

Jonathan Rosenfeld's Nursing Homes Abuse Blog

Wrongful Death Lawsuit Proceeds: New Court Decision Says Medicare Not Entitled To Portion Of Recovery

Posted by [Jonathan Rosenfeld](#) on October 25, 2010

A new court decision by the Eleventh Circuit in the matter of Bradley v. Sebelius, 2010 WL 3769132 (11th Cir. Sept. 29, 2010) helps clarify the murky area of the law as to who is exactly entitled to the proceeds from a wrongful death settlement proceeds in nursing home cases.

In making its decision, the court ruled that the proceeds from a wrongful death settlement are the property of the decedent's family exclusively and the proceeds are exempt from Medicare recovery.

Bradley involves a wrongful death claim initiated by the family of Charles Burke who allegedly died due to the negligence of the Florida nursing home where he was a patient. Before a lawsuit was filed, the family of Mr. Burke was able to settle their claim with the nursing home for the limits of facilities insurance policy.

After the claim was settled, Medicare asserted a lien in the matter for medical expenses incurred by Mr. Burke—for approximately half of the total recovery. Despite several state courts holding that reduced Medicare's recovery to a minor amount, the Department of Health and Human Services (HHS) appealed the decisions alleging that the terms of Medicare Secondary Payer Manual should control.

Jonathan Rosenfeld represents victims of nursing home abuse and neglect throughout the country. For more information please visit Nursing Homes Abuse Blog (www.nursinghomesabuseblog.com), Bed Sore FAQ (www.bedsorefaq.com) or call Jonathan directly at (888) 424-5757.

Despite Medicare's claim of federal preemption, the court of appeals found HHS's argument unpersuasive and used Florida's wrongful death statute as the controlling law on the matter. "Under Florida law, any claim of the estate is separate and distinct from the claim of a survivor," wrote Judge James Hill in his decision.

Judge Hill goes on to say,

All loss of consortium or companionship recoveries is the property of the person who incurred the loss. Not the secretary of HHS. A child's loss of parental companionship claim is a property right belonging to the child. Not the secretary of the HHS.

As lawyer who represents families in wrongful death matters involving nursing home negligence and medical malpractice, I hope this decision brings some clarity to this increasingly complicated area of the law. Nonetheless, all matters involving a potential recovery claim by Medicare need to be carefully evaluated at the time of settlement to assure that the settlement proceeds are maximized for the client.

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Bradley v. Sebelius, 2010 WL 3769132 (11th Cir.) September 29, 2010 (PDF)