

STATE OF RHODE ISLAND  
PROVIDENCE, SC

PROBATE COURT OF THE  
CITY OF PROVIDENCE

In Re Estate of: **ROMEO MANUEL ROSS**

No.: **2018-059**

**DECISION**

The matter is before this Court for decision on a **Disallowance of Claim** filed by Jacqueline M. Taskin, Administratrix of the Estate of Romeo Manuel Ross (the “**Estate**”) to the **Claim** filed by the State of Rhode Island Executive Office of Health and Human Services (“**EOHHS**”) for **\$349, 880.55**, pursuant to **RI General Laws § 33-11-16**, as amended.

**TRAVEL AND UNDISPUTED FACTS OF THE CASE**

The decedent passed away on **December 29, 2005**. He was a **medical assistant recipient (“Medicaid”)** from **December, 1996** until his death and resided at Berkshire Place, a skilled nursing home, located 455 Douglas Avenue in the City of Providence.

It is assumed by this court that he was properly qualified by the **EOHHS** or its predecessor(s) to receive such assistance and apparently did not reveal or know the existence of any assets that would have been able to be used for his care<sup>1</sup>, or his eligible assets were spent down prior to his qualification for assistance from **Medicaid**.

Sometime in **December, 2017**<sup>2</sup>, his family received a check from Compass Pension Group (“**Compass**”) in the amount of **\$77, 526.84** payable to the “**Estate of Manuel Ross**” purportedly for the balance of the decedent’s qualified plan<sup>3</sup>. Since the payee on the check was the Estate of Manuel Ross, a Petition for the Appointment of an Administrator of his estate was filed in the Providence Probate Court. On March 6<sup>th</sup>, 2018, Jacqueline M. Taskin, Mr Ross’s daughter, was appointed Administratrix and Appraiser by the court. At that hearing, Counsel for the Estate properly advised the court of the existence of a possible claim against the estate by **EOHHS** and, based on that possibility, a **surety bond** in the amount of **\$75,000.00** was ordered for the Administratrix by the court<sup>4</sup>.

Notice of the filing of the Petition for Probate pursuant to § **40-8-15-(g)** as well as actual Notice of the Probate Estate to known or reasonably ascertainable creditors pursuant to § **33-11-5.1** were timely provided to **EOHHS**. An inventory was filed by the appointed Appraiser and Administratrix for the Estate listing the check received from **Compass** as the only asset of

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<sup>1</sup> No mention of assets at the commencement of his qualification was made by either party. This court takes Judicial Notice of the stringent application process in use by the **EOHHS or predecessors** which is used to qualify applicants for medical Assistance.

<sup>2</sup> This check was received **12 years** after his death and no mention of what his qualified plan was.

<sup>3</sup> The death certificate of Mr Ross indicates he was a Chef.

<sup>4</sup> The bond was duly filed and the Administratrix was qualified by the Court in April of 2018.

the estate. Subsequently, **EOHHS** timely filed its claim for reimbursement of monies expended for the decedent, with appropriate detail, in the amount of **\$349, 880.55** pursuant to **§ 33-11-5 (a)**. The **Estate** filed a Disallowance of the Claim and **EOHHS** requested a hearing in this court<sup>5</sup>, which was held on October 2, 2018.

At the hearing, no dispute as to the facts was raised by either party; this court set a briefing schedule for the submission of Legal Memorandum by both parties as to whether the Claim of **EOHHS** was valid under existing RI Law. Both parties submitted Memorandums of Law in support of their respective positions; in addition, the court offered the parties the opportunity to present oral arguments at an agreed upon date, which was respectfully declined.

### **DISCUSSION AND FINDINGS**

Since all of the appropriate steps required by the parties herein to file a Claim, Disallow it and request a hearing before this court to decide the validity of the Claim were proper and timely filed as set forth as part of the undisputed facts herein, this court finds that the sole issue before it is whether **RI General Law § 9-1-21** or some other section of **RIGL** time bars **EOHHS** from sustaining its claim against the **Estate**.

At the hearing held on October 2, 2018, this court had inquired from both parties whether there is any type of limitation for a creditor's lien or claim in **Title 33 of the Rhode Island General Laws**. The section of the General Laws that was referred to is : **RIGL § 33-13-4** which specifically bars claims against **real estate** owned by an intestate decedent **six (6) years** after death<sup>6</sup>. It does not apply to this case as there is no real estate owned by the **Estate** for the creditor **EOHHS** to act upon.

The **Estate**, in its Memorandum of Law, initially states that it has complied with all notice requirements set forth by **RIGL§ 40-8-15 (g)** even though it did not have to so comply because that particular version of **RIGL§ 40-8-15** was not enacted until **2012**, seven (7) years after the death of the decedent. That argument is not sustainable since the notice was in fact given to **EOHHS** and was necessary as the present statute in effect when the probate matter was filed requires it; the statutory application is not dependent on the **date of death** of the decedent but rather on the date that the probate estate is **filed and heard**. Furthermore, when this decedent passed in December, 2005, a similar statute was in effect with the same notice requirements specifically to **EOHHS** or its predecessor as existed when this matter was filed. **RIGL § 33-11-5.1 (a)** also requires notice by the **Estate** to any known or ascertainable creditors of the decedent. This Court finds as a fact that since there were **no assets known** to be **owned by the decedent** by the **Estate** or **EOHHS** in **December, 2005, (decedent's date of death)**, no Probate estate was then required to be filed. {NB: **EOHHS** (or its predecessor) would have been able to secure reimbursement from the **Estate** for reimbursement of medical expenses paid on behalf of the

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<sup>5</sup> Both the Disallowance of the Claim and the Request for hearing in the the Probate Court were timely filed.

<sup>6</sup> The **Estate** references this fact on page 2 of its Memorandum.

decendent herein had the heirs of the decedent known of the existence of the **Compass** check and filed a Probate Estate under the RI Statute in existence in **2005**. (See **RIGL § 40-8-15** enacted in **1999**) and be entitled to similar remedies that the current enactment and Probate **§ 33-11-4 et seq.** provides. }

The **Estate** then avers that the claim for reimbursement of medical expenses and the lien therewith arise “upon the death of a recipient... and by its own terms cannot arise before the death of a medical assistant recipient”, citing **In re Estate of Manchester**, 66 A.3d 426,429 (RI 2013). To this premise, this court agrees as does **EOHHS** as stated on page **2 and 3** of its Memorandum of Law filed in this matter.

However, the conclusion that the **Estate** bases on the holding in the Manchester Case is fatally flawed. It argues that because the **Estate** owned no real estate or personal property at the time of his death that would have been includable in a probate estate, no lien of **EOHHS** or its predecessor would have been effective. The fact is the **Estate** did own personal property at the time of death, but the heirs at law did not know of its existence. It apparently argues on the premise that because a lengthy period of time (12 years) passed between the time of death and knowledge of the asset by the heirs, the claim of **EOHHS** is not valid, but cites no legal precedent in support of this premise. Reference the discussion in this decision regarding application of **RIGL § 33-13-4**, supra.

Apparently, based on the Legal Memorandum submitted, the **Estate** argues that **EOHHS** is time barred by **RI General Law § 9-1-21** because the action arose prior to Decedent’s death and the commencement of the term of the Statute of Limitation was the date of death, thus the Statute expired on December 30, 2008. For authority, it cites **MacNeil v Gallagher**, 24 RI 490,53 A.630 (RI 1902), a case which deals with a creditor who had a construction contract with the decedent for work on two parcels of real estate owned by the decedent and was not paid for the work for some time prior to the decedent’s death. Our Supreme Court, in that case, found that the claim of the contractor was time barred by the Statute of limitation then in effect in RI for actions that arose **prior to the decedent’s death**. Neither the facts nor timeline are compatible to the facts of this case. See the **Manchester Case**, supra. **RI General Law § 9-1-21** applies to a cases when the Claim is owed by the decedent during his or her lifetime not to claims that do not arise after death. Probate rules and procedures do apply and determine the distribution of decedent’s estates.

**EOHHS** relies on the findings in the **Manchester Case** which affirmed the RI Superior Court decision appealed from finding that **RI General Law § 9-1-21** does not apply to cases involving claims for reimbursement for Medical Assistance as those claims do not arise until after the recipient dies.

Further, **EOHHS** argues that in the alternative Probate Court has discretion to allow claims otherwise barred by the Statute of Limitations. It argues that the gravamen of the **Estate’s** request for Disallowance of the Claim is that the long passage of time between the death of Mr. Ross and the discovery by the family of the funds held by **Compass** should somehow act as a bar

to the allowance of **EOHHS's** claim. **EOHHS** propounds a rather unique public policy argument. Even if the claim was time barred, **public policy** requires that **EOHHS** has the right to seek reimbursement from a recipient whenever assets belonging to the deceased were discovered, regardless of the passage of time between the death of the recipient and the discovery of and probate of the recipient's estate.

After a review of the memorandum submitted by the parties, which the court acknowledges and thanks counsel for the respective parties for the work performed in submitting them, it is the decision of this court that the Claim of **EOHHS** is allowed for **\$349,880.55**.

Timely disclosure of the check by **Compass** to the family/**Estate** in a reasonable time after the decedent's death would have alleviated the issue. There would be no expectation by the **Estate** of a payment that it clearly is not entitled to under **Title XIX of the Federal Social Security Act, 42 U.S.C. § 1396, et seq.**

In this case, the parties did not know of any assets owned by the decedent herein until December of 2017 for the **Estate** and February of 2018 for **EOHHS**. Based on this fact, applicable law as stated in our Statutes and the holdings in the Manchester Case, this court must find for **EOHHS** in the allowance of its Claim.

As a practical matter, the court will include in its **Order** herein the normal and customary categories of charges to be paid or reimbursed to the **Estate** pursuant to **RIGL** before the payment of the balance of funds to **EOHHS**. The amounts of the allowed expenses to the **Estate** are not known to the court and require submission via appropriate petitions/forms to this court with receipts attached as applicable, and a hearing before this court for approval of amounts to be **paid/reimbursed** to the Estate for these charges.

### **ORDER**

1. The Claim of **the** State of Rhode Island Executive Office of Health and Human Services in the amount of \$ **349, 880.55** is allowed;
2. Out of the Gross proceeds of the estate as shown in the inventory filed in this case in the amount of **\$77,526.84** plus any and all accrued interest the following expenses shall be paid:
  - a) Funeral and burial expenses reimbursed to the payor **if** the funeral expense was not prepaid or paid via an insurance policy owned by the decedent or paid in full from other funds owned by the decedent;
  - b) Costs of last illness not paid through medical assistance or medicare;
  - c) Administrative fees and surety bond costs paid for the Probate of this estate;
  - d) Reasonable Fees for the Administratrix of the Estate;
  - e) Reasonable Attorney's fees in the Probate of this matter;
3. Balance paid to the State of Rhode Island Executive Office of Health and Human Services for the lien for reimbursement of medical assistance provided to the decedent Romeo Manuel Ross.

**ENTER:** \_\_\_\_\_  
**John E. Martinelli, Providence Probate Judge**

**DATE:** \_\_\_\_\_

**BY ORDER:** \_\_\_\_\_  
**Rene M. Manosh, Providence Probate Deputy Clerk**

**DATE:** \_\_\_\_\_