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## TRUST AND ESTATES

# Reimbursement From Supplemental Needs Trusts

## *State entitled to Medicaid paid for infant*

By Robert M. Harper

Until recently, the question of the extent to which the State of New York is entitled to reimbursement for "Medicaid payments made on behalf of an infant" in connection with a Supplemental Needs Trust was unsettled. In *In re Abraham XX*, however, the Court of Appeals definitely resolved that question. This article provides general background on Supplemental Needs Trusts, discusses the *Abraham XX* decision, and explains why the state is entitled to recover the entire value of any Medicaid assistance paid for the infant.

"A Supplemental Needs Trust ("SNT") is a planning tool used to shelter a severely disabled person's assets for the dual purpose of securing or maintaining eligibility for state-funded services, and enhancing the disabled person's quality of life with supplemental care paid by his or her trust assets."<sup>1</sup> First recognized in New York in *In re Escher* in 1978,<sup>2</sup> the SNT authorizes the use of a "discretionary trust to supplement the care of [a] severely disabled [individual] without jeopardizing the individual's right to government-provided medical care during the beneficiary's lifetime."

The New York Legislature enacted section 7-1.12 of the Estates, Powers and Trusts Law in 1993 to provide greater clarity and consistency with respect to SNTs.<sup>3</sup> That same year, Congress passed the Omnibus Budget Reconciliation Act ("OBRA") for dual purposes: to "tighten eligibility requirements for Medicaid[;]" and to prevent "abusive asset transfers...".<sup>4</sup> This was significant because, under OBRA, the trust assets of a Medicaid recipient, including those in a SNT, were "available resources" and affected the receipt's eligibility for Medicaid assistance.

Following OBRA's enactment, Congress passed 42 U.S.C. § 1396p ("Section 1396p"), which was designed to balance the concerns of the severely disabled and the government's need for heightened Medicaid eligibility requirements.<sup>5</sup> Section 1396p struck this balance by excluding certain trust assets, including the assets of SNTs, from "available resources," thereby enabling numerous disabled people to receive Medicaid funds to which they otherwise would not have been entitled under the original version of OBRA. However, Section



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1396p also provided for the transfer of "all amounts remaining in the trust upon the death [of the disabled person] up to an amount equal to the total medical assistance paid on behalf of the [disabled person] under" a state-sponsored Medicaid plan to the State. The New York Legislature followed suit by enacting a similar statutory section in 1994.<sup>6</sup>

Against that background, the *Abraham XX* case addressed whether "the State can recover its remainder interest in [a SNT in] an amount equal to the 'total medical assistance paid' on behalf of the recipient, or whether the State is limited to the amount expended from the trust's effective date to the recipient's death."<sup>7</sup> There, the decedent's mother suffered a seizure while she was pregnant with the decedent, and delivered the decedent prematurely by an emergency Caesarian section operation. The decedent suffered severe side-effects as a result, and then entered into the custodial care of a New York State facility.

Shortly thereafter, the decedent's mother commenced a medical malpractice action against her physicians and the hospital on the decedent's behalf. After the decedent's mother secured a \$5,000,000.00 settlement for the decedent, the state filed a \$1,707,884.95 lien against the decedent's settlement and ultimately received payment in full for the value of its lien.

Nevertheless, a dispute concerning the allocation of the settlement proceeds resulted in a delay of the distribution thereof. During the dispute, the decedent remained Medicaid eligible and under the care of the state. Additionally, the settlement proceeds did not render the decedent ineligible for Medicaid because they were paid to the SNT.

The decedent died in June 2003. Following the decedent's death, the state sought reimbursement for \$1,500,000 in Medicaid payments made from the date on which the state's lien expired in March 1998 to the date upon which the decedent left the state's care in October 2001, including the gap period from the date of the lien's expiration to the date of the SNT's funding in September 1999. The State based its claim on the language of the SNT agreement, which provided for reimbursement "to the extent then required by law... such amount as shall be necessary to provide reimbursement for

expenditures made for medical assistance for Abraham [XX] . . . through Medicaid."

The decedent's mother agreed to the payment of the state's claim, subject to her right to seek a refund from the state. After paying the state's claim, the decedent's mother petitioned for a refund of approximately \$960,000 for Medicaid payments during the aforementioned gap period. "She argued that the state was precluded from recovering funds in excess of its Medicaid lien based on res judicata."

The Supreme Court, Broome County, directed the state to make a partial refund of the Medicaid payments made during the gap period. However, in modifying the Supreme Court's order, the Appellate Division, Third Department, reversed the partial refund and granted summary judgment in favor of the state. The Appellate Division reasoned that the SNT agreement was dispositive and that res judicata did not apply.

The Court of Appeals affirmed the Appellate Division's decision. In doing so, the court explained that although the trust agreement would usually govern, the decedent's SNT agreement expressly referred to the Medicaid statutes, which provide for reimbursement of all properly paid Medicaid payments made during the decedent's lifetime. Thus, the state was entitled to reimbursement for Medicaid funds paid even before the funding of the decedent's SNT during the gap period.

The scope of reimbursement to which the State is entitled from a SNT for Medicaid payments made for the benefit of a disabled person is now settled. Indeed, subject to the applicable laws and the terms of the SNT agreement, the state can recover the entire value of properly paid Medicaid funds, regardless of when the SNT is funded.

*Note: The author is an associate in the Trusts and Estates and Commercial Litigation Department at Farrell Fritz, P.C.*

<sup>1</sup> *In re Abraham XX*, No. 165, 2008 WL 4934432 (N.Y. Nov. 20, 2008).

<sup>2</sup> *In re Escher*, 94 Misc.2d 952 (1978), aff'd, 75 A.D.2d 531 (1980), aff'd, 52 N.Y.2d 1006 (1981).

<sup>3</sup> EPTL § 7-1.12.

<sup>4</sup> Joseph A. Rosenberg, "Supplemental Needs Trusts for People with Disabilities," 10 B.U. Pub. Int. L.J. 91, 127 (2000).

<sup>5</sup> 42 U.S.C. § 1396p.

<sup>6</sup> N.Y. Soc. Serv. Law § 366.

<sup>7</sup> See generally *Abraham XX*, 2008 WL 4934432 (discussing SNT reimbursement).