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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

WELLS FARGO BANK, as Trustee,
etc.

Plaintiff and Respondent,

v.

CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES,

Defendant and Appellant;

JEFF MARTIN et al.,

Real Parties in Interest and
Respondents.

B284420

(Los Angeles County
Super. Ct. No. BP113460)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lesley C. Green, Judge. Reversed and remanded.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Leslie P. McElroy, Supervising Deputy Attorney General, and Cristina M. Matsushima, Deputy Attorney General, for Defendant and Appellant California Department of Health Care Services.

No appearance for Plaintiff and Respondent Wells Fargo Bank.

No appearance for Real Parties in Interest and Respondents Jeff Martin and Lorrie Brown.

* * * * *

In 2004, a woman suffered a catastrophic injury that left her permanently disabled. She sued the third party tortfeasors responsible for the injury, and obtained a \$1.6 million settlement. To continue receiving Medicaid benefits, she placed the settlement proceeds into a special needs trust in 2007. The woman recently passed away. In the course of distributing the assets of the special needs trust, the trial court ruled that the state agency charged with administering Medicaid benefits was not entitled to reimbursement for the \$11,446.58 in medical services the agency had provided prior to the trust's creation in 2007, because the agency had accepted a \$46.13 check in satisfaction of a \$1,218.06 lien the agency had asserted against the trust at the time of its creation. This ruling was in error, so we reverse and remand.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

On October 23, 2004, Carol Martin (Martin), then age 52, suffered respiratory and cardiac arrest that caused permanent brain damage. Martin sued several individuals in Fresno

Superior Court for her injuries. The individuals eventually agreed to pay \$1.6 million to settle Martin's lawsuit.

Martin had been receiving medical benefits from Medicaid since May 1996. To maintain her eligibility for those benefits notwithstanding the settlement, Martin petitioned the court to create a "special needs trust" that would be funded with an initial contribution of \$570,865.94 and by subsequent monthly payments of \$3,134.69 for the rest of Martin's life, all coming from the settlement funds. As described more fully below, a special needs trust is a type of trust, authorized by federal and California law, that allows a person to receive settlement monies from a third party tortfeasor without sacrificing her financial eligibility for Medicaid benefits. (*Shewry v. Arnold* (2004) 125 Cal.App.4th 186, 191 (*Shewry*).) In the proposed trust document, Martin promised that, upon her death, the trustee would repay the state "up to an amount equal to the total medical assistance paid on [her] behalf." Defendant the California Department of Health Care Services (the Department) sought reimbursement of \$1,218.06 from the settlement proceeds to be deposited into the trust. The trial court ordered that the Department be paid the full amount of its lien. The trial court approved the trust, and it was funded in December 2007.

The trust's lawyer sent the Department a check for \$46.13, and the Department cashed it.

II. Procedural Background

After Martin died on October 2, 2016, plaintiff Wells Fargo Bank (Wells Fargo), the trustee of Martin's special needs trust, filed a petition for a final accounting of the trust. In its petition, Wells Fargo took the position that any "claim [for Medicaid] services rendered prior to the establishment of the Trust should

not be allowed” because all pre-trust “claim[s] by [the Department were] settled and paid.”

The Department filed a creditor’s claim seeking reimbursement of \$42,501.87. This amount represented the total amount of Medicaid services provided to Martin between May 3, 1996, and her death (\$42,548), minus the \$46.13 it had received in 2008.

The trial court ruled that the Department’s acceptance of the \$46.13 check constituted a settlement of *all* of its claims for reimbursement between May 1996 and December 2007, which total \$11,446.58. The court ruled that the Department could only recover the \$31,055.29 in services provided to Martin *after* the creation of the trust (that is, \$42,501.87 less the \$11,446.58 in pre-trust services).

The Department filed a motion for reconsideration, but the trial court denied it on procedural grounds.

The Department filed this timely appeal.¹

DISCUSSION

The Department argues that the trial court erred in denying it the right to reimbursement for *all* \$11,466.58 of the medical services it provided Martin prior to the creation of her special needs trust due to its acceptance of a \$46.13 check. To the extent the Department’s argument requires us to construe federal or state laws, our review is de novo (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387); to the extent it requires us to examine the trial court’s factual findings, our

¹ This matter is appealable. (Welf. & Inst. Code, § 14124.76, subd. (c).)

review is for substantial evidence (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 559).

I. Background Law

A. Medicaid, Generally

Medicaid is a joint federal and state program designed “to provide medical assistance to impoverished individuals who are aged, blind, disabled, or families with dependent children.” (*Shewry, supra*, 125 Cal.App.4th at p. 193; *Arkansas Dept. of Health and Human Servs. v. Ahlborn* (2006) 547 U.S. 268, 275-276; see generally 42 U.S.C. § 1396a et seq.; Welf. & Inst. Code, §§ 14005.7, 14006.)² If a recipient of Medicaid sues a third party and obtains a verdict or settlement that would otherwise render her no longer financially eligible for Medicaid services, she can retain her eligibility by placing the proceeds of the verdict or settlement into a special needs trust. (*Balian v. Balian* (2009) 179 Cal.App.4th 1505, 1512 [a special needs trust “preserve[s] the availability of public benefits to an elderly or disabled person”]; 42 U.S.C. § 1396p.) Eligibility is maintained because “[t]he assets of special needs trusts are to be disregarded in determining an individual’s eligibility for Medicaid . . . benefits.” (*Shewry*, at p. 197.) A special needs trust is valid only if it is approved by a court and if it specifies that, upon the beneficiary’s death, “all statutory liens in favor of the State Department of Health Care Services . . . shall first be satisfied.” (Prob. Code, § 3604, subd. (d); 42 U.S.C. § 1396p(d)(4)(A).)

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

B. *Collection of Liens*

The Department, as the agency responsible for administering the Medicaid program in California (where it is called Medi-Cal), has the right to seek reimbursement from third parties for “the reasonable value” of “payment for medical expenses, or medical care” the state has provided to a beneficiary injured by that third party. (§§ 14124.71, subd. (a), 14124.76, subd. (a); *Riddell v. State of California* (1996) 50 Cal.App.4th 1607, 1609 [so noting]; 42 U.S.C. § 1396a(a)(25).)³ If the beneficiary files a lawsuit against the third party, the Department may enforce its statutory right to reimbursement “as a first lien” against any verdict or settlement once “reasonable litigation expenses” have been paid. (§ 14124.74, subd. (a); see also § 14124.70, subd. (d) [defining “[l]ien” as “the director’s claim for recovery, from a beneficiary’s tort action or claim, of the reasonable value of benefits provided on behalf of the beneficiary”].) The Department nevertheless has the discretion to accept less than the full value of a lien. (§ 14124.71, subd. (b) [noting Department’s power to “[c]ompromise, or settle and release any such claim in whole or in part” or to “[w]aive any

³ The Department’s right to reimbursement does not extend to the full amount of all medical payments or medical care provided where the beneficiary has “incur[red] a personal liability to pay attorney’s fees and costs of litigation” (§ 14124.72, subd. (d)) or when that reasonable value exceeds the amount “the beneficiary recovers after deducting . . . attorney’s fees and litigation costs paid for by the beneficiary” (§ 14124.78). (§ 14124.785 [capping the recovery amount at the lesser of the amount specified in sections 14124.72, 14124.76, or 14124.78].) Neither of these lower caps on reimbursement is at issue in this case.

such claim, in whole or in part”]; *Wright v. Department of Benefit Payments* (1979) 90 Cal.App.3d 446, 449.)

II. Analysis

Did the trial court err in concluding that the Department’s acceptance of the \$46.13 check in satisfaction of its \$1,218.06 lien waived its claim to seek reimbursement for *all* medical services provided prior to the creation of Martin’s special needs trust? We conclude that it did, and do so for two reasons.

First, the trial court erred to the extent it relied upon the legal proposition that the Department’s right to reimbursement reaches only those medical services provided *after* a special needs trust is created. The statutes requiring that special needs trusts expressly provide for reimbursement upon the beneficiary’s death reach “*all* statutory liens” (Prob. Code, § 3604, subd. (d), italics added), not just those for services provided after the special trust is created. (Accord, *Matter of Abraham XX* (N.Y. 2008) 11 N.Y.3d 429, 436-437 [holding that “[t]here is no temporal limitation” to a state’s “right to recover the *total* Medicaid paid on behalf of” the beneficiary of a special needs trust]; Social Security, Program Operations Manual System, SI 01120.203, p. 5 [“Medicaid payback may . . . not be limited to any particular period of time, i.e., payback cannot be limited to the period after establishment of the [special needs] trust”];⁴ see also Prob. Code § 3605, subd. (b) [tolling the statute of limitations on such liens during the life of the special needs trust].)

⁴ We may take judicial notice of this administrative manual. (Evid. Code, § 452, subd. (c); *Smiley v. Citibank, N.A.* (1995) 11 Cal.4th 138, 145, fn. 2 [taking judicial notice of documents promulgated by a federal administrative agency].)

Second, even if the trial court did not rely on a blanket rule against reimbursement for pre-trust medical services, the trial court erred in concluding that the \$46.13 check wiped out the Department's entitlement to *all* of the \$11,446.58 in pre-trust medical services.

Those services can be grouped into three categories: (1) the services reflected in the \$1,218.06 lien the Department asserted against the trust in 2007; (2) the services provided prior to Martin's October 23, 2004 injury; and (3) the services provided after the injury but before the creation of the special needs trust.

With respect to the first category, substantial evidence supports the trial court's finding that the Department's acceptance of the \$46.13 check constituted a partial compromise or waiver of the \$1,218.06 lien previously asserted against the third party settlement that created the special needs trust. The court therefore had a factual basis for reducing the Department's lien by \$1,171.93. The Department argues there can be no compromise unless the specific requirements of an accord and satisfaction are met, but our Legislature's specific grant of discretion to the Department to decide whether to compromise its liens (§ 14124.71) displaces the need to satisfy the default requirements of accord and satisfaction. What is more, the Department has not shown that it abused its own discretion in accepting the \$46.13 check as a partial compromise or waiver.

With respect to the second category, substantial evidence does not—and, indeed, could not—support the court's finding that the Department's acceptance of the \$46.13 check constituted a partial compromise or waiver of Martin's pre-injury medical expenses. That is because the Department, in asserting its lien against the special needs trust, is seeking reimbursement from

the third parties whose conduct caused the injury to Martin that prompted the creation of the trust. Thus, the \$46.13 paid from the special needs trust could, at most, effect a compromise or waiver of the amounts paid for medical services related to Martin's October 23, 2004 injury. The check could not have effected a compromise or waiver of medical expenses incurred prior that injury because those expenses, by definition, were not related to that injury.

With respect to the third category, we cannot determine whether the trial court's finding that the Department's acceptance of the \$46.13 check constituted a partial compromise or waiver of the medical expenses incurred between October 23, 2004, and the date of the special needs trust's creation. Acceptance of the check could have wiped away medical expenses incurred in this window if those expenses were related to the injury (as opposed to some other condition). However, the records of medical expenses that the Department provided to the trial court (and which are the sole documents available for our review on appeal) do not itemize the precise dates on which medical services were provided or the nature of those services. The Department urges that any services for which it now seeks reimbursement beyond those sought in the \$1,218.06 lien necessarily do not pertain to the October 23, 2004 injury because the Department's statutory authority to assert that lien was confined to services related to that injury, but this ignores the possibility that the Department may have exercised its discretion to seek less than the full amount of services related to the injury when it asserted its \$1,218.06 lien. The record before us is silent on this point. For this reason, and because the trial court made no factual finding regarding the medical expenses incurred in

this window, we must remand the matter to the trial court for it to examine: (1) which medical services were provided to Martin between October 23, 2004, and the date of the special needs trust's creation; (2) whether those services were related to Martin's 2004 injury; and (3) whether those services were partially compromised by the Department's acceptance of the \$46.13 check.⁵

⁵ We need not decide whether any of the Department's claims for medical expenses paid prior to the creation of the trust are barred by the three-year statute of limitations that ordinarily applies to reimbursement claims (§ 14124.72, subd. (a); Code Civ. Proc., § 338) because Wells Fargo's failure to assert the statute of limitations as a defense has waived that defense (*Hall v. Chamberlain* (1948) 31 Cal.2d 673, 679 ["The general rule is firmly established that if a statute of limitation is not pleaded it is waived"].) This waiver also makes it unnecessary for us to evaluate the Department's argument that the statutorily mandated term of all special needs trusts—namely, that the trust's proceeds be used to reimburse "all statutory liens"—obligates a trust to repay even time-barred claims.

DISPOSITION

The judgment is reversed. The Department is entitled to its costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J. *
MATZ

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.