

N.D.A.G. Letter to Wold (Sep. 21, 1989)

September 21, 1989

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your August 30, 1989, letter regarding certain claims in a decedent's estate. You ask whether a claim filed by the Department of Human Services in a decedent's estate but not paid due to the survival of a spouse, earns interest until paid.

According to N.D.C.C. § 50-24.1-07, the Department of Human Services is to file a claim in a decedent's estate for all medical assistance paid on behalf of the decedent following the decedent's 65th birthday. This claim is given a special preference under the statute. However, "[n]o claim must be paid during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind and permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section." (Emphasis supplied.)

N.D.C.C. § 30.1-19-06 provides the manner in which the personal representative allows or disallows claims in a decedent's estate, and the consequences of those actions. Under N.D.C.C. § 50-24.1-07 the personal representative is prohibited from disallowing the claim filed by the Department on the basis of the presence of a surviving spouse or a surviving minor or permanently and totally disabled child. However, that section does not obligate the personal representative to make immediate payment on the claim. If the facts support the personal representative's election to delay payment on the claim filed by the Department, the "allowed claim" status is not altered.

N.D.C.C. § 30.1-19-06(5), with an exception not relevant here, provides that "allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired. . . ." The legislative scheme contemplates a delay in the collection of a medical assistance claim when the specified circumstances are present. However, no exception is made with respect to the statutory imposition of an interest charge when payment is delayed.

Based upon these statutes, it is my opinion a claim filed in a decedent's estate by the Department of Human Services, as required by N.D.C.C. § 50-24.1-07, but not paid due to the survival of a spouse or a minor or permanently and totally disabled child, earns interest until the payment is made.

Sincerely

Nicholas J. Spaeth

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