

MSBA ELDER LAW SECTION E-NEWSLETTER

August 4, 2009

E-Newsletter Editorial Staff:

Communications Committee Chair: Laurie Hanson, Esq.

Editor in Chief: Suzy Scheller, Esq.

Contributors: Joel Smith, Esq., Kristine Mullmann, Esq., Peter Hendricks, Esq., Amanda Christman, Esq., Julian J. Zweber, Esq., Kim Dayton, Esq., Vicki McIntyre, Esq.

BARG UPDATE: BARG NO LONGER SUBJECT TO APPEAL

Submitted by Julian J. Zweber, Esq.

The period allowed for the Commissioner of Human Services or Mille Lacs County to petition the United States Supreme Court for Reconsideration of Denial of Certiorari has passed without the filing of a petition. After more than five years of litigation, the Minnesota Supreme Court's decision in Barg is now beyond appeal and final. *In Re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008), cert. denied sub nom. *Vos v. Barg*, 557 U.S. ____ (June 29, 2009).

County attorneys have been instructed to review Barg-type cases to look for cases involving large claims and large assets where the estate has not denied the MA claim in full. The Minnesota Supreme Court held in the Barg decision that the part of the claim not disallowed in the probate court was still payable because the estate did not clearly challenge its previous partial allowance on appeal. A case is pending in Hennepin County Probate Court where the personal representative has petitioned for disallowance of the MA claim in full even though the claim was only partially disallowed during the usual period for disallowance. The Probate Code allows disallowance of a claim "for good cause shown" at any time before the claim is paid. The petitioner is arguing that the Court's decision in Barg changed the previous court interpretation of state law and the change in law is "good cause" for allowing disallowance in full. The hearing was scheduled for August 31, 2009. The State is waiting to see if partial allowance of a medical assistance claim will allow recovery of the allowed part of the claim despite the general holding in Barg.

HENNEPIN COUNTY ACCEPTING APPLICATIONS FOR THE GUARDIANSHIP/CONSERVATORSHIP ATTORNEY PANEL

The Fourth Judicial District Court (Hennepin County) Probate Mental/Health Division is accepting applications for the Guardianship/Conservatorship Attorney Panel. Applicants must meet the following criteria: Minimum of five years experience as an attorney; some experience with guardianship/conservatorship cases; current malpractice insurance; be willing to authorize Court to check with the Lawyers Professional Responsibility Board; and devote six CLE credits to guardianships/conservatorships annually. Interested

candidates should complete both the application and authorization forms. Applications must be postmarked on or before August 15, 2009. Mail applications to:

Steve Bittick
Court Operations Manager
Probate/Mental Health Division
C-400, 300 South 6th Street
Minneapolis, MN 55487-0340

FREE ASSISTIVE TELEPHONE EQUIPMENT FROM DHS

The Minnesota Department of Human Services (DHS) offers a Telephone Equipment Distribution Program (TED) to provide assistive telephone equipment at NO COST to individuals who have difficulty using a regular telephone due to a hearing loss, speech impairment or physical disability. Please view the DHS website at www.tedprogram.org, for more information.

ELDER LAW NEWS

U.S. Dept. of Health & Human Services releases 2008 Snapshot of state-specific health care quality information

<http://statesnapshots.ahrq.gov/snaps08/index.jsp>

Nurses Open To Idea Of Robots

<http://www.sciencedaily.com/releases/2009/07/090730140437.htm>

Senior sexuality a gray area, Pa. official says

http://ydr.inyork.com/ci_12916590

Good Question: How Do We Keep Track Of Cousins?

<http://wcco.com/local/good.question.cousins.2.1100595.html>

New Minnesota state laws set to take effect Aug. 1

http://hometownsource.com/index.php?option=com_content&task=view&id=10092&Itemid=1

Probation for woman swindling family – Grandparents victims of crime

http://www.mankatofreepress.com/local/local_story_211001445.html

6 Startup Friendly Industries

These businesses are booming despite the gloomy economy.

<http://www.msnbc.msn.com/id/32125210/>

Not retiring comes with a bonus: better health Spending your golden years on the job is good for your brain and body

<http://www.msnbc.msn.com/id/32188496/ns/health-aging/>

Going Too Far with Assisted Suicide?

<http://www.time.com/time/magazine/article/0,9171,1912417,00.html>

MINNESOTA CASES

The following is an unpublished case from the Minnesota Court of Appeals released on July 28, 2009:

A08-1637

Stacie Willis, Relator, vs. Rice County Housing & Redevelopment Authority, Respondent.

CONNOLLY, Judge

Relator's Section 8 housing assistance was terminated following an administrative hearing before a hearing officer. Because the hearing officer's determinations that relator had an unreported household member living at her residence and was also involved in illegal-drug use are unsupported by substantial evidence, we reverse.

The decision is available at:

<http://www.lawlibrary.state.mn.us/archive/ctapun/0907/opa081637-0728.pdf>.

Unpublished opinions may not be cited except as provided by Minn. Stat. § 480A.08, Subd. 3 (2008).

STATUTES, REGULATIONS, BULLETINS

DHS BULLETIN # 09-25-08: DHS ISSUES ELDERLY WAIVER (EW) CUSTOMIZED LIVING (CL) PLANNING AND RATE-SETTING TOOLS. The DHS is issuing customized living tools for the EW program for several reasons, including but not limited to the following: 1) to meet requirements CMS set forth as a condition of the EW Plan renewal; 2) to implement Minnesota statutory requirements related to authorization and purchase of this service; 3) to provide a consistent statewide approach to the negotiation of rates for customized living service; and 4) to establish a rate reflective of the individual's approved customized living service plan. The bulletin, dated July 23, 2009, describes the new tools and is available at:
http://www.dhs.state.mn.us/main/groups/publications/documents/pub/dhs16_145868.pdf.

NEWS FROM DHS – EXCERPTS FROM THE JULY 2009 E-NEWSLETTER

Budget information, fact sheets available online

Information about the 2010-2011 biennial budget is available on the [Minnesota Management & Budget](#) Web site. A [tracking document](#) that summarizes the human services budget and fact sheets on changes affecting [Minnesota Health Care Programs](#), [chemical and mental health services](#), [continuing care](#) and [children and families](#) as well as a [human services overview](#) are available on the [fact sheets page](#).

Summary of legislative, other changes affecting providers available

Key legislative and other changes affecting providers enrolled in Minnesota Health Care Programs are summarized in a [provider update](#).

Enrollee notice of health care program changes available online

The 2009 notice to health care program enrollees about legislative and other changes is being mailed to 410,000 households. Due to the large volume, some enrollees may not receive their notice until mid-August. Copies of the notice are available on DHS Web site at www.dhs.state.mn.us/healthcare/notices.

UPCOMING EVENTS AND CLE PROGRAMS

Medical Assistance & Long Term Care 2009

Video

August 17 – Minneapolis

Contact Information: <http://www.minncle.org/SeminarList.aspx> or 1 800-759-8840.

Elder Law Institute

October 8-9, 2009

Minnesota CLE Conference Center

ELDER LAW SECTION ACTIVITIES

PRO BONO COMMITTEE. The next meeting of the Pro Bono Committee will be August 11, 2009, from 4:00pm - 5:00pm at GRATHWOL LAW OFFICE, 216 Water Street, Excelsior, MN 55331. For more information or to confirm your attendance, contact the Grathwol Law Office at 952-474-2955 or FAX. 952-474-4625.

MA COMMITTEE MEETING: The next MA Committee meeting will be at 3:30 p.m. on Tuesday, August 18, 2009, at the MAO Offices, 2021 E. Hennepin, Suite 200, Minneapolis. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at creher@mnelaw.com, or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622.

GOVERNING COUNCIL MEETING: The next meeting of the Elder Law Section Governing Council will be at 3:30 p.m. on Friday, August 21, 2009, at the MAO offices, 2021 E. Hennepin, Suite 200, Minneapolis. All members are welcome to attend. To participate by phone, please contact Vicki McIntyre at vmcintyre2@yahoo.com or 612-722-8572.

VULNERABLE ADULT COMMITTEE MEETING: The next meeting of the Vulnerable Adult Committee will be Thursday, October 29, at Noon, at the offices of

Pearson, Randall, Schumacher & LaBore, P.A., 100 S. 5th Street, Suite 1025,
Minneapolis, 612.767.7500. Contact co-chairs Ken LaBore at klabore@prslegal.com or
Joel Smith at joel@koslaw.com for more information.

GREATER MINNESOTA COMMITTEE: Please contact Bonita Kallestad at 1-320-
235-9600 or bkallestad@westernlegal.org with issues you would like the Greater
Minnesota Committee to address. Also contact Bonita if you would like to serve on the
Greater Minnesota Committee.

**DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT
RESOURCE.** Here's what you can find on the Website: Links to the DHS Health Care
Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the
Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative
summary; Practice Links to organizations such as NAELA, ABA Commission on Law
and Aging, Links to Federal and State Government Agencies, Statutes, and Regulations;
Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE

Click here: <http://www2.mnbar.org/sections/elder-law/index.asp>

Please send E-Newsletter contributions by noon on Saturday of each week to Suzy
Scheller at sscheller@prslegal.com.

If you do not wish to receive this E-Newsletter, send your request to be removed from the
mailing list to Elyse Farnsworth at efarnsworth@statebar.gen.mn.us.

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law
Section and are available at: <http://www.mnbar.org/sections/elder-law/newsletters.asp>.