

[J-42-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

E.D.B., an INCAPACITATED PERSON,	: No. 78 MAP 2008
by and through D.B. and J.R.B., JR.,	:
COURT-APPOINTED GUARDIANS of the	: Appeal from the Order of the Superior
ESTATE and PERSON OF E.D.B.,	: Court at No. 2010 MDA 2006, dated
	: August 15, 2007, reconsideration denied
	: October 25, 2007, reversing and
	: remanding the Order of Centre County
v.	: Court of Common Pleas, Civil Division, at
	: No. 2003-2042, dated November 6, 2006
	:
GERALD CLAIR AND CENTRE	: 933 A.2d 86 (Pa.Super. 2007)
COMMUNITY HOSPITAL, A	:
CORPORATION	: ARGUED: May 12, 2009
	:
APPEAL OF: COMMONWEALTH OF	:
PENNSYLVANIA, DEPARTMENT OF	:
PUBLIC WELFARE	:

OPINION

MR. JUSTICE McCAFFERY

DECIDED: December 29, 2009

The issue presented in this case is whether the Pennsylvania Department of Public Welfare (hereinafter “DPW”) can obtain reimbursement from a tortfeasor for Medicaid expenditures made on behalf of a disabled minor when a claim therefor by the minor’s parents is barred by the statute of limitations. We conclude that DPW can obtain such reimbursement, and accordingly reverse the decision of the Superior Court.

E.D.B. (hereinafter “Emily”) was born on October 11, 1985, suffering from severe physical and mental disabilities. Nearly eighteen years later, in August 2003, Emily, by and

through her parents and guardians, D.B. and J.R.B., Jr. (hereinafter “the Bowmasters”), filed suit against Centre Community Hospital, where Emily was born, and an attending physician, alleging that their negligence was the proximate cause of Emily’s disabilities. The complaint specifically alleged, inter alia, that Emily “has been forced to expend sums of money for physicians, hospitals, paramedical personnel, home care attendance, medications and other items necessary for her proper care and treatment and may be forced to expend similar sums for like items in the future” and that her “earning capacity has been gravely and permanently impaired.” Complaint at 8-9. The parties reached a negotiated settlement, and the Bowmasters filed a petition for leave to settle an incapacitated person’s case. On August 31, 2006, the court of common pleas approved the settlement, which included the establishment of a special needs trust for Emily.¹

Because Emily had been receiving medical assistance benefits through the Medicaid program, the Bowmasters provided notice to DPW of their suit in March 2004, as required by statute. See 62 P.S. § 1409(b)(5). DPW responded with a statement of claim asserting a lien on any award or settlement resolving the litigation, in the amount that DPW had expended for Emily’s medical care. In the order settling the case, the court of common pleas accepted the Bowmasters’ proposal that \$56,517.81 (the amount ultimately sought by DPW) of the settlement be set aside, pending a determination of the exact amount necessary to satisfy DPW’s lien.² Following further briefing on the issue of DPW’s lien, the

¹ The trial court also granted Centre Community Hospital’s motion to seal the record relating to the settlement. Centre Community Hospital filed a motion in this Court to seal portions of the appellate record, which we granted on April 7, 2009.

² DPW initially determined that it had spent \$86,092.53 on Emily’s care, but subsequently revised this amount down to \$79,193.12. The final amount that the common pleas court ordered to be set aside reflected a proportionate deduction for attorneys’ fees and costs.

court ordered the trustee of Emily's special needs trust to reimburse DPW in the full amount of \$56,517.81 for Emily's medical expenses.

The Bowmasters appealed to the Superior Court, which reversed and remanded, holding that DPW could be reimbursed only for those medical expenses paid on Emily's behalf after she reached the age of majority. Bowmaster v. Clair, 933 A.2d 86, 91-92 (Pa.Super. 2007). The Superior Court's reasoning was as follows: Under Pennsylvania common law, a claim for medical expenses incurred by a minor because of personal injury rests with the minor's parents, not with the minor herself. See Hathi v. Krewstown Park Apartments, 561 A.2d 1261, 1262 (Pa.Super. 1989). However, in 2003, when the complaint was filed, the Bowmasters were legally barred from seeking reimbursement for medical expenses incurred during Emily's minority because the statute of limitations for such a suit had expired. Bowmaster, supra at 88-89. Although Emily could pursue a claim for medical expenses in her own right, such a claim, under common law, would necessarily be limited to expenses incurred after she reached the age of majority. Id. Thus, the Superior Court concluded, the instant litigation could not have resulted in an award or settlement that included the medical expenses Emily had incurred while she was a minor, and accordingly DPW could not satisfy its lien for Medicaid benefits paid during Emily's minority from the settlement.

DPW sought allowance of appeal from this Court, which we granted on the following issues, as stated by DPW:

- a. Where a minor child's estate may be legally liable to pay medical expenses resulting from an injury, can the child sue the tortfeasor for reimbursement of those medical expenses?
- b. Did the Pennsylvania Legislature intend to permit a minor receiving medical assistance to sue a tortfeasor for medical expenses when it enacted 62 P.S. § 1409(b)?

c. Is a minor child a “beneficiary” of medical assistance as defined in 62 P.S. § 1409(b)(13)?

Bowmaster v. Clair, 959 A.2d 900 (Pa. 2008).

Resolution of these tightly intertwined issues is dependent upon interpretation of the Fraud and Abuse Control Act of 1980 as it intersects with the common law and federal law.³ Statutory interpretation is a question of law, for which we must be guided by the Statutory Construction Act, 1 Pa.C.S. §§ 1901-91. See Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632, 635 (Pa. 2009); Borough of Youngwood v. Pennsylvania Prevailing Wage Appeals Board, 947 A.2d 724, 730 (Pa. 2008). We have recently summarized the relevant principles of statutory interpretation as follows:

The object of interpretation and construction of all statutes is to ascertain and effectuate the intent of the General Assembly. See 1 Pa.C.S. § 1921(a). When the words of a statute are clear and free from all ambiguity, their plain language is generally the best indication of legislative intent. A reviewing court should resort to other considerations to determine legislative intent only when the words of the statute are not explicit. 1 Pa.C.S. § 1921(b).

* * * *

Moreover, it is axiomatic that in determining legislative intent, all sections of a statute must be read together and in conjunction with each other, and construed with reference to the entire statute.

Penn Jersey Advance, supra at 635-36 (internal citations omitted).

If possible, we must avoid a reading that would lead to a conflict between different statutes or between individual parts of a single statute. Housing Authority of the County of Chester v. Pennsylvania State Civil Service Commission, 730 A.2d 935, 946 (Pa. 1999). Finally, we must presume that when enacting any statute, the General Assembly intended

³ Act of July 10, 1980, P.L. 493, as amended, 62 P.S. §§ 1401-12.

to favor the public interest as against any private interest. Vitac Corporation v. Workers' Compensation Appeal Board (Rozanc), 854 A.2d 481, 485 (Pa. 2004) (citing 1 Pa.C.S. § 1922(5)).

The statute at issue in the instant case is the Fraud and Abuse Control Act, which addresses a variety of matters relating to the Medicaid program. Medicaid, which provides joint federal and state funding of medical care for those who cannot afford to pay, requires cooperation between the states and the federal government. See Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S. 268, 275 (2006); Title XIX of the Social Security Act, 42 U.S.C. § 1396 - 1396v. Although each state is allowed broad discretion in the development of its Medicaid program, in order to maintain federal funding a state must satisfy a number of conditions, including an obligation to seek reimbursement from third parties that are liable for a Medicaid recipient's medical expenses. Ahlborn, supra at 275-77 (citing 42 U.S.C. §§ 1396a(a)(25)(A), (a)(25)(B), and (a)(25)(H), and § 1396(k)). This federal mandate led to the enactment of the Fraud and Abuse Control Act. Shaffer-Doan v. Department of Public Welfare, 960 A.2d 500, 506 (Pa.Cmwlt. 2008) (quoting Miller v. Lankenau Hospital, 618 A.2d 1197, 1198 (Pa.Cmwlt. 1992)).

DPW, the state agency that administers Medicaid, is charged with the responsibility of recovering from liable third parties the reasonable value of benefits provided under the program. 62 P.S. § 201; 62 P.S. § 1409(b)(1). A recipient of medical assistance, by the act of accepting such benefits, assigns to DPW "by operation of law [his or her] rights to recover support, specified by a court as support for the payment of medical care, and to payment for medical care from any third party." 62 P.S. § 1404(b). As set forth in the statute, "[w]hen benefits are provided or will be provided to a beneficiary under this section because of an injury for which another person is liable, or for which an insurer is liable ... **[DPW] shall have the right to recover from such person or insurer the reasonable value of benefits so provided.**" 62 P.S. § 1409(b)(1) (emphasis added).

The Fraud and Abuse Control Act contemplates that DPW and/or the beneficiary may initiate a suit or claim to recover medical expenses from a liable third person or insurer. At the request of DPW, the attorney general may bring such an action in the name of DPW or of the beneficiary. 62 P.S. § 1409(b)(1). When either DPW or the beneficiary brings an action or claim against a third person or insurer, then DPW or the beneficiary must give notice to the other of the action or claim. 62 P.S. § 1409(b)(5). DPW or the beneficiary may become a party to an action brought by the other at any time before trial on the facts. 62 P.S. § 1409(b)(5)(v). However, as a general practice, DPW has sought reimbursement by asserting a lien on any judgment, award, or settlement. This practice is set forth in subsection 1409(b) of the Fraud and Abuse Control Act, which provides in relevant part as follows:

... in the event of judgment, award, or settlement in a suit or claim against such third party or insurer:

(i) If the action or claim is prosecuted by the beneficiary alone, the court [] shall first order paid from any judgment or award the reasonable litigation expenses... . After payment of such expenses and attorney's fees[,] the **court [] shall**, on the application of [DPW], **allow as a first lien against the amount of such judgment or award**, the amount of the **expenditures for the benefit of the beneficiary** under the medical assistance program.

62 P.S. § 1409(b)(7)(i) (emphasis added).

Another provision of the Fraud and Abuse Control Act, see 62 P.S. § 1409(b)(11), addresses some of the particulars for satisfaction of a DPW lien:

Except as otherwise provided in this act, **notwithstanding any other provision of law**, the **entire amount of any settlement** of the injured beneficiary's action or claim, with or without suit, **is subject to [DPW's] claim** for reimbursement of the benefits provided any lien filed pursuant thereto, but in no event shall [DPW's] claim exceed one-half of the beneficiary's recovery

after deducting for attorney's fees, litigation costs, and medical expenses relating to the injury paid for by the beneficiary.

62 P.S. § 1409(b)(11) (reproduced verbatim; emphasis added).

Subsection 1409(b)(11) required some limitation and qualification after the United States Supreme Court decided Ahlborn, supra, in 2006. In Ahlborn, the high court considered an Arkansas statute that, similarly to subsection 1409(b)(11), allowed a state agency lien for Medicaid benefits to be satisfied from the entirety of a settlement, judgment, or award. As explained by the Supreme Court, Arkansas “claim[ed] an entitlement to more than just that portion of a judgment or settlement that represent[ed] payment for medical expenses;” in fact, the state claimed a right to recover **all** of the funds that it had expended on a Medicaid beneficiary's behalf even if that amount exceeded the monies allocated in the settlement for medical costs. Ahlborn, 547 U.S. at 278-79. Thus, under the Arkansas statute, the state's lien for Medicaid reimbursement could be satisfied in its entirety from the beneficiary's settlement with the tortfeasor, even when, to do so, those portions of the settlement allocated for other types of damages, e.g., lost wages or pain and suffering, had to be diverted to the state's lien. The United States Supreme Court concluded that this provision of the Arkansas statute had “no support in the federal third-party liability provisions, and in fact squarely conflicts with the anti-lien provision of the federal Medicaid laws.”⁴ Id. at 280. The Supreme Court accordingly held that a state's lien for Medicaid

⁴ The anti-lien provision of the federal Medicaid statute to which the high court referred provides, in part, as follows:

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan[.]

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except-

(continued...)

expenditures could be satisfied only from that portion of a settlement that represented payments for medical care. Id. at 282.⁵

(...continued)

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual[.]

42 U.S.C. § 1396p (quoted in Ahlborn, supra at 283).

⁵ Recognizing that Ahlborn necessitated some limitation of subsection 1409(b)(11), our General Assembly enacted Section 1409.1, effective September 2, 2008, which provides in relevant part the following:

(a) To the extent that Federal law limits the department's recovery of medical assistance reimbursement to the medical portion of a beneficiary's judgment, award or settlement in a claim against a third party, the provisions of this section shall apply.

(b) In the event of judgment, award or settlement in a suit or claim against a third party or insurer:

(1) If the action or claim is prosecuted by the beneficiary alone, the court [] shall first order paid from any judgment or award the reasonable litigation expenses ... together with reasonable attorney fees. After payment of the expenses and attorney fees, the **court [] shall allocate the judgment or award between the medical portion and other damages and shall allow [DPW] a first lien against the medical portion** of the judgment or award, the amount of the expenditures for the benefit of the beneficiary under the medical assistance program.

62 P.S. § 1409.1 (emphasis added).

Notably, the General Assembly has not repealed subsection 1409(b)(11), but rather has limited its scope by enactment of Section 1409.1.

There is one other provision of the Fraud and Abuse Control Act that is highly relevant to the instant case, specifically Section 1409(b)(13), which sets forth the definition of “beneficiary” for purposes of subsection 1409(b) as follows:

any person who has received benefits or will be provided benefits under this act because of any injury for which another person may be liable. It includes such beneficiary’s guardian, conservator, or other personal representative, his estate or survivors.

62 P.S. § 1409(b)(13).

As discussed supra, in the instant case, the Superior Court determined that, the Fraud and Abuse Control Act notwithstanding, DPW was not entitled to recover its expenditures under the Medicaid program for the provision of medical care to Emily during her minority. Bowmaster, 933 A.2d at 91-92. The starting point for the Superior Court’s holding was that, under Pennsylvania common law, only the Bowmasters--not Emily herself--had a cause of action for Emily’s medical expenses incurred during her minority.

Under Pennsylvania [common l]aw[,] personal injury to a minor gives rise to two separate and distinct causes of action, one the parents['] claim for medical expenses and loss of the minor’s services during minority, the other the minor’s claim for pain and suffering and for losses after minority.

Id. at 88 (quoting Hathi, 561 A.2d at 1262); see also Schmidt v. Kratzer, 168 A.2d 585, 587 (Pa. 1961) (“The minor plaintiff is entitled to damages for pain and suffering and probable loss of earnings after he reaches his majority[,] while his parents are entitled to damages for medical expenses they have incurred and will incur because of their son’s injury and for their loss of his services during minority.”) (emphasis in original); Woeckner v. Erie Electric Motor Co., 37 A. 936, 936-37 (Pa. 1897) (reiterating that the parent has the claim for

pecuniary loss caused by injury to a minor child, based on parental duty to maintain, protect, and educate the child).

However, the Bowmasters were barred from advancing a claim in 2003 for the medical expenses Emily incurred during her minority because the statute of limitations for such a claim had expired. Bowmaster, supra at 89, 91. Thus, concluding that neither the Bowmasters nor Emily could recover the medical expenses she had incurred during her minority, the Superior Court held that DPW was likewise precluded from recovering such expenses.

The Superior Court rejected DPW's argument that Emily was a "beneficiary" under the Fraud and Abuse Control Act, and therefore that the agency had a statutorily-conferred right to recovery against the settlement for the reasonable value of medical benefits provided to her. Id. at 89-90. In rejecting this argument, the Superior Court concluded that the Bowmasters were the "true" beneficiaries under the statute because they, as parents, had an obligation to support Emily during her minority.⁶ Id. at 91.

⁶ It is worth noting that following the Superior Court's decision in Bowmaster, the General Assembly enacted the following provision as an amendment to the Fraud and Abuse Control Act:

Where benefits are provided or will be provided for a minor's care, any statute of limitation or repose applicable to an action or claim in which the minor's medical expenses may be sought shall be tolled until the minor reaches the age of majority. The period of minority shall not be deemed a portion of the time period within which the action must be commenced. As used in this clause, the term "minor" shall mean any individual who has not yet attained the age of 18.

Act of July 4, 2008, P.L. 557, No. 44 § 9, 62 P.S., effective as of September 2, 2008; 62 P.S. § 1409(b)(4)(iii)(D).

(continued...)

One year and three months after the Superior Court denied DPW the right to reimbursement in Bowmaster, the Commonwealth Court reached the opposite conclusion in another case that presented the same issue on similar facts. See Shaffer-Doan, 960 A.2d at 500. In Shaffer-Doan, as in Bowmaster, a severely injured minor, by his parents, brought a medical malpractice action after the parents were precluded from advancing their own claim because the statute of limitations had expired. Shaffer-Doan, supra at 503. The parties reached a settlement, but the Shaffer-Doan parents argued, similarly to the Bowmasters in the instant case, that DPW was not entitled to satisfy its lien from the settlement because no monies had been--or legally could be--recovered for the minor child's medical care. Id. at 504. The Commonwealth Court explained the essence of the Shaffer-Doan dispute and its relationship to Bowmaster as follows:

At its essence, the argument before this Court is that, since Parents failed to bring their claim within the two-year statute of limitations, DPW cannot recover the lien. This position is based on the premise that only parents can recover for a minor's medical expenses and that, since DPW's lien is for only a minor's medical expenses, DPW is precluded from recovering. [Parents] argue that because the settlement did not provide compensation for any past medical care, there should be no re-payment to DPW for past medical expenses. In support of this position, [Parents] rely on Bowmaster, supra, in which the Superior Court concluded that parents, and not the injured minor child, were the intended beneficiaries of [medical assistance] benefits from DPW for the minor child's medical expenses.

Shaffer-Doan, supra at 506 (internal quotation marks and citation omitted).

(...continued)

Although this provision post-dates and thus is not relevant to the instant case, it does make unequivocally clear the General Assembly's disagreement with the Superior Court's holding in Bowmaster.

Following a thorough review of the relevant sections of the Fraud and Abuse Control Act and of the decisional law on which the Superior Court relied in Bowmaster, the Commonwealth Court declined to follow the Bowmaster reasoning or holding. Based on the statutory definition of “beneficiary,” the Commonwealth Court strongly disagreed with the Superior Court’s determination that the minor child’s parents--and not the minor child--were the true beneficiaries of the medical assistance benefits received prior to the child’s majority. Shaffer-Doan, supra at 514. In addition, the Commonwealth Court described the prohibition against a minor receiving compensation for his or her medical expenses incurred during minority as a “common law anachronism,” rooted in a now-repudiated tradition that considered children to be the property of their father. Id. at 511. Finally, the Commonwealth Court held that Sections 1404 and 1409 of the Fraud and Abuse Control Act superseded the common law rule insofar as necessary to allow DPW to recover medical assistance payments provided to a minor even when the claims of the minor’s parents were no longer timely. Id. at 516-17.

After careful consideration of the incompatible--indeed opposite--holdings reached by the Superior Court and the Commonwealth Court with regard to the issue here presented, we conclude that the decision of the latter reflects the intent of the General Assembly in enacting the Fraud and Abuse Control Act. We emphasize that this case presents a question of state law requiring interpretation of the Fraud and Abuse Control Act. While the United States Supreme Court’s holding in Ahlborn restricts the **portion** of a settlement that may be used to satisfy a state agency’s lien for medical assistance payments, it does not control the central question presented here, i.e., whether, under the Fraud and Abuse Control Act, DPW can obtain reimbursement for Medicaid expenditures on behalf of a disabled minor when a claim by the minor’s parents is barred by the statute of limitations.

We begin our analysis with the question of whether the minor child Emily is a “beneficiary” under subsection 1409(b)(13). Based on the statutory definition’s plain text, we must strongly disagree with the Superior Court’s determination that the “true” beneficiaries of the medical assistance provided to Emily during her minority were her parents because they had the obligation to support her. No reading of the statutory definition of “beneficiary” can exclude Emily, as the Superior Court appears to do. A beneficiary is defined for purposes of subsection 1409(b) by the following two sentences:

any person who has received benefits or will be provided benefits under this act because of any injury for which another person may be liable. It **includes such beneficiary’s guardian**, conservator, or other personal representative, his estate or survivors.

62 P.S. § 1409(b)(13) (emphasis added).

Thus, a beneficiary is, first and foremost, **any person who has received or will receive benefits** under the Fraud and Abuse Control Act. With the second sentence of the definition, the statute makes clear that **such beneficiary’s guardian**, in this case Emily’s parents, is also included in the definition of beneficiary. But the statutory inclusion of “such beneficiary’s guardian” in the definition of beneficiary does not in any sense remove Emily from her status as a beneficiary in her own right. As pointed out by the Commonwealth Court in Shaffer-Doan, supra at 514, the statutory characterization of the guardian as the **beneficiary’s** guardian makes indisputably clear that the direct recipient of the medical benefits, in the instant case Emily, is the primary beneficiary. Thus, we hold that, under subsection 1409(b) of the Fraud and Abuse Control Act, both Emily and her parents are

beneficiaries, with Emily being the primary beneficiary and her parents also being beneficiaries insofar as they serve as Emily's guardians.⁷

Having concluded that Emily is a beneficiary, we must read the provisions of the Fraud and Abuse Control Act with this understanding in order to resolve the dispute before us. Upon such a reading, the intent of the General Assembly becomes clear: when any beneficiary, whether an adult or a minor, enters into a settlement with his or her tortfeasor, DPW has the right to recover, via a lien asserted on the settlement, the reasonable value of Medicaid benefits provided to the beneficiary. Several provisions compel this conclusion.

⁷ We agree with the dissent that "resolution of this appeal revolves around whether either Emily's parents or Emily herself were the 'beneficiaries' of the medical assistance payments paid by DPW while Emily was a minor." Dissenting Slip Op. at 4. However, we disagree with the dissent's conclusion that only Emily's parents--and not Emily herself--were the beneficiaries of the medical assistance provided by DPW during Emily's minority. *Id.* at 4, 9. Our conclusion that both Emily **and** her parents were beneficiaries is based strictly and solely on the definition of "beneficiary" set forth in the Fraud and Abuse Control Act. In our view, the plain text of this statutory definition can only mean that Emily was a beneficiary as well as her parents. See text, supra.

The dissent disregards the statutory definition of "beneficiary" in an effort to effect compatibility with the common law rule that an individual has no cause of action for medical expenses incurred during his or her minority. See Dissenting Slip Op. at 8-10. The dissent specifically states that it does not agree that Emily was a beneficiary of payments from DPW in light of its prior discussion "concerning the responsibility of parents to care for their children, their legal standing to seek redress for their child's medical expenses, and the passing of the statute of limitations for those claims in this case." *Id.* at 9. We do not for a moment suggest that these issues are unimportant; however, we fail to understand how they can be or why they should be determinative or controlling as to the definition of "beneficiary" in the Fraud and Abuse Control Act. Furthermore, we discern no indication that the General Assembly intended to override the plain meaning of its own statutory definition of "beneficiary" with the importation of these or any other extra-statutory factors. We must conclude that the dissent has disregarded the plain meaning of the statutory definition of "beneficiary," and has thereby misconstrued the General Assembly's intent with regard to the Fraud and Abuse Control Act.

Under subsection 1409(b)(1), DPW is expressly authorized to recover from a liable third party the reasonable value of benefits provided to a beneficiary. If the parties reach a settlement in a claim prosecuted by the beneficiary alone, the court is directed to allow DPW's expenditures for the benefit of the beneficiary as a first lien against the settlement. 62 P.S. § 1409(b)(7)(i). In addition, pursuant to subsection 1409(b)(9), the Commonwealth's interest in a settlement must be assured prior to the payment of any proceeds to the claimant. Finally, and importantly, under subsection 1409(b)(11), the General Assembly has expressly precluded the consideration of other provisions of law as follows:

Except as otherwise provided in this act, **notwithstanding any other provision of law**, the entire amount of **any settlement of the injured beneficiary's action or claim**, with or without suit, **is subject to [DPW's] claim** for reimbursement of the benefits provided any lien filed pursuant thereto, but in no event shall [DPW's] claim exceed one-half of the beneficiary's recovery after deducting for attorney's fees, litigation costs, and medical expenses relating to the injury paid for by the beneficiary.

62 P.S. § 1409(b)(11) (emphasis added).⁸

From the plain text of the above subsections, it is clear that, notwithstanding any other provision of law, the General Assembly has conferred upon DPW a statutory right to reimbursement from a beneficiary's settlement with his or her tortfeasor. Nothing in the statute distinguishes a beneficiary who is a minor from one who has reached the age of majority. Furthermore, subsection 1409(b)(11)'s directive that the entire settlement of the beneficiary's claim is subject to DPW's lien, **notwithstanding any other provision of law**, would seem to preclude reliance on any common law rule that might bar a beneficiary from

⁸ DPW's claim in this case is far less than one-half of Emily's monetary recovery.

recovering from his or her tortfeasor the monies that DPW expended on his or her behalf during minority.

By the express and incontrovertible text of subsection 1409(b)(11), which was enacted prior to the United States' Supreme Court decision in Ahlborn, supra, the General Assembly made clear its intent that the **entire amount of any settlement** of a beneficiary's claim would be subject to DPW's claim for reimbursement. Thus, under the plain text of subsection 1409(b)(11) prior to Ahlborn, the allocation of a settlement into different categories of damages, e.g., for medical expenses, pain and suffering, loss of wages, etc., was required neither to determine whether DPW's lien should be satisfied, nor to quantify to what extent it should be satisfied. Rather, the clear intent of the General Assembly in subsection 1409(b)(11) was that, notwithstanding any other provision of law, including presumably the common law, the entirety of a beneficiary's settlement would be subject to DPW's claim. Given these express directives, we cannot conclude that the General Assembly intended that the application of subsection 1409(b)(11) would be constrained by the common law in such manner as to bar a beneficiary of Medicaid assistance from recovering from his or her tortfeasor the monetary value of that assistance provided during his or her minority. Such an interpretation of subsection 1409(b)(11) would also be inconsistent with subsection 1409(b)(1), which authorizes DPW to recover the benefits provided to a beneficiary **from a person who is liable** for the beneficiary's injury--not from the beneficiary herself.

As discussed supra, we are aware that in Ahlborn, 547 U.S. at 292, the United States Supreme Court held unenforceable as violative of federal Medicaid law an Arkansas statute that, similarly to subsection 1409(b)(11), required satisfaction of a state agency lien for Medicaid expenditures from the entirety of a settlement, regardless of how the settlement had been allocated. Ahlborn necessitated modification of subsection 1409(b)(11) "[t]o the extent that Federal law limits [DPW's] recovery of medical assistance

reimbursement to the medical portion of a beneficiary's judgment, award or settlement... .” 62 P.S. § 1409.1. However, nothing in Ahlborn affects, negates, weakens, or calls into question the reasoning outlined above as to the General Assembly's **intent** with regard to the filing of claims by beneficiaries for Medicaid expenditures incurred during their minority.⁹

Finally, we recognize the presumption that, when enacting any statute, the General Assembly intended to favor the public interest as against any private interest. 1 Pa.C.S. § 1922(5); Vitac Corporation, 854 A.2d at 485. The public interest in the instant case is clear: protecting taxpayers from assuming Medicaid costs that are properly charged against a liable third party. Hence, the public interest favors an interpretation that allows Medicaid beneficiaries to sue their tortfeasors to recover Medicaid expenditures made on their behalf during their minority.¹⁰

⁹ We respectfully disagree with the dissent's view that Ahlborn is the “death knell” for our analysis. Dissenting Slip Op. at 11. Ahlborn provides no guidance as to who is a beneficiary of Medicaid assistance provided to or on behalf of a minor. Furthermore, the record does not support the dissent's assertion that our resolution of this case permits DPW to recover funds that it spent for Emily's care during her minority from a settlement that is limited to monies for her medical expenses as an adult. See n. 11.

¹⁰The dissent contends that “[a]t the heart of this dispute is centuries' worth of Pennsylvania jurisprudence, which places the responsibility to raise a child upon her parents,” which jurisprudence we allegedly have “summarily dismisse[d].” Dissenting Slip Op. at 4. We disagree. Nothing in our decision may properly be interpreted as a relaxation or diminution of the legal and moral responsibilities that parents historically have borne and continue to bear for the rearing of their children. As the dissent acknowledges, the obligation of parents to support their minor children is set forth not only in decisional law, but also in statutory law. Id. (citing 23 Pa.C.S. § 4321(2)). Neither is implicated in this case or in our resolution. Rather, this case is focused on a severely disabled child whose parents were financially unable to provide her with all the medical care that she required, prompting public assistance in the form of Medicaid.

We have cited the Commonwealth Court's thoughtful summary of the history of the rights and duties of parents with respect to their children. See Majority Slip Op. at 12 (citing Shaffer-Doan, 960 A.2d at 511-17, a case with facts very similar to those of the instant case, which was decided in opposite manner by the Commonwealth Court). However, we (continued...)

In sum, we hold that, pursuant to the Fraud and Abuse Control Act, a Medicaid beneficiary has a cause of action against his or her tortfeasor to recover and reimburse DPW for Medicaid benefits received during the beneficiary's minority. Accordingly, we vacate the Superior Court's order and reinstate the order of the Court of Common Pleas dated November 6, 2006.¹¹

(...continued)

must point out that the broad question of the continuing vitality of the common law doctrine that bars an individual from bringing suit for medical expenses incurred during his or her minority is not before us and is not the basis for our decision.

What is really at the heart of this dispute is not parental rights and responsibilities as they have evolved under the common law, but rather a much narrower issue of statutory interpretation of interlocking provisions of the Fraud and Abuse Control Act, as informed by federal law. Common law jurisprudence fails to speak to the central issue in this case. The policy questions that are implicated focus not on parental duty but on protection of the public fisc in the provision of medical assistance to minors whose parents do not have the financial means to do so. The common law is silent as to the provision of medical care to needy minors and does not contemplate state involvement in administering such care. Accordingly, our resolution of the instant case is based on interpretation of the relevant statutory law, which incorporates social welfare developments independent of common law jurisprudence.

¹¹ The Bowmasters also contend that because their complaint "can reasonably be read as requesting only those damages that Emily could legally recover under the common law rule," i.e., those medical expenses incurred after the age of majority, a remand is required to determine whether the medical benefits that Emily received during her minority were included in the settlement. Bowmasters' Brief at 12. The Bowmasters acknowledge, as they must, that their complaint alleged that Emily "has been forced to expend sums of money for physicians, hospitals, paramedical personnel, home care attendance, medications and other items necessary for her proper care and treatment." Id. at 11 (quoting Complaint at ¶ 30). However, the Bowmasters contend that this paragraph did not include a claim for Emily's medical expenses incurred during her minority. Id. Rather, given that the action was commenced only two months before Emily's eighteenth birthday, the Bowmasters insist that this paragraph refers only to medical expenses that were incurred after her majority but prior to trial. Id. at 11-12. While we recognize that the complaint is far from a model of clarity, we conclude that the settlement itself and the Bowmasters' own petition for leave to settle an incapacitated person's case reflect that the (continued...)

(...continued)

complaint included claims for medical expenses incurred during Emily's minority. The settlement and the trial court's order clearly contemplated payment of DPW's lien for medical assistance to Emily during her minority.

In any event, this issue is waived pursuant to Pennsylvania Rule of Appellate Procedure 302(a): "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." In the next few paragraphs, we summarize the procedural history of this case in order to explain further these points.

In the Bowmasters' petition for leave to settle an incapacitated person's case, the repayment of DPW's lien was included among the provisions. See Petition for Leave to Settle an Incapacitated Person's Case, filed 8/31/06, at 3 and 5. Most relevantly, the petition included the following:

"To protect the lien of DPW, it is proposed that the Special Needs Trust can be funded with the express proviso that the Trustee must set aside \$56,517.81 (DPW's lien with a reduction [for] attorney fees and the proportionate share of costs) and hold that amount until further Order of Court that determines the amount that DPW must be repaid.

Id. at 5.

The only question raised in this petition as to DPW's lien was whether Emily's medical bills had actually been paid by a managed care organization, and hence whether DPW was entitled to reimbursement only for the insurance premiums that it had paid on Emily's behalf, rather than for the total expenses.

In the order granting the Bowmasters leave to settle, the court of common pleas accepted the Bowmasters' suggestion concerning a set-aside from the settlement to satisfy DPW's lien. Specifically, the court order stated the following:

Additionally, as this Court must hereafter determine the amount that must be repaid to [DPW] to satisfy its lien, the Trustee shall set aside \$56, 517.81 and shall not spend any of that amount on behalf of [Emily] until further Order of this Court concerning the repayment amount.

Order, Court of Common Pleas of Centre County, filed 8/31/06, at ¶ 4.

(continued...)

Superior Court order vacated. Common Pleas Court order reinstated.

Mr. Chief Justice Castille, Mr. Justice Eakin and Madame Justice Todd join the opinion.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Baer files a dissenting opinion in which Madame Justice Greenspan joins.

(...continued)

Following further briefing, on November 6, 2006, the court of common pleas ordered the trustee of Emily's special needs trust to reimburse DPW in the amount of \$56,517.81 to satisfy the agency's lien. In reaching this holding, the trial court rejected the Bowmasters' argument that DPW was entitled to reimbursement only for the monthly capitation payments made by DPW to a managed care organization on Emily's behalf. In addition, the trial court rejected the Bowmasters' second, newly advanced argument, *i.e.*, that DPW was precluded from recovering any Medicaid expenditures made on Emily's behalf during her minority, because neither the Bowmasters nor Emily had a claim for such medical expenses.

The Bowmasters then appealed to the Superior Court, raising the following three allegations of error by the trial court: (1) the court erred in holding that DPW could enforce its lien against the settlement proceeds because neither the Bowmasters nor Emily could recover medical expenses incurred by Emily during her minority and hence the settlement did not include such expenses; (2) the trial court erred in holding that DPW was entitled to recover all of Emily's medical assistance expenses, rather than just the capitation fees that DPW had paid to a managed-care organization on Emily's behalf; and (3) the trial court erred by failing to adjust the amount of DPW's lien to reflect an amended statement of claim subsequently filed by DPW. The Superior Court considered only the first issue, reversing the trial court's holding, as discussed *supra* in the text, that DPW was entitled to reimbursement from the settlement proceeds (the third issue does not appear to have been pursued before the Superior Court). *See Bowmaster*, 933 A.2d at 87-88 & n.1.

This brief procedural history makes clear that the Bowmasters did not previously raise a question concerning the text of their complaint, specifically that the text did not encompass DPW's claim for reimbursement of the medical assistance benefits conferred upon Emily during her minority. We conclude that this issue is waived because the Bowmasters did not raise it before the lower courts. *See Pa.R.App.R. 302(a)*.