UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)
) Chapter 7
JOHN F. ASCHTGEN,)
) Bankruptcy No. 01-01348
Debtor.)

ORDER RE MOTION TO STRIKE AMENDMENT TO PETITION

This matter was heard on May 21, 2002 pursuant to assignment. Attorney David Nadler appeared for Debtor John F. Aschtgen, deceased. Attorney Ben C. Chatman appeared as attorney for Health Management Systems, Inc., an agent for the Iowa Department of Human Services. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I).

FINDINGS OF FACT

Debtor filed a Chapter 7 petition on April 18, 2001. He received medical attention both prior to and after filing for bankruptcy. These medical services were paid for by the State of Iowa, via Health Management Systems, Inc. ("HMS") pursuant to Iowa Code sec. 249A.5 (2001). Debtor died on July 2, 2001.An order for discharge was entered on July 24, 2001.

On March 18, 2002, the executor of Debtor's probate estate amended Schedule F to include the HMS/State of Iowa claim of $13,000 for Debtor's medical assistance obligation. The executor for Debtor's probate estate concedes liability for any medical bills HMS paid on Debtor's behalf after the filing of the petition. The executor, however, characterizes liability for the prepetition medical expenses paid by HMS as a prepetition debt that is discharged. HMS objects to this characterization. It argues that these medical expenses are postpetition debt and therefore not dischargeable.

ISSUE

The issue for resolution is whether the debt HMS paid on Debtor's behalf, pursuant to Iowa Code sec. 249A.5(2) (2001), is a prepetition or postpetition debt.

CONCLUSIONS OF LAW

A discharge in bankruptcy discharges debts. 11 U.S.C. § 524(a)(1) (2001). A Chapter 7 discharge is effective only as to "debts that arose before the date of the order for relief." 11 U.S.C. § 727(b). In a voluntary case, the order for relief occurs at the moment of filing. 11 U.S.C. § 301. Consequently, "debts arising after the bankruptcy case has commenced are not discharged." In re Rosteck, 899 F.2d 694, 696 (7th Cir. 1990).

A "debt" is defined as liability on a claim. 11 U.S.C. § 101(12). A "claim" is defined as "a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." 11 U.S.C. § 101(5). The key phrase in § 101(5) is "right to payment." In re Emelity, 251 B.R. 151, 154 (Bankr. S.D. Cal. 2000).

"While state law determines the existence of a claim based on a cause of action, federal law determines when the claim arises for bankruptcy purposes." Johnson v. Home State Bank, 501 U.S. 78, 83 (1991). In deciding whether the medical assistance payments are dischargeable, a two prong analysis is required: Does a claim exist under state

law? If so, when did it arise under bankruptcy law?

EXISTENCE OF THE CLAIM UNDER STATE LAW

The existence of HMS's claim under state law is indisputable. Section 249A.5(2) vests HMS with a right to payment upon Debtor's death. Section 249A.5 states:

> 1. **Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2,** unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.
>
> **2. The provision of medical assistance** to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for persons with mental retardation, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, **creates a debt due the department [of human services] from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.**

Iowa Code § 249A.5 (2001) (emphasis added). The Court must look to federal law, however, to determine whether the claim arose before or after Debtor's bankruptcy filing.

WHEN THE CLAIM AROSE UNDER BANKRUPTCY LAW

Contingent claims are included in a Chapter 7 discharge. "A contingent claim is a debt 'which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.'" In re Hassanally, 208 B.R. 46, 50 (B.A.P. 9th Cir. 1997). Courts have noted that the bankruptcy estate can include a claim contingent upon death. See generally In re Ellwanger, 140 B.R. 891, 898 (Bankr. W.D. Wash. 1992) ("If a bankruptcy estate includes a contingent claim vested only upon death of a debtor's spouse, I see no reason why this one does not include a contingent claim accruing upon death of debtors' appeal."); In re Henrie, 235 B.R. 113, 118 (Bankr. M.D. Fla. 1999), (stating that when evaluating the nature of a debt one of the factors to consider is "whether the obligation under consideration is subject to contingencies, such as death or remarriage"). As to the matter before this Court, the obligation is properly classified as a contingent liability since the liability of Debtor's estate is not triggered until Debtor's death; the requisite extrinsic event.

The definition of a claim is to be given the broadest construction possible. Johnson v. Home State Bank, 501 U.S. 78, 83 (1991). "By providing for the 'broadest definition of claim' Congress intended to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.'" Hassanally, 208 B.R. at 50 (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 1, 309 (1978)). Despite the breadth with which "claim" has been defined, logic dictates that the concept cannot be limitless. See, e.g., Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000). For courts, the conundrum has been to identify or articulate just where these limits lie. In re Nelson, 268 B.R. 826, 828 (Bankr. N.D. Ind. 2001).

"RIGHT TO PAYMENT" TEST

Courts have devised two separate approaches to solve this puzzle: the "right to payment" test and the "fair contemplation" or "prepetition relationship" test. The Eighth Circuit has stated that "in this circuit, 'a debt is incurred on the date upon which the debtor first becomes legally bound to pay.'" Laws v. United Missouri Bank, 98 F.3d 1047, 1050 (8th Cir. 1996) (defining "debt" in the context of a § 547 preference claim).

This is essentially an adoption of the "right to payment" test. See In re Arleaux, 229 B.R. 182, 186 (B.A.P. 8th Cir. 1999); c.f. Hassanally, 208 B.R. at 50 (collecting cases and criticizing the "right to payment" test as too narrow). Courts applying this test emphasize the "right to payment" language of § 101(5)(A) and equate a claim solely with a right to payment under nonbankruptcy law. Hassanaly, 208 B.R. at 50. Until the right to payment has accrued under state law, there is no bankruptcy claim. See, e.g., Arleaux, 229 B.R. at 186 (citing McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 740-41 (8th Cir. 1996) (noting that claim does not arise in bankruptcy until a cause of action has accrued under state law)); In re Ware, 21 B.R. 880, 882 (Bankr. N.D. Iowa 1982) (stating state law determines when a claim arises); Laws, 188 B.R. at 268 (same); In re Berlingeri, 246 B.R. 196, 199 (Bankr. D.N.J. 2000) (same); In re Scholl, 234 B.R. 636, 641 (Bankr. E.D. Pa. 1999) (same). Courts look to state law to determine when the right to payment accrues.

Iowa Code sec. 249A.5(2) (2001), states "the provision of medical assistance ... creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death." Authority interpreting this Code section is nonexistent. Since there is no specific Iowa case law interpreting Iowa Code sec. 249A.5(2), the Court must examine the statute to determine its meaning. In so doing, the Court applies standard rules of statutory construction. In re Crane, 97-02968-C, slip op. at 3 (Bankr. N.D. Iowa Feb. 11, 1998).

The polestar of statutory construction is legislative intent. Iowa Dep't of Revenue v. Iowa Merit Employment Comm'n, 243 N.W.2d 610, 614 (Iowa 1971). The ultimate goal of a court is to ascertain and to give effect to the intention of the legislature. Hearst v. Iowa Dep't of Revenue & Fin., 461 N.W.2d 295, 299 (Iowa 1990). In determining legislative intent, it is appropriate to consider the language of the statute and the objects which are sought to be accomplished by the legislation. Slager v. HWA Corp., 435 N.W.2d 349, 352 (Iowa 1989).

The Court looks "to what the legislature said, rather than what it should or might have said." State v. Hesford, 242 N.W.2d 256, 258 (Iowa 1976). The words used in the statute are given their ordinary meaning. Id. The Court must avoid legislating in its own right and placing upon statutory language a skewed, impractical or absurd construction. Doe v. Ray, 251 N.W.2d 496, 501 (Iowa 1977). With these rules in mind, an examination of the language of sec. 249A.5(2) is necessary in order to discern its meaning as intended by the Iowa legislature.

Iowa Code sec. 249A.5(2), places limits on when medical assistance payments are recoverable by the State of Iowa. This section uses the recipient's death as the point in time at which an obligation to repay the medical assistance arises. This temporal limitation is a critical part of sec. 249A.5(2) and it is not logical to conclude that this restriction was merely advisory. The legislature clearly understood the significance of placing various types of limitations in this statute.

The language of this statute is clear and unambiguous. Debtor's estate became indebted to the State for all the medical assistance provided on Debtor's behalf, upon his death. This Court may not disregard this limitation under the guise of statutory construction. Such an approach would be an unreasonable construction of Iowa Code sec. 249A.5(2) that is not warranted by the clear language of the statute.

Pursuant to sec. 249A.5(2), a right to payment does not arise until Debtor's death. Under the "right to payment" test applied in the Eighth Circuit, HMS has a postpetition claim since the right to payment arose after the date of the order for relief.

CONCLUSION

HMS's right to payment arose at the time of Debtor's death. Debtor died after the date of the order for relief. Under the "right to payment test", HMS has a postpetition claim. This postpetition claim is not affected by the discharge in Debtor's Chapter 7 case.

WHEREFORE, the Motion to Strike Amendment to Petition filed by Health Management Systems, Inc., an agent for the Iowa Department of Human Services, is GRANTED.

FURTHER, the debt for medical services paid by HMS is not a prepetition debt of Debtor John F. Aschtgen, deceased, and is not included in his discharge.

SO ORDERED this _16th_ day of July, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE