United States Code Annotated
Title 26. Internal Revenue Code (Refs & Annos)
Subtitle A. Income Taxes (Refs & Annos)
Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)
Subchapter B. Computation of Taxable Income
Part I. Definition of Gross Income, Adjusted Gross Income, Taxable Income, Etc.

26 U.S.C.A. § 61, I.R.C. § 61

§ 61. Gross income defined

Effective: December 22, 2017
Currentness

(a) General definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Annuities;

(9) Income from life insurance and endowment contracts;

(10) Pensions;

(11) Income from discharge of indebtedness;

(12) Distributive share of partnership gross income;

(13) Income in respect of a decedent; and

(14) Income from an interest in an estate or trust.

(b) Cross references.--

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 17; Pub.L. 98-369, Div. A, Title V, § 531(c), July 18, 1984, 98 Stat. 884; Pub.L. 115-97, Title I, § 11051(b)(1)(A), Dec. 22, 2017, 131 Stat. 2089.)

26 U.S.C.A. § 61, 26 USCA § 61
Current through P.L.118-6. Some statute sections may be more current, see credits for details.

End of Document

McKinney's Consolidated Laws of New York Annotated
Constitution of the State of New York (Refs & Annos)
Article VII. State Finances

McKinney's Const. Art. 7, § 8

§ 8. [Gift or loan of state credit or money prohibited; exceptions for enumerated purposes]

Effective: January 1, 2002
Currentness

1. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.

2. Subject to the limitations on indebtedness and taxation, nothing in this constitution contained shall prevent the legislature from providing for the aid, care and support of the needy directly or through subdivisions of the state; or for the protection by insurance or otherwise, against the hazards of unemployment, sickness and old age; or for the education and support of the blind, the deaf, the dumb, the physically handicapped, the mentally ill, the emotionally disturbed, the mentally retarded or juvenile delinquents as it may deem proper; or for health and welfare services for all children, either directly or through subdivisions of the state, including school districts; or for the aid, care and support of neglected and dependent children and of the needy sick, through agencies and institutions authorized by the state board of social welfare or other state department having the power of inspection thereof, by payments made on a per capita basis directly or through the subdivisions of the state; or for the increase in the amount of pensions of any member of a retirement system of the state, or of a subdivision of the state; or for an increase in the amount of pension benefits of any widow or widower of a retired member of a retirement system of the state or of a subdivision of the state to whom payable as beneficiary under an optional settlement in connection with the pension of such member. The enumeration of legislative powers in this paragraph shall not be taken to diminish any power of the legislature hitherto existing.

3. Nothing in this constitution contained shall prevent the legislature from authorizing the loan of the money of the state to a public corporation to be organized for the purpose of making loans to non-profit corporations or for the purpose of guaranteeing loans made by banking organizations, as that term shall be defined by the legislature, to finance the construction of new industrial or manufacturing plants, the construction of new buildings to be used for research and development, the construction of other eligible business facilities, and for the purchase of machinery and equipment related to such new industrial or manufacturing plants, research and development buildings, and other eligible business facilities in this state or the acquisition, rehabilitation or improvement of former or existing industrial or manufacturing plants, buildings to be used for research and development, other eligible business facilities, and machinery and equipment in this state, including the acquisition of real property therefor, and the use of such money by such public corporation for such purposes, to improve employment opportunities in any area of the state, provided, however, that any such plants, buildings or facilities or machinery and equipment therefor shall not be (i) primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services or (ii) used primarily as a hotel, apartment house or other place of business which furnishes dwelling space or accommodations to either residents or transients, and provided further that any loan by such public corporation shall not exceed sixty per centum of the cost of any such project and the repayment of which shall be secured by a mortgage thereon which shall not be a junior encumbrance thereon by more than fifty per centum of such cost or by a security interest if personalty, and that the amount of any guarantee of a loan made by a banking organization shall not exceed eighty per centum of the cost of any such project.

Credits

(Formerly § 1, renumbered § 8 and amended Nov. 8, 1938. Amended Nov. 6, 1951; Nov. 7, 1961; Nov. 8, 1966; Nov. 6, 1973; Nov. 8, 1977; Nov. 5, 1985. Amended Nov. 6, 2001, eff. Jan. 1, 2002.)

McKinney's Const. Art. 7, § 8, NY CONST Art. 7, § 8

Current through L.2023, chapters 1 to 143. Some statute sections may be more current, see credits for details.

End of Document

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)
Chapter 55. Of the Consolidated Laws
Article 5. Assistance and Care
Title 11. Medical Assistance for Needy Persons (Refs & Annos)

McKinney's Social Services Law § 369

§ 369. Application of other provisions

Effective: July 26, 2022
Currentness

1. All provisions of this chapter not inconsistent with this title shall be applicable to medical assistance for needy persons and the administration thereof by the social services districts.

2. (a) Notwithstanding any inconsistent provision of this chapter or other law, no lien may be imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf under this title, except:

(i) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(ii) with respect to the real property of an individual who is an inpatient in a nursing facility, intermediate care facility for individuals with developmental disabilities, or other medical institution, who is not reasonably expected to be discharged from the medical institution and to return home, and who is required, as a condition of receiving services in such institution under the state plan for medical assistance, to spend for costs of medical care all but a minimal amount of his or her income required for personal needs; provided, however, any such lien will dissolve upon the individual's discharge from the medical institution and return home; in addition, no such lien may be imposed on the individual's home if one of the following persons is lawfully residing in the home:

(A) the spouse of the individual;

(B) a child of the individual who is under twenty-one years of age or who is blind or permanently and totally disabled; or

(C) a sibling of the individual who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the individual's admission to the medical institution.

(b)(i) Notwithstanding any inconsistent provision of this chapter or other law, no adjustment or recovery may be made against the property of any individual on account of any medical assistance correctly paid to or on behalf of an individual under this title, except that recoveries must be pursued:

(A) upon the sale of the property subject to a lien imposed on account of medical assistance paid to an individual described in clause (ii) of paragraph (a) of this subdivision, or from the estate of such individual; and

(B) from the estate of an individual who was fifty-five years of age or older when he or she received such assistance, provided that for individuals whose eligibility for medical assistance was based on paragraph (b) of subdivision one of section three hundred sixty-six of this title, recovery shall be limited to medical assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services.

(ii) Any such adjustment or recovery shall be made only after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one years of age or is blind or permanently and totally disabled, provided, however, that nothing herein contained shall be construed to prohibit any adjustment or recovery for medical assistance furnished pursuant to subdivision three of section three hundred sixty-six of this chapter.

(iii) In the case of a lien on an individual's home, any such adjustment or recovery shall be made only when:

(A) no sibling of the individual who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to a medical institution referred to in subparagraph (ii) of paragraph (a) of subdivision two of this section, and is lawfully residing in such home and has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution, and

(B) no child of the individual who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to a medical institution referred to in subparagraph (ii) of paragraph (a) of subdivision two of this section, and who establishes to the satisfaction of the state that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution, and is lawfully residing in such home and has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(c) Nothing contained in this subdivision shall be construed to alter or affect the right of a social services official to recover the cost of medical assistance provided to an injured person in accordance with the provisions of section one hundred four-b of this chapter.

(d) Where a recovery or adjustment is made pursuant to this title with respect to a case in a federally-aided category of medical assistance, a part of the net amount resulting from such recovery or adjustment shall be paid or credited to the federal government pursuant to federal law and the regulations of the federal department of health and human services.

3. The department and any social services district is hereby authorized to maintain an action subject to sections one hundred one and one hundred four of this chapter to collect from either a trustee, creator, or creator's spouse any beneficial interest of either the creator or creator's spouse in any trust, other than a testamentary trust, to reimburse such department or district for the costs of medical assistance furnished to, or on behalf of, a creator or creator's spouse. For the purpose of this subdivision, the beneficial interest of the creator or creator's spouse includes the income and any principal amounts to which the creator or creator's spouse would have been entitled by the terms of such trust by right or in the discretion of the trustee, assuming the full exercise of discretion by the trustee for the distribution of the maximum amount to either the creator or the creator's spouse.

4. Any inconsistent provision of this chapter or other law notwithstanding, all information received by social services and public health officials and service officers concerning applicants for and recipients of medical assistance may be disclosed or used only for purposes directly connected with the administration of medical assistance for needy persons.

5. The requirements of this section with respect to adjustments and recoveries of medical assistance correctly paid shall be waived in cases of undue hardship, as determined pursuant to the regulations of the department in accordance with criteria established by the secretary of the federal department of health and human services.

6. For purposes of this section, the term "estate" means all real and personal property and other assets included within the individual's estate and passing under the terms of a valid will or by intestacy.

7. Notwithstanding any provision of law to the contrary, the department shall, when it determines necessary program features are in place, assume sole responsibility for commencing actions or proceedings in accordance with the provisions of this section, sections one hundred one, one hundred four, one hundred four-b, paragraph (a) of subdivision three of section three hundred sixty-six, subparagraph one of paragraph (h) of subdivision four of section three hundred sixty-six, and paragraph (b) of subdivision two of section three hundred sixty-seven-a of this chapter, to recover the cost of medical assistance furnished pursuant to this title and title eleven-D of this article. The department is authorized to contract with an entity that shall conduct activities on behalf of the department pursuant to this subdivision. Prior to assuming such responsibility from a social services district, the department of health shall, in consultation with the district, define the scope of the services the district will be required to perform on behalf of the department of health pursuant to this subdivision.

Credits

(Added L.1966, c. 256, § 3. Amended L.1966, c. 800, § 1; L.1977, c. 863, § 12; L.1992, c. 41, § 85; L.1994, c. 170, §§ 451, 452; L.2008, c. 58, pt. C, § 71-a, eff. April 23, 2008, deemed eff. April 1, 2008; L.2011, c. 59, pt. H, § 53, eff. March 31, 2011, deemed eff. April 1, 2011; L.2012, c. 56, pt. D, § 56, eff. March 30, 2012, deemed eff. April 1, 2012; L.2012, c. 56, pt. F, § 7, eff. March 30, 2012, deemed eff. April 1, 2012; L.2014, c. 60, pt. C, §§ 62, 62-a, eff. March 31, 2014, deemed eff. April 1, 2014; L.2022, c. 477, § 8, eff. July 26, 2022.)

McKinney's Social Services Law § 369, NY SOC SERV § 369
Current through L.2023, chapters 1 to 143. Some statute sections may be more current, see credits for details.

End of Document

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)
Chapter 55. Of the Consolidated Laws
Article 3. Local Public Welfare Organization; Powers and Duties (Refs & Annos)
Title 6. Powers to Enforce Support

McKinney's Social Services Law § 104-b

§ 104-b. Liens for public assistance and care on claims and suits for personal injuries

Effective: December 28, 2018
Currentness

1. If a recipient of public assistance and care shall have a right of action, suit, claim, counterclaim or demand against another on account of any personal injuries suffered by such recipient, then the public welfare official for the public welfare district providing such assistance and care shall have a lien for such amount as may be fixed by the public welfare official not exceeding, however, the total amount of such assistance and care furnished by such public welfare official on and after the date when such injuries were incurred. In all such cases, notice of the commencement of such an action shall be served upon the public welfare district that has provided or is providing such assistance and care, or upon the department of health.

The commissioner shall endeavor to ascertain whether such person, firm or corporation alleged to be responsible for such injuries is insured with a liability insurance company, as the case may be, and the name thereof.

2. No such lien shall be effective, however, unless a written notice containing the name and address of the injured recipient, the date and place of the accident, and the name of the person, firm or corporation alleged to be liable to the injured party for such injuries, together with a brief statement of the nature of the lien, the amount claimed and that a lien is claimed upon the said right of action, suit, claim, counterclaim or demand by the public welfare official be served prior to the payment of any moneys to such injured party, by certified with return receipt or registered mail upon such person, firm or corporation, and his or her, its or their attorney, if known, and upon any insurance carrier which has insured such person, firm or corporation against such liability. A copy of the notice of lien shall be mailed to such carrier at least twenty days prior to the date on which such carrier makes a payment to the injured party. Except as against such carrier, the effectiveness of the lien against any other party shall not be impaired by the failure to mail the required notice to such carrier. In addition, a true copy of such notice shall be served by regular mail to the welfare recipient and to his or her attorney, if known. Such mailing shall be deemed to be effective, notwithstanding any inaccuracy or omission, if the information contained therein shall be sufficient to enable those to whom the notice is given to identify the injured recipient and the occurrence upon which his or her claim for damages is based.

3. Upon the service of the notice, as aforesaid, the local public welfare official shall file a true copy thereof in the office of the clerk of the county in which his office is located, and, thereupon the lien of the public welfare official in the amount therein stated shall attach to any verdict, decision, decree, judgment, award or final order in any suit, action or proceeding in any court or administrative tribunal of this state respecting such injuries, as well as the proceeds of any settlement thereof, and the proceeds of any settlement of any claim or demand respecting such injuries prior to suit or action.

4. An amended notice of lien may be served and filed by such public welfare official in the same manner and subject to the provisions of this section governing the notice of lien originally served and filed pursuant to this section.

5. (a) The person, firm, corporation or insurance carrier, having notice that a social services official has served and filed a notice of lien, and intending to make payment on the personal injury claim upon which the lien was filed, shall notify the social services official by certified or registered mail, at least ten days prior to the date such payment is proposed to be made, of the amount and date thereof.

(b) Notwithstanding any inconsistent provision of this section, the social services official shall have the right to serve and file by certified or registered mail, within five days after receipt of such notice, excluding Saturdays, Sundays, and holidays, an amended notice of lien to include the amount of public assistance and care furnished to the recipient after the date such official served and filed the notice of lien or the last previous amendment thereof.

(c) A person, firm, corporation or insurance carrier that fails to give the notice required by paragraph (a) of this subdivision shall be liable to the social services official to the same extent that it would have been liable had such notice been given and the social services official had filed the amended notice of lien provided for in paragraph (b) of this subdivision.

6. Such lien may be enforced by action against those alleged to be liable for such injuries, as aforesaid, by the local public welfare official in any court of appropriate jurisdiction.

7. The aforesaid lien shall be valid and effective, when the notice thereof and the statement are served and filed as aforesaid, and shall continue until released and discharged by the local public welfare official by an instrument in writing and filed in the said county clerk's office, and no release, payment, discharge or satisfaction of any such claim, demand, right of action, suit or counterclaim shall be valid or effective against such lien.

8. The county clerk shall, at the expense of the county, provide a suitable book with proper index, to be called the public welfare lien docket, in which he shall enter the names of the public welfare official and the recipient, the date and place of the accident and the name or names of those alleged to be liable for such injuries, as aforesaid.

9. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subject and subordinate to the lien on the amount recovered by verdict, report, decision, judgment, award or decree, settlement or compromise, of any attorney or attorneys retained by any such injured person to prosecute his claim for damages for personal injuries, having or acquiring by virtue of such retainer a lien on the cause of action of any such injured person, or on the verdict, report, decision, judgment, decree made in, or any settlement or compromise of, any such action or claim for damages for personal injuries.

10. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subordinate to the lien of any hospital claimed under and to the extent recognized by section one hundred eighty-nine of the lien law, but only for treatment, care and maintenance given, prior to or in excess of the public assistance and care granted by the public welfare official.

11. The provisions of this section shall not be deemed to adversely affect the right of a public welfare official who has taken an assignment of the proceeds of any such right of action, suit, claim, counterclaim or demand, to recover under such assignment the total amount of assistance and care for which such assignment was made.

12. The provisions of this section to the contrary notwithstanding, the lien herein created shall not apply with respect to any claim or benefits payable to the recipients of any form of public assistance or care, part of which is paid for by the government of

the United States or any agency thereof when, in the opinion of the commissioner, such lien would jeopardize the continuation of such federal contribution.

13. The provisions of this section to the contrary notwithstanding, the public welfare official may in his discretion release to the injured person an amount not to exceed the cost of two years' maintenance from the lien herein created.

14. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.

This section shall not apply to any claim or award which is or may be allowed pursuant to the provisions of the workers' compensation law or the volunteer firefighters' benefit law.

Credits

(Formerly § 104-a. Added L.1964, c. 382, § 1. Amended L.1965, c. 271, § 1; L.1969, c. 560, § 1. Renumbered § 104-b, L.1971, c. 550, § 1. Amended L.2003, c. 340, § 2, eff. Jan. 1, 2004; L.2005, c. 281, § 1, eff. July 19, 2005; L.2011, c. 59, pt. H, § 52-g, eff. June 29, 2011; L.2018, c. 476, § 238, eff. Dec. 28, 2018.)

McKinney's Social Services Law § 104-b, NY SOC SERV § 104-b
Current through L.2023, chapters 1 to 143. Some statute sections may be more current, see credits for details.

End of Document

154 A.D.3d 453
Supreme Court, Appellate Division,
First Department, New York.

D.J., et al., Plaintiffs–Appellants,
v.
636 HOLDING CORP., et al., Defendants,
Department of Social Services, Non–Party Respondent.

Oct. 10, 2017.

Synopsis

Background: Minor and his mother brought action against owners of apartment complex where minor was shot by intruder and rendered paraplegic, alleging owners were negligent in failing to maintain apartment complex in reasonably safe condition. City social services department filed a Medicaid lien for recovery of its past medical expenses on minor's behalf totaling $250,070. After parties reached settlement without involving department, plaintiffs moved to vacate Medicaid lien or, in the alternative, to reduce the lien amount by the same proportion by which the full value of the case was compromised. The Supreme Court, Bronx County, Barry Salman, J., denied motion and allowed department to recover full amount of lien. Plaintiffs appealed.

The Supreme Court, Appellate Division, held that trial court properly allowed department to recover full amount of its Medicaid lien.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Set Aside or Vacate.

Attorneys and Law Firms

**327 Gentile & Associates, New York (Laura Gentile of counsel), for appellants.

Zachary W. Carter, Corporation Counsel, New York (Elizabeth I. Freedman of counsel), for respondent.

SWEENY, J.P., RICHTER, ANDRIAS, KAHN, JJ.

Opinion

*453 Order, Supreme Court, Bronx County (Barry Salman, J.), entered December 29, 2015, which denied plaintiffs' motion to vacate a Medicaid lien or, in the alternative, to reduce the lien amount by the same proportion by which the full value of the *454 case was compromised, and thereby allowed the Department of Social Services of the City of New York (DSS) to recover the full amount of the Medicaid lien, unanimously affirmed, without costs.

D. J. (plaintiff), then age 16, was shot by an intruder at defendants' premises and rendered a paraplegic. After his family's insurance coverage was exhausted, his **328 medical care was paid by Medicaid for nine years.

The minor plaintiff and his mother sued the owners of the apartment complex for negligently failing to maintain the premises in reasonably safe condition, and nonparty DSS filed a lien pursuant to Social Services Law section 104–b for recovery of its past medical expenses on plaintiff's behalf totaling $250,070. Although plaintiffs' counsel had been served with notice of the lien on April 23, 2010, during the pendency of the action, and was informed by DSS to notify DSS of any pending settlement discussions or face a subrogation action, counsel neither informed DSS of its ongoing negotiations with defendants nor sought to negotiate the lien amount with DSS.

In May 2010, plaintiffs, then claiming damages in the amount of $25,000,000, [1] settled the premises liability action with the defendant landlords for $4,350,000. After unsuccessful efforts between plaintiffs and DSS to resolve the lien, plaintiffs moved in December 2010 to vacate the lien entirely, contending, without supporting documentation, that the entire settlement was ascribed to plaintiff's pain and suffering, and no portion of it was attributable to payment of past medical expenses. In the alternative, plaintiffs sought to reduce the amount of the Medicaid lien to the same proportion of the settlement as the settlement bore to the $25,000,000 damages plaintiffs claimed during settlement discussions, which they characterized as constituting the true value of the case. Plaintiffs' counsel averred that "[t]he low settlement value reflects the potential for a defense verdict in this premises liability case."

DSS sought to enforce the full amount of its lien for medical expenses, based in part upon plaintiffs' failure to allow them to participate in the settlement negotiations. DSS also argued that the settlement amount constituted the full value of the case, in view of plaintiffs' concession that negligent security cases are difficult to prove. The agency further contended that public policy prohibited parties to a personal injury suit from

avoiding Medicaid liens by allocating a settlement entirely to *455 pain and suffering, and noted plaintiffs' failure to provide the stipulation of settlement or any other proof of the parties' allocation of damages in determining the amount of the settlement.

On or about June 30, 2011, Supreme Court ordered a hearing to determine the full value of the case and the value of the various items of damages, and ordered related discovery. By October 2014, however, the parties had waived a hearing, agreeing to have the matter decided on the papers submitted.

In a December 17, 2015 decision and order on plaintiffs' motion, Supreme Court determined DSS to be entitled under Social Services Law § 104–b to enforce its full lien amount of $250,070, rejecting plaintiffs' requests for relief. In doing so, the court found that the settlement amount represented the actual value of the plaintiff's case; that DSS was not a party to the settlement, and that DSS had notified the plaintiffs and their counsel prior to the settlement of the existence of the lien. The motion court further found that plaintiffs had attempted to allocate the entire settlement amount to conscious pain and suffering, thereby unlawfully depriving DSS of any ability to enforce its Medicaid lien against the settlement. The court further noted that the DSS lien amounted to 5.79% of the plaintiff's overall settlement. The motion court thus effectively denied **329 plaintiffs' motion to vacate the lien or, in the alternative, a reduction of the lien amount in proportion to the relation the settlement amount bore to plaintiff's claimed full value of the case (*see Arkansas Dept. of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 126 S.Ct. 1752, 164 L.Ed.2d 459 [2006]; *see also Harris v. City of New York*, 16 Misc.3d 674, 837 N.Y.S.2d 486 [Sup.Ct., N.Y. County 2007, Feinman, J.]; *Lugo v. Beth Israel Med. Ctr.*, 13 Misc.3d 681, 819 N.Y.S.2d 892 [Sup.Ct., N.Y. County 2006, Schlesinger, J.]).

On this appeal, the parties disagree as to the proper application of *Ahlborn* and its progeny in the present circumstances. On the record presented, we find that Supreme Court properly awarded DSS the full amount of its lien and properly declined to employ the formula used in *Ahlborn*.

Federal law provides that under Medicaid, the jointly funded federal and state medical assistance program for low income individuals, agencies which serve as its local administrators, such as DSS here, must comply with all federal requirements of the program or risk losing their federal funding (*see Ahlborn*, 547 U.S. at 275–276, 126 S.Ct. 1752). Among such requirements is the obligation of the state or local agency administering the program to "take all reasonable measures to ascertain the legal liability of third parties ... to pay for care and services available under the *456 plan" and to seek reimbursement from them for such services "to the extent of such legal liability" (42 U.S.C. § 1396a[a][25][A], [B]). In furtherance of these requirements, Medicaid recipients are required to assign their rights to claims against third parties as a condition to their eligibility to receive program benefits (42 U.S.C. § 1396k[a][1][A]; Social Services Law § 366[1][d] [2]), and the Medicaid lien created in such circumstances enables the program to remain "the payer of last resort" (*Cricchio v. Pennisi*, 90 N.Y.2d 296, 305, 660 N.Y.S.2d 679, 683 N.E.2d 301 [1997]).

Federal law requires the state or local agency to recoup Medicaid funds from the responsible third parties and set up procedures for doing so (*Cricchio* at 305, 660 N.Y.S.2d 679, 683 N.E.2d 301). DSS is authorized to impose a lien in a personal injury action against a third party who is legally liable for the Medicaid recipient's injury (Social Services Law § 104–b; *Calvanese v. Calvanese*, 93 N.Y.2d 111, 117, 688 N.Y.S.2d 479, 710 N.E.2d 1079 [1999]), and is subrogated to the Medicaid recipient's right to reimbursement from the liable third party (Social Services Law § 367–a[2][b]).

DSS is entitled to recover reimbursement only for the amount of medical expenses it paid, and not for other damages amounts, such as pain and suffering or lost wages (*Wos v. EMA ex rel. Johnson*, 568 U.S. 627, 638, 133 S.Ct. 1391, 185 L.Ed.2d 471 [2013]; *Ahlborn* at 280–282, 126 S.Ct. 1752). The Supreme Court has recognized, however, "that Medicaid beneficiaries and tortfeasors might collaborate to allocate an artificially low portion of a settlement to medical expenses" (Wos at 684, 133 S.Ct. 1391), to manipulate the settlement to "allocate away the State's interest" (*Ahlborn* at 288, 126 S.Ct. 1752).

The Supreme Court had no occasion in *Ahlborn* to prescribe any particular method for determining the portion of a personal injury settlement attributable to medical care, as there the parties, including the state, stipulated that 6% of the settlement would be ascribed to past medical expenses. Although the Supreme Court in *Ahlborn* found the formula advanced by the plaintiff in that case (and urged by plaintiffs here), of applying the agreed proportion **330 that medical expenses bore to the full value of the case to the amount of the settlement, to be an acceptable method of allocation, it did not adopt it as the exclusive method of making the determination.

Indeed, in *Wos,* the Court rejected any "one-size-fits-all" approach to making the calculation (*Wos* at 639, 133 S.Ct. 1391). Rather, in *Ahlborn* and later in *Wos,* the Court merely made clear that where the amount of a lump sum settlement attributable to medical expenses was not established by a verdict or by a stipulation binding on all parties, a judicial resolution of the issue was required (*Wos* at 638, 133 S.Ct. 1391; *Ahlborn* at 288, 126 S.Ct. 1752).

***457** In New York, it has long been recognized that a Medicaid lien will not be defeated by the mere declaration of a plaintiff's attorney that the settlement does not relate to medical expenses (*Matter of Homan v. County of Cattaraugus Dept. of Social Servs.*, 74 A.D.3d 1754, 1755, 905 N.Y.S.2d 387 [4th Dept.2010]; *Carpenter v. Saltone Corp.*, 276 A.D.2d 202, 211, 716 N.Y.S.2d 86 [2nd Dept.000]; *Simmons v. Aiken,* 100 A.D.2d 769, 770, 474 N.Y.S.2d 41 [1st Dept.1984]). As we have explained, the court's determination

> "is not foreclosed by the form of the settlement documents or the language used by the attorneys in the settlement stipulation, if that form and language do not truly reflect the consideration of the settlement, or are chosen merely as a means to defeat DSS' recovery."

(*Simmons* at 770, 474 N.Y.S.2d 41). Among the factors we found relevant to the court's determination was whether the pleadings asserted a claim for medical expenses (*id.*).

In this case, after the parties declined the opportunity for a hearing, the motion court properly considered all of the surrounding facts and circumstances in making its determination of the portion of plaintiffs' $4.3 million settlement attributable to the medical expenses paid by Medicaid. Plaintiffs never proffered any breakdown of the settlement amount, nor disclosed its terms. Rather, plaintiffs characterized the entire payment as attributable to plaintiff's pain and suffering, notwithstanding the fact that in their complaint, plaintiffs had sought recompense for the medical care and attention he had incurred. The motion court reasonably rejected this characterization as an effort to deprive DSS of its Medicaid lien.

Further, plaintiffs had ignored the request by DSS that it be permitted to participate in settlement discussions. As noted, although the court ordered a hearing on the *Ahlborn* issue, plaintiffs waived their right to it. And the court noted that the Medicaid lien, representing $250,070 paid over nine years, constituted less than 6% of the total settlement and thus did not unduly prejudice plaintiff's recovery.

Under these circumstances, the motion court fairly determined that DSS was entitled to recoupment of its entire lien.

Plaintiffs' reliance on *Lopez v. Daimler Chrysler Corp.*, 179 Cal.App.4th 1373, 102 Cal.Rptr.3d 285 (Cal.App. 3d Dist.2009), is misplaced. Social Services Law section 104–b differs in its requirements from its counterpart California statute. In any case, in *Lopez,* the parties disagreed as to the amount of the lien and the state agency had failed to submit any evidence in support of its claim. Here, by contrast, plaintiffs conceded the amount of the expenditures DSS made under Medicaid for plaintiff's past medical expenses. Neither does ***458** *Miraglia v. H & L Holding Corp.*, 36 A.D.3d 456, 828 N.Y.S.2d 329 (1st Dept.2007), help plaintiffs here, given its disparate facts.

****331** Finally, plaintiffs failed to preserve any argument as to proper notice of the lien, not having raised it below, so it cannot be considered by this Court. If we were to consider it, we would reject it, as any failure to adhere to the statutory notice requirements for the lien would not void the lien, even under prior law. In any case, plaintiffs received sufficient notice in the April 23, 2010 letter to enable them to identify the injured party and the occurrence on which the claim was based for purposes of Social Services Law § 104–b.

All Citations

154 A.D.3d 453, 62 N.Y.S.3d 326, Med & Med GD (CCH) P 306,129, 2017 N.Y. Slip Op. 07085

Footnotes

1 In the complaint, plaintiff sought damages in the amount of $50,000,000 which included the expenses he "was caused ... to incur ... for medical care and attention."

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)
Chapter 55. Of the Consolidated Laws
Article 3. Local Public Welfare Organization; Powers and Duties (Refs & Annos)
Title 6. Powers to Enforce Support

McKinney's Social Services Law § 104

§ 104. Recovery from a person discovered to have property

Effective: January 1, 2004
Currentness

1. A public welfare official may bring action or proceeding against a person discovered to have real or personal property, or against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property, if such person, or any one for whose support he is or was liable, received assistance and care during the preceding ten years, and shall be entitled to recover up to the value of such property the cost of such assistance or care. Any public assistance or care received by such person shall constitute an implied contract. No claim of a public welfare official against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property, shall be barred or defeated, in whole or in part, by any lack of sufficiency of ability on the part of such person during the period assistance and care were received.

Nor shall the claim asserted by a public welfare official against any person under this section be impaired, impeded, barred or defeated, in whole or in part, on the grounds that another person or persons may also have been liable to contribute.

In all claims of the public welfare official made under this section the public welfare official shall be deemed a preferred creditor.

2. No right of action shall accrue against a person under twenty-one years of age by reason of the assistance or care granted to him unless at the time it was granted the person was possessed of money and property in excess of his reasonable requirements, taking into account his maintenance, education, medical care and any other factors applicable to his condition.

3. To the extent described in section 7-1.12 of the estates, powers and trusts law, the trustee of a supplemental needs trust which conforms to the provisions of such section 7-1.12 shall not be deemed to be holding assets for the benefit of a beneficiary who may otherwise be the subject of a claim under this section and no action may be brought against either the trust or the trustee to recover the cost of assistance or care provided to such person, or anyone for whose support such person is or was liable.

4. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.

Credits

(L.1940, c. 619, § 10. Amended L.1941, c. 82, § 7; L.1953, c. 838, § 1; L.1961, c. 55, § 1; L.1963, c. 509, § 1; L.1964, c. 573, § 1; L.1968, c. 448, § 1; L.1974, c. 909, § 4-a; L.1993, c. 433, § 3; L.2003, c. 340, § 1, eff. Jan. 1, 2004.)

McKinney's Social Services Law § 104, NY SOC SERV § 104
Current through L.2023, chapters 1 to 143. Some statute sections may be more current, see credits for details.

End of Document

1996 N.Y. Op. Atty. Gen. (Inf.) 1022 (N.Y.A.G.), 1996 WL 183249

Office of the Attorney General

State of New York
Informal Opinion No. 96-8
March 4, 1996

COUNTY LAW §§ 501(1), 502; FAMILY COURT ACT ART 2, 3, and 7, §§ 245(a), 254, 756-a; SOCIAL SERVICES LAW § 66(1).

***1** Social Services Law § 66 gives the county legislature the authority to appoint department of social services attorneys who will assist the county attorney in undertaking certain social service responsibilities under the Family Court Act. These attorneys are not separately appointed by the county attorney and need not take an oath of office.

Steven J. Getman, Esq.
Seneca County
Department of Social Services
P.O. Box 690
Waterloo, New York 13165-0690

Dear Mr. Getman:
You ask whether a county attorney may deputize attorneys under Social Services Law § 66(1) to help perform his or her duties related to Family Court Act § 254. You also ask whether the process of "deputization" under section 66(1) requires a separate appointment by the county attorney and an administration of the oath of office.

Family Court Act Article 2 establishes the statutory framework for providing legal assistance to family court petitioners. Section 254 of the Family Court Act requires the appropriate county attorney or corporation counsel to appear in support of any petition brought under the Family Court Act when "requested" to do so by a Family Court judge or the appropriate Appellate Division. Family Court Act § 245(a); 1975 Op Atty Gen (Inf) 92.

Section 66 of the Social Services Law deals with the appointment of attorneys to perform duties associated with social services matters and states in relevant part:
The legislative body of the county may authorize the appointment of any number of . . . attorneys to perform duties it considers necessary to carry out the provisions of this chapter. However, such legislative body may also authorize that such attorneys, in addition to performing the duties assigned to them by the county commissioner, may be deputized by the county attorney to perform duties on his behalf in connection with the work of the social services department.

Social Services Law § 66(1). This section empowers a county legislature to authorize appointment of attorneys in the county's department of social services and vest them with certain Family Court Act responsibilities. See, 1987 Op Atty Gen (Inf) 89 concluding that a county's legislative body may assign to attorneys in its department of social services the responsibility to represent the county's interest in an extension hearing pursuant to Family Court Act § 756-a. Section 66(1) also permits the county's social services commissioner to assign duties to these attorneys and authorizes the county's legislative body to allow the county attorney to deputize these attorneys to perform social services duties on his behalf. In the absence of a delegation of authority to attorneys in the county's department of social services, the office of county attorney would be responsible for presenting a case in support of a petition at the request of the family court judge. Id. This conclusion is predicated upon a county attorney's statutory duty to "prosecute and defend all civil actions and proceedings brought by or against the county, the board of supervisors and any officer whose compensation is paid from county funds for any official act". County Law § 501(1).

***2** Therefore, Social Services Law § 66 permits the county legislature to authorize the appointment of department of social services attorneys and the deputizing of these attorneys to assist the county attorney in undertaking certain social service

responsibilities such as Family Court Act Articles 3 and 7 (juvenile delinquency and persons in need of supervision) undertakings. See, 1987 Op Atty Gen (Inf) 89; cf. 1970 Op Atty Gen (Inf) 103.

Second, you ask whether use of the term "deputize" in section 66(1) requires a separate appointment by the county attorney and an administration of the oath of office. We note that in a telephone conversation, you indicated that Seneca County Department of Social Services attorneys do not take or file an oath of office with the county clerk.

As we stated above, County Law § 501 requires a county attorney to prosecute and defend all civil actions and proceedings brought by or against the county. Assistant county attorneys may be appointed at the discretion of the county attorney, with each appointment recorded in a writing filed at the office of the county clerk. County Law § 502(1). "The person so appointed shall take the prescribed oath of office and furnish any required official undertaking". Id. An assistant county attorney must perform such of the official duties of the county attorney as may be directed by that official. County Law § 502(2). In the absence or incapacity of the county attorney, the assistant county attorney carries out the duties of the office of county attorney. County Law § 502(3). If there is more than one assistant county attorney, the county attorney must designate the order in which the assistant county attorneys are to carry out the duties of the county attorney in the event of his absence or incapacity. County Law § 502(5).

In contrast, section 66(1) of the Social Services Law authorizes the appointment of attorneys in the county's department of social services who may be given specific duties by the legislative body, the county commissioner of social services, or by the county attorney through the deputizing of these attorneys. These social services department attorneys are not assistant county attorneys appointed under section 502 of the County Law who would carry out the duties of the county attorney in the event of his or her absence or incapacity. They are not separately appointed by the county attorney and their responsibilities are limited to those social services duties they are directed to perform. Since they are not assistant county attorneys, they are not required to take an oath of office under section 502 of the County Law. They are deputized for the narrow purpose of assisting the county attorney with the work of the social services department.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office. Sincerely,

Joseph Conway
*3 Assistant Attorney General

1996 N.Y. Op. Atty. Gen. (Inf.) 1022 (N.Y.A.G.), 1996 WL 183249

End of Document

Prohibition of Recovery or Recoupment of Medicaid Incorrectly Paid

Questions and Answers

May 22, 2023

The Center for Medicare and Medicaid Services (CMS) recently informed states in a Covid-19 Public Health Emergency Unwinding FAQ, dated October 17, 2022, that Medicaid programs are prohibited from recovering or recouping the cost of Medicaid services provided from a beneficiary, even if they have been found after administrative or criminal proceeding to have committed fraud or abuse. CMS indicated such recovery or recoupment represents a retroactive termination of Medicaid eligibility which violates a consumer's due process rights.

The New York State Department of Health (DOH) issued e-mail correspondence to local department of social services (LDSS) on January 4, 2023, with the subject "Medicaid Incorrectly Paid." This correspondence informed LDSS staff of CMS' interpretation of federal laws and regulations related to recovery of Medicaid incorrectly paid. DOH is awaiting more guidance from CMS before issuing official guidance to districts. In the meantime, DOH is releasing answers to questions posed by the LDSSs since the January 4, 2023, correspondence.

Q1: Can a district recover or recoup the cost of Medicaid services from a beneficiary?

A1: No, generally states cannot recover or recoup the cost of Medicaid services from a beneficiary. According to the CMS document "COVID-19 Public Health Emergency Unwinding Frequently Asked Questions for State Medicaid and CHIP Agencies," issued October 17, 2022, recovering or recouping the cost of Medicaid services from a beneficiary would effectively represent a retroactive termination of Medicaid eligibility, which would violate a consumer's federally protected due process rights.

However, there are three (3) circumstances under which a state may recover funds from a beneficiary. These circumstances are explicitly provided for in federal statute and regulation. These include: (1) liens placed on a beneficiary's property when a court judgment finds that Medicaid benefits were improperly paid pursuant to the judgement of a court on account of benefits incorrectly paid; (2) estate recovery proceedings required under federal law; and (3) benefits provided pending the outcome of a fair hearing. It is important to note that benefits provided pending the outcome of a fair hearing during the Public Health Emergency (PHE) may not be recouped.

Q2: Is the prohibition on recoupment of benefits incorrectly paid to a beneficiary a new rule or requirement?

A2: No, this is not a not a new rule and it is not related to the PHE or to the "unwind." CMS recently clarified its interpretation of the existing rule to make states aware of the prohibition of recoupment of Medicaid benefits incorrectly paid to beneficiaries.

Q3: What action should districts take when they have outstanding repayment agreements with Medicaid consumers to collect for Medicaid incorrectly paid?

A3: Any district with a current voluntary repayment agreement with a consumer for Medicaid incorrectly paid, as discussed in Section E. Medicaid incorrectly paid, 3., a. of 02 OMM/ADM-3 (pages 19-20), must immediately terminate such repayment agreements, cease to collect any future payments, and discharge all outstanding payments due from the consumer. Districts must send a manual notice to the consumer informing them the repayment agreement is being terminated and the district will no longer attempt to collect any recoveries from the consumer pursuant to the repayment agreement. Districts are not required to return any previously obtained recoveries.

However, any district with a current repayment agreement *pursuant to a judgement of a court*, as discussed in Section E. Medicaid incorrectly paid, 3., b. of 02 OMM/ADM-3 (pages 19-20) should contact their local district liaison to determine if the repayment agreement should remain in effect considering CMS' interpretation of this rule.

Q4: Are there any exceptions to the rule prohibiting recoupment of benefits incorrectly paid to a consumer?

A4: There are three (3) exceptions to the prohibition of recoupment of benefits incorrectly paid to a consumer and states may continue to recoup benefits in the following three scenarios:

(1) liens placed on a beneficiary's property when a court judgment finds that Medicaid benefits were improperly paid under section 1917(a) of the Act and 42 CFR § 433.36(g)(1);

(2) estate recovery proceedings required under section 1917(b)(1) of the Act; and

(3) benefits provided pending the outcome of a fair hearing under 42 CFR § 431.230.

As indicated in A1, above, benefits provided pending the outcome of a fair hearing during the PHE may not be recouped. Doing so jeopardizes the enhanced federal matching made available to states during the PHE.

Q5: Does the prohibition on recoupment of Medicaid benefits incorrectly paid to a consumer also apply to NAMI (Net Available Monthly Income) adjustments?

A5: Yes, this guidance also applies to NAMI adjustments. States cannot increase a NAMI retroactively and recover Medicaid incorrectly paid unless they do so pursuant to one of the exceptions discussed above.

Q6: Does the prohibition on recoupment of Medicaid benefits incorrectly paid apply to criminal restitution?

A6: No, criminal restitution, which is ordered as part of sentencing after a criminal conviction, is not affected by CMS guidance prohibiting recoupment for Medicaid incorrectly paid.

Q7: Does the prohibition on recoupment of Medicaid benefits incorrectly paid apply to retroactive Medicaid Managed Care (MMC) recoupments - in such instances as a consumer residing outside of New York State?

A7: No, this does not apply to retroactive recoupment of MMC capitation payments. Retroactive MMC recoupments are not affected because they do not involve recovering directly from the consumer. Such recoupments are part of the Medicaid Managed Care contract which stipulates the managed care organization is required to refund the Department.

Q8: Does the prohibition on recoupment of Medicaid benefits incorrectly paid apply to personal injury liens?

A8: No, personal injury liens are not affected and continue to be required. Such recoveries are required under Social Security Act §1902(a)(25) to recoup the cost of benefits provided which are/were the liability of a third party (the tortfeasor).

Q9: Does the prohibition on recovery of Medicaid benefits incorrectly paid apply to instances when there is agency error?

A9: Yes, this prohibition applies to Medicaid incorrectly paid as a result of agency error. The January 4, 2023, correspondence indicates all recovery activities should stop until further guidance is provided by CMS. However, pursuant to Governor Hochul's veto memo #179, dated December 28, 2022, the Medicaid program is directed to cease recovery of Medicaid incorrectly paid as a result of agency error from beneficiaries. As such, districts should not recover for agency error regardless of CMS' guidance.

Q10: What about "correctly paid" recoveries such as Supplemental Needs Trusts and Annuities?

A10: These are not affected by the CMS guidance since they are not technically "recoveries" but are, rather, a collection of remainder interests Medicaid is entitled to, according to terms of the instruments.

145 A.D.2d 714
Supreme Court, Appellate Division,
Third Department, New York.

STATE of New York, Respondent,
v.
UPSTATE STORAGE, INC., Defendant
and Third–Party Plaintiff–Appellant;
Lionel Marshall et al., Third–Party Defendants,
and
Please–More Construction Company,
Inc., Third–Party Defendant–Appellant.

Dec. 1, 1988.

Synopsis

Action was brought against owner of warehouse for loss of state property in collapse of second floor of warehouse, and owner asserted third-party claim against contractor for negligence in construction of warehouse. After head of State's Bureau of Donated Foods Distribution sent letter to warehouse owner stating that the United States Department of Agriculture had concurred in recommendation that no claim be made against warehouse and that such official was closing his file, warehouse owner and contractor moved for summary judgment dismissing complaint and third-party complaint, respectively. Motions were denied by the Supreme Court, Albany County, Hughes, J., and appeal was taken. The Supreme Court, Appellate Division, Weiss, J., held that: (1) language of the letter was insufficient to constitute a binding release against the State, and (2) in any event, release would be invalid as gift of public funds and lacking proper authority.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

****247** Thuillez, Ford, Conolly & Kelly (Matthew Kelly, of counsel), Albany, for defendant-appellant Please–More Const.

Robert Abrams, Atty. Gen. (Leslie Neustadt, of counsel), Albany, for plaintiff-respondent.

Plumadore, Poissant & Twiss (James Maher, of counsel), Saranac Lake, for defendant-appellant & third party plaintiff-appellant Upstate.

Before CASEY, J.P., and WEISS, MIKOLL and LEVINE, JJ.

Opinion

WEISS, Justice.

Appeal from an order of the Supreme Court (Hughes, J.), entered August 17, 1987 in Albany County, which denied motions by defendant and third-party defendant Please–More Construction Company, Inc. for summary judgment dismissing the ****248** complaint and third-party complaint, respectively.

This action seeks recovery of the value of plaintiff's foodstuffs which were destroyed while in storage in defendant's warehouse. The food had been given to plaintiff by the United States Department of Agriculture for distribution to certain institutions, agencies, camps, child care centers and schools. The third-party complaint seeks recovery over against the third-party defendants for their negligence in the construction of the warehouse building. The collapse of the second floor on July 9, 1984 resulted in the damage to plaintiff's property. By letter dated January 29, 1985, Ernest Berger, head of plaintiff's Bureau of Donated Foods Distribution, without apparent authorization, advised defendant that the Department of Agriculture had concurred with "our recommendation that no claim be made" against defendant for the loss of foodstuffs. The letter further stated, "We are, therefore, closing our file on this matter." Supreme Court denied a motion by third-party defendant Please–More Construction Company, Inc. for summary judgment dismissing the third-party complaint and the cross motion by defendant for summary judgment dismissing the complaint, both of which were premised on Berger's purported "release" letter. Both have appealed.

The facts being undisputed, the principal issue is whether Berger's January 29, 1985 letter to Gerald Derfort, president of defendant, constituted a release by plaintiff and, if so, whether Berger was authorized by law to execute a valid release binding upon plaintiff.

***715** In determining whether the letter constitutes a release, we must look to its language to determine Berger's intent without resort to extrinsic evidence, unless we find the language to be ambiguous as a matter of law (*see, Wells v. Shearson–Lehman/Am. Express,* 72 N.Y.2d 11, 19, 530

N.Y.S.2d 517, 526 N.E.2d 8). The letter states only that "the U.S. Department of Agriculture has concurred with our recommendation that no claim be made against your warehouse" and that Berger was closing his file. We find this language insufficient to constitute a binding release against plaintiff. While no particular form need be used in a release (*Pratt Plumbing & Heating v. Mastropole,* 68 A.D.2d 973, 414 N.Y.S.2d 783), a writing must contain an expression of a present intention to renounce a claim or discharge an obligation (*Carpenter v. Machold,* 86 A.D.2d 727, 447 N.Y.S.2d 46). Here, unlike the situation in *Pratt Plumbing & Heating v. Mastropole (supra),* the letter does not recite a present intention to renounce the claim or forever discharge defendant from any obligation to pay for the damaged goods. Instead, there is only a recommendation to the Department of Agriculture that no claim be made. The absence of the requisite words of release, discharge or renunciation, required in a writing purporting to be a release, negates its validity (*see, Carpenter v. Machold, supra*).

The Berger letter fails as a release for several other reasons. Plaintiff may not make a gift of public funds by releasing a contractual obligation without due consideration (N.Y. Const., art. 7, § 8; *cf., Pratt Plumbing & Heating v. Mastropole, supra* [only private parties involved]). Berger's actions in sending the letter were clearly gratuitous. Nor may estoppel be asserted against plaintiff under the circumstances described (*see, Matter of E.F.S. Ventures Corp. v. Foster,* 71 N.Y.2d 359, 369–370, 526 N.Y.S.2d 56, 520 N.E.2d 1345; *Scruggs–Leftwich v. Rivercross Tenants' Corp.,* 70 N.Y.2d 849, 851–852, 523 N.Y.S.2d 451, 517 N.E.2d 1337; *Parsa v. State of New York,* 64 N.Y.2d 143, 147, 485 N.Y.S.2d 27, 474 N.E.2d 235). The letter cannot serve as a binding contractual release since it was not approved by the Comptroller (State Finance Law § 112[2], [3]; *Parsa v. State of New York, supra; Landers v. State of New York,* 56 A.D.2d 105, 108–109, 391 N.Y.S.2d 723, *affd.* 43 N.Y.2d 784, 402 N.Y.S.2d 386, 373 N.E.2d 281). Finally, we agree with Supreme Court's assessment that Berger lacked independent authority to release defendant's contractual obligation to plaintiff. The Legislature has specifically vested the Attorney–Generall ****249** with the authority to control all actions or proceedings in which plaintiff has an interest (Executive Law § 63[1]). Implicit in this authorization is the power to release a viable cause of action that has accrued to plaintiff prior to the commencement of formal litigation.

***716** Order affirmed, without costs.

CASEY, J.P., and MIKOLL, YESAWICH and LEVINE, JJ., concur.

All Citations

145 A.D.2d 714, 535 N.Y.S.2d 246

End of Document