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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194383

DATE: September 11, 1979

MATTER OF: Jean Harris - [Reconsideration of Collection Action]

- DIGEST:**
1. Distributee of property from the estate of a deceased debtor of the United States, is liable to repay debt resulting from overpayment of Supplemental Security Income Benefits to decedent debtor during her lifetime to the extent of assets received. Distributee is considered to constructively hold funds in trust for benefit of the United States. United States is not barred by Wisconsin nonclaim statute from satisfying its claim against decedent debtor through action against beneficiary, without participating in probate proceeding. Wisc. Stat. Ann. 859.01(3).
 2. Among debtors jointly and severally liable to United States, Government is not required to collect proportionate share from each, but may collect in manner best calculated to liquidate indebtedness as quickly as possible even if this means collecting entire amount from one debtor. That debtor presumably can enforce legal right to contribution by fellow debtors.

This responds to a letter from Ms. Jean Harris, in effect asking for reconsideration of our Claims Division's determination that she is liable for the debt resulting from overpayments of Supplemental Security Income (SSI) Benefits made to her deceased mother.

Ms. Harris' mother, Mrs. Marion Doughty, received overpayments totaling \$1,184.20 in SSI Benefits from April through November 1975. She never repaid the funds during her lifetime, so her estate became liable for the debt upon her death in September, 1976. Her estate consisted of about \$1,000 in cash and a house worth approximately \$20,000. Ms. Harris was one of three beneficiaries of the estate who were to divide the assets equally.

The Social Security Administration (SSA) notified the attorney for the estate of the Government's claim in a letter dated December 2, 1976. In the letter, SSA notified the attorney that the United States

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must be given priority over other creditors of the estate under the provisions of 31 U.S.C. § 191 (1976). It also pointed out that under 31 U.S.C. § 192, a representative of an estate can become personally liable for a debt owed to the United States if he pays the general creditors of the estate without first satisfying the Government's claim. The letter concluded by requesting the attorney to furnish to SSA appropriate forms if it would be necessary to file a formal claim in order to collect the debt.

In place of the Government's filing a formal claim against Mrs. Doughty's estate, an agreement was made between representatives from the Department of Health, Education and Welfare (HEW), and the attorney for the estate, that Ms. Harris would pay the debt after the estate was closed, out of the proceeds from the sale of her mother's house. In a letter to HEW dated July 5, 1977, the attorney for the estate said:

"Pursuant to our phone conversation, I hereby acknowledge, on behalf of my client, Jean Harris, who is one of the principal beneficiaries of the estate, the indebtedness of the estate to the United States Government in the amount of \$1,184.20. Please be advised, however, that my client will not be able to pay this claim until after the estate has been closed. She fully intends to make payment at that time."

Then, in a letter dated February 3, 1978, to the SSA, the attorney stated:

"The above estate has been closed. The arrangement which was made with representatives from HEW who I spoke to previously was that the daughter of the decedent would pay this claim after the estate was closed. This was agreed to by the daughter and by HEW. The daughter's name is Jean Harris, Route 7, Spooky Ridge Farm, Merrill, Wisconsin. The principal asset in the estate was a house which the beneficiaries of the estate intended to sell. I would suggest that you contact Ms. Harris directly about this."

The SSA attempted unsuccessfully to collect the debt from Ms. Harris after learning that the estate had been closed. It referred the case to the General Accounting Office's Claims Division for collection in July, 1978, which determined that Ms. Harris was liable for the debt and asked her to pay it. Our Claims Division explained this determination, and the rationale for it,

in a January 2 letter to Senator Proxmire which was forwarded to Ms. Harris. She now asks for reconsideration of the decision that she must refund the overpayment.

Ms. Harris contends that it is unfair for the United States now to look to her alone to repay the entire debt, because HEW proceeded improperly following her mother's death. She argues that HEW should have filed a notice of the debt in the Probate Court having jurisdiction over her mother's estate, rather than informally making an arrangement with the attorney for the estate for satisfaction of the Government's claim. Ms. Harris points out that if HEW had submitted its claim to the Probate Court, then her mother's debt would have been satisfied from the estate and all three beneficiaries would in effect have shared the cost of repaying the Government. She says that she never authorized the attorney for the estate to agree that she would repay the entire debt, that in fact he did not represent her, that she did not know of the agreement until after her mother's estate was closed, and that she never would have agreed to the arrangement if HEW had proposed it to her. Ms. Harris contends, therefore, that it is inequitable to hold her solely responsible for the debt under the agreement.

We have no reason to change our determination that Ms. Harris is liable for her mother's debt notwithstanding the arguments she has presented. The rights of the United States are different from those of a private creditor seeking to collect a debt owed by a decedent. The Federal Government may look to Ms. Harris for satisfaction of its claim because she is a distributee of the estate, even though the Government did not participate in the Probate Proceedings. The United States can collect its debt from Ms. Harris even if HEW had not made the agreement with the attorney for the estate, because its rights stem from law and not the agreement.

Generally, a creditor must file a claim with the Probate Court within the time set by law in order to collect a debt owed by a deceased debtor whose estate is probated in Wisconsin (with exceptions not relevant here). Wis. Stat. Ann. § 859.01(1). If the private creditor does not file his claim, he is forever barred from bringing it against the estate, the personal representatives and the heirs and beneficiaries of the decedent. Id.

However, the Wisconsin statute which bars a creditor's claim if it is not properly filed, does not apply to claims by the United States. Id. Subsection 859.01(3) of the Wisconsin Probate Code expressly provides that claims of the United States are not within the operation of subsection 859.01(1).

Wisconsin's law is thus in accord with the general principle that State "nonclaim" statutes (those statutes, usually found in the

Probate Code, fixing the time within which claims against a decedent's estate must be filed or presented to the executor or administrator and which usually further provide that the claim will be barred unless presented within such time) do not apply to claims of the United States. United States v. Deimer, 140 F. Supp. 88 (D. Wyo. 1953); Reconstruction Finance Corp. v. Faulkner, 122 A. 2d 263 (1956). Individual states do not possess the power, under the Constitutional system, to invalidate a claim of the United States by statute or through state courts so that the claim cannot be enforced at all. United States v. Summerlin, 310 U.S. 414, 84 L. Ed. 1283, 60 S. Ct. 1019 (rev'g. 140 Fla. 475, 191 So. 842 (1940)). Accordingly, the SSA's failure to pursue its claim in the Probate Court does not terminate its right of action in this case, and the Government's claim remains valid and enforceable.

The Government may exercise its right of action against any or all persons who have inherited the debtor's property. United States v. Anderson, 66 F. Supp. 870 (1946); United States v. Fisher et al., 57 F. Supp. 410 (1944); United States v. Purdome, 240 F. Supp. 221 (1963). They are considered, under the law, to receive and hold in trust funds belonging to the United States to the extent of assets received. Accordingly, Ms. Harris is liable for her mother's debt under the "trust fund" doctrine of the cited cases because she is a distributee of the estate.

As stated earlier, the Government could collect its debt from Ms. Harris even if HEW had not made the agreement with the attorney for the estate, since the basis of Ms. Harris' liability is a doctrine of law and not the agreement. Therefore, Ms. Harris' objections to the agreement are not material, even though, as may have been the case, the attorney for the estate was not authorized to make any agreement on behalf of Ms. Harris.

We see no impropriety in HEW's actions, following Ms. Harris' mother's death, in dealing informally with the attorney for the estate. HEW has a statutory duty to attempt collection of all claims of the United States arising out of HEW activities. 31 U.S.C. § 952 (1976). (Regulations require, to this end, "aggressive action, on a timely basis with effective followup." 4 C.F.R. § 102.1 (1978).) HEW's procedure is a legally recognized as well as administratively acceptable means for the Government to use to recover a debt owed by a deceased debtor.

Although the Government may, if it chooses, file and prosecute its claim in the same manner as any other creditor, as already discussed, the United States need not formally submit a claim in Probate Court in order to preserve its collection rights. However, if the Government does formally submit its claim in probate proceedings, it is bound by the determination made by the State Court. United States v. Vibradamp Corp. 257 F. Supp. 931 (1966).

(On the other hand, if the United States chooses not to participate, then Federal law governs. If the Government notifies the representative of an estate that his decedent died owing a debt to the United States, the Government can look to the representative personally if he distributes the assets of the estate without paying the claim.) 31 U.S.C. § 192 (1976).

Thus, the United States may file its claim in Probate Court, or notify the representative of the estate and then rely on him to preserve the priority accorded by sections 191 and 192 of title 31, United States Code. (HEW apparently decided that it would be better in this case, as permitted by law, to deal with the estate directly and not to submit its claim to the risk and expense of litigation in Probate Court. Admittedly, if HEW had decided to file its claim in the Probate Court, the claim would presumably have been satisfied from the assets of the estate before distribution was made to the beneficiaries, but HEW's responsibility was to try to recover funds belonging to the United States through the most economical means legally available.)

We do not agree that the Government's action has been inequitable. Ms. Harris does not now question that her mother owed \$1,184.20 to the United States. Also, she would have a right to recover their proportionate shares of the debt by way of contribution from the other distributees of the estate. The fact that the other distributees are jointly liable, however, does not prevent the United States from looking to only one for full satisfaction of the debt and leaving it to that debtor to seek contribution from the others. In this regard, the Federal Claims Collection Standards require that --

"When two or more debtors are jointly and severally liable collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible." 4 C.F.R. § 103.6 (1978).

Moreover, in the Claims Division's January 2 letter to Senator Proxmire, it was agreed that we would initiate collection action against the other liable parties if Ms. Harris would advise us of their whereabouts, even though, as the above regulation indicates, there is no requirement that we do so. Ms. Harris did not provide the addresses, but we have now discovered a record of them and, as agreed, we will also try to collect the debt from the other two beneficiaries. One is Ms. Harris' brother and lives at the same address as she, and the other beneficiary, the executrix of her mother's estate lives in Milwaukee, according to the information we have. However,

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we reiterate that we will still hold Ms. Harris responsible for the entire debt as the law and regulations require us to do, should we be unable to locate or collect from the other two beneficiaries.


Deputy Comptroller General
of the United States