

2023 ANNUAL  
CONFERENCE



# Estate Recovery

County Attorney Experiences

2023 ANNUAL  
CONFERENCE



# ESTATE RECOVERY

One County's Experience Going from Passive to Active  
Collection

Jackie Warner,  
Assistant Dakota County Attorney

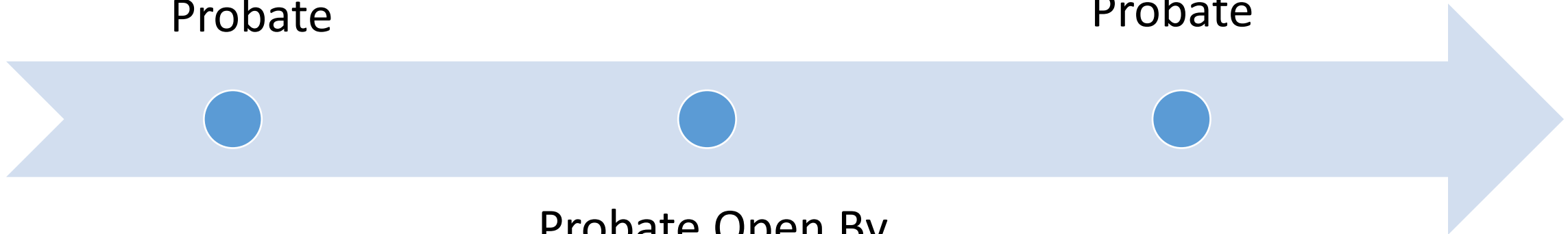
# CONTINUUM OF RECOVERY



No  
Probate

County  
Initiated  
Probate

Probate Open By  
Someone Else



# THE NUMBERS



FY YEAR	Dakota County Collection Total <sup>1</sup>	Number of County Initiated Probates	County Initiated Probate Recovery
2020	\$1,441,668.92	2	\$219,420.45 <sup>2</sup>
2021	\$2,791,996.39	1	\$211,994.74
2022	\$2,363,853.32	1	\$108,670.14
2023	\$3,288,622.64	Est. 2	Est. in 2024 \$288,370.00
2024 (Just Aug. 2023)	\$ 594,292.59		

1. The County's keep between 10% (for Alternative Care) and 25% (for all other MA collection) of these figures.
2. These figures do NOT include attorneys' fees or PR fees that are also collected by the County.

# Suggestions on WHERE TO BEGIN?



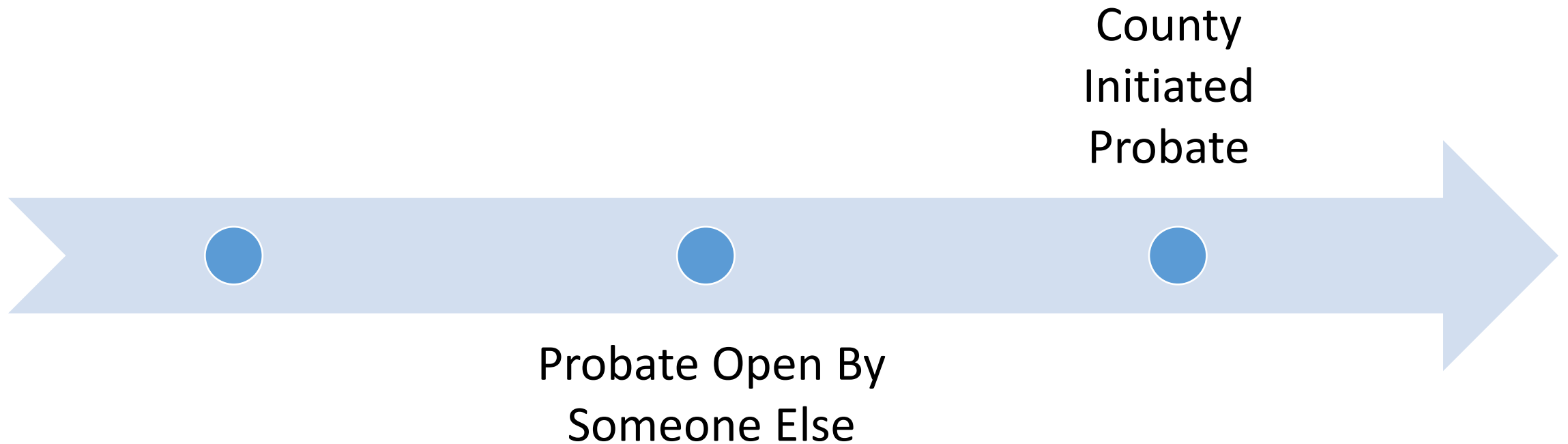
- Make Sure Everyone is On Board with the Idea
- Probate Determination – It Has to Make Sense
  - Assets?
    - Property (incl. Homestead)
    - Bank Accounts
    - Stocks/Retirement/Life Ins. (with no named beneficiary)
  - Value?
    - Encumbrances
    - FMV
    - Insolvent
  - Other Players?
    - Family members
    - Other Creditors

# TIPS AND TRICKS?



- Do the Work at the Front End
- Special Administrations (Minn. Stat. § 524.3-614)
  - Exigent Circumstances – Ability to Act Quickly
- Leverage and Work With Family Members
- Improvements (Trust the Professionals)

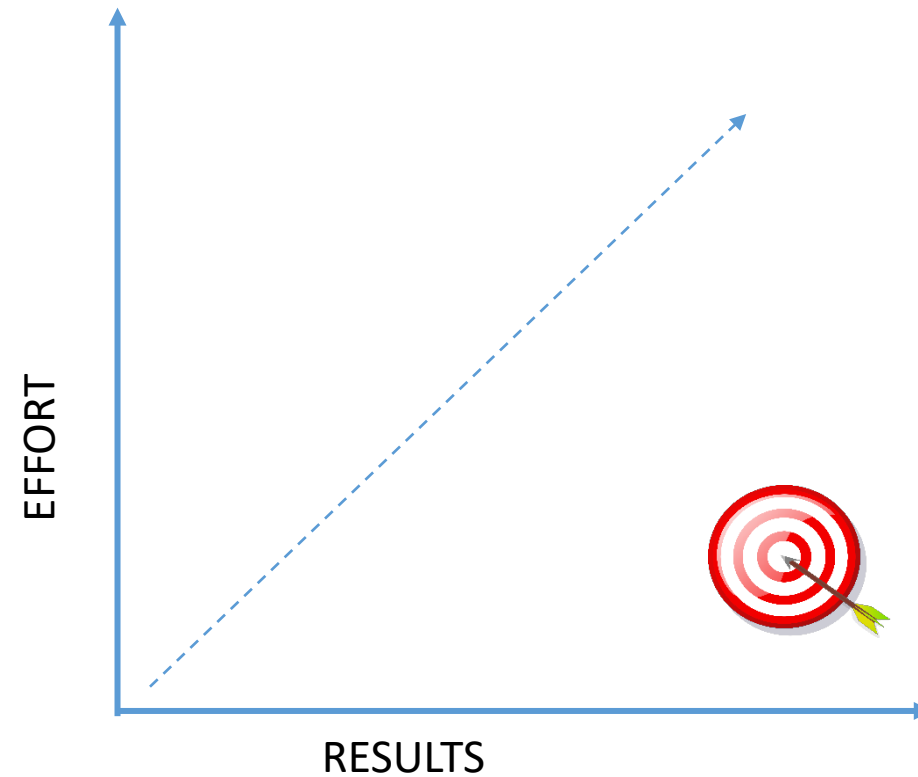
# CONTINUUM OF RECOVERY



# WRITTEN STATEMENT OF CLAIMS



1. File Them
2. That's it.
3. Not really...
4. Follow-up





# No Probate (low value)



- Affidavit for Collection of Personal Property
  - Court Forms Available
- Put Pressure on Authorized Representative(s) “AREPS”
  - Final Accounting
  - Payments

# Questions?







# Recent Court Challenges to Capitation Payments of Medical Assistance

Sean R. McCarthy  
Assistant Rice County Attorney

# **CASE #1 - *In Re: Estate of Raymond D. Trahan***



***In Re: Estate of Raymond D. Trahan,***

Rice Co. Dist. Ct. File No. **27-PA-PR-21-1424**

(filed: 02/09/2022 - Hon. Judge Karie M. Anderson)

Court of Appeals: **No. A22-0494**, 2022 WL 9612389 (Minn. Ct. App. 10/17/2022)

## **Court of Appeals History**

*Trahan 1*      *In re Estate of Trahan*, No. A19-1020, 2020 WL 525713  
(Minn. Ct. App. 02/03/2020) (reverse and remand)

*Trahan 2*      *In re Estate of Trahan*, No. A20-0567, Order Opinion  
(Minn. Ct. App. 11/16/2020) (trial court order vacated as  
“null and void” due to lack of jurisdiction)

*Trahan 3*      *In re Estate of Trahan*, No. A22-0494, 2022 WL 9612389  
(Minn. Ct. App. 10/17/2022) (affirmed)

# CASE #1 - *In Re: Estate of Raymond D. Trahan*



## Trial Court Facts & Procedural History

May 2010 Trahan begins receiving Medical Assistance.

May 2018 Trahan dies.

Sept. 2018 County files claim for \$158,384.35 per DHS Claims History. Personal Representative disallows claim.

Parties agree to submit on legal briefs only.

Personal Representative submits **additional affidavits** and **exhibits**.

May 2019 Trial court **denies** County claim, holding:  
1. Benefits never should have been paid – (ineligible); and  
2. DHS Claim History did not match billed medical services.

# **CASE #1 - *In Re: Estate of Raymond D. Trahan***



1. Capitated Payments (insurance premiums, **not** fee-for service)
2. Hearsay used for collateral attack on routine government action.
3. Trial Court holding potentially endangered all DHS Claims Histories.

County appeals.

COA **reverses** (**Trahan 1**), but also **remands** to consider unresolved claims of: due process, notice and equity.



# **CASE #1 - *In Re: Estate of Raymond D. Trahan***



02/**03**/2020 Court of Appeals reverses and remands. (***Trahan 1***)

02/**25**/2020 Trial Court files new order, again denying County claim, **without** reopening the record or further briefing.

04/20/2020 COA enters judgement from ***Trahan 1***.

County appeals.

COA **reverses** (***Trahan 2***) for lack of jurisdiction, and again **remands**.



# **CASE #1 - *In Re: Estate of Raymond D. Trahan***



On remand, parties again agree to submit on legal briefs and exhibits. County adds **DHS Affidavit** explaining Capitation Payments and DHS Claims History.

Personal Representative argues:

Due Process Violation (Decedent misled about estate recovery);

Lack of Notice (that capitation payments were subject to recovery); and

Validity of Claim not proven by County.

Trial Court **denies** County's claim based on P.R. arguments.

County appeals.

COA **affirms** (**Trahan 3**) Trial Court Did Not Err Where There Was No Record of Notice to Applicant that Capitation Payments were Recoverable.



# **CASE #2 - *In Re: Estate of Joanne Mary Ecklund***

## ***In Re: Estate of Joanne Mary Ecklund,***

Hennepin Co. Dist. Ct. File No. **27-PA-PR-21-1424**

(filed: 2312/12/2022 - Hon. Judge Michael Browne)

Court of Appeals File No. **A23-0210**

- 12/12/2022 - Hennepin Co. Dist. Court, (Hon. Michael Browne), **disallowed recovery** of more than **\$66,000** in medical assistance capitated payments made to Medica.
- Trial Court interpreted statute to only allow recovery of payments for services actually “rendered”, thus disallowing all capitated payments.
- Only **\$8,806** of the capitated payments resulted in actual expenditures by Medica for services actually “rendered.”



# **CASE #2 - *In Re: Estate of Joanne Mary Ecklund***

## **Court of Appeals Status**

- 09/19/2023 – Oral Argument before MN Court of Appeals.
- Dec. 2023 – Decision expected from MN Court of Appeals.

Can obtain briefs and other documents from:

- your local court administration public access terminal.
- Mark Eekhoff and Geneva Finn, DHS.

# **CASE #2 - *In Re: Estate of Joanne Mary Ecklund***



**MN State Bar Association (MSBA)  
ELDER LAW SECTION  
E-NEWSLETTER April 3, 2023**

...to assemble a list of similar cases and gain an idea of how many similar cases across Minnesota might be affected by this case, the Elder Law Section Advocacy Committee is requesting information about other cases where the County MA Collection Unit is seeking recovery, or has already obtained recovery, for capitated payments made to a managed care organization.

Please respond to Martha Amdahl at Northwoods Law Group, (952) 295-1059, marthaa@Northwoodslawgroup.com, or Julian J. Zweber, 651-646-4354, julianzweber@qwestoffice.net.



# **CASE #2 - *In Re: Estate of Joanne Mary Ecklund***

**2023 ELDER LAW INSTITUTE**  
Day 1 – Thursday, October 5

**202**

**A Closer Look at 5 Critical Elder Law Cases: **Ecklund**, Post-Geyen, Schubert Trust, Zika and Deverell**

– Christopher J. Kradle, Mary Frances Price & J. Noble Simpson

– Cathryn D. Reher (moderator)

# **CASE #3 - *In Re: Estate of Barbera Lee Hadler***



***In Re: Estate of Barbera Lee Hadler,***  
Wadena Co. Dist. Ct. File No. **80-PR-22-396**  
(Filed 08/31/2023 - Hon. Judge Doug Clark)

- Holds capitation payment recovery allowed by plain language of statute..
- Directly addresses flaws with *Ecklund* analysis.
- Correctly cites to both State and Federal Laws in this area.
- Copies of Trial Court Order and Briefs can be obtained from:
  - MGA download
  - Contact Mark Eekhoff & Geneva Finn at DHS.

# Build a Better Record - Distinguish Your Case



1. Don't agree to affidavits and hearsay documents!
2. Demand a hearing.
3. Call witnesses.
4. Offer exhibits.
5. Have witnesses use and explain the exhibits.
6. Cross examine opposing witnesses.

# Build a Better Record – Hearing Strategies



1. Live Testimony = Credibility Findings
2. “Routine Habit and Practice” - Minn. R. Evid. 406:  

Evidence of the habit of a person or of the routine practice of an organization ... is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.
3. Witness testimony about MA Applications, Annual Renewals, Managed Care Guide, plus any DHS and County Manuals on M.A.
4. Draft **Proposed Order** with credibility findings and legal analysis.



# Build a Better Record – Exhibits To Introduce



1. M.A. Application (signed, plus all boilerplate “Rights & Responsibilities” pages).
2. M.A. Application Renewals (signed, plus all boilerplate notice pages).
3. DHS Claims History (can supplement w/ DHS affidavits or even a DHS Witness!)
4. 2105 DHS Notice Letter (sent to all M.A. recipients).
5. County and DHS M.A. Manuals
6. Consult with DHS to check for additional potential exhibits.

# EXHIBIT: 2105 DHS Letter



## How We Pay for Your Health Care Benefits

Most Medical Assistance (MA) and MinnesotaCare members get coverage through a managed care plan. **We pay a monthly amount to the managed care plan** for you if you get coverage through a managed care plan. **We pay this amount even if you do not get services during the month.**

## MA Estate Recovery

The MA program must recover MA costs after the death of certain members ... **by filing a claim in probate court, or a claim against assets remaining in the estate after death.**

Recoverable MA service costs include ... **monthly payments to managed care plans** for health care coverage.

Minnesota Department of Human Services  
PO Box 54989  
St. Paul, MN 55164-0989

JOSEPHINE Q PUBLIC-PERSON  
444 LAFAYETTE AVENUE  
APT 7-E  
SAINT PAUL, MN 55155-9998

Dear Minnesota Health Care Program (MHCP) Member:

Please read the enclosed notice. It contains information about changes that the Minnesota legislature made to MHCPs this year.

You can find more information about MHCP services on the DHS Member Services web page at [www.dhs.state.mn.us/mhcpmemberservices](http://www.dhs.state.mn.us/mhcpmemberservices)

Please also read the information below:

### How We Pay for Your Health Care Benefits

Most Medical Assistance (MA) and MinnesotaCare members get coverage through a managed care plan. We pay a monthly amount to the managed care plan for you if you get coverage through a managed care plan. We pay this amount even if you do not get services during the month. For more information on this monthly amount, see this web page:  
[www.dhs.state.mn.us/managedcarepayments](http://www.dhs.state.mn.us/managedcarepayments)

Some MA members get coverage through fee-for-service. This means we pay the health care provider a rate set by the MA program for each of the medical services you get.

It is important that you report all changes that may affect your eligibility. You may be asked to pay back the amounts we paid for your managed care coverage or for your medical services if you do not report a change and get coverage for a month that you were not eligible.

### MA Estate Recovery

The MA program must recover MA costs after the death of certain members.

The MA program recovers these costs by filing a claim in probate court, or a claim against assets remaining after death.

The MA program must try to recover costs for these people:

- people who received MA at and after the age of 55
- people who resided in a long-term-care facility for six months or more, regardless of their age

Minnesota recovers payments for all MA services provided to people 55 years old or older. Recoverable MA service costs include, but are not limited to, monthly payments to managed care plans for health care coverage, fee-for-service medical expenses, and long-term-care expenses. For more information on monthly payments to managed care plans, see this web page:  
[www.dhs.state.mn.us/managedcarepayments](http://www.dhs.state.mn.us/managedcarepayments)

DHS\_LEGIS\_2015

# Additional questions ???



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