

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ADRIENNE BLATCHFORD,

Plaintiff,

vs.

ALASKA NATIVE TRIBAL HEALTH
CONSORTIUM, d/b/a/ ALASKA
NATIVE MEDICAL CENTER,

Defendant.

Case No. 3:08-cv-00247 TMB

ORDER

Denying Plaintiff's Motion for Summary
Judgment and Granting Defendant's Motion for
Summary Judgment

I. MOTIONS PRESENTED

Plaintiff Adrienne Blatchford ("Plaintiff") prays for declaratory relief requesting the Court either reduce or deny Defendant Alaska Native Tribal Health Consortium's ("ANTHC") claims for reimbursement of medical treatment rendered to Plaintiff. ANTHC has filed a counterclaim, pursuant to 25 U.S.C. § 1621e(a), for reimbursement of the reasonable expenses it incurred providing medical care to Plaintiff. Plaintiff and Defendant have each filed motions for summary judgment.¹ Oral argument was held on August 5, 2010. For the reasons stated herein, the Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion for summary judgment.

II. BACKGROUND

Defendant ANTHC is a consortium of Alaska Tribes and Tribal health organizations organized pursuant to § 325 of Pub.L. 105-83.² ANTHC provides health care programs for

¹ Dkt. 29 & 35.

² Dkt. 22 at 1-2.

Alaska Natives and American Indians on behalf of the federal government.³

Plaintiff was seriously injured in an automobile accident caused by a third-party tortfeasor. Plaintiff obtained medical services at the Alaska Native Medical Center (“ANMC”), which is managed by ANTHC.⁴ On September 5, 2007, ANTHC filed a health care provider lien with the state of Alaska in the amount of \$51,851.31, and filed a Notice of Federal Health Services Lien on November 6, 2008 in the amount of \$103,480.74.⁵ These lien amounts represented the reasonable expenses incurred by ANMC for the medical services provided to Plaintiff.⁶

Plaintiff settled her claims against her insurance company, receiving \$59,636.20 of bodily injury coverage and \$59,636.20 for her uninsured motorist coverage.⁷ \$51,851.31 of the settlement proceeds remain in a trust account managed by Plaintiff’s counsel; the remaining funds were properly disbursed before the second lien was filed on November 6, 2008.⁸ ANTHC objects to disbursement of the remaining settlement proceeds until and unless ANTHC is reimbursed for medical care provided under 25 U.S.C. § 1621e.⁹

III. LEGAL STANDARD

Summary judgment is appropriate if, when viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving

³*Id.* See Indian Health Care Improvement Act, 25 U.S.C. § 1601 *et seq.*, Pub. L. 94-437, as amended; Title V of Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.*, Pub. L. 93-638, as amended.

⁴ Dkt. 21 & 22 at 2-3.

⁵ *Id.*

⁶ Dkt. 37 at 2-3.

⁷ Dkt. 21 & 22 at 4.

⁸ *Id.*; Dkt. 27 at 2; Dkt. 48.

⁹ Dkt. 22 at 5.

party is entitled to judgment in its favor as a matter of law.¹⁰ The moving party bears the initial burden of proof as to each material fact upon which it has the burden of persuasion at trial.¹¹ This requires the moving party to establish, beyond controversy, every essential element of its claim or defense.¹² “When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the same evidence were to be uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.”¹³

Once the moving party has met its burden, the nonmoving party must demonstrate that a genuine issue of material fact exists by presenting evidence indicating that certain facts are so disputed that a fact-finder must resolve the dispute at trial.¹⁴ The court must view this evidence in the light most favorable to the nonmoving party, must not assess its credibility, and must draw all justifiable inferences from it in favor of the nonmoving party.¹⁵

IV. DISCUSSION

A. Defendant’s Claims for Reimbursement are Valid.

There are no relevant disputed facts and there is no question under the law that ANTHC has a right to recover the money spent on Plaintiff’s medical care under 25 U.S.C. § 1621e. Plaintiff’s allegations that state law or equitable considerations should bar or reduce the award are legally untenable for the reasons explained below.

¹⁰ Fed. R. Civ. P. 56(c).

¹¹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

¹² *S. Calif. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003).

¹³ *C.A.R. Transp. Brokerage Co., Inc. v. Darden Rest., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

¹⁴ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

¹⁵ *Id.* at 225; *Soldano v. United States*, 453 F.3d 1140, 1143 (9th Cir. 2006).

As an initial matter, ANTHC's claim against Plaintiff for her insurance settlement is proper under 25 U.S.C. § 1621e. That section provides, in relevant part, that "a tribal organization shall have the right to recover the reasonable expenses incurred...in providing health services...to any individual to the same extent that such individual...would be eligible to receive reimbursement of indemnification for such expenses if: (1) such expenses had been provided by a nongovernmental provider, and (2) such individual had been required to pay such expenses and did pay such expenses."¹⁶

Plaintiff, the individual who received medical expenses provided by ANTHC, a tribal organization, does not dispute that ANTHC's claimed medical expenses are reasonable. There is also no dispute that Plaintiff would have been entitled to recover the costs for the medical services provided by ANTHC's if she had received those services from a nongovernmental provider and Plaintiff had been required to pay for the services rendered.

Plaintiff admits that ANTHC initially pursued the lien under Alaska state law.¹⁷ Plaintiff also admits that ANTHC would have been able to join in Plaintiff's action to recover against the third-party tortfeasor, but argues that allowing ANTHC to recover the settlement money from Plaintiff herself would be contrary to the intention of the statute. This argument fails because the statute does not limit the tribal organization to reimbursement from third-party tortfeasors. To prevent ANTHC from being reimbursed merely because one party, and not another, holds that money would be contrary to the language and intention of the statute; and would unjustly enrich Plaintiff. Any individual has the right to recover an settlement funds obtained from a tortfeasor's insurance company; the tribal group has the same right under § 1621e.¹⁸ Therefore, ANTHC has a *prima facie* right to recover the expenses it incurred in providing Plaintiff with medical care under 25 U.S.C. § 1621e. For this reason, Plaintiff's motion for summary judgment is **DENIED**.

B. Any Reduction of Defendant's Reimbursement Would Be Improper.

Plaintiff's efforts to defeat the plain language of 25 U.S.C. § 1621e are also untenable.

¹⁶ 25 U.S.C. § 1621e(a).

¹⁷ Dkt. 30 at 6; AS 34.35.450-482.

¹⁸ The recent amendment to this statute would not change this result, if applicable.

First, Plaintiff cites state lien foreclosure procedures in an attempt to invalidate ANTHC's lien against the settlement account. Second, Plaintiff references distinguishable cases to convince the Court to reduce the amount ANTHC may recover.

Plaintiff argues that ANTHC's lien on the settlement funds is invalid because ANTHC brought an action to enforce the lien after the one year time period authorized under Alaska law had elapsed. However, 25 U.S.C. § 1621e(c) provides that "[n]o law of any State...shall prevent or hinder the right of recovery of...a tribal organization under subsection (a) of this section." Since ANTHC enjoyed a right to recovery under subsection (a) of the statute, Plaintiff may not invoke state law to prevent or hinder ANTHC's recovery. Although ANTHC initially used state lien procedures, this election does not prevent ANTHC from recovering under the federal statute. The Court notes in passing that, under the current revision of 25 U.S.C. § 1621e, ANTHC's claim would also be allowed under the statute of limitations of 28 U.S.C. § 2415.¹⁹

Additionally, Plaintiff asserts a novel argument that the so-called "made whole doctrine" should allow ANTHC to be reimbursed only out of the portion of the settlement which was awarded as damages for medical expenses, but not from portions reflecting non-pecuniary damages. Plaintiff relies on *Houle*²⁰ for the proposition that the "made whole" doctrine should be applied here to deny recovery, or alternatively on *Ahlborn*²¹ for the proposition that the tribal agency's recovery should be reduced pro-rata. *Houle*, which is neither controlling nor convincing, depends on inapplicable case law to reach its holding and is, therefore, inapposite. Furthermore, *Ahlborn* does not mandate a hearing²² because in *Ahlborn* the Supreme Court dealt the application of Arkansas state law to limit subrogation rights under Medicaid. The statute at issue here is 25 U.S.C. § 1621e, which has a different purpose and employs different language

¹⁹ Indian Health Care Improvement Fund, 25 U.S.C. § 1621 *et seq.* (to be codified as amended Pub. L. 111-148 § 10221, 124 Stat. 119 (2010)).

²⁰ *Houle v. School Dist. Of Ashland*, 671 N.W.2d 395 (Wis 2003).

²¹ *Arkansas Dept. Of Health and Human Servs. v. Ahlborn*, 547 U.S. 268, 126 S.Ct.1752 (2006).

²² *See* Dkt. 43 at 7.

than the statute discussed in *Ahlborn*. The Court concludes that subrogation cannot be read into the language of the statute applicable in this case.

In *Yukon-Kuskokwim Health Corp.* the court determined that 25 U.S.C. § 1621e was created to allow insureds, that were eligible for federal funds and had paid all relevant premiums, to collect these funds from private insurers.²³ The Court finds the circumstances involved in current lawsuit and *Yukon-Kuskokwim* are indistinguishable. As such, the Court finds that ANTHC must be allowed to collect insurance money that would have *or actually was* paid by private insurers to insureds, such as Plaintiff, who are eligible for federal funds. This is a plain reading of the statute, unchanged by the current revision at Pub. L. 111-148, and is a common-sense approach to avoid the absurd result that a Tribe may only collect insurance money before, but not after, an insurance settlement. Plaintiff has not presented, and the Court has not found, any authority to support application of any equitable doctrine reducing ANTHC's restitution in the current matter.²⁴ Accordingly, ANTHC is entitled to recover reasonable medical expenses from Plaintiff, which the parties have agreed amounted to \$51,851.31.²⁵ In light of the foregoing, ANTHC's Motion for Summary Judgement is **GRANTED**.

V. ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment at Docket 29 is **DENIED**. ANTHC's Cross-Motion for Summary Judgment at Docket 35 is **GRANTED**. Plaintiff is ordered to reimburse ANTHC in the amount of \$51,851.31, in full discharge of the medical expenses owed.

²³ *Yukon-Kuskokwim Health Corp. v. Trust Ins. Plan*, 884 F.Supp. 1360, 1365-65 (D.Alaska 1994).

²⁴ In reaching this conclusion, this Court agrees with the holding of *Larrison v. Alaska Native Tribal Health Consortium, et al.*, Case No. 3:08-cv-00103-RRB (August 1, 2008 D. Alaska).

²⁵ At oral argument held on August 5, 2010, the parties agreed that this amount constitutes the total available recovery. Dkt. 48.

Dated at Anchorage, Alaska, this 10th day of August 2010.

/s/ Timothy Burgess
Timothy M. Burgess
United States District Judge