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SJC-12881

IN THE MATTER OF THE ESTATE OF JACQUELINE ANN KENDALL.

Essex. October 5, 2020. - December 28, 2020.

Present: Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.¹

MassHealth. Medicaid. Division of Medical Assistance. Repose,
Statute of. Devise and Legacy, Intestacy. Executor and
Administrator, Claims against estate, Governmental claims.

Petition filed in the Essex Division of the Probate and Family Court Department on May 24, 2018.

Questions of law were reported by Frances M. Giordano, J., to the Appeals Court. The Supreme Judicial Court transferred the case on its own initiative.

Meredith A. Fine for the petitioner.
Patricia Keane Martin for Massachusetts Chapter of the National Academy of Elder Law Attorneys & others.
David R. Marks, Assistant Attorney General, for Executive Office of Health and Human Services.

KAFKER, J. At issue in the instant case is whether the Estate of Jacqueline Ann Kendall is required to pay a claim for

¹ Justice Lenk participated in the deliberation on this case prior to her retirement.

reimbursement from the Commonwealth's MassHealth program when the estate proceeding was commenced more than three years after Kendall died. We conclude that G. L. c. 190B, § 3-108 (4), prohibits the filing of such claims after three years and prohibits the personal representative from paying any claims, and thus the claim here is time barred. The Legislature provided MassHealth with various advantages over other creditors, but it also created an ultimate time limit on the filing and payment of creditor claims against estates in § 3-108, with no exception for MassHealth.²

1. Factual background. The facts of this case are taken from the undisputed facts submitted by the parties. Kendall received MassHealth benefits when she was age fifty-five or older in the amount of \$104,738.23, and died intestate on August 7, 2014. Upon her death, she had a fifty percent interest in a house in Gloucester, a portion of which was recoverable by MassHealth under G. L. c. 118E, § 31. On May 24, 2018, one of her heirs, the petitioner, filed a petition for late and limited formal testacy and, as required by G. L. c. 118E, § 32, notified MassHealth. MassHealth informed counsel for the petitioner that it would be filing a notice of claim in the estate.

² We acknowledge the amicus brief of the Massachusetts Chapter of the National Academy of Elder Law Attorneys, the Real Estate Bar Association for Massachusetts, Inc., and The Abstract Club, in which the Massachusetts Bar Association joined.

On June 15, 2018, MassHealth received a letter from counsel for the petitioner stating that once the petitioner was appointed as personal representative of the estate, she could not pay MassHealth's claim pursuant to G. L. c. 190B, § 3-108 (4). MassHealth then filed a notice of appearance and objection and an affidavit of objections stating its rights to present a claim under G. L. c. 118E, §§ 31 and 32, and G. L. c. 190B, § 3-803 (f). The petitioner filed a motion to strike the affidavit of objections, which MassHealth opposed, and which the court denied. MassHealth filed a petition for formal probate, requesting the appointment of a personal representative of its choosing (a public administrator) so that its claim could be paid, which the petitioner opposed. In February 2019, the parties cross-moved for summary judgment. In April 2019, at the request of both parties, a Probate and Family Court judge reserved and reported the case to the Appeals Court pursuant to Mass. R. Civ. P. 64 (a), as amended, 423 Mass. 1403 (1996), along with the following reported questions:

"1. Whether the Estate of Jacqueline Ann Kendall is required to pay a MassHealth claim more than three years after Ms. Kendall died, when [G. L. c. 190B, § 3-108,] of the Uniform Probate Code prohibits the Personal Representative from paying any claims.

"2. Whether, where a decedent received Medicaid benefits under [G. L. c. 118E], that chapter governs notice to be given to the division of medical assistance and such division's claim for recovery under [G. L. c. 118E, § 31], if the division so chooses, and the priority statute,

[G. L. c. 190B, § 3-805 (a) (6)], shall be construed to authorize and permit MassHealth to file notices of claim in all estates, including so-called 'late and limited' petitions under [G. L. c. 190B, § 3-108,] and authorize those claims to be paid by the personal representative as a matter of law.

"3. Whether [G. L. c. 190B, § 3-803 (f)], which provides MassHealth the authority to assert claims in the estates of deceased persons who received medical assistance while [fifty-five] years of age or older, or who received inpatient services in a nursing facility or medical institution at any age, in accordance with [G. L. c. 118E, § 32], is an exception to the one year limitation on presentation of claims set forth in [G. L. c. 190B, § 3-803].

"4. Whether, if [G. L. c. 190B, § 3-803 (f)], is not an exception to the one year statute of limitations, MassHealth is entitled to commence a formal testacy proceeding for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death, including the repayment of MassHealth benefits correctly paid."

We subsequently transferred the case to this court on our own motion.

2. Statutory background. The administration and distribution of a decedent's estate are governed by the Massachusetts Uniform Probate Code (code), G. L. c. 190B. The code was enacted with the explicitly stated purpose of "promot[ing] a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors." G. L. c. 190B, § 1-102 (b) (3). To that end, the code sets out deadlines for various actions in the estate administration process.

Most importantly, the Legislature imposed an "ultimate time limit" in § 3-108,³ which provides:

"No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than [three] years after the decedent's death"

There are certain limited exceptions to this time bar on probate proceedings, including late and limited probate proceedings, at issue in this case. The relevant exception (§ 3-108 [4]) states:

"[A]n informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the [three] year period after the decedent's death, but the personal representative shall have no right to possess estate assets as provided in

³ The term "ultimate time limit" is found in § 3-108's title. It appears in the Uniform Probate Code, as well as in multiple other States' laws. See Uniform Probate Code § 3-108, 8 U.L.A. (Part II) 40 (Master ed. 2013) (Probate, Testacy and Appointment Proceedings; Ultimate Time Limit). See also, e.g., Alaska Stat. § 13.16.040 (Probate, testacy, and appointment proceedings; ultimate time limit); Ariz. Rev. Stat. § 14-3108 (Probate, testacy and appointment proceedings; ultimate time limit); Haw. Rev. Stat. § 560:3-108 (Probate, testacy and appointment proceedings; ultimate time limit); Me. Rev. Stat. Ann. tit. 18-C, § 3-108 (Probate, testacy and appointment proceedings; ultimate time limit); Minn. Stat. § 524.3-108 (Probate, testacy and appointment proceedings; ultimate time limit); Neb. Rev. Stat. § 30-2408 (Probate, testacy, and appointment proceedings; ultimate time limit); N.M. Stat. Ann. § 45-3-108 (Probate, testacy and appointment proceedings; ultimate time limit); S.C. Code Ann. § 62-3-108 (Probate, testacy, and appointment proceedings; ultimate time limit); Utah Code Ann. § 75-3-107 (Probate and testacy proceedings -- Ultimate time limit -- Presumption and order of intestacy).

[§] 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be presented against the estate."

Apart from this "ultimate time limit" in § 3-108, the code also provides specific time limits for creditor claims, set out in § 3-803 (a):

"Except as provided in this chapter, a personal representative shall not be held to answer to an action by a creditor of the deceased unless such action is commenced within [one] year after the date of death of the deceased"

Notably, creditors can petition to open an estate in order to bring their claim. See G. L. c. 190B, § 3-401 (any interested person can petition for formal testacy); G. L. c. 190B, § 1-201 (24) (defining "interested person" to include creditors and any others with claims against estate). Therefore, their ability to bring timely claims is not dependent upon heirs' or successors' petitions.

MassHealth is a State program designed "to provide basic health coverage to people who do not have sufficient income or resources to provide for themselves." Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 403-404 (1996), cert. denied, 519 U.S. 1057 (1997), quoting H.R. Rep. No. 265, 99th Cong., 1st Sess., pt. 1, at 72 (1985). Recipients are expected to deplete their assets prior to receiving such benefits. See Haley v. Commissioner of Pub. Welfare, 394 Mass.

466, 468-469 (1985). Federal Medicaid law also mandates that MassHealth operate and maintain an estate recovery program, so that in certain circumstances, MassHealth may recover money paid out as benefits during a member's lifetime as a claim against the estate. 42 U.S.C. § 1396p. G. L. c. 118E, § 31. To this end, the Legislature has given MassHealth various advantages over other creditors.

First, MassHealth is given priority status over other creditors when a personal representative pays out estate assets. G. L. c. 190B, § 3-805 (a) (6) (laying out order in which claims must be paid if estate assets are insufficient to pay all claims in full).

Second, in certain circumstances MassHealth is exempted from the general one-year limitation on creditor claims laid out in § 3-803 (a). Section 3-803 (f) states:

"If a deceased received medical assistance under [G. L. c. 118E] when such deceased was [fifty-five] years of age or older or while an inpatient in a nursing facility or other medical institution, [G. L. c. 118E, § 32,] shall govern the notice to be given to the division of medical assistance and such division's claim for recovery under [G. L. c. 118E, § 31,] if the division so chooses."⁴

⁴ The petitioner incorrectly contends that this language does not exempt MassHealth from the general one-year filing deadline in § 3-803 (a). The plain language of § 3-803 and its cross-reference to G. L. c. 118E, § 32, provide an exception to subsection (a)'s one-year limitation on creditor claims for MassHealth claims. Notice to be given to MassHealth, and the claim for recovery, are both governed by G. L. c. 118E, § 32, which allows for claims to be filed later than one year. G. L. c. 118E, § 32 (i) (explicitly allowing claims after one year).

General Laws c. 118E, § 32, provides MassHealth with multiple avenues of recovery, some of which are unavailable to other creditors. Pursuant to § 32, the division of medical assistance (division) may present claims against the estate in two ways that other creditors cannot: (1) within four months after the approval of the official bond of the personal representative, thereby extending the one-year deadline; and (2) by designating a public administrator⁵ in circumstances where more than one year has passed from the decedent's date of death, the division determines it may have a claim against the estate, and a petition for administration of the estate or for admission to probate the will has not yet been filed. G. L. c. 118E, § 32 (b), (i). Section 32 also mandates that MassHealth be directly notified whenever a petition for probate or administration is filed, and that if the petitioner fails to notify MassHealth, "any person receiving a distribution of assets from the decedent's estate shall be liable to the

See G. L. c. 118E, § 32 (b) (allowing claims within four months of approval of personal representative). There is nothing to contradict this clear language, particularly given subsection (a)'s explicit allowance for exceptions within the chapter.

⁵ A public administrator is a type of personal representative who typically administers estates of persons who die intestate with no known husband, widow, or heir. G. L. c. 194, § 4. See G. L. c. 190B, § 3-203.

division to the extent of such distribution." G. L. c. 118E, § 32 (a).

3. Discussion. In the case before us, the petitioner filed for late and limited testacy more than three years after Kendall's death, pursuant to § 3-108 (4). The petitioner argues that § 3-108 (4) limits the powers of the personal representative such that no claims against the estate can be paid, and that MassHealth is subject to both the ultimate three-year time bar on creditor claims in § 3-108 (4) and the one-year creditor filing deadline in § 3-803 (a). MassHealth argues that the specific provisions governing its ability to recover against estates exempt it from the § 3-803 (a) deadline and overcome the ultimate time limit in § 3-108, and it should therefore be able to recover from Kendall's estate. In particular, MassHealth contends that it is entitled to present and recover claims after the three-year period so long as it files within four months after the personal representative has obtained a bond. For the reasons stated infra, we conclude that § 3-108 (4) bars claims made after three years and precludes a personal representative from paying any creditor claims in late and limited probate proceedings under G. L. c. 190B, § 3-108 (4). No exceptions have been included for MassHealth. Where the Legislature intended for differential treatment for MassHealth in the probate process, it did so expressly.

"We ordinarily construe statutes to be consistent with one another[, reading them as a harmonious whole] 'so that effect is given to every provision in all of them.'" Green v. Wyman-Gordon Co., 422 Mass. 551, 554 (1996), quoting 2B Singer, Sutherland Statutory Construction § 51.02, at 122 (5th ed. 1992). The statutory scheme devised by the Legislature established a relatively expeditious probate process to be concluded within three years. Section 3-108 expressly provides for a three-year "ultimate time limit." This three-year ultimate time limit functions essentially as a statute of repose, allowing only very limited activity after the three years. On more than one occasion, we have characterized statutes of repose as having the effect of placing an "absolute time limit" on liability. Stearns v. Metropolitan Life Ins. Co., 481 Mass. 529, 535 (2019). See Nett v. Bellucci, 437 Mass. 630, 635 (2002). The language of an "ultimate time limit" is nearly identical to this characterization, and evidences a legislative intent to create a statute of repose that, in contrast to statutes of limitation, "completely eliminates a cause of action," Stearns, supra at 533, quoting Klein v. Catalano, 386 Mass. 701, 702 (1982), and "impose[s] a condition precedent to the right of recovery," Department of Pub. Welfare v. Anderson, 377 Mass. 23, 35 (1979). No exception to this

three-year ultimate time limit for the filing of claims was included for MassHealth.

When three years have passed from a decedent's death,

"an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the [three] year period after the decedent's death, but the personal representative shall have no right to possess estate assets . . . beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration shall not be presented against the estate" (emphases added).

G. L. c. 190B, § 3-108 (4). This language is plain and clear.

The double use of "shall," limiting the personal

representative's powers and explicitly barring claims, reflects a strict rule against any possibility of creditor recovery from an estate in late and limited testacy. See Commonwealth v.

Cook, 426 Mass. 174, 181 (1997) ("shall" is mandatory term);

Massachusetts Soc'y of Graduate Physical Therapists, Inc. v.

Board of Registration in Med., 330 Mass. 601, 603 (1953)

("shall" is "word of command"). Reading § 3-108 (4) as a strict

extinguishment of the personal representative's power to pay

claims and a bar against all creditor claims is consistent with

the statute's plain language and the Legislature's stated

purpose of promoting "a speedy and efficient system for

liquidating the estate of the decedent and making distribution

to the decedent's successors." G. L. c. 190B, § 1-102.

Section 3-108 makes no exception for MassHealth. We have explicitly held that MassHealth is not immune from probate time bars "unless a clear statement to the contrary appears in a statutory provision on which the claimant bases its claim." Anderson, 377 Mass. at 29. In Anderson, the Department of Public Welfare initiated a claim against a decedent's estate to recoup the costs of medical assistance provided during the end of her life. Id. at 23. The statute at issue provided that "an executor or administrator shall not be held to answer to an action by a creditor of the deceased which is not commenced" within the statutorily mandated time frame. Id. at 27. The court held that this statute barred MassHealth from recovery.

MassHealth argues nonetheless that it should be able to recover a claim timely filed within four months of the appointment of a personal representative in a late and limited testacy.⁶ In particular, MassHealth emphasizes that G. L. c. 118E, § 32 (b), states that "the division may present claims against a decedent's estate . . . within four months after approval of the official bond of the personal representative."⁷

⁶ In the instant case, a petition has been filed but the personal representative has not yet been appointed. MassHealth has indicated its intent to file a claim once the appointment is made.

⁷ MassHealth also argues, in the alternative, that "an estate probated by a public administrator may direct funds from an estate to pay a MassHealth claim regardless of the date of

MassHealth also emphasizes that differential treatment of MassHealth in the various other provisions of the probate statutes supports its contention that the Legislature also intended to carve out an exception for MassHealth from the strict limitations in § 3-108 (4). We disagree.

The three-year ultimate time limit is a critical provision ensuring the orderly settlement and liquidation of estates in a relatively expeditious manner. We conclude that if the Legislature intended to create an exception for MassHealth to this ultimate time limit, it would have done so expressly in that particular provision. We will not read in such an important exception inferentially. Where the Legislature advantaged MassHealth over other creditors, it did so carefully and expressly. See G. L. c. 190B, § 3-803 (f) (excepting MassHealth from one-year limitation on creditor claims); G. L. c. 190B, § 3-805 (a) (6) (designating MassHealth as priority creditor); G. L. c. 118E, § 32 (i) (empowering MassHealth to designate public administrator more than one year after decedent's death); G. L. c. 118E, § 32 (b) (empowering MassHealth to file claim within four months of appointment of personal representative); G. L. c. 118E, § 32 (a) (directing

death or appointment." Because we conclude that § 3-108 (4) prohibits all personal representatives, including public administrators, from paying claims three years after a decedent's death, this argument fails.

that notice of probates and administrations be given to MassHealth).

There is no exception for MassHealth in § 3-108 (4), the provision addressing late and limited probate proceedings. This narrow provision creates an exception to the ultimate time limit against opening new probate proceedings, and it expressly bars creditor claims and prohibits the personal representative from paying any such claims. It allows the personal representative to possess estate assets only to the extent needed to confirm title to the successors. The omission of an explicit exception to the personal representative's limited powers in § 3-108 (4), therefore, indicates that the Legislature chose not to exempt MassHealth from the bar on creditor claims in late and limited probate proceedings. See Stearns, 481 Mass. at 536 (court's conclusion not to read exception into statute of repose was "bolstered by the fact that the Legislature [had] expressly provided for an exception in another, similar statute of repose"); Fernandes v. Attleboro Hous. Auth., 470 Mass. 117, 129 (2014) ("The omission of particular language from a statute is deemed deliberate where the Legislature included such omitted language in related or similar statutes"). Where the Legislature "has fashioned an ironclad rule, . . . we will not read into it any exception that the Legislature did not see fit

to put there" (quotation and citation omitted). Stearns, supra at 535.

We also have no difficulty reconciling our holding with statutory provisions allowing advantageous consideration of MassHealth over other creditors. Our holding today does not render MassHealth's right to file a claim against an estate's personal representative four months after the obtaining of a personal representative's bond superfluous or remove other advantages that the Legislature granted to MassHealth; MassHealth may still bring claims against estates later than other creditors pursuant to the bond provision. MassHealth retains the unique ability to present timely claims from one year after death through the date when the "ultimate time limit" of § 3-108 is triggered. Indeed, MassHealth may present an otherwise timely claim even after three years, provided that the petition for an appointment of a personal representative was filed prior to the expiration of the "ultimate time limit" of § 3-108. It may also seek the appointment of a public administrator if the requirements of that provision are met. Our holding merely confirms that § 3-108 (4) applies to MassHealth, like all other creditors, providing ultimate time limits and other restrictions ensuring a relatively expeditious settlement of estates.

MassHealth argues that this reading of the statute unfairly shifts the burden of obtaining notice of a recipient's death onto MassHealth, where the Legislature put that burden on the estate in G. L. c. 118E, § 32 (a). Yet the Legislature expressly envisioned the possibility that in some circumstances, MassHealth would not receive notice of a death and nonetheless be capable of obtaining and acting on knowledge of the death. G. L. c. 118E, § 32 (i) (MassHealth may designate public administrator where one year has passed from death, petition for administration has not been filed and therefore MassHealth has not received notice, and MassHealth determines it may have claim against estate). In most cases, MassHealth will not need to actively obtain knowledge of a death -- the drafters of the code, adopted by the Legislature, noted that most estates are administered quickly, and under § 32 (a) MassHealth receives notice of all administered estates. See Uniform Probate Code § 3-803 comment, 8 U.L.A. (Part II) 272-273 (Master ed. 2013) (noting that vast majority of estates are quickly applied to paying creditor claims).⁸

Lack of notice does not preclude MassHealth from recovering from an estate. In cases in which MassHealth does not receive

⁸ The Uniform Probate Code comment documents discussions that transpired among the Reporters in the drafting of the Uniform Probate Code. See Uniform Probate Code § 3-803 comment, 8 U.L.A. (Part II) 272-273 (Master ed. 2013).

notice of a death, it is nonetheless positioned to ascertain that a death has occurred. With due diligence, MassHealth should be aware of whose benefits have ceased and who has not responded to renewal notices, and can cross-match this information with public death records or inquire directly as to the recipient's status. In fact, MassHealth already takes some active steps to ensure it recovers from estates where it does not receive notice of a death.⁹ When MassHealth independently learns of a death, it can bring a claim against an estate within the § 3-108 time limit even where no petition has yet been filed for administration. See G. L. c. 118E, § 32 (i) (MassHealth may designate public administrator); G. L. c. 190B, § 3-401 (any interested person may petition for formal testacy).

Finally, MassHealth warns that such a reading of the statute will "incentivize heirs" to wait three years to open probate, in order to avoid MassHealth's recovery. As discussed infra, the Legislature has already acknowledged this concern and done a cost-benefit analysis, and we do not question the statutes they chose to enact after assessing the risks.

Wakefield Teachers Ass'n v. School Comm. of Wakefield, 431 Mass.

⁹ MassHealth's brief states: "MassHealth's Estate Recovery Unit, however, also conducts regular cross-matches of new petitions filed with the probate courts in order to capture information about the administration of estates where notice may not have been given MassHealth, despite the law's requirements" (quotation, alteration, and citation omitted).

792, 802 (2000) ("The Legislature clearly balanced competing public policy considerations that we shall not second-guess").

The official comment to § 3-803 explicitly acknowledges and considers the possibility of heirs waiting for the nonclaim period to kick in and the costs and benefits of additional procedures:

"Successors who are willing to delay receipt and enjoyment of inheritances may consider waiting out the non-claim period running from death simply to avoid any public record of an administration that might alert known and unknown creditors to pursue their claims. The scenario was deemed to be unlikely, however, for unpaid creditors of a decedent are interested persons ([§ 1-201 (24)]) who are qualified to force the opening of an estate for purposes of presenting and enforcing claims. Further, successors who delay opening an administration will suffer from lack of proof of title to estate assets and attendant inability to enjoy their inheritances. Finally, the odds that holders of important claims against the decedent will need help in learning of the death and proper place of administration is rather small. Any benefit to such claimants of additional procedures designed to compel administrations and to locate and warn claimants of an impending non-claim bar, is quite likely to be heavily outweighed by the costs such procedures would impose on all estates, the vast majority of which are routinely applied to quick payment of the decedents' bills and distributed without any creditor controversy."

Uniform Probate Code § 3-803 comment, 8 U.L.A. (Part II) 272-273 (Master ed. 2013). The Legislature's risk assessment and over-all cost-benefit analysis is entitled to respect. We also cannot conclude that the Legislature was unaware of MassHealth's claims when it undertook such assessment and analysis, as the Legislature has carefully considered MassHealth's claims in the

probate statutes. In sum, "[w]e will not undo the Legislature's studied determination." Rudenauer v. Zafiropoulos, 445 Mass. 353, 359 (2005).

Our holding today is consistent with Federal Medicaid law, which requires that States establish an estate recovery system to recoup benefits paid to members during their lifetime, but provides flexibility with regard to how States enact and run their estate recovery programs, including respect for State probate laws. 42 U.S.C. § 1396p(b). Consistent with this requirement, Massachusetts has created a robust estate recovery system to recoup Medicaid benefits paid to members during their lifetime. This system provides distinct advantages to MassHealth over other creditors.

The three-year ultimate time limit for estate recovery does not violate Federal law. The Federal statute governing estate recovery explicitly defines "estate" as "all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law," thereby giving effect to State legislation surrounding what State programs can recover. 42 U.S.C. § 1396p(b)(4). A strict statute of repose on recovery applicable to all claims, including MassHealth's, is a reasonable limitation set out by State law governing estates, and is thus well within the Commonwealth's discretion in establishing the mandated estate

recovery procedures. See e.g., Daley v. Secretary of the Executive Office of Health & Human Servs., 477 Mass. 188, 204 n.15 (2017) (describing how Massachusetts has limited its right to recover probate assets consistent with Medicaid law). Nothing in the Federal law requires, as MassHealth claims, that MassHealth go beyond the bounds of State law to recover the maximum possible extent of its benefits. The advantages given to MassHealth already protect its estate recovery program and ensure that MassHealth recoups adequate funds. The implementation of a strict statute of repose on all recovery still gives MassHealth ample time to recover from decedents' estates, and in no way violates Federal law.

4. Conclusion. For the reasons discussed above, we conclude that G. L. c. 190B, § 3-803 (f), creates an exception for MassHealth to the general limitation on creditor claims laid out in § 3-803 (a), but does not create an exception to the ultimate time limit on the personal representative's power to pay claims and creditors' ability to bring claims laid out in § 3-108. Consequently, MassHealth's claims are time barred. Therefore, the petitioner's motion for summary judgment must be granted.

We answer the reported questions as follows:

1. The Estate of Jacqueline Ann Kendall is not required to pay a MassHealth claim filed against the estate more than three

years after Kendall died where G. L. c. 190B, § 3-108, prohibits the personal representative from paying any claims.

2. MassHealth is not authorized to file notices of claims in estates under so-called "late and limited" petitions under G. L. c. 190B, § 3-108, nor is the personal representative authorized to pay such claims.¹⁰

3. General Laws c. 190B, § 3-803 (f), is an exception to the one-year limitation on presentation of claims set forth in § 3-803 (a).

4. Because we hold that § 3-803 (f) is an exception to the one-year statute of limitations, we need not answer the fourth question.

So ordered.

¹⁰ The second reported question is worded in such a way that it contains multiple questions, and is therefore unclear. We do conclude that "where a decedent received Medicaid benefits under [G. L. c. 118E], that chapter governs notice to be given to the division of medical assistance and such division's claim for recovery under [G. L. c. 118E, § 31], if the division so chooses."