

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 24, 2006 Session

IN RE: THE ESTATE OF JAMES CLIFFORD SMITH

**Probate Court for Sumner County
No. 2004P-12 Tom E. Gray, Chancellor**

No. M2005-01410-COA-R3-CV - Filed November 1, 2006

WILLIAM C. KOCH, JR., P.J., M.S., concurring.

When read together, 42 U.S.C.A. § 1396p(b)(4)(B) (West 2003) and Tenn. Code Ann. § 71-5-116(c) (2004) plainly permit the State of Tennessee to recover correctly paid medical assistance benefits from the estate of a recipient's surviving spouse. However, I concur with the court's conclusion that the property from which these benefits can be recovered is limited to property owned by the recipient at the time of his or her death that passed to the surviving spouse "through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement."

The parties have stipulated that Mr. and Mrs. Smith sold their home in May 1999 and placed the proceeds in various joint accounts. They have also stipulated that Mrs. Smith had lawfully transferred her interest in all but approximately \$2,000 of these assets to Mr. Smith before she died. Based on this stipulation, the bulk of the assets once jointly owned by Mr. and Mrs. Smith are no longer subject to the State's recovery claim because Mrs. Smith did not own an interest in them when she died.

WILLIAM C. KOCH, JR., P.J., M.S.