

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

GWENDOLYN MARIE
THURMAN-PRYOR,

Debtor.

_____ /

Chapter 13

Case No. 22–01896–jwb

Hon. James W. Boyd

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff.

v.

GWENDOLYN MARIE
THURMAN-PRYOR

Defendant.

_____ /

Adv. Pro. No. 23–80021–jwb

**BRIEF IN RESPONSE TO DEFENDANT’S MOTION TO DISMISS
ADVERSARY CASE WITH PREJUDICE**

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CONCISE STATEMENT OF ISSUES PRESENTED

1. The Michigan Department of Health and Human Services (MDHHS) was not listed or properly scheduled in Thurman-Pryor's bankruptcy case and was without notice or actual knowledge of the bankruptcy filing until February 2023—after the January 3, 2023, deadline to contest dischargeability of the debt. Because of the lack of notice and actual knowledge, MDHHS' complaint may be brought at any time pursuant to 11 U.S.C. § 523(a)(3)(B).
2. Service upon the Michigan Department of Attorney General (DAG) did not impute notice to MDHHS of the bankruptcy case.
3. MDHHS and the DAG lacked actual knowledge of the bankruptcy filing prior to the January 3, 2023, deadline to contest dischargeability of the debt.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: Matter of First Am. Health Care of Georgia, Inc., 219 B.R. 324, 329 (Bankr. S.D. Ga. 1998; *In re Sims*, 572 B.R. 862, 862 (Bankr. W.D. Mich. 2017); *In re Walker*, 125 B.R. 177 (Bankr. E.D. Mich. 1990).

STATEMENT OF FACTS

Pre-petition Medicaid debts

Pre-petition, Thurman-Pryor entered into an agreement to serve as an individual provider under the Home Help program—a Medicaid program administered by the Michigan Department of Health and Human Services (MDHHS). MDHHS is an agency of the State of Michigan and administers Michigan’s Medicaid program pursuant to Mich. Comp. Laws § 400.1 *et seq.* The Medicaid program was created in 1965 through enactment of Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* The MDHHS’s Office of Inspector General (OIG) is authorized to prevent, detect, and investigate fraud, waste, and abuse of the Medicaid program. Mich. Comp. Laws § 333.26368. The OIG accomplishes this through conducting post-payment reviews to ensure compliance with the Medicaid program.

In 2013, Thurman-Pryor enrolled in the Home Help Medicaid program wherein she agreed to serve as an individual Home Help provider and agreed to repay MDHHS for any services she did not provide (ECF No. 1, Ex. 1 Home Help Provider Agreement; ECF No. 1, Ex. 2 Home Help Statement of Employment.)

OIG conducted an audit of Thurman-Pryor's Home Help reimbursement covering the time-period of December 7, 2017, through March 31, 2022 (the "Over-Issuance Period"), and determined she had been overpaid \$15,061.41. (ECF No. 1, Ex. 3 Recoupment Letter.) OIG determined that Thurman-Pryor sought and received reimbursement for Home Help services when the beneficiary of those services was hospitalized and when Thurman-Pryor was married to the beneficiary. (*Id.*)

OIG mailed a letter to Thurman-Pryor on May 13, 2022, informing her that a determination had been made that she owed \$15,061.41 for overpaid Home Help benefits. (ECF No. 1, Ex. 3 Recoupment Letter.) The OIG also informed Thurman-Pryor that if she wished to contest the OIG's findings that she had the right to request an internal conference or administrative hearing within 30 days. (*Id.*) Thurman-Pryor did not request an internal conference, or an administrative hearing and the OIG's overpayment determination then became final as of June 13, 2022. Mich. Admin. Code R. § 400.3404(3).

Thurman-Pryor's Chapter 13 filing

Thurman-Pryor filed a Chapter 13 petition on September 18, 2022. (ECF No. 7, ¶ 2.) However, Thurman-Pryor retained her bankruptcy counsel on August 8, 2022, and signed her Chapter 13 petition and verified the accuracy of the schedules on September 1, 2022. (Bankr. Case, ECF No. 1, pp. 1, 40.) On her Schedule E/F and on the creditor matrix, Thurman-Pryor scheduled a debt owing simply to “State of Michigan” and used a mailing address of PO Box 30754, Lansing, MI 48909. (ECF No. 7, ¶¶ 5, 6.) Thurman-Pryor did not list any specific person or State agency who should receive the Bankruptcy Notice. (*Id.*) The certificate of notice filed by the Bankruptcy Noticing Center reflects that notice was not mailed to PO Box 30754 but was instead sent via email to MarcsBankruptcyUnit@michigan.gov. (Bankr. Case, ECF No. 15.)

Thurman-Pryor also scheduled a debt to “State of Michigan, Dept of Treasury, Bankruptcy Unit” and used a mailing address for that creditor of PO Box 30168, Lansing, MI 48909. (Bankr. Case, ECF No. 1, p. 21.) The certificate of notice filed by the Bankruptcy Noticing Center

reflects that notice for this creditor was also sent via email to
MarcsBankruptcyUnit@michigan.gov. (Bankr. Case, ECF No. 15.)

The deadline to file an adversary complaint seeking to except a
debt from discharge was January 3, 2023. (Bankr. Case, ECF No. 14.)
The governmental proof of claim deadline was March 17, 2023. (*Id.*)
Thurman-Pryor's Chapter 13 plan was confirmed on December 9, 2022.
(Bankr. Case, Text Order, 12/09/2022.)

Pre-petition collection activity and State Court Lawsuit

On July 6, 2022, a letter was sent to Thurman-Pryor requesting
that she enter a voluntary repayment plan with the Plaintiff.¹ (ECF No.
7, Ex. 1.) The July 6, 2022, letter details the direct phone number and
email address of the Assistant Attorney General David Goodkin (AAG
Goodkin) who was assigned to work on Thurman-Pryor's case.² (Ex. 1,
Letter from AAG Goodkin.) After receipt of the July 6, 2022, letter

¹ The letter to Thurman-Pryor was drafted on July 1, 2022, but was not
mailed until July 6, 2022.

² In her Motion to Dismiss Adversary Case with Prejudice, Thurman-
Pryor attaches only page 1 of the July 6, 2022, letter. A full copy of that
letter is attached hereto as Exhibit 1 Letter from AAG Goodkin.

Thurman-Pryor engaged in repayment negotiations via email with AAG Goodkin. (Ex. 2, Affidavit of David Goodkin, ¶ 6.)

Thurman-Pryor was actively responding to and negotiating repayment terms from July 18, 2022, until at least August 19, 2022. (*Id.*) Despite actively negotiating repayment terms, Thurman-Pryor never informed AAG Goodkin that she was contemplating or intending to file a bankruptcy case. (*Id.* at ¶¶ 7-8.) Indeed, Thurman-Pryor retained her bankruptcy attorney on August 8, 2022, yet continued to respond to emails from the AAG Goodkin regarding repayment terms until August 19, 2022. (Bankr. Case, ECF No. 1, Statement of Financial Affairs, p. 40.)

Thurman-Pryor then met with her bankruptcy attorney on September 1, 2022, to finalize and sign her bankruptcy petition and schedules. (Bankr. Case, ECF. No. 1.) Neither Thurman-Pryor or her bankruptcy counsel informed AAG Goodkin that a bankruptcy case was going to be, or had been, filed. (Ex. 2, ¶¶ 7-8).

Still unaware that a bankruptcy case was filed, AAG Goodkin initiated a state court complaint seeking a money judgment against Thurman-Pryor on September 21, 2022. (*Id.* at ¶ 9.) The complaint was

served on Thurman-Pryor on December 21, 2022. (Ex. 3, Proof of Service.) On February 16, 2023, well after the January 3, 2023, adversary filing deadline, AAG Goodkin received a call from Thurman-Pryor's bankruptcy counsel informing him of the bankruptcy case. (Ex. 2, ¶¶ 12-14.)

ARGUMENT

I. The debt owed to MDHHS is of the kind specified under 11 U.S.C. § 523(a) and the lack of adequate notice prevented MDHHS from filing a timely request to except the debt from discharge.

BAPCPA expanded the list of non-dischargeable debts under § 1328(a)(2) to include § 523(a)(3) debts for when the debtor failed to schedule or a list the creditor. *In re Gamboa Matthews v. Gamboa*, No. 11-16261-JDL, 2020 WL 118591, at *5 (Bankr. W.D. Okla. Jan. 9, 2020), *aff'd sub nom. Matthews v. Gamboa*, No. BR 11-16261-JDL, 2021 WL 4302409 (W.D. Okla. Sept. 21, 2021). This reinforced the concept that a debtor cannot discharge debts for unscheduled creditors. As such, “creditors who do not receive sufficient notice of a bankruptcy case have a remedy in § 523(a)(3), applicable to chapter 13 cases through § 1328(a).” *In re Fryman*, No. 18-20660, 2019 WL 2612763, at *3 (Bankr. E.D. Ky. July 24, 2019), *as amended* (July 24, 2019).

Section 523(a)(3) provides:

(a) A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt—

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request; [11 U.S.C. § 523(a)(3).]

By incorporating § 523(a)(3) into § 1328(a), Congress chose to protect creditors who were not provided notice of the deadlines to file claims and object to dischargeability. *See In re Sykes*, 451 B.R. 852, 859 (Bankr. S.D. Ill. 2011). That is the case here.

The Western District of Michigan in *In re Sims* addressed a similar situation where the Michigan Unemployment Insurance Agency (UIA) was unscheduled in a Chapter 13 case. 572 B.R. at 862. In *Sims*,

the UIA filed a motion to allow the filing of a late proof of claim—presumably under Fed. R. Bankr. P. 3002—and argued it lacked notice of the case in time to timely file a proof of claim. *Id.* at 863–64. The *Sims* court denied UIA’s motion and held:

Congress addresses the circumstance presented here—where a creditor contends that it did not have notice of the bankruptcy proceeding in time to participate in the distribution—by excepting the claim from discharge and permitting either party to seek a determination about dischargeability on this ground “at any time,” and in state or federal court. *See* 11 U.S.C. § 523(a)(3); Fed. R. Bankr. P. 4007(b); *In re Steward*, 509 B.R. 123, 126 (Bankr. W.D. Mich. 2014) (state courts have concurrent jurisdiction over disputes under § 523(a)(3)). This approach reinforces a [sic] debtors duty to give timely and proper notice to all creditors by creating an incentive: *a debtor’s failure to give proper notice may allow an otherwise dischargeable debt to survive discharge.* [*Id.* (emphasis added).]

In so holding, *Sims* recognized that the UIA “may have the right to pursue collection notwithstanding discharge (assuming it did not have notice in time to file a timely proof of claim).” *Id.* Like *Sims*, MDHHS was not scheduled and did not have notice in time to file a dischargeability complaint by the bar date. MDHHS’ complaint may therefore be filed at any time pursuant to section 523(a)(3).

As laid out in MDHHS’ complaint, the debt owed by Thurman-Pryor to MDHHS is based on an overpayment of Home Help benefits

received by Thurman-Pryor from December 2017 to March 2022. (ECF No. 1, ¶ 16.) During this period, Thurman-Pryor repeatedly and intentionally misrepresented her eligibility to receive reimbursement from MDHHS. Thurman-Pryor sought reimbursement for Home Help services that could not have been provided while the beneficiary of those services was hospitalized. (ECF No. 1, ¶¶ 20-21.) Thurman-Pryor was also under a duty to report any change in her circumstances to MDHHS but failed to report that she and the beneficiary of the Home Help services were married. (ECF No. 1, ¶ 25.) Thurman-Pryor misrepresented her eligibility to receive Home Help reimbursement from MDHHS and the debt owed is of a kind specified in 11 U.S.C. 523(a)(2). (ECF No. 1, ¶¶ 40-42.)

Thurman-Pryor now wants all the benefits that a bankruptcy case affords but with none of the attendant duties to notify MDHHS of important deadlines. Despite providing insufficient notice of the bankruptcy filing to MDHHS, Thurman-Pryor failed to take even the remedial step of simply informing AAG Goodkin that she was represented by counsel or had filed a bankruptcy case. Instead, she

remained silent and continued negotiating repayment terms even after retaining her bankruptcy counsel on August 8, 2022.

Thurman-Pryor continued to remain silent after being served with the state court complaint on December 21, 2022. Her failure to provide notice to MDHHS or to inform AAG Goodkin of the bankruptcy filing, and more importantly, of the then fast approaching January 3, 2023, adversary deadline after receiving a state court lawsuit denied MDHHS its basic right to due process. MDHHS only learned of the bankruptcy filing in February 2023—well after the January 3, 2023, deadline to seek a determination regarding dischargeability—and is now permitted to file the complaint at any time pursuant to 11 U.S.C. § 523(a)(3)(B). Yet, Thurman-Pryor asks this Court to dismiss MDHHS' complaint and argues that she can discharge a debt even after she failed to provide adequate notice of the applicable deadlines. The Bankruptcy Code does not allow for such an outcome.

In sum, the debt owed to MDHHS is of a kind that is non-dischargeable under § 523(a)(2), MDHHS was not properly listed or scheduled, and MDHHS did not have notice or actual knowledge of the

bankruptcy case prior to the adversary deadline. Thurman-Pryor's motion to dismiss must therefore be denied.

A. Standard of review

Although not specifically stated, Thurman-Pryor's Motion to Dismiss Adversary Case with Prejudice appears to be brought under Fed. R. Civ. P. 12(b)(6). A motion brought under Fed. R. Civ. P. 12(b)(6)—made applicable by Fed. R. Bankr. P. 7012—should be granted “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). Although Rule 12(b)(6) requires the Court to accept all well-pleaded factual allegations as true, it need not accept all legal conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–679 (2009).

II. Thurman-Pryor failed to properly list and schedule MDHHS as a creditor in her bankruptcy case.

A debtor seeking relief under the Bankruptcy Code has a duty to comply with all applicable statutes, rules, and court orders if the bankruptcy process is to function properly. *In re Moser*, 628 B.R. 756 (Bankr. W.D. Pa. 2021). Perhaps the most basic and important of the

debtor's duties is to file a list of all creditors and a schedule of all assets and liabilities. 11 U.S.C. § 521(a)(1)(A). "The purpose of requiring a debtor to list his creditors with their proper addresses is to permit notice to be given to the creditors of the bankruptcy filing so that they may have an opportunity to avail themselves of the rights afforded them by the Bankruptcy Code." *In re Frankina*, 29 B.R. 983, 985 (Bankr. E.D. Mich. 1983) (citing *Birkett v. Columbia Bank*, 195 U.S. 345, (1904); *In re Heyward*, 15 B.R. 629 (Bkrcty.E.D.N.Y.1981). Bankruptcy Rule 1007(a) further requires a debtor to "file with the petition a list containing *the name and address* of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms." (Emphasis added). Official Form 106E/F instructs the debtor to "[b]e as complete and accurate as possible" when filling out the names and addresses for creditors. Official Form B 106E/F, available at https://www.uscourts.gov/sites/default/files/form_b106ef.pdf. This is not just a technical requirement or a meaningless hurdle for debtors; the rule and resulting form memorialize the debtor's efforts to provide notice, i.e., that creditors are afforded due process before their rights are adjudicated.

“The burden of establishing that a creditor has received adequate notice rests with the debtor.” *WebMD Practices Servs., Inc. v. Sedlacek* (*In re Sedlacek*), 325 B.R. 202, 211 (Bankr. E.D. Tenn. 2005) (quotations and citation omitted). Notice to MDHHS was not adequate in this case because Thurman-Pryor improperly listed and scheduled her debt to MDHHS. In addition, MDHHS lacked actual knowledge of the bankruptcy filing until after the adversary deadline had passed. Because Thurman-Pryor failed in her most basic duty as a debtor—that is to provide notice to MDHHS so as to afford basic due process—the complaint should be allowed to proceed pursuant to 11 U.S.C. § 523(a)(3)(B).

A. Thurman-Pryor failed to correctly identify MDHHS as the creditor and used an incorrect address. Notice to MDHHS was therefore inadequate.

“A creditor is properly scheduled if he is scheduled in a manner that is reasonably calculated to provide him with notice of the bankruptcy proceeding.” *In re Frankina*, 29 B.R. 983, 985 (Bankr. E.D. Mich. 1983). Here, Thurman-Pryor utilized a generic name—“State of Michigan”—on the list of creditors submitted with her chapter 13 petition. This generic name is not reasonably calculated to identify a

particular agency or department within state government and was not sufficient to give adequate notice of MDHHS. See, e.g., *IHS of Brunswick v State of Michigan (In re First American Health Care of Georgia, Inc.)*, 219 B.R. 324 (Bankr. S.D. Ga. 1998) (holding that notice sent to Michigan Department of Treasury was insufficient as a matter of law to provide notice to Michigan Department of Community Health). “It is well settled that if a debtor lists incorrectly the name or address of a creditor in the required schedules, so as to cause the creditor not to receive notice, that creditor's debt has not been ‘duly scheduled[.]’ ” *WebMD Practices Servs., Inc. v. Sedlacek (In re Sedlacek)*, 325 B.R. 202, 211, 216 (Bankr. E.D. Tenn. 2005) (citing *Matter of Adams*, 734 F.2d 1094, 1098 (5th Cir. 1984)). By failing to use an address that would give notice to MDHHS, debtor failed to duly schedule the debt.

Furthermore, a debtor in bankruptcy also “must exercise reasonable diligence in accurately scheduling his debts.” *In re Faden*, 96 F.3d 792, 796 (5th Cir. 1996) (citation omitted). Thurman-Pryor failed to exercise reasonable diligence when using the generic name “State of Michigan” and not including any further identifiers for the creditor on her creditor matrix. This is especially true when

considering that Thurman-Pryor enrolled in the Medicaid program and signed a Medical Assistance Home Help Provider Agreement with MDHHS and agreed to “return any payments received for Home Help services not provided.”³ (ECF No. 1, Ex. 1.) *See also* Mich. Comp. Laws § 400.111b(16), (24) (failure to repay MDHHS is conversion). Thurman-Pryor knew that the creditor to who she would owe overpaid Medicaid benefits is MDHHS and is not the “State of Michigan.”

In addition, the May 13, 2022, recoupment letter received by Thurman-Pryor was sent on MDHHS letterhead and signed by the OIG. (ECF No. 1, Ex. 3.) This provides further evidence that Thurman-Pryor knew the identity of the true creditor. Despite her knowledge that the true creditor to who she owed money was MDHHS and not the “State of Michigan”, Thurman-Pryor still chose to use a generic name on her list of creditors and did not include any additional identifiers. Doing so was

³ The former Department of Social Services was renamed the Family Independence Agency and later renamed the Department of Human Services. Mich. Comp. Laws § 400.226. And the former Departments of Public Health and Mental Health merged to form the Department of Community Health. Mich. Comp. Laws § 330.3101. In 2015, the Departments of Human Services and Community Health merged to form what is now MDHHS. Mich. Comp. Laws § 400.227. Thurman-Pryor signed her original Home Help Provider Agreement with the Department of Community Health.

not the exercise of reasonable diligence and was not “reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.” *Mullane v. Central Hanover Bank and Trust*, 339 U.S. 306, 314 (1950); See also *IHS of Brunswick, Inc. v. Michigan (In re First Am. Health Care of Ga., Inc.)*, 219 B.R. 324, 330 (Bankr. S.D. Ga. 1998).

Thurman-Pryor, and her counsel, appear to misunderstand the nature of state government and the separate, legally distinct, agencies and departments that comprise the overall “State of Michigan.” In the Motion to Dismiss, counsel for Thurman-Pryor perpetuates this misunderstanding by identifying the “State of Michigan” as “Creditor Plaintiff.” (ECF No. 7, ¶ 4.) The State of Michigan is neither a creditor of Thurman-Pryor nor is the State of Michigan named as a plaintiff in the adversary complaint.

In addition to using an incorrect name to identify the creditor, Thurman-Pryor also utilized an incorrect address. The creditor matrix submitted to the court lists “PO Box 30754, Lansing, MI 48909” as the address for MDHHS’. This is not the correct address as neither

MDHHS nor OIG receives mail in the ordinary course of business at PO Box 30754, Lansing, MI 48909.

Failure by the debtor to list the correct address can be the basis for determining that notice to that creditor is inadequate. *In re Walker*, 125 B.R. 177 (Bankr. E.D. Mich. 1990.) “The fact that the Plaintiff’s address was incorrectly stated, however, does not mandate the conclusion that the debt was not duly scheduled.” *Id.* at 180. If the error in the address is a minor one, and still allows for service on the appropriate creditor, then the incorrect address does not support of a finding that the debt was not properly scheduled. *Id.*

However, in this case, the error in the address is not a minor one. In fact, the address that Thurman-Pryor scheduled for MDHHS is not used by MDHHS at all. The address belongs to the DAG and is used for cases in which the DAG has *already* filed an appearance in a case *after* a litigant has properly served a complaint on the proper state department, or in this context, after a debtor has listed and scheduled the proper creditor state department, and that department has referred the matter to its respective legal counsel within the DAG. The address

specific to PO Box 30754 is used for DAG litigation involving numerous individual state departments.

“Although a bankrupt is not required to exhaust every possible avenue of information in ascertaining a creditor’s address, he must exercise reasonable diligence in accurately scheduling his debts.” *In re Faden*, 96 F.3d 792, 796 (5th Cir. 1996) (citation omitted). Thurman-Pryor was in possession of the May 13, 2022, recoupment letter when filing her bankruptcy petition. This letter listed an address for MDHHS as PO Box 30062, Lansing, MI 48909. (ECF No. 1, Ex. 3.) However, Thurman-Pryor chose to ignore this address and use only the PO Box 30754 address. At a minimum, Thurman-Pryor should have listed both the PO Box 30754 and the PO Box 30062 addresses when scheduling the debt owed to MDHHS. The incorrect address when combined with the use of the generic “State of Michigan” as a creditor name, does not amount to reasonable diligence on the part of Thurman-Pryor and notice to MDHHS was therefore inadequate.

Thurman-Pryor’s argument for dismissal latches onto the July 6, 2022 letter from AAG Goodkin and attempts to take advantage of 11 U.S.C. § 342(c)(2)(A). Section 342(c)(2)(A) states:

If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number. [11 U.S.C. § 342(c)(2)(A).]

“When a creditor has, in at least two, recent prebankruptcy ‘communications’ provided the debtor with his or her account number and ‘the address at which such creditor requests to receive correspondence,’ the debtor must dispatch required notices to that address and the notice must include the account number.” *In re Harvey*, 388 B.R. 440, 445 (Bankr. D. Me. 2008) (citing 11 U.S.C. § 342(c)(2)(A)).

Thurman-Pryor argues in her motion that using PO Box 30754, Lansing, MI 48909 as the address for MDHHS was appropriate because doing so complied with Section 342(c)(2)(A). To get to this conclusion, she argues that the July 6, 2022, letter from AAG Goodkin constituted a communication from MDHHS requesting that correspondence be sent to PO Box 30754. This argument misses the mark for three reasons. First, Thurman-Pryor would have had to receive at least two “communications” from MDHHS for this code section to be applicable

but received only the July 6 letter. Second, at no place in the July 6, 2022, letter does AAG Goodkin indicate that MDHHS was requesting correspondence be sent to PO Box 30754. Third, and most importantly, § 342(c)(2)(A) applies only to notices that are sent by the *debtor* to creditors in the bankruptcy case. In the instant case, no notice was sent by Thurman-Pryor to MDHHS. All notices in this case were sent by the Court Clerk and this code section is simply inapplicable.

As a result of Thurman-Pryor misidentifying the creditor and using an incorrect address, MDHHS was not properly listed and scheduled in a manner reasonably calculated to give it notice of the bankruptcy filing in time to file a complaint contesting discharge of the debt. For that reason, MDHHS' complaint is proper pursuant 11 U.S.C. § 523(a)(3)(B) and Thurman-Pryor's motion to dismiss should be denied.

B. Notice to the DAG did not impute notice to MDHHS.

“The general rule is that notice to or knowledge of an agent may be imputed to the principal in certain situations. Notice or knowledge is imputed where the agent is acting within the scope of his authority and the knowledge pertains to matters within the scope of the agent's authority.” *Ford Motor Credit Co. v. Weaver*, 680 F.2d 451, 457 (6th

Cir. 1982) (citations omitted). “In most of the cases where an agent's knowledge of bankruptcy proceedings is imputed to a creditor, the agent is an attorney who has been authorized either to collect the balance due on a defaulted debt or represent the creditor in bankruptcy proceedings.” *Id.* Here, given that Thurman-Pryor sent notice of the bankruptcy filing to the address associated with the DAG it could be argued that notice should be imputed to MDHHS. However, “service on an attorney is not in and of itself sufficient, where the creditor did not receive notice directly and where the notice sent to creditor’s attorney did not indicate that the true party in interest was the creditor.” *Matter of First Am. Health Care of Georgia, Inc.*, 219 B.R. 324, 329 (Bankr. S.D. Ga. 1998).

As discussed above, MDHHS did not receive notice directly due to the use of an incorrect name and address on the matrix. The name used by Thurman-Pryor to identify the creditor was only “State of Michigan” and did not specifically name MDHHS, AAG Goodkin or any other state agency or person. As the Third Circuit has stated:

“[A]n attorney given notice of the bankruptcy on behalf of a particular client is not called upon to review all of his or her files to ascertain whether any other client may also have a claim against the bankrupt. Notice sent to an authorized

attorney or agent must *at least signify the client whom it is intended* so that the attorney can know whom to advise to assert a claim in the bankruptcy. [*Maldonado v. Ramirez*, 757 F.2d 48, 51 (3d Cir. 1985) (emphasis added).]

The court in *Gordon v. United States (In re Sissine)* 432 B.R. 870, 879 (Bankr. N.D. Ga. 2010) involved a similar argument involving notice to separate state agencies. In *Gordon*, the Georgia Department of Revenue (GDOR) was not listed as a creditor. *Gordon*, 435 B.R. at 875. The bankruptcy trustee sent a letter to the Georgia Department of Law regarding state-tax refunds, and because GDOR turned those refunds over to the IRS, the trustee argued that GDOR violated the automatic stay, among other arguments. *Id.* The court rejected imputing notice to the GDOR because “the letter to an individual attorney within the Georgia Department of Law is insufficient to establish actual notice to GDOR of Debtor’s bankruptcy. *GDOR is a separate entity from the Department of Law.* The record does not establish that GDOR had actual notice or actual knowledge of the bankruptcy.” *Id.* at 879 (emphasis added).

Generally, notice that is sent to the DAG is not sufficient to impute notice to any other state agency. The DAG is a separate department from all other state agencies. Mich. Comp. Laws § 16.104;

Mich. Const. 1963, art. V, § 3. The DAG is not automatically the counsel of record for *all* state agencies at *any* time because Mich. Comp. Laws § 14.29 provides, “[i]t shall be the duty of the attorney general, *at the request* of the governor, the secretary of state, the treasurer or the auditor general, *to prosecute and defend all suits relating to matters connected with their departments.*” (Emphasis added). *See also Att’y Gen. v. Mich. Pub. Serv. Comm’n*, 625 N.W.2d 16 (Mich. Ct. App. 2000) (addressing the various roles of the Attorney General). As such, the Department of Attorney General is not automatically the counsel of record for *all* state agencies at *any* time. That is, state agencies must request representation from the DAG, or such representation must otherwise fall within the Attorney General’s authority to appear. Mich. Comp. Laws § 14.28.

It undisputed that MDHHS requested representation from the DAG regarding the collection of the debt owed by Thurman-Pryor. However, notice to, or actual knowledge of, the DAG of a bankruptcy case, which filings do not identify MDHHS, is not sufficient notice to MDHHS. This view is consistent with the Court’s holding in *Gordon*: “[L]etter to an individual attorney within the Georgia Department of

Law is insufficient to establish actual notice to GDOR of Debtor's bankruptcy." 432 B.R. at 879. *See also Dole v. First One Lending Corp.*, No. 23-80022-swd (Bankr. W.D. Mich. June 1, 2023) ("Moreover, and as a practical matter, a corporate "registered agent" for service of process such as The Corporation Trust Company listed on the certificate of service, who represents hundreds of thousands of entities, might be forgiven for not forwarding a summons and complaint to an entity omitted from the caption.") *But see In re Frankina*, 29 B.R. 983, 986 (Bankr. E.D. Mich. 1983) ("Justification for imputing the attorney's knowledge of the bankruptcy case to his client in cases where an attorney has been retained to collect the debt scheduled in the bankruptcy proceeding is readily apparent.").

Even though AAG Goodkin was acting to collect the debt on behalf of MDHHS and OIG, and even though Thurman-Pryor was aware that the creditor was in fact MDHHS, the notice sent to PO Box 30754 contained no identifying information other than "State of Michigan." Notably, Thurman-Pryor also listed and scheduled a debt owed to the Michigan Department of Treasury by using the following information: "State of Michigan, Dept of Treasury, Bankruptcy Unit." (Bankr. Case,

ECF. No. 15.) By including the additional identifiers for the debt owed to the Treasury, Thurman-Pryor exercised reasonable diligence and the information used was reasonably calculated to provide notice to the Department of Treasury.

Thurman-Pryor inexplicably did not use any additional identifying information when scheduling the debt owed to MDHHS. Because the notice that was intended for MDHHS contained no further identifying information, it was likely viewed as an additional notice that was intended for Treasury. Furthermore, the notice intended for MDHHS was not received directly by AAG Goodkin as it was delivered to the MarcsBankruptcyUnit@michigan.gov email address. Had AAG Goodkin's name been placed on the notice, he would have had an opportunity to review the notice and cross reference it against the dozens of open collections cases to which he is assigned. The notice intended for MDHHS was inexplicably void of any additional identifying information and was sent to an incorrect address. Therefore, the notice was simply insufficient and should not impute notice of the bankruptcy filing to MDHHS.

III. MDHHS did not have actual knowledge of the bankruptcy filing to allow for the timely filing of a request for determination of dischargeability.

“A creditor's informal actual knowledge of a pending bankruptcy case is sufficient to satisfy due process.” *In re O'Shaughnessy*, 252 B.R. 722, 730 (Bankr. N.D. Ill. 2000) (citing *In re Pence*, 905 F.2d 1107, 1109 (7th Cir.1990). Actual knowledge of a bankruptcy filing places a duty on a creditor to at least inquire about deadlines in the case. *In re Marino*, 195 B.R. 886, 893 (Bankr. N.D. Ill. 1996) (“A creditor, who knows of the proceeding but has not received formal notice, should be prevented from standing back and allowing the bankruptcy action to proceed”)

In this case the DAG acquired actual knowledge of the bankruptcy filing in February 2022 when AAG Goodkin was notified by Thurman-Pryor’s bankruptcy counsel via telephone. This was well after the January 3, 2023, deadline for filing an adversary.

The certificate of notice filed by the Bankruptcy Noticing Center in the Thurman-Pryor’s bankruptcy case states that notice was not mailed to PO Box 30754 but was instead sent via email to MarcsBankruptcyUnit@michigan.gov. (Bankr. Case, ECF No. 15.) This

email address is linked to the Michigan Accounts Receivable Collection System (MARCS). MARCS is a third-party debt collector system that assists the Michigan Department of Treasury (Treasury) in collecting unpaid taxes and other state debts. MARCS collects only debts that are owed directly to Treasury or debts that have been referred to Treasury by other state agencies. The debt owed by Thurman-Pryor in this case is not owed directly to Treasury and has never been referred to Treasury for collection by either MDHHS or OIG.

The MARCS email address is associated with PO Box 30754 for various procedural benefits, including allowing MARCS to efficiently stop collection efforts on behalf of the Michigan Department of Treasury upon receiving notice of a bankruptcy filing involving a specific debt that has been referred to MARCS for collection.

This practice of designating a specific address is consistent with the code; “Section 342(f) . . . empowers any entity to file an address with a bankruptcy court and to specify that, thereafter, that address must be used by ‘all the bankruptcy courts or by particular bankruptcy courts’ in connection with chapter 7 or chapter 13 cases.” *In re Harvey*, 388 B.R. 440, 445 (Bankr. D. Me. 2008) quoting Section 342(f). When a creditor

takes these steps, then the address on file with the bankruptcy court is conclusively presumed to be correct. Here, Thurman-Pryor did not use an address so designated for MDHHS or OIG. As a result, MDHHS and OIG lacked actual knowledge of the bankruptcy filing prior to the January 3, 2023, adversary bar date.

CONCLUSION AND RELIEF REQUESTED

The debt owed by Thurman-Pryor is of the kind that is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2). Thurman-Pryor failed to schedule and provide notice to MDHHS regarding her Chapter 13 case and the applicable deadlines. Because of her failure, MDHHS was without notice or knowledge of the deadline for objecting to dischargeability. The complaint filed by MDHHS can be filed at any time pursuant to 11 U.S.C. § 523(a)(3)(B). This Court should therefore deny Thurman-Pryor's motion to dismiss.

Respectfully submitted,

/s/ Adam M. Roose
Adam M. Roose
Assistant Attorney General
Attorney for Defendants
Michigan Department of
Attorney General
Revenue and Tax Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584
Roosea2@michigan.gov
P68893

Dated: July 14, 2023

EXHIBIT 1

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

July 1, 2022

Gwendolyn Thurman-Pryor
4412 Stillwell Ave
Lansing, MI 48911

Re: Gwendolyn Thurman-Pryor, Michigan Department of Health and
Human Services Overpayment; INV-2022

Ms. Thurman-Pryor,

I have been assigned to represent the Michigan Department of Health and Human Services—Office of the Inspector General in this collections matter regarding the Medicaid Overpayment you owe back to the State.

I am writing you to discuss setting up a repayment agreement for your \$15,061.41 Medicaid Overpayment.

If you are unable to repay the full amount all at once, it is acceptable for a payment plan of 20% down and repayment over 24 months (or less). A 24 month repay plan would amount to \$3,012.28 down and then 24 monthly payments of \$506.87 at the current Common Cash Fund Rate of 0.92%. (The interest rate may fluctuate somewhat by the time we do an agreement, but it is not likely to change by much). If this does not work for you, we can discuss different terms, including possibly a flat 24-month repayment plan of \$633.59 per month, though that would require separate OIG approval.

If you are unable to agree to terms for repayment within 24 months or less, then you will be required to submit financial documentation for your personal finances, income and expenses, to justify a longer repayment window and that will also be subject to OIG approval and will require justification based on the documentation received.

Gwendolyn Thurman-Pryor

Page 2

July 1, 2022

Feel free to call or email with any questions. Please respond within one week of receipt of this letter. My email is GoodkinD@michigan.gov and my phone number is (517) 335-7584.

Sincerely,

/s/ David H Goodkin

David H Goodkin
Assistant Attorney General
Revenue & Tax Division
(517) 335-7584

DHG/xxx

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

Chapter 13

GWENDOLYN MARIE
THURMAN-PRYOR,

Case No. 22-01896-jwb

Hon. James W. Boyd

Debtor.

_____ /

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN
SERVICES,

Adv. Pro. No. 23-80021

Plaintiff

v.

GWENDOLYN MARIE
THURMAN-PRYOR

Defendant.

_____ /

AFFIDAVIT OF DAVID H. GOODKIN

STATE OF MICHIGAN)

) ss

COUNTY OF INGHAM)

David H. Goodkin, first being duly sworn, says:

1. I am employed by the Michigan Department of Attorney General as an Assistant Attorney General.
2. Among other things, my duties include pursuing collection cases involving overpayments and ineligible payments to Medicaid beneficiaries pursuant to the Social Welfare Act, Mich. Comp. Laws § 400.1 *et seq.*, and the Social Security Act, 42 U.S.C. § 1396 *et seq.*, related to Medicaid overpayments and fraud.
3. I have personal knowledge of the facts stated in this affidavit and, if sworn as a witness, am competent to testify to them.
4. In June 2022, I received a case referral from the Michigan Department of Health and Human Services – Office of the Inspector General (MDHHS-OIG) to negotiate repayment terms for a debt owed by Gwendolyn Thurman-Pryor.
5. I drafted a letter to Thurman-Pryor on July 1, 2022 which requested that she enter into a voluntary repayment agreement with MDHHS-OIG.
6. I actively communicated with Thurman-Pryor regarding a repayment agreement for the debt that she owed to MDHHS-OIG from at least July 18, 2022 to August 19, 2022.

7. At no time during our communications did Thurman-Pryor disclose to me that she was contemplating filing for bankruptcy.

8. At no time during our communications did Thurman-Pryor disclose to me that she was represented by counsel.

9. I filed a state court complaint seeking a money judgment against Thurman-Pryor on September 21, 2022.

10. The state court complaint was served upon Thurman-Pryor on December 21, 2022.

11. Between December 21, 2022 and January 3, 2023, neither Thurman-Pryor nor her attorney disclosed the existence of the bankruptcy case to me.

12. On February 16, 2023 I was informed by Thurman-Pryor's bankruptcy counsel via telephone that a chapter 13 bankruptcy case had been filed.

13. I did not receive of any notice of the filing of Thurman-Pryor's bankruptcy case either before or after the February 16, 2023.

14. I did not have actual knowledge of Thurman-Pryor's bankruptcy case until receiving the February 16, 2023 telephone call from Thurman-Pryor's counsel.

15. I declare that I have personal knowledge of the facts stated in this affidavit and that facts stated in this affidavit are true.

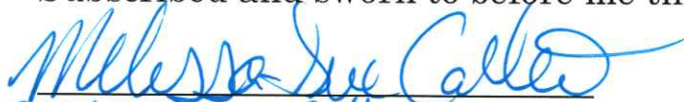
7-13-2023

Date



David H. Goodkin
Assistant Attorney General
Michigan Department of
Attorney General

Subscribed and sworn to before me this 13th day of July 2023.



melissa sue collins, Notary Public

Ingham County, State of Michigan

My Commission Expires: 8/10/2024

Acting in Ingham County

EXHIBIT 3

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

Approved, SCAO

STATE OF MICHIGAN 55th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 22- 2536-GC
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JUDGE WILLMAN

Court address 700 Buhl St. Mason, MI 48854	Court telephone no. 517-676-8400
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Plaintiff's name(s), address(es), and telephone no(s).
 State of Michigan, Department of Health & Human Services,
 Office of Inspector General

Plaintiff's attorney, bar no., address, and telephone no.
 David H. Goodkin (P69338)
 Michigan Department of Attorney General
 PO Box 30754
 Lansing, MI 48909
 517-335-7584

v

Defendant's name(s), address(es), and telephone no(s).
 Gwendolyn Thurman-Pryor (In Pro Per)
 4412 Stillwell Ave
 Lansing, MI 48911
 517-802-8820

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date SEP 26 2022	Expiration date* 12/26/22	Court clerk/
----------------------------------	------------------------------	------------------

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS
Case No. 22-2536 -GC

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input checked="" type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
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- I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
 List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time
Gwendolyn Thurman-Ryan	<u>Correct Address</u> 4415 Stillwell Ave Lawson MI 48911	Wed 6:19 PM 12-21-22

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service. Wrong Address - No Such Address

Defendant's name	Complete address(es) of service	Day, date, time
	4412 Stillwell Ave Lawson MI	Mon 4:35 PM 12-19-22

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$ 26	10.4	\$ 9.75	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$ 10	10.4	\$ 9.75	\$ 55.50

Signature: _____
 Name (type or print): Matt B Jenkins
 Title: Court officer

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Date Signature: _____
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
 Attachments

_____ on _____
 Day, date, time

Signature _____ on behalf of _____

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

GWENDOLYN MARIE
THURMAN-PRYOR,

Debtor.

_____ /

Chapter 13

Case No. 22-01896-jwb

Hon. James W. Boyd

MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Adv. Pro. No. 23-80021-jwb

Plaintiff.

v.

GWENDOLYN MARIE
THURMAN-PRYOR

Defendant.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, I electronically filed *The Michigan Department of Health and Human Services' Response to Defendant's Motion to Dismiss Adversary Case with Prejudice* and the *Brief in Response to Defendant's Motion to Dismiss Adversary Case With Prejudice* with a Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing of the following to the parties:

Michelle Marrs
Marrs and Terry, PLLC
6553 Jackson Road
Ann Arbor, MI 48103

/s/ Adam M. Roose
Adam M. Roose
Assistant Attorney General
Attorney for Michigan
Department of Health and
Human Services
Revenue and Tax Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584
Roosea2@michigan.gov
P68893

Dated: July 14, 2023