

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

Steve Auxier,  
Beverly Auxier

Case No. 11-04871-als7

Debtors

Chapter 7

**MEMORANDUM OF DECISION  
(date entered on docket: July 25, 2012)**

Before the Court is the Trustee's objection to Debtor's claim of exemption in a benefit paid under the Iowa Public Employment Retirement System ("IPERS") as the beneficiary of a member's account. A telephonic hearing was conducted and the matter was fully submitted upon the filing of stipulated facts and written arguments. Jurisdiction of this core proceeding is pursuant to 28 U.S.C. sections 157(b)(1) and 1334. For the reasons stated the Trustee's Objection is sustained and the Debtor's claim of exemption is denied.

The parties have stipulated to the following facts. Steve Auxier ("Debtor") filed a joint bankruptcy petition under chapter 7 of the code on December 27, 2011. The Debtor's mother, Virginia C. Auxier, died on May 14, 2012. As the sole beneficiary named under her IPERS account, the Debtor received a lump sum death benefit payment on November 1, 2012 in the net amount of \$14,862.07. \$11,214.91 of the funds were utilized to pay Virginia Auxier's funeral expenses. On November 13, 2012 the Debtor filed an amended Schedule C which claimed the amount of \$18,000 as exempt pursuant to Iowa Code section 97B.39 (2012). The Trustee filed a timely objection to the claimed exemption.

## Discussion

On the date of filing, all of a debtor's legal or equitable interests in property are included in the bankruptcy estate. 11 U.S.C. § 541(a) (2012). Assets or interests acquired post-petition are not included in the bankruptcy estate, but the Code identifies three exceptions to this general rule. As it relates to the facts of this case, the Code states:

Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date by bequest, devise, or inheritance.

11 U.S.C. § 541(a)(5)(A) (2012). Debtor's entitlement to the death benefit arose on May 14, 2012, which falls within the time period identified and requires it to be treated as property of the estate. The next issue to be addressed involves application of the appropriate exemption statute.

Iowa has opted out of the federal exemption provisions and its residents must utilize state law exemptions in bankruptcy. See Iowa Code § 627.10 (2011). Notwithstanding this directive, the Debtor has claimed his exemption under Iowa Code section 97B.39 which provides, in relevant part:

The right of any person to any future payment under this chapter is not transferable or assignable, at law or in equity, and the moneys paid or payable or rights existing under this chapter are not subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders, or for recovery of medical assistance payments pursuant to section 249A.5. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b). The system shall comply with the provisions of a marital property order requiring the selection of a particular benefit option, designated beneficiary, or contingent

annuitant if the selection is otherwise authorized by this chapter and the member has not received payment of the member's first retirement allowance. However, a marital property order shall not require the payment of benefits to an alternative payee prior to the member's retirement, prior to the date the member elects to receive a lump sum distribution of accumulated contributions pursuant to section 97B.53, or in an amount that exceeds the benefits the member would otherwise be eligible to receive pursuant to this chapter.

(2012). In support of his claim of exemption in the death benefit, the Debtor cites to In re Carver, 116 B.R. 985 (Bankr. S.D. Iowa 1990). Reliance on this opinion is misplaced. The Court in Carver simply addressed whether a terminated employee, who could access the funds in her IPERS account on the date she filed bankruptcy, had a right to claim any “future payments” as exempt under Iowa Code section 97B.39. The issue in this case does not involve a member’s right to future payments, but rather a payment of a death benefit, elected and designated by a member.

Determining the intent and purpose of a law begins with general principles of statutory construction. See Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 363 (Iowa 2000). It is well settled that legislative intent is based upon the plain language used in a statute. See In re Fowler, 784 N.W.2d 184, 187 (Iowa 2010); Benjegerdes v. Reindl (In re Reindl), 671 N.W. 2d 466, 469 (Iowa 2003). “The court is not at liberty to read into the statute provisions which the legislature did not see fit to incorporate, nor may it enlarge the scope of its provisions by an unwarranted interpretation of the language used.” Moulton v. Iowa Emp’t Sec. Comm’n, 34 N.W.2d 211, 216 (Iowa 1948). This exercise requires evaluating the statute as a whole instead of focusing on “isolated words or phrases.” In re Conservatorship of Alessio, 803 N.W. 2d 656, 661 (Iowa 2011). In analyzing the applicable statutes, the Court is mindful of the proposition that Iowa exemption statutes are

liberally construed in favor of a debtor to confer the intended benefit. See Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971).

The purpose of IPERS in relevant part is “to promote economy and efficiency in the public service by providing an orderly means for employees . . . to have a retirement system which will provide for the *payment of annuities*, enabling the employees to care for themselves in retirement.” Iowa Code § 97B.2 (2012). A review of Chapter 97B, as a whole, reflects that there are provisions that identify possible recipients of “payments” as individuals, representatives and minors. Iowa Code §§ 97B.33; 97B.34 and 97B.34A (2012). A separate section provides that a member may select a beneficiary to receive payment of “death benefits.” Iowa Code § 97B.44 (2012). The plain language of the statute makes a distinction between “payments” and “death benefits.” Iowa Code section 97B.39 simply serves to protect the IPERS retirement payments from attachment, execution, garnishment or administration in bankruptcy.<sup>1</sup> See In re Carver, 116 B.R. 985 (Bankr. S.D. Iowa 1990). Nothing in the statutory language identifies similar protection for a death benefit payable to a beneficiary. This interpretation is also in accord with correspondence to the Debtor dated May 16, 2012, and included in the stipulated facts filed by the parties, which states:

All IPERS members must select a payment option when they begin receiving benefits. Every option provides the member a lifetime monthly benefit. The *payment* option determines any *death benefits* that may be payable for each member’s account.

The member selected Option 1. You are entitled to receive a one-time lump-sum gross death benefit of \$18,000.00. This amount was chosen by the member at retirement.

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<sup>1</sup> With an exception for “child, spousal, or medical support obligations or marital property orders, or for recovery of medical assistance payments pursuant to section 249A.5.”

(emphasis added). A distinction exists between the payments made to a member by virtue of their employment and eligibility to receive retirement payments under IPERS and a death benefit. By definition, a payment to a beneficiary cannot constitute a payment received by a member. To adopt the Debtor's position would require the Court to segregate, and place sole emphasis upon, the words "any person" in the opening sentence of Iowa Code section 97B.39. Such a reading is not in line with the general rules of statutory construction.

A review of exemption provided for under Iowa Code chapter 627 does not reveal that the legislature intended for a separate exemption to be conferred under Iowa Code section 97B.39.<sup>2</sup> In reaching this conclusion the Court is mindful of the proposition that Iowa exemption statutes are liberally construed in favor of a debtor to confer the intended benefit. See Frudden Lumber Co. v. Clifton, 183 N.W.2d 201, 203 (Iowa 1971). However, based upon the plain language of Iowa Code Chapter 627 and section 97B.39 the death benefit payment is not exempt.

IT IS THEREFORE ORDERED that the Trustee's objection to exemption is sustained and the Debtor's claim of exemption in the death benefit pursuant to Iowa Code section 97B.39 is denied.

/s/ Anita L. Shodeen  
Anita L. Shodeen  
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:  
Electronic Filers in this chapter case.

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<sup>2</sup> There are specific references to other state law statutory provisions which may expand a debtor's right to claim an exemption. See Iowa Code §627.6(10).