

1975 WL 29513 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
February 19, 1975

***1 Re: Daisy H. McIlwain W. J. McIlwain Estate**

Mr. Redden J. Thames
District Director
Department of Social Services
219 N. Congress Street
Winnsboro, South Carolina 29180

Dear Mr. Thames:

It is my understanding that Mrs. Daisy H. McIlwain has applied for Medicaid benefits and currently has been ruled ineligible due to the interpretation placed on Item 2 of the Last Will and Testament of W. J. McIlwain. Based on my conversation with you this date, it is my understanding that you have a copy of the Will, and I will not set forth Item 2 herein.

It appears that in addition to the real estate which was owned by W. J. McIlwain at the time of his decease, there is now some \$12,000 cash in a bank account, and the application of Item 2 to the \$12,000 cash is in question. I have read over the entire Will of W. J. McIlwain, with particular reference to Item 2. In my opinion, Item 2 clearly sets forth a life estate both as to the real and personal property to Daisy H. McIlwain for the term of her natural life, that is to say, a life estate. A life estate can be created in personal property. [Finley v. Hunter](#), 3 Strob. Eq. 78. Normally, a life tenant cannot invade the corpus or principal of a life estate, but is entitled only to the income therefrom during the tenant's lifetime, that is to say, a tenant for life is entitled to the use of, or interest of money, only; and must account to the remainderman for the principal. Without specific direction or authority contained in the Will to invade the corpus, which is absent in this case, the life tenant would have to bring legal action to authorize an invasion of the corpus. See [Patterson v. Devlin](#), [McMul. Eq. 459](#).

In conclusion, it is the opinion of this Office that the life estate created by Item 2 of the Will of W. J. McIlwain applies to the afore-mentioned \$12,000; however, Daisy H. McIlwain, life tenant, is only entitled to the interest thereon during her lifetime absent legal action and authority of the court to invade the principal, and therefore this principal should not be considered as a 'resource' available to Mrs. McIlwain in considering her eligibility for Medicaid benefits.

I trust that the foregoing will enable you to review Mrs. McIlwain's application for assistance, and if I can be of further help, kindly advise.

Yours very truly,

Raymond G. Halford
Assistant Attorney General

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