

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of VIRGINIA HOORT, Deceased

UNPUBLISHED
November 17, 2000

EDWARD G. HOORT, PERSONAL
REPRESENTATIVE,

Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

No. 217892
Saginaw Circuit Court
LC No. 98-002556-CZ

Before: Meter, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by right from an order denying his decedent's request for an injunction and dissolving a temporary restraining order against defendant. We affirm.

Plaintiff's decedent, Virginia Hoort (hereinafter "Hoort"), originally brought this action to compel defendant to pay two months' retroactive Medicaid benefits.¹ The trial court concluded that it lacked subject matter jurisdiction over the claim because Hoort failed to exhaust her administrative remedies. Plaintiff contends on appeal that the trial court erred in sua sponte dismissing Hoort's claim and asserts that Hoort was eligible for retroactive benefits because she stated on her application that she incurred expenses during the three months before the date of her application. We disagree.

Whether the trial court had subject matter jurisdiction is a question of law that this Court reviews de novo. *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). The trial court lacks subject matter jurisdiction if a plaintiff fails to exhaust her administrative remedies. *Id.*

¹ Hoort died while the instant appeal was pending, and Edward G. Hoort, her personal representative, therefore took over the appeal.

Defendant provided an affidavit of Edna Ticar, the worker assigned to Hoort's case. In this affidavit, Ticar stated that (1) at the time plaintiff² applied for Medicaid benefits for Hoort, she (Ticar) advised him that he would need to provide certain financial information in order to make Hoort's eligibility retroactive, (2) plaintiff did not supply this information, and (3) because of the lack of information, Ticar made no eligibility determination regarding the two months at issue.

Plaintiff does not contend on appeal that he or Hoort supplied defendant with the information necessary for its determination regarding the two months at issue in this case,³ nor does he contend that he or Hoort were not informed what information was necessary. Therefore, we conclude that the trial court did not err in finding that Hoort failed to comply with defendant's procedures and thereby exhaust her administrative remedies. Because Hoort failed to exhaust her administrative remedies, the trial court did not have subject matter jurisdiction over her claim, see *Rudolph Steiner School of Ann Arbor, supra* at 739, and was therefore required to dismiss it.⁴ See *Fox v Board of Regents*, 375 Mich 238, 242-243; 134 NW2d 146 (1965). No error occurred.

Furthermore, and contrary to plaintiff's argument, the trial court did not err in holding that Hoort was not entitled to an administrative hearing. 42 CFR 431.220 provides:

(a) The agency must grant an opportunity for a hearing to:

(1) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness;

(2) Any recipient who requests it because he or she believes the agency has taken an action erroneously;

² In addition to serving as Hoort's personal representative for purposes of the instant appeal, plaintiff Edward G. Hoort also served as Hoort's power of attorney and handled certain of her affairs before her death.

³ Plaintiff suggests, without supporting authority, that (1) retroactive coverage for the months at issue was triggered merely because Hoort stated in the application for benefits that medical expenses were incurred during the prior three months, and (2) the nursing facility was responsible for providing defendant with the specific financial information defendant required in order to pay the expenses. However, even if the nursing home was responsible for providing the requested financial information, plaintiff gives no indication that the information was indeed provided and that defendant subsequently and improperly denied benefits for the two months at issue.

⁴ Indeed, it was not the duty of the trial court to be the first entity to examine Hoort's financial information and determine if she was eligible for Medicaid.

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged; and

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

Again, plaintiff does not contend on appeal that defendant received the information necessary for its determination regarding the two months at issue in this case. Therefore, in the absence of the proper information, defendant did not make a determination or take any other action that would be subject to a hearing under 42 CFR 431.220.⁵

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Michael J. Talbot

⁵ We further note that the only specific damages Hoort sought in her complaint were Medicaid payments for the two months at issue, as well as costs and fees. In other words, she did not specifically ask the circuit court to compel defendant to hold a hearing.