

The Department granted the application for medical assistance benefits, and, during the period from January 1, 2008, through January 31, 2009, it paid Allied Services \$65,099.62 for Major's care. (Finding of Fact No. 3.) However, the Department subsequently discovered that, during this same period of time, Major was receiving payments of \$1,000 per month from a structured settlement. (Finding of Fact No. 4.) Neither Van Sickle nor Major reported the \$1,000 per month payment to the Department. (Finding of Fact No. 5). Van Sickle was aware that her father was receiving the payments, (Finding of Fact No. 8), and Van Sickle endorsed several of the \$1,000 checks and deposited them into a joint bank account owned by her and Major. Van Sickle believed that she did not need to report the settlement monies to the Department because the payments were compensation for an injury and she was the beneficiary of the settlement. (Finding of Fact No. 9.)

By letter dated November 18, 2009, the Office of Inspector General ordered Van Sickle to repay \$13,000 medical assistance benefits in accordance with section 1408(c)(6)(i) of the Public Welfare Code (Code).¹ Van Sickle appealed, and the matter was heard by an administrative law judge (ALJ) on March 5, 2010.

¹ Act of June 13, 1967, P.L. 31, as amended, 62 P.S. §1408(c)(6)(i). Section 1408(c)(6)(i) of the Code provides as follows :

If it is found that a recipient or a member of his family or household, who would have been ineligible for medical assistance, possessed unreported real or personal property in excess of the amount permitted by law, the amount collectible shall be limited to an amount equal to the market value of such unreported property or the amount of medical assistance granted during the period it was held up to the date the unreported excess real or personal property is identified, whichever is less. *Repayment of the overpayment shall be sought from the recipient, the person receiving or holding such property, the recipient's estate and/or survivors benefiting from receiving such*

(Footnote continued on next page...)

The Department presented testimony from employees of the Lackawanna County Assistance Office (CAO) with regard to the medical assistance application process and Major's income. In particular, Karin Collins, an income maintenance caseworker with the CAO, testified that initially she was only aware that Major had social security income; however, she later learned that Major was receiving structured settlement payments of \$1,000 per month, which should have been adjusted to the nursing home. The Department also presented the testimony of Gail Rees, vice president of Penn Star Bank, who testified that the settlement payments were deposited in an account owned by Major and Van Sickle. Additionally, Moriah Harding, an agent of the Office of Inspector General, testified regarding her investigation of this matter. Ms. Harding stated that Van Sickle admitted that she had applied for public assistance, that she was receiving the structured settlement income, and that she did not believe that she was required to report it to the Department.

Van Sickle testified that the signature on the medical assistance application was not her signature. Moreover, Van Sickle admitted that she "made application for assistance" for her father and provided the income information, i.e., that he received Social Security. (A.A. at 184-85.)

After reviewing the evidence, the ALJ denied the appeal for the following reasons:

(continued...)

property. Proof of date of acquisition of such property must be provided by the recipient or person acting on his behalf.

62 P.S. §1408(c)(6)(i). (Emphasis added.)

I find that Norina VanSickle did not sign the application submitted in March 2008 for Medical Assistance benefits for the Appellant, Fred Major, her father. I find, further, that Norina VanSickle did participate in the filing of the application and provided information to the (CAO)... Ms. VanSickle was incorrect in her belief that she did not need to report the structured settlement payments to the CAO. Because of her failure to report the income, the Department made excess payments on behalf of Fred Majors in the amount of \$13,000 during the period January 1, 2008 through January 13, 2009. This amount should be repaid to the Department.

Accordingly, the appeal filed on behalf of Fred Major is denied. Norina Van Sickle is a survivor of the Appellant, Fred Major, her father, and she benefitted from the \$1,000 per month structured settlement payments which were deposited into a joint account of Norina Van Sickle and Fred Major....

(ALJ's Adjudication at 6.) On March 23, 2010, the Department issued a final administrative action order, which affirmed the decision of the ALJ.

On appeal to this Court, Van Sickle contends that she is not liable for the repayment of \$13,000 because the signature on the application for medical assistance benefits is a forgery. Van Sickle argues that Allied Services is the party responsible for repaying the \$13,000 because it prepared the medical assistance application, submitted false information to the Department, and benefitted financially from the medical assistance payments.²

In Maloy v. Department of Public Welfare, 998 A.2d 661 (Pa. Cmwlth. 2010), we addressed the Department's authority to collect repayments pursuant to 1408(c)(6)(i) of the Code. In that case, the Department determined that it overpaid

² Although there are questions of fraud and forgery in this case, those are matters that may be addressed by the civil and criminal process.

medical assistance benefits in the amount of \$35,459.63 because the guardian of an incapacitated person failed to report real estate and mortgage transactions to the Department. The transactions made the incapacitated person ineligible for benefits. Holding that the Department properly sought restitution directly from the guardian, we reasoned:

There appears to be no case law examining the process by which the Department chooses from whom to collect repayments. However, there is nothing in the plain language of the statute to suggest that the Department is in any way obligated to consider the equities when making that choice. The statute's clear purpose is to provide a mechanism for the Department to make the Commonwealth whole after it has overpaid a recipient. To accomplish this aim, the statute lists a number of potential parties from whom repayment can be collected, connected with 'and/or.' The use of this term implies that the legislature intended to give the Department wide latitude or broad discretion to choose which party, or group of parties from whom it would collect repayment. Of course, there is nothing in the statute to prevent the Department from considering fairness, but it would also be consistent with the statute's purpose for it to consider a party's solvency, location, willingness to pay, or any of a number of other factors in making its decision. When, as here, a statute gives an agency discretionary powers, judicial review is limited to a determination of whether there has been a manifest or flagrant abuse of discretion, or a purely arbitrary execution of the agency's duties or functions.

Id., at 664. (citation omitted.) We may not, in the absence of bad faith, fraud, capricious action, or abuse of power, inquire into the wisdom of the agency's action or into the details or manner of executing agency action. Slawek v. State Board of Medical Education and Licensure, 526 Pa. 316, 586 A.2d 362 (1990); Blumenschein v. Pittsburgh Housing Authority, 379 Pa. 566, 109 A.2d 331 (1954).

In the instant case, the ALJ found as fact that Van Sickle never signed the application for medical benefits, but the ALJ did note that Van Sickle participated in the filing of the application. Moreover, we agree with the Department that the absence of Van Sickle's signature on the application is not controlling because she benefited from the unreported settlement funds and thus is liable under section 1408(c)(6)(i) of the Code.

Although Van Sickle never signed the application for benefits, where a recipient has unreported real or personal property, the Department is authorized by section 1408(c)(6)(i) of the Code to look beyond the person who signed the application and seek repayment from either the recipient, the person receiving or holding the unreported property, or the recipient's estate and/or survivors benefiting from receiving such property. Maloy. The ALJ's findings demonstrate that Van Sickle is a survivor of Major who received, held, and benefitted from the unreported structured settlement payments. Van Sickle does not dispute that she was aware of the structured settlement payments, that she failed to report the settlement income to the Department, or that she endorsed several of settlement checks and deposited them into a joint account she held with her father. In addition, the record establishes that Van Sickle initiated and participated in the application for medical assistance benefits. Therefore, we conclude that the Department properly sought repayment from Van Sickle pursuant to section 1408(c)(6)(i) of the Code.

Accordingly, we affirm.

PATRICIA A. McCULLOUGH, Judge

