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ZBIGNIEW SZEWCZYK *v.* DEPARTMENT OF SOCIAL SERVICES
(AC 22134)

Lavery, C. J., and Bishop and Stoughton, Js.

Argued November 20, 2002—officially released May 27, 2003

(Appeal from Superior Court, judicial district of New Britain, Cohn, J.)

Thomas J. Riley, with whom was *Shawn L. Rutchick*, for the appellant (plaintiff).

Tanya Feliciano, assistant attorney general, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Richard J. Lynch*, assistant attorney general, for the appellee (defendant).

Opinion

BISHOP, J. This appeal presents the question of whether hospital in-patient chemotherapy treatment of an undocumented alien who has been diagnosed with acute myelogenous leukemia constitutes treatment for

an emergency medical condition so as to entitle the hospital to receive medicaid reimbursement for the cost of the treatment. Having provided treatment to the plaintiff, an undocumented alien, the hospital sought medicaid reimbursement from the department of social services (department).[1] Once the department rejected the plaintiff's reimbursement request, the plaintiff sought judicial review in the trial court where his appeal was dismissed. The two issues on appeal are (1) whether the court applied the proper legal standard for determining whether the plaintiff suffered from an ''emergency medical condition'' so as to qualify for medicaid benefits and (2) whether the court's conclusion that the plaintiff did not have an ''emergency condition'' was supported by substantial evidence. We affirm the judgment of the trial court.

To address the issues on appeal adequately, it is appropriate to provide a brief overview of the medicaid program as it relates to undocumented aliens.[2] ''Medicaid is a federal program that provides health care funding for needy persons through cost-sharing with states electing to participate in the program.'' *Greenery Rehabilitation Group, Inc.* v. *Hammon*, 150 F.3d 226, 227 (2d Cir. 1998). States, such as Connecticut, that elect to participate in the medicaid program are required to follow federal requirements. See *Clark* v. *Commissioner*, 209 Conn. 390, 394, 551 A.2d 729 (1988). The medicaid program is administered in Connecticut by the department pursuant to General Statutes § 17b-260. The department's Uniform Policy Manual (manual) sets forth the regulations in regard to medicaid, and has the full force and effect of law pursuant to General Statutes § 17b-10.

The department's regulations of the eligibility of undocumented aliens for medicaid assistance mirror its federal counterpart, which provides that ''[u]ndocumented aliens or aliens not otherwise permanently residing in the United States under color of law generally are not entitled to full Medicaid coverage. See 42 U.S.C. § 1396b (v) (1) ('no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law'); 42 C.F.R. § 435.406. The only exception to this exclusion is payment for medical assistance that is 'necessary for the treatment of an emergency medical condition.' 42 U.S.C. § 1396b (v) (2) (A).'' *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 227–28.

Under federal law, an ''emergency'' is defined as ''a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(A) placing the patient's

health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.'' 42 U.S.C. § 1396b (v) (3).

''The corresponding regulation . . . found at 42 C.F.R. § 440.255 (b) (1) . . . provides that aliens are entitled to Medicaid coverage for [e]mergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (i) Placing the patient's health in serious jeopardy; (ii) Serious impairment to bodily functions; or (iii) Serious dysfunction of any bodily organ or part.'' *Greenery Rehabilitation Group, Inc.* v. *Hammon,* supra, 150 F.3d 227.

In Connecticut, consistent with the federal requirements, undocumented aliens are ineligible for medicaid coverage unless they have an emergency medical condition and are otherwise eligible for medicaid. See Department of Social Services, Uniform Policy Manual § 3005.05C. ''A medical condition is considered an emergency when it is of such severity that the absence of immediate medical attention could result in placing the patient's health in serious jeopardy. This includes emergency labor and delivery, and emergencies related to pregnancy, but does not include care or services related to an organ transplant procedure.'' Id., § 3000.01.[3]

Keeping the foregoing background in mind, we now turn to the facts and procedural history that are relevant to the plaintiff's claims. The plaintiff, a citizen of Poland, came to the United States on a tourist visa and remained illegally after his visa expired. On or about November 15, 1998, he began having symptoms relating to his current medical condition.

On November 19, 1998, he reported to his family physician that he was experiencing stomach pain, nausea and was having trouble walking. That same day, the plaintiff underwent blood tests and X rays. The test results became available on November 24, 1998, and on the basis of those results, his family physician referred him to Robert B. Erichson, an oncologist at Stamford Hospital (hospital).

Under the care of Erichson, on November 24, 1998, the plaintiff was diagnosed as having acute myelogenous leukemia, a disease that can be fatal if not treated aggressively with chemotherapy. As a result of the diagnosis, Erichson performed bone marrow biopsies and inserted a triple lumen Hickman catheter into the plaintiff so as to begin chemotherapy treatment. Following a course of chemotherapy, the plaintiff was discharged on December 26, 1998.

On February 26, 1999, the hospital filed an application for medicaid on behalf of the plaintiff. In its application, the hospital indicated that it was seeking payment for

in-patient hospital care that the plaintiff had received that was ''necessary for the treatment of his emergency medical condition'' and which resulted in his hospitalization from November 24 to December 26, 1998. The plaintiff's application was sent for review to a third party, Colonial Cooperative Care, Inc. (Colonial), and to the department's medical review team (review team).

On April 24, 1999, Colonial found that the plaintiff met the criteria for disability as set forth in the department's regulations. Notwithstanding Colonial's findings, the review team found on May 11, 1999, that the plaintiff did not meet the criteria for having an emergency medical condition, and on May 17, 1999, the department denied the plaintiff's application for emergency medical assistance under medicaid.[4]

Subsequently, the plaintiff requested an administrative hearing to review the denial of his application for Medicaid assistance. A hearing was held on November 19, 1999, in which a department hearing officer adopted the review team's determination that the plaintiff did not have an ''emergency medical condition'' at the time he was admitted at the hospital on November 24, 1998. The hearing officer's conclusion was based, inter alia, on his findings that the medical procedures, bone marrow biopsies and the insertion of a Hickman catheter, performed at the hospital during the plaintiff's hospitalization, were not emergency medical events. Furthermore, the officer noted that the plaintiff would not have died if he did not receive treatment the day he was admitted. As a result, the plaintiff filed an administrative appeal with the Superior Court, which in turn was dismissed. This appeal followed. Additional facts will be set forth as necessary.

I

The first issue on appeal is whether the court applied the proper legal standard for determining whether the plaintiff suffered from an ''emergency medical condition'' so as to qualify him for medicaid benefits. Specifically, the plaintiff contends that the hearing officer construed the definition of ''emergency medical condition'' under § 3000.01 of the manual too narrowly by requiring the plaintiff to show that he ''would . . . have immediately died on November 24, 1998 [date of admittance] if he had not received the treatment administered to him on that date at Stamford Hospital.'' We disagree.

Before turning to the merits of the plaintiff's claim, we set forth our standard of review. ''Judicial review of the conclusions of law reached administratively is . . . limited. The court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of [the Supreme Court] to accord great

deference to the construction given [a] statute by the agency charged with its enforcement. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts.'' (Citations omitted; internal quotation marks omitted.) *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 669, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001).

In its definition of ''emergency condition,'' § 3000.01 of the manual mirrors its federal counterpart, 42 U.S.C. § 1396b (v) (3). As stated previously, the manual provides that ''[a] medical condition is considered an emergency when it is of such severity that the absence of immediate medical attention could result in placing the patient's health in serious jeopardy. . . .'' Uniform Policy Manual, supra, § 3000.01. Although § 3000.01 of the manual mirrors its federal counterpart, those regulations do not make plain the circumstances in which a serious medical condition may be considered to be an ''emergency.'' We have held that ''[w]here the words of a statute fail to indicate clearly whether the provision applies in certain circumstances, it must be construed by this court . . . . Our objective in construing the language of an ambiguous statute is to give effect to the apparent intent of the legislature. . . . In our pursuit of that objective, we look to the language of the statute itself, its legislative history, and previous judicial construction.'' (Citations omitted; internal quotation marks omitted.) *Roach* v. *Roach*, 20 Conn. App. 500, 511, 568 A.2d 1037 (1990); see also *State* v. *Courchesne*, 262 Conn. 537, 577, 816 A.2d 562 (2003) (en banc).

In accordance with those principles of statutory construction, we look to the language of the statute itself, its legislative history and previous judicial construction in determining what elements will constitute an ''emergency medical condition'' under § 3000.01 of the manual. In pursuing our objective, we are informed by the approach taken by the United States Court of Appeals for the Second Circuit as to the scope and nature of 42 U.S.C. 1396b (v) (3), which § 3000.01 of the manual mirrors. See *Lewis* v. *Thompson*, 252 F.3d 567 (2d Cir. 2001); *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 226.

In *Lewis* v. *Thompson*, supra, 252 F.3d 570–79, the Second Circuit provided a comprehensive legislative history of medicaid coverage for illegal aliens. The court noted that the clear purpose of the medicaid statute since its inception in 1965 is to make government more cost-effective. The court opined that in keeping with that purpose, Congress amended the medicaid statute in 1986 to bar aid to ''non-PRUCOL aliens''[5] for any condition short of a medical emergency. Id., 573–74;

see also Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874, 2057 (1986). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 400-51, 110 Stat. 2105, 2261-76 (codified as amended at 8 U.S.C. §§ 1601-46 [2001]) (PRWORA) expanded the class of aliens who were ineligible for Medicaid, except for emergency care, to include some PRUCOL aliens.[6] *Lewis* v. *Thompson*, supra, 577–78. On the basis of its review of the legislative history, the court concluded that Congress intended that the ''emergency medical condition'' exception under PRWORA should be narrowly construed. Id., 580–81. The court stated that ''[i]n discussing the alienage restrictions in the bill, the House Conference Report emphasizes: The allowance for emergency medical services under Medicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. *The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein*. H.R. Conf. Rep. No. 104-725, at 380 (1996) . . . *reprinted in* 1996 U.S.C.C.A.N. 2649, 2768.'' (Emphasis in original.) *Lewis* v. *Thompson*, supra, 578.

As to the parameters of an ''emergency condition'' under PRWORA, we find the Second Circuit's reasoning in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 226, instructive. The Greenery Rehabilitation Group, Inc., (Greenery Rehabilitation) had operated nursing homes and rehabilitation facilities that provided specialized programs for the care of individuals who have suffered brain injuries. Greenery Rehabilitation entered into an agreement with the New York City Human Resources Administration to provide care for New York City residents who were in need of its services and who were eligible for medicaid. Id., 228. In line with that agreement, Greenery Rehabilitation admitted into its facilities three patients who had suffered sudden and serious head injuries that necessitated immediate treatment, which left the patients with long-term debilitating conditions that required ongoing daily care. Id. It did so under the belief that medicaid would cover the services provided to the patients. Id.

The court in *Greenery Rehabilitation Group, Inc.*, reasoned that because the patients' initial injuries had been treated and the patients were stabilized prior to being moved to the Greenery Rehabilitation facilities, their medical conditions no longer could be classified as ''emergencies.'' Id., 232–33. Instead, the patients suffered from chronic conditions requiring daily and regimented care. Id. As a result, Greenery Rehabilitation could not receive reimbursement for providing ongoing daily care to the patients, despite the fact that those patients' conditions upon admission had been ''emer-

gencies,'' and even though the discontinuance of their ongoing care could have had grave consequences for them. Id. Moreover, the court elaborated that a medical condition does not become an ''emergency'' under the statute simply because the discontinuance of care may place the patient's life at risk. Id., 232.

In arriving at its conclusion that the patients' conditions were ''chronic'' as opposed to ''emergencies,'' the Second Circuit in *Greenery Rehabilitation Group, Inc.*, reasoned that ''[i]n the medical context, an 'emergency' is generally defined as a sudden bodily alteration such as is likely to require immediate medical attention. . . . The emphasis is on *severity*, *temporality* and *urgency*. We believe that 42 U.S.C. § 1396b (v) (3) clearly conveys this commonly understood definition.

''An 'acute' symptom is a symptom characterized by sharpness or severity . . . having a sudden onset, sharp rise, and short course . . . [as] opposed to *chronic*. . . . Moreover, as a verb, 'manifest' means to show plainly. . . . In [42 U.S.C.] § 1396b (v) (3) this verb is used in the present progressive tense to explain that the emergency medical condition must be revealing itself through acute symptoms. Thus . . . the statute plainly requires that the acute indications of injury or illness must coincide in time with the emergency medical condition. Finally, immediate medical care means medical care occurring . . . without loss of time or that is not secondary or remote. . . . In sum, the statutory language unambiguously conveys the meaning that emergency medical conditions are sudden, severe and short-lived physical injuries or illnesses that require immediate treatment to prevent further harm.'' (Citations omitted; internal quotation marks omitted.) *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 232.

We conclude, on the basis of the language of the statute itself, its legislative history and previous judicial construction of it, that the hearing officer did not use a legal standard that was ''too narrow'' in arriving at the conclusion that the plaintiff did not have an ''emergency medical condition'' as defined by § 3000.01 of the manual. The hearing officer's determinations were consonant with the Second Circuit's admonition that in determining whether a medical condition is an ''emergency'' for purposes of PRWORA, which § 3000.01 of the manual mirrors, the legal standard employed by the hearing officer must emphasize the *severity*, *temporality and urgency* of the medical condition.

In making his determination, the hearing officer considered the *severity*, *temporality and urgency* of the plaintiff's medical condition. In terms of the immediacy of the plaintiff's medical treatment, the hearing officer found that the plaintiff ''would not have immediately died on November 24, 1998, if he had not received the treatment administered to him on that date at Stamford

Hospital.'' As well, the hearing officer also considered the nature of the treatment received by the plaintiff in concluding that ''[b]one marrow biopsies and the insertion of a triple lumen Hickman catheter are not emergency events.'' Last, the hearing officer considered the severity of the condition by noting that the plaintiff ''was diagnosed with acute myelogenous leukemia and was admitted to Stamford Hospital, where he underwent certain medical procedures. Although these procedures were necessary to begin [the plaintiff's] chemotherapy, there is no indication that they were of an emergency nature; i.e., that the [plaintiff's] health would have been in serious jeopardy had they not begun on November 24, 1998 . . . .''

As our Supreme Court has stated, ''[w]e are not without sympathy for those with minimal resources for medical care. But our sympathy is an insufficient basis for approving a recovery based on a theory inconsistent with law.'' *(*Internal quotation marks omitted.*)* *Clark* v. *Commissioner*, supra, 209 Conn. 406. Accordingly, the conclusion of law reached by the hearing officer must stand because it resulted from a correct application of the law to the facts found and reasonably and logically could follow from such facts.

II

We next turn to the plaintiff's claim that there was not substantial evidence to support the court's decision that the plaintiff did not have an ''emergency medical condition.'' We disagree.

Before addressing the merits of the plaintiff's claim, we set forth our standard of review. ''Judicial review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . [I]t imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action.'' (Internal quotation marks omitted.) *Williams* v. *Commission on Human Rights & Opportunities*, 67 Conn. App. 316, 323–24, 786 A.2d 1283 (2001).

As discussed in part I, in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 232, the court defined emergency medical conditions as ''sudden, severe and short-lived physical injuries or illnesses that require immediate treatment to prevent further harm.''

In deciding what constitutes a ''medical emergency,'' the emphasis is on *severity*, *temporality* and *urgency*. Id.

In terms of the severity of the plaintiff's condition, the hearing officer found that the plaintiff ''was diagnosed with acute myelogenous leukemia and was admitted to Stamford Hospital, where he underwent certain medical procedures [bone marrow biopsies and the insertion of a triple lumen Hickman catheter]. The hearing officer further found that ''[a]lthough these procedures were necessary to begin [the plaintiff's] chemotherapy, there is no indication that they were of an emergency nature; i.e., that the [plaintiff's] health would have been in serious jeopardy had they not begun on November 24, 1998 . . . .''

As to the urgent need for the treatment received by the plaintiff, we note that ''immediate medical care means medical care occurring . . . without loss of time or that is not secondary or remote.'' (Internal quotation marks omitted.) Id. On the basis of our review of the record, we conclude that there was substantial evidence in the record for the court to determine that the plaintiff's medical condition was not immediate or urgent. More precisely, the court noted that ''[t]he administrative record indicates that the plaintiff appeared in the emergency room two weeks after he suffered his initial symptoms.'' Furthermore, the plaintiff reported weight loss a few months prior to his hospitalization.

The record does not reveal that the plaintiff's health would have been in serious jeopardy if he had been admitted for treatment one week later or at some time thereafter. As the court noted in its memorandum of decision, the ''plaintiff received the beginning treatments in the hospital for a medical condition that is only cured over the long term, and he was essentially admitted to begin a course of chemotherapy. . . . It is true that when he decided to go to the emergency room, the plaintiff's condition had reached a crisis stage . . . but the record also contains notes of health professionals showing that the plaintiff was not in need of urgent care on November 24 [1998]. . . . (The plaintiff denied fever, chills, cough, gum bleeding or excessive bruising . . . The notes indicate his pallor as very pale, but his vital signs are listed as normal) . . . .''

We are not persuaded by the plaintiff's argument that the hearing officer should have adopted the opinion of the plaintiff's treating physician, Erichson, who concluded that the plaintiff suffered from an ''emergency condition'' within the definition in § 3000.01 of the manual. We similarly are not persuaded by the plaintiff's argument that the hearing officer should have accorded more weight to other evidence besides the review team's report, which concluded that the plaintiff did not suffer from an ''emergency medical condition.'' As

we consistently have held, ''[t]he credibility of witnesses and the determination of factual issues are matters within the province of the administrative agency, and, if there is evidence [as is the case here] . . . which reasonably supports the decision of the [hearing officer], we cannot disturb the conclusion reached . . . .'' (Internal quotation marks omitted.) *Elf* v. *Dept. of Public Health*, 66 Conn. App. 410, 422, 784 A.2d 979 (2001).

Since there was substantial evidence in the administrative record to support the agency's findings of basic fact and its conclusion that the plaintiff did not have an ''emergency medical condition'' when he received treatment at the hospital, the court did not improperly dismiss the plaintiff's appeal.

The judgment is affirmed.

In this opinion STOUGHTON, J., concurred.

[1] Pursuant to assignment, the application for reimbursement and subsequent appeal to the trial court were brought in the plaintiff's name although it would appear, as a practical matter, that the treating hospital is the real party in interest.

[2] Undocumented aliens are those who are not permanent residents or ''otherwise permanently residing in the United States under color of law . . . .'' 38 Fed. Reg. 30,259 (November 2, 1973).

[3] We note that part II of the dissent consists of an argument that the provision of emergency medical care under medicaid for undocumented aliens in Connecticut is more generous than that required by the federal medicaid statute and its correlative regulations. The dissent bases that conclusion on the absence of the term ''acute'' from the Connecticut regulation and its presence in the federal counterpart regulation, asserting that this difference in language supports the notion that Connecticut has adopted a less restrictive medicaid provision than exists in federal law. Other than a general discussion concerning an approach to legislative history, the dissent has not cited any portion of the legislative record to support its conclusion that the General Assembly intended for Connecticut citizens to be required to pay, without federal reimbursement, more for emergency medical care to undocumented aliens than that which is mandated by medicaid. Additionally, although the appellant notes the language of Connecticut's pertinent regulation, he has provided no analysis or argument that Connecticut's scheme is anything other than a mirror of its federal counterpart. Because the appellant did not brief the question of whether Connecticut's medicaid scheme relating to undocumented aliens differs from its federal counterpart, we do not believe that claim is appropriate for separate analysis.

[4] There is no dispute between the parties that but for the plaintiff's status as an undocumented alien, he would have been eligible for medicaid assistance.

[5] See footnote 2. ''Non-PRUCOL aliens'' refers to aliens who are not permanently residing under color of law. The Second Circuit discussed the derivation of that doctrine from 45 C.F.R. § 233.50 and its application in *Holley* v. *Lavine*, 553 F.2d 845, 848–51 (2d Cir. 1977), cert. denied sub nom. *Shang* v. *Holley*, 435 U.S. 947, 98 S. Ct. 1532, 55 L. Ed. 2d 545 (1978).

[6] Section 401 (a) of PRWORA makes clear that a nonqualified alien is not eligible for any federal public benefit unless he meets one of the exceptions in 8 U.S.C. § 1611 (b).