

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0422

JESS A. MOORE AND BEVERLY MOORE

VERSUS

THE LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS

Judgment Rendered: NOV 07 2014

\* \* \* \* \*

On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court No. C620586

Honorable Timothy Kelley, Judge Presiding

\* \* \* \* \*

Leo J. Berggreen  
Baton Rouge, LA

Attorney for Plaintiffs-Appellees,  
Jess A. Moore and Beverly Moore

Douglas L. Cade  
Baton Rouge, LA

Attorney for Defendant-Appellant,  
The Louisiana Department of Health  
and Hospitals

\* \* \* \* \*

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WJM  
JME  
TMT

**HIGGINBOTHAM, J.**

Defendant, the Department of Health and Hospitals (DHH), appeals a decision of the district court which reversed the findings of the Division of Administrative Law and reinstated plaintiff, Mr. Jess Moore's, Medicaid benefits. For the following reasons, we reverse.

**FACTS AND PROCEDURAL HISTORY**

Jess Moore was admitted into the Range Road Community Home on July 6, 2012. As a result, DHH determined that Mr. Moore was eligible for Medicaid benefits under the Long Term Care Program. Subsequently, on October 30, 2012, Mr. Moore was discharged from Range Road Community Home and returned home. As Mr. Moore was no longer residing in the group home, DHH determined that he was no longer eligible for Medicaid under the Long Term Care Program and sent him a notice of closure letter on December 14, 2012. DHH further notified Mr. Moore that he did not qualify for Medicaid benefits under any other program because his countable monthly income consisting of Retirement, Survivors, and Disability Insurance (RSDI) benefits exceeded the Federal Benefit Rate.

On January 3, 2013, Mr. Moore filed a request for an administrative review of DHH's decision to terminate his Medicaid benefits. Mr. Moore did not dispute that he was no longer eligible for Medicaid benefits under the Long Term Care Program, but he contended that he was eligible for other Medicaid programs. Specifically, Mr. Moore contends that his RSDI benefits should not have been considered income for the purpose of Medicaid eligibility because they were deposited into a special needs trust. On February 13, 2013, the Division of Administrative Law (DAL) held a telephone hearing after which it affirmed the decision of DHH, finding that Mr. Moore exceeded the income limitations for Medicaid benefits.

Thereafter, Mr. Moore and his mother, Ms. Beverly Moore, on his behalf, filed a petition for judicial review of the decision of the DAL before the Nineteenth Judicial District Court. After review of the administrative record and a brief hearing, the district court reversed the decision of the DAL and reinstated Mr. Moore's Medicaid benefits. DHH appealed the decision of the district court.

The facts of this case are not in dispute. Mr. Moore is disabled. Ms. Moore, on his behalf, created in January 2008 the "Jess Allan Moore Supplemental Needs Trust." The trust was subsequently renamed "The Moore Family Supplemental Needs Trust" and amended in December 2008. The Moore Trust is an irrevocable trust for the sole benefit of Mr. Moore. Ms. Moore is the named grantor and initial trustee of the trust. Further, the Moore Trust provides that, upon Mr. Moore's death, the State of Louisiana will be reimbursed for the benefits paid on behalf of Mr. Moore during his lifetime.

Mr. Moore receives \$1,413.90 in RSDI benefits per month. Ms. Moore testified that Mr. Moore's RSDI benefits were deposited into the Moore trust each month. Mr. Moore cannot independently access funds once they are placed into the Moore Trust.

### **LAW AND ANALYSIS**

When reviewing an administrative final decision in an adjudication proceeding, the district court functions as an appellate court. Once a final judgment is rendered by the district court, an aggrieved party may seek review of same by appeal to the appropriate appellate court. On review of the district court's judgment, no deference is owed by the court of appeal to factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. **Maraist v. Alton Ochsner Medical Foundation**, 2002-2677 (La. App. 1 Cir. 5/26/04), 879 So.2d 815. Thus, an appellate court sitting in review of an

administrative agency reviews the findings and decision of the administrative agency and not the decision of the district court.

The applicable standard of review is set forth in La. R.S. 49:964. Section F of La. R.S. 49:964 provides that a reviewing court is confined to the record established before the agency (except in cases of alleged irregularity in procedure before the agency). **Sanders v. Pilley**, 96-0196 (La. App. 1 Cir. 11/8/96), 684 So.2d 460, 462, writ denied, 97-0352 (La. 3/21/97), 691 So.2d 90. A reviewing court's function is not to weigh *de novo* the available evidence and to substitute its judgment for that of the agency. **Save Ourselves v. Louisiana Environmental Control Commission**, 452 So.2d 1152, 1159 (La. 1984). Nevertheless, the district court and the court of appeal have the authority to reverse or modify the decision of the agency if substantial rights of the party seeking review have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) manifestly erroneous in view of the reliable, probative and substantial evidence in the record. La. R.S. 49:964 G.

The question in this case is whether the RSDI benefits received by Mr. Moore that are deposited into a special needs trust are income for purposes of qualifying for Medicaid benefits. This requires an interpretation of statutory law, and therefore, it is a question of law subject to appellate review for legal correctness, and the prior decision of DHH is not entitled to deference. **Sanders**, 684 So.2d at 463. Appellate review of questions of law is simply review of whether the lower court was legally correct or legally incorrect. **Oliver v. Department of Public Safety & Corrections, Office of Alcoholic Beverage Control**, 94-1223 (La. App. 1 Cir. 6/23/95), 657 So.2d 596, 597.

Congress enacted the Medicaid program in 1965, establishing a cooperative federal-state program in which the federal government reimburses states for a portion of the costs of medical care for needy persons. 42 U.S.C.A. § 1396 et seq.; **Schweiker v. Gray Panthers**, 453 U.S. 34, 36, 101 S.Ct. 2633, 2636, 69 L.Ed.2d 460 (1981). State participation in the program is voluntary, but states choosing to participate must comply with the federal statute's requirements. **Harris v. McRae**, 448 U.S. 297, 300, 100 S.Ct. 2671, 2680, 65 L.Ed.2d 784 (1980). The test for Medicaid eligibility is essentially a needs-based test, with coverage being denied if the applicant exceeds a ceiling in countable assets.

Louisiana's DHH created the Medicaid Eligibility Manual which gives effect to the federal statute and establishes the State standards for Medicaid benefits. In its role as administrator of the Medicaid programs, DHH is charged with ensuring that only financially eligible individuals are approved to participate. 42 U.S.C.A § 1396a(a)(17). The DHH must consider only resources and income available to the applicant and provide a reasonable method of evaluation. 42 U.S.C. § 1396a(a)(17)(B) & (C); **Hargrove on Behalf of Hargrove v. State, La. Dept. of Health and Hospitals**, 96-1072 (La. App. 1 Cir. 3/27/97), 692 So.2d 30, 31-32, writ denied, 97-1072 (La. 6/13/97), 695 So.2d 983.

In this case, in order to be eligible for the Disability Medicaid Program, Mr. Moore must meet all of the eligibility requirements in the SSI program. See Louisiana Medicaid Eligibility Manual H-1710. One of the eligibility requirements is that the individual's countable income must not exceed the Federal Benefit Rate. At the time of Mr. Moore's eligibility determination, the Federal Benefit Rate was \$698.00, and Mr. Moore's RSDI benefits totaled \$1,413.90. Section H-1740.4 of Louisiana's Medicaid Eligibility Manual provides a formula to determine an individual's countable monthly income. In applying that formula and considering Mr. Moore's RSDI benefits as countable income, DHH

determined that Mr. Moore was not financially eligible for the Disability Medicaid Program.

Therefore, we must determine whether the RSDI benefits received by Mr. Moore that are deposited into the Moore Trust are excusable from consideration as countable income for purposes of the Medicaid Disability Program. Mr. Moore contends that his RSDI benefits should not be counted as resources or income for Medicaid eligibility purposes because those benefits are placed within the Moore Trust. DHH contends that despite being deposited into the Moore Trust, Mr. Moore's RSDI benefits are still countable income included in a determination of Medicaid eligibility.

Subsection (d) of 42 U.S.C.A §1396p governs the treatment of trust amounts for the purpose of determining an individual's Medicaid eligibility for benefits and the amount of benefits an eligible individual receives. 42 U.S.C.A §1396p(d)(1).

Subsection (d) provides in pertinent part:

Treatment of trust amounts

- (1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

\* \* \* \* \*

(3)(B) In the case of an irrevocable trust--

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income--

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual...

The exception to that provision is found in 42 U.S.C.A. §1396p(d)(4)(A), governing special needs trust, which provides:

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

Paragraph (d)(4)(A) makes the entirety of subsection (d) inapplicable to special needs trusts. The parties agree that the provisions of 42 U.S.C.A. §1369p concerning the treatment of trusts generally with respect to an individual's resources do not apply to special needs trusts. The parties further agree that the trust at issue qualifies as a special needs trust pursuant to the Federal Medicaid Statute 42 U.S.C.A §1396p(d)(4)(A). However, the parties disagree with how far the exception extends. DHH acknowledges that the Moore Trust should not be considered as a resource for determining Medicaid Eligibility, but contends that the RSDI benefits received by Mr. Moore and deposited into the trust on a monthly basis are considered income for purposes of determining Medicaid Eligibility.

Unfortunately, §1396p(d)(4) only states that the default rule does not apply to special needs trust, but fails to note what rules may apply to special needs trusts. Therefore, we must look to other sources to determine if Mr. Moore's RSDI benefits deposited into the Moore Trust should be considered as countable income for the purpose of Medicaid eligibility.

The Social Security Administration's Program Operations Manual System ("POMS")<sup>1</sup> POMS SI 01120.200G. 1.b provides that "[a]dditions to trust principal made directly to the trust are not income to the grantor, trustee or beneficiary." It

---

<sup>1</sup> The POMS can be found on the The Official Website of the U.S. Social Security Administration at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200> (effective 12/11/2013). POMS Section SI 01120.200 applies to trusts not subject to § 1613(e) of the Social Security Act [42 U.S.C.A § 1382b(e) ]. Special needs trusts such as the one at issue here are not subject to § 1613(e). See 42 U.S.C.A. § 1382b(e)(5). Thus, Section SI 01120.200 governs this analysis.

further provides that exceptions to this rule are listed in SI 01120.200G.1.c and SI 01120.200G.1.d. POMS SI 01120.200G.1.c states that:

Certain payments are non-assignable by law and, therefore, are income to the individual entitled to receive the payment under regular income rules. They may not be paid directly into a trust, but individuals may attempt to structure trusts so that it appears that they are so paid. Non-assignable payments include:

- Temporary Assistance to Needy Families (TANF)/Aid to Families with Dependent Children (AFDC);
- Railroad Retirement Board-administered pensions;
- Veterans' pensions and assistance;
- Federal employee retirement payments (CSRS, FERS) administered by the Office of Personnel Management;
- **Social Security title II and SSI payments;** and
- Private pensions under the Employee Retirement Income Security Act (ERISA) (29 U.S.C.A., Section 1056(d)). [Emphasis added.]

RSDI benefits are paid under title II of the Social Security Act. POMS SI 00830.210A.1. Therefore, Mr. Moore's RSDI benefits "may not be paid directly into the [Moore Trust]." As such, Mr. Moore's RSDI benefits must pass through his hands first.

Paragraph (d)(4)(A) of 42 U.S.C.A §1396 (p) says nothing about the assets in an individual's possession which are about to be placed in a special needs trust. Paragraph (d)(4)(A) states that subsection (d) "shall not apply to... A trust **containing** the assets of an individual..." In other words, after the assets have been added to the trust corpus and are contained in the trust, the asset-inclusion rules of (d)(3) cannot reach them.

The only assets that may be placed in a special needs trust are assets that originally belonged to the beneficiary. 42 U.S.C.A. § 1396p(d)(4)(A). At the time those assets are owned by the disabled individual, prior to being placed in the trust, nothing in paragraph (d)(4)(A) prevents the assets from being included in Medicaid eligibility determinations or in Medicaid benefits determinations. Only income already "contain[ed]" in the trust is sheltered.



Because Mr. Moore's RSDI benefits are not "contain[ed]" in the Moore Trust, but pass through his hands first, we find that DHH correctly included those benefits as income in its determination of Mr. Moore's Medicaid eligibility. Having concluded that Mr. Moore's RSDI benefits should be considered income for the purpose of determining his Medicaid eligibility, despite being deposited into the Moore Trust, we find no error in DHH's decision to deny Mr. Moore's Medicaid benefits and therefore, reverse the judgment of the district court.

### **CONCLUSION**

For the foregoing reasons, the judgment of the district court is reversed. All costs of this proceeding are to be paid by Mr. Jess Moore and Ms. Beverly Moore.

**REVERSED.**