

NOT DESIGNATED FOR PUBLICATION

JEANNETTE B. BLOOM * **NO. 2004-CA-0579**
VERSUS * **COURT OF APPEAL**
DEPARTMENT OF HEALTH * **FOURTH CIRCUIT**
AND HOSPITALS, STATE OF * **STATE OF LOUISIANA**
LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-7692, DIVISION "M-7"
Honorable Sheryl Howard, Judge Pro Tempore

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Chief Judge Joan Bernard Armstrong,
Judge Dennis R. Bagneris Sr., and Judge David S. Gorbaty)

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REVERSED

This is an appeal from a judgment of the trial court reversing the Administrative Law Judge's (ALJ) denial of Medicaid benefits to plaintiff/appellee, Jeannette Bloom (Bloom). For the reasons assigned below, we reverse the trial court.

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

On December 4, 2002, Bloom applied for Medicaid under the Long-Term Care (LTC) program of the Louisiana Department of Health and Hospitals (DHH). To be eligible for LTC, a claimant's total countable resources cannot exceed the allowable limit of \$2,000 per individual. At the time of her application, Bloom had \$1,193.48 in her checking account. Additionally, each of her five children owed her \$16,000.00 represented by five separate promissory notes made on August 19, 2002. Each note is entitled: "Non-Negotiable" in bold italics and each note contains within its provisions the following statement: "This promissory note is non-negotiable."

The Region I Medicaid Office of the DHH, in evaluating Bloom's

request, concluded that the five promissory notes did not meet the non-negotiability requirements contained in Section I-1634.22 of Louisiana's Medicaid Eligibility Manual (Manual). Based on that determination, the promissory notes were considered a countable resource. As such, Bloom's assets, totaling \$81,193.48, exceeded the allowable countable resource of \$2,000.00, thereby rendering her ineligible for long-term care benefits. Bloom's application for benefits was denied.

An appeal was filed on Bloom's behalf; and, on March 17, 2003, an ALJ hearing was held. The central issue before the ALJ was whether the promissory notes were negotiable or non-negotiable as defined by Section I-1634.22 of the Manual. The ALJ agreed with the DHH determination that the promissory notes were negotiable and therefore a countable resource. Accordingly, the ALJ upheld the decision to deny Bloom's request for benefits.

Following the ALJ ruling, Bloom filed a Petition for Judicial Review in the Civil District Court for the Parish of Orleans. After hearing oral arguments, the trial court concluded that the promissory notes were non-negotiable, and reversed the decision of the ALJ.

DHH has filed this timely suspensive appeal, arguing that: 1) the trial court failed to properly apply the standard of review set forth in La. R.S.

49:964(G); and 2) the trial court improperly interpreted and applied Medicaid policy in determining that the promissory notes were non-negotiable.

DISCUSSION:

Assignment of Error No. 1: The trial court's improper application of the standard of review.

Both parties agree that the appropriate standard of review of administrative decisions is La. R.S. 49:964(G). The statute sets forth six enumerated grounds that warrant the reversal or modification of an agency adjudication as follows:

The court may reverse or modify the decision if substantial rights of the appellant 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 statutory authority of the agency;
- (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) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

As La. R.S. 49:964(G) is written, any one of the six bases listed in the statute is sufficient to modify or reverse an agency determination. *Blanchard v. Allstate Ins. Co.* 99-2460 (La. App. 1 Cir. 10/18/00), 774 So.2d 1002.

DDH argues that the trial court failed to specify which of the six enumerated grounds was applied in its decision to overrule the ALJ. Therefore, DHH maintains that there is no sound basis for the trial court's decision.

We find that such a statement was unnecessary, as the obvious basis for the reversal was the trial court's different interpretation of the Medicaid regulations pertaining to non-negotiable instruments and Bloom's eligibility. We cannot conclude that the trial court failed to apply the proper standard of review simply because it did not enumerate which of the provisions of La. R.S. 49:964(G) was relied upon. It is clear from the ruling that the trial court found an error of law on the part of the ALJ. Pursuant to La. R.S. 49:964(G) subsection (4), error of law is a proper basis for reversal. This assignment is without merit.

Assignment of Error No. 2: The trial court's improper application and interpretation of Medicaid policy.

The question presented to the ALJ was whether the five promissory notes, otherwise non-negotiable pursuant to Louisiana commercial laws, met

the criteria of non-negotiability pursuant to the Manual. The following conclusions were made by the ALJ:

In Section I-1634.22 of the Medicaid Eligibility Manual, specifically the section under the heading Negotiable, the agency is to :

Assume that a mortgage or promissory note is negotiable unless “non-negotiable” is:

Stamped across the mortgage or note, or
Included in the terms of the mortgage or note.

The use of the word “Non-Negotiable” in the title of each promissory note, together with the language in the body of each promissory note stating “[t] his promissory note is not negotiable” allows the agency to disregard this first “assumption” that the promissory notes are negotiable. However, another step, equally important in determining negotiability, is required by Section I-1634.22, specifically in the section under the heading Value, wherein it is found:

Assume that the mortgage or promissory note is negotiable unless the applicant/recipient *presents evidence* of a legal bar to transferring ownership. (Emphasis added)

Appellant’s attorney contends that the use of the words “non-negotiable” or “not negotiable” is evidence of the legal bar to transferring ownership, required by Section I-1634.22 of the Medicaid Eligibility Manual. However, Section I-1634.22 requires more. Under the heading Non-Negotiable, the following pertinent language is found:

A non-negotiable instrument is not a resource because there is a legal bar to the transfer of ownership of the item. A determination that the note is non-negotiable *must include a description of the legal bar to the sale or transfer of the instrument.* (Emphasis added)

Hence, it is not unreasonable to expect a description of the legal bar to the sale or transfer of a promissory note to be more than just the use of the words “non-negotiable” or “not negotiable”. Accordingly, the agency’s determination that the five promissory notes are countable resources was correct, as was its

decision to deny appellant's application for Medicaid benefits and Long Term Care Vendor Payments due to resources over the program limits.

Bloom asserts in this appeal that Section I-1634.22 of the Manual should not control in the determination of whether an instrument is negotiable or non-negotiable, as the Manual is only an internal operating document used to assist its own employees in making eligibility determination. However, our jurisprudence is replete with cases in which the courts have accepted the Manual and the standards set forth therein. *Estate of Messina v. State, Dept. of Health and Hospitals*, 38,220 (La. App. 2 Cir. 3/3/04), 867 So. 2d 879; *Brandenburg v. Office of Secretary, Dept. of Health and Hospitals*, 98-163 (La. App. 3 Cir. 6/3/98), 716 So. 2d 100; *Hargrove on Behalf of Hargrove v. State, Dept. of Health & Hospitals*, 96-1072 (La. App. 1 Cir. 3/27/97), 692 So. 2d 30; *Obafunwa Family v. Appeals Bureau*, 93-0820 (La. App. 1 Cir. 4/8/94), 635 So. 2d 714.

The Medicaid Program, 42 U.S.C. § 1396, et seq., authorizes federal financial participation in state medical assistance plans that provide funds to persons whose income and resources are insufficient to pay for the cost of necessary medical treatment. *Case of Hamner*, 427 So.2d 1188, 1190 (La.1983). States that participate in the program are required to institute reasonable standards for eligibility determination that are consistent with the

objectives of the assistance program [42 U.S.C. § 1396a(a)(17)(A)], and these standards must consider only resources and income available to the applicant and provide a reasonable method of evaluation of such resources and income [42 U.S.C. § 1396a(a)(17)(B) & (C)]; *Hargrove*, 692 So.2d at 31-32. Accordingly, Bloom's argument that the Manual should not control is without merit.

Bloom further argues that the ALJ's interpretation of Section I-1634.22 was in error. Specifically, the ALJ held that Section I-1634.22 required a description of the legal bar to the sale and or transfer of a promissory note, and further, that the description must be more than just the use of the words "non-negotiable." It is clear from the record that the notes in question do not contain a description of the legal bar. Further, the transcript of the hearing before the ALJ indicates that Bloom failed to present any evidence of the legal bar, but, instead, argued that the language "non-negotiable" was sufficient to meet the requirements of Section I-1634.22. Accordingly, based on the evidence in the record, we conclude that the ALJ properly categorized the promissory notes as negotiable for the limited purpose of determining Medicaid eligibility.

In sum, we have thoroughly reviewed the entire administrative record and find no legal error on the part of the ALJ. We further conclude that the

trial court erred in substituting its judgment for the judgment of the ALJ.

For the foregoing reasons, the judgment of the trial court is reversed.

REVERSE

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