# STATE OF MICHIGAN

# COURT OF APPEALS

COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEAST MICHIGAN, PIHP, LENAWEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY, LIVINGSTON COUNTY COMMUNITY MENTAL HEALTH AUTHORITY, MONROE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY, and WASHTENAW COUNTY COMMUNITY MENTAL HEALTH AUTHORITY,

Plaintiffs-Appellants,

v

DEPARTMENT OF HEALTH AND HUMAN SERVICES and DEPARTMENT OF HEALTH AND HUMAN SERVICES DIRECTOR,

Defendants-Appellees.

UNPUBLISHED
November 18, 2021

No. 355072
Court of Claims
LC No. 20-000122-MB

Before: MARKEY, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Plaintiffs Community Mental Health Partnership of Southeast Michigan, PIHP (CMH), and its constituent county mental health authorities, Lenawee County Community Mental Health Authority, Livingston County Community Mental Health Authority, Monroe County Community Mental Health Authority, and Washtenaw County Community Mental Health Authority, appeal by right the opinion and order of the Court of Claims ruling that plaintiffs failed to file a verified claim or notice of claim pursuant to MCL 600.6431(1) and granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). We affirm.

## I. BACKGROUND

CMH, a prepaid health plan, is one of 10 community-mental-health regional entities located in Michigan as created pursuant to MCL 330.1204b, and CMH was formed as a

combination of four community mental health authorities—the remaining plaintiffs—that were established under MCL 330.1204 and MCL 330.1205.[1] CMH delivers mental healthcare services to approximately 8,500 Medicaid beneficiaries in the four-county region. See MCL 400.109f. The defendant Department of Health and Human Services (DHHS) is required to "support the use of Medicaid funds for specialty services . . . for eligible Medicaid beneficiaries with a serious mental illness, developmental disability, serious emotional disturbance, or substance use disorder." MCL 400.109f(1). DHHS administers the Medicaid funds and provides them to CMH under an annual Medicaid Managed Care Contract. The funding comes in the form of capitated payments in amounts determined by DHHS as guided by law. The capitation rate reflects a set or fixed fee per Medicaid beneficiary regardless of actual treatment and is calculated on the basis of multiple variables and data.

In early August 2018, CMH requested that DHHS review the integrity of the data used to create the capitation rates for fiscal years 2017 through 2019. In late August 2018, Milliman, Inc., a firm retained by DHHS to provide actuarial and consulting services related to the development of certified capitation rates, responded to the request, examined and analyzed the data, and concluded that there should be no changes to the capitation rates. DHHS denied CMH's request to adjust the funding or capitation rates for fiscal years 2017 through 2019 and, on December 21, 2018, plaintiffs filed an appeal with the Michigan Administrative Hearing System. Plaintiffs asserted that they had incurred deficits from 2016 through 2018 and would incur a deficit in 2019 due to chronic underfunding by DHHS, that the capitated payments constituted a Medicaid entitlement, that the underfunding had deprived beneficiaries of Medicaid services to which they were entitled by state and federal law, and that the amount in dispute exceeded $35 million. Plaintiffs requested a formal hearing before an administrative law judge (ALJ).

In April 2019, the ALJ issued a proposed decision recommending dismissal of plaintiffs' appeal. The ALJ determined that plaintiffs had no right to challenge the capitation rates through the administrative appeals process. On June 6, 2019, DHHS issued a final order adopting the ALJ's proposed decision. Plaintiffs then filed a petition for appeal or review of that final order in the Washtenaw Circuit Court. At a hearing on September 26, 2019, the circuit court essentially concluded that plaintiffs were seeking relief that, jurisdictionally, could only be awarded in an original action in the Court of Claims and not in an appeal to the circuit court. On October 16, 2019, the circuit court entered a stipulated order affirming the final order of DHHS and dismissing plaintiffs' appeal.

Plaintiffs filed a complaint in the Court of Claims on June 26, 2020, against DHHS and the Director of DHHS. Plaintiffs asserted that capitated payments from DHHS to CMH are welfare entitlements belonging to Medicaid beneficiaries and that the failure of DHHS to cover the full cost of mental healthcare services and to reimburse CMH for the services provided to the beneficiaries constituted a reduction of welfare benefits absent a hearing, contrary to *Goldberg v Kelly*, 397 US 254; 90 S Ct 1011; 25 L Ed 2d 287 (1970). Plaintiffs alleged a violation of the managed care contract, various federal regulations, multiple state statutes, and the decision of the

[1] A community mental health authority is "a public governmental entity separate from the county or counties that establish it." MCL 330.1204(1).

United States Supreme Court in *Goldberg*. In Count I, plaintiffs sought monetary damages in the amount of $41.9 million, "plus interest, costs, and attorney fees," for defendants' failure to cover the full cost of mental healthcare services and failure to reimburse CMH for services it provided at its own expense. In Count II of the complaint, plaintiffs requested a declaratory judgment mandating DHHS to provide sufficient funds for the required mental healthcare services and to reimburse plaintiffs for the services that had been provided at plaintiffs' own expense. In Count III, plaintiffs requested a writ of mandamus compelling the Director of DHHS to reimburse plaintiffs in the amount of $41.9 million.

In lieu of answering the complaint, defendants moved for summary disposition pursuant to MCR 2.116(C)(5), (7), and (8). Defendants first asserted that plaintiffs had failed to file a verified claim or notice of claim within one year of the accrual of their action, as required by § 6431 of the Court of Claims Act (COCA), MCL 600.6401 *et seq*. Defendants argued that plaintiffs' claims accrued no later than December 21, 2018, when plaintiffs filed the appeal with the Michigan Administrative Hearing System. And because the instant complaint was filed on June 26, 2020, more than one year later, plaintiffs' claims were barred by MCL 600.6431(1). Defendants' additional arguments in favor of summary disposition are not relevant to this appeal and were not reached by the Court of Claims.

On October 2, 2020, the Court of Claims issued an opinion and order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). Citing *Rusha v Dep't of Corrections*, 307 Mich App 300; 859 NW2d 735 (2014), and *McCahan v Brennan*, 492 Mich 730; 822 NW2d 747 (2012), the Court of Claims explained that a plaintiff must strictly comply with the notice requirements of MCL 600.6431, that MCL 600.6431 applies to all claims filed in the Court of Claims, including constitutional claims, and that dismissal is mandatory when a plaintiff fails to comply with MCL 600.6431. The Court of Claims found that plaintiffs' action had accrued no later than June 6, 2019, when DHHS issued its final order in the administrative proceedings and that plaintiffs had not filed a notice of intent under MCL 600.6431(1) before filing their complaint on June 26, 2020. Thus, the complaint was untimely and had to be dismissed. Because the Court of Claims resolved the motion under MCR 2.116(C)(7), it did not address the arguments raised by defendants under MCR 2.116(C)(5) and (8).

## II. ANALYSIS

### A. STANDARD OF REVIEW

MCR 2.116(C)(7) provides for summary disposition of a claim when it is time-barred. This Court reviews de novo a trial court's decision on a motion for summary disposition, a determination that an action is time-barred, and questions of statutory construction. *Caron v Cranbrook Ed Community*, 298 Mich App 629, 635; 828 NW2d 99 (2012).

In *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008), this Court recited the principles pertaining to a motion for summary disposition brought pursuant to MCR 2.116(C)(7):

> Under MCR 2.116(C)(7) . . ., this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary

> evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [Citations omitted.]

## B. THE COCA

Under MCL 600.6419(1), the COCA provides that the Court of Claims has exclusive jurisdiction over the following matters:

> (a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

MCL 600.6431(1), which is the statutory provision at the heart of this appeal, provides as follows:

> Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies.

"The purpose of MCL 600.6431 is to establish those conditions precedent to pursuing a claim against the state." *Fairley v Dep't of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015). "Courts may not engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with statutory notice requirements." *McCahan*, 492 Mich at 746-747 (addressing and construing MCL 600.6431).

## C. DISCUSSION

Plaintiffs first argue on appeal that their complaint was timely because DHHS's refusal to adjust the reimbursement to plaintiffs to cover the full cost of the mandated mental healthcare services constituted a taking of welfare entitlements without prior hearing in violation of due process under *Goldberg*, with the due process violation being ongoing and thus challengeable at any time up until it is remedied. Plaintiffs contend that so long as they operate an efficient program, DHHS is required by federal law to provide Medicaid funds to cover the full cost of services.

In *Goldberg*, 397 US at 264, 267, the United States Supreme Court held that procedural due process requires that a pretermination evidentiary hearing be held when public assistance

payments to welfare recipients are to be discontinued, so as to determine the validity of the government's grounds for discontinuance of those payments in order to protect against an erroneous deprivation of benefits.

Most of plaintiffs' argument is devoted to an effort to sway us that there is merit to their substantive positions that DHHS is legally obligated to cover the entire cost of mental healthcare services provided to Medicaid beneficiaries in the four-county region and that a pretermination hearing was required because DHHS did not make the full payment for those services or fully reimburse CMH. Given that MCL 600.6431(1) solely concerns procedural matters in suits against the state by instituting a presuit notice requirement or, in effect, a statute of limitations, we shall not reach or resolve issues regarding the substance or merits of plaintiffs' lawsuit. It is simply not relevant to the question whether the Court of Claims properly applied MCL 600.6431(1). The Court of Claims relied exclusively on MCL 600.6431(1) in summarily dismissing the case.

*Goldberg* did not address procedural litigation issues such as the statute of limitations and presuit notice requirements. While *Goldberg* entitles individuals to pretermination evidentiary hearings when public benefits or services are on the cusp of being discontinued, thereby providing them with a cause of action in a court of law when deprived of such hearings, the *Goldberg* Court did not speak to procedural matters concerning litigation of the cause of action. And simply because a party has a recognized cause of action, whether constitutionally, statutorily, or common-law based, does not mean that the party is not subject to the procedural rules governing litigation of the claim, like MCL 600.6431. See *Rusha*, 307 Mich App at 310 ("The statutory notice requirement [of MCL 600.6431] does not abrogate a substantive right, but rather provides the framework within which a claimant may assert that right.").

We find plaintiffs' argument within their first issue on appeal difficult to discern. In our view, the closest that plaintiffs come is as follows:

> As the [*Goldberg*] Court noted, ". . . the fact that there is a later constitutionally fair proceeding does not alter the result."[2] In our case, the possible availability of a later administrative hearing does not alter the result. The possible availability of a remedy in the Court of Claims does not alter the result. The action remains void and the violation is ongoing. The reason is the consumers/patients have a right to voice their challenges before the action is taken—not after. Thus, there is no deadline within which they must ask for an administrative hearing after the fact. *There is no accrual of a claim or time frame within which they must file a claim in the Court of Claims after the fact*. Neither of these "possibilities" is enough to remedy the constitutional violation. The action remains void until the welfare entitlement is restored—and only then can the argument begin. The Department's action can be challenged under *Goldberg v Kelly*, *supra*, at any time up until the Medicaid capitation rates are adjusted to a high enough level to cover the services

[2] Plaintiffs are referring to the underfunding of services absent a hearing when speaking of "the result."

> they are entitled to receive under the contract and the Social Security Act. [Emphasis added.]

Accordingly, plaintiffs are essentially assailing the ruling by the Court of Claims that plaintiffs' action accrued no later than June 6, 2019, when DHHS issued its final order in the administrative proceedings.

For purposes of MCL 600.6431(1), a claim accrues at the time the wrong upon which a claim is based was done. *Mays v Governor*, 506 Mich 157, 182; 954 NW2d 139 (2020), citing MCL 600.5827. A "wrong" occurs on the date that the defendant's conduct harmed the plaintiff. *Mays*, 506 Mich at 182. "A claim does not accrue until each element of the cause of action, including some form of damages, exists." *Id.* (citation omitted).[3] Determining the point in time when a claim accrues requires identifying when a plaintiff was harmed. *Id.* In *Oak Constr Co v Michigan*, 33 Mich App 561, 566; 190 NW2d 296 (1971), this Court observed that "[f]airness and logic mandate that we hold that a claim accrues under MCL 600.6431(1) when the defendant has finally rejected a contested claim in the last step of its claim procedure[.]"

Count I of plaintiffs' complaint sought money damages in the amount of $41.9 million. Earlier in the complaint, plaintiffs alleged that "the CMH region was left with a Medicaid budget deficit of $41.9M for fiscal years 2017, 2018, and 2019, which it was forced to cover using local funds meant for local purposes rather than put some 10,000 vulnerable individuals at risk." With respect to plaintiffs' attempt to recover the $41.9 million for fiscal years 2017 through 2019, we agree with the Court of Claims that accrual of that particular claim occurred no later than June 6, 2019, when DHHS issued its final order rejecting plaintiffs' arguments. This is the date when, at the latest, the harm or wrong occurred and a cause of action arose, *Mays*, 506 Mich at 182, and it represented the last step in the administrative procedure, *Oak Constr Co*, 33 Mich App at 566. Being generous to plaintiffs by assuming that *Goldberg* required a pretermination hearing before DHHS paid less to CMH than the full amount necessary to provide the mandatory mental healthcare services,[4] we conclude that plaintiffs have not presented us with a developed viable legal argument that overcomes our analysis on accrual under *Mays* and *Oak Constr Co*. If, for example, DHHS underpaid CMH for fiscal year 2018 without the type of hearing alluded to in *Goldberg* being held before the deficient payment was made, the wrong or harm occurred, at the earliest, when the inadequate payment was delivered to CMH. And it certainly had occurred by the time that DHHS issued its final order in the administrative proceedings rejecting plaintiffs' stance. There is no legal support for plaintiffs' vague conclusory argument that there is an ongoing constitutional due process violation such that there has been "no accrual of a claim" under MCL

[3] A claim accrues under MCL 600.6431(1) "only when suit may be maintained thereon." *Cooke Contracting Co v Michigan*, 55 Mich App 336, 338; 222 NW2d 231 (1974).

[4] There is no dispute that the Medicaid beneficiaries themselves received all of the mental healthcare services to which they were entitled under the law during the relevant period.

600.6431(1).[5] Taking plaintiffs' argument to its logical end, one could conclude they could soundly sue DHHS in 2040 for the alleged underpayment covering fiscal year 2018. That is plainly not the law. Our ruling thus far pertains to Count I and the request for $41.9 million in damages in relation to fiscal years 2017, 2018, and 2019.

With respect to Count II of plaintiffs' complaint, they requested a declaratory judgment dictating that DHHS "provide enough Medicaid funding to cover the costs of the services it has required and to reimburse the CMH region for the costs of the services it has provided at its own local expense." As part of Count II, plaintiffs alleged that "[t]he CMH region is at a financial and program impasse and a decision from this Court is necessary to determine the rights of the respective parties so that they know what their future practical and legal options and rights are."

"Once a court determines which statute of limitations applies, . . . the time at which the claim accrues for purposes of applying that statute depends on the type of relief sought." *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 128 n 10; 537 NW2d 596 (1995) (addressing declaratory relief). "The purpose of a declaratory judgment is to definitively declare the parties' rights and duties, to guide their future conduct and relations, and to preserve their legal rights." *Barrow v Detroit Election Comm*, 305 Mich App 649, 662; 854 NW2d 489 (2014). "[B]y granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred." *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (citation omitted).

In this case, the request for declaratory relief related to recovery of the $41.9 million associated with fiscal years 2017 through 2019. We conclude that the claim fails under MCL 600.6431(1) for the reasons discussed above relative to Count I: The claim accrued no later than June 6, 2019. Plaintiffs effectively sought retroactive declaratory relief that cannot be distinguished from the claim for money damages in Count I. Although the complaint might perhaps be construed as encompassing a request for declaratory relief in regard to future actions and guidance, i.e., fiscal years 2020 forward, plaintiffs' counsel at oral argument indicated that the complaint only pertained to fiscal years 2017 through 2019 and the recovery of the $41.9 million. Accordingly, we will not discuss accrual in the context of declaratory relief post-2019; therefore, we hold that the Court of Claims did not err by dismissing Count II under MCL 600.6431(1).

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[5] In *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), our Supreme Court explained:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [Quotation marks and citation omitted.]

With respect to Count III, plaintiffs sought mandamus in regard to the Director of DHHS. Plaintiffs alleged that the Director had "a clear legal duty to provide enough Medicaid funds to cover the costs of its Medicaid Managed Care program." Plaintiffs also alleged that the Director had "a clear legal duty to reimburse the CMH region for the costs of the services he himself has mandated as Director of the Department." As part of Count III, plaintiffs requested reimbursement in the amount of $41.9 million.

Mandamus is appropriate when a defendant has a clear legal duty to perform a requested act and the plaintiff has a clear legal right to the performance of the act, so long as the act is ministerial in nature and there is no other remedy which exists that might achieve the same result. *Warren City Council v Buffa*, 333 Mich App 422, 429; 960 NW2d 166 (2020). Comparable to our analysis of Counts I and II, we reject plaintiffs' claim seeking a writ of mandamus to somehow "retroactively" compel a performance and recover the $41.9 million associated with fiscal years 2017 through 2019. The claim fails under MCL 600.6431(1) for the reasons discussed above. The gravamen of the claim was simply that the Director violated the law and owed money damages to plaintiffs, which claim accrued no later than June 6, 2019. A true mandamus action pertains to compelling a future performance, and plaintiffs' lawsuit concerned past action relative to fiscal years 2017 through 2019. Accordingly, we hold that the Court of Claims did not err by dismissing Count III under MCL 600.6431(1).

Plaintiffs next argue on appeal that they receive capitated payments from DHHS for and on behalf of Medicaid beneficiaries, that the real parties in interest are those beneficiaries, that the beneficiaries have various mental infirmities, and that the time deadlines in MCL 600.6431(1) were tolled in light of those mental infirmities. Plaintiffs fail to provide any pertinent legal authorities in support of this meritless argument. Plaintiffs cite *Smith v Dep't of Public Health*, 428 Mich 540; 410 NW2d 749 (1987), in support of their position. But the majority memorandum opinion in *Smith* makes no mention whatsoever of any of the principles and points plaintiffs asserted. *Id.* at 544-545. There is no discussion of periods of limitation, tolling, mental infirmity, or MCL 600.6431. *Id.* Instead, a concurring opinion joined by just one other Justice made a couple of brief references to the tolling of a statute of limitations based on a continuing mental infirmity. *Id.* at 551 and 551 n 3. And even then, the references were simply to an underlying ruling by the Court of Claims and not a legal determination by the two Justices. *Id.* There is absolutely no precedential or instructive value to plaintiffs' citation of *Smith.*

We do note that MCL 600.5851 provides, in relevant part:

> (1) Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. . . .
>
> (2) The term insane as employed in this chapter means a condition of mental derangement such as to prevent the sufferer from comprehending rights he or she is otherwise bound to know and is not dependent on whether or not the person has been judicially declared to be insane.

We initially note that this provision does not address a presuit notice requirement. Regardless, accepting for the sake of argument that plaintiffs, whose agents are clearly not mentally infirm or insane and are more than intellectually capable of complying with presuit notice requirements and statute of limitations in pursuing *plaintiffs*' alleged rights to reimbursement, can stand in the shoes of Medicaid beneficiaries and potentially invoke tolling under MCL 600.5851, we find they have not shown that the 8,500 Medicaid beneficiaries, or even one of them, was insane as defined in MCL 600.5851(2).[6] Moreover, plaintiffs have not provided any relevant authorities to even support our underlying assumptions. Their argument is unavailing.

We affirm. Having fully prevailed, DHHS may tax costs under MCR 7.219.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

[6] Plaintiffs have not even attempted to explain whether one, some, or all of the beneficiaries had to be mentally infirm or insane.