

[Cite as *Woods v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-1800.]

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

JOSEPH C. WOODS :
 :
 Plaintiff : CASE NO. 2003-08410
 : Judge J. Craig Wright
 v. : Magistrate Steven A. Larson
 :
 OHIO DEPARTMENT OF : DECISION
 REHABILITATION AND CORRECTION :
 :
 Defendant :

: : : : : : : : : : : : : : : : : :

{¶ 1} On November 22, 2005, defendant filed both a motion for judgment on the pleadings pursuant to Civ.R. 12(B)(6) and (1), and supplemental authority in support of its motion on December 12, 2005. On February 16, 2006, plaintiff filed a memorandum contra to defendant’s motion.

{¶ 2} In construing a motion to dismiss pursuant to Civ.R. 12(B)(6) for failure to state a claim, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O’Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242. The standard to apply for a dismissal pursuant to Civ.R. 12(B)(1) is whether plaintiff has alleged any cause of action cognizable by the forum. See *Avco Financial Services Loan, Inc. v. Hale* (1987), 36 Ohio App.3d 65.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff claims that defendant improperly charged him a \$3 co-pay for health care services.

{¶ 4} R.C. 5120.56 states in pertinent part:

{¶ 5} "(B) The department of rehabilitation and correction may recover from an offender who is in its custody or under its supervision any cost debt described in division (D) of this section.

{¶ 6} "****

{¶ 7} "D) Costs of incarceration or supervision that may be assessed against and collected from an offender under division (B) of this section as a debt to the state shall include, but are not limited to, all of the following costs that accrue while the offender is in the custody or under the supervision of the department of rehabilitation and correction:

{¶ 8} "(1) *Any user fee or copayment for services at a detention facility or housing facility, including, but not limited to, a fee or copayment for sick call visits; ***.*" (Emphasis added.)

{¶ 9} Additionally, Ohio Adm.Code 5120-5-13, promulgated under this statute, states that "Inmates who request health care and inmates who receive emergency health care evaluation or treatment, *shall be charged a three dollar co-payment fee, unless the care is specifically exempted or waived by the correctional healthcare services co-payment policy.*" (Emphasis added.)

{¶ 10} Plaintiff argues that the above-cited statutes do not apply to him by virtue of former R.C. 5120.021, effective July 1, 1996, which stated:

{¶ 11} "(A) Chapter 5120. of the Revised Code, as it existed prior to July 1, 1996, applies to a person upon whom a court

imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996.

{¶ 12} "(B) Chapter 5120. of the Revised Code, as it exists on and after the effective date of this section, applies to a person upon whom a court imposed a stated prison term for an offense committed on or after the effective date of this section."

{¶ 13} Medical co-pays were instituted by defendant pursuant to R.C. 5120.56, which first became effective March 17, 1998. Plaintiff claims that because he was sentenced prior to July 1, 1996, the amendments to Chapter 5120 of the Revised Code are inapplicable to him.

{¶ 14} However, the General Assembly amended R.C. 5120.021 effective May 18, 2005. As it now exists, R.C. 5120.021 reads:

{¶ 15} "(A) The provisions of Chapter 5120. of the Revised Code, as they existed prior to July 1, 1996, and that address the duration or potential duration of incarceration or parole or other forms of supervised release, apply to all persons upon whom a court imposed a term of imprisonment prior to July 1, 1996, and all persons upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996.

{¶ 16} "(B) The provisions of Chapter 5120. of the Revised Code, as they exist on or after July 1, 1996, and that address the duration or potential duration of incarceration or supervised release, apply to all persons upon whom a court imposed a stated prison term for an offense committed on or after July 1, 1996.

{¶ 17} "(C) *Nothing in this section limits or affects the applicability of any provision in Chapter 5120. of the Revised*

Code, as amended or enacted on or after July 1, 1996, that pertains to an issue other than the duration or potential duration of incarceration or supervised release, to persons in custody or under the supervision of the department of rehabilitation and correction." (Emphasis added.)

{¶ 18} From the new language of the statute, it is clear that the General Assembly’s intention in passing R.C. 5120.021 was only to effect sentencing duration, not medical co-pays. Additionally, section (C) makes clear that the statute is retroactive, meaning that it is applicable to all prior enactments. Based on the plain language of the statute, R.C. 5120.56 clearly applies to plaintiff. As such, plaintiff can prove no set of facts that entitle him to recovery in this case.

{¶ 19} Based on the foregoing, plaintiff has failed to state a claim upon which relief can be granted. Accordingly, defendant’s motion for judgment on the pleadings shall be granted and plaintiff’s case shall be dismissed.

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

JOSEPH C. WOODS	:	
Plaintiff	:	CASE NO. 2003-08410
v.	:	Judge J. Craig Wright
	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>JUDGMENT ENTRY</u>
Defendant	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	

The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, defendant’s

motion for judgment on the pleadings is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

Entry cc:

Joseph C. Woods, #172-695
Chillicothe Correctional Institution
15802 St. Rt. 104 N.
P.O. Box 5500
Chillicothe, Ohio 45601

Plaintiff, Pro se

Douglas R. Folkert
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

MR/cmd
Filed March 7, 2006
To S.C. reporter April 6, 2006