STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 21, 2016)

CHERYL STANLEY	:	
	:	
v.	:	**C.A. No. PC-2015-1857**
	:	
R.I. EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES	:	
	:	
	:	**consolidated with**
	:	
JAMES SENAY	:	
	:	
v.	:	**C.A. No. PC-2015-3094**
	:	
R.I. EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES	:	

DECISION

CARNES, J. This matter is before the Court for decision on the consolidated appeal of two decisions of the Rhode Island Executive Office of Health and Human Services (OHHS), which found the appellants ineligible to receive benefits under the state's Medicare Premium Payment program (MPP) as a Qualified Medicare Beneficiary (QMB).[1] Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts

Appellant Cheryl Stanley is a Medicare beneficiary with a monthly income of $1480. She lives with Elmer Stanley, her husband of thirty-four years. In November of 2014, she applied for payment assistance, and the OHHS denied her application in December 2014. The agency

[1] The two cases were consolidated by Order of this Court on November 6, 2015.

informed her that her countable income of $1460 (Social Security Income of $1480 minus the $20 standard deduction) exceeded the "qualified standard of $1312.88" for one person, and thus her application was being denied. She maintains that her application should have been considered according to the income guidelines for a two-person household. The parties are in agreement that if the guidelines for a two-person household had been used in considering her application, said application would have been approved.

In the other consolidated case, appellant James Senay is a Medicare beneficiary who had been receiving MPP benefits since 2012, during which time OHHS applied the guidelines for a two-person household. OHHS terminated such benefits in February 2015, informing him that his countable income of $1695 (Social Security Income of $1715 minus the $20 standard deduction) exceeded the "qualified standard" for a one-person household, which was $1312.88. Appellant Senay maintains that his application should have been considered according to the income guidelines for a two-person household. The parties are similarly in agreement that if the guidelines for a two-person household had been used in considering his application, said application would have been approved. The Court notes that Mrs. Senay passed away March 31, 2015, and therefore the "household size" of Mr. Senay is only at issue for March 2015 on this administrative appeal. Senay Compl. ¶ 9, Def. Ex. 15 at 19. Further relevant facts as set forth in the record are discussed infra.

II

Standard of Review

The review of a decision by a state agency by this Court is governed by the Administrative Procedures Act. Section 42–35–15(g) of the act provides that:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The

> court may affirm the decision of the agency or remand the case for further proceedings, or it 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 or law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This section precludes a reviewing court from substituting its judgment for that of the agency in regard to the credibility of witnesses or the weight of the evidence concerning questions of fact. Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). The court's review is limited to determining whether substantial evidence exists to support the department's decision. Newport Shipyard Inc. v. R.I. Comm'n for Human Rights, 484 A.2d 893, 897 (R.I. 1984). If "'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions."' Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

It is well settled that "'deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied."' Id. at 97 (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)); see also Unistrut Corp. v. State Dep't of Labor and Training, 922 A.2d 93, 99 (R.I. 2007) (quoting Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d

164, 169 (R.I. 2003)) ("'[W]hen the administration of a statute has been entrusted to a governmental agency, deference is due to that agency's interpretation of an ambiguous statute unless such interpretation is clearly erroneous or unauthorized.'").

"If competent evidence exists in the record considered as a whole, the court is required to uphold the agency's conclusions. However, it may reverse, modify, or remand the agency's decision if the decision is violative of constitutional or statutory provisions, is in excess of the statutory authority of the agency, is made upon unlawful procedure, is affected by other errors of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary or capricious and is therefore characterized by an abuse of discretion." Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992) (citing § 42-35-15(g)).

III

Analysis

States are not required to participate in the federal-state program known as Medicaid, but those states that participate are required to comply with federal Medicaid law. Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 501, 110 S.Ct. 2510, 2513 (1990). Federal law requires states to cover certain categories of people. 42 U.S.C. § 1396a(a)(10)(A). Included among those to whom the state is required to provide coverage are "qualified medicare beneficiar[ies]" described in 42 U.S.C. § 1396d(p)(1). 42 U.S.C. § 1396a(a)(10)(E)(i). QMBs are eligible for the state's MPP, which pays Medicare premiums and out-of-pocket health care expenses.

a. The Stanley Matter

Medicare Part A covers hospital insurance coverage and Medicare Part B covers physician services, durable medical equipment, and outpatient services. Appellant Ex. 9 at 1. According to

the OHHS, Mr. Stanley, husband of Plaintiff Stanley, did not have any income and was therefore not considered to be part of the "filing unit" when Mrs. Stanley's application for the MPP benefit as a "qualified beneficiary" was considered. On December 24, 2014, Mrs. Stanley informed the OHHS that she would appeal the denial of the MPP benefit. Appellant Aff. at 1. At a hearing held on February 23, 2015, OHHS Supervisor Kristen Grosso testified that, according to the R.I. Medicaid Code of Administrative Rules (MCAR), Section 0372 (Special Treatment Coverage Groups), for eligibility for Medicare Part B premium payment to exist, "an individual or member of a couple must meet the non-financial requirements of citizenship, alienage, residency, enumeration, and third party resource requirements, must be enrolled in Part A, and meet income and resource limits." Def. Ex. 22 at 2. She further testified:

> "[I]n order to be eligible, you have to be considered part of the filing unit so you either have to have income, you have to have resources, more importantly you have to be . . . receiving Medicare Part B. Unfortunately, Elmer doesn't meet any of those criteria so instead of looking at the case as a family unit or couple's unit, we can only look at the case as a single person filing. So that dramatically changes the income limit and resource limit that we review. We can't look at it as a couple." Def. Ex 23 at 5.

b. The Senay Matter

Similarly, the OHHS stated that since Mrs. Senay, wife of Appellant Senay, did not have any income, she was, for purposes of Appellant Senay's application, not part of the "filing unit" when Mr. Senay's application for MPP benefits was considered. Mr. Senay had been receiving MPP benefits since 2012 because the OHHS had calculated his eligibility based on a household size of two people. Def. Ex. 15 at 16-18. On January 26, 2015, the OHHS sent Mr. Senay a denial notice that stated that his MPP-QI-1 (Qualified Individual) benefits would be discontinued because his monthly income of $1695 exceeded the maximum for a household of one, which was $1312.88. Def. Ex. 2 at 1. On February 3, 2015, Mr. Senay sent to the OHHS a notice of appeal

stating that he and his wife are a two-person household and therefore should be evaluated based on the income guidelines for a household of that size. Def. Ex. 1. A hearing was scheduled for May 14, 2015. Def. Ex. 5. Cheryl Tremblay, a supervisor at the Woonsocket office of the OHHS, testified on behalf of the OHHS. She testified that Mr. Senay's application for continued MPP benefits had been denied because the application was evaluated by comparing his income to the maximum for a one-person household. Def. Ex 15 at 2-3. She conceded that if Mr. Senay's spouse had been the source of the majority of their household income, the application would have been evaluated by the guidelines for a couple and therefore would have been approved. Def. Ex. 15 at 11-13.

IV

Arguments

OHHS argues that the methodology used to calculate Appellants' income and determine eligibility for the MPP program is similar to that upheld by the court in Skaliotis v. R.I. Dep't of Human Servs, 1996 WL 936920.[2] In Skaliotis, petitioner was a Medicare beneficiary who was found to be ineligible to receive benefits as a QMB or a Special Low-Income Medicare Beneficiary. He applied for benefits in June 1994 and was found to be eligible for benefits as a QMB through November 1994. When he reapplied in November, he was found to be ineligible based on the guidelines for a one-person household. Id.

The court found that 20 C.F.R. 416.1163(d)(1) was applicable to Skaliotis's application, and that the agency was within its powers when, in applying the aforementioned statute, it compared his income to the applicable limit for an individual. Similar to Appellant Senay in the

[2] This decision was rendered by the Rhode Island Superior Court on April 18, 1996. Superior Court cases are not binding precedent. See Breggia v. Mortg. Elec. Registration Sys, Inc., 102 A.3d 636 (R.I. 2014).

present case, Skaliotis was a Medicare Beneficiary who had been receiving benefits as a QMB. The agency sent notice that he was not eligible to continue receiving such benefits, as his income exceeded the limit for an individual. Similar to the present Appellant Senay, he was married, and his wife did not have any income. The court upheld the decision of the agency to apply the individual limit, as opposed to the limit for a couple, holding that the application of the SSI methodology to determine an applicant's eligibility for receiving benefits as a QMB was consistent with the Code of Federal Regulations that govern the Social Security Administration (20 C.F.R. § 416.1163(d)(1)). Id.

However, Skaliotis did not address whether defining a person who was married and living with his or her spouse as an individual was permissible under the federal statutes governing medical assistance programs such as Medicare and Medicaid, namely 42 U.S.C.A. §§ 1396d(p)(2)(A) and 1396a(a)(10)(E)(iii),(iv). Therefore, OHHS's reliance on a case from our Superior Court is misplaced.

In Martin v. N.C. Dep't of Health and Human Servs, 194 N.C. App. 716, 670 S.E.2d 629 (2009), the court, considering facts similar to those of Appellant Stanley, held that petitioner was entitled to Medicaid Part B benefits because her household, for purposes of her Medicaid application, was a household of two (petitioner and her husband). In that case, the North Carolina Department of Health and Human Services initially denied petitioner's application for Qualified Beneficiary Part B (MQB–B) benefits because her Social Security Disability Income (SSDI) "was over the MQB–B income limit of $980 per month for a single individual." Id. at 631. The court held "that DHHS erred by incorrectly calculating petitioner's income and resources as an individual rather than by her actual family size as established by 42 U.S.C. § 1396d." Id. Significantly, the court noted that "[a] 'state agency's interpretation of federal statutes is not

entitled to the deference afforded a federal agency's interpretation of its own statutes."' Id. at 632 (quoting GTE South, Inc. v. Morrison, 199 F.3d 733, 745 (4th Cir. 1999)). See also Winick v. Dep't of Children and Family Servs., 161 So.3d 464, 470 (Fla. Dist. Ct. App. 2014) (holding "federal Medicaid guidelines require that MBI [Medicare Buy-In] applicants' incomes be compared to the income limits for a household of their actual family size").

More recently, in Wheaton v. McCarthy, 800 F.3d 282 (6th Cir. 2015), the Sixth Circuit Court of Appeals held that the Medicaid federal statute required states to provide assistance with premiums and co-payments based on the federal poverty line "for a family of the size involved." Id. at 284 (citing 42 U.S.C.A. §§ 1396d(p)(2)(A), 1396a(a)(10)(E)(iii),(iv)). The court cited United States v. Zabawa, 719 F.3d 555, 559 (6th Cir. 2013), which urged that "[i]n determining [a term's ordinary] meaning, dictionaries are a good place to start." The dictionary definition of "family" would clearly include a person's husband or wife, particularly when, as in the case of Appellants, the person and their spouse live in the same household. The State of Ohio in Wheaton, much like the State of Rhode Island in the present case, argued that the "family of the size involved" does not have the same "ordinary meaning" as "family," and therefore the State has more flexibility in how it applies that term. The court held that the word "involved" "simply-and we think clearly-directs the State to consider the federal poverty line for the *beneficiary's* family, rather than someone else's." Wheaton, 800 F.3d at 288.

The State, in Wheaton, as in Martin and Winick, argued that they were following an agency policy that was entitled to deference. Unlike the States in Martin and Winick, the State, in Wheaton, argued that it relied on a **federal** agency (Centers for Medicare and Medicaid Services) that had issued a guidance letter. "[T]he State argues that we should defer to a 2010 'guidance letter' in which the Centers for Medicare and Medicaid Services—a federal agency—said that

States are free to use the SSI program's individual-needs standard in determining a Medicare beneficiary's eligibility for Assistance Payments." Id. at 288. The Wheaton court held that the letter was "conclusory"; it did not explain how or why states should use SSI provisions and therefore was not entitled to judicial deference. Id. at 288-89.

Federal courts have long held that "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations." Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 844 (1984). However, with respect to such deference, the United States Supreme Court held in Christensen v. Harris County, 529 U.S. 576 (2000) that an opinion letter

> "taking the position that an employer may compel the use of compensatory time only if the employee has agreed in advance to such a practice is not entitled to deference under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694. Interpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant Chevron-style deference. They are 'entitled to respect,' but only to the extent that they are persuasive, Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124." Christensen, 529 U.S. at 577.

In Wheaton, a federal court held the State's opinion letter[3] to be a guideline that lacks the force of law. See Wheaton, 800 F.3d at 288. Therefore, it held that the policy is not entitled to judicial deference. Id.; see also Christensen, 529 U.S. at 577.

The Wheaton Court acknowledged that there are instances where the word "family" might be ambiguous. For example, it is not clear whether family would include "adult children who live

[3] This letter from the Centers for Medicare and Medicaid Service found "that States are free to use the SSI program's individual-needs standard in determining a Medicare beneficiary's eligibility for Assistance Payments."

with their parents, or a 17 year-old child who does not, or nieces and nephews who live with their aunts and uncles." Wheaton, 800 F.3d at 287. However, ambiguity "at the margins" does not mean that a term is ambiguous as it is used in the matter at issue. The court noted that there are words and phrases that may be ambiguous in some contexts, but unambiguous in other contexts. The court explained:

> "The phrase 'uses a firearm during and in relation to a drug crime'—to paraphrase 18 U.S.C. § 924(c)(1)(A)—might be ambiguous as applied to a defendant who barters his pistol for cocaine, see Smith v. United States, 508 U.S. 223, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993); but there is no doubt that it covers a defendant who demands payment for drugs at gunpoint. The term 'planet' might be ambiguous as applied to Pluto, but is clear as applied to Jupiter. And though there might be some ambiguity in 2015 as to whether Ukraine's borders encompass the Crimean Peninsula, there is no doubt that Kiev lies within them. So too here: whatever ambiguity the 'persons living under one roof' or 'basic unit of society' definitions might have at the margins, there is no doubt that, under either definition, a person's family includes her resident spouse." Id.

Here, the term "family of the size involved" is not ambiguous as applied to Appellants. If the OHHS had applied the plain meaning of the term, it would have evaluated the applications of the Appellants according to the income guidelines for a two-person household. See Wheaton, 800 F.3d at 287. In their brief, Appellants maintain they would have been eligible for MPP benefits under such guidelines. Therefore, finding that the applications of both Appellants should have been considered according to the guidelines for a household size of two, not one, this Court finds that Appellants are therefore eligible for benefits pursuant to the Rhode Island MPP program for the months that they were wrongly deemed to be ineligible.

V

Attorney's Fees

Appellants also seek an award of attorney's fees pursuant to the Equal Access to Justice Act. Section 42-92-1. Appellants are entitled to recover reasonable attorney's fees if deemed to be the prevailing party in litigation against a state agency, unless the position of the agency is substantially justified. See § 42-92-3. In meeting the substantial justification test, the agency has the burden to show that its position was at least "'clearly reasonable, well founded in law and fact, solid though not necessarily correct."' Taft v. Pare, 536 A.2d 888, 893 (R.I. 1988) (quoting United States v. 1,378.65 Acres of Land, 794 F.2d 1313, 1318 (8th Cir. 1986)).

As noted above, Wheaton, which held that the term "family of the size involved" is unambiguous, was rendered prior to both agency decisions before the Court today. This Court may have found in favor of the Appellants in the absence of the Wheaton decision. However, this Court cannot conclude that the OHHS was not reasonable in its position when the case most detrimental to its position was not published until after the administrative rulings being challenged. Additionally, courts have grappled with the within issue of how states may define "family of the size involved" for purposes of administering their Medicare programs. See Martin, 194 N.C. App. 716, 670 S.E.2d 629; see also Winick, 161 So.3d 464. Here, while ultimately finding in favor of the Plaintiffs, the Court finds that the position of the OHHS was at least "'clearly reasonable, well founded in law and fact, solid though not necessarily correct."' Taft, 536 A.2d. at 893 (quoting 1,378.65 Acres of Land, 794 F.2d at 1318). Therefore the Court finds that OHHS was substantially justified in its position. This Court thus declines to award attorney's fees to the Appellants.

VI

Conclusion

For the reasons stated above, this Court reverses the decisions of the OHHS denying MPP benefits due to Appellants having an income exceeding the income limit for an "individual" applicant. The Court finds that the policy interpretation of the OHHS to be contrary to the plain meaning of the applicable statutes. OHHS is ordered to provide the value of the MPP benefits that were improperly withheld. However, the Court declines to award attorney's fees, finding that OHHS was substantially justified in its position. Counsel shall prepare appropriate orders for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Stanley v. R.I. Executive Office of Health and Human Services** **Consolidated with** **Senay v. R.I. Executive Office of Health and Human Services**
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DATE DECISION FILED:	**June 21, 2016**
JUSTICE/MAGISTRATE:	**Carnes, J.**
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