

[Cite as *Loboy v. Dept. of Job & Family Servs.*, 2017-Ohio-4386.]

STATE OF OHIO, MAHONING COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

GLORIA LOBOY

PLAINTIFF-APPELLANT

VS.

OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES

DEFENDANT-APPELLEE

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CASE NO. 16 MA 0024

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from the Court of Common  
Pleas of Mahoning County, Ohio  
Case No. 14 CV 2686

JUDGMENT:

Affirmed.

APPEARANCES:

For Plaintiff-Appellant

Attorney Mary Pisciotta  
1426 North 3rd Street  
Suite 200, P.O. Box 5400  
Harrisburg, Pennsylvania 17100

For Defendant-Appellee

Attorney Mike DeWine  
Ohio Attorney General  
Attorney Rebecca Thomas  
Assistant Attorney General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3400

JUDGES:

Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Carol Ann Robb

Dated: June 2, 2017

[Cite as *Loboy v. Dept. of Job & Family Servs.*, 2017-Ohio-4386.]  
DeGENARO, J.

{¶1} Plaintiff-Appellant, Gloria Loboy, appeals the trial court's judgment affirming the administrative appeal decision of Defendant-Appellee, Ohio Department of Job and Family Services (Agency), denying her application for benefits. Because Loboy's arguments are meritless the judgment of the trial court is affirmed.

{¶2} Loboy entered a nursing home in July 2013 and, through her daughter as her authorized representative, applied for Nursing Home Vendor Payment Medicaid on October 24, 2013. The Agency sent a checklist requesting verification of resources but did not inform the applicant or her daughter of the \$1,500 Medicaid resource limit. It is undisputed that Loboy had between \$5,000 and \$7,700 in her bank accounts at the time of her application.

{¶3} Loboy's application was denied by the Mahoning County Department of Job and Family Services because her resources exceeded Medicaid eligibility limits. Loboy challenged the denial to the ODJFS Bureau of State Hearings. Although the hearing officer recognized in his state hearing decision that the Agency had not informed Loboy's daughter of the resource limit and how to reduce her resources to qualify, he nonetheless overruled Loboy's appeal, holding that there is no provision waiving the resource requirement due to agency error.

{¶4} Loboy then appealed the state hearing decision to the ODJFS Administrative Appeal Section. The administrative appeal decision recognized that there was no dispute that Loboy had resources exceeding the \$1,500 limit in various bank accounts and found the county's actions to be correct because Loboy was not eligible for Medicaid benefits when her application was denied. Loboy appealed this decision to the trial court which affirmed the denial of Medicare benefits.

{¶5} Loboy's sole assignment of error asserts:

The Mahoning Court of Common Pleas erred by denying the instant appeal and ruling the administrative decisions appealed from were in accordance with law.

In determining an applicant or recipient's eligibility for Medicaid, the reviewing agency must conduct a resource assessment to

determine whether the applicant or recipient's aggregate resources exceed the "resource limit," which is defined as the "maximum combined value of all resources an individual can have an ownership interest in and still qualify for Medicaid." See Ohio Adm.Code 5101:1–39–05(B)(11). For an individual, the resource limit is \$1,500. See Ohio Adm.Code 5101:1–39–05(B)(11)(a)<sup>1</sup>.

*Cook v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-852, 14AP-853, 2015-Ohio-4966, ¶ 11.

{¶6} When reviewing an administrative agency order, a common pleas court must affirm the order if, upon consideration of the entire record, it is in accordance with law and is supported by reliable, probative, and substantial evidence. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992); R.C. 119.12. An appellate court is limited to determining whether the trial court abused its discretion when reviewing the factual determinations made by the trial court. *Bryant Health Care Ctr., Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 13AP–263, 2014–Ohio–92, ¶ 23. With respect to issues of law, such as statutory construction, an appellate court reviews an Ohio administrative agency's determinations de novo. *Estate of Montgomery v. Ohio Dept. of Job & Family Servs.*, 5th Dist. No 11 CAH 06 0054, 2012-Ohio-574, ¶ 19.

{¶7} Loboy concedes she had resources exceeding the \$1500 limit at the time she filed for Medicaid benefits and that these resources remained above this limit at the time of the first agency decision. Loboy argues that since the Agency did not process her application within the Ohio Administrative Code timelines and failed to inform her of the resource limit, that she should be granted benefits retroactive to the date of her first application. The Agency acknowledges Loboy's contentions, but responds that these issues aside, Loboy was not eligible for Medicaid benefits at the time of her application and as such, Ohio law prohibited her from receiving them.

{¶8} Regarding the delay in processing, the Eighth District has addressed

---

<sup>1</sup> Code sections that govern this matter have since been repealed and renumbered.

this issue; after reviewing a series of cases our sister district held:

None of these cases holds that in an appeal of a decision denying Medicaid, failure to abide by timeliness requirements in the Medicaid application process must result in an award of benefits to someone not eligible for them.

In fact appellee is prohibited from awarding benefits to someone not entitled to them. See Ohio Adm. Code 5101:1-2-20.

*Albert v. Ohio Dept. of Human Services*, 138 Ohio App.3d 31, 36, 740 N.E.2d 310 (8th Dist. 2000)

{¶9} Ohio Adm.Code 5160:1-2-01(l)(3)(a)(i) expressly states that the Agency "must not approve medical assistance to an individual merely because of an agency error or delay in determining eligibility. All eligibility factors must be met." As the hearing officer initially noted, there is no provision in the Ohio law that waives the resource requirement due to Agency error; it expressly states otherwise.

{¶10} Loboy cites cases which are not on point, and also argues points of federal law which she raised for the first time on appeal; as such they are improperly before us and we will not consider them. *Estate of Hohler v. Hohler*, 197 Ohio App.3d 237, 2011-Ohio-5469, 967 N.E.2d 219, ¶ 18 (7th Dist.) Accordingly, Loboy's assignment of error is meritless, and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P. J., concurs.