IN THE COURT OF CLAIMS OF OHIO

EVELYN GEORGE, Executrix, etc., et al.	:	CASE NO. 95-12150
Plaintiffs		Judge J. Warren Bettis
	:	
v.		DECISION
	:	
DEPARTMENT OF HUMAN SERVICES		
	:	
Defendant		

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{¶1} On September 20, 2001, the Tenth District Court of Appeals reversed the judgment of this court and remanded this case for further proceedings, stating in relevant part:

{¶2} "[T]he record is clear that the only issue to be determined at this point in the litigation is liability, specifically, whether appellee's income-first approach to determining Medicaid eligibility was proper under the applicable law(s). This is essentially the only issue (thus, it predominates), and it is common to all the potential class members. Therefore, the class should be certified.

{¶3} "*** Further, this court hereby orders the Court of Claims to certify the class." *George v. Ohio Dept. of Human Servs.* (2001), 145 Ohio App.3d 681, 688.

{¶4} On March 5, 2002, this court issued an entry which certified the class as: "All persons who, at any time from March 22, 1990, through December 31, 1995, were institutionalized spouses or community spouses and who were deprived of their rights under Ohio Administrative Code 5101:6-7-02(A)(4) and/or 5101:1-35-73(D) or who were not informed of their rights under Ohio Administrative Code 5101:6-7-02(A)(4) and/or 5101:1-35-73(D) and who have unnecessarily 'spentdown' their resources." The issues of

liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶5} This class action pertains to married couples who, from 1990 to 1995, sought Medicaid eligibility to pay for nursing home care for one spouse while the other spouse remained in the couple's home. When a married couple consisting of an "institutionalized spouse" (IS) and a "community spouse" (CS) applied for Medicaid assistance, the couple would visit a county office where a caseworker evaluated their assets (resources) and income. Defendant, the state agency responsible for implementing the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. Section 1396r-5 (MCCA), oversaw the county offices. The objective of the MCCA was to protect the CS from becoming destitute once the IS entered a nursing home.

{¶6} Certain assets were exempt from the Medicaid determination, such as the couple's home and one vehicle. The couple's combined assets were evaluated and for purposes of the eligibility determination, were then divided in half and apportioned equally to each spouse. The CS's share of these assets was known as the "Community Spouse Resource Allowance" (CSRA), and that amount, up to a certain maximum, was set aside for the CS's use. If the IS's share of these assets exceeded $1,500, the Medicaid application would be denied for "excess resources." The couple could reapply at the county office when the IS's share of resources was "spent down" to $1,500.

{¶7} At the eligibility determination, the county caseworker would also determine what the CS's monthly income would be once the IS did qualify for Medicaid. The caseworker would look at the couple's total marital investments, the income from those investments, and any monthly retirement checks that each spouse received. The caseworker would add the amount of the CS's individual pension or retirement check to the monthly income generated from the CS's share of the couple's resources (CSRA). The total of these two components would then be compared to the federally mandated "Minimum Monthly Maintenance Needs Allowance" (MMMNA).

An MMMNA of $1,250 per month was the amount that Congress had mandated as the minimum monthly income necessary for a CS to remain in the community without becoming destitute when the IS entered a nursing home. If the caseworker calculated that upon eligibility the CS's monthly income did not reach $1,250 per month, the caseworker could then allocate to the CS the amount of the IS's monthly income that would be necessary to allow the CS to reach the MMMNA. The amount taken from the IS's monthly income to supplement the CS's monthly income was known as the "CS Monthly Income Allowance" (CSMIA).

{¶8} Thus, when a couple became eligible for Medicaid, the CS could retain income from three sources: the CS's own pension or Social Security monthly check; the income from the CS's half of the allocated resources; and, if applicable, such portion of the IS's monthly pension or Social Security check necessary to raise the total income for the CS up to the MMMNA. The CS's future monthly income, although contingent upon the IS's eligibility, was calculated at the time of application, whether or not the Medicaid application was approved at the time.

{¶9} This case concerns a fourth source of money for some CSes, provided for by a regulation in the Ohio Administrative Code (Ohio Adm.Code). Between 1990 and the end of 1995, the regulation provided as follows:

{¶10}Ohio Adm.Code 5101:6-7-02(A)(4), and its identical predecessor, 5101:1-35-73(D), stated:

{¶11}"If either the IS or the CS can document that the CS resource allowance (in relation to the amount of income generated by it) is inadequate to raise the CS's income to the MMMNA, a hearing decision may substitute a higher resource allowance to provide additional income as necessary. The hearing decision must specify the amount of the

additional transfer authorized and must increase the CS resource allowance by the same amount."

{¶12}The federal statute, 42 U.S.C. Section 1396r-5(e)(2)(C), stated:

{¶13}"If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there *shall* be substituted, for the community spouse resource allowance under section (f)(2) [of this section], an amount adequate to provide such a minimum monthly maintenance needs allowance." (Emphasis added.)

{¶14}Plaintiffs contend that defendant violated the Ohio Adm.Code and its own regulations by instituting an "income-first" policy, rather than a "resource-first" policy. Plaintiffs argue that when the CS's MMMNA was calculated, if the CS's pension and return on the CS's share of assets did not enable the CS to reach the MMMNA, the state hearing officer should have looked to the IS's resources first and transferred a portion of those resources to generate enough income on a monthly basis for the CS to have reached the MMMNA. This is known as the "resource-first" approach. In a resource-first scenario, the IS could transfer a large amount of resources to the CS that the IS would otherwise have to spend down if an income-first approach were applied. As a result, an IS would reach Medicaid eligibility more quickly if a resource-first approach were taken.

{¶15}Defendant contends that if the applicants who were denied eligibility due to "excess resources" had requested a hearing to increase the CSRA, the applicants would be entitled to a transfer of resources only if they could show that the CS would be below the MMMNA after an income transfer had taken place.

{¶16}Plaintiffs also contend that even if an "income-first" policy was valid under Ohio law, that defendant's policy was an "income-only" policy; meaning that defendant did not allow a resource transfer in situations where a CS did not meet the MMMNA after an income transfer. Defendant denies that it failed to allow a resource transfer in such a case.

{¶17}Lastly, plaintiffs contend that defendant did not give proper notice to couples who were denied eligibility due to excess resources that they could request a state hearing and request a resource transfer at that hearing.

{¶18}Robert Frankhart, Deputy Legal Counsel for defendant, testified that he had worked with Medicaid eligibility requirements for approximately 20 years. According to Frankhart, two documents were used to assist the county caseworkers in making their eligibility determinations: the Ohio Adm.Code and the Public Assistance Manual (PAM), a "user friendly" guidebook written by defendant which interpreted the Ohio Adm.Code. He also stated that Manual Transmittal Letters (MTLs) written by defendant were periodically issued to county offices when changes were made to existing Medicaid policies, and that MTL-290 caused the MCCA to be implemented. (Defendant's Exhibit A.) He stated that the "income-first" approach was arrived at by reading state and federal Medicaid laws together.

{¶19}Jeanne Carroll, chief of defendant's Medicaid Policy Section from 1990-1996, testified that she had written rules and policies for the PAM but that in order to do so, she had to interpret state and federal Medicaid laws. The proposed rules and regulations from the PAM were filed with the Joint Committee on Agency Rule Review (JCARR). (See Plaintiff's Exhibits 1-3.)

{¶20}Carroll testified that the only way to get a resource transfer to reach the MMMNA was for the CS to have a deficit after an income transfer from the IS. She further testified that transferring resources prior to transferring income was not an option; that it was her understanding that income must be transferred before a resource transfer could be considered.

{¶21}Lesli Mautz, a state hearing officer for defendant since 1984, testified that she had held hearings when Medicaid applicants did not agree with the county eligibility assessments. Her understanding of the process was that a hearing officer could order a transfer of resources, but not before a transfer of income was considered. In support of

her contention, Mautz testified that the "income-first" policy is reflected in MTL-290, Sections 7524, 7525, and 7526.

{¶22}Evelyn George, the daughter of Ralph and Bessie Quinnan, testified that her parents had applied for Medicaid at the Licking County Medicaid Office once Ralph entered a nursing home, but upon application, Ralph was found to be ineligible due to excess resources. George further testified that her parents were represented by an attorney during the eligibility process and that she did not think that her parents had requested a state hearing to contest the eligibility determination.

{¶23}Richard Taps, an attorney specializing in elder law, testified that he had represented approximately 100 couples who were denied Medicaid benefits due to excess resources from 1993-1995. He testified that at the state hearings, he had sought an increased CSRA in situations where the CS was short of the MMMNA. He argued that CSes should have been entitled to keep more of ISes' resources and that CSes' income deficits could be met by a transfer of resources instead of an income transfer. However, he noted that in all of the cases in which he was involved, that defendant had used the income-first approach, and that even though a resource allocation was allowed pursuant to the statute, it was not utilized at the time.

{¶24}Gregory French, an attorney licensed in Ohio, testified that he was retained by plaintiffs' counsel to review hearing decisions from 1990-1994. He reviewed about 100 Medicaid hearing decisions, focusing on denials due to excess resources and on state hearings held to increase the CSRA. He concluded that defendant uniformly applied an income-first approach.

{¶25}In *Chambers v. Ohio Dept. of Human Services* (1998), 145 F.3d 793, cert. denied (1998), 55 U.S. 964, the Sixth Circuit Court of Appeals held that under federal law, defendant was permitted to apply an income-first approach to Medicaid eligibility, and that states could interpret the federal MCCA statute as an income-first policy, a resource-first policy, or a hybrid thereof. Although *Chambers* did not specifically address Ohio law, the court finds that Ohio Adm.Code Sections 5101:6-7-02(A)(4) and 5101:1-35-73(D) mirror

the federal MCCA statute. Accordingly, the court finds that the Ohio law in effect at the time permitted an income-first approach, a resource-first approach, or a hybrid thereof. The evidence before the court shows that defendant interpreted the Ohio Adm.Code to mandate an income-first approach, and that defendant applied the income-first approach uniformly throughout 1990-1995. The court further finds that defendant's income-first interpretation was reasonable and permissible, although it was not the only possible interpretation. Courts must defer to an agency's administrative interpretation, especially when that agency is empowered to enforce the statute at issue. *Rumbaugh v. Ohio Dept. of Commerce*, 155 Ohio App.3d 288, 2003 Ohio 6107. Based on the totality of the evidence, plaintiffs have failed to prove that any of the class members were denied benefits by defendant due to an improper interpretation of Ohio law.

{¶26}The court further finds that plaintiffs have failed to show that defendant denied a resource transfer to any couple when the CS did not meet the MMMNA after an income transfer. Although plaintiffs offered French's testimony to support this allegation, the court finds that French's review of hearing decisions merely supports the court's findings that defendant implemented an income-first approach. Therefore, plaintiffs' claim that defendant practiced an "income-only" policy is without merit.

{¶27}Plaintiffs next assert that they were not notified of their right to a state hearing when eligibility was denied due to excess resources. Ohio Adm.Code Section 5101:6-2-03(A), stated:

{¶28}"When the agency denies an application for or a requested change in public assistance or social services, the assistance group shall be provided prompt written notice of the decision.

{¶29}"(1) The notice shall contain a clear and understandable statement of the action the agency has taken and the reasons for it, cite the applicable regulations, explain the individual's right to and the method of obtaining a county conference and a state hearing, and contain a telephone number to call about free legal services."

{¶30}Candy Kelley, a Delaware County caseworker for over 24 years, testified that three worksheets were distributed to the counties for use in determining Medicaid eligibility. (Defendant's Exhibit A.) These worksheets were completed with the couple's financial information and copies were then given to the applicants. Each worksheet contains the same language:

{¶31}"Your Right to a State Hearing

{¶32}"This notice is to tell you about a determination the county department of human services has made on your case. If you do not understand this determination, you should contact your caseworker. After discussing the reasons for the determination with your caseworker, it is possible that the county will change its decision or that you will agree with the determination.

{¶33}"If you do not agree with this determination, you have a right to a state hearing. A state hearing lets you or your representative *** give your reasons against the determination. The county department of human services will also attend the hearing to present its reasons. A hearing officer from the Ohio Department of Human Services will decide whether you or the county department of human services is right.

{¶34}"If you want a hearing we must receive your hearing request within 90 days of the mailing of the date of this notice. ***

{¶35}"If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free at 1-(800)-282-3596, for the local number.

{¶36}"If you want a state hearing, check one of the boxes below, sign and date this form and send it to the Ohio Department of Human Services, ***."

{¶37}Based upon the Ohio Adm.Code and the notice language contained on the worksheets, the court finds that plaintiffs were given adequate notice regarding their rights to state hearings. Therefore, plaintiffs' claims regarding lack of notice are also without merit.

{¶38}Having found that defendant's income-first approach was proper under Ohio law, judgment shall be rendered in favor of defendant.

{¶39}This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. WARREN BETTIS
Judge

Entry cc:

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