STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: May 31, 2013)

JOHN J. CANHAM, JR., EXECUTOR OF THE ESTATE OF RICHARD J. VINAL, DECEDENT OF WEST WARWICK	:	
v.	:	**C.A. No. KC 12-0263**
APPEALS OFFICE, DEPARTMENT OF HUMAN SERVICES, STATE OF RHODE ISLAND	:	

DECISION

GALLO, J. Before the Court is an appeal from an administrative ruling. Plaintiff John J. Canham, Jr., acting in his capacity as Executor of the Estate of Richard J. Vinal, seeks relief from a decision of the Rhode Island Department of Human Services denying Plaintiff's request to review a prior application for Medical Assistance. For the reasons set forth in this Decision, the Court remands Plaintiff's appeal for a hearing on the merits. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

The named Defendant in this case, the Department of Human Services (DHS), is the administrative agency charged with oversight of the Medical Assistance Program (MA Program) in the State of Rhode Island. Plaintiff John J. Canham, Jr. (Plaintiff or Executor) is the Executor of the Estate of Richard J. Vinal (Mr. Vinal or Decedent).

Prior to his death, Mr. Vinal was diagnosed with cirrhosis of the liver and was told he had less than one year to live. Mr. Vinal was hospitalized at Kent County Memorial Hospital from

March 13 through March 26, 2010, during which time he received medical treatment relating to this affliction. It was during his hospitalization, on March 15, 2010, that Mr. Vinal gave his niece, Jennifer M. Vinal (Ms. Vinal), Power of Attorney and Healthcare Proxy over his affairs. On March 26, 2010, Mr. Vinal was released from Kent County Memorial Hospital to a nearby nursing home.

During his stay at the nursing home, Mr. Vinal applied for Medical Assistance on March 30, 2010. Prior to this time, Mr. Vinal did not have health insurance and paid for his medical expenses and stay at the nursing home out of pocket. After residing in the nursing home for several months and exhausting his assets, Mr. Vinal returned to his own home under the care of Hospice. Mr. Vinal later passed away at the age of 58 on June 6, 2010, still awaiting a response to his application for Medical Assistance. Notably, Mr. Vinal's mother, Domenica Vinal—who was Ms. Vinal's grandmother, and for whom Ms. Vinal served as sole caretaker, healthcare proxy and power of attorney—passed away twelve days later on June 18, 2010.

On August 12, 2010, Plaintiff was appointed Executor of Mr. Vinal's estate, and in October of 2010, Plaintiff received a bill from Kent County Memorial Hospital seeking payment of over $50,000 for medical expenses incurred by Mr. Vinal during his thirteen-day hospital stay. Notably, this hospital bill indicated that Mr. Vinal did not have health insurance and was "Self-pay." However, in October 2011, Ms. Vinal was working with an accountant to finalize her deceased uncle's estate taxes when she stumbled upon an earlier hospital bill dated June 6, 2010—the same day Mr. Vinal passed away—indicating that his insurance status was "Pending Medicaid/R." It was at this time that Ms. Vinal first became aware that her uncle had applied for Medical Assistance prior to his death, and immediately contacted DHS to inquire as to the status of Mr. Vinal's application.

Upon speaking with a DHS representative Ms. Vinal soon learned that following Mr. Vinal's application for Medical Assistance on March 30, 2010, a letter was sent to his home on or around June 14, 2010, requesting that additional documents be provided by June 24, 2010 to complete the approval process. At that point, although Mr. Vinal had been approved medically, the additional documents were necessary to show that Mr. Vinal met the financial resource requirements of the plan. This verification was required based on the fact that Mr. Vinal had originally listed his assets as $5000 in his application for benefits, while the MA Program had a resource limit of $4000, thus resulting in a difference of $1000.

However, on June 22, 2010—two days prior to the deadline to submit the additional documents requested in the original letter, and sixteen days after Mr. Vinal's death—DHS sent a letter to Mr. Vinal denying his application for Medical Assistance. This letter stated that the denial was due to Mr. Vinal's resources exceeding the program limit. The letter went on to state that despite the denial, Mr. Vinal's eligibility for the MA Program may still be established if there existed "outstanding allowable medical bills or other allowable expenses that equal or exceed the amount of your excess resources," and if "the amount of the excess resources [is reduced] to the appropriate resources limit by actually paying the allowable expenses or fees" within thirty days of the date of the notice.

Upon learning this information from a DHS representative, Ms. Vinal stated that she was in possession of the previously requested documents necessary to complete Mr. Vinal's application—namely, bank and IRA statements showing that his financial resources had been reduced by his end of life care so as to meet the financial qualifications of the MA Program. However, Ms. Vinal was told that the only available option would be to appeal the decision denying Mr. Vinal's application.

On November 14, 2011, Ms. Vinal filed an appeal of the decision denying Mr. Vinal's application for Medical Assistance, providing her own name and address as the point of contact. After not hearing anything for several months, Ms. Vinal returned to the DHS office during the last week of January 2012, to check on the status of her request. It was at this time that Ms. Vinal was told that a letter scheduling a hearing had been sent to her deceased uncle on January 18, 2012. However, an inspection of this letter showed that it was not sent to Mr. Vinal's prior West Warwick address, but rather to an individual with the same name residing at an address in Central Falls, Rhode Island.

Nevertheless, Ms. Vinal and a DHS representative attended the scheduled February 6, 2012 hearing, which was presided over by a DHS hearing officer. At this hearing, Ms. Vinal explained the unusual circumstances leading to the appeal and presented the previously requested documents showing that Mr. Vinal's assets had, in fact, been reduced to MA Program eligibility requirements prior to his death and during the pendency of his application. Ms. Vinal argued that had the documents been provided when requested by DHS—which, consequently, was after Mr. Vinal had died—Mr. Vinal's application would not have been denied. At this hearing Ms. Vinal also pointed out that although she provided her contact information when filing the appeal, notice of the hearing was not sent to her or her uncle's address, but rather to an individual not associated with the matter.

Despite these arguments, however, on February 13, 2012, DHS issued a written decision (Decision) which stated that the only issue at hearing "is whether or not the appellant's representative filed an appeal over which this office has jurisdiction." This Decision denied Ms. Vinal's appeal on purely procedural grounds; namely, that Ms. Vinal's request for a hearing was "clearly beyond the 30-day request for hearing requirement," as outlined in the DHS Policy

Manual. The Decision thereby summarily dismissed the appeal "because of a lack of jurisdiction," claiming that there was "no further issue for this hearing officer" to consider.

On March 13, 2012, Plaintiff filed an appeal of the DHS Decision in Superior Court. Through this appeal, Plaintiff seeks an order from this Court directing DHS to grant a reapplication to the Medical Assistance Program by the Estate of Richard J. Vinal, in order to allow for a determination of the merits of the case as to whether the Decedent's hospital expenses may be covered by Medicaid. In opposition, Defendant DHS argues that this Court should deny Plaintiff's appeal because, pursuant to DHS regulations, the hearing officer who issued the Decision did not have appropriate jurisdiction to render a decision based on the merits of Ms. Vinal's appeal to that agency.

II

Standard of Review

An aggrieved party may appeal a final decision of DHS to this Court pursuant to the Administrative Procedures Act, § 42-35-1, et seq., which provides in pertinent part:

> (g) 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 of law;
> (5) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record; or
> (6) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
> Sec. 42-35-15.

This Court's review of an agency's determination is thus limited to "'an examination of the certified record to determine if there is any legally competent evidence therein to support the

agency's decision.'" Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004)(quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). "If competent evidence exists on the record as a whole, the court is required to uphold the agency's conclusions." Id. This Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Milardo v. Coastal Res. Mgmt. Council, 434 A.2d 266, 272 (R.I. 1981). Questions of law, however, "are not binding upon the [C]ourt and may be reviewed to determine what the law is and its applicability to the facts." Carmody v. R.I. Conflict of Interest Comm'n, 509 A.2d 453, 458 (R.I. 1986).

III

Analysis

Plaintiff claims that notice provided to Mr. Vinal of both the request for additional documents and the denial of his application was not sufficient, thus it was impossible to meet DHS's deadline demands for further financial documents or any subsequent appeal of the denial for Medical Assistance. Plaintiff therefore seeks to invoke the equitable powers of this Court to provide for a determination of the merits of the issue, as to whether the Decedent's hospital expenses may be covered by Medicaid. In opposition, Defendant asks this Court to deny Plaintiff's appeal, claiming that the hearing officer lacked jurisdiction to decide the merits of Ms. Vinal's appeal at the hearing.

Title XIX of the United States Social Security Act (the Act), entitled "Grants to States for Medical Assistance Programs," sets forth the guidelines of the Medical Assistance Program, also commonly referred to as the "Medicaid Act."[1] 42 U.S.C. § 1396, et seq. To participate in the federal program, the Act requires that each state establish a state plan, which must then be

[1] Notably, although the state and federal acts are entitled "Medical Assistance," both are commonly referred to as "Medicaid," and such references are used interchangeably.

approved by the United States Department of Health and Human Services, in order for the state's individual Medical Assistance Program to qualify for federal funding. 42 U.S.C. § 1396a. Although each state's participation in the Medical Assistance Program is optional, once a state opts to participate, it must fully comply with the federal statutory and regulatory requirements as outlined in the Act.

Pursuant to Chapter 12 of Title 42 of our General Laws, the Rhode Island Department of Human Services is an agency within the executive branch of state government that is responsible for the management of state and federally funded public financial assistance programs. Sec. 42-12-4. DHS administers the Rhode Island Medical Assistance Program, as outlined in G.L. 1956 § 40-8-1, et seq. It is the declared policy of the program that:

> [I]n the state of Rhode Island there are many persons who do not have sufficient income and resources to meet the cost of medical care . . . [I]t is in the best interest of all the citizens of this state to promote the welfare of persons with the characteristics of persons eligible to receive public assistance and ensure that they will receive adequate medical care and treatment in time of need . . . [;] therefore, it is declared to be the policy of this state to provide medical assistance for those persons in this state who possess the characteristics of persons receiving public assistance . . . who do not have the income and resources to provide it for themselves or who can do so only at great financial sacrifice. Sec. 40-8-1(a)-(c).

Accordingly, for those meeting the eligibility requirements of the MA Program, DHS must pay benefits pursuant to regulations developed and approved by the federal government. Sec. 40-8-13. One such regulation expressly imposed by the Act is that "a state plan for medical assistance must . . . provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness." 42 U.S.C. § 1396a(a)(3); King by King v. Sullivan, 776 F. Supp. 645, 658 (D.R.I. 1991). This federal provision is supported by language found in G.L. § 40-8-6, entitled "Review of application for benefits," stating that:

> [t]he director or someone designated by him or her shall review each application for benefits filed in accordance with regulations, and shall make a determination of whether the application will be honored and the extent of the benefits to be made available to the applicant . . . . If the application is rejected, the notice to the applicant shall set forth therein the reason therefor. The director may at any time reconsider any determination. Id.

The regulations promulgated by DHS also contain provisions regarding the requirement of affording a fair hearing to an individual aggrieved by an agency decision. Section 0110.25 of the DHS regulations specifies that the legal entitlement to such an appeal, as well as the requirement for reasonable notice and opportunity for a fair hearing, are derived from both "Title 40 of the General Laws of Rhode Island," and the "Medical Assistance (MA) Program, as authorized under Title XIX of the Social Security Act." R.I. Admin. Code Sec. 39-2:0110.25. Such a hearing is defined as "an opportunity provided by the agency for responding to an appeal," and that "[a]n opportunity for a hearing is granted to an applicant or [his] designated representative, when [his] claim for assistance or social services is denied." R.I. Admin. Code Sec. 39-2:0110.30. Moreover, § 0110.30.05 specifies that at the time of application, as well as at the time of any action affecting an applicant's claim for assistance, the individual must be informed of his or her right to receive a hearing and the method of obtaining it. Sec. 39-2:0110.30.05. Notably, this rule is supported by the statement that "[t]he opportunity for a hearing is not an actuality unless the individual is fully aware of its availability." Id.

Nevertheless, here, the Decision of the hearing officer summarily dismissed Ms. Vinal's appeal "because of a lack of jurisdiction." (Pl.'s Ex. 7, DHS Decision at 2, ¶2). The hearing officer based this conclusion solely upon Section 0110.20 of the DHS policy manual, entitled "Definition of an Appeal," which states that "[t]he appeal must be filed within" "[t]hirty (30) days from the date of the notice when it involves any other DHS program." Sec. 39-2:0110.20. However, the language of Chapter 8 of Title 40—the local enabling legislation for the federal

act, and the DHS regulations—is clear and unambiguous in its statement that DHS is charged with overseeing the MA Program in Rhode Island, and is thus vested with the sole authority to implement its provisions. Sec. 40-8-2; see also R.I. Admin. Code sec. 39-3:0300.10. Moreover, noticeably absent from this statutory scheme is an express time limit placed on an appeal of a review of an application for benefits, which would serve as a jurisdictional bar to review. Sec. 40-8-7; see also 2 Charles H. Koch, Administrative Law and Practice §5:25 (3d ed. 2010) (indicating that "[s]tatutory time limits for filing an administrative appeal are jurisdictional"). Thus, the language of the statute is clear and unambiguous that DHS maintains jurisdiction over all appeals arising from its administration of the MA Program. See Iselin v. Retirement Bd. of Employees' Retirement System of Rhode Island, 943 A.2d 1045, 1049 (R.I. 2008) ("It is well settled that when the language of a statute is clear and unambiguous," the Court "must interpret the statute literally and must give the words of the statute their plain and ordinary meaning.").

As a result, this Court finds that the issue presented is not whether the hearing officer possessed jurisdiction to hear the merits of the appeal, but rather whether the hearing officer should have exercised such jurisdiction under the circumstances presented in this unusual case. See Rivera v. Employees' Retirement System of Rhode Island, No. 2011-166-M.P., slip op. at 11 (R.I., filed April 8, 2013). As a leading treatise explains, while failure to file an appeal of an agency decision within time limits established by agency rules or policy may lead to dismissal, "the review[ing] authority has discretion to waive a time limit for good cause." 2 Koch, Administrative Law and Practice §5:25. In fact, upon a petitioner's "showing of good cause for the untimely filing of [an] appeal, waiver of the filing deadline is appropriate absent a showing of substantial prejudice to the agency caused by the delay in filing." Id.; see also Rivera, slip op. at 12 (stating that the Court "has never indicated that strict construction" of statutes prescribing

the time and procedure to be followed by a litigant "is an impenetrable bar to venerable concepts of equity.").

This axiom is epitomized by other DHS regulations which set forth the procedures by which appeals are heard, as well as the accommodating manner in which such appeals are to be considered by a hearing officer. For instance, the DHS regulation concerning the manner in which appeals are resolved states that "[t]he intent of the appeal process is to protect a needy individual's right to assistance, social services, child support services and food assistance. . . . An appeal generally can be resolved through a discussion with the staff member who made the decision."[2] Sec. 39-2:0110.20.05. Additionally, Section 0110.50, entitled "The Appeals Officer," states that:

> [t]he appeals officer endeavors to bring out all relevant facts bearing on the individual's situation at the time of the questioned agency action or inaction and on agency policies pertinent to the issue. The hearing must not be closed until the appeals officer is satisfied that all facts needed for a decision have been assembled.

Here, however, the Decision issued by the hearing officer was premised solely upon an

[2] This provision provides for additional, and somewhat informal, forms of relief:

> "If a claimant determines it is necessary to go beyond that staff member to be assured that s/he is receiving equitable treatment, s/he must be informed of the following alternative agency provisions for hearing his/her complaint:
> [1] A discussion of the disputed issue(s) can be arranged for the individual with the appropriate agency representative and his/her supervisor in the district or regional office; or,
> [2] If the individual prefers, instead of the supervisory conference, or following it, an 'Adjustment Conference' can be arranged with the regional manager. This is an informal hearing in which an individual has an opportunity to state his/her dissatisfaction with agency action. The agency representative presents the facts upon which action was based. The regional manager determines whether or not the staff decision was made in accordance with agency policy; or,
> [3] Since the individual has a right to request and receive a hearing unconditionally, s/he can proceed directly to a full hearing review of his/her complaint." Sec. 39-2:0110.20.05.

erroneous statement as to jurisdiction, and was otherwise devoid of any factual findings which would provide support for not considering Ms. Vinal's appeal. Further, a review of the entire record shows that it was impossible for Mr. Vinal to meet DHS' deadline demands for further financial documents and the time limit placed on any subsequent appeal of the denial of Medicaid due to the unusual circumstances present in this case. Here, the letter requesting additional financial documentation was sent by DHS on June 14, 2010, eight days after Mr. Vinal had passed away. The June 22, 2010 letter denying Mr. Vinal's application and informing him of his right to an appeal was sent two days shy of the June 24, 2010 deadline imposed by the earlier correspondence requesting supplemental documention, and eighteen days after his death. Thus, it is clear that Mr. Vinal was neither aware, nor could he have exercised his right to an appeal within the thirty day timeframe provided. See Sec. 39-2:0110.30.05 ("The opportunity for a hearing is not an actuality unless the individual is fully aware of its availability.").

It is also evident that the purpose of the legislation creating the MA Program is thwarted when those who are otherwise eligible for benefits are denied due to extenuating circumstances beyond their control. It is certainly conceivable that those seeking medical assistance through the MA Program may die or become incapacitated while an application for benefits is pending. In this Court's judgment, rigid adherence to the time period for appeal without regard to extenuating circumstances is not in accordance with the tenor of the Social Security Act or this jurisdiction's case law. See 42 U.S.C. § 1396a(a)(3); Rivera, slip op. at 12; see also Johnson v. Newport County Chapter for Retarded Citizens, Inc., 799 A.2d 289, 292 (R.I. 2002) (stating that the doctrine of "equitable tolling is an exception to the general statute of limitations based upon principles of equity and fairness," when deciding whether a statute of limitations period should be expanded for litigants suffering from mental incapacity).

Mr. Vinal is undoubtedly among those persons our General Assembly sought to protect in creating the Medical Assistance Act; he is a citizen of this state whose financial resources were sufficiently reduced to qualifying levels and who did not have sufficient income and resources to meet the costs related to his end of life medical care. It is apparent from the language of the Medical Assistance Act that our General Assembly did not envision severely penalizing a needy applicant because he passed away during the pendency of their application, or because an individual who, wrought with grief and charged with sorting out the affairs of their deceased family member, failed to request a hearing within a thirty-day time frame. See Sec. 40-8-6 ("The director may at any time reconsider any determination.").

However, the hearing officer failed to make any findings relevant to the merits of the claim, and instead denied Plaintiff's appeal based upon the time parameters outlined in a DHS regulation. Accordingly, the appeals officer's strict adherence to a time component—while failing to consider Plaintiff's evidence of extenuating circumstances—is inconsistent with the fundamental purpose of both the state and federal Medical Assistance Acts, § 40-8-1, et seq., and other DHS regulations. As a result, this Court finds that, based on the pertinent state and federal law, DHS regulations, and the substantial evidence of the whole record, the hearing officer's conclusion was characterized by an abuse of discretion which prejudiced the substantial rights of Mr. Vinal. See Sec. 42-35-15(g)(6).

IV

Conclusion

After review of the entire record, this Court finds that the Decision denying Ms. Vinal's appeal on jurisdictional grounds constituted an abuse of discretion, so as to prejudice the substantial rights of Mr. Vinal. Accordingly, this Court remands the case to DHS for a hearing

on the merits to determine whether Mr. Vinal's outstanding bills for end of life care may be covered under the Medical Assistance Program, notwithstanding his inability to comply with the time frame for appeals found in DHS regulation 0110.20. Counsel shall submit an appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	John J. Canham, Jr., Executor of the Estate of Richard J. Vinal, Decedent of West Warwick v. Appeals Office, Department of Human Services, State of Rhode Island
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