

No. A07-798

STATE OF MINNESOTA

IN COURT OF APPEALS

Paul Fish,

Respondent,

vs.

Commissioner of the Minnesota Department of Human Services and
Roseau County Department of Social Services,

Appellants.

RESPONDENT'S BRIEF

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LEGAL ISSUES

- I. Whether the District Court was correct in determining that Respondent's monthly Retirement Survivors Disability Insurance ("RSDI") benefit is countable income for purposes of Medical Assistance eligibility?

District Court:
Reversed.

Apposite Authorities:
42 U.S.C. § 423(a)
42 U.S.C. § 1382b

- II. Whether the District Court was correct in determining that Respondent was eligible for a "maintenance of home" deduction from income?

District Court:
Reversed.

Apposite Authorities:
Minn. Stat. § 256B.0575

STATEMENT OF THE CASE

This is an appeal by the Commissioner of the Minnesota Department of Human Services ("Commissioner") and Roseau County Department of Social Services. They appeal after the Honorable Judge Charles LeDuc of the Ninth Judicial District Court issued an Order and Memorandum on February 12, 2007, reversing the Commissioner's previous Order, dated July 16, 2004. (AApp-27).

The Respondent, Paul Fish, had applied for Medical Assistance and was notified by the County on April 8, 2004, of their calculated spend down amount. (AApp-14). Respondent appealed to Commissioner on May 3, 2004. (AApp-7). A hearing was held on May 25, 2004, in which the Commissioner affirmed the County's action. (AApp-1). Then, on August 13, 2004, Respondent sought reconsideration. (AApp-23). The reconsideration request was denied by Commissioner on August 17, 2004. (AApp-25).

Respondent exercised his right to appeal to the District Court of Roseau County on September, 14, 2004. (AApp-26). On July 8, 2005, the Court upheld the Order of the Commissioner. *Fish v. Comm'r of the State of Minn. Dep't of Human Servs. Et al.*, Order, No. C4-04-631 (Roseau County Dist. Ct. July 8, 2005). However, that Order was vacated on September 10, 2005, pursuant to Minn. R. Civ. P. 60.02. *Fish*, Order, No. C4-04-631 (Roseau County Dist. Ct. Sept. 29, 2006). Next, on September 29, 2006, the Court upheld the Commissioner's Order but it was vacated because a written submission by Respondent's Conservator (the brief in letter form) had been lost and not yet considered. (See AApp-27,28). On February 12, 2007, after a hearing and review of the Conservator's submission, the Court then issued its favorable Order and adopted Conservator's Memorandum as its reasoning for reversal. (AApp-28) and (AApp-31).

STATEMENT OF FACTS

A major flood ravaged Lake of the Woods County in 2002 and it was designated by the President as a Federal Disaster area. Respondent, Paul Fish, was permanently injured and disabled while he participated in the flood clean-up and now suffers from quadriplegia. (AApp-21) and (August 24, 2005, submission adopted into District Court Memorandum of Law, AApp-31). He was admitted to a Long Term Care Facility (“LTCF”) in November 2002, where he remained for about a month. (AApp-21). After a hospital stay, he reentered the LTCF on January 28, 2003. (AApp-2).

Through his Conservator, Respondent, Paul Fish, applied for Medical Assistance. He became eligible for assistance as of March 1, 2004. (AApp-14). Roseau County Social Services (“RCSS”) sent him a Notice of Action on April 8, 2004, indicating their determination that his monthly spend down for Medical Assistance would be \$858.00. *Id.* Believing that the spend down calculation was wrong, Respondent exercised his right to file an appeal with the Commissioner of Human Services. He filed the appeal on May 3, 2004. (AApp-7). The appeal was heard by a Human Services Referee on May 25, 2004. (AApp-1). Respondent appealed on the basis that his Retired, Survivors, and Disability Insurance (“RSDI”) payments must be excluded as income when determining his spend down. (AApp-2). In support of his position, Respondent cited 42 U.S.C. §1382a(b)(11), which excludes from income “assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President.” 42 U.S.C. §1382a(b)(11).

Respondent also appealed the Commissioner's decision to disallow home maintenance costs when they calculated his spend down. (AApp-2). The Respondent argued that home maintenance costs should be excluded from his spend down because he was expected to reside in a LTCF for three months or less, from when he was determined eligible for Medical Assistance. (AApp-4). In support of his position, he cited Minn. Stat. § 256B.0575(b), which states that, "Income shall be allocated to an institutionalized person for a period of up to three calendar months, in an amount equal to the medical assistance standard for a family of one if: (1) a physician certifies that the person is expected to reside in the long-term care facility for three calendar months or less" Minn. Stat. § 256B.0575(b).

The Commissioner did not allow the maintenance costs because they believed that Respondent was not expected to return home from the hospital within three months of entering a long term care facility. (AApp-2, Issue #2). However, Respondent's physician wrote a letter, dated March 29, 2007, stating that the anticipated discharge was in approximately three months, as long as appropriate safety measures are in place. (AApp-22). The Commissioner also took the position that because Respondent had actually been staying in the LTCF since January of 2003, he was not entitled to the home maintenance deduction. (AApp-4). The Commissioner believed that the first calendar month for the purpose of the home maintenance deduction should be February 1, 2003. *Id.* Conversely, Respondent argued that the first calendar month must be April 1, 2004, since he was not eligible and approved for Medical Assistance until March, 2004. *Id.* He relies on Minn.Stat. § 256B.0575, which begins with the language, "When an institutionalized person is determined eligible for medical assistance, the income that exceeds the deductions . . . must be applied to the cost of institutional care." (AApp-4,7).

Respondent argued that it is not at the point a person enters into long-term care that is the starting point for the home maintenance deduction, but the proper date under the statute is the date in which a person is determined eligible for Medical Assistance. In this hearing, the Human Services Referee issued an Order affirming the Commissioner's decision. (AApp-4,5).

Next, after Respondent's request for reconsideration was denied by the Commissioner, he appealed to the Ninth Judicial District Court on September 14, 2004. (AApp-26). After several extensions, a Motion hearing was held on November 13, 2006. (AApp-27). On February 12, 2007, Judge LeDuc ordered that Respondent's RSDI payments are "exempt as income under 42 U.S.C. § 1382a(b)(11) for the purposes of determining his medical assistance eligibility." (AApp-27). Further, the Court held that the Commissioner must reimburse Respondent "the amount of medical assistance denied to him for home maintenance costs that should have been treated as deductions when determining his eligibility for medical assistance." (AApp-27). The Commissioner and County appealed to this Court on April 13, 2007. (AApp-37).

SCOPE OF REVIEW

A party who is aggrieved by an Order of the Commissioner of Human Services may appeal to the District Court. Minn. Stat. 256.045, subd. 7 (2006). Subsequently, the party aggrieved by the Order of the District Court may appeal to this Court. Minn. Stat. 256.045, subd. 9 (2006).

This Court will conduct an independent review of the Commissioner's Order, giving no deference to the District Court's review. *Estate of Atkinson*, 564 N.W.2d 209, 213 (Minn. 1997). The scope of review is authorized in Minn. Stat. § 14.69 (2006). Under the Statute, this Court will review whether the Commissioner's decision was "(a) In violation of constitutional provisions; or (b) in excess of the statutory authority or jurisdiction of the agency; or (c) made upon unlawful procedure; or (d) affected by other error of law; or (e) unsupported by substantial evidence in view of the entire record as submitted; or (f) arbitrary or capricious." Minn. Stat. § 14.69 (2006).

The appeal in the present case involves questions of whether the Commissioner's holding was based on error of law. In its review, the Court will review an agency's decision de novo when the decision was based on statutory interpretation. *In Re Appeal of Staley*, 730 N.W.2d 289, 297 (Minn. Ct. App. 2007). However, when reviewing questions of law, this Court "is not bound by the agency's decision, and we need not defer to the agency's expertise." *Dozier v. Commissioner of Human Services*, 547 N.W.2d 393, 395 (Minn. Ct. App. 1996).

ARGUMENT

I. RESPONDENT'S SOCIAL SECURITY DISABILITY INSURANCE BENEFITS ARE EXCLUDED AS COUNTABLE INCOME BECAUSE HIS DISABLING INJURY OCCURRED IN A FEDERAL DISASTER AREA.

The United States Code states that people who are eligible for Medical Assistance must receive exclusions from countable income under specified circumstances. 42 U.S.C. § 1382a(b). One of the specific exclusions applies to individuals who are injured while working in a Federal Disaster Area, as declared by the President. 42 U.S.C. § 1382a(b)(11). According to the statute, “[i]n determining the income of an individual . . . there shall be excluded assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. § 5121 et seq.] or other assistance provided pursuant to a Federal Statute on account of a catastrophe which is declared to be a major disaster by the President.” *Id.*

In the present case, Respondent was injured while performing flood cleanup in Lake of the Woods County while it was under a Federal Disaster designation. (AApp-2, #4). Because of Respondent's injury while removing flood debris, he became permanently disabled. And, it was because of that injury that he began receiving RSDI and became eligible for Medical Assistance. (AApp-2). If not for his injury incurred while performing work in the disaster area, he would likely be working today. Under the plain language of the applicable Federal law, his RSDI benefits must be excluded as countable income. 42 U.S.C. § 1382a(b)(11).

Appellant contends that Respondent's RSDI benefits should not be excluded in the Medical Assistance spend down calculation. Appellant asserts that “Respondent's eligibility for SSDI is not based on his being injured in a federal disaster area.” (Appellant's Brief p. 13). However, in the Human Services Referee's Finding of Fact, it was not disputed that Respondent was “working in an

area declared to be a Federal Disaster Area when he was injured,” *and* that he “began receiving RSDI because of his injury.” (AApp-2, #4).

Appellant further contends that Respondent is receiving the RSDI payments “on account of his physical condition only.” (AApp-3, #5). Appellant reasons that the fact that Respondent “became injured while he was working in a federal disaster area is irrelevant to his receipt of RSDI.” *Id.*

An obvious problem with Appellant’s rationale is that it requires an unsubstantiated presumption that Respondent would suffer from a physical condition aside from his injury incurred while working in the disaster area. But, nothing in the record disputes that the cause of his physical condition was the injury he suffered while working in the disaster area with the resultant effect of being permanently disabled, and thus requiring Medical Assistance.

In sum, Appellant claims that the fact that Respondent became injured while he was working in a federal disaster area is irrelevant to his receipt of RSDI. The problem with that reasoning is that Respondent is *only* receiving RSDI because he was injured while working in a Federal Disaster Area. Further, if there had never been a disastrous flood, then Lake of the Woods County would not have been declared a Federal Disaster Area. Hence, Respondent would not have been working in that disaster area, and therefore would not have suffered a disabling injury. Consequently, Respondent would have had no need to receive RSDI benefits in the first place. It does not make sense to assert that Respondent’s receipt of RSDI is irrelevant to his becoming injured while he was working in the Federal Disaster Area. He is entitled to have his RSDI payments excluded as countable income. It would be poor public policy not to do so.

Minnesota law states that when judicially reviewing the decision of an agency, the Court may reverse a decision if the substantial rights of an aggrieved have been prejudiced. Minn. Stat. § 14.69. One of the factors the Court looks at is

whether the administrative conclusion was “affected by error of law.” *Id.* at 14.69(d). Respondent is in agreement with the District Court’s holding that the Commissioner’s finding in the July 16, 2004, Order was legally incorrect. Respondent is entitled to exclude his RSDI benefits as countable income.

II. RESPONDENT IS ENTITLED TO A MAINTENANCE OF HOME ALLOWANCE BECAUSE WHEN HE BECAME ELIGIBLE FOR MEDICAL ASSISTANCE, HE WAS EXPECTED TO RESIDE IN LONG-TERM CARE FOR THREE MONTHS OR LESS.

Respondent agrees with the District Court that the home maintenance deduction applies and that the Commissioner’s Order was legally incorrect. Under Minnesota law, “[w]hen an institutionalized person is determined eligible for medical assistance, the income that exceeds the deductions in paragraphs (a) and (b) must be applied to the cost of institutional care.” Minn. Stat. § 256B.0575 (2006).

The law states that:

“(b) Income shall be allocated to an institutionalized person for a period of up to three calendar months, in an amount equal to the medical assistance standard for a family size of one if:

(1) a physician certifies that the person is expected to reside in the long-term care facility for three calendar months or less;

(2) if the person has expenses of maintaining a residence in the community; and

(3) if one of the following circumstances apply:

(i) the person was not living together with a spouse or a family member as defined in paragraph (a) when the person entered a long-term care facility; or

(ii) the person and the person’s spouse become institutionalized on the same date, in which the case the allocation shall be applied to the income of one of the spouses.”

For purposes of this paragraph, a person is determined to be residing in a licensed nursing home, regional treatment center, or medical institution if the person is

expected to remain for a period of one full calendar month or more. Minn. Stat. § 256B.0575.

In the present case, Respondent qualifies for the maintenance of home allowance based upon the above statute. First, upon becoming eligible for Medical Assistance, Respondent's physician certified that his anticipated (or expected) discharge from the long-term care facility was approximately three months. Secondly, Respondent did have expenses of maintaining his residence in the community. He was expected to return to his home and he did. Thirdly, Respondent meets the final criteria as well because he was not living together with a spouse or family member when he entered the long-term care facility.

Additionally, Minnesota law recognizes that some residents of nursing homes will not reside there permanently and will in fact return to their homes. For example, with respect to income eligibility for Medical Assistance, the statute provides that, "[t]he homestead shall be excluded for the first six calendar months of a person's stay in a long-term care facility and shall continue to be excluded for as long as the recipient can be reasonably expected to return to the homestead." Minn. Stat. § 256B.056, subd. 2.

The statute clarifies the meaning of *reasonably expected to return to the homestead*. It means "the recipient's attending physician has certified that the expectation is reasonable, and the recipient can show that the cost of care upon returning home will be met through medical assistance or other sources." *Id.* Respondent fit into the above category, as evidenced by the letter from his physician indicating his anticipated discharge. He continues living in his home to this day. Regarding the latter financial requirement, Respondent's appeal originated due to the erroneous calculations made by the agency. (i.e., the incorrect inclusion of his RSDI benefits as countable income and the lack of a home maintenance allowance.)

Appellant has argued that the maintenance of home allowance should only apply at the time a person is “expected to remain in the nursing home for one full calendar month or more.” (Appellant’s Brief, p. 17 citing Commissioner’s Order). However, under that interpretation, regardless of whether one had applied for Medical Assistance or not, the three month period would begin to run at the point that a person is expected to reside for one month or more. But, the language of the statute clearly states that, “[w]hen an institutionalized person is *determined eligible for medical assistance* . . . (b) income shall be allocated . . . for a period of up to three months or less.” Minn. Stat. § 256B.0575. (emphasis added).

In the present case, although Respondent resided in a nursing home for over a year, it was in March of 2004 that he became eligible for Medical Assistance. Consequently, the time for the home maintenance allowance to begin running should have been April of 2004. It is poor public policy to penalize one simply because they are not deemed eligible for Medical Assistance during the first month they reside in a nursing home. The Respondent was prejudiced by the Commissioner’s holding that was affected by error of law. The District Court was correct in its holding, and its decision should be upheld.

CONCLUSION

The Respondent, Paul Fish, respectfully requests that the Court reverse the Commissioner's Order by upholding the District Court's February 12, 2007, Order.

Dated this 18th day of June, 2007.

RESPECTFULLY SUBMITTED,

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