

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Peterson Eldercare at Wheeling, LLC
d/b/a Peterson Rehabilitation Hospital,
Petitioner Below, Petitioner**

FILED
May 27, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs) No. 101408 (Kanawha County No. 10-AA-18, 19)

**The West Virginia Department of
Health and Human Resources and Thomas
Arnett, State Hearing Officer, State Review
Board of the West Virginia Department
of Health and Human Resources,
Respondents Below, Respondents**

MEMORANDUM DECISION

Petitioner Peterson Eldercare at Wheeling, LLC d/b/a Peterson Rehabilitation Hospital (“Peterson Eldercare”) appeals from the circuit court’s final order arising out of a decision issued by the West Virginia Department of Health & Human Resources Board of Review in this action involving Medicaid long-term care benefits. Peterson Eldercare seeks a reversal of the circuit court’s decision and other associated relief. Respondent West Virginia Department of Health and Human Resources (“DHHR”) has filed a timely response.

This Court has considered the parties’ briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court’s Order entered in this appeal on February 7, 2011. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Margaret and Norman Helling were admitted to the skilled nursing facility of Peterson Eldercare on March 3, 2007, and April 27, 2007, respectively. On May 4, 2007, the Hellings named attorney J.D. Miller as their attorney-in-fact to handle their affairs, including financial matters. On December 7, 2007, DHHR received an application for Medicaid long-term care

benefits from Mr. Miller on behalf of the Hellings. The application reflected that the Hellings' assets exceeded eligibility limits.¹ Later that month, DHHR requested additional verification from Mr. Miller, which was needed to complete the application, and advised that the Hellings' assets needed to be below the asset limit before they would qualify for Medicaid long-term care benefits. On March 7, 2008, Mr. Helling died.

During June of 2008, DHHR received some of the information it requested from Mr. Miller's office in December of 2007, but not the verification needed to complete the application. On July 3, 2008, DHHR again requested the verification from Mr. Miller and advised that Mrs. Helling's assets needed to be below \$2,000 for her to qualify for Medicaid long-term care benefits. On December 9, 2008, DHHR received verification from Mr. Miller's office that Mrs. Helling's assets were below \$2,000. Accordingly, she was approved for Medicaid benefits effective December 1, 2008. At Peterson Eldercare's request, DHHR approved a medical deduction for Mrs. Helling made retroactive to September 1, 2008.

On May 13, 2009, DHHR sent out denial letters indicating that the Hellings were asset ineligible in December of 2007, for Medicaid long-term care benefits.² On May 29, 2009, Peterson Eldercare, on behalf of the Hellings, filed a grievance with DHHR's Board of Review ("BOR").

On August 25, 2009, a fair hearing was held before the state hearing officer for the BOR, respondent Thomas Arnett, during which Peterson Eldercare asserted that DHHR violated state and federal regulations by failing to make an eligibility determination within ninety days of the Hellings' application and that the delay warranted that the Hellings be approved for Medicaid benefits retroactive to the date of their application in December of 2007. The state hearing officer found that there was no evidence to indicate that the late eligibility determination had any bearing on the Hellings' Medicaid benefits eligibility or that the Hellings were prejudiced by the delay because they were not "asset eligible." In a decision dated September 25, 2009, the BOR upheld DHHR's determination of Medicaid benefit eligibilities for the Hellings.

On January 22, 2010, Peterson Eldercare filed a complaint for a writ of certiorari in

¹ The asset limit is \$2,000 for one person and \$3,000 for a couple.

²The letter with regard to Mrs. Helling was apparently sent in error since she was approved for and has received Medicaid benefits from September of 2008, forward.

the circuit court challenging the BOR's decision. On June 29, 2010, the circuit court affirmed the BOR's decision. Although noting that DHHR had not sent out a timely denial letter, the circuit court found that Mr. Helling was not prejudiced by the delay because he was still not asset eligible at the time of his death and that Mrs. Helling was not prejudiced because as soon as she became asset eligible, she was awarded benefits, including retroactive payment. The circuit court further found that Mrs. Helling was not deprived of spending down her assets or knowing that her assets needed to be spent down because DHHR acted on her application when it spoke with her power-of-attorney, Mr. Miller, and placed him on notice that the assets needed to be spent down.

Peterson Eldercare asserts that the circuit court erred in affirming the decision of the BOR given that DHHR failed to comply with the time limits in pertinent state and federal Medicaid regulations and failed to provide notice to either the Hellings or Mr. Miller as to what was needed to complete the Medicaid benefits applications and what assets needed to be spent down. Peterson Eldercare also argues that the circuit court erred when it determined that the Hellings had to show that they were prejudiced by DHHR's untimeliness. Peterson Eldercare asserts that the Hellings must be approved for retroactive Medicaid benefits and reimbursed for their out-of-pocket medical expenses due to DHHR's delay and disregard for its own mandated procedures.

DHHR asserts that the circuit court correctly upheld the BOR's decision because the Hellings were not entitled to retroactive Medicaid benefits or to reimbursement for out-of-pocket medical expenses. DHHR states that its untimely notice of denial played no part in Mr. Miller's delay in spending down the Hellings' assets. DHHR states that under the State's plan for implementing the Medicaid program, if DHHR acts untimely, the client will be approved for Medicaid as of the date eligibility would have been established if DHHR had acted timely. Mrs. Helling became asset eligible in December of 2008, and she has received Medicaid long-term care benefits since that time. Mr. Helling was never asset eligible, including at the time of his death.

Lastly, Peterson Eldercare argues that the circuit court erred in finding insufficient evidence to indicate that DHHR's late notice coupled with the death of Mr. Helling had any bearing on the Hellings' Medicaid eligibility. Peterson Eldercare states that because the Hellings' assets were jointly held, Mrs. Helling could neither assign nor spend down Mr. Helling's portion of their resources until an executor was appointed to Mr. Helling's estate. DHHR responds that Mrs. Helling spent down her assets and became eligible in December of 2008, which was prior to the April 2009 appointment of an administrator for Mr. Helling's estate. DHHR adds that because Mr. Helling passed away within the period for issuing a timely denial and remained asset ineligible at that time, he was not entitled to retroactive Medicaid benefits.

“This Court applies an abuse of discretion standard in reviewing a circuit court’s certiorari judgment.” (citation omitted) *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corporation*, 223 W.Va. 146, 150, 672 S.E.2d 282, 286 (2008). This Court has also stated that “to the extent that our review involves a question of law, our review is de novo.” (citation omitted) *Id.*, 223 W.Va. at 150, 672 S.E.2d at 286. This Court recently held that “[t]he scope of review under the common law writ of certiorari is very narrow. It does not involve an inquiry into the intrinsic correctness of the decision of the tribunal below, but only into the manner in which the decision was reached.” Syl. Pt. 3, *Foster Foundation v. Gainer*, No. 35627, 2011 WL 867343 (W.Va., March 10, 2011).

Having reviewed the record and the parties’ arguments on appeal under the pertinent standards of review and after considering the particular facts and circumstances of this case, the Court does not find any error.³ Accordingly, we affirm.

Affirmed.

ISSUED: May 27, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Menis E. Ketchum
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin

³ The Court expresses no opinion on whether DHHR is violating state and federal regulations in the timeliness of its eligibility determinations.