

STATE OF MICHIGAN
IN THE PROBATE COURT FOR THE COUNTY OF KENT

In the matter of:

JOSEPH C. JELTEMA

Case No. 14-195553-PO

The Honorable David M. Murkowski

APPEARANCES

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OPINION AND ORDER GRANTING RESPONDENT DEPARTMENT OF HUMAN
SERVICES' MOTION FOR SUMMARY DISPOSITION

I.

FACTUAL BACKGROUND

This litigation encapsulates the continuing tension between the State of Michigan's efforts to conserve Medicaid resources for the truly needy and the legal ability of institutionalized Medicaid recipients to shelter income for the benefit of their spouses who remain in the community.

A Motion for Summary Disposition brought under MCR 2.116(C)(8), for failure to state a claim upon which relief can be granted, is tested by the pleadings alone and examines only the legal basis of the complaint. *Cuznar v Rakasha Corp.*, 481 Mich 169 (2008), *Maiden v Rozwood*, 461 Mich 109 (1999). A motion under MCR 2.116(C)(4) alleging that the Court

lacked subject matter jurisdiction raises an issue of law. When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case is absolutely void. *Todd v Department of Corrections*, 232 Mich App 623 (1998). A motion under subrule (C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43 (2000). However, where the defense is based on the primary jurisdiction doctrine, the motion is not properly brought under subrule (C)(4). *Travelers Ins. Co. v Detroit Edison Company*, 465 Mich 185 (2001).

Petitioner and community spouse Annette Jeltema petitioned the Kent County Probate Court as the spouse of Joseph Jeltema, the institutionalized spouse, seeking an order for spousal support requiring Joseph Jeltema to pay his monthly net income, less certain expenses, to Annette as support.

- The petition for support was filed with the Probate court on May 27, 2014.
- The petitioner filed the Medicaid application with the Department of Human Services (DHS) (The Department) on May 30, 2014.
- On August 19, 2014, the Medicaid application was approved and a determination of the petitioner's Community Spouse Monthly Income Allowance (CSMIA) was calculated by The Department.
- On October 1, 2014, the Department of Human Services filed an objection to the proposed protective order.
- On October 7, 2014, petitioner filed a response to the Department of Human Services' objection to the proposed protective order.
- On October 14, 2014, the Department of Human Services filed a motion for summary disposition and supporting brief, pursuant to MCR 2.116(C)(8).

- On October 30, 2014, petitioner filed a response to the Department of Human Services' motion for summary disposition.
- On November 5, 2014, oral argument was conducted on the motion for summary disposition.
- The parties sought permission of the Probate Court to file supplemental written briefs and on November 19, 2014, the Department of Human Services filed a supplementary brief.
- On November 19, 2014, petitioner filed a supplement to the petitioner's response to the Department of Human Services' motion for summary disposition.

II

LEGAL ANALYSIS

Under the Estates and Protected Individuals Code, MCL 700.5401 (3) provides: "The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following: (a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance. (b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money." MCL 700.5402 describes the jurisdiction of the probate court over the business affairs of protected individuals: "After the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court in which the petition is filed has the following jurisdiction: (a) Exclusive jurisdiction to determine the need for a conservator or other protective order until

the proceeding is terminated. (b) Exclusive jurisdiction to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected individual or any of the protected individual's dependents or other claimants. (c) Concurrent jurisdiction to determine the validity of a claim against the protected individual or the protected individual's estate, and questions of title concerning estate property." Further, MCL 700.5407(2)(c) provides: "After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, the Court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will . . . "

Medicaid is a joint federal-state program providing medical assistance to the needy. Enacted under Congress's spending clause authority, Medicaid is voluntary. No state is obligated to join Medicaid, but if they do join, they are subject to federal regulations governing its administration. *Roloff v Sullivan*, 975 F2d 333, 335 (7th Cir. 1992)

Generally, Medicaid provides assistance for two types of individuals: the categorically needy and the medically needy. The categorically needy are those who qualify for public assistance under the Supplemental Security Income (SSI) program or other federal programs. *Roach v Morse*, 440 F3d 53, 59 (2d Cir 2006); *Roloff*, 975 F2d at 335. The medically needy are those who would qualify as categorically needy but whose income or assets are substantial enough to disqualify them. *Roloff*, 975 F2d at 335. Every state participating in Medicaid must provide assistance to the categorically needy. States need not provide assistance to the medically needy. See *id.* If states choose to make medical assistance available to the medically needy, they are subject to various statutory restrictions in determining to whom medical assistance should be extended.

Controlling federal law requires a single state agency in each state to make all Medicaid determinations pursuant to an approved state plan and to hold fair hearings for disputed claims. 42 USC 1396(a); 42 CSR 431.10; 42 CSR 430.10; 42 CSR 431.200 In Michigan, the legislature has determined the Department of Human Services as the single state agency to make medical determinations and hold fair hearings for contested matters. MCL 400.6; MCL 400.105 Pursuant to MCL 400.6, the Department of Human Services maintains the authority to develop regulations to implement the goals and principles of the assistance program created under the social welfare act, including all standards and policies related to applicants and recipients that are necessary or desirable to administer the program. Policies developed by the Department of Human Services are effective and binding on all those affected by the assistance programs. The Department of Human Services has the authority to develop policies to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds. Policies developed by the Department of Human Services are effective and binding on all those affected by the programs. MCL 400.6(4)

With the passage of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Congress sought to protect community spouses from "pauperization" while preventing financially secure couples from obtaining Medicaid assistance. *Wisconsin Department of Health and Family Services v Blumer*, 534 US 473, 480, 122 S Ct 962, 967 (2002).

The particular provision of the MCCA germane to this case provides: "If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered." 42 USC §1396r-5(d)(5).

The promulgated administrative rules of the Department of Human Services implement this provision of the Medicare Catastrophic Coverage Act by directing the use of a court-ordered

support determination as the community spouse income allowance if the institutional spouse is ordered by the Court to pay support to the community spouse and the court-ordered amount is greater than the result of the Department's computation of the community spouse income allowance. Bridges Eligibility Manual (BEM) 546.

The plain language of 42 USC §1396r-5(d)(5) provides two avenues to determining the CSMIA - a court order for support or an administrative determination through The Department.

The specific issue before the Court is whether a court order for support can be entered after the Department of Human Services has made a determination of the CSMIA.

The primary goal of statutory interpretation "is to discern the intent of the Legislature by first examining the plain language of the statutes." *Driver v Naini*, 490 Mich 239 (2011). When the language is clear and unambiguous, "no further judicial construction is required or permitted and the statute must be enforced as written." *Pohutski v City of Allen Park*, 465 Mich 467 (2002). A statutory provision must be read in the context of the entire act and "every word or phrase of a statute should be accorded its plain and ordinary meaning." *Krohn v Homeowners Ins. Co.*, 490 Mich 145, 156 (2011).

Examining the plain language of the statute and giving every word and phrase its plain and ordinary meaning, including the use of the past tense in the court-ordered support provision of the statute, this Court concludes that 42 USC §1396r-5(d)(5) does not allow the securing of a court order for a support once eligibility has been determined. The statute simply requires that The Department recognize an existing court order of support. The controlling federal statute provides no other mechanism to establish a CSMIA.

No Michigan appellate court has reviewed the language of the MCCA, but support for this Court's conclusions of law can be found in *MEF v ABF*, 393 NJ Super 543, 554 (2007).

In the instant case the filing of the petition for support was filed in probate court almost simultaneously with the filing of the Medicaid application. On August 19, 2014, the Medicaid application was approved and the community spouse monthly income allowance was calculated by The Department. At the time of The Department's determination, no order of support was issued by the Probate Court. Because no order of support was in place before the petitioner's CSMIA was determined by The Department, the petitioner must accept The Department's eligibility determination or avail herself of the fair hearing process.

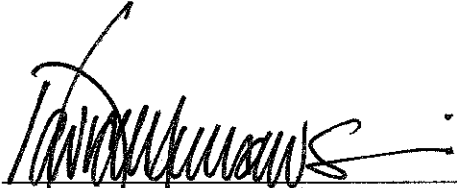
III

CONCLUSION

This Court does not possess subject matter jurisdiction because eligibility has been determined administratively and there has been no exhaustion of administrative remedies, and summary disposition is appropriate under MCR 2.116(C)(4).

IT IS HEREBY ORDERED that the Department of Human Services' motion for summary disposition, pursuant to MCR 2.116(C)(4) is granted, and the petition for support is dismissed.

Date: Jan 13, 2019



Honorable David M. Murkowski (P35026)
Chief Judge
Kent County Probate Court