COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 93-0859

PHYLLIS MANSFIELD,
Appellant

vs.

JOSEPH GALLANT, in his capacity as Commissioner of the Massachusetts Department of Public Welfare,
Respondent

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S APPEAL PURSUANT TO G.L. c. 30A, § 14[1]

On March 8, 1993, a Referee for the Department of Public Welfare ("Department") issued a final decision dismissing the appellant's administrative appeal concerning the reduction of her Medicaid Personal Care Attendant hours. As reasons therefore, the hearing officer concluded that the Department lacked jurisdiction over the appellant's claim. The appellant now seeks judicial review of this decision pursuant to G.L. c. 30A, § 14. For the reasons set forth below, the decision of the Referee dismissing the appellant's claim is **SET ASIDE** and the case is **REMANDED** for further proceedings consistent with this opinion.

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[1] Although the appellant entitled this as a motion for summary judgment, she essentially seeks a full G.L. c. 30A, § 14 review.

BACKGROUND

The appellant Phyllis Mansfield ("Mansfield") is a thirty-seven year old quadriplegic qualifying for Medicaid. Mansfield's medical care includes the services of a personal care attendant ("PCA"), who assists her with "activities of daily living". See 130 Code Mass. Regs. § 422.410.[2]

Mansfield initially applied for Medicaid PCA services while living in Lawrence, Massachusetts. The Northeast Independent Living Program, a personal care agency in the area, submitted a request to the Department for the authorization of fifty-four (54) hours of PCA services per week. The Department approved the request without modification.

In 1991, Mansfield relocated to Hubbardston, Massachusetts, where the Center for Living and Working ("CLW") became responsible for administering her Medicaid-paid PCA services. CLW reevaluated Mansfield and concluded that Mansfield's condition required fifty-one (51) PCA hours per week. CLW filed its request with the Department, which the Department approved.

Mansfield sought an internal review of the reduction in PCA hours by CLW, which was denied. Mansfield subsequently requested a hearing with the Department. Although the Department initially denied Mansfield's request for a hearing, it later granted Mansfield a hearing solely to determine whether the Department had jurisdiction over Mansfield's claim.

On March 8, 1993, the Referee dismissed Mansfield's claim for lack of jurisdiction

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[2] These activities include, inter alia, bathing, grooming, dressing, eating, and moving about.

under 106 Code Mass. Regs. § 343.245.[3] As reasons therefore, the Referee noted that the reduction in Mansfield's PCA hours was not done by the Department, but rather by CLW. Accordingly, the Referee held that the reduction of PCA hours did not constitute adverse Department action appealable under 106 Code Mass. Regs. §§ 343.110 and 343.230(A).[4] Additionally, the Referee found that the Department's participation in this case was limited to the mere approval of an authorization request submitted by CLW, and as such, it was not a reduction action cognizable under 106 Code Mass. Regs. § 342.230.

Mansfield now seeks judicial review of the Department's decision denying her appeal for lack of jurisdiction.[5]

DISCUSSION

Any person aggrieved by an administrative decision may appeal therefrom to the Superior Court pursuant to G.L. c. 30A, § 14. Under G.L. c. 30A, § 14, this court may affirm, remand, set aside, or modify an agency's decision if it is determined that a party's substantial rights were prejudiced because the decision was: (1) in violation of constitutional

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[3] 106 Code Mass. Regs. § 343.245 requires the Division of Hearings to "dismiss a request for a hearing when: . . . (4) The stated reason for the request is not grounds for appeal as specified in 106 CMR 343.230."

[4] 106 Code Mass. Regs. § 343.110 describes the fair hearing process, permitting recipients to "obtain a determination of the appropriateness of certain actions . . . [by] the Department."

Under 106 Code Mass. Regs. § 343.230(A)(2), any Department action regarding the reduction of medical assistance constitutes grounds upon which a recipient has a right to request a hearing.

[5] In its next reevaluation of Mansfield, CLW determined that Mansfield required fifty-four (54) hours of PCA services and the Department approved CLW's request.

provisions, (2) in excess of statutory authority or jurisdiction of the agency, (3) based on an erroneous interpretation of the law, (4) made upon unlawful procedure, (5) unsupported by substantial evidence, or (6) arbitrary or capricious. G.L. c. 30A, § 14(7). See Pyramid Co. of Hadley v. Architectural Access Bd., 403 Mass. 126, 130 (1988); Winn v. Architectural Access Bd., 25 Mass. App. Ct. 41, 42 (1987). The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bds., 27 Mass. App. Ct. 470, 474 (1989); Faith Assembly of God v. State Bldg. Code Comm'n, 11 Mass. App. Ct. 333, 334 (1981), citing Almeida Bus Lines, Inc. v. Department of Pub. Utils., 348 Mass. 331, 342 (1965).

In reviewing an agency's decision, the court is required to give due weight to the agency's experience, technical competence, specialized knowledge, and the discretionary authority conferred upon it by statute. Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988); Quincy City Hosp. v. Labor Relations Comm'n, 400 Mass. 745, 748-49 (1987). The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Regional Vocational School Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n, 372 Mass. 152, 154 (1977). A court may not overturn an administrative agency's choice between two conflicting views, even though the court justifiably would have made a different choice had the matter come before it de novo. Zoning Bd. of Appeals v. Housing Appeals Committee, 385 Mass. 651, 657 (1982).

It is axiomatic that once a state accepts Medicaid funds, it is required to abide by federal regulations relating thereto. 42 U.S.C. § 1396 et seq.; Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, __, 110 S. Ct. 2510, 2513 (1990); accord Maher v. Freedom of Information Comm'n, 192 Conn. 310, 472 A.2d 321 (1984); Rickaby v. Wisconsin Dept. of Health and Social Services, 98 Wis.2d 456, 297 N.W.2d 36 (App. Ct. 1980). Under federal regulations, the state agency responsible for administering Medicaid must provide for a fair hearing whenever the agency's action[6] results in the reduction of services to a recipient. 42 C.F.R. § 431.200.[7] Moreover, "[t]he agency must grant an opportunity for a hearing to . . . [a]ny recipient who requests it because he believes the agency has taken an action erroneously." 42 C.F.R. § 431.220(a)(2).

In the present case, the Department's action of approving CLW's request for fifty-one hours of PCA services for Mansfield resulted in the reduction of her PCA hours. Where, as here, the Department is responsible for administering Medicaid programs, it cannot avoid a hearing by asserting that it merely approved of a reevaluation which has the same effect. See 42 U.S.C. § 1396(a).

The Department contends that its actions were indirect as it merely approved of the plan submitted by CLW. In support of its contention, the Department relies on Blum v. Yaretsky, 457 U.S. 991 (1982), in which the Court found no due process violation where

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[6] "Action" is defined as "a termination, suspension, or reduction of Medicaid eligibility or covered services."

[7] Additionally, 42 C.F.R. § 431.205 mandates that the Medicaid agency must "maintain a hearing system . . . that meet[s] the due process standards set forth in Goldberg v. Kelly, 397 U.S. 254 (1970)."

the state agency adjusted patients' Medicaid benefits in response to the nursing home's decision to discharge or transfer its patients, without providing them a hearing. Id. at 1005-1012. The Court reasoned that "[m]ere approval of or acquiescence in the initiatives of a private party is not sufficient" to establish state action. Id. at 1004-1005.

Blum, however, is distinguishable from the present case because here the Department approved of the reduction. Such approval is a prerequisite to payment for the personal care agency. See 130 Code Mass. Regs. § 422.411. Accordingly, the Department is required to approve or disapprove of Mansfield's PCA hours. Compare Id. at 1010 (noting nothing in regulations authorized officials to approve or disapprove of nursing home's decision).

Additionally, the Department contends that on the authority of O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980), Mansfield is not entitled to a hearing. In O'Bannon, the Court held that residents of a nursing home had no constitutional right to challenge the revocation of the home's authority to provide its residents with nursing care at government expense. Id. at 775. The residents in O'Bannon nevertheless remained eligible for the services, albeit from a different nursing home. Id. at 787. Here, the Department's approval of CLW's plan reduced Mansfield's assistance. Thus, O'Bannon is clearly distinguishable.

Moreover, Mansfield's right to a hearing is guaranteed under state law. G.L. c. 118E, § 48 provides that "[a]ny person aggrieved by the failure . . . to render adequate medical assistance . . . or aggrieved by the withdrawal of such assistance . . . shall have a right to a hearing." Similarly, G.L. c. 18, § 16 provides a right to a hearing for "[a]ny person aggrieved by the failure of the department to render adequate aid or assistance under any

program of aid or assistance administered by the department . . . or aggrieved by the withdrawal of such aid or assistance." The Department's approval of fifty-one PCA hours constituted a withdrawal of three hours of PCA services where Mansfield was previously receiving fifty-four hours. As Mansfield argued, three hours a week of assistance to a quadriplegic is significant and may constitute inadequate aid thereby entitling her to a hearing. Since Mansfield's assistance was reduced, she is entitled to a hearing pursuant to 106 Code Mass. Regs. §§ 343.245 and 343.230.

Finally, this court notes that the Department cannot delegate its authority to provide a hearing to a private agency. See 42 C.F.R. § 431.10(e) (prohibiting agencies from delegating their exercise of administrative discretion in the administration or supervision of a plan); 42 C.F.R. § 431.205 (setting forth requirement that state agency must maintain a hearing system). To hold as the Department urges would leave Mansfield without any avenue of relief. Such a result is not only unconscionable, but is also contrary to both federal and state law. See Goldberg v. Kelly, 397 U.S. 254, 361-364 (1970) (due process requires that qualified welfare recipients must be afforded a pre-termination evidentiary hearing). Accordingly, this court declines to allow the Department to avoid its constitutional duties.

Because the Referee's dismissal of Mansfield's appeal for lack of jurisdiction is based on an erroneous interpretation of the law, and arbitrary, capricious, and otherwise not in accordance with the law, it cannot stand.

ORDER

For the foregoing reasons, the decision of the Referee is **SET ASIDE** and the case is **REMANDED** for further proceedings consistent with this opinion.

James P. Donohue
Justice of the Superior Court

DATED: April 5, 1994.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS. CIVIL ACTION NO. 93-0859

Phyllis Mansfield)
)
vs.) JUDGMENT
)
Joseph Gallant, in his capacity as Commissioner)
of the Massachusetts Department of Public Welfare)

This matter came on for trial before the Court, Donohue,J. presiding, and the issues having been duly tried and findings having been duly rendered,

It is Ordered and Adjudged:

that the decision of the Referee is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated at Worcester, Massachusetts, this twenty-seventh day of April, 1994.

(15)

Leonard Bonneau
First Assistant Clerk