

1987

# Jerry Grandson v. Suzanne Dandoy : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 870099 IN THE COURT OF APPEALS

STATE OF UTAH

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JERRY GRANDSON,	:	
	:	
Petitioner and	:	
Appellant	:	
	:	NO. 870099-CA
vs.	:	
	:	
SUZANNE DANDROY, in her capacity	:	Category No. 14(a)
as Executive Director of the	:	
Utah Department of Health,	:	
	:	
Respondent and	:	
Appellee.	:	

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APPELLANT'S BRIEF

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Appeal from the Memorandum Decision  
and Order of the 7th District Court  
for San Juan County  
Hon. Boyd Bunnell, Judge

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COURT OF APPEALS

IN THE COURT OF APPEALS

STATE OF UTAH

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JERRY GRANDSON,	:	
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Petitioner and	:	
Appellant	:	
	:	NO. 870099-CA
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#### JURISDICTIONAL STATEMENT

This action is an appeal from a decision rendered by the Seventh Judicial District Court on a Petition For Review of a Final Determination made by the Director of the Utah Department of Health on a medicaid application. The Court of Appeals has jurisdiction over this appeal pursuant to U.C.A. §78-2a-3(2)(a).

#### STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether federal and state statutes and regulations mandate that a State Medical Assistance Program may not include the income of any relative, except that of a parent or spouse, in the calculation of a child applicant's eligibility for Medicaid benefits.
2. Whether federal law and regulation are violated by any Medicaid eligibility calculation which deems Social Security benefits which are paid through a representative payee to be available to any person but the specific beneficiary.

DETERMINATIVE LAW

42 U.S.C. §1396a(a) (17(D) :

A State plan for medical assistance must... include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, [42 USCS §§301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.], based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which... do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under 21 or (with respect to States eligible to participate in the State program established under title XVI [42 USCS §§1381 et seq.]), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 [42 USCS § 1382c] (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;...

42 U.S.C. §603(a) (38) :

A State plan for aid and service to needy families with children must- ...

(38) provide that in making the determination under paragraph (7) with respect to a depen-

dent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part [42 USCS §§601 et seq.]) include-

- (A) any parent of such child, and
- (B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (20) of section 406(a) [42 USCS §606(a)], if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 205(j) [42 USCS §405(j)], in the case of benefits provided under title II [42 USCS §§401 et seq.]); and

**42 C.F.R. §435.113:**

The agency must provide Medicaid to individuals who would be eligible for AFDC except for an eligibility requirement used in that program that is specifically prohibited under title XIX.

**42 C.F.R. §435.692(a)(1) and (2):**

- (a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not-
  - (1) Consider income and resources of any relative available to an individual; nor
  - (2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.

**U.C.A. §26-18-3(2):**

The department [Department of Health] shall be the single state agency responsible for the administration of the medicaid program in connection with the United States Department of Health and Human Services pursuant to Title



XIX of the Social Security Act. (2) The department shall develop implementing policy in conformity with the requirements of Title XIX and with regulations adopted pursuant thereto by the federal agency.

Utah DSS-APA Manual, Vol. III, §327.32:

1. Count the income of the parents and the child when the child lives with his parents. This includes children in non-AFDC foster care that have been placed in their own homes (see Sec. 213.5).

For B, and D cases, a child is considered living with his parents until the month after he moves.

For F and C cases, a child is considered living with his parents while temporarily absent from the home, such as for school, vacation, summer employment, medical treatment, etc.

2. Count only the income of the child, including support payments made by the parents, in these situations:

F and C Cases - when the child is living away from his parents and it is not temporary.

- a. This includes a child in Foster Care that has not been placed back in his own home (see Sec. 213.5).
- b. This includes a child in AFDC foster care, no matter where he lives.
- c. This includes a child living with a specified relative, and it is not temporary.

B and D cases - when the child lives separate from his parents - for any reason. A child is considered living with his parents until the month after he moves.

**42 U.S.C. §405(j)(1) and (2):**

(1) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(2) Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall insure that such certification are adequately reviewed.

**42 U.S.C. §408(e):**

Whoever... (e) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any party thereof, to a use other than for the use and benefit of such other person; ... shall be guilty of a felony and upon conviction thereof shall be fined not more than \$5000 or imprisoned for not more than five years, or both.

**42 U.S.C. §1302:**

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

20 C.F.R. §404.2035(a):

A representative payee has a responsibility to-

(a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;....

#### STATEMENT OF THE CASE

On May 30, 1986, a Petition For Review was filed in the Seventh Judicial District Court requesting that the Final Determination of the Director of the Utah Department of Health, which denied Medicaid benefits to Jerry Grandson, be reversed as arbitrary and capricious for having ignored federal and state law and regulations. (C.T. pp. 1-17) On June 23, 1986, the Director moved to dismiss the Petition. (C.T. pp. 18-19) On July 7, 1986, the District Court entered an Order denying the Motion To Dismiss. (C.T. pp. 38-39)

On July 14, 1986, the Director filed an Answer to the Petition (C.T. pp. 40-42) and a Certification Of Transcript Papers, And Documents. (C.T. pp. 47-79.) On August 13, 1986 Jerry Grandson filed a Memorandum Of Points and Authorities In Support Of Petition For Review. (C.T. pp 80-89.) On September 16, 1986, the Director filed her Reply Memorandum. (C.T. pp. 100 - 129.)

On September 12, 1986, the Director moved for leave to file a third-party complaint against the Secretary of the Unit

States Department of Health and Human Services. (C.T. pp. 90-91.) On November 11, 1986, the District Court denied the motion. (C.T. pp. 169-170.)

On February 12, 1987, Jerry Grandson requested a ruling on the Petition (C.T. pp. 191-192) On February 23, 1986, the District Court entered a Memorandum Decision denying the Petition to reverse the Final Determination of the Director. (C.T. pp. 193-194.) The Decision was formalized in the Order of March 30, 1987. (C.T. pp. 201-202.)

On March 23, 1986, Jerry Grandson filed a Notice Of Appeal. (C.T. pp. 196-197.)

#### STATEMENT OF FACTS

In 1985, Jerry Grandson applied for medical assistance under the state Medicaid plan. Jerry Grandson's household is composed of 5 members: his mother, sister, two nieces adopted by his mother, and himself. (C.T. pp. 70-71) As one or both parents of these children is deceased, each child in the household is a recipient of Social Security Survivor benefits. Jerry Grandson's personal benefits total about \$158.00 per month. (C.T. p. 69)

On July 25, 1985, the District VII (B) Office of Community Operations denied Jerry Grandson's application on the ground that the total income available to meet Petitioner's medical obligation is in excess of \$666.00: the basic maintenance standard for a household of five. (C.T. p.75.) In arriving at

this determination, the District Office deemed as available income both Jerry Grandson's Social Security benefits and also those Social Security benefits received by his sister and two nieces. (C.T. p. 74)

Jerry Grandson submitted a written appeal of this denial to Administrative Hearing Officer Neal Bernson to contest the decision by the District Office. (C.T. pp. 62-68, 76-77) The appeal argued that deeming of benefits belonging to Jerry Grandson's sister and nieces as being available as income to him violated federal law and regulations which preclude such deeming. The appeal also pointed out that such deeming was inconsistent with Utah Assistance Payments Administration regulations. Finally, the Hearing Officer was advised that, because the Social Security Survivor's benefits were paid to Nellie Grandson, Jerry's mother, as a representative payee, any use of benefits received for his nieces and sister to pay for Jerry's medical bills would be contrary to federal law.

On December 20, 1985, the administrative Hearing Officer, although refusing to address any legal arguments raised by Jerry Grandson (C.T. p.60.), sustained the District Office's decision. (C.T. pp. 53-60.) The Recommended Decision of the administrative Hearing Officer was adopted by the Director of the Utah Department of Health, Suzanne Dandoy, in her Final Determination dated March 14, 1986. (C.T. pp. 48-52.)

The Director's Final Determination addressed the legal

issues previously ignored by the hearing officer. The Determination stated that the Deficit Reduction Act of 1984 ("DEFRA", below), P.L. 98-369, §2640, required the Department of Health to count the income of Jerry Grandson's siblings as being available to him in determining his medicaid eligibility. (C.T. p. 51.) However, in explaining what she termed "the whole law", the Director did not deal with the problem that DEFRA only amended Title IV of the Social Security Act, and left unchanged the provision against deeming of relatives' income found in Title XIX (Medicaid) of the Act. In addressing the problem of representative payee status, the Director again relied on DEFRA, pointing out that the changes made in the Title IV (Aid To Families With Dependent Children) eligibility statute also abolished the representative payee bar to deeming sibling income as available in AFDC cases. (C.T. pp. 50-51.) However, other than to state that "the whole law" mandated the same abolition for Medicaid cases, the Director did not explain how DEFRA had altered Title XIX, which Congress did not amend.

On May 30, 1986, Jerry Grandson filed a Petition For Review in the Seventh Judicial District Court which alleged that the decision of the Department of Health concerning calculation of the income available to a child Medicaid applicant violated certain federal and state laws and regulations, and was therefore arbitrary and capricious. (C.T. pp. 1-3.) On February 23, 1987, the District Court entered a Memorandum Decision holding that the

income calculation was correct under existing law and regulation and denying the petition to alter the Final Determination of the Department of Health. (C.T. pp. 193-195.)

Specifically, the Court stated..."that no particular law or regulation should be isolated and treated as the final word in a Medicaid eligibility determination, and thereby sustaining the Director's action of utilizing the DEFRA amendments to AFDC eligibility to alter eligibility under the unamended Medicaid statutes and regulations. An Order to this effect was signed and entered on March 30, 1987. (C.T. pp. 201-202.)

Jerry Grandson filed his Notice Of Appeal on March 2, 1987. (C.T. pp. 196-197.)

#### SUMMARY OF ARGUMENT

The appellant, Jerry Grandson, applied for Medicaid benefits, under Title XIX of the Social Security Act. The Medicaid program is administered by the Utah Department of Health. In determining Jerry's eligibility, the Social Security Survivor's benefits income received by Jerry, two nieces, and his sister were deemed to be available to him as resources to cover his medical expenses. This totalling of income rendered Jerry ineligible for Medicaid benefits. The Director of the Department of Health upheld this determination by stating that the Deficit Reduction Act of 1984 (DEFRA) mandated that the income of survivors be counted in both AFDC cases, under Title IV of the Social Security Act.

Security Act, and in Medicaid cases under Title XIX of the Act. This determination ignored an unamended section of Title XIX (42 U.S.C. §1396a(a)(17)(D)) which bars state agencies from counting sibling income in Medicaid eligibility determinations. The Director's decision also ignored federal regulations (42 C.F.R. §§ 435.113 and 435.602(a)(1) and (2)) which bar the counting of sibling income in Medicaid eligibility determinations. Finally, by ignoring these federal statutes and regulations, the Director circumvented Utah law (U.C.A. §26-18-3(2)) which requires that the Department of Health obey federal law in the administration of its Medicaid program. The Director's decision represents a sweeping and unauthorized expansion of amendments to Title IV of the Social Security Act into an alteration of Title XIX eligibility law. In making this expansion, unambiguous federal law barring the counting of sibling income was ignored, and the Director's determination was therefore arbitrary and capricious.

The Medicaid eligibility determination upheld by the Director essentially held that the Social Security Survivor's benefits of Jerry Grandson's siblings were available to meet his financial obligations for medical treatment. These benefits are paid to Nellie Grandson, Jerry's mother, as a representative payee. Federal law and regulation (42 U.S.C. §405(j)(1) and (2), 42 U.S.C. §408(e), and 20 C.F.R. §404.2035(a)) make it unlawful for a representative payee to use monies received by them for the obligations of any person other than the actual beneficiary. The



Director's determination thus forces the representative payee to violate federal law. The Director relies on DEFRA to justify this result, noting that the bar was waived in Title IV eligibility determinations. But DEFRA has no effect on Title XIX (Medicaid) eligibility standards, and the bar against allowing representative payments to be used for persons other than the actual beneficiary has not been lifted in Medicaid cases.

#### ARGUMENT

- I. FEDERAL AND STATE STATUTES AND REGULATIONS DICTATE THAT THE INCOME OF SIBLINGS AND OTHER RELATIVES, EXCEPT THAT OF PARENTS OR SPOUSE, MAY NEVER BE DEEMED AS AVAILABLE TO A CHILD-APPLICANT FOR MEDICAID BENEFITS IN A DETERMINATION OF THE APPLICANT'S ELIGIBILITY.

Section 1396a(a)(17)(D), of Title 42, United State Code, mandates that a State plan for medical assistance, in determining the eligibility of an individual for Medicaid benefits under Title XIX of the Social Security Act,

...[may] not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child.... (Emphasis supplied)

This statute has never been amended by Congress.

Consistent with the terms of this statute, the Code Federal Regulations, at §435.602(a)(1) and (2), of Title 42, (a section entitled "Limitation on the financial responsibility

relatives") states

[e]xcept for a spouse of an individual or a parent for a child who is under age 21... the agency must not - (1) consider income and resources of any relative available to an individual; nor (2) collect reimbursement from any relative for amounts paid... to any individual. (Emphasis supplied.)

This regulation is clearly set out to enforce the limitation of 42 U.S.C. §1396a(a)(17)(D). The regulation has never been altered by the Department of Health and Human Services.

Utah is obliged to follow federal law and regulation in its implementation of the medical assistance program. U.C.A. §26-18-3(2). Utah's Department of Health has codified its eligibility rules for the Medicaid program in its DSS-APA Manual. Volume III, §327.32 of the Manual instructs eligibility workers that, in determining the income of an unemancipated child, to only "[c]ount the income of the parents and the child." This provision is an unambiguous restatement of the federal statute and regulations.

In summary, valid federal and state statutes, regulation and rules consistently mandate that a state agency making Medicaid eligibility determinations may never count the income of a relative, such as a brother, sister, or niece, as being available to a child-applicant.

Federal and state agencies (as is true in the present

case) have adopted the position that in determining the Medicaid eligibility of children, state agencies must apply the financial eligibility requirements of the State's Aid to Families With Dependent Children (A.F.D.C.) plan. Under the amendments to Title IV of the Social Security Act (covering A.F.D.C.), made by the Deficit Reduction Act of 1984 (D.E.F.R.A.) P.L. 98-369, §2640, an eligibility determination for a dependent child must count income available to a brother or sister. 42 U.S.C. §602(a)(38). The Secretary of the Department of Health and Human Services, in reliance of the change made by DEFRA, has also required state agencies to count sibling income in any determination of eligibility for Medicaid benefits under Title XIX. The federal and state agencies have argued that this interpretation of DEFRA by the Secretary is entitled to such great weight as to be dispositive of the issue of the conflicting statutes and regulations.

The problems with this position are readily apparent. Through DEFRA, Congress may have expressed its intent to amend eligibility requirements for AFDC benefits under Title IV of the Social Security Act, but it expressed no similar intent to change any part of Title XIX of the Act dealing with Medicaid benefits. Indeed, §1396a(a)(17)(D) is still a viable and unamended section of Title XIX and clearly denies the states any right to include relatives' income (other than that of a spouse or parent) in eligibility determinations. And, although the Secretary's in-

terpretation of statutes are entitled to some weight, he cannot ignore clear statutory authority absolutely barring his interpretation. The Secretary's interpretation, in any event, ignores the Secretary's own regulations, which state at 42 C.F.R. §435.113

[t]he agency must provide Medicaid to individuals who would be eligible for AFDC except for an eligibility requirement used in that program that is specifically prohibited under Title XIX. (Emphasis supplied)

Every decision, except the present one from the Seventh Judicial District, has rejected the position of the federal and state agencies and upheld the plain meaning of §1396a(a)(17)(D). In Vance v. Hegstrom (1986 9th Cir.) 793 F.2d 1018, the Ninth Circuit observed of DEFRA

[t]he statute finally enacted by Congress which required states to include sibling income when determining AFDC eligibility is directed solely to the provisions of 42 U.S.C. §602, which is a component of the AFDC statute, and not to subsection (17)(D). (Emphasis supplied.)

Id., at p. 1025. The Court also held that the Secretary's interpretative authority was not unlimited and, in setting eligibility standards, section 1396a(a)(17)(D) could not be ignored. Id., at p.1024. Other courts have made identical holdings, all of which bar the counting of relatives' income. Reed v. Blizinger (S.D. Ind. 1986) 639 F.Supp. 130; Olson v. Reagan (S.D. Iowa 1986) 631 F.Supp. 154; Gibson v. Puett (M.D. Tenn. 1985) 630 F.Supp. 542;

Malloy v. Eichler (D.Del. 1986) 628 F.Supp. 582; Sandberg v. Mansour (W.D. Mich. 1986) 627 F.Supp. 616; Childress v. Heckle (D.Colo. Jan. 13, 1986) No. 85-7-1459.

The law on this matter is unambiguous: a state agency is absolutely barred from counting the income of a brother, sister, or niece as being available to an unemancipated child applicant for Medicaid benefits. The Final Determination of the Director of the Department of Health upheld the inclusion of income from Jerry Grandson's sister and nieces in the assessment of his eligibility for Medicaid benefits. Such inclusion is done in violation of federal and state statutes and regulations. The final Determination of the Director is therefore arbitrary and capricious and must be reversed.

II. SOCIAL SECURITY BENEFITS PAID TO A REPRESENTATIVE PAYEE MAY ONLY BE USED FOR THE ACTUAL BENEFICIARY, AND STATE MEDICAID PLANS MAY NOT DEEM SUCH INCOME PAID TO THE REPRESENTATIVE OF A SIBLING AS BEING AVAILABLE TO AN APPLICANT FOR MEDICAID BENEFITS.

The Social Security Act permits the Secretary of Health and Human Services to appoint a trustee to receive benefits on behalf of a beneficiary, to be used in the interest of the beneficiary. 42 U.S.C. §405(j). This trustee is termed "representative payee". Title 20, section 404.2035(a), of the Code of Federal Regulations, states that a representative payee must

"use the payments...she receives only for the use and benefit of the beneficiary in a manner and for the purposes...she determines...to be in the best interests of the beneficiary;...." (Emphasis supplied.)

Section 408(e) of Title 42, makes it a felony to use the benefits paid to a representative payee for anyone other than the named beneficiary.

In some households, several persons may be receiving Social Security benefits paid through a representative payee. State benefit programs have frequently written their eligibility rules in a manner which cumulates this income as a single household income. As a consequence, a single applicant for benefits may have those benefits denied through attribution of this household income.

These eligibility rules regarding cumulation of representative payee benefits have been struck down in the past. In Snider v. Creasy (1984 6th Cir.) 728 F.2d 369, the Court of Appeals held that such deeming violated federal regulation in a determination of eligibility for AFDC benefits. The Court noted

The federal regulations governing the administration of benefits through a representative payee specifically require the payee to use "the benefits of the beneficiary in a manner and for the purpose, he or she determines...to be in the beneficiary's best interest." [citation] The representative payee's discretionary role in spending on the beneficiary's behalf is abrogated by [the State's] policy. The practical effect of this policy is to directly allocate these funds to one other than the intended beneficiary, thereby eliminating the representative payee's discre-

tion to determine how benefits should be spent on the beneficiary's behalf. Such an abrogation is impermissible. Moreover, the duties and obligations imposed upon the representative payee, are federally mandated and failure to fulfill these obligations can expose the representative payee to criminal liability. (Emphasis supplied)

Id., at p. 372; accord, Riddick v. D'Elia (1980 2d Cir.) 626 F.2d 1084. These decisions deny states any authority to cumulate benefits paid through a representative payee.

After these decisions were issued, Congress enacted the Deficit Reduction Act of 1984, P.L. 98-369, §2640. As the Director of the Department of Health pointed out in her Final Determination, DEFRA (codified as 42 U.S.C. §602(a)(38)) declares that for purposes of AFDC eligibility

A State plan for aid and services to needy families with children must-

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include-

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title, is such parent, brother, or sister is living in the same house as the dependent child, and any income of, or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter) [Emphasis supplied].

The apparent significance of the parenthetical reference to §405(j) is the removal of any bar to the deeming of representative payee income in AFDC cases. However, the courts are in conflict on this point, for some have found that DEFRA does remove the deeming bar, while others agree that it still exists and is enforceable. Ardister v. Mansour (W.D. Mich. 1986) 627 F.Supp. 641, [Title II (Old Age Survivor and Disability Insurance) payments made to the representative payee of a child beneficiary must be deemed available for common use to AFDC applicants under DEFRA]; Collins v. Barry (N.D. Ohio 1986) 644 F.Supp. 249, 253 ["...OASDI benefits paid to a representative payee in trust for a minor beneficiary cannot be deemed as income available to the family generally but are restricted to use for the sole benefit of the minor beneficiary."]; Whitehorse v. Heckler (D.S.D. 1985) 627 F.Supp. 848, 855 ["...the ambiguous reference in §2640(a) to §205(j) [sic] ... is not sufficient to repeal the prohibitions which clearly outlaw the use of O.A.S.D.I. benefits by anyone other than the named beneficiaries...."].

Whatever the outcome of this conflict between the courts, one message is clear in their differing opinions: DEFRA amends only AFDC eligibility rules, and to the extent the representative payee bar is removed at all, it is only removed in regard to AFDC eligibility determinations. This is clear from the terminology of §2640 itself, which refers only to AFDC



eligibility under Title IV. DEFRA amends no rules regarding Medicaid eligibility under Title XIX.

Because DEFRA does not amend Title XIX, the bar against deeming Social Security Survivor's benefits, paid through a representative payee, as being available to an applicant for Medicaid remains intact and unchanged. It is therefore a violation of federal law and regulation to attribute such income as available to a Medicaid applicant.

Jerry Grandson's nieces and sister received Survivor's benefits through Nellie Grandson as a representative payee. Federal law barred that income from being deemed as available to meet any financial obligation of Jerry Grandson. Yet the Final Determination of the Director of the Department of Health let stand a Medicaid eligibility assessment which in fact deemed that representative payee income as being available to Jerry. As a consequence, the Final Determination ignored federal law. Because the Director is obligated by Utah law to obey federal statutes and regulations in the administration of the medical assistance program, her Final Determination is arbitrary and capricious, and must be reversed.

#### CONCLUSION

Jerry Grandson applied for Medicaid benefits in 1985. In determining his eligibility, Social Security Survivor benefits received through a representative payee to his sister

and two nieces were deemed to be income available to him. This eligibility decision was upheld by the Director of the Department of Health in her Final Determination.

42 U.S.C. §1396a(a)(17)(D) denies state agencies any authority to attribute income from a sibling as being available to a Medicaid applicant under Title XIX of the Social Security Act. This statute, and its related federal and state regulations, were not amended by the Deficit Reduction Act of 1984, which only allows the counting of sibling income in the determination of eligibility for benefits under Title IV of the Social Security Act (Aid to Families With Dependent Children). In Medicaid cases, state agencies may only count the income of an applicant's parent or spouse as being available to the applicant.

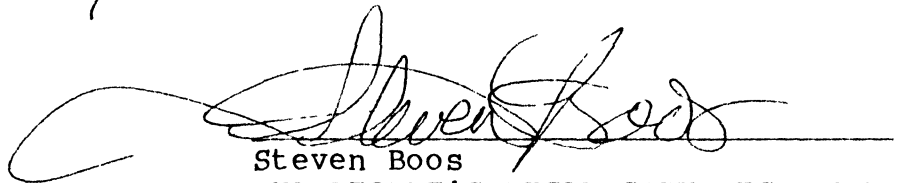
42 U.S.C. §405(j) and §408(e) provide that benefits received by a representative payee may only be used for the actual beneficiary. While the federal courts are in disagreement over the issue of whether DEFRA removed this bar in the determination of eligibility for AFDC, they appear to agree that no such amendment has taken place in regard to Medicaid. It would therefore violate these statutes, and their related regulations, to deem benefits received through a representative payee as being available to a Medicaid applicant.

The Final Determination of the Director of the Department of Health is invalid on two independent grounds. First, it counts the income of Jerry's siblings as being available to him,

although such deeming is barred by §1396a(a)(17)(D). Second, it counts income paid through a representative payee as being available to Jerry, although that deeming is barred by §405(j) and §408(e).

To reach the result of her Final Determination, the Director had to deliberately side-step fixed and unambiguous federal and state law. Such a maneuver is arbitrary and capricious. The Final Determination must therefore be reversed.

Date: 8 May 1987

  
Steven Boos  
DNA-PEOPLE'S LEGAL SERVICES, INC.  
Attorneys for Appellant and  
Petitioner

#### ADDENDA

1. Memorandum Decision
2. Order
3. Final Determination
4. Recommended Decision
5. Childress v. Heckler

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR SAN JUAN COUNTY  
STATE OF UTAH

JERRY GRANDSON,	)	
	)	MEMORANDUM DECISION
Petitioner,	)	
	)	
vs.	)	
	)	
SUZANNE DANDOY, in her capacity	)	Civil No. 4902
as Executive Director of the	)	
Utah Department of Health,	)	
	)	
Respondent.	)	
	)	

The petitioner has filed a petition with the Court seeking a judicial review of the final determination of the respondent wherein the petitioner contends that the respondent acted capriciously in adopting the Findings of Fact and Conclusions of Law recommended by the Hearing Officer in this case. It is the contention of the petitioner that the Hearing Officer and the Director capriciously misapplied the law and applicable regulations when they determined that the petitioner, who is a child applicant, was not eligible for medical assistance payments. The sole legal issue is whether the Director is correct when she included the income available to all household members of petitioner's family in calculating the amount of income available to the petitioner as it applies to his eligibility for medical assistance payments.

The Court has reviewed the memorandums submitted by the petitioner and the respondent and the applicable laws and

regulations and has concluded that the laws and regulations relative to the payment of medical assistance must be read and construed in their totality, and that no particular law or regulation should be isolated and treated as the final word. The Court has further concluded that the director's conclusion is not contrary to those laws and regulations, and that the Director was not acting capriciously in her actions in this case.

Therefore, the Court denies the petitioner's application for alteration of the final order of the respondent.

The Attorney for the respondent is directed to prepare a formal order in accordance with this opinion.

DATED this 23<sup>rd</sup> day of February, 1987.

  
BOYD BUNNELL, District Judge

DAVID L. WILKINSON (3472)  
Attorney General  
STUART W. HINCKLEY (4051)  
Division Chief  
BRIAN L. FARR (1037)  
Assistant Attorney General  
Attorney for State of Utah  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: 533-7642

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**IN THE SEVENTH JUDICIAL DISTRICT COURT FOR SAN JUAN COUNTY**  
**STATE OF UTAH**

---

**JERRY GRANDSON**

:

Petitioner,

:

-v-

:

**ORDER**

**SUZANNE DANDOY**, in her capacity :  
as **Executive Director of the**  
**Utah Department of Health**, :

Civil No. 4902

Respondent. :

---

This matter came before the Court on appeal from an administrative hearing in the Department of Health pursuant to Utah Code Annotated § 26-23-2. Having reviewed the record, the memoranda submitted by counsel and the applicable laws and regulations, the Court has concluded that the laws and regulations relative to the payment of medical assistance must be read and construed in their totality, and that no particular law or regulation should be isolated and treated as the final word. The Court has further concluded that the Director's Final Determination is not contrary to those laws and regulations, and that the Director was not acting capriciously in her actions in this case.

NOW THEREFORE it is ORDERED, ADJUDGED and DECREED that:

1. Judgment is entered in favor of Respondent affirming the Final Determination of the Executive Director of the Department of Health; and

2. The relief requested by Petitioner is denied.

DATED this 30 day of March, 1987.

  
HONORABLE BOYD BUNNELL  
District Court Judge


CERTIFICATE OF MAILING

I hereby certify that I mailed a true and exact copy of the foregoing Judgment, postage prepaid, to the following:

Steven Boos, Esq.  
Attorney for Petitioner  
DNA - People's Legal Services, Inc.  
P.O. Box 488  
Mexican Hat, Utah 84531

Brian L. Farr, Esq.  
Assistant Attorney General  
Attorney for Respondent  
236 State Capitol  
Salt Lake City, Utah 84114

on this the 30th day of March, 1987.







STATE OF UTAH  
DEPARTMENT OF HEALTH

NORMAN H BANGERTER, GOVERNOR

SUZANNE DANDOO, M.D., M.P.H., EXECUTIVE DIRECTOR



CH-132-86

FAIR HEARING IN THE INTEREST OF:

Jerry Grandson                      11/85              #9

F I N A L   D E T E R M I N A T I O N

Having reviewed the findings of fact and conclusions of law made by the Fair Hearing Officer of the Office of Administrative Hearings, Department of Social Services, incorporated herein, and having found that they are supported by substantial evidence in the record,

NOW, THEREFORE, IT IS ORDERED:

That the aforementioned recommended findings of fact and conclusions of law be sustained, and that the Hearing Officer's recommended decision be affirmed.

In doing so, the Department of Health (the "Department" or "DOH") is not unmindful of the position advanced by claimant.

In this regards, the Department has, as above, reviewed and scrutinized the whole record and also reviewed relevant: 1. state and federal legislation; 2. CFR citations; 3. legislative histories and agency directives, including federal Health and Human Services ("HHS") advisories regarding relevant regulatory measures passed thereunder; and 4. pertinent court decisions, both state and federal, regarding the present issue(s) before the Department.

DOH, under authority of Section 26-18-3 UCA and as implemented by contract with the Utah Department of Social Services ("DSS") through DSS's Office of Community Operations' ("OCO") District Office ("district") network, has designated DSS as the eligibility determinating agency for the Utah Medical Assistance Program, Section 26-18-1, et. seq. UCA, commonly called Medicaid.

In determining eligibility for Medicaid, the district office utilizes the procedures and standards established by DSS which are condensed in written form in Volume III, "Medical Assistance," of DSS's Assistance Payments Administration (APA) determination guidelines. Such procedures and standards being a compilation of relevant state and federal law and directives thereunder.

OFFICE OF THE EXECUTIVE DIRECTOR

While on a day-to-day basis, in large measure the district office refers to this manual for daily guidance and direction, it, the district, must and is guided also by all pertinent state and federal law, both statutory/regulatory and case law.

From a review by the Department of such relevant materials it can as a starting point be stated that the key issues and determinative factors as regards claimant's eligibility/ineligibility center on:

1. Defining the "assistance unit" or, more precisely, the "filing unit" and,
2. Applying such definition(s) to the present factual situation as to determining appropriate family contribution or "deeming" as to determining the eligibility of claimant.

At first glance and upon cursory review of claimant's position, it would appear that only claimant's monthly income of \$158.00 and not that of his siblings can be included in claimant's eligibility determination. (This excluding for the moment any "deeming" of claimant's mother's income which apparently was initially ignored by the district office). For by reference to certain CFR citations, namely 20 CFR 404.2035 which in part states:

"A representative payee has a responsibility to -

- (a) Use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary;"

and from 42 CFR 435.602 we read in part:

- (a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not -
  - (1) Consider income and resources of any relative available to an individual; nor . . . "

Also reference to the case law in this area would on first glance appear to further bolster claimant's contention. Johnson v. Harder, C.A. Conn. 1975, 512 F. 2d 1188, certiorari denied 96 S. Ct. 149. Snider v. Creasy, C.A. Ohio 1984, 728 F. 2d 369. Chaddick v. Adult and Family Services Division, 1981, 632 p. 2d 33, 53 Or. App. 508.

If our inquiry stopped at this point, claimant's position would seemingly be dispositive.

What must be viewed is the underlying intent of the legislation setting up the determination process and the status of the whole law at the time claimant walked into the district office.

From 20 CFR 404.1 we read:

The regulations in this Part 404 (Regulations No. 4 of the Social Security Administration) relate to the provisions of Title II of the Social Security Act as amended on August 28, 1950 [42 U.S.C.A. § 401 et seq.], and as further amended thereafter.

By reference to 42 U.S.C. 405 (j) we find the foundation authorization for 20 CFR 404.2035 regarding representative payees wherein we read in part:

42 USC 405 (j)

(1) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

From 42 USC 602 (a) (38) we read:

(a) A State plan for aid and services to needy families with children must-

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include -

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 606(a) of this title, if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405 (j) of this title, in the case of benefits provided under subchapter III of this chapter); and . . .  
(Emphasis added)

[Paragraphs (7) and (8) dealing with the \$1,000 family ceiling and \$75/\$160 earned income disregards; clauses (1) and (2) of section 606(a) defining "dependent child."]

Clauses (A) and (B) of 602 (a)(38) stating that "in making the determination . . . the State agency shall . . . include -

(A) any parent of such child, and

(B) any brother or sister of such child . . . (Emphasis added)

Such parents and siblings being viewed as part of the "filing unit." (See HHS Transmittal No. SSA-AT-86-1, dated January 13, 1986, a copy of which is attached).

Further from clause (B) we read:

" . . . and any income of or available for such parent, brother, or sister shall be included in making such determination . . . (notwithstanding section 405 (j) of this title . . . )" (Emphasis added) (Note: And by implication "notwithstanding 20 CFR 404.2035")

The above referenced section 42 USC 602 (a)(38) being an amendment and addition as part of the Deficit Reduction Act of 1984 and effective as of July 18, 1984 Pub. L. 98-369, Title VI, Section 2640.

Such being a specific statutory response and legislative overriding of case law as embodied in Johnson v. Harder and Snider v. Creasy; with such legislation for all practical purposes doing away with representative payee "limitations" (at least as regards AFDC related determinations). (See also in this regards 45 CFR 206.10 (a)(1)(vii)).

Even prior to the Congress' declaration, the courts' have (had) been undermining the representative payee "for the use and benefit of the beneficiary" position. See Summers v. D'Elia 1983, 465 NYS 2d, 95 A.D. 2d 184. Korbel v. Commonwealth of Pennsylvania, PA Commw. Ct. No. 976 C.D. 1978 (December 12, 1979).

In applying the whole law to claimant when he presented himself via his mother's application on his behalf on April 22, 1985 it is clearly evident that the filing unit included: a) claimant; b) claimant's mother (even before the July 18, 1984 section 42 USC 602 amendments); and c) claimant's siblings; and all of their available income as a family unit no matter in what form received - whether directly or indirectly via a representative payee or otherwise.

Analysis as regards sections 325 and 327 of Volume III of the APA further bolsters the district office's determination when read in light of the above congressional and regulatory enactments rather than negating it as claimant would assert.

It follows presumptively assuming that the district office's \$ figures are correct that with or without the claimant's mother's income being included that the district's denial was appropriate and correct based on inclusion of the siblings' income.

Accordingly, as above, the Hearing Officer's recommended decision is hereby affirmed.

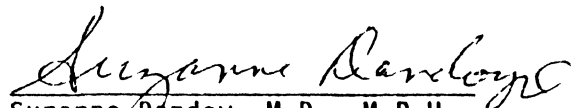
It is further ordered that a copy of this final determination be sent to the claimant at his last known address by certified mail, return receipt

requested; to his attorney of record by certified mail, return receipt requested; and to the appropriate District Office and/or other state agency for action in accordance herewith.

An appeal from this final determination may be secured pursuant to Utah Code Ann. Section 26-23-2 (1953 & Supp. 1983) by filing a petition in the appropriate District Court of the State of Utah within 30 days after this final determination is received. Failure to file such a petition within the 30-day time limit may constitute a waiver of all right to appeal this determination.

DATED this 14 day of March, 1986.

UTAH DEPARTMENT OF HEALTH

  
Suzanne Dandoy, M.D., M.P.H.  
Executive Director



## Social Services

Norman H. Bangerter, Governor, State of Utah  
Norman G. Angus, Executive Director

FAIR HEARING IN THE  
INTEREST OF )  
 )  
 Jerry Grandson 11/85 #9 )

### RECOMMENDED DECISION

The above entitled matter having been regularly heard before the Fair Hearing Officer of the Office of Administrative Hearings, of the Department of Social Services, and proper notice having been given the claimant, and all of the facts, circumstances, and rights of the claimant having been duly considered:

IT IS THEREFORE RECOMMENDED: That the decision by the District VII (B) Office of Community Operations that all household members and income must be considered in determining excess income is hereby sustained. Refer to Volume III, §§325 and 327.

Dated this 20th day of December 19 85.

OFFICE OF ADMINISTRATIVE HEARINGS

*Neal Bernson*

Neal Bernson  
Fair Hearing Officer

Office of Administrative Hearings  
Bill L. Walker, Director

150 West North Temple, Fourth Floor  
P O Box 45500, Salt Lake City, Utah 84145-0500  
801-533-7386 & 533-6586

An Equal Opportunity Employer

FAIR HEARING SUMMARY

10/85 #9  
Medical Assistance  
District VII (B) OCO-APA

Hearing Held through Correspondence  
Neal Bernson, Hearing Examiner

I. ISSUE:

The claimant requested a hearing on August 28, 1985, to appeal a decision by the District VII (B) Office of Community Operations in requiring excess income to be paid to qualify for Medical Assistance. On September 5, 1985 the claimant's representative and the district office were notified that the hearing would be conducted through correspondence. On September 17, 1985 the district office summarized their position in a brief. A copy was provided to the Office of Administrative Hearings and the claimant's representative. The claimant's representative made a response on September 24, 1985. Upon review of the claimant's representative's brief, the district office made a response on October 1, 1985. A final response was then made by the claimant's representative on October 3, 1985, which was received by the Office of Administrative Hearings on October 7, 1985.

District Office's Summary:

On September 17, 1985, the district office representative stated, through correspondence, that on April 22, 1985 the claimant's mother applied for Medical Assistance in behalf of her son. The claimant's mother was asked to verify the monthly household income. She failed to provide verification of her household income; and, therefore, her application was denied. On June 19, 1985 the family reapplied for Medical Assistance. She verified that their monthly income from Social Security was \$1,432.00. There are six people in the household, so their monthly excess income was determined to be \$766.00. On July 25, 1985, the district office sent the claimant a Notice of Decision, and a Form 417-A that explained how much the family would have to pay for the Medical ID Card. On July 31, 1985 the family had not made any contact with the district office, so their second application for Medical Assistance was also denied. The denial action is based on Volume III, §325.1 which states that all children must be included in the assistance unit, and §327.3 and 327.32 which requires one to deem all income of the family because the only programs for which the claimant could qualify is either F or C category. Based on these regulations, the district office counted the total income of the family to determine an MAO excess income payment.

Claimant's Representative's Response:

The claimant's representative stated that the district office's representative, while not citing any authority, states that the only ground for denying the Medical Assistance is excess income arrived at by totaling the claimant's family's Social Security income. The claimant accordingly limits his response to the issue of the income calculation.

I. ISSUE:

Claimant's Representative's Response: (continued)

In two letters to a district office worker, dated August 29, and August 30, 1985, the claimant's representative outlined the claimant's arguments against the income calculation made in his case. The claimant would like these letters to serve as his main brief in this appeal.

To briefly recapitulate the arguments of those letters, it should first be noted that under 42 U.S.C., §1396a, a state Medical Assistance program must comply with certain federal guidelines. A state program also cannot require applicants to violate federal law. The Code of Federal Regulations, at Title 42, §435, sets out eligibility rules to be followed by state assistance programs. Section 435.602 (quoted in the August 30, 1985 letter) makes it improper for a state program to use an eligibility calculation which considers the income of child applicant's relative, except a parent, to be available to the child. As a result, when determining the eligible income of a child, the state formula may only total the income of the child and its parents, and may not add in the income of any other relative.

As a separate matter, 20 C.F.R., §404.2035, makes it unlawful for Social Security payments, made to a representative payee, to be used for any person other than the beneficiary. Thus, a state Medical Assistance program which requires a representative payee to total family beneficiary payments by holding that the aggregate amount is available to any single member of the family would violate federal law.

Here, the district office's MAO-Excess Income Computation has calculated a group income by totaling the Social Security payments made to the claimant and his brothers and sisters. These payments are made to the claimant's mother as a representative payee. By totaling these sums, the district office assumes that the income of his siblings is available to meet the obligations of the claimant. Such a calculation violates the dictates of 20 C.F.R., §404.2035 and 42 C.F.R., §435.602.

The proper calculation would be to determine the claimant's eligibility based upon his income and that of his parents, excluding income from his siblings. Such a calculation would put him well within the Assistance Payments Administration's Table II, Basic Maintenance Standard.

Such a result does not seem to be inconsistent with Utah regulations. As noted in the letter of August 29, 1985, Volume III, §325, of the Assistance Payments Administration's Manual states quite clearly that, "[t]he decision of who to cover under a Medical Assistance grant is different than the decision of whose income to count." Simply because coverage of all the claimant's siblings may be required does not mean that the district office may use an income calculation which assumes their income is available to him. And, in line with the federal regulations, §327.32 just as clearly states that a child's eligibility is calculated by counting only the income of the child and its parents.



## I. ISSUE:

### Claimant's Representative's Response: (continued)

As a matter of federal and Utah law, the medical excess of \$766.00 for the claimant is erroneous. Under a legally valid calculation there is no excess, and the district office's denial of assistance is improper.

On October 3, 1985 the claimant's representative responded to the district office representative's Memorandum of October 1, 1985, regarding the claimant's appeal. The district office representative cited Volume III, §327.32, as authority for the denial of the claimant's application for Medical Assistance, stating that this section, "...requires one to deem all income of the family...." Therefore, the total income of the family was counted to determine an MAO excess payment. However, §327.32 clearly states that when an unemancipated child lives with his parents, as does the claimant, the income of only the parents and the child is to be counted. The inclusion of the income of the claimant's siblings in the calculation to determine the claimant's eligibility was not in accordance with the regulations. Therefore, §327.32, when applied correctly, qualifies the claimant for Medical Assistance under the APA, Table II, Basic Maintenance Standard.

The claimant's representative noted that the district office representative's suggestion that the claimant's mother's Social Security income, not figured into the original MAO excess income calculation would add to the total excess payment. However, this suggestion, unsubstantiated by any evidentiary submission, is not properly a part of this appeal, as the claimant's mother's income was not used as grounds for the original denial in this case. Therefore, the district office representative's statement concerning the claimant's mother's Social Security income cannot be considered in reaching a decision in this appeal.

## II. FINDINGS OF FACT:

The claimant's mother applied for Medical Assistance for her one son. In the home is one other child and two grandchildren the claimant's mother has legally adopted. The application was for MNC Medical Assistance to cover some medical expenses for the claimant. The household's income is Social Security benefits computed by the district office as follows:

Child No. 1. (Grandchild)	\$ 558.00
Child No. 2. (Grandchild)	558.00
Child No. 3. (Mother's Child)	158.00
Child No. 4. (Mother's Child)	158.00
Total Household Income	<u>\$1,432.00</u>

## II. FINDINGS OF FACT: (continued)

The district office considered the above income of \$1,432.00. From this was deducted the Basic Maintenance Standard of \$666.00, leaving the claimant with \$766.00 in excess income. The district office has now stated that the claimant's mother's Social Security benefits will also have to be considered in the calculation, significantly increasing the excess income to be paid by the claimant. The claimant's representative contends that the district office has improperly applied the intent of the existing Volume III and federal regulations to the claimant's circumstances. The Volume III procedures that he feels have been applied incorrectly to the claimant's case, are Volume III, §§325 and 327.3. These procedures state as follows:

### Volume III, §325

#### "Deciding Who to Cover - Non-Nursing Home Cases"

The decision of who to cover is different than the decision of whose income to count. For policy on whose income to count, see Section 327 (Deemed Income).

If a client can qualify under both coverage groups (A, B and D), or (F and C), he may choose the group he wants.

#### 325.1 Who Must be Covered - F and C Cases

The decision of who to cover depends on two factors:

1. The relationship of certain relatives to the person who wants coverage.

When a child applies for coverage, with few exceptions, all of his parents, stepparents, brothers, sisters, half-brothers, half-sisters, adopted brothers, and adopted sisters whom he lives with must be included in the case.

When a parent applies for coverage, with few exceptions his spouse and children whom he lives with must be included in the case.

- and
2. The eligibility of these relatives for the same category as the person who wants coverage.

For instance, a parent might qualify for F or C category, depending on his age. A child may qualify for either category based upon the eligibility of his parents for the F case.

## II. FINDINGS OF FACT: (continued)

Do not include someone who is not eligible, such as someone over age 18, on a C case.

If parents and dependent children qualify for F and C cases at the same time, open only the F case.

### Volume III, §327.3

#### Whose Income to Count

##### 327.31 For an Emancipated Child

When a child is emancipated, count only his income.

##### 327.32 For an Unemancipated Child

1. Count the income of the parents and the child when the child lives with his parents. This includes children in non-AFDC foster care that have been placed in their own homes (See Sec. 213.5).

For B, and D cases, a child is considered living with his parents until the month after he moves.

For F and C cases, a child is considered living with his parents while temporarily absent from the home, such as for school, vacation, summer employment, medical treatment, etc.

2. Count only the income of the child, including support payments made by the parents, in these situations:

F and C Cases - when the child is living away from his parents and it is not temporary.

- a. This includes a child in Foster Care that has not been placed back in his own home (see Sec. 213.5).
- b. This includes a child in AFDC foster care, no matter where he lives.

## II. FINDINGS OF FACT: (continued)

- c. This includes a child living with a specified relative, and it is not temporary.

B and D Cases - when the child lives separate from his parents - for any reason. A child is considered living with his parents until the month after he moves."

In considering the above procedures, the claimant's representative contends that the Social Security checks are made out for the children, and each payment is reserved to the beneficiary and cannot be applied to the obligations of any other person. By totaling all benefits, assumes that the Social Security payment made to the claimant's mother for her adopted grandchildren is available to her children for use and benefit. Consequently, the calculation would be illegal under federal law. The claimant's representative feels that a proper calculation would have been to consider only the claimant with total unearned income of \$158.00 available to him. Each other child receiving Social Security benefits would then have their own Social Security for themselves. Therefore, under the proper intent of Volume III, §§325 and 327, the regulations allow the district office to consider the total household number of five, but only consider the income available to the one son needing Medical Assistance which would be well under the \$666.00 Basic Maintenance Standard. Consequently, calculation made in harm of federal law on Social Security payments leaves no MAO excess, and benefits cannot be denied. The claimant's representative also contends that 42 C.F.R., §435.602, discusses financial eligibility requirements for state Medicaid plans, and states as follows:

- "(a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not-
  - (1) Consider income and resources of any relative available to an individual; nor
  - (2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual."

The claimant's representative feels that the above procedures taken out of the federal regulations support his conclusions that you cannot consider all household and all income in determining the amount of excess income to be collected for and in behalf of the claimant with a medical need.

The Hearing Examiner finds that the decision by the District VII (B) Office of Community Operations is correct in their calculations of excess income based on the income of the four children. The claimant's mother's Social Security income, however, is also countable income. This should

II. FINDINGS OF FACT: (continued)

be verified, and the correct amount of excess income determined. The district office has correctly interpreted the intent of Volume III, §§325 and 327. Under the claimant's mother's household circumstances wherein she has two children and two legally adopted grandchildren, all minor children and their income would have to be counted in the determination of Medicaid excess income for any child seeking Medical Assistance. The claimant's representative also raises several questions relative to the application of the federal regulations. The Hearing Examiner will not respond to the legal arguments as stated by the claimant's representative. However, they are being made part of the record; and, therefore, can be reviewed by legal counsel of the Department of Health. All correspondence between the claimant's representative and the district office will be forwarded to the Department of Health for review.

III. RECOMMENDED DECISION:

The Hearing Examiner recommends that the decision by the District VII (B) Office of Community Operations that all household members and income must be considered in determining excess income is hereby sustained. Refer to Volume III, §§325 and 327.

IV. FINAL DETERMINATION:

The Department of Health sustained the Hearing Examiner's recommended decision.

MAILING CERTIFICATE

This is to certify that I have mailed a true and exact copy of the foregoing Hearing Decision and Order to Jerry Grandson, the Claimant; Steven Boos, the Claimant's Representative; Nancy Stone, Good Samaritan Medical Center; and Steve Wilcox, District Office Director.

Dated

April 29, 1986

Joe Roberts

SECRETARY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 85-Z-1459

CONTESSA CHILDRESS, et al.,

Plaintiffs,

vs.

MARGARET M. HECKLER, et al.,

Defendants.

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REPORTER'S TRANSCRIPT  
(Hearing on Motions for Summary Judgment: Bench Ruling)

Proceedings before the HONORABLE ZITA L. WEINSHIENK,  
Judge, United States District Court for the District of  
Colorado, commencing at 8:45 a.m., on the 13th day of January,  
1986, in Courtroom C-204, United States Courthouse, Denver,  
Colorado.

APPEARANCES

BRIAN PATRICK LAWLOR, Colorado Rural Legal Services, 2801  
E. Colfax Ave. Suite 104, Denver, Colorado, 80206; JACQUELYN H.  
HIGINBOTHAM, Colordao Rural Legal Services, 231 Main Street,  
Suite 216, Ft. Morgan, Colorado, 80701, and R. Eric Solem,  
Pikes Peak Legal Services 617 S. Nevada Ave., Colorado Springs,  
Colorado, 80903, appearing for the plaintiffs.

ROBERT N. MILLER, United States Attorney, by JAMES R. CAGE,

Paul Zuckerman, CSR, RPR  
1929 Stout Street, Drawer 3563  
Denver, Colorado 80294  
(303) 629-9285

1 Assistant U.S. Attorney, 1961 Stout Street, Suite 1200, Denver,  
2 Colorado, 80294, appearing for the Federal defendant.

3 VIVIANNE CHAUMONT OATES, Office of the Attorney General,  
4 State of Colorado, 1525 Sherman Street, Third Floor, Denver,  
5 Colorado, 80203, appearing for the Colorado defendant.

6 (The arguments of Counsel are not herein transcribed,  
7 pursuant to the direction of ordering counsel. The following  
8 proceedings then were had and entered of record:)

9 RULING

10 THE COURT: The question that's before the Court today  
11 is an important one. It involves a statute passed by Congress  
12 as a deficit reducing measure which restricts the scope of AFDC  
13 payments or appears to, by in large, affect scope of financial  
14 resources considered in determining whether a family is  
15 eligible for AFDC Payments.

16 The Court notes that an agency's interpretation of a  
17 statute that it administers is entitled to some deference by  
18 the Court; and the interpretation of a statute which is  
19 reflected in agency regulations needs to be reasonable and  
20 consistent with the underlying statute. And the agency's  
21 interpretation does not have to be the only reasonable  
22 interpretation; it has to be a reasonable interpretation  
23 consistent with the statute. This are cites on that: the Udall  
24 case, 380 U.S. 1, 1964, case and others.

25 I want to thank the attorneys for the excellent job of



1 briefing that was done and for the really extraordinary extra-  
2 good arguments that were made this morning. In view of the  
3 briefing and in view of the arguments, which I must say sort of  
4 firmed up my thoughts after reading the briefs, the Court will  
5 decide this matter in the following way; And let me say to  
6 both sides that I do not intend to issue a written opinion. I  
7 think there is lots of written opinions, some of which has been  
8 very thorough in their analysis. But what I say now will be on  
9 the record; and if this is going to be appealed in this circuit,  
10 you can ask the reporter for a transcript. So let me  
11 incorporate by reference verbally my findings and my  
12 conclusions.

13           It would appear that the--from the legislative history,  
14 from the language of the--of DEFRA, the Deficit Reduction Act,  
15 602--let's see--402 United States 602(a)(38), that the intent  
16 of Congress is clear that the income of dependent children  
17 should be included in the family unit which files for AFDC  
18 benefits. There is no requirement that I see that the children  
19 included in the filing unit be, quote/unquote, "needy."  
20 Section 602(a)(38) incorporates clauses 1 and 2 of 606(a).  
21 That's pretty technical, perhaps, that "needy" does not lie  
22 within those clauses.

23           But in any case, if I were to adopt plaintiffs'  
24 interpretation of this statute, basically we would make  
25 602(a)(38) ineffective. It would apply in so few cases, it

1 would apply only to the "grandmother giving somebody an  
2 unrestrictive support" type of case. It would not apply in  
3 Title II cases for the most part, nor in child support cases,  
4 for the most part; and those two considerations were  
5 specifically intended by Congress to apply, from reading this  
6 act. Subsection 38 does talk about Title II. Subsection 39  
7 talks about child support.

8 I don't intend to read 602(a)(38) out of existence.  
9 This court does not make law; this court looks at the law as  
10 made by Congress and tries to interpret it reasonably; and in  
11 interpreting it reasonably, this does include the income of  
12 these dependent children in the family who receive Title VII  
13 (sic) child support and other payments in the family unit.

14 From a policy viewpoint, one understands why this was  
15 done. It makes sense from a policy point of view to look at  
16 the whole real family unit to see what that unit's income is,  
17 whether it's a half sibling or a whole sibling or whether one  
18 child is getting Social Security and another isn't. It makes  
19 sense because one uses Social Security payments, where you do  
20 have a family which is needy or dependent, in paying rent and  
21 food.

22 Now, it would appear to me that there really is no  
23 need for the agency to have individualized hearings to conclude  
24 on a case-by-case basis whether there is financial need or  
25 whether this child's benefits are available for the other

1 members of the family. In the great majority of the cases--and  
2 it would appear to me all the cases represented by the  
3 plaintiffs here--the children do qualify for inclusion into the  
4 filing unit by being deprived of the care of one parent; and  
5 there doesn't have to be this case-by-case basis.

6 I recognize that there may be some isolated cases. I  
7 tried to think of some. It was very hard for me to come up  
8 with some, where because of a child's deformity they need  
9 special clothes or perhaps because of their size, or maybe  
10 because there is a musical genius who needs special musical  
11 lessons. And those cases can be handled, it would appear to me,  
12 by an after-the-fact hearing rather than a before-the-fact  
13 hearing. I don't see that there is any due process requirement  
14 that there be a hearing before determining these benefits,  
15 where the statute is very clear in its intent and in its policy.

16 The question is raised in the briefs primarily,  
17 although it's been touched on--whether in passing 602(a)(38),  
18 Congress intended to repeal by implication the criminal  
19 provisions of 408(e), which prohibit a custodial payee from  
20 spending Title II benefits on anyone other than the child  
21 qualifying for them.

22 It appears to me to some extent to be really a highly  
23 technical argument, because in most cases where you apply the  
24 benefits for the child receiving the Title II benefits for rent,  
25 for food, the others are receiving incidentally the benefits of

1 those payments. But even where one might--if the amount  
2 received is large and one might spend it on specific things for  
3 other children, such as clothes or baby food, for example,  
4 which wouldn't apply to the child receiving the Title II  
5 benefit, it would seem to me that clearly by enacting DEFRA,  
6 Congress did impliedly indicate that the criminal sanctions  
7 would not apply in the cases where DEFRA does apply. And I  
8 think that has to be implied; so whether you want to call it an  
9 implied repeal of the application of the criminal penalties if  
10 the suspending is because of the family following the mandates  
11 of DEFRA, the fact of including those children in the family  
12 unit, or whether you want to just say that the criminal  
13 sanctions would not apply, I don't know how that you want to  
14 hypothetically--what you want to call it, it seems clear to me  
15 that there could not be these criminal penalties if, in fact,  
16 the provisions, the requirements of 602(a)(38), are being  
17 followed.

18           So the court agrees, then, with the holding or the  
19 reasoning in Huber v. Blinzinger, which is the case from the  
20 Northern District of Indiana, a 1985 case, in holding that  
21 Congress did not intend the criminal sanctions to apply in this  
22 type of situation dealing with Title II benefits.

23           As to child support payments, I conclude that Congress  
24 explicitly included child support payments within the financial  
25 resources to be included by the AFDC filing unit. The first

1 \$50 is exempt. Child support over \$50 is included within the  
2 unit; and I think that is clear from the Congressional mandate,  
3 from the statute and the regulations. The fact that the child  
4 support payments are included within the AFDC Filing does not  
5 constitute any unconstitutional taking of property.

6 I would conclude that the statute and the regulations  
7 permissibly require families receiving AFDC Payments to include  
8 such support payments in the resources of the unit; and this  
9 condition of receiving benefits does not violate any  
10 constitutional provisions, the 5th or 14th Amendments' property  
11 clauses, or the contract clause of the Constitution.

12 As to Medicaid eligibility, the issue of Medicaid  
13 eligibility is whether consideration of a sibling's income is  
14 within the meaning of the phrase "financial responsibility of  
15 any individual for any applicant or recipient," which is found  
16 at 42 United States Code 1396(a)(17)(d). Now, that section  
17 does not talk about siblings. It talks about spouse and parent;  
18 and I'm not persuaded by the Secretary's argument concerning  
19 the legislative history. I agree with the plaintiff that the  
20 history is weak and although Congress may have intended to  
21 restrict financial burdens on children caring for older parents,  
22 they were very specific in their language. They talked about  
23 spouse and parent. Nothing is said about siblings; and as far  
24 as Medicaid is concerned, nothing in the statutory or the  
25 regulations deem a sibling's come to be such as to reduce

1 Medicaid payments.

2 I think when we look at this in a public policy point  
3 of view, also, the example that was given or that was  
4 considered when I was discussing this with the attorneys for  
5 the defendant--defendants--make it clear: A family's AFDC  
6 income may actually be reduced by the effect of DEFRA; and it  
7 doesn't make any sense at all to--while you're reducing it to  
8 also cut out the Medicaid payments when there is nothing that  
9 says they must be cut out. So on this issue, I go along with  
10 the case law and agree with the courts which have uniformly  
11 upheld the plaintiffs' position on Medicaid.

12 Let me just touch on constitutional arguments that  
13 have been made. There are constitutional challenges to this  
14 statute; and the Court concludes that these are without merit.  
15 We have many laws which indirectly affect privacy and family  
16 sanctity but are not for that reason unconstitutional.

17 As far as due process and equal protection, statutes  
18 and regulations are looked at under rational review standards;  
19 and the Court finds that the statute and regulations that we've  
20 been looking at this morning are rationally related to a  
21 permissible goal of determining eligibility for Federal  
22 benefits and of course trying to reduce payments under the  
23 Deficit Reduction Act.

24 As to the 10th Amendment, I find no violation of the  
25 10th Amendment from any of this in looking at the recent Garcia

1 v. San Antonio Metropolitan Transit Authority case, 105 Supreme  
2 Court 1005, which is a 1985 case; and I don't see that there is  
3 any problem.

4           So in conclusion, the Court will at this time grant in  
5 part and deny in part the plaintiffs' motion for summary  
6 judgment and grant in part and deny in part the defendants'  
7 motion for summary judgment, as I've indicated, in that the  
8 interpretation of the rule, which requires the income of  
9 siblings or half-siblings under Title VII, child support or  
10 other income to be considered as set forth in 42 United States  
11 Cosde 602(a)(38), is a proper interpretation. The statute is  
12 proper, the regulations are proper, and that statute is to be  
13 followed and upheld.

14           However, the Court further is convinced that Medicaid  
15 is not to be discontinued or cut off merely because that  
16 statute is, in fact, being followed; and the consideration of  
17 the siblings' income is not going to affect the payment of  
18 Medicaid. And that is my understanding of the statute and  
19 regulations as to Medicaid, and that will be my ruling as to  
20 the payment of Medicaid payments.

21           Now, more specifically, is there anything else that I  
22 need to state rather than just the directions that the 602  
23 section is to be considered in determining family unit and that  
24 Medicaid payments are not to be cut off in that consideration?  
25 How more specifically would you like this Court's order to read?

1 Or Does that take care of it?

2 MR. CAGE: Your Honor, I just have a question about  
3 how you wish us to proceed with the class. The class has not  
4 been certified at this point; and obviously, given your ruling,  
5 there would be some real problems with the class definition  
6 proposed by Plaintiff. And of course, there has been no  
7 evidence presented on any of the elements for class  
8 certification.

9 THE COURT: Let me just ask you this question: In  
10 view of my interpretation of the statute and the Medicaid  
11 provisions, can my order be followed, assuming you're not going  
12 to appeal--I don't know whether you are or not--statewide,  
13 without actually the technical certifying of a class? In other  
14 words, can payments just be adjusted? I'm trying to think of  
15 another case that we had where we really did that, where we  
16 really didn't certify the class but where my decision just  
17 applied. That was a case involving Social Security payments of  
18 people who had retired from a second company. I don't know  
19 whether you were involved in that case or not.

20 MR. CAGE: Must have been before my time, your Honor.

21 THE COURT: Must have been before your time. But I  
22 actually didn't certify the class. I just said from now on,  
23 the state shall follow the Court's rulings on this.

24 Will that take care of this case, or do we have a lot  
25 of people that are owed Medicaid payments because of these



1 rulings?

2 MR. LAWLOR: I think it might be productive for us to  
3 have an opportunity to confer to find out with regard to the  
4 Medicaid aspect of this case. You know, if we can work out an  
5 agreement about reinstating people and making those  
6 determinations, identifying that--

7 THE COURT: And reconsidering of past refusal to pay  
8 Medicaid where it really falls under this situation.

9 MR. LAWLOR: I'd be willing to have to the burden put  
10 on us to come to the Court if we're not able to resolve things,  
11 say--either ask for a status conference or move for class  
12 relief if we're not able to work things out. I would like an  
13 opportunity to work it out.

14 THE COURT: I think it could be worked out without  
15 actually certifying is a class and sending notice and doing all  
16 the things that are going to cost both sides a lot of money.  
17 I'd just as soon save the taxpayers some money, quite frankly.

18 MR. LAWLOR: I think making that effort would be  
19 productive. If we have problems, then we could come back to  
20 you.

21 THE COURT: Can I have your assurance, Mr. Cage and  
22 Ms. Oates, that you will confer and try to reach, if you can--  
23 reach some sort of an agreement, because basically now you've  
24 been applying this statute, the 602(a)(38). Right?

25 MR. CAGE: Yes, your Honor, all along.

1 THE COURT: So, nothing is going to have to be to done  
2 based on my ruling on that. The only adjustment is going to  
3 have to be as far as Medicaid is concerned.

4 MR. LAWLOR: That's correct.

5 MR. CAGE: Correct.

6 THE COURT: Let's be very clear: From this date on,  
7 Medicaid payments shall be made in those cases; and the only  
8 thing you really have to confer on is what has happened in the  
9 past.

10 MR. LAWLOR: Yes. And one clarification is that the  
11 Cordelia--I would ask that the Court direct that the State of  
12 Colorado reinstate the Medicaid eligibility of the members of  
13 the Cordelia Salazar family.

14 THE COURT: Is there any reason I shouldn't do that in  
15 view of my ruling?

16 MR. CAGE: I think you've already done it, your Honor.

17 MR. LAWLOR: I just want to make that clear.

18 THE COURT: The Court specifically orders that the  
19 Salazar family's Medicaid be reinstated.

20 Do we have that problem with Childress or with--What's  
21 the other family?

22 MR. LAWLOR: That also the reinstatement be effective  
23 from the date that they were terminated.

24 THE COURT: The Court will so order. It will be  
25 effective from the date they were terminated. Do we have any

1 problem with the Childress family?

2 MR. CAGE: They have not been terminated at this point,  
3 your Honor.

4 THE COURT: Medicaid has been continuing for the  
5 Childresses?

6 MR. SOLEM: And they're under a state administrative  
7 ALJ action which interpreted differently DEFRA than you did, so  
8 they've not required to have the other two children in the unit.  
9 So I'm not sure exactly--I think that has to be worked out in--  
10 they've appealed that in state court and I think that has to be  
11 worked out there.

12 THE COURT: You mean the two children that were  
13 included in the family unit under 602(a)(38) have not been  
14 included in the Medicaid unit?

15 MR. SOLEM: They haven't been included in the AFDC  
16 filing unit, either. The state ALJ interpreted the state  
17 regulation to apply only to needy children. So we've got a  
18 little--

19 THE COURT: That's just a--

20 MR. CAGE: I don't think there is any problem in  
21 conjunction with your order. They're still receiving Medicaid  
22 and pursuant to your order--it hasn't been terminated--and  
23 they'll continue to receive it.

24 MR. SOLEM: That's correct.

25 THE COURT: Now, what about the other family?

1 MR. CAGE: They haven't been terminated, your Honor.

2 MR. LAWLOR: There is no problem, Judge.

3 THE COURT: Okay. Why don't you try to work it out.

4 I'd like to somehow be able to close this case, and we're going  
5 to need a final judgment order to close it; and I can't do that  
6 until hopefully you work it out.

7 MR. LAWLOR: I would suggest, Judge--and I can accept  
8 this burden to report to the Court on the progress in resolving  
9 this remaining aspect of relief within 30 days.

10 THE COURT: I was going to hope you were going to say  
11 10. Do you really need 30 days to do it? We'll give you the  
12 time if you need to. By February--by February 12, which I  
13 think is 30 days.

14 MR. LAWLOR: That's fine.

15 THE COURT: Report; and would you please either send  
16 me something in writing or else if you need to talk to the  
17 Court, do so through Phil Brimmer, my law clerk.

18 MR. LAWLOR: Yes, Judge.

19 THE COURT: And we're going to need a final judgment,  
20 as I say.

21 Are there going to be be other issues to be decided?

22 MR. LAWLOR: Attorneys fees, Judge.

23 THE COURT: Let's see if we can have any motions for  
24 attorneys fees discussed prior to 30 days and see if you can  
25 come up with a stipulation on those, too. And if you can't,

1 I'll want--what I'll want at that 30-day period is a motion for  
2 attorneys fees supported by very excellent, terrific, explicit,  
3 detailed affidavits as to your time.

4 MR. LAWLOR: I've got them.

5 THE COURT: Ala the Ramos case. If you read the Ramos  
6 case, it says excruciating detail.

7 MR. LAWLOR: I've got terrific records, judge.

8 THE COURT: That's what I want. And at that time, I  
9 think I would also like to see a suggested final order; and  
10 maybe you can talk about that between you, too, how you want it  
11 stated.

12 I take it some of these cases that have been cited to  
13 me are up on appeal.

14 MR. LAWLOR: They are, Judge.

15 THE COURT: If not all of them.

16 MR. CAGE: I understand that the Creaton case out of  
17 California is before the Ninth Circuit.

18 MR. LAWLOR: Both Gorrie and White Horse are also  
19 pending in the Eighth Circuit.

20 THE COURT: You may consider whether you want to  
21 appeal this or see what the other circuits do. That's up to  
22 you, but we need that tight final judgment before an appeal  
23 here. And I'll expect that also by the 12th, then. Everything  
24 is to be tied up by the 12th, hopefully, unless you have a  
25 problem; and if you do, then I'll meet with you and we'll

1 either hold a hearing or try to resolve it.

2 Anything else to put on the record?

3 MR. CAGE: No, your Honor.

4 THE COURT: Thank you very much for your attention to  
5 this matter. Court is in recess.

6 (Thereupon, the hearing was concluded and the Court  
7 recessed at 11:20 a.m.)

8 \* \* \* \* \*

9 REPORTER'S CERTIFICATE

10 I, Paul A. Zuckerman, Registered Professional Reporter  
11 and Official Reporter to this Court, do hereby certify that  
12 I was present at and reported in shorthand the proceedings in  
13 the foregoing matter; that I thereafter reduced my shorthand  
14 notes to typewritten form, comprising the foregoing official  
15 transcript; further, that the foregoing official transcript is  
16 a full and accurate record of the proceedings described in this  
17 matter on the date set forth.

18 Dated at Denver, Colorado, this 19th day of January,  
19 1986.

20

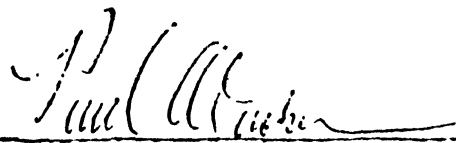
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Paul A. Zuckerman, CSR, RPR

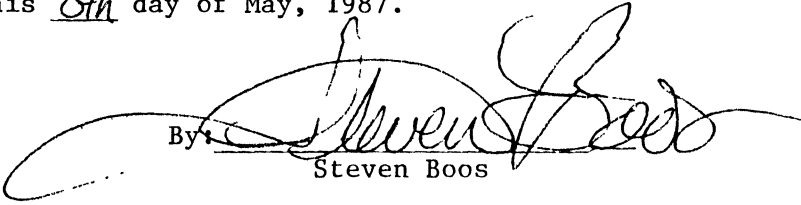
Mailing Certificate

I hereby certify that four copies of the foregoing  
APPELLANT'S BRIEF were mailed by pre-paid, first  
class mail to:

Brain Farr  
Assistant Utah Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

This 8th day of May, 1987.

By:

  
Steven Boos