

1989

Michael C. Carter v. Division of Health Care Financing : Brief of Petitioner

Utah Court of Appeals

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State of Utah; Respondent.

Michael C. Carter; Petitioner/Appellant.

MICHAEL C. CARTER PETITIONER/APPELLANT 3070 S. 2515 V. # B WEST VALLEY CITY.
UT 975-7546 84119

Recommended Citation

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Dr. [Signature]

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MICHAEL C. CARTER
PETITIONER/APPELLANT
3070 S. 2515 W. # B
WEST VALLEY CITY, UT
975-7546 84119

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Mary T. Noonan

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JURISDICTION

THIS IS A PETITION FOR REVIEW OF FORMAL ORDER AND FINAL AGENCY ACTION BY THE STATE OF UTAH, DIVISION OF HEALTH CARE FINANCING, IN CASE No. 89-111-02, AND THIS COURT IS THE PROPER COURT HAVING JURISDICTION TO REVIEW SAID FORMAL ORDER AND FINAL ACTION BY SAID AGENCY.

NATURE OF THE PROCEEDINGS

PETITIONER, PROCEEDING IN FORMA PAUPERIS, SEEKS JUDICIAL REVIEW OF THE ABOVE NAMED ADMINISTRATIVE PROCEEDING TO DETERMINE WHETHER THERE WAS A VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS AND TO SEEK CLARIFICATION OF THE STATE'S RESPONSIBILITIES TO ITS "CLIENTS" TO PROTECT THEIR RIGHTS AND PREVENT THEM FROM LOSING BENEFITS AND/OR PRIVILEGES THEY WOULD HAVE OTHERWISE BEEN ENTITLED TO RECEIVE.

ISSUES ON REVIEW

1. WAS THE HEARING OFFICER ACTING WITHIN THE SCOPE OF HIS AUTHORITY IN USING UNAUTHORIZED EVIDENCE IN MAKING HIS DECISION?

2. WAS PETITIONER DENIED A FAIR HEARING BY THE ABSCENCE FROM THAT HEARING OF THE U.M.A.P. REPRESENTATIVE? - ARGUMENT WITHDRAWN

3. DID THE PRESIDING OFFICER PROPERLY APPLY §809.4 OF VOLUME III OF THE ASSISTANCE PAYMENT ADMINISTRATION MANUAL TO THE FACTS OF THIS CASE?

4. WHAT IS THE STATE'S RESPONSIBILITY TO ITS "CLIENTS" WITH REGARD TO APPLICATION DEADLINES?

STATEMENT OF THE CASE

THIS IS A PETITION FOR REVIEW OF FORMAL ORDER AND FINAL AGENCY ACTION BY THE STATE OF UTAH, DIVISION OF HEALTH CARE FINANCING, ON CASE No. 89-111-02, DATED JUNE 15TH, 1989, AND ATTACHED HERETO AS PETITIONER'S EXHIBIT "B". THIS IS THE PROPER COURT FOR JUDICIAL REVIEW OF SAID ADMINISTRATIVE ORDER AND THIS COURT HAS JURISDICTION TO REVIEW SAID ORDER.

FACTS

AS TO ISSUES ONE AND THREE OF THIS PETITION, PETITIONER RELIES ON FACTS CONTAINED IN HIS ORIGINAL ADMINSTRATIVE APPEAL, ATTACHED HERETO AS PETITIONER'S EXHIBIT "A", THE FORMAL ORDER AND FINAL AGENCY ACTION OF RESPONDENT, ATTACHED HERETO AS PETITIONER'S EXHIBIT "B", AND THE TAPE RECORDED SESSION OF THE PROCEEDINGS.

AS TO ISSUE FOUR, PETITIONER ALSO RELIES UPON THE ABOVE MENTIONED SOURCES OF INFORMATION AND THE FOLLOWING:

PETITIONER AND HIS WIFE RECEIVED PUBLIC ASSISTANCE OFF AND ON OVER A PERIOD OF ABOUT TWO YEARS. DURING THIS PERRIOD, THEY FILLED OUT AND COMPLETED FORM 61A/632 "APPLICATION FOR FINANCIAL OR MEDICAL ASSISTANCE OR FOOD STAMPS". AT NO TIME DURING THESE PREVIOUS FILINGS WERE THEY TOLD THAT THEY HAD TO TURN IN THE APPLICATION WITHIN A CERTAIN PERIOD OF TIME OR THEY WOULD BE DENIED BENEFITS, NOR WAS THERE ANY DOCUMENTATION OR SIGNS POSTED TO SO INFORM THEM.

THERE BEING NO SOURCE OF INFORMATION PROVIDED THEM FROM ANY OTHER SOURCE, PETITIONER AND HIS WIFE RELIED UPON SUCH INFORMATION AS WAS CONTAINED UPON THE APPLICATION FORM, WHICH IN THIS CASE, WAS QUESTION NUMBER ONE WHICH READS: "DO YOU WANT HELP WITH BILLS FOR MEDICAL CARE THAT ANYONE IN YOUR HOME RECEIVED IN THE LAST THREE MONTHS?", (EMPHASIS MINE)

THEIR RELIANCE UPON THE CLEARLY STATED TIME PERIOD IN QUESTION NUMBER ONE OF FORM 61A/632, A COPY OF WHICH WAS INCORPORATED IN PETITIONER'S EXHIBIT "A" ATTACHED HERETO, RESULTED IN PETITIONER AND HIS WIFE BEING DENIED BENEFITS THEY WERE OTHERWISE ENTITLED TO RECEIVE.

THE STATE NEVER REALLY TOOK A POSITION ON WHOSE DUTY OR RESPONSIBILITY IT WAS TO EITHER INFORM OR FIND OUT JUST WHAT THE FACTS CONCERNING APPLICATION DEADLINES WERE. THE PRESIDING OFFICER, CHANGING THE ISSUE TO SOMETHING DIFFERENT FROM WHAT PETITIONER HAD STATED ON APPEAL IN HIS PLEADINGS, AVOIDED A DECISION ON THE ISSUES RAISED; THEREFORE, THERE NEVER WAS A CLEAR DETERMINATION RESOLVING THE ISSUES OFFERED BY PETITIONER ON ADMINISTRATIVE APPEAL AS TO WHETHER OR NOT HE WAS MISLED BY THE DPSS AND WHETHER OR NOT HE HAD A RIGHT TO BE INFORMED OF APPLICATION DEADLINES IF DIFFERENT FROM TIME PERIODS EXPRESSED OR IMPLIED IN OTHER DOCUMENTS PROVIDED TO HIM.

IN THE FORMAL ORDER, THE ISSUES WERE CHANGED, FACTS WERE MISTATED, AND INFORMATION OBTAINED AFTER THE HEARING WAS USED TO DENY PETITIONER'S APPEAL WITHOUT GIVING HIM THE OPPORTUNITY TO BE HEARD ON IT.

SUMMARY OF ARGUMENTS

1. PETITIONER CONTENDS THAT THE HEARING OFFICER EXCEEDED HIS AUTHORITY IN OBTAINING AND INTEGRATING EVIDENCE OBTAINED AFTER THE HEARING. THAT SUCH ACTS DEPRIVED PETITIONER OF A FAIR HEARING AND AMOUNTED TO A DENIAL OF DUE PROCESS RIGHTS OF PETITIONER AS PETITIONER WAS DENIED THE OPPORTUNITY TO OBJECT TO, CLARIFY OR OTHERWISE DEFEND AGAINST OR SUPPORT THE CONTENTS OF THE EVIDENCE WHICH THE HEARING OFFICER USED AGAINST HIM IN DENYING HIS APPEAL.

2. PETITIONER WAS GOING TO CONTEND THAT THE ABSCENCE FROM THE HEARING OF THE UMAP REPRESENTATIVE DENIED HIM A FAIR HEARING IN THAT HE COULD NOT QUESTION SAID REPRESENTATIVE ON UMAP POLICIES AND PROCEDURES AND THEIR APPLICATION TO THE FACTS OF HIS CASE, HOWEVER, PETITIONER HAD NOT SUBPOENAED THE WITNESS, UMAP WAS NOT NAMED AS A PARTY BY HIM ON APPEAL, AND THE STATE COULD NOT BE EXPECTED TO GATHER EVERY ADMINISTRATIVE AGENCY BEFORE A HEARING. ADDITIONALLY, ALTHOUGH THE PRESIDING OFFICER WAS MADE AWARE THAT THE UMAP REPRESENTATIVE WAS NOT PRESENT, PETITIONER FAILED TO OBJECT TO THE CONTINUATION OF THE HEARING AND AGREED TO CONTINUE WITHOUT THE UMAP REPRESENTATIVE BEING PRESENT. THEREFORE THIS ARGUMENT ON THIS ISSUE HAS BEEN WITHDRAWN BY PETITIONER FOR LACK OF MERIT.

3. PETITIONER QUESTIONS THE HEARING OFFICER'S APPLICATION OF §809.4 OF VOLUME III OF THE ASSISTANCE PAYMENT ADMINISTRATION MANUAL TO THE FACTS OF THIS CASE WHERE THE HEARING OFFICER CITES SAID SECTION IN DENYING PETITIONER'S APPEAL, WHILE THE FACTS OF THE CASE INDICATE THAT, UNDER THE SECTION, PETITIONER SHOULD BE GRANTED RETROACTIVE COVERAGE FOR THE BENEFITS HE WAS APPLYING FOR.

4. FINALLY, PETITIONER SEEKS TO CLARIFY THE STATE'S RESPONSIBILITY TO ITS "CLIENTS" WITH REGARD TO APPLICATION DEADLINES WHERE, AS IN THIS CASE, THE DPSS USES A SINGLE FORM TO OBTAIN INFORMATION FOR SEVERAL DIFFERENT PROGRAMS, AND WHERE A QUESTION ON THE FORM CLEARLY STATES RETROACTIVE COVERAGE FOR MEDICAL BILLS INCURRED OVER A THREE MONTH PERIOD AND DOES NOT IDENTIFY WHICH PROGRAM IS PROVIDING THAT COVERAGE, OR STATE THAT THAT COVERAGE MAY BE FOR A SHORTER TIME IF A DIFFERENT PROGRAM IS USED.

ARGUMENT I
WAS THE HEARING OFFICER ACTING WITHIN THE SCOPE OF HIS
AUTHORITY IN USING UNAUTHORIZED EVIDENCE IN MAKING
HIS DECISION?

PER AGREEMENT BETWEEN THE PARTIES, THE HEARING OFFICER WOULD BE ALLOWED TO CONTACT THE UMAP REPRESENTATIVE AFTER THE HEARING FOR THE LIMITED PURPOSE OF FINDING OUT IF THE "[UMAP] PROGRAM WOULD CONSIDER GRANTING RETROACTIVE COVERAGE IN THIS SITUATION." (SEE PETITIONER'S EXHIBIT B, FORMAL ORDER PAGE 2, PARAGRAPH 7).

UNDER "REASONS FOR THE PRESIDING OFFICER'S DECISION" TWO OF THE THREE PARAGRAPHS CONCERNED THE ISSUE OF CONTRACTS AND ALLEGED CLAIMS MADE BY PETITIONER CONCERNING CONTRACTS. DURING THE HEARING, PETITIONER HAD READ FROM HIS PLEADINGS, WHICH DID NOT CONTAIN ANY ISSUES RELATED TO CONTRACTS: THE ONLY TWO ISSUES HE HAD RAISED WERE THAT HE HAD BEEN MISLED BY THE DPSS INTO BELIEVING THAT HE HAD UP TO NINETY DAYS IN WHICH TO APPLY FOR MEDICAL ASSISTANCE AND THAT THE STATE HAD A DUTY TO ITS CLIENTS TO INFORM THEM OF THEIR RIGHTS AND RESPONSIBILITIES. MATTERS CONCERNING CONTRACTS WERE NOT BROUGHT UP AT ALL BY PETITIONER AT ALL DURING THE HEARING AND RESPONDENT NOTED THAT ALL DPSS DOCUMENTATION SHOWED THAT PETITIONER'S CLAIMS FROM THE BEGINNING HAD BEEN RELATED TO HIS BEING MISLED BY THE QUESTION ON THE FORM.

THE HEARING OFFICER RECEIVED HIS INFORMATION CONCERNING ISSUES RELATED TO CONTRACTS FROM JACKIE STOKES, THE UMAP DIRECTOR, WHOM HE HAD CONTACTED AFTER THE HEARING FOR THE LIMITED PURPOSE AS STATED ABOVE. THE HEARING OFFICER USED THIS UNRELATED ADDITIONAL

INFORMATION IN DENYING PETITIONER'S APPEAL WITHOUT PROVIDING PETITIONER WITH THE OPPORTUNITY TO OBJECT TO, CLARIFY, OR OTHERWISE DEFEND AGAINST OR SUPPORT IT, NOR ALLOW PETITIONER THE OPPORTUNITY TO BE HEARD CONCERNING IT.

ALTHOUGH ADMINISTRATIVE AGENCIES MAY BE RELIEVED FROM OBSERVANCE OF STRICT COMMON-LAW RULES OF EVIDENCE, THEIR HEARINGS MUST STILL BE CONDUCTED CONSISTENT WITH FUNDAMENTAL PRINCIPLES WHICH INHERE IN DUE PROCESS OF LAW. CASH v. INDUSTRIAL COMMISSION, 556 P.2d 827, JONES v. INDUSTRIAL COMMISSION, 401 P.2d 172.

GENERALLY, EVIDENCE WHICH HAS PROBATIVE FORCE AND TENDS TO PROVE OR DISPROVE A MATERIAL FACT IS ADMISSABLE IN ADMINISTRATIVE PROCEEDINGS UNLESS ITS RECEIPT RESULTS IN A DENIAL OF DUE PROCESS. APPEAL OF TWO CROW RANCH, INC., 494 P.2d 915, AND RIGHTS OF CONFRONTATION AND CROSS-EXAMINATION APPLY NOT ONLY IN CRIMINAL CASES BUT ALSO IN ALL TYPES OF CASES WHERE ADMINISTRATIVE AND REGULATORY ACTIONS ARE UNDER SCRUTINY. U.S.C.A. CONST. AMEND. 14, ENDLER v. SCHUTZBANK, 436 P.2d 297.

IN THE INSTANT CASE, PETITIONER WAS DENIED RIGHTS OF CONFRONTATION AND CROSS-EXAMINATION BECAUSE SUCH EVIDENCE WAS OBTAINED AND USED IN SUCH A MANNER AS TO PREVENT HIM FROM ADDRESSING IT AND WAS FURTHER UNRELATED TO THE ISSUES HE RAISED IN HIS PLEADINGS.

WHILE THE RULE THAT THE PLEADING AND PROOF MUST CONFORM IS RELAXED IN ADMINISTRATIVE PROCEEDINGS, THE ISSUES ARE ORDINARILY LIMITED TO THOSE RAISED BY THE PLEADINGS AND THE HEARING SHOULD BE CONFINED TO POINTS AT ISSUE SO AS TO INSURE TO THE PERSONS AFFECTED A FULL OPPORTUNITY TO BE HEARD ON ANY MATTER BEFORE

A RULING THERON IS MADE. STATE EX REL. OKLAHOMA STATE Bd. OF EMBALMERS AND FUNERAL DIRECTORS V. GUARDIAN FUNERAL HOME, 429 P.2D 732. IN PETITIONER'S CASE, HE WAS DENIED THE OPPORTUNITY TO BE HEARD ON THE UNRELATED ISSUES OF CONTRACTS INTRODUCED INTO HIS APPEAL BY THE HEARING OFFICER AFTER THE HEARING. IN ESMIEU V. SCHRAG, 563 P.2D 203, IT WAS DETERMINED THAT AN ORDER BASED ON A HEARING IN WHICH THERE WAS NO ADEQUATE NOTICE OR OPPORTUNITY TO BE HEARD IS VOID.

FINALLY, THE HEARING OFFICER'S ACTIONS AMOUNTED TO AN ADMINISTRATIVE TRIBUNAL ACTING UPON ITS OWN INFORMATION. WHILE THERE WAS AN AGREEMENT BETWEEN THE PARTIES THAT THE HEARING OFFICER COULD CONTACT THE UMAP DIRECTOR AFTER THE HEARING TO GATHER AND INTEGRATE ADDITIONAL EVIDENCE, THIS EVIDENCE WAS LIMITED TO FINDING OUT IF THE "[UMAP] PROGRAM WOULD CONSIDER GRANTING RETROACTIVE COVERAGE IN THIS SITUATION." THE HEARING OFFICER WENT BEYOND THIS HOWEVER, AND OBTAINED AND UTILIZED UNRELATED ERRONEOUS EVIDENCE IN RENDERING A DECISION.

IN BORETA ENTERPRISES, INC. V. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, 465 P.2D 1, A CALIFORNIA COURT, CITING A PREVIOUS CASE (ENGLISH V. CITY OF LONG BEACH, (1950) 35 CAL 2D 155, 158, 217 P.2D 22,24) STATED "...NOTHING CAN BE CONSIDERED AS EVIDENCE THAT WAS NOT INTRODUCED AT A HEARING OF WHICH THE PARTIES HAD NOTICE OR AT WHICH THEY WERE PRESENT. THE RIGHT OF A HEARING BEFORE AN ADMINISTRATIVE TRIBUNAL WOULD BE MEANINGLESS IF THE TRIBUNAL WERE PERMITTED TO BASE ITS TERMINATION UPON INFORMATION RECEIVED WITHOUT KNOWLEDGE OF THE PARTIES. A HEARING REQUIRES THAT THE PARTY BE APPRISED OF EVIDENCE AGAINST HIM SO

THAT HE MAY HAVE AN OPPORTUNITY TO REFUTE, TEST, AND EXPLAIN IT, AND THE REQUIREMENT OF A HEARING NECESSARILY CONTEMPLATES A DECISION IN LIGHT OF THE EVIDENCE THERE INTRODUCED." (EMPHASIS MINE)

THE COURT IN BORETA, SUPRA, FURTHER ESTABLISHED THAT ADMINISTRATIVE TRIBUNALS WHICH ARE REQUIRED TO MAKE A DETERMINATION AFTER A HEARING CANNOT ACT UPON THEIR OWN INFORMATION.

IN SUMMARY, THE HEARING OFFICER, IN BREACHING THE AGREEMENT BETWEEN THE PARTIES AND GATHERING AND UTILIZING UNRELATED ERRONEOUS INFORMATION IN DENYING PETITIONER'S ADMINISTRATIVE APPEAL, VIOLATED PETITIONER'S DUE PROCESS RIGHTS AND HIS ACTIONS WERE BEYOND ANY AUTHORITY BESTOWED UPON HIM OR THE AGENCY HE REPRESENTED.

ARGUMENT II

WAS PETITIONER DENIED A FAIR HEARING BY THE ABSCENCE
FROM THAT HEARING OF THE U.M.A.P. REPRESENTATIVE?

--- ARGUMENT WITHDRAWN ---

ARGUMENT III
DID THE PRESIDING OFFICER PROPERLY APPLY §809.4
OF THE ASSISTANCE PAYMENT ADMINISTRATION MANUAL
TO THE FACTS OF THIS CASE?

VOLUME III, SECTION 809.4 OF THE APA SETS FORTH TWO RULES OR CONDITIONS WHICH MUST BE MET BEFORE A PERSON CAN OBTAIN RETROACTIVE COVERAGE FROM UMAP FOR MEDICAL BILLS FOR SERVICES RECEIVED BEYOND UMAP'S NORMAL 30 DAY LIMIT:

1. THE PERSON MUST BE ELIGIBLE [FOR THE PROGRAM] AT THE TIME OF SERVICE AND,
2. THE PERSON MUST HAVE A GOOD REASON FOR A DELAY IN APPLYING.

IN THE INSTANT CASE, BOTH PETITIONER AND HIS WIFE WERE ELIGIBLE AT THE TIME THEY RECEIVED MEDICAL ASSISTANCE (AND SEVERAL MONTHS THEREAFTER) AND PETITIONER PROVIDED THE HEARING OFFICER WITH EVIDENCE THAT EXPLAINED WHY PETITIONER HAD WAITED ALMOST THREE MONTHS IN APPLYING: A CLEARLY MISLEADING QUESTION ON AN APPLICATION FORM PROVIDED TO PETITIONER BY THE DEPARTMENT OF PUBLIC SOCIAL SERVICES THAT LED PETITIONER AND HIS WIFE TO BELIEVE THAT THEY HAD UP TO NINETY DAYS FROM DATE OF TREATMENT IN WHICH TO APPLY OR OTHERWISE TURN IN THE APPLICATION. THIS EVIDENCE WAS A COPY OF PAGE 3 OF FORM 61A/632, ATTACHED HERETO AND INCORPORATED AS PART OF PETITIONER'S EXHIBIT A.

THE PRESIDING OFFICER CITED THE ABOVE SECTION IN DENYING PETITIONER'S APPEAL, BUT ALSO RELIED ON THE UNAUTHORIZED EVIDENCE DISCUSSED IN ARGUMENT I, SUPRA. IN LIGHT OF THE ACTUAL, AND FACTUAL EVIDENCE PRESENTED BY PETITIONER, HE WAS ENTITLED TO RETROACTIVE COVERAGE UNDER THE SECTION CITED.

ARGUMENT IV
WHAT IS THE STATE'S RESPONSIBILITY TO ITS "CLIENTS"
WITH REGARD TO APPLICATION DEADLINES?

ON ADMINISTRATIVE APPEAL, PETITIONER CLAIMED THAT THE STATE HAD A RESPONSIBILITY, IF NOT A DUTY, TO ITS CLIENTS TO INFORM THEM OF APPLICATION DEADLINES FOR MEDICAL ASSISTANCE PROGRAMS.

NIETHER THE RESPONDENT OR THE PRESIDING OFFICER INDICATED ANYTHING TO THE CONTRARY WHEN THIS ISSUE WAS RAISED AT THE HEARING, AND THE PRESIDING OFFICER DID NOT ADDRESS THE ISSUE IN HIS FORMAL ORDER..

PETITIONER FELT THAT IT WAS THE STATE'S RESPONSIBILITY TO INFORM ITS CLIENT'S OF APPLICATION DEADLINES TO ENSURE THAT THEY WOULD NOT BE DENIED OR DEPRIVED OF A BENEFIT THEY WOULD OTHERWISE BE ENTITLED TO RECEIVE.

PETITIONER FURTHER STATED THAT A PERSON WHO READS QUESTION NUMBER ONE ON FORM 61A/632 WOULD COME TO THE CONCLUSION THAT THEY COULD RECEIVE ASSISTANCE IN PAYING MEDICAL BILLS FOR SERVICES RENDERED AT ANY TIME WITHIN THE PREVIOUS THREE MONTHS FROM THE FILING OF THE APPLICATION AND COULD BE TREATED TODAY AND HAVE UP TO THREE MONTHS TO APPLY FOR ASSISTANCE TO PAY THAT.

SINCE THE VERY NATURE OF THE DPSS IS TO "HELP" ITS CLIENTS, THEN IT WOULD ONLY SEEM REASONABLE THAT THE DPSS WOULD PROVIDE THOSE CLIENTS WITH INFORMATION CONCERNING THEIR RIGHTS AND RESPONSIBILITIES, AMONG WHICH WOULD INCLUDE FILING DEADLINES FOR APPLICATIONS FOR ASSISTANCE. IT WOULD ALSO SEEM TO DEMAND THAT ANY INFORMATION PROVIDED BY THE DPSS BE CLEARLY STATED.

IN THE INSTANT CASE, THE FAILURE OF THE DPSS TO PROVIDE THE PETITIONER WITH ADEQUATE AND CLEAR INFORMATION REGARDING FILING DEADLINES, RESULTED IN PETITIONER AND HIS WIFE RELYING UPON WHAT LITTLE INFORMATION AS COULD BE FOUND ON THE APPLICATION FORM AND THAT INFORMATION, BEING INNACCURATE AND MISLEADING, RESULTED IN PETITIONER AND HIS WIFE BEING DENIED AND DEPRIVED OF BENEFITS THAT THEY WERE OTHERWISE ENTITLED TO RECEIVE.

PETITIONER WAS UNABLE TO LOCATE ANY LAW TO SUPPORT HIS CONTENTIONS THAT THE STATE HAS A RESPONSIBILITY TO INFORM ITS CLIENTS OF FILING DEADLINES FOR APPLICATIONS FOR ASSISTANCE, BUT SUCH DUTIES AND RESPONSIBILITIES MAY BE INFERRED FROM THE NATURE OF THE PARTICULAR AGENCY, ITS PARTICULAR FUNCTION IN SOCIETY, AND ITS RELATIONSHIP TO ITS "CLIENTS" AS WELL AS WHETHER ITS ACTIONS AND/OR INACTIONS WOULD RESULT IN A DENIAL OF RIGHTS, BENEFITS, OR PRIVILEGES TO ITS "CLIENTS".

CONCLUSION

WHEREFORE PETITIONER PRAYS THAT FORMAL ORDER AND FINAL AGENCY ACTION OF RESPONDENT BE REVERSED AND PETITIONER BE GRANTED SUCH OTHER AND FURTHER RELIEF AS IS DEEMED APPROPRIATE AND JUST.

PETITIONER

DATE

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE FOREGOING PETITIONER'S BRIEF ON REVIEW BY DEPOSITING THE SAME IN THE UNITED STATES MAIL, POSTAGE PREPAID TO THE FOLLOWING:

UTAH DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FINANCING
288 NORTH 1460 WEST
SALT LAKE CITY, UT 84116

DATED THIS _____ DAY OF _____, 19____.

BY _____

EXHIBIT "A"

PETITIONER'S ORIGINAL ISSUES
AND EVIDENCE ON ADMINISTRATIVE APPEAL

APPELLANT'S ORIGINAL ISSUES
ON ADMINISTRATIVE APPEAL

ISSUE

THE DEPARTMENT OF PUBLIC SOCIAL SERVICES MISLED
CLIENT INTO BELIEVING THAT HE HAD NINETY DAYS IN
WHICH TO APPLY FOR MEDICAL ASSISTANCE

PETITIONER RELIES ON SEVERAL FACTORS IN SUPPORTING HIS CLAIM THAT THE
DEPARTMENT OF PUBLIC SOCIAL SERVICES MISLED HIM:

- 1) QUESTION NUMBER 1 ON FORM 61A/632, WHICH ASKS: "DO YOU WANT HELP WITH
BILLS FOR MEDICAL CARE THAT ANYONE IN YOUR HOME RECEIVED IN THE LAST 3 MONTHS?"
- 2) THE ABSCENCE OF ANY REFERENCE TO A DEADLINE IN WHICH TO APPLY ON SAID
FORM.
- 3) THE ABSCENCE OF ANY POSTED SIGNS REGARDING APPLICATION DEADLINES.
- 4) PREVIOUS EXPERIENCE WITH THE DEPARTMENT OF PUBLIC SOCIAL SERVICES IN
WHICH HE RECEIVED MEDICAL TREATMENT ON SEPTEMBER 18, 1988, AND WAS NOT GIVEN
A REFERRAL LETTER TO UMAP UNTIL DECEMBER 22, 1988, OR NINETY SIX (96) DAYS
AFTER DATE OF TREATMENT.
- 5) THE POINT THAT NEITHER HE NOR HIS WIFE, DURING ANY TIME THAT THEY
APPLIED FOR ASSISTANCE BETWEEN 1986 AND 1989, WERE EVER TOLD BY ANY
REPRESENTATIVE OF THE DEPARTMENT OF PUBLIC SOCIAL SERVICES, THAT THEY WOULD
BE DENIED ASSISTANCE IF THEY FAILED TO TURN IN THE APPLICATION BEFORE A
CERTAIN DATE.

DISCUSSION

THE FACTS ABOVE ARE SUFFICIENT TO SUPPORT PETITIONER'S CLAIM: IT WAS
THROUGH THE DEPARTMENT OF PUBLIC SOCIAL SERVICES ACTS AND OMISSIONS THAT
HE WAS LED TO BELIEVE THAT HE HAD UP TO NINETY DAYS FROM DATE OF TREATMENT
IN WHICH TO APPLY FOR MEDICAL ASSISTANCE, AND NOTHING NEED BE ADDED TO
THIS DISCUSSION.

ISSUE

THE DEPARTMENT OF PUBLIC SOCIAL SERVICES HAS A RESPONSIBILITY, IF NOT A DUTY, TO ITS CLIENTS TO INFORM THEM OF APPLICATION DEADLINES FOR MEDICAL ASSISTANCE PROGRAMS

THE DEPARTMENT OF PUBLIC SOCIAL SERVICES TOLD PETITIONER THAT IT WAS HIS RESPONSIBILITY, AND NOT THEIRS, TO FIND OUT THE DEADLINE FOR APPLYING FOR MEDICAL ASSISTANCE. ON THE FACTS OF THIS CASE, PETITIONER DISAGREES.

DISCUSSION

A PERSON OF REASONABLE INTELLIGENCE WOULD CONCLUDE THAT QUESTION NUMBER ONE OF FORM 61A/632 MEANS THAT THEY COULD RECEIVE ASSISTANCE IN PAYING FOR MEDICAL TREATMENT RECEIVED UP TO NINETY DAYS PRIOR TO THE DATE OF THEIR APPLICATION. IN THE ABSCENCE OF ANY OTHER REPRESENTATION MADE BY THE DEPARTMENT OF PUBLIC SOCIAL SERVICES, ALL CLIENTS READING QUESTION NUMBER ONE OF THAT FORM WOULD HAVE NO NEED TO INQUIRE OF THE DEPARTMENT OF PUBLIC SOCIAL SERVICES CONCERNING ANY APPLICATION DEADLINES FOR MEDICAL ASSISTANCE SINCE, AFTER READING THAT QUESTION, THEY WOULD CONCLUDE THAT THEY WOULD RECEIVE ASSISTANCE FOR MEDICAL TREATMENT RECEIVED AT ANY TIME WITHIN THE PREVIOUS THREE MONTHS AND, THAT IF THEY WERE TO RECEIVE MEDICAL TREATMENT TODAY, THEY WOULD HAVE UP TO THREE MONTHS IN WHICH TO APPLY FOR MEDICAL ASSISTANCE TO PAY THAT.

SINCE THE DEPARTMENT OF PUBLIC SOCIAL SERVICES HAS MORE THAN ONE MEDICAL ASSISTANCE PROGRAM TO OFFER, AND THE APPLICATION FORM USED FOR ALL PROGRAMS IS FORM 61A/632, RETRO PERIODS FOR EACH PROGRAM, IF DIFFERENT THAN THE THREE MONTHS OF COVERAGE EXPRESSED IN QUESTION NUMBER ONE OF THAT FORM, SHOULD BE CLEARLY EXPRESSED BY THE DEPARTMENT OF PUBLIC SOCIAL SERVICES TO EACH CLIENT TO PREVENT THAT CLIENT FROM LOSING BENEFITS HE WOULD OTHERWISE BE ENTITLED TO. THE RESPONSIBILITY TO DO THAT LIES WITH THE DEPARTMENT OF PUBLIC SOCIAL SERVICES AS THE CLIENT, AFTER READING QUESTION NUMBER ONE, WOULD CONCLUDE THAT THE RETRO PERIOD FOR ALL MEDICAL ASSISTANCE PROGRAMS WOULD BE THREE MONTHS AND, HAVING SO CONCLUDED, WOULD HAVE NO REASON TO ASK IF THE MEDICAL ASSISTANCE PROGRAM HE IS ELIGIBLE FOR MIGHT BE DIFFERENT.

THE CONCLUSION REACHED BY ANY PERSON OF REASONABLE INTELLIGENCE WOULD BE THAT THERE IS NO REAL APPLICATION DEADLINE FOR MEDICAL ASSISTANCE, JUST A DUTY TO APPLY FOR SAID MEDICAL ASSISTANCE WITHIN NINETY DAYS FROM THE DATE OF TREATMENT.

4095 WEST 5295 SOUTH

24 30 78

KEARNS

UT 84118

NOTICE OF DECISION

DEPARTMENT OF SOCIAL SERVICES OFFICE OF ASSISTANCE PAYMENTS ADMINISTRATION

CASE NUMBER 00020913

MAILING DATE 31MAR89

LAUNA CARTER
2874 S. 2500 W. 2K1-1
SPACE 198
WEST VALLEY CIT UT 84119

DENIAL - MISCELLANEOUS

DEAR LAUNA CARTER

YOUR APPLICATION FOR UMAP ASSISTANCE, DATED 3/10/89, HAS BEEN DENIED.
THIS IS BECAUSE THE MONTH YOU ARE REQUESTING ASSISTANCE FOR IS PAST
THE RETRO PERIOD FOR THIS PROGRAM.

YOU MAY REAPPLY AT ANY TIME.

THIS ACTION IS BASED ON VOLUME III SECTION 809.4.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CALL US AT
964-7700.

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20918

Case Number

Michael C. Carter
2874 So. 2500 W.
W. Valley, Ut. 84119

Community Operations
409 W. 52nd St.

Your application for medical outreach in September 88 has been approved. You will need to take this letter with you to the clinic - you must also take all September medical bills to them so they can determine if they can be covered. You must call for an appointment. Your case will be closed effective 0930 88 for medical outreach coverage.

Failure to comply with the above by NIA will result in your ☐ Financial ☐ Medical

Food Stamp assistance being _____ effective _____

7PA Vol. III sec 200+300 Plongy Huan 12 22 8 964 7700

You must notify your local Office of Community Operations listed above immediately whenever there is a change in:

1. Your address or number of people living with you.
2. Money you receive from work, pensions, or any other sources.
3. Property you own (when you receive, sell, or give away real or personal property)
4. Your marital status or that of any household member
5. Any change in household expenses.

Willfully withholding information regarding changes in your household circumstances is unlawful and may result in your becoming ineligible for all or part of your assistance. Any amount overissued to you as a result of willful withholding will be recovered

If you disagree with this decision, refer to Hearing Rights on the back.

Date Received _____

Date Interviewed _____

1. As you complete this form, read the questions carefully. Follow the instructions in the yellow boxes. If you need help, tell us. A worker will help you.
2. Answer all the questions as completely and accurately as you can. Please print.
3. If you are applying for Food Stamps ONLY, you do not need to answer the questions marked with an *asterisk*.
4. Do not write in the shaded areas of the form. These areas are for agency use only.

Do you want help with bills for medical care that anyone in your home received in the last 3 months? .. ☒ Yes ☐ No.

YES, FILL IN THE BOXES BELOW.

me	Date of Service	Retro Medical Date
AUNA CARTER	1/3/89	
Michael CARTER	1/31/89	
-	-	

Do you have a legal guardian or someone who has power of attorney for you? ☐ Yes ☒ No.

YES, WHAT IS THAT PERSON'S NAME? \

st Name	First Name	Middle Initial
-	-	-

Is anyone in your household living in one of these institutions? ☐ Yes ☒ No.

- ☐ Hospital ☐ Shelter ☐ Jail
☐ Group Home ☐ Nursing Home ☐ Drug/Rehab Center

YES, LIST THAT PERSON'S NAME AND THE NAME OF THE INSTITUTION:

me	Name of Institution	Admission Date
-	-	-

Has anyone in your home who once received SSI later stopped receiving SSI? ☐ Yes ☒ No.

YES, FILL IN THE BOXES BELOW.

me	Date stopped receiving SSI
-	-

Is anyone in your home a veteran of the U.S. armed forces? ☐ Yes ☒ No.

YES, WHO?

-

EXHIBIT "B"

RESPONDENT'S FINAL ACTION
AND FORMAL ORDER



EXHIBIT "B"
RESPONDENT'S FINAL ORDER

288 North 1460 West
P O Box 16580
Salt Lake City Utah 84116-0580
(801) 538-6151

))))))))

v.

UTAH DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FINANCING,
Respondent.

The enclosed Formal Order has been reviewed pursuant to Section 63-46b-12 Utah Code Ann. 1953, as amended, entitled "Agency Review - Procedure," and Department of Health Administrative Rule R455-14, entitled, "Division of Health Care Financing Administrative Hearing Procedures for Medicaid/UMAP Applicants, Recipients, and Providers."

Was retroactive eligibility for the Utah Medical Assistance (UMAP) program inappropriately denied to Petitioner for the month of January?

The Findings of Fact entered by the presiding officer are hereby incorporated by reference.

The Conclusions of Law entered by the presiding officer are hereby incorporated by reference.

Wherefore, Formal Order No. 89-111-02 is hereby AFFIRMED.

Utah Department of Social Services, Assistance Payments Administration, Volume III, Section 809.4, states the UMAP rule for retroactive coverage:
"Generally, do not extend retroactive coverage beyond the first of the month immediately preceding the month of application. The applicant must have been eligible at the time the medical service was performed."

If a person has a good reason for a delay in applying, a special exemption can be given by UMAP. For example, if an applicant thinks that his insurance will cover his expenses but later finds out that the insurance will not pay, or will only pay a portion of the bill, contact UMAP.... It will decide whether or not extended retroactive coverage may be granted."

UMAP did not approve a variance from the one month retroactive period. Therefore, the Office of Community Operations was correct in denying coverage for the period in question.

RIGHT TO JUDICIAL REVIEW

Within twenty (20) days after the date that this Final Agency Action and Order on Review is issued, you may file a written request for reconsideration with the Director of the Division of Health Care Financing. The filing of such a request is not a prerequisite for seeking judicial review. Judicial review may be secured by filing a petition in the Utah Court of Appeals within thirty (30) days of the issuance of this Final Agency Action and Order on Review. The petition shall be served upon the Director of Health Care Financing and shall state the specific grounds upon which review is sought. Failure to file such a petition within the 30-day time limit may constitute a waiver of any right to appeal the Final Agency Action and Order on Review.

A copy of this Final Agency Action and Order on Review shall be sent to Petitioner or his representative at the last known address by certified mail, return receipt requested.

DATED this 15th day of June, 1989

UTAH DEPARTMENT OF HEALTH
Suzanne Dandoy, Executive Director

BY: Rod Betit
Rod Betit, Director
Division of Health Care Financing
Her Designated and Authorized Representative

THE UTAH DEPARTMENT OF HEALTH DIVISION OF HEALTH CARE FINANCING

MICHAEL C. CARTER

Petitioner

v.

Utah Department of Health
Division of Health Care Financing,
Respondent

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FORMAL ORDER

Case No. 89-111-02

A formal hearing was convened in the matter of Michael C. Carter, Petitioner, v. The Utah Department of Health, Division of Health Care Financing, Respondent on June 5, 1989, at 2:00 p.m. at the Office of Community Operations (OCO) offices, 4095 West 5295 South, Kearns, Utah. The presiding officer was Steven Gatzemeier. The proceedings were held according to the Utah Administrative Procedures Act (April, 1988), and Department of Health Rule R455-14. Appearances: Michael C. Carter, Petitioner; Donna Kramer, Respondent.

ISSUE

Was retroactive eligibility for the Utah Medical Assistance (UMAP) program inappropriately denied to the petitioner for the month of January 1989?

FINDINGS OF FACT

1. The petitioner and his wife applied on March 10, 1989 for retroactive medical assistance for services received in January, 1989.
2. The OCO Kearns office determined that the petitioner did not meet eligibility requirements for the Medicaid program, and therefore looked to the UMAP program for assistance.
3. The petitioner noted that on Page 3 of form 61A/632, applicants are asked whether they "...want help with bills for medical care that anyone in your home received in the last 3 months?". He states in Petitioner's Exhibit 1 that:

"A person of reasonable intelligence would conclude that Question Number One of Form 61A/632 means that they could receive assistance in paying for medical treatment received up to ninety days prior to the date of their application."

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4. The petitioner maintained that he and his wife were misled by Social Services into believing that they had 90 days in which to file for retroactive medical coverage.
5. The respondent noted that form 61A/632 is used for 17 different programs, and that completing the form does not ensure anyone of coverage by any of the programs. Each program is different, and while some benefits may be available under some programs, they are not necessarily available under other programs.
6. APA Volume III Section 809.4 identifies the criteria used by the OCO office in determining retroactive eligibility for the UMAP program. It states:

"Generally, do not extend retroactive coverage beyond the first of the month immediately preceding the month of application. The applicant must have been eligible at the time the medical service was performed.

If a person has a good reason for a delay in applying, a special exemption can be given by UMAP. For example, if an applicant thinks that his insurance will cover his expenses but later finds out that the insurance will not pay, or will only pay a portion of the bill, contact UMAP....It will decide whether or not extended retroactive coverage may be granted."

7. The OCO office reports contacting Mrs. Jacky Stokes of the UMAP program to determine if retroactive coverage beyond the one month period allowed in the regulations would be allowed in this case. The reported determination by UMAP was that retroactive coverage would not be allowed. The hearing officer indicated that since there was no tangible evidence introduced that verified that UMAP had denied retroactive coverage beyond the one month period, if it was acceptable to both parties , he would contact Mrs. Stokes at the UMAP program to determine if the program would consider granting retroactive coverage in this situation. Both parties agreed to this additional information being gathered by the hearing officer and considered as a part of the hearing. Mrs. Stokes was contacted, and verified that the UMAP program had denied granting retroactive coverage beyond the one month period authorized in the regulations.

8. The petitioner introduced a Notice of Decision indicating that previously he had been granted eligibility on December 22, 1988 for services rendered in September, 1988. He maintained that this constituted a precedent, and that retroactive coverage should also be allowed in this case.

CONCLUSIONS OF LAW

Section 809.4 of Volume III of the Assistance Payment Administration (APA) manual, which identifies the retroactive eligibility period available under the UMAP program indicates that eligibility will be granted for up to one month retroactively. More time may be granted by the program if there is "...a good reason for a delay in applying..."

Volume III of the APA manual has been adopted through the state rule making process, and thus has the force and effect of law. In this case the decision of the OCO office was based on the regulations. A request for variance from the one month retroactive period was not approved by the UMAP program, and therefore the OCO office had no choice but to deny coverage for periods prior to February, 1989.

REASONS FOR THE PRESIDING OFFICER'S DECISION

The petitioner claimed that the question on the application form that asks whether the applicant wants help with medical bills received within the last three months constitutes an agreement by the UMAP program to pay for those bills. This claim appears to the presiding officer to be without foundation. The petitioner indicated that he was aware that the application form was used for a number of different programs, some of which are unrelated. The fact that one program may be able to grant retroactive coverage for a period longer than another does not bind all programs to grant the same retroactive coverage period.

The presiding officer failed to conclude that a question on an application form constitutes a contract to provide the service requested. It simply is used to collect information from which decisions may be made regarding eligibility, and appropriate services.

The claim by the petitioner that prior experience indicated that retroactive coverage could be granted for longer than the one month period was found not to be substantiated. The example introduced was for services rendered in September, 1988, for which an application was filed in September, 1988. The fact that due to problems with processing, the determination was not rendered until December did not negate the fact that the application was filed timely, and that the eligibility was not determined for a retroactive month, but for the same month in which the application was filed.

RELIEF ORDERED BY THE AGENCY

The decision by the respondent not to approve retroactive UMAP eligibility for the petitioner for more than one calendar month prior to the month of application is affirmed.

RIGHT TO REVIEW

This Formal Order will be automatically reviewed by the Department of Health prior to its release. Both the Formal Order and a Final Agency Action which represents the results of that review will be released by the Department of Health simultaneously.

BY


Steven Gatzemeier
Administrative Law Judge

Date June 6, 1989