

1992

# Shauna Bleazard v. Utah Department of Health, Division of Health Car Financing : Reply Brief of Petitioner

Utah Court of Appeals

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DOCKET NO. 920787

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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SHAUNA BLEAZARD,	:	
	:	
Petitioner,	:	Case No. 920787-CA
	:	
v.	:	(Priority No. 15)
	:	
UTAH DEPARTMENT OF HEALTH,	:	
DIVISION OF HEALTH CARE	:	
FINANCING,	:	
	:	
Respondent.	:	

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REPLY BRIEF OF PETITIONER

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APPEAL FROM AN ORDER OF THE DIRECTOR  
OF THE UTAH DEPARTMENT OF HEALTH

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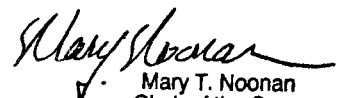
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**FILED**  
Utah Court of Appeals

APR 20 1993

  
Mary T. Noonan

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### STATEMENT OF FACTS

The additional facts set forth by the Department of Health, Division of Health Care Financing (the "Department") in its brief are generally accurate. Petitioner raises, however, the following points:

In discussing the Department's denial of Medicaid benefits on behalf of Jody Bleazard, the Department notes that, "Ms. Bleazard's resources exceeded allowable limits under the medically-needy program" (Brief of Respondent, p. 4). Shauna Bleazard (Jody's mother) is not a person of substantial resources (R. at 69), and the resources attributable to her (\$9,642) would not cover even one-third of Jody's bill for March 1992 at Primary Children's Medical Center (\$30,000) (R. at 69, 59). Nevertheless, it is undisputed that Shauna Bleazard's resources exceed the limits for eligibility under the medically needy program. The issue in this case is not Shauna Bleazard, however, but her daughter.<sup>1</sup> The Department has not disputed the fact that Jody Bleazard's resources, not including those of her parents, do not exceed the limits for eligibility under the medically needy program. The issue in this case is whether Jody was a resident

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<sup>1</sup>In its Brief, the Department notes that Jody Bleazard sought Medicaid assistance under a variety of theories (Brief of Respondent, p. 2-4). Given the complexity of the Medicaid rules and regulations, the fact that she could not initially determine the proper category of Medicaid for which she was eligible should not have been used against her by the Department, nor should it be used against her by this court.

of Primary Children's Medical Center in March 1992, in which case the resources of her parents would not be attributable to her.

Jody Bleazard also notes that the initial conclusion of the hearing officer in this matter was in her favor (R. at 47-49). This determination was set aside by the Interim Executive Director of the Department (R. at 43-46). It is from the Director's Order that this appeal is made.

#### SUMMARY OF ARGUMENT

In response to the arguments raised by Jody Bleazard in support of her claim for Medicaid benefits during March 1992, the Department of Health, Division of Health Care Financing ("Department"), contends that Jody's interpretation of the Department's rules is precluded by federal regulation. It argues that those regulations require (1) the determination that Jody was not a resident of Primary Children's Medical Center and (2) the consideration of a parent's income to determine the eligibility of a minor child for Medicaid. In its support, however, the Department cites only federal regulations which are either inapplicable to Jody's claim or unsupportive of the Department's position. Thus, its argument must fail.

The Department also argues that its rules regarding residency in an institution should not apply to an acute care hospital. As this has no support in statute, regulation or rule, it also must fail.



In opposing Jody's claim, the Department ignores the federal regulation perhaps most applicable to this situation. It allows the Department to determine, by rule, whether an applicant's resources include those of her parents. 42 C.F.R. § 435.821. In Utah, by agency rule, the resources of a parent should not be attributed to a minor child who is a resident of a medical institution. APA Manual, Volume III-M, § 485(3).<sup>2</sup> Because Jody Bleazard was so situated, and her resources do not exceed the limits for eligibility, she is entitled to Medicaid benefits for March 1992.

#### ARGUMENT

In opposition to Jody Bleazard's claim for Medicaid benefits, the Department of Health, Division of Health Care Financing ("Department") contends that it was bound by federal regulation to determine that Jody Bleazard was not a resident of Primary Children's Medical Center and to consider the resources of Jody's parents in evaluating her eligibility (Brief of Respondent, pp. 10-11; 15-19). As this argument has no legal basis, the decision of the Department should be reversed.

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<sup>2</sup>Citations to the APA Manual refer to the rules generated by the Department of Human Services for administration of the Medicaid program. These rules, compiled in several volumes, are referred to as Assistance Payments Administration (APA) Manuals.

**I. THE FEDERAL REGULATIONS ON WHICH THE DEPARTMENT RELIES ARE NOT APPLICABLE TO THIS CASE.**

In support of her claim for benefits, Jody Bleazard relied on state Medicaid rules and regulations which provide that an eligible resident of an institution is entitled to benefits. In response, the Department does not dispute Jody's interpretation of these rules, but argues that federal regulations prevent the application of the Rules as written.

Jody Bleazard does not dispute that the administration of the Medicaid program is governed in part by federal regulations and that these must be considered in evaluating an individual's eligibility for benefits. The regulations cited by the Department, however, do not modify the or address the Department's rules, address residency in an institution or require consideration of the resources of Jody's parents. In arguing that federal regulations preclude Jody's claim, the Department ignores its own rules to suit its own purposes. Inasmuch as this is "the essence of arbitrary and capricious action", the Department's action must be reversed. *State v. Utah Merit System Council*, 614 P.2d 1259 (Utah 1980).

**A. Section 435.831 of 42 C.F.R. does not Govern or Affect Jody Bleazard's Claim.**

The Department begins its argument with section 435.831 of 42 C.F.R., which provides that: "The agency must deduct amounts that would be deductible in determining eligibility under the State's [Aid to Families with Dependent Children (AFDC)] Plan."

As is obvious, this provision says nothing about Jody's residency or the resources of her parents. It simply provides that in the evaluation of her eligibility, available resources should be reduced by certain amounts. Given Jody's lack of resources, however, this provision would seem to have no application to this case.

**B. Sections 435.711 and 435.712 of 42 C.F.R. do not Affect Jody Bleazard's Claim Because they Only Apply to Claims of Categorically Needy Individuals.**

The Department next cites sections 435.711 and 435.712 of 42 C.F.R., which provide that "the agency must apply the financial eligibility requirements of the State's AFDC plan," 42 C.F.R. § 435.711, and "the agency must consider income and resource of spouses or parents as available to the individual whether or not they are actually contributed, if they live in the same household."<sup>3</sup> 42 C.F.R. § 435.712. From these the Department attempts to establish that "all applicable federal regulations and state rules governing the question of residency in AFDC cases" apply to Jody's claim (Brief of Respondent, p. 18). The Department is in error in several important respects.

First, the sections cited do not incorporate AFDC residency requirements. They address only "financial eligibility

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<sup>3</sup>The Department does not elaborate on this language, which seemingly supports its position. As will be demonstrated below, however, this language applies only to categorically needy individuals. 42 C.F.R. §§ 435.700-435.740. It does not apply to persons like Jody whose claims are based on medical need. 42 C.F.R. §§ 438.800-435.852.

requirements", 42 C.F.R. § 435.711, referring to the calculation of income and resources and level of eligibility. Thus, the Department's attempts to incorporate AFDC residency requirements into its determination are not supported by the regulation it relies on.

Additionally, and more importantly, sections 435.711 and 435.712 do not apply to this case. As was noted in Jody Bleazard's initial Brief, these sections apply exclusively to the eligibility of categorically needy individuals. 42 C.F.R. §§ 435.700-435.740. Jody's claim is based upon her status as medically needy, Utah Admin. Code R513-333-302(1), eligibility for which is governed by separate regulations. 42 C.F.R. §§ 435.800-435.852. Thus, the Department cannot rely on the regulations which it cites.

**C. Section 233.90 of 45 C.F.R. does not Affect Jody Bleazard's Claim Because it is an Inapplicable AFDC Regulation and Because it Addresses a Distinct and Separate Issue.**

Having attempted to establish that AFDC residency regulations govern this case, the Department next cites an AFDC regulation, 45 C.F.R. § 233.90, the only such regulation on which it relies. The regulation provides in relevant part that "A home exists so long as the relative exercises responsibility for the care and control of the child, even though ... the child ... is temporarily absent from the customary family setting." The Department uses this language to argue that so long as Shauna

Bleazard exercised care and control over her daughter, Jody could not be a resident of Primary Children's Medical Center.

The section cited, however, cannot support the Department's position for several reasons. First, this is not a Medicaid regulation, but an AFDC regulation. As was discussed above, the Department has not demonstrated that AFDC regulations should apply to eligibility of medically needy individuals residing in institutions.

Further, the regulations which the Department cites for the proposition that AFDC regulations apply to Medicaid eligibility refer only to "financial eligibility requirements". This section does not deal with financial eligibility, or even residency, but serves to aid in the definition of "dependent child". See 42 U.S.C. 606(a). While that definition is relevant for purposes of AFDC, it is not a requirement of eligibility for Medicaid. Thus, the provision should not be used to deny Jody her benefits.

Finally, the Department's interpretation is flawed. The regulation provides that a home can exist, thereby preserving the family's right to AFDC benefits, even though a child is temporarily absent, so long as a parent maintains care and control of the child. 45 C.F.R. § 233.90. The Department contends that this means a child cannot qualify as a resident of an institution so long as a parent exercises care and control over the child. The Department ignores the fact that it is dealing with distinct programs and situations. The rule governs the eligibility of a family for AFDC benefits. In contrast, Jody

is an individual seeking Medicaid benefits. The rule governing the family cannot be applied to the individual. Thus, the Department makes an unsupported leap to its conclusion.

**D. The Department's Reliance on its own Rules is Ineffective Because the Rules on which it Relies are Taken out of Context.**

Finally, the Department refers to statements from its own rules governing Medicaid eligibility. These explain that a child and relative are "living with" each other even if one is "temporarily absent" from the home. APA Manual, Volume III-M, §§ 305-2(1), 305-3(4). While there is language in these provisions that seemingly supports the Department's position, their context indicates that they do not provide a legitimate basis for denial of Jody's benefits. These come from rules dealing with caretaker relatives, persons who become eligible for "F" Medicaid as the caretakers of other eligible individuals. See 42 C.F.R. § 435.301(b)(2)(ii); APA Manual, Volume III-F, § 305-3. If Jody's parents were seeking "F" Medicaid as caretaker relatives, these would be relevant. As they are not, however, these sections do not apply.

Additionally, these sections do not support the Department's position. Although they express the idea that a caretaker relative is living with an individual even during temporary absences, including those for medical treatment, they do not define "temporary absence." The Department argues that an

absence is temporary unless a parent relinquishes care and control.<sup>4</sup> The rules do not discuss care and control.

The rules do provide, however, that a person who enters an institution becomes a resident of the institution beginning the month after entry, which residency continues until the month of discharge. APA Manual, Volume III-F, § 215-3. In construing statutes and regulations, "The meaning of a part of an act should harmonize with the purpose of the whole act. Separate parts of an act should not be construed in isolation from the rest of the act." *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984); *Ferro v. Utah Department of Commerce*, 828 P.2d 507 (Utah Ct. App. 1992). The Department's interpretation does not harmonize or consider the relevant rules in this case, which would limit a temporary absence from the home to those situations in which an individual is admitted and discharged from an institution in the same month or in the month following. As that did not occur in this case, the Department cannot claim that Jody was not a resident of Primary Children's Hospital based on temporary absence from the Bleazard household.

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<sup>4</sup>In addressing Jody's claim below, the Department cited a Social Security regulation that provided that a temporary absence occurs when an individual "leaves a household but intends to, and does, return in the same month or the month immediately following." 20 C.F.R. § 416.1167(a). Under this definition, Jody was not temporarily absent from her home.

**E. The Department's Attempt to Distinguish Acute Care Hospitals and Other Institutions is not Supported by Existing Law.**

As a final note, the Department argues that Jody's eligibility is also in question because Primary Children's Medical Center is an acute care hospital (Brief of Respondent, p. 20). The Department would argue that a person can become a resident of an institution only if that institution is akin to a licensed nursing care facility.

While the Department offers distinct statutory definitions for a licensed nursing care facility and a general acute care hospital, Utah Code Ann. §§ 26-21-2(8); 26-21-2(14), the rules governing eligibility for Medicaid make no such distinction. An "institution" is a entity with an owner, manager or other person in charge that provides food shelter and some treatment and service to its residents that is designed to proved for four or more people. APA Manual, Volume III-F, § 215-1. The Department has conceded that, "hospitals are in fact institutions." (R. at 54).

**F. Summary**

Thus, none of the regulatory provisions cited by the Department in support of its contention that federal regulations required it to determine that Jody Bleazard was not a resident of Primary Children's Medical Center are applicable to this case. Neither do the rules used by the Department provide support. As the rules unambiguously provide that Jody Bleazard is entitled to Medicaid benefits, the Department's action should be reversed.



**II. FEDERAL REGULATIONS DO NOT REQUIRE THE DEPARTMENT TO CONSIDER THE RESOURCES OF JODY BLEAZARD'S PARENTS IN DETERMINING JODY'S ELIGIBILITY FOR MEDICAID BENEFITS.**

In referring to various federal regulations, the Department fails to mention or refer to the regulation most relevant to this case. Contained in section 435.821 of 42 C.F.R., it deals directly with responsibility of relatives of medically needy individuals. It provides that: "The agency may consider income and resources of spouses or parents as available to the individual even if they are not actually contributed to the individual." 42 C.F.R. § 435.821 (emphasis added). This regulation, giving the state discretion to attribute resources of a parent to a child, is in contrast to the mandatory attribution of resources between parent and child for categorically needy individuals, the irrelevant statute cited by the Department. 42 C.F.R. § 435.712.

The significance of this regulation is that in determining Jody Bleazard's eligibility for Medicaid, the Department is not bound by federal regulation to consider the resources of Jody's parents. Because the Department's rules provide that those resources should not be considered for individual's in Jody's situation, the Department committed reversible error in denying Jody's benefits based on her parent's resources.

**III. THE MEDICAID ELIGIBILITY RULES OF THE DEPARTMENT PROVIDE THAT JODY BLEAZARD WAS A RESIDENT OF PRIMARY CHILDREN'S MEDICAL CENTER IN MARCH 1992, THAT THE RESOURCES OF HER PARENTS SHOULD NOT BE CONSIDERED IN EVALUATING HER ELIGIBILITY, AND THAT SHE IS ENTITLED FOR MEDICAID BENEFITS FOR MARCH 1992.**

The Department has presented no relevant authority in support of the proposition that its rules should be interpreted otherwise than as written. Although it attempts to invoke regulations governing AFDC and categorically needy individuals, these do not apply to Jody Bleazard, who seeks benefits as a medically needy resident of Primary Children's Medical Center.

The Department's rules provide that an individual becomes a resident of an institution beginning the month after she enters the institution and continuing through the month before she leaves the institution. APA Manual, Volume III-F, § 215-3. Jody entered Primary Children's Medical Center in February 1992 and was discharged in April 1992. Thus, during March 1992, she was a resident.

For minor residents of an institution, the income of parents is counted only for the months of entry and discharge. APA Manual, Volume III-M, § 485(3). Thus, for March 1992, the income of Jody's parents would not be attributed to her.

It is undisputed that Jody's resources, not including those of her parents, do not exceed the limitations for Medicaid under the medically needy program. Thus, Jody is entitled to benefits for March 1992. Utah Admin. Code R513-333-302(1). The Department has failed to show compelling grounds to depart from

its rules; it should be held to them. *State v. Utah Merit System Council*, 614 P.2d 1259 (Utah 1980).

**CONCLUSION**

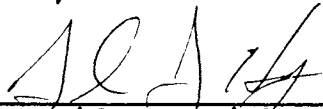
As it did prior to this appeal, the Department has searched for various rules and regulations to justify its action in denying Medicaid benefits to Jody Bleazard. The Department has failed, however, to cite any relevant authority supporting its position. Instead, it cites unsupportive and irrelevant regulations which only serve to obscure the purpose and intent of the rules.

The rules of the Department provide that an individual in Jody's circumstances is entitled to Medicaid benefits. The Department's decision denying those benefits should be reversed.

DATED this 20<sup>th</sup> day of April, 1993.

DAVID B. ERICKSON

KIRTON, McCONKIE & POELMAN

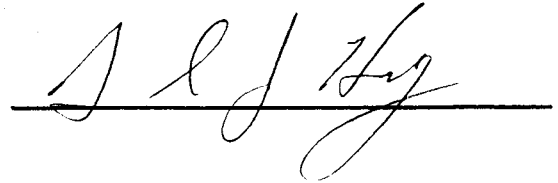
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of April, 1993, two true and correct copies of the forgoing REPLY BRIEF OF PETITIONER were deposited in the United States Mail, postage prepaid, to:

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A handwritten signature in cursive script, appearing to read "J. S. Mikita", is written over a solid horizontal line.