9-23-2009

Kootenai Medical Ctr. v. Bonner County Bd. of Comm'rs Appellant's Reply Brief Dckt. 36217

IN THE SUPREME COURT OF THE STATE OF IDAHO

KOOTENAI HOSPITAL DISTRICT, a quasi-municipal corporation owning and operating a hospital by the name of KOOTENAI MEDICAL CENTER, (RE: David T.)	) Docket No. 36217
Appellant,	
vs.	
BONNER COUNTY BOARD OF COMMISSIONERS,	
Respondent.	

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the
First Judicial District of the State of Idaho
in and for the County of Bonner

The Honorable Steve Verby, District Judge, Presiding

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I. TIMELINESS

In its respondent's brief on appeal, Bonner County discusses at some length the many reasons why a "delayed" application for county indigent assistance may be denied. That discussion, however, does not overcome the express statutory language here in question:

> In the discretion of the Board, bills on a delayed application, which would not have been covered by a successful application or timely claim to the other resource(s) may be denied by the Board as untimely; and

Idaho Code § 31-3505(4)(a)(iv).

Given the provisions of I.C. § 31-3502(1) and (17), it is axiomatic that all "delayed" applications for county assistance will involve claims first made upon, but denied by "other resource(s)". As with the present case, county commissioners will by definition have, in every "delayed" application case, for their consideration "bills on a delayed application which would not have been covered by a successful application or timely claim to the other resource(s)...". This same statute expressly states that such bills may be denied as "untimely" "in the discretion of the board". This discretion obviates, for delayed applications, the "statutory mandate" referenced at IHC Hospitals, Inc. v. Teton County, 139 Idaho 188, 191, 75 P.3d 1198 (2003). The prejudice standard of Carpenter v. Twin Falls County, 107 Idaho 575, 583, 691 P.2d 1190, 1197-1198 (1984), remains, therefore, the state of the law.

Bonner County's arguments based on the legislative history behind the 2004 amendment to the indigency statutes, does not alter the result. In most, if not all cases of "delayed applications", the basis for the denial by the "other resource(s)" will be known by

the county commissioners considering the claim. Given the language of I.C. § 31-3505(4), and the standards of judicial review under the Administrative Procedures Act, it is difficult to imagine a set of circumstances under which a board of county commissioners would be reversed for finding a delayed application not "bonafide". The commissioners will virtually have the benefit of hindsight not available to the provider when applying to the "other resource(s)".

The holding and the language of IHC Hospitals, Inc. v. Teton County, *supra*, was known to the legislature when the 2004 amendments to I.C. § 31-3505 were made. Giving commissioners the "discretion" to deny delayed applications which "would not have been covered by a successful application or timely claim to the other resource(s)...", is clearly not a mandate to deny such claims. The legislature did, apparently, respond to the complaints voiced by Nez Perce County Clerk Wolf, but left to the counties a requirement that they show prejudice from such circumstances, on a case by case basis, to support a denial.

II. INCOME AND OTHER RESOURCES

Bonner County cites Mercy Medical Center v. Ada County, Board of County Commissioners of Ada County, 146 Idaho 226, 233, 192 P.3d 1050, 1057 (2008), for the proposition that this court should remand this matter to the Bonner County Commissioners for further deliberation on matters of the patient's income and other resources. (Respondent's Brief on Appeal, pp. 22-24).

The remand at issue in Mercy Medical Center, *supra*, was held by the Supreme Court to be "within the outer boundaries" of the discretion of the District Court. 146 Idaho at 233. The parameters of that discretion were described as follows:

> We recognize that, despite the absence of formal findings by the Board, the agency record contains information submitted by the Patient regarding her financial resources, habitation history, employment and medical documents which would tend to support a finding of eligibility on remand. However, when a board fails to make a factual determination on a necessary issue, the District Court must not make its own factual determination but must rather remand the case to the Board to make that determination. University of Utah Hospital v. Clerk of Minidoka County, 114 Idaho 662, 665, 760 P.2d 1, 4 (1988); *accord* In Re: Application of Hayden Pines Water Company, 111 Idaho 331, 336, 723 P.2d 875, 880 (1986) ('[W]here the record is inadequate to permit the reviewing court to determine whether or not an agency's action is supported by substantial competent evidence, a remand to the agency for further development of the record may be required.'); but *cf.*, Bonner General Hospital v. Bonner County, 133 Idaho 7, 11, 981 P.2d, 242, 246 (1999) (holding that remand to the Board for further findings of fact was not necessary where the Board had already made findings from the 'paucity of evidence' that were arbitrary, capricious, and an abuse of discretion).

146 Idaho at 232.

As discussed in appellant's opening brief on appeal, all of the documentation requested of the patient was provided in at least one interview by staff and three separate county commissioner hearings. *See also, generally,* Tr. At least a *prima facie* case of indigency was made, and is clearly demonstrated in the record.

In their finding of fact No. 29, the commissioners concede that they are "unable to prove or disapprove [*sic*] the numbers". A.R. 13, ¶ 29.

This is not a case where the county failed to make findings. *See* A.R. 7-8, ¶¶ 11-14. This is, rather, yet another case wherein the Bonner County Board of Commissioners have "already made findings from the 'paucity of evidence' that were arbitrary, capricious and an abuse of discretion". 146 Idaho at 232 (*emphasis original*), *citing* Bonner General Hospital v. Bonner County, 133 Idaho 7, 11, 981 P.2d 242, 246 (1999).

III. CONCLUSION

For the reasons stated above, as well as those set forth in appellant's brief on appeal, this Court is respectfully requested to reverse both the District Court and the Bonner County Board of Commissioners and order this application approved in full.

DATED this 21st day of September, 2009.

PAINE HAMBLEN LLP

By _____
MICHAEL B. HAGUE
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of September, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Scott Bauer
Bonner County Attorney
127 S. First Ave.
Sandpoint, ID 83864

☑ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX) to:

Michael B. Hague