

1-21-2014

Cazier v. Idaho State Dept. of Health and Welfare Respondent's Brief Dckt. 41255

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Cazier v. Idaho State Dept. of Health and Welfare Respondent's Brief Dckt. 41255" (2014). *Not Reported*. 1547.
https://digitalcommons.law.uidaho.edu/not_reported/1547

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES DRAKE CAZIER,)	
)	
Plaintiff-Appellant,)	Supreme Court Docket 41255
)	Kootenai County No. 2012-5606
vs.)	
)	
)	
STATE OF IDAHO, DEPARTMENT OF)	
HEALTH AND WELFARE,)	
)	
Defendant-Respondent.)	
_____)	

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN P. LUSTER, PRESIDING

LAWRENCE G. WASDEN
ATTORNEY GENERAL

PEG M. DOUGHERTY, ISB #6043
Lead Deputy Attorney General
CHARINA A. NEWELL, ISB # 6783
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0036
Telephone: (208) 334-5537
Attorney for Defendant-Respondent

CHARLES DRAKE CAZIER, *Pro Se*
3025 West Summer Ave
Athol, ID 83801
Telephone: (208) 704-3718

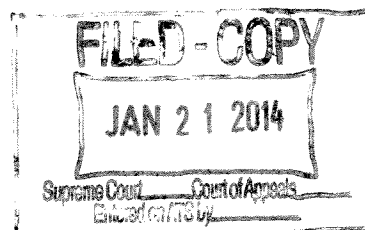


TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....	1
1. Nature of the Case.....	1
2. Statement of Facts.....	2
II. ISSUE ON APPEAL.....	3
1. Did the Department’s <i>Final Decision and Order</i> correctly uphold the Department’s decision to deny Cazier’s request to backdate his enrollment as a CFH provider to the date of his application?	3
III. STANDARD OF REVIEW	3
IV. ARGUMENT	4
A. The Department’s Decision is Supported By Rule and Is Not in Violation of Its Legal Authority.....	4
V. CONCLUSION	7
VI. CERTIFICATE OF MAILING.....	8

TABLE OF AUTHORITIES

Cases

<i>Angstman v. City of Boise</i> , 128 Idaho 575, 927 P.2d 409 (Ct. App. 1996)	3
<i>Brett v. Eleventh St. Dockowner's Ass'n, Inc.</i> , 141 Idaho 517, 112 P.3d 805, (2005)	4
<i>Payette River Property Owners Ass'n v. Board of Comm'rs</i> , 132 Idaho 551, 976 P.2d 477 (1999)	3

Statutes

Idaho Code § 67-5279.....	3
Idaho Code § 67-5279(3)	3, 7, 4
Idaho Code § 67-5279(4)	4, 7

Rules

IDAPA 16.03.19	1
IDAPA 16.03.19.009	5
IDAPA 16.03.19.009.02	6
IDAPA 16.03.09.009.02.b	5
IDAPA 16.03.19.100	4
IDAPA 16.03.19.101	5
IDAPA 16.05.03.300	2, 6
IDAPA 16.05.03.301	7
IDAPA 16.05.06	5

I. STATEMENT OF THE CASE

1. Nature of the Case

Pursuant to Idaho law, the Idaho Department of Health and Welfare (Department) is charged with the authority to issue certifications to providers who wish to provide services in their home. These homes are known as certified family homes (CFHs), and they are governed under the rules adopted by the Department in IDAPA 16.03.19.

The Appellant, Mr. Cazier, is requesting that the Department backdate his enrollment as a CFH provider to a time prior to when he was actually certified. In doing so, this would allow Cazier to be paid for the time between when he applied to become a CFH provider and when he was actually cleared by a criminal background check. According to Idaho law and the Department's rules, however, the Department is not authorized to issue a certificate to a provider until the provider has completed the application to become a CFH. Once the certificate is issued, a provider will be enrolled into the Medicaid program and can begin billing for their services. In the instant matter, that application was not complete until the criminal history background check issued a clearance to Cazier. Therefore, the Department did not have the authority to enroll Cazier as a provider until that clearance was granted. The Department respectfully requests the Court to uphold the *Final Decision and Order* (Supplement to Record, Exhibit A to Affidavit of Charina Newell, Motion to Augment Record), which upheld the hearing officer's decision to deny Cazier's request for a backdated enrollment.

2. Statement of Facts

In the fall of 2009, Mr. Cazier applied for certification for he and his wife's home to be a certified family home (CFH) with the Idaho Department of Health and Welfare in order for them to be the paid caregivers for their adult son, Clancy. Initially, the Criminal History Unit within the Department did not approve the CFH application due to a disqualifying offense. (R, p. 4.) After hearings in district court, the matter was remanded back to the Department, and the criminal history unit ultimately passed Mr. Cazier. (R, pp. 80-81.) Following his criminal background check approval, the Department approved his CFH enrollment on April 5, 2011 with an effective date of March 15, 2011. (R, p. 81.) Mr. Cazier appealed this decision and requested an administrative review regarding the issue of whether the Department should back date his enrollment to November 3, 2009.¹

Pending his request for administrative review, a letter dated June 15, 2011 was sent from Molina² to Mr. Cazier which purported to approve his enrollment as a provider with an effective date of November 3, 2009. (R, p. 81.) However, the Department was unaware of why or how Mr. Cazier's request was approved by Molina. Two weeks later, on June 29, 2011, the Department sent a correction to Mr. Cazier stating that the effective date should remain as March 15, 2011. *Id.*

In the administrative appeal that followed, the hearing officer granted the Department's motion for summary judgment. Cazier appealed again to the Director of the agency, which again upheld the denial of the backdate request in a Final Decision and Order issued on July 3, 2012. *Id.* Cazier petitioned the Kootenai County District Court for judicial review of the agency's *Final Decision and Order*. After briefing by both parties and oral argument, Judge Luster issued

¹ Administrative review is a process for providers to appeal decisions by the Division of Medicaid. IDAPA 16.05.03.300.

² Molina is the Department of Health and Welfare, Division of Medicaid's claims processing contractor.

his *Decision Upon Judicial Review* on June 4, 2013. R, p. 89. Judge Luster upheld the *Final Decision and Order*, stating that the Department was within its legal authority when it followed its administrative rules regarding when a certificate can be issued. (R, pp. 87-88.) This appeal followed.

II. ISSUE ON APPEAL

1. Did the Department's *Final Decision and Order* correctly uphold the Department's decision to deny Cazier's request to backdate his enrollment as a CFH provider to the date of his application?

III. STANDARD OF REVIEW

The standard of review for an appeal from an administrative order is governed by statute in Idaho. The primary statement of the appropriate standard of review is specifically set forth in Idaho Code § 67-5279. As the party requesting judicial review of a state agency order, Cazier must first show that the agency "...erred in a manner specified [in Idaho Code § 67-5279(3)] and must then show that his substantial rights have been prejudiced." *Payette River Property Owners Ass'n v. Board of Comm'rs*, 132 Idaho 551, 976 P.2d 477 (1999); see also, *Angstman v. City of Boise*, 128 Idaho 575, 927 P.2d 409 (Ct. App. 1996).

Idaho Code § 67-5279(3) provides:

When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence in the record as a whole; or
- (e) arbitrary, capricious or an abuse of discretion.

Idaho Code § 67-5279(3). Furthermore, an appellant must also demonstrate that the agency's actions prejudiced his substantial rights. Idaho Code § 67-5279(4).

Upon an appeal from a petition for judicial review, the Supreme Court will review the agency record independently of the district court's decision. *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 521, 112 P.3d 805, 809 (2005). "The Court's role is to review the matter to ensure compliance with the applicable standards. *Id.* If these standards are not met, the agency action '... shall be set aside, in whole or in part, and remanded for further proceedings as necessary' in accordance with the Court's discretion." *Id.*

IV. ARGUMENT

A. The Department's Decision is Supported By Rule and Is Not in Violation of Its Legal Authority.

Cazier argues that the Department should have allowed him to backdate his enrollment as a CFH provider to when he first applied, and that its failure to do so is either 1) in excess of its statutory authority, or 2) arbitrary, capricious or an abuse of discretion. To the contrary, the Department cannot enroll a Medicaid provider until a certificate is issued. The *Final Decision and Order* should be upheld by the Court.

The rules regarding initial certification of a CFH are clear and unambiguous. Under IDAPA 16.03.19.100, the Department will not issue a certificate until all certification requirements are met. One of those requirements is compliance with a criminal history check:

101. APPLICATION FOR CERTIFICATION.

The applicant must apply for certification on forms provided by the Department, pay the initial certification fee, and provide information required by the Department. (7-1-11)T

01. Completed and Signed Application. A completed application form signed by the applicant. (4-11-06)

02. Statement to Comply. A written statement that the applicant has thoroughly read and reviewed this chapter and is prepared to comply with all of its provisions. (4-11-06)

03. Criminal History and Background Clearance. Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including a criminal history clearance as provided in Section 009 of these rules.

IDAPA 16.03.19.101. The rule regarding the mandatory criminal history checks is found at IDAPA 16.03.19.009, which provides:

009. MANDATORY CRIMINAL HISTORY CHECK
REQUIREMENTS.

01. Compliance with Department Criminal History Check. The provider and all adults living in the home are required to comply with IDAPA 16.05.06, "Criminal History and Background Checks." The resident is exempt from criminal history check requirements.

02. When Certification Can Be Granted. The provider must have a completed criminal history check, including clearance, prior to certification. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks."

(Emphasis added.) Further legal authority for this practice is found at IDAPA 16.03.09.009.02.b, which provides that "[t]hose individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department." Thus, pursuant to its rules, the Department is not authorized to grant a certificate for a CFH provider until the above-listed requirements are met. The Department could not issue the certificate to Mr. Cazier until the criminal history background check was complete and Cazier was cleared, which did not occur prior to March 15, 2011. Therefore, it was entirely appropriate for the Department to enroll Cazier as of that date and not to the initial application date.

Pursuant to the same rule, a provider cannot provide services until they are cleared by the criminal history check. *Id.* Cazier is in essence requesting that the Department pay him for alleged services rendered prior to the time he was cleared by criminal history, which is clearly disallowed under the Department's rules. There is no legal authority for the request to backdate his enrollment, and thus, the Court should uphold the *Final Decision and Order*.

Cazier cites to the period of time that the Criminal History Unit took to clear him as a basis for the requested backdate of his enrollment as a provider because the initial denial of the background check was "plainly erroneous, unreasonable, arbitrary, capricious, or an abuse of discretion." (Appellant's Brief, p. 12.) However, the determination and legal proceedings surrounding the criminal history check are separate from the matter at hand. The Department's rule in this regard is clear, namely, that a provider "must have completed a criminal history check, including clearance, prior to certification." IDAPA 16.03.19.009.02 (emphasis added). This rule contemplates a situation such as the one at hand where completion of the background check process includes clearance, and that no certificate can be issued prior to that time.


Cazier argues that the Department was somehow acting as an appellant during the administrative review, which is a precursor to an administrative hearing that the Department offers to providers. See IDAPA 16.05.03.300. He basically argues that the Department has no authority to revoke an erroneous notification. (Appellant's Brief, pp. 17-18.) This is clearly not the case. Cazier requested an administrative review on April 2, 2011 of the Department's decision to deny the backdate of November 3, 2009. Before the administrative review was held, Molina sent the erroneous letter approving the November 3, 2009 backdate. However, once the Department discovered that the erroneous letter had been sent to Cazier, it sent another letter two weeks later that clearly rescinded its previous letter. All of this information was discussed at the

Department's administrative review that was held on July 19, 2011. Because this error had occurred after Cazier requested the administrative review, but prior to the review hearing, Randy May (previous Administrator of Medicaid Department of Health & Welfare) had no choice but to clarify the issues at the administrative review. Under IDAPA 16.05.03.301, any issues or documentation used or discussed in the administrative review can be admissible at the hearing. Thus, the administrative review forum was an appropriate venue to discuss the error with Molina. As the agency's Final Decision and Order noted, "[i]t makes no sense to read the rule to also permit the Department to appeal when it disagrees with its own decisions." (Supplement to Record, p. 3; Exhibit A to Respondent's Motion to Augment, Affidavit of Charina Newell.) Cazier's arguments in this regard are unwarranted.

V. CONCLUSION

Cazier has not met his burden to show that the Department's *Final Decision and Order* violated Idaho Code § 67-5279(3) or (4). Therefore, the Department respectfully requests that the decision to deny his request for backdating of his CFH enrollment be upheld.

DATED This 21st day of January, 2014.




CHARINA A. NEWELL
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of January, 2014, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to the person(s) listed below in the manner indicated:

C. Drake Cazier
3025 West Summer Avenue
Athol, ID 83801

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☐ Email



Carla Shupe
Legal Secretary