

12-24-2013

Cazier v. Idaho State Dept. of Health and Welfare Appellant'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 Appellant's Brief Dckt. 41255" (2013). *Not Reported*. 1549.
https://digitalcommons.law.uidaho.edu/not_reported/1549

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

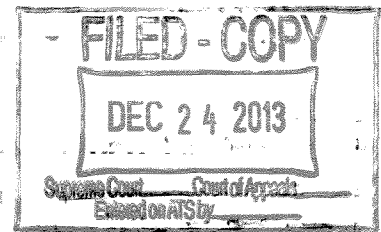
Plaintiff/Appellant

SUPREME COURT NO.:
41255

vs.

IDAHO DEPARTMENT OF
HEALTH AND WELFARE

Defendant/Respondent



APPELLANT'S BRIEF

ATTORNEY FOR APPELLANT:

PRO SE APPELLANT
BY: CHARLES DRAKE CAZIER
3025 WEST SUMMER AVE
ATHOL, IDAHO 83801

ATTORNEY FOR RESPONDENT:

OFFICE OF THE ATTORNEY GENERAL
BY: CHARINA A. NEWELL
ATTORNEY AT LAW
P.O. BOX 83720
BOISE, IDAHO 83720

APPEAL FROM DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI
THE HONORABLE JOHN P. LUSTER PRESIDING

This brief is filed as an appeal to the final decision of Judge Luster in the Administrative Review dated June 11, 2013. The main question raised is did that court err in not finding that the Department committed reversible errors in their actions and decisions pursuant to the certification of the appellant as a family home? Specifically can the Department correct its errors and prejudice against the appellant by granting a certain Department form captioned as "Provider Request to Backdate the Effective Date" which the appellant filed in 2011?

HISTORY AND UNDISPUTED FACTS

In the fall of 2009, Drake and Lyn Cazier began the process for certification as a "family home" to care for their adult autistic son Clancey Cazier. Clancey has lived at home with his parents since his birth.

Drake and Lyn completed and received certification of completion of classes required to be certified as a family home provider on September 24, 2009. Carmen Wright-Cazier, Clancey's step-mother, was not required to take these courses as she is a registered nurse.

On or about October 1, 2009 all three parents applied for criminal background checks through the Idaho Department of Health and Welfare in connection with the application.

The background unit erred in its findings and denied the application. Caziers initiated appeals that came to the district court. (Case No. CV2009-0010886)

The case was fully briefed. Just prior to the hearing on June 21, 2011 the Cazier's through their attorney and the Department entered into a stipulation for the case to be remanded back to the Department for further taking of evidence. The court agreed and so ordered.

Drake Cazier contacted the Department no less than a dozen times via email, fax and phone calls to urge the Department to conduct the further finding of evidence and render a decision. No meaningful response was given until 2/23/11. After a staggering 16 months and 8 months after the court ordered review, Fernando A. Castro, Acting Program Supervisor of the Criminal History Unit, issued a letter stating "I have reviewed Mr. Luce's (the attorney representing the Department) brief that he prepared. And, I have concluded that I will reverse the Unconditional Denial Decisions relative to you and Mrs. Carmen Wright Criminal History Unit Background Checks. Your statuses will change in our website within the next 72 hours."

Caziers immediately completed the certification process and registration through Molina, (the department's contracted agent for enrollment and payment of CFH) to begin billing for their services as a certified family home.

One part of that enrollment process was the completion of a "service plan" for Clancey's care in the certified family home. The plan was identical to the services that Caziers had always provided to Clancey and certainly had provided since November 3, 2009.

Another part of the registration process was completion of a form captioned "Provider Request to Backdate the Effective Date". Drake Cazier requested a back date of November 3, 2009, the date the original application was erroneously denied.

This backdate request was denied by the Department and the Department instead back dated to March 15, 2011.

Drake Cazier appealed that decision on May 2, 2011 and again requested a back date of November 3, 2009.

On May 25, 2011 Monlina forward that appeal to the Department.

In the interim the Department failed to notify the district court of its change of clearance as required by Title 67 Chapter 52 of the "Administrative Procedure Act" at 76 "Additional

Evidence". Therefore Drake Cazier filed a Motion for Entry of Judgement and Award of Fees and Costs in the district court.

The Department responded by pleading that this motion was mute since they had granted the certification.

Two days prior to the hearing scheduled for the motion on Entry of Judgement and Award of Fees and Costs Drake Cazier received the Department's letter of June 15, 2011 granting their approval of backdate to November 3, 2009.

Drake Cazier then submitted to Molina, two claims which Molina labeled as claim numbers 11172W0000005 and 1171W0004488 covering the period of November 3, 2009 until March 15, 20011.

The hearing on Mr. Cazier's motion was held at the district court where Mr. Cazier conceded that the entry of judgement was now mute since the Department had granted both the certification and back date. The Department's letter of June 15, 2011 granting the backdate was accepted into the district court record.

Sometime in the next few days, after the hearing, the Department "voided" claim numbers 11172W0000005 and 1171W0004488 . No notice or explanation has ever been sent to the appellant regarding the voiding of those claims.

Drake Cazier contacted Randy May, Deputy Administrator for the medicaid division of the Department, to enquire why those claims had been voided.

After several communications Mr. May stated he could not find any record of an appeal or of the granting of the appeal of the backdate request.

On June 29, 2011 a letter attempting to reverse the June 15, 2011 decision was sent by the Department to Cazier.

After further discussion and Cazier providing copies of the appeal and granting of the appeal to Mr. May, Mr. May scheduled an administrative review conference for July 19, 2011.

This conference was held and Mr May rendered his decision on July 29, 2011 denying Cazier's appeal.

The Department did not object or give a different account of these facts. Thus the decision could be rendered on summary judgement.

Cazier appealed Mr. May's decision and the case was assigned to be heard by John J. Bulge. At a pre hearing conference it was agreed that the matter could be settled as a matter of law and a briefing schedule was set. Cazier filed his brief on time but the Department failed to file anything. Cazier filed two motion pursuant to IDAPA 16.05.03.106 requesting that default judgement be entered against the Department per the directions of that procedure. Mr. Bulger failed to follow that procedure and allowed the Department additional time to file their briefs.

Oral arguments were re-scheduled and heard on January 24 , 2012. A Preliminary Order RE: Motions for Summary Judgment was entered in this case by Mr. Bulge on February 6, 2012 where in he ruled in favor of the Department.

Cazier timely filed an appeal to that .Preliminary Order RE: Motions for Summary Judgment. Appellant filed a brief with the Department. The Department's counsel filed notice it would not file a brief. On July 3, 2012 the Department of Health and Welfare Issued it's Final Decision and Order. The appellant timely filed an appeal to that order to the District Court.

The case was assigned to Judge Patrick Luster and a briefing schedule and oral agreement was set. Both parties filed briefs and oral arguments were heard on xxxx. In those arguments the department brought up for the first time that Clancey had received CFH service for the same time Caziers were applying for backdated payment and therefore there was a double billing.

Cazier strenuously refuted that there had ever been any CFH services provided during that time except by the Caziers and no payment to anyone had every been made to Cazier or anyone else for those services.

On April 19, 2013, Ms. Newell notified the district court through a Supplemental Respondent's Brief to Correct Record, that she was in error having been misinformed by the department that any CFH services had been rendered or paid for by the Department.

Cazier filed a reply brief with affidavits stating that this same allegation had been raised as a threat previously by the Department's attorney (Page 76-79 of Clerk's Record).

On June 11, 2013, Judge Luster issued his decision in favor of the Department. Cazier time filed an appeal to this court.

STANDARD FOR REVIEW

The standards for review are set forth in Idaho Statutes. Specifically at 67-5279. In seeking corrective action of an agency. First, the Appellant must demonstrate that the Department's action has prejudiced his substantial rights.

Secondly, the appellant must demonstrate that the departments decision or actions were

- (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.

If these two requirements are met the District court can then exercise it's power to remand the matter back to the department for corrective action.

Argument

The record is very clear in both the substantial prejudice the appellant has suffered and that the department has clearly erred in both it's actions and decisions. Likewise the District court erred in it's decision by not concluding the same.

The substantial prejudice suffered by the Appellant is clear. The department has never paid Caziers for the services rendered from November 3, 2009 until March 15, 20011. In his decision Judge Luster confirms that prejudice citing that as the exact prejudice. (Page 86 Clerk's Record paragraph 2)

The only other issue that would be required for the District court to remand the matter back to the Department was establishing that the Department's decision or actions were as outlined in the statute. The record again is clear in demonstrating the Department's actions were in violation of these criteria.

The district court erred early on when Judge Luster stated "Well I think the arbitrary and capricious standard that I am bound to evaluate this case on is by virtue of the agency's action; that is the hearing that was conducted by the department, not necessarily by some of the actions that they took along the way, but basically the ultimate determination that they made when they evaluated the case to determine whether or not to approve your request or not, no so much the initial behavior or actions by the department." (Transcript of Oral Arguments April 9, 2013, pg 20 line 11.)

As outlined above in the HISTORY the initial part of this matter had been previously briefed in District Court case number CV-09-10886. Where in the Department reversed their position on criminal background clearance for the Caziers. Further the Department had approved the

Provider Request to Backdate the Effective Date. After the conclusion of that action the Department attempted to reverse it's approval of the backdate and "voided" the claims which had been submitted to and accepted by Molina for payment.

By failing to consider these actions and decisions of the Department the court failed to recognize that the department violated at least two of the criteria on which this District Court should have again remanded the decision back to the Department.

First, as noted at (b) above the Department acted "in excess of the statutory authority of the agency;" 'Second as noted at (e) above the department acted "arbitrary, capricious or an abuse of discretion "

The district court was in error in it's decision in stating on page 80 Paragraph 1 of Clerk's Record "based upon a disqualifying offense discovered during the background check." In actuality when evaluating the criminal background checks for Cazier's application the Department developed it's own definition of theft which was contrary to the definition given by statute. (Respondent's brief on Pages 14-15 of this District court record.)

It is clear from the briefs filed in the prior action (pages 4-16 of the Clerks record) that the Department had gone beyond it's authority in that evaluation. To begin with the language of

IDAPA 16.05.03.210.02a through 210.2q is not ambiguous nor vague. The code is very specific in listing the crimes which prohibit for five years after conviction the approval of an application. Therefore an interpretation is not required. An applicant was either convicted of a “disqualifying offense” or he was not. The Applicant /Appellant was not convicted of any disqualifying offense.

However the department took the approach of looking for equivalent crimes. Although some states including the neighboring state of Washington allows their departments to evaluate “equivalent” crimes WAC 388-76-10180 that is not the law in Idaho.

Had the Idaho legislature intended to grant this authority to the department or if the department itself had intended this authority then they would have included the evaluation of equivalent crime wording in the administrative code.

This lack of authority to evaluate equivalent crimes is very apparent by the respondent’s failure to cite any case in which the department has been allowed to deny an application based on equivalent crimes. Again evaluation of an equivalent crime by the department is not the law in Idaho.

After discussions on this point with Cazier’s attorney the department agreed that it needed to reconsider it’s decision to deny criminal background clearance and agreed to have the court remand it back to the department. As if that were not enough Fernando A. Castro, Acting

Program Supervisor' of the Criminal History Unit did not hold a hearing but simply read the Department' brief and concluded that: "I have reviewed Mr. Luce''s brief that he prepared. And, I have concluded that I will reverse the Unconditional Denial Decisions relative to you and Mrs. Carmen Wright Criminal History Unit Background Checks. Your statuses will change in our website within the next 72 hours."

The department's denial of the background check was plainly erroneous, unreasonable, arbitrary, capricious, or an abuse of discretion.

Further this error was the exact cause of the prejudice that prevented the Caziers from receiving payment for the first 16 months of their CFH services.

Once again, even after the Department had agreed to reconsider the denial of the background check they acted "arbitrary, capricious or with an abuse of discretion " in not taking any action for 8 months. All the while the prejudice against the Caziers continued to build as they could not bill for their CFH services.

On page 89 Paragraph 2 of his decision Judge Luster stated that "The Department provides a process for a provider to request the backdate of an effective date. The form states that situations that are typically approved are when emergency services are provided or if the participant was given retroactive medicaid eligibility." "These exceptions do not apply to Cazier's

circumstances and he has not referred the court to any law or Department procedure that would entitle him to the backdate approval as requested.”

The law and procedure that allows for the backdate is the form the court just quoted . Res ipsa loquitur.

Under IDAPA the Department is charged with developing it’s forms for enrollment of Certified Family Home providers in the medicaid system. That is where this form called the Provider Request to Backdate the Effective Date originated.

That form stated in full says; "The effective date of an applicant’s enrollment as an Idaho Medicaid provider is deemed to be the date the completed and accepted application is received by IDHW or Unisys Provider Enrollment (Unisys was a predecessor to Molina). Any exceptions to this policy must be requested in writing by providing justification as to why the applicant’s effective date should be backdated. Exceptions that are typically approved are when emergency services were provided or if the participant was given retroactive medicaid eligibility."

The form gives two examples but these are obviously not the only justification for backdating the effective date, they are only examples. Again as stated above the department has never argued that the backdate is not justified.

Under that form and procedure there were only two requirements that the provider had to meet to have their effective date of enrollment backdated. Application and justification. Cazier meet both of these requirements.

The department has since the initial filing of appeals updated this form with additional requirements in November of 2011 (copy attached). In part the form now has a line which reads: "IDHW Approval - must submit a copy of IDHW approval letter" This change in the form and policy is clear evidence that this was not previously a requirement.

As stated in the **HISTORY** Drake Cazier completed the Provider Request to Backdate the Effective Date form and stated the justification to be: "Criminal background unit was in error in denying clearance on 11/03/09 until 2/22/11 when error was corrected Clancey was resident during all of this time with the same diagnosis and disabilities and was over 18 years of age."

It is clear that if a written justification is provided the Department could back date the effective enrollment date.

The Department has not, nor can they now dispute that the back date to November 3, 2009 is justified. Caziers were certified by the Department in the fall of 2009 as having completed the courses and testing as Certified Family Home providers. The Caziers provided to Clancey the services contained in the service plan and provided a home that exceeded the Department's

requirements during that entire 16 month period of time. It was only the Department's errors and lack of action that delayed the Cazier's enrollment as Certified Family Home provider for that sixteen months.

The District court clearly erred in its evaluation or recognition of the backdate form and process's existence and application.

Although, Judge Luster states on page 85 of the Clerk's Record, that; "the court clearly sympathies with Cazier's plight in attempting to secure reimbursement for services provided for the care of Clancey in his home during a time frame that reflects a proper qualifying home. As noted by the hearing officer in the February 6, 2012 decision that the Department's delay in resolving the criminal history issue provided a disservice to Cazier."

However neither the district court or the hearing officer offers any method for correcting this prejudice or recognizing that the form and process of Provider Request to Backdate the Effective Date was in place and the Department can and in fact did correct the billing question on June 15th.

Judge Luster noted on page 88 paragraph 2 of his decision in the court record that; "confusion is presented in this matter between enrollment in the Medicaid and certification for a family home. Enrollment in Medicaid and certification as a family home are two different processes and are

determination made by two different entities. Although Medicaid can approve enrollment in its program it can not provide certification as a family home.”

That is correct however, it is unnecessary to change the certification date in order to back date the enrollment and pay for services rendered. On June 20th after the back date had been approved to November 3, Cazier submitted and Molina accepted the billing from November 3. That is all that needed to be done for the billing to be processed and paid. The Certification date and the enrollment date remained as they were only the effective date for billing purposes was changed.

Appellant has plead for approval of his Provider Request to Backdate the Effective Date in his briefs and in oral arguments. Beginning on page 54 of the Clerk’s record is an extensive explanation of the distinction between the effective date and the certification date. Appellant clearly states this is the purpose of the appeal in part stating "The Process of certification is second and apart from the form and process of a Provider Request to Backdate the Effective Date. So you have two different dates. You have the date that the Department certifies and enrolls the provider and you have a date which is backdated from that for the effective date."

The purpose and application are perfectly clear. It is unmistakable from the examples on the form that the purpose of the Provider Request to Backdate the Effective Date is to provide a method to compensate providers for services rendered before medicaid enrollment was completed. That is

exactly why the Provider Request to Backdate the Effective Date was developed, is used and why in the subject case it was submitted.

The Appellant properly used the "Provider Request to Backdate the Effective Date" process and form to request back dated enrollment back to the Department's error in not giving back ground clearance on November 3, 2009.

The only argument and why this matter can be settled as a matter of law is; can the department establish an effective date of enrollment and pay for services rendered back to that effective date?

Contrary to what the District court decision states on Page 87, Molina did not change the certification date. Molina only issued the approval of the Provider Request to Backdate the Effective Date with the approval of the Department as stated in the June 15th letter "Effective date approved by the regional IDHW office.". Molina issued all three letters establishing the effective back dates and those letters are clearly evidence that Molina had authority to establish the effective date of enrollment.

These letters bare only the State of Idaho, Department of Health and Welfare Medicaid Division letterhead, there is no indication that Molina had anything to do with those letters.

On June 15, 2011 the department granted the appeal to back date to November 2009. Then the

Molina billing system allowed Cazier to submit his billing from November 3, 2009 until March 15, 2011. No backdate of certification was necessary. The back date of enrollment supercedes the certification date. All that was necessary then and now for the Caziers to be paid for their services is for the Department through Molina again to grant the Provider Request to Backdate the Effective Date. The certification date can remain unchanged.

For reasons the department has never enumerated they feel that the provider should suffer the loss, cost and damage of not being compensated for 16 months of services because of the department's errors including inaction and total neglect. This is contrary to the law and IDAPA which allows for the Provider Request to Backdate the Effective Date.

The Decision is in error in not recognizing that IDAPA 16.05.03.300 governs the finality of the Department's decisions unless the Provider files an appeal and that there are no provisions for establishing the Department's rights for administrative review of its own appeal decisions. The District court decision cites no provision whereby the Department can appeal its own appeal decisions. Certainly they could correct an error especially if new information were discovered. But this was not simply an error it was a decision on an appeal. The Caziers had to return to the district court because the State reversed its self on the appeal.

The District court's decision is in error in not ruling on the Department was in error in "voiding" claim numbers 11172W0000005 and 1171W0004488. These claims were voided by the

Department a day or two after the June 22, 2011 hearing in district court on appellant's motion for Entry of Judgement and Award of Fees and Costs.

This action was taken before the Department issued its letter of June 29, 2011 attempting to reverse the granted appeal on backdating. In other words the backdate was at that point November 3, 2009 and the Department's actions were plainly erroneous, unreasonable, arbitrary, capricious, or exercised an abuse of discretion since the back date of November 3, 2009 was still in effect.

Those errors having been addressed the main issue remains and was raised as the original appeal that is; can the Department back date the effective date of the enrollment prior to the actual date of enrollment and pay for services rendered prior to the enrollment?

CONCLUSION

The appellant pleads for a finding that the District Court's affirmation of the Department's denial and or reversal of backdating the appellant's effective date of enrollment were plainly erroneous, unreasonable, arbitrary, capricious, or exercised an abuse of discretion. The District Court erred in not recognizing that the Department not only can backdate the appellant's enrollment to 11/3/2009 but that in fact they did so on 6/15/2011 through their agent MOLINA. Likewise the Department's action in voiding claim numbers 11172W0000005 and 1171W0004488 was in

error.

Respectfully submitted

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes, likely representing the name C. Drake Cazier.

C. Drake Cazier

Return this completed form to:

Molina Medicaid Solutions

Idaho Medicaid Provider Enrollment

PO Box 70082

Boise, ID 83707

Fax: 1 (877) 517-2041

DO NOT WRITE IN THIS SPACE (For Molina Office Use)

Provider Request to Backdate the Effective Date

Form instructions are on the pages immediately following. An * indicates required fields.

Current Group/Billing Provider Record Information*

1. **Provider ID Number:** ☐ NPI _____ ☐ Idaho Medicaid ID# _____2. **Group/Billing Provider's Name :**3. **FEIN and/or SSN:** ☐ FEIN _____ ☐ SSN _____4. **Rendering Provider Name:**5. **Rendering Provider ID Number:** ☐ NPI _____**NOTE:** If there are rendering providers affiliated to the enrollment application requesting to be backdated, please copy this form and complete for each rendering provider.

The effective date of an applicant's enrollment as an Idaho Medicaid provider is deemed to be the date the application has been fully reviewed and approved by IDHW and Molina Provider Enrollment. Any exceptions to this policy must be requested in writing by providing justification as to why the applicant's effective date should be backdated. The requested effective date must be noted and must be covered by an applicable license or certification submitted with this application.

* Enter the requested effective date for your enrollment as a Medicaid provider: _____

* Please select one of the following for requesting a backdate;

☐ **Emergency Service**-must submit a copy of the claim indicating the emergency services provided☐ **Healthy Connections Referral**-must submit a copy of the Healthy Connections Referral☐ **Retroactive Participant Medicaid Eligibility**-must submit a copy of the Participant's Retroactive Medicaid Eligibility letter☐ **IDHW Approval**-must submit a copy of IDHW approval letter☐ **Other** (please use the space below for reason)-must include reason for backdate and supporting documentation to prove eligibility during the backdate time period

*An * indicates a required field.*



PROVIDER STATEMENT:

I certify that I am the provider, or am authorized on behalf of the provider to sign this documentation.

I certify this is true, correct, and complete. If I become aware that any information in this document is not true, correct, and complete, I will notify Molina Provider Enrollment of this fact immediately.

I authorize the Medicaid provider enrollment unit to verify the information contained herein. I understand that a change in the ownership of my organization or my status as an individual or group biller may require a new application.

Provider Name: _____
Please print

Title: _____

Provider Authorized Signature: _____

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellant's Brief was

 X mailed, with first class postage prepaid thereon;

 hand delivered;

 Emailed

on the 29 th day of November, 2013 TO:

OFFICE OF THE ATTORNEY GENERAL
CHARINA A. NEWELL
ATTORNEY AT LAW
P.O. BOX 83720
BOISE, IDAHO 83720

A handwritten signature in black ink, appearing to read 'C. Drake Cazier', is written over a horizontal line.

C. Drake Cazier, Pro Se