4-16-2018

# Re: Medical Indigency Application of C.H. Clerk's Record Dckt. 45614

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|---|---|---|
| In Re: Medical Indigency Application of C.H. ( Gem County Case No. 16-026 | ) | |
| Petitioner/Appellant | ) | SUPREME COURT NO. 45614 |
| vs. | ) | |
| Board of Commisioners of Gem County, Idaho | ) | |
| Respondents, | ) | |

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem.

HONORABLE George A. Southworth
District Judge

| Attorney for Appellant | Attorney for Respondent |
|---|---|
| ********** | ********** |
| Mark Peterson | Tahja Jenson |
| Hawley Troxell Ennis & Hawley, LLP | Gem County Prosecutor's Office |
| PO Box 1617 | PO Box 671 |
| Boise, Idaho 83701 | Emmett, Idaho 83617 |

EXHIBITS:

Agency Record – Ordered Settled

St. Luke's Health System vs. Gem County Board of Commissioners

| Date | Code | User | | Judge |
|---|---|---|---|---|
| 3/6/2017 | | QUENZER | Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: St. Luke's Health System (plaintiff) Receipt number: 0000866 Dated: 3/10/2017 Amount: $221.00 (Check) For: St. Luke's Health System (plaintiff) | George Southworth |
| 3/10/2017 | NCOC | QUENZER | New Case Filed - Other Claim | George Southworth |
| 3/17/2017 | NOTC | QUENZER | Notice of Lodging Record with Agency | George Southworth |
| 3/20/2017 | NOTC | QUENZER | Notice of Lodging Transcript with Agency | George Southworth |
| 4/14/2017 | NOTC | QUENZER | Notice of Lodging the Agency Record and Transcript with the District Court | George Southworth |
| | ORDR | QUENZER | Order Settling the Agency Record | George Southworth |
| 5/17/2017 | MISC | QUENZER | Petitioner's Brief | George Southworth |
| 6/16/2017 | MISC | QUENZER | Respondent's Brief | George Southworth |
| 7/7/2017 | MISC | QUENZER | Petitioner's Brief | George Southworth |
| 9/8/2017 | NOTC | QUENZER | Notice of Law Firm Name Change | George Southworth |
| | NOHR | QUENZER | Notice of Hearing | George Southworth |
| | HRSC | QUENZER | Hearing Scheduled (Motion Hearing 10/10/2017 11:30 AM) | George Southworth |
| 10/10/2017 | DCHH | QUENZER | Hearing result for Motion Hearing scheduled on 10/10/2017 11:30 AM: District Court Hearing Hel Court Reporter: Patty Terry Number of Transcript Pages for this hearing estimated: Less than 100 pgs | George Southworth |
| | CDIS | QUENZER | Civil Disposition entered for: Gem County Board of Commissioners, Defendant; St. Luke's Health System, Plaintiff. Filing date: 10/10/2017 | George Southworth |
| | CACL | QUENZER | Case Closed | George Southworth |
| 10/11/2017 | ORDR | QUENZER | Order on Judicial Review | George Southworth |
| 11/17/2017 | | QUENZER | Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Peterson, Mark C (attorney for St. Luke's Health System) Receipt number: 0004699 Dated: 12/5/2017 Amount: $129.00 (Check) For: St. Luke's Health System (plaintiff) | George Southworth |

Mark C. Peterson, ISB No. 6477
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
mcp@moffatt.com
mjm@moffatt.com
10950.0000

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN RE: MEDICAL INDIGENCY APPLICATION OF C.H.
**(Gem County Case No. 16-026)**

ST. LUKE'S HEALTH SYSTEM, LTD.,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO, in their official capacity as the Board of County Commissioners for the County of Gem, State of Idaho,

Respondents.

Case No. CV2017-145

**PETITION FOR JUDICIAL REVIEW**

Category L.3

Fee: $221.00

COMES NOW Petitioner St. Luke's Health System, Ltd., for and on behalf of its subsidiaries and affiliates, including without limitation St. Luke's Regional Medical Center, Ltd. and St. Luke's Clinic – Treasure Valley, L.L.C. ("Petitioner" or "St. Luke's"), by and through its undersigned counsel, and pursuant to Idaho Code Section 67-5201, *et seq.* (Idaho Administrative Procedure Act), petitions this Court for review of the Board of Commissioners of Gem County's ("Board" or "County") denial of the medical indigency application submitted on behalf of C.H.[1] (hereinafter "Patient") requesting medical indigency assistance for services provided to her by Petitioner.

**I.**

The Patient is a medically indigent 63-year old woman residing in Gem County, Idaho. The Patient received medical services related to diabetes, hyperlipidemia, peripheral vascular disease, hypertension, and ulcerative colitis on dates of service January 26, 2016 through March 9, 2016, incurring hospital bills for services in the amount of $320,451.02.

**II.**

The Petitioner filed a completed application for emergency necessary medical services with the department within 31 days of the date of admission pursuant to Idaho Code Section 31-3505(3).

**III.**

During the County's investigation, the Patient and the Petitioner provided all material information requested by the County.

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[1] Pursuant to Idaho Court Administrative Rule 32(g)(1), (h) and (i), St. Luke's has identified the Patient only by reference to the Patient's initials, and requests that the case be sealed in light of the Patient's privacy interests, and further requests that the title and caption of the case utilize only the initials of the Patient.

**IV.**

On September 19, 2016, the Board issued its Initial Determination of Approval for dates of treatment January 26, 2016, 2015 through February 3, 2016, under Case No. 2016-026. The Initial Determination of Approval, however, makes no reference to dates of service February 4, 2016 through March 9, 2016. It contains no findings of fact or conclusions of law concerning such dates of service, but it appears the denial was based on the lack of medical records relating to those dates of service.

**V.**

St. Luke's thereafter timely appealed the Initial Determination which, implicitly, denied dates of service February 4, 2016 through March 9, 2016.

**VI.**

Further medical review by the County's medical expert, reflected in a report issued October 24, 2016, resulted in an opinion that the Patient no longer needed the services of an acute care inpatient hospital as of February 12, 2016, and therefore, dates of service from February 12, 2016 through March 9, 2016 were not medically necessary.

**VII.**

Additional notes and records were thereafter submitted to medical review, reflecting the unsuccessful efforts to transfer the Patient to a facility providing a lower level of care. The County's medical expert further revised his opinion, reflected in a report issued November 16, 2016, and found that dates of service January 26, 2016 through February 18, 2016 were medically necessary and emergent. He determined that the inpatient stay from February 19, 2016 to March 9, 2016 was not medically necessary because the Patient no longer needed the services of an acute care inpatient hospital.

**VIII.**

The County held an appeal hearing on February 6, 2017. At the hearing, St. Luke's presented evidence of its substantial efforts to transfer the Patient to a lower level of care, including the fact that it was not successful in pursuing such efforts until March 9, 2016. The facility accepting the transfer did so only after St. Luke's entered into a single patient agreement with the other facility, providing that St. Luke's pay a daily rate for the care up to thirty (30) days.

**IX.**

On February 6, 2017, the Board entered an Amended Determination of Approval for County Assistance, approving the application for dates of service January 26, 2016 through February 18, 2016. The Amended Determination of Approval for County Assistance makes no reference to dates of service February 19, 2016 through March 9, 2016. It contains no findings of fact or conclusions of law concerning such dates of service.

**X.**

The County deems the Amended Determination of Approval for County Assistance a final disposition of the entire application. In other words, notwithstanding the absence of any findings of fact or conclusions of law or any reference whatsoever to dates of service February 19, 2016 through March 9, 2016, the Amended Determination of Approval for County Assistance was implicitly a final denial of the application for such dates of service.

**XI.**

Pursuant to Idaho Code Sections 31-3505G and 67-5279(3), Petitioner seeks review of the Board's findings, inferences, conclusions or decisions, which were: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the commissioners; (3) made upon unlawful procedure; (4) not supported by substantial evidence on

the record as a whole; or (5) arbitrary, capricious, or an abuse of discretion. Specifically, and without limiting the foregoing, Petitioner contends that the Board and/or County: (1) erred by denying an application for aid in accordance with an erroneous interpretation of the Act that does not account for the availability of a lower level of medical care; (2) abused its discretion by ignoring undisputed evidence in the record that providers that could provide a lower level of care refused or were unable to accept the Patient; (3) made a determination regarding medical necessity that is not supported by substantial evidence on the record as a whole and is contrary to the statutory definition; and (4) failed to make findings and conclusions regarding all dates of service that were the subject of the Patient's application.

**XII.**

Petitioner respectfully requests an award of its attorneys' fees and costs pursuant to Idaho Code Section 12-117 and any other applicable statutes.

**XIII.**

Petitioner understands that the hearings before the Board regarding the Patient's application were recorded by the Clerk of the Gem County Commissioners, and the records of the investigation and proceedings have been transcribed and/or are maintained by the Gem County Commissioner's Office, 415 East Main, Emmett, Idaho 83617. The Petitioner requests that the entire agency record and transcripts currently before the Board, including the documents submitted by the Petitioner and/or the Patient for the Board's consideration at or before the hearing of February 6, 2017, be submitted to this Court.

Petitioner CERTIFIES:

A. That the Clerk of the County has been concurrently paid by Petitioner an estimate of the costs for the preparation of the agency's transcripts and records pursuant to Idaho Rule of Civil Procedure 84(f)(4);

B. That the District Court's filing fee applicable to petitions for judicial review of a final decision from administrative agencies, including county commissioners, has been paid; and

C. That service has been made upon all parties required to be served pursuant to Idaho Rule of Civil Procedure 84(b).

DATED this 3rd day of March, 2017.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2017, I caused a true and correct copy of the foregoing **PETITION FOR JUDICIAL REVIEW** to be served by the method indicated below, and addressed to the following:

| | |
|---|---|
| Gem County Commissioners<br>415 E. Main Street<br>Emmett, ID 83617 | (X) U.S. Mail, Postage Prepaid<br>( ) Hand Delivered<br>( ) Overnight Mail<br>( ) Facsimile |
| Gem County Prosecutor's Office<br>306 E. Main Street<br>Box 671<br>Emmett, ID 83617 | (X) U.S. Mail, Postage Prepaid<br>( ) Hand Delivered<br>( ) Overnight Mail<br>(X) Facsimile |

Matthew J. McGee

**ERICK B. THOMSON**
**Gem County Prosecuting Attorney**

**TAHJA L. JENSEN, ISB# 8510**
**Deputy Prosecuting Attorney**
**P.O. Box 671**
**306 East Main Street**
**Emmett, Idaho 83617**
**Telephone: 208-365-2106**
**Fax: 208-365-9411**

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF**

**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM**

| | |
|---|---|
| **ST. LUKES'S HEALTH SYSTEM,** | |
| **Petitioner,** | **Case No. CV-2017-145** |
| **v.** | **ORDER SETTLING THE AGENCY RECORD** |
| **GEM COUNTY BOARD OF COMMISSIONERS,** | |
| **Respondent.** | |

Pursuant to I.R.C.P. 84(j), on March 17, 2017, Gem County served upon the parties its *Notice of Lodging Agency Record with Agency*. On March 20, 2017, Gem County served upon the parties its *Notice of Lodging Transcript with Agency*. Each Notice gave the Petitioner fourteen (14) days from the date of each Notice to file any objections to the agency record or the agency transcript. There were no objections to the agency record or the agency transcript, both having been filed with Gem County pursuant to I.R.C.P. 84(j).

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that with no objections to the agency

record having been filed, the agency record is deemed settled.

IT IS FURTHER ORDERED that pursuant to Idaho Rule of Civil Procedure 84(j), this order shall be included in the record on the petition for judicial review. Gem County shall provide the Petitioner with a copy of the settled agency record on one (1) DVD.

DATED this 14th day of April, 2017.

Shelly Tilton

SHELLY TILTON
Gem County Clerk

## CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of April, 2017, I served a true and correct copy of the foregoing upon:

Matthew J. McGee
MOFFAT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
PO Box 829
Boise, ID 83701

by:

_____ United States Mail, postage prepaid, at above address

_____ hand delivery

_____ email: mjm@moffatt.com

_____
Tahja L. Jensen
Gem County Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | |
|---|---|
| IN RE: MEDICAL INDIGENCY APPLICATION OF C.H. **(Gem County Case No. 16-026)**,<br><br>ST. LUKE'S HEALTH SYSTEM, LTD.,<br><br>Petitioner,<br><br>vs.<br><br>BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO, in their official capacity as the Board of County Commissioners for the County of Gem, State of Idaho,<br><br>Respondents. | Case No. CV2017-145 |

# PETITIONER'S BRIEF

Appeal from the Board of Commissioners of Gem County, State of Idaho

Mark C. Peterson, ISB No. 6477
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
999 Main Street, Suite 1300
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
10950.1085

Attorneys for Petitioner, St. Luke's Health Systems, Ltd.

Tahja Jensen, ISB No. 8510
GEM COUNTY PROSECUTOR'S OFFICE
306 E. Main Street
P.O. Box 671
Emmett, ID 83617
Telephone (208) 365-2106
Facsimile (208) 365-9411

Attorneys for Gem County and the Board of Gem County Commissioners

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## I. STATEMENT OF THE CASE

### A. Nature of the Case.

This is a medical indigency case. Petitioner St. Luke's Regional Medical Center, Ltd. ("St. Luke's") appeals the decision of the Board of County Commissioners of Gem County (the "County" or "Board") in which the County denied an application for medical indigency benefits filed by St. Luke's on behalf of C.H. (the "Patient") under the Medical Indigency Act, Idaho Code Section 31-3501, *et seq.* (the "Act").

### B. Course of the Proceedings.

On February 25, 2016, St. Luke's submitted a combined application for County aid pursuant to Idaho Code Section 31-3501, *et seq.* (the "Application"), for dates of service January 26, 2016, through March 6, 2016. *See* Agency Record ("AR") at 278-302. The County issued an Initial Determination of Approval in Case No. 16-026 on September 19, 2016. AR at 14. The Initial Determination found the Patient medically indigent, but only approved the application for dates of service January 26, 2016, through February 2, 2016. AR at 14. St. Luke's appealed the denial on September 29, 2016. AR at 9.

On February 6, 2017, a hearing was held before the Board regarding its prior determination that services provided after February 2, 2016, were not medically necessary. *See* Medical Indigency Hearing – Executive Session, Transcript of Medical Indigency Case No. 2016-026 ("Tr.") at 1-5. St. Luke's appeared, inquired regarding the County's medical review, and offered evidence, argument, and authority demonstrating that dates of service February 3, 2016, through March 9, 2016, were medically necessary. *See* Tr. at 7-21; AR at 313-25.

On February 6, 2017, the Board issued an Amended Determination of Approval for County Assistance. AR at 11-13. The Board approved the Application as to dates of service January 26, 2016, through February 18, 2016, but did not approve dates of service February 19, 2016, through March 9, 2016. AR at 11-13. St. Luke's thereafter timely filed its petition for judicial review.

## II. STATEMENT OF FACTS

The facts of this case are undisputed. The Patient was treated at St. Luke's for meningitis and brain lesions between January 26, 2016, and March 9, 2016, and also received additional inpatient care and home health care thereafter at a different facility. Tr. at 4; AR at 278-86. She is an indigent resident of Gem County. AR at 11-13. Indeed, the County approved the Application with respect to certain treatment rendered to the Patient from January 26, 2016, through February 18, 2016. *Id.*

The Patient was admitted on January 26, 2016, after being found unconscious. Tr. at 4. She received emergency treatment. As early as February 5, 2016, St. Luke's began assessing the propriety of a lower level of care at a long term acute care hospital ("LTACH"), noting that the Patient's lack of resources would likely be a "barrier for placement." *See* AR at 317. On February 16, 2016, St. Luke's contacted Meridian Care regarding placing the Patient in a lower level of care, but it would not take the Patient because of her lack of resources. *See* AR at 316. The following day, St. Luke's contacted two additional facilities, which likewise declined to admit the Patient because she was self-pay. *Id.* Another facility declined admission until the Patient had a primary care physician that would follow her to the facility. *Id.*

On February 22, 2016, St. Luke's contacted two rehabilitation hospitals because that was the recommended disposition, and on February 25, 2016, each hospital declined to take

the Patient due to concerns about the Patient's clinical status. *See* AR at 315. Two additional facilities evaluated the Patient beginning on February 25, 2016, and finally, on March 9, 2016, the Patient discharged to Life Care Treasure Valley. *See* AR at 314-15. Before Life Care would agree to admit the Patient, however, a single patient agreement was negotiated that required St. Luke's to be responsible for the charges incurred at the lower level of care. *See* Tr. at 10; AR at 320-25.

On May 16, 2016, Dr. Dammrose submitted a utilization management review. *See* AR at 24-27. The review determined that the care provided after February 3, 2016, was not medically necessary because the medical records had not yet been submitted for that care, so there was nothing for Dr. Dammrose to review. *See* AR at 25.

On October 24, 2016, after the County submitted additional medical records, Dr. Dammrose amended his review, finding that "the additional clinical notes indicate the patient was medically stable on 02/12 and it appears she no longer needed the services of an acute care inpatient hospital." *See* AR at 33.

On November 16, 2016, after the receipt of additional physician's notes, Dr. Dammrose again amended his review, finding that the Patient "was medically stable on 02/19 and it appears she no longer needed the services of an acute care inpatient hospital." *Id.*

On February 6, 2017, St. Luke's participated in an appeal hearing regarding the denied dates of service. St. Luke's did not, and does not, dispute Dr. Dammrose's opinion that the Patient was "medically stable" on or about February 19, 2016, and that treatment at a lower level of care, to the extent available, would be appropriate for the Patient from a clinical standpoint. St. Luke's presented evidence of its substantial efforts, beginning in early February, to locate a more cost-effective medical facility equipped to provide the lower level of

rehabilitative care required for the Patient. *See* AR at 313-25; Tr. at 9. Importantly, there is no dispute that the Patient could not have been simply discharged home. *See* AR at 313. Therefore, the ability to provide the Patient with care at a lower level facility depended entirely upon the willingness of the various equipped facilities to admit the Patient.

Dr. Dammrose provided only a clinical opinion that a lower level of care was appropriate from a clinical standpoint and none of his reports suggest or address that care at such a facility was actually available to the Patient. *See* AR at 24-40. The County did not present any evidence suggesting or otherwise even claim that there was more cost-effective care actually available to treat the Patient. *See* Tr. at 3-21. At the close of the hearing, counsel for the County acknowledged that St. Luke's had done what it should have done. Nonetheless, without noting or even discussing the actual availability of a facility willing to provide a lower level of care, the Board amended the dates of service to reflect approval of only January 26, 2016, to February 18, 2016, upholding denial of the remaining dates of service. *See* Tr. at 20-21.

## III. ISSUES PRESENTED

1. Whether the County must find that alternative medical care is available before denying an application based on the clinical propriety of such alternative care.

2. Whether St. Luke's is entitled to an award of attorney fees.

## IV. STANDARD OF REVIEW

Pursuant to Idaho Code Section 31-3505G, St. Luke's seeks judicial review of the final determination of the County on the Patient's Application. When an application for payment of medical services based on medical indigency statutes has been denied, the applicant and provider are entitled to judicial review under the Idaho Administrative Procedure Act ("APA"), Idaho Code Section 67-5201, *et seq. St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'rs of Ada*

*Cnty.*, 146 Idaho 753, 756, 203 P.3d 683, 686 (2009). An appellant is entitled to relief if the County's findings, inferences, conclusions or decisions were (1) in violation of statutory or constitutional provisions; (2) in excess of the statutory authority of the commissioners; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; or (5) arbitrary, capricious, or an abuse of discretion. IDAHO CODE § 67-5279(3).

On issues of law and statutory interpretation, an appellate court freely reviews the interpretation of a statute and its application to the facts. *St. Luke's Reg'l Med. Ctr., Ltd v. Bd. of Comm'rs of Ada Cnty.*, 146 Idaho at 755, 203 P.3d at 685.

As to questions of fact, judicial review of an administrative order is limited to the record, and the reviewing court may not substitute its judgment for that of the administrative agency. *Application of Ackerman*, 127 Idaho 495, 903 P.2d 84 (1995). Accordingly, "[a] finding of fact without any basis in the record [is] clearly erroneous." *Dovel v. Dobson*, 122 Idaho 59, 62, 831 P.2d 527, 530 (1992) (citations omitted). "Also, a finding of fact lacking substantial and competent evidence to support it is clearly erroneous." *Id.* In order to uphold the County's decision under the clearly erroneous standard, the Court must conclude that the record contains "some reliable, probative, and substantial evidence in support of its position." *Idaho Cnty. Nursing Home v. Dep't of Health & Welfare*, 120 Idaho 933, 940, 821 P.2d 988, 995 (1991). A reviewing court may reverse the decision of the county if the substantial rights of the appellant have been prejudiced. IDAHO CODE § 67-5279.

## V. ARGUMENT

This case involves a County determination that is inconsistent with the plain language of the statute, the purpose of the Medical Indigency Act, and clear Idaho Supreme Court precedent. The policy of the Act is to "encourage personal responsibility for medical care

and to charge counties with the duty to care for individuals that cannot meet this responsibility." *St. Luke's Reg'l Med. Ctr.*, 146 Idaho at 755, 203 P.3d at 685. "In construing [Idaho Code § 31-3501, *et seq.*], this Court has stated that 'the legislature's general intent in enacting the medical indigency assistance statutes is twofold: to provide indigents with medical care and to allow hospitals to obtain compensation rendered to indigents.'" *Id.* (quoting *Univ. of Utah Hosp. v. Ada Cnty.*, 143 Idaho 808, 810, 153 P.3d 1154, 1156 ( 2007)). For the reasons that follow, the County has abused its discretion and committed clear legal error, and its denial of dates of service February 19, 2016, through March 9, 2016, should be reversed.

### A. The County's Interpretation of the Definition of Necessary Medical Services Is Contrary to the Statute's Plain Language and Purpose.

#### 1. The plain language of Idaho Code Section 31-3502(18) demonstrates that the denied dates of service were necessary medical services.

Dr. Dammrose's clinical opinion was that the dates of service at St. Luke's from February 19, 2016, to March 9, 2016, are not considered medically necessary because "the patient was medically stable on 02/19 and it appears she no longer needed the services of an acute care inpatient hospital" and "[h]er medical care was at a maintenance level, and her needs were rehabilitative in nature." AR at 38. In short, the Patient could not be discharged, but would be clinically appropriate to have received care somewhere other than St. Luke's. St. Luke's does not dispute that the Patient's status was appropriate for a lower level of care for the service dates identified by Dr. Dammrose. However, Dr. Dammrose's clinical opinion about the Patient's medical stability does not demonstrate that the statutory requirements of "necessary medical services" were not met in this case. The statute at issue provides, in its entirety, as follows:

A. "Necessary medical services" means health care services and supplies that:

(a) Health care providers, exercising prudent clinical judgment, would provide to a person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms;

(b) Are in accordance with generally accepted standards of medical practice;

(c) Are clinically appropriate, in terms of type, frequency, extent, site and duration and are considered effective for the covered person's illness, injury or disease;

(d) Are not provided primarily for the convenience of the person, physician or other health care provider; and

(e) Are the most cost-effective service or sequence of services or supplies, and at least as likely to produce equivalent therapeutic or diagnostic results for the person's illness, injury or disease.

B. Necessary medical services shall not include the following:

(a) Bone marrow transplants;

(b) Organ transplants;

(c) Elective, cosmetic and/or experimental procedures;

(d) Services related to, or provided by, residential, skilled nursing, assisted living and/or shelter care facilities;

(e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;

(f) Medicare copayments and deductibles;

(g) Services provided by, or available to, an applicant from state, federal and local health programs;

(h) Medicaid copayments and deductibles; and

(i) Drugs, devices or procedures primarily utilized for weight reduction and complications directly related to such drugs, devices or procedures.

IDAHO CODE § 31-3502(18).

Dr. Dammrose specifically cites Section 31-3502(18)A(e) as the provision supporting his opinion that the dates at issue were not medically necessary. *See* AR at 38. It appears that Dr. Dammrose concluded that because it would have been clinically appropriate to transfer the Patient to a lower level of care, the service was not the "most cost-effective service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results for the person's illness, injury or disease." IDAHO CODE § 31-3502(18)A(e). That conclusion may be an accurate clinical assessment of the Patient's condition, but does not account for all of the pertinent facts. Dr. Dammrose does not dispute that the Patient could not be discharged home, and no other more cost-effective facility was willing to receive the Patient until March 9, despite significant efforts to transfer the Patient before then. Even on March 9, a facility was only willing to admit the Patient upon a financial responsibility taken on by St. Luke's. Put simply, St. Luke's was the ***only*** facility that could and would provide the necessary medical services to the Patient. Logically, the ***only*** service or sequence of services is the most cost-effective.

Critically, that conclusion is consistent with the plain language of the statute. It is well-established that if statutory language is unambiguous, the legislature's expressed intent must be given effect and a court should not engage in statutory interpretation. *In re Kootenai Hosp. Dist.*, 149 Idaho 290, 293, 233 P.3d 1212, 1215 (2010). Accordingly, the plain meaning of a statute will prevail unless the clearly expressed legislative intent is contrary to the plain meaning or unless the plain meaning leads to absurd results. *Id.* The statute does not require that the necessary medical services ***would be*** the most cost-effective services in a hypothetical best case scenario regardless of the availability of a facility to provide those services. It requires only that the necessary medical services "***[a]re*** the most cost effective" services in the factual scenario

presented to the County. The County abused its discretion by ignoring the undisputed facts establishing that the service provided by St. Luke's to the Patient was the only service actually available to the Patient. It was clear legal error for the County to simply rely upon Dr. Dammrose's clinical assessment that does not account for the lack of availability of care at a lower level facility.

**2. The County's interpretation of Idaho Code Section 31-3502(18) contravenes the purpose of the Medical Indigency Act.**

"[T]he legislature's intent in enacting the medical indigency assistance statutes was two-fold: to provide indigents with access to medical care and to allow hospitals to obtain compensation for services rendered to indigents." *Univ. of Utah Hosp. v. Ada Cnty.*, 143 Idaho 808, 810, 153 P.3d 1154, 1156 (2007) (quoting *Carpenter v. Twin Falls Cnty.*, 107 Idaho 575, 582, 691 P.2d 1190, 1197 (1984)). In this case, the County's interpretation of the requirements of Section 31-3502(18) directly conflicts with that purpose. St. Luke's is deprived of the ability to obtain compensation for services rendered to the Patient because the Patient achieved a certain medical status justifying treatment at a different facility notwithstanding the fact that no other facility would admit the Patient. To add insult to injury, not only did the County deny nearly three weeks of services St. Luke's provided to the Patient, but St. Luke's also was contractually obligated to pay for the Patient's care at Life Care as a condition to transfer the Patient. The legislature did not intend such results.

For example, the legislature recognized the issue of ensuring cost-efficiency and saw fit to grant counties the right to "contract with providers, transfer patients, [and] negotiate provider agreements." IDAHO CODE § 31-3503(2). In other words, the County has the statutory right to contract with providers to ensure that circumstances such as those that have occurred in

this case are minimized or eliminated. After all, multiple providers approached by St. Luke's declined to admit because the Patient was self-pay and an applicant under the Act.

The purpose of the Act is to ensure that providers receive payment for medical care provided to indigent residents, and the legislature has provided counties with ample authority to ensure that treatment is provided in a cost-effective manner. In this case, the County ignored evidence that alternative care was not available and denied nearly three weeks of care. Such a result is not only contrary to the plain language of the Act, but is inconsistent with the Act's purpose. The Court should reverse the County's decision and remand for approval of dates of service February 19, 2016, through March 9, 2016.

### B. Alternative Service Options Must Be "Actually Available" In Order to Support Denial.

#### 1. *St. Joseph Regional Medical Center v. Nez Perce County.*

"Availability" is a touchstone in the medical indigency analysis, and the County must account for the availability of the "most cost-effective service" when evaluating medical necessity. The Idaho Supreme Court has confirmed that counties must determine "whether specific services were actually available" before relying upon or accounting for such services. *St. Joseph Reg'l Med. Ctr. v. Nez Perce Cnty. Comm'rs*, 134 Idaho 486, 490, 5 P.3d 466, 470 (2000) (none of the documentation on which the County based its denial provided any details about whether a specific service was available).

A patient must have access to the "most cost-effective service" in order for that service to disqualify the provided service as medically necessary. In this case, although St. Luke's does not dispute Dr. Dammrose's opinion that the Patient was stable enough to be transferred to a lower level of care, a lower level of care was not available to the Patient. Therefore, the services provided by St. Luke's until a transfer was possible were, as a matter of

fact, the "most cost-effective services." There is no evidence in the record to contradict that conclusion. As a medical professsional, Dr. Dammrose's opinion is a clinical opinion that addresses hypothetical circumstances without accounting for another provider's willingness to admit the indigent patient.

*St. Joseph Regional Medical Center*, *supra*, illustrates that alternative service options which may disqualify provided services as "necessary medical services" must be "actually available" to an applicant. The following quotation from that case shows that Nez Perce County made the very same error the County did in this case, failing to account for the "actual availability" of alternative care options:

> The Board also denied B.T. medical indigency status based upon a finding that there were other resources available to provide the same services to B.T., such as state-supported mental health services, through Idaho Mental Health and the state psychiatric hospitals, and alcohol treatment through the Port of Hope and Roger's Counseling Center. The Board relied on an affidavit and supporting documentation from the program manager for Region II Mental Health Services, which is a program provided by the State of Idaho, Department of Health and Welfare, Division of Family and Community Services. Under I.C. § 31-3502(18)(B)(g), "services ... available to an applicant from state, federal and local health programs" are not includable as "necessary medical services" for which the indigency statutes provide payment.
>
> The record reflects that on the first day of service, B.T. was homeless, without income and with access to only one week of resources. Within a day of her admission, B.T. was interviewed by a representative of Idaho Mental Health for referral to a voluntary bed at State Hospital North. However, on July 8, 1996, Idaho Mental Health advised SJRMC that "Pathgrant Funds ha[d] been exhausted until September 1996 and that patient c[ould] follow up with Idaho Mental Health and Chemical Dependency program of choice." On July 9, 1996, another entry in B.T.'s hospital record indicates "Idaho Mental Health has refused to see patient due to diagnosis being drug and alcohol related." Recognizing a discharge plan problem in B.T.'s case, SJRMC continued to look into housing assistance on her behalf, other available services, and treatment referrals. When follow-up treatment was arranged

through Roger's Counseling Center in Clarkston, Washington, B.T. was discharged from SJRMC.

*Id.* at 489-90, 5 P.3d 469-70.

The district court thereafter "dismantled the Board's finding that other resources were available to B.T." and determined that "none of the documentation upon which the Board based its decision provided any details as to ***whether specific services were actually available*** to B.T." *Id.* (emphasis added). The Idaho Supreme Court upheld the district court's conclusion, holding that "only those resources actually available to an applicant can be considered for purposes of eligibility for medical indigency benefits." *Id.*

Just as in *St. Joseph Regional Medical Center*, the County has denied dates of service based upon theoretical care options at a different facility. Also, just as in *St. Joseph Regional Medical Center*, there was clear evidence demonstrating that the provider pursued those alternative care options, but they were not actually available and the Patient was not admitted. In fact, there is absolutely no evidence in the record that care at a lower level facility was available to the Patient at any time before March 9, 2016. Indeed, the County does not even allege the actual availability of a facility willing to provide a lower level of care. The result of this case should accord with the holding in *St. Joseph Regional Medical Center*. The Court should reverse the County's denial of dates of service February 19, 2016, through March 9, 2016, on the grounds that care at a lower level facility was not actually available to the Patient.

**2. The law does not allow St. Luke's or the County to transfer a patient without the receiving facility's consent.**

The requirement that a receiving facility agree to receive a transferring patient before a transfer is made is fundamental in medicine and hospitalization, and cannot simply be ignored when evaluating medical necessity and cost-effectiveness. Under the federal Emergency

Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA"), which applies to St. Luke's, "[a]n appropriate transfer to a medical facility is a transfer . . . in which the receiving facility (i) has available space and qualified personnel for the treatment of the individual, and (ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment." 42 U.S.C. § 1395dd(c)(2). A transfer cannot take place without a willing receiving facility. It necessarily follows that the care must be available in order for it to qualify as a potential source of more "cost-effective care." Care is only cost-effective if a provider will actually agree to provide it.

The Act contemplates consideration of availability of care. In fact, the foregoing provision also applies to the County in the event it exercises its right to have a medically indigent person transferred. The County must comply with EMTALA, including ensuring that the receiving facility has agreed to accept transfer, and must ensure that treatment for the necessary medical service is available at the facility. *See* IDAHO CODE § 31-3507. If the County must ensure that care at the receiving facility is "available" to complete a transfer, it must account for the availability of service in its assessment of whether the care provided is the most cost-effective.

By way of example, if the Patient had already been approved by the County on February 19, 2016, it would have had the right to transfer the Patient. It could not have done so, however, without locating a receiving facility. The only place where "treatment for the necessary medical service [was] available" was St. Luke's, because no other appropriate providers were willing to receive the transfer. That fact does not mean that the already-approved application should thereafter be denied as to further medical services. It simply means that, in

light of the unavailability of a lower level of care, treating the Patient at St. Luke's is "the most cost-effective service or sequence of services . . . for the person's illness, injury or disease."

The County erred by failing to account for substantial evidence in the record illustrating that the Patient's treatment from February 19, 2016, to March 9, 2016, was the most cost-effective service available to the Patient because a lower level of care was not available.

### C. St. Luke's Is Entitled to Its Reasonable Attorney Fees.

St. Luke's requests attorney fees on review pursuant to Idaho Code Section 12-117(1), which provides that "the court shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law." IDAHO CODE § 12-117(1). A party acts without a reasonable basis in fact or law when it "has no authority to take a particular action." *Univ. of Utah Hosp. v. Ada Cnty.*, 143 Idaho 808, 812, 153 P.3d 1154, 1158 (2007) (quoting *Fischer v. City of Ketchum*, 141 Idaho 349, 356, 109 P.3d 1091, 1098 (2005)).

As the foregoing clearly demonstrates, the County had no authority or evidence to support denial of the dates of service February 19, 2016, through March 9, 2016. Not only does the application of undisputed facts to the plain language of the statute demonstrate error, but a well-established medical indigency decision by the Idaho Supreme Court directly addresses the impropriety of denial based on more cost-effective service options without corresponding evidence that such options were "actually available" to a patient. St. Luke's presented ample undisputed evidence that the services Dr. Dammrose references were not actually available until March 9, 2016. There was no evidence in the record, or even claim by the County, that services

at a lower level facility were available to the Patient. The Board's decision had no basis in law or fact. Accordingly, St. Luke's respectfully requests an award of costs and attorney fees.

## VI. CONCLUSION

The sole grounds for denial of the Patient's treatment for dates of service February 19, 2016, through March 9, 2016, was the propriety of a lower level of care. While St. Luke's does not dispute that care at a lower level facility would have been appropriate, the undisputed evidence before the Board demonstrated that care at a lower level facility was not actually available to the Patient. The County's denial is not supported by fact or law, and should be reversed and remanded for the Board's approval of dates of service February 19, 2016, through March 9, 2016.

DATED this 18th day of May, 2017.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May, 2017, I caused a true and correct copy of the foregoing **PETITIONER'S BRIEF** to be served by the method indicated below, and addressed to the following:

Gem County Prosecutor's Office
306 E. Main Street
P.O. Box 671
Emmett, ID 83617
Facsimile (208) 365-9411

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
(X) Overnight Mail
( ) Facsimile

Matthew J. McGee

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF**

**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM**

IN RE: MEDICAL INDIGENCY APPLICATION OF C.H.
(Gem County Case No. 16-026),

ST. LUKE'S HEALTH SYSTEM, LTD.,

Petitioner,

v.

BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO, in their official capacity as the Board of County Commissioners for the County of Gem, State of Idaho,

Respondent.

**Case No. CV-2017-145**

# RESPONDENTS' BRIEF

Appeal from the Board of Commissioners of Gem County, State of Idaho

Erick B. Thomson, ISB No. 8010
GEM COUNTY PROSECUTING ATTORNEY

Tahja L. Jensen, ISB No. 8510
Deputy Prosecuting Attorney
P.O. Box 671
Emmett, Idaho 83617
Telephone (208) 365-2106
Facsimile (208) 365-9411

*Attorneys for Respondents Gem County Board Of County Commissioners*

Mark C. Peterson, ISB No. 6477
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
P.O. Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384

*Attorneys for Petitioner, St. Luke's Health Systems, Ltd.*

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## I. STATEMENT OF THE CASE

### A. Nature of the Case

This is a medical indigency case. Respondent Board of County Commissioners of Gem County (the "County") approved the application for medical indigency benefits filed by Petitioner St. Luke's Regional Medical Center ("St. Luke's") on behalf of C.H. (the "Patient") under the Medical Indigency Act, Idaho Code § 31-3501, *et seq.* (the "Act"). St. Luke's now appeals dates of services that the County denied because they were not "necessary medical services" under the Act.

### B. Procedural History & Factual Summary

On January 26, 2016, the Patient was found unconscious in her Emmett, Idaho, home and was transported via ambulance to Valor Health in Emmett. *See* Agency Record ("AR") at 19. She was started on antibiotics and then transported to St. Luke's Meridian Medical Center ("SLMMC") that same date. AR at 36. The Patient remained at SLMMC until March 9, 2016, when she was discharged to Life Care Center, a rehabilitation center. AR at 37.

On February 29, 2016, the County received a combined application for County assistance pursuant to Idaho Code § 31-3501, *et. seq.* (the "Application"). AR at 278-302. The County issued an Initial Determination of Approval in Gem County Case No. 16-026 on September 19, 2016. AR at 14-16. The Initial Determination was that the Patient was indigent and approved dates of service from January 26, 2016, through February 2, 2016. *Id.*

On September 29, 2016, St. Luke's filed an appeal with the County for the denial of dates of service. AR at 9. On October 24, 2016, after submission of additional medical records including a summary of care and a treatment plan, Dr. Doug Dammrose, MD and Medical Director of Idaho Medical Review, amended his utilization management review and opined:

a. 01/26/2016 to 02/12/2016 ED/inpatient stay at SLMMC is considered medically necessary and emergent
The additional clinical notes indicate the patient was medically stable on 02/12 and it appears she no longer needed the services of an acute care inpatient hospital. Her medical care was at a maintenance level, and her needs were rehabilitative in nature. The inpatient stay from 02/12/2016 to 03/09/2016 is considered not medically necessary for purposes of payment IC 31-3502(18)A(e)B(d)

b. Home health services are considered not medically necessary for purposes of payment. The services to be provided appear directed towards maintenance rather than treatment

AR at 33.

On November 16, 2016, after receiving additional medical records, Dr. Dammrose again amended his utilization management review, finding that "the additional clinical notes indicate the patient was medically stable on 02/19 and it appears she no longer needed the services of an acute care inpatient hospital." AR at 38. Dr. Dammrose found that the inpatient stay from 02/19/2016 to 03/09/2016 was rehabilitative in nature and not medically necessary per Idaho Code § 31-3502(18)A(e)B(d). *Id.*

The appeal was heard by the County on February 6, 2017. *See* Transcript of Medical Indigency Hearing ("TR") at 1. St. Luke's appeared at the hearing and offered notes from a discharge planner as to the dates of service February 3, 2016, through March 9, 2016. TR at 7-21. The County reviewed the latest medical review denying those same dates of service and inquired of St. Luke's as to the costs of Patient's inpatient care. TR at 6, 17. Specifically, Commissioner Elliot asked, "So during the 20 days that [the Patient] did not need the higher rate of care, was that care still administered at that rate and was it billed at that rate?" TR at 17. The hospital admitted that there was less care provided but did not offer a reduced rate. *Id.*

On February 6, 2017, the County issued an Amended Determination of Approval for County Assistance. AR at 11-13. The County found that the dates of service from January 26, 2016, through February 18, 2016, were medically necessary and approved payment for those dates of service. *Id.*

On March 6, 2017, St. Luke's timely filed its petition for judicial review.

## II. ISSUES ON APPEAL

1. Was the County is statutorily prohibited from paying for services deemed not "necessary medical services?"
2. Was the County required to consider "available resources" to the hospital absent statutory or supporting authority to do so?

## III. STANDARD OF REVIEW

Idaho Code § 31-3505G provides that:

> If, after a hearing a provided in section 31-3505E, Idaho Code, the final determination of the board is to deny an application for financial assistance with necessary medical services, the applicant, or a third party making application on applicant's behalf, may seek judicial review of the final determination of the board in the manner provided in Section 31-1506, Idaho Code.

The district court's review is limited to the record. *Application of Ackerman*, 127 Idaho 495, 496-97, 903 P.2d 84, 85-86 (1995). A reviewing court may not substitute its judgment for that of the [County] on questions of fact, and will uphold [the County's] finding of fact if supported by substantial and competent evidence. A reviewing court may reverse the [County's] decision or remand for further proceedings only if substantial rights of the appellant have been prejudiced. IDAHO CODE § 67-5279(4).

When the [County] was required ... to issue an order, the court shall affirm the [County's action] unless the court finds that the [County's] findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the [County]; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. *Saint Alphonsus Regl. Med. Ctr., Inc. v. Bd. of Cnty Commrs. of Ada Cnty.*, 146 Idaho 51, 53, 190 P.3d 870, 872 (2008) (quoting Idaho Code § 67-5279(3)). Determining the meaning of a statute is a matter of law. *Id.*

## IV. ARGUMENT

### A. The County correctly applied Idaho Code § 31-3502(18) in denying payment for dates of service which were not medically necessary.

It is uncontroverted that the dates of care denied by the County were not the most cost-effective service. St. Luke's did not, and does not, dispute Dr. Dammrose's opinion that the Patient was "medically stable" on or about February 19, 2016, and that treatment at a lower level of care would be appropriate from a clinical standpoint. *See Petitioner's Brief* at 3.

St. Luke's interpretation of the purpose of the Medical Indigency Act (the "Act") is correct in that the legislature sought to not only have medical care provided to indigent residents but also to assure that the compensation provided to hospitals allows them to continue providing care. *See Petitioner's Brief* at 9, and *Univ. of Utah Hosp. v. Ada Cnty.*, 143 Idaho 808, 810, 153 P.3d 1154, 1156 (2007). However, St. Luke's cannot ignore that the language of the statute requires the County to place limitations on what qualifies as necessary medical services. "[T]he county medically indigent program and the catastrophic health care cost program are payers of last resort. Therefore, applicants or third party applicants seeking financial assistance under the

county medically indigent program and the catastrophic health care cost program **shall be subject to the limitations and requirements as set forth herein**." IDAHO CODE § 31-3501(2) (emphasis added).

Only necessary medical services can be approved for payment. Idaho Code § 31-3502(18) reads:

> A. "Necessary medical services" means health care services and supplies that:
>
> > (a) Health care providers, exercising prudent clinical judgment, would provide to a person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms;
> >
> > (b) Are in accordance with generally accepted standards of medical practice;
> >
> > (c) Are clinically appropriate, in terms of type, frequency, extent, site and duration and are considered effective for the covered person's illness, injury or disease;
> >
> > (d) Are not provided primarily for the convenience of the person, physician or other health care provider; and
> >
> > (e) Are the most cost-effective service or sequence of services or supplies, and at least as likely to produce equivalent therapeutic or diagnostic results for the person's illness, injury or disease.
>
> B. Necessary medical services shall not include the following:
>
> > (a) Bone marrow transplants;
> >
> > (b) Organ transplants;
> >
> > (c) Elective, cosmetic and/or experimental procedures;
> >
> > (d) Services related to, or provided by, residential, skilled nursing, assisted living and/or shelter care facilities;
> >
> > (e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;
> >
> > (f) Medicare copayments and deductibles;

(g) Services provided by, or available to, an applicant from state, federal and local health programs;

(h) Medicaid copayments and deductibles; and

(i) Drugs, devices or procedures primarily utilized for weight reduction and complications directly related to such drugs, devices or procedures.

After reviewing medical records on four different occasions, the County's medical reviewer, Dr. Dammrose, consistently denied February 19, 2016, through March 9, 2016, for payment citing that the care was not medically necessary because it was not the most cost-effective service. *See* AR at 38.

It is worthy of note that Idaho Code § 31-3502(18)(B) includes what necessary medical services "shall not include." St. Luke's has argued from the onset that it tried to transfer the Patient to a lower level of care, specifically skilled nursing facilities, since February. The services that St. Luke's was seeking were included in the statute's services that are not medically necessary. So, even under its own assessment, if the Patient was to be transferred as of the date of St. Luke's efforts, those services would not be deemed medically necessary under the statute.

**1. The County is not required to consider whether alternative service options are actually available to the hospital.**

Nothing in the statute requires or even implies that the county is to consider whether alternative service options are actually available to the hospital. Similarly, there is no authority for St. Luke's to make that argument. St. Luke's claims that the language of the statute is unambiguous. See *Petitioner's Brief* at 8. If the legislature wanted to require the County to consider whether alternative service options are actually available to the hospital, they could

have put that in the statute. They did not. Because they did not intend for counties to be held to that requirement.

St. Luke's asserts that it has an "entire group" that is responsible for case management. TR at 8. According to the record, they began as early as February 11, 2016, in looking for a lower level of care for the patient. *Id.* The patient was medically ready for discharge on February 18, 2016. *Id.* So according to their records, they spent not just those seven days looking for an alternative placement, but it took until March 9 to enter into a third party contract with the provider Life Care of Boise, a rehabilitative hospital. TR at 9-10. Such a placement could have been, and in fact should have been, entered into in February. A lower level of care could have been achieved much sooner and much more cost effectively as reiterated by Dr. Dammrose.

Even if resources had not been available, it is not the County's responsibility to seek out such an arrangement. It is the responsibility of the hospital. This logically follows that the costs of failing to do so would also fall upon the hospital. It is inequitable to argue that the hospital has the responsibility to transfer a patient but is not responsible for the financial responsibility to do so, passing that burden on to the County. One of the primary purposes of the Act is to provide the most "cost-effective" services. Applying St. Luke's argument in this case would create a system where the hospitals have no financial motivation for lowering a patient's level of care in an efficient manner, as they would receive compensation for the higher levels of care whether that care was necessary or not.

**2. The County is statutorily obligated to participate in utilization management and by statute has no authority to pay for any service that utilization management has determined to be "not medically necessary."**

The County is statutorily obligated to participate in utilization management pursuant to the statute. *See* IDAHO CODE § 31-3503(D). "Every county shall fully participate in the utilization management program." *Id.* That is what the County did in this instant case in sending this case for medical review, not once, but on four different occasions. TR at 5. Counties and the state catastrophic health care cost program (the "CAT board") rely on such utilization management to assure the "efficien[t] use of health care services, procedure and facilities. IDAHO CODE § 31-3502(28). Further, Idaho Code § 31-3505B specifically restricts the authority of the County to pay for any service that utilization management has determined to be "not medically necessary." It reads:

> APPROVAL BY THE COUNTY COMMISSIONERS. The county commissioners shall approve an application for financial assistance if it determines that necessary medical services have been or will be provided to a medically indigent resident in accordance with this chapter; provided, the amount approved when paid, at the reimbursement rate, by the obligated county for any medically indigent resident shall not exceed the lesser of:
>
> (1) The total sum of eleven thousand dollars ($11,000) in the aggregate per resident in any consecutive twelve (12) month period; or
>
> (2) The reimbursement for services recommended by any or all of the utilization management activities pursuant to section 31-3502, Idaho Code.

*Id.* (emphasis added).

The County relied on all four of the utilization management reviews conducted by Dr. Dammrose, and was correct in doing so. TR at 20-21. The County denied services rendered for the Patient from February 19, 2016, through March 9, 2016, because they were "not medically necessary." *Id.* The statute limited the County's authority to reimburse St. Luke's for those dates of service.

3. **The decision in *St. Joseph Regional Medical Center v. Nez Perce County* is regarding eligibility for medical indigency, and cannot be interpreted to read what resources were available to the hospital.**

The court, in *St. Joseph Regional Medical Center v. Nez Perce County*, found that "only those resources actually available to [an] ... applicant can be considered in determining the applicant's eligibility for assistance." *Intermountain Health Care, Inc. v. Board of Cnty Comm'rs*, 107 Idaho 248, 688 P.2d260 (Ct. App. 1948) quoting *Moffett v. Blum*, 74 A.D.2d 625, 424 NYS2d 923, 925 (1980). This can be distinguished from the facts in our case because the court used this analysis in determining an applicant's eligibility for assistance, *not* whether resources were available to the hospital. This is where the analysis using this case ends. This case does not discuss the utilization of hospital resources and would be incorrectly applied if read as St. Luke's hopes it to be.

**B. St. Luke's Analysis of the Statute's Plain Language and Purpose is Erroneous.**

1. **The plain language of Idaho Code Title 31, Chapter 35 must be read as a whole.**

The indigency statute must be read as a whole. Clear Idaho Supreme Court precedent outlines that "the words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole." *State v. Hart*, 135 Idaho 827, 829, 25P.3d 850 (2001). Idaho Code Title 31, Chapter 35 requires application of limitations enumerated therein. St. Luke's recitation of the purpose of the act ignores the statute as a whole.

2. **To read that the purpose of Idaho Code Title 31, Chapter 35 is to compensate medical providers without limitation leads to an absurd and incorrect result.**

In this instant case, St. Luke's provided care to the Patient that is simply not covered under "necessary medical services" and the County correctly applied the statute. To suggest that

the hospital should be paid to any end was clearly not the legislative intent. Under this analysis, the hospital could submit for payment dates of service that were not "medically necessary services" without limitation. For example, the hospital could find that no one at a patient's home was available to assist with discharge and hold the patient at the acute care rate for a period of days. It belies logic that the legislature would codify the limitations of what can be paid under the Act, only to have an interpretation that leads to the result St. Luke's seeks—to be paid for their decision not to transfer the Patient to a lower level of care at the time that it was appropriate.

In fact the legislature specifically limits the authority of the County to authorize payment for services that utilization management determines to be "not medically necessary." *See* IDAHO CODE § 31-3505B. A Board of County Commissioners is charged with the fiscal responsibilities of the County and is in no position to conduct medical reviews, which is why the legislature requires participation in utilization management.

**C. St. Luke's is Not Entitled to Its Attorney Fees**

St. Luke's asserts that the County had no authority or evidence to support denial of the dates of service February 19, 2016, through March 9, 2016, and as such requests an award of attorneys fees pursuant to Idaho Code § 12-117.

Idaho Code § 12-117(1) provides that "the court shall award the prevailing party reasonable attorneys' fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law." The County correctly determined that the dates of service were not medically necessary per statute and should prevail.

St. Luke's request for attorneys fees assumes that its reading of *St. Joseph Regional Medical Center v. Nez Perce County* is correct and that the County ignored Idaho Supreme Court

precedent. Both of St. Luke's assumptions are erroneous. The County's interpretation of Idaho Code § 31-3502(18), which has not previously been construed by the courts, is reasonable. *See City of Osburn v. Randel*, 152 Idaho 906, 909, 277 P.3d 353, 356 (2012) (explaining that "a governmental agency does not act without a reasonable basis in fact or law when its interpretation of a statute that has not been previously construed by the courts" is not unreasonable.). In this case, this precise issue has not previously been litigated. Using the *Osborn* standard, St. Luke's is not entitled to attorney fees on appeal.

## V. CONCLUSION

St. Luke's kept the Patient in its acute care facility for twenty (20) days beyond the point where the Patient no longer required that level of care. The County correctly applied Idaho Code § 31-3502(18) in denying payment for dates of service which were not medically necessary. The County had no authority to pay for any service that utilization management determined to be "not medically necessary." St. Luke's assertion that the services must actually be available is without merit or support and belies the plain language and purpose of the Medical Indigency Act. The County's denial should be affirmed.

DATED this 16th day of June, 2017.

GEM COUNTY PROSECUTING ATTORNEY

By: Talija L. Jensen, ISB #8510
Deputy Prosecuting Attorney

Attorneys for Respondent

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2017, I caused a true and correct copy of the foregoing **RESPONDENTS' BRIEF** to be served by the method indicated below, and addressed to the following:

Matthew J. McGee
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHARTERED
PO Box 829
Boise, Idaho 83701
MJM@moffatt.com

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile
(X) Electronic Mail

Tahja L. Jensen

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | |
|---|---|
| IN RE: MEDICAL INDIGENCY APPLICATION OF C.H. **(Gem County Case No. 16-026)**,<br><br>ST. LUKE'S HEALTH SYSTEM, LTD.,<br><br>Petitioner,<br><br>vs.<br><br>BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO, in their official capacity as the Board of County Commissioners for the County of Gem, State of Idaho,<br><br>Respondents. | Case No. CV2017-145 |

# PETITIONER'S REPLY BRIEF

Appeal from the Board of Commissioners of Gem County, State of Idaho

Mark C. Peterson, ISB No. 6477
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
999 Main Street, Suite 1300
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
10950.1085

Attorneys for Petitioner, St. Luke's Health Systems, Ltd

Tahja Jensen, ISB No. 8510
GEM COUNTY PROSECUTOR'S OFFICE
306 E. Main Street
P.O. Box 671
Emmett, ID 83617
Telephone (208) 365-2106
Facsimile (208) 365-9411

Attorneys for Gem County and the Board of Gem County Commissioners

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## I. INTRODUCTION

The County has denied dates of service February 19, 2016 through March 9, 2016 because Dr. Dammrose, a medical expert expressed a clinical opinion that the Patient could have received a lower level of care at a certain point. The County has interpreted Idaho law as not requiring any consideration as to the availability of such lower level of care. It is the purview of this Court to interpret Idaho law. Existing precedent, as well as the plain language of the statute, support reversal of the County's decision in this case.

## II. ARGUMENT

### A. The Services Provided Were the Most Cost-Effective Services.

The County begins its argument by asserting that "[i]t is uncontroverted that the dates of care denied by the County were not the most cost-effective service." *See* Resp. Br. at 4. That assertion fundamentally misstates the issue before the Court, and is also incorrect. The care denied by the County ***was*** the most cost-effective service because it is uncontroverted that such service was the ***only*** service actually available to the Patient.

Dr. Dammrose opines that the Patient reached a level of clinical stability such that she could have received a lower level of care. The County points out that St. Luke's does not dispute that fact. But Dr. Dammrose does not directly address in his clinical opinion whether a lower level of care was actually available to the Patient, although there are references throughout the report to various facilities that refused transfer. *See* AR at 36-38. That was not his role. The gathering and presentation of that type of evidence was, in this instance, the role of the parties—the Patient, the provider, and the County Clerk. The County cannot point to any statement or opinion by Dr. Dammrose that there was a lower-level provider that would actually accept transfer of the Patient. Indeed, in this case, the only evidence in the record before the Court

demonstrates, without qualification, that a lower level of care was ***not available*** to the Patient. *See* Petitioner's Brief at 2-4.

The County proceeds with the argument by asserting that "the County's medical reviewer, Dr. Dammrose, consistently ***denied*** February 19, 2016 through March 9, 2016, for payment citing that the care was not medically necessary because it was not the most cost-effective service." *See* Resp. Br. at 6 (emphasis added). The County mischaracterizes the state of the record.

**1. Dr. Dammrose is not authorized to deny services.**

First, Dr. Dammrose did not ***deny*** any services. Dr. Dammrose does not have the legal authority to deny an application for aid; that authority belongs to the county commissioners. *See, e.g.*, IDAHO CODE§ 31-3505C(1) (". . . the ***county commissioners*** shall make an initial determination to approve or deny an application . . .") (emphasis added). The County implicitly suggests that, pursuant to utilization management and Idaho Code Section 31-3505B(2), the Commissioners do not have the ability to make findings and draw conclusions regarding medical necessity independent of medical review. *See* Resp. Br. at 8. That is not what Idaho Code Section 31-3505B(2) stands for. In fact, that statute plainly states that utilization management activities result in recommendations to the County and the CAT Board, not findings, conclusions or denials. *See id.*

**2. Dr. Dammrose is not a legal expert.**

Second, Dr. Dammrose offered his clinical opinion about the services at issue based on medical facts, and to the extent he offered a legal opinion about the Medical Indigency Act, such a statement is entitled to no greater weight than any other witness, attorney, or commissioner. Specifically, he determined that "the patient was medically stable on 02/19 and it

appears she no longer needed the services of an acute care hospital" and that "[h]er medical care was at maintenance level, and her needs were rehabilitative in nature." AR at 38. St. Luke's does not dispute those clinical opinions. St. Luke's takes issue with the legal conclusion that follows, wherein Dr. Dammrose steps beyond his qualifications as a medical reviewer and interprets and applies Idaho law. He cites the statutory definition of "necessary medical services" and concludes that the treatment at issue "is considered not medically necessary for purposes of payment." AR at 38. As the County notes, he draws that conclusion "because it was not the most cost effective service." Resp. Br. at 6.

Dr. Dammrose's conclusion in that regard, while potentially true as a clinical matter, finds no support in the factual record the Commissioners were charged with reviewing. When there is no available alternative service, the service provided is *de facto* the most cost-effective service. Furthermore, Dr. Dammrose is not qualified as a legal expert. He notes throughout his report the various facilities that declined to admit the Patient. *See* AR at 37. Because he is not a legal expert, or in any way responsible to interpret and apply Idaho law, Dr. Dammrose is apparently unfamiliar with *St. Joseph Regional Medical Center v. Nez Perce County Commissioners*, 134 Idaho 486, 5 P.3d 466 (2000), which case affirmed that alternative services must actually be available in order to find that the services provided were not medically necessary. The County clearly erred by abdicating to Dr. Dammrose its duty to draw the necessary factual and legal conclusions relating to whether the services at issue were "necessary medical services."

This is not the first time that Dr. Dammrose's role as a medical reviewer issuing a legal opinion has resulted in a failure by commissioners to appropriately act as fact finders in an adjudicative setting. In a recent case in Twin Falls County, the district court was presented with

similar circumstances—a county's erroneous deference to and reliance upon the legal opinion of Dr. Dammrose about the statutory definition of "emergency services." *See In re Medical Indigency Application of M.S.*, Twin Falls County Case No. CV42-15-2357 (Dec. 14, 2015), attached hereto as Appendix 1. In that case, Dr. Dammrose applied his clinical opinion about the patient's care to that definition, concluding that several dates of service did not qualify as "emergency services." On appeal, the district court stated as follows regarding the Board's conclusion:

> The Board essentially relied upon the testimony of Dr. Dammrose. It appears to this court that Dr. Dammrose was not rendering an expert medical opinion as much as he was rendering a legal opinion.

*See id.* at 5, n.3.

The Court thereafter engaged in statutory construction, and concluded that Dr. Dammrose's legal opinion, adopted by the county, was in error. Put simply, the Court afforded the county, and in turn Dr. Dammrose, the appropriate deference as to his clinical opinions, but found that the county's reliance upon his legal opinion interpreting the definition of "emergency services" was not entitled to deference or weight, and also determined that the county erred in its reliance upon that legal opinion. This case warrants the same result. Dr. Dammrose is not the finder of fact, nor is he imbued with the authority to apply the law. The Commissioners are. Dr. Dammrose is a paid expert. The Commissioners' abdication of their role in favor of Dr. Dammrose's mistaken legal opinion constitutes an abuse of discretion, and clear legal error.

**B. The County's Reference to Skilled Nursing Facilities Is a Red Herring.**

In order to support the denial of the treatment dates at issue, the County also references Section 31-3502(18)(B), the secondary subpart of the definition of "necessary medical

services" that delineates those items that are not "necessary medical services." Specifically, the County appears to reference the statute's prohibition of "[s]ervices related to, or provided by . . . skilled nursing facilities." IDAHO CODE § 31-3502(18)(B)(d). This provision does not constitute grounds for denial of the dates of service at issue. First, the treatment at issue was neither related to, nor provided by, a skilled nursing facility. The treatment at issue was provided by St. Luke's, an acute care hospital. Each of the facilities explored by St. Luke's declined to accept the Patient. Second, Dr. Dammrose's opinion does not indicate that a skilled nursing facility would be sufficient for the Patient. His opinion merely references the fact that "she no longer needed the services of an acute care inpatient hospital." Even if the statutory prohibition of services provided by a skilled nursing facility applied to St. Luke's, there is not sufficient evidence in the record to demonstrate that such prohibition applied in this case.

### C. The County Is Required to Consider Whether Alternative Service Options Are Actually Available.

The County argues that it is not required to consider whether alternative service options are actually available to the ***hospital***. *See* Resp. Br. at 6-7. It remains unclear why the County framed the argument in such a manner, but this is simply another way of stating its position that the County is not required to consider whether alternative service options are actually available to ***the Patient***. As the *St. Joseph* case very plainly holds, the County is indeed required to consider the availability of alternative service options if it intends to deny services based on such options. 134 Idaho at 490, 5 P.3d at 470.

The County gives short shrift to the *St. Joseph* case, *see* Resp. Br. at 9, and for good reason, as it is clearly not helpful to its position. The case is directly on point, and plainly reveals the County's error. Although the attempt to distinguish *St. Joseph* is a bit unclear, it seems to suggest that the distinction relates to an evaluation of an applicant's eligibility for

assistance, as opposed to resources available to a hospital. Again, the attempt to re-frame the issue with the hospital as the purveyor of some unsubstantiated case management error is entirely without support in the record—evidenced by a complete lack of any record citation. The question is not whether a lower level of care was available to St. Luke's; it is whether a lower level of care was available to the Patient.

In *St. Joseph*, the county denied an application because it found that the patient could have received care at a state psychiatric facility, and alcohol treatment through Port of Hope and Roger's Counseling Center rather than the acute care hospital. Relying upon the affidavit testimony of a state mental health program manager to that effect, the county applied that clinical assessment to the definition of "necessary medical services." However, the factual record reflects that a voluntary bed at the state psychiatric facility was not available to the patient, and that as soon as follow-up treatment could be arranged through Roger's Counseling Center, the patient was discharged. The Idaho Supreme Court upheld the district court's conclusion on appeal that the county's denial was legal error because the commissioners failed to consider whether these other care options were actually available to the patient.

In this case, the County denied the application because it found that the Patient could have received a lower level of care, relying entirely upon the report of Dr. Dammrose. The factual record also discloses, however, that no other facility would accept the Patient during the time period in question. A lower level of care was not available to the Patient during that time period, and the Patient was transferred as soon as a lower level of care became available, and only upon St. Luke's agreement to pay the Patient's obligation to that facility. Just as in *St. Joseph*, the County's failure to consider whether other care options were actually available to the Patient was clear legal error.

The County cannot convincingly distinguish the facts of this case from the facts in *St. Joseph*. That case demands a finding by this Court that the County has abused its discretion by failing to consider the availability of alternative treatment options, and St. Luke's respectfully requests the same.

### D. The County's Inflammatory Representation of the Record Should Be Ignored.

Furthermore, and to ensure there is no mistake about what the record reflects, the County's assertion that placement in a rehabilitation facility "could have been, and in fact should have been entered into in February" is wholly without support. *See* Resp. Br. at 7. Another example of the County's loose explanation of the record is located at page 10, where it asserts that St. Luke's "seeks to be paid for ***their decision*** not to transfer the Patient to a lower level of care at the time it was appropriate." *See* Resp. Br. at 10 (emphasis added). The County does not cite any evidence for those bald and inflammatory assertions because none exists. Those statements constitute misrepresentation, and the lack of any record citation illustrates as much. As discussed in detail in the opening brief, and reflected in the record, numerous facilities declined to accept the Patient when St. Luke's attempted transfer the Patient. It was not a decision by St. Luke's not to transfer the Patient. The ***only*** evidence in the record reflects that the Patient was discharged as soon as St. Luke's located a facility that would accept the Patient. That date was March 9. The Court should not countenance the County's effort to manufacture the suggestion that St. Luke's somehow chose to hold on to the indigent patient for some financial motivation. This notion should be readily dismissed by the Court.

### E. This Case Does Not Meet the Legislative Limitations Cited by the County.

Finally, the County's attempted reduction of St. Luke's argument to the absurd is unavailing. *See* Resp. Br. at 9-10. St. Luke's does not "suggest that the hospital should be paid

to any end." *Id.* The hospital could ***not*** "find that no one at a patient's home was available to assist with discharge and hold the Patient at the acute care rate for a period of days." *Id.* at 10. If the Patient was appropriate to be discharged home, holding the Patient for additional days would be "primarily for the convenience of the person, physician or other health care provider," and would not be a necessary medical service. *See* IDAHO CODE § 31-3502(18)(A)(d). The limitations are indeed codified, as the County asserts and as the foregoing illustrates, but the facts and circumstances of this case do not fall within the confines of the statutory limitations. For that reason, the Court should reverse the County's denial of the application for dates of service February 19, 2016 through March 9, 2016.

## III. CONCLUSION

For the foregoing reasons, and for the reasons set forth in the opening brief, St. Luke's respectfully requests that the Court reverse the County's denial of dates of service February 19, 2016 through March 9, 2016, and award St. Luke's its reasonable attorney fees pursuant to Idaho Code Section 12-117. While St. Luke's does not dispute that care at a lower level facility would have been appropriate, the undisputed evidence before the Board demonstrated that care at a lower level facility was not actually available to the Patient.

DATED this 6th day of July, 2017.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

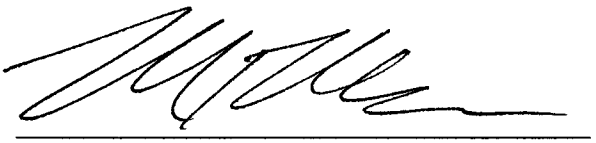
By _____
Matthew J. McGee – Of the Firm
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2017, I caused a true and correct copy of the foregoing **PETITIONER'S REPLY BRIEF** to be served by the method indicated below, and addressed to the following:

Gem County Prosecutor's Office
306 E. Main Street
P.O. Box 671
Emmett, ID 83617
Facsimile (208) 365-9411

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
(X) Overnight Mail
( ) Facsimile



Matthew J. McGee

# APPENDIX 1

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

| | | |
|---|---|---|
| IN RE: MEDICAL INDIGENCY APPLICATION OF M.S. | ) | |
| ST. LUKE'S HEALTH SYSTEM, LTD., | ) | Case No. CV42-15-2357 |
| Petitioner, | ) | |
| vs. | ) | |
| BOARD OF COMMISSIONERS OF TWIN FALLS COUNTY, IDAHO, in their offical capacity as the Board of County Commissioners for the County of Twin Falls, State of Idaho, | ) | |
| Respondent. | ) | |

## MEMORANDUM DECISION ON JUDICIAL REVIEW

The Petition for Judicial Review in the above entitled matter came on regularly for oral argument on December 7, 2015. The Petitioner was represented by Counsel, Mark C. Peterson and the Respondent was represented by Twin Falls County Deputy Prosecutor, Melissa J. Kippes.

The Court having reviewed the Agency Record and having considered the briefs and arguments of counsel took the matter under advisement for a written decision.

## I.

## FACTUAL AND PROCEDURAL BACKGROUND

On November 23, 2014 a 32 year old male, M.S. (patient) was transported by EMS to the St. Luke's Regional Medical Center emergency department as a result of coughing up blood. The patient was admitted to the hospital on November 23, 2014 and was diagnosed with "Bulla of lung/Hemoptysis/Destroyed left lung secondary to prior tuberculosis infection." The patient was treated at the hospital and then discharged from the hospital on November 25, 2014 with a planned follow-up with a physician in Boise.

On December 1, 2014 the patient was then seen for the follow-up by Matthew W. Schoolfield, M.D. a cardiothoracic and vascular surgeon. Dr. Schoolfield determined that the patient was in need of "urgent surgery for his destroyed lung". The patient underwent the surgery recommended by Dr. Schoolfield on December 2, 2014 and was then discharged on December 9, 2014.

Within 31 days of the patient's date of admission [November 23, 2014] to St. Luke's an Emergency 31-Day Combined Application for State and County Medical Assistance (Application) was prepared by the Petitioner and the patient. The Application covered the medical services provided for the periods of November 23-25, 2014 and December 1-9, 2014. The Application was submitted to the Department of Health and Welfare on December 17, 2014 for a Medicaid Eligibility Determination. On January 6, 2015 the Department of Health and Welfare determined that the patient was not eligible for Medicaid and the Application was then received by the Respondent on January 7, 2015.

After receipt of the Application the Respondent on January 28, 2015 conducted a patient interview and then sent the case out for a "medical review due to the large dollar amount". After

conducting the investigation and review of the case the Respondent determined that the patient was (1) indigent; (2) that the services were medically necessary and (3) that only the medical services provided on November 23-25, 2014 were "emergent". The Respondent determined that the medical services provided between December 1-9, 2014 while they were medically necessary they were not "emergent" and that the Application was untimely as to the December medical services. The Respondent took the position that the petitioner after November 25, 2014 was required to file a "Non-Emergency 10-Day Prior" Application for the December medical services provided by the petitioner.

On February 24, 2015 the Respondent issued its Initial Determination approving the medical services for November but denying the medical services for December based on the untimeliness of the Application. On March 20, 2015 the petitioner appealed the Initial Determination of the denial of the December medical services.

The Respondent's Board of Commissioners (Board) conducted a hearing on the appeal. The Board heard testimony and received exhibits.[1] The Petitioner essentially relied upon the opinions expressed in the letters from Dr. Schoolfield, dated December 1, 2014 and April 6, 2015 that the December, 2014 medical services should be covered under the emergency application. The Respondent in the hearing also heard and considered the testimony of Dr. Dammrose who conducted a review of the medical records. Dr. Dammrose testified that he was "charged with ...applying the statute and the definitions of emergent,..., in the statute as it relates to the clinical care delivered, ..." (Tr. pg. 14, L4-11) Dr. Dammrose admitted he was not an expert in lung surgery and he would defer to Dr. Schoofield as to the immediacy of the need for lung surgery. (Tr. pg. 14, L. 16-21) In fact in his testimony Dr. Dammrose admitted and

[1] The agency record before this court is not clear as to whether the record consists of all of the medical records considered by the Board, for purposes of judicial review this court is of the view that the record review conducted by Dr. Dammrose and the letters from Dr. Schoolfield present an adequate record for the issue on judicial review.

agreed that the patient's lung surgery "...was medically necessary". (Tr. pg. 14, L. 12-15). Overall, while Dr. Dammrose acknowledged there was a risk in delaying surgery, it was his opinion that there was time to notify the County of the anticipated surgery after the November 25 discharge and that "...the timing of the surgery was really the issue. It was not clearly emergent because if it had been emergent, it should have been done on Eleven Twenty-five." (Tr. pg. 18, L. 1-8). The testimony of Dr. Dammrose can be summarized to indicate that it was his opinion that while the surgery was medically necessary, it was not an emergency since the patient was discharged in a stable condition on November 25, 2014 and did not seek follow up treatment until 6 days later on December 1, 2014 and did not have surgery until December 2, 2014.[2]

On the other hand Dr. Schoolfield on December 1, 2014 opined that surgery was urgent for the reason that there was "no active infection"; that the patient was a "high risk for developing recurrent infection"; and if surgery were conducted during an "active infection" the "risk of complications are increased including infection, fistula and death." Dr. Schoolfield in his letter of April 6, 2015 further explained his opinion. He noted that with patients similar to M.S. that the "...clock is always ticking...when they present with symptoms because of the high recurrence rate of symptoms in the setting of destroyed lung and the strict adherence to basic principles to offer the patient as low a risk of surgery as possible....". He further opined that delaying surgery would in his opinion be inappropriate because it would put the patient "...in danger of massive airway bleeding, risk of his airway becoming actively infected or him becoming less compliant with his antibiotic regimen and thereby increasing progressing his airway infection."

[2] Dr. Dammrose in his medical record review report, acknowledged that when the patient was discharged on November 25, 2014 that a follow up with a surgeon in Boise and surgery were anticipated.

At the conclusion of the hearing the Board issued its Findings of Fact, Conclusions of Law and Order Denying Application. The Board's Findings of Fact are summarized as follows:

1. The 31 day application for emergency necessary medical services with the Medicaid denial was received by the respondent on January 8, 2015;
2. The application requested payment for the service dates of November 23-25, 2014 and December 1-9, 2014 for Bulla of lung, Hemoptysis, destroyed left lung secondary to prior tuberculosis infection;
3. That the patient was indigent and a resident;
4. That the November services were necessary and emergent;
5. That the December services were non-emergent and the 31 day application was untimely as to the December services;
6. A timely appeal was filed on March 20, 2015;
7. The Board conducted a hearing on May 20, 2015;
8. St. Luke's offered a letter from Dr. Schoolfield explaining the December services;
9. That Dr. Dammrose offered testimony and his opinion that the December services were non-emergent but agreeing with Dr. Schoolfield "that continued delay of surgery performed on the December dates does present risk."
10. That the patient was medically stable on December 1 & 2, 2014.

The Board in its Conclusion of Law found that the patient was a resident and was medically indigent. The Board went on to conclude that "[T]he December services appear to be related to the November emergency room visit but, do not qualify as "emergency services" as defined by Idaho Code § 31-3502(12). The December services were not provided in response to a sudden serious and unexpected symptom requiring immediate medical attention."[3] The Board concluded that the December services could not be included in the 31 day emergency application and that St. Luke's was required to file a 10 day non-emergent application for the December services.

The Petitioner has filed a timely Petition for Judicial Review.

## II.

## STANDARD ON JUDICIAL REVIEW

[3] The Board essentially relied upon the testimony of Dr. Dammrose. It appears to this court that Dr. Dammrose was not rendering an expert medical opinion as much as he was rendering a legal opinion.

A review of matters pertaining to the granting or denying applications for indigency benefits is governed by the Administrative Procedures Act. I.C. § 67-5201 *et seq.*; I.C. § 31-1506; *Sacred Heart Medical Center v. Kootenai County Comm'rs.*, 136 Idaho 787, 41 P.3d 215 (2001). "A reviewing court may not substitute its judgment for that of the administrative agency on questions of fact, and will uphold an agency's findings of fact if supported by substantial and competent evidence." *Shobe v. Ada County Bd. of Comm'rs*, 130 Idaho 580, 583, 944 P.2d 715, 718 (1997) (quoting *Application of Ackerman*, 127 Idaho 495, 903 P.2d 84 (1995)).

A reviewing court should affirm the county's decision unless it determines that such decision is (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 on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); *St. Alphonsus Reg. Med. Ctr. v. Bd. of County Commrs. of Ada County,* 146 Idaho 51, 53, 190 P.3d 870, 872 (2008); *Bonner Gen. Hosp. v. Bonner County*, 133 Idaho 7, 981 P.2d 242 (1999). Only if it is shown that an applicant's substantial rights have been prejudiced may a reviewing court reverse a board's decision or remand for further proceedings. *Sacred Heart Medical Center*, 136 Idaho 787, 41 P.3d 215 (2001); *Shobe*, 130 Idaho 580, 944 P.2d 715 (1997).

## III.

## ANALYSIS

The issue on judicial review is whether the petitioner's filing of the 31-day Application for Emergency Medical Services on December 17, 2014 under Idaho Code section 31-3505(3) was sufficient to cover the medical services provided for the periods of November 23-25, 2014 and December 1-9, 2014. The parties do not dispute that the patient was admitted to petitioner's hospital on November 23, 2014 and that he was hospitalized until November 25, 2014 due to a

medical condition which was diagnosed as "Bulla of lung/Hemoptysis/Destroyed left lung secondary to prior tuberculosis infection". The parties also do not dispute that at the time the patient presented himself on November 23, 2014 and at the time he was admitted to the hospital that his medical condition was such that he was in need of "emergency services". The parties also do not dispute that the patient's condition was stabilized and that he was discharged on November 25, 2014 with instructions to follow-up with a thoracic surgeon in Boise and that at the time of discharge surgery was anticipated. There is no dispute that the patient saw the thoracic surgeon in Boise on December 1, 2014 and that the surgeon scheduled surgery for December 2, 2014. The surgery was performed on December 2 as scheduled and the patient was hospitalized until he was discharged on December 9, 2014. The petitioner argues that the December medical services are within the umbrella of the definition of "emergency services" based on the opinion of the thoracic surgeon, Dr. Schoolfield. The Respondent argues that once the patient was discharged from the hospital on November 25, 2014, there was no longer a need for emergency services and the petitioner was required to file the 10 day nonemergency application.

**A. Legislative Policy**

Our courts have often recognized and stated the legislative policy behind Title 31, Chapter 35 which "is to encourage personal responsibility for medical care and to charge counties with the duty to care for individuals that cannot meet this responsibility" and that the "legislature's general intent" behind Chapter 35, "is twofold: to provide indigents with medical care and to allow hospitals to obtain compensation for services rendered to indigents." *Saint Alphonsus Regional Medical Center v. Gooding County,* 159 Idaho 84, 356 P.3d 377, 379 (2015).

Idaho Code section 31-3505 governs the time and manner of filing application for financial assistance with the counties. This section sets forth different time standards depending on whether the medical services were provided on an emergency or nonemergency basis.[4]

In the case of "emergency services" an application for medical services when the patient was not hospitalized must be filed "within thirty-one (31) days beginning with the first day of the provision of necessary medical services" and in the case where the patient was hospitalized the application for medical services must be filed "within thirty-one (31) days of the date of admission." I.C. § 31-3505(2), (3).[5] It is clear that a patient does not necessarily have to be "hospitalized" to qualify for emergency medical services.

When a proper and timely application for financial assistance has been filed, the "...county commissioners shall approve an application for financial assistance if it determines that necessary medical services have been ... provided to a medically indigent resident in accordance with this chapter; ..." I.C. § 31-3505B. Therefore, if a patient is indigent and a resident of the county and has timely filed an application for assistance, the county is obligated to pay for the "necessary medical services" provided. Pursuant to I.C. § 31-3502 (18)A, the phrase "necessary medical services" is defined as follows:

> (18) A. "Necessary medical services" means health care services and supplies that:
> (a) Health care providers, exercising prudent clinical judgment, would provide to a person for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms;
> (b) Are in accordance with generally accepted standards of medical practice;
> (c) Are clinically appropriate, in terms of type, frequency, extent, site and duration and are considered effective for the covered person's illness, injury or disease;
> (d) Are not provided primarily for the convenience of the person, physician or other health care provider; and

[4] An "application for nonemergency necessary medical services" must be filed "ten (10) days prior to receiving services" and that "[R]equests for additional treatment related to an original diagnosis in accordance with a preapproved treatment plan shall be filed ten (10) days prior to receiving services. I.C. § 31-3505 (1), (4).

[5] In the event of the need for emergency services, there is obviously no preapproved treatment plan.

(e) Are the most cost-effective service or sequence of services or supplies, and at least as likely to produce equivalent therapeutic or diagnostic results for the person's illness, injury or disease.

Therefore as to what constitutes "necessary medical services" is dependent on the nature of the medical condition; the accepted medical standards for the effective treatment of such a condition; the need for such treatment as opposed to mere convenience; and the most cost-effective method of treatment to achieve a positive outcome for the patient.

B. **Did the Board err when it concluded that the December medical services required the filing of a 10 Day Non-Emergency Application?**

On December 17, 2014 the petitioner filed its 31-Day Emergency Application for financial assistance which covered the November and December medical services provided by the petitioner to M.S. and there is no dispute in the record that the application was filed within 31 days of the first hospitalization and that M.S. was a resident and indigent. There also is no dispute between both Dr. Dammrose and Dr. Schoolfield that the services provided to M.S. by the petitioner were "necessary medical services" and that all of the services provided were directly related to the original diagnosis made on November 23, 2014 when M.S. was first admitted to petitioner's hospital.

The issue in dispute concerns the interpretation of the definition of "emergency services" and the facts of this case. I.C. § 31-3502(12). The term at issue is defined as follows:

(12) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care, including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in:

(a) Placing the patient's health in serious jeopardy;
(b) Serious impairment to bodily functions; or
(c) Serious dysfunction of any bodily organ or part.

The definition mentioned above was adopted by the legislature as part of its 2009 amendments to Title 31, Chapter 35. Prior to the adoption of this amendment to the definition of "emergency services" our courts had found that the definition was not ambiguous. *Sacred Heart Medical Center v. Nez Perce County Commissioners,* 138 Idaho 215, 216, 61 P.3d 572, 573 (2002); *St. Joseph Regional Medical Center v. Nez Perce County Commissioners,* 134 Idaho 486, 5 P.3d 466 (2000).[6]

> The interpretation of a statute is a question of law .... *State v. Maidwell,* 137 Idaho 424, 426, 50 P.3d 439, 441 (2002). The object of statutory interpretation is to derive legislative intent. *State v. Schulz,* 151 Idaho 863, 866, 264 P.3d 970, 973 (2011). Interpretation of a statute begins with the statute's literal words. *State v. Burnight,* 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. *Id.* The Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. *Id.* When the statutory language is unambiguous, courts must give effect to the legislature's clearly expressed intent without engaging in statutory construction. *State v. Rhode,* 133 Idaho 459, 462, 988 P.2d 685, 688 (1999).

*Saint Alphonsus Regional Medical Center v. Gooding County,* 159 Idaho 84, 356 P.3d at 379-380.

While the definition of "emergency services" has been amended, since the court decisions finding it to be unambiguous, the definition as amended remains unambiguous. The definition focuses on the "medical condition" and whether the condition is such as to require "immediate medical care". To assist in this determination of the need for immediate care the legislature has added language to the effect if a person of "average knowledge of health and medicine" would expect that the "absence of immediate medical attention" would cause the patient serious jeopardy, impairment or dysfunction of the health, body or organs of the patient.

In *St. Joseph Regional Medical Center v. Nez Perce County Com'rs, supra.* the Court found that a woman's belief that radio waves controlled her actions called for immediate

[6] The term "emergency services" was previously defined to mean "a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care."

hospitalization—rendering treatment emergent—rather than deferring admission for ten days or directing her to seek outpatient treatment because the treating physician testified that he "had no way of knowing whether [she] would have died from her psychosis had she left the hospital and not been admitted." 134 Idaho 486, 471, 5 P.3d 466, 491 (2000). The testimony provided by the treating physician was not rebutted by the County's expert. *Id.*, 5 P.3d at 491. The Court concluded that the patient's application for indigency benefits for emergency medical services was timely filed because "she clearly was in need of treatment for a psychotic condition that had never been diagnosed and had never been treated before, making her situation an emergent condition." *Id.*, 5 P.3d at 491. Thus the court focused on whether immediate treatment was "more appropriate" than deferring medical action for 10 days in order to allow a non-emergent application absent rebuttal testimony as to such professional determination by an expert.

The decision in *St. Joseph* does not address the issue before this court based on the facts of this case since it does concern a situation where the patient is admitted on an emergency basis, is stabilized and then released from the hospital with follow up treatment or surgery that occurs within the 31 days to file an emergency application. However, in the case of M.S., the opinions expressed by Dr. Schoolfield demonstrate from a medical standpoint as to why the surgery on December 2, 2014 was emergent, given the high risk of a recurrent infection and the associated complications, including death. Dr. Dammrose, on the other hand, while acknowledging the possibility of increased risk to the patient, seems to suggest that any delay in treatment or surgery takes the patient out of the definition of "emergency medical services" based on his interpretation of I.C. § 31-3502(12) and not based on his medical opinion as a medical doctor.

The only other case dealing with definition of emergency medical services is *Sacred Heart Medical Center v. Nez Perce County Com'rs, supra.* The court found as "reasonable" the

Nez Perce County Commissioners' factual finding that Sacred Heart had not provided "immediate medical care" after considering the chronology of events leading up to the patient's surgery at Sacred Heart. *Id.*, 138 Idaho 215, 217, 61 P.3d 572, 574 (2002). The court noted: (1) the patient first heard of needing gallbladder surgery in July 1998 and received surgery the same month in Lewiston, Idaho; (2) the Lewiston surgeon referred the patient to the Rockwood Clinic in Spokane, Washington which referred the patient to Sacred Heart Medical Center in Spokane where she consulted with Dr. Holbrook on August 18, 1998; (3) during the August 18, 1998 consultation Dr. Holbrook set exploratory surgery sixteen days later, on September 2, 1998; (4) between the time of the initial consultation with Dr. Holbrook and the performance of surgery, "there was sufficient time for Sacred Heart Medical Center to file an application for non-emergency medical services." *Id.*, 61 P.3d at 574.

The Court further concluded that the medical records failed to support the Sacred Heart doctor's opinion, provided after surgery on February 25, 1999, that the patient needed "immediate medical care" because he scheduled surgery sixteen days later. *Id.*, 61 P.3d at 574. *The Court noted "[t]he determination of whether surgery is necessary is to be contrasted with whether a patient has received immediate medical care." Id.*, 61 P.3d at 574. (emphasis added) The former may require expert medical testimony to determine; a layperson can determine the latter. *Id.*, 61 P.3d at 574. The *Sacred Heart* decision is somewhat distinguishable, since there was no showing or finding that the gallbladder surgery performed at the hospital in Lewiston was an "emergency" nor was there any application for county assistance for that procedure. Further, the contemplated surgery was "exploratory".

In the case at issue, there is no dispute that when M.S. was admitted to the petitioner's hospital that there was an emergency need for medical treatment. The respondent does not

dispute the need for emergency medical services at the time of admission to petitioner's hospital on November 23, 2014. The dispute between the parties concerns the medical services provided to the patient after he was discharged from the petitioner's hospital on November 25, 2014. The additional medical treatment was received 6 days after his discharge from the hospital and it was 7 days later when the patient underwent medically necessary surgery. The respondent's expert, Dr. Dammrose admits that the December follow up with Dr. Schoolfield and surgery was related to the diagnosis upon his original admittance to the hospital in November and that the December surgery was medically necessary. The Respondent, based on the opinion of Dr. Dammrose, takes the position that since the patient did not have the surgery immediately and was able to wait at least 7 days that there was no "emergency" thereby requiring the filing of a 10-Day Non-Emergency Application prior to his surgery. The Petitioner argues that the emergency continued after discharge of the patient and/or that the legislature did not envision the need for the filing of multiple applications.

As set forth above I.C. § 31-3505 governs the time for the filing of an application for financial assistance. There is no dispute that all of the medical services claimed in the application were provided within the 31 days to file an emergency application. Since a timely emergency application was filed it was then the duty of the respondent to conduct an investigation of the application as to residency, indigency, and medical necessity. I.C. § 31-3505A. Upon the filing of a timely application the county commissioners are required to approve the application for financial assistance provided the county commissioners find that the patient was a "medically indigent resident" and that the patient was provided "necessary medical services". I.C. § 31-3505B.

Within the statutory scheme of Chapter 35, the term "emergency" or "emergency service" only appears within the section for definitions and the section concerning the time for filing an application. I.C. § 31-3502; 31-3505. Statutory language is not to be viewed in a vacuum; this court must construe all of the applicable statutes together to determine legislative intent; and statues should not be construed in a manner that would result in absurd results. *Saint Alphonsus Regional Medical Center v. Gooding County,* 159 Idaho at ___, 356 P.3d at 382. Considering the policy behind Chapter 35 together with the general intent of the legislature, it is clear that whether medical services are provided as an emergency or a nonemergency is only relevant as to the time within which to file an application for assistance. If a patient receives emergency medical care from a treatment provider, the provider then has 31 days to file an application for the necessary medical services provided to the patient based on the presenting medical condition and provided the patient is a resident and is indigent, then the only remaining determination for the obligated county is to approve those medical services which were "necessary medical services".

In this case M.S. was admitted to St. Luke's in Twin Falls on November 23, 2014 for "emergency services". The need for emergency services on November 23, 2014 is not in dispute. M.S. was treated at St. Luke's and was discharged from the hospital on November 25, 2014 because his infection had been stabilized and there was no medical reason to keep him in the hospital as long as he followed his antibiotic regimen. When he was discharged the recommended course of care was to follow up with a surgeon in Boise, because his medical condition required further medical care, including lung surgery.[7] M.S. apparently continued his

[7] Cost-effectiveness is a consideration of "necessary medical services". If the hospital had kept the patient hospitalized when he could have been treated on an outpatient basis pending surgery, the County could have come to the conclusion that hospitalization after November 25 and prior to December 2 was not a "necessary medical service".

antibiotic regimen after his discharge and 6 days later he followed up with Dr. Schoolfield who then determined that lung surgery was medically necessary and performed the same on December 9, 2014. M.S. was then discharged from St. Luke's on December 9, 2014 after successful surgery. Based on the presenting medical condition of M.S. on November 23, 2014, St, Luke's then filed a timely 31 day emergency application for emergency medical services provided to M.S.

Since there was no dispute that M.S. was indigent and a resident of Twin Falls County and given the further fact, that both Dr. Dammrose and Dr. Schoolfield are of the opinion that the December, 2014 medical services were "necessary medical services", the county commissioners abused their discretion when they denied reimbursement for the December 1-9, 2014 medical services provided to M.S. by the petitioner. The abuse of discretion resulted from a misinterpretation of the statutory provisions of Title 31, Chapter 35.

## IV.

## CONCLUSION AND ORDER

For the reasons set forth above, the Petition for Judicial Review is GRANTED and the matter is hereby REMANDED to the Respondent to approve the petitioner's application for financial assistance as to the December 1-9, 2014 medical services provided by the Petitioner.

IT IS SO ORDERED.

DATED this 14 day of December, 2015

John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 14 day of Dec, 2015 a true and correct copy of the foregoing MEMORANDUM DECISION ON JUDICIAL REVIEW was mailed, postage paid, and/or hand-delivered to the following persons:

Mark C. Peterson
Attorney at Law
Moffatt, Thomas, Barrett, Rock
& Fields, Chartered
P.O. Box 829
Boise, Idaho 83701

Melissa J. Kippes
Deputy Prosecutor
Twin Falls County Prosecutor's Office
P.O. Box 126
Twin Falls, Idaho 83303

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | | |
|---|---|---|
| ST. LUKE'S HEALTH SYSTEM,<br><br>Plaintiff,<br><br>vs.<br><br>GEM COUNTY BOARD OF COMMISSIONERS,<br><br>Defendant. | ) | **CASE NO. CV-2017-145**<br><br>ORDER ON JUDICIAL REVIEW |

Before the Court is St. Luke's Petition for Judicial Review of the Gem County Board of Commissioners' determination of approval for an indigent patient as medically necessary and emergent. Pursuant to the Idaho Medical Indigency Act, the County as a payer of last resort shall "pay for necessary medical services for the medically indigent residents of their counties. . ." I.C. § 31-3503(1). The statute defines "medically indigent" as any person who is in need of necessary medical services and is without income and/or other resources available to pay for them. I.C. § 31-3502(17). The Act defines "necessary medical services" as services that are "clinically

appropriate" and "the most cost-effective service" and shall not include "services provided by, or available to, an applicant from state, federal and local health programs." I.C. § 31-3502(18).

The Court carefully reviewed the parties' briefing, the record, and heard oral arguments. Based on the facts of the case, this Court concludes that the Board correctly denied payment for the dates of service that were not medically necessary as statutorily defined by the Medical Indigency Act. Based on the plain language of the statute and the admission of both parties, C.H. was medically stable by February 18 and no longer needed the services of an acute care hospital. The Board's denial did not violate constitutional or statutory provisions, was not in excess of their statutory authority, was not made upon unlawful procedure, was supported by sufficient evidence, and was not an abuse of discretion.

**ORDER**

It is hereby ORDERED, the Board's Amended Determination of Approval for County Assistance is AFFIRMED.

DATED this 18 day of October, 2017.

George A. Southworth
District Judge

## CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of October, 2017, I caused to be served a true and correct copy of the foregoing order by the method indicated below, and addressed to the following persons:

Mark C. Peterson
HAWLEY TROXELL
P.O. Box 1617
Boise, ID 83701
208-344-6000
mpeterson@hawleytroxell.com

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☒ E-Mail

Tahja Jensen
GEM COUNTY PROSECUTOR'S OFFICE
306 E. Main St.
P.O. Box 671
Emmett, ID 83617
208-365-2106

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☒ E-Mail

Shelly Tilton
CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk

Mark C. Peterson, ISB No. 6477
William K. Smith, ISB No. 9769
HAWLEY TROXELL ENNIS & HAWLEY, LLP
877 W. Main Street, Suite 1000
Post Office Box 1617
Boise, Idaho 83701
Telephone (208) 344-6000
Facsimile (208) 954-5929
mpeterson@hawleytroxell.com
wsmith@hawleytroxell.com

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN RE: MEDICAL INDIGENCY APPLICATION OF C.H.
**(Gem County Case No. 16-026),**

ST. LUKE'S HEALTH SYSTEM, LTD.,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO, in their official capacity as the Board of County Commissioners for the County of Gem, State of Idaho,

Respondents.

Case No. CV2017-145

**NOTICE OF APPEAL**

Fee Category: L.4
Filing Fee: $129.00

TO: THE GEM COUNTY BOARD OF COMMISSIONERS, AND ITS COUNSEL OF RECORD IN THE ABOVE-CAPTIONED ACTION, TAHJA JENSEN, GEM COUNTY PROSECUTOR'S OFFICE, 306 E. MAIN ST., P.O. BOX 671, EMMETT, IDAHO 83617, AND THE CLERK OF THE ABOVE-ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, St. Luke's Health System, Ltd. ("Appellant" or "St. Luke's"), appeals against the above-named Respondent, Gem County Board of Commissioners, to the Idaho Supreme Court from the *Order on Judicial Review* entered in the above entitled action on October 11, 2017, the Honorable George A. Southworth, District Judge, presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment, decision and order described in paragraph 1 above are appealable under Idaho Appellate Rules 11(a)(2) and 11(f).

3. A preliminary statement of the issues on appeal which the Appellant intends to assert in the appeal; provided, any such list of issues shall not prevent the Appellant from asserting other issues on appeal, are:

   a. Whether the District Court committed error when it ruled that the Gem County Board of Commissioners did not exceed its statutory authority when it denied St. Luke's compensation under the Idaho Medical Indigency Act for certain dates of service in a medical indigency application;

   b. Whether the District Court committed error when it ruled the Gem County Board of Commissioners correctly denied payment for dates of services where no alternative medical care was available to the patient; and

   c. Whether St. Luke's is entitled to an award of attorney fees.

4. No order has been entered sealing all or any portion of the record.

5. Appellant requests the preparation of the reporter's transcripts in both hard copy and electronic format of the proceeding before the District Court. Pursuant to Idaho Appellate

Rule 25(c), the date and title of the proceeding is: October 10, 2017, hearing on Judicial Review before the Honorable George A. Southworth, Court Reporter Patty Terry. The number of transcript pages estimated is under 100.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 of the Idaho Appellate Rules:

| DATE | DESCRIPTION OF FILING |
|---|---|
| March 6, 2017 | Petition for Judicial Review |
| April 14, 2017 | Settled Agency Record and Agency Transcript |
| May 17, 2017 | St. Luke's Petitioner's Brief |
| June 16, 2017 | Gem County's Respondent's Brief |
| July 7, 2017 | St. Luke's Petitioner's Reply Brief |
| October 11, 2017 | District Court's Order on Judicial Review |

7. The Appellant requests any and all documents, charts, or pictures offered or admitted as exhibits by either party to be copied and sent to the Idaho Supreme Court.

8. I certify:

a. That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below:

Patty Terry
415 E Main St #300
Emmett, ID 83617

b. That Appellant will pay for the preparation of the reporter's transcript once it has received an estimated cost;

c. That Appellant will pay for preparation of the Clerk's Record once it has received an estimated cost;

d. That the appellate filing fee has been paid; and

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 15th day of November, 2017.

HAWLEY TROXELL ENNIS & HAWLEY, LLP

By _____
Mark C. Peterson, , ISB No. 6477
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2017, I caused a true and correct copy of the foregoing NOTICE OF APPEAL to be served by the method indicated below, and addressed to the following:

Patty Terry
Gem County Court House
415 E. Main Street, #300
P.O. Box 671
Emmett, ID 83617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail

Tahja Jensen
Gem County Prosecutor's Office
306 E. Main Street
P.O. Box 671
Emmett, ID 83617

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Facsimile: (208) 365-9411

Mark C. Peterson

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | | |
|---|---|---|
| In Re: Medical Indigency Application of C.H. ( Gem County Case No. 16-026 | ) | |
| Petitioner/Appellant | ) | SUPREME COURT NO. 45614 |
| vs. | ) | |
| | ) | CERTIFICATE OF SERVICE |
| Board of Commisioners of Gem County, Idaho | ) | |
| Respondents, | ) | |

I, Shelly Tilton, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem, do hereby certify that I personally mailed, by United States Mail, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

| Attorney for Appellant | Attorney for Respondent |
|---|---|
| ********** | ********** |
| Mark Peterson | Tahja Jenson |
| Hawley Troxell Ennis & Hawley, LLP | Gem County Prosecutor's Office |
| PO Box 1617 | PO Box 671 |
| Boise, Idaho 83701 | Emmett, Idaho 83617 |

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 13 day of March, 2018.

SHELLY TILTON
Clerk of the District Court

By _____
Deputy Clerk

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | | |
|---|---|---|
| In Re: Medical Indigency Application Of C.H. (Gem County Case No. 16-026) | ) | |
| | ) | Supreme Court No. 45614 |
| Plaintiff/Appellant, | ) | |
| vs. | ) | CERTIFICATE OF EXHIBIT'S |
| Board of Commissioners of Gem County, Idaho, | ) | |
| Defendant/Respondent. | ) | |

I, SHELLY TILTON, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem, do hereby certify the following exhibit was used at the Motion Hearing:

**Plaintiff's/Petitioner's Exhibits:**

**No Exhibits**

**Defendant's Exhibit/Repondent's Exhibits:**

| | | |
|---|---|---|
| **Agency Record** | **Lodged** | **Sent** |
| **Agency Transcript** | **Lodged** | **Sent** |

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Emmett, Idaho this 16th day of April, 2018.

SHELLY TILTON, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Gem,

By _____
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

| | |
|---|---|
| In Re: Medical Indigency Application Of C.H. (Gem County Case No. 16-026) | |
| Plaintiff/Appellant, | Supreme Court No. 45614 |
| vs. | CLERK'S CERTIFICATE |
| Board of Commissioners of Gem County, Idaho, | |
| Defendant/Respondent. | |

I, SHELLY TILTON, Clerk of the District Court of the Third Judicial District, of the State of Idaho, in and for the County of Gem, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including all documents filed or lodged as requested in the Notice of Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Emmett, Idaho, this 16th day of April, 2018.

SHELLY TILTON
Clerk of the District Court

By _____
Deputy Clerk