6-27-2018

Re: Medical Indigency Application of C.H. Respondent's Brief 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),

ST. LUKE'S HEALTH SYSTEM, LTD.,

Appellant,

v.

BOARD OF COMMISSIONERS OF GEM COUNTY, IDAHO,

Respondent.

Supreme Court Docket No. 45614

Case No. CV-2017-145

RESPONDENT'S BRIEF

Appeal from the District Court of the
Third Judicial District for Gem County

Honorable George A. Southworth, District Judge, Presiding

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I. STATEMENT OF THE CASE

A. Statement 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 Appellant 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 appeals dates of services, February 19, 2016 through March 9, 2016, that the County denied because they were not "necessary medical services" under the Act.

B. Factual Summary & Procedural History

On January 26, 2016, the Patient was found unconscious in her Emmett, Idaho, home and was transported via ambulance to Valor Health in Emmett. Agency Record ("AR") at 19[1]. 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

[1] The Agency Record (herein referred to as "AR") and the Agency Transcript (herein referred to as "Agency Tr") are lodged with the Clerks Record ("R") as exhibits. *See* R. at 85.

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* Agency 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. Agency 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. Agency 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?" Agency 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. The parties briefed the matter and submitted briefing to the district court for consideration. *See* R. 3-58. The matter was heard before the District Court, Honorable George A. Southworth presiding, on October 10, 2017. R. at 2. Judge Southworth upheld the County's decision to deny dates of service February 19 through March 9, 2016. An Order on Judicial Review was filed October 11, 2017. R. at 76.

II. 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 Commr's 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.*

In a case where the statute is clear and unambiguous, the court need not engage in statutory construction but rather apply the plain meaning of the statute. *Porter v. Bd. of Trustees, Preston Sch. Dist. No. 201*, 141 Idaho, 11, 14, 105 P.3d 671, 674 (2004); *BHC Intermountain Hosp., Inc. v. Ada Cnty*, 150 Idaho 93, 95-96, 244 P.3d 237, 239 (2010). The court is to apply the law as written and as it pertains to the facts of the case at hand. *Id.* "If it is necessary for [a] Court to interpret a statute, the Court will attempt to ascertain legislative intent, and in construing a statute, may examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute." *St. Luke's Reg'l Med'l Ctr., Ltd. v. Bd. Of Comm'rs of Ada Cnty*, 146 Idaho 753, 755, 203 P.3d 683, 685 (2009) (citing *Kelso & Irwin, P.A. v. State Insur. Fund*, 13 Idaho 130, 134, 997 P2d 591, 595 (2000)).

III. 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" as of February 18, 2016, and that treatment at a lower level of care would be appropriate from a clinical standpoint. *See Appellant's Opening Brief* at 2.

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 Appellant's Opening Brief* at 16, 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 plain 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). *See* Tr., p. 30, ll. 8-11.

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 dates of service 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 and that care and dates of service would not be covered under the Act.

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 "unambiguously clear." *See Appellant's Opening Brief* at 9. If the legislature wanted to require the County to consider whether alternative service options **are** actually available to the hospital as St. Luke's entire argument suggests, they could have put that in the statute. *See Appellant's Opening Brief* at 11. 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. Agency Tr. at 8. According to the testimony at hearing, 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. Agency Tr. at pp. 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. The District Court agreed with the County and "refuse[d] to find that it was the county's obligation to find alternative care as there's no obligation requiring that of the counties contained in the medical indigency statute." Tr., p. 37, ll. 11-15. It is the responsibility of the hospital or the patient or the patient's family, where available, to seek out arrangements for such care. This logically follows that the costs of failing to secure the most cost effective care 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. Agency 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. Agency Tr. at pp. 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 limits 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. The District Court agreed that this instant case is distinguishable from the *St. Joseph* decision. *See* Tr., p. 28, ll. 18-24.

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). "If [the] statute is not ambiguous, the Court does not construe the statute, but rather, simply follows the law as written." *State v. Montgomery*, 163 Idaho 40, 408 P.3d 38, 42 (2017) (relying on *Verska v. Sain Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011)). Idaho Code Title 31, Chapter 35 requires application of limitations enumerated therein.

The statute, as written, requires the County to determine payment only for "medically necessary services." IDAHO CODE § 31-3502(18). First, medically necessary services must be those services must be "the most cost-effective service or sequence of services or supplies…" Id. Here, the treatment provided from February 19 to March 9, 2016 was not the most cost-effective service. And second, what St. Luke's contends would have been the most cost-effective service—transfer to a skilled nursing facility—is specifically enumerated as not "medically necessary services" pursuant to subpart B of Idaho Code § 31-3502(18). The dates of service

February 19 to March 9, 2016 are simply not care that the County could approve for payment under the Act.

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. The District Court understood that the County is burdened with "paying emergency costs for its indigent citizens and necessary costs" but not "intended to take long-term rehabilitative care." Tr., p. 35, ll. 8-12.

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"). In this case, this precise issue has not previously been litigated. *See* Tr., p. 37, ll. 20-21. Using the *Osborn* standard, St. Luke's is not entitled to attorney fees on appeal.

IV. 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 District Court affirmed the County's decision in the denial. The County's denial should be affirmed.

DATED this 27th day of June, 2018.

GEM COUNTY PROSECUTING ATTORNEY

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2018, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served by the method indicated below, and addressed to the following:

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