

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Weatherbee ex rel. Vecchio v. Richman

351 F. App'x 786 (3d Cir. 2009) · Decided November 12, 2009

SUMMARY

The Third Circuit affirmed the District Court's ruling that an annuity purchased by a community spouse did not constitute a countable resource for purposes of the institutionalized spouse's Medicaid eligibility. The court held that the federal Medicaid statutes preempted a more restrictive Pennsylvania statute and rejected the Department of Public Welfare's argument that the annuity could be treated as a resource because it might be sold on a secondary market. The court also concluded that any lack of notice regarding conversion of the motion to dismiss into summary judgment was harmless.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Nygaard, Circuit Judge; Fisher; Nygaard; Smith
JURISDICTION	Federal
DECIDED	November 12, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the District Court's denial of the Pennsylvania Department of Welfare's motion to dismiss, conversion of that motion into a motion for summary judgment, entry of relief precluding denial of Medicaid benefits to Weatherbee, and closure of the case.
STANDARD OF REVIEW	The court reviewed the District Court's legal conclusions concerning Medicaid eligibility and preemption; it evaluated any notice error in converting the motion to dismiss into summary judgment for harmlessness and prejudice.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Pennsylvania Department of Welfare v. Theodore E. Weatherbee, ex rel. Cheryl L. Vecchio

TOPICS

medicare medicaid

statutory interpretation

federalism

summary judgment

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an annuity purchased by the community spouse could be treated as a resource under federal Medicaid law to deny the institutionalized spouse eligibility for benefits.
2. Whether Pennsylvania's statute narrowing the annuity exemption was preempted because it imposed eligibility requirements more restrictive than federal Medicaid law.
3. Whether the District Court erred by converting the Department's motion to dismiss into a motion for summary judgment without sufficient notice, and, if so, whether the error was prejudicial.

HOLDINGS

1. An annuity that otherwise complies with federal law and exchanges a resource for guaranteed income cannot be treated as a resource under 42 U.S.C. § 1396p(e)(4) to deny Medicaid eligibility.
2. Pennsylvania's statute, 62 P.S. § 441.6(b), was preempted because it narrowed the federal annuity exemption and imposed an eligibility restriction inconsistent with federal Medicaid law.
3. Even assuming the District Court erred by failing to provide sufficient notice before converting the motion to dismiss into a motion for summary judgment, reversal was unwarranted because the Department failed to show prejudice and any error was harmless.

KEY QUOTATIONS

“We find that the District Court properly stated that the changes brought about by the Deficit Reduction Act are not ambiguous and must be read within the larger context of the longstanding rule that community spouse income is not available to an institutionalized spouse.” (787)

“The eligibility requirements established by the states may be more liberal than those of the Federal government, but they may not be more restrictive.” (788)

FACTUAL BACKGROUND

The community spouse purchased an annuity in connection with an institutionalized spouse's application for Medicaid long-term-care benefits. The Pennsylvania Department of Welfare treated the annuity as a resource and denied eligibility, relying in part on a Pennsylvania statute and on the possibility that the annuity could be sold on a secondary market. The District Court concluded that the annuity provided guaranteed income rather than an available resource and that the state restriction conflicted with federal Medicaid law.

PROCEDURAL HISTORY

Weatherbee sought declaratory and injunctive relief concerning Medicaid eligibility. After a hearing, the District Court converted the Department's motion to dismiss into a motion for summary judgment, denied the motion, precluded the Department from denying benefits based on the annuity, and closed the case. The Department appealed, challenging the Medicaid treatment of the annuity and the adequacy of notice before conversion to summary judgment.

DISPOSITION

affirmed

CASES CITED

- James v. Richman, 547 F.3d 214, 218 (3d Cir. 2008)
- In re Rockefeller Center Properties, Inc. Securities Litigation, 184 F.3d 280, 288 (3d Cir. 1999)

OPINION

NYGAARD, J.

OPINION OF THE COURT NYGAARD, Circuit Judge. This cause was raised by Theodore Weatherbee as a complaint for declaratory judgment and injunctive relief. Following a hearing on the Pennsylvania Department of Welfare’s motion to dismiss, the District Court: converted the motion to dismiss into summary judgment; denied the motion; precluded the Department from denying Medicaid benefits to Weatherbee; and, closed the case.

The facts and procedures are well known to the parties and are discussed in the District Court’s opinion. Hence, we will not reiterate them here. Two basic issues are raised on appeal. The Department of Public Welfare asserts that the annuity purchased by the community spouse in this case is properly regarded as a “resource” for purposes of Medicaid eligibility, and is therefore a proper basis to deny Weatherbee benefits under the Medical Assistance Long-Term Care program.

The Department also argues that the District Court did not provide sufficient notice of its conversion of the motion to dismiss into summary judgment, prejudicing its case. 42 U.S.C. § 1396p generally governs the transfer of assets by Medicaid applicants and their spouses.

We find that the District Court properly stated that the changes brought about by the Deficit Reduction Act are not ambiguous and must be read within the larger context of the longstanding rule that community spouse income is not available to an institutionalized spouse. 42 U.S.C. § 1396r-5.

Therefore, contrary to the Department’s interpretation, § 1396p(e)(4) cannot be regarded as a basis by which it may deny eligibility for benefits where the annuity otherwise complies with the law. In this case it is clear that the community spouse gave up a “resource” in exchange for a guaranteed “income,” as it is defined in 42 U.S.C. § 1382a(2)(B).

Moreover, the Department of Welfare’s assertion that the annuity is a resource because it could be sold on a secondary market is fundamentally flawed. As we stated in a prior decision, impediments to a transfer that may incur legal liability for the owner of the asset preclude consideration of that asset as a resource. James v. Richman, 547 F.3d 214, 218 (3d Cir.2008). *788Finally, we agree with the District Court that the state law referenced by the Department is preempted.

States that elect to participate in the Medicaid program must comply with eligibility requirements set by the Federal government. 42 U.S.C. § 1396(a)(10)(C)(i). The eligibility requirements established by the states may be more liberal than those of the Federal government, but they may not be more restrictive. 42 U.S.C. 1396(a)(10)(C)(i)(III).

In this case, the Department of Welfare argues that it may rely on 62 P.S. § 441.6(b) to substantiate its decision to deny benefits. However, we read the statute as narrowing the annuity exemption from Medicaid eligibility analysis, and therefore conclude that the District Court properly regarded this state statute as conflicting with federal law.

The District Court did not err in ruling that 62 P.S. § 441.6(b) is preempted. For all of these reasons, the District Court did not err in finding that the Department of Welfare improperly denied Weatherbee eligibility for Medicaid benefits. With regard to the District Court's handling of the Department of Welfare's Motion to Dismiss, the Department argues that the District Court did not provide sufficient notice of its intent to convert the motion to dismiss into a motion for summary judgment.

A district court must provide the parties "'reasonable opportunity' to present all material relevant to a summary judgment motion." *In re Rockefeller Center Properties, Inc. Securities Litigation*, 184 F.3d 280, 288 (3d Cir.1999), (citing Fed.R.Civ.P. 12(b)).

However, a failure to provide proper notice is not cause for reversal where the error is harmless. *Id.* The Department of Welfare claims prejudice on the basis that it was not able to break down the annuity to determine the portion that was income and the portion that was "resource." This calculation is irrelevant to the holding.

The Department also claims that it was not able to gather other guidance from the Centers for Medicare and Medicaid Services that might have been instructive or clarifying in its case. However, the Department fails to state that such guidance actually existed, and provides us with no reason to believe that it would have been decisive, given that the guidance proffered by the Department and considered by the District Court essentially restates the provisions of the statute.

Moreover, Weatherbee correctly notes that the Department had fifteen months to prepare for argument on its motion to dismiss. For these reasons, even were we to conclude that the District Court erred, we find that the Department was not prejudiced.

For all of these reasons, we will affirm the order of the District Court.