**SUPREME COURT OF APPEALS OF WEST VIRGINIA**

# Coordinating Council for Independent Living, Inc. v. Palmer, 209 W. Va. 274

546 S.E.2d 454 (2001) · No. No. 28666 · Decided April 30, 2001

## SUMMARY

The Supreme Court of Appeals of West Virginia held that the state's health care services provider privilege tax did not apply to homemaker and case management services provided under the Aged/Disabled Home and Community-Based Services Waiver Program. The court construed the ambiguous tax statute in favor of the taxpayers and affirmed an injunction against enforcement. It also held that the Tax Commissioner's attempt to impose the tax through a letter constituted an improperly promulgated agency rule under the Administrative Procedures Act.

## CASE DETAILS

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| COURT | Supreme Court of Appeals of West Virginia |
| WRITING FOR THE COURT | Davis, Justice |
| JURISDICTION | West Virginia |
| DECIDED | April 30, 2001 |
| DOCKET | No. 28666 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | The State Tax Commissioner appealed the Kanawha County Circuit Court's order enjoining enforcement of the West Virginia health care services provider privilege tax against the appellees' homemaker and case management services and declaring the Commissioner's enforcement letter void for failure to comply with the Administrative Procedures Act. |
| STANDARD OF REVIEW | Questions of law, including statutory interpretation and interpretation of an administrative rule or regulation, are reviewed de novo. Under the general standard, the final order and ultimate disposition are reviewed for abuse of discretion and underlying factual findings for clear error. |
| PRECEDENTIAL VALUE | Published West Virginia Supreme Court of Appeals opinion; precedential. |

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| **PARTIES** | The Honorable Joseph M. Palmer, State Tax Commissioner v. The Coordinating Council for Independent Living, Inc., Pro Careers, Inc., Alternate Care, Inc., American Homecare Services, Inc., Braley and Thompson, Inc., Catholic Community Services, Inc., Health Consultants Plus, Inc., Mountain State Home Health Care, Inc., Wyoming County Opportunity Workshop, Inc., Companion Care Corporation |

## TOPICS

tax · sales and use tax · statutory interpretation · administrative procedure act · rulemaking

## PRACTICE AREAS

tax · administrative law · health law

## QUESTIONS PRESENTED

1. Whether the privilege tax imposed by West Virginia Code § 11-13A-3 applies to homemaker and case management services provided pursuant to the Aged/Disabled Home and Community-Based Services Waiver Program.
2. Whether the Tax Commissioner's March 3, 1998, letter announcing a new tax-enforcement policy constituted an agency rule subject to the Administrative Procedures Act's rulemaking requirements.

## HOLDINGS

1. The privilege tax imposed by West Virginia Code § 11-13A-3 does not apply to case management services supplied pursuant to the Aged/Disabled Home and Community-Based Services Waiver Program.
2. The privilege tax imposed by West Virginia Code § 11-13A-3 does not apply to homemaker services provided pursuant to the Aged/Disabled Home and Community-Based Services Waiver Program, absent further legislative clarification.
3. The Commissioner's letter constituted an agency rule because it established a generally applicable policy affecting private rights and interpreted and implemented tax laws. Because it was not promulgated under the Administrative Procedures Act, the attempted tax enforcement was void and ineffective.

## KEY QUOTATIONS

> *"Therefore, we hold that the privilege tax levied upon health care services providers through W. Va.Code § 11-13A-3 (1997) (Repl.Vol. 1999) does not apply to "case management services" supplied pursuant to the Aged/Disabled Home and Community-Based Services Waiver Program."* (463)

> *"Accordingly, we hold that "homemaker services" provided pursuant to the Aged/Disabled Home and Community-Based Services Waiver Program are not subject to the health care providers privilege tax levied by W. Va.Code § 11-13A-3 (1997) (Repl.Vol. 1999)."* (463)

> *“Because the Commissioner's stated policy did not follow the requisite mandates for formal proposal, approval, adoption, etc., see id., his attempted enforcement of the health care services providers tax was void and ineffective.”* (464)

### FACTUAL BACKGROUND

The appellees provide homemaker and case management services through West Virginia's Aged/Disabled Home and Community-Based Services Waiver Program, which is funded by state and federal Medicaid funds. West Virginia imposed a privilege tax on certain health care services in 1993, but the appellees were not taxed and refunds were issued for several years. In 1998, the Tax Commissioner changed course and issued a letter announcing that all services provided pursuant to a plan of care, including nonmedical services, would be taxed.

### PROCEDURAL HISTORY

The appellees filed an action in the Circuit Court of Kanawha County challenging the applicability of the health care services provider tax after the Tax Commissioner issued a March 3, 1998, letter stating that Medicaid waiver providers' medical and nonmedical services would be taxed prospectively. The circuit court declared that the tax did not apply to the appellees' services, enjoined enforcement, and held that the Commissioner's letter constituted an improperly promulgated rule. The Supreme Court of Appeals of West Virginia affirmed.

### DISPOSITION

affirmed

### CASES CITED

- Walker v. West Virginia Ethics Commission, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Appalachian Power Co. v. State Tax Department of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995)
- Smith v. State Workmen's Compensation Commissioner, 159 W. Va. 108, 219 S.E.2d 361 (1975)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- Farley v. Buckalew, 186 W. Va. 693, 414 S.E.2d 454 (1992)
- Ohio County Commission v. Manchin, 171 W. Va. 552, 301 S.E.2d 183 (1983)
- State ex rel. Lambert v. Carman, 145 W. Va. 635, 116 S.E.2d 265 (1960)
- Baton Coal Co. v. Battle, 151 W. Va. 519, 153 S.E.2d 522 (1967)
- Calhoun County Assessor v. Consolidated Gas Supply Corp., 178 W. Va. 230, 358 S.E.2d 791 (1987)
- Ohio Cellular RSA Ltd. Partnership v. Board of Public Works of West Virginia, 198 W. Va. 416, 481 S.E.2d 722 (1996)
- State ex rel. Roy Allen S. v. Stone, 196 W. Va. 624, 474 S.E.2d 554 (1996)
- State v. General Daniel Morgan Post No. 548, V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959)
- Miners in General Group v. Hix, 123 W. Va. 637, 17 S.E.2d 810 (1941)
- Lee-Norse Co. v. Rutledge, 170 W. Va. 162, 291 S.E.2d 477 (1982)

- Wheeling Barber College v. Roush, 174 W. Va. 43, 321 S.E.2d 694 (1984)

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