

MISSOURI COURT OF APPEALS

Kabir v. Missouri Department of Social Services

782 S.W.2d 706 (Mo. App. 1990) · Decided November 21, 1989

SUMMARY

The Missouri Court of Appeals reviewed the reversal of an Administrative Hearing Commission decision concerning Dr. Mohammed A. Kabir’s termination from the Missouri Medicaid Physician’s Service program. The court held that the Department of Social Services failed to comply with its own regulations by using an unauthorized, nonrandom claims review methodology and by failing to provide the required notice of deficiencies. The court reversed the circuit court’s judgment and remanded with instructions to reinstate the Commission’s decision.

CASE DETAILS

COURT	Missouri Court of Appeals
WRITING FOR THE COURT	Berrey, Presiding Judge; Berrey; Turnage; Ulrich
JURISDICTION	Missouri
DECIDED	November 21, 1989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Dr. Kabir appealed the circuit court's reversal of an Administrative Hearing Commission decision that had found his termination from the Missouri Medicaid Physician's Service program improper.
STANDARD OF REVIEW	The court reviewed the AHC decision for excess of agency jurisdiction, lack of competent and substantial evidence on the whole record, or arbitrary, capricious, or unreasonable action, viewing the decision in the light most favorable to the AHC decision and all reasonable inferences supporting it.
PRECEDENTIAL VALUE	Published Missouri Court of Appeals opinion; precedential value not otherwise specified in the source.
PARTIES	Mohammed A. Kabir, M.D. v. Missouri Department of Social Services

TOPICS

- medicare medicaid
- administrative law
- agency adjudication
- judicial review of agency action
- appellate procedure

PRACTICE AREAS

administrative law

health law

Medicaid provider regulation

appellate procedure

QUESTIONS PRESENTED

1. Whether the Department of Social Services could terminate Dr. Kabir's Medicaid participation based on a targeted, nonrandom review that did not follow the statistical sampling method required by its regulations.
2. Whether the Department's failure to provide the required ten-day written notice before termination prejudiced Dr. Kabir and invalidated the termination.
3. Whether the AHC improperly shifted the burden of proof to the Department when it reopened the hearing to permit Dr. Kabir to present evidence.

HOLDINGS

1. The Department was required to follow its own regulatory statistical sampling methodology and could not substitute an unauthorized targeted review of thirteen files. The resulting termination was improper.
2. The Department's failure to provide the required ten-day written notice prejudiced Dr. Kabir and was an additional reason the termination was improper.
3. The AHC did not improperly shift the burden of proof to the Department.

KEY QUOTATIONS

“Administrative agencies, just as the general public, are bound by the terms of rules promulgated by them.”
(at 708)

“It is difficult to comprehend how respondent can claim that Dr. Kabir was not prejudiced by the very limited review done by Special Agent Dye.” (at 709)

FACTUAL BACKGROUND

The Missouri Department of Social Services reviewed Dr. Kabir's Medicaid claims and previously identified an overpayment, after which the parties entered into a 1984 agreement concerning claim submissions. In 1985, a Department investigator reviewed a targeted, nonrandom sample of thirteen patient records and recommended termination of Kabir's Medicaid participation. The Department terminated him without providing the written ten-day notice required by its regulations, and the AHC later found the termination improper after considering evidence from both the Department and Kabir's expert.

PROCEDURAL HISTORY

The Missouri Department of Social Services terminated Dr. Kabir's Medicaid participation after an investigator reviewed a nonrandom sample of thirteen patient records and recommended termination. The Administrative Hearing Commission found the termination improper because the Department failed to follow the applicable sampling methodology and notice requirements. The circuit court reversed the AHC. The Missouri Court of

Appeals reviewed the agency decision rather than the circuit court judgment, reversed the circuit court, and remanded with instructions to reinstate the AHC decision.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court was directed to reinstate the decision of the Administrative Hearing Commission.

CASES CITED

- Welty v. State Board of Chiropractic Examiners, 759 S.W.2d 295, 297-98 (Mo. App. 1988)
- Berry v. Moorman Mfg. Co., 675 S.W.2d 131, 134 (Mo. App. 1984)
- Citizens For Rural Preservation, Inc. v. Robinett, 648 S.W.2d 117, 128 (Mo. App. 1983)
- Missouri National Education Assoc. v. Missouri State Board of Mediation, 695 S.W.2d 894, 897 (Mo. banc 1985)