SUPREME COURT OF NEBRASKA

Winslow v. State ex rel. Peterson

303 Neb. 24 (2019) · No. No. S-18-181 · Decided May 3, 2019

SUMMARY

The Nebraska Supreme Court affirmed the denial of Medicaid benefits to LaVeta Winslow based on excess resources, including a house held by her revocable trust. The court held that the property was no longer exempt as Winslow’s home and that DHHS was required to provide an Agreement to Sell Real Estate and Repay Assistance form once it determined that Winslow had authority to liquidate the property and would otherwise satisfy the resource limit. Because Winslow’s September 2016 application was properly denied under the applicable regulations, the district court’s judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	May 3, 2019
DOCKET	No. S-18-181
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Lancaster County District Court's order affirming the Nebraska Department of Health and Human Services' denial of Winslow's September 2016 application for Medicaid benefits.
STANDARD OF REVIEW	Under the Nebraska Administrative Procedure Act, the appellate court reviews the district court's judgment for errors appearing on the record. The inquiry is whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Whether a decision conforms to law is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	LaVeta Winslow, by and through her designated authorized representative The Evangelical Lutheran Good Samaritan Society -

Superior v. State of Nebraska ex rel. Douglas Peterson, Attorney General, Department of Health and Human Services

TOPICS

judicial review of agency action | administrative law | medicare medicaid | trust administration | appellate procedure

PRACTICE AREAS

administrative law | health law | Medicaid eligibility | trusts

QUESTIONS PRESENTED

1. Whether the Mankato house qualified as Winslow's exempt home for purposes of her September 2016 Medicaid application.
2. Whether property held by Winslow's revocable trust could qualify for the other-real-property liquidation exception when Winslow had authority to liquidate it.
3. Whether DHHS was required to provide Winslow an IM-1 form before December 30, 2016, based on the information available concerning her other resources.

HOLDINGS

1. The Mankato house was not Winslow's home for Medicaid eligibility purposes because she had resided in a nursing facility beyond the regulatory six-month period and the house was no longer her principal place of residence.
2. Real property held by a revocable trust may qualify for the six-month liquidation exception if it is an available resource and the applicant has legal authority to liquidate it; the applicant need not hold title in her individual name.
3. DHHS was required to provide an IM-1 form once it had sufficient information that Winslow had authority to liquidate the property and would be under the resource limit if the house were excluded. However, the record did not establish that DHHS had sufficient information about Winslow's other resources before December 30, 2016, so DHHS was not required to provide the form earlier on this record.

KEY QUOTATIONS

> *"if an applicant is determined to possess real property that is not subject to the home exemption and is considered an available resource, DHHS is required to make available an IM-1 form to the applicant provided that (1) the applicant has authority to liquidate the property and (2) the applicant would be under the available resource limit if the property is excluded from consideration."* (303 Neb. at 36-37)

> *"Thus, real property held by a revocable trust which is determined to be an available resource may be eligible for the 6-month exception if the applicant has authority to liquidate the property."* (303 Neb. at 38-39)

FACTUAL BACKGROUND

Winslow, a resident of a skilled nursing facility, applied for Medicaid in September 2016. Her assets included a house in Mankato, Kansas, owned by her revocable living trust; she had not resided there except for occasional visits since moving to the facility in October 2015. The trust gave Winslow authority to revoke the trust, remove property, and deal with trust real estate, and DHHS had the trust document before deciding her application. DHHS nevertheless counted the house as an available resource and did not provide an IM-1 form until after the property was transferred to Winslow individually; Winslow signed the form on December 30, 2016.

PROCEDURAL HISTORY

DHHS denied Winslow Medicaid benefits after determining that her available resources exceeded the $4,000 limit, including a house held by her revocable living trust. After an administrative hearing, the interim director of DHHS affirmed the denial. The Lancaster County District Court affirmed, and Winslow appealed to the Nebraska Supreme Court, which affirmed the judgment while rejecting the district court's reasoning that Winslow lacked authority to liquidate property held by the trust.

DISPOSITION

affirmed

CASES CITED

- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Donna G. v. Nebraska Department of Health & Human Services, 301 Neb. 838, 920 N.W.2d 668 (2018)
- In re Estate of Vollmann, 296 Neb. 659, 896 N.W.2d 576 (2017)
- Pohlmann v. Nebraska Department of Health & Human Services, 271 Neb. 272, 710 N.W.2d 639 (2006)
- Boruch v. Nebraska Department of Health & Human Services, 11 Neb. Ct. App. 713, 659 N.W.2d 848 (2003)
- Gridiron Management Group v. Travelers Indemnity Co., 286 Neb. 901, 839 N.W.2d 324 (2013)