

SUPREME COURT OF NEBRASKA

Merie B. on behalf of Brayden O. v. State of Nebraska Department of Health and Human Services and Vivianne M. Chaumont, director of Division of Medicaid and Long Term Care, Department of Health and Human Services

290 Neb. 919 (2015) · No. No. S-14-007 · Decided May 22, 2015

SUMMARY

The Nebraska Supreme Court reviewed the termination of home and community-based waiver services for Brayden O., a minor with Coffin-Lowry Syndrome. The court held that the Nebraska Department of Health and Human Services was required to apply the nursing-facility level-of-care criteria in 471 NAC 12-000, rather than relying on the child-specific assessment provisions in 480 NAC 5-003.B. The court reversed the district court’s judgment and remanded with directions.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	May 22, 2015
DOCKET	No. S-14-007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Lancaster County District Court judgment affirming the Nebraska Department of Health and Human Services' administrative decision terminating Brayden O.'s home and community-based waiver services.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the Supreme Court reviews the district court's judgment or final order for errors appearing on the record, asking whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Questions of law and statutory or regulatory interpretation are reviewed independently for a correct conclusion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES

Merie B. on behalf of Brayden O. v. State of Nebraska Department of Health and Human Services, Vivianne M. Chaumont, director of Division of Medicaid and Long Term Care, Department of Health and Human Services

TOPICS

judicial review of agency action

administrative law

medicare medicaid

statutory interpretation

plain meaning rule

PRACTICE AREAS

administrative law

Medicaid

health law

appellate procedure

QUESTIONS PRESENTED

1. Whether DHHS used the legally correct Nebraska Administrative Code criteria to determine Brayden's nursing-facility level of care and eligibility for home and community-based waiver services.
2. Whether DHHS's assessment instrument, Exhibit 4, lawfully and rationally implemented the governing regulations.
3. Whether Brayden met the applicable nursing-facility level-of-care criteria for waiver services.

HOLDINGS

1. The nursing-facility level-of-care criteria in 471 Neb. Admin. Code, ch. 12, including the specified assessment categories and required number of limitations, apply to all waiver-service clients, including children. The child-specific provisions in 480 Neb. Admin. Code, ch. 5, § 003.B do not alter or supersede those criteria.
2. DHHS's creation and use of Exhibit 4 was unlawful because it failed to apply the required title 471 criteria and arbitrarily imposed more restrictive eligibility requirements on disabled children.
3. Brayden met the nursing-facility level-of-care requirement because she had limitations in at least three activities of daily living and at least one cognition factor.

KEY QUOTATIONS

“We conclude that the correct NF level of care criteria to be applied to all persons—aged persons, adults, and children—are set forth in 471 NAC 12-000, which title 480 incorporates by express reference in chapter 5, § 002.” (at 935)

“Consequently, DHHS should have found that Brayden met the NF level of care for waiver services.” (at 942)

“We reverse the judgment of the district court, which affirmed DHHS’ revocation of Brayden’s waiver service benefits, and remand the cause with directions that the district court order DHHS to reinstate Brayden’s waiver services effective November 11, 2012.” (at 942)

FACTUAL BACKGROUND

Brayden O., a minor with Coffin-Lowry Syndrome and profound cognitive, medical, and functional limitations, had received home and community-based waiver services since 2001. After a 2012 reassessment, DHHS determined that she no longer met the eligibility criteria and terminated her services, relying on an assessment instrument that used restrictive criteria derived from regulations concerning children with disabilities. The reassessment did not substantially account for several cognition and risk-factor limitations, despite Brayden's continuing dependence in multiple activities of daily living and need for constant supervision.

PROCEDURAL HISTORY

DHHS reassessed Brayden's eligibility and terminated her waiver services effective November 11, 2012. After an administrative appeal, DHHS upheld the termination. The Lancaster County District Court affirmed on judicial review, and Merie B. appealed to the Nebraska Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to order DHHS to reinstate Brayden's waiver services effective November 11, 2012.

CASES CITED

- Nebraska Account. & Disclosure Comm. v. Skinner, 288 Neb. 804, 853 N.W.2d 1 (2014)
- Middle Niobrara NRD v. Department of Natural Resources, 281 Neb. 634, 799 N.W.2d 305 (2011)
- Hooper v. Freedom Financial Group, 280 Neb. 111, 784 N.W.2d 437 (2010)
- Watkins v. Watkins, 285 Neb. 693, 829 N.W.2d 643 (2013)
- In re Interest of Nedhal A., 289 Neb. 711, 856 N.W.2d 565 (2014)

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