

November 28, 2016

## NC APPELLATE COURT INTERPRETS FEDERAL SSI STATUTES TO EXCLUDE WCMSA FUNDS AS COUNTABLE RESOURCES FOR MEDICAID DETERMINATIONS<sup>i</sup>

On November 15, 2016, the Court of Appeals of North Carolina held that a Medicaid recipient's Workers' Compensation Medicare Set-Aside (WCMSA) account was not a countable asset for determining Medicaid eligibility. A trial court previously affirmed a decision from the North Carolina Department of Health and Human Services (DHHS) and its Division of Medical Assistance (DMA) that terminated Phoebe Williford's entitlement to Medicaid benefits based upon funds in her WCMSA account.

Ms. Williford was injured in a workplace accident in 2005 and settled the claim in 2011. When Williford turned 65 in 2009, she applied for and was awarded Medicaid benefits. North Carolina limits age-based Medicaid recipients to those with less than \$2,000 in countable assets. Pursuant to the 2011 settlement agreement, which was approved by the North Carolina Industrial Commission, \$46,484 was allocated into a standard MSA account that would be administered by Williford.

In December, 2013, a hearing officer for the Sampson County Department of Social Services issued a decision terminating Williford's Medicaid benefits on the grounds that the WCMSA account, which held approximately \$46,630 at the time, was a countable resource. DHHS issued a final decision in July of 2014 upholding that decision. In February, 2016, the trial court affirmed DHHS's decision.

Williford appealed to the Appellate Court, which applied a *de novo* standard in reviewing the legal issue. As a condition of Medicaid participation, states must comply with federal law, and North Carolina has incorporated all of the federal Social Security provisions by statute. The DMA is authorized to adopt rules to implement or define federal laws and regulations, including conditions for Medicaid eligibility. DMA provided that eligibility would be based upon the standards and methods in Title XVI of the Social Security Act. Thus, in North Carolina, Medicaid eligibility is determined by the requirements for federal Supplemental Security Income (SSI). For purposes of SSI eligibility, countable assets are "cash or other liquid assets . . . that an individual . . . owns and could convert to cash to be used for his or her support and maintenance . . . [And] if the individual has the right, authority or power to liquidate the property . . . it is considered a resource." 20 C.F.R. 416.120(a)(1).di

SSA also issues a Program Operations Manual System (POMS) for guidance. POMS incorporates the definition above, but specifies that "resources" are funds that the individual "is not *legally restricted from using for [her] support and maintenance.*" POMS SI 01110.100B (emphasis added). Similarly, B.2 states that the "individual must have a *legal right* to access property . . . [and] property cannot be a resource if the owner lacks the *legal ability* to access funds." (emphasis added). According to POMS, SSA's general rule is that assets are not includable if the

individual does not have the legal right, authority or power to liquidate them or the legal right to use the assets for their support and maintenance. POMS also provides several examples of non-countable resources. One example is where an applicant is awarded damages limited to medical expenses related to an accident. In this situation, the applicant owns the funds and has direct access to them, but they are not legally free to use them for their own support and maintenance, and therefore they are neither income nor a resource.

The Appellate Court held that the federal SSI standards, which DMA has adopted, require that assets be legally available to the applicant without legal restriction on their authority to use for their support and maintenance. The Court concluded that the "right, authority or power to liquidate" in the CFR refers to the legal right or authority to access funds. The Court quoted the Northern District of the Eight Circuit:

"We think the regulation naturally refers to a legal right, authority, or power to liquidate. What other sort of right or power would be at issue? If the regulation merely referred to a raw power to liquidate -- even in breach of the contract or violation of law -- it would impose virtually no limitation, for a pair of unscrupulous actors can reduce almost anything of value to a dollar amount."  
*Geston v. Anderson*, 729 F.3d 1077 (8<sup>th</sup> Cir. N.D. 2013).

Additionally, the Appellate Court found that DHHS's internal instructions, the North Carolina Adult Medicaid Manual, supported this conclusion. The Manual specifies that resources must be "legally available" and "are considered available unless the [Applicant] shows evidence of legal restraint such as judgments ... or legally binding agreements." Medicaid Manual § 2230 I.A, A2.

The Court held that Williford's WCMSA funds were not a countable resource because her use of the funds for her support and maintenance was subject to "legal restrictions" pursuant to a "legally binding agreement." The Appellate Court noted that the WCMSA funds could only be used for 1) medical expenses; 2) arising from her compensable injury; 3) for which Medicare would otherwise be liable. The restrictions were pursuant to a legally binding agreement because the Industrial Commission entered an order approving the contract, which is binding on the parties and may be enforced as a judgment or through civil contempt.

The Respondents, DMA and DHHS, made several arguments as to why the WCMSA funds were includable assets. DMA first argued that because the WCMSA funds were held in Williford's bank account, she had unrestricted access to the funds. However, this did not refute the fact that her legal access was restricted. Respondents also argued that there was no legally binding agreement because it was not binding on DHHS, but failed to explain why the agency must be bound. The Respondents also argued that the WCMSA was a type of medical health savings account funded by Medicare, but failed to articulate any legal basis for how it was a type of HSA.

Respondents also cited a portion of their Manual discussing the concept of a "resulting trust" where assets may not be available when there is a pre-existing agreement where the Applicant holds assets for another, but does not have an ownership interest, which is sometimes referred to as a legally binding agreement. Respondents' position was that because the Manual includes the phrase "legally binding agreement" in discussing resulting trusts, the only type of legally binding agreement is a resulting trust. The Court gave several reasons why the argument was without merit. First, a resulting trust does not arise from or depend on any express agreement between parties, it is an equitable remedy that arises notwithstanding the absence of any express or binding agreement. Second, Respondents failed to explain why, for "Medicaid purposes," a legally binding agreement must meet the definition of a resulting trust. Finally, even if the internal definition was correct, the federal statutes control any conflicting interpretations.

Accordingly, the Appellate Court held that pursuant to the SSI eligibility definitions, WCMSA funds were not countable resources for purposes of determining State Medicaid eligibility because Williford's use of the funds for her support and maintenance is subject to "legal restrictions" pursuant to a "legally binding agreement."

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<sup>i</sup> *Williford v. N.C. Dep't. Health & Hum. Serv.*, 2016 N.C. App. LEXIS 1163 (Nov. 15, 2016).

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