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# Greenery Rehabilitation Group, Inc. v. Hammon

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150 F.3d 226 (2d Cir. 1972)

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**Miner, Judge.**

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Medicaid is a federal program that provides health care funding for needy persons through cost-sharing with states electing to participate in the process. (citations omitted) Undocumented aliens or aliens not otherwise permanently residing in the United States under color of law generally are not entitled to full Medicaid coverage. See 42 U.S.C. § 1396b(v)(1) (“no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law”); 42 C.F.R. § 435.406. The only exception to this exclusion is payment for medical assistance that is “necessary for the treatment of an emergency medical condition.” 42 U.S.C. § 1396b(v)(2)(A). An “emergency medical condition” is a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

- (A) placing the patient’s health in serious jeopardy,
- (B) serious impairment to bodily functions, or
- (C) serious dysfunction of any bodily organ or part.

42 U.S.C. § 1396b(v)(3).

The corresponding regulation is found at 42 C.F.R. § 440.255(b)(1), which provides that aliens are entitled to Medicaid coverage for [e]mergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient’s health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part.

. . . New York has chosen to participate in the Medicaid program and has enacted regulations that are substantially the same as those found in 42 U.S.C. § 1396b(v) and 42 C.F.R. § 440.255(b)(1). See N.Y. Comp. Codes R. & Regs. tit. 18, § 360-3.2(f)(2).

Plaintiff-appellee The Greenery Rehabilitation Group, Inc., (“GRG”) operates nursing homes and rehabilitation facilities where specialized programs are offered for the care of individuals who have suffered brain injuries. GRG operates facilities in several states. Care was and is being provided to the patients involved in this case, following their initial treatment, stabilization and transfer, at facilities located in Brighton, Middleboro, and Hyannis, Massachusetts.

GRG has entered into agreements with defendant-third-party-plaintiff New York City Human Resources Administration (“NYCHRA”) to admit into

GRG's specialized brain injury care programs New York City residents who are in need of its services and are eligible for Medicaid. GRG admitted into its Massachusetts facilities three New York City residents who were in need of such services, but for whom NYCHRA has refused payment because of their alien status. Two of the three patients, Izeta Ugljanin and Leon Casimir, are undocumented aliens. The third, Yik Kan, was granted legal residency in the United States but had not yet met the residency requirements necessary to qualify for Medicaid benefits.

All three patients suffered sudden and serious head injuries that necessitated immediate treatment and ultimately left the patients with long-term debilitating conditions requiring ongoing care and daily attention. On June 16, 1991, nineteen-year-old Ugljanin was thrown from a vehicle during an automobile accident and sustained head injuries that caused severe brain damage. Due to her injuries, Ugljanin required immediate care for which she was admitted to Nassau County Medical Center. After being stabilized, Ugljanin was transferred to GRG's Brighton facility in 1991, and was subsequently transferred to GRG's Middleboro facility. Bed-ridden and quadriplegic, she continues to require a feeding tube, continual monitoring and extensive nursing care. At the time this litigation arose, Ugljanin, an immigrant from what is now known as the Republic of Macedonia, fulfilled the criteria for Medicaid coverage but for her alien status.

On March 9, 1990, thirty-eight-year-old Casimir, an immigrant from Trinidad, was shot in the head and suffered brain damage. He was initially treated at Goldwater Memorial Hospital in New York City and, after being stabilized, was transferred to GRG's Brighton facility in 1991 and is currently receiving care at GRG's Hyannis facility. Casimir is unable to walk, requires monitoring and medication for seizures and behavioral problems related to his injury and needs assistance with daily tasks such as bathing, dressing, eating and toileting. Casimir was also eligible for Medicaid coverage but for his alien status.

In October of 1990, forty-six-year-old Yik Kan, an immigrant from Hong Kong, was attacked and beaten, resulting in cerebral contusions and a hematoma to his right eye. Yik Kan initially received treatment at Harlem Hospital in New York City and was later transferred to

GRG's Middleboro facility and has been receiving care at GRG's Hyannis facility since May of 1993. Although he is legally blind as a result of his injuries, he is ambulatory and can function if instructed to accomplish a given task. For example, he can feed himself if instructed to eat and is able to dress or use the toilet if directed to do so. He also suffers from behavioral and psychiatric problems that require medication and monitoring. Like the others, Yik Kan was eligible for Medicaid coverage but for his alien status.

. . . [A]ppellant Marva L. Hammon served as Commissioner of the NYCHRA at all times relevant to this appeal. . . . [A]ppellant Brian Wing was Acting Commissioner of the New York State Department of Social Services at all times relevant to this appeal. . . . [A]ppellant Barbara DeBuono is Commissioner of the New York State Department of Health. . . .

GRG admitted Ugljanin, Casimir and Kan, believing them to be eligible beneficiaries under the Medicaid program in New York State. After Medicaid payment for the treatment of these individuals was denied, GRG commenced the instant action . . .

. . . The district court noted, among other things, that although GRG treating physicians believed that the patients satisfied the statutory definition of an emergency medical condition because the patients would be put at risk without the care provided by GRG, they also concluded that the patients were stable and suffering from chronic conditions rather than what they commonly understood to be emergency medical conditions. . . .

. . . .  
With respect to the "emergency medical condition" issue, the district court in its findings of fact summarized the testimony of attending physicians, Drs. Michael Randon and John Berry, and the State Appellant's expert, Anne Budin. The court noted that these witnesses generally explained that the patient's initial injuries had been treated and the patients were stabilized prior to being moved to GRG facilities. It also took note of the testimony regarding the extent of the continuing care required by each patient as explained by the witnesses, including the total dependence of Ugljanin and Casimir on nursing care and Ugljanin's reliance on a feeding tube. The injury-related behavioral problems of Kan and Casimir were also discussed, as were the three patients' medication requirements and

the necessity for continuous care with respect to activities such as getting out of bed, moving or walking, dressing, feeding, bathing and toileting.

The district court concluded that § 1396b(v)(3)'s definition of an emergency medical condition is not the same as the common understanding of what an emergency condition is, and that HHS' adoption of 42 C.F.R. § 440.255 did not narrow the meaning of § 1396b(v)(3). The court relied on a statement released by HHS officials in response to comments concerning § 440.255's adoption to support its conclusion that "emergency medical condition" must be construed broadly. That statement reads:

[W]e believe the broad definition [of emergency medical condition] allows States to interpret and further define the services available to aliens covered . . . which are any services necessary to treat an emergency medical condition in a consistent and proper manner supported by professional medical judgment. Further, the significant variety of potential emergencies and the unique combination of physical conditions and the patient's response to treatment are so varied that it is neither practical nor possible to define with more precision all those conditions which will be considered emergency medical conditions.

Crediting the testimony of the treating physicians, the district court analyzed each patient's situation under its expansive reading of § 1396b(v)(3). The district court found that the circumstances surrounding the patients' head injuries satisfied the "sudden onset" requirement of 42 C.F.R. § 440.225. The court also found that GRG was treating Ugljanin for an emergency medical condition because she required "continuous care" without which her health would be placed in "serious jeopardy and seriously impair her bodily functions." The court concluded that Casimir was receiving emergency medical care because he required "immediate" nursing care, without which "he would be left without food, in his own waste, unable to move." The district court found that Yik Kan did not satisfy the statutory requirement because the court could not "reasonably find that without immediate medical attention [Yik Kan] would be in peril."

The district court was also persuaded by an opinion of the Arizona Court of Appeals holding . . . that a statutory "emergency medical condition" can include a long-term condition resulting from the initial injury even though there are no longer any acute symptoms evidencing that injury. Concluding that Ugljanin's and Casimir's care was being given to treat emergency medical conditions and thus was covered by Medicaid, the district court ruled on the third-party complaint and found that HHS was required to pay a portion of the costs of their care.

. . . The State Appellants and third-party-defendant-appellant timely appealed the judgment with respect to Ugljanin and Casimir. GRG does not appeal the judgment with respect to Yik Kan.

### Discussion

The issue on appeal is . . . simply whether chronic debilitating conditions that . . . result from sudden and serious injuries, such as those suffered by the patients herein, are "emergency medical conditions" as provided under § 1396b(v)(3).

. . . .  
As noted above, aliens who otherwise meet Medicaid requirements but who are not lawfully admitted for permanent residence in the United States, or otherwise permanently residing in the United States under color of law, are not eligible for full federal Medicaid coverage. See 42 U.S.C. §§ 1396a, 1396b(v)(1). Congress did carve out one exception by providing that aliens are entitled to Medicaid coverage only for "such care and services [as] are necessary for the treatment of an emergency medical condition of the alien."

An emergency medical condition is a medical condition (including emergency labor and delivery) [defined by 42 U.S.C. § 1396b(v)(3)].

The appellants argue that the district court erred by failing to heed the plain language of this provision and finding that an "emergency medical condition" includes a condition requiring daily and regimented care for chronic conditions, such as that offered by GRG. We agree.

In the medical context, an "emergency" is generally defined as "a sudden bodily alteration such as is likely to require immediate medical attention." Webster's Third New International Dictionary 741 (1981).

The emphasis is on severity, temporality and urgency. We believe that 42 U.S.C. § 1396b(v)(3) clearly conveys this commonly understood definition.

An “acute” symptom is a symptom “characterized by sharpness or severity . . . having a sudden onset, sharp rise, and short course . . . [as] opposed to chronic.” Moreover, as a verb, “manifest” means “to show plainly.” (citations omitted) In § 1396b(v)(3) this verb is used in the present progressive tense to explain that the “emergency medical condition” must be revealing itself through acute symptoms. Thus, contrary to the district court’s finding, the statute plainly requires that the acute indications of injury or illness must coincide in time with the emergency medical condition. Finally, “immediate” medical care means medical care “occurring . . . without loss of time” or that is “not secondary or remote.” In sum, the statutory language unambiguously conveys the meaning that emergency medical conditions are sudden, severe and short-lived physical injuries or illnesses that require immediate treatment to prevent further harm.

The statutory definition is also consistent with the general concept of a medical emergency as commonly understood by those in the medical professions. Dorland’s Medical Dictionary defines an emergency as “an unlooked for or sudden occasion; an accident; an urgent or pressing need.” Dorland’s Illustrated Medical Dictionary 544 (28<sup>th</sup> ed. 1994). Moreover, both of the treating physicians from GRG testified to their general understanding of the concept of care for an emergency medical condition. Dr. Randon defined such care as usually short-lived, care that is given to prevent death or some significant consequence of injury or disease or accident. . . . The care you g[i]ve to stabilize the patient, I could consider that up to the stabilization as emergency care. To stop [the] bleeding, to put an airway in, that type of care.

Dr. Randon testified that Ugljanin was receiving “chronic skill care” from GRG as opposed to what is commonly understood to be emergency medical care.

Dr. Berry testified that “[e]mergency treatment is immediate treatment needed to stabilize a patient.” He also testified that Kan and Casimir had suffered no “physical emergencies” while at GRG and that they were receiving chronic rather than emergency care. In addition, Ms. Budin testified that her understanding of the concept of an emergency was that it involved a life threatening situation that necessitated urgent medical treatment. The patients’ sudden and severe head injuries undoubtedly satisfied the plain meaning of § 1396(b)(v) (3). However, after the patients were stabilized and the risk of further harm from their injuries was essentially eliminated, the medical emergencies ended. That is not to say that the patients could not suffer from a true emergency medical condition while being cared for by GRG. For example, it seems clear that if one of these patients suffered a sudden heart attack, treatment to stabilize the patient would be covered by Medicaid . . . . The district court believed that Ugljanin and Casimir were suffering from emergency medical conditions because it found that the absence of continuous medical attention could reasonably be expected to place their health in serious jeopardy. Although Ugljanin and Casimir undoubtedly require ongoing maintenance care, we have some doubt as to whether their health would be jeopardized by the absence of “immediate medical attention. . . .” In any event, however, it is clear that the stable, long-term problems suffered by Ugljanin and Casimir do not meet the additional, independent requirement that the medical condition be manifested “by acute symptoms.”

Although our review of the plain meaning of § 1396b(v)(3) ends our inquiry, we note that we do not believe that 42 C.F.R. § 440.255 or its history provide any support for the conclusion that the statutory definition of an emergency medical condition must be given a distinct and more liberal meaning than what is commonly understood to be a medical emergency. . . .

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