

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAVANNAH GRACE GIBBS, BY AND
THROUGH HER PARENT MICHELE
GIBBS,
Appellant,
vs.
THE STATE OF NEVADA,
DEPARTMENT OF HEALTH AND
HUMAN RESOURCES, DIVISION OF
WELFARE AND SUPPORTIVE
SERVICES,
Respondent.

No. 55928

FILED

SEP 29 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a petition for judicial review in a welfare matter. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

This appeal involves payments made from a special needs trust established pursuant to 42 U.S.C. § 1396p(d)(4)(A) (2008). Special needs trusts are exempt for purposes of determining eligibility for Medicaid's Katie Beckett program, which provides medical assistance to disabled children who can be cared for at home for less expense than if they were placed in a care-giving institution. We now reverse because the district court lacked jurisdiction to consider the petition for judicial review.

Background

Appellant Savannah Gibbs's parents placed money from a medical malpractice action connected to Savannah's birth into a special needs trust so that Savannah, a severely disabled child who requires 24-hour care, could live at home and still receive Medicaid benefits. In 2006

and 2007, the trust paid Savannah's mother, Michele, a net amount of \$4,000 per month, although the purpose of these payments was unclear. Upon discovering these payments, respondent Nevada Department of Health and Human Services, Division of Welfare and Supportive Services (DWSS) issued a notice that it would terminate Savannah's Medicaid benefits because the payments to Michele, then attributed to Savannah, exceeded the maximum amount a child could receive to remain eligible for Medicaid's Katie Beckett program.

Following the notice of termination, a hearing was held before a hearing officer on May 12, 2009. See NRS 422A.275. On July 16, 2009, the hearing officer issued a written decision, which determined that the termination of benefits was incorrect and remanded the matter to DWSS to obtain additional information about the money Michele received from the special needs trust and to issue a new decision. On remand, DWSS requested additional information from Michele to determine the purpose for the trust payments. Michele and the trust responded by providing several documents regarding the payments.

On September 9, 2009, DWSS issued a new decision indicating that, after reviewing the additional documents, it was still in favor of terminating Savannah's eligibility for Medicaid's Katie Beckett benefits. DWSS sent a copy of this decision to the hearing officer. On October 2, 2009, the hearing officer issued an "Order of Legal Notification" sua sponte, clarifying that, in light of her decision to remand the matter for the purpose of gathering additional information, Savannah would have an opportunity to appeal DWSS's new decision. DWSS immediately sought judicial review of both the hearing officer's original July 16, 2009, remand, which determined that DWSS's termination of benefits was incorrect, and

the October 2, 2009, order of legal notification, which clarified that Savannah has the right to appeal DWSS's new decision.

On judicial review, the district court concluded that "the Hearing Officer abused her discretion in failing to uphold Petitioner's decision to terminate [Katie Beckett] benefits due to excess resources." Thus, it reversed the hearing officer and upheld DWSS's decision to terminate Savannah's benefits. The district court also remanded the matter to the hearing officer for the purpose of terminating Savannah's benefits. This appeal followed.

The district court lacked jurisdiction to consider DWSS's petition for judicial review

On appeal, Savannah makes two primary arguments. First, she contends that the district court exceeded its scope of review by considering matters beyond those determined by the hearing officer. Second, she argues that the district court erred in determining that the payments to Michele are attributed to Savannah for purposes of determining Savannah's Katie Beckett eligibility. However, neither of these arguments address what we identify as the primary issue in this appeal—the lack of a final decision from the hearing officer for a court to review. This court may consider subject matter jurisdiction *sua sponte*, Landreth v. Malik, 127 Nev. ___, ___, 251 P.3d 163, 166 (2011), and "[s]ubject matter jurisdiction is a question of law subject to *de novo* review." Ogawa v. Ogawa, 125 Nev. ___, ___, 221 P.3d 699, 704 (2009).

DWSS sought judicial review of the hearing officer's decision issued on July 16, 2009, in which she remanded the matter to DWSS for the agency to obtain additional information, and her October 2, 2009, order of legal notification that provided Savannah with a right to appeal DWSS's new decision on remand. Pursuant to NRS 422A.295(1), a

hearing officer's final decision "must include findings of fact and conclusions of law" that "must be accompanied by a concise and explicit statement of the underlying facts supporting the findings." After a final decision is rendered by the hearing officer, a party can petition the district court for judicial review within 90 days from the date written notice of the decision was mailed. NRS 422A.295(2). Here, neither the July 16, 2009, remand order nor the October 2, 2009, order of legal notification was a final decision from the hearing officer. Therefore, we conclude that the district court did not have jurisdiction to consider DWSS's petition for judicial review.¹

DWSS's Welfare Administrative Manual (WAM)² contains the rules governing the administration of DWSS, and section 3100 specifically governs hearings. WAM section 3102.13(A)(6) requires that a decision of the hearing officer "uphold or reverse the agency's disputed action." In its petition for judicial review, DWSS argued that this provision only allows the hearing officer to uphold or reverse a decision rendered by DWSS, and thus, the hearing officer could not remand the matter of July 16, 2009, for additional information and a new decision from DWSS. By itself, WAM section 3102.13(A)(6) seems to support DWSS's argument that the hearing officer only had two options. However, when considered together with other provisions in section 3100, we determine that a hearing officer is not

¹Because we conclude that the district court improperly considered DWSS's petition for judicial review, we do not reach the merits of Savannah's arguments on appeal.

²This manual is apparently only available through DWSS's website: <https://dwss.nv.gov> (last visited August 12, 2011).

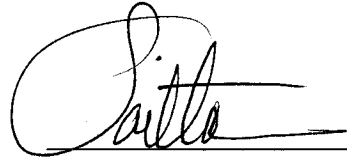
limited to upholding or reversing a DWSS decision. WAM section 3102.11 permits a hearing officer to obtain additional evidence from the parties before rendering a final decision. To do so, the hearing officer may recess the hearing, continue the hearing, or close the hearing but leave the record open so that the parties can submit additional evidence not available at the time of the hearing. WAM § 3102.11(A)(1)-(3). Additionally, if the hearing officer determines that the evidence submitted was “insufficient or unclear,” the hearing officer may hold the record open for the submission of additional information, and “[t]he [h]earing [o]fficer may reopen the hearing if the nature of the additional information or the refutation thereof makes a further hearing necessary.” *Id.* § 3102.11(B).

Although the hearing officer in Savannah’s case did not use the precise terminology from section 3102.11 when she remanded the matter to DWSS, her actions effectively closed the hearing but kept the record open so that the parties could obtain additional information and DWSS could render a new decision based on that information. We conclude that the hearing officer’s request for additional information was proper.

After DWSS submitted its new decision on remand to the hearing officer, again determining that Savannah was not eligible to receive Katie Beckett benefits, the hearing officer issued an order of legal notification that provided Savannah with an opportunity to appeal DWSS’s new decision, but the hearing officer did not make any findings of fact or conclusions of law regarding the termination of Savannah’s benefits as specified in NRS 422A.295(1). Therefore, we conclude that the hearing officer did not render a final decision as required by NRS 422A.295, and,

thus, DWSS could not properly petition the district court for judicial review.

Accordingly, we ORDER the judgment of the district court REVERSED, and we REMAND this matter with instructions that the district court, in turn, remand the matter to the hearing officer for a final decision.


_____, C.J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Susan Johnson, District Judge
Paul H. Schofield, Settlement Judge
Palmer Law Group, PLLC
Attorney General/Las Vegas
Attorney General/Carson City
Eighth District Court Clerk