Washington and Lee Law Review

Volume 47 | Issue 2 Article 12

Spring 3-1-1990

# Vi. Government Benefits

The Fourth Circuit further reasoned that the broad fiduciary duties the ERISA imposes on plan trustees require plan trustees to administer pension plans for the sole benefit of plan participants and beneficiaries. The Fourth Circuit stated that these fiduciary duties require plan trustees to insure that plan participants are given adequate notice of any plan changes that may affect participants' or beneficiaries' rights. The Fourth Circuit concluded that because MEBA neither gave Rodriguez adequate notice of his option under the plan, nor allowed Rodriguez a fair opportunity to pursue his claim, MEBA failed to fulfill the fiduciary duties it owed to Rodriguez.

Consequently, the Fourth Circuit held that the MEBA trustees failed to adequately notify Rodriguez of his option to terminate his benefits. The court further held that Rodriguez must be given the right to exercise his 1968 option to either suspend his pension check while accruing further benefits or to continue to receive his pension check while foregoing further accruals. Accordingly, the Fourth Circuit reversed the district court's decision and remanded the case to the district court to allow Rodriguez to exercise his option, and to calculate the precise amount of the benefits that would have accrued had Rodriguez exercised the option.

### GOVERNMENT BENEFITS

In *Deel v. Jackson*, 862 F.2d 1079 (4th Cir.), *cert. denied*, 109 S. Ct. 2434 (1989), the United States Court of Appeals for the Fourth Circuit considered the validity of Virginia's transfer of assets rule, a part of Virginia's program of Aid to Families with Dependent Children (AFDC). The plaintiffs in *Deel*, Anna R. Deel and Onnie Dale Adcock, applied for benefits under the Virginia AFDC program. The Virginia Department of Social Services (Department) denied the plaintiffs' applications on the basis of Virginia's transfer of assets rule. The Virginia transfer of assets rule denies eligibility for AFDC benefits to persons who within two years of their application have transferred real or personal property for less than adequate compensation, ostensibly for the purpose of becoming eligible for AFDC benefits. The Department denied Deel's application because two days before applying for AFDC benefits Deel transferred a fifty-nine acre parcel of land to her daughter and son-in-law for less than fair market value. The Department rejected Adcock's request for benefits because a short time after submitting her application Adcock sold her interest in a mobile home to her brother-in-law for less than fair market value, and consequently, less than adequate compensation. Administrative hearing officers and the State Board of Review denied the plaintiffs' administrative appeals.

In October 1985 Deel filed suit in the United States District Court for the Western District of Virginia against the Commissioner of the Department and the Secretary of the United States Department of Health and Human Services. Deel sought declaratory and injunctive relief. Adcock intervened as a plaintiff. The suit alleged that the transfer of assets rule violated the "availability principle" derived from the Social Security Act, which requires that the Department consider only assets currently available to an applicant in determining eligibility.

In *Deel* the parties did not dispute any facts, and both the plaintiffs and the defendants filed motions for summary judgment restricted to the issue of the validity of the transfer of assets rule. The district court granted summary judgment for the defendants, holding that the Virginia rule was a valid state antifraud device, consistent with the Social Security Act. A divided panel of the Fourth Circuit reversed the district court and ordered the entry of summary judgment for the plaintiffs. The Fourth Circuit granted the defendant's application for rehearing en banc.

On rehearing, the Fourth Circuit first recognized that the AFDC is a scheme of cooperative federalism. The *Deel* court determined that the federal government largely is responsible for financing the AFDC, but that states bear the primary responsibility for administering the program. The Fourth Circuit stated that under the AFDC system courts had given states great flexibility in the states' determination of eligibility requirements for recipients. The *Deel* court noted that the United States Supreme Court emphasized the value of the state role in AFDC administration in *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973). The Fourth Circuit determined that, under the Supreme Court's holding in *Dublino*, the Fourth Circuit must find a "clear manifestation" of congressional intent to forbid a state to employ a transfer of assets rule for the Fourth Circuit to invalidate the Virginia rule. The *Deel* court concluded that the nature and purpose of the availability principle reveal no such intent.

In *Deel* the Fourth Circuit determined that the purpose of the availability principle is to preclude the fictional imputation of income to AFDC applicants from relatives and housemates who never actually contribute to the AFDC assistance unit. The *Deel* court concluded that no such fictional imputation of income was involved in the Virginia transfer of assets rule. The Fourth Circuit found that, instead of basing eligibility determinations on assets that the applicant never had, the rule disqualifies applicants who had assets and voluntarily transferred the assets to a friend or relative to receive AFDC benefits rather than expend the assets. The *Deel* court determined that many states use a transfer of assets rule to prevent what essentially is fraud against the AFDC system, and that the transfer of assets rule is not the type of provision Congress intended to cover when Congress formulated the availability principle. Additionally, the court noted that the best evidence of congressional intent indicates that the transfer of assets rule is consistent with federal AFDC policy. The *Deel* court suggested that the court could infer Congress's receptivity to transfer of assets rules from the fact that Congress specifically has endorsed a transfer of assets rule in the context of the Medicaid program.

In *Deel* the Fourth Circuit determined that two amendments to the AFDC statute further supported the court's conclusion that the transfer of assets rule is compatible with the availability principle. The Fourth Circuit observed that the amendments are part of the Omnibus Budget Reconciliation Act of 1982 (OBRA) and the Deficit Reduction Act of 1984 (DEFRA). The *Deel* court concluded that OBRA and DEFRA furnish strong indications that the Virginia transfer of assets rule furthers congressional intent. The

Fourth Circuit noted that the legislative history of the OBRA provisions indicates that Congress intended that state administrators of AFDC programs not allow families to receive AFDC benefits if they have resources upon which the administrator reasonably could expect the family to draw. The *Deel* court emphasized that the transfer of assets rule attempts to enforce precisely this policy by preventing applicants who have resources from making a transfer to qualify themselves for AFDC benefits. The Fourth Circuit also stressed that congressional policy similarly demands that state administrators restrict AFDC funds to those most in need. The *Deel* court concluded that the transfer of assets rule promotes this policy because the use of limited AFDC funds by those who improperly have disposed of assets necessarily deprives those in greater need.

In addition to the OBRA provisions, the Fourth Circuit in *Deel* determined that a provision of the DEFRA amendment provided further insight into congressional attitudes toward AFDC. The *Deel* court relied on a provision allowing families to continue to receive AFDC benefits while the families are making "good faith efforts" to dispose of real property that would make the families ineligible for aid. The Fourth Circuit concluded that the requirement of "good faith" in the amendment suggests that Congress intended that state administrators not allow applicants to render themselves eligible for aid through bad faith transfers of assets to relatives or friends for inadequate compensation. Accordingly, the *Deel* court rejected the plaintiffs' argument that the amendments do not provide adequate support for the transfer of assets rule. The Fourth Circuit stated that the plaintiffs based their argument on the incorrect assumption that the court must invalidate the state transfer of assets provision unless Congress specifically has approved the state provision. The *Deel* court explained that the correct approach involves a determination of the proper scope of the availability principle. Under this approach, the Fourth Circuit concluded that the OBRA and DEFRA amendments reinforce the view that Congress did not intend to undermine state efforts to prevent fraud against the funds of the program that Congress had enacted.

In deciding that Virginia's transfer of assets rule was valid, the *Deel* court also stressed the importance of the Secretary of Health and Human Services' position in the resolution of the case. The Fourth Circuit explained that the Secretary has expertise in the administration of AFDC and, therefore, that the Secretary's opinion is entitled to judicial respect. The *Deel* court noted that the Secretary has observed state transfer of assets rules since 1976 and consistently has approved the transfer rules. Because of the consistency of the Secretary's approval, the Fourth Circuit gave the administrator's position substantial deference. Furthermore, the *Deel* court determined that the need of the states for stable rules of AFDC administration supports deference to the Secretary's position.

Finally, the Fourth Circuit in *Deel* rejected the plaintiffs' challenge to the particular provisions of the Virginia transfer of assets rule. The *Deel* court determined that the plaintiffs' assertion that the provisions of the rule violated the due process clause of the fourteenth amendment because the

rules are overbroad and overly rigid was without merit. The Fourth Circuit noted that the Virginia rule did not disqualify AFDC recipients solely on the basis of a property transfer for an improper purpose. Instead, the *Deel* court emphasized that the Virginia rule only applies to transfers made for the purpose of receiving AFDC benefits to which the applicant is not entitled. The Fourth Circuit also determined that the Virginia transfer of assets rule's requirement that applicants provide evidence that other resources were available to meet the applicants' needs at the time of the alleged transfer constituted a reasonable means of identifying improper transactions. The *Deel* court determined that no reason exists for a person without other resources to transfer assets for less than the assets were worth unless the transfer was part of a plan to become eligible for AFDC benefits.

In *Deel* the Fourth Circuit held that the Virginia transfer of assets rule is a valid state provision. The *Deel* court based its decision on the court's regard for the state role in AFDC administration, faithfulness to the court's view of the purposes of the availability principle, and deference to the position of the agency overseeing AFDC administration. The Fourth Circuit rejected the plaintiffs' assertion that a federal statute or regulation must authorize every state initiative in AFDC administration. The *Deel* court concluded that this requirement would impair the cooperative role for the states that Congress envisioned under the AFDC program. Accordingly, the Fourth Circuit upheld the district court's determination that Virginia's transfer of assets rule was valid.

Judge Ervin dissented from the majority opinion in *Deel*. Judge Ervin was concerned with what he viewed as the majority's disregard for a previous Fourth Circuit case in which the court invalidated an earlier Virginia transfer of assets rule. Additionally, Judge Ervin criticized the majority's attempt to read congressional silence in the AFDC context as implied authorization for policies expressly authorized in other federal aid programs. Chief Judge Winter wrote a separate dissent expressing his conclusion that even if no evidence of fraud exists, the Virginia transfer of assets rule is so broad that the rule penalizes the innocent as well as the guilty. Chief Justice Winter, therefore, determined that the Virginia transfer of assets rule denies equal protection of the laws because the rule arbitrarily withholds a government benefit without a rational purpose.

In *Milam v. Director, Office of Workers' Compensation Programs, United States Department of Labor*, 874 F.2d 223 (4th Cir. 1989), the Fourth Circuit considered whether a claimant may receive cash benefits under part C of the Black Lung Benefits Act, 30 U.S.C. sections 931-934 (1982) (the Act), when that claimant has been approved for Part B benefits but has not received any cash benefits because the claimant's benefits were offset under the excess earnings offset provision of the Act. In 1973 Milam filed a claim for benefits under part B of the Act, 30 U.S.C. sections 921-925. The Social Security Administration (SSA) approved the claim, finding that Milam suffered from complicated pneumoconiosis. The SSA refused to award cash benefits to Milam under part B, however, because the SSA

found that Milam earned more than $2100 in the year for which Milam claimed benefits. Under part B of the Act, a claimant cannot receive cash benefits due to an excess earnings offset provision in part B if that claimant earns more than $2100 per year.

Because Milam continued to earn more than $2100 per year after the SSA's decision and, consequently, could not obtain cash benefits under part B of the Act, Milam filed for cash benefits under part C of the Act in 1980. In considering Milam's claim for cash benefits under part C, the Department of Labor found that the Act and regulations under the Act provide solely for the payment of medical benefits under part C to claimants whose claims for part B benefits had been approved. The Department of Labor, thus, denied Milam's claim under part C, stating that claimants only can receive medical benefits under part C if they previously have been approved for cash benefits under part B. An administrative law judge reviewed the Department of Labor's decision and agreed that Milam could not receive cash benefits under part C. Milam appealed the administrative law judge's decision to the Benefits Review Board, which affirmed the decision. Milam then appealed the Benefits Review Board's decision to the Fourth Circuit.

On appeal Milam argued that a claimant may receive cash benefits under part C if, because of the excess earnings offset provision in part B, the claimant cannot receive part B cash benefits. In addressing Milam's argument, the Fourth Circuit reviewed the language of the Act and consulted the regulations that the Department of Labor had promulgated under the Act. The Fourth Circuit noted that the Act states that a claimant making a claim "may file a claim for medical services and supplies under part C of this subchapter." The Fourth Circuit additionally noted that the regulations promulgated under the Act provide that a part C claim which an approved part B claimant has filed is a claim for medical benefits only. Regulations under the Act also prohibit duplicative receipt of cash benefits under parts B and C. The Fourth Circuit, relying on the general proposition that courts should respect an agency's construction of a statute that the agency administers, found that the Department of Labor's statement in the regulations that a part C claim is a claim "only for medical benefits" indicates that a claimant cannot receive cash benefits under part C after that claimant has been approved for cash benefits under part B.

The Fourth Circuit next consulted the legislative history of the Black Lung Benefits Reform Act of 1977 (Reform Act) in addressing Milam's claim that an approved part B claimant may receive cash benefits under part C of the Act. According to the Fourth Circuit, Congress enacted the Reform Act to provide part B claimants with an additional opportunity to receive medical benefits under part C. The Fourth Circuit found that, contrary to Milam's argument, Congress did not intend the Reform Act to provide approved part B claimants with a second opportunity to receive cash benefits under part C.

The Fourth Circuit thus rejected Milam's argument that a claimant can receive cash benefits under part C of the Act if the part B excess earnings

offset provision completely offset that claimant's part B cash benefits. The Fourth Circuit's holding is consistent with two Benefits Review Board decisions, *Stowers v. Director of Workers' Compensation Programs, United States Department of Labor*, 9 B.L.R. 1-124 (1986), and *Kosh v. Director, Office of Workers' Compensation Programs, United States Department of Labor*, 8 B.L.R. 1-168 (1985), *aff'd*, 791 F.2d 918 (3d Cir. 1986), in which the Benefits Review Board decided that an approved part B claimant cannot obtain cash benefits, but only can receive medical benefits, under part C of the Act.

In *Charlotte Memorial Hospital & Medical Center, Inc. v. Bowen*, 860 F.2d 595 (4th Cir. 1988), the Fourth Circuit determined when a hospital provider may receive Medicare reimbursement for costs that the hospital incurred under the hospital's deferred compensation plan. To determine the date upon which a hospital incurs reimbursable physicians' service costs, the court considered whether to apply Generally Accepted Accounting Principles (GAAP) or an alternative accounting method. The dispute in *Charlotte Memorial Hospital* concerned a deferred compensation plan that Charlotte Memorial Hospital and Medical Center, Inc. (Memorial Hospital) offered to its practicing physicians from 1979 until 1981. Under the "Executive Compensation Plan" (the Plan), Memorial Hospital set aside a percentage of physicians' salaries in a fund for the physicians' retirement or to be paid as death benefits. Memorial Hospital deposited the deferred salary funds in savings accounts and certificates of deposit.

As a prerequisite to participation in the Plan, physicians agreed to render medical and consulting services that the Hospital reasonably requested and to refrain from providing services to any other hospital without the prior approval of Memorial Hospital. The Plan provided that physicians who failed to honor these agreements could forfeit their rights to receive payments from the retirement fund. Although several physicians had violated the Plan's terms, no physician had forfeited the right to receive retirement money.

After setting aside funds under the Plan during the 1979-81 cost years, Memorial Hospital applied to the Medicare Intermediary, Blue Cross and Blue Shield of North Carolina (Blue Cross), for reimbursement of the costs of administering the Plan pursuant to the Medicare Act, 42 U.S.C. sections 1395-1396d (1982) (the Act). Blue Cross rejected Memorial Hospital's claim for reimbursement, finding that the Plan did not comply with the regulatory interpretations that the Secretary of Health and Human Services issued regarding reimbursement for the costs of a deferred compensation plan. According to the regulatory interpretations that the Secretary of Health and Human Services (the Secretary) had made, Blue Cross could not reimburse Memorial Hospital for salary costs incurred under the Plan until Memorial Hospital actually made payments to the physicians. Applying the Secretary's interpretations, the Provider Reimbursement Review Board affirmed Blue Cross's decision to deny the Hospital's claim for reimbursement, and the Hospital sought judicial review of the Secretary's regulatory interpretations.

The United States District Court for the Western District of North Carolina reversed the Provider Reimbursement Review Board's decision. The district court found the defendant Secretary's regulatory interpretations inconsistent with 42 C.F.R. section 413.24 (1987) (the Medicare Regulation), the controlling Medicare regulation. Section 413.24 mandates the use of accrual accounting to determine proper reimbursement and indicates that a hospital should receive reimbursement when the hospital incurs a cost, rather than when the hospital pays a debt. The district court determined that Memorial Hospital incurred a reimbursable expense when, in payment for services rendered, the Hospital deposited a portion of the physicians' salaries in separate accounts on the physicians' behalf. Accordingly, the court reversed the Provider Reimbursement Review Board's decision to deny the Hospital's claim for reimbursement.

The Secretary appealed the district court's decision to the United States Court of Appeals for the Fourth Circuit. The Secretary contended that the Hospital had not incurred a reimbursable Medicare expense by making contributions under the Plan. The Secretary reasoned that, by placing salary deductions in various accounts pursuant to the Plan, the Hospital merely made an unsecured pledge to provide benefits in the future. Given the forfeiture provisions of the Hospital's Plan, the Secretary maintained that, if Blue Cross granted the Hospital's request for reimbursement, the Hospital could receive reimbursements for salary payments that the Hospital never would have to pay. Additionally, reasoning that amounts paid to physicians equalled the cost of patient care, the Secretary maintained that the court should depart from GAAP to insure that Medicare costs matched the cost of patient care.

To resolve the issue, the Fourth Circuit first considered the Medicare Act and the controlling regulation. The Act allows hospital providers to obtain reimbursement for the lesser of the amount of the hospital's charges to patients or the reasonable costs incurred in providing services to Medicare beneficiaries. The Act charges the Secretary of Health and Human Services with the authority to promulgate regulations interpreting "reasonable cost" while considering national organization principles. Pursuant to this authority, the Secretary issued the Medicare Regulation, which requires hospital providers to submit to Blue Cross adequate documentation and bookkeeping of the costs that the hospital providers incurred to obtain reimbursement under the Act. In addition, the Medicare Regulation specifies that hospital providers should use the accrual method of accounting to calculate the amount of the reimbursement. The Medicare Regulation provides that, under the accrual method of accounting, hospital providers record costs in the period in which the costs are "*incurred*, regardless of when they are *paid*." The Fourth Circuit observed that the Secretary, by contrasting "costs incurred" with "costs paid," intended the creation of a debt and not the payment of a debt to determine the date of reimbursement. Accordingly, the court found that the regulation requires Medicare to apply GAAP. As a result, the court believed that Blue Cross should reimburse the Hospital when the Hospital had incurred a debt to a physician for services rendered.