

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

<b>GREEN VALLEY SNF LLC d/b/a</b>	:	
<b>PINNACLE REHABILITATION AND</b>	:	
<b>HEALTH CENTER</b>	:	<b>C.A. No: 11A-11-007 (RBY)</b>
	:	
_____ <b>Appellant,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>DELAWARE DEPARTMENT OF</b>	:	
<b>HEALTH AND SOCIAL SERVICES,</b>	:	
<b>DIVISION OF MEDICAID AND</b>	:	
<b>MEDICAL ASSISTANCE</b>	:	
	:	
<b>Appellee.</b>	:	

\_\_\_\_\_  
*Submitted: May 1, 2012*  
*Decided: August 29, 2012*

*Upon Consideration of Appellant's Appeal  
of the Department of Health and Social Services*  
**REVERSED AND REMANDED**

**ORDER**

Ronald S. Gellert, Esq., Eckert, Seamans, Cherin & Mellott, LLC, Wilmington, Delaware for Appellant.

Peter S. Feliceangeli, Esq., Deputy Attorney General, Department of Justice, Wilmington, Delaware for Appellee.

Young, J.

### **SUMMARY**

\_\_\_\_\_ In this administrative appeal, a long-term care facility challenges the Department of Health and Social Services decision that the facility lacks standing to pursue Medicaid benefits on behalf of one of the facility's patients. The Authorization Statement is not a prohibited assignment of the patient's public assistance benefits. The facility has standing to pursue benefits on the patient's behalf. The Authorization Statement is not void. Hence, the decision below is **REVERSED** and **REMANDED**.

### **FACTS**

\_\_\_\_\_ Green Valley SNF, LLC, doing business as Pinnacle Rehabilitation and Health Center (Appellant), is an in-patient nursing home facility. At 79 years old, Pauline Bryner was admitted to Appellant's facility on February 19, 2010. Ms. Bryner suffers from Alzheimer's disease and dementia. She is unable to manage her own affairs. Unfortunately, she has no family and no friends acting on her behalf.

In response to Ms. Bryner's mounting health care bills, and due to her legal incapacity, Appellant, by and through its office manager, Yolanda Gordon, filed an application for Medicaid benefits on Ms. Bryner's behalf on October 29, 2010. That application was denied on February 23, 2011.

Soon thereafter, on March 23, 2011, the Court of Chancery appointed Senior Partner, Inc. to act as guardian to Ms. Bryner's person and property. On April 28, 2011, Senior Partner, Inc. signed Appellant's appeal to the Delaware Department of Health and Social Services (DHSS) challenging the aforementioned

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denial of benefits.

In addition to joining in the appeal, Senior Partner, Inc. executed an Authorization Statement purporting to provide to Appellant Ms. Bryner's interest in Medicaid benefits, purporting to authorize Appellant to pursue those benefits on Ms. Bryner's behalf. In pertinent part, the Authorization Statement states as follows:

“I, Pauline Bryner, by and through my Court appointed Guardian, Senior Partner, Inc., do hereby authorize Pinnacle Rehabilitation and Health Center (the “Facility”), to receive Medicaid benefits for services provided to me by the Facility and authorize the Facility to receive payments from Medicaid pursuant to this assignment.

Pursuant to the above authorization, the Facility, its employees, agents, and/or Eckert Seamans Cherin & Mellott, LLC and Schutjer Bogar LLC are authorized to take those actions that are required to secure Medicaid benefits on my behalf, including establishing my eligibility and filing necessary appeals to secure such benefits to pay for my nursing home care provided by the Facility.”

On September 26, 2011, a DHSS hearing officer heard testimony and argument regarding the merits of Appellant's appeal, together with testimony and argument regarding Appellant's standing to assert the appeal on Ms. Bryner's behalf. The hearing officer was presented with the Authorization Statement. James Reynolds, owner of Senior Partner, Inc., testified regarding his role in

executing that document.

On October 20, 2011, the hearing officer issued a written decision denying the appeal on the grounds that Appellant lacked standing. Specifically, it was held that the “assignment” of benefits to Appellant is prohibited by statute; that Appellant is not an “applicant” for the purpose of challenging the denial of Medicaid benefits; and that the Authorization Statement is ineffective because it is not dated.

### **STANDARD OF REVIEW**

\_\_\_\_\_ An appeal from an administrative board's final order to this Court is restricted to a determination of whether the Board's decision is free from legal error, and whether the Board's findings of fact and conclusions of law are supported by substantial evidence in the record.<sup>1</sup> Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.”<sup>2</sup> In this matter, the facts are not in any significant dispute. The concern is an interpretation of law that is presented. Questions of law are reviewed *de novo*.<sup>3</sup>

### **DISCUSSION**

\_\_\_\_\_ The hearing officer’s decision below, that Appellant lacks standing to pursue the appeal, is based upon three distinct findings: (1) the Authorization

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<sup>1</sup> 29 Del. C. §10142(d); *Avon Prods. v. Lamparski*, 203 A.2d 559, 560 (Del. 1972).

<sup>2</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966)).

<sup>3</sup> *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154 (Del. 1998).

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Statement is an impermissible assignment of public assistance benefits; (2) Appellant is pursuing the benefits in its own interest as opposed to that of Ms. Bryner; and (3) the Authorization Statement is void because it is not dated.

***THE AUTHORIZATION STATEMENT IS NOT AN IMPERMISSIBLE  
ASSIGNMENT OF PUBLIC BENEFITS***

Pursuant to 31 *Del. C.* § 513, public assistance benefits are, categorically, non-assignable. In pertinent part, § 513 states as follows:

“Assistance granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process or to the operation of any bankruptcy or insolvency law, with the exception that the State shall seek recoupment for overpayments.”

That statute portion is not applicable to the instant case. The prohibition of assignments here, like virtually identical prohibitions in the Social Security Act, was promulgated to protect benefits from the reach of creditors.<sup>4</sup> This interpretation is consistent with the legislature’s intent, which is expressly: “to promote the welfare and happiness of all of the people of this State by providing public assistance to all of its eligible needy.”<sup>5</sup>

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<sup>4</sup> *Ellender v. Schweiker*, 575 F.Supp. 590, 598 (S.D.N.Y. 1983) (interpreting the Social Security Act’s prohibition of assignments, codified at 42 U.S.C. § 407, which is substantially similar to § 513).

<sup>5</sup> 31 *Del. C.* § 501.

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While the title and verbs in Authorization Statement specifically and accurately refer to “Authorization”, admittedly the statement does however, inartfully as a clear reference to “authorization” or “statement”. It does so, employ the term “assignment.” That term is not an accurate representation of what the document is intended to do. Read harmoniously, the Authorization Statement is intended to facilitate Appellant’s pursuit of Medicaid benefits on Ms. Bryner’s behalf. The document throughout continues to authorize Appellant to establish Ms. Bryner’s eligibility for benefits and to file any necessary appeals. It grants Appellant access to all documents necessary to achieve that purpose.

Taken as a whole, the document purports to effectuate the very intent expressed in § 501. Rather than assigning Ms. Bryner’s interest in public assistance benefits to someone like a creditor, the Authorization Statement simply presents Appellant with the authority to pursue funds that it would ultimately be entitled to receive as remuneration from Ms. Bryner for her medical services as provided. As a result, the Authorization Statement does not run afoul of § 513.

***APPELLANT HAS STANDING TO PURSUE THE APPEAL AS MS.***

***BRYNER’S REPRESENTATIVE***

Having found the Authorization Statement to be exactly that, the Court still must determine if Appellant has standing to pursue the matter on appeal. Aggrieved “applicants and recipients for any public assistance program administered by the Division of Social Services or the Division of Medicaid and

Medical Assistance” are entitled to a fair hearing.<sup>6</sup> “‘Applicant’ means any person or family who applies for assistance or welfare services or on whose behalf such application is made.”<sup>7</sup> This definition is consistent with its Federal counterpart, which is inclusive of an individual “whose application is submitted through a representative or a person acting responsibly for the individual.”<sup>8</sup>

DHSS contends that Appellant is not pursuing benefits on Ms. Bryner’s behalf. Rather, DHSS suggests that Appellant is interested only in being compensated for services that it has provided. DHSS cites *IFIDA v. Division of Social Services, Delaware Department of Health and Social Services*,<sup>9</sup> in which it was held that a long-term care facility does not have standing to challenge the reimbursement rate for Medicaid services. The reimbursement rate governed remuneration received pursuant to an agreement under which a long-term care facility provided care to indigents. The facility was found not to have standing, because the challenged reimbursements flowed from a contract, and were not paid as “public assistance” to an “applicant.”<sup>10</sup>

That analysis is inapposite to the case presented here. In this case, the Authorization Statement, executed by Ms. Bryner’s legal guardian, authorizes

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<sup>6</sup> 16 *Del. Admin. C.* § 5100-5304.

<sup>7</sup> 31 *Del. C.* § 502.

<sup>8</sup> 42 C.F.R. § 400.203.

<sup>9</sup> 1994 WL 45340 (Del. Super. Feb. 9, 2004), *aff’d*, 653 A.2d 305 (Del. 1994) (TABLE).

<sup>10</sup> *Id.* at \*2.

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Appellant to pursue Medicaid benefits already due to Ms. Bryner on her behalf specifically. Ms. Bryner's legal guardian reinforced Appellant's authority during his uncontested testimony at the hearing. As indicated, Ms. Bryner has no family and no friends to represent her interest. She continues to reside at Appellant's facility. The benefits sought are to assist her in procuring long-term care. Of course, Appellant maintains an independent interest in the matter. The fact that it should be compensated for services rendered does not disqualify it from advancing Ms. Bryner's interest simultaneously.

***THE AUTHORIZATION STATEMENT IS NOT VOID***

Finally, the hearing officer held that the Authorization Statement is void. According to his representation, Authorization Statements are void within six months of execution. Without a date, the hearing officer found that there was no way to determine if the Authorization Statement remains valid. Neither the hearing officer nor DHSS points to authority invalidating an Authorization Statement after six months.

At the hearing, Ms. Bryner's legal guardian testified to Appellant's authority to pursue this matter. DHSS has presented no authority to suggest that written authorization, independent of that testimony, is required. Assuming that written authority is required, and assuming further that the instrument must be executed within six months, the hearing officer's decision that the statement is void is not supported by any evidence. Ms. Bryner's guardian testified that he executed the Authorization Statement on July 26, 2011, less than six months prior to the hearing date.

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**CONCLUSION**

The decision below is **REVERSED**. The matter is **REMANDED** for reconsideration consistent with this opinion.

**SO ORDERED.**

/s/ Robert B. Young

J.

RBY/lmc

oc: Prothonotary

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