

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI



KING'S DAUGHTERS MEDICAL
CENTER, ET AL.

ATTEST A TRUE COPY
FILED

JUL 10 2008

EDDIE JEAN CARR, CHANCERY CLERK

BY _____

CAUSE NO. G-2006-1621

PLAINTIFFS

VS.

HALEY BARBOUR, ET AL.

DEFENDANTS

OPINION AND ORDER OF THE COURT

THIS CAUSE is before the Court on cross-motions for summary judgment in accordance with Rule 56 of the Mississippi Rules of Civil Procedure. After careful consideration, the Court finds that there are no genuine issues of material fact in this cause that may result in "triable issues." See *Great Southern Nat'l Bank v. Minter*, 590 So. 2d 129, 135 (Miss. 1991). Similarly, this Court, in viewing the facts and inferences in the light most favorable to the Defendants, unequivocally finds that Plaintiffs are entitled to prevail as a matter of law.

Procedural History

On September 21, 2006, Plaintiffs filed their Complaint for Declaratory Judgment and Injunctive Relief seeking to have this Court enjoin enforcement of a gross revenue assessment imposed by the Mississippi Division of Medicaid ("DOM") under Mississippi Code Section 43-13-117(18)(b) as an unconstitutional tax. In early 2007, the parties asked this Court to grant an agreed order *staying the matter* pending what appeared to be an alternative resolution. In January 2008, the parties returned to this Court seeking to lift the stay and proceed with the original litigation, and in February the Court heard arguments on the now pending cross-motions for summary judgment. By the end of March 2008, the parties had submitted their briefs and legal

authorities with regard to the cross-motions. After careful consideration, the Court now makes the following findings of fact and conclusions of law.

Facts

Since 1993 Medicaid has financed a large portion of the directed payments to hospitals by requiring public hospitals to transfer funds directly to Medicaid. From 2001 through 2006, both private and public hospitals had paid revenue assessments, but public hospitals had been required to contribute an additional amount totaling in recent years some \$90 million annually. Private hospitals did not contribute such additional funds. Those funds transferred by public hospitals were then used as the state match to generate funds for the Disproportionate Share Hospital Program (“DSH”), the Upper Payment Limits Program (“UPL”), and other hospital-related programs. In June 2005, the federal Center for Medicare and Medicaid Services (“CMS”) required DOM to stop collecting the approximately \$90 million per year from the public hospitals. CMS objected to DOM’s heavy reliance on public hospitals to fund Medicaid benefits such as DSH and UPL for both public and private hospitals. CMS threatened to withhold federal matching funds if DOM failed to cease such collections. In order to comply with CMS’s directive, Medicaid was forced to assume a budgetary shortfall. In fiscal year 2006, the \$90 million shortfall was corrected by the receipt of one-time Hurricane Katrina grant funds from the federal government. However, no such funds were expected for fiscal year 2007.

On June 8, 2006, Defendant Robert L. Robinson, in his official capacity as Executive Director of DOM, announced that effective July 1, 2006, DOM would increase the hospital gross revenue assessment provided for in §43-13-177(18)(b) by approximately 1% of hospital gross revenues. Defendant Robinson subsequently proposed to reduce this assessment to approximately

0.8% of hospital gross revenues, amounting to approximately the \$90 million shortfall created by the CMS mandate. Shortly after Plaintiffs filed suit in September 2006, the State received additional and unexpected Hurricane Katrina grant funds. At that time the proposed increased assessment was stayed and the status quo maintained. In October 2006, the parties agreed to continue the matter until March 2007 and to hold the action in abeyance. *In March 2007, the parties announced to this Court that they were in agreement that this matter should continue to be stayed pending a legislative resolution of the funding issues.* However, the Legislature failed to take any action on the matter during the 2007 session. As a result, in January 2008, the parties requested that the Court lift the stay and proceed with the nearly 18- month-old action. Recognizing the time-sensitive nature of this matter, this Court held hearing on the summary judgment motions in February 2008 and took the matter under consideration in March 2008. At that time the 2008 regular legislative session was ongoing. Still in hopes of a legislative resolution of the issues, the Court awaited action by the Legislature as it reviewed the arguments and briefs of the parties and deliberated the appropriateness of the grant of summary judgment.

Law

Mississippi Code § 43-13-117 (18)(b) provides:

The division shall establish a Medicare Upper Payment Limits Program, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations, for hospitals, and may establish a Medicare Upper Payment Limits Program for nursing facilities. The division shall assess each hospital and, if the program is established for nursing facilities, shall assess each nursing facility, based on Medicaid utilization or other appropriate method consistent with federal regulations. This assessment will remain in effect as long as the state participates in the Medicare Upper Payment Limits

Program. The division shall make additional reimbursement to hospitals and, if the program is established for nursing facilities, shall make additional reimbursement to nursing facilities, for the Medicare Upper Payment Limits, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations.

The increased assessment proposed by DOM is purportedly based upon the legal authority found in this section allowing DOM to assess “each hospital . . . based on Medicaid utilization or other appropriate method. . . .” Historically DOM has utilized this assessment only to fund the UPL program. However, DOM now argues that §43-13-117(18)(b) allows the Division to make assessments to fund all of the non-federal share of the Medicaid program. The original UPL statute provided that the division was to “assess each hospital for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program.” In a later session, the Legislature deleted this language from the UPL statute. DOM argues that the removal of this language by the Legislature allows the Division to make assessments up to 6% of hospital gross revenues for any Medicaid purposes without seeking legislative approval.

Further, DOM argues that the initial increase in the revenue assessment percentage was proposed by one of the Plaintiffs, the Mississippi Hospital Association (“MHA”). Plaintiffs agree that the 2005 increase in the gross revenue assessment was proposed by the MHA but point out that the increase was limited to the purpose of increasing the UPL payments made to hospitals. Plaintiffs argue that at no point did MHA propose or agree to an increase to fund any portion of the Medicaid program except the limited UPL program.

It is a well established principle of Mississippi law that “when a court considers a statute passed by the Legislature, the first question before the court is whether the statute is ambiguous.” *Mississippi Power Co. v. Jones*, 369 So. 2d 1381, 1388 (Miss. 1979). If the statute in question is not ambiguous or unclear, the court should interpret and apply the statute according to its plain meaning. The court need only apply the principles of statutory construction if the statute is ambiguous or unclear on its face. See *Harrison County School District v. Long Beach School District* 700 So. 2d 286, 288-89 (Miss. 1997). “Whether the statute is ambiguous or not, the ultimate goal of the court in interpreting a statute is to discern and give effect to legislative intent.” *Anderson v. Lambert*, 494 So. 2d 370, 372 (Miss. 1986). “It is a general rule in construing statutes that the court will not only interpret the words used, but will consider the purpose and policy which the legislature had in view of enacting the law.” *State ex rel. Hood v. Madison County ex rel. Madison County Board of Supervisors*, 873 So. 2d 85, 88 (Miss. 2004)(citing *Aikerson v. State*, 274 So. 2d 124, 127 (Miss. 1973)).

This Court has considered the position advanced by DOM regarding interpretation of the subject statute and finds that same is ill-founded. DOM asks this Court to interpret the removal of previous statutory language as permission to impose an all-inclusive hospital gross revenue assessment. However, the statute in question is not ambiguous on its face; the plain language of §43-13-117(18)(b) does not allow DOM to assess a hospital gross revenue assessment as a general funding mechanism for Medicaid. Further, even if this Court considered the statute ambiguous, the laws of statutory construction simply do not permit this Court to read the absence of a prohibition to effectively act as permission. This Court’s ultimate goal, whether the statute is ambiguous or not, is to determine the legislative intent in enacting §43-13-117(18)(b). This particular statute was

enacted to establish a UPL program to provide annual Medicaid payments to hospitals in addition to the hospitals' existing Medicaid reimbursement utilizing federal matching funds. The purpose of the statute was to effectuate a net increase in Medicaid payments to participating hospitals and thereby ensure continued benefits to Medicaid recipients. The interpretation asserted by DOM would **not** result in a net increase in Medicaid payments to the hospitals; in fact, in some instances, the proposed assessment would result in some hospitals operating at or near a negative profit margin, thereby endangering their continued participation in the Medicaid program. Obviously, this interpretation would be in direct contradiction with the legislative intent.

The assessment provision included in § 43-13-117 (18)(b) is clearly intended to fund the non-federal share of the Mississippi UPL Program alone; it was not intended to provide a general funding mechanism for other Medicaid programs or to allow DOM a vehicle for making up a general shortfall in Medicaid funding. If the Legislature intended to give such broad authority to DOM to impose assessments for general Medicaid funding, such should have been spelled out specifically in statutory law. This Court cannot interpret the absence of the original statutory language to grant such broad and unfettered discretionary authority to DOM.

DOM admits that the assessment provision is included in the specific provision addressing the UPL Program and that the increased assessments are intended to offset a Medicaid budgetary shortfall that does not arise from the UPL Program. Further, DOM admits in paragraph 35 of its Answer and Counterclaim that “[c]learly, the Legislature intended for the assessment to generate the non-federal share of the UPL payments.” This Court agrees. While the Court is sympathetic to the DOM’s need to make up a significant budgetary shortfall, the plain language of the subject statute simply does not permit DOM to impose such an unlimited assessment. Any such increased

assessment to offset a general Medicaid budgetary shortfall is clearly outside the statutory authority of DOM and instead squarely within the purview of the Mississippi Legislature. The Court is not unmindful of the current political climate in which this issue is framed. Such circumstances are, however, beyond the proper consideration of this or any court. It is not the function or responsibility of this Court to determine whether such an assessment should be authorized by the Legislature or whether such would be an appropriate response to the budgetary shortfall. Instead, this Court is charged only with the responsibility to determine whether the increased assessment is within the statutory authority of DOM. Clearly, Proposed Rule AP2006-36 is beyond the statutory authority of DOM and is an unconstitutional usurpation of legislative authority.

Further, Mississippi law is clear that courts should interpret statutes in a manner to render them constitutional rather than unconstitutional. *See Columbia Land Dev., LLC v. Secretary of State*, 868 So. 2d 1006, 1017 (Miss. 2004). The interpretation proposed by DOM would render the applicable statute unconstitutional as a violation of the separation of powers doctrine. As the Mississippi Supreme Court stated in *In re: Jim Hood, Attorney General, Ex Rel., State of Mississippi Tobacco Litigation v. State of Mississippi, by and through Governor Haley Barbour, et al.*, 958 So. 2d 790, 813 (Miss. 2007), “[n]o money can come into the treasury or go out of it lawfully except as directed by legislative act. Collection and disbursement of public money belongs to the legislature and must be done as it directs.” The proposed interpretation of DOM would offend the notion of separation of powers as announced in *City of Belmont v. Mississippi State Tax Commission*:

Under all constitutional governments recognizing three distinct and independent magistracies, the control of the purse strings of government is a legislative function. Indeed, it is the supreme legislative prerogative, indispensable to the

independence and the integrity of the Legislature, and not to be surrendered or abridged, save by the Constitution itself, without disturbing the balance of the system and endangering the liberties of the people.

860 So. 2d 289, 306 (Miss. 2003). Although the legislative branch may constitutionally delegate its authority, it may only do so if it fixes adequate standards or boundaries for the executive agency to follow. The unlimited funding assessment, as proposed by DOM, does not qualify as a constitutional delegation of legislative authority as it lacks adequate standards and boundaries; instead, the proposed assessment and statutory interpretation urged by DOM would be an unconstitutional infringement of the legislative function of controlling the purse strings. “If possible, courts should construe statutes so as to render them constitutional rather than unconstitutional” *Board of Education v. State Educational Finance Comm’n*, 138 So. 2d 912 (Miss. 1962). The interpretation proposed by DOM would render the subject statute unconstitutional, while the interpretation asserted by Plaintiffs would render the statute constitutional. Therefore, this Court is obligated to construe the statute in the constitutional manner proposed by Plaintiffs as a limited delegation of legislative authority which provides for an assessment clearly limited by the boundaries of the UPL Program.

Mississippi law is clear that summary judgment should be granted cautiously. *Brown v. Credit Center, Inc.*, 444 So. 2d 358 (Miss. 1987). In fact, our Mississippi Supreme Court has stated that all summary judgment motions should be viewed with great skepticism and that the trial court should err on the side of denying the motion. *Daniels v. GNB, Inc.*, 629 So. 2d 595 (Miss. 1993). However, after cautiously considering the motion in this cause, this Court finds that the strict standard for summary judgment has been met. The parties agree that there are no genuine issues

of material fact and that discovery in this matter will result in unnecessary and unwanted delay. The parties also agree that resolution of this matter should be made on summary judgment motion. Therefore, based upon the foregoing, Plaintiffs' Motion for Summary Judgment pursuant to Rule 56 of the Mississippi Rules of Civil Procedure is hereby granted. Proposed Rule AP2006-36 is beyond the statutory authority of DOM and is an unconstitutional usurpation of legislative authority. Accordingly, the proposed increased assessment is hereby declared void, and Defendants are ordered to comply with the assessment and payment requirements of §43-13-11(18)(b) as interpreted by this Court hereinabove.

SO ORDERED, ADJUDGED, AND DECREED THIS the 10th day of July, 2008.



WILLIAM HALE SINGLETARY, Chancellor