

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-553

OCTOBER TERM, 2006

In re Appeal of Lisa Green

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APPEALED FROM:

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Human Services Board

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DOCKET NO. Fair Hearing 19,557

In the above-entitled cause, the Clerk will enter:

In this third level of review, petitioner Lisa Green appeals a decision of the Secretary of the Agency of Human Services denying her request for Medicaid transportation services to an out-of-state methadone clinic. Because the Secretary incorrectly concluded that the findings of the Human Services Board lack any support in the record, we reverse the Secretary's decision and reinstate that of the Board.

Green is a heroin addict who began methadone treatment in October 2003 at a Greenfield, Massachusetts

clinic because comparable services were not available near her residence in St. Albans, Vermont. Section M755 of the Office of Vermont Health Access (OVHA) regulations allows Medicaid coverage for transportation to and from necessary medical services,¹⁰ but does not require Medicaid to cover transportation at unusual or exceptional cost in order to meet a recipient's personal choice of provider.¹¹ 5 Code of Vermont Rules 13 170 008-259 (1999). In 2005, two years after Green had begun treatment at the Greenfield clinic, new treatment services were established in Burlington, Vermont; as a result, OVHA informed Green that Medicaid would no longer subsidize her transportation costs to the Greenfield clinic. On appeal to the Human Services Board, the hearing officer ultimately recommended that the Board grant Green's request for transportation services. The Board adopted the hearing officer's recommendation, determining that the uncontroverted medical evidence presented by Green in the form of letters from her counselor and primary care provider established that (1) Green's fragile emotional state made the Greenfield clinic the only place capable of meeting her particular ongoing medical needs; and (2) forcing Green to switch to another facility would most likely be injurious to her health. On review, the Secretary reversed the Board's determination, ruling that the record was devoid of any evidence supporting the Board's conclusion that the transportation costs were medically necessary. On appeal to this Court, Green argues that the Secretary abused his discretion by reversing the Board's decision.

Before reviewing the evidence and rulings in this case, we emphasize the standard of review. By statute, in relevant part, "the secretary may reverse or modify a board decision or order if . . . the board's findings of fact lack any support in the record."¹² 3 V.S.A. § 3091(h)(1)(A). This standard is equivalent to the clearly erroneous standard we apply in reviewing the Board's findings of fact. Jacobus v. Dep't of PATH, 2004 VT 70, & 7, 177 Vt. 496. Thus, the Secretary must uphold the board's findings "if the record contains any credible evidence that fairly and reasonably supports its findings."¹³ Id. (quoting In re Potter, 2003 VT 101, & 10, 176 Vt. 574).

In this case, two letters were offered in support of Green's petition to maintain transportation services to the Greenfield clinic. The first letter was from Green's counselor at the Greenfield clinic. The counselor stated that Green had "an obvious anxiety reaction, evidenced by uncontrollable shaking and crying"¹⁴ in response to the proposed transfer to the Burlington clinic because of her fears of being placed back in the environment where her addiction was active. The letter also stated that it had taken Green a while to develop the close

supportive connections that she had formed in the women=s group at the clinic, and that A[b]reaking away at this point would probably increase the likelihood of worsening depression through isolation.@ The second letter, from Green=s primary care provider, stated that the trauma of switching to another clinic would cause Green to become extremely distraught and would exacerbate her multiple mental disabilities to the extent that it would adversely affect her health. The letter further stated that an extremely important part of Green=s recovery was the strong bond that she had established with the women participating in a women=s group at the clinic, and that losing this support group would increase Green=s emotional and physical health problems. In sum, the letter stated that moving Green to the Burlington clinic would not be conducive to her health because the clinic did not offer a women=s group and Green had serious concerns about spending time with her former drug acquaintances.

In response to these letters, OVHA submitted an affidavit of a treatment program coordinator stating that (1) multiple agencies with substance abuse treatment programs offering women=s groups existed in northwestern Vermont; (2) any of those programs could provide treatment, including group and individual therapy, for a woman with a history of drug abuse; (3) all of the forms of treatment offered at the Greenfield clinic were also available through agencies in northwestern Vermont; and (4) the program providing transportation subsidies for methadone treatment at out-of-state clinics, including the Greenfield clinic, was ending, and all of those clients would be referred either to the Burlington clinic or a mobile clinic serving Orleans and Caledonia counties. Green=s primary care provider responded by stating in a follow-up letter that she was aware of the OVHA affidavit, but nonetheless continued to believe that Green needed to remain at the Greenfield clinic, and that switching to the Burlington clinic would cause her to become extremely distraught and Awould have an adverse effect on her health and rehabilitation progress.@

After acknowledging the above correspondence, the Board concluded that OVHA had failed to offer any evidence even addressing, much less contradicting, the credible assessments offered by Green=s health care providers indicating that Green would be traumatized by leaving the Greenfield facility, to the detriment of her health and her ability to achieve success in her treatment. On review, the Secretary determined that no evidence supported the Afalse assumptions@ that transferring Green from the Greenfield clinic would isolate her

and require her to associate with her former drug companions. In support of this assessment, the Secretary relied on undisputed evidence contained in OVHA's affidavit indicating that a variety of substance abuse programs offered women's groups, and that all of the services offered at the Greenfield clinic were also available at various locations near Green's community, thereby ensuring that Green would not be forced into unhealthy associations.

Upon review of the record, we conclude that the Secretary erred in concluding that no evidence supported the Board's findings that Green would be traumatized and her health and treatment compromised by forcing her to transfer to another clinic. Under the Secretary's reasoning, as long as an otherwise equivalent type of service is available locally, a Medicaid recipient such as Green who had already established a preexisting therapeutic relationship at an out-of-state clinic is not entitled to consideration of the impact of a move on her treatment in determining whether transportation costs should be provided for equivalent services at the out-of-state facility. That is not consistent with the relevant Medicaid regulation, however. The question is whether the desired transportation is to and from necessary medical services, which are defined by ' M107, in relevant part, as Aappropriate, in terms of type, amount, frequency, level, setting, and duration to the beneficiary's diagnosis or condition,@ and which A(1) help restore or maintain the beneficiary's health; or (2) prevent deterioration or palliate the beneficiary's condition; or (3) prevent the reasonably likely onset of a health problem or detect an incipient problem.@ 5 Code of Vermont Rules 13 170 008-21 (1999). The letters submitted by Green's care providers, which were not controverted by OVHA, unequivocally stated that forcing Green to transfer from the Greenfield clinic Awould increase [Green's] health problems both physically and emotionally,@ and Awould have an adverse effect on her health and rehabilitation progress.@ This was credible evidence Afairly and reasonably@ supporting the Board's findings and requiring the Secretary to uphold the Board's decision. Therefore, it was error to reverse the Board's order.

Reversed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise Johnson, Associate Justice