

NOTICE

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2016 IL App (4th) 150112-U

NO. 4-15-0112

FILED

July 22, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES McGOWAN,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
DEPARTMENT OF HUMAN SERVICES and)	No. 12MR796
MICHELLE R.B. SADDLER, Secretary of the)	
Department of Human Services,)	Honorable
Defendants-Appellees.)	John P. Schmidt,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding it did have jurisdiction and that the Department properly determined plaintiff's support obligation.
- ¶ 2 In September 2012, plaintiff, James McGowan, filed a complaint for administrative review against the Department of Human Services (Department) in the circuit court of Sangamon County. On administrative review, plaintiff claimed the Department improperly calculated his support obligation for his late wife's nursing home care. In May 2014, the circuit court remanded the matter to the Department for a redetermination of plaintiff's spousal support obligation, excluding his Roth individual retirement account (IRA) distribution. In June 2014, plaintiff filed a motion to reconsider, which the court denied. In January 2015, the court entered findings of fact and conclusions of law. In February 2015, plaintiff appealed. On

appeal, plaintiff asserts the Department erroneously included his late wife's IRA distribution in calculating his support obligation. The Department argues this court lacks jurisdiction because (1) plaintiff failed to file his notice of appeal within 30 days of the denial of his June 2014 motion to reconsider and (2) it properly considered plaintiff's late wife's IRA distribution in calculating his support obligation. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Plaintiff's late wife (decedent recipient) was cared for in a nursing home from July 2009 until her death in June 2010. During her stay, she received medical assistance payments through the State of Illinois's Aid to the Aged, Blind, and Disabled program.

¶ 5 Correspondence to the plaintiff from the Department dated June 30, 2010, advised plaintiff he was legally responsible for the support of the decedent recipient and included a notice of obligation to support form. The Department instructed plaintiff to forward to the Department, within 15 days of the mailing of the notice, a copy of his most recent federal income tax return or other documents verifying his income. Plaintiff failed to send the requested information to the Department.

¶ 6 In light of plaintiff's lack of compliance, the Department sent a September 2010 letter directing plaintiff to submit a copy of his most recent federal income tax return by October 2, 2010. Plaintiff failed to do so. Thereafter, in a November 5, 2010, letter, the Department informed plaintiff that due to his failure to submit his federal tax information, a support obligation calculation had been made in the absence of his income verification information. The Department determined plaintiff's support obligation to be \$57,257.20 for the period of July 9, 2009, to June 2010. On or about April 25, 2011, the Department received plaintiff's 2009 federal

income tax return.

¶ 7 Subsequently, in May 2011, the Department completed a responsible relative income-expenditure computation considering from plaintiff's 2009 federal income tax return, the adjusted gross income, nontaxable IRA annuity income, and nontaxable social security income. The Department's final computation for plaintiff's support obligation was recalculated to \$7,320. Later that month, the Department mailed plaintiff a letter via certified mail entitled, "notice of support due," accompanied by a return receipt request. The letter indicated plaintiff's support was recalculated to \$7,320. Thereafter, in June 2011, the Department received the certified mailing it sent to plaintiff on May 20, 2011, with a "Refused" stamp dated June 16, 2011.

¶ 8 In July 2011, pursuant to plaintiff's request, the Department provided information illustrating how his financial obligation was determined, which stated, in part:

"Said document reflected the sum of [plaintiff's] adjusted gross income of \$58,563.00, plus the difference between [plaintiff] and the decedent recipient's non-taxable Social Security benefits of \$14,804.00, plus the difference between non-taxable IRAs/annuity in the amount of \$8,469.00, minus the decedent recipient's income as reported by the Department of Public Aid of \$14,238.00 (\$1,186.5 [times] 12 months). Said amounts are referenced in [plaintiff's] 2009 Federal Income Tax return. The total gross income reflected was of \$67,688.00."

¶ 9 On or about August 1, 2011, plaintiff filed a notice of appeal with the Bureau of Assistance Hearings, challenging the administrative support order and requesting a hearing.

Plaintiff argued the administrative support order dated June 30, 2011, was incorrect because the Department, in calculating his support obligation, improperly attributed to him decedent recipient's \$35,246.95 IRA distribution. Plaintiff maintained the IRA distribution was attributable only to the decedent recipient and should not be considered his income. In the alternative, plaintiff argued, even if the IRA distribution was required to be considered in his income calculation, the accounting should be done in accordance with the provisions of the federal tax code. On August 21, 2012, the Department issued its final administrative decision, upholding the administrative support order of \$7,320.

¶ 10 On September 21, 2012, plaintiff filed a complaint for administrative review in the circuit court of Sangamon County. In his complaint, he asserted the Department improperly calculated his support obligation by including (1) his Roth IRA distribution and (2) the decedent recipient's IRA distribution. On May 28, 2014, the circuit court entered an order remanding the cause to the Department with directions to recalculate plaintiff's support obligation consistent with the Department's admission that plaintiff's \$8,469 Roth IRA distribution should not have been included in its calculations. The court upheld the Departments decision in all other respects.

¶ 11 On June 16, 2014, plaintiff filed a "Motion to Reconsider the May 28, 2014[,] Ruling and Motion for Findings, or in the Alternative to Vacate Part of the Order." On June 17, 2014, the circuit court denied plaintiff's motion to reconsider. The court's June 2014 order failed to address the motion for findings portion of plaintiff's June 16, 2014, motion. On June 24, 2014, upon remand and in accordance with the circuit court's May 28, 2014, order, the Department reduced plaintiff's support obligation from \$7,320 to \$6,300.

¶ 12 Subsequently, on October 6, 2014, the circuit court addressed the portion of plaintiff's June 16, 2014, motion which sought entry of findings pursuant to section 3-111(c) of the Code of Civil Procedure (Code) (735 ILCS 5/3-111(c) (West 2014)). The court directed both parties to prepare proposed findings of fact and conclusions of law for the court's consideration. Ultimately, on January 13, 2015, the circuit court adopted the Department's findings of fact and conclusions of law.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, plaintiff asserts that in calculating his support obligation, the Department erroneously included his late wife's IRA distribution. The Department argues this court lacks jurisdiction because (1) plaintiff failed to timely file his notice of appeal, and (2) it properly calculated plaintiff's income to determine his support obligation. We affirm.

¶ 16 A. Jurisdiction

¶ 17 On May 28, 2014, the circuit court entered its ruling in this case. On June 16, 2014, plaintiff filed a motion seeking reconsideration and findings. On June 17, 2014, the court denied plaintiff's request for reconsideration. On January 13, 2015, the court entered findings of fact. On February 11, 2015, plaintiff filed his notice of appeal.

¶ 18 In an April 2015 order we denied the Department's motion to dismiss based on lack of jurisdiction. The Department continues to assert this court does not have jurisdiction because plaintiff failed to file a notice of appeal within 30 days of the circuit court's June 2014 denial of the motion to reconsider portion of his June 2014 motion. Plaintiff argues this court has jurisdiction because he filed his notice of appeal within 30 days of entry of the order

disposing of the motion for findings portion of his postjudgment motion.

¶ 19 As a reviewing court it is our duty to consider our jurisdiction and to dismiss the appeal if we determine jurisdiction is lacking. See *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440, 490 N.E.2d 1252, 1253 (1985). A notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against the judgment or order." Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). A postjudgment motion must (1) be "directed against the judgment" under Rule 303(a)(1) and (2) request at least one of the forms of relief specified in section 2-1203(a) of the Code, *i.e.*, rehearing, retrial, modification, vacatur of the judgment, or other similar relief. *Marsh v. The Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 462, 563 N.E.2d 459, 461-62 (1990).

¶ 20 Inherently, a motion for findings is not "directed against the judgment" because it "merely requests that the court articulate the findings of fact and law upon which its prior judgment is predicated [and] does not request a change in the judgment." *Hayes Machinery Movers, Inc. v. REO Movers & Van Lines, Inc.*, 338 Ill. App. 3d 443, 446, 788 N.E.2d 259, 261 (2003). However, if the motion for findings requests any relief prescribed under section 2-1203(a) of the Code, it is "directed against the judgment" and qualifies as a postjudgment motion under Rule 303(a)(1). See *R & G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 325, 812 N.E.2d 1044, 1049-50 (2004) (to avoid the jurisdictional hurdle with a motion for findings, all counsel needs to do is "add a tag line to the motion to clarify requesting a rehearing").

¶ 21 In his motion, plaintiff asked the circuit court to (1) reconsider its affirmance and make findings of fact or (2) vacate and remand. Therefore, plaintiff's motion requested relief prescribed in section 2-1203(a) of the Code, in that it asked for reconsideration or vacatur. Following this court's decision in *R & G*, plaintiff timely filed his notice of appeal on February 11, 2015, within 30 days from the court's disposal of the last postjudgment motion, because his motion for findings was contained within a motion which requested relief directed against the judgment. See *id.* Thus, we continue to find we have jurisdiction to hear plaintiff's appeal.

¶ 22 B. Responsible Relative Support Obligation

¶ 23 In an administrative review action, this court reviews the agency's decision rather than the decision of the circuit court. *Farris v. Department of Employment Security*, 2014 IL App (4th) 130391, ¶ 35, 8 N.E.3d 49. If the historical facts are undisputed, but the issue is whether the agency correctly interpreted a statutory provision or an agency regulation, the decision is subject to *de novo* review. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill. 2d 370, 380, 899 N.E.2d 227, 237 (2008). In this matter, there are no disputed historical facts. The parties also agree application of the responsible relative determination of ability to support regulation contained in 89 Ill. Adm. Code 103.20(b)(2) (2009), is appropriate. The parties diverge on the how to properly interpret title 89, section 103.20(a)(2) (89 Ill. Adm. Code 103.20 (a)(2)(2009). Plaintiff contends the Department wrongfully included the decedent recipient's IRA distribution when calculating his income to determine his support obligation based on a plain reading of the regulations. The Department argues it properly considered the decedent recipient's IRA distribution in calculating plaintiff's income based on the plain language of the regulations. We agree with the Department.

¶ 24 Provisions properly promulgated under the Administrative Code have the force and effect of law and are construed according to the same standards governing the construction of statutes. *People ex rel. Madigan*, 231 Ill. 2d at 380, 899 N.E.2d at 232. "The interpretation of a statute is a question of law, which we review *de novo*." *Id.* As such, we apply a *de novo* standard of review to this matter. When called upon to interpret agency regulations, our primary objective is to ascertain and give effect to legislative intent by looking to the language of the regulation, which is to be given its plain and ordinary meaning. *Id.* "Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to other tools of statutory construction." *MD Electrical Contractors Inc., v. Fred Abrams et al.*, 228 Ill. 2d 281, 287-88, 888 N.E.2d 54, 58 (2008).

¶ 25 In *Poindexter v. State*, 229 Ill. 2d 194, 196, 890 N.E.2d 410, 413 (2008), our supreme court reviewed the purpose of the Medicare Catastrophic Coverage Act (Act) (42 U.S.C. § 1396r-5 (2006)), which led to Illinois's codification of title 89, section 103.20(a)(2) of the Administrative Code. Before the Act was codified, a couple would need to deplete nearly all of their assets before either could meet the Medicaid eligibility requirements and the effect would leave one spouse in the community in a poor financial position. *Poindexter*, 229 Ill. 2d at 196, 890 N.E.2d at 413. In 1988, Congress used the Act to address the issue of spousal impoverishment, which provided a formula for allowing the institutionalization of one spouse, while keeping the other spouse in the community ("community spouse") above the poverty line. *Id.* The Act also was aimed at "preventing financially secure couples from obtaining Medicaid assistance." *Id.* (quoting *Wisconsin Department of Health & Family Services v. Blumer*, 534 U.S. 473, 480 (2002)). The Act accomplished this by preventing an institutionalized spouse

from becoming Medicaid eligible by simply transferring all of his or her assets to the community spouse. *Id.*

¶ 26 To determine Medicaid eligibility, the Department takes a "snapshot" of the couple's total current and projected resources and income as of the first continuous period of institutionalization. *Id.* at 197, 890 N.E.2d at 413. The institutionalized spouse's income cannot exceed a maximum level determined by the state and the community spouse's income will not be deemed available when considering the institutionalized spouse's eligibility. *Id.* at 198, 890 N.E.2d at 414. Next, the Department looks at the couple's total resources, regardless of ownership. *Id.* "This collective evaluation of the couple's assets closed the loophole that allowed the couple to shelter resources solely in the name of the community spouse." *Id.* The couple's total resources must be below the "Community Spouse Resource Allowance" (Spouse Allowance) before the institutionalized spouse will be eligible for benefits. *Id.*

¶ 27 After a spouse is deemed eligible for Medicaid, the Department can seek support from the community spouse. 89 Ill. Adm. Code 103.10(a) (2009). "The Department shall seek to obtain support for recipients from legally responsible individuals and shall seek the enforcement of support obligations ***." *Id.* The Department determines a responsible relative's support obligation by applying Table A to his or her gross income based on their most recent federal income tax return. 89 Ill. Adm. Code 103.Tbl A, 103.20(a)(2) (2009). "If the responsible relative has filed a joint tax return with a non-responsible relative, only such income which is attributable to the responsible relative will be considered." 89 Ill. Adm. Code 103.20(a)(2) (2009).

¶ 28 The relevant and undisputed facts are as follows. On June 29, 2009, decedent

recipient cashed out her IRA and received a distribution of \$35,246.95. Plaintiff admitted at an administrative review hearing that decedent recipient's IRA distribution was transferred to him so she would remain eligible to receive Medicaid benefits. As a result, the IRA distribution was not included in the decedent recipient's income when the Department made a determination on her Medicaid eligibility. To fix plaintiff's support obligation, the Department made its calculation based on his 2009 federal tax return, which was filed jointly with decedent recipient.

¶ 29 Plaintiff argues that under section 103.20(a)(2), the decedent recipient's IRA distribution should not be included in calculating his income to determine his support obligation. Plaintiff relies on the following language: "If the responsible relative has filed a joint tax return with a non-responsible relative, *only such income which is attributable to the responsible relative will be considered.*" (Emphasis added.) *Id.* The Department's interprets section 103.20(a)(2) differently than plaintiff. The Department suggests plaintiff's late wife cannot be a non-responsible relative of herself and section 103.20(a)(2) does not apply under these circumstances. Therefore, according to the Department, the decedent recipient's IRA distribution was properly included in its calculation.

¶ 30 We first look to the language of title 89, section 103.20(a)(2) of the Administrative Code to determine its plain and ordinary meaning:

"If the responsible relative has filed a joint tax return with a non-responsible relative, only such income which is attributable to the responsible relative will be considered." *Id.*

¶ 31 A "responsible relative" is defined as a person who is "legally responsible for the financial support and maintenance of recipients: (1) spouse for spouse [and] (2) parents for

children under 18 years of age." 89 Ill. Adm. Code 103.10(b)(1)-(2) (2009). (A recipient is defined as "[a]n individual who receives benefits under an assistance program." 89 Ill. Adm. Code 101.20 (1998).) As a spouse, plaintiff is a responsible relative of the recipient and is financially responsible for her nursing home care. A "non-responsible relative" is a relative of the recipient who is not legally responsible for the financial support and maintenance of the recipient. See 89 Ill. Adm. Code 103.10(b) (2009). (Black's Law Dictionary defines "relative" as: "[a] person connected with another by blood or affinity." Black's Law Dictionary 1402 (9th ed. 2011).) In its brief, the Department provided a helpful example of a "non-responsible relative":

"John is married to Jane, who has a teenage daughter named Sue from a previous relationship. Sue has a child, and she receives benefits under the Temporary Assistance for Needy [Children] [P]rogram. [Citation.] The Department could seek support from Jane because Jane is a responsible relative of Sue as her parent. [Citation.] But, if Jane and John filed a joint tax return, John's income could not be considered in determining Jane's support obligation because John, as Sue's step-father, would be a non-responsible relative who has no legal obligation to support Sue. [Citation.]"

¶ 32 As the Department suggests in its brief, for plaintiff's argument to be correct under title 89, section 103.20(a)(2) of the Administrative Code, his late wife would have to be considered a "non-responsible relative." However, the recipient cannot be a "non-responsible

relative" of herself. In his reply brief, plaintiff concedes the recipient cannot be a "non-responsible relative" of herself but suggests, since only married persons can file a joint tax return, the recipient's income should not be considered, just as a nonresponsible relative's income would not be considered. We disagree. The Administrative Code uses the term "recipient" throughout its regulations that apply to support obligations. See 89 Ill. Adm. Code 103.10, 103.20, 103.40, 103.Tbl A (2009). The term "non-responsible relative" distinguishes situations where spouses file a joint tax return, but only one of them may be financially responsible for a recipient—not in this context, where the recipient is also a spouse.

¶ 33 The effect of plaintiff's contention that the decedent recipient's IRA distribution should have been excluded from his income means the IRA distribution would not have been accounted for in either the recipient's income in determining Medicaid eligibility or the responsible relative's income in determining his support obligation. This is precisely the type of situation the Act was meant to prevent. "Congress intended to close the loophole where a couple could shelter resources in the community spouse's name while the institutionalized spouse received Medicaid." *Poindexter*, 229 Ill. 2d at 196, 890 N.E.2d at 413 (quoting *Johnson v. Guhl*, 91 F. Supp. 2d 754, 761 (D.N.J. 2000)).

¶ 34 C. Transfer of Resources to the Community Spouse

¶ 35 Plaintiff also claims Section 120.379(d) (89 Ill. Admin. Code 120.379(d) (2013)), prohibits consideration of the funds transferred to him from decedent recipient's IRA distribution in calculating his support obligation. Under this provision, when determining the eligibility of an institutionalized spouse, the Department may allow the institutionalized spouse to transfer to the community spouse an amount that does not exceed the Community Spouse Resource Allowance.

Id.

¶ 36 As the Department suggests, transfer of funds is allowed in an effort to assist in establishing Medicaid eligibility. Once eligibility is established, the mere fact funds were transferred does not prohibit consideration of those funds when calculating a support obligation. Moreover, the Department is specifically required to consider the gross income figure shown on the most recent federal income tax return. 89 Ill. Adm. Code 103.20(b)(2). Decedent recipient's IRA distribution made up a portion of the gross income figure on Plaintiff's federal income tax return. Therefore, in calculating plaintiff's support obligation, the Department properly determined plaintiff's income based on the 2009 joint federal income tax return.

¶ 37 Accordingly, we affirm the circuit court's judgment as the Department properly considered the funds from decedent recipient's IRA distribution in determining plaintiff's support obligation as a responsible relative.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the circuit court's judgment.

¶ 40 Affirmed.