Pierantozzi v. GMHP Assoc., 8 ROP Intrm. 288 (2001)

SANDRA PIERANTOZZI,[1] Minister of Health,
Appellant,

v.

GMHP ASSOCIATES & GMHP ASSOCIATES, LTD.,
Appellees.

CIVIL APPEAL NO. 00-12
Civil Action No. 99-239

Supreme Court, Appellate Division
Republic of Palau

Argued: December 27, 2000
Decided: March 23, 2001

Counsel for Appellant: James Kelleher, Assistant Attorney General

Counsel for Appellees: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

MICHELSEN, Justice:

The issue raised in this appeal is one of statutory interpretation – whether 34 PNC § 331 authorizes the practice of the Ministry of Health to vary the hospital fees charged to Palauan citizens based upon whether they are insured. Appellees GMHP Associates and GMHP Associates, Ltd. (collectively, "GMHP"), medical insurance companies that insure Palauans who receive medical care at the Hospital, brought suit to contest that ⊥289 policy, arguing that it is inconsistent with 34 PNC § 331.

The Trial Division granted summary judgment in favor of GMHP, holding that "the Ministry of Health must apply the 1995 Sliding Fee Scale to all Palauan patients, regardless of whether they are covered by private health insurance." The court also granted the Ministry's motion to dismiss all of GMHP's claims for monetary relief because GMHP failed to oppose the motion. The Minister appealed.

In 1995, the Olbiil Era Kelulau ("OEK") enacted 34 PNC § 331, discussed in detail below, which established a standard of billing for the Hospital. After the passage of this statute, the Ministry expanded its system of billing previously used at the Community Health Center and

[1] Sandra Pierantozzi became Minister of Health in January 2001. Her name has therefore been automatically substituted as a party for Masao Ueda, the former Minister of Health. ROP R. Civ. Pro. 25(d)(1).

applied it at the Hospital. Under this system, some Palauans are subsidized for their medical care and only are billed according to a "Sliding Scale" based on family size and annual income. Pursuant to the Ministry's policy, however, Palauans who are covered by medical insurance presently are billed for the full cost of their medical care, according to the fees listed for each medical treatment in the "Fee Schedule."

The Trial Division reached its decision by a consideration of statutory construction and legislative intent, both of which present questions of law that this Court reviews *de novo*. *See ROP v. Etpison*, 5 ROP Intrm. 313, 317 (1995); *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995).

Section 331 of Title 34 of the Palau National Code states, in full:

> The fees contained in the Ministry of Health Medical and Other Related Fee Schedule 1995 shall be charged to all non-Palauans by the Ministry of Health for all health services. Within 10 days after the effective date of this section, the Ministry of Health shall charge all Palauans for medical services based on the 1995 Sliding Fee Schedule, based on their social security contributions.
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> However:
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> No person in need of medical care may be denied such care because of inability to pay all or any part of the fee established; however, this section shall not apply to nonresidents who travel to Palau for the express purpose of receiving medical treatment;
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> There shall be no distinction in treatment or care based upon nonpayment or the amount of payment.

34 PNC § 331.

The primary dispute arises from the statute's reference to "the 1995 Sliding Fee Schedule." The parties agree that although there is a document called a "Fee Schedule" and another document called a "Sliding Fee Scale," there is no such document as the "1995 Sliding Fee Schedule." The Fee Schedule is a listing, in great detail, of the specific fees to be charged for each medical treatment that the hospital provides. The 1995 Sliding Fee Scale is a document that indicates what percentage of the cost of medical care should be charged to Palauans based on family size and annual income. The Appellant argues that the reference in the statute to the Sliding Fee Schedule was intended to incorporate the entire sliding fee ⊥290 "system," including all billing policies that had previously been adopted by the Ministry when the sliding fee system was implemented at the Community Health Center.

"In statutory interpretation, the starting point is the language of the statute itself." *Wenty v. ROP,* 8 ROP Intrm. 188, 189 (2000) (citing *Lewis v. United States*, 100 S. Ct. 915 (1980). The opening paragraph of Section 331 establishes a two-tier system of billing and compels two

conclusions: first, that Palauans and non-Palauans are to be considered as separate groups in determining how they are to be charged for medical care, and second, that *all* Palauans are to be treated as a unit. It also refers to the "1995 Sliding Fee Schedule" and the "Ministry of Health Medical and Other Related Fee Schedule 1995." Because the OEK properly referred to the Medical and Other Related Fee Schedule 1995 earlier in the statute, its use of the term "1995 Sliding Fee Schedule" was intended to refer to a document other than the Medical and Other Related Fee Schedule 1995. Therefore, the remaining question is what was intended by the statement that all Palauans are to be charged according to the "1995 Sliding Fee Schedule."

"[W]hen construing statutory language, we are bound to give ambiguous provisions a 'reasonable, rational, sensible, and intelligent construction.'" *Rengulbai v. Solang,* 4 ROP Intrm. 68, 74 n.2 (1993) (quoting 73 Am. Jur. 2d *Statutes* § 265 (1974)). Where the language in a statute is ambiguous, "the Court must look to the legislative history to discern the legislature's intention." *ROP v. Etpison,* 5 ROP Intrm. 313, 317 (1995).

The legislative record reveals that several members of both the House of Delegates and the Senate made statements that Section 331 was intended to establish a discounted system of billing for Palauans based on annual income, while non-Palauans were to be charged for the full cost of medical care.[2] There is no mention in the legislative ⊥291 record of any intent to charge

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[2] *See, e.g.*, Fifth OEK, House of Delegates, Second Special Session, Second Day Journal, p. 4 (March 5, 1997) (Delegate Whipps):

> Mr. Speaker, while on the subject measure, let me just ask the committee assigned this subject measure, to look into Hospital cost. I am concerned on this. This may also be another source of revenue to the Republic if only hospital costs can be collected at actual costs from foreigners. From what I have learned, in 1994, there were at the most 36 patients seen by doctors each day. Today, there are 190 patients seen by doctors every day. There are many foreigners residing in the Republic and also need to be seen by doctors. In addition to Palauans, there are foreigners who pay hospital fees as if they were Palauan. This has to change. Foreigners should pay hospital costs at actual costs. There is a bill, House Bill No. 5-3-1, introduced by Delegate Ngiraikelau, pending and still with a committee on Health and Social Services. I feel that this bill is very important and may address this issue. I ask the committee assigned this bill to do the required impending work and report its findings to the floor. I think this bill may provide another source of revenue if hospital costs incurred by a foreigner can be collected at actual costs.

Fifth OEK, House of Delegates, Second Special Session, Fourth Day Journal, p. 10 (March 24, 1997):

> Moreover, Mr. Speaker, your Committee agreed to add a section to this bill to allow the Ministry of Health to charge fees for its services based on the new fee schedule. The intent is to allow basic fees for Palauans and a separate or special charge fees for

insured Palauans who would otherwise be entitled to a discounted fee at the full rate for medical services.

The Trial Division concluded that the OEK intended to refer to the 1995 Sliding Fee Scale when it used the term, "1995 Sliding Fee Schedule." A reading that the legislature inadvertently used the word "Schedule" when it meant "Scale" is consistent with the otherwise clearly expressed intent of the legislature. The legislature was aware of the "Fee Schedule" and stated that all non-Palauans shall be charged according to the rates listed in the 1995 Fee Schedule. The legislative record indicates that the primary concern in passing this bill was for non-Palauans to be charged at the full rates listed in the Fee Schedule, while Palauans be charged subsidized rates. Finally, as the Trial Division noted, had the OEK intended to adopt the Ministry's policy of billing insured Palauan patients at the full rate, the language of Section 331 would have referred to prior practice or policies used when the system was implemented at the

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> foreigners. We were concerned with the new fee schedule as it may be unconstitutional. However, your Committee feels that this is okay and there should not be any problems with the laws. In other countries especially in U.S., different fees or higher fees are charged to foreigners and locals or U.S. citizens pay the basic fee which is much lower. This may be a normal practice used throughout the World. Your Committee also believe that with this new fee schedule the Hospital Trust Fund will generate more revenues to subsidize some of their expenses such as medications. At the same time, relieve the government from making subsidies to defray cost of services incurred by foreigners.

Id. at 11:

> On item 8, a major policy decision, Mr. Speaker, to provide or allow the Ministry of Health to charge fees for its services based on a new fee schedule with basic fees for local or Palauans and special charge fees for foreigners or higher fees.

Fifth OEK, Senate, Third Special Session, Third Day Journal, p. 3 (March 25, 1997):

> Mr. President, again what we deliberated on was some much needed improvement to the Belau National Hospital; the fee schedule they are currently using impose the same fees to locals and foreigners. Your committee addressed that in the subject bill by favorably supporting the new fee schedule to be implemented 30 days after the effective date of this act, so the hospital can base that to impose their fees on foreigners and local citizens. This is another avenue to generate the much needed revenue for the Hospital Trust Fund from $650,000 to $2,000,000 at the end of the year.

Community Health Center, or the entire sliding fee system in general. We thus conclude that the legislature intended that the Sliding Fee discounts be ⊥292 applied to all Palauans, regardless of whether they are covered by medical insurance. The Ministry's policy of not applying the Sliding Fee discounts to insured Palauans therefore is not authorized by Section 331.

The Appellant argues, however, that our analysis should consider the reasoning found in *Chevron, U.S.A., Inc. v. Natural Resources Defense Coun., Inc.* , 104 S.Ct. 2778 (1994). The Ministry urges that, as the agency charged with the administration of Section 331, its interpretation of the meaning of the statute should be given the deference accorded to administrative agencies in the United States. Although we have not yet addressed whether, or how, the courts of Palau should apply the agency deference rule outlined by the U.S. Supreme Court in *Chevron,* we need not reach that issue in this case because no deference would be accorded the Ministry even if the rule were applied.

When the *Chevron* rule is applied, the starting point remains the same:

> the language of the statute. If the language is ambiguous, we look to legislative history to determine congressional intent. In addition, we will sometimes defer to a permissible interpretation of a statute by an appropriate agency. However, we will do so only when the statute does not directly speak to the issue and congressional intent cannot be gleaned from the text of the statute, or its legislative history. Only then, should the question for the court become whether the agency's answer is based on a permissible construction of the statute.

Director, OWCP v. Sun Ship, Inc., 150 F.3d 288, 291 (3d Cir. 1998). Here, the legislative intent can be gleaned from the text of Section 331 and the legislative history. We conclude that no deference is due under the *Chevron* rule because the Minister's interpretation would require ignoring the clearly expressed statement of the OEK. *See, e.g., Food and Drug Admin. v. Brown & Williamson Tobacco Corp.,* 120 S.Ct. 1291, 1297 (2000) ("[A]lthough agencies are generally entitled to deference in the interpretation of statutes that they administer, a reviewing court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." (internal quotation omitted)); *Hotels of Marianas, Inc. v. Government of Guam,* 71 F.3d 1455, 1459 (9th Cir. 1995) (noting that courts "do not defer to an agency's interpretation of a statute if it is inconsistent with the plain language of the statute").

The judgment of the Trial Division is affirmed.