

H.(K.)

THE HIGH COURT

IN THE MATTER OF K.H., A.P.U.M. DECEASED



Judgment delivered on the 19th day of July 1984 by

Finlay P.

This is an issue arising on the discharge of K.H. a Ward of Court and a person of unsound mind, arising from a claim made by the Mid-Western Health Board for a sum of £9,363.01, charges which they allege are due for maintenance of the Ward in St. Joseph's Hospital, Limerick for the years ended 31st December 1981, 31st December 1982 and for the period from the 1st January 1983 to the 18th August 1983.

The Ward . was declared to be a person of unsound mind by Order of 1st May 1959 and was brought into the wardship of this Court. She died on the 18th August 1983 and was at all times material to this issue a patient in St. Joseph's Psychiatric Hospital, Limerick. It is agreed that during the material time, the Ward who had no dependants had an income of approximately £5,000 per annum. The Mid-Western Health Board did not during the lifetime of the Ward raise any charge for maintenance covering this period but upon the death of the Ward by letter dated 15th December 1983, they made a claim for maintenance on the basis of 70% of £5,000 for the years ended 31st December 1981 and 31st December 1982 and 75% of the same figure for the period from 1st January 1983 to the 18th August 1983. I am satisfied and it is not contested that this was a purported exercise by the Board of the powers conferred on it by the Health (Charges for in-patient services) Regulations, 1976 being S.I. No. 180 of 1976 made by the Minister for Health in exercise of the powers conferred on him by Section 5 of the Health Act 1947 and Section 53 of the Health Act, 1970.

By virtue of the provision of Section 45(1) of the Health Act, 1970 it was provided that a person should have full eligibility for health services if they were "unable without undue hardship to arrange general practitioner or medical and surgical services for themselves and their dependants. By virtue of the provisions of Section 46 of the same Act as modified and amended by Statutory Instrument No. 110 of 1979, a person who is without full eligibility shall have limited eligibility for health services.

It follows that the Ward was, at all material times, a person with limited eligibility for health services. The relevant part of Statutory Instrument No. 180 of 1976 is at paragraph 3 thereof and is as follows -

- "1. A charge towards the cost of in-patient services provided under Section 52 of the Act may be made on a person who is not a person with full eligibility where the person (a) has no dependants, and (b) has been in receipt of in-patient services for 90 days or for periods aggregating in total 90 days within the previous 12 months.
2. A charge under this Article shall be at a rate not exceeding the income of the person less a sum of £2.50 a week or less such larger sum as may be determined by the Chief Executive Officer of the appropriate Health Board having regard to the circumstances of the case".

It is not disputed that the Ward had not at any material time any dependants and that she had been during all the period in respect of which this claim has been made, a person who had been in receipt of in-patient services for 90 days within the previous 12 months. She was, therefore, a person captured by Article 3 of the Regulations of 1976 and the Health Board was entitled to raise against her a charge towards



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the cost of her in-patient services provided it did not exceed her income and provided it was at least £2.50 a week less than her income. The charges which have been raised are, of course, less than the income of the Ward during the relevant period by significantly more than £2.50 per week.

The net issue which arises is as to whether it is within the power of a Health Board under the right to charge granted by the Regulations of 1976 to make a charge which is effective retrospectively. No special point was taken with regard to the possibility of charging after the death of a patient and on the submissions made to me, I can see no distinction between a retrospective charge made whilst the patient is still alive, whether continuing as a patient or not and a retrospective charge made after the death of the patient. On behalf of the Health Board who are the Claimants, it was urged that there is nothing in the terms of Article 3 of the Regulations of 1976 which would exclude or prohibit a retrospective charge. Further it was contended that by reason of the limitation of the charge to the income of the person receiving the services coupled with the provision for a minimum surplus amount available out of that income to the patient that there could be no injustice in a retrospective charge. Further, it was contended that the practical difficulties of ascertaining possibly at all and certainly immediately, varying and changing financial circumstances of a patient would make the construction of the Article as capable of being operated retrospective a more efficient and likely construction than the reverse.

On behalf of the Committee, it was urged that the combined provisions of Section 52 and Section 53 of the Act of 1970, must be construed as effectively providing that unless and until such time as

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a charge is raised under the Regulations of 1976 that a person with limited eligibility is entitled to free hospital or institutional care.

The relevant portions of the Sections upon which Counsel for the Committee relied are as follows -

Section 52 (1) -

"A Health Board shall make available in-patient services for persons with full eligibility and persons with limited eligibility."

Section 53 (1) -

"Save as provided for under sub-Section 2, charges shall not be made for in-patient services made available under Section 52."

Sub-Section (2) -

"The Minister may with the consent of the Minister for Finance make Regulations (a) providing for the imposition of charges for in-patient services in specified circumstances on persons who are not persons with full eligibility or specified classes of such persons, and (b) specifying the amounts of the charges or the limits to the amounts of the charges to be so made."

It was further urged on the interpretation of these Sections that the position of the Ward up to the date of her death was that she was a person with a statutory right which she was exercising to free in-patient treatment and that accordingly, the Regulations could not be construed so as retrospectively to substitute for that a liability to pay.

I have carefully considered these two conflicting submissions and I have come to the following conclusions. There does not appear to me to be any language contained in Article 3 of the Regulations of 1976



which is capable of being construed as clearly permitting a retrospective fixing of a charge on the one hand or of clearly prohibiting it on the other.

To construe the Article, therefore, it seems to me that I must on the general principles of the construction of Statutory Instruments and Statutes have regard to the purpose of the legislation pursuant to which the Regulations are made. The Health Act 1970 and the prior Health Acts with which it is to be construed from a code of legislation, the broad intention of which is, firstly, to provide for the administration of health care and secondly, to provide that those who are unable in whole or in part to provide for the cost of such services should have them provided out of State funds.

A necessary corollary of this general intention seems to me to be the provision whether by Regulation or Statute of a scheme which ensures that those who are able as the Act itself says "without undue hardship" to provide for services afforded to them by the Health Boards set up under the Acts should make a reasonable contribution towards the cost of them.

This interpretation of the general purpose of the Act is reinforced by a consideration of Sections 48, 49 and 50 of the Act of 1970.

Section 48 provides a right in a Health Board to require that a person make a declaration in such form as it considers appropriate in relation to his means and to take such steps as it things fit to verify the declaration where the question falls for determination as to whether a person is or is not a person with full eligibility or a person with limited eligibility.

Section 49 provides an actual obligation on a person recorded by a Health Board as entitled because of specified circumstances to a service provided by the Board of any change in the circumstances which dis-entitles him to the service and has as a sub-Section the creation of an offence and a provision for a fine on summary conviction for a person who fails to discharge that obligation.

Section 50 provides that where a person has obtained a service under the Health Acts and it is ascertained that he was not entitled to the service, the appropriate Health Board may charge therefore a charge approved of or directed by the Minister.

These Sections do not directly or expressly apply to the issues arising in the present case but they are, in my view, a persuasive indication of the purposes and broad intentions of the Act. They clearly are to arm the Health Board as best the statute can without injustice to the person receiving services with the power to make appropriate charges in appropriate circumstances as a corollary to the obligation and duty to provide such services free in appropriate circumstances.

Having regard to these provisions, I am therefore satisfied that I should interpret the Regulations consisting of the Health (Charges for in-patient services) Regulations, 1976 as permitting a Health Board to make a retrospective charge even after the death of a patient on a person who clearly comes within those Regulations.

I am therefore satisfied that I must allow in the discharge of this Ward, the sum of £9,363.01 claimed by the Mid-Western Health Board and that Board having at present in its possession monies to the credit of the Ward in the sum of £978.87 must include in the order for discharge



the payment of £8,384.14 giving credit for the amount to be retained by the Board in respect of maintenance.

I should add one comment to my decision in this case which may be applicable to other cases. It seems to me, that the provisions of Section 45 of the Act of 1970 must be interpreted as being dominant to the power to make regulations created by Section 53 of the Act and the administrative application of those Regulations. I therefore would like to reserve to a case in which the issue arose (and it clearly does not arise in this case) the question as to whether or not on the making of a retrospective charge pursuant to the Regulations of 1976 in the case of a patient who had expended his or her income during the period covered by the charge and could not have resource to any capital for the purpose of discharging the accumulated arrears

without undue hardship such a retrospective fixing would be valid. However, as indicated this is an issue which clearly does not arise in the case before me.

*Handwritten initials and date:*  
2/8/84

*Approved.*  
*V. a. F.*