

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ESTATE OF ROBERT KAW, et al.,)	
Plaintiffs)	
)	
v.)	
)	
COMMISSIONER, MAINE)	
DEPARTMENT OF HUMAN)	
SERVICES,)	Civil No. 90-0113 P
Defendant and)	
Third-Party Plaintiff)	
)	
v.)	
)	
LOUIS W. SULLIVAN, M.D.,)	
Secretary, United States Department)	
of Health & Human Services,)	
Third-Party Defendant)	

MEMORANDUM OF DECISION ON PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT¹

The plaintiffs in this class action² seek summary judgment in this suit challenging the validity of an income-eligibility test for Medicaid payment of certain Medicare costs.

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have me as a United States Magistrate Judge conduct all proceedings in this case, including trial, and to order the entry of judgment.

² I granted the plaintiffs' motion for class certification by order dated March 8, 1991. *See* Order Granting Class Certification. The plaintiffs consist of "[a]ll married individuals in the State of Maine who anytime from January 1, 1989 to the present have been or will become eligible for Medicare Part A benefits, whose resources do not exceed twice the SSI resource limit and whose marital income, divided in half and minus state and federal SSI-related income disregards for an individual, was or is below 85% of the Federal poverty level during the period January 1, 1989 through December 31, 1989, at or below 90% of the Federal poverty level during the period January 1, 1990 through December 31, 1990 and at or below 95% of the Federal poverty level for the period beginning January 1, 1991." *Id.*

The plaintiffs contend that the standard used by the Maine Department of Human Services ("DHS") to assess married couples' income violates 42 U.S.C. § 1396d(p) and 1983. DHS in turn sues Louis W. Sullivan in his official capacity as secretary of the federal Department of Health and Human Services ("HHS"), seeking to bind HHS to any court decision invalidating DHS' income-eligibility test. For the reasons discussed below, I deny the plaintiffs' motion for summary judgment.

I. FACTUAL SETTING

The plaintiffs receive both Social Security and Medicare benefits. Statement of Material Facts ("Plaintiffs' Statement")³ & 1. Medicare, administered by HHS, furnishes medical services to certain blind, disabled and aged individuals. Complaint & 17; Answer & 6. Eligibility for Medicare is not based on income or resources. *Id.* Medicare beneficiaries must pay certain deductible and co-insurance costs under Parts A and B of the program. Complaint & 18; Answer & 6. In 1988 Congress amended Medicare to require that state Medicaid plans pay Medicare premiums, deductibles and co-insurance for "qualified Medicare beneficiaries" ("QMBs"). Complaint & 19; Answer & 6. Medicaid, designed to furnish medical assistance to the needy, is funded jointly by the federal and state governments. Complaint & 15; Answer & 6. QMBs were defined, in relevant part, as those having incomes at or below 85 percent of the federal poverty level as of January 1, 1989, 90 percent as of January 1, 1990, 95 percent as of January 1, 1991 and 100 percent as of January 1, 1992. *Id.* The plaintiff married couples' applications for QMB status were denied on the basis of excess income. Plaintiffs' Statement & 2. In accordance with Maine Medicaid Eligibility Manual ("MEM")' 3020, DHS compared the plaintiff couples' income to the federal poverty standard for a family of two. *Id.*

³ The Plaintiffs' Statement is supported by appropriate record citations. The defendants having neither objected to the statement nor submitted their own, I deem the Plaintiffs' Statement admitted.

& 3; Third-Party Complaint & 13; Third-Party Defendant's Answer & 13; Exh. C to Memorandum in Support of Motion for Summary Judgment ("Plaintiffs' Memorandum"). HHS has approved Maine's plan of operation for its Medicaid program. Third-Party Complaint & 17; Third-Party Defendant's Answer & 17.

II. LEGAL ANALYSIS

See Local Rule 19(b)(2).

The plaintiff class contends that DHS has misconstrued 42 U.S.C. § 1396d(p) by applying an income-eligibility test to married couples that violates congressional intent.⁴ DHS assesses a married couple's eligibility, when both apply for QMB status, by comparing the couple's joint income with the federal poverty income guideline for a family of two. *See* Exh. C to Plaintiffs' Memorandum (MMEM ' 3020) ("When determining the federal poverty line, the number of QMB's in the family equals the family size. For example: If there is a couple, both of whom meet QMB criteria, a family size of two would apply; if there is a QMB with a spouse and two minor children, a family size of one would apply.") The plaintiffs argue that this practice violates Congress' intent that state agencies assess such couples' QMB eligibility by dividing their income in half and comparing the income of each with the federal poverty income guideline for a family of one. The plaintiffs' preferred construction clearly would enlarge the pool of individuals eligible for QMB status. The federal poverty level for a family of one in 1990 was \$6,280 while the level for a family of two was \$8,420.⁵ Attachment 1 to Memorandum

⁴ Congress mandates that resources, as well as income, be considered in determining eligibility for QMB status. 42 U.S.C. § 1396d(p)(1)(C). The resource-eligibility test is not at issue in the instant lawsuit.

⁵ "Income," as defined for purposes of the federal poverty income guidelines, excludes certain gains, such as capital gains, tax refunds, gifts and loans. *See* Attachment 1 to Memorandum in Support of Third-Party Defendant's Opposition to Plaintiffs' Motion for Summary Judgment (Annual Update of the Poverty Income Guidelines, 55 Fed. Reg. 5664, 5665 (1990)).

in Support of Third-Party Defendant's Opposition to Plaintiffs' Motion for Summary Judgment⁶ ("Defendant's Memorandum") (Annual Update of the Poverty Income Guidelines, 55 Fed. Reg. 5664, 5665 (1990)) ("Poverty Income Update"). Under DHS' eligibility test, neither partner in a married couple with a \$12,000 income would be eligible; under the plaintiffs' test, the attribution of a \$6,000 income to each spouse would render both eligible.

The plaintiffs apparently present a question of first impression. The parties do not cite, nor can I find, a published opinion construing the statute's income-eligibility provision as applied to married couples. In assessing DHS' construction of a federal statute, I follow the standard of review articulated in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, *reh'g denied*, 468 U.S. 1227 (1984). *See, e.g., Dion v. Commissioner, Me. Dep't of Human Servs.*, 743 F. Supp. 80 (D. Me. 1990) (applying *Chevron* standard to state agency regulations). *Chevron* directs courts to inquire first "whether Congress has directly spoken to the precise question at issue." *Chevron*, 467 U.S. at 842. If Congress' intent is clear, the inquiry ends. *Id.* Courts, as well as agencies, must defer to a clear congressional mandate. *Id.* at 842-43. If, on the other hand, "the statute is silent or ambiguous with respect to the specific issue," a court must uphold an agency's interpretation if "based on a permissible construction of the statute." *Id.* at 843 (footnote omitted).

Chevron suggests that courts employ "traditional tools of statutory construction" to ascertain congressional intent. *Id.* at 843 n.9. The Court of Appeals for the First Circuit has catalogued four indicia of intent: "(1) the language of the statute; (2) the contemporaneous legislative history; (3) any

⁶ DHS incorporates this memorandum by reference in its opposition to the plaintiffs' motion for summary judgment. *See* Commissioner's Objections to Plaintiff's Motion for Summary Judgment and Incorporated Memorandum of Law.

subsequent legislative history; and (4) agency interpretation(s) of the statute." *Massachusetts v. Secretary of Health & Human Servs.*, 899 F.2d 53, 58 (1st Cir. 1990) (citation omitted). So great is the importance of statutory language and design to a determination of intent that the First Circuit has observed that it is unclear whether recourse to other indicia is appropriate. *Dunn v. Secretary of U.S. Dep't of Agric.*, 921 F.2d 365, 367 n.2 (1st Cir. 1990). A review of the statutory language and legislative history persuades me in the instant case that Congress has not spoken clearly to the precise question at issue. In the absence of a clear mandate, DHS' interpretation is based on a permissible construction of ' 1396d(p).

A. Congressional Intent

The plaintiff class contends that DHS misapplies 42 U.S.C. § 1396d(p), which provides in relevant part:

(1) The term "qualified medicare beneficiary" means an individual --
...

(B) whose income . . . does not exceed an income level established by the State consistent with paragraph (2)(A) . . .

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

This language does not address the methodology by which family size is to be determined. It dictates that income be assessed by reference to official poverty lines; however, it does not appear to incorporate the family-size definitions used in drawing those lines.⁷ The parenthetical expression "as defined by the Office of Management and Budget . . ." modifies "official poverty line," not "applicable to a family of the size involved." Congress' choice of punctuation reinforces the view that it did not prescribe the manner in which family size should be determined.

In the face of the statute's silence, the plaintiffs urge the court to discern clear congressional intent from a House committee report providing, in relevant part:

With respect to determining income eligibility for this "buy-in" coverage, the Committee intends that the States not use SSI standards or methodologies. In the case of married individuals, the Committee

⁷ HHS, in revising the official federal poverty lines for 1990, defined a married couple as a family of two. *See Poverty Income Update* at 5665.

intends that the States, in determining income eligibility, not apply the poverty income guidelines for a family of two. Instead, the Committee expects that the states will attribute to each spouse one-half of all of the income, earned and unearned, received by either spouse, to each spouse, and apply that amount against the income guideline for a single individual. Thus, each member of a couple with a total annual income of \$10,000 would be eligible for this coverage (assuming resource eligibility), since half of \$10,000 meets the current poverty guideline for a single individual, even though their total income as a couple exceeds the poverty guideline of \$7,400 per year for a family of two.

H.R. Rep. No. 105(II), 100th Cong., 2d Sess. 60, *reprinted in* 1988 U.S. Code Cong. & Admin. News 803, 883. As compelling as this report appears, it is entitled to scant weight when viewed in proper context. HHS persuasively chronicles its weaknesses, two of which are particularly fatal: (1) it interprets language adopted by a previous Congress; and (2) it is unsupported by the statutory language.

Most critically, the committee report was not drafted contemporaneously with the statutory language at issue. The committee report in question pertains to the Medicare Catastrophic Coverage Act of 1988 ("MCCA"), P.L. 100-360, amending provisions on QMBs enacted by the Omnibus Budget Reconciliation Act of 1986 ("OBRA"), P.L. 99-509. The relevant language of ' 1396d(p)⁸ was enacted by OBRA and unchanged by MCCA. *Compare* Attachment 2 to Defendant's Memorandum (102 Stat. 748) (describing OBRA amendments) *with* 42 U.S.C. ' 1396d(p)(2)(A) (statute as amended). OBRA transformed the QMB program from voluntary to mandatory; it did not alter the standards by which income eligibility was to be judged. The committee report is "legislative dictum," as the First Circuit has aptly termed such after-the-fact commentaries. *United States v. Meyer*, 808 F.2d 912, 915 (1st Cir. 1987). Such reports merit little weight. *See, e.g., Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 n.13, 119-20 (1980); *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 758

⁸ I refer to the language, "the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved."

(1979); *Maine Ass'n of Interdependent Neighborhoods v. Commissioner, Me. Dep't of Human Servs.*, 732 F. Supp. 248, 253 (D. Me. 1990).

Legislative dictum should be viewed especially skeptically when, as here, it is unsupported by -- if not outright contradictory to -- the statutory language. *See, e.g., Meyer*, 808 F.2d at 915-16. The Supreme Court has suggested that legislative history should not control the customary meaning of words if the legislative materials are 'without probative value, or contradictory, or ambiguous'" *NLRB v. Plasterers' Local Union No. 79*, 404 U.S. 116, 129 n.24 (1971) (quoting *United States v. Dickerson*, 310 U.S. 554, 562 (1940)). *See also Paris v. Department of Hous. & Urban Dev.*, 843 F.2d 561, 569-71 (1st Cir. 1988).

Legislative history drafted contemporaneously with the enactment of OBRA is barren of any discussion of the treatment of married couples' family size for QMB purposes. *See, e.g.,* H.R. Rep. No. 727, 99th Cong., 2d Sess. 105-06, *reprinted in* 1986 U.S. Code Cong. & Admin. News 3607, 3695-96; H.R. Conf. Rep. No. 1012, 99th Cong., 2d Sess. 395-96, *reprinted in* 1986 U.S. Code Cong. & Admin. News 3607, 4040-41. Viewing the statutory language and legislative history as a whole, I discern no clear intent on assessment of married couples' income-eligibility for QMB status.

B. Agency Construction

Having determined that Congress had no ascertainable intent on the precise issue in question, I next proceed under *Chevron* to determine whether DHS' interpretation is permissible. *Chevron*, 467 U.S. at 843. In a case such as this, in which Congress has implicitly delegated power to agencies, a court must defer to a reasonable agency construction of a statute. *Id.* at 844, 865-66. The DHS regulation at issue here is well within the bounds of permissible interpretation. Comparison of a married couple's income with the federal poverty level for a family of two offends neither the language

nor the underlying policy of ' 1396d(p). Congress struggled in the Medicare portions of OBRA and MCCA to balance compassion for the plight of the elderly with concern for the cost of its legislation. *See, e.g.*, H.R. Rep. No. 727, 99th Cong., 2d Sess. 68-69, *reprinted in* 1986 U.S. Code Cong. & Admin. News 3607, 3658-59; H.R. Rep. No. 105(II), 100th Cong., 2d Sess. 35-38, *reprinted in* 1988 U.S. Code Cong. & Admin. News 803, 858-60; *id.* at 96-98, 152-53, *reprinted in* 1988 U.S. Code Cong. & Admin. News 803, 919-22. In the end, perhaps for political reasons, Congress delegated tough choices on where to cut off eligibility for a needed benefit. The House report on which the plaintiffs rely lobbies the states to make a more generous choice. DHS permissibly has chosen not to do so.

III. CONCLUSION

For the reasons discussed above, I hereby *DENY* the plaintiffs' motion for summary judgment. There being no other issues presented and the defendant being entitled to a summary judgment, I hereby *ORDER sua sponte* that summary judgment be entered for the defendant and that the third-party action be *DISMISSED* with prejudice and without costs.

Dated at Portland, Maine this 22nd day of March, 1991.

David M. Cohen
United States Magistrate Judge