

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**BERTHA CRUZ,
APPELLANT
vs.**

**MO. DEPARTMENT OF SOCIAL SERVICES,
RESPONDENT**

DOCKET NUMBER WD74667

DATE: DECEMBER 4, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable W. Brent Powell, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Attorneys:

Katie Wood, for Appellant

Randell G. Collins, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BERTHA CRUZ, APPELLANT

v.

MO. DEPARTMENT OF SOCIAL SERVICES, RESPONDENT

WD74667

Jackson County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Bertha Cruz ("Claimant") appeals from a judgment entered by the Circuit Court of Jackson County affirming an order from the Director of the Missouri Department of Social Services, Family Support Division ("the Division"), affirming the denial of her applications for Medicaid coverage for dialysis treatments she received from October 3, 2008, to February 16, 2010.

Claimant has end stage renal disease, which requires her to receive regular hemodialysis treatments. From October 3, 2008, to February 16, 2010, Claimant routinely received her dialysis treatments biweekly in the emergency room. Claimant applied to receive Medicaid coverage for these dialysis treatments. The Division found that Claimant satisfied all requirements for Medicaid benefits except the citizenship and alien requirements.

Although Claimant is a lawful permanent resident of the United States, she had not lived in the United States for the requisite five years before applying for Medicaid. Thus, the only way in which her dialysis treatments could be covered by Medicaid is if they constituted treatment for an emergency medical condition. The Division determined that Claimant's dialysis treatments did not constitute care or services rendered for the treatment of an emergency medical condition because Claimant's symptoms were not of sudden onset.

Upon review, the Director of the Division determined that Claimant's dialysis treatments did not satisfy the emergency medical condition standard because Claimant's symptoms were not of sudden onset. The Director also made a finding that Claimant's symptoms were not such that the absence of immediate medical attention could reasonably be expected to seriously jeopardize Claimant's health or cause serious impairment or dysfunction of Claimant's bodily organs. The Circuit Court of Jackson County affirmed the Director's Decision and Order.

Claimant raised the following points of error on appeal: (1) the Director erred in denying her Medicaid benefits on the basis that she did not meet the "sudden onset" requirement because the "sudden onset" requirement is contrary to federal law in that it

impermissibly modified the federal Medicaid statute by creating a more restrictive definition of "emergency medical condition," and (2) the Director erred in rejecting her applications for Medicaid coverage because the Director failed to properly evaluate the existence of Claimant's emergency medical condition in that the Director failed to adequately consider how Claimant's current medical condition would affect her in the days to come.

AFFIRMED

Division Two holds:

(1) The Director did not err in affirming the Division's denial of Claimant's applications for Medicaid coverage in that the Director's finding that the absence of immediate medical attention could not be reasonably expected to seriously jeopardize Claimant's health or result in serious impairment or dysfunction of Claimant's bodily organs was supported by substantial and competent evidence in the record, which established Claimant's dialysis treatments were essentially like scheduled medical care and Claimant was often asymptomatic or experiencing baseline symptoms when she presented at the emergency room to receive her dialysis treatments.

(2) The Director did not fail to properly evaluate the existence of Claimant's emergency medical condition because the standard requires that the emergency medical condition necessitate immediate intervention to prevent the occurrence of any of the three statutorily enumerated results set forth in **42 U.S.C. § 1396(b)(v)(3)**.

Opinion by Joseph M. Ellis, Judge

Date: December 4, 2012

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