



**POINTS AND AUTHORITIES**

**I. The plain language of 5-2(2) is ambiguous because it is susceptible to at least two readings and therefore it must be interpreted according to sound principles of statutory construction. ....10**

305 ILCS 5/5-2(2) (2008)..... *passim*

*In re Marriage of Logston*  
103 Ill. 2d 266 (1984)..... 10

*Kraft, Inc. v. Edgar*  
138 Ill. 2d 178 (1990)..... 10, 12

*Moore v. Green*  
219 Ill. 2d 470 (2006)..... 10

*People v. Jameson*  
162 Ill. 2d 282 (1994)..... 10-11

*People v. Cherry Valley Public Library District*  
356 Ill. App. 3d 893 (2nd Dist. 2005) ..... 11

42 C.F.R. § 435.10 et seq (2008)..... 13

42 C.F.R. § 435.200 et seq (2008)..... 13

42 C.F.R. § 435.300 et seq (2008)..... 13

*Bethania Association v. Jackson*  
262 Ill. App. 3d 773 (1st Dist. 1994) ..... 13

**II. The trial court’s reading of 5-2(2) conflicts with federal Medicaid law, is contrary to the administering agency’s longstanding interpretation as acquiesced in by the General Assembly, and leads to an absurd result. ....13**

**A. To be consistent with Federal Medicaid law, 5-2(2) must be read to authorize medical assistance to persons who do not meet TANF eligibility requirements. ....14**

305 ILCS 5/5-2(2) (2008)..... *passim*

42 U.S.C. § 1396u-1(b) (2000)..... 15, 16, 17

*Schweiker v. Gray Panthers*  
453 U.S. 34 (1981)..... 14

42 U.S.C.A. § 1396a (2007) .....	14
42 U.S.C. § 1396c (2000) .....	14
305 ILCS 5/12-4.5 (2008) .....	14
The Henry J. Kaiser Family Foundation, Illinois: Federal and State Share of Medicaid Spending, FY2006 (2007) .....	15
305 ILCS 5/4-1.8-1.10 (2008) .....	14
Personal Responsibility and Work Opportunity Reconciliation Act Pub. L. No. 104-193, 110 Stat. 2105 (1996) .....	15
43 CONG. REC. S9337 (1996) .....	16
H.R. REP. NO. 104-882 (1997) .....	15
1996 U.S.C.C.A.N. 2891 .....	15
31 Ill. Reg. 15854 (Nov. 26, 2007) .....	15
Centers for Medicare and Medicaid Services, Medicaid Eligibility Groups and Less Restrictive Methods of Determining Countable Income and Resources (May 11, 2001) .....	16
Centers for Medicare and Medicaid Services, "Supporting Families in Transition: A Guide to Expanding Health Coverage in the Post-Welfare Reform Word (1999) .....	16. 17
Letter from Olivia Golden, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services, to State Medicaid Directors & TANF Administrators (June 5, 1999) .....	16, 17
42 U.S.C. § 606(a)-(c) (1996) .....	16
42 U.S.C. § 607(a) (1996) .....	16
89 ILL. ADMIN. CODE § 112.79(f) (2008) .....	17
42 C.F.R. § 435.113 (2008) .....	18
<i>Massachusetts Association of Older Ams. V. Sharp</i> 700 F.2d 749 (1st Cir. 1983) .....	17
42 C.F.R. § 435.401(a) (2008) .....	18

**B. The trial court should have deferred to the administering agency's longstanding reading of 5-2(2) that it does not limit eligibility for medical assistance only to persons who meet the eligibility requirements of the cash assistance program.....18**

305 ILCS 5/5-2(2) (2008)..... *passim*

*Abrahamson v. Illinois Department of Professional Regulation*  
153 Ill. 2d 76 (1992)..... 18

*People ex rel. Birkett v. City of Chicago*  
202 Ill. 2d 36 (2002)..... 18

*Schweiker v. Gray Panthers*  
453 U.S. 34 (1981)..... 18

89 ILL. ADMIN. CODE § 120.312 (1985) ..... 19

89 ILL. ADMIN. CODE § 120.30(b) (1985)..... 19

89 ILL. ADMIN. CODE § 120.330 et seq. (1985) ..... 19

89 ILL. ADMIN. CODE § 112.1 (1985) ..... 19

89 ILL. ADMIN. CODE § 112.101 (1985) ..... 19

Illinois Department of Human Services, Manual Release 99.99 (Dec. 21, 1999)..... 19-20

Illinois Department of Human Services, Manual Release 00.9 (Jan. 24, 2000)..... 20

89 ILL. ADMIN. CODE § 112.8 (1996) ..... 20

89 ILL. ADMIN. CODE § 112.30 (1996) ..... 20

89 ILL. ADMIN. CODE § 112.40 (1996) ..... 20

89 ILL. ADMIN. CODE § 112.50 (1996) ..... 20

89 ILL. ADMIN. CODE § 120.309 (2008) ..... 21

89 ILL. ADMIN. CODE § 120.312 (2008) ..... 21

89 ILL. ADMIN. CODE § 120.315 (2008) ..... 21

89 ILL. ADMIN. CODE § 120.316 (2008) ..... 21

89 ILL. ADMIN. CODE § 112.70-112.83 (1996)..... 21

89 ILL. ADMIN. CODE § 120.308 et seq (2008)..... 21

Illinois Department of Human Services, Just the Facts (April 2008)..... 21

**C. The General Assembly has repeatedly acquiesced in DHFS' interpretation of 5-2(2).....22**

305 ILCS 5/5-2(2) (2008)..... *passim*

The Henry J. Kaiser Family Foundation, Illinois: Federal and State Share of Medicaid Spending, FY2006 (2007)..... 22

26 Ill. Reg. 15051 (Oct. 18, 2002)..... 23

27 Ill. Reg. 4708 (Mar. 14, 2003)..... 23

27 Ill. Reg. 10793 (July 18, 2003)..... 23

27 Ill. Reg. 18603 (Dec. 5, 2003)..... 23

28 Ill. Reg. 12921 (Sept. 17, 2004) ..... 23

29 Ill. Reg. 820 (Jan. 7, 2005) ..... 23

Minutes, Illinois Joint Committee on Administrative Rules (Nov. 13, 2007)..... 23-24

Minutes, Illinois Joint Committee on Administrative Rules (Feb. 26, 2008) ..... 23-24

**D. The trial court's construction of Section 5/5-2, when read in conjunction with other state law, renders 5/5-2(2) meaningless and inoperative.....24**

305 ILCS 5/5-2(2) (2008)..... *passim*

*Pliakos v. Illinois Liquor Control Commission*  
11 Ill. 2d 456 (1957)..... 24, 26

*In re Annexation of Territory to City of Park Ridge*  
260 Ill. App. 3d 384 (1st Dist. 1994) ..... 24

*People v. Illinois Commerce Commission*  
114 Ill. App. 3d 384 (1st Dist. 1983) ..... 24-25

304 ILCS 5/4-1-1.8 to 1.10 (2008)..... 25

**NATURE OF THE CASE**

Plaintiff Richard P. Caro and Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise (collectively “Plaintiffs”) have brought this taxpayer action to enjoin the expenditure of public funds on the FamilyCare medical assistance program by the Illinois Department of Healthcare and Family Services (DHFS). This is an interlocutory appeal from the trial court’s order preliminarily enjoining DHFS and its director, Barry Maram, from expending public funds on the program.

**ISSUE PRESENTED FOR REVIEW**

Did the trial court err in interpreting 305 ILCS 5/5-2(2) to limit the Illinois Department of Healthcare and Family Services’ authority to provide FamilyCare medical assistance only to those related adult caretakers of dependent children who meet the eligibility requirements of the TANF cash assistance program?

**STANDARD OF REVIEW**

This interlocutory appeal from the trial court’s entry of a preliminary injunction concerns a question of law. Therefore, this Court should apply a de novo standard of review. *Jones v. Dep’t of Public Aid*, 373 Ill. App. 3d 184, 193 (3<sup>rd</sup> Dist. 2007).

**JURISDICTIONAL STATEMENT**

This Court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 307(a)(1) because this appeal involves the trial court’s grant of a preliminary injunction. On April 15, 2008, the trial court entered an order preliminarily enjoining HFS and its director, Barry Maram, from expending public funds for the FamilyCare

medical assistance program. The Executive Branch defendants timely filed a notice of appeal.

**STATUTES INVOLVED**

**305 ILCS 5/5-2. Classes of Persons Eligible.**

Sec. 5-2. Classes of Persons Eligible. Medical assistance under this Article shall be available to any of the following classes of persons in respect to whom a plan for coverage has been submitted to the Governor by the Illinois Department and approved by him:

1. Recipients of basic maintenance grants under Articles III and IV.
2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care, including but not limited to the following:

...

- (b) All persons who would be determined eligible for such basic maintenance under Article IV by disregarding the maximum earned income permitted by federal law.

**42 USC § 1396u-1. Assuring coverage for certain low-income families.**

(a) References to title IV-A are references to pre-welfare-reform provisions. Subject to the succeeding provisions of this section, with respect to a State any reference in this subchapter (or any other provision of law in relation to the operation of this subchapter to

a provision of part A of subchapter of this chapter, or a State plan under such part (or a provision of such a plan), including income and resource standards and income and resource methodologies under such part or plan, shall be considered a reference to such a provision or plan as in effect as of July 16, 1996, with respect to the State.

(b) Application of pre-welfare-reform eligibility criteria.

(1) In general. For purposes of this title [42 U.S.C. §§ 1396 et seq.], subject to paragraphs (2) and (3), in determining eligibility for medical assistance--

(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of title IV [42 U.S.C. §§ 601 et seq.] only if the individual meets--

(i) the income and resource standards for determining eligibility under such plan, and

(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 406 and section 407(a) [42 U.S.C. §§ 606(a)-(c) and 607(a)], as in effect as of July 16, 1996; and

(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

....

(2) State option. For purposes of applying this section, a State --

...

(C) may use income and resource methodologies that are less restrictive than the methodologies used under the State plan under such part as of July 16, 1996.

(3) Option to terminate medical assistance for failure to meet work requirement.

(A) Individuals receiving cash assistance under TANF. In the case of an individual who-

(i) is receiving cash assistance under a State program funded under part A of title IV [42 U.S.C. §§ 601 et seq.],

(ii) is eligible for medical assistance under this title on a basis not related to section 1902(l) [42 U.S.C. § 1396a(l)], and

(iii) has the cash assistance under such program terminated pursuant to section 407(e)(1)(B) [42 U.S.C. § 607(e)(1)(B)] (as in effect on or after the welfare reform effective date) because of refusing to work, the State may terminate such individual's eligibility for medical assistance under this title [42 U.S.C. §§ 1396 et seq.] until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

(B) Exception for children. Subparagraph (A) shall not be construed as permitting a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of title IV [42 U.S.C. §§ 601 et seq.].

#### **STATEMENT OF FACTS**

Defendant-Intervenors, who had not yet been granted leave to intervene at the time of the proceedings in this record, adopt in full and incorporate by reference the Statement of Facts of the Defendant-Appellants.

## ARGUMENT

The provision of state law at issue in this case, 305 ILCS 5/5-2(2) (2008) (hereafter "5-2(2)"), implements the Federal Medicaid program of medical assistance for poor children and the adult relatives who care for them, mostly their parents. The trial court granted the preliminary injunction based solely on its interpretation of 5-2(2) to limit the Illinois Department of Healthcare and Family Services' (DHFS) authority to provide medical assistance only to those adults who meet the eligibility requirements of the Temporary Assistance for Needy Families (TANF) cash assistance program.<sup>1</sup> Defendant-Intervenors ask this Court to reverse the trial court's entry of a preliminary injunction because the trial court misinterpreted 5-2(2). As to the other arguments made by the parties that the trial court did not reach, Defendant-Intervenors adopt and incorporate by reference sections II and III of the Arguments section of Defendant-Appellants' brief.

The best reading of 5-2(2) -- that it authorizes DHFS to provide medical assistance to persons who meet the eligibility requirements of the medical assistance program, regardless of whether they also meet the eligibility requirements of the TANF program -- is the one most faithful to the words used by the General Assembly. The trial court's error would have been avoided if it had given proper deference to the longstanding interpretation of that language maintained by DHFS, whose interpretation the General Assembly has repeatedly acquiesced in by funding the coverages created under the statute's authority. Under that interpretation, DHFS is authorized to provide

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<sup>1</sup> DHFS cited 5-2(2) as the statutory authority for its preservation and expansion of the FamilyCare program at issue in this case. 31 Ill. Reg. 15854 (Nov. 26, 2007). The trial court mistakenly identified the statutory authority DHFS relied on as 5-2(2)(b) but this mistake has no bearing on the trial court's analysis of the law.

medical assistance to classes of Illinois residents in a way that is fully consistent with the requirements of federal Medicaid law under which Illinois attracts billions of dollars in federal funds.

The trial court's interpretation of 5-2(2), on the other hand, is a new and different interpretation that does not fully effectuate the words the legislature used. It would bring 5-2(2) into direct conflict with federal Medicaid law, which Illinois is bound to follow, and which expressly prohibits states from limiting the eligibility for medical assistance of related adult caretakers of dependent children only to those who meet the eligibility requirements of the TANF program.

Moreover, the trial court's construction of 5-2(2) is erroneous because, when read in conjunction with other state law, it leads to an absurd result.

**I. The plain language of 5-2(2) is ambiguous because it is susceptible to at least two readings and therefore it must be interpreted according to sound principles of statutory construction.**

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *In re Marriage of Logston*, 103 Ill. 2d 266, 277 (1984). When a statute is clear and unambiguous, the intent of the legislature is best evidenced by the plain language of the statute. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). However, if the language of a statute is ambiguous, or if the plain language of one statute appears to conflict with another statute, the court should consider the purpose of the statute, the problem the statute targeted, and the goal the statute sought to achieve to determine legislative intent. *Moore v. Green*, 219 Ill. 2d 470, 479-80 (2006).

A statute is considered ambiguous if "it is capable of being understood by reasonably well-informed persons in two or more different senses." *People v. Jameson*,

162 Ill. 2d 282, 288 (1994). Section 5-2(2) is ambiguous because it has been understood in different ways by reasonably well-informed persons. *People v. Cherry Valley Public Library Dist.*, 356 Ill.App.3d 893, 896 (2nd Dist. 2005). As set forth in detail below, the trial court's understanding of 5-2(2) differs from the longstanding understanding of the administering agency, an understanding that repeatedly has been acquiesced in by the Illinois General Assembly.

The trial court erred when it ignored the prevailing reading of 5-2(2) and instead read it as limiting DHFS' authority to provide medical assistance only to those adults who meet the eligibility requirements of the TANF cash assistance program. The trial court did not recognize that these competing readings of the statute meant that it had to apply statutory construction principles to determine the General Assembly's intent. That, in turn, caused the trial court to miss the General Assembly's intent and misconstrue the statute.

The trial court's reading of 5-2(2) does not address two key terms in 5-2(2), "classes of persons" and "a plan for coverage." In its title and again in its introductory text, 5-2(2) authorizes health coverage for "classes of persons." The term "classes of persons" connotes broad, general categories of eligible groups, not specific eligibility requirements. The introductory text further provides that a class of persons shall be eligible when a "plan for coverage has been submitted to the Governor and approved by him." The "plan of coverage" requirement indicates that there are additional, specific factors of eligibility separate from the definition of the general "classes" of person eligible. If the legislature had wanted the specific eligibility requirements for medical

and cash assistance to be identical, it would not have called for a separate “plan of coverage” for the medical assistance program.

The trial court’s decision interprets 5-2(2) in a way that, rather than authorizing medical assistance to broad “classes” of people, instead prescribes the specific eligibility requirements that must be met to receive medical assistance. That is, the trial court read the statute to import specific eligibility requirements for TANF into the allowable categories of Medicaid eligibility. This is an interpretation of the statute that ignores the legislature’s choice of the term “classes” of eligible persons and would instead substitute the different language: “individual persons who meet cash assistance program eligibility requirements”. The trial court’s interpretation would also read out of the statute the separate “plan of coverage” requirement that contemplates separate eligibility requirements for medical assistance.

The trial court’s reading of the statute does not effectuate every word the legislature chose and it should therefore be rejected as a mistaken reading of the plain language. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). At best, the trial court’s reading is but one possible reading of the provision and 5/5-2 is an ambiguous statute.

The trial court held that DHFS lacked the statutory authority under 5-2(2) to cover persons with income from 133-400% of the federal poverty level (FPL) in the FamilyCare program. (Op. at 6). The trial court’s holding applied to persons in that income range because that is the income range covered by the Family Care medical assistance program rulemaking at issue in this case. But the logic of the trial court’s ruling – that 5-2(2) only authorizes DHFS to provide medical assistance to persons who meet all of the eligibility requirements of the TANF program – would apply equally to

