2019 IL App (1st) 181538-U
Order Filed: June 7, 2019

FIRST DISTRICT
Fifth Division

No. 1-18-1538

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HAROLD PERLSTEIN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	2017 CH 11119
JAMES T. DIMAS, in his official capacity as Secretary of the Illinois Department of Human Services, and THERESA A. EAGLESON, in her official capacity as Director of the Illinois Department of Healthcare and Family Services,	)	
	)	Honorable
	)	Kathleen M. Pantle,
Defendants-Appellees.	)	Judge, presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the order of the Secretary of the Illinois Department of Human Services which provided that plaintiff was subject to a waiting period before receiving long-term care benefits under Medicaid because he had made non-allowable transfers of assets to his ex-wife in the five years before applying for the benefits.

¶ 2 Plaintiff, Harold Perlstein, applied to the Illinois Department of Healthcare and Family Services (DHFS) for long-term care services under Medicaid. The DHFS analyst determined that

plaintiff was eligible for Medicaid benefits but was subject to a waiting period (the Medicaid penalty), because he had made non-allowable transfers of assets pursuant to a divorce decree in the five years before applying for the benefits. Plaintiff appealed to the Secretary of the Illinois Department of Human Services (DHS). The Secretary issued a final decision affirming the DHFS determination that plaintiff was subject to the Medicaid penalty for non-allowable transfers, but remanded for a redetermination of the duration of the penalty period. On remand, DHFS issued its revised decision, reducing the length of the penalty period. Plaintiff filed a complaint for administrative review with the circuit court, arguing that the Secretary erred in finding that he was subject to the Medicaid penalty. The circuit court affirmed the Secretary's decision. Plaintiff appeals, arguing that (1) the Secretary improperly relied on unwritten rules when affirming the imposition of the Medicaid penalty; (2) the rules upon which the Secretary relied were unconstitutionally vague; and (3) the Secretary's decision conflicted with the Medicare Catastrophic Coverage Act (42 U.S.C. §1396r-5 (2018)). We affirm.[1]

¶ 3 I. Relevant Law

¶ 4 The background facts and the arguments made by the parties are best understood with an initial discussion of the relevant law applicable to the imposition of the Medicaid penalty.

¶ 5 The Medicaid Act (42 U.S.C. §1396 *et seq*. (2000)) created a cooperative program whereby the federal government reimburses state governments for some of the costs of providing medical assistance to two low income groups, the categorically needy and the medically needy. The categorically needy are persons who are automatically eligible to receive cash grants under the Aid to Families with Dependent Children program (AFDC) (42 U.S.C. §601 *et seq*. 2000)) or

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a)(eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

the Supplemental Security Income for the Aged, Blind, or Disabled program (SSI) (42 U.S.C. §1381 *et seq*. (2000)). See 305 ILCS 5/5-2(1) (West 2002); 42 C.F.R. §435.100 *et seq*. (2003). The medically needy are people who are ineligible to receive cash grants under AFDC or SSI but who still lack the ability to pay for medical assistance. See 305 ILCS 5/5-2(2)(West 2002); 42 C.F.R. §435.300 *et seq*. (2003). Persons falling into the medically needy category are called Medical Assistance-No Grant (MANG) recipients. See 89 Ill. Adm. Code §120.10(a) (2018). To qualify for Medicaid as a MANG recipient, a person must have low income and low assets, and he must "spend down" any resources over the statutory and regulatory limits. See *id*. §120.10(d).

¶ 6 Congress has enacted statutory provisions to ensure that persons who have the resources to pay for their own care do not receive Medicaid. Specifically, Congress mandated that in determining a person's Medicaid eligibility, a state must "look back" into the three-year period before he applied for assistance to determine if he made any transfers solely to become eligible for Medicaid. See 42 U.S.C. §1396p(c)(1)(B) (2000). In certain cases involving payments from a trust, or any other disposal of assets made on or after February 8, 2006, the state must look back five years. *Id*. If the person disposed of assets for less than fair market value during the look-back period, he is ineligible for medical assistance for a statutory penalty period based on the value of the assets transferred. *Id*. §1396p(c)(1)(A).

¶ 7 The relevant section of the Illinois Administrative Code provides rules that "are intended to comport with federal requirements related to transfers of assets, in particular, requirements under 42 USC 1396p and guidance from the US Department of Health and Human Services related to those statutory requirements." 89 Ill. Adm. Code §120.388 (2018). In particular, section 120.388 of Title 89 of the Illinois Administrative Code (hereinafter section 120.388) provides that: "A transfer of assets for less than fair market value made on or after January 1,

2007 by an institutionalized person or the spouse of that person within 60 months before the later of applying for medical assistance or transferring an asset shall result in a period of ineligibility for long term care services for that person." *Id.* §120.388(a). Assets are defined as:

> "[A]ll income (as defined in 42 USC 1382a) and resources (as defined in 42 USC 1382b, except subsection (a)(1) of that section, which excludes the home as a resource) of an institutionalized person and that person's spouse, including, but not limited to: cash; savings certificates; stocks; bonds; interests in real property, including mineral rights; rights to inherited real or personal property or income; and accounts and debts receivable." *Id.* §120.388(d)(1).

¶ 8 Assets also include:

> "[A]ny income or resources that the person or the person's spouse is entitled to but does not receive because of action or inaction by:
>
> ***
>
> B) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse;
>
> C) any person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse." *Id.* §120.388(d)(2)(B),(C).

¶ 9 With respect to whether an asset was transferred for less than fair market value, section 120.388 provides that:

> "Fair market value (FMV) is an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred. Prevailing price is what property would sell for on the open market between a willing buyer and a willing seller, with neither being required to act and both having reasonable knowledge of the relevant facts.

> (1) In determining if FMV has been received for an asset, the Department shall use all reasonable means available and consider all relevant facts and circumstances relating to the asset and the transaction, including, but not limited to: the cost or price paid for the asset, whether the transaction was at arm's length, comparable sales, replacement cost, and expert opinion." *Id.* §120.388(f)(1).

¶ 10 II. Background Facts

¶ 11 Plaintiff, who was born on October 5, 1938, has Parkinson's disease and has resided in a full-time nursing care facility since November 2014. About four months after entering the facility, he received a divorce from his wife of 50 years, Burnalette. The dissolution judgment entered on March 18, 2015, incorporated a marital settlement agreement (MSA), which asserted that it "was entered into freely and voluntarily between the parties" and set forth their agreed-upon distribution of marital property. Pursuant to the MSA, plaintiff was to retain a sole interest in his pension benefits of $2,911 per month and social security allowance of $939 per month, as well as $123,000 in cash, investments, annuities, and life insurance. Burnalette was to retain her sole interest in her social security benefits of $419 per month, $88,000 in cash and annuities, a 2000 Toyota Camry, and the parties' house, valued at $325,000, as well as non-marital property worth about $766,000.

¶ 12 The divorce came before the circuit court as a stipulated matter. There was no trial and the court did not take evidence or make findings of fact on the value of the assets divided between plaintiff and Burnalette. The issue of Medicaid eligibility also was not before the court. The court concluded that the MSA was "entered into freely and voluntarily" and that its terms were "fair, reasonable, and not unconscionable."

¶ 13 On June 26, 2015, about three months after the divorce, plaintiff applied for long-term care services under Medicaid. DHFS approved the application, subject to a Medicaid penalty, specifically, a 60-month waiting period due to the non-allowable transfer of assets within the look-back period. The penalty period was imposed based on the DHFS analyst's finding that plaintiff did not receive fair market value either for transferring about $65,000 into an irrevocable trust, or for transferring about $556,000, including the value of the couple's home, car, and certain investments and annuities, to Burnalette pursuant to the MSA.

¶ 14 Plaintiff filed an administrative appeal with DHS, but before the appeal could proceed, DHFS issued a revised decision reducing his penalty period to 35 months and 29 days. The revised calculation still found that plaintiff did not receive fair market value for transferring approximately $65,000 into an irrevocable trust. However, the revised calculation excluded some non-marital property that was granted to Burnalette pursuant to the MSA, and penalized plaintiff for transferring about $372,531 in assets to Burnalette pursuant to the MSA for less than fair market value.

¶ 15 Plaintiff again appealed to DHS, and an administrative hearing was held before a DHS hearing officer on May 1, 2017.

¶ 16 A. The Administrative Hearing

¶ 17 Pat Brown, the DHFS analyst who calculated plaintiff's penalty period in the revised decision, testified that there was no specific agency rule for evaluating whether a transfer of an asset pursuant to a divorce settlement was for less than fair market value. Instead, she considered administrative regulations of general applicability, specifically, section 120.388(a), which, as discussed, are intended to comport with federal requirements related to transfers of assets for Medicaid eligibility and which defines the term "assets" and sets forth the method for

determining their fair market value. Ms. Brown considered the assets that plaintiff transferred to Burnalette within the look-back period pursuant to the MSA, including the house, car, and monies in an annuity account, disregarded certain assets that were properly considered nonmarital property belonging solely to Burnalette, and determined that plaintiff had transferred $372,531 of his assets to Burnalette for less than fair market value.

¶ 18 Mr. Mann, the divorce attorney for Burnalette, testified that, in his opinion, plaintiff received a more favorable allocation of property in the divorce than Burnalette because he retained the sole interest in his pension. The pension's present value, coupled with the other monies/property received by plaintiff, was greater than the monies/property received by Burnalette.

¶ 19 Following all the testimony, the Secretary of DHS issued a final administrative decision on July 12, 2017. The Secretary determined that section 120.388 provided the appropriate framework for determining whether plaintiff had transferred assets to Burnalette for less than fair market value during the look-back period. The Secretary further noted that "The Illinois Marriage and Dissolution Act, 750 ILCS 5/501 *et seq.*, does not contain any provisions which preempt [DHS's] right to ascertain the eligibility of an applicant for long-term care benefits even if said applicant's assets are part of a marital settlement agreement in a divorce action. Since the court order was a ratification of a [MSA] between [plaintiff] and [his] ex-wife, which was signed while the parties were still married, the application of 89 Ill. Adm. Code 120.388(d)(2)(B) and (C) is properly invoked here." Section 120.388(d)(2)(B) and (C) provides DHS with the ability to review a court order to determine whether it provided for the transfer of assets affecting Medicaid eligibility. See 89 Ill. Adm. Code §120.388 (d)(2)(B), (C) (2018).

¶ 20 The Secretary then reviewed the assets transferred between the parties during the look-back period pursuant to the MSA, and determined that Ms. Brown was correct in finding that (1) the Toyota Camry and (2) $65,000 in an annuity account which was transferred to Burnalette pursuant to the MSA was marital property subject to the Medicaid penalty because plaintiff did not receive fair market value therefor. The Secretary determined, though, that a $170,000 inheritance received by Burnalette and deposited in the annuity account was her own non-marital property that should be excluded from the penalty calculation.

¶ 21 Finally, the Secretary determined that Ms. Brown erred in finding that plaintiff was subject to a Medicaid penalty for transferring the marital home to Burnalette pursuant to the MSA; the Secretary noted that section 120.388(d) provides that no penalty may attach to the transfer of the homestead. See *id*. §120.388(d).

¶ 22 The Secretary remanded plaintiff's application to DHFS to recalculate the penalty period. On remand, DHFS reduced the penalty period to 12 months.

¶ 23 B. The Circuit Court's Decision

¶ 24 Plaintiff filed a complaint for administrative review, and the circuit court affirmed the Secretary's decision. Plaintiff appeals.

¶ 25 III. Analysis

¶ 26 In reviewing the final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2016)), we review the administrative decision and not the circuit court's judgment. *West Belmont, L.L.C. v. City of Chicago*, 349 Ill. App. 3d 46, 49 (2004). The applicable standard of review depends on the type of questions raised on appeal. *Hanks v. Illinois Department of Healthcare and Family Services*, 2015 IL App (1st) 132847, ¶19. The administrative agency's factual findings and credibility determinations are deemed *prima facie* true and correct and the

factual findings will not be reversed unless they are against the manifest weight of the evidence. *Id*. The agency's findings regarding questions of law are reviewed *de novo*. *Id*.

¶ 27 Initially, we note defendants' argument that plaintiff forfeited review of his appellate arguments by failing to raise them during the administrative hearing. See *Crowley v. Board of Education of City of Chicago*, 2014 IL App (1st) 130727, ¶35 (any issue not raised before the administrative agency is forfeited). Defendants' contention is unavailing, as our review of the record indicates that plaintiff in fact raised his arguments during the administrative hearing. We find no forfeiture.

¶ 28 Plaintiff first argues that in finding that certain transfers of assets he made to Burnalette (within the look-back period) pursuant to the MSA were for less than fair market value, thereby subjecting him to the Medicaid penalty, the Secretary improperly relied on unwritten rules in the absence of any applicable written rules promulgated pursuant to the Act, 5 ILCS 100/1-1 (West 2018). In support of his argument, plaintiff cites a New Jersey case, *W.T. v. Division of Medical Assistance and Health Services*, 916 A.2d 1066 (2007). In *W.T.*, W.T. became a resident of a nursing home in 2000. *Id*. at 1069. In 2002, W.T. divorced his wife, M.T. *Id*. at 1070. The divorce judgment incorporated the terms of a property settlement agreement (PSA) which provided M.T. with 63% of the marital estate. *Id*.

¶ 29 In March 2004, W.T. filed a petition for Medicaid benefits. *Id*. The Ocean County Board of Social Services (OCBSS) imposed a Medicaid penalty. *Id*. W.T. filed an administrative appeal. *Id*. At the hearing, Nancy Faulkner, a Human Services Specialist with OCBSS, testified that the Medicaid penalty was imposed on the PSA division because of an unwritten policy of the New Jersey Department of Human Services Division of Medical Assistance and Health Services

(DMAHS), that any distribution of marital assets to a petitioner's spouse of more than 50% constituted a transfer for less than fair market value. *Id*. at 1071.

¶ 30 The DMAHS Director upheld the Medicaid penalty. *Id*. at 1072. On appeal, the Superior Court of New Jersey, Appellate Division, reversed. *Id*. at 1078. The court noted that the penalty was assessed pursuant to an "uncodified, unpromulgated, and unannounced in-house rule or policy that matrimonial settlements or divorce judgments providing equitable distribution of less than fifty percent of marital assets to an incapacitated spouse require a penalty for an impermissible transfer when made within the look back period." *Id*. at 1076. The court held in pertinent part that such an in-house rule or policy violates the Administrative Procedure Act as administrative rule-making. *Id*.

¶ 31 Unlike in *W.T.*, the Secretary made clear, when issuing his final administrative decision in this case, that he was relying solely on the written rules promulgated and set forth in section 120.388, which were properly adopted under the Act, and was *not* relying on any unwritten rules of the type disapproved in *W.T.* The Secretary made special mention of section 120.388(d)(2)(B) and (C), which grants him the right to review a court order to determine whether it provided for the transfer of assets affecting Medicaid eligibility. See 89 Ill. Adm. Code §120.388(d)(2)(B), (C) (2018). Pursuant to section 120.388(d)(2)(B) and (C), the Secretary reviewed the MSA (which was incorporated into the dissolution judgment) and the assets that were transferred between the parties thereto. In looking at the parties' assets, the Secretary distinguished marital property, which is considered an asset belonging to both plaintiff and Burnalette (see *id*., §120.388(d)(1)), from non-marital property belonging only to Burnalette. The Secretary determined that section 120.388 tasked him with deciding whether plaintiff had received fair market value in the division of marital property under the MSA (*i.e*., whether the marital

properties transferred to Burnalette under the MSA equaled the fair market value of the marital properties transferred to plaintiff). The Secretary ultimately determined that the Toyota and $65,000 annuity were marital properties that were transferred by plaintiff to Burnalette, and that the properties he received in return under the MSA did not equal their fair market value, thereby subjecting them to the Medicaid penalty.[2] The Secretary determined that certain other transfers were of non-marital property belonging only to Burnalette and were not subject to the Medicaid penalty. Accordingly, the Secretary affirmed the imposition of the Medicaid penalty on plaintiff for his transfer of the Toyota and $65,000 annuity for less than fair market value, but remanded to DHFS for a recalculation of the correct penalty period because the initial calculation by DHFS had improperly penalized plaintiff for the transfer of the homestead and certain nonmarital property belonging only to Burnalette.

¶ 32 We affirm the Secretary's decision imposing the Medicaid penalty upon plaintiff based on his finding that plaintiff's transfers of the Toyota and annuity were for less than fair market value in violation of section 120.388. Even where, as here, review is *de novo*, an agency's interpretation of its rules and regulations are " 'entitled to substantial weight and deference,' given that 'agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent.'" *Hartney Fuel Oil. Co. v. Hamer*, 2013 IL 115130, ¶16 (quoting *Provena Covenant Medical Center v.*

[2] The Secretary noted that the trial court's findings in the underlying dissolution proceeding that the MSA was not unconscionable was not the same as a finding that the assets were transferred thereto for fair market value. An MSA is unconscionable where there is an absence of a meaningful choice by one of the parties together with contract terms that unreasonably favor the other party. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002). The trial court's finding here that the parties each possessed meaningful choice and that the contract terms were not unreasonably favorable to one party over the other, was not the same as a finding that the assets had all been transferred for fair market value.

Department of Revenue, 236 Ill. 2d 368, 387 n. 9 (2010)). Given the substantial deference accorded the Secretary in interpreting defendants' rules and regulations, we find that he committed no error of law in his application of section 120.388 to the facts of this case, where section 120.388(d)(2)(B) and (C) gave him the authority to review the MSA to determine whether it provided for the transfer of assets for less than fair market value and where section 120.388(d), (e), and (f) set forth all the relevant factors to consider in making that determination. See 89 Ill. Adm. Code §120.388 (d)(1-3) (defining and giving examples of "assets"); §120.388(e) (defining and giving examples of when a transfer occurs); §120.388(f) (setting forth the standards to use in determining fair market value).

¶ 33 Plaintiff makes no argument that the Secretary's factual finding that his transfers of the Toyota and $65,000 annuity were for less than fair market value was against the manifest weight of the evidence. Therefore, the issue is forfeited. See Il. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 34 Instead, plaintiff argues that the Medicaid regulations and rules set forth in section 120.388 are unconstitutionally vague. "A law or regulation is impermissibly vague and violates due process if it leaves the regulated community unsure of what conduct is prohibited or fails to provide adequate guidelines to the administrative body charged with its enforcement." *Granite City Division of National Steel Co. v. Illinois Pollution Control Board*, 155 Ill. 2d 149, 163 (1993). "The language of the regulation must convey with sufficient certainty [to persons of ordinary intelligence] fair warning and notice of what constitutes prohibited conduct, and what is fair and adequate is measured by common understanding. It must, however, be borne in mind that 'we can never expect mathematical certainty from our language.'" *Id*. at 164 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972)). A regulation is not unconstitutionally vague merely because one can conjure up hypothetical situations in which the meaning of some

terms may be in question. *Id*. Further, the fact that a regulation is susceptible to misapplication will not necessarily render it unconstitutional. *Id*.

¶ 35 Administrative regulations are presumed to be valid, and the party challenging them bears the burden of showing that they are unconstitutional. *Id*.

¶ 36 Plaintiff failed to meet his burden here. As discussed earlier in this order, section 120.388 conveys with sufficient certainty fair warning and notice that a transfer of assets for less than fair market value by an institutionalized person within the look-back period will result in a waiting period for long-term care benefits. Section 120.388 defines "assets," "transfer," and "fair market value," and gives examples (see 89 Ill. Adm. Code §120.388(d), (e), and (f) (2018)), thereby providing adequate guidelines for the administrative bodies (DHFS and DHS) charged with its enforcement.

¶ 37 Plaintiff argues, though, that section 120.388 does not *specifically* reference how the division of assets in a dissolution judgment/MSA affects Medicaid eligibility and, therefore, is unconstitutionally vague. Plaintiff's constitutional argument is unavailing, as section 120.388 makes clear that the Medicaid penalty applies to *all* transfers of assets for less than fair market value within the look-back period, which would necessarily also include transfers of assets made pursuant to a dissolution judgment/MSA. Further, section 120.388(d)(2)(B) and (C) provides that DHS may review a court order (such as the dissolution judgment incorporating the MSA here) to determine whether it provided for the transfer of assets for less than fair market value, thereby affecting Medicaid eligibility. In determining whether the transfers of assets under a dissolution judgment/MSA were for less than fair market value, a person of ordinary intelligence is adequately guided by the definitions and examples set forth in section 120.388 (d-f). We find no constitutional violation.

¶ 38 Plaintiff also argues that section 120.388 fails to give constitutionally adequate guidelines regarding how his retention of his pension rights under the MSA is to be treated when analyzing his asset transfers. We disagree. Plaintiff's pension rights were marital property (see 750 ILCS 5/503(b)(2) (West 2016)) awarded to him under the MSA during the look-back period, ostensibly in exchange for his transfer of the Toyota and $65,000 annuity to Burnalette. Plaintiff's pension rights were also considered an "asset" under section 120.388 (see 89 Ill. Adm. Code §120.388 (d)(3)(A)(2018)), as were the Toyota and annuity (see *id*. §120.388(d)(1)), meaning that their transfers pursuant to the MSA were required to have been made for fair market value in order to avoid the Medicaid penalty. Section 120.388 provides that to determine whether the transfers of the Toyota and annuity to Burnalette were for fair market value, the Secretary must use "all reasonable means" to determine the fair market value of the pension rights received in return (*id*. §120.388(f)(1)), and then must decide whether the fair market value of the pension rights were "roughly equivalent to or greater than the value of " the Toyota and annuity (*id*. §120.388(f)(2)). In the case of plaintiff's retained pension rights, the present value of the expected future pension benefits is a reasonable means for determining their fair market value. See *In re Marriage of Britton*, 141 Ill. App. 3d 588, 591 (1986). Accordingly, the Secretary here considered the evidence of the present value of plaintiff's expected future pension benefits, as testified to by Mr. Mann, and determined that it did not equal the fair market value of the Toyota and $65,000 annuity which he transferred to Burnalette. We find nothing unconstitutionally vague in section 120.388 with respect to the guidelines it provided the Secretary when he analyzed and considered plaintiff's retained pension rights under the MSA.[3]

[3] Plaintiff contends that the DHFS analyst, Ms. Brown, testified to her uncertainty of the meaning of the guidelines set forth in section 120.388, thereby demonstrating their unconstitutional vagueness; however, our review is of the final decision rendered by the

¶ 39 Finally, plaintiff argues that the Secretary's final administrative decision, which upheld the imposition of a Medicaid penalty for his transfer of certain assets to Burnalette within the look-back period pursuant to the MSA, effectively amounted to rule-making that improperly altered section 120.388's enabling act, specifically, the Medicare Catastrophic Coverage Act (MCCA) (42 U.S.C. §1396r-5 (2018)). The MCCA provides that an institutionalized person cannot be penalized for an assets transfer made to his non-institutionalized spouse where the transfer was pursuant to a court order mandating support payments to the spouse. *Id*. §1396r-5(d)(5), (f)(3). Plaintiff contends that the Secretary's improper rule-making improperly penalizes him for making a type of assets transfer allowed under the MCCA.

¶ 40 An administrative agency's authority to adopt rules and regulations is defined and limited by the enabling statute. *Illinois Department of Revenue v. Illinois Civil Service Comm'n*, 357 Ill. App. 3d 352, 363 (2005). Agency rules cannot alter or extend the scope of the enabling statute. *Id*. at 364. Rules that conflict with the enabling statute are void *ab initio*. *Id*. at 367.

¶ 41 However, in the present case, the Secretary was acting in a purely adjudicatory capacity, not in a rulemaking capacity. The basic distinction between adjudication and rulemaking is one " 'between proceedings for the purpose of promulgating policy-type rules or standards, on the one hand, and proceedings designed to adjudicate disputed facts in particular cases on the other.' " *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 598 (1983) (quoting *United States v. Florida East Coast Railway Co*., 410 U.S. 224, 245 (1973)). "[A]djudicated cases may serve as vehicles for the formulation of agency policies which are applied and announced therein. In announcing policies in this manner, administrative agencies do not engage in

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Secretary here (see 735 ILCS 5/3-105 (West 2016)), not the initial decision of the analyst regarding plaintiff's application for Medicaid benefits. The Secretary's final decision indicated that section 120.388 provided him with adequate guidelines to determine whether plaintiff was subject to the Medicaid penalty.

rulemaking." *Board of Trustees, Prairie State College v. Illinois Educational Labor Relations Board*, 173 Ill. App. 3d 395, 412 (1988).

¶ 42 The Secretary here was acting in a purely adjudicatory capacity when rendering his decision following the administrative hearing, because the hearing was a proceeding "designed to adjudicate disputed facts in [a] particular case[]." *E & E Hauling*, 116 Ill. App. 3d at 598. Specifically, the proceeding determined whether plaintiff was subject to the Medicaid penalty for transferring assets to Burnalette for less than fair market value during the look-back period pursuant to the MSA. The Secretary did not promulgate any rules or standards, but rather applied the existing rule of section 120.388 to the particular facts before him. Therefore, the Secretary did not engage in unauthorized rule making.

¶ 43 In any event, the Secretary's final decision in this case did not conflict with the dictates of the MCCA. As discussed, the MCCA provides that an institutionalized person cannot be penalized for transferring assets to his non-institutionalized spouse when the transfer was a support payment made pursuant to court order. 42 U.S.C. §1396r-5(d)(5), (f)(3) (2018). Here, though, the transfers at issue were not support payments made pursuant to court order, but rather they were made as part of the agreed division of property under the MSA. As such, section 1396r-5(d)(5) and (f)(3) did not preclude the Secretary from imposing the Medicaid penalty based on the transfers being for less than fair market value.

¶ 44 For all the foregoing reasons, we affirm the circuit court.

¶ 45 Affirmed.