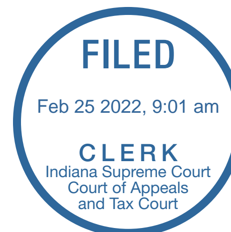
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Jason M. Smith
Smith Law Services, P.C.
Seymour, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General for Indiana

Benjamin M.L. Jones
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

The Estate of Albert T. Burton and Carolyn E. Burton,

Appellant-Petitioner,

v.

Indiana Family and Social Services Administration,

Appellee-Respondent.

February 25, 2022

Court of Appeals Case No. 21A-MI-1879

Appeal from the Jennings Superior Court

The Honorable Gary L. Smith

Trial Court Cause No. 40D01-1908-MI-73

Bailey, Judge.

Case Summary

[1] The Family and Social Services Administration denied Albert T. Burton's application for Medicaid, identifying resources that exceeded the eligibility limit. Albert and his spouse—together, the applicant[1]—sought judicial review. The applicant now appeals from the trial court's adverse decision. The applicant argues that (1) the agency erred by counting certain income in its eligibility determination and (2) he is entitled to relief under 42 U.S.C. Section 1983 because the agency disregarded the Spousal Impoverishment Act.

[2] Contrary to Indiana Appellate Rule 46(A)(8), the applicant fails to support his contentions with cogent argument, failing to explain why the agency committed reversible error. For example, the applicant does not explain how the proffered approach would bring his resources under the limit. And although he seeks relief under Section 1983, the applicant does not quote from that section, provide caselaw involving the section, or explain why that section applies.

[3] Concluding that the applicant has waived his appellate arguments, we affirm.

Facts and Procedural History

[4] The applicant sought Medicaid benefits and the agency denied that application. The agency denied the application because it identified countable resources

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[1] Albert has died and his estate is a party.

with a value exceeding the resource maximum. That resource maximum was found to be $50,953, consisting of a $2,000 maximum for the institutionalized spouse and a share of $48,953 for the community spouse. As to eligibility, on the first of February, March, April, and May 2018, there were countable resources valued at more than $50,000 above the maximum. *See* App. Vol. 2 at 26 (identifying a countable resource value of $109,014.61 on February 1 and, on the first of the succeeding months, $113,603.67, $113,129.71, and $110.602.30).

[5] The applicant sought judicial review, arguing that the agency improperly counted the community spouse's income "in gross violation of the Spousal Impoverishment Act[.]" *Id.* at 18. The trial court entered a judgment for the agency, determining that the agency's approach to countable resources was "consistent with the . . . Act and its treatment of spousal resources." *Id.* at 15.

[6] The applicant now appeals.

Discussion and Decision

Background

[7] Under the Administrative Orders and Procedures Act, a person may seek judicial review of a final agency action, *see* Ind. Code § 4-21.5-5-2, with that review generally limited to issues raised before the agency, *see* I.C. § 4-21.5-5-10. Upon review, a court is "confined to the agency record for the agency action," and the court "may not try the cause de novo or substitute its judgment

for that of the agency." I.C. § 4-21.5-5-11. And the burden is on the person seeking judicial relief, with a court authorized to grant relief only if the person

> has been prejudiced by an agency action that is
>
> > (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> >
> > (2) contrary to constitutional right, power, privilege, or immunity;
> >
> > (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> >
> > (4) without observance of procedure required by law; or
> >
> > (5) unsupported by substantial evidence.

I.C. § 4-21.5-5-14.

[8] "Decisions on petitions for review . . . are appealable in accordance with the rules governing civil appeals from the courts." I.C. § 4-21.5-5-16. Furthermore, in reviewing an adverse ruling on a petition, we apply the same standard as the trial court. *See, e.g.*, *Jay Classroom Tchrs. Ass'n v. Jay Sch. Corp.*, 55 N.E.3d 813, 816 (Ind. 2016). That is, although we review the agency's legal conclusions de novo, "we defer to the agency's findings if they are supported by substantial evidence." *Id.* Moreover, "[a]lthough an agency's interpretation of a statute presents a question of law entitled to de novo review," we give the agency's interpretation "'great weight.'" *Id.* (quoting *West v. Off. of Ind. Sec'y of State*, 54

N.E.3d 349, 353 (Ind. 2016)). Ultimately, if the agency's interpretation is reasonable, "we stop our analysis and need not move forward with any other proposed interpretation." *Moriarity v. Ind. Dep't of Nat. Res.*, 113 N.E.3d 614, 619 (Ind. 2019) (quoting *Jay Classroom Tchrs. Ass'n*, 55 N.E.3d at 816).

Analysis

[9] According to the applicant, the agency erred by treating spousal income as a countable resource. Yet even assuming the agency erred, the applicant does not explain how—but for that calculation—he had resources below the limit.

[10] In briefing, the applicant focuses on the Spousal Impoverishment Act, asserting that "through rather obvious wordplay" the agency "is openly refusing to apply the income protections required by" the Act. Br. of Appellant at 11. He also questions why a community spouse "is required to spend every dollar of her income to reach eligibility." *Id.* at 10. Yet, the applicant does not provide a calculation showing that, had the income been "protected" as he suggests was required, his countable resources fell below the maximum amount. And although the applicant argues that he is entitled to relief under 42 U.S.C. Section 1983 because the agency "nullif[ied] the income protections of the Spousal Impoverishment Act," *id.* at 12, the applicant does not (1) quote from Section 1983, (2) provide caselaw applying that section, or (3) explain why that section applies to the agency and supports granting the relief requested.

[11] Under Indiana Appellate Rule 46(A)(8), an appellant must support his contentions with cogent reasoning. And he must explain "why the trial court or

Administrative Agency committed reversible error." Ind. App. R. 46(A)(8). Failing to follow Appellate Rule 46(A) may result in waiver of an appellate issue. *See, e.g.*, *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014). Indeed, as this Court has explained, we will not "'sift through the record to find a basis for a party's argument' . . . lest we become an advocate for a party rather than an adjudicator." *Matter of Est. of Blair*, 177 N.E.3d 84, 93 (Ind. Ct. App. 2021) (quoting *Haddock v. State*, 800 N.E.2d 242, 245 n.5 (Ind. Ct. App. 2003)).

[12] Ultimately, the applicant has fallen short of the requirements of Appellate Rule 46(A)(8), and he has waived his appellate arguments. We therefore affirm.

[13] Affirmed.

Mathias, J., and Altice, J., concur.