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ZBIGNIEW SZEWCZYK *v.* DEPARTMENT OF SOCIAL SERVICES
(SC 17034)

Sullivan, C. J., and Borden, Norcott, Palmer and Zarella, Js.

Argued February 8—officially released September 20, 2005

Thomas J. Riley, for the appellant (substitute plaintiff).

Tanya Feliciano DeMattia, assistant attorney gen-

eral, with whom, on the brief, were *Richard Blumenthal*, attorney general, and *Richard J. Lynch*, assistant attorney general, for the appellee (defendant).

Jennifer L. Cox, *Jennifer A. Osowiecki* and *Patrick J. Monahan II* filed a brief for the Connecticut Hospital Association as amicus curiae.

Sheldon V. Toubman, *Jamey Bell*, *Angel Feng*, *Greg Bass* and *Shirley Bergert* filed a brief for the Connecticut Legal Services, Inc., et al., as amici curiae.

Opinion

NORCOTT, J. The principal issue in this certified appeal is whether an illegal alien with acute myelogenous leukemia suffers from an ''emergency medical condition'' under the federal statute, 42 U.S.C. § 1396b (v),[1] and the state regulation, Department of Social Services, Uniform Policy Manual § 3000.01 (Uniform Policy Manual),[2] and is, therefore, entitled to medicaid benefits. Michael R. Kerin, the temporary administrator of the estate of the plaintiff, Zbigniew Szewczyk,[3] appeals, following our grant of certification,[4] from the judgment of the Appellate Court concluding that the plaintiff did not suffer from an emergency medical condition, and affirming the judgment of the trial court dismissing his administrative appeal from the decision of the defendant, the department of social services (department), denying medicaid benefits to the plaintiff. *Szewczyk* v. *Dept. of Social Services*, 77 Conn. App. 38, 52, 822 A.2d 957 (2003). We conclude that the plaintiff suffered from an emergency medical condition. Accordingly, we reverse the judgment of the Appellate Court.

Chief Judge Lavery aptly set forth the facts and procedural history in his dissent from the Appellate Court opinion in this case. ''The plaintiff, a native of Poland, illegally remained in this country after his visa expired. On November 24, 1998, the plaintiff sought treatment from his family physician. At that time, he suffered from intense pain, nausea and overall weakness so severe that he could take only one to two steps before collapsing. After reviewing the results of tests performed on the plaintiff's blood samples, the plaintiff's physician immediately referred the plaintiff to Robert B. Erichson, an oncologist at Stamford Hospital (hospital).

''On that same day, Erichson diagnosed the plaintiff with acute myelogenous leukemia and admitted him to the hospital. The plaintiff received treatment consisting of chemotherapy, surgery and biopsies at the hospital until his discharge on December 26, 1998. The hospital charges from November 24 through December 26, 1998, totaled $82,046.85.[5]

''An application for benefits from November through December, 1998, was filed with the [department], an agency of the state. Erichson wrote a letter, which was admitted into evidence by the department's hearing officer, that stated that 'acute myelogenous leukemia . . .

is a rapidly fatal disease unless treated aggressively with chemotherapy.' . . . Erichson also opined that such chemotherapy is always administered in a hospital, associated with severe infections requiring aggressive antibiotic and transfusion treatment, and that '*in the absence of such therapy*, [*the plaintiff*] *would probably not be alive today*.'[6] . . . Despite the absence of any medical evidence to the contrary, the hearing officer determined that the plaintiff did not suffer from an emergency medical condition and therefore was not eligible for benefits. Specifically, the hearing officer found that the plaintiff did not suffer from an emergency medical condition because the plaintiff would not have immediately died on November 24, 1998, if he had not received treatment.'' (Emphasis in original.) Id., 53–54 (*Lavery, C. J.*, dissenting).

The plaintiff appealed from the denial of benefits to the trial court pursuant to General Statutes §§ 4-183 and 17b-61. The trial court applied the explanation of ''emergency medical condition'' from the decision of the United States Court of Appeals for the Second Circuit in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, 150 F.3d 226, 232–33 (2d Cir. 1998), and cited another trial court case for the proposition that ''an emergency is any condition that is of such severity that in the absence of immediate medical attention, the patient's health would be placed in serious jeopardy.'' (Internal quotation marks omitted.) The trial court credited the hearing officer's conclusions that the biopsy and catheterization were not '' 'emergency events,' '' and that the plaintiff '' 'would not have immediately died' on the date of admission.'' The trial court concluded that these findings were supported by substantial evidence, and, therefore, dismissed the plaintiff's administrative appeal.

The plaintiff thereafter appealed from the judgment of the trial court to the Appellate Court. *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 38. The Appellate Court relied on the standards articulated in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 232, and concluded that the hearing officer did not use an inappropriately ''narrow'' legal standard. *Szewczyk* v. *Dept. of Social Services*, supra, 48. The Appellate Court also concluded that the hearing officer's decision was supported by substantial evidence, similarly crediting his determination that the biopsy and catheterization were not emergency procedures, and that the hearing officer's decision not to adopt Erichson's determination was a question of credibility that it would not disturb.[7] Id., 52. Accordingly, the Appellate Court affirmed the judgment of the trial court, and this certified appeal followed. See footnote 4 of this opinion.

On appeal, the plaintiff contends that the Appellate Court correctly relied upon, but misapplied, the Second Circuit's explanation of the term ''emergency medical

condition'' from *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 233. The plaintiff also contends that the Appellate Court's improperly restrictive application of the term ''emergency medical condition'' will have dire consequences for patient care, and will interfere with hospitals' discharge of their patient care responsibilities under the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd.[8] Finally, the plaintiff claims that the hearing officer's determination that he did not suffer from an ''emergency medical condition'' was not supported by substantial evidence.[9] We agree with the plaintiff's contention that the Appellate Court improperly affirmed the judgment of the trial court because the hearing officer correctly relied upon, but misapplied, the standard set forth in *Greenery Rehabilitation Group, Inc.*

In the present case, the plaintiff concedes that there is no Connecticut law that provides broader health coverage to illegal aliens than that provided under federal law, and acknowledges that the definition of ''emergency medical condition'' in § 3000.01 of the Uniform Policy Manual is controlled by the coordinate federal statute. See, e.g., *Lewis* v. *Thompson*, 252 F.3d 567, 570 (2d Cir. 2001). Thus, in order to establish his eligibility for payments under § 3005.05 (C) of the Uniform Policy Manual, the plaintiff must establish that he suffered from an emergency medical condition as that term is defined in 42 U.S.C. § 1396b (v) (3), and also that he received treatment for the emergency medical condition within the meaning of 42 U.S.C. § 1396b (v) (2) (A).

We begin with the applicable standard of review. ''In *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 669, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001), we stated: Although the interpretation of statutes is ultimately a question of law . . . it is the well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement. . . . Conclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . We also have held that an exception is made when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . Accord *Bridgeport Hospital* v. *Commission on Human Rights & Opportunities*, [232 Conn. 91, 109, 653 A.2d 782 (1995)] ([a]s we have stated many times, the factual and discretionary determinations of administrative agencies are to be given considerable weight by the courts . . . [however] it is for the courts, and not for administrative agencies, to expound and apply governing principles of law . . .).'' (Internal quotation marks omitted.) *Wallingford* v. *Dept. of Pub-*

lic Health, 262 Conn. 758, 771–72, 817 A.2d 644 (2003).

The construction and application of § 1396b (v) (3) presents an issue of law not heretofore considered by this court. Accordingly, our review is plenary. See, e.g., *Manifold* v. *Ragaglia*, 272 Conn. 410, 419, 862 A.2d 292 (2004). With respect to the construction and application of federal statutes, ''principles of comity and consistency'' require us to follow the plain meaning rule for the interpretation of federal statutes ''because that is the rule of construction utilized by the United States Court of Appeals for the Second Circuit.''[10] *Webster Bank* v. *Oakley*, 265 Conn. 539, 554–55, 830 A.2d 139 (2003) (construing federal Americans with Disabilities Act and Fair Housing Amendments Act of 1988), cert. denied, 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244 (2004). Moreover, it is well settled that ''[t]he decisions of the Second Circuit Court of Appeals carry particularly persuasive weight in the interpretation of federal statutes by Connecticut state courts.''[11] Id., 555 n.16.

''Accordingly, our analysis of the federal statutes in the present case begins with the plain meaning of the statute. . . . If the text of a statute is ambiguous, then we must construct an interpretation consistent with the primary purpose of the statute as a whole. . . . [*United States* v. *Ripa*, 323 F.3d 73, 81 (2d Cir. 2003)]; see also *In re Caldor Corp.*, 303 F.3d 161, 167–68 (2d Cir. 2002) ([a]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute . . .). Under the plain meaning rule, [l]egislative history and other tools of interpretation may be relied upon only if the terms of the statute are ambiguous. . . . *In re Venture Mortgage Fund, L.P.*, 282 F.3d 185, 188 (2d Cir. 2002). Thus, our interpretive process will begin by inquiring whether the plain language of [each] statute, when given its ordinary, common meaning . . . is ambiguous. . . . *In re Caldor Corp.*, supra, 168.'' (Internal quotation marks omitted.) *Webster Bank* v. *Oakley*, supra, 265 Conn. 555–56.

We note at the outset that the Second Circuit is the sole federal Court of Appeals to have considered § 1396b (v) (3). That court authoritatively construed § 1396b (v) (3) in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 233, and declared the statutory term ''emergency medical condition'' to be clear and unambiguous. We, therefore, need not reinvent the federal wheel, and turn to *Greenery Rehabilitation Group, Inc.*, for highly persuasive guidance respecting this issue from the federal Court of Appeals whose jurisdiction encompasses our state.[12] See footnote 11 of this opinion. In that case, the Second Circuit concluded that, ''[t]he statutory language of 42 U.S.C. § 1396b (v) (3) is plain in its meaning. An 'emergency medical condition' must be manifested by acute, rather than chronic symptoms. It must necessitate immediate medical treat-

ment, without which the patient's physical well-being would likely be put in jeopardy or serious physical impairment or dysfunction would result.'' *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 233.

In *Greenery Rehabilitation Group, Inc.*, the Second Circuit adopted the definition of '' 'emergency' '' from Webster's Third New International Dictionary and stated that ''[i]n the medical context, an 'emergency' is generally defined as 'a sudden bodily alteration such as is likely to require immediate medical attention.' . . . The emphasis is on severity, temporality and urgency. We believe that 42 U.S.C. § 1396b (v) (3) clearly conveys this commonly understood definition.'' (Citation omitted.) Id., 232. The court further stated that ''[a]n 'acute' symptom is a symptom 'characterized by sharpness or severity . . . having a sudden onset, sharp rise, and short course . . . [as] opposed to chronic.' . . . Moreover, as a verb, 'manifest' means 'to show plainly.' . . . In § 1396b (v) (3) this verb is used in the present progressive tense to explain that the 'emergency medical condition' must be revealing itself through acute symptoms. Thus . . . the statute plainly requires that the acute indications of injury or illness must coincide in time with the emergency medical condition. Finally, 'immediate' medical care means medical care 'occurring . . . without loss of time' or that is 'not secondary or remote.' . . . In sum, the statutory language unambiguously conveys the meaning that emergency medical conditions are sudden, severe and short-lived physical injuries or illnesses that require immediate treatment to prevent further harm.''[13] (Citations omitted.) Id. Indeed, in determining that the federal regulation, 42 C.F.R. § 440.255,[14] or the legislative history do not require a different definition of the term ''emergency medical condition,'' the court concluded that ''our review of the plain meaning of § 1396b (v) (3) ends our inquiry.'' Id., 233.

In *Greenery Rehabilitation Group, Inc.*, the court applied this standard and concluded that three undocumented aliens who were residents of long-term nursing and rehabilitation centers did not suffer from ''emergency medical conditions'' under § 1396b (v). Id., 228–29, 233. The patients required rehabilitative care for severe head injuries that they had sustained as a result of trauma from an automobile accident and assaults. Id., 228–29. The court stated that treatment for the ''patients' sudden and severe head injuries undoubtedly satisfied the plain meaning of § 1396b (v) (3). However, after the patients were stabilized and the risk of further direct harm from their injuries was essentially eliminated, the medical emergencies ended. This is not to say that the patients could not suffer from a true emergency medical condition while being cared for by [the rehabilitation centers]. For example, it seems clear that if one of these patients suffered a sudden heart attack, treatment to stabilize the patient would be covered by [m]ed-

icaid pursuant to § 1396b (v) (3). However . . . such an occurrence would constitute an independent emergency and would not be considered a continuation of the emergency situation brought about by the initial head injury.'' Id., 232–33. The court further stated that, although two of the patients ''undoubtedly require *ongoing maintenance care*, we have some doubt as to whether their health would be jeopardized by the absence of immediate medical attention . . . . In any event, however, it is clear that the *stable, long-term problems* suffered by [two of the immigrants] do not meet the additional, independent requirement that the medical condition be manifested by acute symptoms.'' (Citation omitted; emphasis added; internal quotation marks omitted.) Id., 233.

Several of our sister state courts have considered *Greenery Rehabilitation Group, Inc.*, as persuasive authority in determining the meaning of ''emergency medical condition'' under the plain language of § 1396b (v) (3). See, e.g., *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, 206 Ariz. 1, 6–7, 75 P.3d 91 (2003);[15] *Luna* v. *Division of Social Services*, 162 N.C. App. 1, 11–13, 589 S.E.2d 917 (2004). We find especially persuasive a North Carolina appellate decision that is directly on point, namely, *Diaz* v. *Division of Social Services*, 166 N.C. App. 209, 600 S.E.2d 877 (2004), review granted, 359 N.C. 320, 611 S.E.2d 409 (2005).[16] In *Diaz*, a biopsy performed on an undocumented alien suffering from sore throat, nausea, vomiting, bleeding gums and lethargy revealed that he had acute lymphocytic leukemia. Id., 210. He immediately received chemotherapy, sustained an infection requiring transfer to the intensive care unit, and subsequently was discharged from the hospital approximately one month after chemotherapy started. Id. He received subsequent ''modules'' of chemotherapy on a monthly basis for the next several months. Id. The division of social services approved medicaid coverage for the first several modules, but denied it with respect to the rest. Id., 211. The trial court concluded that the alien was entitled to ''treatment for [his] emergency medical condition'' with respect to *all* of the modules of chemotherapy. Id. The division of social services thereafter appealed, claiming that the ''trial court erred by extending [m]edicaid benefits to [the] petitioner for the treatment of an emergency medical condition.'' Id.

The North Carolina Court of Appeals affirmed the judgment of the trial court, relying solely on the federal medicaid requirements and concluding that ''medical care is necessary for the treatment of an emergency condition if the alien requires the care and services after the sudden onset of a medical condition (including labor and delivery) that manifests itself by acute symptoms of sufficient severity (including severe pain) . . . . These symptoms must be so severe that the

absence of immediate medical attention could result in: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part.'' (Citation omitted; internal quotation marks omitted.) Id., 213, citing *Medina* v. *Division of Social Services*, 165 N.C. App. 502, 508, 598 S.E.2d 707 (2004).[17]

The North Carolina court applied this standard and concluded that the petitioner was entitled to medicaid coverage for an ''emergency medical condition.'' *Diaz* v. *Division of Social Services*, supra, 166 N.C. App. 216. It determined that, unlike in prior cancer cases, the trial court had made the requisite findings of fact to support its determination that the patient initially had arrived at the hospital with ''acute symptoms'' such as vomiting and lethargy, and that ''absent medical treatment in the form of chemotherapy, [his] health would have been placed in serious jeopardy and he would have died.'' (Internal quotation marks omitted.) Id., 215–16.

Beyond the analysis of *Greenery Rehabilitation Group, Inc.*, we also note that the plain language of § 1396b (v) indicates that the statute encompasses payment for care beyond that which is immediately necessary to stabilize a patient. The statute permits payment for ''care and services . . . necessary for the treatment of an emergency medical condition of the alien''; 42 U.S.C. § 1396b (v) (2) (A); so long as the alien is otherwise eligible and ''such care and services are not related to an organ transplant procedure.'' 42 U.S.C. § 1396b (v) (2) (C). The proviso with respect to organ transplant procedures, which undoubtedly are time-consuming and entail relatively lengthy hospitalizations, presumably would be unnecessary if Congress had intended § 1396b (v) to apply only to short-term stabilization treatment, such as that which is required by EMTALA, 42 U.S.C. § 1395dd.[18] It is, of course, presumed, both by this court and the Second Circuit, that the legislature did not intend to enact useless or superfluous legislation. See, e.g., *Lutwin* v. *Thompson*, 361 F.3d 146, 157 (2d Cir. 2004) (''[w]here possible, we avoid construing a statute so as to render a provision mere surplusage'' [internal quotation marks omitted]); *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 309–10, 819 A.2d 260 (2003) (''[s]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant'' [internal quotation marks omitted]).

In light of the foregoing cases, our review of the hearing officer's decision and the trial court's memorandum of decision demonstrates that they are the product of an improperly narrow application of the *Greenery Rehabilitation Group, Inc.*, standard. In the case before us, the plaintiff sought coverage for ''the finite course of treatment of the very condition that sent him to the emergency room, and not for long-term or open-ended

nursing care.'' *Luna* v. *Division of Social Services*, supra, 162 N.C. App. 11; id., 13 (remanding case for additional factual findings in case wherein undocumented immigrant had been diagnosed with non-Hodgkin's lymphoma). It is undisputed that the inquiry before the hearing officer was confined only to the initial chemotherapy treatments that the plaintiff received from his admission in November through December, 1998.[19] Furthermore, the record demonstrates that the plaintiff presented with symptoms of ''intense pain, nausea and overall weakness so severe that he could take only one to two steps before collapsing.''[20] *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 53 (*Lavery, C. J.*, dissenting). It also is undisputed that the plaintiff's severe symptoms came on suddenly, as he testified that he ''felt a little weak two weeks before but then . . . suddenly couldn't walk any more.''

Moreover, there is nothing in the record that indicates that the plaintiff received anything other than the standard course of treatment after he was diagnosed with a ''rapidly fatal'' disease, which, in the words of the trial court, had ''reached a crisis stage'' when he arrived at the hospital. He, therefore, required ''immediate medical treatment, without which the patient's physical well-being would likely be put in jeopardy or serious physical impairment or dysfunction would result.'' *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 233. The only medical evidence in the record that contains any analysis or explanation of the gravity of the plaintiff's medical condition is Erichson's letter describing acute myelogenous leukemia as, inter alia, a ''rapidly fatal'' disease.[21] See footnote 6 of this opinion. Inasmuch as ''emergency medical conditions can involve a wide variety of injuries and illnesses that might require diverse treatment approaches''; *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 233;[22] and determination of the existence of an emergency medical condition ''should largely be informed by the expertise of health care providers''; *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 206 Ariz. 8; we conclude that the hearing officer's determination that the plaintiff did not suffer from an emergency medical condition is the result of an improperly narrow application of the law.[23] See General Statutes § 4-183 (j) (4).[24] Accordingly, the Appellate Court improperly affirmed the judgment of the trial court dismissing the plaintiff's administrative appeal.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the judgment of the trial court and to remand the case to the trial court with direction to sustain the plaintiff's administrative appeal.

In this opinion BORDEN and PALMER, Js., concurred.

[1] Title XIX of the Social Security Act, 42 U.S.C. § 1396b (v), provides: ''(1)

Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

''(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

''(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

''(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter [42 U.S.C. § 1396 et seq.] (other than the requirement of the receipt of aid or assistance under subchapter IV [42 U.S.C. § 601 et seq.], supplemental security income benefits under subchapter XVI [42 U.S.C. § 1381 et seq.], or a State supplementary payment), and

''(C) such care and services are not related to an organ transplant procedure.

''(3) For purposes of this subsection, the term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

''(A) placing the patient's health in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.''

[2] Uniform Policy Manual, supra, § 3000.01, provides in relevant part: ''Emergency Medical Condition

''A medical condition is considered an emergency when it is of such severity that the absence of immediate medical attention could result in placing the patient's health in serious jeopardy. This includes emergency labor and delivery, and emergencies related to pregnancy, but does not include care or services related to an organ transplant procedure.''

Under Uniform Policy Manual, supra, § 3005.05 (C), ''[a] non-citizen who does not fall into one of the categories listed in B is eligible for [medical care] only, if he or she has an emergency medical condition.'' It is undisputed that the plaintiff was not otherwise eligible for medical care under § 3005.05.

[3] The plaintiff died after the appeal had been filed. Thereafter, this court granted a motion to substitute Kerin, the temporary administrator of Szewczyk's estate, as plaintiff. For convenience sake, we refer herein to Szewczyk as the plaintiff.

[4] We granted the plaintiff's petition for certification limited to the following issue: ''Did the Appellate Court improperly find that the plaintiff did not suffer from an emergency medical condition under the definition of that term as set forth in the department of social services Uniform Policy Manual?'' *Szewczyk* v. *Dept. of Social Services*, 265 Conn. 903, 829 A.2d 421 (2003).

[5] ''If the department's hearing officer had determined that the plaintiff had been eligible for the benefits he attempted to obtain, the state would have been required to contribute $22,386.56.'' *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 53 n.1 (*Lavery, C. J.*, dissenting).

[6] ''The complete text of the Erichson letter states: 'Regarding [the plaintiff] and his admission of 11/27/98 to 12/26/98. [The plaintiff] has acute myelogenous leukemia which is a rapidly fatal disease unless treated aggressively with chemotherapy. Such chemotherapy is always administered in the hospital and is almost always associated with severe infections, requiring aggressive antibiotic therapy, as well as an aggressive transfusion program, including packed cells and platelets. The duration of his hospitalization is standard for such therapy and, in the absence of such therapy, [the plaintiff] would probably not be alive today [June 7, 1999].' The date of admission appears to be in error in the letter, as all of the other evidence indicates that the plaintiff was admitted to the hospital on November 24, 1998.'' *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 53–54 n.2 (*Lavery, C. J.*, dissenting).

[7] Chief Judge Lavery filed a dissenting opinion wherein he concluded that the majority, the trial court and the hearing officer had applied *Greenery Rehabilitation Group, Inc.*, too narrowly, and placed improper ''emphasis on the factual finding that the plaintiff would not have immediately died on November 24, 1998, if he did not receive treatment.'' *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 59–60. Chief Judge Lavery stated that this emphasis on immediate death improperly added an element to the text of § 1396b (v) (3). Id., 60 (*Lavery, C. J.*, dissenting). He also wrote that

the applicable state regulations evince the state's ''elect[ion] to provide additional benefits to unlawful aliens and that the plaintiff is entitled to benefits under the state regulations, independent of the federal statute.'' Id., 61 (*Lavery, C. J.*, dissenting).

[8] The Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, provides in relevant part: ''(a) Medical screening requirement

''In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection [e] [1] of this section) exists.

''(b) Necessary stabilizing treatment for emergency medical conditions and labor

''(1) In general

''If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

''(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

''(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section. . . .

''(c) Restricting transfers until individual stabilized

''(1) Rule

''If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection [e] [3] [B] of this section), the hospital may not transfer the individual unless—

''(A) (i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

''(ii) a physician (within the meaning of [42 U.S.C. § 1395x (r) (1)]) has signed a certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or . . . .

''(B) the transfer is an appropriate transfer (within the meaning of paragraph [2]) to that facility.

''A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

''(2) Appropriate transfer

''An appropriate transfer to a medical facility is a transfer—

''(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

''(B) in which the receiving facility—

''(i) has available space and qualified personnel for the treatment of the individual, and

''(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

''(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1) (A), and the name and address of any on-call physician (described in subsection [d] [1] [C] of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

''(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

''(E) which meets such other requirements as the Secretary may find

necessary in the interest of the health and safety of individuals transferred. . . .

"(e) Definitions

"In this section:

"(1) The term 'emergency medical condition' means—

"(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

"(ii) serious impairment to bodily functions, or

"(iii) serious dysfunction of any bodily organ or part; or

"(B) with respect to a pregnant woman who is having contractions—

"(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

"(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child. . . .

"(3) (A) The term 'to stabilize' means, with respect to an emergency medical condition described in paragraph (1) (A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1) (B), to deliver (including the placenta).

"(B) The term 'stabilized' means, with respect to an emergency medical condition described in paragraph (1) (A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1) (B), that the woman has delivered (including the placenta).

"(4) The term 'transfer' means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person. . . .

"(h) No delay in examination or treatment

"A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status. . . ."

[9] The plaintiff is supported by the amici curiae, who include Connecticut Legal Services, Inc., New Haven Legal Assistance Association, Inc., and Greater Hartford Legal Aid, Inc. (collectively, legal services), and the Connecticut Hospital Association (association). Legal services contends that the Appellate Court should not have followed the standard set forth in *Greenery Rehabilitation Group, Inc.*, because it is inconsistent with federal medicaid law as explained by the decisions of various state courts. The association contends that the Appellate Court properly followed, but gave an inappropriately restrictive application to the standard set forth in *Greenery Rehabilitation Group, Inc.* The association also endorses that portion of Chief Judge Lavery's dissent that reads the applicable state regulations as evincing the state's "elect[ion] to provide additional benefits to unlawful aliens and [stating] that the plaintiff is entitled to benefits under the state regulations, independent of the federal statute." *Szewczyk* v. *Dept. of Social Services*, supra, 77 Conn. App. 61. We need not address in detail the additional contentions of the amici because we agree with the plaintiff's claim that the trial court and the Appellate Court misapplied the standard set forth in *Greenery Rehabilitation Group, Inc.*

[10] We followed the plain meaning rule in *Webster Bank* v. *Oakley*, 265 Conn. 539, 55–56, 830 A.2d 139 (2003), cert. denied, 541 U.S. 903, 124 S. Ct. 1603, 158 L. Ed. 2d 244 (2004), despite our contemporaneous renunciation of it in *State* v. *Courchesne*, 262 Conn. 537, 577–78, 816 A.2d 562 (2003), which had not yet been superseded by General Statutes § 1-2z, because "[t]he decisions of the Second Circuit Court of Appeals carry particularly persuasive weight in the interpretation of federal statutes by Connecticut state courts . . . [and] that court's decisions may be more helpful to us if we follow the same analytical approach to federal statutory interpretation that it does." (Citation omitted.) *Webster Bank* v. *Oakley*, supra, 555 n.16,

citing *Thomas* v. *West Haven*, 249 Conn. 385, 392, 734 A.2d 535 (1999) (considering 42 U.S.C. § 1983 claim in light of concurrent state and federal court jurisdiction), cert. denied, 528 U.S. 1187, 120 S. Ct. 1239, 146 L. Ed. 2d 99 (2000).

[11] We agree with the dissent's observation that, while persuasive, decisions of the Second Circuit are not necessarily *binding* upon us. See, e.g., *Turner* v. *Frowein*, 253 Conn. 312, 341, 752 A.2d 955 (2000). Departure from Second Circuit precedent on issues of federal law, however, should be constrained in order to prevent the plaintiff's decision to file an action in federal District Court rather than a state court located " 'a few blocks away' " from having the " 'bizarre' " consequence of being outcome determinative. *Red Maple Properties* v. *Zoning Commission*, 222 Conn. 730, 739 n.7, 610 A.2d 1238 (1992) (following Second Circuit's analysis for claim of substantive due process violation in land use cases under 42 U.S.C. § 1983 because it would be " 'bizarre' " for two courts located " 'a few blocks away' " to utilize different analyses); see also *DiMartino* v. *Richens*, 263 Conn. 639, 663 and n.17, 822 A.2d 205 (2003) (following federal cases requiring independent review of trial court and jury findings that government employee's speech was protected under first amendment and noting that Second Circuit cases are " 'particularly persuasive' "); *Turner* v. *Frowein*, supra, 341 (following Second Circuit's construction of article 13b of Hague Convention on Civil Aspects of International Child Abduction and federal implementing legislation); *Schnabel* v. *Tyler*, 230 Conn. 735, 743, 646 A.2d 152 (1994) (considering qualified immunity under 42 U.S.C. § 1983 and stating that "in applying federal law in those instances where the United States Supreme Court has not spoken, we generally give special consideration to decisions of the Second Circuit Court of Appeals").

[12] The dissent disagrees with the Second Circuit's application of the plain meaning rule in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 233, and states that it finds § 1396b (v) (3) ambiguous. The dissent then utilizes a variety of extratextual evidence relating both to § 1396b (v) (3) and the different EMTALA statute, § 1395dd (e) (1), to conclude that "an emergency medical condition is a condition that requires stabilizing treatment in order to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility or his discharge." As the concurring opinion points out, we do not write on a blank slate with respect to the construction and application of § 1396b (v) (3). Any disagreement by us with the Second Circuit's statutory analysis must yield to the more compelling objective of uniform interpretation of federal laws, particularly when the federal court has spoken *first*. See cases cited in footnote 11 of this opinion.

[13] The Second Circuit noted that the statutory definition of § 1396b (v) (3) "is also consistent with the general concept of a medical emergency as commonly understood by those in the medical professions." *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 232. It quoted Dorland's Medical Dictionary definition of "emergency" as " 'an unlooked for or sudden occasion; an accident; an urgent or pressing need.' " Id., quoting Dorland's Illustrated Medical Dictionary (28th Ed. 1994).

[14] The coordinate federal regulation, 42 C.F.R. § 440.255 (c), provides: "Effective January 1, 1987, aliens who are not lawfully admitted for permanent residence in the United States or permanently residing in the United States under the color of law must receive the services necessary to treat the condition defined in paragraph (1) of this section if—

"(1) The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

"(i) Placing the patient's health in serious jeopardy;

"(ii) Serious impairment to bodily functions; or

"(iii) Serious dysfunction of any bodily organ or part, and

"(2) The alien otherwise meets the requirements in §§ 435.406(c) and 436.406(c) of this subpart."

[15] We note that, in *Scottsdale Healthcare, Inc.*, the Arizona court criticized *Greenery Rehabilitation Group, Inc.*, as narrow and stated that "whether a patient suffers from an emergency medical condition does not depend upon the type of bed or facility the patient may be in at any given time. In addition, stability, in the sense that a patient can be transferred from an acute care bed, is not the sole or even primary criterion under the statute. Nor does the statute limit the determination of when an emergency medical

condition has ended to whether the treating physician has a reasonable degree of confidence that the patient and his lay caregivers can manage his medical condition so that serious adverse consequences are not reasonably likely to occur . . . .

''Instead, the focus must be on whether the patient's current medical condition—whether it is the initial injury that led to admission, a condition directly resulting from that injury, or a wholly separate condition—is a non-chronic condition presently manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical treatment could result in one of the three adverse consequences listed in § [1396b (v)]. If the resulting condition is manifested by chronic symptoms it is not an emergency medical condition. Whether a condition is manifested by acute symptoms or by chronic symptoms is a question of fact.'' (Internal quotation marks omitted.) *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 206 Ariz. 8.

After articulating its standard for ''emergency medical condition'' under § 1396b (v), the court remanded the case for a determination as to whether the patients at issue had such conditions. Id. The patients in *Scottsdale Healthcare, Inc.*, had been admitted to the hospital as a result of major traumas, and thereafter required longer-term intensive care, including feeding tubes and multiple surgeries, for lasting complications from their severe injuries. Id., 4 n.3.

We disagree with the Arizona court's criticism of *Greenery Rehabilitation Group, Inc.*, as unduly narrow and focused on stabilization. We do, however, agree with that court's observation that the plain language of § 1396b (v) (3) ''does not focus solely on the condition of the patient at one instant in time. Instead, § [1396b (v)] takes a forward looking view asking whether 'the absence of immediate medical attention *could reasonably be expected* to result in' one of the three adverse consequences listed in the statute. The statute thus considers both the patient's current condition, that is whether the condition is presently manifested by acute symptoms, and how that current condition may affect the health of the patient in the days to come.'' (Emphasis in original.) Id., 8 n.9.

[16] The definition of ''emergency medical condition'' apparently has been a hotly contested issue in North Carolina. See *Diaz* v. *Division of Social Services*, supra, 166 N.C. App. 209; see also *Medina* v. *Division of Social Services*, 165 N.C. App. 502, 508, 598 S.E.2d 707 (2004) (remanding case for additional factual findings to determine whether ''absence of immediate medical attention . . . could result in . . . health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part'' when illegal immigrant had received chemotherapy for acute lymphoblastic leukemia); *Luna* v. *Division of Social Services*, supra, 162 N.C. App. 11–13 (remanding case for immigrant who suffered from non-Hodgkin's lymphoma).

[17] We find the North Carolina cases especially persuasive because of their consideration of *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 150 F.3d 226. In *Medina* v. *Division of Social Services*, supra, 165 N.C. App. 508, which was cited in *Diaz* v. *Division of Social Services*, supra, 166 N.C. App. 209, the court relied on its analysis in *Luna* v. *Division of Social Services*, supra, 162 N.C. App. 11–12, which is the state's seminal case on the issue. In *Luna*, the court relied on the explanation of the term ''acute symptoms'' in *Greenery Rehabilitation Group, Inc.* v. *Hammon*, supra, 232, but ultimately adopted the test set forth in *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 206 Ariz. 8, for determining the existence of an ''emergency medical condition.'' *Luna* v. *Division of Social Services*, supra, 12–13; see also footnote 15 of this opinion.

[18] The plaintiff claims that the Appellate Court's ruling will affect patient access to emergency care adversely under EMTALA, 42 U.S.C. § 1395dd, which shares the same definition of ''emergency medical condition'' as is used in § 1396b (v). See 42 U.S.C. § 1395dd (e) (1) (A). Under EMTALA, adherence to which is a condition for hospitals participating in the medicare program, when any patient comes to a hospital emergency room, the hospital personnel first must screen him or her for the existence of an ''emergency medical condition . . . .'' 42 U.S.C. § 1395dd (a). The department, however, contends that EMTALA has no impact on payments made for care under § 1396b (v) because the statutes serve different purposes; § 1396b (v) is a cost cutting measure and a payment statute, while EMTALA is a treatment entitlement for limited conditions that was enacted to combat the problem of '' 'patient dumping' . . . .''

Moreover, we find the dissent's extensive discussion of the history and subsequent administrative interpretations of EMTALA to be illuminating with respect to that statute, but of minimal import with respect to the construction of § 1396b (v). The dissent's discussion does not provide any insight with respect to the kind of emergency medical conditions that Congress intended would be subject to the specific statute at issue, namely, § 1396b (v). Rather, the dissent begs the question when it describes the scope of the hospitals' screening and stabilization obligations under EMTALA, and states that EMTALA no longer is applicable once a patient has been admitted to the hospital, either directly or through the emergency department.

Instead, we find persuasive the Arizona Supreme Court's explanation of the relationship between EMTALA and § 1396b (v), in *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 206 Ariz. 6 n.6. The Arizona court, in criticizing what it deemed to be the focus in *Greenery Rehabilitation Group, Inc.*, on stabilization rather than treatment; see footnote 15 of this opinion; stated that ''whether a patient is stable enough to be transferred from one health care facility to another is a consideration under . . . [EMTALA], which uses the same definition of 'emergency medical condition' as [§ 1396b (v) (3)] . . . . The concern under the EMTALA is a hospital's duty to treat patients coming to its emergency room. . . . That statute discusses stabilization of the patient with reference to when a hospital may transfer a patient to another facility. . . . However, § 1395dd does not indicate that an 'emergency medical condition' is no longer present when a patient is stable. Under the EMTALA, '[t]he term ''stabilized'' means, with respect to an emergency medical condition . . . that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.' . . . Thus under the EMTALA, a patient is 'stabilized' if his or her condition will not materially deteriorate during the short time necessary to transfer the patient to another facility. But, under [§ 1396b (v)] . . . stabilization is not an express factor in determining whether an emergency medical condition exists.'' (Citations omitted.) *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 6 n.6.

Indeed, the appendicitis and cardiac bypass surgery examples cited by the dissent are illustrative of the distinction between EMTALA as a screening statute, and § 1396b (v) as a payment for treatment statute. With respect to appendicitis, the patient with an infected appendix is actually more at risk for death or serious complications as time passes before definitive treatment. After that patient is admitted to the hospital and time passes, however, EMTALA is no longer applicable. Thus, under the dissent's reading of § 1396b (v), that patient would not be eligible for medicaid reimbursement for the necessary emergency surgical treatment of an ''emergency medical condition'' because that patient would not have been discharged or transferred, but rather already would have been admitted to the hospital as an inpatient. Moreover, the dissent's apparent limitation of § 1396b (v) only to treatment rendered in the emergency room places a premium on the entrance to the hospital used by the patient, rather than that patient's actual medical condition that precipitated the hospitalization in the first instance. In our view, this result, as a product of the dissent's construction of § 1396b (v), is beyond irrational, and clearly inconsistent with the letter and purpose of § 1396b (v). Cf. *Scottsdale Healthcare, Inc.* v. *Arizona Health Care Cost Containment System Administration*, supra, 206 Ariz. 7 (noting ''wide variety of emergency conditions or patients' responses to treatment'').

[19] The dissent disagrees with our conclusion that the plaintiff sought only coverage for a '' 'finite course of treatment' '' because he subsequently received multiple additional chemotherapy treatments that ultimately did not cure his illness, stating that whether the plaintiff had an emergency medical condition should not depend on the hospital's billing practices. We disagree with the dissent's contention that our analysis is driven by the hospital's billing practices; in contrast, our focus on the compensability of the initial treatment rendered is the product of the limited scope of the plaintiff's claim herein. The subsequent chemotherapies simply are not before us, and we, therefore, need not consider them now. Moreover, there is nothing in the statute or interpretive case law remotely suggesting that whether a treatment ultimately is successful renders the nature of the underlying condition any more or less emergent.

[20] The plaintiff testified before the hearing officer that he went to his family physician in November, 1998, because: ''I had trouble with my stomach, great pain. I vomited, had nausea. I could hardly walk, I took just one or two

steps. Then I felt weak and was about to collapse.'' After taking blood samples and X rays, the plaintiff's family physician then referred him to Erichson, who immediately sent him to the hospital because he could not walk. Erichson then diagnosed the plaintiff with acute myelogenous leukemia, and hospitalized him through December, 1998.

[21] The hearing officer apparently relied on the medical review team's report stating that the plaintiff did not suffer from an emergency medical condition and that, ''bone marrow biopsies and Hickman [catheter] insertion are not emergency events.'' As the plaintiff points out, this report is signed only by a social worker, and does not explain the medical credentials of the reviewing team. The denial also is conclusory, and does not explain why the biopsies and catheterization are not emergency events, or contradict Erichson's letter describing the ''rapidly fatal'' nature of the plaintiff's illness. Finally, it fails to consider the patient's condition, which is what defines the emergency nature of the procedures.

[22] In *Lewis* v. *Thompson*, supra, 252 F.3d 578, in concluding that illegal aliens were not entitled to nonemergency prenatal care under the medicaid act, the Second Circuit described Congress' understanding of the emergency medical condition definition: ''In discussing the alienage restrictions in the bill, the House Conference Report emphasizes: 'The allowance for emergency medical services under [m]edicaid is very narrow. The conferees intend that it only apply to medical care that is strictly of an emergency nature, such as medical treatment administered in an emergency room, critical care unit, or intensive care unit. The conferees do not intend that emergency medical services include pre-natal or delivery care assistance that is not strictly of an emergency nature as specified herein.' H.R. Conf. Rep. No. 104-725, [p.] 380 (1996) . . . reprinted in 1996 U.S.C.C.A.N. 2649, 2768.''

[23] We, therefore, need not reach the plaintiff's claim that the hearing officer's factual determination was not supported by substantial evidence.

[24] General Statutes § 4-183 (j) provides in relevant part: ''The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (4) affected by other error of law . . . .''