

IN THE SUPREME COURT OF OHIO

STATE OF OHIO <i>EX REL.</i>)	CASE NO. 2024-1075
LEADINGAGE OHIO, <i>et al.</i> ,)	
)	ORIGINAL ACTION
Plaintiffs/Relators,)	IN MANDAMUS
)	
v.)	
)	
THE OHIO DEPARTMENT OF)	
MEDICAID, <i>et al.</i> ,)	
)	
Defendants/Respondents.)	

**RELATORS' RESPONSE IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS AS MOOT**

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Respondents’ “Motion to Dismiss as Moot” is yet another groundless attempt to prevent this Court from resolving the merits of this straightforward statutory-interpretation case—a case that involves a provision of permanent law that has been and remains codified in the Revised Code. Relators LeadingAge Ohio, The Ohio Health Care Association, and The Academy of Senior Health Sciences brought this mandamus action because the Ohio Department of Medicaid (“ODM”) has been egregiously misapplying—and **continues to misapply**—the unambiguous directive in Revised Code Section 5165.26(E) requiring ODM to calculate the total amount to spend on quality incentive payments based on, among other things, the amount by which each “nursing facility’s **rate for direct care costs** ... changed as a result of the rebasing conducted under section 5165.36 of the Revised Code.” *Id.* (emphasis added). This requirement was in effect when Relators filed this suit, and it remains in effect today. Yet ODM refuses to comply with this requirement and instead is using in its calculations the amount by which nursing facilities’ “**cost per case-mix unit**” (*i.e.*, the “**price**”) changed as a result of rebasing. This error has deprived and continues to deprive high-quality nursing homes and their residents of millions of dollars of reimbursement to which they are entitled under the General Assembly’s clear mandates.

Relators’ request for a peremptory mandamus ordering Respondents to calculate and pay high-quality nursing homes what they are currently owed and what they will be owed in the future is far from moot. “An issue is moot ‘when it has no practical significance and, instead, presents a hypothetical or academic question.’” *State ex rel. Ford v. Ruehlman*, 2016-Ohio-3529, ¶ 55, quoting *State v. Moore*, 2015-Ohio-2090, ¶ 7 (4th Dist.). The question here, in contrast, has tremendous practical significance and is far from hypothetical: Respondents are violating the General Assembly’s unambiguous commands **right now**—depriving Ohio’s nursing homes and their residents of millions of dollars of incentive payments to which they are statutorily entitled—

and they will continue to do so until and unless this Court orders them to comply with the statute. ODM's contention that its ongoing misapplication of this permanent statutory provision is now moot simply because the state has entered a new biennial fiscal period is without any basis in Ohio law and would have the absurd result of allowing state agencies to evade their statutory obligations simply by waiting out the current fiscal period.

1. Relators Are Seeking Enforcement of a Provision of Permanent Law Codified in the Revised Code—Not a Temporary Budget Appropriation.

Respondents' Motion to Dismiss as Moot is largely a continuation of their faulty contention that Revised Code Section 5165.26(E)'s unambiguous calculation mandates are somehow contingent upon a specific, limited appropriation of funds by the General Assembly. As Relators have explained in prior briefing, that simply is not the case. Like most Medicaid expenditures, quality incentive payments are paid out of ODM's general, agency-wide appropriation of funds. But unlike many other Medicaid expenditures, quality incentive payments are specifically required by statute; that is, they are mandatory—not discretionary.

Respondents' Motion seeks to further confuse the issue by pointing to the fact that the relevant language in Revised Code Section 5165.26(E) was enacted by the General Assembly in the 2024-25 "Budget Legislation." Based on this, Respondents make the outlandish claim that "the legislation upon which Relators based their request for this Court's intervention has expired." (Mot. at 5). That is incorrect: The critical, disputed language in Section 5165.26(E) remains in force, and Respondents continue to violate it. It is true that, as Relators' petition explains, the language at issue in this case was enacted via House Bill 33, the budget legislation for the 2024–25 biennium. (Pet. at ¶ 1). It is also true that, as the biennium's budget bill, House Bill 33 also included numerous appropriations provisions whose appropriations "revert[ed] to the funds from which the appropriations were made" at the end of the biennium. R.C. 131.33(a). But it is **not** true

that House Bill 33’s many substantive provisions “expired” at the end of the 2024–25 biennium. As this Court is well aware, the General Assembly increasingly uses biennial budget legislation to enact **numerous** substantive provisions of permanent law on **numerous** topics that have nothing to do with the appropriation of funds and that remain in effect after the end of the corresponding fiscal period. The General Assembly would surely be surprised to learn that the thousands of statutory amendments it made via House Bill 33 vanished when the calendar turned to July 1, 2025; that is, of course, not how Ohio law works. House Bill 33’s many statutory amendments, including its amendments to Section 5165.26, continue in effect to this day.

2. Relators’ Petition Was Not Limited to the 2024-25 Biennium.

Respondents’ Motion also relies on a blatant mischaracterization of Relators’ petition. Respondents assert that the relief requested in Relators’ petition “was limited to that [2024–25] biennium.” (Mot. at 1; *see also, e.g., id.* at 5 (“Relators limited that relief to the biennium”).) That assertion is contradicted by the petition’s (and supporting memorandum’s) request for relief, which expressly seeks “a peremptory writ of mandamus ordering Respondents to calculate and pay all nursing facility quality incentive payments, **dating from July 1, 2023 forward**, as required pursuant to the plain, unambiguous language of Revised Code section 5165.26 as amended by the Budget Legislation,” and which reiterates that this relief should apply “**for the July 1, 2023 rate-setting and any subsequent rate-setting.**” (Pet. at 14; *see also* Mem. in Support Pet. at 19–20 (same)).

Anticipating this point, Respondents insist that the breadth of Relators’ requested relief is somehow implicitly “cabined by the other paragraphs of their complaint, including their very first allegation.” (Mot. at 8). Not so. Relators’ petition simply notes (correctly) that the critical statutory language at issue in this case was added by “House Bill 33 (the budget legislation for state fiscal years 2024-2025)” (Pet. at ¶ 1). Nothing in Relators’ petition limited the relief sought to fiscal

years 2024 and 2025. It is simply false to state, as Respondents do, that “Relators sought no relief with respect to the current budget biennium.” (Mot. at 8). Relators did seek such relief, and there is no dispute that the Court is fully capable of ordering Respondents to calculate nursing home quality incentive payments going forward in compliance with R.C. 5165.26(E)’s plain text. For that reason alone, the “outcome of this appeal will ... affect the amount” that Ohio nursing homes receive from ODM, which means “a continuing controversy remains” and the Court should proceed to the merits. *State ex rel. Navistar, Inc. v. Indus. Comm’n of Ohio*, 2020-Ohio-712, ¶ 12.

3. The Start of a New Fiscal Biennium Does Not Relieve ODM of its Existing Legal Obligations and Liabilities.

It is also crucial to note that the Court can indeed order effective relief with respect to quality incentive payments that came due during the 2024–25 biennium. Even granting Respondents’ contention that ODM’s 2024–25 appropriations have reverted to the General Fund under Revised Code Section 131.33 and have not been reappropriated (Mot. at 5–6), Section 131.33(C) specifically provides that “[l]egal liabilities from prior fiscal years for which there is no reappropriation authority shall be discharged from the unencumbered balances of current appropriations.” In other words, a state agency cannot evade its legal obligation to pay simply by waiting for the biennium to end; if, after the biennium ends, the agency cannot use earlier appropriations, it must use “current appropriations.” *Id.*

Further, as Relators pointed out in their initial memorandum, it is neither Relators’ nor the Court’s responsibility to identify the source of funds that Respondents might use to fulfill their statutory obligations: “In *State ex rel. Moorehead, v. Reed*, 177 Ohio St. 4, 6, 201 N.E.2d 594 (1964), this Court held that required expenditures must be made even if ‘there are no unappropriated or unencumbered funds out of which the additional funds could be appropriated, and...to comply with...[the court’s] request would work an undue hardship and burden on other

offices and agencies.’” (Mem. in Support Pet. at 17). Thus, ODM cannot “simply refuse to make a statutorily required expenditure”; even if it completely lacked appropriations (and it does not), it could still “exercise one of the existing statutory options through the Controlling Board” or “request a supplemental appropriation from the General Assembly.” *Id.* at 18. Notably, Respondents’ merit brief **did not dispute these points**.

Contrary to Respondents’ accusation, Relators are **not** asking “for this Court to require the legislature to make a new appropriation for a prior budget biennium.” (Mot. at 6). Relators are merely asking the Court to order, as it has many times before, a state agency to make the payments required by the plain text of the statute the agency administers. The Court had authority to issue this relief when this action was filed, and it continues to have this authority. The conclusion of the 2024–25 biennium makes no difference.

4. Respondents Do Not Cite Any Case Law That Supports Their Proposition.

Respondents do not cite any case that has been held moot on the theory that the end of a fiscal biennium prevents a state agency from making statutorily required payments. Respondents assert that “[o]ther courts have dismissed funding disputes as moot when the fiscal year at issue has ended,” but they cite a single case for this proposition—*Geauga County Board of Commissioners v. Geauga County Sheriff*, 2003-Ohio-7201, ¶ 77 (11th Dist.). (Mot. at 9). And *Geauga County* provides no support for Respondents’ argument here. *Geauga County* did not hold that mootness arose from appropriations that “reverted” under Revised Code Section 131.33(A); it involved neither a state agency nor state appropriations at all. Rather, it was an appeal brought by county commissioners from an order requiring them to appropriate a certain sum to the county sheriff. *Id.* at ¶ 26. The Court of Appeals determined that the order was premised on the wrong legal standards, *id.* at ¶ 76, but it held that “remanding ... for new factual findings” in accordance with the proper standards “would be a useless exercise” because the county commissioners had

not obtained a stay of the trial-court order and thus “should have already complied with the trial court’s funding order,” *id.* at ¶ 77. Because the county commissioners could not claw back the money they had already appropriated, the dispute over the funding order was moot—though that did not stop the Court of Appeals from going “forward to address the merits.” *Id.* at ¶ 78.

Respondents do not even attempt to explain how *Geauga County* supports their mootness argument. It does not. That decision simply recognizes that if a defendant fails to obtain a stay of an order requiring the appropriation of funds, it cannot challenge the order on appeal after it complies with the order, since the appellate court cannot “undo” the appropriation. That point has nothing to do with the issues here. Relators are not asking the Court to claw back an appropriation. They are asking the Court to order Respondents to make the calculations and payments expressly required by Ohio law. “[B]ecause it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted.” *State ex rel. Gaylor, Inc. v. Goodenow*, 2010-Ohio-1844, ¶ 11.

For the foregoing reasons, Relators respectfully request that the Court deny Respondents’ Motion to Dismiss as Moot and proceed to the merits of this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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