

IN THE SUPREME COURT OF OHIO

Case No. 2024-1075

Original Action in Mandamus

STATE OF OHIO *ex rel.* LEADINGAGE OHIO, *et al.*

Relators

v.

OHIO DEPARTMENT OF MEDICAID, *et al.*

Respondents

RESPONDENTS' MOTION TO DISMISS AS MOOT

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RESPONDENTS' MOTION TO DISMISS AS MOOT

Pursuant to Supreme Court Rules of Practice 4.01 and Ohio Constitution Article 4, Section 2, Respondents Ohio Department of Medicaid and Maureen M. Corcoran, Director (collectively, “ODM”) move this Court to dismiss this action because it is moot. Relators LeadingAge Ohio, The Ohio Health Care Association, and the Academy of Senior Health Sciences (collectively, “Relators”) brought this action “to compel . . . ODM . . . to comply with . . . House Bill 33 (the budget legislation for state fiscal years 2024–2025” (the “Budget Legislation”). The Budget Legislation has now expired according to its terms and the State has enacted a new budget for fiscal years (“FY”) 2026–2027. Accordingly, the relief sought by the Relators’ complaint is unavailable, and because mandamus cannot lie to compel a vain act, this Court cannot grant relief and so dismissal is proper.

A supporting memorandum is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This original action is based on Relators’ request for hundreds of millions of additional, dollars from the 2024–2025 biennial budget to be spent on Medicaid quality incentive payments to nursing homes. Relators sued ODM, alleging that ODM had not accurately (and adequately) calculated the pool of quality incentive payments available for nursing homes as part of Ohio Medicaid reimbursements. Relators’ request was based on an amendment to R.C. 5165.26 and the appropriations for Medicaid in the Budget Legislation for 2024–2025. But even if Relators were correct in their interpretation of the statute—which ODM adamantly denies for the reasons set forth in its prior briefing—any alleged appropriations from the 2024–2025 budget have now lapsed under the Ohio Constitution, the Revised Code, and the Budget Legislation itself. Therefore, Relators’ requested relief is unavailable and this case is moot. It should, accordingly, be dismissed.

II. BACKGROUND AND POSTURE

Relators first filed their mandamus petition and supporting memorandum on February 14, 2024. On July 24, 2024, the Court *sua sponte* dismissed that petition for noncompliance with S.Ct.Prac.R. 12.02(B)(2). Relators refiled their petition in compliance with the Court’s rules, as well as another supporting memorandum, on July 26, 2024. In the first paragraph of their amended petition, Relators stated its purpose: Relators “submit this petition for a writ of mandamus on behalf of the State of Ohio to compel Respondents . . . to comply with unambiguous directives in House Bill 33 (the budget legislation for state fiscal years 2024-2025; hereinafter, the ‘Budget Legislation’) regarding the calculation of Medicaid rates paid to Ohio’s nursing facilities.” Petition ¶ 1. A few paragraphs later, Relators restated their request—writ of mandamus “to compel

Respondents to comply with their duty under the clear language of the Budget Legislation.” Petition ¶ 7. Again, Relators defined “Budget Legislation” as the 2024–2025 biennial budget. Petition ¶ 1.

Relators acknowledged that their request was limited to that biennium, because “[e]very two years, in budget legislation, and sometimes more frequently, the General Assembly adjusts the statutory formula to reflect its current judgment on the appropriate way to set Medicaid rates for nursing facilities.” Petition ¶ 19. And lest there be any doubt, Relators relied on Section 333.300 of the 2024–2025 Budget Legislation in various portions of their allegations. *See, e.g.*, Petition ¶¶ 37, 39.

ODM then filed an answer largely denying the allegations in the petition and moved for an order permitting discovery. In October 2024, the Court denied ODM’s request and *sua sponte* issued an alternative writ for the presentation of evidence and briefing. Both parties timely submitted evidence on November 19, 2024, and fully briefed the matter as of December 30, 2024.

Governor DeWine signed the budget bill for the new FY 2026–2027 biennium—Am.Sub. House Bill 96—on July 1, 2025. *See* Office of the Governor, *Governor DeWine Signs FY’26-’27 Operating Budget* (July 1, 2025), <https://governor.ohio.gov/media/news-and-media/governor-dewine-signs-fy-26-27-operating-budget> (accessed July 11, 2025). The new budget legislation for FY 2026–2027 is available from the General Assembly. *See* Ohio Legislature, *House Bill 96*, <https://www.legislature.ohio.gov/legislation/136/hb96> (accessed July 11, 2025); *see also* https://search-prod.lis.state.oh.us/api/v2/general_assembly_136/legislation/hb96/07_EN/pdf/. This Court is permitted to review the new enactments because they are law, but also can consider evidence outside the record in determining of mootness. *State ex rel. Cincinnati Enquirer, Div. of*

Gannett Satellite Info. Network, Inc. v. Dupuis, 2002-Ohio-7041, ¶ 8 (“An event that causes a case to become moot may be proved by extrinsic evidence outside the record.”).

III. ARGUMENT

“‘[I]t is the duty of every judicial tribunal to decide actual controversies’ and withhold advice upon moot questions.” *State ex rel. Grendell v. Geauga Cnty. Bd. of Commrs.*, 2022-Ohio-2833, ¶ 9, quoting *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970). “If the controversy has come and gone, then this court must dismiss the case as moot.” *M.R. v. Niesen*, 2022-Ohio-1130, ¶ 7. The same holds true for actions in mandamus, which “will not issue to compel a vain act”—i.e., “when the underlying dispute has become moot, such that relief in the pending lawsuit would not affect the outcome.” *State ex rel. Burkons v. Beachwood*, 2022-Ohio-748, ¶ 14, citing *State ex rel. Thomas v. Ghee*, 81 Ohio St.3d 191, 192 (1998).

Relators’ petition expressly asked this Court to issue relief with respect to House Bill 33, the Budget Legislation that governed the state’s biennial budget for FY 2024–2025. Relators limited that relief to the biennium and sought “a writ of mandamus . . . to compel Respondents . . . to comply with unambiguous directives in [the Budget Legislation] regarding the calculation of Medicaid rates paid to Ohio’s nursing facilities.” Petition ¶ 1. However, the budget for FY 2024–2025 has expired according to its terms. Section 503.50 of 2023 Am.Sub.H.B. 33—the prior Budget Legislation—explicitly provides that it is “to make operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025.” 2023 Am.Sub.H.B. 33, Preamble at p. 22. Therefore, because the legislation upon which Relators based their request for this Court’s intervention has expired, their relief is unavailable.

The Budget Legislation did contain an automatic reappropriation provision. 2023 Am.Sub.H.B. 33, Section 503.50. However, that reappropriation provision was limited to the FY

2024–2025 biennium. *Id.* at Section 503.50(A)(4). Relators thus cannot point to the prior Budget Legislation to rely on a continuation of funds to pay their requested relief. ODM itself is powerless to rewind the FY 2024–2025 budget and reappropriate money the legislature designated only for that biennium. And it would not be appropriate for this Court to require the legislature to make a new appropriation for a prior budget biennium. *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 2010-Ohio-1029, ¶ 35 (“It is not the role of the courts ‘to establish legislative policies or to second-guess the General Assembly’s policy choices.’”), quoting *Groch v. Gen. Motors Corp.*, 2008-Ohio-546, ¶ 212; *see also Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 113 (holding that “the General Assembly is responsible for . . . making policy decisions” and this Court is only “charged with evaluating the constitutionality of their choices”); *DeRolph v. State*, 78 Ohio St.3d 419, 425 (1997) (Cook, J., dissenting) (“In a climate of finite resources, the General Assembly, with its function of reaching decisions through compromise and consideration of popular opinion, has the greatest legitimacy in making budget decisions that require a choice among priorities.”). ODM, thus, cannot be made to expend funds from (or according to) the FY 2024–2025 Budget Legislation, which means this Court cannot grant Relators’ requested relief.

Further, the Ohio Constitution imposes a temporal limitation on biennial budget appropriations, and “no appropriation shall be made for a longer period than *two years*.” (Emphasis added.) Ohio Const. art. II, § 22. Consistent with this limit, the General Assembly has directed that “appropriations made to a specific fiscal year shall be expended only to pay liabilities incurred within that fiscal year.” R.C. 131.33(A).¹ Therefore, even if Relators could offer some

¹ Revised Code Section 131.33 contains several exceptions, none of which are applicable here. For example, “[f]ederal grant funds obligated by the department of job and family services” may be spent beyond a given fiscal year within “the federal grant period of obligation and

provision in the Budget Legislation or another statute to argue that the funds from FY 2024–2025 remain available, Ohio’s Constitution and R.C. 131.33 foreclose any such expenditure.

Lest there be any doubt about the role of R.C. 131.33 here, the General Assembly clarified this issue in the FY 2024–2025 budget legislation by *omitting* any exception to R.C. 131.33’s temporal limitation on expenditures during (and only during) a given fiscal year from that budget legislation. To be sure, prior state budgets often included an exception to the restrictions of R.C. 131.33 as applied to Medicaid expenditures. *See, e.g.*, 2013 Am.Sub.H.B. 59, Section 323.20 (“The foregoing appropriation item 651525, Medicaid/Health Care Services, shall not be limited by section 131.33 of the Revised Code.”); 2015 Am.Sub.H.B. 64, Section 327.53 (same); 2017 Am.Sub.H.B. 49, Section 333.40 (same); 2019 Am.Sub.H.B. 166, Section 333.40 (same); 2021 Am.Sub.H.B. 110, Section 333.20 (same). However, this provision, or any similar provision, is absent from the FY 2024–2025 Budget Legislation. *See generally* 2023 Am.Sub.H.B. 33.

It is axiomatic that the General Assembly knew what it was doing when it omitted that language from H.B. 33 and that it intended to do so. *Greenville Law Library Ass’n v. Village of Ansonia*, 33 Ohio St.2d 3, 6 (1973), quoting *Malone v. Indus. Comm.*, 140 Ohio St. 292, 299 (1942) (“When an existing statute is repealed and a new statute upon the same subject is enacted to include an amendment, as in this case, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof”); *see also Stewart v. Kahn*, 78 U.S. 493, 502 (1870) (when a new statute “omits provisions contained in the original act, the parts omitted cannot be kept in force by construction, but are annulled”).

liquidation.” R.C. 131.33(D)(1). But Relators have never pled a right to any such funds from job and family services in this action against ODM.

Therefore, nothing in the FY 2024–2025 Budget Legislation could preserve Relators’ request for relief from those funds.

Because the funds appropriated by the General Assembly for FY 2024–2025 expired with the Budget Legislation, the relief requested here—whereby this Court would order the State of Ohio to appropriate additional money toward Medicaid quality incentive payments to nursing homes—is now unavailable. Accordingly, Relators’ petition is moot.

Complying with the Constitution’s requirements, a new budget bill has been enrolled and governs the current biennium. 2025 Am.Sub.H.B. 96. But Relators sought no relief with respect to the current budget biennium. *See generally* Petition. The new budget for FY 2026–2027 thus provides no alternate avenue for Relators here.

Respondents have demonstrated to this Court that the allegations raised in the petition for mandamus are moot, so this Court should now deny the writ and dismiss their petition. However, because this Court’s Rules do not permit Respondents to file a reply in support of this motion, Respondents provide additional argument in support of this motion.

Relators may argue that, in their “request for relief,” they sought relief beyond the FY 2024–2025 Budget Legislation because they asked the Court to order ODM to construe the statute at issue as Relators urge “in performing the calculation under division (E)(1)(a) of section 5165.26 for the July 1, 2023 rate-setting and any subsequent rate-setting” But Relators would be wrong for two reasons. First, any “subsequent rate-setting” is cabined by the other paragraphs of their complaint, including their very first allegation. Relators plainly limited their request “to comply with . . . House Bill 33,” the Budget Legislation for FY 2024–2025. Petition ¶ 1; *see also id.* at ¶ 7. Second, the money Relators seek to be paid is no longer available. Even assuming the funds Relators sought existed in FY 2024–2025, those funds would have reverted to the general

revenue fund on July 1, 2025 and would require reappropriation by the General Assembly in order to be spent. R.C. 131.33(A); *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 2009-Ohio-6993, ¶ 31 (10th Dist.). Relators have neither pled nor argued that the funds they seek were appropriated or are available from a different budget (i.e., 2026–2027) under which they never sought relief. So, even if ODM, in theory, once had the funds to comply with any potential order granting Relators’ requested relief under a prior biennial budget, those funds have now lapsed and this case is moot.

Other courts have dismissed funding disputes as moot when the fiscal year at issue has ended. *See, e.g., Geauga Cty. Bd. of Comm’rs v. Geauga Cty. Sheriff*, 2003-Ohio-7201, at ¶ 77 (11th Dist.). Likewise, this Court should do so here. Relators’ requested relief—Medicaid quality incentive payments from the FY 2024–2025 budget—is no longer available because of the beginning of the new biennial budget and so this action is moot.

IV. CONCLUSION

Based on the foregoing reasons, ODM respectfully requests that the Court dismiss this action as moot.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July 2024, a copy of the foregoing was served by email upon the following:

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