STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-38

Use of the Electronic Monitoring Indigency Fund to Pay for Global Positioning Monitoring Devices

Question

Does "other alternative alcohol or drug monitoring device" as used in Tenn. Code Ann. § 55-10-419(a)(1)(A)(ii) include a global positioning monitoring device?

Opinion

No.

ANALYSIS

Tennessee courts have statutory authority to order an individual convicted of driving under the influence of alcohol or drugs to attend a substance treatment program as a condition of probation. Tenn. Code Ann. § 55-10-402(a). If a court orders an offender to participate in an intensive outpatient treatment program, the court may also order:

> The use of transdermal monitoring devices or other alternative alcohol or drug monitoring devices. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a device for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a device that the person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419 . . . .

Id. § 55-10-402(h)(7)(A) (emphasis added).

The "electronic monitoring indigency fund" referred to in this subsection (A) is a fund created in Tenn. Code Ann. § 55-10-419 that "shall be used to pay"—for persons deemed by a court to be indigent—"the costs associated with the use of a transdermal monitoring device or other alternative alcohol or drug monitoring device, if required by the court pursuant to § 55-10-402(h)(7)." Id. § 55-10-419(a)(1)(A)(ii).

Separately, under § 55-10-402(h)(7)(C), the court may order the "use of a global positioning monitoring system pursuant to § 40-11-152." Use of "a global positioning monitoring system" in this subsection (C) is expressly tied to Tenn. Code Ann. § 40-11-152—and not at all to § 55-10-419, the electronic monitoring indigency fund. In other words, if, under its § 55-10-402(h)(7)(C) authority, a court orders use of a global positioning monitoring system, then § 40-11-152 governs how the system is to be used. And § 40-11-152 requires the defendant ordered to

use the system to "pay the costs associated with" use of the system, § 40-11-152(b), but allows the defendant to "perform community service in lieu of paying the costs required by subsection (b) if the magistrate determines that the defendant is indigent." *Id.* § 40-11-152(h).

A transdermal monitoring device is defined by statute as "any device or instrument that is attached to the person, designed to automatically test the alcohol or drug content in a person by contact with the person's skin . . . ." *Id.* § 55-10-424. Moreover, a transdermal monitoring device is specifically for monitoring alcohol or drug content in a person "regardless of the person's location." *Id.*

A global positioning monitoring device, on the other hand, monitors a person's location but does not monitor drugs or alcohol in a person. *See id.* § 40-11-152(a)(2) (defining global positioning monitoring system as a "system that electronically determines and reports the location of an individual through the use of a transmitter . . . that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology").

Under basic principles of statutory construction, the phrase "other alternative alcohol or drug monitoring device" in § 55-10-419(a)(1)(A)(ii) does not include a global positioning monitoring device.

When statutory language is clear and unambiguous, a court must "accord the language its plain meaning and ordinary usage in the context within which it appears, without a forced interpretation." *Runions v. Jackson-Madison County Gen. Hosp. Dist.*, 549 S.W.3d 77, 85 (Tenn. 2018). By its plain language, § 55-10-419(a)(1)(A)(ii) clearly and unambiguously applies only to devices that monitor alcohol or drugs in a person, i.e., "transdermal monitoring devices," which are defined as instruments "designed to test the alcohol or drug content in a person," and "other alternative alcohol or drug monitoring device[s]." Since a global positioning monitoring device does not monitor alcohol or drugs, a global positioning monitoring device is not an "other alternative alcohol or drug monitoring device" within the meaning of § 55-10-419(a)(1)(A)(ii).

For the same reason, a global positioning monitoring device is not an "other alternative alcohol or drug monitoring device" within the meaning of Tenn. Code Ann. § 55-10-402(h)(7)(A). Subsection (C) of § 55-10-402(h)(7) confirms this conclusion. Subsection (C) deals with global positioning monitoring devices separately from alcohol or drug monitoring devices within the context of § 55-10-402(h)(7) and, with its cross-reference to § 40-11-152, subsection (C) provides separate and different relief from payment of costs for indigent persons ordered to use a global positioning monitoring device. Indigent persons ordered to use a global positioning monitoring device may be relieved of payment for the device if they perform community service, whereas indigent persons ordered to use a transdermal or alternative drug or alcohol monitoring device may be relieved of payment through the electronic monitoring indigency fund.

Had the legislature intended the § 55-10-419 electronic monitoring indigency fund to be used to pay for costs associated with location monitoring devices, it would have expressly referenced that funding mechanism in subsection (C) as it did in subsection (A) with respect to alcohol or drug monitoring devices. By addressing the two types of monitoring devices in separate subsections and by providing different relief for indigent persons with respect to each type, the statutory language and context make clear that the legislature considered global positioning

monitoring devices to be distinct from and not included in "other alternative alcohol or drug monitoring devices."

In sum, the plain and unambiguous language of Tenn. Code Ann. § 55-10-419(a)(1)(A)(ii) does not allow for the payment on behalf of indigent persons of costs associated with global positioning monitoring systems from the electronic monitoring indigency fund. It allows for the payment of costs for indigents from that fund only for "a transdermal monitoring device or other alternative alcohol or drug monitoring device, if required by the court pursuant to § 55-10-402(h)(7)." And the phrase "other alternative alcohol or drug monitoring device" as used in Tenn. Code Ann. § 55-10-419(a)(1)(A)(ii) does not include a global positioning monitoring device.

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