

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR09028

KD SUPPORT SERVICES LLC,
Petitioner,

v.

Western Highlands Network,
Respondent.

**FINAL DECISION GRANTING
SUMMARY JUDGMENT FOR
RESPONDENT**

THIS MATTER came before Beecher R. Gray, Administrative Law Judge presiding, in Waynesville, North Carolina on October 28, 2013, for consideration of *Respondent's Motion for Summary Judgment*, *Respondent's Motion in Limine to Conclusively Establish Admitted Matters*, and *Respondent Western Highlands Network's Motion in Limine to Exclude Evidence, Reference to Evidence, Testimony or Argument that Contests Prior Investigative Findings, Conclusions or Final Decisions* filed with the Office of Administrative Hearings ("OAH") on October 16, 2013.

During this hearing, Petitioner tendered Consolidated Responses to Respondent's Motions in Limine and for Summary Judgment. Petitioner filed a post-hearing document under the caption Affidavit of Kenneth D. Dellinger Concerning Prior Affidavit. Respondent filed a post-hearing Reply to Petitioner's Consolidated Responses to Respondent's Motions in Limine and for Summary Judgment on October 30, 2013. Having reviewed the file, heard the oral arguments of the parties' respective counsel, and considered all matters of record appropriate and relevant for consideration, including Respondent's Motions and all of Petitioner's Responses and Affidavits, I find that Respondent's Motion for Summary Judgment should be allowed as a matter of law. Uncontroverted findings are set forth in this Decision to aid future tribunals in review of this Decision.

FINDINGS OF FACT

1. At all relevant times prior to October 1, 2013, Respondent Western Highlands Network ("Respondent" or "WHN") was a multi-county area mental health, developmental disabilities, and substance abuse authority organized by the Boards of Commissioners of Buncombe, Henderson, Madison, Mitchell, Polk, Rutherford, Transylvania, and Yancey Counties (which eight counties comprised "WHN Catchment Area") under G.S. 122C-115 and existing as a local political subdivision of the State of North Carolina under G.S. 122C-116, also known as a Local Management Entity ("LME") as defined in G.S. 122C-3(20b).
2. By agreement that went into effect January 3, 2012 between Respondent and the N.C. Department of Health and Human Services ("NC DHHS"), and with the approval of the

Centers for Medicare and Medicaid Services, Respondent operated as a Prepaid Inpatient Health Plan (“PIHP”) under 42 C.F.R. §438.2. PIHPs are authorized to operate Medicaid managed care programs under Medicaid waivers.

3. Under Sections 1915(b) and 1915(c) of the Social Security Act (42 U.S.C. § 1396n(b) and (c)), the U.S. Department of Health and Human Services has waived portions of North Carolina's traditional fee-for-service Medicaid programs and replaced them with a managed care program (the “1915(b)/(c) Medicaid Waiver”). At all relevant times prior to October 1, 2013, Respondent operated the 1915(b)/(c) Medicaid Waiver in its eight-county WHN Catchment Area.
4. Respondent did not itself provide services to clients or consumers, but managed the system of care in its WHN Catchment Area through a network of contract service providers, of which Petitioner KD Support Services, LLC (“Petitioner”) had been one.
5. Respondent entered into a contract with Petitioner with an effective beginning date of January 3, 2012, which enrolled Petitioner as service provider within the WHN Catchment Area, (“Contract”). Petitioner provided Medicaid-funded services for consumers within the WHN Catchment Area and provides Medicaid-funded services for consumers in other counties in the State.
6. The letter dated April 27, 2012 and the March 22, 2012 Provider Report enclosed with the letter (both attached as Exhibit A to *Respondent Western Highlands Network's Motion In Limine to Exclude Evidence, Reference to Evidence, Testimony or Argument that Contests Prior Investigative Findings, Conclusions or Final Decisions* (“Motion to Exclude Evidence” and incorporated herein by reference)) relate to Respondent's Focused Monitoring Review of Petitioner (“First Final Decision”).
7. The letter dated May 31, 2012 and the May 30, 2012 Investigation Findings Report enclosed with the letter (both attached as Exhibit B to Respondent's Motion to Exclude Evidence and incorporated herein by reference) relate to Respondent's second Investigation Monitoring Review of Petitioner (“Second Final Decision”).
8. The letter dated June 15, 2012 and the June 13, 2012 Investigation Findings Report enclosed with the letter (both attached as Exhibit C to Respondent's Motion to Exclude Evidence and incorporated herein by reference) relate to Respondent's third Investigation Monitoring Review of Petitioner (“Third Final Decision”).
9. The letter dated July 11, 2012, the July 11, 2012 Investigation Findings Report enclosed with the letter, and the Notice of Decision dated July 30, 2012 (all attached as Exhibit D to Respondent's Motion to Exclude Evidence and incorporated herein by reference) relate to Respondent's fourth Investigation Monitoring Review of Petitioner (with said Notice of Decision dated July 30, 2012 being the “Fourth Final Decision”).

10. Petitioner did not appeal for reconsideration to Respondent's Reconsideration Review Committee the First Final Decision, Second Final Decision, or Third Final Decision. (Admissions Request and Response #5, 6, 8, 9, 11, and 12).
11. Petitioner did not appeal to OAH or NC DHHS the Fourth Final Decision. (Admissions Requests and Responses #14).
12. Exhibits E through H and J to Respondent's Motion to Exclude Evidence are true and accurate photocopies of the original pages of the *Deposition of Kenneth D. Dellinger* taken in this action.
13. Exhibit I to Respondent's Motion to Exclude Evidence is a true and accurate photocopy of an electronic mail correspondence by, between, or among former employees of Respondent and Kenneth D. Dellinger for Petitioner.
14. All of the Exhibits to the document entitled Respondent's Prehearing Statement and dated April 17, 2013 filed in this action are true and accurate photocopies of the document they purport to be. (Admissions Requests and Responses #2, 3, 4, 7, 10, 13, 15, 16, and 17).
15. By letter dated August 2, 2012, Respondent terminated with cause the Contract with Petitioner, effective September 10, 2012.
16. Petitioner sought reconsideration of such termination from Respondent. By letter dated August 27, 2012, Respondent, after careful review and reconsideration, notified Petitioner through its "Notice of Decision" that Respondent upheld the termination of the Contract with cause and the grounds therefor. Said Notice of Decision informed Petitioner of its rights to file a petition for review.
17. This Notice of Decision, a copy of which is attached as Exhibit I to Respondent's Prehearing Statement, forms the basis of Petitioner's appeal to OAH in this action. (Admission Requests and Responses #1 and 12).
18. Petitioner identifies reinstatement of its Contract with WHN in its prehearing statement as an issue to be resolved. (Petitioner's Prehearing Statement filed October 23, 2012, ¶1).
19. On April 5, 2013, NC DHHS informed Respondent that its 1915(b)/(c) Medicaid Waiver Contract between NC DHHS and Respondent and its contract with the North Carolina Division of Mental Health, Developmental Disabilities, and Substances Abuse Services would not be renewed and was to be terminated with an effective date of July 31, 2013. (Reuss Aff., ¶4).
20. In or around May or early June 2013, NC DHHS informed Respondent that the terms of the contracts with Respondent would be extended to September 30, 2013. (Reuss Aff., ¶5).

21. The Secretary of NC DHHS has approved a plan of dissolution for Respondent and expansion of the catchment area for Smoky Mountain Center (“SMC”), also a multi-county area mental health, intellectual/developmental disabilities, and substance abuse area authority existing as a LME, to add the eight counties formerly comprising the WHN Catchment Area. (Reuss Aff., ¶7).
22. On or about October 4, 2013, Respondent and SMC consolidated, and all of Respondent’s operations, other than those necessary to complete the effective winding up and closeout process of WHN, ceased. The closeout activities for Respondent include the resolution of this provider appeal action. (Reuss Aff., ¶8).
23. As of October 4, 2013, WHN no longer enters into or maintains contracts with service providers for enrollment to provide services to consumers formerly in the WHN Catchment area, has a catchment area, authorizes services for consumers in any catchment area, processes claims, pays providers for services provided to a consumer after September 30, 2013, or has consumers served in a catchment area. (Reuss Aff., ¶9).
24. Petitioner currently has a contract with SMC, which enrolled Petitioner as service provider within the SMC catchment area, which now includes the eight counties formerly comprising the WHN Catchment Area. Through Petitioner’s contract with SMC, Petitioner can provide Medicaid funded services for SMC consumers, some of whom were former WHN consumers. (Kenneth D. Dellinger Deposition, pg. 38).

CONCLUSIONS OF LAW

1. This matter properly is before the Undersigned for determination of the pending motions.
2. Petitioner failed to exhaust all of its administrative remedies as to the First Final Decision, Second Final Decision, Third Final Decision, and Fourth Final Decision. All of the matters alleged in those Decisions are deemed admitted under the provisions of G.S. 1A-1, Rule 36.
3. There is no genuine issue as to any material fact.
4. Respondent is entitled to summary judgment as a matter of law.

FINAL DECISION

In view of the foregoing, I find that Respondent’s Motion for Summary Judgment should be, and the same hereby is ALLOWED.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 20th day of November, 2013.

Beecher R. Gray
Administrative Law Judge