

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 19981**

FINAL DECISION ORDER OF DISMISSAL

APPEARANCES

For Respondent
DHHS/DMA: Thomas J. Campbell
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N.C. Department of Justice
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For Respondent

Partners: Nancy B. Paschall
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AFTER CONSIDERING the Motions, Responses, Pleadings, Affidavits, Memoranda and arguments of counsel and for good cause shown, the Undersigned makes the following:

FINDINGS OF FACT

1. The Division of Medical Assistance section of Respondent State Agency, Department of Health and Human Services (DHHS/DMA), is responsible for administering and managing North Carolina's Medicaid plan and program. Pursuant to North Carolina General Statutes § 108A-54, DHHS/DMA is authorized to adopt rules, regulations, and policy for program operation.

2. Partners is a multi-county area mental health, developmental disabilities and substance abuse authority established pursuant to North Carolina General Statutes § 122C-115. Partners is a local management entity/managed care organization (LME/MCO) that is responsible for the management and oversight of the public system of mental health, developmental disabilities and substance abuse services at the community level. Partners contracts with the DHHS/DMA to manage the Medicaid benefits of its consumers. In doing so, Partners operates as a Prepaid Inpatient Health Plan (PIHP), receiving a finite amount of funding from the State to manage the provision of Medicaid benefits to consumers in its catchment area.

3. Partners is the Department's legally authorized agent and contractor, which, acting within the scope of its authorized activities, assesses, authorizes, manages, reviews, audits, and monitors services pursuant to the Social Security Act, the North Carolina State Plan of Medical Assistance, and the waivers of the federal Medicaid Act granted by the United States Department of Health and Human Services.

4. As a LME/MCO/PIHP, Partners is responsible for recruiting, developing, and overseeing a comprehensive provider network within its area of authority that assures access to care for all Medicaid enrollees in the applicable Medicaid waiver program. Because Partners contracts with providers under the applicable Medicaid waiver program, if a provider does not have a contract with Partners, that provider cannot participate in the Medicaid waiver that Partners operates.

5. Petitioner Susan Arrowood, OLPC is a provider of mental health and substance abuse services in Morganton, NC and surrounding areas. Petitioner assists consumers, including Medicaid recipients, in preventing, overcoming, and managing deficits caused by mental health

and/or substance abuse issues. Petitioner is a provider who serves Medicaid recipients inside Partners' catchment area pursuant to a contract with Partners.

6. Partners is a limited, local agent of DHHS/DMA and has general authority to enter into contracts with both DHHS/DMA and Petitioner. The contract between DHHS/DMA and Partners requires Partners to provide a process for provider appeals.

7. Petitioner and Partners entered into a contract setting forth conditions of the contract including processes for disputing termination. Partners established its disputes policies and procedures setting forth the review for properly and timely established grievances. The Procurement Contract between Partners and Petitioner provides that the dispute resolution process and appeals process is outlined in the Provider Manual.

8. In accordance with the contract, Partners established a Participating Provider Disputes Policy and Procedure ("Policy"). The Provider Disputes Policy outlines the steps a provider should take in order to review and contest a decision involving the provider's status within the network. Two levels of panel review are provided. The Policy states that written notification of the panel decision will be sent to the provider. Included in the written notification is information about the participating provider's right to appeal to the State Appeals Panel and the mechanism to request such reconsideration.

9. On November 25, 2013, Partners notified Petitioner in writing that it was terminating its contract with Petitioner with cause on January 1, 2014.

10. Petitioner was informed in the November 25, 2013 letter that it could "dispute the decision of Partners. . .". Petitioner was informed that a formal written request to dispute the decision must be submitted within twenty-one (21) calendar days. The letter further informed Petitioner that the decision of Partners shall be considered final if a reconsideration request was not received. The Participating Provider Disputes Policy and the Dispute Resolution Form was included with the letter.

11. Petitioner did not submit a request for reconsideration or avail herself of the Provider Disputes Policy prior to filing her case with OAH. At no point did Petitioner follow the Provider Dispute Policy and Procedure. Petitioner did not complete the Provider Dispute Resolution Form, nor did she appeal the contract termination in any manner at the Partners level.

12. DHHS/DMA did not independently take any action against the Petitioner. DHHS/DMA incorporated the arguments made by Partners that Petitioner failed to exhaust all administrative remedies at her disposal in the DHHS/DMA memorandum filed with the OAH.

13. Respondents Partners and DHHS/DMA presented written arguments that OAH does not have jurisdiction over provider appeals for contractual termination from an LME/MCO with references to North Carolina General Statutes § 150B and 108(C). The Undersigned, at the beginning of oral arguments, stated these arguments would not be considered at this time as part of its decision on the Motions to Dismiss, wishing to focus solely on the issue of Petitioner's

failure to exhaust her administrative remedies. Counsel for Partners requested that the arguments made in writing be preserved as being made in the record and the Undersigned so noted.

BASED UPON the foregoing Findings of Fact, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties received proper notice of the motions and the hearing in this matter.
2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Bonnie Ann F. v Callahan Indep. Sch. Bd.*, 835 F. Supp. 340 (1993). A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. "Questions of subject matter jurisdiction may properly be raised at any point, even in the Supreme Court." *Forsyth County Bd. of Social Services v. Division of Social Services*, 317 N.C. 689, 346 S.E.2d 414 (1986) (citations omitted). *Williams v. New Hanover County Bd. of Educ.*, 104 N.C.App. 425, 409 S.E.2d 753 (1991) (*quoting Harrell v. Whisenant*, 53 N.C.App. 615, 281 S.E.2d 453 (1981)).
4. The contractual provision which provides for a local reconsideration review is a valid and binding provision within the contract. Such a provision is reasonable and is required of both the LME/MCO/PIHP and the Petitioner.
5. North Carolina statutes require that providers exhaust the appeals process at the area authority (LME/MCO) level and then proceed to the State Appeals Panel. North Carolina General Statute § 122C-151.3 requires that an area authority establish written procedures for resolving disputes over decisions of an area authority that may be appealed to the State MH/DD/SA Appeals Panel.
6. North Carolina General Statute § 122C-151.4 describes the process of appeal for contractors (providers) who: (i) claim that an area authority has not acted within applicable State law or rules in imposing particular requirements; (ii) claim that a particular requirement of the contract substantially compromises the ability of the contractor to fulfill the contract; or (iii) that the area authority has acted arbitrarily or capriciously in reducing funding for the type of services provided by the contractor.
7. North Carolina General Statute § 122C-151.4(f) further states that a person who is dissatisfied with a decision of the State MH/DD/SA Appeals Panel may commence a contested case under Chapter 150B. The statute further provides that : "If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to

the Office of Administrative Hearings *after having exhausted the appeals process at the appropriate area authority. . .*” (Emphasis added.)

8. The Petitioner failed to exhaust the appeals process at the area authority (LME/MCO) level as required by N.C. General Statutes.

9. The OAH is a court of limited jurisdiction, and cannot exercise jurisdiction over matters or entities unless specifically authorized by statute. *Empire Power Co. v. N.C. Department of Environment and Natural Resources*, 337 N.C. 569, 586; 447 S.E.2d 768, 788 (1994) (“There is no inherent right to appeal from an administrative decision to either OAH or the courts.”); *Gummels v. N.C. Department of Human Resources*, 98 N.C. App. 675, 677; 392 S.E.2d 113, 114 (1990) (“ . . . because the right to appeal to an administrative agency is granted by statute, compliance with statutory provisions is necessary to sustain the appeal.”)

10. The Petitioner did not avail herself of the local appeals process as required by the contract between the parties or the applicable statutes. Where a Petitioner does not follow statutory requirements for submitting an appeal, the OAH does not acquire jurisdiction over the subject matter of the case. See *Nailing v. UNC-CH*, 117 N.C. App. 318; 451 S.E.2d 351 (1994), *disc. rev. denied*, 339 N.C. 614; 454 S.E.2d 255 (1995).

11. “An action is properly dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction where the plaintiff has failed to exhaust administrative remedies.” *Johnson v. University of N.C.*, 202 N.C. App. 355, 357; 688 S.E.2d 546, 548 (2010).

12. OAH lacks subject matter jurisdiction based upon (a) the contractual terms between the parties; (b) the statutory requirements for provider disputes with LME/MCO area authorities; and (c) the limited jurisdiction of OAH.

13. The local reconsideration review policy promotes efficiency by providing the LME/MCO the opportunity to correct its own mistakes and further provides a process of administrative remedies for the parties to try to resolve their controversy through informal procedures at the lowest level possible.

14. Asserting jurisdiction in a case where a petitioner has failed to exhaust administrative remedies could open a flood gate of provider cases to OAH which could then become the only arbiter of all contract terminations of LME/MCOs, contrary to systems set up by the federal and state governments.

15. A court should dismiss an action for want of subject matter jurisdiction if the moving party is entitled to prevail as a matter of law.” *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999) (quoting *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir.1991)).

16. When reviewing a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b), a trial court may consider and weigh matters outside the pleadings. See *Department of Transportation v. Blue*, 147 N.C. App. 596, 556 S.E.2d 609 (2001).

17. Administrative tribunals only have such authority as is properly conferred upon them by the Legislature. *State ex rel. Utilities Comm'n v. Carolina Utility Customers Ass'n, Inc.*, 336 N.C. 657, 446 S.E.2d 332 (1994); *Meads v. N.C. Dep't of Agriculture*, 349 N.C. 656, 509 S.E.2d 165 (1998).

18. Where it is obvious that the Court lacks the authority to hear a matter, the Court is precluded from exercising its jurisdiction and is therefore obliged to dismiss the case. *Lovern v. Edwards*, 190 F.3d 648 (4th Cir.1999).

19. Petitioner failed to exhaust her administrative remedies. The Respondent is entitled to a dismissal of the Petition because of the Petitioner's premature filing of his Petition. Because dismissal has been found appropriate based on the lack of subject matter jurisdiction, the Undersigned has no need to address any further basis of Respondent's motion.

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above and grants the Respondent Partners Behavioral Health Management's Motion to Dismiss the whole of the Petition brought by Petitioner. The North Carolina Office of Administrative Hearings lacks subject matter jurisdiction to hear the case and dismissal is appropriate and proper pursuant to N.C. GEN. STAT. § 1A-1, Rule 12(b) of the North Carolina Rules of Civil Procedure. It is hereby **ORDERED** that this contested case be **DISMISSED without prejudice**.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-33 and N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, 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 in which the party resides. 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, 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.

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.

IT IS SO ORDERED, *nunc pro tunc*, the 30th day of December, 2013.

Signed and entered this the 8th day of January, 2014.

Augustus B. Elkins, II
Administrative Law Judge Presiding