

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DHR00752

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| <p>Parker Home Care Llc Petitioner</p> <p>v.</p> <p>N C Department Of Health And Human Services Respondent</p> | <p>FINAL DECISION</p> |
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on July 30, 2014 in Raleigh, North Carolina, together with a companion case with the same parties denominated 12 DHR 10864, after due notice given July 14, 2014. Upon resolution of the parties' dispositive motions, a Final Decision was entered.

APPEARANCES

For Petitioner: Mathew W. Wolfe
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For Respondent: Brenda Eaddy
Assistant Attorney General
North Carolina Department of Justice
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ISSUES

Whether Respondent Division of Medical Assistance ("DMA") substantially prejudiced Petitioner's rights contrary to law, as set forth in N.C. Gen. Stat. §150 B-23, by its decision to withhold Medicaid payments due Petitioner in the amount \$391,797.00, as proposed in the Tentative Notice of Overpayment dated May 4, 2012, issued by Respondent's contractor, Public Consulting Group.

APPLICABLE LAW

N.C. Gen. Stat. §§150B-23, 150 B-23(f), 150B-33(b)(3a), 108C-12(d), 108C-2(1), 108C-5, 150B-34, 150B-45, 1A-1 Article 2, 150B-46, and 150B-47; N.C. Rules of Civil Procedure 12(h)(3); Rule 56; Rule 50(a); and, Rule 41(b); and, 26 NCAC 03 .0101 (b), 26 NCAC 03 .0127(c), and 26 NCAC 03 .0102.

EXHIBITS

The following Exhibits were admitted into evidence:

Petitioner’s Exhibits:
(Petition and its attachments)

| Exhibit No. | Description |
|-------------|---|
| 1. | Verified Petition for Contested Case Hearing, <u>Parker Home Care, LLC v. NC DHHS, DMA</u> , 12DHR10864 |
| 2. | Notice of Dismissal dated October 17, 2012 in re Parker Home Care, LLC, PI Case #2011-1474 (sic) |
| 3. | Notice of Dismissal (Corrected Copy) dated October 22, 2012 in re Parker Home Care, LLC, PI Case #2010-1474 |
| 4. | Notice of Reconsideration Review Decision (Corrected) dated June 13, 2012 by DMA Hearing Office in re Interim Health Care – Morris Group, P.I. Case # 2011-0413 |

Respondent’s Exhibits: Respondent did not offer any exhibits for admission.

WITNESSES

Petitioner did not present the testimony of any witnesses.

Respondent did not present the testimony of any witnesses.

MEMORANDUM of DECISION

[26 NCAC 03 .0127(c)(7)]

In open Court on July 30, 2014, and in its Prehearing Statement, Respondent made clear that its sole objective was to obtain an Order dismissing the Petition “due to lack of subject matter jurisdiction because Petitioner failed to timely file its Petition for a Contested Case Hearing,” or failing that, to preserve that issue for review; and consequently, that Respondent would not offer any testimony of any witnesses, nor introduce any other evidence concerning the

validity of its underlying claim for recoupment, as set out in the May 4, 2012 *Tentative Notice of Overpayment* prepared by its contractor, Public Consulting Group (“PCG”).¹ As discussed in the hearing, Respondent filed its *Renewed Motion to Dismiss Petition for Lack of Subject Matter Jurisdiction* on August 11, 2014.

At the July 30, 2014 hearing, Petitioner moved for directed verdict pursuant to Rule 50(a) of the North Carolina Rules of Civil Procedure, and presented Petitioner’s *Brief on Directed Verdict*. The undersigned declined to rule until Respondent’s jurisdictional motion was resolved.

Upon due consideration of the submissions of the parties, and all the contents of the record, the undersigned determined the Motions and entered a Final Decision as follows:

MOTIONS

RESPONDENT’S RENEWED MOTION TO DISMISS PETITION FOR LACK OF SUBJECT MATTER JURISDICTION

Respondent’s *Motion* argues that the Office of Administrative Hearings (“OAH”) lacks of subject matter jurisdiction, based on the undisputed fact that Petitioner did not appeal the decision of Respondent’s contractor as the law requires to obtain OAH review of an *agency* decision. This Motion is grounded in the same undisputed facts and legal arguments that were addressed to the Hon. Melissa Owens Lassiter, Administrative Law Judge prior to her Order entered on March 17, 2014. Like Judge Gray in the companion case denominated 12 DHR 10864, Judge Lassiter held that PCG did not have authority to act in place of the agency in the context of statutorily required steps towards a decision from which the Petitioner would need to contest with an appeal to OAH.

For the reasons set forth in 12 DHR 10864, Respondent’s motion in this matter must likewise be DENIED.

PETITIONER’S MOTION FOR DIRECTED VERDICT

At the July 30, 2014 hearing, Petitioner moved for directed verdict pursuant to Rule 50(a) of the North Carolina Rules of Civil Procedure, and presented Petitioner’s *Brief on Directed Verdict* in support of the Motion. The undersigned deferred ruling until the jurisdictional issue raised by Respondent’s Motion was resolved.

Considering this Motion as a finder of fact without a jury, it is treated as a Motion to Dismiss pursuant to Rule 41(b), as made applicable in OAH cases by N.C. Gen. Stat. § 150B-

¹ Respondent assumed the same posture in another, legally similar matter involving PCG. See *Caring Hands Home Health, Inc. v. N.C. Department of Health and Human Services*, 13 DHR 09727, 2013 WL 7118820 (NC OAH, 5 December 2013); *aff’d*, 14 CVS 2549 (Supr. Ct., Guilford Co., 10 July 2014).

33(b)(3a), and 26 NCAC 03 .0101(b). See 1969 official *Comment* to Rule 41, ¶ 4; *Goodrich v. Rice*, 75 N.C. App. 530, 535, 331 S.E.2d 195, 198 (1985).

As noted above, the Respondent voluntarily declined to make an evidentiary showing in support of the merits of its claim at the hearing.

As it acknowledged at the hearing, Respondent had the burden of proof in this case as to any “adverse determination.” N.C. Gen. Stat. § 108C-12(d). The definition of “adverse determination” includes the decision to recoup funds from the Petitioner. See N.C. Gen. Stat. § 108C-2(1).

“Even after entry of a default judgment in civil court, ‘for damages to be certain, more evidence is needed ‘than simply the plaintiff[’s] bare assertion of the amount owed.’ [*Grant v. Cox*, 106 N.C.App. [122,] at 127–28, 415 S.E.2d [378] at 381–82 [(1992)].” *Basnight Const. Co. v. Peters & White Const. Co.*, 169 N.C. App. 619, 623, 610 S.E.2d 469, 472 (2005). In this instance, statutes and regulations require that the agency demonstrate that it followed specific procedures when it seeks to utilize extrapolation to calculate a recoupment claim. N.C. Gen. Stat. § 108C-5.

Consequently, due to Respondent’s failure to prosecute its claim, Petitioner is entitled to judgment as a matter of law.

FINAL DECISION

NOW, THEREFORE, based on the foregoing, the Respondent’s decision to withhold funds alleged to be due in the “Tentative Notice of Overpayment” dated May 4, 2012, prepared by Respondent’s contractor Public Consulting Group, and the agency’s PI Case No. 2010-3934, must be REVERSED.

Consequently, it is **ORDERED**:

That Respondent is permanently enjoined from withholding any of the referenced funds;

That Respondent shall remit the funds heretofore withheld, totaling \$15,649.12, together with interest as provided by law, within 30 days of the date of this Final Decision.

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 6th day of October, 2014.

J. Randolph Ward
Administrative Law Judge