

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 UNC 01110

Onyedika C Nwaebube

Petitioner

vs.

UNC Hospitals

Respondent

**FINAL DECISION
ORDER ALLOWING SUMMARY
JUDGMENT FOR RESPONDENT**

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings (OAH) on June 8, 2012, and Petitioner's response thereto filed with OAH on June 22, 2012. Having considered the submissions and matters of record proper for consideration, this Tribunal concludes as a matter of law that there is no genuine issue of material fact and that summary judgment should be granted in favor of Respondent. It is further found and concluded as a matter of law as follows:

1. The issue before OAH is whether or not Respondent followed proper procedure and followed the law in attempting to collect monies from Petitioner, and whether or not the North Carolina Department of Revenue properly withheld his income tax refund and paid those monies to Respondent for satisfaction of the outstanding balance.
2. Petitioner's contested case petition and his response to the motion for summary judgment primarily center on his contention that he should not have to pay for what he perceives to have been medical services which did not satisfy his expectations. If Petitioner felt that he did not owe the money, then his remedy was with Respondent when he was billed for the services rendered. OAH is not the proper forum for resolution of that issue. Any issue Petitioner had with the quality of services for his minor child and or the contracts he entered for those services would more properly have been in Superior Court.
3. Petitioner's naked averment that he did contest the outstanding balance is not supported, and therefore not controlling. It would be of no consequence in this Forum in any regard unless he had contested the balance and there is a different balance at issue than the amount Respondent seeks to collect.
4. The Request for Admissions submitted by Respondent to Petitioner are deemed admitted. Petitioner's averment that there is no proof that he received the requests in "regular" mail is without merit. There is a certificate of service with the Requests attesting to the fact that they were mailed to Petitioner. It is a presumption in law that they are received, and that presumption has not been rebutted. It is noted that the record of this matter reflects that this Tribunal, the Office of Administrative Hearings,

mailed to the Petitioner the Notice of Hearing by both certified mail and by regular mail and that the certified mail was returned as “unclaimed” and “unable to forward” and the regular mail was not returned, and presumed delivered. Both were mailed to the same address which is the same address used by Petitioner in all correspondence with this Court.

5. Quite simply, Petitioner does not want to pay for what he perceives to have been improper or less than adequate medical care. Through his own submissions, he has not questioned the amount of the bill. With his own submissions and with the admissions contained within the Requests for Admissions, there is no issue that Respondent followed all proper procedures and that the Department of Revenue followed all proper procedures, and that the money was properly withheld from Petitioner’s income tax return and properly paid over to Respondent.

Based upon the foregoing, Summary Judgment is **ALLOWED** on behalf of Respondent.

NOTICE

Under G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Decision and Order. Under G.S. 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 25th day of June, 2012.

Donald W. Overby
Administrative Law Judge