

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-15-21

CEDARS NURSING CASE CENTER
d/b/a/ THE CEDARS,

Petitioner,

v.

MAINE DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Respondent.

ORDER

STATE OF MAINE
Cumberland, ss, Clerk's Office

AUG 24 2015

RECEIVED

I. Background

Petitioner the Cedars appeals from two related decisions. The first is a January 8, 2015 decision by the Department of Health and Human Services (DHHS) that reclassified the Aroostook Health Center (AHC) from Peer Group II to Peer Group III (“the AHC decision”). The Cedars contends the AHC decision will affect its MaineCare reimbursement rates. The second decision is one dated June 24, 2015, in which DHHS denied the Cedars’s request for an informal review or administrative hearing of the AHC decision.

DHHS moves for an extension of time to file the administrative record and also moves to dismiss the complaint under Rule 12(b)(6).

II. Discussion

A. The Administrative Record

Under Rule 80C(f), “The agency shall file the complete record of the proceedings under review as provided by 5 M.R.S. § 11005.” Under 5 M.R.S. § 11005, “The agency

shall file in the reviewing court within 30 days after the petition for review is filed.” If the petitioner believes the record is incomplete or over-inclusive, Rule 80C(f) sets forth a procedure whereby the agency and petitioner work to modify the record. If unable to agree, the petitioner can file a motion with the court to modify the contents of the record.

DHHS requested an extension to file the administrative record on the grounds that if the motion to dismiss is granted, the record need not be filed. If however the motion is denied, the court’s decision will help DHHS determine the scope of materials to include. DHHS takes the position that the decision to reclassify AHC from Peer Group II to Peer Group III is not appealable by the Cedars and have moved to extend the deadline until after a ruling on the motion to dismiss in order to avoid filing materials related to that proceeding.

B. Motion to Dismiss: Standing

When considering a motion to dismiss, the court considers the allegations contained in the complaint as true and admitted by the defendant. *Annable v. Bd. of Env’tl. Prot.*, 507 A.2d 592, 593 (Me. 1986). On a 12(b)(6) motion, the court determines whether the complaint states a claim “upon which relief can be granted.” M.R. Civ. P. 12(b)(6).

DHHS chiefly argues that the Cedars is not “aggrieved” and cannot appeal the AHC decision.¹ *See* 5 M.R.S. § 11001 (“[A]ny person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court.”) “A person is aggrieved within the meaning of the APA if that person has suffered particularized injury—that is, if the agency action operated prejudicially and directly upon the party’s

¹ DHHS also argues there has been no “final agency action” because the Cedars is not an aggrieved party. Because the argument hinges on the Cedars’s status as an aggrieved party, the court considers the final agency action as part of the standing analysis.

property, pecuniary or personal rights.” *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 10, 953 A.2d 378.

The amended complaint² alleges that the Cedars is aggrieved in two respects. First, the change in designation from Peer Group II to Peer Group III “will reduce median costs used for calculating reimbursement of Peer Group II facilities, which will in turn reduce MaineCare reimbursement to the Cedars.” Second, “using the ‘higher hospital affiliated rate’ to reimburse AHC will also likely mean a decrease in overall MaineCare reimbursement available to reimburse nursing facilities not in Peer Group III, such as the Cedars.” (Pet. Compl. ¶¶ 23-24.)

DHHS argues the Cedars is not “aggrieved” because as a factual matter, the Cedars’s MaineCare reimbursement remains unaffected by the AHC decision. In other words, because any potential consequences flowing from the AHC decision have not yet materialized, any injury or aggrieved status the Cedars could claim remains too speculative to support standing.

Taking the facts alleged in the complaint as true and admitted by the Defendant, the Cedars will suffer a decrease in MaineCare reimbursement that will be proximately caused by the AHC decision. If true, this is a sufficiently particularized injury to support standing at the motion to dismiss stage, especially where the agency has failed to timely file the administrative record. Without the record, the court has a limited context to evaluate the rights affected by the AHC decision. *Nelson*, 2008 ME 91, ¶ 10, 953 A.2d 378 (“We examine the issue of standing in context to determine whether the asserted effect on the party's rights genuinely flows from the challenged agency action.”) The

² DHHS does not oppose the motion to amend. The court grants the motion to amend and considers the amended complaint for the purposes of this order.

complaint states a sufficiently particularized injury to support standing. The motion is therefore denied.

III. Conclusion

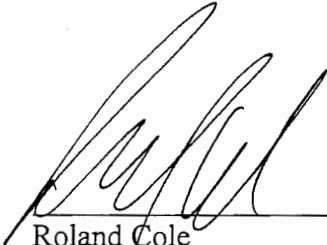
As set forth above, the scope of the record is to be determined by reference to scope of proceedings challenged at the agency level in the 80C petition. The agency is responsible for filing the record, but lacks the prerogative to strategically withhold the record in an effort to preemptively limit the issues fairly raised by the appeal. M.R. Civ. P. 80C(f). Rule 80C(f) requires DHHS file a “complete record,” including materials related to the AHC classification decision that the Cedars appeals.

The clerk shall enter the following:

The Respondent’s motion to dismiss is DENIED. The Respondent is hereby ordered to file the administrative record within 30 days.

SO ORDERED.

DATED: August 24, 2015



Roland Cole
Chief Justice, Superior Court

Date Filed: 06/16/2015

CUMBERLAND
COUNTY

JUSTICE COLE
Docket No. AP15-0021

Action: 80C APPEAL

CEDARS NURSING CARE CENTER
D/B/A THE CEDARS

MAINE DEPARTMENT OF HEALTH AND
HUMAN SERVICES

vs.

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Date of Entry