In contrast, the appellate court in *Riggio v. Burns*, 711 A.2d 497 (Pa. Super. 1998), held that the statute "plainly and unequivocally" made any body "funded in any amount by or through Commonwealth … authority" a public body for purposes of the Whistleblower Law." *Id.*, at 500; 43 P.S. § 1422. In interpreting the statute contrarily, the court acknowledged that its predecessor, *Cohen*, had "considered a much more complicated question from that which present[ed] itself" in *Riggio*, *i.e.*, the issue of a publicly owned, for-profit corporation contractually affiliated with a center that treated Medicaid-eligible patients. *Riggio*, 711 A.2d at 500.

Plaintiff cites to *Denton v. Silver Stream Nursing & Rehabilitation Center*, 739 A.2d 571 (Pa. Super. 1999), in support of the application of the Whistleblower Law. There, the plaintiff, the director of nursing, alleged to have witnessed abuses by management and corporate officials, was terminated from his position, and sued claiming, *inter alia*, violation of the Whistleblower Law. The Pennsylvania Superior Court found that the "plain meaning of the language of the [Whistleblower Law] statute makes it clear that it was intended to apply to all agencies that receive public monies under the administration of the Commonwealth", and ultimately held that a recipient of Medicaid funding is a "public body" under the Whistleblower Law, thereby finding that the complaint on this count was erroneously dismissed. *Id.*, 739 A.2d at 576-77. In embracing the holding in *Riggio*, the *Denton* Court recognized that *Riggio* did not "rule specifically on whether mere Medicaid funding was sufficient to create "public body" status." *Id.* at 576.

Plaintiff also cites to *Ellis v. Allegheny Specialty Practice Network*, 2013 U.S. Dist. LEXIS 13409 (W.D. Pa. Feb. 1, 2013). There, plaintiff alleged that defendants received monies from the Commonwealth of Pennsylvania in the form of "Medicare and MCARE funds". *Ellis*, 2013 U.S. Dist. LEXIS 13409, *2. Citing *Riggio* and *Denton*, the *Ellis* court, found, without

further elaboration, that plaintiff's allegation was enough for his complaint to survive a motion to dismiss. *Id.,* *11.

This Court is, however, persuaded by the analysis in *Tanay v. Encore Healthcare*, supra. There, prior to finding that defendant was not a public body and dismissing the Whistleblower Law claim, the court carefully reviewed *Cohen*, *Riggio*, and *Denton,* and stated that while *Denton* directly addressed the Medicaid issue, it relied upon the factually distinguishable *Riggio* matter, which did *not* address the Medicaid funding scenario in *Cohen*, and was "of little assistance in determining the meaning of the word 'funded' in that context." *Id.*, 810 F. Supp. 2d at 744. According deference to the Superior Court's analysis in *Denton*, the court agreed with *Cohen* that the receipt of Medicaid reimbursements is insufficient to make an otherwise private entity a public body subject to Whistleblower Law liability. *Id.* at 743. "The words 'funded in any amount by or through' are naturally read to denote money that is specifically appropriated by a governmental unit. Such appropriations may come in the form of periodic or one-time payments, but they are not controlled by the whims of patients eligible for Medicaid." *Tanay*, 810 F. Supp. 2d at 743-44. The Court further elaborated:

> This reading is supported by the statutory scheme. Healthcare providers are not the intended beneficiaries of the Medicaid program. *Geriatrics*, 640 F.2d at 265. Medicaid does confer financial benefits upon healthcare providers insofar as it expands the number of patients paying for medical services. However, a governmental assistance program, which directly benefits eligible participants and indirectly benefits private bodies, does not qualify as funding by the Commonwealth. A contrary ruling could justify the conclusion that other assistance programs, such as food stamps, similarly transform private entities into public bodies. The legislature could not have intended to create a cause of action under the Whistleblower Law for a former employee of a local grocery store that accepted food stamps. If we accept Plaintiff's argument as to the definition of "funded," the scope of the Whistleblower Law could be expanded to include any private business that accepted payment from a recipient of government assistance. We are satisfied that this is not what the Legislature intended.

Tanay, 810 F. Supp. 2d at 744.

Adopting the reasoning in *Tanay*, this Court opines that Defendant NHS-Allegheny, a community-based nonprofit human services provider and recipient of Medicaid funding, is not a public body and is, therefore, not subject to the Whistleblower Law. Consequently, Count II of Plaintiff's amended complaint is dismissed, with prejudice.

CONCLUSION

Relying on the holding in *Davis,* Defendant asks this Court to dismiss the amended complaint in its entirety with prejudice. Defendant, however, overlooks the distinguishing facts of *Davis;* it was the plaintiffs' third attempt at curing deficiencies noted in prior complaints. *Id.*, 2012 U.S. Dist. LEXIS 111160, *29. The Third Circuit has cautioned that it is error to dismiss a case without giving the plaintiff an opportunity to amend the complaint unless such an attempt would be inequitable or futile. *Davis v. Point Park Univ.*, 2010 U.S. Dist. LEXIS 125867, *35 (W.D. Pa. Nov. 30, 2010) (citing *Phillips*, 515 F.3d at 236)). Defendant has offered no reason why a second amended complaint would be inequitable or futile.

Accordingly, for the reasons stated, Defendant's *motion to dismiss* is granted, in part, and Count I of the amended complaint is dismissed, without prejudice, and Count II is dismissed with prejudice. This Court will afford Plaintiff an opportunity to remedy the shortcomings noted.

An appropriate order follows.

Nitza I. Quiñones Alejandro, USDC J.