

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Manor Healthcare Corp. d/b/a	:	
Manorcare Health Services-	:	
Williamsport North,	:	
Petitioner	:	
	:	
v.	:	
	:	
Department of Public Welfare,	:	No. 1074 C.D. 2007
Respondent	:	Argued: December 10, 2007

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: January 30, 2008

Manor Healthcare Corp. et al (Manor) petitions for review from an order of the Bureau of Hearings and Appeals' (BHA) dismissal of Manor's appeal as untimely.

Manor operates a skilled nursing facility where James Kennedy (Kennedy) is a resident. Kennedy has received medical assistance (MA) benefits since 2005. On January 10, 2006, the Lycoming County Assistance Office (CAO) issued a PA162-R (Advance Notice to Reduce) to Kennedy¹ and Manor and notified Kennedy that his patient pay contributions would increase to \$2,546.56:

**This Is To Notify You That Our Office Has Taken
Action To Change Your Benefits Listed Below-
Medical Assistance 01/23/2006.**

¹ Because Kennedy was eligible for MA benefits, he was required to turn over his income, minus certain personal deductions, to Manor to contribute towards the cost of his care.

This Action Has Been Taken Because Of The Following Facts And Regulations:

Individuals who receive Federal Retirement, Survivors or Disability benefits get a cost of living increase in January 2006. Your Railroad Retirement, Black Lung and veterans benefits may also increase.

Monthly Income Computation:

SSA/RR/BL Income	\$1222.50
VA Benefits	\$ 0.00
Civil Ser/Private Pension	\$1364.00
Interest/Other Income	0.00
Gross Income	\$2586.56
Personal Care Allow	\$ 40.00

....

Your Monthly Payment \$2546.56

The nursing facility will deduct the following verified medical expenses from your monthly payment:

Medicare	\$ 88.50
----------	----------

....

Advanced Notice To Reduce, January 10, 2006, at 2; Reproduced Record (R.R.) at

A. No appeal was filed within the thirty day appeal period.²

On January 16, 2007, Manor sent a letter to the CAO and requested the following:

As you know, our firm represents HCR ManorCare-WilliamSPORT ("HCR ManorCare") in relation to its Medicaid Eligibility and Reimbursement needs. HCR ManorCare herein appeals the failure of the attached PA 162 ("Exhibit A") to reflect Mr. Kennedy's monthly gross income deduction of \$361.46 for court ordered alimony payments. (emphasis added).

HCR ManorCare herein waives its rights to a timely hearing and requests that this appeal be placed on hold

² Manor does not dispute that it did not appeal the January 10, 2006, notice.

for 60 days prior to the scheduling of a hearing in this matter. It is my understanding that, given this request, the 60 day stay will be granted. If I am incorrect, please contact me.

Letter from Misty D. Bartel, to Sue Bock, CAO, January 16, 2007, at 1;
Reproduced Record (R.R.) at C.

On March 26, 2007, the BHA issued a Rule to Show Cause to Manor as to why the appeal should not be dismissed because of timeliness based upon the following:

The Department of Public Welfare, Bureau of Hearings and Appeals (BHA), received the appeal that you filed on behalf of James Kennedy from the Lycoming CAO concerning Medical Assistance, but it appears your appeal was received after the deadline to appeal. The Regulation at 55 Pa. Code §275.3(b)(1) states appeals of Medical Assistance issues must be filed within 30 days of the date of the agency adverse action notice. The Regulation at 1 Pa. Code §31.11 states an appeal must be received at the County Assistance Office on or before the deadline. The Regulation at 55 Pa. Code §275.3(b)(1) states the Bureau of Hearings and Appeals may dismiss an appeal filed after the deadline without a hearing.

In order for your appeal to continue and be scheduled for a hearing, you must respond in writing to this 'Rule to Show Cause' by the date show below Your response must explain why your appeal was received after the deadline. If you think that your appeal was filed on time or our records are incorrect, please explain why

You must submit your written response by 4/5/2007, or your appeal will be dismissed without a hearing. After your response is received, you will receive additional correspondence from BHA to let you know if your appeal will be scheduled for a hearing or will be dismissed without a hearing. (emphasis in original)

Rule To Show Cause, March 26, 2007, at 1; R.R. at B.

On April 2, 2007, Manor responded:

. . . .

ManorCare understands that, according to the Regulations, the time period in which to file for an appeal of a past determination is 30 days. However, ManorCare is not appealing a past determination, but instead is appealing a current and prospective miscalculation of James Kennedy's 'patient pay'. Thus, this appeal of limited issue is not untimely.

ManorCare appeals solely the Individual Computations related to James Kennedy's 'patient pay' amount for Medicaid benefits. A true and correct copy of the PA 162 was attached to the appeal to demonstrate the current calculations. Mr. Kennedy receives a monthly pension; however, a court ordered monthly deduction is taken out each month resulting in a yearly write off of \$4,945.32 for our client. This computation of 'patient pay' occurs every month and thus has present and future implications for our client. ManorCare wishes to have the gross income amount amended to reflect the Court-ordered alimony payments and understands that this amended patient pay calculation will not apply retroactively. Since this request for amended calculations applies prospectively only, it does not present issues of untimeliness.

Based on the above, we request that the appeal not be dismissed (emphasis added).

Letter from Misty Bartel to Freeda M. Prunty, Administrative Law Judge, April 2, 2007, at 1; R.R. at D.

The Administrative Law Judge made the following pertinent findings of fact:

1. On January 10, 2006, the Lycoming CAO issued a PA 162-R (Advanced Notice to Reduce) to the Appellant at Manor Care . . . advising him that effective January 23, 2006, his patient pay amount would increase to \$2,546.00. (Exhibit C1)

2. On January 16, 2007, Appellant's attorney . . . filed a written appeal. (Exhibit A1)
3. The appeal was filed **371 days** after the date of January 10, 2006, notice. (Exhibit C1, and Exhibit A1) (emphasis in original).
4. On March 26, 2007, a Rule to Show Cause for timeliness was mailed to the Appellant's Attorney, along with a copy of the appeal that was received by the Bureau of Hearings and Appeals. The Rule to Show Cause for timeliness requested that the Appellant's representative explain why the appeal should not be dismissed as untimely filed. The response was due to the Appeal Perfector within (10) days from the date of the Rule. (Exhibit C2)
5. On April 2, 2007, the Appeal Perfector received a signed, written response from the Appellant's Attorney in which she stated that the appeal was filed in an untimely [sic] manner since, "Manorcare is not appealing a past determination, but instead is appealing a current and prospective miscalculation of James Kennedy's patient pay. Thus, this appeal of limited issue is not untimely." (Exhibit A2)

Adjudication, May 18, 2007, Findings of Fact Nos. 1-5 at 1-2; R.R. at D4. The Administrative Law Judge concluded:

The basis of this appeal is that the CAO determined the Appellant's patient pay amount by using the Appellant's entire federal pension. As previously stated the notice advising all parties of this change was issued on January 10, 2006. If the Appellant, ManorCare . . . disagreed with the CAO's calculation, they had thirty (30) days from the date of the January 10, 2006, notice to file an appeal disputing the computation. An appeal on this issue was not received until January 16, 2007, more than one year after the date of the January 10, 2006, notice. The appeal was clearly filed in an untimely manner. The Appellant should have received a COLA increase in 2007. The increase in the Appellant's income should

have resulted in the CAO's issuance of a new notice. The Appellant's representative should exercise their right to appeal on the most recent notice. (Exhibit C1, and Exhibit A2)

Adjudication, Discussion at 2; R.R. at D4. The Administrative Judge dismissed Manor's appeal as untimely. The BHA affirmed the decision of the Administrative Judge.

Essentially, Manor argues³ that it did not appeal the January 10, 2006, PA 162R notice that increased Kennedy's monthly patient pay contribution. Instead, Manor asserts that it appealed the CAO's denial of its request to amend Kennedy's income allocation to prospectively reflect the October 2006, court-ordered monthly alimony payments. Although not specifically argued, this Court believes that Manor seeks to reduce Kennedy's monthly patient pay contribution by the amount of the court-ordered monthly alimony payment which would then result "in a yearly write off of \$4945.32 for our client [Kennedy]." See Letter from Bartel to Administrative Law Judge at 1; R.R. at D.

To the contrary, the Department of Public Welfare (DPW) strenuously argues that Manor's appeal was from January 10, 2006, PA 162R notice and because Manor did not appeal that decision within the thirty day appeal period Manor's appeal was untimely. Again, although not argued, this Court believes that if Manor's argument were successful then DPW would be required to pay

³ This Court's review is limited to a determination of whether constitutional rights were violated, an error of law was committed, or necessary findings of fact are supported by substantial evidence. J.A. v. Department of Public Welfare, 873 A.2d 782 (Pa. Cmwlth. 2005).

more “into the pot” to offset Kennedy’s reduced monthly pay contribution caused by the deduction of the court-ordered alimony payments.

A review of the certified record lacks any guidance whether Manor’s appeal was untimely.⁴ Specifically, the certified record consists of only the following:

1. Notice of Petition for Review Docket No. 1074 C.D. 2007.

2. Appeal Request.

3. Exhibits:

C-1 Advance Notice to Reduce Dated 1-10-06.

C-2 Rule to Show Cause Dated 3-26-07.

A-1 Letter Dated 1-15-07 from Misty D. Bartel to Sue Bock, Lycoming County Assistance Office.

A-2 Fax Letter Dated 4-2-07 from Misty Bartel to Honorable Judge Prunty.

Certified Record. Notably missing from the certified record are the following: the letter from the Department of Defense concerning the court-ordered alimony payments allegedly sent in mid-October of 2006; and the facsimile from the CAO,

⁴ 55 Pa. Code § 275.3 provides:

(b) *Time limitations on right to appeal.* An applicant or recipient must exercise his right of appeal within the following time limits. Appeals, which do not meet the following time limitations will be dismissed without a hearing:

(1) Thirty days from the date of written notice of a decision or action by a County Assistance Office, administering agency or service provider except for food stamps which time limits are indicated in paragraph (4).

dated November 3, 2006, where the CAO refused to modify Kennedy's monthly pay contributions as alleged by Manor.

Unfortunately, without a hearing and a record, the Administrative Law Judge findings of fact inadequately supplement the certified record. For instance, did Manor know of the court-ordered alimony deduction on January 10, 2006, or in mid-October of 2006 as it asserts? Second, what was the exact date the CAO denied Manor's request for a modification of calculations?⁵ Third, are the court-ordered alimony payments a permitted deduction in the calculation of a patient pay contribution? These types of findings are essential to determining whether Manor's appeal was timely.

"Where the timeliness of an appeal turns on factual considerations, an applicant must be afforded a hearing in which those considerations are explored and an opportunity must be given to the applicant to offer proof in support of a claim that an appeal was timely filed." Martin v. Department of Public Welfare, 514 A.2d 204, 208 (Pa. Cmwlth. 1986), citing St. Christopher's Hospital for Children, A Division of United Hospitals, Inc. v. Department of Public Welfare, 466 A.2d 1134 (Pa. Cmwlth. 1983).

⁵ Manor also refers to an alleged verbal conversation with a CAO employee and her supervisor that allegedly took place in November denied and where Manor's request was denied. A hearing would help determine whether the alleged conversation did occur.

Accordingly, the decision of the BHA is vacated and remanded so that the Administrative Law Judge can conduct a hearing and make necessary findings concerning the issue of timeliness.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Manor Healthcare Corp. d/b/a	:	
Manorcare Health Services-	:	
Williamsport North,	:	
Petitioner	:	
	:	
v.	:	
	:	
Department of Public Welfare,	:	No. 1074 C.D. 2007
Respondent	:	

ORDER

AND NOW, this 30th day of January, 2008, the order of the Department of Public Welfare, Bureau of Hearings and Appeals is vacated and the present matter is remanded for an evidentiary hearing and further proceedings consistent with this opinion.

Jurisdiction relinquished.

BERNARD L. MCGINLEY, Judge