

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Davon R. Hayes, :
Petitioner :
 :
v. :
 :
Department of Corrections, : No. 1106 C.D. 2012
Respondent : Submitted: November 16, 2012

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: December 13, 2012

Davon Hayes (Hayes) petitions *pro se* for review from an order of the Department of Corrections (Department) assessing his prison account in the amount of \$544.18 as reimbursement to the Commonwealth for injuries sustained by a corrections officer when Hayes assaulted him. For the reasons that follow, we affirm.

Hayes is currently a prisoner at the State Correctional Institution (SCI) at Graterford. On April 4, 2011, Hayes was issued a misconduct report for biting a corrections officer's right thumb while incarcerated at SCI-Dallas. Hayes pled not guilty to the charge of assault. The hearing examiner found Hayes guilty and sanctioned him to 90 days in disciplinary custody and ordered an assessment of

costs incurred by the Department for the officer's treatment at an outside hospital. At the assessment hearing, a Department representative testified that after the assault, the corrections officer went to Wilkes-Barre General Hospital, where he underwent emergency room treatment and testing costing \$544.18 for the emergency room treatment.¹ She provided a bill from the hospital confirming that amount. The Department also submitted a written affidavit from the corrections officer Hayes assaulted, which states that the officer "was bitten by inmate Hayes on the right thumb ... inmate Hayes then began to spit [and] struck this reporting officer in his right cheek." (Hearing Examiner's Exhibit 2.) Additionally, an affidavit was submitted after reviewing security tapes; it noted that corrections officers went to Hayes' cell to search it, and at the conclusion of the search, Hayes got combative and had to be taken down by officers. Hayes was provided with copies of these documents. Following the hearing, the amount provided was assessed on Hayes' account.² Hayes appealed the assessment to the Secretary of the Department, who denied the appeal. This appeal followed.³

¹ Both the testimony and the invoice from the hospital indicate that a number of tests were done, totaling \$2,008.50. However, the costs assessed to Hayes were "strictly for the emergency room department services." (Hearing Transcript dated November 14, 2011, at 9.) The descriptions of services on the bill include hepatitis and HIV testing, TDAP (Tetanus-Diphtheria-Pertussis) vaccination, and routine venipuncture. (Commonwealth's Exhibit 2, at 1.)

² "The Department has both the statutory and regulatory authority to assess an inmate's account as a result of certain inmate misconduct." *Brome v. Department of Corrections*, 756 A.2d 87, 88 (Pa. Cmwlth. 2000). This authority includes assessments for expenses incurred as a result of the misconduct. 37 Pa. Code §93.10(a)(2)(iii).

³ Our scope of review on appeal is limited to determining whether constitutional rights were violated, an error of law was committed, or whether necessary findings of fact are supported by substantial evidence. *Mason v. Department of Corrections*, 886 A.2d 724 (Pa. Cmwlth. 2005).

On appeal, Hayes contends that the Department erred by denying him a “pre-assessment hearing” to challenge the fact that his account was being assessed in the first place. While it is difficult to make out, his contention seems to allege that he should be able to challenge the underlying misconduct in a pre-assessment hearing which would then be an appealable order that we could review.

The Department’s decision to charge an inmate's prison account is an agency “adjudication” within the meaning of the Administrative Agency Law (Law).⁴ See 2 Pa.C.S. §101. *Holloway v. Lehman*, 671 A.2d 1179 (Pa. Cmwlth. 1996). As such, the inmate is entitled, after reasonable notice, to a hearing. 2 Pa.C.S. §504; *Holloway*, 671 A.2d at 1182. The inmate must be afforded an opportunity to be heard, all testimony must be recorded, and a full and complete record of the proceedings kept. 2 Pa.C.S. §504. Reasonable examination and cross-examination must be permitted. 2 Pa.C.S. §505; *Holloway*, 671 A.2d at 1182. The adjudication must be reduced to a written decision that includes findings of fact and reasons for the decision. 2 Pa.C.S. §507; *Holloway*, 671 A.2d at 1182.

However, unlike the imposition of an assessment, “[i]n general, a decision finding that a prisoner has committed a misconduct is not subject to appellate review because the court does not get involved in prison management matters.” *Holloway*, 671 A.2d at 1181 n.3 (Pa. Cmwlth. 1996) (citing *Ricketts v. Central Office Review Committee*, 557 A.2d 1180 (Pa. Cmwlth. 1989)). See also *Bronson v. Central Office Review Committee*, 554 Pa. 317, 321, 721 A.2d 357, 359

⁴ 2 Pa. C.S. §504 provides, in relevant part, that “no adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”

(1998) (“the commonwealth court does not have appellate jurisdiction, under 42 Pa.C.S §763, over inmate appeals of decisions by intra-prison disciplinary tribunals”). Because the finding that Hayes bit the corrections officer was made in a misconduct proceeding, that finding is non-reviewable.

Moreover, Hayes’ reliance on *Burns v. Department of Corrections*, 544 F.3d 279 (3d Cir. 2008), to support his contention that a pre-assessment hearing is required, is misplaced. In that case, the United States Third Circuit Court of Appeals said that the notice of assessment of funds in an inmate’s account affects the inmate’s property interest in his prison account, such that failure to afford the inmate a pre-assessment hearing violated his procedural due process rights. In *Jerry v. Department of Corrections*, 990 A.2d 112 (Pa. Cmwlth. 2010), this Court found *Burns* was inapplicable because where there is both a misconduct hearing and assessment hearing, pre-assessment proceedings are unnecessary, stating:

The *Burns* majority, deciding an issue of first impression, determined that in addition to the recognized property interest in the funds in an inmate's prison account, there is also a property interest in having the prison account unencumbered by a DOC assessment. In short, the *Burns* majority held that DOC's assessment reduced the economic value of the inmate's prison account and that such a deprivation triggers the Fourteenth Amendment's Due Process Clause.

We need not confront the *Burns* decision now because it has no relevance to the current controversy. *Burns* involved the process provided to an inmate at the point of liability determination, which, as here, occurred at the misconduct hearing. At *Burns*' misconduct hearing, however, information was received in camera

from confidential informants who were not subject to cross-examination. No Holloway hearing was involved. These procedures are unlike those in the present case, and for this reason we distinguish Burns.

Here, Jerry had two hearings, each held after notice. At the first hearing, which determined liability, his victim testified, and he asked questions. At the second hearing, which determined damages, the person responsible for the assessment testified, and Jerry asked questions. Written findings were made after each hearing, and they were provided to Jerry. In view of the process actually afforded Jerry, we conclude that there was no significant risk that he was erroneously deprived of any property right. *See Mathews v. Eldridge*, 424 U.S. 319 (1976) (among factors to be reviewed in procedural due process evaluation is the risk of erroneous deprivation of private interest through the procedures used).

990 A.2d at 117 (emphasis added).

As in *Jerry*, Hayes had two hearings: a misconduct hearing and a *Holloway* hearing. He was permitted to appeal the misconduct decision internally to the Central Office if he thought it was appropriate or necessary to do so. At the *Holloway* hearing regarding the imposition of the assessment against his prison account, he had the opportunity to cross-examine the Department's witness and present physical evidence. No deprivation of the funds in his inmate account occurred until liability had been established, as opposed to *Burns*, where the process questioned was at the point of determining liability. *See Burns*, 544 F.3d at 282-83. Because Hayes received a hearing on his prison misconduct and a hearing on the assessment, he has received all the process that he is due.

Although he does not challenge that he bit the corrections officer's thumb, Hayes also argues that his inmate account should not be assessed because he was provided with only the hospital bill, but no injury report, in connection to the April 4, 2011 assault. He contends that an injury report is necessary to make out the amount assessed against him.

The Department has the authority to recoup expenses incurred as a result of an inmate's misconduct by deducting those expenses from the inmate's account. 37 Pa. Code §93.10(a)(2)(iii). This Court has upheld assessments for medical expenses resulting from an inmate's assault of a corrections officer. *Brome v. Department of Corrections*, 756 A.2d 87, 88-89 (Pa. Cmwlth. 2000). Nothing in §93.10 or the Department Administrative Directive DC-ADM 801⁵ require that an inmate receive an injury report to substantiate a bill for treatment. Medical expenses must be causally related to the incident at issue for the party allegedly causing the injury to be compensable. *Cittrich v. Workers' Compensation Appeal Board (Laurel Living Center)*, 688 A.2d 1258 (Pa. Cmwlth. 1997). To be assessed for the medical expenses incurred, the Department was obligated to show that the treatment costs sought to be assessed against the inmate account are causally connected to his assaultive conduct of an inmate for that inmate to be assessed for the expenses. *See id.*; 37 Pa. Code §93.10(a)(2)(iii).

⁵ DC-ADM 801, entitled Inmate Discipline Procedures Manual, addresses Assessments of Financial Losses and Costs. Specifically, Section 8(A)(1) provides that an inmate may be required to "pay for a financial loss or cost resulting from a violation or written rules governing inmate behavior." A copy of DC-ADM 801 (revised October, 2010) may be found at http://www.cor.state.pa.us/portal/server.pt/community/doc_policies/20643.

In this case, the Department's witness testified at the hearing that this resulted in the officer going to the emergency room at Wilkes-Barre General Hospital for treatment. The Department submitted the medical bill into evidence which notes an examination and a number of tests done on the officer, including testing for HIV and Hepatitis and a TDAP vaccine. While, as Hayes points out, an injury report is not included in the record, the officer's report, medical bill, and statement from the Department's witness have established that the amount assessed to Hayes' account were causally related to his April 4, 2011 assault on a corrections officer.⁶

Accordingly, the order of the Department is affirmed.

DAN PELLEGRINI, President Judge

⁶ Hayes also contends that his due process rights and the Law, 2 Pa. C.S. §103 (Rule 103), were violated because the hearing examiner and Secretary of the Department did not "sign the final review decision and proposed findings of facts decision." However, neither Rule 103 nor any other section of the Law provide for such a requirement. Moreover, the final opinion and order is signed by the Secretary of the Department, thus Hayes' argument on this point is erroneous.

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ORDER

AND NOW, this 13th day of December, 2012, the order of the
Department of Corrections, dated May 2, 2012, is affirmed.

DAN PELLEGRINI, President Judge