

Law”¹ before it may enforce the policy against him. Weaver also argues that the Department has impermissibly applied Section 6152 of the Act commonly known as the “Medical Records Act”² to him even though he has not sought his medical records through a *subpoena duces tecum*. The Department argues that DC-ADM 003 is a statement of policy and, therefore, not subject to the Commonwealth Documents Law. We deny Weaver’s motion. We grant the Department’s motion, in part, and deny it, in part.

The following facts are not in dispute between the parties. DC-ADM 003 is a Department policy, which, in part, states that inmates seeking copies of their medical records must pay “a search and retrieval fee of \$18.30” along with \$1.23 for each of the first 20 pages of records, \$.92 for each of the next 40 pages, and \$.31 for each of any remaining pages. (DC-ADM 003-1.) According to this policy, these fees “are charged in accordance with the Medical Records Act (Act 26, 42 [Pa. C.S.] § 6152).” (DC-ADM 003 ¶ F.2.)³

¹ Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102-1602.

² 42 Pa. C.S. § 6152. Weaver devotes a substantial part of his brief to arguing that Section 6152 is not called “the Medical Records Act.” While this statute does not have an official name, it is, in fact, commonly known as “the Medical Records Act.” See, e.g., Liss & Marion, P.C. v. Recordex Acquisition Corp., 937 A.2d 503, 506 (Pa. Super. 2007) (“The Pennsylvania legislature, in 1986, enacted 42 Pa. C.S. §§ 6151-6160, commonly known as the Medical Records Act . . .”).

³ DC-ADM 003 reads in relevant part:

Copying charges for the reproduction of medical records are charged in accordance with the Medical Records Act (Act 26, 42 [Pa. C.S.] § 6152), and are contained in the Copying Charges for Medical Records (Attachment C).

(DC-ADM 003 ¶ F.2.) Attachment C to DC-ADM 003 reads as follows:

Fees imposed for the copying of medical records shall be in accordance with the Medical Record[s] Act (Act 26), 42 [Pa. C.S.] § 6152. Effective January 1, 2008, the following charges shall be imposed for reproduction of medical records:

1. a fee of \$1.28 per page for pages 1-20;
2. a fee of \$.95 per page for pages 21-60;
3. a fee of \$.32 per page for pages 61 to end;
4. amount of First Class Postage shall be determined by weight;
5. \$1.88 is the amount charged per page for microfilm copies;
6. flat fee for production of records to support claim under the Social Security Act or claims under other Federal or State financial need based benefit programs. This applies to claims from outside the state of Pennsylvania - \$24.08; and
7. flat fee per request for supplying records requested by a District Attorney. A District Attorney is not charged if they are prosecuting a crime that *occurred* in a Department facility - \$19.00.
8. the search and retrieval of records - \$19.00; and
9. The Pennsylvania Protection and Advocacy (PP&A) shall be charged \$.60 per page for the first 20 pages, \$.45 per page for the next 40 pages, and \$.18 per page for more than 61 pages for every 10 inmates. These fees are per facility. Beginning [sic] with the next set of 10 inmates (11 through 20 inmates, 21 through 30, etc.) the charges will start over again. PP&A will not be charged a search and retrieval fee.

All requests for medical records shall be mailed First Class. The person/group requesting the records is responsible for the actual cost of postage, shipping, and delivery. The business office of the facility reproducing the records and the Bureau of Administration for Central Office shall be responsible for producing an invoice for reproduction charges. The postage fee shall be included on the invoice provided to the requestor.

The charges listed in this notice do not apply to an X-ray film or any other portion of a medical record which is not susceptible to photostatic reproduction.

In 2006, Weaver attempted to obtain a copy of his medical records. An official in S.C.I. Coal Township's Medical Records Office, identified only as "K. Jackson" (Jackson), informed Weaver of the fee schedule under DC-ADM 003 for the copying of medical records. Weaver filed a grievance, which Facility Grievance Coordinator Kandis Dascani denied. Weaver appealed this denial to the Superintendent of S.C.I.

(DC-ADM 003, Attachment C.)

Section 6152 states in relevant part:

(1) When a subpoena duces tecum is served upon any health care provider or an employee of any health care facility licensed under the laws of this Commonwealth, requiring the production of any medical charts or records at any action or proceeding, it shall be deemed a sufficient response to the subpoena if the health care provider or health care facility notifies the attorney for the party causing service of the subpoena, within three days of receipt of the subpoena, of the health care provider's or facility's election to proceed under this subchapter and of the estimated actual and reasonable expenses of reproducing the charts or records. However, when medical charts or records are requested by a district attorney or by an independent or executive agency of the Commonwealth, notice pursuant to this section shall not be deemed a sufficient response to the subpoena duces tecum.

(2)(i) Except as provided in subparagraph (ii), the health care provider or facility or a designated agent shall be entitled to receive payment of such expenses before producing the charts or records. The payment shall not exceed \$ 15 for searching for and retrieving the records, \$ 1 per page for paper copies for the first 20 pages, 75¢ per page for pages 21 through 60 and 25¢ per page for pages 61 and thereafter; \$ 1.50 per page for copies from microfilm; plus the actual cost of postage, shipping or delivery. No other charges for the retrieval, copying and shipping or delivery of medical records other than those set forth in this paragraph shall be permitted without prior approval of the party requesting the copying of the medical records. The amounts which may be charged shall be adjusted annually beginning on January 1, 2000, by the Secretary of Health of the Commonwealth based on the most recent changes in the consumer price index reported annually by the Bureau of Labor Statistics of the United States Department of Labor.

42 Pa. C.S. § 6152(a)(1)-(2)(i).

Coal Township and to the Department's Chief Grievance Officer, both of whom affirmed the denial. Weaver then filed his Petition in our original jurisdiction.⁴ Weaver has now filed a Motion for Summary Relief, and the Department has filed a Motion for Summary Judgment.⁵ We address first Weaver's Motion for Summary Relief and then the Department's Motion for Summary Judgment.

Weaver's first argument is that the Department may not require him to pay the fees set out in DC-ADM 003 unless DC-ADM 003 is promulgated as a regulation

⁴ We note that:

[a] proceeding in mandamus is an extraordinary remedy at common law, designed to compel the performance of a ministerial act or mandatory duty. "The purpose of mandamus is not to establish legal rights, but to enforce those rights already established beyond peradventure." This Court may only issue a writ of mandamus where the petitioner possesses a clear legal right to enforce the performance of a ministerial act or mandatory duty, the defendant possesses a corresponding duty to perform the act, and the petitioner possesses no other adequate or appropriate remedy. Mandamus can only be used to compel performance of a ministerial duty and will not be granted in doubtful cases.

Lawrence v. Department of Corrections, 941 A.2d 70, 72 (Pa. Cmwlth. 2007) (internal citations omitted) (quoting Detar v. Beard, 898 A.2d 26, 29 (Pa. Cmwlth. 2006)).

⁵ The standard applied to an application for summary relief is the same as that applied to a motion for summary judgment. McGarry v. Pennsylvania Board of Probation and Parole, 819 A.2d 1211, 1214 n.7 (Pa. Cmwlth. 2003). Either "may be granted if a party's right to judgment is clear... and no issues of material fact are in dispute." Id. As yet, however, the parties have not developed an evidentiary record and our determination, therefore, is based upon facts averred in their pleadings. Absent an evidentiary record, Weaver's Motion for Summary Relief and the Department's Motion for Summary Judgment are more akin to motions for judgment on the pleadings. We note that the standard for judgment on the pleadings is the same as the standards for summary relief or summary judgment. See Buckwalter v. Borough of Phoenixville, 940 A.2d 617, 619 n.7 (Pa. Cmwlth. 2008) ("A motion for judgment on the pleadings should be granted only where the pleadings demonstrate that no genuine issue of fact exists and that the moving party is entitled to judgment as a matter of law.")

pursuant to the Commonwealth Documents Law. Weaver argues that, because the Department requires inmates to pay the fees specified in DC-ADM 003 for their medical records, DC-ADM 003 constitutes a binding norm and is, therefore, a regulation subject to the Commonwealth Documents Law. However, as the Department points out in its brief, this Court has recently addressed this precise issue and held that DC-ADM 003 is a statement of policy, not a regulation, and is not required to be published for notice and comment under the Commonwealth Documents Law. Richardson v. Beard, 942 A.2d 911, 913-14 (Pa. Cmwlth. 2008). Thus, Weaver’s first argument fails.

Weaver’s next argument is that the Department is illegally applying Section 6152 of the Medical Records Act to him by requiring him to pay the fees in accordance with that section even though he is not seeking his medical records pursuant to a *subpoena duces tecum*. Instead, he argues he is seeking his medical records through what is commonly known as the “Right to Know Law.”⁶ In considering this argument, we first address Weaver’s assertion that his medical records are public records under the Right to Know Law. Section 1 of the Right to Know Law defines a “public record” as:

[a]ny account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and ***any minute, order or decision by an agency fixing the personal or property rights***, privileges, immunities, duties or obligations ***of any person*** or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an

⁶ Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1 – 66.9.

investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; *it shall not include any record*, document, material, exhibit, pleading, report, memorandum or other paper, *access to or the publication of which is prohibited, restricted or forbidden by statute law* or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

65 P.S. § 66.1 (emphasis added). In the course of requesting his medical records, Weaver submitted Form DC-108 to the Department, as required by DC-ADM 003. Form DC-108 states that “[i]n authorizing this disclosure, I explicitly waive any and all rights I may have to the confidential maintenance of these records, including any such rights that exist under local, state, and federal statutory and/or constitutional law, rule or order” (Form DC-108.) Weaver argues that, by submitting Form DC-108 to the Department, he waived all rights to his medical records and that, therefore, access to or publication of his medical records is not prohibited, restricted, or forbidden by law. Thus, Weaver argues that his medical records are public records and are subject to the Right to Know Law. Weaver argues that because he seeks his medical records under the Right to Know Law, and not through a *subpoena duces tecum*, the fee schedule in Section 6152 should not apply.⁷

Weaver’s medical records are not public records. In order to be a public record, a document must deal with an agency’s acquisition or disposal of property or

⁷ Although Weaver does not refer to it, we note that Section 7(g) of the Right to Know Law, 65 P.S. § 66.7(g), sets limitations on the fees that agencies may charge for providing public records in response to requests.

be a “minute, order or decision by an agency fixing the personal or property rights . . . of any person.” 65 P.S. § 66.1. Medical records are neither minutes, orders, nor decisions. Rather, they are descriptions of symptoms, treatments, test results, diagnostic impressions, and so forth. They are not the sort of “decisional document” envisioned by the term “minute, order or decision.” Tribune-Review Publ’g Co. v. Department of Community and Economic Development, 580 Pa. 80, 91, 859 A.2d 1261, 1268 (2004) (The Right to Know Law “requires public access for ‘examination and inspection’ only of decisional documents and writings that accompany or memorialize funding.”) Because medical records are not documents accompanying or memorializing funding or minutes, orders or decisions, they are not public records under the Right to Know Law.^{8,9} We therefore do not grant Weaver’s Motion for Summary Relief.

⁸ This Court recognizes that its opinion in Hunt v. Department of Corrections, 698 A.2d 147 (Pa. Cmwlth. 1997), could be read as characterizing medical records of inmates of the Department as minutes, decisions or orders which affect the rights of those inmates. The dispositive issue in Hunt, however, was that the requester did not have a signed waiver from the deceased inmate whose records he sought. This Court, in that case, did not explicitly analyze whether medical records were, in fact, minutes, decisions, or orders as specified by the Right to Know Law.

⁹ Even if medical records were decisional documents which fixed the personal or property rights of persons, they still fall within the exception in the definition of public records for documents the “access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court.” 65 P.S. § 66.1. Weaver’s argument, that by submitting Form DC-108 he waived all confidentiality rights in his medical records, is unavailing. Although the language of Form DC-108 is extremely broad, to read it as waiving all confidentiality and privacy rights an inmate might have in his medical records, rather than waiving only those rights necessary for the Department to reasonably attempt to provide the records to the specified recipient, would be overbroad and contrary to the public policy of this Commonwealth, which favors the confidentiality of medical records and disfavors contracts of adhesion.

The Department has also filed a Motion for Summary Judgment. The Department, however, does not address all of Weaver's arguments. Even though we agree with the Department that Weaver's medical records are not public records as defined by the Right to Know Law, the Department has not convinced us that, viewing the record in the light most favorable to him, Weaver has failed to plead facts which could show that the application of the pricing schedule set forth in Section 6152 violates Weaver's right to equal protection as alleged in paragraphs III and IV of his Petition.¹⁰ Therefore, we must deny the Department's motion in part. We grant it, in part, however, as to the issue of whether DC-ADM 003 is a regulation which must be promulgated as required by the Commonwealth Documents Law. We will allow this case to go forward on the issue of whether DC-ADM 003 violates Weaver's right to equal protection.

RENÉE COHN JUBELIRER, Judge

¹⁰ Paragraphs III and IV of Weaver's Petition state:

III. This DOC DC-ADM 003, as amended violates Petitioner's Right to equal protection under the law as Petitioner is still a citizen of this Commonwealth and citizens of all standings must only comply with 42 Pa.C.S.A. §6152 if and when they or their counsel, on their behalf, file a subpoena duces tecum on a non-party to and [sic] active civil matter.

IV. The Department of Corrections is forcing the instant Petitioner to comply with a court procedural statute in a manner not anticipated in the legislative language of Act 26 of 1998; the filing of a subpoena duces tecum.

(Petition at 4.)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Francis E. Weaver,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 14 M.D. 2007
	:	
Pennsylvania Department of	:	
Corrections, Jeffrey Beard, Ph.D.,	:	
Secretary,	:	
	:	
Respondent	:	

ORDER

NOW, August 15, 2008, Francis E. Weaver’s Motion for Summary Relief is hereby **DENIED**, and the Department of Corrections’ Motion for Summary Judgment is hereby **DENIED** in part and **GRANTED** in part. The Department’s Motion is granted insofar as DC-ADM 003 is not a regulation which must be promulgated pursuant to the Commonwealth Documents Law.

RENÉE COHN JUBELIRER, Judge