

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Francis E. Weaver,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 14 M.D. 2007
	:	
Pennsylvania Department of	:	Submitted: April 8, 2011
Corrections, Jeffrey Beard, Ph.D.,	:	
Secretary,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: September 14, 2011**

Before this Court, the Pennsylvania Department of Corrections, Jeffrey Beard, Ph.D., Secretary (together, Department) applies for summary relief on the remaining equal protection claims of Francis E. Weaver (Weaver). The Department argues that Weaver's equal protection claims as set forth in his Petition for Review and briefs in this matter are without merit. For the following reasons, we grant the Department's Application for Summary Relief.

This Court has previously described the facts of this case as follows:

Weaver currently resides at S.C.I. Coal Township. In our previous opinion in this case, we described the relevant facts as follows:

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.)

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. Coal Township and to the Department’s Chief Grievance Officer, both of whom affirmed the denial.

Weaver v. Department of Corrections, No. 14 M.D. 2007, slip op. at 4-5 (Pa. Cmwlth. August 15, 2008) [(Weaver I)] (footnote omitted) (alterations in original). Weaver filed a Petition for Review in the Nature of Mandamus (Petition) in our original jurisdiction. In his Petition, Weaver argued that:

the Department must promulgate one of its policies, DC-ADM 003, as a regulation under the Act commonly known as the “Commonwealth Documents Law”<sup>1</sup> 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”<sup>2</sup> to him even though he has not sought his medical records through a *subpoena duces tecum*.

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

<sup>2</sup> 42 Pa. C.S. § 6152.

Weaver [I], slip op. at 1-2 & nn.1-2. As part of this second argument, Weaver asserted that he should have been able to obtain his medical records under the Act commonly known as the “Right to Know Law.”<sup>1</sup> The Department filed a Motion for Summary Judgment, which we granted in part on the ground that DC-ADM 003 is a statement of policy and, therefore, is not required to be promulgated as a rule under the Commonwealth Documents Law. We also granted summary judgment to the Department as to Weaver’s arguments regarding the Right to Know Law, on the ground that his medical records are not covered by the Right to Know Law, as they do not fall within that Law’s definition of “public records.” We did not grant summary judgment to the Department on the question of whether Weaver stated a claim for violation of his equal protection rights, however, stating that 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.

Weaver [I], slip op. at 9. Weaver states in these paragraphs:

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.)

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<sup>1</sup> Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1 – 66.9.

Weaver v. Department of Corrections, No. 14 M.D. 2007, slip op. at 2-4 (Pa. Cmwlth. December 19, 2008) (Weaver II). In Weaver II, this Court dealt with an application for summary relief from the Department, arguing that it was entitled to summary judgment on Weaver's remaining claims. Weaver II, slip op. at 4. This Court explained, in Weaver II, that the Department's adoption of Section 6152 was not, per se, an *application* of Section 6152, which provides the fees that may be charged for records sought through a *subpoena duces tecum*, and that the Department was not, therefore, violating Section 6152. Weaver II, slip op. at 4. This Court also addressed Weaver's argument that the Department violated Weaver's right to equal protection in various ways. Of relevance to the current matter, this Court held that the Department failed to show that it was entitled to summary judgment on the issue of whether Weaver's right to equal protection was violated because the Department charges lower fees for the copying of medical records to an inmate advocacy group, Pennsylvania Protection and Advocacy (PP&A), than it does to inmates. Weaver II, slip op. at 8. This Court denied the Department's application for summary judgment.

On July 12, 2010, this Court ordered that the Department:

file a brief with this Court . . . explaining the rationale supporting [the Department's] policy of charging inmates higher fees for copies of their medical records than [PP&A]. The Department's brief shall also discuss whether the intermediate scrutiny or strict scrutiny standard of constitutional review should apply to the differing classification between inmates and PP&A.

Weaver v. Department of Corrections, (Pa. Cmwlth. No. 14 M.D. 2007, filed July 12, 2010). On July 23, 2010, the Department filed its Application for Clarification, in which the Department sought permission to argue that the rational basis standard

should apply to its different treatment of PP&A. (Application for Clarification ¶ 9.) In addition, the Department asked this Court to consider the “Application for Clarification as encompassing an Application for Summary Relief.” (Application for Clarification ¶ 11.)

In reviewing Weaver’s claim that the Department violated his right to equal protection by charging him a higher rate for copying medical records than the Department charges PP&A, we must determine what standard of constitutional review to apply.

In Plyler v. Doe, the United States Supreme Court stated, “[i]n determining whether a class-based denial of a particular right is deserving of strict scrutiny under the Equal Protection Clause, we look to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein.” Plyler v. Doe, 457 U.S. 202, 217 n.15 (1982). Important interests, by contrast, involve liberty interests or denials of benefits vital to an individual. James v. Southeastern Pennsylvania Transportation Authority, 505 Pa. 137, 146, 477 A.2d 1302, 1306 (1984).

Weaver II, slip op. at 5 n.3. If neither strict nor intermediate scrutiny applies, then the applicable standard is the rational basis standard. James, 505 Pa. at 145, 477 A.2d at 1305-06.

Weaver makes no argument in his brief that strict scrutiny should apply to this claim. Weaver argues that intermediate scrutiny should apply, but offers no legal authority for this argument and little rationale, beyond that he cannot afford

the rates set by the Department.<sup>1,2</sup> Because Weaver has failed to show that strict or intermediate scrutiny should apply, this Court will apply the rational basis standard.

Under the rational basis standard, this Court will uphold a classification if it bears a “rational relationship to a legitimate government interest.” Singer v. Sheppard, 464 Pa. 387, 402, 346 A.2d 897, 905 (Pa. Cmwlth. 1975) (quoting Frontiero v. Richardson, 411 U.S. 677, 683 (1973)). The Department argues that it charges PP&A lower rates than those set forth in Section 6152 as a result of the settlement of a federal lawsuit by PP&A against the Department.<sup>3</sup> We agree with the Department that it acts rationally to advance a legitimate governmental purpose by adhering to a legally binding settlement. Because the Department has a rational

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<sup>1</sup> Although this Court has found that Weaver has failed to show that he has a constitutional right or vital interest in obtaining copies of his medical records, we do not hold that inmates have no such right or interest.

<sup>2</sup> We also note that Weaver has not shown that he is a member of a suspect class, either as an inmate or as an indigent person. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 318 (3d Cir. 2001) (inmates are neither a suspect class due to their incarceration, nor are indigents a suspect class).

<sup>3</sup> More specifically, the Department states:

PP&A is a non-profit advocacy group for the mentally ill. Pennsylvania has designated it, as the agency under the federal Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801-10827 (PAIMI), to advocate for and protect the rights of persons with disabilities and to investigate possible abuse and neglect of those with mental illness. Its mission authorizes it to advocate for mentally ill inmates in Pennsylvania state prisons.

(Department’s Br. at 10 (citations omitted).)

basis for charging PP&A a lower rate for copies of inmate medical records than the rate set forth in DC-ADM 003, Weaver's equal protection claim fails.<sup>4</sup>

For these reasons, we grant the Department's Application for Summary Relief and dismiss Weaver's Petition for Review.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>4</sup> Weaver also devotes significant portions of his brief to arguing that he has a right to only be charged reasonable fees for the copying of his medical records because, otherwise, his right to access the courts is compromised. This issue was not raised in Weaver's Petition for Review in our original jurisdiction and we will, therefore, not address it.

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**ORDER**

**NOW**, September 14, 2011, the Application for Summary Relief of the Pennsylvania Department of Corrections, Jeffrey Beard, Ph.D., Secretary, in the above-captioned matter is hereby **GRANTED** and the Petition for Review filed by Francis E. Weaver is hereby **DISMISSED**.

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**RENÉE COHN JUBELIRER, Judge**