

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Praxis Alzheimer’s Facility, :  
 :  
 Petitioner :  
 :  
 v. : No. 276 C.D. 2008  
 : Submitted: July 25, 2008  
 Department of Public Welfare, :  
 :  
 Respondent :

BEFORE: BONNIE BRIGANCE LEADBETTER, President Judge  
 HONORABLE ROCHELLE S. FRIEDMAN, Judge  
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
 SENIOR JUDGE FLAHERTY FILED: August 28, 2008

Praxis Alzheimer’s Facility (Praxis) petitions for review of a decision of the Secretary of the Department of Public Welfare (Department) which upheld the order of the Bureau of Hearings and Appeals (Bureau) which denied Praxis’s appeal of the Northampton County Assistance Office’s (NCAO) denial of Medical Assistance – Long Term Care benefits (MA-LTC benefits). We affirm.

Mr. Leslie Harris (Harris) was a resident at Praxis, a skilled nursing facility, and on July 26, 2004, an application was submitted on his behalf for MA-LTC benefits to the NCAO.<sup>1</sup>

The NCAO scheduled an application interview with Celeste Tucker (Tucker), Harris’ daughter and agent-in-fact, for August 19, 2004; however she

---

<sup>1</sup> At the time in which the application was submitted on his behalf, Harris was suffering from Alzheimer’s dementia.

failed to appear. On August 30, 2004, the NCAO sent Tucker a PA-162A denial notice, rejecting the July 26, 2004 application for MA-LTC benefits for failure to appear at the interview. The denial notice was never sent to Harris. Tucker was given thirty days in which to file an appeal of the NCAO's denial notice to the Bureau. Tucker did not file an appeal.

Praxis, upon learning of the denial, filed a notice of appeal of the NCAO's denial notice to the Bureau on January 29, 2007, over two years after the initial denial. On April 26, 2007, an Administrative Law Judge (ALJ) issued a rule to show cause, stating that the notice of appeal was received after the deadline and indicated that the "appeal may be scheduled for a hearing at which time the ...[ALJ] will take testimony concerning the issues of timeliness and Medical Assistance." Reproduced Record (R.R.) at 7a. Another rule to show cause was issued contemporaneously, requesting verification that Praxis was authorized by Harris to represent him in the appeal process. R.R. at 8a. Praxis filed a reply to the rule to show cause regarding the untimely appeal, informing the Department that notice of denial had not been provided to Harris. However, Praxis did not reply to the rule to show cause regarding its lack of standing.

On April 9, 2007, two months after Praxis filed the appeal, Lisa Spitale, Esquire (Spitale), signed an authorization statement which authorized Praxis to represent Harris in the appeal of the NCAO's denial notice. However, at that time, Spitale was only authorized by the Northampton County Orphan's Court to represent Harris' interest at his guardianship hearing. Spitale was appointed Permanent Plenary Guardian of the Estate of Leslie Harris on May 15, 2007, over one month after giving Praxis authority to pursue the appeal.

On October 18, 2007, the ALJ dismissed Praxis' appeal as untimely filed and for lack of standing. R.R. at 15a. On that same date, the Bureau affirmed the ALJ's decision. On November 2, 2007, Praxis filed an application for reconsideration, which was granted on November 15, 2007. On January 31, 2008, the Department issued a final order upholding the Bureau's order of October 18, 2007. Praxis now petitions our court for review.<sup>2</sup>

Praxis contends that the Department erred in upholding the Bureau's order, in finding that it did not have standing, and in failing to provide Harris, as well as Praxis, with the proper due process and the benefit of a hearing. Praxis further contends that the Department erred in upholding the Bureau's order, as the Bureau's decision was not supported by substantial evidence.

We will first consider whether Praxis had standing to appeal Harris' denial of medical assistance benefits. A "party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action." Dauphin County Public Defender's Office v. Court of Common Pleas of Dauphin County, 578 Pa. 59, 63, 849 A.2d 1145, 1148 (2004)(citation omitted). Moreover, "when statutory and regulatory provisions designate who may appeal an agency action, only those persons so designated have standing to appeal." Chichester Kinderschool v. Department of Public Welfare, 862 A.2d 119, 121 (Pa. Cmwlth. 2004). As such, 55 Pa. Code. § 275.3(a)(6) indicates that the appellant or his representative, if any, have the right "[t]o appeal the final administrative action of the Department within 30 days from the date of

---

<sup>2</sup> Our review of an administrative order is limited to determining whether constitutional rights were violated, an error of law was committed and whether necessary findings of fact are supported by substantial evidence. Ross v. Department of Public Welfare, 811 A.2d 1076 (Pa. Cmwlth. 2003), petition for allowance of appeal denied, 573 Pa. 693, 825 A.2d 640 (2003).

its order.” Moreover, as defined by the Department regulations, a ‘hearing request’ is “[a]n expression, oral or written, by the client or the person acting for him, such as his legal representative, relative or friend, to the effect that he wants an opportunity to present his case to higher authority.” 55 Pa. Code § 275.2.

In the present case, Tucker, as Harris’ agent, was the only individual entitled to appeal the denial of benefits on Harris’ behalf. See 55 Pa. Code § 275.2. Although Tucker was provided with the Department’s notice of denial of benefits on August 30, 2004, she failed to appeal such notice. Over two years later, on January 30, 2007, Praxis filed an appeal on Harris’ behalf. Subsequently, on April 9, 2007, Spitale signed a statement indicating that Praxis had the authority to act on Harris’ behalf. However, Spitale was not appointed as Harris’ guardian until May 15, 2007.

Moreover, on April 26, 2007, a rule to show cause for standing was mailed to Praxis, requesting that Praxis respond within ten days from the date of the rule with verification that Praxis was authorized by Harris to represent him in the appeal process. R.R., F.F. No. 8 at 27a. Praxis never responded with such authorization.<sup>3</sup> R.R., F.F. No. 9 at 28a.

Due to the fact that on January 30, 2007, the date that Praxis initially filed its appeal with the Department, neither Praxis nor Spitale had the authority to act on Harris’ behalf, we agree with the Department that Praxis lacked standing when it initially filed its appeal.<sup>4</sup>

---

<sup>3</sup> On the same date, April 26, 2007, another rule to show cause for timeliness was issued to Praxis, requesting an explanation as to why its appeal should not be dismissed as untimely filed. Praxis did, however, respond to this rule within the applicable time period, which was ten days from the date of the rule.

<sup>4</sup> Because we have concluded that Praxis lacked standing to appeal on behalf of Harris, its remaining arguments, that its appeal was not untimely and that Harris was denied due process, are moot and will not be addressed by this Court.

Accordingly, we affirm the Department's determination.

---

JIM FLAHERTY, Senior Judge

