

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

PUGET SOUND MEDICAL SUPPLY,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

No. 39807-9-II

UNPUBLISHED OPINION

Hartman, J.P.T.<sup>1</sup> — Puget Sound Medical Supply (PSM) appeals a superior court's decision to dismiss its petition for review for failure to exhaust administrative remedies. PSM argues that it exhausted its available administrative remedies. We affirm.

**FACTS**

PSM supplies medical equipment to Medicaid patients and is reimbursed by the Department of Social and Health Services (DSHS). DSHS audited PSM, determined that it overpaid PSM, and demanded repayment.

PSM appealed DSHS's demand to the Office of Administrative Hearings, which, on December 24, 2007, entered and mailed an initial order in favor of DSHS. The order stated:

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<sup>1</sup> Judge Hartman is serving as a judge pro tempore of the Washington State Court of Appeals pursuant to CAR 21(c).

“This order becomes final on the date of mailing unless within 21 days of mailing of this order a petition for review is received by the DSHS Board of Appeals [BOA].” CP at 26 (some capitalization omitted).

PSM filed a request for review of the initial order with the BOA on the morning of January 15, 2008, one day after the 21-day deadline to file a petition for review had expired. On January 29, PSM filed a statement with the BOA, asking for relief from the late filing, as provided under WAC 388-02-0580. Thereafter, on February 13, PSM filed a petition for review in superior court, even though the BOA had not yet ruled on the party’s petition for review or PSM’s request for relief from the late filing.

On March 17, the BOA denied review, finding that PSM failed to show good cause for its late filing. DSHS moved to dismiss PSM’s superior court petition, which the court granted.

#### ANALYSIS

The question is whether PSM failed to exhaust its administrative remedies before appealing to the superior court.

A party must generally exhaust all available administrative remedies before the superior court can grant relief. RCW 34.05.534; *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997). Exhaustion requires the petitioner to take advantage of all remedies within the administrative process before seeking judicial relief. *State v. Tacoma-Pierce County Multiple Listing Serv.*, 95 Wn.2d 280, 283-84, 622 P.2d 1190 (1980). “The court will not intervene and administrative remedies need to be exhausted when the ‘relief sought . . . can be obtained by resort to an exclusive or adequate administrative remedy.’” *Citizens for*

*Mount Vernon*, 133 Wn.2d at 866 (quoting *South Hollywood Hills Citizens Ass'n v. King County*, 101 Wn.2d 68, 73, 677 P.2d 114 (1984)). “The principle is founded upon the belief that the judiciary should give proper deference to that body possessing expertise in areas outside the conventional expertise of judges.” *Citizens for Mount Vernon*, 133 Wn.2d at 866.

PSM argues that it exhausted its available administrative remedies when it filed the late petition for review and its subsequent request for relief from the late filing. PSM is incorrect.

PSM failed to exhaust its administrative remedies when it filed a petition for review in superior court on February 13, without having first received a decision from the BOA. Without first having a BOA decision before filing in superior court, PSM did not exhaust its available administrative remedies and, thus, its appeal to superior court was properly dismissed.<sup>2</sup> Former WAC 388-02-0530 (2007); former WAC 388-02-0560 (2007).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Hartman, J.P.T.

We concur:

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<sup>2</sup> We note that PSM filed a separate superior court action challenging the BOA’s March 17 order denying review. The second action was adjudicated in *Puget Sound Medical Supply v. Dep’t of Social and Health Servs.*, 156 Wn. App. 364, 234 P.3d 246 (2010). PSM should have moved to consolidate these appeals. RAP 3.3(b).

No. 39807-9-II

Quinn-Brintnall, J.

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Worswick, A.C.J.