

██████████

APPELLANT¹

v.

MARYLAND DEPARTMENT OF
HEALTH

* BEFORE MICHAEL R. OSBORN,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH No.: MDH-MCP-11A-17-31051

* * * * *

RULING ON MOTION TO DISMISS

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

In 2017, ██████████ (Appellant), was a participant in the Community First Choice Program (CFC) of the Maryland Medical Assistance Program (MA), which is administered by the Maryland Department of Health (Department). The Appellant’s CFC benefits were, in part, determined by submission of a Plan of Service to the Department.

The Appellant lives with ██████████, the Appellant’s cousin.

At an unspecified time, the Department approved funding to modify a shower enclosure in Ms. ██████████’s home to accommodate the Appellant. On July 24, 2017, Ms. ██████████ on behalf of the Appellant, filed a Revised Plan of Service in which she requested that a door-on-roller shower door be installed in the modified shower enclosure, instead of a shower curtain.² On July 31, 2017, the Department, through the Division of Evaluation and Service Review, denied the

¹ Although ██████████ is named as the Appellant, this Motion to Dismiss involves the issue of whether the appeal was filed by an authorized representative. Therefore, any reference to ██████████ as an “Appellant” in this case is merely for ease of identification and is not an indication of whether a valid appeal was filed on his behalf.

² The shower enclosure had a door prior to modification but a shower curtain, only, after modification, which was not entirely to Ms. ██████████’s satisfaction.

Appellant's request as not supported by the accompanying documentation, and as not covered under the CFC. On August 28, 2017, Ms. [REDACTED] on behalf of the Appellant, filed a Request for Fair Hearing (appeal) to challenge the Department's decision.

On September 13, 2017, the Department transmitted the matter, including the appeal submitted by Ms. [REDACTED] to the Office of Administrative Hearings (OAH) to conduct the requested hearing.

On July 5, 2018, I convened the hearing at the [REDACTED] [REDACTED] in [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 10.01.04. Erin Reilly, Assistant Attorney General, represented the Department. Ms. [REDACTED] appeared for the Appellant, who was not present.

At the hearing, the Department made an oral Motion to Dismiss (Motion) the appeal, asserting that Ms. [REDACTED] was not an authorized representative of the Appellant. After considering the arguments of the parties, I granted the Motion and advised the parties that I would issue a written decision on the Motion.

The contested case provisions of the Administrative Procedure Act, the Procedures for Fair Hearing Appeals under the Maryland State MA Program, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2017); COMAR 10.01.04 and 28.02.01.

ISSUE

Should the Motion to Dismiss be granted?

SUMMARY OF THE EVIDENCE

The Department referred to the appeal of August 28, 2017, which is part of the case file transmitted to the OAH by the Department on September 13, 2017.

DISCUSSION

I conclude that Ms. [REDACTED] was not an authorized representative of the Appellant when she filed a request for hearing, and was not authorized by the Appellant to represent him at the hearing. She therefore lacks the authority to pursue this appeal of the Department's decision to deny a request for installation of a door-on-roller shower door.

COMAR 10.01.04.04A(1) provides:

A. Statement of Request.

(1) Any individual, either himself or through an authorized representative, may request a fair hearing by giving a clear statement, oral, electronic, or written, to any member of the Department or delegate agency, that the individual desires an opportunity to present for review any matter which is the proper subject of a fair hearing as provided in Regulation .02 of this chapter.

COMAR 10.01.04.01B(5) provides that the term "authorized representative" "has the same meaning as in Regulation .12." In pertinent part, COMAR 10.01.04.12 provides:

.12 Authorized Representatives.

A. Definitions.

(1) "Authorized representative" means an individual or organization acting responsibly on behalf of the applicant or recipient in accordance with §§B, C, D, and E of this regulation, in assisting with an applicant or recipient's application, renewal of eligibility, appeals, and other ongoing communications with the agency.

(2) "Signature" includes electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmissions.

B. Designating an Authorized Representative.

(1) An applicant or recipient may designate any individual or organization to serve as an authorized representative.

(2) An authorized representative may be designated either:

(a) In writing, including the applicant or recipient's signature; or

(b) By providing proof of legal authority to act on behalf of an applicant or recipient.

(3) Legal authority includes, but is not limited to those who are the:

...

(b) Applicant or recipient's legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the applicant or recipient's legal guardian but who has not yet been appointed the applicant or recipient's legal guardian;

...

(e) Individual appointed to make legal or medical decisions on behalf of the applicant or recipient pursuant to a validly executed power of attorney.

Ms. [REDACTED] acknowledged that she did not have any authority, written or otherwise, to file the appeal on the Appellant's behalf or to represent him at the hearing. She also acknowledged that she is not the Appellant's legal guardian and has not applied for such appointment, and does not hold power of attorney. She stated that the Appellant's sister, [REDACTED] is in fact the Appellant's court-appointed guardian, and that Ms. [REDACTED] did not participate in the appeal or expect to participate in the hearing.³

The OAH Rules of Procedure govern procedure in this case. COMAR 28.02.01.12C provides:

B. Motion to Dismiss. Upon motion, the judge may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

Here, dismissal is warranted because Ms. [REDACTED] had no authority to file the appeal, and thus there is no claim upon which relief may be granted.

CONCLUSION OF LAW

I conclude as a matter of law that the August 28, 2017 Request for a Fair Hearing as a result of the Department's decision to deny the Appellant's July 24, 2017 request for a door-on-roller shower

³ I allowed Ms. [REDACTED] a brief recess to call Ms. [REDACTED] to advise her of the hearing and to give Ms. [REDACTED] an opportunity to appear and represent the Appellant, but Ms. [REDACTED] was unable to reach Ms. [REDACTED]

door was not properly filed by a person with authority to do so. COMAR 10.01.04.04A(1); COMAR 10.01.04.01B(5); COMAR 10.01.04.12A(1) and (2); B(2) and (3). Thus, the Request for Fair Hearing does not state a claim for which relief may be granted, and the Department's Motion to Dismiss must be granted. COMAR 28.02.01.12C.

ORDER

I **ORDER** that the Maryland Department of Health's Motion to Dismiss is **GRANTED**; and further

ORDER that all further proceedings in this case are **TERMINATED**, and a disposition of **DISMISSED** is entered in this case.

August 1, 2018
Date Ruling Mailed

Signature Appears on Original

Michael R. Osborn
Administrative Law Judge

MRO/da
#174860

REVIEW RIGHTS

This is the final decision of the Maryland Department of Health. A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2017). The original petition must be filed in the circuit court within thirty (30) days of the date of this decision, with a copy to David Lapp, Office of the Attorney General, Suite 302, 300 W. Preston St., Baltimore, MD 21201. Md. Rules 7-201 through 7-210.

The petition for judicial review should identify the Maryland Department of Health, which administers the Medicaid program, as the agency that made the decision for which judicial review is sought. The address of the Maryland Department of Health should be included on the petition: 201 W. Preston St., Room 511C, Baltimore, MD 21201.

A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. No fees may be charged to Medical Assistance Program recipients, applicants, or authorized representatives for transcription costs or for preparation or delivery of the record to the circuit court. The Office of Administrative Hearings is not a party to the judicial review process.

Copies Mailed To:

