

[REDACTED]

APPELLANT

V.

DEPARTMENT OF HEALTH AND
MENTAL HYGIENE

* BEFORE STUART G. BRESLOW,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
* OAH NO.: DHMH-MCP-12-18-23053

* * * * *

RULING ON MOTION FOR SUMMARY DECISION

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STATEMENT OF THE CASE

On May 29, 2018, the [REDACTED] County Health Department ([REDACTED] CHD), acting on behalf of the Maryland Department of Health (MDH or Department), notified [REDACTED] (Appellant) that her file had come up for review on May 1, 2018 and based on that review her request for Medical Assistance (MA) Transportation was denied because she has access to Metro Access. On June 2, 2018, the Appellant sent a request for hearing to challenge the denial. The Department transmitted the matter to the Office of Administrative Hearings (OAH) on July 23, 2018 for the requested hearing.

On September 25, 2018, I conducted a hearing at the OAH's office located in [REDACTED] Maryland. Code of Maryland Regulations (COMAR) 10.01.04.04. Vanessa Yanson, Assistant Attorney General, represented the Department. The Appellant appeared and represented herself.

The Administrative Procedure Act, the procedural regulations for fair hearings under the Maryland MA Program, and the OAH's Rules of Procedure govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 10.01.04 and COMAR 28.02.01.

At the commencement of the hearing, the Appellant stated that she is now no longer eligible for MA benefits. She agreed to stipulate to her statement as fact. Following her statement, the Department raised a Motion for Summary Decision arguing that the Appellant's stipulation satisfies the requirements of an affidavit in support of a Motion for Summary Decision. COMAR 28.02.01.12D.

ISSUE

1. Should the Department's Motion for Summary Decision be granted?

SUMMARY OF THE EVIDENCE

Exhibits

Neither party offered exhibits for admission into evidence.

STIPULATED FACT

The following fact was stipulated:

1. The Appellant is no longer eligible to receive MA benefits.

DISCUSSION

OAH's Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. Those regulations provide as follows:

D. Motion for Summary Decision

(1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavits.

(2) The response to a motion for summary decision shall identify the material facts that are disputed.

(3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(4) The judge may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

When ruling on a motion for summary decision, an administrative law judge may also consider admissions, exhibits, affidavits, and sworn testimony for the purpose of determining whether a hearing on the merits is necessary. *See Davis v. DiPino*, 337 Md. 642, 648 (1995) (comparison of motions to dismiss and for summary judgment), *vacated in part on other grounds*, 354 Md. 18 (1999). In this case, the Appellant stipulated that she is no longer eligible for MA benefits. I find that this stipulation is sufficient to satisfy the affidavit requirements as this was an oral motion and the Appellant stipulated that she is no longer eligible for MA benefits.

The requirements for summary decision under COMAR 28.02.01.12D are virtually identical to those for summary judgment under Maryland Rule 2-501, which contemplates a “two-level inquiry.” *Richman v. FWB Bank*, 122 Md. App. 110, 146 (1998). In *Richman*, the Court of Special Appeals provided, in pertinent part:

[T]he trial court must determine that no genuine dispute exists as to any material fact, and that one party is entitled to judgment as matter of law. In its review of the motion, the court must consider the facts in the light most favorable to the non-moving party. It must also construe all inferences reasonably drawn from those facts in favor of the non-movant.

To defeat a motion for summary judgment, the non-moving party must establish that a genuine dispute exists as to a material fact. A material fact is one that will somehow affect the outcome of the case. If a dispute exists as to a fact that is not material to the outcome of the case, the entry of summary judgment is

not foreclosed. Moreover, mere formal denials or general allegations are not necessarily sufficient to prevent the entry of summary judgment.

Id. at 146–47 (citations omitted).

In this matter, the Department argued that in order to qualify for MA transportation, the Appellant must be eligible to receive MA benefits. A grantee¹ is responsible for arranging or providing nonemergency transportation to and from medically necessary covered services to MA recipients² and, when necessary, their attendants, who have no other means of transportation available. COMAR 10.09.19.04A. The Department argued that since the Appellant is no longer receiving MA benefits, she would no longer be eligible to receive MA transportation benefits. The Appellant did not dispute the Department's argument. She did, however, state that at one time, she was receiving MA benefits and, therefore, could have been eligible for MA transportation benefits at that time. The issue before me however is whether she is currently eligible for MA transportation benefits. Based on the regulations, it is clear that she is not as a matter of law.

As such, there is no genuine dispute of material fact and that the Department is entitled to Summary Decision as a matter of law. Accordingly, the Department's Motion for Summary Decision must be granted.

CONCLUSION OF LAW

I conclude, as a matter of law that the Department's Motion for Summary Decision should be granted as there is no genuine dispute of material fact and that the Department is entitled to Summary Decision as a matter of law. COMAR 28.02.01.12D(4).

¹ "Grantee" means a recipient of grant funds from the Department pursuant to this chapter. COMAR 10.09.19.02B(6).

² "Recipient" means an individual who is certified as eligible for, and is receiving, MA benefits.

ORDER

I **ORDER** that the Department's Motion for Summary Decision is **GRANTED** and the Appellant's appeal be **DENIED AND DISMISSED**.

October 15, 2018
Date Decision Mailed

Signature Appears on Original

Stuart G. Breslow
Administrative Law Judge

SGB/cj
#176149

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. 2018). The original petition must be filed in the circuit court within thirty 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. 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:

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