[redacted],	*	**BEFORE BRIAN ZLOTNICK,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
MARYLAND HEALTH	*	**ADMINISTRATIVE HEARINGS**
BENEFIT EXCHANGE	*	**OAH No.: MHBE-[redacted]-01A-21-20410**

* * * * * * * * * * * * *

RULING ON MOTION TO DISMISS OR FOR SUMMARY DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF UNDISPUTED FACT
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On November 14, 2018, [redacted] (Appellant) completed an application for health coverage through the Maryland Health Connection (MHC) website for herself, her husband and her two children. On November 14, 2018, the MHC notified the Appellant of her eligibility to purchase a Qualified Health Plan (QHP) with a tax credit up to $2,699.00. The Appellant enrolled her family in a BlueChoice HMO[1] HSA[2]Silver $3,000 Vision Plus plan (Policy) effective January 1, 2019, with a tax credit in the amount of $2,085.06. On October 8, 2020, the Appellant made a telephone call to the Maryland Health Benefit Exchange (MHBE) and requested that her Policy be retroactively cancelled effective June 1, 2019. The MHBE denied the Appellant's request to retroactively cancel her Policy and the Appellant filed an

[1] Health Maintenance Organization
[2] Health Savings Account

appeal on September 1, 2021[3]. On September 7, 2021, the MHBE forwarded the file to the Office of Administrative Hearings (OAH) for a hearing.

On September 29, 2021, [redacted], Appeals Administrator for the MHBE, filed a Motion to Dismiss (Motion) arguing that the OAH lacks jurisdiction to hear an appeal of the MHBE's denial of the Appellant's request to have the Policy retroactively terminated, and therefore, the Appellant has failed to state a cause of action for which relief may be granted. The hearing on the merits was scheduled for October 7, 2021, and I converted that hearing to a Motions hearing to allow the parties to present arguments regarding the Motion. On October 7, 2021, I conducted a telephone hearing at which Ms. [redacted] appeared and represented the MHBE. The Appellant appeared and represented herself.

Under the OAH Rules of Procedure at Code of Maryland Regulations (COMAR) 28.02.01.12B(3)(a), (b), the Appellant's written answer to the Motion must have been filed on the earlier of 15 days after the date the Motion was filed or the date of the hearing. Because the Motion was filed eight days before the scheduled hearing, the Appellant's response was due on or before the day of the hearing. COMAR 28.02.01.12B(3)(b). The Appellant did not file a response to the Motion, and argued her opposition at the Motion hearing.

Procedure in this case is governed by the Administrative Procedure Act, the MHBE's procedures for Fair Hearings of Individual Exchange Eligibility Determinations, the Rules of Procedure of the OAH, and the federal regulations for Appeals of Eligibility Determinations for Exchange Participation and Insurance Affordability Programs, and Termination of Exchange Enrollment or Coverage. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021;

[3] The record does not indicate the date that the MHBE denied the Appellant's request to retroactively cancel her Policy to June 1, 2019. The timeliness of the Appellant's appeal was not raised by the MHBE.

COMAR 14.35.01.01; COMAR 14.35.11; COMAR 28.02.01; and 45 Code of Federal Regulations (C.F.R.) §§ 155.500 through 155.555 (2019).[4]

ISSUE

Should the Appellant's Request for Hearing be dismissed?

SUMMARY OF THE EVIDENCE

Exhibits

The MHBE presented its Appeal Summary, dated September 24, 2021, which was admitted into evidence as LD Ex. #1 with the following attachments:

- Appellant's MHC application, dated November 14, 2018
- MHC Eligibility Determination, dated November 14, 2018
- Notice of Eligibility, dated November 14, 2018
- MHC Notice of Successful Enrollment for the Appellant in her Policy, dated November 16, 2018
- Renewal of Coverage Notice, dated October 2, 2019
- Contact Notes to Call Center, dated October 8, 2020
- Contact Notes to Call Center, dated October 28, 2020
- Audit Trail printout of Appellant's Policy coverage, from November 14, 2018 to December 6, 2019
- COMAR Excerpts
- CFR Excerpts

The Appellant did not offer any exhibits into evidence.

Testimony

Ms. [redacted] presented argument on behalf of the MHBE. The Appellant and her husband, [redacted], presented argument on the Appellant's behalf.

FINDINGS OF UNDISPUTED FACT

Based upon the Motion, the exhibits, testimony, oral argument, and all other evidence of record, viewing the evidence in a light most favorable to the Appellant, I find the following material facts are undisputed:

[4] Unless otherwise noted, all citations herein to the C.F.R. are to the 2019 volume.

1. On November 14, 2018, the Appellant filed an application through the MHC to enroll in a QHP.

2. On November 14, 2018, the MHC notified the Appellant that she was eligible to purchase health coverage through the MHC with an effective date of January 1, 2019.

3. On November 16, 2018, the MHC notified the Appellant that she successfully enrolled her household for coverage with the Policy effective January 1, 2019.

4. The Appellant became employed in the Summer of 2019 and began receiving health coverage from her employer.

5. Effective December 6, 2019, the Appellant was disenrolled in the QHP through the MHBE.

6. On October 8, 2020, the Appellant contacted the MHC seeking retroactive cancellation of the Policy to June 2019.

DISCUSSION

I

Applicable Law and Governing Regulations —the Standard to Dismiss and for Summary Decision

A contested case hearing, including an appeal of a grievance, may be disposed of by a motion for dismissal or for summary decision. Md. Ann. Code, State Gov't §§ 10-210(6), (7) (2021); Md. Code Ann., State Pers. & Pens. § 12-205(c) (2015). The OAH's Rules of Procedure provide for consideration of a motion to dismiss under COMAR 28.02.01.12C. The controlling regulation provides as follows:

> 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.

COMAR 28.02.01.12C; *see also* Md. Ann. Code, State Gov't § 10-210(7) (2021).

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as, "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person."

In reviewing the Motion,

> [I] must accept as true all well-pleaded facts and allegations in the complaints, together with reasonable inferences properly drawn therefrom. Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford [the Appellant] relief if proven. . . . [A]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.

Faya v. Almaraz, 329 Md. 435, 443–44 (1993) (internal citations and quotations omitted). Further, "consideration of the universe of facts pertinent to [my] analysis of the motion are limited generally to the four corners of the [initial pleading] and its incorporated supporting exhibits, if any." *Litz v. Maryland Dep't of Env't*, 434 Md. 623, 639 (2013) (internal citations omitted).

Additionally, "what [I] consider are allegations of fact and inferences deducible therefrom, not merely conclusory charges." *Berman v. Karvounis*, 308 Md. 259, 264–65 (1987).

The OAH's Rules of Procedure equally provide for consideration of a motion for summary decision. The controlling regulations provide as follows:

> D. Motion for Summary Decision.
>
> (1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.
>
> (5) The ALJ 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.

COMAR 28.02.01.12D(1) & (5); *see also* Md. Ann. Code, State Gov't § 10-210(6) (2021).

In considering a motion for summary decision, an administrative law judge may be guided by case law that explains the nature of summary judgment in judicial proceedings, as these matters are governed under substantively identical criteria. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 136 (1993); Md. Rule 2-501 (to prevail in a motion for summary judgment the moving party must satisfy several burdens). First, a movant must identify the legal cause of action or legal defense that the movant relies upon. Second, a movant must set forth sufficient, undisputed factual grounds to satisfy elements of the movant's claim or defense. Finally, a movant must explain to the court the legal authority for the court to grant the motion and the movant's reasoning for contending that the movant is entitled to judgment as a matter of law).

The opinions of the United States Supreme Court and the Maryland Court of Appeals addressing this issue are instructive. "Summary judgment is appropriate if there is no '*genuine* issue of *material* fact.'" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). Facts are material if they would affect the outcome of a case; there is a genuine issue of fact if the evidence would allow a "reasonable [fact-finder] . . . to return a verdict for the non-moving party." *Id.* Material facts in dispute are those facts satisfying elements of the claim or defense or otherwise affecting the outcome of the case. *King v. Bankerd*, 303 Md. 98, 111 (1985). A mere scintilla of evidence in favor of a non-moving party is insufficient to defeat a summary judgment motion. *Anderson* at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

In addition to demonstrating that there is no genuine dispute of material fact, the moving party must show that it is entitled to judgment as a matter of law. "Even where the underlying facts are undisputed, if the facts are susceptible of more than one permissible factual inference, the choice between those inferences should not be made as a matter of law, and summary

judgment should not be granted." *East v. PaineWebber, Inc.*, 131 Md. App. 302, 309 (2000), *aff'd,* 363 Md. 408 (2001).

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).

As I have considered matters outside the initial pleadings to rule on this matter, I will treat the Motion as one for summary decision. *Id.;* COMAR 28.02.01.02B(9).

II

Positions of the Parties

The Appellant respectfully and resolutely maintained that she contacted the MHC in June 2019 to cancel the Policy when she became employed and no longer needed health coverage through the MHBE. She indicated that she messaged the MHC through her account in June 2019 to cancel the Policy. The Appellant also asserted that she called the MHC to cancel the Policy and was informed that cancellation forms would be mailed to her. She stated that she received the cancellation forms in September 2019 and mailed it back to the MHC at that time. The Appellant then followed up with the MHC and learned that her cancellation forms had not been received so she then downloaded a cancellation form and sent it to the MHC in November 2019 which resulted in her disenrollment in the Policy on December 6, 2019. The Appellant argued that the Policy should have been cancelled in June 2019 when she first contacted the MHC and that because it was not cancelled until December 2019, she was improperly subject to premiums for that period. She asserted that she no longer needed the Policy in June 2019 when she became

employed and accepted health coverage from her employer. The Appellant is seeking retroactive cancellation of the Policy to June 2019.

The MHBE argued that the Appellant's request to retroactively cancel her Policy to June 2019 cannot be granted by the OAH because the MHBE has not delegated this type of case to the OAH. For this reason, the MHBE argued the grievance should be denied and dismissed.

III

Analysis

In accordance with the Patient Protection and Affordable Care Act (ACA),[5] Maryland created the MHBE as a public corporation and independent unit of State government. Md. Code Ann., Ins. § 31-102(b)(2) (Supp. 2021). The MHBE's purpose is, in part, to assist individuals in accessing public programs, including the Maryland Medical Assistance Program, the Maryland Children's Health Program, and QHPs offered through the MHBE by private carriers, as well as premium tax credits and cost-sharing reductions. Md. Code Ann., Ins. § 31-102(c) (Supp. 2021). The MHBE does not itself provide insurance coverage or financial subsidies; it merely processes the information provided by an applicant and reports the outcome as dictated by federal law. *See generally*, Md. Code Ann., Ins. § 31-108(b)(10)(i) (Supp. 2021); 45 C.F.R. § 155. The MHBE uses its insurance exchange, the MHC, to assist customers with applying for coverage, either on paper or by using its website.

The law and regulations grant the MHBE authority to terminate an enrollee's coverage in a QHP subject only to certain exceptions. 45 C.F.R. § 155.430(b)(1)(iv)(A)-(C). The C.F.R. provides that:

[5] The Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, *amended by* the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, *amended by* the Three Percent Withholding Repeal and Job Creation Act, Pub. L. No. 112-56, 125 Stat. 771 (2011) (codified as amended in scattered sections of Titles 26 and 42 of the United States Code Annotated (U.S.C.A.)).

(iv) The Exchange must permit an enrollee to retroactively terminate or cancel his or her coverage or enrollment in a QHP in the following circumstances:

(A) The enrollee demonstrates to the Exchange that he or she attempted to terminate his or her coverage or enrollment in a QHP and experienced a technical error that did not allow the enrollee to terminate his or her coverage or enrollment through the Exchange, and requests retroactive termination within 60 days after he or she discovered the technical error.

(B) The enrollee demonstrates to the Exchange that his or her enrollment in a QHP through the Exchange was unintentional, inadvertent, or erroneous and was the result of the error or misconduct of an officer, employee, or agent of the Exchange or HHS, its instrumentalities, or a non–Exchange entity providing enrollment assistance or conducting enrollment activities. Such enrollee must request cancellation within 60 days of discovering the unintentional, inadvertent, or erroneous enrollment. For purposes of this paragraph (b)(1)(iv)(B), misconduct includes the failure to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State requirements as determined by the Exchange.

(C) The enrollee demonstrates to the Exchange that he or she was enrolled in a QHP without his or her knowledge or consent by any third party, including third parties who have no connection with the Exchange, and requests cancellation within 60 days of discovering of the enrollment.

Id.

COMAR 28.02.01.12C provides for the dismissal of an appeal for failure to state a cause of action upon which relief may be granted. The Motion requests dismissal of the Appellant's Request for Hearing because the subject matter of the Request for Hearing is not included in the matters that the MHBE has delegated to the OAH for hearings.

Chapter 45 Section 155.505 of the Code of Federal Regulations sets forth the appealable issues under the ACA:

(a) General requirements. Unless otherwise specified, the provisions of this subpart apply to Exchange eligibility appeals processes, regardless of whether the appeals process is provided by a State Exchange appeals entity or by the HHS appeals entity.
(b) Right to appeal. An applicant or enrollee must have the right to appeal—

(1) An eligibility determination made in accordance with subpart D, including—

(i) An initial determination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with the standards specified in § 155.305(a) through (h); and

(ii) A redetermination of eligibility, including the amount of advance payments of the premium tax credit and level of cost-sharing reductions, made in accordance with §§ 155.330 and 155.335;

(iii) A determination of eligibility for an enrollment period, made in accordance with § 155.305(b);

(2) An eligibility determination for an exemption made in accordance § 155.605;

(3) A failure by the Exchange to provide timely notice of an eligibility determination in accordance with §§ 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii), or 155.610(i); and

(4) A denial of a request to vacate dismissal made by a State Exchange appeals entity in accordance with § 155.530(d)(2), made under paragraph (c)(2)(i) of this section; and

(5) An appeal decision issued by a State Exchange appeals entity in accordance with § 155.545(b), consistent with § 155.520(c).

45 C.F.R. § 155.505.

COMAR 14.35.11.05A provides that an individual may request a hearing for any matter which is the, "proper subject of a fair hearing as provided in Regulation .03 of this chapter." Accordingly, COMAR 14.35.11.03A sets forth the allowable issues in a hearing involving the MHBE:

A. An opportunity for a fair hearing shall be granted if an applicant claims that:

(1) The determination or redetermination received from the Exchange of the applicant's eligibility for enrollment in a qualified health plan is incorrect;

(2) The determination or redetermination received from the Exchange of the applicant's eligibility for an insurance affordability program is incorrect; or

(3) The determination or redetermination received from the Exchange of the applicant's eligibility for enrollment in a qualified health plan or an insurance affordability program is untimely as set forth in applicable law.

The OAH only acquires hearings and appeals by virtue of delegations from State agencies. Md. Code Ann., State Gov't § 10-205(a)(1)(ii) (2021). As seen above, pursuant to COMAR 14.35.11.03A, the MHBE has delegated hearings to the OAH on a few very specific

matters; these include determinations and redeterminations by the MHBE regarding an applicant's eligibility for enrollment into a qualified health care plan and/or an insurance affordability plan, or the timeliness of such determinations. Retroactive termination, or cancellation of an insurance plan like the Policy, is not among the hearing issues that the MHBE has delegated to the OAH. Therefore, I conclude the OAH is without jurisdiction to hear the Appellant's appeal, which contests the determination of the MHBE to not retroactively terminate the Appellant's insurance. Accordingly, the MHBE is entitled to summary decision in its favor.

CONCLUSION OF LAW

Based on the foregoing Findings of Undisputed Fact and Discussion, I conclude that there is no dispute as to any material fact, the Appellant failed to state a cause of action upon which relief can be granted, and the MHBE is thus entitled to summary decision in its favor as a matter of law. Md. Code Ann., State Gov't § 10-205(a)(1)(ii) (2021); COMAR 28.02.01.12D; and COMAR 14.35.11.03A.

ORDER

I **ORDER** that the MHBE's Motion for Summary Decision be, and hereby is, **GRANTED.** I further **ORDER** that the appeal is **DENIED** and **DISMISSED** and the merits hearing scheduled for November 2, 2021 is **CANCELLED**.

Signature Appears on Original

October 26, 2021
Date Ruling Mailed

Brian Zlotnick
Administrative Law Judge

BMZ/emh
#194957

REVIEW RIGHTS

This is the final decision of the Maryland Health Benefit Exchange. A party aggrieved by this final decision may, within thirty (30) days of the date of this decision, file a 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 in which any party resides or has a principal place of business. Md. Code Ann., State Gov't § 10-222 (2021); 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.

If you do not wish to file a petition for judicial review with the circuit court, you may choose to file an appeal request with the United States Department of Health and Human Services within thirty (30) days of the date of this decision, at Health Insurance Marketplace, 465 Industrial Boulevard, London, KY 40750-0061. 45 C.F.R. § 155.520(c) (2019). The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[redacted]

[redacted]

[redacted]

[redacted],	*	**BEFORE BRIAN ZLOTNICK,**
APPELLANT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE OF**
MARYLAND HEALTH	*	**ADMINISTRATIVE HEARINGS**
BENEFIT EXCHANGE	*	**OAH No.: MHBE-[redacted]-01A-21-20410**

* * * * * * * * * * * * *

EXHIBIT LIST

The MHBE presented its Appeal Summary, dated September 24, 2021, which was admitted into evidence as LD Ex. #1 with the following attachments:

- Appellant's MHC application, dated November 14, 2018
- MHC Eligibility Determination, dated November 14, 2018
- Notice of Eligibility, dated November 14, 2018
- MHC Notice of Successful Enrollment for the Appellant in her Policy, dated November 16, 2018
- Renewal of Coverage Notice, dated October 2, 2019
- Contact Notes to Call Center, dated October 8, 2020
- Contact Notes to Call Center, dated October 28, 2020
- Audit Trail printout of Appellant's Policy coverage, from November 14, 2018 to December 6, 2019
- COMAR Excerpts
- CFR Excerpts

The Appellant did not offer any exhibits into evidence.