

Before the
Administrative Hearing Commission
State of Missouri



HULLS HAVEN ADULT DAY CARE,)
)
Petitioner,)
)
v.)
)
DEPARTMENT OF SOCIAL SERVICES,)
MISSOURI MEDICAID AUDIT AND)
COMPLIANCE UNIT,)
)
Respondent.)

No. 13-1427 SP

DECISION

Petitioner Hulls Haven Adult Day Care appeals the decision of Respondent Department of Social Services, Missouri Medicaid Audit and Compliance Unit to seek recoupment of certain Medicaid payments totaling \$56,962.70. Because Hulls Haven filed too late, we dismiss.

Procedure

Hulls Haven filed a letter with this Commission on August 8, 2013, which we treated as a complaint. In lieu of an answer, the Department filed a motion to dismiss on August 26, 2013. We notified Hulls Haven that it should file any response to the motion by September 13, 2013, but it filed nothing.

The Department's motion to dismiss is a motion for involuntary dismissal. We may grant a motion for involuntary dismissal based on a preponderance of the admissible evidence. 1 CSR 15-3.436(3). Admissible evidence includes allegations contained in the complaint, stipulations,

or other evidence admissible under the law. *Id.* If the motion relies on matters other than the allegations contained in the complaint, or stipulations, then we must treat it as one for summary decision under 1 CSR 15-3.446, or convene an evidentiary hearing on the motion.

The findings of fact below are taken from Hulls Haven's complaint and authenticated business records the Department filed in support of its motion. We therefore treat the motion as one for summary decision. An evidentiary hearing is not necessary.

Findings of Fact

1. Hulls Haven Adult Day Care is a Missouri Medicaid services provider.
2. The Department of Social Services, Missouri Medicaid Audit and Compliance Unit conducted an audit of Hulls Haven's records and decided Hulls Haven had been overpaid a total of \$56,962.70 in Missouri Medicaid reimbursements.
3. The Department mailed its decision letter to Hulls Haven by certified mail on June 24, 2013.
4. The Department's decision letter includes the following language:

If you were adversely affected by this decision, you may appeal this decision to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within 30 days from the date of mailing or delivery of this decision, whichever is earlier; except that claims of less than \$500 may be accumulated until such claims total that sum and, at which time, you have 90 days to file the petition. If any such petition is sent by registered mail or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Commission. **Appealing this decision can only be made to the Administrative Hearing Commission and not to MMAC or MHD.**

[Underlining added, bold in original.]¹

5. Hulls Haven sent its appeal of the Department's decision to this Commission by regular mail. We received it on August 8, 2013.

Conclusions of Law

We have jurisdiction. § 208.156.2, RSMo (2000) and § 621.055, RSMo (Supp. 2012).

As a creature of statute, this Commission can exercise only those powers conferred by law, and cannot expand them. *Livingston Manor, Inc. v. Dep't of Soc. Servs., Div. of Family Servs.*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). The relevant statutes establish specific time limitations for appeals in cases like the instant one.

Specifically, § 208.156.2 and § 621.055.1 both provide that “[a]ny person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152” may seek review with this Commission of certain actions of the Department in regard to payments.

Section 208.156.8 establishes requirements for seeking review, including a time limitation: An aggrieved provider “shall have thirty days from the date of mailing or delivery of a decision of the department of social services or its designated division in which to file his petition for review” with this Commission. (Emphasis added.) And § 621.055.3 explains appeal deadlines in relation to date of mailing:

Any decision of the department of social services that is subject to appeal to the administrative hearing commission pursuant to subsection 1 of this section shall contain a notice of the right to appeal in substantially the following language:

If you were adversely affected by this decision, you may appeal this decision to the administrative hearing commission. To appeal, you must file a petition with the administrative hearing commission within thirty days from the date of mailing or

¹ Exhibit A.

delivery of this decision, whichever is earlier; except that claims of less than five hundred dollars may be accumulated until such claims total that sum and, at which time, you have ninety days to file the petition. If any such petition is sent by registered mail or certified mail, the petition will be deemed filed on the date it is mailed. If any such petition is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

[Underlining added.]

Here, the Department mailed its decision letter to Hulls Haven on June 24, 2013 by certified mail. By law, § 208.156.8 and § 621.055.3, Hulls Haven had 30 days from June 24, 2013 in which to appeal, or until July 24, 2103.

Hulls Haven mailed its complaint to this Commission by regular mail. We received it on August 8, 2013, which is deemed the date of filing under § 621.055.3. Hulls Haven appealed too late.

Because Hulls Haven failed to timely appeal, we must dismiss.

Summary

The Department's motion to dismiss is granted.

The hearing scheduled for December 16, 2013 is canceled.

SO ORDERED on September 18, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner