

Before the
Administrative Hearing Commission
State of Missouri



JANE W. RUEDI, Ph.D,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0691 SP
)	
DEPARTMENT OF SOCIAL SERVICES,)	
MISSOURI MEDICAID AUDIT)	
COMPLIANCE UNIT,)	
)	
Respondent.)	

DECISION

We dismiss the complaint of Jane W. Ruedi, Ph.D because we lack jurisdiction to hear it.

Procedure

On April 30, 2013, Ruedi filed a complaint stating that she was adversely affected by a final decision of the Missouri Department of Social Services, Missouri Medicaid Audit and Compliance Unit (“the Department”) imposing sanctions against Ruedi for Medicaid overpayments resulting from billing errors. On June 3, 2013, the Department filed a motion to dismiss supported by suggestions and documentation, asserting that Ruedi’s complaint was untimely filed. Ruedi filed a response to the motion on June 17, 2013. On June 18, 2013, the Department filed affidavits of two persons associated with the mailing of a sanction letter from a Department employee.

A motion to dismiss is granted if we lack jurisdiction.¹ Because the Department's suggestions in support of its motion, as well as the affidavits it subsequently filed, contain matters outside the pleadings, we consider it a motion for summary decision.² We apply our standard for summary decision when ruling on the motion to dismiss when the motion relies upon matters other than the allegations in the complaint and stipulations.³ Under this standard, the Department prevails if it establishes facts entitling it to a favorable decision and those facts are not genuinely disputed by Ruedi.⁴

Findings of Fact

1. Prior to March 28, 2013, Pamela Hendrix, an RAC Specialist for the Department, informed Ruedi, by letter, that the Department is imposing sanctions against Ruedi in the amount of \$2,232.08 for Medicaid overpayments resulting from billing errors (the "sanction letter").

2. The sanction letter contains the following language:

This is a final decision regarding administration of the medical assistance program in Missouri. Missouri Statute, Section 208.156, RSMo provides for appeal of this decision.

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 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 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, MHD, or Cognosante.

¹ 1 CSR 15-3.436(1)(A). All references to CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² 1 CSR 15-3.436(4)(A).

³ 1 CSR 15-3.436(4)(A).

⁴ 1 CSR 15-3.446(6)(A) and § 536.073.3. Statutory references are to RSMo 2000 unless otherwise noted.

3. At all relevant times, the Department engaged a contractor named Cognosante, LLC (“Cognosante”), located in Fargo, North Dakota, to perform Medicaid and recovery audit contractor services, including the mailing of sanction letters.

4. Prior to March 29, 2013, the sanction letter was sent by the Department to Cognosante, who prepared the sanction letter for mailing.

5. On March 29, 2013, Cognosante’s subcontractor, Forum Communications Printing (also located in Fargo, North Dakota), mailed the sanction letter, by certified mail, to Ruedi.

6. Ruedi filed a complaint with this Commission by certified mail on April 30, 2013.

7. April 30, 2013 was more than 30 days after March 29, 2013.

Conclusions of Law

Evidentiary Issues

The Department’s motion includes copies of three documents: the sanction letter, several pages of what was described in the Department’s suggestions as a “certified mail receipt” but are, in fact, pages from a Firm Mailing Book for Accountable Mail published by the United States Postal Service, one page of which states that a certified letter bearing article number 71791000164602884606 was sent to Ruedi, and a printout of an internet page from usps.com titled “Track & Confirm,” which shows the tracking history of the certified letter bearing article number 71791000164602884606 sent by Forum to Ruedi.

While no foundation was laid for the admission of these documents as evidence, § 536.070(8)⁵ requires that “[a]ny evidence received without objection which has probative value shall be considered by the agency along with the other evidence in the case.” The documents have probative value; the sanction letter states the Department is imposing a sanction and the reason for doing so, while the other documents show that the sanction letter was mailed

⁵ RSMo 2012 Supp.

on March 29, 2013. Because there was no objection, they may be utilized as competent and substantial evidence to support a decision.⁶

The Department's Claim of Lack of Jurisdiction

We have jurisdiction over appeals of the Department's final decisions.⁷ However, our jurisdiction is limited to only those appeals that are filed within a specified period of time.

Section 208.156.8 provides:

Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections 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 the administrative hearing commission, except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time the provider shall have ninety days to file his petition.

(Emphasis added.) The failure to comply with statutory time limitations for appeal from an administrative agency decision results in the lapse of subject matter jurisdiction.⁸ The Department has established that the sanction letter was mailed to Ruedi on March 29, 2013.⁹ When a statute provides the time for appeal to run upon mailing or delivery and the Department mails the sanction letter, the time for appeal begins the date on which the letter was mailed.¹⁰ Ruedi filed her appeal on April 30, 2013, which was more than 30 days after March 29, 2013.

⁶ *Snider v. Missouri Highways & Transp. Comm'n*, 356 S.W.3d 320, 324-25 (Mo. App., W.D. 2011).

⁷ Section 208.156.2.

⁸ *Fayette No. 1, Inc. v. Missouri Dept. of Social Services*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1993).

⁹ Section 208.156.8 does not require that the Department mail the decision, only that it be mailed.

Therefore, we need not consider whether the scope of Cognosante's agency on the Department's behalf included the actions it took, as well as the delegation of such agency to Forum.

¹⁰ *Id*; *R.B. Industries, Inc. v. Goldberg*, 601 S.W.2d 5, 6-7 (Mo. banc 1980)(explaining that "where service of an agency's final decision is by mailing . . . service is complete upon the mailing").

Ruedi's Response to the Department's Motion

Ruedi's response to the Department's motion addresses several issues, the first being the timeliness of the filing of her complaint. She asserts that the complaint was timely filed, since she sent it by certified mail on April 30, 2013.¹¹ Her filing of her complaint by mailing it by certified mail on April 30 means that the complaint is considered filed that day.¹² However, as we find above, that day was more than 30 days after the sanction letter was mailed.

Ruedi also asserts that the amount of potential damages would appear to most likely be less than \$500 because the amount in question should be reduced due to the nature of the billing error. We believe she is referring to the last clause of § 208.156.8 set out above, providing that claims of less than \$500 can be aggregated until they reach that amount. The amount of the Department's *claim* in this case, however, is \$2,232.08. Ruedi's argument goes to the ultimate validity of the claim's amount, not to the amount of the claim as made by the Department.

Ruedi also asserts the following: once she learned of the billing error in her practice, she corrected it; there is a procedure in the Medicare Claims Processing Manual that would treat this situation differently and would yield a better result if applied to this situation; and contract law mandates a level of cooperation between provider and insurer that does not, but should, exist between the parties to this case. These matters can only be considered once we establish that we have jurisdiction to hear the case at all.

We do not have jurisdiction to hear a complaint filed out of time.¹³ If we have no jurisdiction to hear it, we cannot reach the merits of the case and can only exercise our inherent

¹¹ Ruedi also asserts that she sent an e-mail to this Commission on April 30, 2013. We cannot accept filings by e-mail. Our Regulation 1 CSR 15-3.290(1) limits filings to those transmitted by certified or registered mail, personal delivery, regular mail, or fax. The matter is moot, however, since she mailed the complaint by certified mail on April 30, 2013.

¹² Section 621.205.1; 1 CSR 15 3.290(1)(A).

¹³ *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 752 S.W.2d, 794, 799 (Mo. banc 1988).

power to dismiss it.¹⁴ Therefore, we dismiss Ruedi's complaint because the Department has established that it was filed out of time.

Summary

We grant the Department's motion, cancel the hearing, and dismiss the complaint.

SO ORDERED on June 25, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁴*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).