

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**MARILU WEEKS,**  
**Petitioner,**

v.

**DHS, DIVISION OF FAMILY AND  
CHILDREN SERVICES,**  
**Respondent.**


**Docket No.: 2117014  
2117014-OSAH-DFCS-M-NH-58-Howells**

**Agency Reference No.: 117161883**



**APR 28 2021**

**ORDER OF DISMISSAL**

  
Grant Mintz, Legal Assistant

This matter initially came before the Office of State Administrative Hearings (“OSAH”), an administrative court, on a direct appeal filed by Brian Center Health and Rehabilitation – Canton (“Brian Center”), purportedly on behalf of Petitioner Marilu Weeks. The direct appeal was before Judge Steven Teate and bore the docket number 2115535. Prior to proceeding with the matter, Judge Teate directed Brian Center to provide evidence that it was Mrs. Weeks’ authorized representative or to cite statutory or regulatory authority showing that this administrative court has jurisdiction over this matter. (*See* January 28, 2021 Order.) Prior to ruling on the issue of Brian Center’s standing to appeal Petitioner’s Medicaid application denial, OSAH received a hearing request transmitted by Respondent. Accordingly, the direct appeal was dismissed, and a new matter was initiated based on the referral from Respondent.

A Notice of Hearing was issued in this matter on March 3, 2021, setting a hearing for April 1, 2021. Prior to the hearing, Respondent filed a Motion to Dismiss this matter as untimely. Thereafter, the caseworker assigned to the case requested a continuance to allow for an attorney to be assigned to the matter for Respondent.<sup>1</sup> The motion for a continuance was granted, and the

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<sup>1</sup> Caseworkers frequently represent the Division of Family and Children Services (“DFCS”) in administrative hearings, without the benefit of counsel. However, when the issues become complex or when the opposing party is represented by an attorney, the agency will sometimes obtain an attorney to represent it at the hearing.

undersigned notified the parties that the issue of Brian Center's standing or authority to bring this appeal had not been determined. On April 5, 2021, Brian Center filed a supplemental response incorporating its brief addressing its authority to file the appeal, which was previously filed in the direct appeal. A hearing on the issue of Brian Center's standing or authority to bring this matter and Respondent's Motion to Dismiss was conducted on April 27, 2021 by telephone and video conferencing.

***Brian Center Does Not Have Standing or Authority to Appeal  
the Denial of Marilu Weeks' Medicaid Application***

The authority to file a Medicaid application on behalf of an individual is broader than the authority to appeal the denial of an application. The agency must accept an application from the applicant, an adult in the applicant's household, a family member, an authorized representative, or if the applicant is incapacitated, anyone acting responsibly for the applicant. 42 C.F.R. § 435.907. Therefore, Brian Center, acting responsibly for its resident, was entitled to file the Medicaid applications on behalf of Mrs. Weeks.

Nevertheless, the regulations limit who may request a hearing regarding the denial of an application. *Id.* § 431.221(a)(1). Only the applicant or the applicant's authorized representative may request a hearing. *Id.*

Respondent must allow an applicant or beneficiary to designate an authorized representative to act on his or her behalf. *Id.* § 435.923(a)(1). If an individual or entity has a court order establishing legal guardianship or power of attorney for the applicant or beneficiary, then that individual or entity is considered the same as an authorized representative who has been designated in writing. *Id.* § 435.923(a)(2). Therefore, an authorized representative is an individual or an entity that the applicant has designated in writing or an individual who has a court order establishing legal guardianship or power of attorney. *Id.* § 435.923(a).

An authorized representative has the authority to act on behalf of the applicant or beneficiary in all matters with the agency, including filing a request for a hearing and representing him or her at the hearing. *Id.* §§ 435.923(b)(4), 431.221(a)(1); *see also* Medicaid Manual at Appendix B.

In Brian Center's brief, which was incorporated into its supplemental response, it acknowledged that it does not have written authorization from Mrs. Weeks to act on her behalf, and it does not have a court order granting it guardianship.<sup>2</sup> Accordingly, Brian Center is not Mrs. Weeks' authorized representative.<sup>3</sup> Brian Center argues that it has independent standing to request a hearing. For the following reasons, Brian Center's argument is without merit.

First, Brian Center cites the Supplemental Security Income policy guidance for its ability to request a hearing for Mrs. Weeks. This guidance is inapplicable, because there is a specific regulation governing who may request a hearing for a Medicaid applicant or beneficiary. 42 C.F.R. § 431.221(a) ("The agency must establish procedures that permit an individual, or an authorized representative as defined at § 435.923 of this chapter, to . . . [s]ubmit a hearing request.")

Second, Brian Center cites O.C.G.A. § 49-4-153(b)(2), which allows medical providers to request a hearing regarding the Department of Community Health's denial or non-payment of reimbursement or a determination of the amount of reimbursement to be paid. The instant matter is not due to a decision by the Department of Community Health to deny reimbursement. Rather,

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<sup>2</sup> Although Brian Center initiated a proceeding for guardianship and conservatorship, that process was not completed because Mrs. Weeks was transferred to the hospital and did not return to Brian Center. (Ex. R-37; Testimony of Jessi Page.)

<sup>3</sup> It is true that a nursing home may serve as an applicant's authorized representative. *See* 78 Fed. Reg. 42160, 42174-75 (July 15, 2013). However, the applicant's incapacity and lack of family assistance do not automatically make the nursing home the applicant's authorized representative. Instead, the nursing home must take steps to become the authorized representative. When an applicant is incapacitated and cannot designate an authorized representative in writing, the appropriate avenue for the nursing home is to become the resident's guardian or conservator. 42 C.F.R. § 435.923(a)(2). It appears that Brian Center recognized this because it began the process to become Mrs. Weeks guardian.

it is based on Respondent's determination that Mrs. Weeks was not eligible for Nursing Home Medicaid.

Third, Brian Center argues that it has third party standing to bring this matter. Brian Center acknowledges that Medicaid eligibility is not a constitutionally protected right; however, it asserts that the right of due process in the application process is a constitutionally protected right. Brian Center cites *Feminist Women's Health Ctr. v. Burgess*, 282 Ga. 433 (2007), in support of its argument. That case is inapposite. It involved the medical providers right to challenge the state's denial of reimbursement for medically necessary abortions on behalf of their patients. *Id.* at 435–36. Specifically, the medical providers challenged the constitutionality of the Georgia Medicaid Program and its regulations. *Id.* at 433–436. This administrative court has no authority to declare the Georgia Medicaid Program or any regulations unconstitutional. Ga. Comp. R. & Regs. 616-1-2-.22(3).

Finally, Brian Center argues that it has standing based on the Department of Community Health's breach of contract, and because it has a property right in receiving payment directly from Medicaid. Brian Center may or may not have a breach of contract claim or a right to due process based upon a property right; however, it does not have a right to bring such claims here. OSAH is an administrative court. It is not a court of general jurisdiction. Rather, its jurisdiction is limited to that conferred by the Administrative Procedures Act or other specific state or federal statutes and rules. *See* O.C.G.A. §§ 50-13-1 through 50-13-44; *see also* Ga. Const. art. VI, sec. IV, para. I. For the foregoing reasons, Brian Center does not have standing or authority to request an administrative hearing regarding the denial of Mrs. Weeks' application for Nursing Home Medicaid.

### *The Hearing Request is Untimely*

Respondent is required to provide the opportunity for a hearing in the following instances:

(1) When an individual requests a hearing because he or she believes the agency acted erroneously, denied his or her claim for eligibility or for benefits, issued a decision regarding the individual's liability, or has not acted on the claim with reasonable promptness, including, a decision regarding eligibility, a determination of a spend down amount, a determination of premium or cost sharing amounts, a change in the type or amount of benefits, or a decision regarding a requested "exemption from mandatory enrollment in an Alternative Benefit Plan;"

(2) When a resident in a nursing facility requests a hearing because the resident believes the facility has improperly decided that he or she must be transferred or discharged;

(3) When an individual requests a hearing because he or she believes the state made an improper determination regarding preadmission and annual resident review requirements;

(4) When a Managed Care Organization, Prepaid Inpatient Health Plan, or Prepaid Ambulatory Health Plan enrollee is entitled to a hearing;

(5) When an enrollee in a non-emergency transport Prepaid Ambulatory Health Plan is entitled to a hearing; or

(6) When an enrollee is entitled to a hearing "under subpart B of part 438."

42 C.F.R. § 431.220(a).

Furthermore, Respondent must allow applicants a reasonable amount of time to request a hearing, but that time must not exceed ninety (90) days from the date the notice of the agency's action is mailed. *Id.* § 431.221(d). Respondent allows thirty (30) days to request a hearing. Medicaid Manual, Appendix B-2.

Brian Center filed a Medicaid application on behalf of Mrs. Weeks on December 13, 2018.

(Ex. R-34.) The Notice of Decision denying Ms. Weeks' application for Medicaid benefits is dated June 5, 2019. (Ex. R-35.) Brian Center submitted another Medicaid application on behalf of Mrs. Weeks on August 9, 2019. (Ex. 36.) On November 12, 2019, Brian Center, on behalf of Mrs. Weeks, submitted to the Department of Community Health a request for a reasonable accommodation under the Americans with Disabilities Act ("ADA") in the form of an exception to provide certain requested verification. (Ex. R-40.) On December 10, 2019, Respondent issued a Notice of Decision, denying Mrs. Weeks' August 9, 2019 application. (Ex. 42.)

Brian Center filed a third Medicaid application on behalf of Mrs. Weeks on April 3, 2020. (Ex. 43.) On May 22, 2020, Respondent issued a Notice of Decision regarding the April 3, 2020 application, in which Mrs. Weeks was determined to be eligible for Nursing Home Medicaid beginning January 2020 and Qualified Medicare Beneficiary Medicaid beginning June 2020. (Ex. R-44.)

Brian Center did not request a hearing until October 1, 2020. (Ex. R-45.) Even if Brian Center were authorized to request a hearing on Mrs. Weeks behalf, which it was not, the request for the hearing is untimely. *See* 42 C.F.R. § 431.221(d); Medicaid Manual, Appendix B-2.

Brian Center argues that there has not been a final determination because the agency did not make a decision on its reasonable accommodation request, as well as other unspecified issues. This argument is without merit. First, the request for a reasonable accommodation under ADA is not one of the determinations for which the agency must provide a hearing. 42 C.F.R. § 431.220(a). In other words, individuals are not entitled to a hearing on every action taken by the agency. Rather, there is a right to a hearing when the agency has denied eligibility, determined an individual's spend down amount, determined an individual's premiums and cost sharing, has changed the amount or type of benefits, or has denied an exemption from mandatory enrollment

in an Alternative Benefit Plan. *Id.* Additionally, an individual is entitled to a hearing when the agency has failed to make a determination on one of the listed issues with reasonable promptness.<sup>4</sup>

*Id.*

Second, Respondent did make a determination of eligibility, and when it issued the Notice of Decision dated June 5, 2019, denying Mrs. Weeks' application, she, or her authorized representative was entitled to request a hearing within thirty days of that notice. That did not happen.<sup>5</sup>

Third, Brian Center was not Mrs. Weeks' authorized representative. Therefore, it had no authority to request the reasonable accommodation on her behalf. In fact, Mrs. Weeks was no longer residing at Brian Center on November 12, 2019. She was discharged on October 11, 2019. (Testimony of Jessi Page.)

Finally, even if Brian Center's request for a reasonable accommodation was an issue for a hearing before this administrative court, which the undersigned concludes it is not, Brian Center's decision to request a hearing almost one year after it requested the accommodation was unreasonable, considering the intervening decisions on the multiple applications. For this reason, the undersigned concludes that Brian Center failed to show good cause for its delay.

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<sup>4</sup> There was testimony that the thirty-day time limit would not apply to agency inaction. However, that is when the application is still pending. (Testimony of Dophamia Dean.) An example of such inaction would be when the agency did not make a determination on the application within the Standard of Promptness. (*Id.*) In this case, the agency made determinations on each of the applications submitted. (Exs. R-35, R-42, R-44.) While those determinations may not have been within the Standard of Promptness, the determinations were made, and the thirty-day clock did not begin until the Notices of Decision were issued.

<sup>5</sup> The undersigned notes that Brian Center's request for a hearing would also be untimely if it were appealing the December 10, 2019 Notice of Decision or the May 22, 2020 Notice of Decision.

For the foregoing reasons, Respondent's Motion to Dismiss is **GRANTED**.

**SO ORDERED**, this 28th day of April, 2021.

*Stephanie M. Howells*

**Stephanie M. Howells**  
**Administrative Law Judge**







## **NOTICE OF FINAL DECISION**

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

### Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Grant Mintz - 404-657-2803; Email: gmintz@osah.ga.gov; Fax: 404-657-2803; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

### Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.