

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Administrative Law Court

NOV 24 2014

Ralph King Anderson III, Administrative Law Judge
Trial Court Case No.: 2013-ALJ-080267-AP

SC Court of Appeals

Appellate Case No.: 2013-002415

Brook Waddle,.....Appellant,

v.

South Carolina Department of Health and Human Services.....Respondent,

RESPONDENT'S MOTION TO DISMISS APPEAL

**SOUTH CAROLINA DEPARTMENT
OF HEALTH AND HUMAN SERVICES**

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FACTS

Respondent (“DHHS”) hereby submits its Motion to Dismiss pursuant to Rule 240 of the South Carolina Appellate Court Rules and shows this Honorable Court the following:

Appellant (“Waddle”) was injured in an automobile accident in 2005, which rendered her quadriplegic. Following the accident, Waddle became a Medicaid-eligible individual, who has been receiving services under the South Carolina Head and Spinal Cord Injury (“HASCI”) waiver program. Under the waiver program, participants can receive a mix of services through the South Carolina Department of Disabilities and Special Needs (“DDSN”). Waivers are mechanisms within the Medicaid program under which, by having certain generic requirements of the Medicaid program “waived,” States are able to provide services to eligible participants in ways not allowed under the regular Medicaid program. This waiver and other waiver programs operated by DDSN are for home and community based services under Section 1915(c) of the Social Security Act. 42 U.S.C. § 1396n(c). These types of waivers allow services to be provided in the home or community in lieu of institutional services. DDSN is responsible for the day-to-day operations of the waiver program, but DHHS is the single agency responsible for the South Carolina Medicaid program. [Order on Appeal, pp. 1-2].

Apria Healthcare, Inc. (“Apria”), is a provider of durable medical equipment (“DME”). Apria submitted to KePro, an agent of DHHS, a prior authorization request on behalf of Waddle for a piece of DME, specifically requesting an oximeter cable which measure that oxygen saturation of the blood. However, the request was denied

because Apria did not provide any supporting clinical information with the request. Both Waddle and DHHS attempted to resolve the issue without success. [Id., p. 2].

On January 31, 2013, Waddle filed an appeal of the denial of the oximeter cable to DHHS's Division of Appeals and Hearings. On April 4, 2013, the agency hearing officer issued an Order dismissing Waddle's appeal on procedural grounds. [Id., p. 3]. Waddle appealed the Order dismissing the appeal to the Administrative Law Court ("ALC"), which affirmed the procedural dismissal in an Order dated October 11, 2013, which is the subject of this appeal. The ALC noted in the Order that, as of March 19, 2013, "there is nothing in the Record on Appeal to indicate that the issue has since been resolved." [Id., p. 2 at footnote 4].

ANALYSIS

Generally an appellate court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Sloan v. Dep't of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (internal citations omitted).

As evidenced by the Affidavit attached hereto as Exhibit 1, if the proper code to request an oximeter cable is used by the ordering healthcare provider, the equipment should be approved without the necessity of prior authorization. [Exhibit 1]. In the present case, the healthcare provider, Apria, incorrectly coded the request for the oximeter cable and, therefore, the request was denied. However, the coding issue was discovered when the denial was appealed and the cable was approved manually and Waddle received the cable. Moreover, if the correct code is used by the provider in the future, barring any other error, it will be approved without prior authorization. [Id.].

Based upon the fact that the coding error was identified and the DME provided to Waddle, the issue on appeal is moot. Even if Waddle prevailed in her appeal to this Court, the relief would be to remand the matter to DHHS's Division of Appeals and Hearings for a fair hearing to determine whether or not the denial of the oximeter cable was proper, and whether or not the DME should be provided to Waddle. As DHHS has resolved the issue and provided the oximeter cable to Waddle, and DHHS has indicated that absent any future coding error the oximeter cable will continue to be provided without prior authorization, there is no need for a fair hearing or relief that the fair hearing officer could provide. As such, the present appeal should be dismissed as moot as there remains no actual controversy.

CONCLUSION

For the reasons set forth herein, DHHS respectfully requests that the Court dismiss with appeal as moot.

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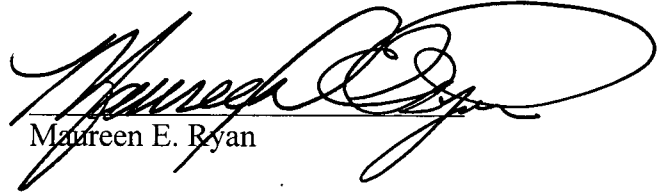
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Counsel for the Respondent

Columbia, South Carolina
November 24, 2014

however, upon appeal the miscoding by the provider was discovered and the cable was manually approved, and the Participant received the cable;

8. If the correct code is used by the provider to bill for this equipment, barring any other error, it will be approved without prior authorization.



Maureen E. Ryan

Sworn to me this 6th day of Nov., 2014

Linda K. Hillier

Notary Public for South Carolina

My Commission Expires 6/3/15

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Brook Waddle,.....Appellant,

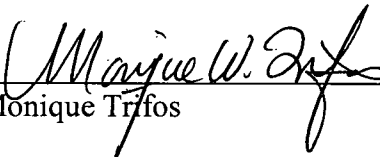
v.

South Carolina Department of Health and Human Services.....Respondent,

CERTIFICATE OF SERVICE

This is to certify that have this day caused to be served upon the person named below the attached **Respondent's Motion to Dismiss Appeal** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Patricia Harrison, Esquire
611 Holly Street
Columbia, SC 29205



Monique Trifos

Columbia, South Carolina
November 24, 2014

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November 24, 2014

(VIA HAND DELIVERY)

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211


Re: Brook Waddle, Appellant, v. South Carolina Department of Health and Human Services,
Respondent
Court of Appeals Docket No.: 2014-002415
Our File No. 5252.00114

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Respondent's Motion to Dismiss Appeal along with proof of service. Please return one (1) filed copy of each to me with my courier. Pursuant to Rule 240(d), SCACR, the motion fee is not required as the movant is an agency of the State of South Carolina. Please do not hesitate to contact me with questions.

Thank you for your kind assistance in this matter.

Sincerely,


Damon C. Wlodarczyk

DCW/

Enclosure

cc: Patricia L. Harrison, Esq.

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