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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Magnolia Pediatrics and Stephen Corontzes, Appellant, vs. South Carolina Department of Health and Human Services, Respondent.	Docket No.: 17-ALJ-08-0319-AP **ORDER**

STATEMENT OF THE CASE

This appeal is before the South Carolina Administrative Law Court pursuant to a Notice of Appeal filed on September 13, 2017, by Appellant, Dr. Stephen Corontzes, in his personal capacity and as owner of Magnolia Pediatrics. Dr. Corontzes appeals an Order of Dismissal issued on August 9, 2017 by the Division of Appeals and Hearings ("DAH") of the South Carolina Department of Health and Human Services ("DHHS").

BACKGROUND

Dr. Corontzes is a medical provider participating in the First Choice by Select Health of South Carolina ("Select Health") network. Select Health, a Managed Care Organization ("MCO"), contracts with DHHS to provide insurance coverage to Medicaid beneficiaries. On November 16, 2016, Select Health notified Dr. Corontzes that an audit of Magnolia Pediatrics' Medicaid claims revealed overpayments in the amount of $264,016.56. The notification instructed Dr. Corontzes to remit repayment within thirty days. On December 15, 2016, Dr. Corontzes filed a notice of appeal with DAH pursuant to the procedures set forth in S.C. Code Ann. Regs. 126-152. The presiding Hearing Officer questioned the jurisdiction of DAH to review Select Health's overpayment determination. For that reason, the Hearing Officer requested the parties brief the jurisdictional issue.

On September 13, 2017, the Hearing Officer dismissed Dr. Corontzes's appeal for lack of jurisdiction. In her well-written order, the Hearing Officer extensively described South Carolina's Medicaid program and DHHS's administering role. In doing so, she explained that traditionally

DHHS is the insurer of Medicaid beneficiaries and acts as the direct payer to Medicaid providers. This type of network is referred to as the "fee-for-service" model. The Hearing Officer also clarified that DHHS participates in other service models wherein it contracts with MCOs to insure Medicaid beneficiaries and act as the payer to the network providers. It is from this latter service model that the Hearing Officer analyzed Dr. Corontzes's jurisdictional basis.

The Hearing Officer reasoned that DAH, as a department of DHHS, is a creature of statute and must therefore act within the limited authority vested in it by the legislature. The Hearing Officer correctly cited S.C. Code Ann. Regs. 126-150 to 126-158 as the law governing DAH's jurisdictional authority over Dr. Corontzes's appeal. Pursuant to 126-150(B), DAH may review "Agency determinations" only if the appealing party possess "a right to appeal pursuant to statutory, regulatory and/or contractual law; *Provided,* that to the extent that an appellant's appellate rights are in any way limited by contract with the Agency or assigned to the Agency, said contractual provision shall control." (Emphasis in original). Accordingly, the Hearing Officer evaluated each potential source from which Dr. Corontzes could derive a right to appeal, e.g., statutory, regulatory, or contractual language indicating a right to a fair hearing. The Hearing Officer found that 126-404(A) was the only applicable source affording a Medicaid provider, such as Dr. Corontzes, the right to appeal a proposed recoupment of overpayments.[1] However, the Hearing Officer ultimately held this regulation was inapplicable, as its clear and unambiguous language affords fair hearings *only* to providers subject to DHHS-determined recoupments, not MCO recoupments. In other words, the right to a fair hearing promulgated in 126-404(A) is generally available only to providers that utilize the fee-for-service network, as DHHS is the entity conducting the audit and determining the recoupment amount. Having found that 126-404(A) was not applicable, and that no other contractual or statutory authority provided Dr. Corontzes with appellate rights, the Hearing Officer dismissed his appeal.

[1] S.C. Code Ann. Regs. 126-404(A) states the following: "Any Medicaid provider who has been notified in writing by [DHHS] of a proposed recoupment of overpayments. . . may exercise his right to a fair hearing pursuant to R126-150 prior to implementation of the sanctions. This subparagraph applies only to postpayment reviews of providers which are conducted by the Bureau of Medicaid Program Assessment."

STANDARD OF REVIEW

Appeals from DAH decisions are heard by this Court pursuant to the Administrative Procedures Act ("APA"). S.C. Code Ann. § 44–6–190. Absent irregularities in the agency's procedure, this Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4). This Court "may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced" in one or more of the following ways:

> [T[he administrative findings, inferences conclusions, or decisions are [found to be] (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

In the underlying matter, the Hearing Officer determined that dismissal of Dr. Corontzes's appeal was mandated due to a lack of subject matter jurisdiction. "Whether a court or tribunal has subject matter jurisdiction is an issue of law." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Thusly, this Court must determine whether the Hearing Officer violated Dr. Corontzes's substantial rights by dismissing his appeal for lack of jurisdiction as a matter of law.

DISCUSSION

On appeal to this Court, Dr. Corontzes brings forth two assignments of error.[2] For his first argument, although to some extent unclear, Dr. Corontzes alleges that absent a fair hearing, Select Health's overpayment recoupment is in violation of his due process rights. As Dr. Corontzes contends, "DHHS cannot avoid the statutory due process expressly provided to South Carolina providers by contracting with a private company to administer its Medicaid program." The substance of Dr. Corontzes's argument is comprised of accusations that DHHS is circumventing constitutional safeguards by delegating its Medicaid responsibilities to Select Health. In conjunction with these statements, Dr. Corontzes also provides several citations to cases involving

[2] It is important to note that Dr. Corontzes does not challenge the Hearing Officer's conclusions that DAH's jurisdiction is derived from S.C. Code Ann. Regs. 126-150, nor does he disagree that a provider's right to dispute overpayments pursuant to 126-404(A) is limited to DHHS recoupments.

claims arising from 42 U.S.C. § 1983, wherein the private actor was found to be acting under color of state law. In essence, Dr. Corontzes's argument is tailored around the proposition that Select Health is acting on behalf of DHHS. However, as further explained below, Dr. Corontzes does not discuss the applicable law utilized to evaluate whether a private entity is conducting state action; nor does he supply any particular support for his argument other than a few generalized statements describing DHHS and Select Health's relationship. It is probable that due to the imprecision of this argument, the Hearing Officer did not specifically address whether Select Health's audit and resulting request for repayment constituted state action.[3] Nevertheless, I find Dr. Corontzes's argument unpersuasive.

In conformity with the minimum requirements of due process, S.C. Code Ann. Regs. 126-404(A) affords Medicaid providers a right to a fair hearing to challenge DHHS-recoupment of alleged overpayments. *See* U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 22. As a fundamental principle of law, a deprivation of one's right to due process must be attributable to governmental action—in this situation, DHHS's action. *See, e.g., Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156, 98 S.Ct. 1729, 1733 (1978). Accordingly, in order for Dr. Corontzes's claim to fall within the ambit of due process protections, he must show that "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351, 95 S.Ct. 449, 453 (1974)(citing *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 176, 92 S.Ct. 1965, 1973 (1972)). The burden is on Dr. Corontzes to demonstrate state action. *Blum v. Yaretsky*. 457 U.S. 991, 1004, 102 S.Ct. 2777, 2786 (1982) (stating that the complaining party must sufficiently demonstrate the close nexus between the private action and the State).

Considering the arguments presented, and the evidence before this Court, I find that Dr. Corontzes has failed to establish the existence of a close nexus between DHHS and Select Health's overpayment determination and recoupment demand. As precedent indicates, some semblance of state control or direction must be shown. *See, e.g., Blum*, 457 U.S. at 1004, 102 S.Ct. at 2786 ("[A] State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State."). In this case, Dr. Corontzes's only

[3] In viewing the Hearing Officer's Order of Dismissal, it appears that she briefly disposed of this particular argument—referring to it as a "public-policy argument"—on sovereign immunity grounds.

demonstration of state action is that Select Health "act[ed] on behalf of, and under the authority delegated by, [DHHS]. . . ." This fact alone is insufficient to establish state action. *Jackson,* 419 U.S. at 350, 95 S.Ct. at 453 ("The mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the Fourteenth Amendment. . . . Nor does the fact that the regulation is extensive and detailed. . . .") (internal citation omitted); *see also Blum,* 457 U.S. 991, 102 S.Ct. 2777 (holding that the action of heavily regulated nursing homes to discharge or transfer Medicaid patients did not constitute state action).

Moreover, to the extent Dr. Corontzes relies on *Catanzano by Catanzano v. Dowling,* 60 F.3d 113 (2d Cir. 1995), to supplement his argument, this Court remains dissuaded. In *Catanzano,* the private entity was not just regulated by the State, rather, the State exercised substantial control over it and the entity was the sole provider of the Medicaid service at issue. *Id.* at 119. In the case before me, however, there has been no showing that a deep integration between DHHS and Select Health exists. As the Hearing Officer found, DHHS contracts with numerous other MCOs to act as the payer and insurer for health services that Medicaid beneficiaries receive. The MCO, not DHHS, bears the risk of loss. Furthermore, Dr. Corontzes has failed to demonstrate, or even allege, that DHSS controls or directs Select Health's audits, cost report periods, or extrapolation methodology. From all appearances, Select Health conducted an independent audit and made an autonomous decision regarding overpayments. Consequently, this Court concludes that Dr. Corontzes has failed to establish a due process violation as Select Health's audit and overpayment determination did not constitute state action.

In his second assignment of error, Dr. Corontzes claims that "the hearing officer's reliance on S.C. Code Ann. Regs. 126-150(B) [was] erroneous, given that provision applies only where appellate rights are limited 'by contract with the Agency or assigned to the Agency. . . [and] the contract is between Appellants and Select Health, not the Agency.'" Dr. Corontzes seems to argue that any right he has to appeal, pursuant to 126-150(B), cannot be barred based on the contract he entered into with Select Health. As Dr. Corontzes succinctly claims, he "did not contract his rights away."

I find Dr. Corontzes's argument confounding. His contention cites the language of 126-150(B), which merely states that *if one has a right to appeal*, a contract entered into with DHHS governs such rights. However, the Hearing Officer, following her thorough analysis, was unable to find a statute, regulation, or contract which bestowed upon Dr. Corontzes a right to appeal to

DAH. Even if a right to appeal was found, at no point did the Hearing Officer rule that any contractual agreement, whether with Select Health or DHHS, barred Dr. Corontzes from seeking review in DAH. While the Hearing Officer discussed contractual appellate rights in her Order of Dismissal, her analysis was in furtherance of locating language granting Dr. Corontzes a right to appeal. This discussion did not state nor indicate that Dr. Corontzes's non-existent right to appeal was contractually estopped. As a result, Dr. Corontzes's argument lacks merit.

Based upon the foregoing, DAH lacked jurisdiction over Dr. Corontzes's appeal. Therefore, the Hearing Officer's Order of Dismissal is hereby Affirmed.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

May 23, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).

This 23 day of May, 2018

By _____
Judicial Law Clerk