

**STATE OF WASHINGTON
HEALTH CARE AUTHORITY
BOARD OF APPEALS**

In Re:)	Docket No.	07-2016-HCA-04204
)		11-2016-HCA-06731
[APPELLANT])		
Appellant)	INTERLOCUTORY REVIEW DECISION	
<hr/>)	Medical/Dental/Transportation/Equipment

I. NATURE OF ACTION, PROCEDURAL HISTORY, & RELEVANT FACTS

1. [APPELLANT] receives medical assistance through the categorically need (CN) Washington Apple Health (WAH) program. Prior to [DATE], the Health Care Authority (HCA) exempted [APPELLANT] from enrollment in managed care due to her homelessness. Prior to this date [APPELLANT] received health care services on a Fee-for-Service basis.

2. By letter dated [DATE], HCA notified [APPELLANT] that she was assigned to Community Health Plan of Washington (CHPW), a managed health care plan (MHCP), with an effective start date of [DATE]. [APPELLANT] did not request reinstatement to her Fee-for-Service coverage within ten calendar days after being sent this notification.

3. On [DATE], [APPELLANT REP], [APPELLANT'S] Representative, verbally requested a hearing on behalf of [APPELLANT] to appeal HCA's decision to enroll [APPELLANT] in a managed health care plan. When requesting the hearing, [APPELLANT REP] asserted that [APPELLANT] is homeless and is requesting reinstatement to the Fee-for-Service program. OAH assigned the hearing request Docket #07-2016-HCA-04204.

4. On [APPELLANT], ALJ Jill Brown heard a Motion to Dismiss brought by HCA. The ALJ denied that motion on [APPELLANT].

5. On [DATE], OAH received a hearing request made by [APPELLANT REP] on behalf of [APPELLANT]. OAH assigned the hearing request Docket #11-2016-HCA-06731.

The hearing request states, in part:

[APPELLANT] was denied medical coverage by HCA today. [APPELLANT] asked to be removed from Managed Care and put on Fee-for-Service, and HCA denied it because

she was unable to provide an address. [APPELLANT] is currently homeless and unable to provide an address

6. There have been numerous pre-hearing conferences under one or both of these docket numbers.

7. On [DATE], ALJ Michael Mowrey heard motions from the parties on several issues. The Agency requested that the two cases should be consolidated due to similarities in the cases with both involving the same Appellant. Under Docket #07-2016-HCA-04204, the Appellant is objecting to the Agency's decision to enroll her in a managed health care plan (MHCP), and sought the relief of being returned to the Fee-for-Service plan she was previously receiving prior to [DATE]. Under Docket 11-2016-HCA-06731, the Appellant objected to the Agency's denial to remove her from her managed health care plan coverage and is seeking the relief of being placed on the "Fee-for-Service" coverage she was previously receiving prior to [DATE].

8. [APPELLANT REP] opposes the consolidation of Docket #07-2016-HCA-04204 and Docket #11-2016-HCA-06731. He believes that issues are significantly different and the Appellant's cases would be prejudiced with consolidation.

9. The Appellant filed a motion for an expedited hearing under Docket #11-2016-HCA-06731 - this docket number was assigned by OAH following the Appellant's request for hearing received [DATE]. This motion was not previously requested under Docket #07-2016-HCA-04204 - this docket number was assigned by OAH following the Appellant's request for hearing received [DATE].

10. The Appellant made a motion to disqualify Mr. MacCanon as the HCA representative because the Appellant had also listed him as a witness in the case and believed it would therefore be a conflict of interest for him to serve as a representative. However, the Appellant withdrew this motion on [APPELLANT].

11. The ALJ made the following rulings on the February 13 motion hearing.

The Agency's motion for [APPELLANT'S] two administrative hearing requests, under Docket #07-2016-HCA-04204 and Docket #11-2016-HCA-06731, to be consolidated into a single hearing, is granted.

The Appellant's motion for an order reinstating the Appellant into the Agency's Fee-for-Service coverage pending an order on the merits in this matter is denied.

The Appellant's motion to place this matter on an expedited case schedule is denied.

No decision is reached on the Appellant's motion regarding whether the Agency representative, Justin MacCanon, should be barred from representing the Agency in this matter, since the Appellant's Representative withdrew this motion, at the Motion Hearing held on [DATE].

12. The Appellant requested an Interlocutory appeal of these rulings.

II. CONCLUSIONS OF LAW

1. **General Authority.** The ALJ has jurisdiction to hear and decide the Appellant's challenge to the decision to place her in managed care.¹ Chapters 182-531 and 182-538 WAC, as well as WAC 182-501-0180, WAC 182-502-0182, and WAC 182-546-5800, implement RCW 41.05.021(1)(m)(iv) and RCW 74.09.520(1)(e). HCA is authorized to promulgate rules related to managed care.² Administrative hearings conducted pursuant to program rules, and subsequent administrative review of the ALJs' *Initial Orders* are subject to the statutes and regulations found at Chapter 34.05 RCW, Chapter 10-08 WAC, and Chapter 182-526 WAC.

2. The HCA is now the designated single state agency for administering the

¹ RCW 74.09.741.

² See RCW 74.09.520(1) (stating that "[t]he term 'medical assistance' may include the following care and services subject to rules adopted by the authority or department...(e) physicians' services..."). See also RCW 41.05.021(1)(m)(iv) (granting the HCA Director authority "[t]o adopt rules to carry out the purposes of chapter 74.09 RCW"); WAC 182-501-0180; WAC 182-502-0182; Chapter 182-538 WAC; and WAC 182-546-5800.

Washington State Medicaid program,³ including physician services.⁴ The federal Centers for Medicare and Medicaid Services generally mandate that HCA, as the single state Medicaid agency, retain final decision-making authority over all Medicaid matters.⁵ The HCA may collaborate with other state agencies and other entities to carry out its duties.⁶ The undersigned was designated by Dorothy F. Teeter, HCA Director, to enter HCA BOA orders.

3. It is well settled that an ALJ's or a Review Judge's authority to render a decision in an administrative hearing is limited to that which is specifically provided for in the authorizing statute(s) or Washington Administrative Code (WAC) provision(s).⁷ "The power of an administrative tribunal to fashion a remedy is strictly limited by statute."⁸

4. **Interlocutory Review.** An ALJ is authorized to enter an order disposing of all contested issues before closing the record and mailing a hearing decision resolving all issues.⁹ Review at the HCA BOA is available when a party disagrees with an initial order.¹⁰ A BOA Review Judge reviews hearing decisions made by an ALJ.¹¹

5. WAC 182-526-0010 provides that an "[i]nitial order' is a hearing decision entered

³ RCW 74.09.530(1)(a). See also 42 USC § 1396a(a)(5); 42 CFR § 431.10; RCW 41.05.021(1)(m)(iv); and RCW 74.09.010 note (stating

Agency transfer -- 2011 1st sp.s. c 15: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section....

(4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority...").

⁴ RCW 74.09.520(1)(e) (defining the term "medical assistance to include "...physicians' services...").

⁵ 42 C.F.R. § 431.10 and the Washington Medicaid State Plan at <http://www.hca.wa.gov/medicaid/medicaidsp/Pages/index.aspx>.

⁶ RCW 74.09.080(1) and RCW 74.09.530(1)(d). See also RCW 41.05.021(m)(iii) (authorizing the HCA Director to enter into agreements with DSHS for administration of the Title XIX (Medicaid) and Title XXI (CHIP) medical programs); RCW 43.20A.865 (directing the DSHS Secretary to enter into agreements with the HCA Director to administer and divide responsibilities related to the Medicaid program); and RCW 74.09.741(4) and (5) (giving an applicant or recipient the option of filing a hearing request with either the Department or HCA, and describing an appellant's right to a consolidated adjudicative proceeding when more than one agency has rendered a decision).

⁷ *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998), and *Taylor v. Morris*, 88 Wn.2d 586, 588 (1977). See also WAC 182-526-0216.

⁸ *Id.* at 558.

⁹ WAC 10-08-210(5) and WAC 182-526-0500(1)(b).

¹⁰ WAC 182-526-0530(2); WAC 182-526-0560(1); and WAC 182-526-0570.

¹¹ WAC 182-526-0010 (defining "Review Judge") and WAC 182-526-0530(2).

(made) by an ALJ that may be reviewed by a review judge at any party's request.”¹²

Neither the term “hearing decision” nor “decision” is defined in Chapter 182-526 WAC or Chapter 34.05 RCW (the Administrative Procedure Act (APA)). The regulatory definition of “initial order” at WAC 182-526-0010 does not clarify whether BOA review of an ALJ’s interlocutory order/decision—such as a grant or denial of a summary judgment motion or some motions to dismiss—as an initial order is permitted.

6. Absent a clear regulation addressing the issue of whether a given order falls under the rubric of an initial order and is therefore reviewable, the undersigned must refer to the enabling statute for guidance, pursuant to WAC 182-526-0220(2). If an interlocutory order on, for example, a motion for summary judgment fits the definition of initial order as referenced in the APA, it is subject to administrative review pursuant to RCW 34.05.464 and APA regulations.¹³

7. The APA defines an order as “...a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.”¹⁴ An ALJ’s order on a motion for summary judgment or some dismissal motions meets the definition of an order because it is a written statement of particular applicability that determines a legal right with finality. Specifically, it determines the right of the moving party to have the matter resolved without a full hearing or the right of the non-moving party to have a full merits hearing on the presented issue(s).

8. Under the APA, an initial order must “...include a statement of findings and conclusions, and the reasons and basis therefore, on all material issues of fact, law, or discretion presented on the record...”¹⁵ Under the OAH’s Model Rules of Procedure, an initial order is required to contain appropriate numbered findings of fact and conclusions of law, and to dispose of the contested issues.¹⁶ Under current HCA procedural rules, the ALJ’s hearing decision must,

¹² WAC 182-526-0010 (defining “initial order”) and WAC 182-526-0530(2).

¹³ WAC 182-526-0530(2); WAC 182-526-0560(1); and WAC 182-526-0570.

¹⁴ RCW 34.05.010(11)(a).

¹⁵ RCW 34.05.461(3).

¹⁶ WAC 10-08-210(2) through (5).

in pertinent part, include findings of fact, state and apply the law in conclusions of law, and state the result as needed to resolve the dispute.¹⁷

9. The orders issued by the OAH on summary judgment motions and some motions to dismiss meet all of these requirements regarding the form and content of an initial order. The caption or form the ALJ applies to the document is not controlling in determining the nature or classification of an interlocutory order versus an initial order. An order meets the most important criteria for an initial order if it finally disposes of a contested issue before the ALJ; for example, whether the matter can be resolved by summary judgment or must proceed to a full merits hearing. As such, an ALJ's order on a motion for summary judgment meets all of the elements of the definition of an order found in the APA. It is an order as defined by RCW 34.05.010(11)(a).

10. While an OAH order on summary judgment, for example, is generally not *the* initial order resolving all of the disputed issues raised in an agency's notice, it is clearly *an* initial order that makes a final determination as to the single issue of whether the Appellant is entitled to a judgment without a full merits hearing.¹⁸ An OAH order is an initial order if it is a final determination of the single, limited legal right of summary judgment. This is because a decision denying the motion cuts off the moving party's right to summary judgment and denies that party the appurtenant benefits of avoiding time and resource loss involved in a full hearing on the merits.¹⁹

11. If an order on a summary judgment motion may be entered without an opportunity for review, the moving party loses the right to have the matter resolved by summary judgment and all the benefits associated with that right. Furthermore, HCA and OAH regulations specifically allow an ALJ to grant (or deny) a preliminary motion based on summary judgment, but they do not

¹⁷ WAC 182-526-0520(3), (5), (6), and (8).

¹⁸ RCW 34.05.010(11)(a).

¹⁹ The Washington State Utilities and Transportation Commission (UTC) has set forth a procedural rule for appeal of interlocutory orders that outlines standards for those reviews. One of the factors to consider when deciding to permit an intermediate UTC appeal is whether it could save the agency and the parties "...substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising the review." WAC 480-07-810.

explicitly limit the right to BOA review of such decisions.²⁰ Because an order on a motion for summary judgment is an initial order/hearing decision/order, it is subject to review by the BOA.²¹

12. Not every order entered by an ALJ prior to a decision on the merits in a case is subject to interlocutory review at the HCA BOA under the foregoing analysis. BOA review of orders entered prior to a decision on the merits is limited to orders that make a final disposition as to a legal right.²² Chapter 182-526 WAC itself makes a clear distinction between unappealable procedural orders and appealable hearing decisions.

13. Orders concerning strictly procedural matters, such as those (e.g., continuance motions) that are specifically permitted to be addressed in prehearing conference orders, are not subject to intermediate review at the BOA and must be challenged by filing an objection with the ALJ.²³ However, Chapter 182-526 WAC contains no similar restriction on BOA review of orders that go beyond the limited scope of procedural orders that may be entered after a prehearing conference.

14. Decisions to consolidate or bifurcate cases are procedural matters on which the Appellant does not have a right to interlocutory administrative review prior to conclusion of the hearing. No substantive rights were determined by those decisions. The same is true concerning the scheduling of a hearing. It does not by itself determine anyone's substantive legal rights.

15. The decision to keep the Appellant in managed care is similar to a dispute about continued benefits. It concerns the substantive rights of the Appellant over the period of time between the request for a hearing and the hearing on the merits of the case. Consequently the Board of Appeals has generally held that those decisions may be reviewed in an interlocutory appeal.

²⁰ WAC 10-08-135 and WAC 182-526-0215(2)(c).

²¹ RCW 34.05.464; WAC 10-08-210; WAC 182-526-0215(4); and WAC 182-526-0560(1) and (2).

²² RCW 34.05.010(11)(a) and 34.05.464.

²³ RCW 34.05.431; WAC 10-08-090; WAC 10-08-130(1)(e); and WAC 182-526-0195.

16. Regarding exemptions from enrollment, WAC 182-538-130 states as follows:

(1) The agency approves a request to exempt a client from enrollment or to end enrollment from mandatory managed care when any of the following apply:

(a) The client or enrollee is eligible for medicare;

(b) The client or enrollee is not eligible for managed care enrollment, for Washington apple health programs, or both; or

(c) A request for exemption or to end enrollment is received and approved by the agency as described in this section.

(i) If a client requests exemption within the notice period stated in WAC [182-538-060](#), the client is not enrolled until the agency approves or denies the request.

(ii) If an enrollee request to end enrollment is received after the enrollment effective date, the enrollee remains enrolled pending the agency's decision, unless continued enrollment creates loss of access to providers for medically necessary care.

17. WAC 182-538-060(8)(c)(ii) allows a client assigned to a managed care plan ten calendar days to contact the Agency to change the assignment. [APPELLANT] did not contact the Agency within ten days after being sent notice of her assignment to MHCP coverage. In the [APPELLANT] ruling on the motion to dismiss brought by HCA, the ALJ found that she was served with the notice. This is, apparently, one of the reasons why [APPELLANT REP] did not want the cases combined. However, even if the two cases were not consolidated, the issue of [APPELLANT] being served with the notice of enrollment in managed care would still be *res judicata*. Since this request was not timely, and there has been no other basis shown that would allow for her reinstatement to Fee-for-Service coverage pending resolution of this proceeding, the request for reinstatement should be denied.

III. DECISION AND ORDER

1. The Appellant's request for review of the Administrative Law Judge's decision to consolidate the two cases is **denied**.
2. The Appellant's request for a review of the decision to place the case on an expedited schedule is **denied**.
3. The decision to not immediately return the Appellant to Fee for Service may be reviewed and was reviewed. The decision of the ALJ denying the request is upheld.
4. This matter should proceed toward its hearing on the merits as OAH schedules it.

Mailed on the 7th day of June 2017

CLAYTON KING
Review Judge/Board of Appeals

Copies have been sent to: [APPELLANT], Appellant
[APPELLANT REP], Appellant's Representative
Justin MacCanon, Agency Representative, MS: 45504
Michael Mowrey, ALJ, [CITY] OAH