[Cite as *Mahoning-Youngstown Community Action Partnership v. Ohio Dept. of Edn.*, 2011-Ohio-6394.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mahoning-Youngstown Community Action Partnership,	:	
Appellant-Appellant,	:	Nos. 11AP-582 and 11AP-583
v.	:	(C.P.C. No. 11CVF07-1577)
Ohio State Department of Education,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

NUNC PRO TUNC[1]

D E C I S I O N

Rendered on December 15, 2011

Roetzel & Andress, L.P.A., Lewis W. Adkins, Jr., Gina A. Kuhlman and *Nathan J. Pangrace*, for appellant.

Michael DeWine, Attorney General, and *Holly E. LeClair*, for appellee.

APPEALS from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Mahoning-Youngstown Community Action Partnership ("MYCAP"), appeals the findings of the Franklin County Court of Common Pleas that there is a lack of subject-matter jurisdiction to hear an appeal of two decisions requiring $877,547.43 in

[1] This *Nunc Pro Tunc* decision was issued to correct a clerical error contained in the original decision released on December 13, 2011, and is effective as of that date.

reimbursements from MYCAP. For the following reasons, we affirm the trial court's decision.

{¶2} MYCAP presents one assignment of error:

> I. The trial court erred as a matter of law in dismissing appellant's administrative appeals, finding that it did not have jurisdiction over the appeals.

{¶3} MYCAP is a non-profit community organization located in Youngstown, Ohio. It participated in two federally-funded programs designed to provide food to children and adults who qualify for such assistance. The Summer Food Service Program and the Child and Adult Care Food Program which MYCAP participated in are governed by federal law 7 C.F.R. 225 and 226 and administered through the state of Ohio by the Ohio Department of Education ("ODE").

{¶4} In May 2010, ODE conducted a special audit of MYCAP and it was determined MYCAP owed a substantial sum of money. MYCAP appealed that determination in accordance with federal regulations which provided for a hearing. ODE selected an independent private attorney on a contract basis to serve as the hearing officer for both hearings. The hearing officer issued his decisions by February 2011. The decisions required MYCAP to reimburse ODE a total of $877,547.43.

{¶5} MYCAP filed appeals for the two decisions under R.C. 119.12 in the Franklin County Court of Common Pleas. ODE filed motions to dismiss for lack of subject-matter jurisdiction. The two cases were consolidated and the trial court issued its final appealable order on June 8, 2011 finding that it lacked jurisdiction. MYCAP timely appealed to this court.

{¶6} The standard of review for a motion to dismiss for lack of subject-matter jurisdiction is whether any cause of action cognizable by the forum has been raised in the complaint. *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80. In reviewing a motion to dismiss for lack of subject-matter jurisdiction, this court's standard of review is de novo. *Groza-Vance v. Vance*, 162 Ohio App.3d 510, 2005-Ohio-3815, ¶13.

{¶7} The state courts generally do not engraft state procedures of administrative appeals onto a federal program, particularly when the federal program clearly lays out its own procedures for claim disputes and expressly labels its procedures as "final." 7 C.F.R. 225 and 226, the regulations governing these specific programs, do not provide for appeals through the state courts. Instead, they permit independent hearings to be conducted. The hearings are governed by federal law which states that such a hearing is to be the final administrative determination: 7 C.F.R. 225.13(b)(12) states, "[t]he determination by the State review official is the final administrative determination to be afforded to the appellant."; 7 C.F.R. 226.6(k)(5)(x) holds: "[t]he determination made by the administrative review official is the final administrative determination to be afforded to the institution and the responsible principals and responsible individuals." The federal regulations have clearly specified that the determination by the hearing officer is the final administrative determination.

{¶8} In the case at bar, we have a federal program funded with federal dollars with a regulatory scheme that clearly defines the method of resolving claims which goes as far as to state that the hearing determination is the final administrative determination to be afforded. The federal scheme does not specially mention judicial appeals to the state courts. However, if Ohio's R.C. Chapter 119 administrative appeal were to be engrafted

onto the federal procedure, it would arguably be in conflict with the finality the federal regulations seeks.

{¶9} Further, a reading of the federal code would also suggest that if there were a permissible entity to appeal to beyond the hearing officer, it would lie within the U.S. Department of Education. The regulations specify that the ultimate authority over claims in these food programs rests with the Secretary of the U.S. Department of Agriculture. 7 C.F.R. 225.18(h) and 7 C.F.R. 226.25(f) contain the same language "[t]he Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the program." In brief, R.C. Chapter 119 does not apply to the federal legislative scheme at issue. We, therefore, agree with the trial court that it lacked subject-matter jurisdiction. We overrule MYCAP's assignment of error and affirm the decision of the trial court.

Judgment affirmed.

BRYANT, P.J., and BROWN, J., concur.

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