

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Ikemefuna Nkanginieme, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 14AP-596 (C.P.C. No. 14CV-4393)
Ohio Department of Medicaid,	:	(ACCELERATED CALENDAR)
Appellee-Appellee.	:	

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D E C I S I O N

Rendered on February 24, 2015

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*Brennan, Manna & Diamond, LLC, Scott P. Sandrock, and Gregory L. Watkins*, for appellant.

*Michael DeWine*, Attorney General, and *Allan K. Showalter*, for appellee.

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APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Plaintiff-appellant, Ikemefuna Nkanginieme, M.D., appeals from the judgment of the Franklin County Court of Common Pleas granting the motion to dismiss filed by defendant-appellee, Ohio Department of Medicaid ("ODM"), for lack of subject-matter jurisdiction over appellant's R.C. 119.12 administrative appeal. For the reasons that follow, we affirm the judgment of the trial court.

**I. BACKGROUND**

{¶ 2} Appellant is a physician and Medicaid provider in Stark County, Ohio. On January 15, 2014, ODM suspended appellant's Medicaid provider agreement ("provider agreement") and corresponding payments pursuant to 42 C.F.R. 455.23 and R.C. 5164.36,

the federal and state statutes directing such suspensions in response to "credible allegations of [Medicaid] fraud."

{¶ 3} ODM sent appellant notice of the suspension by letter dated January 17, 2014. The notice, signed by ODM's chief of the Bureau of Provider Services, informed appellant of the suspension and stated that ODM "has determined that a credible allegation of fraud exists based on evidence submitting claims and receiving reimbursements for services not provided. An investigation is pending under the Medicaid program against you." (Jan. 17, 2014 Notice of Suspension Letter, 1.)

{¶ 4} In the notice, ODM also informed appellant that the "suspension will remain in effect until: 1. ODM or the Attorney General's Office determines that there is insufficient evidence to support the allegation of fraud; or 2. Legal proceedings related to the provider's alleged fraud are completed." (Jan. 17, 2014 Notice of Suspension Letter, 1.) The notice then describes appellant's option, pursuant to R.C. 5164.36, to request a reconsideration of the suspension by sending, within 30 days of receipt of the notice, written information to the director of ODM pertaining to whether the suspension was based on a mistake of fact or based on actions not sanctioned by the provider. The notice concludes by indicating "[d]ecisions made by the Director of ODM are not appealable or subject to further reconsideration." (Jan. 17, 2014 Notice of Suspension Letter, 2.)

{¶ 5} Following receipt of the notice, appellant's attorney contacted ODM and the Ohio Attorney General's office to learn additional information about the allegations of fraud. An ODM representative indicated that "a question was raised regarding billing" for the service date of October 1, 2009. (Feb. 12, 2014 Request for Reconsideration Letter, 3.)

{¶ 6} On February 12, 2014, appellant submitted a timely request for reconsideration to ODM along with the required written information. Appellant provided information about the October 1, 2009 date of service, described the importance of his continued care to Medicaid patients, and asserted that due process required more information for a meaningful opportunity to respond. Appellant also "acknowledge[d] that approximately two years ago a request was made for his office to provide copies of multiple patient records," and he provided those specific records, presumably to either ODM or the Attorney General's office. (Feb. 12, 2014 Request for Reconsideration Letter, 3.)

{¶ 7} By letter dated April 8, 2014 and mailed April 11, 2014, ODM informed appellant that it had conducted an administrative review, pursuant to R.C. 5164.36, and "determined that a credible allegation of fraud remains and an investigation is ongoing." (Apr. 8, 2014 Reconsideration of Suspension Letter.) As such, "[f]ederal law prohibit[ed] ODM from changing the status of [appellant's] suspension," and therefore the January 17, 2014 suspension would "remain in effect." (Apr. 8, 2014 Reconsideration of Suspension Letter.)

{¶ 8} On April 22, 2014, appellant submitted a notice of appeal to both ODM and the Franklin County Court of Common Pleas. In the notice of appeal, appellant indicated the appeal is "pursuant to Chapter 119 of the Ohio Revised Code from the Order of the Ohio Department of Medicaid \* \* \* dated April 8, 2014." In addition to reserving the right to add additional errors after reviewing the record, appellant stated four "grounds for the appeal and the errors complained of":

I. The Order of the Ohio Department of Medicaid should be reversed on the basis that the Order is not supported by reliable, probative and substantial evidence and is not otherwise in accordance with law;

II. Appellant was denied due process in violation of the Ohio and United States Constitutions when the State did not provide Appellant a meaningful opportunity to be heard;

III. The Ohio Department of Medicaid failed to respond within forty-five (45) days after Appellant's request for reconsideration as required by law;

IV. Appellant was denied due process in violation of the Ohio and United States Constitutions when the State did not specify the facts upon which it based its decision, did not respond to mitigating factors described by Appellant, and the decision conflicted with requirements with the Ohio Medical Board.

{¶ 9} After first securing an extension for certifying a record and filing merit briefs, on June 3, 2014, ODM filed a motion to dismiss asserting the trial court lacked subject-matter jurisdiction over an R.C. Chapter 119 administrative appeal in the context of suspensions of Medicaid provider agreements due to credible allegations of fraud. On

June 11, 2014, appellant filed his memorandum in opposition to ODM's motion to dismiss, and on June 18, 2014, ODM filed a reply.

{¶ 10} On June 26, 2014, the trial court granted ODM's motion and dismissed appellant's notice of appeal with prejudice. According to the trial court, the "suspension of a Medicaid provider agreement pending a fraud investigation is not appealable pursuant to R.C. 119.12." (June 26, 2014 Decision and Entry, 1.) Specifically, the trial court concluded "[t]he process for reviewing a suspension of a Medicaid provider agreement is laid out in R.C. 5164.36" and "[a]s seen [from R.C. 5164.36(H)(1)], this decision is not an adjudication and hence cannot be appealed pursuant to R.C. 119.12." (June 26, 2014 Decision and Entry, 1-2.) On June 28, 2014, appellant submitted a timely notice of appeal.

## **II. ASSIGNMENTS OF ERROR**

{¶ 11} Appellant raises the following assignments of error for our review:

[I.] The Franklin County Court of Common Pleas erred as a matter of law by holding that Appellee's denial of Dr. Ikemefuna Nkanginieme's Medicaid provider agreement is not an adjudication.

[II.] The Franklin County Court of Common Pleas erred as a matter of law by holding that R.C. § 5164.36 prohibits appellate review of Appellee's suspension of Dr. Ikemefuna Nkanginieme's Medicaid provider agreement.

[III.] The Franklin County Court of Common Pleas erred as a matter of law when it granted Appellee's Motion to Dismiss pursuant to R.C. § 5164.36 as such statute is unconstitutional as it violates Dr. Ikemefuna Nkanginieme's Constitutional right to due process.

[IV.] The Franklin County Court of Common Pleas erred as a matter of law by failing to afford Dr. Ikemefuna Nkanginieme his Constitutional right to due process.

## **III. DISCUSSION**

### **A. Standard of Review**

{¶ 12} A trial court's decision to dismiss a case for lack of subject-matter jurisdiction is a question of law reviewed by the appellate court de novo. *Daniel v.*

*Williams*, 10th Dist. No. 10AP-797, 2011-Ohio-1941, ¶ 9, citing *Ford v. Tandy Transp., Inc.*, 86 Ohio App.3d 364, 375 (4th Dist.1993).

{¶ 13} In reviewing whether the trial court has subject-matter jurisdiction, an appellate court must determine "whether the complaint has raised any cause of action which the court has authority to decide." *Id.*, citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989); *McHenry v. Indus. Comm.*, 68 Ohio App.3d 56, 62 (4th Dist.1990). In other words, this court must independently determine whether the notice of appeal here, standing in for the complaint, "contains sufficient allegations to demonstrate that the common pleas court has jurisdiction over the asserted claims." *Daniel*. Like the trial court, we may consider material in the notice as well as other material pertinent to determining jurisdiction. *Id.*, citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211 (1976), paragraph one of the syllabus. Interpretation of statutory authority, as a question of law, also requires de novo review without deference to the trial court's findings. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶ 8.

#### **B. First Assignment of Error**

{¶ 14} In his first assignment of error, appellant essentially contends that the Franklin County Court of Common Pleas has subject-matter jurisdiction over the appeal for two reasons: (1) ODM's suspension of his provider agreement is an "adjudication" under the Medicaid statute, specifically section R.C. 5164.38(D); and (2) ODM's suspension of his provider agreement is an "adjudication" under the administrative appeals statute definition, entitling him to an R.C. 119.12 appeal.

{¶ 15} Subject-matter jurisdiction refers to the statutory or constitutional power of a court to hear a case. *Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 25, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11. In the context of administrative appeals, "[c]ourts of common pleas only have 'such powers of review of proceedings of administrative officers and agencies as may be provided by law.' " *Clifton Care Ctr. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 12AP-709, 2013-Ohio-2742, ¶ 9, quoting Ohio Constitution, Article IV, Section 4. *See also Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001) ("The right to appeal an administrative

decision is neither inherent nor inalienable; to the contrary, it must be conferred by statute."). Thus, jurisdiction over an administrative appeal is improper "unless granted by R.C. 119.12 or other specific statutory authority." *Abt v. Ohio Expositions Comm.*, 110 Ohio App.3d 696, 699 (10th Dist.1996).

{¶ 16} To determine whether R.C. 119.12 or other statutory authority does or does not grant the common pleas court jurisdiction over this appeal, we must look to the language of the statutes involved to determine legislative intent. *See State v. Jordan*, 89 Ohio St.3d 488, 491-92 (2000); *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, 121 Ohio St.3d 622, 2009-Ohio-2058, ¶ 13. "The legislative intent to specifically make administrative actions subject to R.C. Chapter 119 must be clear." *Springfield Fireworks, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 10th Dist. No. 03AP-330, 2003-Ohio-6940, ¶ 28; *Clifton Care Ctr.* at ¶ 11. "All statutes relating to the same subject matter must be read *in pari materia*, and construed together, so as to give the proper force and effect to each and all such statutes." (Emphasis sic.) *In re K.J.*, 10th Dist. No. 13AP-1050, 2014-Ohio-3472, ¶ 21, citing *State v. Cook*, 128 Ohio St.3d 120, 2010-Ohio-6305, ¶ 45.

{¶ 17} Turning to appellant's first argument, we disagree that the suspension here is an adjudication appealable, pursuant to R.C. 119.12, by way of Medicaid statute section R.C. 5164.38. R.C. 5164.38 reads in pertinent part:

(C) Except as provided in division (E) of this section \* \* \*, the department shall do any of the following by issuing an order pursuant to an adjudication conducted in accordance with Chapter 119. of the Revised Code:

\* \* \*

(3) Suspend or terminate a medicaid provider's provider agreement;

\* \* \*

(D) Any party who is adversely affected by the issuance of an adjudication order under division (C) of this section may appeal to the court of common pleas of Franklin county in accordance with section 119.12 of the Revised Code.

(E) The department is not required to comply with division (C)(1), (2), or (3) of this section whenever any of the following occur:

\* \* \*

(5) Pursuant to either section 5164.36 or 5164.37 of the Revised Code, the medicaid provider's provider agreement is suspended and payments to the provider are suspended pending indictment of the provider.

\* \* \*

(9) The medicaid provider's provider agreement is suspended, terminated, or not revalidated because of \* \* \* [a]ny reason authorized or required by \* \* \* 42 C.F.R.\* \* \* 455.23.

{¶ 18} R.C. 5164.38(D) expressly permits R.C. 119.12 appeals to the Franklin County Court of Common Pleas, but only from adjudication orders issued "under division (C) of this section." R.C. 5164.38(C) requires ODM to comply with the adjudication order process outlined in R.C. Chapter 119 when issuing certain types of decisions or actions, including suspensions of Medicaid provider agreements generally. However, by its own terms, R.C. 5164.38(C) is subject to the exceptions in R.C. 5164.38(E). The R.C. 5164.38(E) exceptions include suspensions due to credible allegations of fraud under both the state statute, R.C. 5164.36, and its federal model, 42 C.F.R. 455.23. *See* R.C. 5164.38(E)(5) and (9).

{¶ 19} Thus, under the plain language of the statute, suspensions of provider agreements based on credible allegations of fraud do not issue as adjudication orders under R.C. 5164.38(C), and therefore the R.C. 119.12 appeal right granted by R.C. 5164.38(D) does not attach. *See also Bayside Nursing Ctr. v. Ohio Dept. of Health*, 96 Ohio App.3d 754, 762 (10th Dist.1994) (finding that a letter terminating a provider agreement, ordinarily an "adjudication" subject to an R.C. 119.12 appeal under formerly numbered R.C. 5164.38(C), did not constitute an "adjudication" where the reason for the termination fell among the exceptions listed in formerly numbered R.C. 5164.38(E)). As such, R.C. 5164.38(D) fails as a basis for the trial court's subject-matter jurisdiction over this appeal.

{¶ 20} In his second argument to his first assignment of error, appellant maintains that the April 8, 2014 reconsideration letter, signed by the ODM director and containing a "determination," fits the definition of "adjudication," which he believes entitles him to an R.C. 119.12 appeal. (Appellant's Brief, 12-14.)

{¶ 21} The right to an R.C. Chapter 119 administrative appeal is codified in R.C. 119.12, which states in pertinent part, "[a]ny party adversely affected by any order of an agency issued pursuant to any other *adjudication* may appeal to the court of common pleas of Franklin county." (Emphasis added.) An "adjudication" is defined in R.C. 119.01(D) as "the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include \* \* \* acts of a ministerial nature."<sup>1</sup>

{¶ 22} To meet this definition, appellant equates the April 8, 2014 reconsideration letter here to a letter determined to be an adjudication in *Miller v. Crawford*, 7th Dist. No. 06-MA-38, 2006-Ohio-4689. *Miller* involved a day care provider's R.C. 119.12 appeal after an administrative hearing to consider, among other items, a letter from the Mahoning County Department of Job and Family Services that recommended revocation of her license due to a non-fraud regulation violation. The *Miller* court found the letter at issue to constitute an "adjudication" because it was signed by the agency's highest authority and was a "determination."

{¶ 23} We agree with appellant that the April 8, 2014 reconsideration letter was a determination made by ODM's highest authority: the letter was signed by ODM's director and states ODM "determined" credible allegations of fraud remain. However, both the definition of adjudication and the right-to-appeal language in R.C. 119.12 require a determination by the highest authority of an "agency," a term of art much more narrow than its colloquial use. *Miller* did not address this issue.

{¶ 24} The R.C. Chapter 119 definition of "agency" is restricted to three categories: agencies specifically named in the definition; "the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13 of the Revised Code"; and

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<sup>1</sup> " 'Adjudication' has the same meaning" in the Medicaid chapter as the administrative appeals chapter. R.C. 5164.38(A)(1).



the licensing functions of agencies with the authority to issue, suspend, revoke or cancel licenses. R.C. 119.01(A); *Plumbers & Steamfitters Joint Apprenticeship Comm. v. Ohio Civil Rights Comm.*, 66 Ohio St.2d 192, 193 (1981).

{¶ 25} The ODM is not specifically named in the definition. R.C. 119.01(A). Also, provider agreements are excluded from the definition of "license," so licensing functions are not implicated. R.C. 119.01(B). Therefore, for these facts to fit the statutory definition of "agency," a "function" of ODM must be specifically made subject to R.C. 119.01 to 119.13.

{¶ 26} The general decisions and actions listed in R.C. 5164.38(C) can qualify as functions made specifically subject to an R.C. 119.12 appeal through R.C. 5164.38(D). *See Clifton Care Ctr.* at ¶ 11-12. As discussed in the previous argument, however, cases involving credible allegations of fraud are carved out of the general division (C) functions as exceptions to R.C. Chapter 119 compliance. R.C. 5164.38(C), (D), and (E); *Bayside Nursing Ctr.* at 762. Thus removed, suspensions of provider agreements involving credible allegations of fraud do not remain a part of the general "functions" specifically made subject to an R.C. 119.12 appeal in R.C. 5164.38(D). Therefore, suspensions of Medicaid provider agreements due to credible allegations of fraud do not meet the definition of "agency" requisite to establish an "adjudication." Accordingly, having determined that ODM's reconsideration of its suspension of appellant's provider agreement is not an "adjudication" under R.C. 5164.38, 119.01 or 119.12, we overrule appellant's first assignment of error.

### **C. Second Assignment of Error**

{¶ 27} In his second assignment of error, appellant contends R.C. 5164.36(H)(1) does not block an R.C. 119 appeal, but merely exempts ODM from having to hold an evidentiary hearing during the suspension reconsideration decision process in cases involving credible allegations of fraud. Appellant then contends that under the language of R.C. 5164.36, "it is clear that [appellant] is entitled to appeal Appellee's Response." (Appellant's Brief, 15.)

{¶ 28} R.C. 5164.36 is the state Medicaid statute section that addresses suspension of Medicaid provider agreements and payments in cases of credible allegations of fraud.

Division (H)(1) provides the Medicaid provider with the option of asking the director of ODM to reconsider the suspension decision. R.C. 5164.36(H)(1) reads:

Pursuant to the procedure specified in division (H)(2) of this section, a medicaid provider or owner subject to a suspension under this section may request a reconsideration of the suspension. The request shall be made not later than thirty days after receipt of a notice required by division (E) of this section. *The reconsideration is not subject to an adjudication hearing pursuant to Chapter 119. of the Revised Code.*

(Emphasis added.)

{¶ 29} In the R.C. 119.01 definitions, "hearing" is separately defined from "adjudication." A "hearing" is "a public hearing by any agency in compliance with procedural safeguards afforded by sections 119.01 to 119.13 of the Revised Code." R.C. 119.01(E).

{¶ 30} It is clear that the language of R.C. 5164.36(H)(1) expressly permits ODM to forgo holding a public hearing in compliance with R.C. Chapter 119 requirements prior to making a reconsideration decision of a suspension in cases involving fraud allegations. While this language alone does not *prohibit* appeal,<sup>2</sup> it certainly does not expressly *permit* appeal. The drafters of the Medicaid chapter granted the right to an R.C. 119.12 appeal using the direct language in R.C. 5164.38(D). No equivalent language exists in R.C. 5164.36(H)(1). Accordingly, because R.C. 5164.36(H)(1) ultimately does not provide a separate basis for the trial court's jurisdiction over an R.C. 119.12 appeal, we overrule appellant's second assignment of error.

#### **D. Third and Fourth Assignments of Error**

{¶ 31} Because they are interrelated, we will review appellant's third and fourth assignments of error collectively. Together, these assignments assert that, in dismissing the case, the common pleas court erred as a matter of law due to various violations of appellant's constitutional right to due process. Specifically, appellant contends the trial court erred because R.C. 5164.36(H) is unconstitutional as applied to him, ODM failed to comply with the process outlined in R.C. 5164.36 in violation of his due process rights,

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<sup>2</sup> The newly promulgated Administrative Code chapter on Medicaid predicates the right to a judicial appeal on first having an administrative hearing. Ohio Adm.Code 5160-70-01(A)(6); 5160-70-06(D), effective Jan. 1, 2015.

and the trial court's dismissal effectively denied him any remedy in violation of his due process rights.

{¶ 32} Appellant brought his appeal "pursuant to Chapter 119." (Apr. 22, 2014 Notice of Appeal, 1.) While "[g]enerally, decisions of administrative agencies are always subject to review," due process does not require an appeal under R.C. Chapter 119. *Clifton Care Ctr.* at ¶ 19. As previously discussed, subject-matter jurisdiction over an R.C. Chapter 119 administrative appeal must be rooted in a statutory grant. The first two assignments of error detail how the trial court correctly concluded it did not have subject-matter jurisdiction over an R.C. Chapter 119 appeal under the facts of this case. Therefore, the posture of this appeal deprived the trial court of jurisdiction to address the merits of appellant's arguments, including those related to due process. Accordingly, appellant's third and fourth assignments of error are rendered moot.

#### **IV. CONCLUSION**

{¶ 33} Having determined that suspensions of Medicaid provider agreements due to credible allegations of fraud are not subject to R.C. 119.12 appeal, we overrule appellant's first and second assignments of error. As such, appellant's third and fourth assignments of error are rendered moot. We hereby affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

DORRIAN and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, formerly of the Third Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

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