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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ELEANOR DEY
Plaintiff

Case No: CV-17-874747

Judge: STUART A FRIEDMAN

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

MEMORANDUM OF OPINION AND ORDER.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

- OSJ -

Judge Signature

Date

FILED
2017 MAY 10 A 10:41
CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ELEANOR DEY)	CASE NO. 874747
)	
APPELLANT,)	MEMORANDUM OF OPINION
)	AND ORDER
v.)	
)	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES)	
)	
APPELLEE.)	

FRIEDMAN, J.:

{¶1.} This matter is before the Court on appellant Eleanor Dey's appeal of her denial of Medicaid benefits by appellee Ohio Department of Job & Family Services. The Court has carefully reviewed the parties' briefs and the certified record.¹

{¶2.} Appellant raises three errors for the Court to consider regarding appellee's decision. Appellant argues that appellee:

1. violated appellant's fair hearing rights;
2. violated appellant's due process rights; and
3. discriminated against appellant based upon her disability.

{¶3.} In appellant's brief, the attorney for Broadview Nursing Home, Inc. ("Broadview")² states that Ms. Dey's interests are represented by Broadview, Ms. Day's Authorized Representative, and as such, may file this appeal before the Court on her behalf.

{¶4.} Under 42 CFR § 435.923, applicants and beneficiaries are permitted to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other

¹ The certified record consists of two sections: the administrative appeal is numbered pages 1-27; the initial hearing record is separately numbered at pages 1-38.

² Administrative Appeal, p. 8.

ongoing communications with the agency. Such a designation must include the applicant's signature. 42 CFR § 435.9239(a)(1).

{¶15.} Further, the authority to act on behalf of an applicant or beneficiary is also conferred by a court order establishing a legal guardianship or by a power of attorney. 42 CFR § 435.9239(a)(2). The certified record shows that Ms. Dey has neither a court-appointed guardian nor a person with authority under a power of attorney to represent her interests.³ Therefore, any appointment of an authorized representative must be in writing signed by Ms. Dey.

{¶16.} A thorough review of the certified record fails to produce any written document, signed by Ms. Dey, appointing Broadview as her Authorized Representative. Indeed, counsel for Broadview affirmatively states that "Ms. Dey effectively had no AR to assist her in the administrative process."⁴

{¶17.} In its brief, appellee raises the issue of standing. Appellee urges dismissal on the grounds that this appeal is not being prosecuted by the real party in interest, but by an entity without standing. The Court finds that the issue of standing is dispositive of the instant appeal. Even if Ms. Dey (or a guardian or designated power of attorney) had signed an Authorized Representative Designation form, based upon the language of R.C. 5101.35(E) and Ohio Admin. Code 5101:6-3-02(A)(3), Broadview's authority would be limited to the narrow restrictions contained in these code sections, which follow the parameters set forth in 42 C.F.R. 435.923(a)(1).

{¶18.} Broadview's assertion that it is Ms. Dey's authorized representative without supporting documentation fails. "Unless a statute provides otherwise, no person can appeal from an adjudicatory order of an administrative agency to which he was not a party." *Crosby-Edwards v. Ohio Bd. Of Embalmers & Funeral Dirs.*, 175 Ohio App. 3d 213, 221, 2008 Ohio 762, quoting *Harrison v. Pub. Util. Com.* (1938), 134 Ohio St. 346, 347.

{¶19.} The Court finds that Broadview has no standing to bring this judicial appeal on Ms. Dey's behalf. As Broadview has no standing to pursue Ms. Dey's appeal, the Court need not address her assignments of errors.

³Initial Hearing, pp. 9, 16.

⁴Administrative Appeal, p. 12.

{¶10.} Ms. Day's appeal is dismissed.

IT IS SO ORDERED.



JUDGE STUART A. FRIEDMAN

SERVICE

Pursuant to Civ.R. 58(B), the Clerk of Courts is directed to serve this judgment in a manner prescribed by Civ.R. 5(B). The Clerk must indicate on the docket the names and addresses of all parties, the method of service, and the costs associated with this service.



JUDGE STUART A. FRIEDMAN