IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

JUMP START CHILD DEVELOPMENT CENTER,

Appellant,

vs.

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,

Appellee.

CASE NO. 09 CV 4017

JUDGE SWEENEY

JUDGMENT ENTRY

This matter came before the Court upon the Objections to the Decision of the Magistrate filed on April 4, 2012. The Court having considered the Objections and the Response to the Objections of the Decision of the Magistrate filed by the Defendants finds after review of Rule 53(E)(4) that no error of law or other defect appears on the face of the Magistrate's Decision. Therefore, the Magistrate's Decision is hereby adopted and made the action, Judgment and Order of this Court.

Therefore, Judgment is hereby entered as follows:

I. Introduction

Appellee Ohio Department of Job and Family Services ("ODJFS") proposed to deny the application for renewal of the child-care license of Appellant, Jump Start Child Development Center. ODJFS was required by law to send Jump Start a notice of the proposed denial and give Jump Start 30 days after the mailing of that notice in which to request a hearing if Jump Start wished to challenge the proposed denial. Jump Start requested a hearing, and ODJFS denied the request as untimely. Jump Start appealed,

arguing that its deadline for requesting a hearing was 30 days from the date on which it *received* the notice, not from the date on which ODJFS mailed it.

For the reasons explained below, this Court dismisses this appeal because Jump Start failed to exhaust its administrative remedies.

II. Jump Start's hearing request was mailed to ODJFS later than 30 days after ODJFS mailed the proposed adjudication order to Jump Start.

Jump Start concedes that, on August 14, 2009, ODJFS mailed to Jump Start (by certified mail) a proposed adjudication order in which ODJFS notified Jump Start of a proposed denial of Jump Start's application to renew its child-care license. See Cert. Rec. at R-1. See also Appellant's Brief, pp. 3-4, and Cert. Rec. at R-4 (copy of envelope attached to 9/25/09 letter, showing 8/14/09 postmark). In that notice, ODJFS informed Jump Start of its right to challenge the proposed denial if it requested a hearing "within thirty (30) days of the date of the mailing of this notice." See *id.*

The parties also agree that Jump Start's Administrator, Janell Howell, signed for the notice 12 days later, on August 26 (although an initial certified-mail notice had been left with Jump Start earlier, on August 17). See Cert. Rec. at R-1; Appellant's Brief at 4. Howell sent a hearing request by certified mail to ODJFS that was dated September 12, 2009, but not sent until September 15, 2009, at the earliest. See Cert. Rec. at R-4 (9/25/09 letter from Howell to ODJFS, outlining timeline of recent correspondence). As Jump Start admits, and as the ODJFS date-stamp on the document confirms, that hearing request was received by ODJFS on September 21, 2009. See Cert. Rec. at R-2; Appellant's Brief, p. 4.

III. According to the plain language of R.C. 119.07, the 30-day period for requesting a Chapter 119 hearing runs from the "time of mailing," or the date on which the notice is *mailed*. This plain-language reading is echoed in Ohio Admin. Code 5101:6-50-03, the governing rule.

Contrary to Jump Start's suggestion, if the General Assembly wishes a period of time to start running based on receipt of a notice, it knows how to say that. See, *e.g.*, R.C. 3314.08(O)(2)(a) (appeal due 10 business days after receipt of notice); R.C. 5525.07 (appeal due 10 days after receipt of notice); R.C. 6105.134 (appeal due 15 days after receipt of notice). In R.C. 119.07, the General Assembly made clear that the 30-day period for requesting a hearing starts running at the "time of mailing," which is the date the notice is *mailed*. It is not the date on which the licensee actually receives the notice.

R.C. 119.07 provides, in pertinent part:

> Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and *a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice.*

Id. (emphasis added). See also *Harrison v. Ohio St. Med. Bd.*, 103 Ohio App.3d 317, 318, 321 (10th Dist. 1995).

Jump Start offers no authority for its argument that the requirement in R.C. 119.07 that a notice be sent "registered mail, return receipt requested" must mean—particularly in light of due-process considerations—that *receipt* of the notice starts the 30-day period. See Appellant's Brief, pp. 5-7. Nothing in the registered-mail requirement suggests that the hearing-request period runs from receipt of the notice, particularly given the fact that the statute's plain language starts the period at the "time of mailing" of the

notice. The registered-mail requirement simply ensures that notice is accomplished. But as long as notice occurs (as it did here), and as long as there is sufficient time after notice to make a hearing request (as there was here), there is no due-process violation. The two requirements of procedural due process—notice and a meaningful opportunity to be heard—were met here.

Ohio Admin. Code 5101:6-50-03 further supports ODJFS's position that the 30-day period starts running from the date of mailing when ODJFS sends a proposed adjudication order by certified mail. That rule sets forth the various ways in which the 30-day period is calculated, depending on how the agency gave notice of the proposed adjudication. If notice was given by publication, the 30-day period runs from the date of the last publication. See Ohio Admin. Code 5101:6-50-03(B)(1)(c). If the notice was refused after the agency followed certain procedures, the 30-day period runs from the time when service is "complete" as defined in that rule for various scenarios. See Ohio Admin. Code 5101:6-50-03(B)(1)(b). If notice was given by personal service, the 30-day period runs from the date of that personal service. See Ohio Admin. Code 5101:6-50-03(B)(1)(d). If notice was given by certified mail, the 30-day period runs from the "time of mailing the notice." See Ohio Admin. Code 5101:6-50-03(B)(1)(a). No reasonable reading of this rule accommodates Jump Start's argument that a notice recipient has 30 days from actual receipt of a certified-mailed notice in which to request a hearing.

The statute provides that the period runs from the "time of mailing" of the notice. The rule does the same. Therefore, since ODJFS mailed the notice to Jump Start by certified mail on August 14, 2009, the 30-day period for Jump Start to request a hearing

started running on that date. Because Jump Start sent its hearing request, at the earliest, on September 15, 2009, which was 32 days later, the request was untimely.

IV. A properly-noticed licensee that failed to timely request a hearing under R.C. 119.07 has failed to exhaust its administrative remedies and therefore may not challenge the underlying merits of the adjudication order. This failure is grounds for dismissal.

Jump Start failed to exhaust its administrative remedies because it did not request a hearing from ODJFS. As the Tenth District Court of Appeals has held, a party's failure to request a hearing pursuant to R.C. Chapter 119 (when given proper notice and opportunity) results in a failure to exhaust administrative remedies. See *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Dirs.*, 175 Ohio App.3d 213, 2008-Ohio-762, ¶ 38 (10th Dist.). Thus, any issue that could have been—but was not—raised at such a hearing is subject to exhaustion and/or is waived on appeal. See *id.* at 38-39. A court may dismiss a case for failure to exhaust administrative remedies, because a party's failure to exhaust—absent an applicable exception—means that judicial relief is unavailable. See, *e.g.*, *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456, 462 (1977). Jump Start has not argued that an exception applies here, and the Court is not aware of one.

V. Conclusion

Jump Start failed to exhaust its administrative remedies by not timely requesting a hearing at which it could challenge the proposed denial of its license-renewal application. The Court, therefore, dismisses this appeal for failure to exhaust administrative remedies.

There being no just cause for delay, Judgment is entered as above specified.

Date: 7/12/12

JUDGE