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

CRAIG MULVEY
Plaintiff

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES
Defendant

Case No: CV-17-879801

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

96 DISP.OTHER - FINAL

OPINION AND JUDGMENT ENTRY. O.S.J.
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.

Judge Signature

Date

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2017 NOV 27 P 2:33
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CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CRAIG MULVEY,)	CASE NO. CV 17 879801
)	
Appellant,)	JUDGE BRENDAN J. SHEEHAN
)	
v.)	
)	
)	OPINION AND JUDGMENT
)	ENTRY
OHIO DEPARTMENT OF JOB & FAMILY SERVICES,)	
)	
Defendant.)	

I. ISSUES PRESENTED.

This appeal was filed by Communicare d/b/a Greenbrier Senior Living, on behalf of the Plaintiff-Appellant Craig Mulvey, as his Designated Medicaid Authorized Representative, from a November 2015 Administrative Appeal Decision that upheld the denial of a Medicaid application.

Mr. Mulvey (through his authorized representative) applied for Medicaid on November 27, 2015. State Hrg. Rec. at 181-84. The County Department of Job and Family Services received the application and sent a verification checklist with a deadline for responding, to both Mr. Mulvey and the person designated to be his authorized representative. State Hrg. Decis. at 3; State Hrg. Rec. at 119. The request stated that the County might be able to help if verifications could not be obtained and that a request for assistance should be made immediately if that were the case. *Id.*

The County received no response from either Mr. Mulvey or his authorized representative. State Hrg. Decis. at 3 & 5; State Hrg. Rec. at 78, 109-10. The agency sent out a second request for the verifications, with a new deadline for responding, to both Mr. Mulvey and his authorized representative. State Hrg. Decis. at 3 & 5; State Hrg. Rec. at 78, 109-10. The same language concerning a request for assistance if needed was included on the request document. State Hrg. Rec. at 120. Again there was no response by the deadline. On or about January 7, 2016, the County mailed notices of the denial of Mr. Mulvey's application to both Mr. Mulvey and his authorized representative. State Hrg. Decis. at 5;. The notices explained that the reason for the denial was that verification of Mr. Mulvey's resources had been requested and there had been no response. State Hrg. Rec. at 82-93.

Over one year later, on January 30, 2017, Mr. Mulvey (through his authorized representative) requested a state hearing to challenge the denial, pursuant to R.C. 5101.35(B). ODJFS overruled the appeal because the hearing request had been untimely. See *id.* at 5. See also Admin. App. Decis. at 3. ODJFS also noted that, regardless of timing, the denial had been correct because of the failure to respond to the requests for verifications. See State Hrg. Decis. at 5; Admin. App. Decis. at 3. Mr. Mulvey appealed to the ODJFS Director under R.C. 5101.35(C). See Admin. App. Decis. at 3. See also R.C. 5101.35(E). The resulting Administrative Appeal Decision affirmed, agreeing that Mr. Mulvey's state-hearing request was untimely and that the lack of responses to the requests for verification constituted grounds for denial. See Admin. App. Decis. at 3.

II. LAW AND ANALYSIS

A. Standard of Review.

Appeals from administrative decisions issued by ODJFS are authorized by R.C. 5101.35(E), which incorporates most of R.C. 119.12. The review permitted by R.C. 119.12 is strictly limited to whether the agency's decision is supported by reliable, probative, and substantial evidence and is in accordance with law. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 571 (1992); R.C. 119.12(M). If the decision meets these criteria, it must be affirmed. See *Brown v. Ohio Dept. of Job and Family Servs.*, 8th Dist. Cuyahoga No. 92008, 2009-Ohio-1096.

The Ohio Supreme Court has further explained:

The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, supra at 571.

B. STANDING TO SUE.

"Unless a statute otherwise provides it is fundamental that no one can appeal from an order to which he is not a party." *Harrison v. Pub. Util. Comm'n*, 134 Ohio St. 346, 347 (1938). This action was filed by Greenbrier, not Mr. Mulvey, with Greenbrier claiming to act as Mr. Mulvey's authorized representative. However, under Federal Medicaid law, applicable to Ohio administration of Medicaid programs, provides that a Medicaid applicant must be allowed 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 ongoing communication *with the*

agency.” 42 C.F.R. 435.923(a)(1) (emphasis added). The “authorized representative” is permitted to do the following on behalf of a Medicaid applicant: “1) [s]ign an application on the applicant’s behalf, 2) [c]omplete and submit a renewal form, 3) [r]eceive copies of the applicant’s or beneficiary’s notices and other communications from the agency, [and] 4) [a]ct on behalf of the applicant in all other matters *with the agency.*” 42 C.F.R. 435.923(b)(1)-(4) (emphasis added).

Specifically under Ohio law, R.C. 5101.35(A)(2) defines an “appellant” as “an applicant, former participant, recipient, or former recipient of a family services program who is entitled by federal or state law to a hearing regarding a decision or order of the agency that administers the program.” R.C. 5101.35(E) provides that an “appellant” who disagrees with an administrative appeal decision of the director of [ODJFS] or the director’s designee . . . may appeal from the decision to the court of common pleas pursuant to section 119.12 of the Revised Code.” OAC 5101:6-3-02 specifically authorizes the “the individual or authorized representative” to request a state hearing. However, there is no authority for the authorized representative to proceed to appeal beyond the administrative agency level. Based upon the language of R.C. 5101.35(E) and Ohio Admin. Code 5101:6-3-02(A)(3), Greenbrier’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) and it lacks standing to pursue this appeal.¹

¹ Greenbrier’s efforts are especially troublesome given its own admissions that it lost contact with Mr. Mulvey in February 2016. See Appellant’s Brief at 5 & 9. There is no indication that Mr. Mulvey is even aware of the current appeal allegedly brought on his behalf.

C. Timeliness of Request for Hearing.

The Notices of Decision advising that Medicaid benefits had been denied were mailed on January 7, 2016 to Mr. Mulvey and to Greenbrier. State Hrg. Rec. at 82-93. A request for a state hearing was required by April 6, 2016. It was not made until January 30 2017.

Appellant's request for a state hearing was untimely and was properly denied.

III. CONCLUSION.

For the foregoing reasons, the Administrative Appeal Decision issued on April 4, 2017, Appeal No. 3165156 is **AFFIRMED**.

IT IS SO ORDERED.

Dated:

11/22/17


JUDGE BRENDAN J. SHEEHAN