

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1750

September Term, 2014

CARE SOLUTIONS YOUTH CENTER, INC.

v.

MARYLAND DEPARTMENT OF HEALTH
AND MENTAL HYGIENE

Graeff,
Kehoe,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: June 10, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Care Solutions Youth Center (“Care Solutions”) is a mental health care provider licensed by the Maryland Department of Health and Mental Hygiene (“DHMH”) to operate three mental health programs within the State. The DHMH Office of Health Care Quality (“OHCQ”), following an investigation, notified Care Solutions that OHCQ had found it to be in violation of 23 State regulations and intended to revoke its approvals for reimbursement for State- and federally-funded community-based services. On appeal, Care Solutions argues that DHMH provided insufficient notice of its intent to revoke Care Solutions’s funding approvals and of its right to a hearing. We conclude, however, that DHMH provided sufficient notice to satisfy procedural due process and the Code of Maryland Regulations, and, therefore, affirm the Circuit Court for Baltimore City, and thereby the decision by the DHMH Board of Review.

BACKGROUND

DHMH, through OHCQ, licensed Care Solutions to operate as an Outpatient Mental Health Center and Psychiatric Rehabilitation Program. After an OHCQ investigation of Care Solutions revealed violations of 23 State regulations,¹ OHCQ sent notice to Care Solutions of its intent to revoke approvals necessary to receive State and federal reimbursement for services to patients eligible for Medicaid. Care Solutions was instructed that an evidentiary hearing on these findings could be requested if done in writing within ten days, and that if a hearing was not requested, “DHMH may issue a final order and the

¹ The nature and scope of these violations is not a subject of this appeal.

right to a hearing is waived.” The letter notifying Care Solutions was sent May 1, 2012, by regular first-class postage prepaid through the U.S. Postal Service, facsimile, and email to Paulinus Okonkwo, Chief Executive Officer of Care Solutions to the address on file with DHMH: 7348 Ritchie Highway, Glen Burnie, Maryland 21061. The same Ritchie Highway address was also listed by Care Solutions as the address of both its program director and the chairman of its advisory committee. Unfortunately, however, the U.S. Postal Service returned the letter as “undeliverable” and indicated that the forwarding address had expired.

DHMH then sought alternative modes of sending the letter. DHMH found an attorney who had represented DHMH in a previous matter. That attorney gave DHMH an alternative mailing address of P.O. Box 19616, Baltimore, Maryland 21225. DHMH sent the letter to this P.O. Box and this time the letter was not returned “undeliverable.” DHMH also sent one of its employees to the Ritchie Highway address to try to hand-deliver the letter.

After Care Solutions did not respond to request a hearing in response to the letter, DHMH issued an Order of Revocation on October 23, 2012, revoking Care Solutions’s approvals. Arguing that it had not received notice, Care Solutions filed a Motion to Dismiss the Notice and the Order of Revocation with the Office of Administrative Hearings (“OAH”) on November 6, 2012. OAH denied the Motion on January 25, 2013, because it found that Care Solutions had waived its right to an administrative hearing and because someone who was not licensed to practice law in this State had filed the motion.

Care Solutions also appealed its revocation to the DHMH Board of Review. In its effort to demonstrate DHMH's failure to comply with notice requirements, Care Solutions submitted documents that identified specific individuals who were supposed to receive written notice of a proposed revocation pursuant to regulation. COMAR 10.21.16.12(C)(3) (identifying persons to whom notice is required to be given).²

At the Board of Review hearing, DHMH testified that the termination letter was mailed to the only address that Care Solutions had provided in its DHMH licensing documents: the Ritchie Highway address. Two Care Solutions "Program Directors" submitted affidavits to the Board of Review affirming that they had never personally received notice of the revocation action. Ironically, however, both affidavits provided only the Ritchie Highway address. The Board of Review denied Care Solutions's appeal and affirmed OHCQ's revocation decision.

² The documents provided by Care Solutions contained inconsistent and confusing contact information. One document identified Judith Lelchook as a "Rehabilitation Specialist," while on another she was identified as the "Project Manager-Program Services-Quality-Management." Similarly, Nina Routhier was listed on one document as the "Program Manager," (and on that document there was no "Program Director") while another document listed Pamela Cullen as the "Outpatient Mental Health Center Program Director". Finally, one document listed Paulinus Okonkwo as both the "Executive Director" and the "Chairman of the Board of Directors," but another document provided a more general identification of Okonkwo as simply the "Primary Contact" for Care Solutions.

From the Board of Review’s decision, Care Solutions filed a Petition for Judicial Review to the Circuit Court for Baltimore City. Following a hearing, the circuit court affirmed the Board of Review’s decision. Care Solutions noted this timely appeal.

ANALYSIS

On appeal, Care Solutions argues that DHMH failed to provide sufficient notice of its intent to revoke DHMH approval for State and federal reimbursements and of its right to a hearing. DHMH responds by arguing that letters sent to Care Solutions provided sufficient notice of its intent to revoke approvals and of the opportunity to request a hearing. We evaluate the sufficiency of notice under both: (1) constitutional due process; and (2) the Code of Maryland Regulations.

We review the Board of Review’s decision, and not the circuit court’s findings of fact and conclusions of law. *Hersl v. Fire & Police Employees’ Ret. Sys.*, 188 Md. App. 249, 260 (2009). Our role “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Bd. of Physician Quality Assur. v. Banks*, 354 Md. 59, 67–68 (1999) (internal citations and quotations omitted).

1. Notice Requirements Under Due Process

Care Solutions argues that DHMH was required and failed to use a method “thoroughly calculated to provide actual notice.” Believing first-class mail to be

insufficient, Care Solutions argues that a higher level of notice, with a higher level of certainty that it will be effective, is required in this situation.

“The due process clauses of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights protect an individual’s interests in ... procedural due process.” *Reese v. Dep’t of Health & Mental Hygiene*, 177 Md. App. 102, 149 (2007). “At the core of the procedural due process right is the guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.” *Golden Sands Club Condo., Inc. v. Waller*, 313 Md. 484, 487-88 (1988) (citing LAURENCE TRIBE, AMERICAN CONSTITUTIONAL LAW § 10-15 at 732 (2d ed. 1988)). In evaluating matters of procedural due process, “actual receipt of notice is not the test.” *Griffin v. Bierman*, 403 Md. 186, 198 (2008) (citing *Golden Sands Club Condo*, 313 Md. at 500)). “Due process does not require a showing by the State that an interested party received actual notice.” *Id.* at 198 (internal quotations and citations omitted). Instead, the test for due process is “whether the [S]tate acted reasonably in selecting means likely to inform persons affected.” *Id.* at 197 (internal quotations and citations omitted). “Notice by mail is ordinarily presumed to be constitutionally sufficient.” *Id.* at 198 (internal quotations and citations omitted). Notice will be found to be “reasonably calculated to inform interested parties” “where the government sends a notice to the address provided by a party pursuant to a legal requirement to provide the government with an address.” *Id.* at 198 (internal quotations and citations omitted). Additionally, when a mailed notice is returned “the State must take additional reasonable steps to attempt to provide notice to the [interested party] ... , if it is

practicable to do so.” *Jones v. Flowers*, 547 U.S. 220, 225 (2006); *Griffin*, 403 Md. at 202 n.11.

We hold that, in accordance with *Jones* and *Griffin*, DHMH provided Care Solutions sufficient notice when, after the original notice letter was returned as “undeliverable” and indicated that the forwarding address had expired, DHMH took additional reasonable steps to effectuate notice. That the U.S. Postal Service returned the letter sent to Care Solutions does not make the notice deficient. Here, DHMH did take “reasonable follow-up measures to attempt to give notice to the interested [party].” *Griffin*, 403 Md. at 202 n.11. After the letter was returned as “undeliverable,” DHMH contacted an attorney who had represented Care Solutions in a previous matter. That attorney provided DHMH with an alternative address, to which the letter was also mailed. The letter sent to the alternate address was not returned. DHMH also sent the letter to Care Solutions by facsimile and email, and an OHCQ staff member visited the Ritchie Highway address personally, leaving her card, and requesting that Care Solutions’s Executive Director call her. These additional follow-up measures were reasonably likely to inform the persons affected and therefore satisfy constitutional due process requirements under *Jones* and *Griffin*.

2. Notice Requirements Under The Code of Maryland Regulations

Care Solutions also complains that DHMH failed to comply with the notice requirements of COMAR 10.21.16.12(C)(3), which require that:

[N]o less than 45 calendar days in advance of the proposed [revocation of approval] taken under this regulation, the Secretary shall send written notice ... to the:

- (a) Program director;
- (b) President of the program’s advisory committee, board of directors, or governing body, whichever is applicable;
- (c) Administration; and
- (d) C[ore] S[ervice] A[gency] or lead CSA.^[3]

COMAR 10.21.16.12(C)(3).

Care Solutions argues that DHMH failed to comply with this regulation because the letter was mailed only to the Executive Director—a job title which is not mentioned in the regulation—but was not mailed to either the Program Director or the Chair of Care Solutions’s Advisory Committee—both of which are specifically named in the regulation—and who both provided affidavits stating that they had not received the letter. This argument goes nowhere for Care Solutions because, irrespective of who is depicted where on the organizational chart and who holds which titles, Care Solutions only provided DHMH with one address for all of its employees: the Ritchie Highway address. If Care Solutions wanted DHMH to contact it (or its representatives) at any other address, it was Care Solutions’s obligation to provide those alternative addresses.

Moreover, as described above, DHMH took additional follow-up measures that were likely to inform the persons affected, including mailing the letter to an alternate P.O.

³A Core Service Agency or “CSA” “[is] the county or multicounty authority, designated under Health-General Article, Title 10, Subtitle 12, Annotated Code of Maryland” that is responsible for planning, managing, and monitoring publicly funded mental health services.” COMAR 10.21.17.02(B)(10).

Box address, emailing and faxing the letter to Care Solutions, and sending an employee to try to make personal contact. We conclude that these efforts were sufficient to satisfy COMAR.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED,
AFFIRMING THE DECISION OF THE
DEPARTMENT OF HEALTH AND
MENTAL HYGIENE BOARD OF REVIEW.
COSTS TO BE PAID BY APPELLANT.**