25-P-1194 Appeals Court

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES vs.
LINDA MANOR EXTENDED CARE.

No. 25-P-1194.

Suffolk. May 5, 2026. - September 29, 2026.

Present: Singh, Brennan, & Allen, JJ.[1]

Division of Administrative Law Appeals. Medicaid. Administrative Law, Agency's interpretation of regulation, Rate setting, Rate regulation. Regulation. Jurisdiction, Administrative matter. Practice, Civil, Review of administrative action, Failure to prosecute, Judgment on the pleadings.

Civil action commenced in the Superior Court Department on July 2, 2024.

The case was heard by Jackie Cowin, J., on motions for judgment on the pleadings.

Jason B. Curtin for the defendant.
Michael A. Capuano, Special Assistant Attorney General, for the plaintiff.

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[1] Justice Brennan participated in the deliberation on this case prior to his retirement.

SINGH, J. Linda Manor Extended Care (Linda Manor) appeals from a judgment of the Superior Court vacating a decision of the Division of Administrative Law Appeals (DALA). A DALA magistrate concluded that the Executive Office of Health and Human Services (EOHHS) erroneously disallowed over $134,000 in costs claimed for medical services based on EOHHS's interpretation of 114.2 Code Mass. Regs. § 6.06(2)(b) (1998), a record-keeping regulation. A judge of the Superior Court vacated DALA's decision, not on the merits, but because of Linda Manor's failure to prosecute the claim for more than two decades.

This appeal presents the question whether DALA had jurisdiction to decide a rate setting appeal that turns on EOHHS's interpretation of its own regulation, or whether such interpretation may be challenged only through an action for declaratory judgment under G. L. c. 30A, § 7, and G. L. c. 231A. If DALA had jurisdiction, we also must determine whether Linda Manor's failure to prosecute its complaint for over twenty years required dismissal.

We hold that DALA had jurisdiction to hear Linda Manor's administrative appeal and that it was within DALA's discretion to decline to dismiss the appeal. Accordingly, we reverse the judgment of the Superior Court and affirm DALA's decision.

Background. 1. Regulatory scheme. Medicaid is "a cooperative Federal and State program that provides medical assistance to low income persons based on financial need" (quotation and citation omitted). Fournier v. Secretary of the Executive Office of Health & Human Servs., 488 Mass. 43, 45 (2021). EOHHS is the State agency responsible for administering MassHealth, "the State program by which the Commonwealth participates in Medicaid." Executive Office of Health & Human Servs. v. Mondor, 491 Mass. 1015, 1016 n.5 (2023), cert. denied, 144 S. Ct. 2657 (2024).

EOHHS is required to establish, by regulation, "fair and adequate" rates to be paid by governmental units, to meet the costs of facilities like Linda Manor for the care of Medicaid patients.[2] G. L. c. 118E, § 13C. While the methods for calculating such rates continue to change over time, "[EOHHS] performs this duty by annually promulgating, after public hearing, a general and comprehensive regulation which sets forth the rate setting formula. It then calculates a rate of payment for each individual provider by applying the formula to the

[2] In 2012, the Legislature transferred this rate setting authority from the former Division of Health Care Finance and Policy to EOHHS. See G. L. c. 118E, § 13C. In Linda Manor's administrative appeal in this matter, DALA substituted EOHHS for the original agency respondent. We refer to EOHHS throughout because nothing in this appeal turns on the change in statutory scheme or the substitution of EOHHS.

provider's reported cost information." Perkins Sch. for the Blind v. Rate Setting Comm'n, 383 Mass. 825, 828 (1981).

In establishing annual rates, EOHHS relies in part on detailed cost reports filed by facilities at regular intervals. Under the regulations in effect at the relevant time, facilities like Linda Manor were required to keep "accurate, detailed and original financial records to substantiate reported costs for a period of at least five years." 114.2 Code Mass. Regs. § 6.06(2)(b).

2. Rate determination for Linda Manor. Linda Manor is a skilled nursing facility that provides in-home nursing and rehabilitation services to Medicaid patients. EOHHS used Linda Manor's 1998 cost report (cost report) to calculate the facility's rates of payment for the years 2000, 2001, and the first half of 2002. The cost report included, inter alia, Linda Manor's direct restorative therapy (DRT) and indirect restorative therapy (IRT) costs.[3]

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[3] DRT services are defined as those "[s]ervices of physical therapists, occupational therapists, and speech, hearing and language therapists provided directly to individual Residents to reduce physical or mental disability and to restore the Resident to maximum functional level." 114.2 Code Mass. Regs. § 6.02 (1998). IRT services are those provided for "orientation programs for aides and assistants, in-service training to staff, and consultation and planning for continuing care after discharge." Id.

Linda Manor filed a notice of claim of appeal challenging the rates that EOHHS had set for 2000. While the appeal was pending, in 2003, EOHHS contracted with an independent accounting firm to audit the cost report. In response, Linda Manor provided documentation to support its DRT costs, including logs of therapy sessions conducted by the facility's contracted therapists, with information about patients and the type and duration of sessions. Linda Manor did not maintain detailed logs of its contract therapists' IRT services but instead submitted documents concerning the nature of those IRT services, invoices from its contract vendor, and records reflecting total expenditures for all therapy services. Linda Manor asserted that its IRT costs could be calculated based on that documentation by subtracting the DRT costs from the total. EOHHS's contract auditors ultimately recommended a disallowance of Linda Manor's IRT costs on the basis that they "[n]eed[ed] indirect logs" to substantiate those costs.

Following what EOHHS maintains was a "universally applicable" interpretation of its record-keeping regulations at the time, EOHHS adopted the auditors' recommendation and disallowed one hundred percent of Linda Manor's IRT costs. EOHHS then revised Linda Manor's rates for the years 2000 through the first half of 2002, and reduced Linda Manor's total payments by $134,260.

3. DALA appeal. a. Proceedings. As previously mentioned, in April 2000, Linda Manor contested the rates for the years governed by the cost report, through a timely appeal to DALA.[4] On July 26, 2005, Linda Manor filed with DALA a motion to amend its bill of complaint to challenge EOHHS's subsequent disallowance of its IRT costs on the basis that it had "properly and sufficiently maintained records to support its claim for [those] charges." The appeal then sat idle for seventeen years.[5]

In February and March 2022, an administrative magistrate at DALA contacted Linda Manor to discuss pending appeals. Linda Manor stated its intent to proceed on certain appeals and to file withdrawals in others. On September 19, 2023, DALA issued an interim order, inquiring into the status of various appeals and ordering the parties to file legal memoranda in the current

[4] Linda Manor filed two additional appeals concerning payment rates for the years governed by its cost report. These appeals were later consolidated by DALA and were assigned the same docket number as the April 2000 complaint.

[5] As discussed in more detail, infra, the Superior Court judge's memorandum and order on cross motions for judgment on the pleadings refers to a July 27, 2016 DALA order that was never made part of the administrative record. The judge erroneously concluded that Linda Manor had failed to file a status report in response to that 2016 order.

From our review of the record, there is no evidence DALA ordered Linda Manor to take any affirmative action between Linda Manor's filing of its appeal in 2000 and the issuance of that portion of DALA's 2023 order requiring the parties to file prehearing memoranda.

matter. The parties filed their initial memoranda in October 2023.

As part of its initial memorandum, EOHHS moved for an order to show cause why Linda Manor's appeal should not be dismissed for lack of prosecution (show cause motion). That motion was denied without prejudice. The DALA magistrate granted one continuance and issued a series of orders aimed at moving the proceedings forward. The magistrate also admonished Linda Manor because it "did not comply with [the] requirement" that it timely identify its hearing representative.

On April 5, 2024, the parties agreed to have the appeal decided on the papers. In addition to their respective briefs, EOHHS submitted an affidavit from its then director of institutional programs for the office of long term services and supports,[6] and Linda Manor submitted an affidavit from its former representative.[7] As part of its May 10, 2024 primary brief,

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[6] The former director conceded that "[n]either direct therapy logs nor indirect therapy logs are specified in the document retention regulation then in effect," but attested that EOHHS had been "consistent throughout the years" in requiring certain documentation to substantiate IRT costs.

[7] The representative, a certified public accountant, had provided reimbursement consulting to Linda Manor during and after the audit. He attested that during audits for earlier base years, the outside firm EOHHS had retained to audit Linda Manor's report "became fixated on how indirect therapy was reimbursed." He asserted that the auditors had "believe[ed] that nursing facilities were receiving duplicate payments for the same indirect therapy costs." Based on his experience as an

EOHHS renewed its show cause motion, and further claimed that DALA lacked jurisdiction to hear the appeal.

b. Decision. On June 5, 2024, DALA issued its decision. The magistrate found that (1) DALA had jurisdiction to hear a challenge to EOHHS's interpretation of 114.2 Code Mass. Regs. § 6.06(2)(b); (2) EOHHS's interpretation of that regulation and application to Linda Manor in this case was arbitrary or capricious;[8] (3) Linda Manor's course of conduct did not warrant dismissal for failure to prosecute; and (4) EOHHS had not shown that it was prejudiced by the long delay in the appeal's progress. Notably, DALA found that the "backing out" method used by Linda Manor for calculating IRT costs, meaning provision of supporting documentation and subtracting DRT costs from the total costs, "was a familiar approach in the industry" at the

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auditor and observations of the outside firm over a period of time, he formed the opinion that "this firm was laser focused on making a disallowance for indirect therapy and did not employ auditor's [judgment] which allows for auditors to use alternate documentation to support cost." He claimed that the firm instead "chose to propose disallowances of the entire cost category."

[8] Specifically, DALA found that EOHHS's interpretive views were not entitled to deference where "the regulation is plain and unambiguous," and that "it should be interpreted according to its terms." DeCosmo v. Blue Tarp Redev., LLC, 487 Mass. 690, 699 (2021). "To defer to an agency's interpretation when the regulation itself is unambiguous would be to permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation" (quotation and citation omitted). Jose v. Wells Fargo Bank, N.A., 89 Mass. App. Ct. 772, 776 (2016).

time. Accordingly, DALA found that the disallowance in costs should be reversed and ordered that the matter be remanded to EOHHS for a final determination of damages.

4. Judicial review. EOHHS timely sought judicial review in the Superior Court pursuant to G. L. c. 30A, § 14. In its complaint, EOHHS claimed that DALA's decision on the merits, and its decision not to dismiss the appeal for lack of jurisdiction or failure to prosecute, were based on errors of law, were arbitrary or capricious, and were in excess of DALA's statutory authority. EOHHS also claimed that DALA failed to adhere to its obligation to "provide speedy and fair disposition of all appeals," G. L. c. 7, § 4H, given Linda Manor's failure to pursue its appeal for over two decades.

Following briefing and a hearing on cross motions for judgment on the pleadings, the Superior Court judge issued her order on May 1, 2025, allowing EOHHS's motion and denying Linda Manor's cross motion. Although the judge agreed with DALA's determination that it had jurisdiction to hear the appeal and with its decision on the merits in favor of Linda Manor, the judge agreed with EOHHS that DALA's denial of EOHHS's motion to dismiss the appeal for failure to prosecute was arbitrary and capricious.[9]

[9] While the crux of the judge's decision rested on her view that Linda Manor had allowed its appeal to stagnate over the

Judgment on the pleadings entered on the docket on May 12, 2025, vacating DALA's decision and affirming EOHHS's disallowance of IRT costs. Linda Manor filed a timely notice of appeal.

Discussion. "We review de novo the allowance of a motion for judgment on the pleadings." Perullo v. Advisory Comm. on Personnel Standards, 476 Mass. 829, 834 (2017). "In reviewing an agency decision, we [also] exercise de novo review on questions of law, 'giving substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its . . . enforcement.'" Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 512 (2019), quoting Commerce Ins. Co. v. Commissioner of Ins., 447 Mass. 478, 481 (2006).

We otherwise review an agency decision to determine whether it is "[b]ased upon an error of law; . . . [u]nsupported by substantial evidence; or . . . [a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." Freiner v. Secretary of the Executive Office of Health & Human

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course of more than two decades, she also determined that Linda Manor had failed to respond to a 2016 status report order from DALA in this matter. However, this appears to have been a misreading of the administrative record, and EOHHS, in its brief, conceded as much.

Servs., 494 Mass. 198, 204 (2024), quoting G. L. c. 30A, § 14 (7).

1. DALA's jurisdiction. On appeal, EOHHS challenges DALA's conclusion that DALA had jurisdiction to hear Linda Manor's appeal and argues that Linda Manor could properly challenge EOHHS's record-keeping regulation only through an action for declaratory relief under G. L. c. 30A, § 7, and G. L. c. 231A. Because Linda Manor's appeal challenges only EOHHS's interpretation, rather than the validity of the regulation itself, we disagree.

Our case law recognizes that DALA has the authority to "hear challenges to specific rate calculations, but [that] it may not entertain substantive attacks on the rate regulations themselves." Salisbury Nursing & Rehabilitation Ctr., Inc. v. Division of Admin. Law Appeals, 448 Mass. 365, 375 (2007) (Salisbury). See G. L. c. 118E, § 13E. "A substantive challenge is [one] mounted 'on the ground that the general regulation is substantively defective, that is, inadequate.'" Beth Israel Hosp. Ass'n v. Rate Setting Comm'n, 24 Mass. App. Ct. 495, 501 (1987) (Beth Israel), quoting Massachusetts State Pharm. Ass'n v. Rate Setting Comm'n, 387 Mass. 122, 126 (1982). Linda Manor's challenge to EOHHS's interpretation of its record-keeping regulation does not clearly present either a challenge to its particular rate calculation, or a substantive challenge to the validity of the rate regulations themselves.

In determining whether DALA has authority to hear a rate setting appeal, courts generally apply a "jurisdictional test." Salisbury, 448 Mass. at 375. This test aims to parse whether a provider's rate setting appeal presents a challenge to a regulation's "particular" or "general" application, Rate Setting Comm'n v. Baystate Med. Ctr., 422 Mass. 744, 748 (1996) (Baystate), by asking two questions: (1) "were there special circumstances making application of the rate to a particular provider different from its application to all others?" and (2) "were those circumstances the result of something other than voluntary business decisions?" Salisbury, supra. See Baystate, supra; Rate Setting Comm'n v. Faulkner Hosp., 411 Mass. 701, 705 (1992); Rate Setting Comm'n v. Division of Hearings Officers, 401 Mass. 542, 547 (1988) (Hearings Officers); Medi-Cab of Mass. Bay, Inc. v. Rate Setting Comm'n, 401 Mass. 357, 363 n.9 (1987) (Medi-Cab). Courts then determine whether there are "special circumstances" by "examining how application of the regulation to that facility 'compares to other [facilities] of the same sort,'" Salisbury, supra, quoting Baystate, supra at 749, and by looking for factors "beyond the provider's control, which affect the provider but not the class as a whole," Hearings Officers, supra at 545.

The courts have not explicitly addressed DALA's authority to hear interpretive challenges like Linda Manor's, presumably, in part, because earlier cases applying the two-part test have either presented clear substantive challenges to class-based rate setting regulations, raised challenges that were based on a provider's unique circumstances, or involved the parties stipulating to DALA's authority to set an individual rate. See Salisbury, 448 Mass. at 365-368, 376 (during agency's transition from prospective to standard rate setting methodology, provider nursing home challenged legality of base year set for it by regulation in "thinly disguised, frontal attack" on "total payment adjustment" regulations); Baystate, 422 Mass. at 744-752 (circumstances of provider "as it evolved from a community hospital to a tertiary-care facility" -- including increases in "admission of older, sicker patients," "number of open-heart surgeries," "number of dialysis inpatients," "survival rates of low birth weight patients," "number and complexity of ultrasound and CT [computed tomography] examinations," and "number of high-risk obstetrical and gynecological patients" -- qualified as "unique circumstances" not resulting from "voluntary business decision"); Hearings Officers, 401 Mass. at 542-547 (error for DALA to exercise jurisdiction and hear appeal by provider of homemaker and home health aide services on basis that DALA had authority to "go beyond" regulation and order EOHHS's predecessor to "ignore" regulation in setting provider's rates); Medi-Cab, 401 Mass. at 361-365 (parties stipulated to authority of DALA's predecessor to hear challenge by provider of nonemergency ambulance service to individual rate set under class-based regulation governing reimbursement for wheelchair-accessible transport services). In at least one case, however, this court did not question DALA's jurisdiction to hear a provider's challenge to the interpretation, by EOHHS's predecessor, of an ambiguous regulation used to compute a provider's "average equity capital." Bottomley v. Division of Admin. Law Appeals, 22 Mass. App. Ct. 652, 653 (1986). See id. at 653-657 (provider nursing home properly challenged EOHHS predecessor's interpretation of term "average annual capital investment").

Here, EOHHS argues that DALA lacked jurisdiction because Linda Manor's appeal challenges a record-keeping requirement of "general application" (citation omitted). Salisbury, 448 Mass. at 374. The issue on the merits before DALA was whether EOHHS had properly interpreted its regulation, 114.2 Code Mass. Regs. § 6.06(2)(b), to require that IRT costs be substantiated by a specific type of document, i.e., IRT logbooks. EOHHS asserts that this interpretation was universally applied during the relevant period, and Linda Manor does not contest that claim. Thus, EOHHS argues, because Linda Manor has failed to "demonstrate circumstances . . . which make application of the rate to [Linda Manor] different from its application to all other providers in the class," DALA lacked jurisdiction to hear this appeal. Id. at 375, quoting Hearings Officers, 401 Mass. at 545.

Linda Manor does not dispute that it cannot satisfy either prong of the jurisdictional test. Salisbury, 448 Mass. at 375. Instead, it argues, and DALA determined, that because this appeal does not present a "substantive attack[]" on the validity of a rate setting regulation but rather a challenge to EOHHS's interpretation of that regulation, DALA is not required to apply the two-prong test. Id. at 374-376. EOHHS contends that in drawing this distinction, DALA applied an incorrect standard to determine whether DALA had jurisdiction, by misconstruing the Supreme Judicial Court's holding in Salisbury -- that "DALA may properly hear challenges to specific rate calculations, but it may not entertain substantive attacks on the rate regulations themselves," id. at 375 -- "as a grant of authority to DALA to entertain everything but attacks on rate regulations themselves." Or as the DALA magistrate put it, quoting id., "EOHHS theorizes that disagreements with its industry-wide interpretations of rate-setting regulations are among the 'attacks on the rate regulations themselves' that DALA is not authorized to entertain." We do not read DALA's grant of authority to be so limited. We agree with DALA that the jurisdictional test first articulated in Medi-Cab, 401 Mass. at 363 n.9, applies to appeals that present a challenge to "the rate regulations themselves," Salisbury, supra, but does not extend to EOHHS's interpretations of those regulations.

To better appreciate the basis for this distinction, we follow the DALA magistrate in revisiting the concerns that gave rise to the "special circumstances" jurisdictional test. Salisbury, 448 Mass. at 375. As a general matter, "[d]uly promulgated regulations of an administrative agency are presumptively valid and 'must be accorded all the deference due to a statute.'" Robinhood Fin. LLC v. Secretary of the Commonwealth, 492 Mass. 696, 707 (2023), quoting Craft Beer Guild, LLC, 481 Mass. at 520. That presumption of validity applies equally in the context of EOHHS's rate setting authority. DALA cannot simply invalidate EOHHS's "regulation[s] of general applicability." Beth Israel, 24 Mass. App. Ct. at 502. DALA's review of the rates EOHHS sets for individual facilities is complicated by its statutory remit, which requires DALA to review not only whether an aggrieved provider's rates are lawful, but also whether those rates are "adequate, fair and reasonable for such provider." G. L. c. 118E, § 13E. As the DALA magistrate recognized, however, "[i]f facilities were permitted to challenge the adequacy, fairness, and reasonableness of their rates on the basis of considerations shared by many other facilities, the practical result could be a backdoor invalidation of the pertinent EOHHS regulations."

The threat of "backdoor invalidation" of EOHHS's regulations of general application presents an analytical challenge, viz., when a provider challenges a rate setting regulation, how do the courts and DALA draw the line between an appeal that challenges "the substantive validity . . . of [that] regulation" -- a challenge which should "proceed by way of an action for declaratory judgment" -- and an appeal that is limited to "the peculiar application of that regulation to the provider"? Beth Israel, 24 Mass. App. Ct. at 503. This court recognized in Beth Israel that "the line cannot be between 'facial' challenges and 'as applied' challenges, because every provider can phrase a challenge to a general regulation as an appeal from the particular rate set for it under that regulation." Medi-Cab, 401 Mass. at 363 n.9, quoting Beth Israel, supra. See Salisbury, 448 Mass. at 375 ("Substantive attacks include challenges like Salisbury's which, although phrased as an appeal from an individual rate determination, are in fact a challenge to substantive regulations"). The Supreme Judicial Court, in Medi-Cab, supra, posited that for challenges to rate setting regulations based on class, "the line, in theory, is clear." The court held that "when a provider challenges a class-based rate . . . the provider properly may appeal that rate to [DALA] only if the provider can demonstrate" both prongs of the jurisdictional test (emphasis added). Id. In this way, the courts have effectively limited any claim challenging the substance of a duly promulgated EOHHS regulation to arguments of "special circumstances." Salisbury, supra. See G. L. c. 118E, § 13E; Baystate, 422 Mass. at 749; Hearings Officers, 401 Mass. at 544.

Linda Manor's disagreement with EOHHS's interpretation of its record-keeping regulation is not the same as a "challenge[] [to] a class-based rate," and does not implicate the same concerns that the courts sought to address in developing a jurisdictional test to steer toward the appropriate forum providers whose appeals may unwittingly threaten to invalidate those duly promulgated regulations. Hearings Officers, 401 Mass. at 545. See G. L. c. 30A, § 7; G. L. c. 118E, § 13E; G. L. c. 231A. Appeals that are limited in this way, like Linda Manor's, do not target the validity of the regulation at issue but rather assume its validity while advancing a competing interpretation.[10] From a policy perspective, just as "every

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[10] It is important to recall that the context here concerns the scope of DALA's statutory grant of authority to hear challenges to another agency's determinations. G. L. c. 118E, § 13E. See Cliff House Nursing Home, Inc. v. Rate Setting Comm'n, 378 Mass. 189, 196 (1979) (recognizing DALA predecessor's role in determination of rates for providers,

provider can phrase a challenge to a general regulation as an appeal from the particular rate set for it under that regulation," Medi-Cab, 401 Mass. at 363 n.9, requiring an interpretive challenge to first pass the specificity prong would needlessly circumscribe DALA's jurisdictional authority.

In holding that Linda Manor's interpretive challenge falls within the scope of DALA's authority to hear EOHHS rate setting appeals under G. L. c. 118E, § 13E, we also caution that this finding is relatively narrow. Providers whose rate setting appeals to DALA also present facts, issues, or arguments that more clearly fall within the framework of Medi-Cab and its progeny -- in addition to presenting a limited dispute concerning EOHHS's regulatory interpretations, either at the outset of the appeal or in the course of administrative proceedings -- would still need to meet the two-prong jurisdictional test. See, e.g., Beth Israel, 24 Mass. App. Ct. at 504 (while characterizing its complaint as challenge to

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including "independent function of conducting adjudicatory proceedings" and "the authority to make rulings of law and not merely recommendations"). DALA and the courts must still defer to EOHHS's reasonable interpretations of its regulations. See Freiner, 494 Mass. at 205, quoting Massachusetts Fine Wine & Spirits, LLC v. Alcoholic Beverages Control Comm'n, 482 Mass. 683, 687 (2019) ("'[W]e are generous in our deference to administrative agencies in their interpretation of their own regulations,' ensuring only that their interpretation is reasonable").

fairness of particular rate, provider hospital "vigorously attacked the substantive validity of regulations of general application" during proceedings, in attempt to persuade DALA to incorporate certain factors into methodology of rate setting calculations). Moreover, appeals to DALA disputing EOHHS's interpretations of its own regulations still face the same "heavy burden" that is faced by all parties challenging an agency's reasonable determination. Hartnett v. Contributory Retirement Appeal Bd., 494 Mass. 612, 616 (2024), quoting Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 689 (2012). See Carey v. Commissioner of Correction, 479 Mass. 367, 369-370 (2018), quoting Manor v. Superintendent, Mass. Correctional Inst., Cedar Junction, 416 Mass. 820, 820 (1994) ("Unless an agency's interpretation of its own regulation is 'arbitrary, unreasonable, or inconsistent with the plain terms of the rule,' such interpretation is entitled to deference").

2. Failure to prosecute. Linda Manor argues that the judge erred in vacating DALA's order on the basis that the denial of EOHHS's motion to dismiss was arbitrary or capricious. Because DALA appropriately exercised its discretion to hear the appeal, we agree.

Courts "review an agency's decision to determine whether it was," inter alia, "arbitrary or capricious." Ten Local Citizen Group v. New England Wind, LLC, 457 Mass. 222, 228 (2010). See

G. L. c. 30A, § 14 (7). Under that "highly deferential" standard, the court is not permitted to substitute its own judgment but must instead accord "due weight to the . . . discretionary authority conferred upon [the agency]." Friends & Fishers of the Edgartown Great Pond, Inc. v. Department of Envtl. Protection, 446 Mass. 830, 836 (2006), quoting Hotchkiss v. State Racing Comm'n, 45 Mass. App. Ct. 684, 695-696 (2006). "A decision is not arbitrary or capricious unless there is no ground which 'reasonable [persons] might deem proper' to support it." Freiner, 494 Mass. at 215, quoting McCauley v. Superintendent, Mass. Correctional Inst., Norfolk, 491 Mass. 571, 598 (2023).

In arguing that the judge rightly vacated Linda Manor's appeal, EOHHS points primarily to cases addressing whether and when involuntary dismissal is appropriate in civil proceedings. See, e.g., Bucchiere v. New England Tel. & Tel. Co., 396 Mass. 639, 640, 642 (1986) (affirming dismissal of Superior Court case for lack of prosecution where plaintiff had not "initiated any prosecutorial activity whatsoever" after more than six years); State Realty Co. of Boston v. MacNeil Bros. Co., 358 Mass. 374, 378, 379 (1970) (State Realty) (affirming Superior Court's refusal to review case after parties' "inaction of over eleven years" following rescript). In that context, the courts have recognized that "[i]nvoluntary dismissal is a drastic sanction which should be utilized only in extreme situations." Dewing v. J.B. Driscoll Ins. Agency, 30 Mass. App. Ct. 467, 471 (1991), quoting Monahan v. Washburn, 400 Mass. 126, 128 (1987). In considering whether to impose that sanction, "[t]he allowance or denial of a motion to dismiss for failure to prosecute is committed to the judge's sound discretion." Bucchiere, supra at 641. Indeed,

> "[t]he authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."

State Realty, supra at 379, quoting Link v. Wabash R.R. Co., 370 U.S. 626, 630-631 (1962). While agencies lack the same inherent authority as the courts, they do enjoy comparable discretion in managing their dockets, under their statutory authority and the regulations governing the agency's proceedings.

Under its enabling statute, DALA is responsible for the "speedy and fair disposition of all appeals." G. L. c. 7, § 4H. In carrying out that responsibility, DALA applies in its proceedings the standard rules of practice and procedure, 801 Code Mass. Regs. §§ 1.00. In pertinent part, 801 Code Mass. Regs. § 1.01(7)(g)(2) (2020), which governs motions to dismiss, states the following:

> "When the record discloses the failure of a Party . . . to respond to notices or correspondence, to comply with orders

> of the Presiding Officer, or otherwise indicates an intention not to continue the prosecution of a claim, the Presiding Officer may initiate or a Party may move for an order requiring the Party to show cause why the claim shall not be dismissed for lack of prosecution. If a Party fails to respond to such order within ten days, or a Party's response fails to establish such cause, the Presiding Officer may dismiss the claim with or without prejudice." (Emphases added.)

EOHHS argues that Linda Manor's inaction over the life of its appeal "indicate[d] an intention not to continue with the prosecution of [its] claim." 801 Code Mass. Regs. § 1.01(7)(g)(2).

In light of 801 Code Mass. Regs. § 1.01(7)(g)(2), the DALA magistrate found it "difficult to view Linda Manor's course of conduct as a punishable failure to prosecute where the facility complied with each applicable regulation and order." Indeed, when EOHHS filed its initial show cause motion, it did not cite any regulatory violation as a basis for dismissing the appeal, and it did not claim that Linda Manor had run afoul of any agency order. We agree with the DALA magistrate that nothing in DALA's regulations would have "indicated to a reasonable party that it would forfeit its timely claims by failing to implore DALA and EOHHS for progress . . . ." Contrast Suburban Home Health Care, Inc. v. Executive Office of Health & Human Servs., Office of Medicaid, 488 Mass. 347, 360-361 (2021) (imposing six-year statute of limitations on EOHHS overpayment recovery proceedings, dismissing overpayment proceeding filed after more than ten years, and noting "absurd consequences of not including any statute of limitations whatsoever for administrative proceedings"); Weiner v. Board of Registration of Psychologists, 416 Mass. 675, 680-683 (1993) (reversing board decision to suspend petitioner, rendered sixteen years after complaint was filed, where board "created an administrative morass" through excessive delay and repeated issuance of orders to show cause and dismissals). We have previously noted Linda Manor's subsequent failure to comply with the DALA magistrate's order timely to name a new representative. Under the plain language of the governing regulation, however, nothing compelled the magistrate to issue an order to show cause why the appeal should not be dismissed. 801 Code Mass. Regs. § 1.01(7)(g)(2) ("the Presiding Officer may initiate . . . an order requiring the Party to show cause"). See Zafar v. State Lottery Comm'n, 497 Mass. 536, 542 (2026), quoting Perez v. Department of State Police, 491 Mass. 474, 483 (2023) (courts consistently interpret "'may' as 'generally permissive, reflecting . . . grant [of] discretion or permission'"). Accordingly, we defer to the DALA magistrate's decision not to issue an order to show cause and to move forward with Linda Manor's appeal.[11]

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[11] Under G. L. c. 7, § 4H, DALA is required to "prepare annually a report concerning all appeals filed with [DALA] during the preceding calendar year," including information concerning "the number of appeals currently pending" and "the

EOHHS lastly claims that DALA failed to give due weight to the prejudice EOHHS faced in defending Linda Manor's appeal. This argument is unavailing. The substantive issue before DALA involved the straightforward interpretation of an unambiguous regulation. EOHHS had not shown an attempt to collect the testimony of former employees. Indeed, EOHHS itself did not take any action in this case or file a show cause motion for twenty-three years. Because we cannot say that DALA's decision to exercise its jurisdiction in these circumstances or to reinstate Linda Manor's disallowed IRT costs "lack[ed] any rational explanation that reasonable persons might support," it was error to vacate DALA's decision. Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 303 (1997).

Conclusion. The judgment of the Superior Court entered May 12, 2025, is reversed. A new judgment shall enter affirming DALA's decision and order. Consistent with that order, the matter is remanded to EOHHS for a final determination of damages.

So ordered.

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length of time from receipt of the appeal by [DALA] until a written recommended final decision, summary decision, or other interlocutory ruling is issued."