

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

F.E.,
Petitioner

v. Docket No. DPPC-26-0221

Commission for the Protection of Persons with Disabilities¹,
Respondent

ORDER OF DISMISSAL

On June 3, 2026, the Commission for the Protection of Persons with Disabilities (CPPD) moved to dismiss this appeal, writing in part:

Because of the importance of notice requirements and filing deadlines associated with DPPC correspondence—especially Abuser Registry notifications—the DPPC’s standard operational practice is to mail documents via first class mail, postage prepaid, on the date and to the addressee referenced within the document. *Affidavit of the DPPC (“DPPC Aff.”)*, ¶14.² DPPC administrative staff are trained in this requirement. *DPPC Aff.*, ¶14. All DPPC Abuser Registry notices, correspondence, and filings are retained in the DPPC’s document management system. *DPPC Aff.*, ¶15. If mail is returned to the DPPC for any reason, the DPPC retains a copy of the envelope which typically contains the reason that the mail was not deliverable. *DPPC Aff.*, ¶15. The DPPC also tracks notification dates and filing deadlines in its case management system. *DPPC Aff.*, ¶15.

On September 15, 2025, the DPPC mailed the Petitioner a Notice of Right to Respond (“notice”) in DPPC Investigation I-70297 via first class and certified mail in accordance with 118 CMR 14.02 (5) (b) (1) and (2). *DPPC Aff.*, ¶16 and *Exhibit A*. The notice included a copy of the Investigation Report which substantiated a finding of abuse against the Petitioner, as well as instructions for filing a petition for review (“petition”) of that finding. *DPPC Aff.*, ¶16 and

¹ The respondent’s name in this appeal was originally the Disabled Persons Protection Commission (DPPC). The Commission has changed its name to the Commission for the Protection of Persons with Disabilities (CPPD). I have changed this appeal’s caption and use “CPPD” in my narrative. The Commission, in its pleadings, referred to itself as DPPC. In quoting the Commission, I have retained “DPPC.”

² I do not include the motion’s affidavit and exhibits here.

Exhibit A. The initial petition filing deadline was October 2, 2025. *DPPC Aff.*, ¶16 and *Exhibit A*.

Counsel for the Petitioner (“Counsel”) called the DPPC On September 22, 2025 to request an extension and Counsel was granted an extension for filing a petition—until October 31, 2025. *Affidavit of the DPPC*, ¶7. This extension request and amended filing deadline were logged in the DPPC’s case management system. *DPPC Aff.*, ¶7.

On October 20, 2025, the DPPC received a timely petition from Counsel via mail. *DPPC Aff.*, ¶18 and *Exhibit B*. The Petition did not provide any instructions or requests for a preferred method for contacting Counsel with the decision on this filing. *DPPC Aff.*, ¶18 and *Exhibit B*. That same day, DPPC notified Counsel, via first class mail to this office, of receipt of his filing. *DPPC Aff.*, ¶9 and *Exhibit C*. This receipt also specifically indicated, “After the DPPC has performed its review, the final decision of the DPPC **will be mailed to you.**” *DPPC Aff.*, ¶9 and *Exhibit C (Emphasis added.)* This mailing was not returned to the DPPC. *DPPC Aff.*, ¶19

On April 7, 2026, the DPPC notified Counsel of its Petition Decision (“Decision”), via first class mail to this office, which affirmed a finding of registrable abuse. *DPPC Aff.*, ¶10 and *Exhibit D*. The notification also contained information and instructions for initiating an appeal with DALA. *DPPC Aff.*, ¶10 and *Exhibit D*. The Decision notified Counsel of the statutory DALA filing deadline of 13 business days from the date of notice—which accounts for the ten (10) day statutory filing deadline and three (3) mailing days—with this deadline being April 27, 2026. [Footnote omitted.] *DPPC Aff.*, ¶11 and *Exhibit D*. ***This legal communication was issued solely to Counsel as representative of the Petitioner in a pending legal matter.*** *DPPC Aff.*, ¶10. The Decision was not returned to the DPPC as undeliverable. *DPPC Aff.*, ¶12.

On April 30, 2026, the DPPC sent a notice, via first class mail, to both Counsel and the Petitioner that the Petitioner had been placed on the DPPC’s Abuser Registry due to the failure to initiate a timely DALA appeal. *DPPC Aff.*, ¶13. The Petitioner was issued a copy of this notification as the legal proceeding at the DPPC concluded upon a failure to initiate an appeal at DALA. *DPPC Aff.*, ¶13. The DPPC therefore also directly notified the Petitioner he had been placed on the Abuser Registry. *DPPC Aff.*, ¶13. Neither notice of registry placement was returned to the DPPC as undeliverable. *DPPC Aff.*, ¶14.

On May 5, 2026, Counsel contacted the DPPC concerning the notification of registry placement received by the Petitioner. *DPPC Aff.*, ¶15. DPPC advised Counsel that he had not submitted a timely appeal with DALA in response to the DPPC’s Decision. *DPPC Aff.*, ¶15. Counsel alluded to vague issues with his mail

and requested copies of the prior correspondence. *DPPC Aff.*, ¶15. DPPC provide[d] this material via email that same day. *DPPC Aff.*, ¶15 and *Exhibit F*.

On May 13, 2026, DPPC received a copy of Counsel's appeal of the Petition Decision with DALA—submitted via mail. *DPPC Aff.*, ¶16 and *Exhibit G*. In it, Counsel asserts, "We did not receive the original denial mail, so the window of appeal passed, that is why we are sending the appeal late." *DPPC Aff.*, ¶16 and *Exhibit G*.

....

Once the DPPC issues its Petition Decision, section 15 of Chapter 19C allots a caregiver with ten (10) business days to file an appeal with DALA....

....

The DPPC has further codified this statutory mandate in 118 CMR 14.03 (2) and (3). 118 CMR 14.03 (2) states that the petition decision shall notify the care provider of his right to seek appeal with DALA within thirteen (13) [footnote omitted] business days of the date of the mailing of the petition decision. 118 CMR 14.03 (3) directs the DPPC to enter the care provider's name and personally identifying information on the Abuser Registry if the care provider does not file a timely appeal with DALA.

....

Pursuant to 801 CMR 1.01 (7) (g) (3), a party may move to a dismiss a matter when DALA lacks jurisdiction to adjudicate an appeal. "It has long been the law of this Commonwealth that, when a remedy is created by statute, and the time within which it may be availed of is one of the prescribed conditions for relief, failure to meet that time limit deprives a judicial body, court, or administrative appeals board of jurisdiction to hear the case. The remedy thus becomes unavailable after the statutory deadline." *Nissan Motor Corp. in U.S.A. v. Commr. of Revenue*, 407 Mass. 153, 157 (1990) (internal citations omitted). "Accordingly, where...a party does not comply with a statutory deadline for the filing of notice of appeal, the reviewing [tribunal] has no subject matter jurisdiction over the case, and thus no authority to enlarge the appeal period." *Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 792 (2020).....

....

In this matter, the Petitioner is apparently asserting defective notice of some form. The DALA appeal form passively and vaguely offers "we did not receive the original denial mail..." without attributing any error or deficiency to the DPPC or otherwise explaining the circumstances. Counsel has not alleged

that his mailing address was incorrect or the notices were otherwise misdirected. There is a “presumption that the mailing of a properly addressed letter is *prima facie* evidence of receipt by the intended recipient.” *Com. v. Barboza*, 68 Mass. App. Ct. 180, 185 (2007). An affidavit by the sender concerning its normal business practices of mailing correspondence is sufficient to trigger this presumption. *See generally Ricci v. Rushmore Loan Management Services, LLC*, 100 Mass. App. Ct. 1110, *2 (2021) (unpublished decision). More, this presumption is bolstered when corroborated by extrinsic evidence of proper mailing. In *Dwyer v. MTRS*, DALA noted that evidence of a business’s normal practice concerning mailing process is sufficient to meet the presumption—especially when coupled with evidence that other parties received notification in accordance with this same process. 2024 WL 4345195, * 5. *See also Dicato vs. Comm’r of Revenue*, Mass. App. Tax. Bd., No. C282731, *2-3 (Jan. 17, 2007) (Testimony about the normal business practice of the Department of Revenue along with no record of the correspondence being returned to sender was sufficient to establish the notice was mailed and received.)

Once the presumption of proper mailing has been met, the burden shifts to the party claiming lack of receipt. *SCA Disposal Servs. of New England, Inc. v. State Tax Comm’n*, 375 Mass. 338, 341–42 (1978). And, “bare assertion of non-receipt, contained in a self-serving affidavit carefully couched in such phrases as ‘I do not have any record’” do not meet this burden nor will it trigger relief from a filing deadline. *Dicato vs. Comm’r of Revenue*, Mass. App. Tax. Bd., No. C282731, *3 (Jan. 17, 2007)....

As such, it is the Petitioner’s burden to demonstrate that the notice of Petition Decision triggering the filing deadline with DALA was defective. It is a heavy burden. And it has not been met.

....

In this matter, it is undisputed that the Petitioner did not submit a timely appeal. The appeal, dated May 5, 2026, was well past the April 27, 2026 statutory filing deadline. Counsel requests that DALA accept this untimely appeal based upon a cursory assertion that “we” did not receive the DPPC’s April 7, 2026 decision on his petition for review. As an initial matter, there is no requirement for the DPPC to notify both Counsel and the Petitioner.³ When a petitioner is represented by counsel, the DPPC communicates solely with counsel in pending appeals. Furthermore, the DPPC’s affidavit details its standard operational practices—that correspondence is sent via first class mail, postage prepaid, on the date cited within the document and to the addressee cited within the document. Counsel has not asserted that the DPPC’s

³ CPPD’s assumption that by “we” F.E.’s lawyer meant both F.E. and himself is a fair assumption.

mailing to his office was mislabeled or misdirected—nor was it. And, none of the correspondence in this matter, including: DPPC’s initial notice of its finding to Petitioner; its confirmation of receipt of the petition; its petition decision; or its two notices of registry placement—were returned to the DPPC as undeliverable. Moreover, the Petitioner received his initial notice of finding as well as the companion notification of registry placement sent on the same day Counsel was notified. As such, the DPPC has offered sufficient evidence of its compliance with its statutory notification procedures.

Counsel, in his call to the DPPC, alluded to an ongoing issue with his mail but offered no specifics. Despite this, Counsel was communicating with the DPPC via mail with his petition filing. And, Counsel, in filing the petition, did not put the DPPC on notice that email or any other form of communication was the preferred method of receipt of the subsequent decision. [Footnote omitted.] The DPPC’s receipt of the petition explicitly noted that the decision would be sent in the mail.

....

Counsel has offered no evidence of defective notice by the DPPC or any of the other limited and extraordinary grounds for relief from the statutory filing deadline. As a result, DALA lacks jurisdiction to adjudicate this appeal.

On June 25, 2026, F.E.’s lawyer opposed CPPD’s motion to dismiss. F.E., through his lawyer, called CPPD’s motion “meritless.” It is not meritless. F.E. called CPPD’s motion

a mere cover-up for its violations of the law and its deprivation of the Petitioner’s constitutional right of access to justice, fair hearing and due process of law.

F.E. does not identify CPPD’s alleged violations of the law or cite any cases for its allegations about violations of constitutional rights. F.E. apparently means that because CPPD placed him on the abuse registry without a hearing, it violated his rights. However, CPPD does not conduct hearings. See G.L. c. 19C and 118 CMR. DALA conducts hearings, but F.E. did not timely appeal CPPD’s decision and thereby qualify for a hearing.

F.E. argues that CPPD acted “negligently,” “unethically,” and in “bad faith,” and violated its operating procedure. F.E. does not develop these arguments, some of which it made more than once, and I do not credit them.

F.E. argues that CPPD's affidavit is misleading because it does not aver that CPPD used registered mail and that his lawyer received CPPD's documents. CPPD's affidavit is not misleading. Nothing required CPPD to use registered mail, CPPD did not aver anything about registered mail, and its affidavit has not misled me. CPPD's affidavit did not aver that F.E.'s lawyer received CPPD's documents.

F.E. could have but did not use its opposition to the motion to clarify and amplify on his lawyer's vague oral invocation to CPPD of mail issues. I have no affidavit from F.E.'s lawyer, even one averring that he had had *no* mail issues, which would have supported F.E.'s opposition to the motion to dismiss.

CPPD's reply to F.E.'s opposition demonstrates that F.E.'s lawyer had some organizational difficulties in handling this case. While those difficulties do not include receiving and processing U.S. mail, the difficulties certainly raise the likelihood, even slightly, that F.E.'s lawyer received CPPD's documents of April 7, 2026 but did not so realize.

For substantially the reasons that CPPD offered in its motion to dismiss, I grant the motion.

Dated: July 8, 2026 /s/ Kenneth Bresler
Kenneth Bresler
Administrative Magistrate
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