

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Jeanne Cappuccio, Guardian of Mia C.,
Petitioner

v.

Docket No. MS-24-0699

Department of Developmental Services,
Respondent

Appearance for Petitioner:

Jeanne Cappuccio, *pro se*

Appearance for Respondent:

Daniel P. O’Leary, Esq.

Administrative Magistrate:

Kenneth J. Forton

ORDER OF DISMISSAL

Petitioner Jeanne Cappuccio, mother and guardian of Mia C., filed this appeal seeking adjudicatory review from the Division of Administrative Law Appeals (DALA) over an alleged improper transfer of Mia from a DDS-sponsored apartment to her parents’ home.¹ Respondent Department of Developmental Services (DDS) asserts that

¹ The question as to whether the appeal was timely is complicated. Petitioner notified DDS in a letter dated March 26, 2024 that she was unhappy with recent proposed ISP modifications and wished to appeal the modifications and have the appeal treated under the procedure for proposed transfers under 115 CMR 6.63(4). 115 CMR 6.63(4) requires DDS to file a request for adjudicatory proceedings with DALA if an objection to a proposed transfer is made. On April 1, 2024, DDS refused to initiate proceedings at DALA on the basis that no “transfer” as that term is defined in the regulation, had been

DALA has no jurisdiction to hear this dispute, and filed a motion to dismiss. Because there was no “transfer,” as defined under 115 CMR 6.63, DDS’s motion is allowed.

DALA has the legal authority to hear only the specific types of matters assigned or referred to it under applicable statutes, regulations, and interagency agreements.

Clement v. Executive Office of Aging and Independence, EA-24-0635 (Div. Admin. Law. App. Jan. 31, 2025); *Comm’r of Rev. v. Marr Scaffolding Co.*, 414 Mass. 489, 493 (1993). DALA has very limited subject matter jurisdiction over DDS decisions; DALA may review a DDS decision only when it concerns a proposed “transfer” of a DDS client. 115 CMR 6.63(4).

Modifications to ISPs are generally not appealable to DALA. *See* 115 CMR 6.63(1). The sole exception is DDS decisions concerning a proposed “transfer” of a DDS client. 115 CMR 6.63(4). A transfer is “any proposed modification to an ISP involving an individual moving from one home, operated or licensed by the Department, or funded through a residential services contract other than a master services agreement that was negotiated and executed by the Department, to another home.” 115 CMR 6.63(1). The only relevant issue for the purpose of this motion is whether DDS’s proposed actions met the definition of transfer.

Beginning in July 2023, Mia lived with one roommate in a private apartment, with services provided by Northeast Residential Services (NRS), an operational division

proposed, and the Petitioner had no right to appeal the proposed modifications as a transfer. An agency must follow its own regulations. *Royce v. Commissioner of Correction*, 390 Mass. 425, 427 (1983). DDS should have requested the adjudicatory review before DALA and allowed DALA to deny it on the grounds that no transfer occurred, as I do by this ruling. Petitioner ultimately filed this appeal on December 6, 2024.

of DDS. On February 23, 2024, NRS notified Mia that, beginning on April 1, 2024, it would no longer be able to provide services to her because of staffing shortages.² On March 12, 2024, DDS held an ISP modification meeting with the Petitioner to provide several options in light of NRS’s notification. First, Mia could remain in the apartment, provided her guardians were able to find a new DDS-funded service provider. Second, Mia could move to a different residential placement option; she rejected at least two of these alternative placements. Instead, Mia and her parents decided that she would move back in with them, which she did in April 2024. DDS provided funding for in-home staffing support by The ARC of Greater Haverhill/Newburyport.

A “transfer” under 115 CMR 6.63 occurs when, after a modification to an individual’s ISP, she moves from one home to another that is either “operated or licensed by” DDS. 115 CMR 6.63(1). In this case, DDS did not propose a modification to Mia’s ISP that would constitute a transfer. One of her options was to remain in her apartment and use a different service provider. A “change in the identity of the provider . . . involving no move, shall not be deemed a transfer.” 115 CMR 6.63(1)(b). Her other choice was to move to another private apartment and get staffing supports from a different agency that DDS would pay for. Neither of these options are transfers under the regulations.

Instead of considering a different service provider or a different private apartment, her parents moved Mia out of her apartment despite having options available that would have allowed her to stay. Taking Mia home mooted any objection to her move that

² The question of whether the loss of services was in retaliation for a prior complaint filed by Mia’s guardians, as asserted by the guardians, is not within the scope of DALA’s limited review powers.

DALA could even possibly review. DALA is only able to order DDS to delay or stop a transfer; it cannot prevent a move that occurred a year ago. DALA cannot provide the relief the Petitioner is seeking.

When a tribunal lacks jurisdiction, “the only function remaining to [it] is that of announcing the fact and dismissing the cause.” *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018). For the reasons stated above, DDS’s motion to dismiss is granted.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: May 9, 2025