

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Seaview Convalescent and
Nursing Home,
Petitioner,

Docket No.: RS-16-0533

v.

Executive Office of Health and Human Services,
Respondent.

ORDER OF DISMISSAL

The Petitioner, Seaview Convalescent and Nursing Home, appeals rates set by the Executive Office of Health and Human Services (EOHHS). The matter was originally dismissed for failure to prosecute in 2022. However, on appeal to the Superior Court, the dismissal was vacated and the matter remanded for consideration of the merits.

1. Procedural History

Upon remand, EOHHS filed a motion to dismiss, and the Petitioner filed an opposition. At a hearing on the motion, I indicated that the Petitioner's opposition was thin. The Petitioner simply attached its appeal letter in support of its position. However, I explained that the Petitioner needed to provide some offer of proof that there was indeed a factual issue in dispute about the application of the rates to Seaview specifically. I indicated I would interpret the appeal letter broadly to encompass these claims if Seaview could support them in some way. I gave Seaview time to do that.

After granting a few extensions, the Petitioner submitted an offer of proof that essentially rehashed its opposition and attached more exhibits. The exhibits included copies of prior appeal letters, correspondence and orders from other related rate setting cases, and

some court pleadings. It also included a two-page document with a series of accounting figures. But there was no explanation as to what the document was, what it was supposed to show, who created it, and how it supported Seaview's appeal. EOHHS filed a response to the offer of proof, again pressing its motion to dismiss.

I held another hearing after these filings. At the hearing, I again explained to the Petitioner that I did not believe the submissions added anything substantive to the prior arguments. I referenced the "accounting document" and indicated that could potentially be evidence of something, but I had no idea what it was and required more information. I allowed counsel one more deadline to submit any further offer of proof including, for example, affidavits from prospective witnesses. I set a September 5, 2025 deadline for submission and indicated it would be the last chance. On September 18, 2025, counsel for the Petitioner sent an e-mail saying he had been unable to submit anything for a variety of personal reasons and asked for an extension. I responded that he should first reach out to counsel for EOHHS to see if he assented to an extension. If he did not, I told counsel he needed to file a motion with a little more detail than the few lines in the e-mail.

I had previously scheduled a status/motion hearing for October 2, 2025. I e-mailed both parties the day before to ask if they anticipated the hearing moving forward. Counsel for EOHHS said he had still not heard from opposing counsel. I held the status hearing on October 2, 2025. Only counsel for EOHHS appeared. I asked him to try and reach opposing counsel after the hearing. If he made contact, I suggested two further dates for another status hearing at which Petitioner's counsel could address my request for more detail. If he could not make contact, I indicated I would decide the motion based on the submissions. Counsel for EOHHS reported back that he called and e-mailed opposing counsel but did not receive a response.

Accordingly, having given counsel multiple opportunities to respond to the motion to dismiss, the record is closed, and I rely on the submissions I have received to date.

2. The Merits

It is well settled that the Division of Administrative Law Appeals (DALA) “may properly hear challenges to specific rate calculations, but it may not entertain substantive attacks on the rate regulations themselves.” *Guliford Health Mgmt. v. EOHHS*, RS-99-104 et al. (Div. Admin. Law Apps. Mar. 8, 2024), *quoting Salisbury Nursing & Rehabilitation Center, Inc. v. Div. of Administrative Law Appeals*, 448 Mass. 365, 375 (2007). “Among other considerations, allowing challenges to generally applicable regulations by means of an ‘ad hoc adjudicatory proceeding’ would ‘wreak havoc on the regulatory plan established by the Legislature.’” *Id. quoting Beth Israel Hospital, Inc. v. Rate Setting Comm’n*, 24 Mass. App. Ct. 495, 505 (1987). “Instead, ‘an across-the-board challenge’ to ‘regulations of general applicability ought to be determined on a record established and under the standard of review provided in a declaratory judgment action under G.L. c. 30A, § 7, and G.L. c. 231A.’” *Id. quoting Beth Israel, supra*. In short, DALA’s jurisdiction is limited “to situations in which the provider can demonstrate circumstances other than voluntary business decisions - which make application of the rate to that provider different from its application to all other providers in the class.” *Id. quoting Salisbury, supra*.

Here, Seaview’s appeal letter contains no allegations specific to it. Rather, it raises broad claims about how the rates were generally set. It attacks EOHHS’s reliance on costs below the “industry median” that “create a rate that is not fair, reasonable and adequate.” It complains that occupancy rates were calculated using the “nursing cost per management minute” and not “actual 2007 industry data.” It suggests the capital payment may have been based on

something it should not have been based on, but cannot say for sure and simply asks it to be changed (in Seaview's favor). Lastly, it contends that "direct care add-on should be applied to all Nursing facility workers and employees should not be penalized by position held."

These broad claims are not allegations that EOHHS somehow treated Seaview differently than other providers; they are complaints about how EOHHS calculated these rates for all providers. I gave counsel ample opportunity to supplement the allegations. I said I would interpret the appeal letter broadly to encompass specific allegations about how Seaview was treated differently, but I needed something in the record to support it. I suggested counsel could provide an affidavit from a knowledgeable party that could speak to this; I even suggested I would accept a written offer of proof by counsel, with relevant documents attached, if it plausibly showed something specific and unique about Seaview's rates. However, nothing in the record shows Seaview's appeal raises claims under DALA's jurisdiction.

Accordingly, the matter is **dismissed** for failure to state a claim. 801 Code of Mass. Regs. § 1.01(7)(g)(3).

Eric Tennen

Date: October 16, 2025

Eric Tennen, Magistrate
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