

PROCEDURAL FINDINGS

1. On August 25, 2021, HCAI assessed a penalty against Appellant in the amount of \$2,500 for the late extension request of MSB Inc. Congregate Living's Long-Term Care Annual Disclosure Report.²
2. Appellant appealed the penalties by submitting a Request for Administrative Hearing form dated September 7, 2021, postmarked September 8, 2021, and received by the HCAI Hearing Office on September 23, 2021.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter which was delivered to Appellant's place of business by General Logistics Services on August 30, 2021.³
4. On December 20, 2021, the Hearing Office transmitted the Scheduling Notice to both Appellant and HCAI's representatives via e-mail. This notified the parties that the hearing was scheduled to be conducted electronically on Tuesday, February 8, 2022, beginning at 1:30 p.m. The email address used for Appellant was the email address indicated on the Request for Administrative Hearing form.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 10 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted a written statement with its appeal. Appellant's written statement was found to be authentic and relevant and admitted to the record.
7. Appellant failed to appear at the scheduled hearing. The Hearing Officer and HCAI's representative were available to conduct the scheduled hearing from 1:30 p.m. until 1:58 p.m. In addition to the email on December 20, 2021, a copy of the Scheduling Notice was included with HCAI's exhibits which were sent via e-mail on January 28, 2022, and the Hearing Office sent a further reminder email during the scheduled hearing at approximately 1:42 p.m., and an emailed

² Health & Saf. Code, § 128770, and exhibit 9.

³ Exhibit 7 and Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

written notice of the closing of the hearing record at approximately 1:58 p.m. Appellant was advised in the Scheduling Notice and again in the February 8th emails that a failure to appear could result in a decision against it.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file MSB Inc. Congregate Living's Long-Term Care Annual Report by July 31, 2021.⁴
2. HCAI sent automated reminder emails to Appellant's designated representative on July 6, 2021, July 21, 2021, and July 30, 2021.⁵
3. HCAI sent a delinquent report reminder to Appellant's designated representative on August 3, 2021.⁶
4. HCAI mailed a delinquent report reminder to Appellant on August 9, 2021.⁷ It was delivered to Appellant's place of business on August 11, 2021.⁸
5. On August 25, 2021, Appellant requested and was granted the 60-day extension for the report at issue.⁹ Penalties accrued from July 31, 2021 until August 25, 2021 when the extension was requested.
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for 25 days, resulting in a penalty amount of \$2,500.¹⁰
7. These facts, substantiated by written exhibits offered by HCAI, were not contested by Appellant.
8. Under Health and Safety Code section 128770, a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause."¹¹

⁴ See also Cal. Code Regs. tit. 22, § 97051.

⁵ Exhibits 1, 2, and 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 7 and Cal. Code Regs. tit. 22, § 97051.

¹⁰ Exhibit 8. See also Cal. Code Regs. tit. 22, § 97052, and Health & Saf. Code, § 128770(a).

¹¹ Health & Saf. Code, § 128770(c).

9. Appellant submitted a written statement with its appeal it believes shows good cause why its extension was not requested in a timely manner.
10. Appellant's written statement stated that "the company was not notified or aware of the deadline as this is our first-time filing. There was no extension filed on our behalf."
11. These facts, taken from a written statement offered by Appellant, were contested by HCAI through its exhibits.
12. This decision is based solely on the documentary evidence as Appellant failed to appear for its scheduled hearing or request a continuance.
13. HCAI's exhibit 10 confirmed that the report at issue was in fact Appellant's first report for the facility. Furthermore, Appellant's filing history shows that they did not file the report at issue prior to the expiration of the extension on November 23, 2021 and had still not filed the report at issue as of January 24, 2022.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety Code section 128770, for failing to timely request the extension for the Long-Term Care Annual Disclosure Report for MSB Inc. Congregate Living by July 31, 2021, and whether the penalty should be waived or reduced.
2. In *Waters v. Superior Court*, the California Supreme Court stated that, "good cause may be equated to a good reason for a party's failure to perform that specific requirement from which he seeks to be excused."¹² Good cause must be directly related to the specific legal requirement which the party failed to perform and should be outside the reasonable control of the party.¹³ Good cause is sometimes defined as circumstances beyond the party's control, and not related to

¹² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹³ *Waters, supra*, 58 Cal.2d 885,893 and Secretary of State, "Good Cause" Reasons for Waiving Late Campaign & Lobbying Filing Fees <https://www.sos.ca.gov/campaign-lobbying/good-cause-reasons-waiving-late-campaign-lobbying-filing-fees/> [as of December 4, 2019].

the party's own negligent act or failure to act. On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.¹⁴ The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.¹⁵

3. Appellant alleged that it was not notified of the report requirement or aware of the deadline. Appellant's representative did not allege any other basis for good cause.

4. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁶ Here, a representative designated by Appellant, Rimma Goluv, received multiple emailed reminders of the upcoming deadline sent by HCAI. In addition, Appellant received a delinquency email and a mailed letter notifying it the report at issue might be delinquent. No facts were presented demonstrating that Appellant acted with due diligence for the late extension request.

5. It was not substantiated that circumstances outside of Appellant's control contributed to the late extension request, or that Appellant acted with due diligence under the circumstances. Therefore, there is no good cause for waiver or reduction of the penalty.

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¹⁴ Fair Political Practices Commission, Guidelines for Waiving Late Fines (Nov. 2017) <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/FilingOfficer/700FO-Folder/Late%20Fine%20Guidelines.pdf> [as of November 4, 2021]. See also *Waters, supra*, 58 Cal.2d 885, 893.

¹⁵ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁶ *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: February 22, 2022

//original signed//
MICHELLE L. CHURCH-REEVES
Hearing Officer
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775 and California Code of Regulations, title 22, section 97054, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: 3/11/2022

//original signed//
ELIZABETH A. LANDSBERG
Director
Department of Health Care Access and Information