

BEFORE THE
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to: SANTA PAULA POST ACUTE CENTER Appellant.	}	HCAI No. 21-044-LTC
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PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), successor to the Office of Statewide Health Planning and Development (“OSHPD”),¹ State of California, on Wednesday, July 6, 2022, beginning at 10:40 a.m. PDT.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section was also present on behalf of HCAI.

Santa Paula Post Acute LLC, owner and operator of Santa Paula Post Acute Center,² collectively “Appellant,” was represented by Joe McFadden, consultant, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted

¹ Stats. 2021, ch. 143, §§ 30, 31.

² The licensee, The Reutlinger Community, a non-profit corporation, has been owned by Eskaton, also a non-profit corporation, since July 3, 2020. Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=140001185> [as of June 29, 2022].

for decision and the record was closed on Wednesday, July 6, 2022, at 10:51 a.m. PDT.

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.³
2. On November 8, 2021, HCAI assessed a penalty against Appellant in the amount of \$300 for the late filing of its Long-Term Care Annual Disclosure Report.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 22, 2021, postmarked November 23, 2021, and received by the HCAI Hearing Office on November 30, 2021.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.⁵
5. The hearing was conducted electronically using video and teleconferencing.
6. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 9 were found to be authentic and relevant and admitted to the record.
7. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal. The written statement was found to be authentic and relevant and admitted to the record as Exhibit A.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency, the initial due dates for the report at issue were extended by three months.⁶ Following exhaustion of the extension, Appellant was required

³ Health & Saf. Code, § 128755(b) and Exhibit 3.

⁴ Health & Saf. Code, § 128770. *See also* exhibit 11.

⁵ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁶ Executive Order N-08-21 (June 11, 2021).

under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.⁷

2. On March 29, 2021, Appellant requested and received both extensions. Following exhaustion of the extensions, Appellant was required Health and Safety Code section 128740 to file its report by Friday, October 29, 2021.⁸

3. Penalties accrued from Saturday, October 30, 2021 until Monday, November 1, 2021 when Appellant filed the report at issue.⁹

4. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for three days for the late filing of the report at issue, resulting in a penalty amount of \$300.¹⁰

5. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

6. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the extension for its reports was not requested in a timely manner.

7. Mr. McFadden testified on behalf of Appellant that the labor turnover data submitted to Axiom could not be correct based on the analytics that Axiom performed during the report preparation. As the labor turnover data is part of a section of the report at issue that can impact Quality and Accountability Supplemental Payment, it was important to ensure that the information was corrected prior to submittal.¹¹ Appellant's staff worked to obtain corrected data, which took a few days. The report was submitted as soon as the data was corrected and the report was finalized, three days late.

8. These facts were substantiated by oral statements made under oath by Mr. McFadden at the hearing.

⁷ See also Cal. Code Regs. tit. 22, § 97051.

⁸ Exhibits 1 and 2.

⁹ Exhibit 6.

¹⁰ Health & Saf. Code, § 128770(a) and Exhibit 7.

¹¹ See also exhibit A.

9. Mr. Christensen further testified that the Quality and Accountability Supplemental Payment is a carve out of the Medi-Cal payment and part of the facility's Medi-Cal reimbursement.

10. HCAI's exhibit 13 shows that Appellant filed its October 29, 2020 report one day late and its July 29, 2019 report in a timely manner.

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 file the Long-Term Care Annual Disclosure Report for its facility by October 29, 2021, and whether the penalty should be reduced or waived.

2. 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."¹² 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."¹³ 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.¹⁴ Good cause is sometimes defined as circumstances beyond the party's control, and not related to 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.¹⁵ The determination of good cause in a particular context should utilize

¹² Health & Saf. Code, § 128770(c).

¹³ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 885, 893 (hereafter *Waters*).

¹⁴ *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].

¹⁵ 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 15, 2020]. See also *Waters, supra*, 58 Cal.2d 885, 893.

common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.¹⁶

3. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁷ The substantiated facts show that the report at issue was late because Appellant needed to ensure the information submitted was accurate and correct. Specifically, the labor turnover data, which affects the Quality and Accountability Supplemental Payment. However, that data was within Appellant's control and no substantiated facts indicated this was impacted by factors outside of Appellant's control. As there were no additional extensions available to Appellant, the report was submitted as soon as it was corrected, three days late.

4. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control and that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver or reduction of the \$300 penalty.

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¹⁶ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.
¹⁷ *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: September 23, 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: 9/23/2022 _____ //original signed//
ELIZABETH A. LANDSBERG
Director
Department of Health Care Access and Information