

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

In the Matter of the Penalty Issued to:

WESTWOOD POST ACUTE

Appellant.

HCAI No. 21-046-LTC

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 20, 2022, beginning at 10:30 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.

Glacier Bay Holdings LLC, owner and operator of Westwood Post Acute,² collectively “Appellant,” was represented by Joe McFadden, consultant, Axiom Healthcare Group (“Axiom”).

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Wednesday, July 20, 2022, at 10:45 a.m. PDT.

¹ Stats. 2021, ch. 143, §§ 30, 31.

² Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=070000096> [as of July 20, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.³
2. On November 10, 2021, HCAI assessed a penalty against Appellant in the amount of \$1,100 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 23, 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 12 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 under Health and Safety Code section 128740 to file its report or request an extension by July 31, 2021.⁷

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).

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

2. On April 1, 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 October 29, 2021.⁸

3. HCAI mailed Appellant an Initial Delinquency Letter dated November 1, 2021 to Appellant using Global Logistics Services overnight mail.⁹ The letter was delivered on Wednesday, November 3, 2021.¹⁰

4. Penalties accrued from October 30, 2021 until November 9, 2021 when Appellant filed the report at issue.¹¹

5. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for eleven days for the late filing of the report at issue, resulting in a penalty amount of \$1,100.¹²

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

7. 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.

8. Mr. McFadden testified on behalf of Appellant that the operator expanded from three to approximately ten facilities and the new facilities were more difficult to integrate due to the arrival and ongoing impacts of the COVID-19 pandemic. Historically, Appellant prepared its cost reports in house using an experienced employee, Amado De Guzman. Appellant contacted Axiom to prepare the report at issue due to many of the office staff, including their internal report preparer, being debilitated by COVID-19. Upon reviewing the data for the report at issue, Axiom discovered that there were issues with the ventilator and sub-acute expenses. Specifically, the projected rate decreased by \$130. Staff worked to gather the corrected information and prepare the report at issue which was filed with an eleven-day delay. However,

⁸ Exhibits 2 and 3.

⁹ Exhibits 8 and 9.

¹⁰ *Ibid.*

¹¹ Exhibit 10.

¹² Health & Saf. Code, § 128770(a) and Exhibit 12.

the delay was compounded by the difficulties with contacting staff who were out sick or quarantined due to COVID-19.

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

10. HCAI's exhibit 13 shows that Appellant has filed its previous reports 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.”¹³ 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.”¹⁴ 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.¹⁵ 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.¹⁶ The determination of good cause in a particular context should utilize

¹³ Health & Saf. Code, § 128770(c).

¹⁴ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹⁵ *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].

¹⁶ 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.¹⁷

3. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁸ The substantiated facts show that the facility was acquired by Appellant during the COVID-19 pandemic and there were difficulties with integrating them due to those external factors. However, the choice to purchase the facility was within Appellant's control.

4. The substantiated facts also show that Appellant's report preparer, as well as other staff, were out with COVID-19 during the time immediately prior to the filing date. Appellant took steps to have the report prepared by Axiom to meet the deadline. However, Axiom discovered errors which needed to be corrected prior to filing. This delay was compounded by the difficulties with contacting staff who were sick or quarantined due to COVID-19. Staff being out sick is both unexpected and clearly outside of Appellant's control.

5. These facts 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 show good cause for waiver of the \$1,100 penalty.

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¹⁷ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁸ *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.

