

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

In the Matter of the Penalty Issued to:

**CHINO AVENUE CONGREGATE
HOME**

Appellant.

HCAI No. 22-011-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 Tuesday, October 4, 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.

Chino Avenue Congregate Home Inc., owner and operator of Chino Avenue Congregate Home,² collectively “Appellant,” was represented by Steven Martinson, owner and director.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, October 4, 2022, at 10:55 a.m. PDT.

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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=630016322> [as of October 4, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by April 30, 2022.³
2. On May 17, 2022, HCAI assessed a penalty against Appellant in the amount of \$400 for the late extension request of its Long-Term Care Annual Disclosure Report.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated June 3, 2022 and received by the HCAI Hearing Office via email on June 27, 2022.
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 8 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 document was found to be authentic and relevant and admitted to the record as Exhibit A.

FACTUAL FINDINGS

1. Due to the ending of the COVID-19 emergency extensions on June 30, 2021, the initial due date for the report at issue was not extended as in 2020 and 2021.⁶ Appellant was therefore required under Health and Safety Code section 128740 to file its report or request an extension by Saturday, April 30, 2022.⁷

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

⁴ Health & Saf. Code, § 128770. *See also* exhibit 6.

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

⁶ Executive Order N-08-21 (June 11, 2021) terminated the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports due after June 30, 2021.

⁷ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibits 1, 2, and 3.

2. Penalties accrued from Saturday, April 30, 2022 until Wednesday, May 4, 2022 when Appellant requested and received the first extension for the report at issue.⁸

3. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for four days for the late extension request of the report at issue, resulting in a penalty amount of \$400.⁹

4. 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 3, 2022.¹⁰ The report at issue was filed prior to the expiration of the extension.¹¹

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. Martinson testified on behalf of Appellant that as a small six-bed congregate living health facility he is the sole proprietor and administrator of the facility. Mr. Martinson was the only person who has the ability to prepare the financials for HCAI. He testified he was unable to request the extension through SIERA and instead was required to email HCAI staff and request an extension. Mr. Martinson testified that he fell behind on his duties at the facility; that he also had to request an extension on their taxes which were necessary to prepare the report at issue. In addition, he was at a previously planned event from April 27, 2022 to May 4, 2022 and was unable to request the extension until his return.¹²

8. These facts were substantiated by oral statements made under oath by Mr. Martinson at the hearing as well as written exhibits.

9. HCAI's exhibit 8 shows that Appellant filed its previous five reports in a timely manner.

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⁸ Exhibit 5.

⁹ Health & Saf. Code, § 128770(a) and Exhibit 6.

¹⁰ Exhibit 5.

¹¹ Exhibit 8.

¹² Exhibit A.

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 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 Mr. Martinson is the sole responsible party for Appellant and relied solely on himself to file the reports. No substantiated facts show that he did not receive

¹³ Health & Saf. Code, § 128770(c).

¹⁴ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal.2d 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.

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.

