

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

In the Matter of the Penalty Issued to:

MILPITAS CARE CENTER

Appellant.

HCAI No. 23-015-LTC

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on Friday, July 12, 2024, beginning at 10:37 AM 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.

ASM Family Corporation, owner and operator of Milpitas Care Center¹, collectively “Appellant,” was represented by Helen Macatangay, Chief Executive Officer. Grace Parker, contracted accountant, and Adelona Perry, business office manager for ASM Family Corporation, were also present on behalf of Appellant.

Both documentary and testamentary evidence was received. The hearing concluded on July 12, 2024 at 11:32 AM PDT. At HCAI’s concurrence, the record was held open until Friday,

¹ Department of Public Health, Cal Health Find Database
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=070000047> [as of July 10, 2024].

July 19, 2024, at 5:00 PM PDT for Appellant to submit additional requested documentation.

PROCEDURAL FINDINGS

1. On October 26, 2023, HCAI assessed a penalty against Appellant for the late filing of its Long-Term Care Annual Disclosure Report for a total of \$8,200.²
2. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated November 8, 2023 and received by the Hearing Office via regular mail on November 28, 2023.
3. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.³
4. The hearing was conducted electronically using video and teleconferencing.
5. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 16 were found to be authentic and relevant and admitted to the record.
6. Appellant submitted a written statement marked Exhibit A to the Hearing Office and HCAI at the time of appeal. In addition, additional correspondence was submitted after the hearing, marked Exhibits B through D. The documents were found to be authentic and relevant and admitted to the record.
7. Appellant has two previous related appeals: Appeal No. 22-010-LTC, in which the penalty was reduced for good cause primarily due to impacts from COVID-19; and 22-016-LTC, in which the penalty was upheld.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file its Report

² Health & Saf. Code, § 128770. *See also* exhibit 10.

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

Period Ending (“RPE”) date December 31, 2022 report or request an extension by April 30, 2023.⁴

2. An automated reminder email was sent to asmfamilyfoundation@gmail.com on Wednesday, April 5, 2023.⁵

3. On Wednesday, April 12, 2023, Appellant requested and received its first available extension.⁶ Following exhaustion of the extension, the report at issue was due on Thursday, June 29, 2023.

4. On Monday, May 22, 2023, Appellant requested and received its second and final available extension.⁷ Following exhaustion of the extension, the report at issue was due on Saturday, July 29, 2023.

5. Automated reminder emails were sent to asmfamilyfoundation@gmail.com on Tuesday, July 4, 2023, Wednesday, July 19, 2023, and Friday, July 28, 2023.⁸ In addition, an emailed delinquency notification was sent on Tuesday, August 1, 2023.⁹

6. HCAI mailed Appellant an Initial Delinquency notice using Global Logistics Services overnight mail dated August 7, 2023 which was delivered on Tuesday, August 8, 2023 at or around 3:34 PM.¹⁰

7. On Wednesday, August 9, 2023, Appellant requested a further extension via email. Ms. Tran explained that no further extensions were available by statute or regulation.¹¹

8. HCAI mailed Appellant a Final Notice of Delinquency using Global Logistics Services overnight mail dated August 31, 2023 which was delivered on Friday, September 1, 2023 at or around 10:22 AM.¹²

9. Penalties accrued from Saturday, July 29, 2023 until Wednesday, October 19, 2023 when

⁴ See also Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibits 4, 5, and 6.

⁹ Exhibit 7.

¹⁰ Exhibits 8 and 9.

¹¹ Exhibit 10.

¹² Exhibits 11 and 12.

Appellant filed the report at issue.¹³

10. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for eighty-two days for the late filing of the report at issue, resulting in a penalty amount of \$8,200.¹⁴

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

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

13. Ms. Macatangay testified on behalf of Appellant that lingering impacts from the COVID-19 pandemic and licensing issues caused the delay in filing the report at issue.¹⁵

14. Ms. Macatangay further testified that Appellant was still trying to gather information for the report and catch up on billing that was delayed due to the transfer of ownership and licensing issues with Department of Public Health (“CDPH”). Specifically, she testified that the previous National Provider Identifier (“NPI”) lapsed when the previous owner surrendered the license instead of transferring the license to Appellant in or around November 2021. As a result, Appellant was required to apply for a new NPI and recertify the facility for Medicare and Medi-Cal reimbursements.

15. Ms. Macatangay further testified that the license and certification issues have caused financial hardship for the facility and her personally. She stated she borrowed against her retirement fund and her children’s college funds. She further stated that she has had none of these issues with her other three facilities.¹⁶

16. Following the hearing, Ms. Macatangay provided additional exhibits. The documents were found to be authentic and relevant and HCAI did not object to their inclusion.

¹³ Exhibit 13.

¹⁴ Health & Saf. Code, § 128770(a) and Exhibit 14.

¹⁵ Exhibit A.

¹⁶ CDPH licensing information shows that Ms. Macatangay also owns 100% of AIC Health Care Inc., a for profit corporation which manages two six-bed intermediate care facilities and one home health service all located in the CDPH East Bay District Office.

Correspondence from the CDPH Licensing and Certification Program dated February 2, 2022 stated that the license renewal was sent to ASM Family Foundation on August 2, 2021, approximately 90 days before the license expiration and the alleged surrendering of the license by the prior owner.

17. On or about July 15, 2022, Noridian Healthcare Solutions informed Appellant that an approval recommendation had been sent to the CDPH San Jose District Office for the change of ownership Medicare enrollment application and that an inspection would be scheduled.¹⁷

Testimony indicated the inspection took place in or around July or August of 2022.

Ms. Macatangay further testified that despite that Appellant's Medicare enrollment was not completed until on or around July 10, 2023. A letter dated July 10, 2023, notified Appellant of the Medicare enrollment completion, which was backdated to June 16, 2020.¹⁸ Ms. Perry stated that these certification issues caused substantial delays with Medicare reimbursements in 2022. She further stated that as of May 2023, Medicare had not paid the claims for October through December of 2022, reimbursements which needed to be included in the report at issue.

18. Appellant received a Department of Health Care Services letter dated November 10, 2022 which included the welcome packet for Appellant to begin billing to Medi-Cal.¹⁹ The assigned NPI was backdated to June 16, 2020, consistent with the Medicare enrollment. Due to the processing time, Appellant was allowed to submit late billed Medi-Cal claims for 60 days following the date of the letter, or until on or around January 9, 2023.²⁰ Ms. Perry stated that these certification issues caused substantial delays with Medicare and Medi-Cal reimbursements in 2022.

19. These facts were substantiated by oral statements made by Ms. Macatangay and Ms. Perry at the hearing as well as written exhibits.

20. The previous owner's surrender of the license was raised in HCAI Appeal Number

¹⁷ Exhibit B. Mr. Christesen also provided additional testimony differentiating between the CDPH licensing issue and the federal NPI and Medicare and Medi-Cal certification in paragraph 21.

¹⁸ Exhibit D.

¹⁹ Exhibit C.

²⁰ Exhibit C.

22-010-LTC. Testimony stated that following the completion of the purchase in June of 2020 “United Family surrendered the license to the facility rather than initiating a transfer of ownership. In or around November of 2021, Ms. Macatangay was required to apply for a new license for the facility which was granted by the Department of Public Health on or around November 29, 2021. The Department of Public Health shows that ASM Family became the licensee effective on or around July 14, 2021, approximately one year after the business purchase was completed.”

21. Mr. Christiansen further testified that CDPH is responsible for facility licensing, but the Medicare and Medi-Cal issues that Appellant discussed are related to certification. He further stated that CDPH performs the inspections and ensure providers meet the Centers for Medicare and Medicaid Services (“CMS”) requirements.

22. HCAI’s exhibit 16 shows that Appellant does not have a record of timely filing its reports. Appellant late filed the three reports since its transfer of ownership to include the previous two reports, RPEs December 31, 2020, and December 31, 2021.

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 its Long-Term Care Annual Disclosure Report for its facility by July 29, 2023, 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.”²¹ 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.”²² Good cause must be directly related to the specific legal requirement which the party failed to perform and

²¹ Health & Saf. Code, § 128770(c).

²² *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

should be outside the reasonable control of the party.²³ 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.²⁴ 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.²⁵

3. A party's diligence is a factor in determining good cause for an extension or a delay.²⁶ While Ms. Macatangay explained some of the lingering difficulties of the transfer of license and certifications and the delayed reimbursements during the reporting period, Appellant has been unable to file a timely report since acquiring the facility. While Appellant demonstrated circumstances outside its control due to the COVID-19 pandemic and the initial transfer of ownership in HCAI Appeal No. 22-010-LTC, the testimony in HCAI Appeal No. 22-016-LTC did not demonstrate that any of those circumstances were ongoing during that report-period. Here, the extensions for the report at issue were both timely requested, but the delay in filing the report at issue was also longer than in the two previous appeals.

4. While the substantiated facts do show that both Medi-Cal and Medicare reimbursements were substantially delayed, and most likely out of the control of Appellant, the majority of those issues were resolved within the reporting period. However, the substantiated facts show that at the time of the original due date, the October through December 2022 Medicare payments were still outstanding, and the accounts could not be fully resolved.

²³ *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].

²⁴ 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.

²⁵ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

²⁶ *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.

5. The substantiated facts show that Appellant was required to submit Medi-Cal claims by January 9, 2023, but that does not include processing time for the reimbursements. While the testimony was unclear whether the available report deadline extensions allowed sufficient time for full resolution of the Medi-Cal and Medicare payments, it is clear that the reimbursement delays did substantially reduce the time available to Appellant to prepare the report. Therefore, good cause exists to reduce the penalty for an additional month.

6. In addition, the report was due on Saturday July 29, 2023 following the exhaustion of the extensions. Government Code sections 6707 states that “When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.” Government Code section 6700(a)(1) states that every Sunday is considered a holiday in the state of California. In accordance with Government Code section 6707, the report at issue would have been timely filed if it had been filed Monday, July 31, 2023. Therefore, the penalty is reduced by an additional two days.

7. These facts demonstrate that Appellant was partially 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 reduction of the \$8,200 penalty. The penalty is reduced by 33 days, or \$3,300. The remaining \$4,900 of the penalty is upheld.

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PROPOSED ORDER

The assessed penalty is reduced for good cause. \$4,900 of the penalty is upheld.

Dated: August 30, 2024

//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: 9/6/2024

//original signed//

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