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STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-15-21

CEDARS NURSING CARE CENTER  
d/b/a THE CEDARS,

STATE OF MAINE  
Cumberland, ss. Clerk's Office

Petitioner

v.

FEB 29 2016

MAINE DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

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ORDER

Respondent

and

THE AROOSTOOK MEDICAL CENTER/  
AROOSTOOK HEALTH CENTER,

Intervenor

Before the court is petitioner's motion to take additional evidence and supplement the record and its motion to stay the notice and briefing schedule. For the following reasons, the court denies the motion to take additional evidence and grants the motion to stay.

**I. FACTS**

Respondent is the state agency responsible for implementing Maine's Medicaid program, known as MaineCare. Pursuant to this duty, respondent classifies nursing facilities into one of three Peer Groups for purposes of reimbursement. Petitioner operates a nursing facility in Portland, and intervenor Aroostook Health Center (AHC) operates a nursing facility in Aroostook County. Both facilities participate in MaineCare.

Respondent has classified petitioner's facility as Peer Group II. On January 8, 2015, respondent issued a decision changing AHC's classification from Peer Group II to Peer Group III. Petitioner received a copy of respondent's decision on May 8, 2015 in response to a Freedom of Access Act request. By letter dated June 12, 2015, counsel for petitioner requested from

respondent review of its January 8 decision. Respondent denied petitioner's request on June 24, 2015 on the grounds that the request was untimely and petitioner lacked standing.

Petitioner filed a Rule 80C petition on June 16, 2015 and an amended petition on July 14, 2015. Petitioner seeks (1) a declaratory judgment that respondent erred in changing AHC's classification to Peer Group III and (2) a permanent injunction preventing respondent from changing AHC's classification to Peer Group III and directing respondent to continue reimbursing AHC as a member of Peer Group II. Petitioner contends that respondent's January 8 decision will reduce the median costs used for calculating reimbursement of Peer Group II nursing facilities and will likely decrease the overall amount of MaineCare reimbursement available for nursing facilities that are not in Peer Group III.

On August 24, 2015, the court denied respondent's motion to dismiss and ordered respondent to file the administrative record within 30 days. Respondent filed the record on September 25, 2015. The court issued a briefing schedule on September 28, 2015. Petitioner filed its motion to take additional evidence and supplement the record and its motion to stay the briefing schedule on October 5, 2015. Respondent filed a motion in opposition on October 23, 2015, and AHC filed a motion in opposition on October 26, 2015.

## **II. DISCUSSION**

### **A. Motion to Take Additional Evidence**

"Except in limited circumstances, judicial review of an agency decision 'shall be confined to the record upon which the agency decision was based.'" *Martin v. Unemployment Ins. Comm'n*, 1998 ME 271, ¶ 8 n.6, 723 A.2d 412 (quoting 5 M.R.S. § 11006(1)) (citation to footnote only). A party may, however, request that the reviewing court take additional evidence or order the taking of additional evidence as provided by 5 M.R.S. § 11006(1). M.R. Civ. P.

80C(e). Under section 11006(1), the court may order the taking of additional evidence before the agency if it finds that the additional evidence is necessary to deciding the petition for review, or it may allow leave to present additional evidence if the evidence is material to the issues presented and could not have been presented or was erroneously disallowed in the proceedings before the agency. 5 M.R.S. § 11006(1)(B) (2015). “The Administrative Procedure Act leaves it to the discretion of the trial court to determine whether additional evidence is necessary to complete the record.” *Murphy v. Bd. of Env'tl. Prot.*, 615 A.2d 255, 260 (Me. 1992).

Petitioner argues that the record contains mostly respondent’s “rules, licenses, and other generic material” and is missing “testimony, analysis, or other evaluation” of the impact of respondent’s decision on other nursing facilities, including petitioner. (Pl.’s Mot. Addt’l Evid. 2-3.) Specifically, petitioner wishes to supplement the record with the following additional evidence: (1) transcripts of testimony explaining the MaineCare reimbursement and rate setting process to be provided by, at a minimum, petitioner’s CFO, the director of respondent’s Division of Audit, and a financial analyst in respondent’s Rate Setting Unit; (2) respondent’s internal emails and memoranda relating to its January 8 decision and any impact on nursing facilities other than AHC; and (3) any documentation showing the assignment of nursing facilities to each of the Peer Groups and any changes of those assignments. (*Id.* at 4-5.)

Petitioner’s proffered evidence is not necessary or material because the only issue properly before the court is whether respondent erred in denying petitioner’s June 12 request for administrative review. The Administrative Procedure Act (APA) entitles any person who is aggrieved by final agency action to judicial review in Superior Court. 5 M.R.S. § 11001(1) (2015). “Final agency action” means a “decision by an agency which affects the legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, and

for which no further recourse, appeal or review is provided within the agency.” 5 M.R.S. § 8002(4) (2015). Respondent’s January 8 decision cannot be final agency action because further review of that decision was available within the agency. *See* 10-144 C.M.R. ch. 101, § 140.1.2(1) (2014) (providing administrative review of agency decisions); 10-144 C.M.R. ch. 101, § 1.21-1 (2014) (same). Indeed, petitioner’s June 12 letter requested administrative review of the January 8 decision. Respondent’s denial of that request on June 24 left petitioner with no further review within the agency, and it is from that decision that petitioner appeals to this court. *See* 10-144 C.M.R. ch. 101, § 140.1.2(4) (2014) (authorizing judicial review of administrative review); 10-144 C.M.R. ch. 101, § 1.21-1(A) (2014) (same).

In its June 24 decision, respondent denied petitioner’s request for review on the following grounds: (1) the request was untimely under both section 140.1.2(1) and section 1.21-1 because it was filed beyond the respective 30 and 60 day appeal periods; (2) petitioner lacked standing under section 140.1 because it was not the facility to which the January 8 decision issued; and (3) petitioner lacked standing under section 1.21-1 because it was not aggrieved by the decision. The court’s review is confined to these issues. *See* 5 M.R.S. § 11001(1) (allowing judicial review of final agency action); M.R. Civ. P. 80C(a) (same). Petitioner’s proffered evidence, which challenges the merits of respondent’s January 8 decision, is not necessary or material to determining whether petitioner’s June 12 request was timely or whether petitioner had standing to make that request. The court therefore denies the motion to take additional evidence.

B. Motion to Stay

The briefing schedule has been stayed pending this order. *See* M.R. Civ. P. 80C(e) (“Upon the filing of a motion for the taking of additional evidence, the time limits contained in this rule shall cease to run pending the issuance of an appropriate order of court specifying the

future course of proceedings with that motion.”). The court orders the following revised briefing schedule pursuant to M.R. Civ. P. 80C(g):

1. Petitioner’s brief is due within 40 days of the date of this order.
2. Respondent’s brief and AHC’s brief are due within 30 days after the service of petitioner’s brief.
3. Petitioner’s reply brief, if any, is due within 14 days after last service of the brief of any other party.

**III. CONCLUSION**

The court hereby ORDERS that petitioner’s motion to take additional evidence and supplement the record is DENIED and its motion to stay the briefing schedule is GRANTED.

Pursuant to M.R. Civ. P. 79(a), the clerk is directed to incorporate this Order by reference in the docket.

Dated: February 29, 2016



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Roland Cole  
Chief Justice, Superior Court

STATE OF MAINE  
CUMBERLAND, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-15-21

CEDARS NURSING CASE CENTER  
d/b/a/ THE CEDARS,

Petitioner,

v.

MAINE DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Respondent.

**ORDER**

STATE OF MAINE  
Cumberland, ss, Clerk's Office

AUG 24 2015

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I. Background

Petitioner the Cedars appeals from two related decisions. The first is a January 8, 2015 decision by the Department of Health and Human Services (DHHS) that reclassified the Aroostook Health Center (AHC) from Peer Group II to Peer Group III (“the AHC decision”). The Cedars contends the AHC decision will affect its MaineCare reimbursement rates. The second decision is one dated June 24, 2015, in which DHHS denied the Cedars’s request for an informal review or administrative hearing of the AHC decision.

DHHS moves for an extension of time to file the administrative record and also moves to dismiss the complaint under Rule 12(b)(6).

II. Discussion

A. The Administrative Record

Under Rule 80C(f), “The agency shall file the complete record of the proceedings under review as provided by 5 M.R.S. § 11005.” Under 5 M.R.S. § 11005, “The agency

shall file in the reviewing court within 30 days after the petition for review is filed.” If the petitioner believes the record is incomplete or over-inclusive, Rule 80C(f) sets forth a procedure whereby the agency and petitioner work to modify the record. If unable to agree, the petitioner can file a motion with the court to modify the contents of the record.

DHHS requested an extension to file the administrative record on the grounds that if the motion to dismiss is granted, the record need not be filed. If however the motion is denied, the court’s decision will help DHHS determine the scope of materials to include. DHHS takes the position that the decision to reclassify AHC from Peer Group II to Peer Group III is not appealable by the Cedars and have moved to extend the deadline until after a ruling on the motion to dismiss in order to avoid filing materials related to that proceeding.

#### B. Motion to Dismiss: Standing

When considering a motion to dismiss, the court considers the allegations contained in the complaint as true and admitted by the defendant. *Annable v. Bd. of Env'tl. Prot.*, 507 A.2d 592, 593 (Me. 1986). On a 12(b)(6) motion, the court determines whether the complaint states a claim “upon which relief can be granted.” M.R. Civ. P. 12(b)(6).

DHHS chiefly argues that the Cedars is not “aggrieved” and cannot appeal the AHC decision.<sup>1</sup> *See* 5 M.R.S. § 11001 (“[A]ny person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court.”) “A person is aggrieved within the meaning of the APA if that person has suffered particularized injury—that is, if the agency action operated prejudicially and directly upon the party's

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<sup>1</sup> DHHS also argues there has been no “final agency action” because the Cedars is not an aggrieved party. Because the argument hinges on the Cedars’s status as an aggrieved party, the court considers the final agency action as part of the standing analysis.

property, pecuniary or personal rights.” *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 10, 953 A.2d 378.

The amended complaint<sup>2</sup> alleges that the Cedars is aggrieved in two respects. First, the change in designation from Peer Group II to Peer Group III “will reduce median costs used for calculating reimbursement of Peer Group II facilities, which will in turn reduce MaineCare reimbursement to the Cedars.” Second, “using the ‘higher hospital affiliated rate’ to reimburse AHC will also likely mean a decrease in overall MaineCare reimbursement available to reimburse nursing facilities not in Peer Group III, such as the Cedars.” (Pet. Compl. ¶¶ 23-24.)

DHHS argues the Cedars is not “aggrieved” because as a factual matter, the Cedars’s MaineCare reimbursement remains unaffected by the AHC decision. In other words, because any potential consequences flowing from the AHC decision have not yet materialized, any injury or aggrieved status the Cedars could claim remains too speculative to support standing.

Taking the facts alleged in the complaint as true and admitted by the Defendant, the Cedars will suffer a decrease in MaineCare reimbursement that will be proximately caused by the AHC decision. If true, this is a sufficiently particularized injury to support standing at the motion to dismiss stage, especially where the agency has failed to timely file the administrative record. Without the record, the court has a limited context to evaluate the rights affected by the AHC decision. *Nelson*, 2008 ME 91, ¶ 10, 953 A.2d 378 (“We examine the issue of standing in context to determine whether the asserted effect on the party's rights genuinely flows from the challenged agency action.”) The

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<sup>2</sup> DHHS does not oppose the motion to amend. The court grants the motion to amend and considers the amended complaint for the purposes of this order.



complaint states a sufficiently particularized injury to support standing. The motion is therefore denied.

III. Conclusion

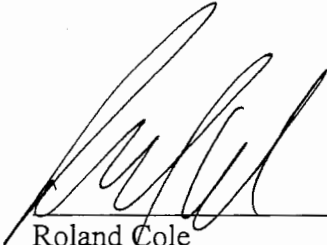
As set forth above, the scope of the record is to be determined by reference to scope of proceedings challenged at the agency level in the 80C petition. The agency is responsible for filing the record, but lacks the prerogative to strategically withhold the record in an effort to preemptively limit the issues fairly raised by the appeal. M.R. Civ. P. 80C(f). Rule 80C(f) requires DHHS file a “complete record,” including materials related to the AHC classification decision that the Cedars appeals.

The clerk shall enter the following:

The Respondent’s motion to dismiss is DENIED. The Respondent is hereby ordered to file the administrative record within 30 days.

SO ORDERED.

DATED: August 24, 2015

  
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Roland Cole  
Chief Justice, Superior Court

Date Filed: 06/16/2015

CUMBERLAND  
COUNTY

JUSTICE COLE  
Docket No. AP15-0021

Action: 80C APPEAL

CEDARS NURSING CARE CENTER  
D/B/A THE CEDARS

MAINE DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

vs.

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Date of Entry