

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

SEAN P. SMITH,)	
)	
Petitioner,)	
)	
v.)	No. 24-0074-I
)	
TENNESSEE DEPARTMENT OF)	
FINANCE & ADMINISTRATION,)	
DIVISION OF TENNCARE;)	
and STEPHEN SMITH, DIRECTOR OF)	
TENNCARE, in his official capacity,)	
)	
Respondents.)	

ORDER GRANTING RESPONDENTS' MOTION TO DISMISS

This matter came before the Court on June 7, 2024, on Respondents' *Motion to Dismiss* Petitioner's *Amended Complaint and Petition for Judicial Review* under Tennessee Rules of Civil Procedure 12.02(1) for lack of subject matter jurisdiction and 12.02(6) for failure to state a claim for relief. Respondents are Tennessee Department of Finance & Administration, Division of TennCare; and Stephen Smith, Director of TennCare (together, "Respondents"). Assistant Attorneys General Haylie C. Robbins, Taylor M. Davidson, and Reid N. Smith represent Respondents. Petitioner Sean P. Smith represents himself, and opposes the motion. Based on the motion, response, reply, the arguments of the parties, and the factual allegations of Petitioner's *Amended Complaint and Petition*, the Court finds Respondents' motion to dismiss should be granted for the reasons discussed below.

I. BACKGROUND

Petitioner Smith¹ is a “medically disabled adult,” with multiple physical and mental health conditions.

Petitioner Smith’s November 2023 Complaint / Appeal to TennCare. In November 2023, Petitioner Smith completed a “TennCare Medical Appeal” form requesting “rehabilitative treatment of disabilities” and a “Full and Fair Review” of an attached document that he titled “An Example Of The Misconduct Committed By Plan Fiduciaries And Their Contracted Partners & An Appeal For Rehabilitative Treatment” (the “Letter/Appeal”). *See Am. Compl.*, Exs. B and D.

The Letter/Appeal includes a “Warning” that if the “Named Entities” failed to engage in formal discussions with Petitioner Smith within six weeks, he would resort to certain “contingency plans” outlined in the letter. *See Am. Compl.*, Ex. B. Petitioner Smith stated that his desired resolution includes:

- (1) obtaining the resources required to undergo rehabilitative care for his medical conditions and attempt to remediate the other damages sustained or expected to occur, such that;
 - (A) he may attempt to repair the physical, psychological, financial, and social damages he and his caregivers have sustained or will sustain; and;
 - (B) the care is he afforded to access has the best chance of fully rehabilitating him such that he is no longer disabled and will thereby have been reasonably indemnified;
 - (C) he will be afforded the means to achieve independence and exercise autonomy as part of attempting to remediate the damage done to him;
 - (i) those means including but not limited to: food, housing, transportation, utilities, the pursuit of education, hobbies, interests, and pursuing personal and financial opportunities.

¹ Because Petitioner Sean P. Smith, Respondent Stephen Smith, and Assistant Attorney General Reid N. Smith all share the same surname, the Court refers to Sean P. Smith as Petitioner Smith.

- (ii) the purpose of such affordances being to accelerate [Petitioner] Smith's rehabilitation and remediation so as to reduce any further damages that [Petitioner] Smith must endure and allow him to focus fully his attention on 'fixing this mess'.
- (D) that the fulfillment of (1)(A)(B)(C) be performed in a manner wherein the actions of the Named Entities cannot impede or in any way jeopardize [Petitioner] Smith's efforts to undergo rehabilitation and engage in remediation.
- (2) that the Named Entities reform their organizations such that they are indeed in compliance with state and federal statutes and [Petitioner] Smith is assured that this reformation will not only occur, but will be lasting
- (3) the total cost of both (1) & (2) is such that the Named Entities are strongly deterred from engaging at any future date in the misconduct that they have subjected [Petitioner] Smith and other plan beneficiaries to.
 - (A) Instruments of Deterrence to include stipulations in any settlement agreement wherein any future violations will incur additional and substantive penalties.

Id.

The Letter/Appeal consists of 88 pages, including 11 pages of references, and contains a series of vague, generalized complaints of "misconduct," "illegal activity," "abuse," "exploitation," and wrongful "denials of care requests." The few identifiable specific complaints include Cigna officials' alleged breach of fiduciary duties and failure to protect Petitioner Smith's personal health information for calling the police to conduct a welfare check after he revealed his suicidal ideation during a conference call; failure to pay a reimbursement claim for an approved out-of-network medical visit; wrongful denial of prior authorization for physical therapy; failure to provide information about how to submit a claim for reimbursement for physical therapy; and denials of requests for sleep studies.

In the Letter/Appeal, Petitioner Smith presented his lengthy research concerning a connection between obstructed breathing, sleep disruption, and psychiatric symptoms. He identified “barriers” preventing him from receiving “appropriate diagnostics and treatment” for his breathing and sleep issues, including “in-network sleep medicine physicians” who lack the training and experience required to understand Petitioner Smith’s specific medical needs. Petitioner Smith suggests that the health plans’ “misconduct” and “illegal activities” caused the physicians to provide “suboptimal care,” which contributed to their dearth of relevant clinical experience, rendering them unable to provide the treatment he needs. All of the “misconduct” Petitioner Smith complains of in the Letter/Appeal appears to have occurred in 2020 and earlier.²

TennCare treated Petitioner Smith’s Letter/Appeal for “rehabilitative treatment” as an appeal of a denial for “outpatient physical therapy,” and denied it as untimely. *See Am. Compl.*, Ex. A.

Petitioner Smith’s Complaint and Petition for Judicial Review. Petitioner Smith then filed with this Court a *Complaint and Petition for Judicial Review* under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann. § 4-5-322, as amended. He alleges that TennCare wrongfully denied his Letter/Appeal because it did not concern the denial of outpatient physical therapy. He asserts instead that his Letter/Appeal “communicates that his health plans are engaged in misconduct that prevents him from seeing the specialists he needs to receive rehabilitative treatment for health conditions causing his medical disabilities.” He claims that “[t]he information related to past disputes about physical therapy was presented as [e]vidence of health plan misconduct.” Petitioner Smith further alleges that since 2018, he has submitted numerous written

² Petitioner Smith previously submitted a “complaint-appeal” to health plan officials in 2019, and had calls with plan officials in 2019 and 2020. Dissatisfied with their response, Petitioner Smith began composing the Letter/Appeal that is the subject of this action in 2020, but he says he had to set it aside when his physical and mental health deteriorated.

and verbal complaints, grievances, and appeals, which have not been fully and fairly reviewed. He complains that no one has investigated his allegations or attempted to resolve his disputes. Petitioner Smith alleges that United Healthcare³ and TennCare have engaged in misconduct that violates federal law and that injures him, amounting to abuse, exploitation, and official oppression.

Petitioner Smith requests the following relief:

2. Order the respondents to pay all costs, including all costs and litigation taxes associated with these proceedings;
3. That during deliberation of my petition, the Chancellor consider how the complexity of my health issues and the difficulty of managing them with inadequate medical assistance creates an exceedingly challenging situation;
4. Provide to [Petitioner] Smith a formal acknowledgment in writing that the misconduct of TennCare and its MCC United Healthcare Community Plan (UHCCP) has occurred and has harmed [Petitioner] Smith;
5. If it be within the Chancellor[']s power, to convince or compel United Healthcare Community Plan and TennCare to also acknowledge in writing that their misconduct has occurred and has harmed [Petitioner] Smith and that they apologize to [Petitioner] Smith, their disabled adult plan beneficiaries, and the citizens of Tennessee for having failed in their duties;
6. To provide relief which will grant [Petitioner] Smith the opportunity to:
 - a) work with the physicians possessing the specialized education, expertise, and experience required to evaluate and treat the health conditions causing his medical disabilities;
 - b) be afforded protections so that the misconduct of United Healthcare and TennCare cannot further impede or jeopardize [Petitioner] Smith's rehabilitation;
 - c) focus his attention and limited capacity to function upon his health and salvaging what little remains of his life;
 - d) be provided just compensation for the physical, psychological, financial, and social damages he and his caregivers have or will sustain,

³ The Court understands that both Cigna and United Healthcare acted as TennCare managed care organizations, administering Petitioner Smith's TennCare benefits, although neither entity is a party to this lawsuit.

in a manner that is in keeping with what [Petitioner] Smith proposed on page 7 of his November 2023 complaint-appeal . . . ; and

e) award punitive damages which will set a very clear precedent which deters any further misconduct perpetrated by TennCare and its Managed Care Contractors against their disabled adult plan beneficiaries. Make the penalties of engaging in misconduct exceed any possible potential benefits.

7. Order United Healthcare Community Plan and TennCare to provide full and fair review of care requests and complaints to [Petitioner] Smith and his physicians;
8. Arrange for or declare a need for some oversight to ensure United Healthcare Community Plan and TennCare comply with the Court^[,] s Order to provide full and fair review of [Petitioner] Smith and his physicians care requests and complaints;
9. Report these matters to the appropriate governmental agencies. Order that a comprehensive investigation into [Petitioner] Smith^[,] s complaints of misconduct committed by health plans and other parties be performed. Enforce whatever penalties are appropriate against organizations and individuals. Provide any such further relief as the Court deems necessary and appropriate.

10. DEFEND THE DISABLED.

Am. Compl.

II. MOTION TO DISMISS

Respondents move to dismiss Petitioner Smith’s *Amended Complaint and Petition* based on the Court’s lack of subject matter jurisdiction and for failure to state a claim for which the Court can grant relief, under Tennessee Rules of Civil Procedure 12.02(1) and (6). Respondents state that they are uncertain about the type of action Petitioner Smith has actually brought, but treat his *Amended Complaint and Petition* as one for judicial review under the UAPA because that is the only method of review available for TennCare’s denial of his Letter/Appeal.

Respondents first argue that the only decision this Court has jurisdiction to review is TennCare’s denial of Petitioner Smith’s medical appeal for “outpatient physical therapy” and,

because he does not challenge that denial, there is no basis for judicial review under the UAPA, § 4-5-322(h), to reverse TennCare’s decision. Respondents further argue that to the extent Petitioner Smith seeks any other relief against TennCare, he has not exhausted his administrative remedies precluding judicial review. They also assert that Petitioner Smith’s other “vague allegations about unspecified ‘misconduct’” are not the sort of coverage denials that TennCare handles administratively so those allegations are not properly before the Court on a petition for judicial review, and he has otherwise failed to bring any claim the Court can redress.

Petitioner Smith filed a 65-page response to the motion to dismiss, which reads more like a new complaint than a response to Respondents’ motion. Petitioner Smith claims that TennCare violated his and other TennCare beneficiaries’ civil and constitutional rights, which is redressable through injunctive and equitable relief under 42 U.S.C. § 1983, and that TennCare violated multiple federal and state civil and criminal statutes. He further claims TennCare has engaged in fraud, denial of due process, and “bad faith,” and argues that it operates an inadequate provider network, with no primary care physicians or specialists who can diagnose and treat his “jaw/airway issues.”

Respondents reply that Petitioner is not clear as to what type of claim he asserts. They submit that, while Petitioner Smith insists that his Letter/Appeal did not concern physical therapy, he has not specifically identified any other denial of care for which he sought an administrative remedy. Respondents further argue that the events he complains of in his Letter/Appeal date back to 2021 at the latest, and so those complaints are untimely under TennCare’s administrative rules. Finally, Respondents argue that Petitioner Smith raises new issues and arguments for the first time in his response to the motion to dismiss that he did not raise in his *Amended Complaint and Petition*, and he has made no claim the Court can redress.

During oral argument on the Respondents' motion to dismiss, Petitioner Smith clarified that his Letter/Appeal concerns TennCare's inadequate provider network that prevents him from receiving necessary treatment for his "jaw and airway issues." Respondents replied that the issues Petitioner Smith raises in his *Amended Complaint and Petition* date back to 2019 and 2020 and, therefore, are not timely brought on his petition for judicial review. Respondents acknowledge that Petitioner Smith is frustrated in finding a physician to provide him with the care he wants, but assert that Petitioner Smith's *Amended Complaint and Petition* raises numerous policy concerns, rather than reviewable legal disputes under the UAPA.

III. MOTION TO DISMISS STANDARDS

Lack of Subject Matter Jurisdiction. A Rule 12.02(1) motion to dismiss for lack of subject matter jurisdiction challenges the court's "lawful authority to adjudicate [the] controversy brought before it." *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)(citations omitted). "Subject matter jurisdiction involves the nature of the cause of action and the relief sought, and can only be conferred on a court by constitutional or legislative act." *Id.* (citations omitted). "The lack of subject matter jurisdiction is so fundamental that it requires dismissal." *First Am. Trust Co. v. Franklin-Murray Dev. Co., L.P.*, 59 S.W.3d 135, 141 (Tenn. Ct. App. 2001). Upon dismissal for lack of subject matter jurisdiction, all other issues are pretermitted. *Sw. Williamson Cnty. Cnty. Ass'n v. Saltsman*, 66 S.W.3d 872, 876 (Tenn. Ct. App. 2001)). In cases involving state agency decisions where exhaustion of administrative remedies is required by statute, a plaintiff's failure to exhaust such remedies deprives the court of subject matter jurisdiction. *Chattanooga-Hamilton Cnty. Hosp. Authority v. United Healthcare Plan of the River Valley*, 475 S.W.3d 746, 758 (Tenn. 2015) (citations omitted).

Failure to State a Claim for Which Relief. A Rule 12.02(6) motion to dismiss for failure to state a claim tests the legal sufficiency of a complaint and not the strength of the allegations.

Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422, 426 (Tenn. 2011). A movant under Rule 12.02(6) “admits the truth of all the relevant and material allegations contained in the complaint, but . . . asserts that the allegations fail to establish a cause of action.” *Id.* (citation omitted). Generally, the Court may only consider the complaint itself when deciding a Rule 12.02(6) motion, and all exhibits attached to the complaint are considered to be part of the pleading. Tenn. R. Civ. P. 10.03; *Pagliara v. Moses*, 605 S.W.3d 619, 625 (Tenn. Ct. App. 2020) (citations omitted).

The trial court must construe the complaint liberally under Rule 8, presume all factual allegations to be true, and draw all reasonable inferences in the plaintiff’s favor. *Webb*, 346 S.W.3d at 426. (citations omitted). Courts may disregard “assertions that are merely legal arguments or ‘legal conclusions’ couched as facts.” *Id.* at 427 (citing *Riggs v. Burson*, 941 S.W.2d 44, 47-48 (Tenn. 1997)). The court should dismiss the complaint only if “the plaintiff can establish no facts supporting the claim that would warrant relief.” *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999) (internal citation omitted).

IV. DISCUSSION

As a preliminary matter, the Court recognizes that Petitioner Smith is proceeding as a self-represented party, and he has assumed the “very heavy burden” when he “invoke[d] the complex and sometimes technical procedures of the courts.” *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn.Ct.App. 1988) (citation omitted). As a self-represented party, Petitioner Smith is “entitled to fair and equal treatment” and “a certain amount of leeway in drafting [his] pleadings and briefs.” *Young v. Barrow*, 130 S.W.3d 59, 62 (Tenn. Ct. App. 2003). But, he must follow and comply with “the same procedural and substantive law” as Respondents. *Irvin*, 767 S.W.2d at 652 (citations omitted). Trial courts are required to maintain a balance in cases involving self-represented litigants:

The line between appropriate indulgence of a self-represented litigant's shortcomings and unfairness to the self-represented litigant's adversary, although fine, must be maintained. Accordingly, the courts should not permit self-represented litigants to shift the burden of litigating their case to the courts or to their adversaries. While courts should liberally construe a self-represented litigant's papers to give effect to their substance rather than their form, they should not manufacture or create a claim, defense, or argument that cannot reasonably be found in the document. Absent some basis from which a court can reasonably construe the pleading in such a manner, a liberal construction alone will not create a pleading, defense, or claim.

Discover Bank v. McCullough, No. M2006-01272-COA0-R3-CV, 2008 WL 245976, at *4 (Tenn. Ct. App. Jan. 28, 2008)(internal citations omitted).

Petitioner Smith has brought his *Amended Complaint and Petition* under the UAPA, Tenn. Code Ann. § 4-5-322, which provides for limited judicial review of final administrative decisions. Petitioner Smith attached to his complaint TennCare's denial of his Letter/Appeal, which TennCare construed and denied as an untimely appeal of a request for "outpatient physical therapy." At the same time, Petitioner Smith claims his Letter/Appeal had nothing to do with physical therapy, and expressly states that his complaint based upon the Letter/Appeal was not about physical therapy but does not explain what the Letter/Appeal was about, or why TennCare's denial was wrong. Instead, he makes broad statements about what he believes the law requires and asserts a series of vague, conclusory allegations of "misconduct," "abuse," "exploitation," and other bad acts. Under the Tennessee Rules of Civil Procedure, a complaint must contain a "short and plain" statement of claims for relief in "simple, concise, direct" allegations. Tenn. R. Civ. P. 8; *Davis v. Covenant Presbyterian Church*, No. M2013-02273-COA-R3-CV, 2014 WL 2895898, at *2 (Tenn. Ct. App. June 23, 2014), *perm. app. denied* (Tenn. Dec. 17, 2014). Through his written response to Respondents' motion to dismiss, and at oral argument on the motion, Petitioner Smith seems to have now stated his true grievance: TennCare does not have adequate in-network

primary care physicians or specialists who are knowledgeable about and experienced in diagnosing and treating his “jaw/airway issues.” He further believes that as a result of TennCare’s “misconduct,” it has caused its in-network physicians to lack the appropriate expertise.

Respondents maintain that to the extent Petitioner Smith seeks relief relating to anything other than TennCare’s denial of the request for physical therapy, he has failed to exhaust his administrative remedies, depriving this Court of subject matter jurisdiction to conduct judicial review under the UAPA. The Court understands that Petitioner Smith did not appeal the denial of any particular request for treatment—instead, he is attempting to present a much broader grievance as to the quality of health care made available to him through TennCare to address his specific medical needs. He seeks judicial review of TennCare’s “conduct,” “actions,” and “decisions” over many years resulting in TennCare’s operation of an allegedly “illegally inadequate” provider network. Construing Petitioner Smith’s Letter/Appeal and *Amended Complaint and Petition* in this way, the Court cannot find an agency decision to which principles of administrative exhaustion would apply. Even accepting as true Petitioner Smith’s factual allegations in his complaint, as required under the Rule 12.02(6) motion to dismiss standards, that TennCare has willfully engaged in broad “misconduct” over years that prevents him, and other disabled adults, from receiving adequate medical care, the Court finds his generalized complaints and criticisms about TennCare’s network are not specific final agency decisions subject to judicial review under the UAPA. Further, the declaratory, injunctive, and monetary relief Petitioner Smith seeks are not remedies that are available on a petition for judicial review under the UAPA. *See* Tenn. Code Ann. § 4-5-322(h) (reviewing court may affirm, modify, or reverse agency decision, or remand for further proceedings); *Poursaied v. Tenn. Bd. of Nursing*, 643 S.W.3d 157, 165-66 (Tenn. Ct. App. 2021), *perm. app. denied* (Tenn. Feb. 10, 2022) (claim for monetary damages is separate original action that cannot be brought with petition for judicial review). Applying the

well-recognized motion to dismiss standard under Rule 12.02(6), the Court concludes Petitioner Smith has failed to state a claim for judicial review under the UAPA.

V. CONCLUSION

For the reasons discussed above, the Court concludes that Petitioner Smith's *Amended Complaint and Petition* fails to state a claim for which the Court can grant his requested relief under Tenn. R. Civ. P. 12.02(6).

It is, therefore, ORDERED, ADJUDGED, and DECREED that Respondents' *Motion to Dismiss* is hereby GRANTED, and Petitioner's *Amended Complaint and Petition for Judicial Review* is DISMISSED, with prejudice, for failure to state a claim for which relief may be granted under Tennessee Rule of Civil Procedure 12.02(6).

It is further ORDERED, ADJUDGED, and DECREED that the Clerk & Master enter this Memorandum and Order as a final judgment under Tennessee Rule of Civil Procedure 58, with costs TAXED to Petitioner.

s/Patricia Head Moskal
PATRICIA HEAD MOSKAL
CHANCELLOR, PART I

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class postage pre-paid, to the parties or their counsel named below:

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s/Julia Spencer
Deputy Clerk & Master

6/28/24
Date