

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE, PART I

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

**RESPONDENTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
AMENDED COMPLAINT AND PETITION FOR REVIEW**

Petitioner's *Amended Complaint and Petition for Review* is unclear as to what type of suit Petitioner has brought, if any. It is styled as a Complaint and Petition for Review, but Tennessee courts "heartily condemn . . . the joinder of an appeal with an original action." *Goodwin v. Metro. Bd. of Health*, 656 S.W.2d 383, 386 (Tenn. Ct. App. 1983). However, TennCare's denial of Petitioner's appeal is treated as a final agency decision, for which "the only available method of judicial review" is a petition for judicial review. Tenn. Code Ann. § 4-5-322(a). TennCare will treat it as such, and the Court must dismiss the Petition for Review because Petitioner failed to exhaust his administrative remedies and has failed to state a claim upon which relief can be granted.

STATEMENT OF THE CASE

On November 16, 2023, Petitioner filed a Medical Appeal form with an attached letter to TennCare requesting coverage of “rehabilitative treatment of disabilities” (Ex. D to Am. Pet.)¹. The letter contained 88 pages of information related to Petitioner’s disabilities, including communications with TennCare managed care organizations (“MCO’s”) describing Petitioner’s dealings with TennCare over the last several years. Petitioner’s Appeal form listed “rehabilitative treatment of disabilities” as the requested care needed, however he did not specify what doctor, if any, had prescribed this treatment, or any other details related to the care he was seeking. (Ex. D to Am. Pet.). The only coverage denial described in Petitioner’s Medical Appeal form and enclosed attachments was a prior authorization denial for physical therapy. (Ex. B to Am. Pet. at 32) (“UnitedHealthcare and TennCare wrongfully denied another request for prior authorization for physical therapy.”); *id.* at 35 (“Mr. Smith contacted UnitedHealthcare Community Plan on Aug. 5th, 2020 attempting to get information about how to submit claims for reimbursement for physical therapy services that have had to be paid out of pocket.”). TennCare subsequently denied Petitioner’s appeal as being filed too late after the denial of physical therapy. (Ex. A to Am. Pet. at 3 (“It’s too late to appeal your request for OUTPATIENT PHYSICAL THERAPY.”)).

Following TennCare’s denial of his appeal, Petitioner filed the instant *Complaint and Petition for Judicial Review* with this Court on January 27, 2024. Petitioner then filed an *Amended Complaint and Petition for Judicial Review* on April 7, 2024. The Petition describes in detail Petitioner’s numerous physical disabilities and ailments, including the medical treatment he has received and how his different disabilities affect his life. (Am. Pet. at ¶ 2).

¹ A motion to dismiss pursuant to Rule 12.02 of the Tennessee Rules of Civil Procedure admits to the factual allegations contained in the complaint or petition but denies that the facts as written state a claim upon which relief may be granted. *See Stewart v. Schofield*, 368 S.W.3d 457, 462 (Tenn. 2012). For purposes of this Motion, Respondent does not dispute the factual allegations contained within the Petition.

However, Petitioner asserts that he is not appealing a denied request for Outpatient Physical Therapy, the only issue considered by TennCare in Petitioner’s medical appeal. (Am. Pet at ¶ 9). Petitioner now asserts that he is challenging “misconduct that prevents him from seeing the specialists required for him to receive rehabilitative treatment.” *Id.* at ¶ 10. For such misconduct, Petitioner requests that “the health plans take action to reform their organizations,” and for “the health plans to enter into good faith formal discussions to seek a resolution to this dispute.” (Am. Pet. at ¶12).

LEGAL STANDARD

Judicial review of an administrative agency’s final order under the Uniform Administrative Procedures Act (“UAPA”) must focus on whether the administrative order should be upheld and is confined to the administrative record. Tenn. Code Ann. § 4-5-322. Under the UAPA, Tenn. Code Ann. § 4-5-322(h) provides that a reviewing court may reverse or modify an agency decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) ...

(B)(i) Unsupported by a preponderance of the evidence in light of the entire record, if the administrative findings, inferences, conclusions, or decisions were made by a board, council, committee, agency, or regulatory program created pursuant to title 63, chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31;

(ii) In determining whether the administrative findings, inferences, conclusions, or decisions are supported by a preponderance of the evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

The only exception to this is for a challenge of facial unconstitutionality, which has not been made by the Petitioner. “Therefore, we reiterate that an administrative agency, board, commission or administrative law judge acting in a contested case hearing has no authority to resolve facial challenges to the constitutionality of a statute.” *Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 455 (Tenn. 1995).

Motions to dismiss for failure to state a claim upon which relief can be granted are governed by Rule 12.02 of the Tennessee Rules of Civil Procedure. A motion pursuant to Rule 12.02 “tests only the legal sufficiency of the complaint, not the strength of the plaintiff’s proof.” *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). “Such motion admits the truth of all relevant and material averments contained in the complaint but asserts that such facts do not constitute a cause of action.” *Id.*

ARGUMENT

A. Petitioner Has Not Exhausted His Administrative Remedies Under the Uniform Administrative Procedures Act.

A petitioner is entitled to judicial review and relief under the UAPA only after he has exhausted his available remedies with the applicable agency. “[N]o one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008). “When a claim is first cognizable by an administrative agency, therefore, the courts will not interfere ‘until the administrative process has run its course.’” *Id.*; *See also United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63 (1956). The exhaustion doctrine, as it is commonly referred, promotes judicial efficiency and protects administrative authority in three distinct ways:

“First, sometimes “[j]udicial intervention may not be necessary because the agency can correct any initial errors at subsequent stages of the process [, and] the agency’s position on important issues of fact and law may not be fully crystallized or adopted

in final form. Secondly, exhaustion allows the agency to develop a more complete administrative record upon which the court can make its review. Finally, cases that concern subject matter within the purview of administrative agencies often involve ‘specialized fact-finding, interpretation of disputed technical subject matter, and resolving disputes concerning the meaning of the agency’s regulations.’”

Id. at 838–39.

“Requiring that administrative remedies be exhausted often leaves courts better equipped to resolve difficult legal issues by allowing an agency to ‘perform functions within its special competence.’” *Id.* All agency remedies available to a claimant must be exhausted before a court possesses jurisdiction to grant relief under the UAPA. *Id.*

Looking only at the four corners of the *Amended Complaint* as a Petition for Review, TennCare denied Petitioner’s Medical Appeal for outpatient physical therapy because Petitioner was not timely in filing his appeal. (Ex. D to Am. Pet.). Petitioner, however, expressly denies he is seeking relief for the denied outpatient physical therapy services. (Am. Pet at ¶9). The only agency decision presented by Petitioner for this Court’s review was TennCare’s denial of outpatient physical therapy services; therefore, pursuant to the UAPA, this is the only agency decision this Court presently has jurisdiction to review. *See, generally*, Tenn. Code Ann. § 4-5-322. To the extent Petitioner’s complaint makes vague allegations about unspecified “misconduct,” nothing in Petitioner’s Complaint refers to the types of coverage denials that are handled administratively by TennCare appeals and therefore potentially subject to administrative hearing. (*See* Ex. D to Am. Pet.). Until Petitioner demonstrates that his available administrative remedies have been exhausted for the relief he is requesting beyond outpatient physical therapy, the Court does not have proper jurisdiction to grant Petitioner relief, and this action must be dismissed.

B. Petitioner Fails to State a Cause of Action Upon Which Relief may be Granted.

Petitioner, in addition to not exhausting his available administrative remedies prior to seeking this Court's review, has failed to state any claim. His appeal was denied as untimely because it was not filed within 40 days of any agency notice. *See* Ex. A to Am. Pet.; *see also* Tenn. R. & Regs. 1200-13-19-.06(3). Nowhere in the Amended Complaint does Petitioner challenge this determination, and therefore Petitioner fails to provide the Court any ground to reverse the agency decision under Tenn. Code Ann. § 4-5-322(h).

Nor does the Petition state any other claim. While generally, all remedies and relief must be exhausted with the agency prior to seeking review, a party may raise facial constitutional challenges to an applicable statute for the first time on appeal. *Richardson v. TN Bd. of Dentistry*, 913 S.W.2d 446, 456-57 (Tenn. 1995).

Petitioner has raised no such challenge. In fact, Petitioner's "Causes of Action" section in his Amended Complaint consists of various statutes, rules, quotes from politicians, and more facts re-stated from Petitioner's Complaint-Appeal sent to TennCare. Despite this regurgitation of legal sources, Petitioner makes no allegations that any law, either on its face or as applied to him, violates a tenant of the Tennessee or United States Constitutions. Indeed, Petitioner's allegations seem to rely upon what he believes to be enforcement of these statutes, rather than any assertions to have them invalidated. Petitioner has made no claim against TennCare or the State of Tennessee that can be redressed by this Court; instead, Petitioner's only avenue of recourse is with the agency itself.

CONCLUSION

For the reasons stated in this *Memorandum in Support of Respondents' Motion to Dismiss*, Respondents move this Court to dismiss this suit with prejudice for failure to state a claim upon which relief may be granted and for lack of subject matter jurisdiction.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this motion, memorandum in support, and all attached exhibits have been served via email and electronic filing on April 22, 2024, upon the following recipients:

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