DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 10-AA-1475, 10-AA-1492, 11-AA-633

D.C. CHARTERED HEALTH PLAN
AND
DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH CARE FINANCE, PETITIONERS,

V.

YVONNE SETTLES, RESPONDENT.

Petitions for Review of an Order of the
District of Columbia Office of Administrative Hearings
(DHCF-70-10)

(Argued October 23, 2012 Decided April 2, 2013)

Before FISHER, OBERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Following a hearing before an Administrative Law Judge of the Office of Administrative Hearings, petitioners D.C. Chartered Health Plan (Chartered) and the District of Columbia Department of Health Care Finance (DHCF) petitioned for review in this court of the ALJ's decision ordering Chartered to pay the bills for $28,665.78 that respondent, Ms. Yvonne Settles, received from Prince George's Hospital Center for emergency care when she was transported there by ambulance at the direction of personnel from the District of Columbia Fire and Emergency Medical Services. We conclude that the ALJ's award was in error and, further, that the ALJ may have misapprehended the appropriate allocation of the burden of proof and failed to consider (because the parties did not present) various potentially relevant citations and documents necessary to decide all arguments raised by the parties. Accordingly, we exercise our authority under D.C. Code § 2-510 (a) (2011 Repl.) to remand for further proceedings.

I. Background

Ms. Settles is a participant in the D.C. HealthCare Alliance Program ("Alliance program"). The DHCF administers the program and contracts with independent insurance companies and managed care organizations to administer the benefits for enrollees. Ms. Settles' benefits are administered through Chartered. Every person enrolled in the Alliance program through Chartered receives a HealthCare Alliance Chartered Health Plan Member Handbook ("Handbook").

On the morning of April 13, 2010, Ms. Settles noticed that her face was swollen, her breathing was irregular, and her tongue had swollen to the point that she could not speak. Her brother called an ambulance and Ms. Settles was transported to the closest hospital, Prince George's Hospital Center, in Cheverly, Maryland, where she was admitted in critical condition and remained for several days. After being released, Ms. Settles received four medical bills totaling more than $28,000. She submitted those bills to Chartered, which paid only the ambulance bill ($534.30). Chartered denied reimbursement for the other bills on the basis that it does not cover emergency medical services furnished by out-of-network providers.

Pursuant to the grievance procedure in the Handbook, Ms. Settles appealed Chartered's denial of her claim to OAH and requested a "Fair Hearing." Present at the hearing on October 28, 2010, were Ms. Settles and her son, neither of whom is a lawyer, and representatives from Chartered and DHCF. Analogizing to an employee handbook, the ALJ construed the Handbook as a contract with enrollees and held that Ms. Settles' "claim should be accepted because [she] met all requirements for emergency care set forth on Page 5 of her member handbook." The ALJ also ruled that, in the event that Chartered's decision to refuse to pay Ms. Settles' bills might have been because she did not seek pre-authorization to obtain services from an out-of-network provider, such denial would run afoul of D.C. Code § 31-2802, which prohibits the denial of reimbursement "for the provision of emergency medical services that are due to a medical emergency solely because the [insured] failed to obtain pre-authorization for emergency services." The ALJ ordered "D.C. Health Care Alliance Chartered Health Plan" to "pay all bills associated" with Ms. Settles' admission to Prince George's Hospital.[1]

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[1] The concluding paragraph of the order directed DHCF to pay Ms. Settles' medical bills. In light of the facts that Ms. Settles is an enrollee of Chartered, she

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II. Discussion

A. Reviewability and Jurisdiction

Ms. Settles moved to dismiss Chartered's petition for review on the basis that Chartered "agreed in its contract with [DHCF] to provide a dispute resolution process for the benefit of enrollees that included OAH review, and agreed that, if enrollees prevailed before OAH . . . the decision 'shall be final and not subject to appeal.'" Ms. Settles asserts that, "[b]ecause Chartered contractually waived any right . . . to petition for review of the OAH decision, its petition must be dismissed for lack of jurisdiction." She also argues that DHCF's petition should be dismissed. She contends that this court does not have jurisdiction over a petition for review filed by DHCF because, although the "non-appealability clause of the Alliance Contract explicitly applies to . . . Chartered, . . . it cannot be evaded by bringing the appeal for Chartered's benefit."

We are inclined to agree with Ms. Settles that Chartered contractually waived its right to appellate review of OAH's final order. Section C.14.8.5.3 of the contract between Chartered and DHCF is clear: "Contractor shall comply with the District Office of Administrative Hearings decision. The District [OAH] decisions in [Fair Hearing proceedings] shall be final and not subject to appeal by Contractor." But we need not resolve the many arguments advanced by Chartered in its effort to avoid the non-appealability clause because, whether or not Chartered may seek review, we are satisfied that DHCF has standing to challenge the ALJ's order.

D.C. Code § 2-1831.16 (d) provides that "[n]otwithstanding any other provision of law, any agency suffering a legal wrong or adversely affected or aggrieved by any order of the Office [of Administrative Hearings] in any adjudicated case may obtain judicial review of that order." Here, DHCF adequately alleged that it will be adversely affected by the ALJ's order. Specifically, DHCF contends that it is aggrieved, or will be aggrieved, by the

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submitted her bills to Chartered, and Chartered issued a letter denying her request for payment, we conclude that a fair reading of the order is that Chartered, not DHCF, was directed to pay the bills for Ms. Settles' emergency medical treatment.

ALJ's ruling that Chartered must pay for out-of-network emergency medical care because without enforcement of the "Alliance Program's statutory and regulatory limitations on medical coverage . . . the cost to administer this program of free insurance would rise" and "threaten[] the extent of coverage the Alliance Program provides to all members, and, potentially, the viability of the program itself." Ms. Settles does not dispute that the ALJ's ruling would adversely affect the financial integrity of the program. Rather, she challenges this court's jurisdiction over DHCF's appeal on the basis that the "non-appealability clause . . . cannot be evaded by [allowing DHCF to] bring[] the appeal for Chartered's benefit." Even if that were the standard upon which this court assessed whether it has jurisdiction over DHCF's appeal, Ms. Settles would not prevail as DHCF has adequately alleged that it seeks review to protect the Alliance Program as a whole, and not simply for "Chartered's benefit."

Accordingly, we proceed to review the ALJ's Order at the behest of DHCF.

B. Merits

DHCF argues that the OAH final order is "based on a mistaken legal premise" and should be reversed. This court will uphold a final order issued by the OAH unless it is "[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *District of Columbia Dep't of Emp't Servs. v. Vilche*, 934 A.2d 356, 360 (D.C. 2007). In our review, this court has the "power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings." D.C. Code § 2-510 (a).[2]

The Amended Final Order construed the Handbook as a contract between Ms. Settles and Alliance and held that a "sensible reading" of the contract is that coverage is afforded when an enrollee is "confronted with an emergency and is taken to an out-of-network provider by a District ambulance driver . . . especially when the District's actions in taking her to an out-of-network provider [are] out of her control." Additionally, the Amended Final Order noted that to the extent Chartered denied "coverage of Petitioner's medical bills because [she] did not properly obtain preauthorization, [that] argument fails because of the provisions of

[2] D.C. Code § 2-1831.16 (g) provides that "[i]n all proceedings for judicial review authorized by this section, the reviewing court shall apply the standards of review prescribed in § 2-510."

D.C. Official Code § 31-2802," which prohibits the denial of reimbursement for emergency services due to a failure to obtain pre-authorization.

With regard to the first ruling, DHCF asserts that the ALJ abused her discretion by analogizing the Handbook to an "employee manual" and construing it as an implied contract. We agree. The "essential elements of a contract are 'competent parties, lawful subject matter, legal consideration, mutuality of assent and mutuality of obligation.'" *Ponder v. Chase Home Finance, LLC*, 666 F. Supp. 2d 45, 48 (D.D.C. 2009); *Paul v. Howard Univ.*, 754 A.2d 297, 311 (D.C. 2000) (stating that necessary elements of express and implied contracts include offer, acceptance, and consideration). Here, there is no basis upon which to conclude that Ms. Settles provided consideration in exchange for any of the services described in the Handbook.

Relying on Chartered's brief, DHCF asserts, and Ms. Settles does not dispute, that "Alliance Program members receive . . . [eligible medical] services free of charge." Ms. Settles argues that the consideration furnished is that "potential Alliance enrollees choose to enroll and choose Chartered as their managed care organization, and in return, Chartered receives a capitation payment," but cites no case law in which payment for services by a third party constitutes "legal consideration." The analogy to an employment manual is inapt as the consideration provided by the employee is his or her professional services; enrollees of the Chartered Health Plan, by contrast, provide no services. *See, e.g.*, *Sisco v. GSA Nat'l Capital Fed. Credit Union*, 689 A.2d 52, 56 (D.C. 1997). Because Ms. Settles did not furnish consideration, construing the Handbook as a contract was "not in accordance with law." *Vilche*, 934 A.2d at 360.[3]

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[3] We also disagree with the conclusion in the Order that the Handbook is ambiguous with regard to Chartered's coverage of out-of-network emergency care services. Page 12 of the Handbook, under the title "Health Services Covered by Chartered" and, in the subsection "Emergency Services," states that Chartered covers "[a] screening exam of your health condition and stabilization if you have an Emergency Medical Condition, if the Provider is in the Chartered network" and in bold print reminds the reader that all members "must be seen at an in-network hospital." And on page 14, under the heading "Services We Do Not Pay For," the Handbook expressly states that the company does not pay for "[s]creening and stabilization services for Emergency Medical Care provided outside the District *or by an Out-of-Network facility*." [Emphasis added.] Indeed, Ms. Settles testified that "prior to . . . having this emergency situation" she "knew" that "all of [the]

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Additionally, the ALJ held that "[e]ven if we assume [Chartered] denied coverage of Petitioner's medical bills because Petitioner did not properly obtain preauthorization, [Chartered's] argument fails because of the provisions of D.C. Official Code § 31-2802," which prohibits the denial of payment for medical services "due to a medical emergency solely because the member failed to obtain pre-authorization." In neither the administrative hearing or in its briefs submitted to this court did Chartered or DHCF allege that the reason for denying payment of Ms. Settles' medical bills was because she did not obtain pre-authorization. Indeed, Chartered disavowed this argument as "irrelevant" explaining that appellant's "claim for [payment of] her hospital bill[s]" was denied "only because she obtained those services out-of-network – not for any reason relating to pre-authorization." Because Chartered did not deny benefits on the basis of Ms. Settles' failure to obtain pre-authorization, the ALJ's ruling on that point is of no consequence.

C. Remand

We thus reject the ALJ's stated reasons for ordering Chartered to pay Ms. Settles' claims. Still, we do not deem it appropriate to order an outright denial of benefits without further proceedings. At the administrative hearing, the ALJ placed the burden of proof on DHCF, telling Ms. Settles and her son that even though Ms. Settles was the petitioner in this case "there has not been an evidentiary hearing or record before so under the D.C. Administrative Procedures Act the Government has the burden of proving its case by a preponderance of the evidence, which simply means more likely so than not so, that the denial of benefits should have been affirmed since they are the parties responsible for the adverse action. Because they basically issued you a denial letter then they have the burden of going forward first and proving to the Court why their denial should be upheld." None of the parties challenged this ruling in our court, but we find ourselves troubled by the ALJ's reasoning. Ms. Settles is the party challenging the denial of her claim for benefits and is therefore the petitioner seeking relief through the Fair Hearing process. It would be anomalous, we think, to place the burden of proof

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services had to be completed in the [D]istrict or within Chartered's network of doctors in the [D]istrict." Given our reading of the Handbook's provisions, we need not address Ms. Settles' apparent contention that she is entitled as a third-party beneficiary to enforce the provisions of the Handbook.

supporting the denial of benefits on Chartered and the DHCF. We find support for that conclusion in the D.C. Administrative Procedure Act, which provides generally, in contested cases, that the burden of proof is on "the proponent of a rule or order." D.C. Code § 2-509 (b). Here, it would seem that one could conclude that DHCF bore the burden of proof only if one construed Chartered's denial letter to be a "rule or order" within the meaning of the DC APA. We do not think the language of the statute supports such a construction.[4] Rather, Ms. Settles was the "proponent" of a ruling from the ALJ awarding her benefits, and there are strong reasons to believe that she should bear the burden of proving her entitlement to reimbursement. We are not disposed to terminate the proceedings, however, when confronted with a situation in which it appears that Ms. Settles (a *pro se* litigant represented by her non-lawyer son) may have been wrongly advised that she did not bear the burden of proof. Perhaps, when properly informed, she will be able to produce evidence that supports her claim on other grounds.

Thus, we believe the most appropriate action for us to take, consistent with the broad array of options available to us under D.C. Code § 2-510 (a), is a remand to allow the ALJ to reconsider Ms. Settles' claim. A remand will enable the ALJ to address various issues not explored at the October 2010 administrative hearing, such as Ms. Settles' reliance on the entirety of the contract between Chartered and DHCF, a document that is likewise not in the record before us, and DHCF's argument that D.C. Code §§ 7-1405 (c) and (d) (provisions administered by the District's Health Care Safety Net Administration) exclude coverage for services provided by non-participating hospitals. We deem it appropriate for those issues to be addressed by the ALJ in the first instance, rather than this court. *See, e.g., District of Columbia Dep't of Mental Health v. District of Columbia Dep't of Emp't Servs,* 15 A.3d 692, 697 (D.C. 2011) (court generally "cannot uphold an agency decision on grounds other than those relied upon by the agency") (internal quotation marks omitted). We have applied that same principle when a petitioner

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[4] A "rule" under the DC APA is "the whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . . ." D.C. Code § 2-502 (6)(A). An "order" is "the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or any agency in any matter other than rulemaking, but including licensing." D.C. Code § 2-502 (11). Chartered is neither any part of the Mayor's office nor an agency but, rather, is simply a healthcare organization that participates in a program (the Alliance) administered by DHCF.

advances arguments in favor of outright reversal on grounds not reached by the agency. *See Georgetown Univ. v. District of Columbia Dep't of Emp't Servs.*, 862 A.2d 387, 393 (D.C. 2004) (reversing and remanding for further proceedings, including consideration of "alternative ground for reversing the ALJ's decision"). Accordingly, we reverse the order of the OAH requiring Chartered to pay the bills Ms. Settles received from Prince George's Hospital Center and, pursuant to D.C. Code § 2-510 (a), we remand the matter to the ALJ to consider the parties' additional arguments.[5]

Reversed and remanded.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

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[5] We take judicial notice of the fact that the District of Columbia placed Chartered into receivership during the time this case has been pending before our court. The Superior Court recently approved a proposed Asset Purchase Agreement, whereby certain of Chartered's assets and liabilities would be purchased by AmeriHealth District of Columbia, Inc. *See District of Columbia Dep't of Insurance, Securities and Banking v. D.C. Chartered Health Plan, Inc.*, No. 2012 CA 008227 (Mar. 1, 2013). Chartered's owner has moved for a stay of that order, and the Superior Court has not yet acted on the stay motion. We express no opinion on the effect, if any, of these developments on this matter; that is among one of the additional issues that the ALJ may wish to explore on remand.

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