

FILED
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
WAR MEMORIAL HOSPITAL, INC.

2021 OCT -5 AM 9:21

CATHY S. CATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Petitioner,

v.

CIVIL ACTION NO. 20-AA-69
Judge Jennifer F. Bailey

THE WEST VIRGINIA
HEALTH CARE AUTHORITY,

Respondent.

ORDER

Pending before the Court is an administrative appeal from the Office of Judges in which it Affirmed the West Virginia Health Care Authority's ("Authority") Decision to deny War Memorial Hospital's ("WMH") application for an exemption for a Certificate of Need ("CON"). The Office of Judges found the Authority appropriately determined that WMH's proposed acquisition of a magnetic resonance imaging ("MRI") scanner for a medical office building owned by its parent corporation in Martinsburg, Berkeley County, West Virginia, rather than WMH, which is located in Berkeley Springs, Morgan County, West Virginia, does not qualify for the CON exemption found in W. Va. Code § 16-2D-11(c)(27). After consideration of the parties' briefs, the administrative record, and applicable legal authorities, the Court finds and concludes as follows:

FINDINGS OF FACT

1. WMH is a hospital located at 1 Healthy Way, Berkeley Springs, Morgan County, West Virginia.
2. On December 18, 2019, the Authority received an application from WMH seeking an exemption from CON review for the acquisition of one MRI device to be utilized in a medical

office building located at 5524 Williamsport Pike, Martinsburg, Berkeley County, West Virginia 25404.

3. WMH asserted such an acquisition was exempt from CON review pursuant to W. Va. Code § 16-2D-11(c)(27). This code section provides in pertinent part: “[n]otwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists, and these health services are exempt from the certificate of need process (27) The acquisition and utilization of one computed tomography scanner and/or magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.”

4. In a Decision dated February 3, 2020, the Authority denied WMH’s application for exemption and determined the purchase of the MRI to be utilized at this medical office building in a separate county and owned by WMH’s parent corporation does not qualify for the exemption and was subject to CON review. The Authority’s rationale for the denial was that W. Va. Code § 16-2D-11(c)(27) provides an exemption for hospitals to purchase an MRI scanner for use in its own facilities without the necessity of having to go through full CON review. The Authority found that in crafting the exemption the Legislature did not intend for hospitals to purchase and utilize MRI scanners in medical office buildings that are not part of the hospital’s primary location. The Authority further held that WMH’s interpretation to the contrary would lead to absurd results such as allowing hospitals to acquire a CT or MRI scanner at any random location regardless of the need for the device.

5. WMH filed a Request for Review with the OOJ on March 4, 2020. A briefing schedule was established, and a hearing was held on July 7, 2020.

6. The Office of Judges issued a Decision dated August 17, 2020, affirming the Authority’s Decision. The administrative law judge (“ALJ”) found that the scope of review of an

administrative decision on appeal is limited and that simply disagreeing with the outcome of the decision is not a reason for reversal. The ALJ further found that the Authority appropriately determined that WMH's application for an MRI scanner at a location other than WMH was not eligible for an exemption from CON review.

7. WMH filed a Petition for Appeal with this Court on September 16, 2020.

CONCLUSIONS OF LAW

1. The standard of review for a decision of the Authority by the Office of Judges is set forth in W. Va. Code § 16-2D-16 which provides, in pertinent part, that an appeal be processed "in accordance with the provisions governing the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this code." *See also Princeton Community Hospital v. State Health Planning and Development Agency*, 174 W.Va. 558, 328 S.E.2d 164 (1985). The specific standard of review is found at W. Va. Code § 29A-5-4(g), which provides:

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are

- (1) In violation of the constitutional or statutory provision; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence of the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See Syl. Pt. 2 Shepherdstown Volunteer Fire Dep't. v. Human Rights Commission, 172 W.Va. 627, 309 S.E.2d 342 (1983).

2. Under the Administrative Procedures Act, "the task of the circuit court is to determine whether the [agency's] decision was based on a consideration of the relevant factors

and whether there is a clear error of judgment.” See *Frymier-Halloran v. Paige*, 193 W.Va. 687, 695, 458 S.E.2d 780, 788 (1995) quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 91 S.Ct. 814, 824, 28 L.Ed.2d 136, 153 (1971). Interpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review. *Appalachian Power Co. v. State Tax Dep’t of West Virginia*, 195 W.Va. 573, 466 S.E.2d. 424 (1995). “An inquiring court – even a court empowered to conduct *de novo* review – must examine a regulatory interpretation of a statute by standards that include appropriate deference to agency expertise and discretion.” *Id.* at 195 W.Va. 582, 466 S.E.2d at 433.

3. Consequently, the Circuit Court’s review of the Authority’s interpretation in this appeal is limited to asking whether the Authority’s interpretation and application of the statute was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. An agency’s interpretation of a statutory provision or regulation it is charged with administering is entitled to a high degree of deference. Courts must, however, reject administrative orders and rules that are contrary to legislative intent. See *West Virginia Health Care Cost Review Authority v. Boone Memorial Hospital*, 196 W.Va. 326, 335, 472 S.E.2d 411, 420.

4. An agency’s determination of matters within its area of expertise is entitled to substantial weight. *Princeton Community Hosp. v. State Health Planning Development Agency*, 174 W.Va. 558, 564, 328 S.E.2d 164, 171 (1985).

5. West Virginia Code §16-2D-1 announces the public policy of this State with respect to CON:

(1) That the offering or development of all health services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the health services of the people of this state and to avoid unnecessary duplication of health services, and to contain or reduce increases in the cost of delivering health services.

(2) That the general welfare and protection of the lives, health and property of the people of this state require that the type, level and quality of care, the feasibility of providing such care and other criteria as provided for in this article, including certificate of need standards and criteria developed by the authority pursuant to provisions of this article, pertaining to health services within this state, be subject to review and evaluation before any health services are offered or developed in order that appropriate and needed health services are made available for persons in the area to be served.

6. Accordingly, the Authority's purpose is to contain and reduce costs by reducing unnecessary duplication of institutional health services by ensuring that the development of any new institutional health service is orderly, economical and that the type, level and quality of care is appropriate and needed for persons in the service area. W. Va. Code § 16-2D-1.

7. The CON law in West Virginia is found at W. Va. Code § 16-2D-1, *et seq.* Specifically, W. Va. Code § 16-2D-1(8)(a) provides that "[e]xcept as provided in § 16-2D-9, § 16-2D-10, and § 16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article: . . . (6) Providing fixed magnetic resonance imaging. . ." Consequently, if an entity desires to provide MRI services for the first time, it must go through the CON process and establish need for the proposed services. Additionally, the review process provides other entities located in the same service area and providing the same services the opportunity to challenge such an application through the administrative hearing process.

8. In W. Va. Code § 16-2D-11, the Legislature provided certain exemptions from CON review. At all times relevant to these proceedings, applications for exemption from review required approval from the Authority. One of the exemptions provided for in this section is W. Va. Code § 16-2D-11(c)(27) which exempts "[t]he acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital." This is the exemption relied on by WMH.

9. WMH's reliance on this exemption, however, is misplaced. When the MRI exemption section found at W. Va. Code § 16-2D-11(c)(27) is read *in pari materia* with W. Va. Code § 16-2D-8, which requires entities offering MRI services for the first time to undergo review, it is clear the Legislative intent was to allow hospitals to add MRI devices below a certain threshold price at their facility without the necessity and expense of CON review.

10. The West Virginia Supreme Court held in *Banker v. Banker*, 196 W.Va. 535, 543, 474 S.E.2d 465, 473 (1996), that "'interpreting a statute . . . presents a purely legal question for the Court.' Syl. Pt. 1, *West Virginia Human Rights Comm'n v. Garretson*, 196 W.Va. 118, 468 S.E.2d 733 (1996); Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dept.*, 195 W.Va. 573, 466 S.E.2d 424 (1995); *Mildred L.M. v. John O.F.*, 192 W.Va. 345, 350, 452, S.E.2d 436, 441 (1994). We previously 'recognized that generally the words of a statute are to be given their ordinary and familial significance and meaning[.]' *Metropolitan Property and Liability Ins. Co. v. Acord*, 195 W.Va. 444, 450, 465 S.E.2d 901, 907 (1995) citing *Amick v. C&T Dev. Co.* 187 W.Va. 115, 118, 416 S.E.2d 73, 76 (1992). On a pure question of statutory construction, we must try to determine legislative intent using traditional tools of statutory construction. Syl. Pt. 11, *Cox v. Amick*, 195 W.Va. 608, 466 S.E.2d 459 (1995), citing Syl. Pt. 2, *State ex rel. Water Dev. Auth. V. Northern Wayne County Public Serv. Dist.*, 195 W.Va 135, 464 S.E.2d 777 (1995); Syl. Pt 2, *Farley v. Buckalew*, 186W.Va. 693, 414 S.E.2d 454 (1992); Syl. Pt. 1, *Smith v. State Workmen's Compensation Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975).

11. "In ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation." *State ex rel. Morgan v. Trent*, 195 W.Va. 257, 263, 465 S.E.2d 257, 263 (1995), citing Syl. Pt. 3, *State ex*

rel. Fetters v. Hott, 173 W.Va. 502, 318 S.E.2d 446 (1984); Syl. Pt. 2, *Smith v. State Workmen's Compensation Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975).”

12. W. Va. Code § 16-2D-1(1) provides that the public policy of the state is that the development of all health services are to be accomplished in a manner that is “. . . orderly, economical and consistent with the effective development of necessary and adequate means of providing for the health services of the people of this state and to avoid unnecessary duplication of health services, and to contain or reduce increases in the cost of delivering health services.” WMH’s interpretation of the code would allow a hospital to acquire and utilize MRI scanners in any location without regard to whether there is a need for the service or considering the impact such additional services would have on existing MRI services located at other hospitals already established in an area. This is antithetical to the purpose of the Authority and CON review.

13. The exemption found at W. Va. Code § 16-2D-11(c)(27) allows a hospital to forego the time and expense of review if it purchases one MRI device below a certain threshold and the MRI device is utilized by the hospital. When read in conjunction with W. Va. Code § 16-2D-1 and § 16-2D-8, it is clear that the Legislative intent of the exemption was that the MRI device would be acquired and used by the hospital in the acquiring hospital’s facility.

14. In order for the exemption to apply, WMH would need to acquire and utilize the device at WMH facilities. However, this is not the case. WMH intends to acquire an MRI device and place it in a medical office building in another county that is owned by its parent corporation.

15. Although WMH asserts it intended that the location “would have been staffed by WMH employees and treated as an outpatient department of WMH,” this is not what the exemption statute requires.

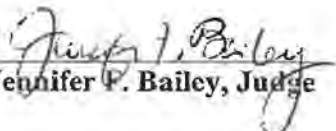
16. Accordingly, the decision below was not in violation of a constitutional or statutory provision, in excess of the statutory authority or jurisdiction, made upon unlawful procedures, affected by other error of law, clearly wrong in view of the reliable, probative and substantial evidence of the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

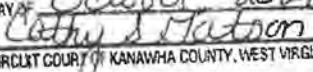
Therefore, the Court **AFFIRMS** the decision of the Office of Judges and **DENIES** the petition for appeal. Further, the Court **ORDERS** that this administrative appeal is hereby **DISMISSED** from the active docket of this Court.

Petitioner's exceptions and objection to this ruling are hereby preserved.

The Clerk is directed to forward certified copies of this Order to all parties and counsel of record.

Entered this 4th day of October, 2021.


Jennifer F. Bailey, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 5
DAY OF October, 2021.
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 