IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Jun 10 2024
08:50PM EDT
Transaction ID 73357771

Putnam County Aging Program, Inc.,
Affected Party Below, Petitioner,

vs.) NO: 24-ICA-98

Panhandle Support Services, Inc.,
Applicant Below, *Respondent*

And

West Virginia Health Care Authority,
Respondent

PETITIONER'S BRIEF IN SUPPORT OF APPEAL

Richard W. Walters (WV Bar #6809)
rwalters@shafferlaw.net
Ryan W. Walters (WV Bar #14113)
ryanwalters@shafferlaw.net
Shaffer & Shaffer, PLLC
2116 Kanawha Boulevard East
P.O. Box 3973
Charleston, WV 25339-3973
304-344-8716

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

ASSIGNMENTS OF ERROR

1. In plain error, the hearing examiner, Heather Connolly, erred in granting Panhandle's Motion for Summary Judgment because as hearing examiner, she had no authority to grant such a motion.

2. The Authority's granting of Panhandle's Motion for Summary Judgment was premature as discovery in the proceeding had not been completed. Panhandle filed its "Motion for Summary Judgment on Behalf of Applicant, Panhandle Support Services, Inc." on October 2nd, 2023. An "evidentiary hearing" was scheduled to take place on October 16th, 2023. At the evidentiary hearing, Petitioner would have been afforded the opportunity to question witnesses and offer that testimony into the record. However, during the pre-hearing on October 6th, 2023, the Authority erroneously found that no evidence could be introduced at the Hearing that would create a dispute of material fact.

3. The Authority's granting of Panhandle's Motion for Summary Judgment was improper because there were significant disputes of material facts, or would have been in the event Petitioner could have produced testimony, in the record making use of West Virginia Rule of Civil Procedure 56 improper, including:

a. A material dispute of fact exists regarding whether an unmet need exists in the proposed service area. The West Virginia Code requires unmet need to be demonstrated prior to a CON application approval. (*W. Va. Code* § 16-2D-12(a)). A finding of unmet need is both required and necessary to comply with the legislative findings of the CON statute: preventing duplication of services and unnecessary waste of resources. (*W. Va. Code* § 16-2D-1).The Applicant provided no evidence of an unmet need in Putnam County, as well as other counties in its proposed service area. Moreover, documents in the record contains evidence that there is no unmet need in these counties. Had there been an evidentiary hearing, testimony would have been entered in the record showing no unmet need existed.

b. A material dispute of fact exists regarding whether the West Virginia Health Care Need Methodology implemented in 2023 is sufficient grounds to support unmet need. Documents in the record contains evidence that the 2023 Need Methodology was arbitrarily and capriciously created, and as such should not be relied on when reviewing CON applications of unmet need. Had there been an evidentiary hearing, testimony would have been entered in the record showing the 2023 Need Methodology was arbitrarily and capriciously created. The Authority not only relies on this arbitrary and capricious calculation, but it is also the only evidence it relies on in finding an existence of unmet need. Absent its reliance on this improper method, the Authority lacks statutory power to grant this Application.

c. A material dispute of fact exists regarding whether granting the Application will have a negative effect on the community by significantly limiting the availability and viability of other services or providers. Documents were submitted in the record of the negative effects that approving this Application would have on Petitioner's services. The Authority improperly disregarded this evidence or erroneously identified it as speculative,

and granted a Motion for Summary Judgment before this issue could be further developed at the scheduled evidentiary hearing.

4. The West Virginia Health Care Authority improperly, and in contradiction to West Virginia law, promulgated an arbitrary and capricious Need Methodology in 2023 for the purpose of determining need of services in each county. State law demands that this Need Methodology be abolished.

STATEMENT OF THE CASE

I. PROCEDURAL BACKGROUND

On June 12th, 2023, the West Virginia Health Care Authority ("WVHCA") received an application from Respondent Panhandle Support Services, Inc., ("Panhandle") for a Certificate of Need requesting permission to start providing Medicaid In-Home Personal Care Services within a proposed service area. (*See* D. R. 16-144). The proposed service area includes Mason, Cabell, Putnam, Lincoln, and Wayne County. (*See* D.R. 34). On June 7th, 2023, the WVHCA received Putnam County Aging Program, Inc.'s ("Petitioner") letter setting forth reasons why Panhandle's application should not be granted. (*See* D.R. 14). On July 13th, 2023, the WVHCA received Petitioner's filing for affected party status contesting that the requirements of a CON were not met by Panhandle and requested an evidentiary hearing. (*See* D. R. 165).

Once a party is granted affected party status, the party is guaranteed an evidentiary hearing that is governed by the State Administrative Procedures Act ("APA"). *W. Va. Code* § 29A-5-1 et. seq. Under the APA, each party will have the opportunity to cross examine testifying witnesses and submit rebuttal evidence. *W. Va. Code* § 29A-5-2(C). The hearing shall be conducted in an impartial manner and the agency may appoint an impartial hearing examiner to oversee the hearing. *W. Va. Code* § 29A-5-1(d). The hearing examiners' only role is to foster the effective gathering of evidence into the record, so that the agency board can consider the evidence and come to a conclusion. *Id.*

On October 2nd, 2023, Panhandle filed a motion for Summary Judgment asking the WVHCA to cancel the evidentiary hearing that was originally scheduled to take place on October 16th, 2023. (*See* D.R. 178). On October 6th, 2023, a pre-hearing conference was

held before the WVHCA, and was presided over by Heather Connolly in the capacity of the Hearing examiner. (*See* D.R. 972-1003). Petitioner hand delivered a response to Panhandle's Motion for Summary Judgment on October 6th, 2024, prior to the commencement of the pre-hearing conference. During the Pre-hearing, Ms. Connolly granted Panhandle's Motion for Summary Judgment. (*See* D.R. 995-996). An Order reflecting Ms. Connolly's decision was entered into the record on February 8th, 2024. (*See* D. R. 1004-1009).

As a result of Ms. Connolly's premature granting of Panhandle's Motion for Summary Judgment, no evidentiary hearing was held, and no witness testimony was entered into the record. Naturally, no post hearing briefing was conducted. Furthermore, on October 13th, 2023, after Petitioner's CON proceeding was dismissed, an evidentiary deposition was taken of Timothy Adkins, the Director of the Certificate of Need Program within the West Virginia Health Care Authority. Mr. Adkins deposition was taken to build the record in all the CON proceedings which Petitioner had in front of the WVHCA. The testimony of Mr. Adkins was intended to be entered and considered in this record. However, because of the premature Order, this testimony was not considered or entered in the record. Significantly, Ms. Connolly's Order granting Summary Judgment deprived the WVHCA board from considering the underlying facts.

On March 7th, 2024, Petitioner noticed its appeal of the underlying decision made by the WVHCA. The WVHCA filed the Designated Record for this appeal on April 10th, 2024. Petitioner now files this Brief for the purpose of perfecting their appeal, and to highlight portions of the record which show the WVHCA erred in its decision to grant a Certificate of Need to Panhandle.

II. FACTUAL BACKGROUND

Due to Ms. Connolly's premature granting of Panhandle's Summary Judgment, the parties were unable to introduce testimony into the record. However, Ms. Connolly did improperly rely on a factual record from a separate CON hearing when granting the Motion. The WVHCA relied on the fact that [Petitioners'] chief arguments in this matter had already been addressed by the Authority in prior hearings." (*See* D.R. 1007). Although the facts are not in this record, the Petitioner wanted to provide a summary of useful facts.

On April 27th, 2023, the West Virginia Health Care Authority promulgated new Medicaid Personal Care standards regarding CONs and the requirements that must be met for an application to be granted. Within these standards, the WVHCA maintains a need methodology that "[a]ll CON applicants must demonstrate with **specificity**." More specifically, the applicant must demonstrate with specificity that: "(1) there is an unmet need for the proposed service; (2) the proposed service will not have a negative effect on the community by significantly limiting the availability and viability of other services or providers; and (3) the proposed services are the most cost-effective alternative." (*See* D.R. 789).

Petitioner provides services in Putnam County. These include Medicaid In-Home Personal Care services, nutrition services, transportation services, and various other services provided by the organizations. The Petitioner currently not only provides In-Home Personal Care services, but also a slew of other services for the benefit of the elderly population that are not funded by Medicaid. Jennifer Sutherland is the Executive Director for Putnam County Aging Program. Putnam County Aging Program is a nonprofit organization that administers the Title III programs for the State of West Virginia and

Putnam County. Putnam County is also authorized through the Bureau of Medical Services (BMS) to be a Medicaid In-Home Personal Care provider, as well as an Aged and Disabled Waiver provider. Putnam County provides a variety of services, during another CON proceeding Ms. Sutherland testified:

> We operate senior centers. So we have the county aging senior centers in both Putnam and Fayette County. I have six centers. We do Meals on Wheels or home-delivered meals through all areas of both counties. I operate county-wide transportation systems in both counties. We do in-home services that are funded by the state lottery programs such as FAIR and Lighthouse. And we provide Department of Agriculture programs such as the senior food commodity boxes and the senior farmers market vouchers.

The Petitioner provides Medicaid personal care directly, as well as subcontract the same services through a relationship with Loved Ones In-Home Care (Loved Ones). Ms. Sutherland further provided that as a nonprofit organization, the revenues that Petitioner makes through any Medicaid program or a sub contractual relationship with Loved Ones is then reinvested into its Title III budgets and other service programs and services that it provides throughout the county.

In the prior hearing, Ms. Sutherland testified that her organizations anticipate receiving $423,214 from their contractual agreement with Loved Ones. Additionally, the Petitioner receives close to two-million dollars of their own revenue in Medicaid Dollars through services they directly provide. However, despite the high revenue, the Petitioner's projected net income is only $61,526. The large difference between revenue and net income is the result of a significant portion of their profit being redirected into other services that are underfunded in Putnam and Fayette County. In essence, any profit made by the Petitioner goes directly back to the senior programs that are either underfunded,

or not funded at all in Putnam and Fayette County. Meals on Wheels is the primary program that these additional funds go towards, and this allows Petitioner to supply elderly persons in Putnam and Fayette County with meals. This service is crucial to the elderly population in these counties as many elderly struggle with or are unable to leave their house.

SUMMARY OF ARGUMENT

Petitioner's first assignment of error: The WVHCA, and Heather Connolly in her capacity as an "unbiased hearing examiner," erred in prematurely granting Panhandle's Motion for Summary Judgment. The WVHCA hearing examiner found that "the authority does, under the authority of the APA, have the ability to entertain dispositive motions and a motion for summary judgment is such dispositive motion." (*See* 995:12-16). However, the WVHCA, nor Panhandle, cite any authority in the underlying argument, or in the underlying decision, to support this assertion. In fact, the Administrative Procedures Act (APA) provides an explicit list of powers entrusted to the hearing examiner. None of the listed powers permit the hearing examiner to consider or rule on dispositive motions. *W. Va. Code* §29A-5-1(d).

Petitioner's Second assignment of error: The WVHCA erred when it prematurely granted Panhandle's Motion for Summary Judgment while a substantial portion of discovery was left unfinished. Panhandle filed its Motion for Summary Judgment for the purpose of preventing Petitioner's from entering additional evidence into the record at the scheduled evidentiary hearing. Furthermore, a second evidentiary hearing was scheduled in the underlying proceeding for the purpose of entering Tim Adkins testimony into the record. Neither Tim Adkins nor the evidence Petitioner would have provided at

the evidentiary hearing were allowed to be considered by the board. In this Brief, Petitioner must refer to facts that would have been in the record had it not been stripped of the opportunity of developing the record. The more Petitioner must rely on facts outside the record, the more it is highlighted that the premature granting of the underlying Summary Judgment was clearly wrong.

The WVHCA granted the Motion finding that there was no evidence that Petitioner could have entered into the record that would create a genuine dispute of material fact. (*See* D.R. 995:17-22). Whether it is just extreme bias, or that the decision to grant the application was made prior to the beginning of the proceeding, it is clearly wrong to find that there is no possible fact that could ever effect the outcome of Panhandle's Application. Furthermore, Ms. Connolly granted Panhandle's Motion for Summary Judgment without even reading Petitioner's Response to the motion.

Petitioner's third assignment of error:

The WVHCA erred in finding that there was no dispute of material fact in the record. More egregiously, the WVHCA found that there was no possible fact that Petitioner could have proffered in the upcoming two evidentiary hearings that would have any effect at all on the WVHCA's decision to grant or deny the underlying application. Because the Petitioner was deprived the opportunity of developing the record, it is difficult to anticipate every argument it would have made. However, below are a few of the arguments that contained genuine disputes of material facts, and that would have been significantly bolstered had Petitioner been afforded the opportunity to develop the record through the upcoming evidentiary hearings.

a.) Dispute of material effect regarding unmet need.

The West Virginia Health Care Authority's decision granting Panhandle Motion for Summary Judgment was in error as there is a genuine issue of material fact regarding unmet need, and there is no evidence in the record supporting a need for Medicaid In-Home Personal Care services in its proposed service area. In a finding of unmet need, the WVHCA relied entirely on the 2023 Need Methodology calculation, which as discussed below, was relied on in error. Panhandle provided no evidence of an unmet need in Putnam County, as well as other counties in its proposed service area. Moreover, there is evidence in the record, or that would have been entered into the record, showing no unmet need.

In a hearing that was supposed to be entered into this record had Summary Judgment not been prematurely granted (hereinafter "Adkins Deposition"), the WVHCA's own expert, Tim Adkins, testified that there is no unmet need in Putnam County. Additionally, the executive director of Putnam County on Aging would have testified that she has never had to turn away an eligible participant from Medicaid In-Home Personal Care services in either County. Significantly, Panhandle is unable to legitimately identify any eligible participant that has been denied Medicaid In-Home Personal Care services.

b.) Dispute of material fact regarding improper reliance on the 2023 Need Methodology calculation.

The WVHCA erred when it relied on its 2023 Need Methodology calculations to find an unmet need existed because it exceeded its statutory limitations when it arbitrarily

and capriciously changed the Medicaid In-Home Personal Care Certificate of Need Standards. When promulgating these new standards in 2023, the WVHCA failed to comply with statutory requirements. First, the WVHCA is required to rely on relevant criteria and apply it in such a manner that there is no duplication of services. However, in promulgating these standards, the WVHCA did not rely on the existence of any actual unmet need. Instead, in Adkins Deposition, the WVHCA admits that it increased the unmet need in all fifty-five counties because it was aware of rumors that subcontracting for these services was going to be prohibited by the legislature in the future, thus, potentially creating unmet need. To this date, subcontracting is still permitted in West Virginia and the WVHCA has not provided any evidence of actual unmet need to support its change of the Need Methodology calculations.

Second, WVHCA arbitrarily changed the Need Methodology calculations to allow additional unneeded providers to start providing services within almost every county in West Virginia. Through documentation, Adkins deposition, and the testimony that would have been proffered by Petitioner, the WVHCA would be unable to make any findings of unmet need, these new services are purely duplicative and therefore in violation of the public policy goals and legislative findings of the Certificate of Need statute. (*W. Va. Code* § 16-2D-1). Third, West Virginia Code § 16-2D-6(c) requires the Authority to form a task force comprised of representatives of consumers, businesses, providers, payers, and state agencies to assist in the review of any proposed standard modifications. Based on Adkins Deposition, the WVHCA failed to meet this requirement as it never actually formed a task force and merely held a short meeting where the issue of the Need Calculation was not even properly addressed. Lastly, the WVHCA clearly failed to consider the public

comments on the Need Methodology calculation changes as many organizations informed the WVHCA that there was in fact no unmet need.

c.) Dispute of material fact regarding negative affect.

The WVHCA erred in finding no genuine dispute of material fact regarding the negative effect on the community by significantly limiting the availability and viability of other services or providers. Allowing additional Medicaid In-Home Personal Care providers into the proposed service areas negatively affects Petitioner by limiting already scarce resources. As described below, Petitioner takes the surplus funds from the Medicaid In-Home Personal Care program and redistribute them into other services for elders, like delivering meals to elderly who cannot leave their home and transportation services. At the very least, this new competition is expected to cut these surplus funds, preventing Petitioner from providing these additional services to elderly people. Furthermore, Petitioner was prevented from developing the record to counter Panhandles baseless argument that no negative effect would occur.

Petitioner's fourth assignment of error: The 2023 Need Methodology promulgated by the WVHCA, as discussed thoroughly throughout this brief, is arbitrary and capricious. The Petitioner does not believe it to be proper for this Court to strike down the validity of the WVHCA standards at issue in this proceeding. However, the WVHCA has taken the position that Petitioner must exhaust its administrative remedies through this process prior to challenging the standard in Circuit or District Court. Therefore, Petitioner asks that this Court strike the 2023 Need Methodology Standards promulgated by the WVHCA as statutorily invalid.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that this Court will benefit from oral arguments on the assignments of error addressed in this brief. This matter involves: (1) "…assignments of error in the application of settled law…"; (2) claims of "…unsustainable exercise of discretion where the law governing that discretion is settled…"; and (3) a claim of "…insufficient evidence or a result against the weight of the evidence…" (*See* W. Va. R. App. P. 19). For these reasons, Petitioner requests oral arguments in this matter under West Virginia Rule of Appellate Procedure 19.

ARGUMENT

I. Standards.

a. Appellate Review

When "reviewing the decision of an administrative agency's factfinder . . . the [appellate] court is required to accord deference to the hearing examiner's findings of fact unless they are '[c]learly wrong in view of the reliable, probative, and substantial evidence on the whole record[.]'" *Minnie Hamilton Health Care Ctr., Inc. v. Hosp. Dev. Co.*, 2023 W. Va. App. LEXIS 92, 5 (W. Va. App. 2023). If this Court finds that the WVHCA was clearly wrong under the applicable law and relevant facts, it has the option of various remedies:

> 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 constitutional or statutory provisions;
>
> (2) In excess of the statutory authority or jurisdiction of the agency;

> (3) Made upon unlawful procedures;
>
> (4) Affected by other error of law;
>
> (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id.

b. Summary Judgment Standard

The WVHCA in the underlying proceeding disposed of the matter through a Motion for Summary Judgment. Therefore, this Court must find that WVHCA's application of the Summary Judgment standard was "clearly wrong."

"Rule 56(c) [of the West Virginia Rules of Civil Procedure] establishes the standard for determining whether a summary judgment in a given situation is proper and should be granted." *Aetna Casualty and Surety Co. v. Fed. Ins. Co. of N.Y.*, 148 W. Va. 160, 170-71, 133 S.E.2d 770, 777 (1963). Pursuant to Rule 56(c), "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. W. Va. R. C. P. Rule 56(c) (2011) (emphasis added).

A "genuine issue" arises when there is sufficient evidence in favor of the nonmoving party that a reasonable jury would return a verdict in their favor on that particular issue. *Jividen v. Law*, 194 W. Va. 705, 461 S.E.2d 451 (1995). A "material fact" is a fact which has the capacity to sway the outcome of the litigation under the applicable law. *Id.* The nonmoving party must show that there is one or more disputed "material

facts" to withstand a motion for summary judgment. *Id.*

The West Virginia Supreme Court of Appeals stated "a motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." *Aetna*, 148 W. Va. at 171 (emphasis added). "A party is not entitled to summary judgment unless the facts established show a right to judgment with such clarity as to leave no room for controversy and show affirmatively that the adverse party can not prevail under any circumstances." *Id.* at 172 (emphasis added). "A motion for summary judgment must be denied if varying inferences may be drawn from evidence accepted as true." *Id.*

Under West Virginia law, the moving party has the burden of proof to show they are entitled to summary judgment. "A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment." *Id.* (emphasis added). The nonmoving party does not have the burden to show that he would prevail on the issue should it be presented to a jury, instead, the burden is on the movant to show there is no genuine issue as to any material fact. *See Lengyel v. Lint*, 167 W. Va. 272, 280 S.E.2d 66 (1981).

II. The hearing examiner improperly, and without any authorization, granted Panhandle's Motion for Summary Judgment.

Heather Connolly, in her capacity as a hearing examiner, improperly granted Panhandle's Motion for Summary Judgment at the pre-hearing conference in the underlying matter. The hearing examiner's purpose is to conduct the hearings in a way so that the parties may effectively enter evidence into the record, so that the WVHCA Board

may make a ruling on the findings. The hearing examiner has a list of explicit statutory powers:

> (d) All hearings shall be conducted in an impartial manner. The agency, any member of the body which comprises the agency, or any hearing examiner or other person permitted by statute to hold any such hearing for such agency, and duly authorized by such agency so to do, shall have the power to: (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three [§§ 29A-3-1 et seq.] of this chapter.

W. Va. Code §29A-5-1(d). Nowhere in the list of explicit statutory powers does it allow the hearing examiner to rule on a dispositive motion, and thereby deprive the WVHCA Board of performing its role.

In fact, the WVHCA is required by law to approve applications for CON only if it makes several specific findings. 65 C.S.R. 32-10 et. seq. In essence, Panhandle's Motion for Summary Judgment is a motion asking the hearing examiner to prevent Petitioner from developing evidence at an evidentiary hearing to assist the Authority in its decision. With the granting of Panhandle's motion, the hearing examiner removed Petitioner as an affected party solely because the hearing examiner had already determined that Panhandle's CON application should be approved regardless of what evidence could have been produced. It is not the hearing examiner's role to grant or deny a CON application, it is her role to gather evidence for the Board. As such, the hearing examiner acted outside of her statutory authority, and therefore, her granting of Panhandle's Motion for Summary Judgment was clearly wrong.

III. The WVHCA improperly and prematurely granted Panhandle's Motion for Summary Judgment prior to allowing Petitioner to develop its case or make supporting arguments.

West Virginia Supreme Court precedent holds:

> **Summary judgment is appropriate only after the non-moving party has enjoyed "adequate time for discovery**." *Celotex Corp. [v. Catrett]*, 477 U.S. [317] at 322, 106 S.Ct. [2548] at 2552, 91 L. Ed. 2d 265 [1986]; *Anderson [v. Liberty Lobby Inc.],* 477 U.S. [242] at 250 n. 5, 106 S.Ct. [2505] at 2511 n. 5, 91 L. Ed. 2d 202 [1986]. **As this Court has recognized, summary judgment prior to the completion of discovery is "precipitous."** *Williams [v. Precision Coil, Inc.],* 194 W.Va. [52] at 61, 459 S.E.2d [329] at 338 [1995], quoting *Board of Educ. of the County of Ohio v. Van Buren and Firestone, Arch., Inc.,* 165 W.Va. 140, 144, 267 S.E.2d 440, 443 (1980).

Conley v. Stollings 679 S.E.2d 594, 599 (W. Va. 2009) (*Citing Payne's Hardware & Bldg. Supply, Inc. v. Apple Valley Trading Co. of W. Va.,* 200 W. Va. 685, 690, 490 S.E.2d 772, 777 (1997)). Granting a summary judgment motion prior to the completion of discovery is inherently risky for obvious reasons. Having an incomplete evidentiary record greatly increases the probability of improperly dismissing a case on the present evidence. The more evidence that can be shown to be missing from the record, the more likely the granting of the same will be improper. That is exactly what happened here.

Even in the WVHCA's decision, it cites case law that directly contradicts the improper timing of this motion. Summary judgment is only proper "[w]hen a motion for summary judgment is mature for consideration and is properly documented with such clarity as to leave no room for controversy…" (*See* D.R. 1006). At the time this motion was granted, there were two evidentiary hearings scheduled in this matter. One was the evidentiary hearing scheduled for October 16th, 2023, where the parties are normally afforded the opportunity to present testimony from any relevant witness, and to cross-

exam the other parties' witnesses. (*See* D.R. 178). The purpose of the other hearing was to gather the testimony of Tim Adkins, Director of the Certificate of Need Program at WVHCA, for the record. Mr. Adkins not only was central in establishing the 2023 Need Methodology, but he had direct knowledge of the unmet need in West Virginia. Due to this premature granting of Summary Judgment, none of the above testimony was entered in this record. It appears near impossible that the WVHCA could find enough clarity as to leave no room for controversy when not a single key player had submitted evidentiary testimony.

In fact, WVHCA made this ruling on nothing more than unexplained documents. Petitioner was prevented from entering evidence in the record through testimony. Not only was Petitioner stripped of the opportunity to explain the submitted documents through testimony, but it was also prohibited from making any arguments on the evidence. Panhandle filed its Motion for Summary Judgment just four days prior to the pre-hearing. (*See* D.R. 262-269). As such, Petitioner drafted a response discussing the premature nature of the Motion and hand delivered it on the day of the pre-hearing. (*See* D.R. 186-281). However, Ms. Connolly never read the Response, and granted the Motion for Summary Judgment within the span of the twenty (25) minute hearing. (*See* D.R. 972-1003).

Surprisingly the WVHCA cited, "[i]n support of its motion, Panhandle argued that PCAP's chief arguments in this matter had already been addressed by the Authority in prior hearings." (*See* D.R. 1005). Without a doubt, making a ruling on evidence not in the record is clearly wrong. Not only is it improper to make this kind of reliance, but it is impossible for the WVHCA to predict what evidence Petitioner would enter and rely on

in the underlying matter. To grant summary judgment not on the evidence in the record, but what evidence the WVHCA believes will be entered is clearly wrong.

Here, a ruling on summary judgment is clearly premature, and therefore improper, as most of the evidentiary record had yet to be developed. A hearing was scheduled in this matter for October 13th, 2023. At which point, multiple witnesses would have testified under oath to matters not yet disclosed by either side. Panhandle's untimely filing of a Summary Judgment is equivalent to requesting a judge to dismiss a plaintiff's case prior to affording them an opportunity to depose key witnesses. The WVHCA found that Petitioner failed to establish sufficient evidence to overcome the Summary Judgment standard, yet even the WVHCA was wholly unaware of the evidence in the record as it was not complete. The proper timing Panhandle to make these arguments are in the post-hearing briefs, after the evidentiary record is complete. Although the Petitioner already had sufficient evidence to overcome summary judgment, the Motion was blatantly premature and thus improper. Therefore, the WVHCA's granting of Panhandles Motion for Summary Judgment is clearly wrong.

IV. A genuine dispute of material fact existed and/or would have been created through the evidentiary hearings in the underlying proceeding.

The WVHCA improperly found "…pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, there were no issues of material fact to be decided at the public hearing and that, even taking the facts in a light most favorable to Petitioners, Panhandle was entitled to judgment as a matter of law." (*See* D.R. 1005).

As discussed above, it is nearly impossible for the WVHCA to find that there is no dispute of material fact when the Authority did not yet know what facts were going to be part of the record and what arguments were going to be made. The hearing examiner

merely elected to speculate that there was not a single fact that could have been presented at either of the two scheduled evidentiary hearings that would have made granting the underlying application less likely. Again, it is not the hearing examiners' place to analyze the facts and determine appropriateness of the application, that role rests solely with the Authority. 65 C.S.R. 32-10 et. seq.

Although it is impossible to speculate on every argument that could have arisen from the evidentiary hearing, there are a few arguments that Petitioner believes would have been persuasive to the Board: (1) Panhandle would have been unable to show an actual unmet need; (2) Panhandle relied solely on the 2023 Need Methodology which was in error as the Methodology was arbitrary and capricious; and (3) Panhandle would be unable prove that the granting of a CON would not have a negative effect on "other service." At the very least, these arguments highlight genuine disputes of material fact that already existed or would have if it was given the opportunity to develop the record.

i.) The WVHCA improperly found that there was no evidence that could have been offered to show no unmet need existed

West Virginia code establishes a minimum criterion for Certificate of Need reviews. More specifically, "[a] certificate of need may only be issued if the proposed health service is…[f]ound to be needed; and [c]onsistent with the state health plan, unless there are emergency circumstances that pose a threat to public health." *W. Va. Code* § 16-2D-12(a). As discussed below, the WVHCA promulgated a rule consistent with the statute requiring an applicant to show with **specificity** that there is an unmet need for the proposed service in the proposed service area. The WVHCA was clearly wrong in its finding that there was an unmet need in Panhandle's five (5) county proposed service area.

A finding of unmet need is both required and necessary to comply with the legislative findings of the CON statute: preventing duplication of services and unnecessary waste of resources. (*W. Va. Code* § 16-2D-1). On April 27th, 2023, the WVHCA promulgated the following calculation for determining the need in any given county:

> 1. Total Number of Residents receiving Medicaid per county.
>
> 2. Total Number of Residents receiving Medicaid per county multiplied by 3% (this will give the total number of residents who may be receiving In-Home Personal Care services or who may benefit from receiving services).
>
> 3. The total Number of Residents, as reported by BMS, who are receiving In-Home Services is subtracted from the Total Number of residents in step two.
>
> 4. If there is an unmet need of 25 or more then the County is considered open to additional providers.
>
> 5. If a new provider has been approved within the previous 12 months, the Authority will subtract 25 from each applicable county proposed.

(*See* D.R. 790). The previous standards that were promulgated in 2016 are similar, with the primary difference being that the multiplier in the second step was 1.25% in 2016 and was increased to 3% in April of 2023. https://hca.wv.gov/certificateofneed/Documents/IN_HOME_PER_C.pdf at pg. 2-3. As discussed below, this change was based upon a rumor and represents a need that simply does not exist.

Panhandle is unable to demonstrate any **actual unmet need** for Medicaid In-Home Personal Care services within Putnam County. Throughout its application and its discovery, Panhandle was unable to enter any legitimate evidence of unmet need into the record and relies entirely on the flawed Need Methodology calculation. (*See* D.R. 422-

426). This erred reliance on the Need Methodology calculation is discussed more thoroughly below. Significantly, not only does the record clearly reflect that Panhandle failed to meet its burden of showing an unmet need, but the Petitioner developed evidence, or would have developed evidence, within the record showing that there is in fact no unmet need in Putnam County, as well as other counties in its proposed service area.

One of the evidentiary hearings previously mentioned that Petitioner was deprived of in this matter was the evidentiary hearing of Timothy Adkins, the Director of the Certificate of Need Program within the West Virginia Health Care Authority. Petitioner was meant to have the opportunity to depose Mr. Adkins on October 10th. (*See* D.R. 257). However, Ms. Connolly, as hearing examiner, granted Summary Judgment in this matter on October 6th, 2023, and therefore, Mr. Adkins' testimony was not taken into consideration. Although the testimony of Mr. Adkins was not considered in the underlying proceedings, the deposition of Mr. Adkins still took place for the purpose of building the record in other CON proceedings. Obviously, for this reason, Mr. Adkins' testimony is not in this record. However, his comments made at the subsequent deposition highlight not only the creation of genuine disputes of material fact but is one example of why the premature granting of Summary Judgment was clearly wrong.

Mr. Adkins was asked about is personal knowledge on unmet need he testified that he was unaware of any:

> Q: …presenting this change to three percent, was there any data that you have that showed that there was eligible --- eligible individuals out there who could not receive services?
>
> A: No.

Q: Were you aware of any waiting lists for any in-home personal care services?

A: I don't know that there's a waiting list…

Furthermore, in an email from the Bureau of Medical Services ("BMS"), Teresa McDonough, Program Manager for TBI Waiver and Personal Care Services, adamantly takes the position that there "never has been or ever will be a 'wait list' for the Personal Care Services program." (*See* D.R. 883 – BMS e-mail).

Significantly, Panhandle had not presented any actual evidence of unmet need. Instead, it relied entirely on the 2023 Need Methodology, which as discussed below was improper. In addition to Panhandle failing to show any evidence of unmet need, if Jennifer Sutherland, Executive Director of Putnam County Aging Program, was permitted to enter testimony, she would have testified that there was no unmet need in Putnam County. She would have further testified that Petitioner has never had to turn away any qualifying individual because it was unable to provide the service.

ii.) The In-Home Personal Care 2023 Need Methodology standards were improperly promulgated, and the WVHCA erred by relying on the arbitrary and capricious methodology.

The WVHCA relied solely on the 2023 Need Methodology referenced above in an attempt to show unmet need. However, as discussed below, the standards were improperly promulgated by the WVHCA and as such, unmet need is being artificially inflated, thus, the WVHCA erred when it relied on such calculation.[1] Most significantly, in the Adkins' Deposition, the WVHCA admitted that it increased the percentage for

[1] Not only were the Standards improperly promulgated, but they have also been improperly maintained since its promulgation. Section III of the state Health Plan Standards provides that the Need Methodology will be revised at least twice a year annually. (*See* D.R. 789). The Standards were approved over a year ago and have yet to be revised.

unmet need based on a rumor that the West Virginia Bureau for Medical Services (BMS) was going to eliminate subcontracting for Medicaid In-Home Personal Care services. *Infra*.[2] This was in addition to admitting that it has no actual knowledge of unmet need in Putnam or Fayette County. Not only does this invalidate the 2023 standards relied on by the WVHCA, but it also highlights that there is, in fact, no actual unmet need.

West Virginia Code §16-2D-6 sets forth the statutory requirements the WVHCA was required to follow when making any changes to the certificate of need standards. The WVHCA failed to meet the following requirements:

> (b) When changing the certificate of need standards, the authority shall identify relevant criteria contained in section twelve and apply those relevant criteria to the proposed health service in a manner that promotes the public policy goals and legislative findings contained in section one.
>
> (c) The authority shall form task forces to assist it in satisfying its review and reporting requirements. The task force shall be comprised of representatives of consumers, business, providers, payers and state agencies.
>
> (d) The authority shall coordinate the collection of information needed to allow the authority to develop recommended modifications to certificate of need standards.
>
> (e) The authority may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the authority's own developed expertise in health planning, data accumulated by the authority or other local, state or federal agency or organization and any other source deemed relevant to the certificate of need standards proposed for change.

[2] To this date, subcontracting Medicaid In-Home Health Personal Care services is still permitted.

West Virginia Code § 16-2D-6(b)-(e). For the reasons stated below, the WVHCA fell short of meeting these statutory requirements.

The 2023 Need Methodology is Arbitrary and Capricious.

In Adkins' Deposition, he listed a number of issues that highlight how the 2023 Need Methodology was arbitrarily and capriciously implemented, and therefore, should not have been relied on for meeting the burden of unmet need. Mr. Adkins testified during his deposition that the reason for the increase was a suspicion that subcontracting was going to be prohibited in the future. His basis for this belief was from a rumor he heard from BMS that they had a desire to get rid of subcontracting. He went on to testify that if subcontracting became prohibited, we would need more providers to pick up the slack. Essentially, it was the WVHCA's position that the percent of anticipated need had to be increased, not necessarily because there was additional unmet need, but because there would be unmet need if the Bureau of Medical Services eliminated subcontracting in West Virginia. To be clear, subcontracting has not been eliminated.

Prematurely modifying standards for the sole purpose of reacting to regulations that may or may not be implemented come with various issues that invalidate the standard itself. First, if BMS does actually eliminate subcontracting, the period of time between granting applications, and the elimination creates duplication of services in violation of West Virginia Code § 16-2D-1. This duplication of services comes with a competition for resources, workers, and patients.

Second, there is a severe lack of evidence to support the premise that subcontracting will be eliminated. Mr. Adkins, the one who relied on subcontracting being eliminated referenced the information he received as hearsay and testified that there was nothing in writing, but an employee from BMS stated that they were working on the plan

and that it was still in a process. Like all rules that are promulgated, there is no guarantee that the rule will be the same at the inception of the idea to the implementation of the same. Additionally, there is no guarantee that the rule will pass legal muster and actually be enacted. Also, the WVHCA is relying on a phone call and not the actual language of any potential rule. The end language of the rule has the potential of affecting sub-contracting without actually eliminating it. Additionally, it is entirely possible that any elimination of subcontracting would have a delayed implementation for an unknown number of years. In any of these situations, the end result is likely to lead to an extreme duplication of services because the premise relied on by the WVHCA did not happen and harm is sustained as a result of this premature modification of the standard.

Third, increasing the number to 3% percent continues to be arbitrary and capricious because, as discussed above, there is no legitimate basis for the increase, and even in the event that subcontracting is to be eliminated, there are much better ways to address this change while still complying with the Certificate of Need statute. One way to better address this change is to wait and see what the actual language of the rule is, then react accordingly to comply with statutory requirements. Secondly, instead of arbitrarily increasing the need in anticipation of subcontracting being eliminated, simply implement a standard with contingencies in the event of the elimination. For example, the WVHCA could have promulgated a standard that implements the 3% only after subcontracting has been eliminated, or alternatively, grandfather in the current subcontractors.

The promulgation of this 2023 Need Methodology is arbitrary and capricious as the WVHCA had no evidence that more need was required. The best-case scenario is that the WVHCA relied on the fact that subcontracting might be eliminated in the future, which is still arbitrary and capricious for the reasons stated above.

Furthermore, clearly identifiable, and unexplainable flaws in the Need Methodology highlight the fact that the promulgated standards are arbitrary and capricious. More specifically, the calculations resulted in an unmet need of negative twenty-six (-26) in Brooke County. (*See* D.R. 793). Obviously, it is not possible to have a negative need in a county and Mr. Adkins was asked about this error. He testified that that he, the Director of the Certificate of Need Program, was not sure why this was the case. This highlights yet again that the WVHCA is relying on flawed logic to reach its conclusion of an unmet need.

The 2023 Need Methodology fails to comply with the legislative findings of this Act

The legislative findings in regard to the Certificate of Need program is as follows:

> 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.

W. Va. Code § 16-2D-1.

As is a common theme through this brief, and as discussed more in-depth above, there is no unmet need in Putnam County. As discussed more thoroughly below, adding more service providers to a county with no unmet need will result in competition for resources, clients, and workers. This creates a duplication of services and is in direct contradiction of the legislative intent of the CON program.

WVHCA failed to establish and utilize a task force

The WVHCA is legislatively required to form a task force for the purpose of aiding in the review of the CON standards. The WVHCA held a task force meeting, or provider,

meeting on September 29th, 2022. Mr. Adkins testified regarding this task force meeting, yet another example of how this premature granting of Summary Judgment prevented material facts from being considered by the WVHCA Board. Although this is not part of the record, Petitioner will provide a summary of the evidence that would have been submitted to the record had Summary Judgment not been prematurely granted. Mr. Adkins testified that the September 29th meeting was the only "task force meeting" held by the task force. When asked what a task force meeting is, Mr. Adkins gave an example of their hospice standards where they had met many times over the course of a year. Mr. Adkins was then asked about the task force for the in-home personal care providers, Mr. Adkins responded that the meeting they had for in home personal care was not a task force meeting.

The short one and a half hour "task force meeting" that was held on September 29th, 2022, fails to meet the statutory requirement.[3] The Petitioner in this matter was informed about the "task force meeting" just one day prior. Clearly the efforts to meet this task force requirement falls significantly short compared to the efforts made when modifying its hospice standards. Not only are these efforts significantly less, but no reasonable person could find that this short meeting could have any effective impact on a major decision as modifying the CON standards. In fact, Mr. Adkins noted at the end of the discussion of the CON standards, there was obviously a lot to cover, and more than one meeting was going to be needed. However, another meeting was never held.

Significantly, the decision to increase from 1.25% to 3% was made prior to the task force meeting. Mr. Adkins was asked whether the decision had already been made to

[3] The need methodology was only one of the topics covered in this hour and a half meeting and did not take up the full time of the meeting.

increase the percentage before the "task force meeting" and Mr. Adkins responded with a yes. It is clear from the course of events that the meeting that was held was nothing more than a formality held in a failed attempt to meet its statutory requirement. However, it is also clear that this statutory requirement was not met in this instance. This failure to comply with the task force requirement further highlights the fact that this standard was arbitrarily and capriciously promulgated. Therefore, the unmet need calculations cannot be relied on by Panhandle and therefore, Summary Judgment was improper.

WVHCA failed to consider the information it received through public comment and the information it had the ability to collect

Many comments were submitted to the WVHCA when the rules were being promulgated, commenting on how they should be changed, if at all. However, upon inspection of these comments, one would see that the majority of these comments were criticizing the increase from 1.25% to 3%. Putnam County Aging Program, Inc. was one of the many current service providers that contested the claim of an unmet need. (*See* D.R. 14). Despite these comments, the WVHCA continued with its plan to open up fifty-one (51) of the fifty-five counties in West Virginia. WVHCA was required to hold a comment period, but it is clear that the process was nothing more than a formality as the comments, and accompanying logic, fell on deaf ears.

Given the overwhelming evidence supporting the position not to increase the unmet need percentage, it is clear the WVHCA failed to utilize the information it had at hand in making this decision. Therefore, the unmet need calculations cannot be relied on in WVHCA's decision to grant this application.

iii.) The WVHCA erred in finding that granting the application would have no negative effect on the community by significantly limiting the availability and viability of other services or providers.

The WVHCA erred when it found "the Authority finds merit in Panhandle's argument that, since it has already been providing PC Services in the target service area for years, albeit through a sub-agreement, the granting of a CON to Panhandle will not create any new negative impact on any services offered by [Petitioner]." (*See* D.R. 1007).

A CON application must show the proposed service will not have a negative effect on the community by significantly limiting the availability and viability of other services or providers. (*See* D.R. 789). The WVHCA erred in finding that the services provided by the Petitioner will not be negatively affected. The Petitioner provided evidence, and would have provided much more through testimony, that granting the application would result in lost resources, clients, and employees, and as a result, lose the ability to provide nutritional and transportation services to its clients.

Petitioner was prevented from entering evidence of a negative effect on other services

Petitioner was prohibited from entering evidence into the record to show that granting this application will have a negative effect on existing services. It is an inherent principle that additional competition in an area of business will result in the competitors fighting over employees in the workforce, clients, and resources. This premise is exaggerated in the realm of West Virginia Medicaid In-Home Personal Care services where it is clear no need exists. Petitioner was prevented from offering testimony to this effect.

Panhandle and the WVHCA rely heavily on the fact that Panhandle already provides services through a subcontractor, and therefore there will be no additional

services added through this application. This raises multiple questions that now go unanswered because Petitioner was prohibited from having an evidentiary hearing. For example, what happens to the current provider(s) that is currently allowing the subcontracting? Would the current CON holder take over the current clients? Will they hire new employees and increase the competition? Petitioner would have had the opportunity to cross examine Evan Worrell, Director of Operations for Panhandle if it were not for the premature Summary Judgment. (*See* D.R. 283). Only through his testimony could the intent of expansion and aggressiveness in obtaining additional employees be ascertained. However, this form of evidence, as well as much other evidence, was prevented from entering this record as a result of the prematurely granted Summary Judgment.

As discussed above, the Petitioner is currently able to provide services to every person in need. However, if Panhandle begins to steal employees and potential employees away, it will become more difficult to provide services in Putnam County. Potentially to the point that Petitioner is ousted from providing services in the County at all. Therefore, Summary Judgment was improperly granted as Petitioner was prohibited from entering evidence of negative affect into the record.

<u>WVHVA erred in finding that Petitioner will not be negatively affected by preventing them from providing transportation and nutrition services</u>

The Petitioner uses the income gained from their Medicaid In-Home Personal Care services to provide additional services in Putnam and Fayette County. As discussed above, the addition of more service providers in counties which have no unmet need will foster additional competition over limited resources, clients, and employees to the already ten (10) providers in Putnam County alone. This is the exact duplication of services that the

CON statute is attempting to prevent, and it is clear why. The more these for-profits expand, the less and less the Petitioner will be able to invest back into the community. Essentially, it will be difficult for a non-profit that is putting its surplus income back into the community to compete with a for-profit company that has already expressed its intent to use its profits to take from the existing providers.

Other services include other services to elders like transportation and nutrition services

The WVHCA also erred in finding "the potential impact of the Application on 'other services' offered by [Petitioner] must be limited to PC Services and not to other services, such as food delivery, that is unrelated to the Application or to PC Services generally." (*See* D.R. 1005). Further finding "…this Authority held that the 'other services' must be related to the services at issue in the Application…" (*See* D.R. 1007).

However, Tim Adkins, the Director of the Certificate of Need Program within the West Virginia Health Care Authority testified that the language "other services" does in fact anticipate these services:

> Q: **…So read that, and tell me what you're referring to.**
>
> A: Will the loss of revenue prevent other services from being provided? We know that --- that the providers use those dollars for other services.
>
> Q: **And that's, and obviously then it was concern of yours?**
>
> A: It --- it's still a concern of mine.
>
> Q: **And we don't have the transcript of it, bit when we were --- when you were in that meeting, you were walking through the --- three elements for a CON application. You talked about need, and then when you got to the second element and it's in the standards got there. On page three, post services will not have a negative effect on the community by significantly limiting the**

availability and viability of other services. You --- brought that up again, and I think your specific comment was you don't want to be in a situation where you're robbing Peter to pay Paul.

A: That's exactly right.

Q: **And you're referring about the same thing. Those...fees that they're using to provide the other services?**

A: Right.

Q: **And --- and that applies to other services in number 2?**

A: That's exactly right.

Mr. Adkins heads the Certificate of Need program and is the proper person to interpret these standards. There is zero doubt that Mr. Adkins interprets other services to include those underfunded transportation and nutrition services provided by the Petitioner. Therefore, Panhandle's argument that these other services don't not fall under "other services" is incorrect and WVHCA erred in making that finding. This may be one of the clearest examples of why ruling on Summary Judgment prior to an evidentiary hearing is clearly wrong. Heather Connolly independently found that transportation and meal services did not fall under the category of "other services." However, Mr. Adkins, the true authority on the matter, found the complete opposite, completely invalidating the Summary Judgment Order in this matter.

V. The 2023 Need Methodology promulgated by the WVHCA is arbitrary and capricious and should therefore be found to be invalid.

As discussed above, the 2023 Need Methodology as promulgated by the WVHCA is arbitrary and capricious. Petitioner filed a Verified Complaint Seeking a Preliminary Injunction, Permanent Injunction, and Declaratory Judgment in the Circuit Court of

Kanawha County against the promulgated standards. In response, the WVHCA made the argument that Petitioner failed to exhaust administrative remedies. More specifically, it argued that Petitioner had not exhausted its administrative remedies because they had not yet concluded the underlying WVHCA proceedings. The Petitioner does not believe it to be proper for this Court to strike down the validity of the WVHCA standards at issue in this proceeding. However, the WVHCA has taken the position that Petitioner must exhaust its administrative remedies through this process prior to challenging the standard in Circuit or District Court. Therefore, Petitioner asks that this Court strike the 2023 Need Methodology Standards promulgated by the WVHCA as statutorily invalid.

CONCLUSION

First, the WVHCA erred in granting summary judgment prior to the scheduled evidentiary hearing. Second, the WVHCA erred when it allowed Heather Connolly, in her capacity as a hearing examiner, to grant a dispositive motion. Third, WVHCA erred in finding there was no material dispute of fact, or any evidence that could be developed to create a material dispute of fact for the following findings: (1) that there is no unmet need for Medicaid Personal Care services in Putnam or Fayette County; (2) that granting this application would result in duplicative services and a waste of resources; (3) that a granting of this CON will negatively affect other services provided to elders in these counties. Granting this application is in direct contradiction to the requirements set forth in both West Virginia Code and the rules promulgated by the Health Care Authority.

Petitioner ask that the WVHCA's decision granting Panhandle's Motion for Summary Judgment be vacated, and the matter be remanded for further fact finding. The petitioner further requests any other remedy this Court finds proper.

PUTNAM COUNTY AGING PROGRAM,
***Petitioner*,**

By Counsel

/s/ Ryan W. Walters
Richard W. Walters (WVSB #6809)
rwalters@shafferlaw.net
Ryan W. Walters (WVSB #14113)
ryanwalters@shafferlaw.net
SHAFFER & SHAFFER, PLLC
P. O. Box 3973
Charleston, WV 25339-3973
(304) 344-8716

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Putnam County Aging Program, Inc.,
Petitioner,

vs. CASE NO: 24-ICA-98

Panhandle Support Services, Inc.,
Applicant Below, *Respondent*

And

West Virginia Health Care Authority,
Respondent

CERTIFICATE OF SERVICE

I, Ryan W. Walters, do hereby certify that on this 10th day of June, 2024, I filed the forgoing "*Petitioner's Brief in Support of Appeal*" to be served on counsel of record via File & ServeXpress.

/s/ Ryan W. Walters
Ryan W. Walters (WVSB#14113)