IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 24-ICA-99

FAYETTE COUNTY SENIOR PROGRAMS, and SUMMERS COUNTY COUNCIL ON AGING,

***Affected Parties Below, Petitioners*,**

v.

PANHANDLE SUPPORT SERVICES, INC.,

***Applicant Below, Respondent*,**

and

WEST VIRGINIA HEALTH CARE AUTHORITY,

***Respondent*.**

BRIEF OF RESPONDENT WEST VIRGINIA HEALTH CARE AUTHORITY

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INTRODUCTION

The West Virginia Healthcare Authority got this case exactly right: it rightly awarded Panhandle Support Services Inc. summary judgment before the final hearing once it became clear at the prehearing conference that Petitioners were not going to be able to raise any genuine issues of material fact. And because Fayette County Senior Programs (FCSP) doesn't legally exist—and is instead just a name for a set of programs run by Putnam County Aging Council (PCAP)—it had to dismiss FCSP as an affected party.

The factual background is straightforward. Last year, the Authority realized that over 12,000 West Virginians entitled to personal care services under Medicaid weren't receiving them. In response, several personal-care service providers, including Panhandle, filed for certificates of need (CON) to address that unmet need. But the existing CON holders pushed back, challenging those CON applications for a variety of reasons.

Those challenges are meritless. This one fails for several reasons. First, for decades every American authority—from scholars to the U.S. Supreme Court to lower federal courts to state courts at every level—has agreed that agencies have the authority to award administrative summary judgments under their inherent powers and administrative procedure acts. So long as there's no genuine issue of material fact, agencies don't need to wait for the final hearing to dispose of a case. Second, summary judgment was properly awarded here. Petitioners weren't going to raise any issue of material fact regarding "unmet need": they don't challenge the 2023 Need Methodology, which shows a need, and the two specific bits of evidence they offer on this point turned out to be immaterial. Nor could they raise a genuine issue regarding the availability of their "other services" because the Authority's legal interpretation of that phrase renders all their proposed evidence meaningless. Third, only entities with a legal identity can take part in legal

proceedings. But everyone agreed the FCSP doesn't have a legal identity. So the Authority had no choice but to dismiss FCSP.

The Court should uphold the Authority's decision.

ASSIGNMENTS OF ERROR

1. Did the Authority have the power to grant Panhandle Support Services, Inc.'s motion for summary judgment before an evidentiary hearing when Petitioners had raised no genuine issues of material fact and planned to raise none at the hearing? *See* Pet'rs' Br. 1 (first, second, and third assignments of error).

2. Did the Authority err when it dismissed Fayette County Senior Programs from the proceedings as unaffected when FCSP admitted it lacks a legal identity and, thus, the capacity to act in any proceeding? *See id.* at 1 (fourth assignment of error).

STATEMENT OF THE CASE

1. West Virginia takes a watchful approach to new entrants in the healthcare markets. Aiming to "contain or reduce increases in the cost of delivering health services" and "to avoid unnecessary duplication of health services," the Legislature enacted a system of "review and evaluation." W. VA. CODE § 16-2D-1(1)-(2). This "certificate of need" system requires preapproval before "certain health services … may be offered to the public in the first instance or expanded into a new area." *Amedisys W. Va., LLC v. Pers. Touch Home Care of W. Va., Inc.*, 245 W. Va. 398, 408-09, 859 S.E.2d 341, 351-52 (2021). The West Virginia Health Care Authority administers that program. W. VA. CODE § 16-2D-3. The Authority may issue a certificate of need only if the proposed new 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." *Id.* § 16-2D-12(a)(1)-(2). The Authority must also make several other findings before granting a certificate,

but its review "may vary according to the purpose for which a particular review is being conducted." *Id.* § 16-2D-12(g).

Part of the Authority's role includes reviewing the state health plan that applicants follow. W. VA. CODE § 16-2D-3(a)(2). That plan includes various standards that the Authority develops or revises, and then the Governor approves. *Amedisys*, 245 W. Va. at 408-09, 859 S.E.2d at 351-52. The standards, in turn, provide "different criteria" that "[d]ifferent types of health services" must meet to quality for a certificate of need. *Minnie Hamilton Health Care Ctr., Inc. v. Hosp. Dev. Co.*, 2023 WL 2424614, at *3 (W. Va. Ct. App. Mar. 9, 2023). The current standards for in-home personal care services—"services for Medicaid residents" that "are available to assist an eligible member to perform activities of daily living" like mobility and personal hygiene—went into effect on April 27, 2023. D.R.703.

To decide whether a service is "needed" under West Virginia Code § 16-2D-12(a)(1), the Authority includes a "need methodology" in its standards. The personal-care services need methodology is a math equation with five steps:

> 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.

D.R.1101. That equation shows an unmet need for personal-care services for over 12,000 West Virginians. D.R.1104-06. Relevant here, Fayette County has an unmet need of 343 people and Summers County has an unmet need of 59. D.R.1106.

Following the Authority's promulgation of the standards, several personal-care service providers filed CON applications to satisfy that unmet need. Existing personal-care service providers holding CONs opposed those applications. This is one of those cases.

2. The Authority decides CON applications using detailed procedures that largely track the civil-litigation process in West Virginia and federal courts. In broad strokes, after the initial filings, the parties engage in discovery and motions practice, which culminates in a pretrial-like conference and a hearing with all the trappings of a trial. *See generally* W. VA. CODE R. § 65-32-8. The process starts when an applicant notifies the Authority of its intention to file an application. After that intention is circulated in relevant newspapers, an applicant must file its application and fee within 10 days. *Id.* § 65-32-8.1 to 8.4. The Authority then promptly determines "whether the application is complete" or if it needs more information to decide the application. *Id.* § 65-32-8.6 to 8.7. Once the Authority determines an application is complete and publishes notice of its intention to decide the application, "affected persons may request a public hearing." *Id.* § 65-32-8.10. If an affected party requests a hearing, the Authority has 15 days to issue a hearing order, which contains dates for the hearing and prehearing conference and deadlines for discovery, discovery motions, subpoenas, and all other motions. *Id.* § 65-32-8.12 to 8.13.

All "parties may engage in discovery as provided by the West Virginia Rules of Civil Procedure." W. VA. CODE R. § 65-32-8.25. And the Authority has full subpoena power and uses Kanawha County Circuit Court to compel obedience to subpoenas. *Id.* § 65-32-8.20. The prehearing conference is an important date: the hearing examiner can use the prehearing

conference to dispose of any pending motions, *id.* § 65-32-8.17; and that's the date by which parties must file the evidence they intend to introduce and a list of witnesses they intend to call at the hearing, *id.* § 65-32-8.18. The Authority must hold the hearing within three months of issuing the hearing order. *Id.* § 65-32-8.14. At that hearing, parties have a right to cross-examine and be represented by counsel; all witnesses testify under oath; a reporter transcribes the proceedings; and normal ethics rules apply. *Id.* § 65-32-8.26 to 8.29. These proceedings are also governed by the West Virginia Administrative Procedure Act's contested case provisions. *Id.* § 65-32-8.11, 8.14.

3. Panhandle submitted its CON application in early June 2023. D.R.150. The Authority received two letters opposing Panhandle's application and requesting affected party status: one from Summers County Council on Aging ("SCCA"), D.R.167; and one from Ryan Alton, who styled himself "Director" of FCSP and wrote: "Fayette County Senior Programs is requesting to be identified as an affected party for CON File # 23-1/4-12694-PC," D.R.169. SCCA and FCSP also requested a hearing. D.R.167-169. So the Authority scheduled a prehearing conference in early October and an administrative hearing in mid-October. D.R.173. The Authority explained to the parties that the point of the prehearing conference was, among other things, "to designate the issues for the hearing, resolve any procedural matters, receive any motions," and resolve discovery and evidentiary issues. D.R.173. And it told the parties to file all "[d]ispositive and preliminary motions" by October 2. D.R.176.

Over the next few months, the parties engaged in voluminous discovery. *See* D.R.391-575 (Panhandle answering detailed interrogatories, requests for production, and requests for admission from SCCA and FCSP), and D.R.576-815, 1080-97 (SCCA and FCSP answering the same from Panhandle). In September, as the preconference and hearing dates in this and the related personal-care-service CON cases started looming, the Authority realized that all these cases have significant

legal and factual overlap. So in early October, it decided that, for efficiency's sake, Interim CON Director Tim Adkins would testify only once for purposes of all the pending personal-care-service cases. D.R. 217. All parties, it explained, could "reference the testimony from" that main "hearing in their [particular] case." D.R. 217.

4. On October 2, Panhandle filed its motion for summary judgment. D.R.207. Panhandle noted that, under the Authority's need methodology, "unmet need for PC Services exists in 53 of West Virginia's 55 counties," totaling about "12,100 West Virginians" who "are currently eligible for PC Services are not receiving them." D.R.210-211. And applying this methodology here reveals the "undisputed fact[]" that there are 343 Fayette County residents and 59 Summers County residents "who have an unmet need for" Panhandle's personal-care services. D.R.211. Panhandle said SCCA and FCSP wouldn't dispute the math—they'd likely just assert that "there is no actual need for PC Services within the counties they serve." D.R.213. Further, when the Authority was setting standards, it counted the personal-care services Panhandle provided through subcontracting agreements. D.R.213-14. So SCCA and FCSP's fears about a new provider and their arguments that the counties' needs were already being met was doubly wrong. D.R.213-14. Given these "uncontestable" facts, Panhandle asked for summary judgment. D.R.214. A few days later, Panhandle amended its motion to add an argument that FCSP should be dismissed because it "is a legal fiction," it can't "qualify as an 'Affected Party.'" D.R.227. It noted that the Director of Putnam County Aging Program Inc. ("PCAP"), Jenni Sutherland, testified in a related personal-care-services case that FCSP "is nothing more than a 'name on the door'"—that is, FCSP isn't a company or affiliate or D/B/A of another "company that is licensed to do business" in West Virginia. D.R.228. It is an initiative of or program administered by Putnam County Aging Program Inc. *Id.*

SCCA and FCSP had little to say in response. For its part, FCSP offered just one fact it claimed was in dispute. D.R.237-39. Panhandle couldn't satisfy the new personal-care-services CON standards' need methodology, FCSP argued, because one of those requirements is that "the proposed service will not have a negative effect on the community by significantly limiting the availability and viability of other services or providers." D.R.238 (quoting the need methodology); *see also* D.R.705. FCSP said there was a genuine dispute of material fact as to whether granting the CON would hurt existing personal-care-service providers' "other services"—like transportation or providing food. D.R.238. FCSP insisted that the Authority had to wait to decide the motion until after the full hearing. D.R.238-239. FCSP admitted that it isn't a legal entity—that instead "FCSP" is just an umbrella "term used to refer to the collective group of aging program services" that PCAP offers in Fayette County. D.R.240-41. For its part, SCCA's response offered just two facts that it claimed were genuine issues: first, that there is currently "no waitlist" in Summers County for personal-care services, which shows no unmet need; and second, that Panhandle's subcontract prohibits Panhandle from providing services in Summers County. D.R.246. SCCA raised the same "other services" questions FCSP did, too. D.R.245-46. Neither SCCA nor FCSP ever argued that the Authority or Hearing Examiner Connolly lacked the authority to award summary judgment.

5. At the preconference hearing, the hearing examiner first addressed FCSP's status as an affected party. Panhandle's counsel explained that FCSP isn't "registered with Secretary of State, it's not a DBA, it's not a registered affiliate, it's not listed on the personal care selection forms for Fayette County." D.R.1362. Indeed, PCAP's Director Sutherland herself was confused about "why or how Fayette filed on their own behalf." D.R.1362. After all, FCSP is just "the programs operated in Fayette County by Putnam County Aging"—it's merely "a division of Putnam Aging."

D.R. 1365. Director Sutherland agreed FCSP is just "a name on the door" and has "no legal effect" as an entity. D.R.1374. FCSP could disappear tomorrow and it wouldn't change anything. D.R.1374. Nevertheless, PCAP's attorney insisted that FCSP should remain as an "affected party" because it and PCAP were "one and the same." D.R.1374. The hearing examiner rejected that argument and revoked FCSP's affected-party status, dismissing FCSP from the action. D.R.1377-78.

With FCSP out, the only remaining affected party was SCCA. And the sole genuine issue of material fact SCCA offered was its and FCSP's "other services" claim. D.R.1392. But Panhandle agreed to stipulate both (a) that SCCA "take[s] the proceeds from PC services and … shift[s] those reimbursements … to other services" and (b) "to the inclusion of any records that" SCCA has supporting that point. D.R.1393. This meant the *factual* piece of SCCA's argument was now undisputed (more on the legal side below). Ultimately, SCCA acknowledged that Panhandle is already a subcontractor providing personal care services in Summers County and that its desire "to be out from underneath a subcontractor agreement and to be able to control its own destiny within the counties it's already serving" is a "perfectly reasonable" goal. D.R.1394. Finally, SCCA explicitly said that while other affected parties are challenging the Authority's need methodology in related personal-care-services cases, in "this particular" case, SCCA wasn't "asking [the Authority] to find" the methodology unlawful. D.R.1399. SCCA still disagrees with the Authority's need methodology. *See* D.R.1399 (saying that "is a point that we will never be able to agree on"). But at the end of the day, the only point it advanced was its "other services" argument. D.R.1400.

The hearing examiner understood well SCCA's point about its other "vital services"—the Authority had already "heard about that many times" in related personal-care-service cases.

D.R.1402. But the fatal legal flaw in SCCA's argument was that the Authority had always interpreted the phrase "other services" to mean only those "services over which the application is involved." D.R.1403. Because Panhandle's application regarded only personal-care services, "other services" didn't include SCCA's food, transportation, and related services. SCCA and other senior programs entities offered no substantive argument showing "that the Authority is supposed to look at an unlimited [number] of other services" when considering a CON application. D.R.1402. And the Authority had never adopted such an interpretation. D.R.1403. After that ruling, Panhandle and SCCA agreed that there was no other open business related to the "Rule 56" motion, and the hearing examiner granted it. D.R.1403-04.

The Authority's subsequent written order tracked these oral holdings at all relevant points. D.R.1420-27. The reasoning for dismissing FCSP mirrored the record exactly. D.R.1422-23. And regarding the summary judgment motion, the written order noted that SCCA raised no "new arguments or issues of material fact" beyond its brief, "relying instead on its argument that summary judgment was inappropriate and that the public hearing should be held to develop a record for appeal." D.R. 1425. The order reiterated that the only point SCCA offered as an issue of material fact was "the negative impact that the granting of this CON could have on [SCCA's] ability to support other services, particularly its food delivery program, which do not otherwise support themselves." D.R.1425. A public hearing on that point was unnecessary because the Authority had already "held that the 'other services' must be related to the services at issue in the" CON application—here, personal-care services. D.R.1425. Further, because Panhandle "has already been providing PC services in the target service area for years" as a subcontractor, giving Panhandle a CON "will not create any new negative impact on any services offered" by SCCA and PCAP. D.R.1425-26.

This appeal followed.

SUMMARY OF THE ARGUMENT

IA. Well- and long-settled principles of administrative law say that agencies can resolve cases using summary judgment-like procedures when there is no chance that a party show a genuine issue of material fact—especially before an agency's trial-like final hearing. Though West Virginia authorities haven't yet explicitly said so, the right to grant summary judgment has acknowledged by an overwhelming national consensus for 50+ years of authorities. From administrative law scholars to the U.S. Supreme Court, to federal circuit and district courts, and fellow state courts commenting on state agency powers—all agree that what happened below is ordinary fare. As if that weren't enough, this reading is also the best textual interpretation of West Virginia's APA—specifically West Virginia Code § 29A-5-1(d)(3), (5)-(6). And allowing administrative summary judgment serves serious policy needs, too, such as administrative efficiency that, by extension, save taxpayer dollars.

IB. The hearing examiner rightly awarded Panhandle summary judgment because Petitioners couldn't have shown any genuine issue of material fact about unmet need or "other services." Regarding the unmet need issue, Petitioners here challenge neither the 2023 Need Methodology nor the Authority's math showing unmet need in Summers and Fayette counties. Nor did Petitioners plan to do so at the hearing. They wanted only to offer testimonial evidence allegedly contradicting the Need Methodology results. But the Authority awards CONs based on its carefully crafted methodologies, not anecdotes. And the only two lines of evidence Petitioners say they wanted to develop are dead ends that don't at all show what Petitioners need them to. As for "other services," the Authority rejected Petitioners' *textual interpretation* of the state health plan's "other services" language. "Other services" refers only to personal-care services, it said, so

all the evidence Petitioners wanted to develop regarding their food and transportation services was irrelevant. Regardless, because Panhandle already provides services in Summers and Fayette counties, there's no evidence granting the CON would hurt Petitioners' non-personal-care services.

II. The hearing examiner also did not plainly err in dismissing FCSP as an affected party. At the preconference hearing, FCSP admitted that it has no legal identity: it isn't a registered entity or a DBA or affiliate. In the words of PCAP's director, FCSP is just "a name on the door"—it's a division of PCAP, a name for a set of PCAP programs serving Fayette County residents. But only an entity with a legal identity can be a party in legal proceedings; without a legal existence, a putative party's actions are mere nullities. PCAP insists that the Authority should have ignored this because PCAP administers FCSP and, therefore, should have kept FCSP as an "affected party." Yet when it comes to jurisdictional issues such as standing, the Authority can't color outside the lines like that. Because FCSP doesn't legally exist, the Authority had no choice but to dismiss it as an affected party.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary because the Authority applied settled law to the record's plain facts, and the briefs fully present the issues on appeal.

STANDARD OF REVIEW

This Court may set aside the Authority's decision only if it violates "constitutional or statutory provisions," exceeds the Authority's "statutory authority or jurisdiction," follows from "unlawful procedures," is "[a]ffected by other error of law," is "[c]learly wrong" when viewed against "the whole record," or is "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Syl. pt. 1, *Amedisys*, 245 W. Va. 398, 859 S.E.2d 341 (quoting W. VA. CODE § 29A-5-4(g)(1)-(6). For fact-bound decisions like this one, that

deferential standard also means the Court will not upset the Authority's "factfinding determinations" "unless clearly wrong." *Minnie Hamilton Health Care Ctr.*, 2023 WL 2424614, at *2.

ARGUMENT

I. The Hearing Examiner Lawfully Granted Panhandle's Motion For Summary Judgment Because Petitioners Raised No Genuine Issues Of Material Fact.

A. West Virginia agencies may award summary judgment before holding trial-like hearings.

West Virginia's APA gives agencies and their hearing examiners many powers to resolve contested cases. Those powers relevant to this case are listed in West Virginia Code § 29A-5-1(d)(3), (5)-(6), which says an agency and its hearing examiners may "(3) regulate the course of the hearing, … (5) dispose of procedural requests or similar matters, and (6) take other action authorized by a rule adopted by the agency." The Authority's administrative summary judgment procedures satisfy each of those three subdivisions. First, the Authority uses its summary judgment procedures to regulate the course of its CON hearings—that's exactly what happened here. Second, "administrative summary judgment" is a "procedural device." *Puerto Rico Aqueduct & Sewer Auth. v. EPA*, 35 F.3d 600, 606 (1st Cir. 1994); *accord* Paul M. Coltoff, et al., *Summary judgment in lieu of hearing*, 2 FED. PROC., L. ED. § 2:154 (July 2024 update) (same); Lee Modjeska, *Right to hearing*, ADMIN. L. PRAC. & PROC. § 4:14 (Aug. 2022 update) (same). So the Authority has the power to dispose of a summary judgment motion under subdivision (5). Third, summary judgment is allowed under subdivision (6) because, as part of the larger CON application process, the Authority has authorized by legislative rule its hearing examiners to grant or deny "motions" at the prehearing conference. W. VA. CODE R. § 65-32-8.17.

While the plain-text analysis of West Virginia APA's language supports the decision below, West Virginia authorities are silent about agencies' summary judgment power under our APA. Federal authorities, however, say a great deal about agencies' authority to grant summary judgment under the federal APA. That's relevant here because West Virginia courts generally interpret our APA "consistent with" the federal APA. *State ex rel. W. Va. Bd. of Educ. v. Perry*, 189 W. Va. 662, 666, 434 S.E.2d 22, 26 (1993); *see also W. Va. Chiropractic Soc., Inc. v. Merritt*, 178 W. Va. 173, 178, 358 S.E.2d 432, 437 (1987) (using the federal APA to determine our APA's meaning). After all, "[f]ederal and State administrative procedures acts" have the same history. *Citizens Bank of Weirton v. W. Va. Bd. of Banking & Fin. Insts.*, 160 W. Va. 220, 226, 233 S.E.2d 719, 724 (1977). Not only is West Virginia's APA based on the same original text as the federal APA, *id.* at 226 n.3, 233 S.E.2d at 724 n.3, but the federal APA's contested-case procedures have the same three subdivisions that in West Virginia's APA support administrative summary judgment, *see* 5 U.S.C. § 556(c)(5) ("regulate the course of the hearing"), (9) ("dispose of procedural requests"), (11) ("take any other action authorized by agency rule").

Authorities discussing the federal APA overwhelmingly agree that agencies have the power to award summary judgment before a trial-like hearing—and this flows from both agencies' APA powers and inherent powers. "Summary judgment in administrative adjudications is well accepted." *Judgment prior to resolution of the hearing—Summary judgment*, 7 WEST'S FED. ADMIN. PRAC. § 7793 (July 2023 update); *see also* Charles H. Koch Jr. & Richard Murphy, *Judgement prior to resolution of the hearing*, 2 ADMIN. L. & PRAC. § 5:42 (3d ed. 2024 update) (saying agencies have power to grant summary judgment that tracks Federal Rule of Civil Procedure 56); Richard Murphy, *Rights to Present Evidence and Cross-Examine*, 32 FED. PRAC. & PROC. JUDICIAL REV. § 8238 (2d ed. June 2024 update) ("[A]s a prerequisite to holding a

statutory hearing, an agency may require demonstration of the existence of a 'genuine' issue of 'material' fact."). Today, "hundreds of [agency] hearing programs" are using "summary judgment" procedures to resolve cases. Emily S. Bremer, *The Rediscovered Stages of Agency Adjudication*, 99 WASH. U.L. REV. 377, 433 (2021). Indeed, "most major agencies in the federal system have opted to make available procedures for the summary disposition of adjudicatory matters." *Puerto Rico Aqueduct*, 35 F.3d at 606. Nationwide consensus is that a party is entitled to a hearing only once they show "that there is a dispute worth hearing"; so when "there is no issue" of material fact, "a hearing is not required"—"even when a statute prescribes a hearing." 73A C.J.S. *Public Administrative Law and Procedure* § 308 (May 2024) (citing many federal and state cases). An agency needn't waste its time with "a meaningless evidentiary hearing" if there are no disputed facts—e.g., when "the only questions involved in an administrative proceeding are of law or administrative policy." *Id.*; *see also* Coltoff, et al., *supra*, § 2:154.

Federal case law backs this scholarship up. The Supreme Court long ago "justif[ied] administrative summary judgment." Alexander I. Platt, *Unstacking the Deck: Administrative Summary Judgment and Political Control*, 34 YALE J. ON REG. 439, 444 (2017). In cases like *United States v. Storer Broad. Co.*, 351 U.S. 192, 205 (1956), and *FPC v. Texaco*, 377 U.S. 33, 39 (1964), the Court affirmed administrative summary judgment awards given without formal hearings, saying that agencies could "bar[]" applicants "at the threshold" when necessary. And in *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617 (1973), the Court said that the because the FDA reduced its summary-judgment "standard to detailed regulations," its "so-called administrative summary judgment procedure [was] appropriate." The Court found no statutory or constitutional reason to "demand[] a hearing when it appears conclusively from the applicant's 'pleadings' that the application cannot succeed." *Id.* at 621. Since then, the Court has

consistently upheld federal agency use of administrative summary judgment procedures. *See*, *e.g.*, *Heckler v. Campbell*, 461 U.S. 458, 467 (1983); *Costle v. Pacific Legal Found.*, 445 U.S. 198, 213-14 (1980); *Nat'l Indep. Coal Operators' Ass'n v. Kleppe*, 423 U.S. 388, 398-99 (1976).

The D.C. Circuit—functionally the federal system's APA specialists—has "reaffirm[ed]" time and again "the propriety of administrative summary judgment" when a "hearing can serve no useful purpose." *Hess & Clark, Div. of Rhodia, Inc. v. FDA*, 495 F.2d 975, 985 (D.C. Cir. 1974); *see American Cyanamid Co. v. FDA*, 606 F.2d 1307, 1323 (D.C. Cir. 1979) (observing that "FDA may properly enter administrative summary judgment"); *accord Consolidated Oil & Gas, Inc. v. FERC*, 806 F.2d 275, 279 (D.C. Cir. 1986); *SmithKline Corp. v. FDA*, 587 F.2d 1107, 1119 (D.C. Cir. 1978); *Cooper Lab., Inc. v. FDA*, 501 F.2d 772, 780 (D.C. Cir. 1974). As it said in *John D. Copanos & Sons, Inc. v. FDA*, the Supreme Court's summary judgment principles articulated in *Anderson v. Liberty Lobby* "apply with equal force in the context of administrative judgment." 854 F.2d 510, 523 (D.C. Cir. 1988) (citing *Veg–Mix, Inc. v. Dep't of Ag.*, 832 F.2d 601, 607-08 (D.C. Cir. 1987)); *see also id.* at 520 (noting that an agency can, in some contexts, even award summary judgment without "precise regulations specifying the type of evidence necessary to justify a hearing").

Other federal circuit courts have joined the D.C. Circuit in embracing administrative summary judgment—the First Circuit's powerful defense of the procedure in *Puerto Rico* being the best example. 35 F.3d at 600. There, the court held that "[t]o force an agency fully to adjudicate a dispute that … can have no bearing on the disposition of the case, would be mindless, and would suffocate the root purpose for making available a summary procedure." *Id.* at 605. Any argument that agencies lack a Rule 56-like summary judgment power "is sheer persiflage," it said. *Id.* "Administrative summary judgment is not only widely accepted, but also intrinsically valid.

An agency's choice of such a procedural device is deserving of deference under 'the very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure.'" *Id.* at 606 (quoting *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 544 (1978)). Due process doesn't "require an agency to convene an evidentiary hearing when it appears conclusively from the papers that, on the available evidence, the case only can be decided one way." *Id.* Thus, "administrative summary judgment, properly configured, is an acceptable procedural device." *Id.* A decade later, in *Crestview Parke Care Ctr. v. Thompson*, 373 F.3d 743, 750 (6th Cir. 2004), the Sixth Circuit said the same thing: "[I]t would seem strange if disputes could not be decided without an oral hearing when there are no genuine issues of material fact." And "it would be bizarre if administrative agencies, which are in many respects modeled after the federal courts and which indeed often have more informal proceedings than federal courts, could not follow" Rule 56-like procedures. *Id.* So the court held that the HHS rule in *Crestview* "allowing ALJs to grant summary judgment without an in-person hearing [wa]s valid." *Id.*

Circuit opinion after circuit opinion has held that agencies can grant summary judgment *before* a hearing. *See*, *e.g.*, *Shah v. Azar*, 920 F.3d 987, 996 (5th Cir. 2019) ("[I]t is well-established that an ALJ is empowered to decide a case on a motion for summary judgment without an evidentiary hearing."); *Pennsylvania v. Riley*, 84 F.3d 125, 130 (3d Cir. 1996) ("An administrative agency need not provide an evidentiary hearing when there are no disputed material issues of fact."); *Travers v. Shalala*, 20 F.3d 993, 998 (9th Cir. 1994) ("Since there were no disputed issues of material fact, a plenary, adversary administrative proceeding involving evidence, cross-examination of witnesses, etc. was not obligatory." (cleaned up)); *Walled Lake Door Co. v. NLRB*, 472 F.2d 1010, 1014 (5th Cir. 1973) ("If there is nothing to hear, then a hearing is a senseless and useless formality."); *accord Fal–Meridian, Inc. v. DHHS*, 604 F.3d 445, 449-

450 (7th Cir. 2010); *Cedar Lake Nursing Home v. DHHS*, 619 F.3d 453, 457 (5th Cir. 2010); *Gattegno v. Admin. Rev. Bd.*, 353 F. App'x 498, 499 (2d Cir. 2009); *Big Bend Hosp. Corp. v. Thompson*, 88 F. App'x 4, 7 n.4 (5th Cir. 2004); *J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 68-69 (2d Cir. 2000); *Adams v. EPA*, 38 F.3d 43, 53 (1st Cir. 1994); *United States v. Cheramie Bo–Truc No. 5, Inc.*, 538 F.2d 696, 698 (5th Cir. 1976); *Nat'l Nutritional Foods Ass'n v. Weinberger*, 512 F.2d 688, 704 (2d Cir. 1975); *E. R. Squibb & Sons, Inc. v. Weinberger*, 483 F.2d 1382, 1384 (3d Cir. 1973).

In short, across all districts and States and in every possible regulatory context, "[i]t is common practice for an agency to issue administrative summary judgement, whereby the agency dispenses with an evidentiary hearing." *New England Tel. & Tel. Co. v. Conversent Comms. of R.I, L.L.C.*, 178 F. Supp. 2d 81, 93 (D.R.I. 2001); *see also Fuentes v. Becerra*, No. 4:20-cv-26, 2021 WL 4341115, at *12 (W.D. Va. Sept. 23, 2021) (saying "it is well-established that an ALJ is empowered to decide a case on a motion for summary judgment without an evidentiary hearing"); *accord Pringle v. Wheeler*, 478 F. Supp. 3d 899, 905 (N.D. Cal. 2020); *Nesby v. Yellen*, No. 2:18-cv-1655, 2022 WL 1091916, at *4 (W.D. Pa. Apr. 12, 2022); *Nawaz v. Price*, No. 4:16-cv-386, 2017 WL 2798230, at *3 (E.D. Tex. June 28, 2017); *Cmty. Home Health v. DHHS*, No. 7:08-cv-168, 2010 WL 11561593, at *6 (N.D. Ala. Feb. 24, 2010), R&R adopted, No. 7:08-cv-168, 2010 WL 11561592 (N.D. Ala. Mar. 23, 2010).

Relying on this wealth of federal case law, States have followed suit with their own APAs. In *Henderson v. Popolizio*, 565 N.E.2d 482, 484 (N.Y. 1990), for example, the New York Court of Appeals held that "administrative summary judgment … is not inconsistent with the requirements of due process or prohibited by the Federal regulation." Massachusetts's high court has repeatedly held that administrative summary judgment "does not contravene the requirements

of either the [APA] or due process." *Pepin v. Div. of Fisheries & Wildlife*, 4 N.E.3d 875, 888 (Mass. 2014); *see Kobrin v. Bd. of Registration in Med.*, 832 N.E.2d 628 (Mass. 2005). This includes when an agency uses administrative summary judgment "to dispense with a hearing" because "the papers or pleadings filed conclusively show on their face that the hearing can serve no useful purpose, because a hearing could not affect the decision." *Mass. Outdoor Advert. Council v. Outdoor Advert. Bd.*, 405 N.E.2d 151, 156-57 (Mass. 1980). As a Connecticut Superior Court put it: "Due process does not require a hearing when it appears that the complainant cannot succeed. Threshold requirements before a hearing is held do not violate due process." *Torres v. Conn. Comm'n on Hum. Rts. & Opportunities*, No. CV 950323545S, 1999 WL 171521, at *5 (Conn. Super. Ct. Mar. 11, 1999) (cleaned up). This appears to be state courts' broad consensus. *See Giles v. Lab. Comm'n*, 2005 UT App 4, 2005 WL 27539 (noting that Utah's agencies can grant motions for summary judgment under its APA); *Verizon Nw., Inc. v. Wash. Emp. Sec. Dep't*, 194 P.3d 255, 260 (Wash. 2008) (permitting agencies to decide cases on summary judgment); *Owsley v. Idaho Indus. Comm'n*, 106 P.3d 455, 458 (Idaho 2005) (using a summary-judgment like procedure); *Contini v. Bd. of Educ. of Newark*, 668 A.2d 434, 442 (N.J. Super. Ct. App. Div. 1995) (relying on federal APA and interpreting case law in affirming the validity of an agency's "summary decision procedures"); *cf. Time Warner Cable Info. Servs. (N.C.), LLC v. Duncan*, 656 F. Supp. 2d 565, 575 (E.D.N.C. 2009) (noting that a state law used administrative summary judgment).

State and federal courts see significant, "obvious" policy advantages to administrative summary judgment. *Puerto Rico*, 35 F.3d at 605-06. Take efficiency. "[G]iven the volume of matters coursing through an agency's hallways, efficiency is perhaps more central to an agency than to a court." *Id.* at 605. So it might "make as good, if not more, policy sense to have a standard

for summary judgment in … administrative proceedings as it does to have one in federal court proceedings." *Crestview*, 373 F.3d at 750. The American legal system has embraced administrative summary judgment, in part, "as a way to avoid costly hearings wherever the benefits (reduced procedural costs) outweigh the costs (inaccuracy)." Platt, *supra*, at 444. For example, because undisputed "legislative facts … dominate most rulemaking," administrative summary judgment allows agencies "to eliminate almost all testimonial proceedings." Richard Murphy, *Formal Rulemaking*, 32 FED. PRAC. & PROC. JUDICIAL REV. § 8186 (2d ed. June 2024). This case is a good example of that: because the undisputed legislative facts plainly show unmet need, the Authority could dispense with a hearing on that point (more on that below).

Another advantage is that because there are no juries in administrative proceedings, and because the adjudicators are policy experts, "[t]he question of whether any disputed facts may be 'material' is easier" to settle. Koch Jr. & Murphy, *supra*, § 5:42. Resolving actions on summary judgment is actually "less jarring in the administrative context" than the civil-courts context because administrative litigants don't usually expect "full-dress jury trials." *Puerto Rico*, 35 F.3d at 606. And because "the prototype for administrative summary judgment procedures" is Rule 56—which itself has a familiar, stable "jurisprudence"—for most litigators the nuts and bolts of administrative summary judgment are old hat. *Id.*

Against all this, Petitioner can only insist that Section 29A-5-1(d) does not expressly mention summary judgment "in the list of explicit statutory powers." Pet'r's Br. 15. But even if that were true (and, as should be clear to this point, it's not), that's not the relevant question. "It is well established that there are certain circumstances in which an agency may perform a function that is implied, but not specifically permitted, by statute." *Benjamin v. Walker*, 237 W. Va. 181, 188, 786 S.E.2d 200, 207 (2016) (cleaned up). That authority includes such "powers as are

necessarily or reasonably incident to the powers granted." *Id.* (cleaned up). Petitioner never even tries to explain why the power to grant summary judgment is not an *implied* part of an agency's right to conduct its own hearings, especially considering the background principles described above. And in the end, Petitioner seems to conceive of the hearing examiner as little more than an administrative secretary. Nothing in West Virginia law supports that narrow conception of the role. *See, e.g.*, *Varney v. Hechler*, 189 W. Va. 655, 661, 434 S.E.2d 15, 21 (1993) (describing how a hearing examiner "considered and dealt with" proposed findings of fact).

As for Petitioner's argument that summary judgment was "premature," Petitioner can speak only in generalities. Petitioner had an opportunity to respond to the motion for summary judgment and identify whatever evidence it might like that could support its case. Though Petitioner now suggests that something might have happened at the hearing that could have helped it further develop its case, Petitioner has never identified what the evidence might be or explained why it was unable to at least describe it in response to the motion for summary judgment. It certainly did not provide an affidavit explaining why it need more information or time, which his the ordinary requirement for a party opposing summary judgment. *See Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 62, 459 S.E.2d 329, 339 (1995). "[A] party may not simpl[y] assert in its brief that discovery was necessary and thereby overturn summary judgment," as Petitioner tries to do here. *Powderidge Unit Owners Ass'n v. Highland Properties, Ltd.*, 196 W. Va. 692, 702, 474 S.E.2d 872, 882 (1996).

Thus, like every other federal or state agency, the Authority was within its power to rule on a summary judgment motion in this case. And it properly did so here.

B. The hearing examiner rightly awarded summary judgment here because Petitioners could not show any genuine issue of material fact about "unmet need" and "other services."

1. There was no possible genuine issue of material fact about "unmet need."

Petitioners are wrong that they would have been able to gin up a genuine issue of material fact regarding "unmet need." Pet'rs' Br. 13-15. To the contrary, the Authority found that each of the counties covered by the certificate of need has "existing need for PC services based on the need methodology outlined by the approved 2023 PC Standards." D.R.1420. And satisfying the Methodology shows unmet need, so summary judgment on that question was just appropriate.

Remember what the Methodology does: it estimates how many residents could benefit from Medicaid in-home services by applying a set multiplier to a county's Medicaid-eligible population, subtracts the residents already receiving services, and finds unmet need if the remainder is 25 or more people. Applied here, the Methodology directly shows "Need for [Personal Care] Services" over 25 in Summers and Fayette County. D.R.1106 (59 and 343, respectively). Petitioners make no effort to show that the Authority's unmet need findings under the Need Methodology are incorrect. Instead, their argument seems to assume (but never clearly says) that in addition to showing unmet need using the Need Methodology, Panhandle must also show *actual* unmet need using further evidence. Pet'rs' Br. 13-15. In short, Petitioners don't appear to disagree that using the 2023 Need Methodology Panhandle shows, and the Authority rightly found, unmet need.

Though you wouldn't know it from Petitioners' brief, the Supreme Court of Appeals greenlit the Authority to rely on similar standards before: *Amedisys* upheld the Authority's "longstanding, consistent" interpretation of its home health care services need methodology that—as here—the Authority issued "pursuant to a legislative grant of authority" and that was

"authorized by the Governor." 245 W. Va. at 415, 859 S.E.2d at 358. True, the Authority's 3% multiplier is not "longstanding." But if the Authority is entitled to rely on potentially ambiguous standards, *id.*, it can trust in *Amedisys*'s baseline principle that the standards constitute sound evidence even more when their meaning is plain. And the more the Authority uses the standards "consistently" in prior applications, the more reasonable it becomes to apply that same methodology to the next one. *Id.* at 413, 859 S.E.2d at 356 (explaining that "consisten[cy]" is a mark in favor of deferring to the Authority's interpretation of the standards); *cf. Minnie Hamilton Health Care Ctr.*, 2023 2424614, at *5 ("[T]he Authority cited three past [certificate of need] applications where it had approved [certain data], highlighting it as an accepted practice" to rely on that data.). Here, the Need Methodology showed a certificate of need was warranted. So the Authority "cannot be said to have exceeded [its] constitutional or statutory authority or to be arbitrary or capricious" in relying on that methodology and finding unmet need. *Amedisys*, 245 W. Va. at 415, 859 S.E.2d at 358.

And none of the evidence Petitioners say they wanted to introduce would have changed the Authority's finding of unmet need. As Petitioners implicitly admit, the Need Methodology calculations are central to the Authority's finding that unmet need existed. *See* Pet'rs' Br. 13-14. Yet Petitioners did not—and could not—plan to bring in any evidence that those calculations were wrong, based on incorrect data, or otherwise improper. Rather, Petitioners sought to introduce testimonial evidence that they say would have shown there was no boots-on-the-ground evidence of unmet need. Pet'r's Br. 14-15. But there is no legal requirement that the Authority rely only on testimonial evidence, let alone that it must do so to the exclusion of the Need Methodology's calculations, which themselves use real-world data.

Even on its own terms, Petitioners' proposed testimonial evidence does not undermine the Authority's finding of unmet need. Petitioners make much of the fact that in his deposition, Adkins agreed he did not have data showing Medicaid-eligible "individuals out there who could not receive services," and that he did not know if "there's a waiting list" for personal care services." Pet'rs' Br. at 15 (citing Adkins' deposition from a separate certificate of need proceeding). So in one statement, Adkins simply said he lacked two specific types of data that *could* show unmet need. And in his second statement, he was just confessing to a lack of knowledge about whether a waiting list exists, but not knowing if the State keeps a waiting list for in-home personal services as an administrative matter is not the definitive statement that no one is looking for those services Petitioner makes it out to be. In other words, Adkins did not testify "he was unaware of any" unmet need, only that he does not know if a waiting list is kept at all under any circumstances. Pet'rs' Br. 14.

Petitioners' remaining proposed evidence fares no better. Petitioners point to an email from a BMS program manager saying there "never has been or ever will be a 'wait list' for the Personal Care Services program." Pet'r's Br. 15 (quoting D.R.947). But the email's "adamant[]" tone, Pet'r's Br. 15, shows only—consistent with the quote Petitioners offer from Adkins—that the writer was correcting a misapprehension that BMS kept a waiting list, not that no one in West Virginia was waiting for care. Otherwise, how could she have known there "never" "will be" a list even if need conditions change in the future?

More to the point, these quibbles risk losing the thread that reviewing courts do not pick apart individual pieces of the record to see "whether the court would have reached a different conclusion." *W. Va. Med. Imaging & Radiation Therapy Tech. Bd. of Examiners v. Harrison*, 227

W. Va. 438, 440, 711 S.E.2d 260, 262 (2011). Here, the "evidence on the record as a whole support[s] the agency's decision." *Id.* That's enough to affirm.

2. There was no possible genuine issue of material fact about "other services."

Nor would Petitioners have been able to establish any genuine issue of material fact regarding their "other services." Recall the relevant text: the statute says "the proposed health service" must be "[c]onsistent with the state health plan." W. VA. CODE § 16-2D-12(a)(2). The "state health plan" is the same personal-care standards Petitioners explicitly do *not* challenge in this action. *See* D.R.1399. So the second prong of its Need Methodology is operative here: that "the proposed service will not have a negative effect on the community by significantly limiting the availability and viability of other services or providers." D.R.705.

The Authority rightly rejected Petitioners' argument that granting Panhandle's CON would hurt their ability to provide "other services"—primarily on legal grounds. As the hearing examiner noted, the Authority had always interpreted the phrase "other services" to mean only those "services over which the application is involved." D.R.1403. Because Panhandle's application regarded only personal-care services, "other services" was limited to other personal-care services and didn't include Petitioners' food, transportation, and other services. Petitioners and other senior programs entities offered no substantive argument showing "that the Authority is supposed to look at an unlimited [number] of other services" when considering a CON application. D.R.1402. The Authority had never adopted such an interpretation, the hearing examiner said, and she saw no reason to start here. D.R.1403. So as the Authority held, a public hearing on the "other services" point was unnecessary because the Authority had already "held that the 'other services' must be related to the services at issue in the" CON application—here, personal-care services. D.R.1425.

But even considering unrelated services like those raised by Petitioners, the Authority noted that Panhandle "has already been providing PC services in the target service area for years" as a subcontractor. D.R.1425-26. And no part of Panhandle's application indicated an intention to increase or otherwise modify services. Indeed, Panhandle expressed that it sought the CON only "to be out from underneath a subcontract agreement and to be able to control its own destiny within the counties it's already serving." D.R.1394. So giving it a CON will not introduce new competition or "create any new negative impact on any services offered" by Petitioners. D.R.1425-26. Importantly, Petitioners point to no evidence in the record or that they could have produced showing otherwise. And even if granting the CON does end up increasing competition, Petitioner points to nothing suggesting the CON statute is meant to preserve existing CON holders' monopoly power.

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In short, the Authority considered "each of the parties' positions, the evidence, and sufficiently set[] forth the reasoning and analysis" for its decision. *Minnie Hamilton Health Care Ctr.*, 2023 WL 2424614, at *5. And given that the evidence Petitioners wanted to bring in was unnecessary "to clarify the application of the law," the Authority was right to grant summary judgment. Syl. pt. 2, *Bradley v. Dye*, 247 W. Va. 100, 875 S.E.2d 238 (2022).

II. The Hearing Examiner Did Not Clearly Err In Holding That FCSP Was Not An Affected Party Because It Lacks Legal Personhood.

In Ryan Alton's June 13 letter asking for affected party status for FCSP, he claimed FCSP was "a 501c3 non-profit organization" that "provides" personal-care services. DR.153. But at the preconference hearing it came out that FCSP has no legal existence: it isn't "registered with Secretary of State, it's not a DBA, it's not a registered affiliate, it's not listed on the personal care selection forms for Fayette County." D.R.1362. It's nothing more than "a division of" or "the

programs operated in Fayette County by Putnam County Aging." D.R. 1365. Even PCAP's Director Sutherland admitted that FCSP is just "a name on the door" and has "no legal effect" as an entity. D.R.1374. In short, everyone agrees that, for legal purposes, FCSP doesn't exist.

The Authority therefore had no choice but to remove the "affected party" label. "It is elemental that in order to confer jurisdiction on the court the" moving party "must have an actual legal existence, that is he or it must be a person in law." *Am.'s Wholesale Lender v. Pagano*, 866 A.2d 698, 700 (Conn. App. 2005) (cleaned up); *cf. State ex rel. Glass Bottle Blowers Ass'n of U. S. & Canada v. Silver,* 151 W. Va. 749, 753, 155 S.E.2d 564, 567 (1967) (explaining that unincorporated associations generally may not sue or be sued). After all, standing requires a party to have some skin in the game—some personal stake in the case. *See Warth v. Selden*, 422 U.S. 490, 498-99 (1975). And when a party "does not legally exist, [it] can hold no stake in the outcome of this or any case." *Northpoint Tech., Ltd v. Directv, Inc*, No. 1:09-cv-506, 2010 WL 11444098, at *2 (W.D. Tex. Oct. 25, 2010). That's why courts always say that if a party "had no legal existence" it also had "no standing" to sue or be sued. *House v. Mitra QSR KNE LLC*, 796 F. App'x 783, 789-90 (4th Cir. 2019); *see also Branch of Citibank, N.A. v. De Nevares*, 74 F.4th 8, 20 (2d Cir. 2023) ("a plaintiff without legal existence cannot have Article III standing"); *Adelsberger v. United States*, 58 Fed. Cl. 616, 618 (2003) (providing that "a party must have a legal existence as a prerequisite to having the capacity to sue or be sued"); *accord Roby v. Corp. of Lloyd's*, 796 F. Supp. 103, 110 (S.D.N.Y. 1992). So when a putative entity "lacks any legal existence," *all* its actions in a case "are legal nullities." *PrimeSource Bldg. Prod., Inc. v. United States*, 494 F. Supp. 3d 1307, 1314 (Ct. Int'l Trade 2021) (Baker, J., concurring).

That's why the Authority had to remove FCSP. An agency exists in a strictly legal world, every character of which plays only that role and has only that power conferred by its legal identity.

Because FCSP lacks a legal identity, it could not exist in the Authority's world. The Authority has no power to create a legal identity for FCSP or bestow upon it a legal existence merely by giving it affected party status. *See ChinaCast Edu. Corp. v. Chen Zhou Guo*, No. 15-05475, 2016 WL 10653269, at *2 (C.D. Cal. Jan. 8, 2016) (noting that a lack of legal existence implicates the most "fundamental" jurisdictional questions). When FCSP was holding itself out as a 501(c)(3), the Authority thought it had that power. But the moment it learned that FCSP doesn't legally exist, that putative power was "extinguished." *Catalyst & Chem. Servs., Inc. v. Glob. Ground Support*, 350 F. Supp. 2d 1, 22 (D.D.C. 2004) (cleaned up).

PCAP argues that shouldn't matter because it and FCSP are "one [and] the same." Pet'rs' Br. 19. But that argument fails. Because FCSP is merely a division or set of programs of "legal entity" PCAP and does not itself "have a separate legal existence," seeking affected party status here "solely in [its own] name" fails to "confer jurisdiction" over it on the Authority. *Am.'s Wholesale Lender*, 866 A.2d at 700. PCAP never suggested, at the preconference hearing or now, that it should *replace* FCSP as an affected party; it argued only that it made no difference what name was on the affected party list. Pet'rs' Br. 19. But remember that whether the Authority has jurisdiction is entirely a question of identity. So the exact name isn't just an incidental detail—it's central.

Ultimately, PCAP asked the Authority to call a program name an affected party. The Authority was correct—indeed, was *bound*—to say no. The Court should affirm.

CONCLUSION

The Court should affirm the Authority's decision.

DATED: July 25, 2024

/s/ *Michael R. Williams*

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IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 24-ICA-99

FAYETTE COUNTY SENIOR PROGRAMS, and
SUMMERS COUNTY COUNCIL ON AGING,

***Affected Parties Below, Petitioners*,**

v.

PANHANDLE SUPPORT SERVICES, INC.,

***Applicant Below, Respondent*,**

and

WEST VIRGINIA HEALTH CARE AUTHORITY,

***Respondent*.**

CERTIFICATE OF SERVICE

I, Michael R. Williams, certify that the foregoing Notice of Appearance is being served on all counsel of record by email and File & Serve Xpress on July 25, 2025.

/s/ Michael R. Williams
Michael R. Williams