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Appeal from Second Declaratory Judg. Dismissed as a result of plaintiffs failure to attend pre-trial. Motion to Re-Open Judgment denied.

HHB-CV15-6029943-S	:	
NEUROSTRATEGIES, INC. AND TARIQ ABDULAZIZ, Ph.D., M.S., MBA	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES, AND RODERICK BREMBY, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES	:	AT NEW BRITAIN
	:	AUGUST 26, 2015

MOTION TO DISMISS

The defendants, Connecticut Department of Social Services, and Roderick L. Bremby, Commissioner, Department of Social Services (hereinafter collectively "DSS"), move to dismiss plaintiffs' Conn. Gen. Stat. § 4-183 administrative appeal from DSS' declaratory ruling dated May 28, 2015, for lack of subject matter jurisdiction as a result of the plaintiffs' failure to sufficiently plead, and plaintiffs' inability to subsequently prove, that they are "aggrieved" by the challenged Declaratory Ruling. In support thereof, the defendants rely on the attached brief and will make references to the allegations in plaintiffs' Complaint and to documents that are contained in the certified Administrative Record.

Respectfully submitted,

DEFENDANTS

CONNECTICUT DEPARTMENT OF SOCIAL SERVICES AND RODERICK L. BREMBY, COMMISISONER, DEPARTMENT OF SOCIAL SERVICES

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CERTIFICATION

I hereby certify that a copy of the foregoing Motion to Dismiss was mailed; first class postage prepaid this 26th day of August, 2015 to:

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NEUROSTRATEGIES, INC. AND TARIQ ABDULAZIZ, Ph.D., M.S., MBA	:	SUPERIOR COURT
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CONNECTICUT DEPARTMENT OF SOCIAL SERVICES AND RODERICK BREMBY, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES	:	AUGUST 26, 2015

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The defendants, Connecticut Department of Social Services and Roderick L. Bremby, Commissioner, Department of Social Services (hereinafter Commissioner or collectively "DSS"), move to dismiss plaintiffs' administrative appeal from the Declaratory Ruling that was issued by DSS, dated May 28, 2015, as a result of plaintiffs failure to sufficiently allege and inability to prove that they are aggrieved by the Declaratory Ruling.

The plaintiffs are NeuroStrategies, Inc., and Tariq Abalaziz, Ph.D., M.S., MBA. Plaintiffs collectively refer to themselves as "Tariq" (Complaint, Opening Statement). Accordingly, DSS, meaning no disrespect, will employ the same terminology and refer to the plaintiffs collectively as either "Tariq", "plaintiffs" or as "petitioners."

The Declaratory Ruling Below

On or about December 9, 2014, the plaintiffs filed a petition for a declaratory ruling pursuant to Conn. Gen. Stat. § 4-176 asking the Commissioner to rule on three questions, namely:

A. Whether the regulations proposed by said Agency pursuant to Connecticut General Statutes § 4-168, and being § 17b-260a and § 17b-206b,[1] were properly adopted pursuant to the Connecticut Uniform Administrative Procedure Act?

B. Whether the regulation proposed by said Agency, pursuant to Connecticut General Statutes § 4-168 and being § 17-99 were properly adopted?[2]

C. Whether § 17b-10 can be applied to the ABI Medical Waiver Program?

Petition for Declaratory Ruling, p. 1, Rec. 1.

As required by Conn. Gen. Stat. § 4-176, plaintiffs' petition specifically identified the alleged "circumstances" that were allegedly pertinent to each of the three questions presented. With respect to the first question of whether the proposed regulations implementing the ABI Medicaid Waiver program were properly adopted, plaintiffs raised a number of technical, procedural objections to the validity of said regulations, including that the Notice of Intent incorrectly cites to Conn. Gen. Stat. § 17b-260b instead of to the correct statutory citation, Conn. Gen. Stat. § 17b-260a, as authority for the program, and that DSS failed to submit the proposed regulation to the Legislative Regulations Review Committee within 180 days of its publication. Petition, pp. 1-4; Rec. 1-4.

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[1] Plaintiffs' citation to this set proposed DSS regulations is obviously incorrect. In context, it is obvious that plaintiffs meant to refer to DSS' proposed regulations implementing its Medicaid Acquired Brain Injury Waiver program ("ABI"), which proposed regulations were noticed in the Law Journal on March 26, 2013, Rec. 8, 9, are numbered as proposed Regs., Conn. State Agencies §§ 17b-260a-I thru 17b-260a-17, and can be found in the certified record at pp. 10-38.

[2] This set of proposed DSS "audit regulations" would implement Conn. Gen. Stat. § 17b-99, are numbered as proposed Reg. Ct. St. Ag. §§ 17b-99(d)(1) – 17b-99(d)(6) and can be found in the certified administrative record at pp. 39-49. This set of proposed "audit regulations" is entirely, distinct and separate from DSS' proposed ABI Waiver regulations, notwithstanding that both sets of proposed regulations were addressed in the underlying declaratory ruling.

As to the alleged facts and circumstances related to their second question, namely whether the separate proposed "audit regulations" implementing Conn. Gen. Stat. § 17b-99 were properly adopted, plaintiffs claimed below that the proposed audit regulations have not been finally promulgated in accordance with the requirements of the Uniform Administrative Procedure Act ("UAPA"), and maintain that DSS has nevertheless "used said proposed regulations to extrapolate money damages against providers."[3] Petition, p. 4, ¶ 4; Rec. 4.[4]

As to the third question, plaintiffs "supported" their request that DSS rule that Conn. Gen. Stat. § 17b-10 could not be employed to authorize DSS to act under its proposed ABI waiver regulations while they were being adopted as regulation by asserting that "he was audited and was advised that he would be held to the standards set forth in § 17b-260a-16a of the proposed regulations." Petition, p. 6.

Numerous exhibits were attached to plaintiffs' Petition, including a copy of the proposed ABI waiver regulations, a copy of the proposed audit regulations, and numerous letters between counsel for Tariq and counsel for DSS contesting DSS' authority to request records under the terms of the provider agreement and under the

[3] Note that Tariq only claims that the "proposed audit regulations" have been applied to other providers. Plaintiffs nowhere assert facts claiming that the proposed audit regulations allowing extrapolation of money overpayments have been applied **to them**.

[4] As noted supra, DSS' proposed audit regulations may be found in the certified record at pp. 39-49. The proposed DSS audit regulation would apply generally to audits of all Medicaid providers, not just to providers of ABI Waiver services. As noted infra, DSS is not authorized by the text of Conn. Gen. Stat. § 17b-10 to operate under these proposed audit regulations, and, in fact, DSS has not operated under said proposed regulations since said proposed regulations have not been finally promulgated as regulation in accordance with the UAPA. DSS expressly ruled in the challenged underlying declaratory ruling that it had no authority pursuant to Conn. Gen. Stat. § 17b-10 to operate under its proposed audit regulations pending their final adoption as UAPA regulations.

proposed ABI waiver regulations (which DSS maintains have the force of regulation pursuant to Conn. Gen. Stat. § 17b-10). In its correspondence with DSS, plaintiffs repeatedly and unilaterally characterized DSS' requests that "Tariq" produce documents supporting its claims for reimbursement as an "audit" conducted under the authority of Conn. Gen. Stat. § 17b-99. DSS, however, repeatedly disputed plaintiffs' characterization that it was conducting an "audit," and instead, consistently indicated that it was requesting documentation of Tariq's claims for reimbursement pursuant to proposed regulation § 17b-260a-16, and pursuant to the terms of "Tariq's" provider agreement with the Department. See DSS correspondence dated May 20, 2014, August 22, 2014, February 19, 2015, and August 22, 2015, which may be found in the certified record at pp. 59-60, 62-63, 73 and 386-387, respectively. The Department's August 22, 2014 correspondence is particularly telling. It provides, in pertinent part, that:

> Next, you want to know about the audit standards that apply to the Department's review of your client's records. It is not clear what you mean by this question. The Department conducted a records review in accordance with the Provider Agreement your client signed on January 15, 2004 and section 17b-260a-16(b) of the regulations, which states that, "[u]pon written request presented to the provider, the department ... may be given immediate access to, and permitted to review and copy any and all records and documentation used to support claims billed to Medicaid." As mentioned in my letter to you, dated May 28, 2014, the purpose for this records review is to review the documentation that supports the services your client claimed to have provided, for which the Department paid.

Rec. 336.

Neither plaintiffs' Petition nor any supporting exhibits demonstrated the result of any such claimed "audit" or, more accurately the record review DSS conducted pursuant to proposed regulation § 17b-260a-16 and pursuant to the terms of "Tariq's"

provider agreement with the Department. Specifically, there is no claim in Plaintiffs' Petition or in any supporting exhibits (or in Plaintiffs' Complaint) alleging that plaintiffs have been found to be liable to reimburse the state for any unsupported ABI Medicaid waiver claims for reimbursement. Furthermore, plaintiffs nowhere allege that any adverse action of any kind has been taken against them as a result of the declaratory ruling.

On December 30, 2014, DSS advised plaintiffs that it agreed to issue a declaratory ruling on the three questions presented in petitioner's December 9, 2014 Petition for a Declaratory Ruling. Rec. 70.

On March 31, 2014, while the December 9, 2014 Petition for Declaratory Ruling was pending before DSS for a ruling, the petitioners purported to unilaterally amend their Petition by adding five additional "questions," D-H. Rec. 84–120. Plaintiffs' Amended Petition reiterated the same facts and circumstances that are purportedly "relevant" to plaintiffs' first three questions in their Amended Petition (which "facts and circumstances" were previously stated in their original Petition), Rec. 84-85, and wholly failed to state any additional facts and circumstances that may be applicable to the "validity" or "applicability" of a statute or regulation as may be pertinent to their five additional questions. Rec. 84-93 (omitting any statement of the specified circumstances relevant to their proposed five additional questions).

DSS never agreed to issue a declaratory ruling as to the five additional questions presented in Plaintiffs' Amended Petition, and declined to rule on the additional questions in its declaratory ruling, discussed infra.

The Declaratory Ruling

DSS issued a declaratory ruling on May 29, 2015 answering the three questions presented in plaintiffs' December 9, 2014 Petition based upon the facts and circumstances presented in the Petition and the attached exhibits, but without holding an administrative hearing. Rec. 121-127.

With respect to the first question, DSS acknowledged that the proposed ABI Waiver Regulations have not been properly promulgated as a UAPA regulation because the proposed regulations have not completed the UAPA regulation adoption process and are still "pending," and not as a result of the highly technical, procedural objections raised by defendants. Notwithstanding that the proposed ABI waiver regulations have not yet been formally promulgated as UAPA regulations, the Department ruled that it is properly "operating under the ABI Waiver regulations as a policy [that has the force of regulation], while the Department is in the process of adopting the policy as a regulation." Rec. 123. Specifically, the Department ruled that it is authorized to utilize Conn. Gen. Stat. § 17b-10 to operate under the proposed ABI regulations pending their final adoption as regulations since the proposed regulations were promulgated in order to conform to the requirements of an approved federal Medicaid waiver program and since DSS provided significantly more notice of its intention to operate under the proposed policies than is required by Conn. Gen. Stat. § 17b-10. Declaratory Ruling, Rec. 122-124; Law Journal Notice of Intention to Operate Under Proposed Policies Pending Their Adoption as Regulations, Rec. 8, 9.

On the second question of whether the proposed audit regulations implementing Conn. Gen. Stat. § 17b-99 were properly adopted as regulations, the Department ruled

that no such regulations are in effect (because the regulation adoption process has not been completed), and further ruled that the Department does not "operate under" or rely on the proposed audit regulations "to extrapolate findings of overpayment under certain circumstances." Rec. 125.[5] Notably, neither Plaintiffs' Petition nor the Department's ruling identifies any specific application of the proposed audit regulations to plaintiffs because the Department has never relied on said proposed regulations in its dealings with "Tariq."[6]

On the third question, the Department ruled that Conn. Gen. Stat. § 17b-10 applies to its proposed ABI waiver regulations since § 17b-10 authorizes DSS to operate under "any new policy necessary to conform to a requirement of an approved waiver application" while it is in the process of adopting the policies as regulation in accordance with the requirements of the UAPA.

DSS declined to address the five additional questions that were belatedly raised in plaintiff "Amended" Petition for Declaratory Ruling on the grounds that Conn. Gen.

[5] Conn. Gen. Stat. § 17b-10(b) authorizes the Department to operate under proposed regulations to the extent that the policy is "necessary to conform to a requirement of an approved waiver application .... [or] to conform to a requirement of a federal or joint state and federal program administered by the department ...." DSS acknowledged that, in contrast to its proposed ABI waiver regulations, it is not necessary for DSS to operate under its separate proposed audit regulations in order to conform to the requirements of federal law. Hence, DSS nowhere indicated its intention to "operate under" its proposed audit regulations pending their final adoption as UAPA regulations, and DSS, in fact, has not operated under said proposed regulations.

[6] The legislature recently repealed the former statutory requirement that DSS adopt regulations governing sampling methodologies associated with the Conn. Gen. Stat. § 17b-99 audit process. P.A. 15-5, 2015 June Sp. Sess., § 400. Accordingly, the Department has no intention of proceeding with the promulgation of audit regulations that contains the "extrapolation" provisions of Section 16 of the proposed regulations – which Tariq apparently finds so objectionable. The Department, however, reserves the right to "extrapolate" to the extent that extrapolation is authorized directly by the statute. In any event, no findings have been issued by DSS as a result of its record review, and no "extrapolation" of any kind has been made.

Stat. § 4-176 authorizes it to issue a ruling "as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency," Conn. Gen. Stat. § 4-176(a). DSS ruled that it could not answer the additional questions since plaintiffs had not identified the "specified circumstances" which are necessary for DSS to determine the "applicability" or "validity" of a statute or regulation, citing Peruta v. Comm'r of Pub. Safety, 128 Conn. App. 777, 785, cert. denied, 302 Conn. 919 (2011), as support for its refusal to rule or the additional five questions. Rec. 126, 127.

Plaintiffs' Conn. Gen. Stat. § 4-183 Administrative Appeal

On or about July 9, 2015, plaintiffs timely appealed the declaratory ruling to Superior Court, purportedly pursuant to the terms of Conn. Gen. Stat. § 4-183. Conn. Gen. Stat. § 4-176(h) provides that, "A declaratory ruling .... shall have the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of Section 4-183." Conn. Gen. Stat. § 4-183(a) provides that, "A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section." Accordingly, plaintiffs may appeal from the declaratory ruling pursuant to § 4-183 if they demonstrate that they are aggrieved by the declaratory ruling. See generally, Sastrom v. Psychiatric Security Review Bd., 291 Conn. 307 (2009), Connecticut Business and Industry Ass'n v. Commission on Hospitals and Health Care, 218 Conn. 335 (1991), and Connecticut State Medical Society v. Connecticut Bd. of Examiners in Podiatry, 203 Conn. 295 (1987) (discussing the aggrievement requirements of § 4-183 in the context of various appeals from

declaratory rulings, and finding that aggrievement requirements were or were not satisfied depending on the facts of each particular case).

Before turning to the particulars of the allegations in plaintiffs' complaint, it is necessary to first review the requirements for "aggrievement."

Requirements For Aggrievement

"Aggrievement" is necessary to invoke subject matter jurisdiction in § 4-183 administrative appeals, and it cannot be waived. LePage Homes, Inc. v. Planning and Zoning Commission of Southington, 74 Conn. App. 340 (2002). It ensures that parties and courts are not vexed by nonjusticiable claims. Id. Aggrievement, and jurisdiction, may not be conferred by the parties' agreement, but requires the Court to independently determine that statutory jurisdictional requirements are satisfied. State Library v. FOIC, 41 Conn. App. 641 (1996). In order to satisfy aggrievement requirements, a plaintiff must first plead facts which, if proven, would constitute aggrievement as a matter of law, and second, a plaintiff must then prove the truth of those factual allegations. Id. Conclusory statements of aggrievement are insufficient, and a plaintiff must plead and prove facts demonstrating the particular nature of the aggrievement. Blau v. State Bd. of Educ., 19 Conn. App. 428 (1989).

Connecticut has recognized two forms of aggrievement: "statutory" and "classical." "Statutory aggrievement" is clearly not applicable here since no state statute recognizes plaintiffs' "right" to appeal to court from a declaratory ruling in the absence of proof that plaintiffs' specific, personal and legal interests were adversely affected by the ruling. Terese B. v. Commissioner of Children and Families, 68 Conn. App. 223 (2002), (requirements for "statutory aggrievement").

Therefore, in order to satisfy "classical aggrievement" requirements, plaintiffs must both plead and prove that they have specific, personal and legal interests in the subject of the ruling and that plaintiffs' specific, personal and legal interests have been specially and injuriously affected by the decision that is the subject of the appeal. Med-Trans of Connecticut, Inc. v. Department of Public Health and Addiction Services, 242 Conn. 152 (1997). The specific, personal and legal interests must be concrete, actual, not merely hypothetical, and not merely common with the interests of the general public at large. New England Rehabilitation Hosp. of Hartford, Inc. v. Commission on Hospitals and HealthCare, 226 Conn. 105 (1993). Furthermore, a plaintiff's status as a party in the underlying administrative proceeding, by itself, is insufficient to prove aggrievement for purposes of subsequent judicial review. Lewin v. U.S. Surgical Corp., 21 Conn. App. 629 (1990).

Assuming that a plaintiffs' Administrative Appeal Complaint pleads facts that are sufficient to establish aggrievement as a matter of law if the alleged facts are subsequently demonstrated to be true, a plaintiff must then prove aggrievement by establishing the truth of the alleged facts. State Library, supra. Plaintiffs may rely on facts established in the underlying administrative proceeding to prove aggrievement; however, if the administrative record is insufficient to establish facts constituting aggrievement, a plaintiff must otherwise establish aggrievement, including possibly by an evidentiary hearing to be conducted by the trial court. Id. Note that in this case, DSS did not hold an evidentiary hearing or "establish facts" but only ruled based on the "circumstances" specified in plaintiffs' Petition for a Declaratory Ruling and the attached exhibits (without in any way adjudicating whether those "circumstances" were true or

not). The circumstances specified by plaintiffs in no way relate to the specific, personal and legal interests of plaintiffs, but appear to apply generally to all members of the public. For example, the specified "circumstance" of DSS' concededly inaccurate citation to the statutory authority for its proposed ABI waiver regulations in its Law Journal Notice does not appear to relate to the specific, personal, and legal interests of the plaintiffs, as opposed to the interests of the public at large. Plaintiffs' Declaratory Ruling Petition (and subsequent Complaint to Court) also (incorrectly) allege that DSS has applied its proposed audit regulation to other providers, and not to plaintiffs. Furthermore, the Record, and DSS' declaratory ruling, clearly indicates that it did not apply its proposed audit regulations to plaintiffs, but that it only conducted a "record review" pursuant to proposed regulation § 17b-260a-16 (which has the force of law pursuant to Conn. Gen. Stat. § 17b-10) and pursuant to the terms of DSS' provider agreement with "Tariq," both of which require Tariq to maintain records documenting and supporting "his" claims for Medicaid reimbursement and to provide such records to DSS upon request.

Most importantly, the record does not indicate the result of the "record review" because no findings have been issued by DSS, such that Tariq currently remains as an enrolled Medicaid provider of ABI Waiver Services and such that no adverse findings have been issued to date[7] imposing any monetary liability or other form of adverse relief against "Tariq." Certainly, nothing in the declaratory ruling proceeding demonstrates how DSS' operating under said proposed ABI Waiver regulations pursuant to Conn.

[7] If and when adverse findings are made, "Tariq" will be afforded an appropriate forum to challenge the action, depending on what enforcement action is taken, if any. At the present time, however, the issues are not "ripe" for judicial review because no action has been taken that is adverse to the specific, personal and legal interests of plaintiffs.

Gen. Stat. § 17b-10 has harmed plaintiffs' specific personal, and legal interests in any way.

Plaintiff's Complaint Fails To Sufficiently Allege Facts Which, If Proven, Would Constitute Aggrievement As A Matter Of Law

Plaintiffs' Complaint wholly fails to allege facts that are sufficient to satisfy the jurisdictional requirement that plaintiffs must plead the specific factual bases for their claim of aggrievement. As a result, plaintiffs' Complaint must be dismissed for lack of subject matter jurisdiction as a result of plaintiffs' failure to adequately allege facts which, if true, would demonstrate a violation of "Tariq's" specific, personal, and legal interests.

First, plaintiffs' Complaint doesn't even allege that specifically NeuroStrategies, Inc. or, alternatively that specifically "Tariq," is a participating Medicaid provider in the Department's ABI Medicaid Waiver Program pursuant to a federally-required provider agreement. Under plaintiffs' "and/or" pleading, (Complaint, ¶ 5,) there is no specific allegations that NeuroStrategies, Inc. or that Tariq is a participating provider. In the absence of a specific allegation that NeuroStrategies, Inc. is a participating provider – or that Tariq is a participating provider – plaintiffs only allege that at least one of the plaintiffs is a participating provider, leaving open the question of whether NeuroStrategies, Inc. or whether Tariq, individually, is a participating provider. Therefore, plaintiffs fail to make even preliminary, predicate factual allegations that, at a minimum, must be alleged (and subsequently proven) in order for each plaintiff's specific, personal and legal interests to possibly have been injuriously affected by the

declaratory ruling.[8] Clearly, the burden is on each plaintiff to prove standing, and neither plaintiff has even specifically alleged that he or it is a Medicaid provider.

Plaintiffs only specific allegations of aggrievement are in paragraphs six and seven of Plaintiffs' Complaint which (incorrectly) allege that "Tariq" was "audited" on June 16, 2014; that he was "advised" that the audit standards would be those set forth in the proposed ABI waiver regulations, Regs., Conn. State Agencies §§ 17b-260a-1 to 17b-260a-17; and that "Tariq" is "aggrieved by the audit protocol being used by DSS in said audit." Complaint, ¶¶ 6, 7. Plaintiffs then make the conclusory allegation that they "collectively" (which one, NeuroStrategies or Tariq?) are "aggrieved" by the "audit protocol," notwithstanding plaintiffs' acknowledgment that "Tariq" has not as yet been notified of the audit results." Complaint, ¶¶ 6, 7 (emphasis added).

LEGAL ARGUMENT

I. PLAINTIFFS ARE NOT AGGRIEVED BY THE SECOND RULING THAT DSS' PROPOSED AUDIT REGULATIONS HAVE NOT BEEN FORMALLY PROMULGATED AND DO NOT HAVE THE FORCE OF LAW

First, it is apparent that the "allegation of aggrievement" in Paragraphs 6 and 7 of plaintiffs' Complaint at best only applies to the first and third questions presented in plaintiffs' Petition concerning whether DSS' proposed ABI Medicaid Waiver regulations were properly adopted pursuant to the UAPA, or, alternatively, whether DSS can

[8] If Tariq is merely a principal of NeuroStrategies, Inc., (assuming that NeuroStrategies is the participating provider) and not directly a participating provider in his own individual capacity, his individual legal interests have obviously not been adversely impacted.

In no way does defendant intend to suggest that an entity's mere status as a participating Medicaid provider is enough to satisfy aggrievement requirements. In the absence of such an allegation, however, plaintiffs fail to make a necessary, but not sufficient, allegations of aggrievement.

operate under its proposed ABI Waiver regulations pending their adoption as UAPA regulations pursuant to the authority conferred by Conn. Gen. Stat. § 17b-10.

Plaintiffs nowhere allege that DSS' proposed audit regulations implementing Conn. Gen. Stat. § 17b-99, proposed Regs., Conn. State Agencies §§ 17b-99(d)(1) – 17b-99(d)(6), Rec. 39-49, have been applied to "them" or that they are "aggrieved" as a result. Accordingly, at a minimum, plaintiffs appeal from the declaratory ruling must be dismissed insofar as it applies to DSS' second ruling that its proposed audit regulations have not been adopted as regulation in accordance with the requirements of the UAPA.

Moreover, in order to establish aggrievement, "Tariq" must plead (and then prove) that the declaratory rulings violated "their" specific, personal and legal interests. *Brouillard v. Connecticut Citing Council*, 133 Conn. App. 851, 856 cert. denied, 304 Conn. 923 (2012). DSS' declaratory ruling that the proposed audit regulations have not been finally promulgated in accordance with the UAPA, and that DSS is not operating under said proposed regulations and has no authority to operate under said proposed regulation pending their adoption because Conn. Gen. Stat. § 17b-10 does not authorize DSS to operate under the proposed audit regulations since they are not necessary to conform to the requirements of federal law can hardly be said to have injured "Tariq." How could "Tariq's" specific, personal and legal interests possibly be harmed by a declaratory ruling that holds that the proposed audit regulations have not been fully adopted and do not have the force of law?

II. PLAINTIFFS ARE NOT AGGRIEVED BY DSS' FIRST AND THIRD DECLARATORY RULINGS THAT ITS PROPOSED ABI WAIVER REGULATIONS HAVE NOT BEEN FINALLY PROMULGATED IN ACCORDANCE WITH THE REQUIREMENTS OF THE UAPA, BUT THAT DSS IS AUTHORIZED TO, AND IS PROPERLY OPERATING UNDER, ITS PROPOSED ABI WAIVER REGULATIONS PURSUANT TO THE AUTHORITY CONFERRED BY CONN. GEN. STAT. § 17b-10

Plaintiffs' Conn. Gen. Stat. § 4-183 administrative appeal from the first and third declaratory rulings that DSS' proposed ABI waiver regulations have not been finally adopted as regulations in accordance with the requirements of the UAPA, but that DSS is properly operating under said proposed regulations in accordance with the authority conferred by Conn. Gen. Stat. § 17b-10 must also be dismissed for lack of aggrievement. The purely conclusory allegations that plaintiffs are aggrieved by the "audit protocol" conducted by DSS pursuant to proposed ABI waiver regulations § 17b-260a-16, Complaint, ¶¶ 6, 7, is clearly insufficient in the absence of a claim that plaintiffs' specific, personal and legal interests have been injured as a result. This conclusory claim amounts to no more than an argument that the defendant "violated the law" by operating under its proposed ABI waiver regulations. It is precisely the sort of purely conclusory claim that our Courts have repeatedly ruled is insufficient. The aggrievement case law cited supra clearly establishes that the mere claim of a "violation of law" is insufficient to confer standing in the absence of specific factual allegations that the "violation of law" resulted in an impairment of plaintiffs' specific, personal and legal interests – which is totally lacking in plaintiffs' Complaint.

As noted supra, the record even rebuts plaintiffs' claim that they were "audited" as opposed to being subject to a request for the production of records pursuant to both

proposed regulation § 17b-260a-16 (which has the force of law pursuant to Conn. Gen. Stat. § 17b-10) and to the terms of "Tariq's" provider agreement with DSS.

Moreover, plaintiffs specifically acknowledge that, "Tariq has not yet been notified of the audit results." Complaint, ¶ 6. Accordingly, "Tariq" has not, and cannot, allege that it has been harmed by the challenged "audit protocol" since "Tariq" has not, and cannot, allege that DSS has made any findings that are adverse to Tariq's specific, personal, and legal interests as a result of the application of that protocol. In fact, to date, DSS has issued no findings that Tariq has improperly claimed Medicaid reimbursement without adequate supporting documentation, or that Tariq is liable to reimburse DSS for any portion of its Medicaid reimbursement. Furthermore, to date, Tariq remains as a participating Medicaid provider of ABI waiver services. Accordingly, there is no sufficient factual allegation in plaintiffs' Complaint that "their" specific, personal, and legal interests have been harmed as a result of DSS' declaratory ruling that it may use proposed regulation § 17b-260a-16 to conduct its still pending "record review," as a result of the authority conferred by Conn. Ge. Stat. § 17b-10

Furthermore, as noted supra, DSS repeatedly indicated that its document request was authorized both by proposed Regs., Conn. State Agencies § 17b-260a-16 and by the terms of "Tariq's" provider agreement with DSS. In accordance with the requirements of federal law, Paragraph 9 of "Tariq's" provider agreement with DSS provides that:

> I will maintain records that fully disclose services and goods rendered and/or delivered to ABI waiver participants. These records will be made available to authorized representatives of the Department upon request.

Rec. 50.

Federal law, 42 C.F.R. § 431.107(b) requires state Medicaid agencies to have provider agreements with each participating provider in which the provider agrees to, "keep any records necessary to disclose the extent of services the provider furnishes to recipients," and to furnish such information, upon request, to the Medicaid agency.

Plaintiffs have never disputed their obligation under their provider agreement to maintain and disclose documents documenting the extent of services provided. Moreover, plaintiffs have never claimed that the more specific record documentation and production requirements of proposed regulation § 17b-260a-16 are any more onerous than the record documentation and production requirements that would necessarily be required anyway under the provider agreement to document the extent of services provided. Accordingly, even if plaintiffs could reasonably argue that they are not properly subject to the record documentation and production requirements of Regs., Conn. State Agencies § 17b-260a-16 because DSS allegedly cannot lawfully operate said proposed regulation pursuant to Conn. Gen. Stat. § 17b-10, they can't possibly argue that they are aggrieved as a result because it is undisputed that the provider agreement independently requires "Tariq" to document the extent of services provided.

Finally, notwithstanding this argument may go more to the "merits" and not to the threshold question of aggrievement and jurisdiction, it should be noted that plaintiffs' argument that DSS can't operate under Regs., Conn. State Agencies § 17b-260a-16 pursuant to the authority conferred by Conn. Gen. Stat. § 17b-10 is so weak that it may not even be supportable by good faith argument. Conn. Gen. Stat. § 17b-10 authorizes DSS to operate under proposed regulations pending their adoption as regulations in accordance with the UAPA if two conditions are satisfied: 1) if the policy is "necessary to

conform to a requirement of an approved federal waiver ... "; and 2) provided that the Department "prints notice of its intent to adopt the regulation in the Connecticut Law Journal no later than twenty days after adopting the policy." Conn. Gen Stat. § 17b-10(b). Conn. Gen Stat. § 17b-260a specifically requires the Department to seek federal approval for a Medicaid waiver program for individuals with acquired brain injury. The Connecticut Law Journal notice acknowledged that DSS was previously operating its ABI waiver program under "policy" that did not have the force of regulation, and specifically indicates that the purpose of the proposed regulation is to "formally establish the policies of the ABI waiver program in regulation format." Rec. 8. The Law Journal notice then specifically indicates that DSS will operate under its proposed ABI waiver regulations while it was in the process of adopting the regulations in accordance with the UAPA.

The very purpose of Conn. Gen. Stat. § 17b-10 is to create a mechanism that allows DSS to promptly comply with the ever-changing requirements of federal law through the use of "regulations" that have the force of law (while final regulations are being promulgated), instead of operating under mere "policy" which does not have the force of law and which may not properly be utilized by an agency to define the rights and responsibilities of the members of the public. Periso v. Maher, 191 Conn. 384, 399-405 (1983) (an agency may not properly act under "policy" that has not been promulgated as regulation); Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 608, fns. 4 and 5 (discussing that the purpose of Conn. Gen. Stat. § 17b-10 is to respond to the Periso case by creating a mechanism that allows DSS to promptly act under proposed regulations that have the force of law while final regulations are

being promulgated in accordance with the UAPA). That purpose is the precise reason why DSS utilized Conn. Gen. Stat. § 17b-10 to adopt ABI Waiver "policy" that has the force of law while it is in the process of adopting that policy regulation in accordance with the procedural requirements of the UAPA.

The Law Journal notice, dated March 26, 2013, or five days in advance of its effective date, further indicates that, "The Department, in accordance with § 17b-10 of the Connecticut General Statutes will implement and operate under the proposed regulations effective April 1, 2013". Rec. 8. Notice of intent to operate under the proposed regulations, therefore, was provided well in advance of the Conn. Gen. Stat. § 17b-10 statutory deadline of within twenty days after DSS began operating under the proposed regulation.

Respectfully, it is hard to imagine a clearer case of authority to operate under proposed regulation pursuant to Conn. Gen. Stat. § 17b-10, and it is unfathomable what plaintiffs mean by their allegations in paragraph 26 of their Complaint that DSS did not notice any "conforming requirements," or by their allegation in paragraph 32 that the "proposed regulations were not properly noticed under Conn. Gen. Stat. § 17b-10(b). The "conforming requirements" here were clearly intended to allow the agency to implement the ABI Waiver program by policies that have the force of law [9]

Finally, notwithstanding that "Tariq" does not claim "aggrievement" as a result, "Tariq" makes a series of highly unusual allegations in Paragraphs 36-39 of their complaint regarding the alleged replacement of "their" 2004 provider agreement with a

[9] The alternative would be to operate under "mere policy" that may be of no legal consequence, and where the public is provided no notice that the policy is legally in effect, in accordance with the requirement of § 17b-10b.

new, updated provider agreement, effective April 1, 2013.[10] Tariq, however, wholly fails to allege how DSS' alleged 2013 "modernization" and updating of its standard form provider agreement was caused by, or is related to, the declaratory rulings that are subject of this administrative appeal. In order to demonstrate that "Tariq" is aggrieved by the rulings, Tariq must allege that his specific, personal and legal interest have been harmed by the rulings. *Brouillard v. Connecticut Citing Council*, 133 Conn. App. 851, 856, cert. denied, 304 Conn. 923 (2012). Obviously, no connection between the updated provider agreements and the rulings is alleged in plaintiffs' Complaint. Furthermore, the question of updated provider agreements was not addressed by DSS in its declaratory rulings since no such "facts and circumstances" were presented by petitioners in their Petition or in any exhibit that was attached to plaintiffs' Petition. Accordingly, even if aggrievement were alleged as a result of this vague and uncertain "provider agreement issue," the necessary connection to the challenged declaratory ruling is entirely absent.

Even apart from the lack of the required connection to the declaratory rulings that are the subject of this appeal, plaintiffs do not even allege that the updated 2013 provider agreement contains different terms in comparison to the 2004 agreement. Accordingly, even if the updated provider agreement were somehow related to, or caused by, the challenged declaratory rulings, plaintiffs make no claim that the updated provider agreements violate their specific, personal and legal interests by imposing any more onerous requirements on Tariq in comparison to the replaced 2004 provider agreement.

[10] DSS apparently updated its provider agreements with all participating providers of ABI Waiver Services at that time.

Furthermore, the unsoundness of this administrative appeal is further demonstrated by "Tariq's" three "claims for relief." Complaint, ¶¶ 46-54. "Tariq" claims legal relief as a result of DSS' alleged use of "improper" audit standards and the substitution of an updated provider agreement for an old 2004 agreement, when no violation of plaintiffs' specific, personal and legal interest have been shown. Moreover, Tariq inexplicably nowhere claims in their Claim for Relief that any of the underlying declaratory rulings violate constitutional or statutory provisions, are in excess of the agency's statutory authority, were made under an unlawful procedure, are affected by other error of law, are clearly erroneous, or are arbitrary and capricious. Conn. Gen. Stat. § 4-183(j). See, Plaintiff's Complaint, Claims for Relief. Accordingly, in addition to failing to sufficiently allege personal aggrievement (much less also subsequently proving aggrievement) as is required for subject matter jurisdiction purposes, plaintiffs also fail to even claim that the challenged rulings are erroneous as a matter of law and must be reversed or vacated as a result of the requirements of Conn. Gen. Stat. § 4-183. Instead, plaintiffs are apparently claiming relief as a result of issues that are essentially unrelated to the declaratory rulings, without in any way claiming that the declaratory rulings themselves are erroneous under the standards of § 4-183(j).

III. PLAINTIFFS CANNOT PROVE AGGRIEVEMENT

Even if plaintiffs' Complaint is somehow found to adequately plead facts that could constitute aggrievement as a matter of law, if proven, defendants strenuously

denies the truth of any "factual allegation" of aggrievement, and leaves each plaintiff to prove that each of them are, in fact, aggrieved by the underlying declaratory rulings.[11]

CONCLUSION

Plaintiffs' administrative appeal must be dismissed for lack of subject matter jurisdiction as a result of plaintiffs' failure to sufficiently allege (and inability to subsequently prove) that they are aggrieved by the declaratory rulings below that are the subject of this administrative appeal.

Respectfully submitted,

DEFENDANTS

CONNECTICUT DEPARTMENT OF SOCIAL SERVICES AND RODERICK L. BREMBY, COMMISISONER, DEPARTMENT OF SOCIAL SERVICES

GEORGE JEPSEN
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[11] Of course, there is no need to determine if plaintiffs can prove aggrievement if this Court just finds that plaintiffs have failed to allege sufficient facts that could constitute aggrievement in their Complaint since a plaintiff in a § 4-183 administrative appeal must both plead and prove aggrievement in order to satisfy subject matter jurisdiction requirements.

CERTIFICATION

I hereby certify that a copy of the foregoing Memorandum in Support of Motion to Dismiss was mailed; first class postage prepaid this 26th day of August, 2015 to:

T. Ryan McNeil, Esq.
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Hugh Barber
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Declaratory Ruling

Re: Petition for Declaratory Ruling by Tariq Abdulaziz

The Department of Social Services (the "Department") issues this declaratory ruling pursuant to the authority granted to administrative agencies in section 4-176 of the Connecticut General Statutes and sections 17-311-44 to 17-311-46, inclusive, of the Regulations of Connecticut State Agencies.

Procedural History

On December 9, 2014, Tariq Abdulaziz (the "Petitioner") filed a Petition for Declaratory Ruling. *See* Exhibit A, Petition for Declaratory Ruling. The questions set forth in the Petition for Declaratory Ruling are as follows:

1. Whether the regulations proposed by said Agency pursuant to Connecticut General Statutes §4-168, and being §17b-260a and §17b-260b were properly adopted pursuant to the Connecticut Uniform Administrative Procedure Act.

2. Whether the regulations proposed by said Agency, pursuant to Connecticut General Statutes §4-168 and being §17b-99, were properly adopted.

3. Whether 17b-10 can be applied to the ABI Medicaid Waiver Program.

On December 30, 2014, the Department agreed to issue a declaratory ruling by May 29, 2015 in accordance with sections 4-176(e)(3) and 4-176(i) of the Connecticut General Statutes. *See* Exhibit B, Agreement to Issue Declaratory Ruling.

On February 20, 2015, the Petitioner filed two notices of deposition with the Department, in which he sought to depose two of the Department's employees, Lara Stauning and Dorian Long, and requested that they produce certain documents contained in the Schedule A of the notices of deposition. *See* Exhibit C, Notices of Deposition.

On March 4, 2015, the Department issued an Order in which it stated that no discovery, including the taking of a deposition, was permitted in relation to the Petition for Declaratory Ruling. *See* Exhibit D, Order dated March 4, 2015. The Department explained to the Petitioner that the declaratory ruling would be issued without any type of proceeding, per section 4-176(e)(3) of the Connecticut General Statutes, and even if there were a proceeding, the Connecticut Supreme Court has ruled that absent an express statutory or regulatory provision, there is no right to discovery in administrative proceedings. *See Pet v Dep't of Health Servs.,*

207 Conn. 346, 357, 542 A.2d 672 (1988). Neither statutes nor the Department's regulations grant a party the right to discovery, including the taking of a deposition, in an administrative proceeding or in relation to a petition for a declaratory ruling.

On March 31, 2015, the Petitioner filed what he called an "Amended Petition for Declaratory Ruling." *See* Exhibit E, Amended Petition for Declaratory Ruling. The following questions were presented, in addition to the original three questions presented on December 9, 2014:

4. Whether the Department of Social Services (DSS), despite the non-adoption of regulations governing the Acquired Brain Injury/Traumatic Brain Injury Waiver Program (ABI Waiver), developed and applied certain published regulations in 1999 (1999 Operation Policy) and certain Social Work Policies.

5. Whether the Department of Social Services (DSS), in developing and applying said 1999 non-adopted regulations, distributed them to Licensing Regulation and Review Committee, the Office of Attorney General or the Secretary of State.

6. Whether the Department of Social Services (DSS) in applying said 1999 non-adopted regulations, impacted providers record keeping requirements and defined who is responsible for determining how services are provided to customers, without ever going through the regulatory adoption process.

7. Whether the Department of Social Services (DSS) in promulgating proposed regulations Connecticut General Statutes §17b-260a-1 to §17b-260a-17, with a Notice of Intent (NOI) published on March 26, 2013, in the Connecticut Law Journal with an effective date of April 1, 2013, despite reference errors as herein referred, failed to include in said NOI any reference to previous and current policies in effect and governing the ABI Waiver Program.

8. Whether the Department of Social Services (DSS) applied policies developed and/or in use by the Department of Social Work since 2009, but failed to publicize them to the general public; distribute them to consumers, providers, Licensing Regulation and Review Committee, the Attorney General or Secretary of State.

Ruling

Question One: Whether the regulations proposed by said Agency pursuant to Connecticut General Statutes §4-168, and being §17b-260a and §17b-260b were properly adopted pursuant to the Connecticut Uniform Administrative Procedure Act.

Sections 17b-260a and 17b-260b are statutes, not regulations. It will be assumed that the Petitioner is asking whether sections 17b-260a-1 to 17b-260a-17, inclusive, of the Regulations of Connecticut State Agencies (the "ABI Waiver Regulations") were properly adopted pursuant to the Connecticut Uniform Administrative Procedure Act ("UAPA").

The Petitioner asserts that the ABI Waiver Regulations were not properly adopted for the following reasons: A) the Department did not comply with the requirement of Connecticut General Statute §17b-10(b) to publish notice of intent to adopt the ABI Waiver Regulations within twenty day after adopting the policy; B) the Department did not comply with the requirement of Connecticut General Statutes §4-168(a) to publish notice of intent at least thirty days prior to adopting the ABI Waiver Regulations; C) the ABI Waiver Regulations have not been properly noticed because of a typographical error citing to §17b-260b, rather than §17b-260a, in the Connecticut Law Journal; and D) the Department did not submit the ABI Waiver Regulations to the Legislative Regulation Review Committee ("LRRC") within one hundred eighty (180) days of the notice's publication in the Connecticut Law Journal

The ABI Waiver Regulations have been properly adopted as follows:

A) The Department is operating under the ABI Waiver Regulations as a policy, in accordance with section 17b-10(b) of the Connecticut General Statutes. *See* Exhibit F, §17b-10(b) of the Connecticut General Statutes, in effect until June 30, 2013.

Section 17b-10(b) of the Connecticut General Statutes enables the Department to operate under a policy while the Department is in the process of adopting the policy as a regulation. *Id.* Until June 30, 2013, it provided that the Department

> shall adopt as a regulation in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8... but the department may operate under such policy while it is in the process of adopting the policy as a regulation, provided the Department of Social Services prints notice of intent to adopt the regulation in the Connecticut Law Journal within twenty days after adopting the policy. Such policy shall be valid until the time final regulations are effective. *Id.*[1]

The ABI Waiver Regulations were promulgated as new policies necessary to conform to the requirement of an approved federal waiver. The statute in effect at the time was clear that, as long as the Department printed notice of its intent to adopt the policy as a regulation in the Connecticut Law Journal within twenty days after adopting the policy, the Department could operate under such policy until the final regulations become effective. *Id.*

In fact, the Department gave more notice than it was required to give. The Notice of Intent to Adopt Regulations ("NOI") was published in the Connecticut Law Journal on March 26, 2013, five days before the policy went into effect on April 1, 2013. *See* Exhibit G, Notice of Intent to Adopt Regulations. The Department, therefore, complied fully with section 17b-10(b)

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[1] This section is virtually identical to the current version of section 17b-10(b) of the Connecticut General Statutes. The only difference is that that the Department is now required to post the policy on the eRegulations System prior to adopting the policy, rather than printing notice in the Connecticut Law Journal within twenty days after adopting the policy.

of the Connecticut General Statutes, which requires that notice be published no later than 20 days after adopting the policy.

B) Again, because the ABI Waiver Regulations were a new policy "necessary to conform to a requirement" of the approved ABI Waiver, the Department issued an NOI in accordance with section 17b-10(b) of the Connecticut General Statutes in effect at the time. *See* Exhibit F. As described in the previous response, the Department complied with the notice requirement in section 17b-10(b) of the Connecticut General Statutes.

C) The ABI Regulations have been properly noticed, even though there is a typographical error in the NOI that was published in the Connecticut Law Journal on March 26, 2013. The NOI cites to section 17b-260b, rather than to section 17b-260a of the Connecticut General Statutes as the statutory authority for the proposed regulations. *See* Exhibit G. Nevertheless, there is no question that the NOI is announcing the Department's intent to adopt regulations for the ABI waiver program. There are multiple references to the ABI waiver program in the opening paragraph of the NOI and in the Statement of Purpose. *Id.* Even with the incorrect statutory citation, therefore, there can be no confusion about the NOI's purpose. The Department provided sufficient notice to the public of its intention to adopt regulations concerning the ABI waiver program, and that the implementation date for the policy was April 1, 2013. *Id.* The typographical error, therefore, does not invalidate the policy under which the Department is operating.

D) The Department acknowledges that it did not submit the ABI Waiver Regulations to the LRRC within 180 days after publication of the NOI, nor did it notify the LRRC of the reasons for its noncompliance and the date by which it would submit the proposed regulations. *See* Exhibit F. The Department's failure to comply with this provision, however, is not a basis upon which to invalidate the policy under which the Department is operating.

The Connecticut Supreme Court has provided guidance concerning whether the time frame in a statute is mandatory in which case the failure to comply with it invalidates an agency's action:

> The test to be applied in determining whether a statute is mandatory or directory is whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience.... If it is a matter of substance, the statutory provision is mandatory. If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially where the requirement is stated in affirmative terms unaccompanied by negative words.... Such a statutory provision is one which prescribes what shall be done but does not invalidate action upon a failure to comply." (Citations omitted; internal quotation marks omitted.) *Jones v. Mansfield Training School,* 220 Conn. 721, 727, 601 A.2d 507 (1992). A reliable guide in determining whether a statutory provision is directory or mandatory is whether the provision is accompanied by language that expressly invalidates any action taken after noncompliance with the

provision. *Leo Fedus & Sons Construction Co. v. Zoning Board of Appeals,* 225 Conn. 432, 440, 623 A.2d 1007 (1993).

Katz v Comm'r of Revenue Servs., 234 Conn. 614, 617, 662 A.2d 762, 764 (1995). There is nothing in section 17b-10 of the Connecticut General Statutes indicating that, if the Department failed to comply with the 180-day period, its regulation would become invalid. Accordingly, although the legislature may have intended for these matters to proceed expeditiously, there is nothing in the statute to indicate that it intended the draconian remedy of invalidating the operational policy, which has the effect of a regulation.

For all of the reasons set forth above, the ABI Waiver Regulations have been properly noticed and are in effect while the Department is in the process of final adoption.

Question Two: Whether the regulations proposed by said Agency, pursuant to Connecticut General Statutes §4-168 and being §17b-99, were properly adopted.

Section 17b-99 is a statute, not a regulation. It will be assumed that the Petitioner is asking whether proposed sections 17b-99(d)-1 to 17b-99(d)-6, inclusive, were properly adopted.

There are currently no regulations in effect for section 17b-99 of the Connecticut General Statutes. Although the Department has presented a proposed regulation to implement this section to the LRRC, the LRRC rejected it without prejudice, despite the Legislative Commissioner's Office's recommendation for approval. Accordingly, a declaratory ruling cannot be issued on the validity of a regulation that has not yet been adopted.

Contrary to the Petitioner's claim, the Department does not rely on regulations to extrapolate findings of overpayments against providers. Rather, section 17b-99(d) (3) of the Connecticut General Statutes authorizes the Department to extrapolate findings of overpayment under certain circumstances. The Department acts in accordance with the statute when it extrapolates overpayments. *See* Conn. Gen. Stat. §17b-99.

Question Three: Whether 17b-10 can be applied to the ABI Medicaid Waiver Program.

Yes, section 17b-10(b) of the Connecticut General Statutes is applicable to the promulgation of regulations under the ABI Waiver Program. As stated above, section 17b-10(b) of the Connecticut General Statutes provides that the Department shall adopt as a regulation, in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8. *See* Exhibit F.

The ABI Waiver Program operates under an approved federal waiver which was initiated in accordance with section 17b-8 of the Connecticut General Statutes. The ABI Waiver Regulations were promulgated as new policies necessary to conform to the requirements of that waiver. Section 17b-10(b) of the Connecticut General Statutes, therefore, is applicable to regulations promulgated pursuant to the ABI Waiver.

Questions Four – Eight:

The Department has determined that questions four through eight do not constitute questions that meet the standard for questions that are properly answered through issuance of a declaratory ruling.

Section 4-176(a) of the Connecticut General Statutes provides that any person may petition a state agency for a declaratory ruling "as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency." *See* Conn. Gen. Stat. §4-176(a). These are the "ground rules" or standards that a petitioner must meet for bringing a petition for a declaratory ruling before a state agency. *Peruta v. Comm'r of Pub. Safety*, 128 Conn. App. 777, 785, *cert. denied*, 302 Conn. 919 (2011).

In Peruta, the Appellate Court reviewed the trial court's granting of the Department of Public Safety's motion to dismiss the plaintiff's action for declaratory judgment for lack of subject matter jurisdiction. The plaintiff in that case emailed nine questions to the Department of Public Safety, and later delivered a document with the same questions.[2] The Department of Public Safety's legal affairs unit sent the plaintiff a letter stating that it was "unable to provide answers to his questions" and suggested that he seek the advice of an attorney. The plaintiff then filed the declaratory judgment action.

The Superior Court had granted the Department of Public Safety's motion to dismiss, finding that the Plaintiff had failed to exhaust his administrative remedies by not first requesting a declaratory ruling from the Department of Public Safety. *Id.* at 779. It ruled that the email the Plaintiff sent to the Department of Public Safety with nine questions regarding the carrying of a firearm was not a valid petition for a declaratory ruling. *Id.*

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[2] In his e-mail, the plaintiff asked the following questions: (1) "What state statute(s), regulation(s), policies or case law(s) mandates concealment of a firearm while being carried by an individual in possession of a valid license to carry same?"; (2) "What state statute(s), regulation(s), policies or case law(s) prevents the wearing of an exposed firearm while being carried by an individual in possession of a valid license to carry same?"; (3) "What state statute(s), regulation(s), policies or case law(s) establish the standards for concealment of a firearm while being carried by an individual in possession of a valid license to carry same?"; (4) "What state statute(s), regulation(s), policies or case law(s) establishes the simple act of carrying of a holstered firearm, by an individual in possession of a valid permit/license to carry same, into a restaurant as an element of a crime?" (5) "What state statute(s), regulation(s), policies or case law(s) establishes the simple act of carrying of a holstered firearm, by an individual in possession of a valid permit/license to carry same, into an establishment that serves alcoholic beverages, (such as a bar or restaurant), as an element of a crime?"; (6) "Is there any existing criminal case law where the simple act of carrying of a concealed holstered firearm, (by an individual in possession of a valid permit/license to carry same), into a restaurant meets the necessary elements contained in [General Statutes §] 53a–181—Breach of peace in the second degree?"; (7) "Is there any existing criminal case law on the simple act of carrying of an exposed, holstered firearm, (by an individual in possession of a valid permit/license to carry same), into a restaurant meets the necessary elements contained in [§] 53a–181—Breach of the peace in the second degree?"; (8) "What state statute(s), regulation(s), policies, case law(s) or situations grant or provide the authority to a local police officer or department to seize and/or confiscate a pistol permit from the holder of same?"; (9) "What state statute(s), regulation(s), policies, case law(s) or situations grant or provide the authority to a local police officer to determine 'MATURE JUDGMENT' as the phrase pertains to carrying a firearm by a person permitted or licensed to do so?"

The Appellate Court affirmed the trial court's decision, ruling that the Plaintiff's email was not a petition for a declaratory ruling -- it needed to "set forth specific circumstances and seek to have the department apply a regulation, statute or final decision on a matter in its jurisdiction to those specific circumstances," and it failed to do that. *Id.* at 785- 786.

The Court stated:

> [T]hrough a series of nine questions, the plaintiff asked the department to *identify* and to provide the source of legal authority preventing, in whole or in part, a valid permit holder from carrying a firearm in the state, openly or exposed, and from doing so in a 'restaurant' or 'an establishment that services alcoholic beverages....' The plaintiff did not seek to have the department apply or examine a regulation or statute with respect to a specified set of circumstances."

Id. at 785-86 (emphasis in original).

Similar to the questions at issue in Peruta, questions four through eight posed by the Petitioner in his Amended Petition for Declaratory Ruling simply ask for information. They do not question the validity of a regulation nor do they seek to have the Department apply or examine a regulation or statute with respect to a specified set of circumstances. Accordingly, the Department is deciding not to issue a declaratory ruling on questions four through eight because these questions do not constitute a petition for a declaratory ruling. *See* Conn. Gen. Stat. 4-176(e)(5).

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

Roderick L. Bremby
Commissioner of Social Services

May 28, 2015

Certificate of Mailing Form

Declaratory Ruling – Tariq Abdulaziz

I certify that a copy of the above referenced Declaratory Ruling was sent to the following person(s) on:

May 29, 2015.

[ ] Hand Delivered
[X] Mailed
[ ] Other (specify)

Petitioner:

Tariq Abdulaziz
23 Kate Way
Windsor Locks, CT 06096

Petitioner's Attorney:

I. David Marder
76 South Frontage Road
Vernon, CT 06066

Joseph A. Smiga

5/29/15
Date

No: HHBCV15-6029943 S	: SUPERIOR COURT
NEUROSTRATEGIES, INC. And TARIQ ABDULAZIZ, Ph.D, M.S., MBA	: JUDICIAL DISTRICT OF NEW BRITAIN
v.	: AT NEW BRITAIN, CONNECTICUT
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES, RODERICK l. BREMBY, COMMISSIONER OF SOCIAL SERVICES	: November 25, 2015

B E F O R E: The Honorable Carl J. Schuman, Judge

A P P E A R A N C E S:

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(In open court 10:00:31 AM).

THE COURT: Good morning. Please be seated.

ATTY. BARBER: Good morning, Your Honor.

THE COURT: This is the matter of NeuroStrategies, Inc., at al. v. The Department of Social Services. May I have the appearances of counsel, beginning with plaintiff's counsel.

ATTY. MARDER: Yes. Attorney David Marder, M-a-r-d-e-r.

THE COURT: All right. Good morning.

ATTY. MARDER: Present, and my client is present.

THE COURT: Good morning.

THE PLAINTIFF: Good morning.

THE COURT: For the --

ATTY. BARBER: And --

THE COURT: -- department?

ATTY. BARBER: -- Assistant Attorney General Hugh Barber for the defendant.

THE COURT: Good morning, counsel.

ATTY. BARBER: Good morning.

THE COURT: I've read all the papers, and I'm reasonably familiar with the issues.

I want to take up the motion to dismiss first because the court has to determine whether it has jurisdiction before it can do anything further. It's your motion, Mr. Barber. I'll hear from you first.

ATTY. MARDER: Excuse me, Your Honor.

THE COURT: Yes, sir.

ATTY. MARDER: Just before we start, I'd like to just make a comment relative to an ıssue that had been previously raised by Attorney Barber. It's not relevant to today, but I just want to be clear on the record.

In a previous motion, Attorney Barber referenced certain, what he claimed to be confidential informatıon that I submitted as part of an exhibit and questioned whether I had releases.

I want to put on the record, and Attorney Barber has received a letter from me containing all of those releases and ısn't concerned about that issue, but I just wanted to make --

THE COURT: Okay.

ATTY. MARDER: -- the Court aware that we did have releases when that information was presented, and counsel was presented with it.

THE COURT: I see.

ATTY. MARDER: The second point is. I understand there's some witnesses here that wıll, may -- Your Honor indicated that testimony would be allowed. And ın terms of procedure, whether perhaps we should have those wıtnesses testify before -- I'm just asking --

THE COURT: Well, I want --

ATTY. MARDER: -- that question.

THE COURT: -- want to hear from Mr. Barber first. It's his motion. Mr. Barber.

ATTY. BARBER: Yes. Thank you, Your Honor. We're, we're here on an appeal from a declaratory ruling. The declaratory ruling -- I know you read the papers, I'll be very quick -- essentially read that proposed regulations implementing the ABI waiver program, medicaid program, are not final, and they're not finally promulgated. However, the agency is authorized to operate under said regs pursuant to Conn. Gen. Stat. 17b-10, provided -- it's provided a Law Journal notice that was timely, this intention to operate under those proposed regs. And, and in the Law Journal notice indicated it was necessary to conform to a federally approved waiver, which is the basics for DSS operating under the proposed regs.

THE COURT: Can, can you explain to me what the word "waiver" means in this context? It, it's confusing to me, as somewhat of a newcomer to this particular area. What is it that's being waived?

ATTY. BARBER: It's, it's -- I'll try to be clear and concise as I can.

A federal statute Your Honor, and Medicaid statute imposes a number of requirements on state Medicaid agencies including uniformity, and they're treated as one in the same. (Mic Interference) I'm sorry.

A waiver allows it to selectively target certain populations. So there's a lack of uniformity, and there are conditions on approval of the waiver that must be satisfied. The agency has submitted a waiver application which has to

be approved by the Federal government, and in, in return -- in addition to lack of uniformity, you're allowed to target certain populations, and you're, you're allowed to offer benefits that are not otherwise coverable under the Medicaid program. Services that are not medical, strictly medical in nature that are designed to help a disabled individual live at home, work, and subject to cost effectiveness and other requirements that have to be approved by the Federal secretary.

The state statute, 17b-10, authorizes DSS to operate under proposed regs necessary to conform to an approved waiver. There's another -- several other statutes that authorizes DSS to operate various waiver programs, and there's a statute cited in my brief that specifically authorizes the acquired brain injury waiver. I'll use the acronym ABI.

THE COURT: Okay.

ATTY. BARBER: And such a waiver has been approved. To date, there have been no --

THE COURT: For --

ATTY. BARBER: -- regs.

THE COURT: -- for, for Connecticut?

ATTY. BARBER: Yeah, Connecticut.

THE COURT: I see. I see.

ATTY. BARBER: Each waiver is state specific.

THE COURT: I see.

ATTY. BARBER: And you can limit the number of

individuals to be served and there's a lot of flexibility.

Connecticut has an approved waiver. That waiver was actually approved a number of years ago. That has been operating basically in an illegal vacuum. As you know, cases like *Persico*, a leading state supreme court case say that informal policy doesn't have the force of, of law. If you want to, to implement law or policy, you need a regulation.

Indeed, that's the very purpose of 17b-10 (indiscernible) the agency to promptly either adopt rules that have the force of law, even though they haven't completed the process necessary to conform to approved waiver or, alternatively, necessary to conform to the requirements of federal law. As you might imagine, federal law in the Medicaid program changes not uncommonly.

In this case, the issue is not a change in federal law, a requirement of federal law. It's simply the requirement to conform to an approved waiver by operating under regs that have the force of law, and so you have binding rules that under state law are, are legally effective.

The agency gave a Law Journal notice in March of '13 of its intention to operate under proposed ABI regulations. That notice was timely. It was before the April 1 proposed effective date. The statute only -- 17b-10 only requires it be within 20 days thereafter, and it recited it was being operated under as necessary to conform to the, to the waiver program.

The applicant, the petitioner in this case asked for a declaratory ruling after being informed that the department was interested in reviewing various records that he had or didn't have documenting the extent of services provided. As a requirement of Federal Medicaid law -- I'm sorry. I keep -- I apologize.

(Microphone adjustment).

ATTY. BARBER: It -- I'm not sure what my last thought was.

But we're implementing the waiver program in order to have a legal basis to run the ABI waiver program. Frankly, there were a number of years that had gone by where there was no basis in state law or a legally enforceable basis in state law to said rules of eligibility, to describe the amount of benefits, to state requirements are on providers, and the very purpose of promulgating the regs and operating under 17b-10 is to establish a lawful basis for administering the program while those regs continue through the reg-adoption process.

The petitioner asked for a declaratory ruling after being informed that we were interested in reviewing various records that he should have maintained, first, pursuant to Provider Agreement. And federal law requires state Provider Agreements with entities. That they maintain records documenting the extent of services provided. That language in the existing Provider Agreement was quite broad, quite general, and basically said you have to maintain records

documenting services.

The proposed ABI waiver regs had a section that was more specific. It talked about documenting the name of the provider, the name of individual, the date of service, the start date, the end date, and a brief, brief summary of services provided. The -- I'll, I'll call him "Tariq". I used -- it's their terminology. They use --

THE COURT: I, I know. I find that very awkward.

ATTY. BARBER: It's a little --

THE COURT: I would suggest the plaintiffs.

ATTY. BARBER: The plaintiffs. I'll, I'll use the word "plaintiffs". I'll use the word "plaintiffs".

Anyway, they asked for a declaratory ruling on three questions: One is whether the proposed ABI waiver regs were finally promulgated, and the answer to that was no, because they hadn't gone through the process. They had also some other concerns about the adoption of those proposed regs which were highly technical in nature, which the agency indicated were directory and would not affect the regs once they were finally promulgated. It acknowledged that they had not been finally promulgated. Therefore, the regs themselves were not finally adopted.

They did indicate and did rule that it could operate under those regs pursuant to 17b-10(b) for the three reasons specified: One, timely notice; and (b) necessary to conform to the federal, approved federal waiver by adopting state rules. The third issue was whether proposed audit regs,

proposed pursuant to an entirely different statute, were in effect, and the agency ruled, no, not finally promulgated, and, no, we're not operating under them. There's no claim that we could operate under them pursuant to 17b-10(b). So the agency --

THE COURT: Are, are these regs that require more specific documentation, are those audit regs?

ATTY. BARBER: No, the regs -- the audit regs are more procedural in how you conduct an audit. They're in the, they're in the record.

I think the particular regs that we're really focusing on in this proceeding are part of the ABI waiver regs, which are -- they're not really audit regs, but they are record-documentation requirements, and it's 17b-260a-16, I believe is the one that has more specific record-retention requirements.

The agency agreed to issue a declaratory ruling. It was based on --

THE COURT: You, you said these ABI waiver regs are not audit regs, but, and then I missed --

ATTY. BARBER: The rules governing the program, the ABI waiver program. They're, comprehensively, who is eligible, or what's -- the financial eligibility rules are, what are the problematic eligibilities --

THE COURT: But, particularly, 16 -- you used the phrase. I just missed it. I was hoping you could recall it. You said they're not audit regs but...

ATTY. BARBER: They are comprehensive regs governing the program includes -- including who is eligible, what kind of services may be provided that are different again from traditional Medicaid services. How they claim --

THE COURT: Excuse me. Do you mind if we go back.

ATTY. BARBER: Yes, sir.

THE COURT: I just missed a phrase that Mr. Barber said. It was a couple sentences ago when he said that there were --

THE COURT MONITOR: Was it before ABI? Particular rights focus on, and then there was a part --

THE COURT: He said they were not audit regs but, and then I think it was a two-word phrase.

ATTY. BARBER: No. They were regs implementing the ABI waiver program.

THE COURT: Mmm-hm.

ATTY. BARBER: To date, there have been no regs implementing that program, and that is a subset of the Medicaid program. It's an ABI waiver program. It has distinct eligibility rules. It has distinct rules as to who is eligible and that requires a cost-effective plan of care. It has rules regarding what kind of services can be covered. And, and one of the rules, one of many rules in the program is what kind of records participating providers must maintain to document the extent of services provided, and that particular provision is in 17b(a) -- 17b-260a-16, I think. I'm quoting that right. It's in the record.

That's the provision that, that the plaintiffs apparently find most offensive.

THE COURT: Mmm-hm.

ATTY. BARBER: Because apparently out of a concern that when we do our audit, this regs, perhaps, arguably, would impose additional requirements in comparison to the existing requirements that already existed as a result of the Provider Agreement. It's more specific as to what kind of records must be maintained to document services.

So, basically, that's the agency's ruling, and they took an appeal from that ruling and the complaint is in the record. And the only allegation of aggrievement that I see in the complaint is in paragraphs 6 and 7, where they first, in 6, they alleged they were audited, and we dispute, by the way, that in -- and documents in the record dispute that it was an audit, but they claim, allege that there was an audit. And then they allege in broad conclusory terms we're aggrieved by the audit protocol. End of allegations. There is no specific -- well, first, briefly reviewing the law of aggrievement. The law of aggrievement requires that the plaintiff first prove -- plead in their complaint specific facts that if proven could constitute aggrievement. It's clear that conclusory allegations are not legally sufficient. That you need specific factual allegations showing that the aggrievement, which is, as I'm sure you know, specific, personal and legal interest have been specially and personally injured as a result of the conduct.

And so the query then: Where is the specific factual allegation of aggrievement? It's a, just a purely allegation of aggrievement. That we're aggrieved by the audit protocols with description of what those protocols are, no description of how -- whatever those protocols are, what specific, personal and legal interest was affected, how it was injuriously affected, and simply the conclusory allegation.

We, therefore, moved to dismiss because under the case law it's a two-part test. You need to plead with specificity the particular factual basis for aggrievement. If and only if that is satisfied, then the plaintiff also has the burden of proving aggrievement. We allege that they neither sufficiently pled nor can prove aggrievement.

Notably, there's no allegation in the complaint, there's been any findings made as a result of that record review. There's no allegation of any financial penalties. That review was conducted, initiated back in June of '14. So it's been pending for quite a while now. And, therefore, the, the factual pleadings of aggrievement are insufficient. The board conclusory allegation: We are aggrieved -- which is basically what you have -- is not enough. His status as a party to the proceeding below is also not enough. So that's essentially our first argument.

Now there are -- we note, in his reply brief, the plaintiff tries to make a number of arguments as to why they're aggrieved. That's not sufficient. The obligation

under the case law as in the complaint to plead facts in the complaint constituting aggrievement. This is a -- an administrative appeal itself is a waiver of sovereign immunity. As part of that waiver of immunity, there's a requirement that the person be aggrieved. 4-183 requires aggrievement. It's a subject matter jurisdiction requirement, and it -- and the case law indicates you need particular facts showing that specific, legal interests have been injuriously affected, and, and that's not sufficiently pled. As to the ruling that the audit regs are, are not in effect, I mean what possible aggrievement could there be for that? And the ruling, the ruling itself says they're not in effect.

It's unclear whether paragraphs 6 and 7 frankly are referring to the ruling that says the audit regs are not in effect, or if it's referring to the record, record-retention requirements of the ABI waiver regulations.

THE COURT: Well, it does cite those regulations.

ATTY. BARBER: It does cite them, but, but it talks about audit protocol.

THE COURT: It's confusing.

ATTY. BARBER: So, and there's nothing in the ABI waiver regs that talk about audit protocol. So, again, and it's their -- their burden to satisfy aggrievement.

And, and one other point. Is in their brief in opposition to our motion to dismiss, the plaintiff seems to focus primarily on the argument that there's nothing in

federal law that requires state regulations to be adopted. A couple responses to that argument. One, it seems for the merits not to the question of aggrievement. Secondly, it's erroneous and irrelevant because the agency never claimed that a requirement of federal law requires these regulations to be adopted. It was, it was instead operating under this prong of 17b-10(b). There are two prongs. Either necessary to conform to a federal statute or to conform to an approved waiver. The agency has always claimed that it was necessary to implement the approved waiver. And cases such as *Perisco* says you adopt rules and therefore implement the waiver program rules by regulations, and that's the very purpose of 17b-10 to allow that to be done expeditiously. A case, such as *Richard*, is also cited in our case stand for that proposition.

So in terms of the sufficiency of the pleading, that's basically our argument. If you agree with our argument on the sufficiency of the pleading, that ends the matter. There's no -- there's no need to go further on whether plaintiffs can prove aggrievement.

THE COURT: Mmm-hm.

ATTY. BARBER: If we proceed further, it's respectfully the plaintiff's burden to prove to show subject matter jurisdiction, and it would be their burden to prove that they are in fact aggrieved.

THE COURT: Right. In that regard, the plaintiff did submit two affidavits. They were submitted late, but I

accepted their representation that they were intended to be submitted with their opposition to the motion to dismiss. These two affidavits were filed, I think on November 2nd in pleading No. 120. I don't know if, if you have those --

ATTY. BARBER: I'm not sure if I brought those affidavits with me, Your Honor.

THE COURT: Exhibit 1 and Exhibit 2. I wanted to ask about Exhibit 2. Exhibit 1, I'm not going to ask about because it's an affidavit that seems to go to the merits. But Exhibit 2 is an affidavit signed by Plaintiff Abdulaziz. Do you have that in front of you?

ATTY. BARBER: I'm sorry. I don't have it.

THE COURT: Mmm-hm. Well, I -- have, have you read it and do you recall generally what it says?

ATTY. BARBER: I'm sorry. I did read it, but --

THE COURT: Okay.

ATTY. BARBER: -- personally, I do not recall.

ATTY. MARDER: Your Honor, I have a copy I can --

THE COURT: Thank --

ATTY. BARBER: -- provide counsel.

THE COURT: -- thank you, sir.

ATTY. BARBER: Thank you.

THE COURT: Thank you very much. I want to focus a little on paragraphs 6 through 11.

(Microphone adjustment).

ATTY. BARBER: Yes, I have reviewed them.

THE COURT: All right. I certainly understand your

argument that we shouldn't get to this because there haven't been sufficient allegations. But assuming for the sake of discussion I got beyond that and were to consider whether the plaintiff has proven or can prove aggrievement, wouldn't that, those paragraphs suffice?

ATTY. BARBER: I don't believe so, Your Honor. First of all, it -- there's an assumption therein that the provider has a legal interest in basically not being subject to regulation changes. This is a highly regulated industry. Regulations are adopted. Providers are not protected or insulated by whatever the terms of a 2004 Provider Agreement may have said.

Secondly, there's no allegation here. First, in terms of the monthly reporting, which is an additional obligation of, of the revised regs. That's not an issue of whether the documentation requirements were satisfied. The -- one section of the -- of section 16 of the ABI words, it states the documentation requirements, and then, and then it states additional requirements of monthly reporting. So whether or not the provider would be subject by -- would be harmed by documenting the extent of services provided, that really doesn't go to the monthly reporting issue.

And, third, there's really no allegation that in this case it would have made a difference. That whether his records were sufficient to meet the former standards of the Provider Agreement, which are broad and conclusory and subject to interpretation as to what they mean, but not

sufficient to meet the more specific requirements effective April 1 of '13.

THE COURT: How about paragraph 11? Does -- doesn't that suggest that --

ATTY. BARBER: That goes to the monthly reports not to the documentation requirements.

I mean that is an additional requirement under the reg, but that doesn't go to the question of whether or not there was adequate documentation the extended services provided, which is arguably the claim of aggrievement and are -- I'm trying to read article, paragraphs 6 and 7 of the complaint, as vague as they are, and it, it does reference the ABI waiver regs, and it says we're aggrieved by the audit protocol. That audit, by the way, covered periods of time that's predated April 1, '13. It predated the new regs, and then extended beyond the new regs.

There's no allegation in the complaint that the records were good enough for one period but not good enough for another. And, in fact, if we have testimony, the testimony would be -- if I can make an offer of proof -- that the records were wholly insufficient no matter what standards applied.

THE COURT: Well, let, let me ask this. If the plaintiff had alleged and could prove that as a result of the ABI waiver, proposed ABI waiver regs -- in particular, we'll call it section 16. So we don't have to recite the entire cite. They now have to provide reports or

documentation that cost them, we'll say $10,000 dollars a month more than the cost of providing documentation under the Provider Agreement. Would that -- wouldn't that be sufficient allegations and proof of aggrievement?

ATTY. BARBER: We don't believe so, Your Honor. I think the, the -- the question is you, you have to show the aggrievement is as a result of the ruling, and it all has to be traced back to the ruling.

The ruling in this case was simply that the proposed regs could be operated under pursuant to 17b-10. The proposed regs are -- are otherwise legally binding, and, and really the only difference is the agency now has, has a decision that says: Yeah, that they're in effect. That the -- you know, the legal argument they were already in effect dating back to April 1 of '13.

The -- in, in terms of how this relates to articles -- paragraphs 6 and 7 of the pleading, again, there's an allegation here that the monthly reports impose a burden, but that doesn't relate to aggrievement as a result of an audit protocol.

THE COURT: If the plaintiff had alleged that as a result of the declaratory ruling, the department can rely on the ABI waiver regs as policy pending review, and that that -- and it's valid, a valid policy, at least for the time being, and that as a result of these ABI waiver regs, we now are required to provide documentation that costs us $10,000 dollars more than we had to spend under the provider

agreement, wouldn't that be a sufficient allegation; and if proven, proof that the declaratory ruling has caused harm to the plaintiff?

ATTY. BARBER: If that type of allegation had been made in the complaint, arguably, yes.

THE COURT: Mmm-hm. Okay.

ATTY. BARBER: And I don't, respectfully, I don't see that allegation in the complaint. All I see in the complaint is a purely conclusory allegation without reference to factual particulars, without identifying the legal interests involved that the plaintiffs have been aggrieved by an audit protocol which is itself undefined.

THE COURT: All right. Those are all the questions I have at this point.

As you say, it is the plaintiff's burden. So I think what I would like to do would be to turn over to the plaintiff, see how the plaintiff wants to proceed and certainly give you a chance to be heard as we go along.

ATTY. BARBER: Thank you.

THE COURT: Mr. Marder. Good morning, sir.

ATTY. MARDER: Thank you, Your Honor. In my, my remarks, and I will try to interject some responses to what counsel has stated, but I just want to start initially with the declaratory ruling.

The declaratory ruling stated the section 17b-260a-1 through 17b-260a-17 have been validly adopted. The commissioner questions the fact that we used the term

regulations versus statutes. I will indicate that in other documentation that referenced by assistant counsel for the commissioner also uses the word regulations. So, just so we're talking about the same thing. It's really those proposed regulations whether they're statutes, whether their regs really is the subject matter.

He indicates that they're validly adopted, and that's all of them not a segment of them.

THE COURT: Validly adopted as policy.

ATTY. MARDER: As policy.

THE COURT: In, in the interim until they're --

ATTY. MARDER: That's correct.

THE COURT: -- unless --

ATTY. MARDER: And they --

THE COURT: -- until they're finally approved.

ATTY. MARDER: That's right. Until they're finally adopted under the Administrative Procedures Act.

THE COURT: Right.

ATTY. MARDER: But they're acting under them with respect to 17b-10(b).

THE COURT: Right.

ATTY. MARDER: So counsel had attempted to indicate that somehow the reporting requirement in those proposed regulations somehow doesn't -- you know, is different than the reporting requirements. But they're all the entire package of what the commissioner's ruling has stated is valid and, and subject -- and, and my client is subject to.

So you can't separate reporting requirements whether it's documentation that may take a few minutes versus monthly reports which, as Exhibit A, as Your Honor pointed out, could be substantially greater. But let me -- so that is just one response to his, to the attempt to try to separate the two.

The -- both parties in their briefs have briefed the standards, which the court is well, very well aware of. The only thing I would like to point out is that, and it comes through in counsel's comments, that in addition to the actual allegations, there are two principles of interpretation that a court -- and Your Honor is aware of it, but I just want to put it on the record -- and that is that one -- any fact that has to be construed most favorable to the plaintiff or non-pleader. And more importantly, I think, or just as important is that facts can be, have to be taken as alleged in the complaint, but also include those facts that are reasonably implied from the allegations. And that I believe comes to play in what we have in, in interpreting this complaint as to whether we've met our burden.

Our burden, and this would apply to both rulings No. 1 and 3 of the, of the declaratory ruling, since No. 1, I believe is, we read as kind of moot.

THE COURT: Mmm-hm.

ATTY. MARDER: Is that we need to demonstrate a specific, personal legal interest in the subject matter of

the decision. Well, the decision was that the entire package of regs were valid. All documentation, including monthly reports, have to be -- are required of each party. And the second prong being that -- that this specific, personal legal interest has been specifically and injuriously affected by the decision.

We are submitting that the, that the allegations are sufficient with the additional (indiscernible) of certain facts most favorable to the plaintiff and along with certain reasonable and necessary implied facts, that we've met our burden.

Number one, paragraph 5, indicates that the plaintiffs are, are -- have provided services under a provider agreement since January 15th of 2004, under the ABI waiver program, and that is an agreement between my clients and the State of Connecticut. It isn't just a, you know, informal request to provide services. He has to -- he has to comply with the provisions of that Provider Agreement. And that the critical one is paragraph, paragraph 9, which is in, alleged in paragraph -- I mean outlined, I should say, in paragraph 23 of the complaint, and that is this is the document --

(Outside noise disruption).

ATTY. MARDER: This is the documentation paragraph in the Provider Agreement of 2004. It's --

THE COURT: Yes. Go, go ahead. I'll --

ATTY. MARDER: Okay. It's set forth verbatim.

THE COURT: -- I'll concentrate on you.

ATTY. MARDER: Okay. It's set forth verbatim in paragraph 23, and, and throughout the brief by plaintiff -- by defendant. It's referred to as the Provider Agreement, and we contend that that is the operative document.

There is reference by the defendant in his brief that somehow there was a Provider Agreement signed or amended in 2013. There isn't one iota of documentation in the record relative to 2013, a 2013, and the, and the defendant never indicates that the 2013 document in any way differs from the 2004. But in terms of their referencing to it, I submit that the 2004 document, the Provider Agreement is the one that we've alleged in paragraph 23.

Now the next paragraph that we contend is, is further factual allegations of our complaint is paragraph 6, and that is -- as Your Honor indicated, we reference in there that the, all of the proposed regulations that -- and we allege that we had been advised that the audit standard would be applied after April 1st -- well, I don't mention the April 1st date. But he was advised that the audit standard would be those set forth in the proposed regulations. That was in preparation for an audit that took place on June 16th, 2014.

Now counsel calls it a record review. I submit it's an audit simply because there are consequences. They may not have publicized what those consequences are, and there may not be any consequences if they find that the documentation

is appropriate, but they are, they are -- in our, in our view, they are an audit.

Now in the record there is an exhibit. In the record, it's on page 59 through 60, 62 through 63, and 386 through 387, but it's also a part of Exhibit 19, which -- to our motion for reconsideration, and that is a letter from assistant -- let me just get his title correct. Staff Attorney Smiga to myself, which indicates that pre April 1, 2013, the audit would be in accordance with paragraph 9 of the Provider Agreement and after --

THE COURT: But that's not in the complaint, though.

ATTY. MARDER: It's, it, we, we've -- we indicate Tariq was advised that the audit standards would then be those, those, those proposed regulations. That's in the last sentence of paragraph 6.

THE COURT: Right.

ATTY. MARDER: And that's the reference that we, we made there to that letter.

Now there are two things that I bring to Your Honor's attention regarding that letter. In the first sentence, counsel indicates that this letter is a response to a previous letter from me dated May 22nd and August 6th, and then he continues in the second paragraph to state that in my, in my August 6th letter, I requested: Why are social workers asking for monthly reports for 2/13? He suggests such reports should not have been made, but that -- but they were made of my client, and I --

THE COURT: Are, are we talking about the allegations or the proof, sir?

ATTY. MARDER: No, we're talking about the allegation.

THE COURT: Right.

ATTY. MARDER: That he was advised that the, that the proposed regulations would be applied to him, and I'm just referencing this letter. Because we also have --

THE COURT: Right. But the letter is not in the complaint.

ATTY. MARDER: The letter --

THE COURT: Are we talking about the allegations in --

ATTY. MARDER: Okay.

THE COURT: -- in the complaint, or are we talking about the --

ATTY. MARDER: I'm talking about the allegations.

THE COURT: Okay. Let's do that.

ATTY. MARDER: Now if you -- if you look at the exhibit, which Your Honor pointed to, which is Exhibit No. 2.

THE COURT: Right. Well, Okay. So are we going beyond the -- and, and it's fine if you want to talk about proof.

ATTY. MARDER: Well, no, I'm --

THE COURT: But I just want to know -- I just want to try to keep things in order.

ATTY. MARDER: I understand. And, and I -- so I'm suggesting that with the allegation in paragraph 5, that he's a provider. Paragraph 23. That indicates what the

Provider Agreement occurred -- that existed in 2004 required of him on recordkeeping, and then in paragraph 6, there was the change.

THE COURT: Mmm-hm. Right.

ATTY. MARDER: Resulting from the proposed regulations.

THE COURT: Right. But where, where do you say in what way you were harmed by the change and in what -- and more particularly, in what way you were harmed by the declaratory ruling?

ATTY. MARDER: Well, because, No. 1, the, the change, we referenced the proposed regulations, and if we use the interpretive standard we've discussed, I mentioned earlier; and that is, what facts can we, can be reasonably implied from the allegations, then we're saying that -- if you compare to the language of paragraph 23, which is paragraph 9 of the Provider Agreement, and the regulations that are mentioned in paragraph 6, you reasonably can imply that there is a drastic difference between the two.

THE COURT: Maybe.

ATTY. MARDER: Well, I'm, I --

THE COURT: I, I don't know. Paragraph 23, as Mr. Barber says, is, is just very broad.

ATTY. MARDER: But that is, but that is what the -- Mr. Barber didn't deny in his brief that that isn't the language.

THE COURT: Right. We --

ATTY. BARBER: So that --

THE COURT: -- we accept its language, but it's, it's not clear to me that just comparing the reg, which you've referred to in paragraph 6, with the Provider Agreement and paragraph 23, that the plaintiffs have been harmed in any way by the regulation.

ATTY. MARDER: Well, if -- we submit that by comparing the two and raising facts that are reasonably implied from that.

THE COURT: Mmm-hm.

ATTY. MARDER: That one would conclude that he would be harmed by the need to comply with that regulation, even though paragraph 9 of the 2004 regs are vague, but the vagueness of it is the, is where the difference lies. The Provider Agreement -- as paragraph 9, none of us can impute anything into it. The fact that it is vague. But it had been operated on, and, by -- excuse me. Had been operated since 2004 to the proposed regulations that were promulgate -- that were -- that the regulations that were proposed in 2013.

THE COURT: When you say paragraph 9, are you referring to --

ATTY. MARDER: That's, that's basically --

THE COURT: -- paragraph 23 of your complaint --

ATTY. MARDER: -- twenty-three outlines paragraph 9 of the proposed -- of the provider --

THE COURT: Yes, sir.

ATTY. MARDER: -- agreement.

THE COURT: Okay.

ATTY. MARDER: And they had been operating under the Medicare waiver -- ABI Medicare waiver program at -- certainly, for my clients in, from 2004 to the time when they were -- then they proposed these, these new regulations. So during all that period of time, they operated under paragraph 23, or as alleged, but it's paragraph 9 under the Provider Agreement, without issues for re -- redefining them or adding any additional requirements.

Now even -- again, even if you look at the provider -- paragraph 9. It all says that we need to maintain records to fully disclose services. There's no reference at all to monthly reports. There's no reference in terms of updated reports in that provider paragraph. But, yet, in the new regulations, that's what we get. And I submit that the comparison of that aspect of paragraph No. 9, and the reference to the new regulations in paragraph No. 6, again, one, to reasonably imply that the two are substantially different, and that's the harm that he would have to comply with.

Now the legal interest that he has is obviously the legal interest that there is an agreement between the state and my client as a provider, and the legal interest. Now the state is attempting to change that. So his legal interest in what he was, be -- what he is able to anticipate from the Provider Agreement in 2004 versus what now he has to expect in the current proposed regulations is a challenge

to that legal interest that he had -- that he had been operating on for that entire interim period from 2004 to 2013.

Now it becomes providing more detailed information, but more the monthly reports, which is the real significant issue for him is the time and the cost of monthly reports that are required.

Now there can't -- and, again, this is going back to some of the comments by counsel. They can't, they cannot be waived by the commissioner. They are -- he's charged with enforcing them. They -- obviously, these proposed regulations are not totally -- you know, have not fully been promulgated and adopted, but they are operating under them. So the allegations with the implicate -- the implied facts, the reasonably implied facts, we submit do meet the burden, our burden that we have in this case; and, two, that the, that the, that we've shown a personal, a specific, personal legal interest in the subject of the decision. And, No. 2, is that it is has been adversely affected by the proposed regulations in terms of what he was -- be able to expect and reasonably anticipate under the 2004 regulation.

And the affidavit. Now going to the proof. Being able to prove that would indicate the significant financial burden for preparing monthly reports for a 120 clients that he has. The hours involved and the cost involved to him.

THE COURT: Well, let's, let's look at the affidavit. It hasn't -- I'm not sure exactly whether this is fully

before me or not, but let me come back to that and just ask you. As to the affidavit, in paragraph 11, you do say that compliance with the proposed regulations would cost nine, ninety-nine hundred eighty-six dollars, I guess per month, but you don't say what compliance with the Provider Agreement would cost. So where is the allegation in the affidavit of, of harm from the new regulations?

ATTY. MARDER: Except that there was no requirement for provider, for monthly reports in the Provider Agreement. It just --

THE COURT: Right.

ATTY. MARDER: -- indicated that the party had to maintain records.

THE COURT: Right.

ATTY. MARDER: But now besides the recordkeeping, which is the same -- which is relatively the same in both proposals, but now there's an added element that he never had before and that is -- because you can't read paragraph, paragraph 9 of the Provider Agreement to suggest that he even needed to file monthly reports. He needed to maintain records to fully disclose his services and goods rendered under the program. I don't see how that can in any way be expanded to indicate that now he has to file a monthly report with the state, which we're contending is what is the difference between the Provider Agreement and the proposed regulation. And paragraph 11 sets out the monetary costs and the hours involved.

THE COURT: I don't know the monetary cost of complying with the Provider Agreement, though. I'm sure that wasn't without --

ATTY. MARDER: Well, but --

THE COURT: -- costs.

ATTY. MARDER: But, again, this cost is only limited to the monthly reports, Your Honor.

THE COURT: Right.

ATTY. MARDER: And that's the distinction I'm making.

THE COURT: Right. But, I --

ATTY. MARDER: I'm not --

THE COURT: -- don't know what compliance with the, with the Provider Agreement costs. So this doesn't seem to allege harm from the regulations that's new.

ATTY. MARDER: Well, we submit it is new because the proposed -- paragraph 9 doesn't require him to -- make monthly reports.

I mean you have to take the language on its face, and that language indicates that he is strictly to maintain records to substantiate his services. On the face, maintenance of records isn't -- I don't think there's a need to compare what the proposed -- what paragraph 9 states, requires him to do versus what the, what the, the issues regarding the monthly reports, because they're -- now it's totally new. So there wouldn't be a comparison in terms of cost because our contention is it was never required under the language of the proposed -- on the Provider Agreement

paragraph 9.

THE COURT: But that Provider Agreement does state that the records will be made available to representatives of the department upon request so there was -- there were reporting requirements under the Provider Agreement.

ATTY. MARDER: I -- with all due respect, I, I just suggest that making records available as opposed to writing reports on a monthly basis are quite different. Basically, as I see it and what actually occurred is they just took what we had. They didn't require us to do anything more than provide the records for each client, and they're -- those, those requirements don't require my client to sit down and prepare anything other than here's the box of records. Copy them.

So I'm saying, I'm suggesting that the -- one, that paragraph 9 doesn't specifically go beyond the maintenance of records and providing availability of the department. Whereas, proposed regulations in the issue with respect that the, the monthly reports are quite, are, are -- are a significant addition to the burden that is on, and that could be again a fact that could be reasonably inferred from the, from these allegations.

And, again, if Your Honor gets to the point of the proof, certainly that would prove that there is a cost. And I don't know that we have to compare, you know, how much does it cost to interview a client? What does it cost for the papers? What -- I mean, I think we're really talking

about a bigger issue in terms of cost rather than just the recordkeeping, which is what paragraph 9 basically talks about.

THE COURT: Let's talk about proof. Assuming, for the sake of discussion --

ATTY. MARDER: Mmm-hm.

THE COURT: -- I found that you had sufficiently alleged aggrievement, it is your obligation to prove it as well. How would you propose to prove it?

ATTY. MARDER: That -- well, No. 1, my client -- the affidavit is just one thing. My client is able to testify as to the very facts. He's able to testify in much more detail in terms of the comparison as to what was required in the recordkeeping even with, with respect to -- to paragraph 9 of the Provider Agreement and then draw the comparison to what's required today, and the fact that it actually has been requested of him. It wasn't as if, as counsel said, that they're not using these proposed regulations, or that they are not requested monthly reports. You would -- I'm, again, we do it in the form of a, an offer of proof.

And the offer of proof is that right up until January 30th of 2015, we have a letter from the Department of Social Services demanding the monthly reports. So the proof -- he obviously can prove that he's a provider. He can prove that what the paragraph 9 of the Provider Agreement, how that had been handled on a day-to-day basis for 2004 to 2013 in terms of that proof, and then the distinction between those --

what was done and accepted by DSS at that point to where we are in, with the 2013.

THE COURT: Mmm-hm.

ATTY. MARDER: And the affidavit is just an affidavit, but we would have testimony to that effect, which I submit does prove that the legal interest that he had, the legal interest of the relationship and the agreement with the DSS, and the plaintiff as a provider, by the ruling of the commissioner who says this -- these regulations were properly adopted and these regulations are in the, in force. All of them, not a part of them. And the fact that my client was demanded to make monthly reports would prove his aggrievement.

THE COURT: So your offer is to have your client testify?

ATTY. MARDER: That's correct, Your Honor.

THE COURT: Okay. You had, I think at the very beginning made reference to witnesses in the plural.

ATTY. MARDER: Well, I, I thought --

THE COURT: And I'm not suggesting --

ATTY. MARDER: -- counsel had some witnesses too.

THE COURT: Oh. I see. Oh, okay. Well, I, I didn't realize that.

ATTY. MARDER: Yeah, I just had one witness.

THE COURT: Oh, okay. That's fine. And I understand your choice in witness.

So let me turn to Mr. Barber. I think and assuming --

well, I think that today's hearing should be, should address both issues, even if I might agree with you on the pleading issue, since we're here, I think we should go to the second issue as well. I think it's appropriate for Mr. Marder to call his client. Would you have any objection to that; and if, if we do call, if we do hear from Mr. Marder, would you have your own witnesses?

ATTY. BARBER: Depending on, on what the testimony is, yes.

THE COURT: Okay.

ATTY. BARBER: And I mean, frankly, I was not anticipating a claim of aggrievement based on the cost of monthly reports. Again, I'm going back to the complaint that's -- I don't see anything like that in that.

THE COURT: I understand.

ATTY. BARBER: I would like to --

THE COURT: It is in his affidavit, though. It is in the affidavit that was submitted.

ATTY. BARBER: But that was submitted in connection with the brief not with the complaint, Your Honor.

THE COURT: Right. I, I understand it's, it's -- I understand your arguments as to allegations. If I get past that and we go to the proof, I, I think that Mr. Marder did give you notice that this is what he was focusing on by submitting this affidavit.

ATTY. BARBER: I would like to point one, one thing out, Your Honor.

THE COURT: Right.

ATTY. BARBER: In the record on page 37, there's a copy of the, the 17b-260a-16 reg on record documentation.

THE COURT: Right.

ATTY. BARBER: And those record documentation requirements are stated in subparagraph (a) of that provision.

THE COURT: Right.

ATTY. BARBER: Which talks about the individual's name and the signature of the individual and the provider's name, the date of service, the start state, et cetera.

The monthly report is -- and, and paragraph (b) says that upon written requests, the department will be given immediate access to the records documenting the extent of services. So the record is documenting the extent of services are dealt with in (a). (d) is the requirement of monthly reports. That is respectfully separate and distinct from what records are reviewed under the proposed regs to document the extent of services. That's dealt with in (a).

So this monthly report requirement is, as I read the reg, not -- not part of the record retention and documentation requirements. It would be subject to a document review or audit; and, therefore, again, I don't see, see the relevance. Again, coming back to the pleading where the only pleading is audit protocol.

THE COURT: Right. I, I understand that. But since we're here, and I'm not entirely sure how I'm going to rule

on the pleading, I do want to get to the second prong. And I realize plaintiff has to prove both, and so I just want to -- I'm trying to just discuss how to go about that.

It seems to me appropriate for the plaintiff to call his client as a witness and allow you to cross-examine, and then if you want to call witnesses, I would hear from them as well.

ATTY. BARBER: Okay. Thank you, Your Honor.

THE COURT: So that's how I propose to begin. And if you're prepared to do that.

ATTY. MARDER: Yes, we are, Your Honor.

THE COURT: Okay. Let me just make sure I can see the witness. You, you should call your client --

ATTY. MARDER: I am.

THE COURT: -- as a witness.

ATTY. MARDER: Right. Yes, I'm calling Tarıq Abdulaziz to the --

THE COURT: Okay.

ATTY. MARDER: -- witness stand.

THE COURT: Good mornıng, sir.

THE WITNESS: Good morning.

THE COURT: You'll have to take an oath.

T A R I Q A B D U L A Z I Z,

A witness called on behalf of the plaintiff, having been first duly sworn by the Court Officer, was examined and testified on his oath as follows:

THE WITNESS: Tariq Abdulaziz. T-a-r-i-q. Last name: A-b-d-u-l-a-z-i-z.

THE COURT OFFICER: And please state your address for the record.

THE WITNESS: 23 indicate Kate Way, Windsor locks, Connecticut, 06096.

THE COURT OFFICER: Thank you. You may be seated.

THE WITNESS: Thank you.

THE COURT: Good morning, sir.

THE WITNESS: Good morning. Thank you.

THE COURT: When you're ready, Mr. Marder.

ATTY. MARDER: Thank you, Your Honor.

(Microphone adjustment).

THE COURT: Just one moment for me as well. I just want to get the FTR up. Just one minute. All right. Mr. Marder.

ATTY. MARDER: Thank you.

THE COURT: You may inquire.

DIRECT EXAMINATION BY ATTY. MARDER:

Q. For sake of brevity, and know you're the plaintiff in the case, but we're addressing you -- in terms of questioning you, do you have any objection if I just call you Tariq?

A. That's fine.

Q. Thank you. Now, Tariq, how, you've, you -- what is your relationship to DSS since 2004?

A. I provide cognitive behavioral program services, one of the 19 services on the ABI waiver program, and I've done so under the current Provider Agreement since 2004.

Q. And that, the Provider Agreement that you referenced that is a document. Am I correct?

A. Yes.

Q. That was forwarded to you by whom?

A. By Allied Community Resources, which is the fiduciary for the Department of Social Services for --

Q. And --

A. -- the ABI waiver program.

Q. And what were you required to do with that document before you could begin any, any -- any services?

A. I had to read, sign and date the document.

Q. And did you do that?

A. Yes, I did.

Q. Now, in your complaint -- (cough). Excuse me.

ATTY. MARDER: May I approach the witness, Your Honor?

THE COURT: Yes. And I'm just going to ask for just a moment here.

(FTR adjustment/off record).

THE COURT: Go ahead, Mr. Marder.

ATTY. MARDER: Thank you. Your Honor, I was asking the Court to be able to approach the witness --

THE COURT: Oh, of course.

ATTY. MARDER: -- to show him a document?

THE COURT: Of course.

Q. (BY ATTY. MARDER) Tariq, I'm showing you what is your document of appeal and point you to paragraph 23.

A. Yes.

ATTY. MARDER: And just for the record, Your Honor, the Provider Agreement is a part of the record. I just have --

THE COURT: Right.

ATTY. MARDER: -- to identify for Your Honor where it is, and I will do that.

THE COURT: Okay.

Q. (BY ATTY. MARDER) But if you look at paragraph 23 of the appeal complaint, does that reflect paragraph 9 of your Provider Agreement signed in 2004?

A. Yes.

Q. And is that the only paragraph that you recall in that agreement that deals with, with documentation?

A. Yes.

Q. Now with respect to documentation requirement as reflected in that paragraph 9 of the Provider Agreement, were there any requirements in terms of length of time that you had to maintain any records?

A. No.

Q. And were there any requirements that you obtain a client's signature on the, any of the documents that you provided services?

A. No.

Q. Was there any requirement for any monthly reports be provide to DSS?

A. No.

Q. Was there any requirement in, in the paragraph 9 of the Provider Agreement that you keep records of time in and time out with respect to any particular service?

A. No.

Q. Was there any -- was there any reference in the Provider Agreement and in paragraph 9 that there would be any penalties if you failed to comply?

A. No.

Q. Now, and what documents did you, under paragraph 9, did you maintain to show evidence -- to evidence of services that you provided, what documentation did you maintain?

A. The requirement was the invoice.

Q. Now when you say the -- the requirement was an invoice for what?

A. The invoice for services provided.

Q. Okay. And what did the invoice contain?

A. The invoice changed between 2003 -- or 2004 and 2013.

Q. And --

A. There were two different invoices.

Q. Let's state the first one.

A. The first invoice, the invoice that begin with the waiver program, was an invoice done in triplicate. The invoice -- there were three sections to it: One was for the provider, one was sent to the fiduciary, the other was for the, was for

the client.

When I began the waiver program, Item No. 9 was you kept your copy of the invoice. That was sufficient.

Q. And you billed from 2004 with that documentation to DSS?

A. I -- yes, I billed with that invoice from that, from the start of the provider agreement until the fall of 2012, that invoice was in effect.

Q. And did anyone question the documentation that was submitted in support of your claim for payment from DSS?

A. No.

Q. Now you indicated that the invoice changed at some point?

A. Correct.

Q. When did it change?

A. In the fall of 2012.

Q. And, and can you describe what was the nature of the change?

A. The change was -- well, a couple of changes. We never received the, the invoice again in triplicate. Instead of a time period for billing -- the first invoice had a time period of billing for two weeks. The second invoice you had to outline by day who you work with. Other than that there were no changes.

Q. And with respect to paragraph 9 of the Provider Agreement, did it or does it not require you to submit monthly reports to DSS?

A. It does not.

Q. Were you ever requested, under that paragraph 9 of the Provider Agreement, to submit monthly reports?

A. No.

Q. When -- you were audited at a certain point. Am I correct?

A. Yes.

Q. And when was that?

A. June of 2014. I believe it was June 16th of 2014.

Q. And what were you requested to do in preparation for that audit?

A. I contacted -- well, I was contacted by the department. I inquired as to the standards. I had no response back from the department as to the standards. So are you asking --

Q. Well -- all right. Let me maybe clarify --

A. Mmm-hm.

Q. -- it. What did they ask you to make available to them?

A. The records.

Q. Did they define what records?

A. Prior to the audit, they did not define what records.

Q. And where did that audit take place?

A. At my home office.

Q. And over how long of a period of time?

A. One day.

Q. And did you provide records that you had or the

representatives?

A. Yes.

Q. What did they do with those records?

A. They scanned them.

Q. Now you became aware, am I correct, that new proposed regulations were being, were beıng promulgated by the Department of Social Services. Correct?

A. Yes.

Q. And were those proposed regulations in any way differ -- well, no. I withdraw that. Let me ask you this: Did the proposed regulations require you to have a time in and time out in terms of the services provided for an individual client?

A. Yes.

Q. Did they require you to obtain the signature of that client or his -- his or her representative to, to corroborate the services provided?

A. Yes.

Q. Did the proposed regulations provide any threat regarding penalties if you were noncompliant?

A. Yes.

Q. And did the new proposed regulatıons also require you to provide monthly reports?

A. Yes.

Q. Now did they indicate to you what was to be contained ın the monthly reports?

A. No.

Q. When I say, "they," I meant --

A. No.

Q. -- DSS.

A. No. No.

Q. Now you were, am I -- or were you or were you not requested to submit monthly reports for 2013?

A. Yes.

Q. By whom?

A. I was requested to provide monthly reports from a social worker who indicated to me that they'd received an e-mail from the Department of Social Services Quality Assurance requesting 2013 monthly reports for the month of March and the month of August for some of my clients.

Q. Did any -- okay. Subsequent to that request, did you receive any further requests for monthly reports?

A. Yes, I received a letter from Deputy Commissioner Brennan indicating to me that if I did not submit monthly reports and written updates that, due to the regulation, I would be -- my, my, my pay will be suspended.

ATTY. MARDER: Your Honor, I'm going to submit -- I'm going to ask the witness --

THE COURT: You just have to stay by a microphone. It's an awkward situation.

ATTY. MARDER: All right. I'm sorry. Your Honor, I'm going to offer -- with Your Honor's permission to approach -- a -- for the witness to identify the letter that he just made reference to.

THE COURT: All right. Go ahead. And you don't have

to ask my permission to approach your own client. Neither, neither --

ATTY. MARDER: Just --

THE COURT: -- attorney does.

ATTY. MARDER: -- Your Honor.

THE WITNESS: Okay.

THE COURT: Understood.

Q. (BY ATTY. MARDER) Now, Tariq, this letter -- can you identify it?

A. This is a letter that was sent to me actually by e-mail from Lara Stauning, I believe on February 14th, 2014, to -- indicated in the e-mail that they'd attempted to reach me by mail with this letter, but I had not resided at the address here for several years. So I guess the mail -- I assume the mail was returned to them and so they eventually sent it to me via e-mail.

Q. And that is addressed to you. Am I correct?

A. Correct. They have the, the name of my company incorrect, but it's made out to me. They have the LLC there. But, yes, it is to me.

Q. And dated January 30th, 2015?

A. Correct.

Q. And signed by Kathleen N. Brennan, Deputy Commissioner?

A. Correct.

ATTY. MARDER: Your Honor, I'd submit this as a plaintiff's exhibit. A copy provided to counsel.

ATTY. BARBER: No objection.

THE COURT: A full exhibit. Thank you, sir.

Plaintiff's 1.

(Plaintiff's Exhibit 1, full exhibit).

ATTY. MARDER: Thank you.

Q. (BY ATTY. MARDER) Now, Tariq, in terms of any time commitment and monetary commitment, with respect to paragraph 9 of the 2004 Provider Agreement, did you have to spend any time or, or, or by -- and "time" meaning billable time for you to have to comply with any requests for monthly reports?

A. Yes.

Q. I'm sorry. For the, the 2004 Provider Agreement.

A. 2004 to 2013? No.

Q. Okay.

A. I was not required to submit monthly reports during that period.

Q. So there is no expenditure of time during that period?

A. Right. There was no requirement that I do so.

Q. And the records under paragraph 9 of the provider -- 2004 Provider Agreement, that you had to make available to the representatives of the department, did they -- did it cost you any money to provide these requirements?

A. These, these report?

Q. Yeah.

A. Absolutely. A --

Q. No --

A. -- 120 hours --

Q. No. Now you're listening --

A. Mmm-hm.

Q. -- to my question.

A. Mmm-hm.

Q. For the audit.

A. For the audit.

Q. Right. Under paragraph 9 of the Provider Agreement.

A. Yes.

Q. Did you have to expend any monies and time reflective of, of time, your, your time to prepare any monthly reports?

A. No, it wasn't required.

Q. Now with respect to the proposed regulations, in terms of your testimony that there were monthly reports required in those provisions, can you tell us when you reviewed the request, and what your client base was and your hourly rate?

Could you indicate to the Court how much of -- and how much in terms of a time effort and a cost effort would go into complying with the request for monthly reports?

A. It would be for post -- the implementation and application of these regulations, I have on average a 120 clients. It takes me a 120 hours billable time each month to write monthly reports.

Q. Was there any provision that you were aware of in the proposed regulations for you -- that to be billable to the Department of Social Services for reimbursement?

A. It is not a service; therefore, it is not billable.

Q. When you say it is not -- the monthly reports is not -- what do you mean by "it's not a service"?

A. The monthly reports are not listed as a service. I can only bill for a service I provide. The monthly reports aren't a service; therefore, I cannot bill for them.

Q. So that would be a loss to you. Am I correct?

A. Correct.

Q. And that loss did not exist under the prior paragraph 9 --

A. Correct.

Q. -- of the 2004 Provider Agreement?

A. Correct.

Q. And you further indicated -- and I guess paragraph P -- oh, excuse me. Exhibit P-1, which we just submitted, and you reviewed, there -- what, what, if any, penalty would be subjecting you to if you failed to comply with the request?

A. I just want to take a look at the document so that I, I get the language correct.

Nonpayment of services. Whatever services are provided, if I don't do the monthly reports, then I don't get paid for the service.

Q. Even though you complied with the service?

A. Right. I've, I've provided the service.

Q. And let's, hypothetically, that there would be no complaints about the service you provided.

A. Correct.

Q. You still would be subject to a penalty?

A. Correct.

Q. And that penalty did or didn't exist as part of your

services provided under paragraph 9 of the 2004 Provider Agreement?

A. Did not exist.

Q. With respect to the cost factor. You said it's a 120 hour, hours for --

A. Billable hours.

Q. And what would be your hourly rate?

A. Eighty -- now it's $83.22.

Q. So we would multiply 83 times --

A. It's --

Q. -- 120 --

A. -- somewhere between ninety-six hundred dollars and ten thousand dollars --

Q. And that's --

A. -- a month.

Q. -- every month. Am I correct?

A. And it's every month.

Q. Not quarterly or once a year?

A. Every month.

Q. With respect to obtaining the signature of your client or his representative, which is a requirement under the proposed regulations, how would you go about doing that?

A. I've attempted to do it that. I've asked, and it's not executable. People will not comply.

Q. You mean the client or the representative or both?

A. Both. I've asked. I have --

Q. And -- okay. So what happens if you then are unable?

Do you have any, any, any thoughts as to what would occur if you submitted a monthly report, if you submitted without the appropriate signature by the, by the party receiving the services?

A. I assume if I bill for services and there's no signature, that I would subject to penalty.

ATTY. MARDER: I have no further questions, Your Honor.

THE COURT: All right. Did you want to take our morning recess? It's about time for that.

ATTY. BARBER: If that's Your Honor's preference. I don't imagine my questioning will be very long. That's --

THE COURT: Okay.

ATTY. BARBER: -- if that guides Your Honor's decision-making.

THE COURT: If that's the case, then I'll hear cross-examination as long as everyone is okay. Okay. And we'll take a recess after we finish with this witness.

ATTY. BARBER: Thank --

THE COURT: Mr. Barber.

ATTY. BARBER: Thank you, Your Honor.

CROSS-EXAMINATION BY ATTY. BARBER:

Q. Mr. Abdulaziz, we've heard testimony about monthly reports. Isn't it true that a monthly report is a clinical progress report on the client?

A. No.

Q. It's not?

A. It is not.

Q. What is it in your opinion?

A. The monthly report is a requirement from the department. It's not a clinical progress note.

It's not a clinical progress note, Attorney Barber, because I'm not a clinician and the program is non-medical.

Q. Right. But you are providing services for clients?

A. Yes, sir.

Q. Is it --is it a progress report on the individual's progress in the program?

A. It is a progress report that -- it could -- if the individual -- if the assumption is that the individual is making progress, I, I would assume so. But it's not clinical.

Q. All right. I understand it's not clinical. But as opposed to a document, records that document the extent of services, isn't it true that the purpose of the individual progress reports are to report on the individual's progress on a monthly basis?

A. I'm not sure what the -- what prompted DSS to require monthly reports. I can't speak to that. You know, what, what their purpose was for doing it.

Q. All right. Well, if I may refer you to page thirty -- to the actual regs, page 37 in the record.

ATTY. BARBER: And, Your Honor, mine are marked up. I don't know if you have a clean copy that we can show the witness.

THE COURT: I have one in front of me. It's in the record. So I think you can proceed, and I don't know

whether you wanted to show them to the --

ATTY. BARBER: I'd like to show, show it to the witness. And, and the problem is my copy is marked, and I don't want to show --

THE COURT: Mmm-hm.

ATTY. BARBER: -- show a marked copy.

THE COURT: Right. I don't know if you have a clean copy --

ATTY. MARDER: I --

THE COURT: -- Mr. Marder? If not, I can --

ATTY. MARDER: No, I don't, Your Honor.

THE COURT: All right. Then what I think we should do would be take a morning recess. I'll print out 16. Is there anything else that --

ATTY. BARBER: No, that --

THE COURT: -- you might use?

ATTY. BARBER: -- it may be a good time to break now.

THE COURT: Okay. All right.

ATTY. BARBER: Thank you.

THE COURT: Stand in recess for 15 minutes.

(Morning recess.)

THE COURT: Please be seated. I do have an extra copy of --

ATTY. BARBER: Thank you, Your Honor.

THE COURT: -- section 16. And why don't --

ATTY. MARDER: Does Your Honor have one for me?

THE COURT: -- we resume cross-examination.

ATTY. BARBER: Oh, you have a copy?

ATTY. MARDER: No, I thought --

THE COURT: Oh.

ATTY. MARDER: -- it was going to be made for me.

ATTY. BARBER: It's in the record.

THE COURT: Oh, was I supposed to make one for you too?

ATTY. BARBER: It's in the record at page --

ATTY. MARDER: I was asking --

ATTY. BARBER: Do you have the record? It's 37.

ATTY. MARDER: I, I didn't bring the whole record. I have part of it.

THE COURT: Can you make a quick copy?

THE COURT OFFICER: Is it from the record?

THE COURT: It is from the record. You have pages 37 and 38.

THE COURT OFFICER: All right.

THE COURT: Okay. We'll print it out.

(Off record).

THE COURT: All right. Continued cross-examination --

ATTY. BARBER: Yes.

THE COURT: -- Mr. Barber.

ATTY. BARBER: Thank you, Your Honor.

THE COURT: Mr. Abdulaziz. Please have a seat, sir.

Q. (BY ATTY. BARBER) Mr. Abdulaziz, I'm about to show you from page 37 of the record, it's the section 17b-260a-16 of the proposed ABI waiver regs, and in particular, subsection (d), which I believe deals with monthly reports.

Do you have that document in front of you?

A. I do.

Q. And does it indicate on that document that the provider shall submit monthly reports and written updates on the individual's progress in a form that is set by the department?

A. Yes.

Q. And by your reference to monthly reports, these are the documents that you were referring to?

A. I assume so.

Q. And -- well, is there a form that the department has provided for you to spend monthly reports on client progress?

A. They do provide a form.

Q. And do you complete that form?

A. I've used that form. I've used other forms.

Q. And is that the -- the completion of that form is that the time that you indicated it poses additional costs on you of give or take approximately $10,000 dollars a month?

A. No, not just -- it takes a lot of work to complete that form. It's not just filling out a form. You can't just fill out the form, Attorney Barber.

Q. Well, you need to gather the information. I, I understand. But what, what -- what were you referring to by the approximate $10,000 dollar number?

A. Okay. In order to complete the form.

Q. Mmm-hm.

A. There are a myriad of things that have to be done in order to complete the form.

Q. I understand.

A. Okay.

Q. And so the 10,000 number referred to whatever you have to do to complete the form?

A. Right. I can't just write the form unless I gather the information.

Q. I understand.

A. Analyze data, speak to the staff. I can't complete the answers on the form without doing all the work that the form requests.

Q. Okay. I'm, I'm not questioning that. But the -- the form is a report on the individual's progress. Isn't that correct?

A. It says that here.

Q. And, in fact, that's what you report on in the monthly reports that you referenced?

A. That is not the only thing that is, that is included on the monthly report.

Q. What else is included?

A. You have to forecast when the client would meet the goal. You would have to develop goals. So develop goals.

I'm thinking the form right now, Attorney Barber. Develop goals, forecast when the client would achieve those goals, provide feedback regarding the client's progress toward goals in measurable terms, and then, in addition to that, provide any comments and concerns regarding the client's performance in the previous month.

I write both treatment plans and behavioral plans for all of my clients. I have the staff collect quantitative and qualitative data. I have to get that data in, analyze that data and use that data as, as a part of completing this form. Is it a process.

Q. All right. I understand that. I accept that. I don't challenge any of that.

But that form, however, that progress report form, that's distinct, is it not, from the documentation of the extent that services were provided; for example, it doesn't call for you to document what services were provided to a particular client on a particular day, the start date of those services, the end date of those services and a brief description of what was performed?

A. Technically, to some degree, it does. There's a section on the monthly report form that I forgot, which is the strategies that are utilized. And in the strategies utilized, you will talk -- you could put in something regarding a brief description of the services provided as well so there are five sections, five or six sections to the form.

Q. Okay.

A. And in comments and concerns, could you also elaborate about services provided as well there.

Q. All right. But you don't use the form to document that on July 5th -- pick an arbitrary date.

A. Mmm-hm.

Q. -- of 2014, that you provided services to John Smith, and the start date of the service was 10 AM, the end date of

service was 10:05 AM, and the nature of this service was to review this plan of care?

A. In order to be thorough on the answer, it's possible. It's possible. Because in the comments and concerns, Attorney Barber, I could write the report during every monthly team meeting. There could be substantial things that go on in that team meeting that are discussed, and I put that in the comments and concerns as well.

Q. Now under (a) of the reg in front of you --

ATTY. BARBER: Oh, I would like to offer this as an exhibit, Your Honor.

THE COURT: If you want.

ATTY. BARBER: It's in the record.

THE COURT: It's in the record. The Court can take judicial notice, but if, if you want, I see no harm.

ATTY. MARDER: No harm. No objection.

THE COURT: All right. A full exhibit.

ATTY. BARBER: Thank you.

THE COURT: It's Defendant's --

THE COURT OFFICER: A.

THE COURT: A.

(Defendant's Exhibit A, full exhibit).

Q. (BY ATTY. BARBER) You maintain separate documents; isn't that correct, however, documenting the extent of services provided?

A. I do.

Q. And those records are the records that document date of

service, start date of service?

A. Correct.

Q. And you started doing -- started to maintain records with that level of detail after these regs were adopted. Is that correct?

A. I'm trying to do that. I cannot, I -- I cannot execute all of the items that are here, because I don't have control over all of the items that are here.

Q. And what do you mean by that?

A. I can't compel someone to sign. I have clients who are incapable of signing.

Q. Mmm-hm.

A. I have conservatives or representative who live in Oregon and California.

Q. Okay.

A. I can't get a signature from them.

Q. All right.

A. So some of these things are just --

Q. And in terms of --

A. -- not executable.

Q. -- of start date, end date, date of service, start date end date, description of services provided. Those are maintained on separate documents?

A. These -- can I speak to that? Even that is not necessarily easy to do. In your regulation, you say start time for each visit, end time for each visit.

Q. Mmm-hm.

A. As a provider on, for cognizant behavioral services, not all my services are provided upon visits. Whatever visits may mean. Visits aren't defined in the regulation. I receive phone calls. My client is in a crises. I have to deal with that crises. That's not a visit in my mind, but that's time worked. So how do I document that? These things have not been addressed with respect to the regulation. They're not executable. They don't deal with the real time.

I'm -- I work not in an office, but in the community dealing with clients in the community who are having real crises at the moment, not in some semi-naturalistic environment. So trying to do these is very, very challenging for me, and I, I don't think it's as simple as you make it out to be, sir.

Q. But you attempt to comply to the recordkeeping --

A. I'm trying.

Q. -- requirements?

A. I'm trying.

Q. Now you indicated what you, you called an audit that was conducted in June of 2014. Is that correct?

A. Correct.

Q. And in that audit -- well, why don't you briefly describe in your own terms what you were asked to produce and, and what you produced?

A. In my own terms. Well, I had a conversation with Allison Case, from the Department of Social Services Quality Assurance, and I asked her what the audit standard was. She communicated to me via e-mail. Initially, she communicated to

me that there were no standards. She then wrote to the social work department and asked them, said: Tariq has written to me today, and he's asking for standards on the audit. Can anyone provide him with feedback as to what the standards would be? I've still not received a response.

A few days later she sent me the, a copy of the Provider Agreement that I signed referencing Item No. 9 in the Provider Agreement. I think you guys were referring to it as paragraph 23 in one of the documents here. That, that was the standard.

After I was audited -- I say audit, you say record review -- then legal counsel Attorney Smiga sent us a letter indicating that I would be held to Item No. 9 of the Provider Agreement for everything prior to April 1st, 2013, but I would be held to the standard of the regulation after April 1st, 2013.

He then further stated that -- which is why I call it an audit and not a record review -- that he would be, that they would be looking to recoup refunding whatever payment was made. I don't think a record review has any -- from what I've learned, has any basis for recouping funds, only audits do.

Q. And what documents were produced in June of '14?

A. What documents were produced? The, the department scanned my files.

Q. Did you, or do you know what type of files were, did you -- did you make the files available to them? -

A. Invoices were there, treatment plans. They, they scanned the documents.

Q. They -- in, in terms the record-retention documents,

were they scanned?

A. Record-retention documents. Can you be more specific?

Q. Well, the documents that you're required to retain under the reg, the document to the extent of services. What do those documents look like?

A. Well, invoices would suffice. My understanding from the time I've been on the waiver program from the beginning that all I needed was the invoices. Anything else that I had was extra.

Q. Okay. So it's the invoices that you used to main --

A. To submit my bill.

Q. -- to document the --

A. No.

Q. -- support, to support the bill?

A. Right. The billing in and of itself, by itself was sufficient to meet the requirement of Item No. 9. Anything else I had was extra.

Q. And is it your testimony that after April 1 of '13, that your invoices included the various items referenced on, on the regulations you have in front of you, specifically 17b-260a-16a?

A. No. The invoices do not contain the detailed information, all of the detailed information here. That's the issue. Prior to April 1st, 2013, the invoices were sufficient. This information goes beyond what is on an invoice.

Q. And my question, again, is what do you do now to document this information?

A. Well, as I stated, I'm, I'm doing the best I can. I gather haphazardly because that's all I can do. There's no form. I don't have anything from the department, Attorney Barber, with the seal of the State of Connecticut that says a provider, when I work with them, has to sign. Therefore, a provider -- my, my clients and other people won't sign, because I have no authority to compel them to, and they have not been informed that they must sign.

Q. Okay.

ATTY. BARBER: I have no further questions of this witness.

THE COURT: I have a few of Mr. Abdulaziz. I apologize for the --

THE WITNESS: No problem.

THE COURT: -- angle here. The --

THE WITNESS: It's okay.

THE COURT: -- courtroom is not configured well for --

THE WITNESS: It's okay.

THE COURT: -- witness testimony. Had I known we were going to have an evidentiary hearing, I might have scheduled it in a different courtroom.

But I just want to know first some things I always want to know about a witness, and that's your educational background.

THE WITNESS: My educational background. I have a Bachelor's degree in Psychology from Xavier University of Louisiana. A Master's degree in Neuroscience from the

University of Arizona. A Doctorate degree in Instruction and Learning from the University of Pittsburgh. A Master of Business Administration from the University of Connecticut in Marketing. A Master of Science and Human Services from Post University.

THE COURT: And, and what was the Ph.D in again?

THE WITNESS: Instruction and Learning.

THE COURT: And do you have -- now do you have your own clinic?

THE WITNESS: I do not have my own clinic. Your Honor, I am not a licensed clinician. My role on this waiver program has always been as a consultant to the team. I'm not a clinician.

THE COURT: And is this team people you employ or --

THE WITNESS: No --

THE COURT: -- or something --

THE WITNESS: -- Your Honor. It's, it's actually groups of people who come together to provide service for an individual who has recovered from a brain injury in trying to integrate in the community.

I am -- I provide the behavioral service neuro-behavioral service and treatment planning. I meet with the client, meet with the staff, design the plan that would be implemented with the client to keep them safe and functioning in the community.

THE COURT: And so you're a consultant to these treaters?

THE WITNESS: Yes.

THE COURT: Mmm-hm. And so are you essentially self-employed or self proprietor?

THE WITNESS: Well, can I answer --

THE COURT: Yes. Yes. Please. Go ahead.

THE WITNESS: Okay. I'd, I'd love to answer that. I don't know.

The, the department treated me for years as if I was self-employed. But the fiduciary that DSS has hired has its own designation of whether or not an individual is self-employed or is an individual provider, and I don't know at this -- I have my own agency. I have agency status with the, with the program, but that's only recent. That's only been in the last year. Prior to that I was considered self-employed.

THE COURT: Okay. I, I gather the services that you provide involve some understanding of the patient's condition and, and how to improve it.

THE WITNESS: It does. But even the terminology -- you know, of patient, to, you know, be respectful, Your Honor, we don't even use the term "patient," because the program is nonmedical. So these are nonmedical services. I'm just not a medical provider.

THE COURT: All right. I think it's sufficient back -- information about your background.

THE WITNESS: Okay.

THE COURT: Thank you, sir.

THE WITNESS: All right. Thank you.

THE COURT: Redirect. And before we go further, we should mark the regulations as Defendant's A, Mr. Barber. Redirect.

ATTY. MARDER: Your Honor, may I just follow-up on one of Your Honor's questions?

THE COURT: Of course.

REDIRECT EXAMINATION BY ATTY. MARDER:

Q. Tariq, you, you've indicated that you're not a medical -- you don't provide medical services?

A. Correct.

Q. And you design plans to integrate clients into the Community. Well, give the judge an example of what are the services you're providing?

A. I consult with the, with the agency that provides staff for my clients.

Let's say my client has a 24-hour program seven days a week, then I design what the treatment plan goals are, the objectives, how the staff should work with the client, best work with the client to keep them safe and productive in the community.

If the client has behavioral issues, I design behavioral plans and interventions so that the staff can work with the client to mitigate those behavioral issues. And related to all of that I'm asking all of the staff to provide me with data, whether some of that data be quantitative, some of it qualitative, and that is -- I use that data in, in actually

making decisions about how we move forward.

I meet with the client, I meet with the family, I meet with the entire team, which right now includes a DSS social worker, and all the, all the providers, the client and their family to discuss where we are as far as, you know, the client's participation in the program. And we may hold those meetings monthly, every two months or quarterly. But at a minimum, quarterly.

Q. Thank you. Now going back to the direct examination of you. You have a copy of Exhibit D-A. That's marked. That's the document from the --

A. Yeah.

Q. -- from the record.

A. Yes.

Q. In front of you. I got the impression from the questions being asked that as to whether just completing this form alone is sufficient for you in order to accommodate all of these requests?

A. No, it's --

Q. Can you walk us through. Walk the Court through what you need to do, based on what you've testified and what your affidavit indicates in terms of time and effort, what you have to do in order to respond to these questions? But also the question wasn't asked of you with respect to the monthly reports, which is the next section --

A. Right.

Q. -- which is (d).

A. Right.

Q. Walk, walk us through what you have to do in order to attempt to comply with whatever the state provides you on a -- for the monthly report.

A. I mean to, to be fair, I mean you, you can't -- if, according to Attorney Barber, it's about progress. You can't discuss progress without gathering data. So that means that I, I need to set treatment plan goals, treatment plans, objectives. I need to have the staff gather data that gives me a baseline of a client's performance and compare that baseline performance to later performance. Even if that performance is, is qualitative instead of quantitative, but I need that feedback in order to write the reports, and some of my --

Q. May, may I just interrupt you?

A. Yes.

Q. Where -- from whom do you get the feedback?

A. From the staff.

Q. And --

A. From the staff and the family.

Q. And do they --

A. And the client.

Q. -- and they prepare reports for that or is it verbal?

A. It, it's -- they prepare reports. It's verbal. It -- I mean it's, it's text message, it's e-mail, it's -- you know.

Q. But if they write reports, what do you have to do with that, with those reports in order to be able to analyze what is going on?

A. Their reports typically go directly to DSS as well, but some of the providers do provide me with a copy of the report as well. But I'm in constant communication with the staff and with management on the clients that, that I serve --

Q. Well, do you --

A. -- and --

Q. -- do you have to assess those -- do you have to review the forms that they, that they send to you?

A. I do review the forms that they --

Q. Do you have to assess them?

A. I have to assess the data that comes in to me.

Q. And you have a 120 clients at this point --

A. Correct.

Q. -- am I correct? So they, that would have -- that's in the sense have to be done for every single one of those 120?

A. Correct.

Q. With respect to complying with section 16a, is it as simple as just answering all these questions in your own in hand, in your own handwriting?

A. Repeat the question.

Q. Yes. With respect to the section 17b-260-16a.

A. Yes.

Q. Is it just you sitting down and answering these questions regarding each client?

A. No.

Q. And the monthly reports you said the -- did the state submit a form as to what they want on a monthly report --

A. They --

Q. -- to you?

A. -- they do have a form that you have to complete for the monthly reports.

Q. And what, if any, difficulty have you encountered in completing the form that was provided by DSS?

A. In completing the form, I, I question the department as to whether I should be required to complete the reports without a release of information from them, which is what prompted Deputy Commissioner Brennan's letter to me saying that, you know, that a release of information isn't required. Threatened me with suspension of my pay for the services rendered.

I've had a social worker threatened to have my pay suspended, because I didn't sign the monthly report. She received the monthly report, but it didn't have my signature. So she threatened to have my pay suspended.

I had a, another social -- a social work supervisor -- we, we've had a lot of social workers who have retired. I, I sent a social work supervisor the reports for social workers in her office. You know, I sent those to her for her to distribute. She became enraged that I sent all of the reports to her. Said that if I didn't distribute them specifically to the workers themselves that she would have my pay suspended.

Q. But with respect to the completion of it, the time that you've estimated in Exhibit A and your testimony, that reflects of the time and cost to you on a monthly basis --

A. Mmm-hm.

Q. -- with respect to responding to the, to the monthly reports, and they're also requiring written updates.

A. Right.

Q. Did anyone, by the way, tell you what a written update is?

A. I have no idea what that refers to.

Q. You've got to sign a monthly report and a written update. Would that be an interim document between the two monthly reports?

A. I have no idea what a written update actually is.

Q. But if you're required to give an update and a monthly report that's just more time that isn't --

A. Right.

Q. -- taken into account in the figures that you had given to the court?

A. Correct.

ATTY. MARDER: I have no further questions, Your Honor.

THE COURT: All right. Any recross?

ATTY. BARBER: I have no, no recross, Your Honor.

THE COURT: All right. Dr. Abdulaziz, you may step down.

THE WITNESS: Thank you.

THE COURT: Thank you, sir.

THE WITNESS: Okay. Thank you.

THE COURT: Further evidence or witnesses, Mr. Marder?

ATTY. MARDER: Nothing. No further witnesses --

THE COURT: Understood.

ATTY. MARDER: -- from --

THE COURT: Mr. Barber --

ATTY. BARBER: Yes.

THE COURT: -- what's your pleasure?

ATTY. BARBER: Ms. Bruni, can you take the stand please.

K A T H Y B R U N I,

a witness called on behalf of the Defendant, having been first duly sworn in by the Court Officer, was examined and testified On her oath as follows:

THE WITNESS: Katy Bruni.

THE COURT OFFICER: Please spell your names.

THE WITNESS: Kathy, K-a-t-h-y. Bruni, B, as in boy, r-u-n-i.

THE COURT OFFICER: Please state your address for the record.

THE WITNESS: 237 Hightale (Phonetic) Drive, Torrington, Connecticut.

THE COURT OFFICER: Thank you. You may be seated.

THE COURT: Good afternoon, Ms. Bruni.

THE WITNESS: Good afternoon.

THE COURT: Please have a seat. And when you're ready, Mr. Barber.

ATTY. BARBER: Yes.

DIRECT EXAMINATION BY ATTY. BARBER:

Q. Ms. Bruni, where are you employed?

A. I'm employed at the Department of Social Services.

Q. And what's your title?

A. I'm the Director of the Home and Community Based Services Unit.

Q. And what does that involve?

A. That involves oversight of 11 Medicaid waiver programs for the state, as well as the nursing home preadmission

screening program.

Q. And is one of those waiver programs that you have oversight and responsibility for the acquired brain injury waiver program?

A. Yes, there's two brain injury waiver programs. Yes.

Q. Okay. And we've been referring to 17b-260a-16.

ATTY. BARBER: If I, if I may show the witness the --

THE COURT: Yes.

ATTY. BARBER: -- the court exhibit, Your Honor? Thank you very much.

Q. (BY ATTY. BARBER) And, first, referring to subsection (a). Are those the record documentation requirements to support a claim for payment?

A. Yes.

Q. And referring down to subsection (d). The requirement to spend monthly reports. What is a monthly report?

A. That we request of the providers to give us a status update on the client. How, how they've progressed or not progressed toward their goals.

Q. And is there a form that's been developed by the department for providers to submit monthly reports?

A. Yes. Yes.

Q. And what does that -- type of information does that form call for?

A. Goals, changes, problems to report, concerns, any need to adjust the service plain.

Q. Is there any requirement that the monthly report

document the extent of services provided for which there is a Medicaid claim, including such things as date of service, the name of the client -- well, the provider's name, start date, end date of service and description of what services were provided on that day?

A. I believe that it includes the provider's name, the type of service provided, but not the start date, end date or hours.

Q. Or date of service, for example?

A. No, I don't think so.

Q. So it includes the provider's name and the individual's name. I mean that's, that's obvious --

A. The provider's name, the individual's name, yes, and, and the categories.

Q. And a description of how the individual is, is doing? What their progress has --

A. Yes.

Q. -- been?

A. Yes.

Q. But not specific documentation of dates of service or quantity of service?

A. I have not seen one in a while, and I can't swear to that. I can't swear to that. I know it doesn't ask for specific hours, but...

Q. And have you seen the monthly reports submitted by Mr. Abdulaziz?

A. I have seen some, yes.

Q. And have you reviewed them?

A. I have reviewed them.

Q. And could you describe the report that you reviewed?

A. I would describe the reports as cookie cutter. The report for --

ATTY. MARDER: Your Honor, I would object. I've been very silent, but I think that kind of a characterization doesn't answer the question.

THE COURT: I'll let the witness complete her answer, and you may cross-examination. I'll overrule the objection. Go ahead.

A. The reports from client to client look identical. The goals are the same, the date that the goals are to be achieved are the same, it looks like it's just cut and pasted from one document to another.

Q. (BY ATTY. BARBER) And in terms of ongoing billings by Mr. Abdulaziz, are you aware of his monthly billings going back over various periods of time?

A. Yes, I am.

Q. And including his billings from various -- prior to April 1 of '13, and his billings to the present?

A. Yes.

Q. And approximately what are the magnitude of those billings?

A. Calendar year 2012, he billed in excess of -- it was paid in excess of $328,000 dollars; in 2013, in excess of $369,000 dollars; in 2014, in excess of $329,000 dollars. And

up through the first ten months of 2015, approximately $285,000 dollars, which puts him on a pace to achieve approximately --

ATTY. MARDER: Objection, Your Honor. I think that's being a bit speculative in terms of what pace he's on.

THE COURT: Well, I assume this is just what we might call simple math.

THE WITNESS: It's simple math, Your Honor.

THE COURT: Right.

THE WITNESS: It's eight -- 83 percent of the year has been completed --

THE COURT: Right. I'll, I'll --

THE WITNESS: -- through October --

THE COURT: -- allow the arithmetic --

A. Approximately $343,000 dollars if the billings stay the way they have been.

Q. (BY ATTY. BARBER) Thank you.

ATTY. BARBER: No further questions.

THE COURT: All right. Cross-examination.

ATTY. MARDER: Yes, Your Honor.

CROSS-EXAMINATION BY ATTY. MARDER:

Q. Ms. Bruni, you said you -- you're employed by DSS. How long have you been employed?

A. Since 2004.

Q. And have you been in the capacity as Director of Home and, and Community Base Services as 2004?

A. No, I came in as an manager in the social work division, and then later came to the home and community base

services unit.

Q. Okay. So how long have you been in the home and community based service as the director?

A. I became the director January of this year, but was in a position of manager since 2007.

Q. Okay. So you're the director since January 2015?

A. Yes.

Q. Now with respect to your description of the reports, you don't have any -- do you have any information as to what it has taken to respond to those reports irrespective of your characterization? Do you know any -- do you have any information as to what it took in terms of to work up to respond to those reports? It's yes or no.

A. I don't think I understand the question.

Q. Okay. That's fair enough. Let me try to repeat it.

Do you -- in reading the report that you got from the plaintiff, do you have any idea of what it took for him to gather the information to respond in a way that he did on that report?

A. Since they all looked the same, the ones that I saw, it didn't look like it took anything at all to complete those.

ATTY. MARDER: Your Honor, I -- I would ask that, that answer be stricken as nonresponsive.

THE COURT: I think it was responsive. I think you asked for any idea, and, and she gave her idea.

ATTY. MARDER: Sure.

THE COURT: I can see you phrasing it differently, though.

Q. (BY MR. MARDER) Do you know how much work went into responding to the --

A. No.

Q. -- to gather -- okay. So you don't know -- you don't have any idea as to what work the plaintiff took in order to gather information to respond to that report? You don't have any idea of what it took for him -- the work, the work --

A. Based on what I saw, I have an idea, but...

Q. Do you have any personal knowledge?

A. No.

Q. Okay. Now you said that the forms required a listing of goals, changes, progress, the -- some extent of services.

Do you have any personal knowledge as to what went into the form that you reviewed regarding work by Mr. -- by the plaintiff in terms of the goals for any individual client, any changes that were required by an individual client, any progress or lack of progress? Do you have any personal knowledge of that?

A. The goals I saw were identical with the same date.

Q. Do you have any personal knowledge of what those goals that he -- the information that was -- that that information -- that that form was based on? Do you have any personal knowledge of that?

A. No.

Q. Now the services that he needs to put into the monthly report -- those are monthly. They're not yearly, they're not quarterly. Am I correct?

A. They're monthly.

Q. So every month he needs to file the reports?
A. Submit the report to the social worker.
Q. Okay. And are you familiar with paragraph 9 of Provider Agreement that Mr. Tariq Abdulaziz or the plaintiff was working on since 2004 to 2014?
A. I am.
Q. Okay. Did those require any monthly reports?
A. No.
Q. So whatever the monthly reports were and whatever -- there was time involved on his part in completing them under the proposed regulations. Am I correct? It was just -- do you expect that he spent time?
A. Yes.
Q. Those were not -- that -- since they were not required as part of the original paragraph in the original Provider Agreement, there was no time spent under paragraph 9 with respect to providing monthly reports. Would that be a fair statement?
A. I'm not sure.
Q. Okay. You said you've seen some monthly reports. Have you seen a monthly report from Mr. Tariq Abdulaziz or his company since April 1st of 2013 on -- for every single month?
A. The only ones I saw were the ones my staff brought to me.
Q. Okay. So there may have been others that you didn't see. Is that correct?
A. Correct.
Q. And others may have contained different, different

information than the ones you saw. Am I correct?

A. It's possible.

Q. Okay?

A. But...

ATTY. MARDER: May I just confer with my client --

THE COURT: Of course.

ATTY. MARDER: -- for a moment, Your Honor?

Q. (BY ATTY. MARDER) The reports -- the monthly reports that he's asked to provide, do -- are, are there certain requirements in -- that he report in those reports that -- that directly go to a person's eligibility?

A. I honestly don't know the answer to that. I'm not sure what you mean by "eligibility".

Q. Well, a patient has to be eligible for the ABI --

A. Well, they have, there's -- there's multiple levels of eligibility. He's certainly not attesting to their financial eligibility.

Q. Right.

A. We're looking at the functional eligibility, but I don't believe that's part of the report.

Q. Okay. And you don't have any personal knowledge as to what, how much would -- is the cost that he's estimated to be incurring in order to complete the monthly reports for 120 patients -- excuse me. A 120 clients. Do you have any personal knowledge about that?

A. Personal knowledge --

Q. Yes.

A. -- or an opinion.

Q. Personal knowledge.

A. No personal knowledge.

Q. Thank you.

ATTY. MARDER: No further questions, Your Honor.

THE COURT: Redirect?

ATTY. BARBER: Nothing on redirect.

THE COURT: You may step down, Ms. Bruni. Thank you very much. Bruni. I apologize.

ATTY. BARBER: Mr. McCormack.

JOHN McCORMACK,

a witness called on behalf of the defendant, having been first duly sworn in by the Court officer, was examined and testified on his oath as follows:

THE WITNESS: John McCormack. J-o-h-n, M-c-C-o-r-m-a-c-k.

THE COURT OFFICER: Please state your address for the record.

THE WITNESS: 29 Smallwood Road, West Hartford Connecticut.

THE COURT OFFICER: All right. Thank you. You may be seated.

THE COURT: Good afternoon, sir.

THE WITNESS: Good afternoon.

THE COURT: Please have a seat. And when you're ready, Mr. Barber.

ATTY. BARBER: Yes. Thank you, Your Honor.

DIRECT EXAMINATION BY ATTY. BARBER:

Q. Mr. McCormack, where are you employed?

A. The Connecticut Department of Social Services.

Q. And what is your job title?

A. I am the Director of the Office of Quality Assurance.

Q. And what are your job responsibilities as Director of Quality Assurance?

A. The overall program integrity, function of the department is with us, and we have several unique divisions that handle those functions.

Q. All right. It's been referenced in this matter to a review that was conducted by the Department of Social services in June of 2014 of Mr. Abdulaziz' records. Are you generally aware with -- of, of the matter?

A. Yes, I am.

Q. And was that review conducted under your auspices?

A. It was.

Q. And can you briefly describe what that review consisted of?

A. Certainly. We have -- our investigations division received a complaint that --

ATTY. MARDER: Your Honor, I would object to that question as being unresponsive. He asked what did the record review consist of.

THE COURT: Right. I'm, I'm not going to admit it for the truth of the matter, but only to explain the witness' actions. So you may continue.

A. Could you ask the question again, please?

Q. (BY ATTY. BARBER) Right. Well, there's, there's been a debate between the parties here between a record review and an audit. Can you advise the Court of what the distinction is?

A. Sure. An audit is -- first of all, is performed by our audit division. And an audit is in most cases we select a provider for audit. We'll take a random sample of claims paid to the provider over a 3-year period. We'll go out and we'll request records to review the, the supporting documentation supporting the claims paid by the department.

Once that's done, we issue a draft audit report to the provider. The provider has an opportunity to come in and discuss the draft audit report and provide any additional information.

Once the additional information is reviewed, a final audit report issued. And we issue several audit reports a year, and that's done by our audit division. In this case this was a review.

Q. Let me ask the next --

A. Yup.

Q. -- question.

A. Sure.

Q. Can you distinguish an audit from a document review?

A. Certainly. An audit is that. It follows a procedure. It follows 17b-99 of the Connecticut General Statutes.

A document review is a review that's done for, for many reasons, whether it's based upon a complaint, it's based upon claim analysis. It is that we'll request information to review supporting claims paid by the department.

Q. Okay. And the review that was conducted in this instance, I believe you briefly referred to a complaint, but can you inform the Court -- what was the origin and the review, how was it conducted?

A. We received a complaint, and the complaint alleged that Mr. Abdulaziz was billing for services not rendered. So our next step on that was to go out and review documentations in his file to see if he had documentation to support the billings

that were made to the department, and as discussed here and those -- that review was made by Allison Case, and so we did that. We did that review.

Q. And, and now you testified earlier as to the distinction between an audit and a document review.

A. Correct.

Q. Was this review done in accordance with audit protocols?

A. Audit protocols pertain to audits. This wasn't done by audit, our audit staff. It's our investigation staff is separate and unique from the audit division.

Q. And what period of time did this review cover?

A. Oh, I -- I can't give the exact dates. I know it was done in, in approximately June of 2014.

Q. Would you know -- if, if I could refresh your, your recollection, did the audit period precede, both precede and, and subsequent to the April 1, '13 effective date of the amended --

A. I believe it was --

Q. -- 17b-10 regs?

A. I think it was -- expand that date before and after.

Q. Both before and after?

A. Yes.

Q. And do you recall how many records you reviewed?

A. The -- I believe it was over a hundred.

Q. And have you informed Mr. Abdulaziz the result of, of your review?

A. I do not believe so.

Q. And what, what -- generally, what were your findings?

A. The findings were that the billings were not supported by documentation.

ATTY. MARDER: Your Honor, I would object. I mean now we're going into --

THE COURT: Right.

ATTY. MARDER: -- information that we don't have an opportunity --

THE COURT: I understand.

ATTY. MARDER: -- to respond.

THE COURT: I don't really see the relevance of the, of the finding.

ATTY. BARBER: Well, the question --

THE COURT: To the question of aggrievement.

ATTY. BARBER: I mean there is a question that I -- I mean the allegation -- the pertinent allegation, paragraph 7, is that an audit was conducted.

THE COURT: Right.

ATTY. BARBER: He's already testified there was no audit.

THE COURT: Right.

ATTY. BARBER: It was something else.

THE COURT: Right.

ATTY. BARBER: So it's -- I believe it's relevant to the one and only allegation in the complaint as to aggrievement.

THE COURT: Well, he, he does allege that he has not

been notified of the audit results.

ATTY. BARBER: Mmm-hm.

THE COURT: You've asked about that. But I don't see how the review results are relevant quite honestly. Unless, unless you can tell me what I'm missing, I'm going to sustain the objection.

ATTY. BARBER: Well, aggrievement, as you know, Your Honor -- my argument --

THE COURT: Mmm-hm.

ATTY. BARBER: -- requires showing of injury of a specific, personal and legal interest.

The allegation here was that, is that he was aggrieved as a result of audit protocol. I'm inquiring as -- whether, whether there was an audit, what was the protocol, how is he, how is he aggrieved. If you don't think it's relevant, we'll stop there.

THE COURT: Well, I think could you inquire as to what the plaintiff might have been asked to do as a result of the review, but a finding that he did or did not comply with the regulations or the statute I don't think is relevant.

ATTY. BARBER: And if I ask the witness if he's been imposed -- I think, I think it's -- all right. Never mind. I withdraw the question.

Q. (BY ATTY. BARBER) Thank you, Mr. McCormack.

ATTY. BARBER: Nothing further.

THE COURT: All right. Cross-examination.

ATTY. MARDER: Thank you, Your Honor.

CROSS-EXAMINATION BY ATTY. MARDER:

Q. Mr. McCormack, you said your office reviewed over a hundred record -- these are individual, individual client files?

A. They are. There should be an individual client file for each client.

Q. So --

A. So I don't know if there was or there wasn't. I don't know if there was a file at all. So I don't know.

Q. But your testimony was it was over a hundred?

A. Correct.

Q. Okay.

ATTY. MARDER: May I, Your Honor?

THE COURT: Yes.

ATTY. MARDER: May I have just one --

Q. (BY ATTY. MARDER) Did, did the plaintiff cooperate in that audit? Well, I -- you, you call it a review. I call it an audit. Did he cooperate?

A. Did he cooperate?

Q. Yes.

A. I think no. Not originally, no.

Q. When you say, "not originally," what was, what was --

A. He wouldn't grant access to his records.

Q. I'm sorry?

A. He would not grant access to his records.

Q. And did he give you a reason?

A. I don't believe so.

Q. Didn't he indicate to you that he wanted to hire an

attorney at that point?

A. You know, I wasn't there.

Q. Okay.

A. But he -- all(s) I know is he did not grant access to his records.

Q. All right. So, but you don't know his reason why?

A. That wasn't the question. I don't know.

Q. I --

A. He did not grant access to his record.

Q. But you don't know why. That's the, my -- that's my question.

A. I have no, no idea why he would not.

ATTY. MARDER: I have no further questions of this witness, Your Honor.

THE COURT: All right. Any redirect?

ATTY. BARBER: No redirect.

THE COURT: Thank you very much, Mr. McCormack. You may step down. Further witnesses, Mr. Barber?

ATTY. BARBER: No further witnesses.

THE COURT: All right. Any rebuttal, Mr. Marder?

ATTY. MARDER: Yes.

THE COURT: Okay.

ATTY. MARDER: I recall --

THE COURT: All right.

ATTY. MARDER: -- Tariq Abdulaziz, Your Honor.

THE COURT: You can have a seat, sir. You're still under oath.

DIRECT EXAMINATION BY ATTY. MARDER

Q. Tariq, you heard Kathy Bruni indicate that there was certain repetitive responses in your reports that she reviewed, although she acknowledged she didn't review all of them.

Could you indicate, from your knowledge, in terms of preparing those, what portions of the reports in your, in your opinion are repetitive?

A. The program has a -- has a number of requirements. One of them of course you have to have a brain injury. The other is that you have to have at least, what we call two ADL needs, and ADLs are activities of daily living, and there are five activities of daily living in the program: Bathing, dressing, feeding, toileting, transfers. So you have to have needs in at least two of those five.

In addition to those ADLs, we have something called instrumental activities of daily living. Those would be things such as meal preparation, homemaking, housekeeping, cleaning and hygiene. These ADLs, IADLs, I include them in every report, because they're essential to the client's eligibility for the program, and I feel that it's imperative that I speak to those because the truth of the matter, from a, from a political standpoint, there's, there's a need to speak to each one of those for every client because they're relevant to every client. And, actually, those categories are categories created by DSS. And so I'm, I was surprised that Mrs. Bruni was unaware that the activities of daily living and instrumental activities of daily living wouldn't be relevant for every client, every month.

Q. And the other portions of that form might be, you know, might be similar in response?

A. I, the category for, for strategies, you know, I use a number of different strategies. So those are there, but everything else is, is, is tied to the individual client, and I have to evaluate, you know, just to be able to -- I have to evaluate what I have in front of me data-wise in order to make a determination regarding the client's performance.

Q. And her testimony was that she didn't review every single submission of yours?

A. Correct.

Q. Okay. And with respect to the, your efforts, she kind of minimized what her opinion was relative to your efforts --

A. Mmm-hm.

Q. -- in responding to those reports.

A. Mmm-hm.

Q. What would you respond to that?

A. Well, she can -- I invite Mrs. Bruni to come spend a day with me. That's, that's all I can say.

Q. And are those efforts that you indicate still are representative of those hours and times that you put in your test -- you testified to about and also your effort?

A. Absolutely. You know, all I can do is, is respond to the form, but there's a lot of work that goes into coming up with an answer to the questions that are in their form.

Q. With respect to Mr. McCormack, he indicated that you didn't make the records available. I believe I quoted him

correctly -- at first.

A. Mmm-hm.

Q. Could you indicate to the Court what was the sequence of events that occur -- that started with the notice about a -- in their terms, a record review being requested?

A. I received a phone call from Allison Case asking to review the records. Maybe she called me toward the -- she called me after the middle of the week, maybe on a Thursday or a Friday for them wanting to come by on a Tuesday. And in that, in that time, you know, I told her I'd have to get back to her, and I --

Q. Now wait. In that time had you -- had you been represented by counsel?

A. I was not represented by counsel.

Q. Okay. Keep, keep going.

A. I went to our website -- a state website and determined that I was to be given at least 30 days, a minimum of at least 30 days before I had to submit to have my records reviewed. And I told Mrs. Case that earlier in the week, the next week. And, you know, that, later that week, I approached you about, you know, having representation, and that was the only reason that there was any type of delay.

She did not inform me, which I guess she's not required to, that I should be given at least 30 days.

Q. Okay. And then with counsel was a date, a mutual date and time agreed upon between DSS and counsel?

A. Yes.

Q. And did it take place on the data agreed upon?

A. Yes.

ATTY. MARDER: No further questions.

THE COURT: Okay. Cross-examination, Mr. Barber?

ATTY. BARBER: No questions, Your Honor.

THE COURT: All right. Thank you, Mr. Abdulaziz.

THE WITNESS: Thank you.

THE COURT: You may step down. Any further evidence, Mr. Marder?

ATTY. MARDER: No further evidence, Your Honor.

THE COURT: Or Mr. Barber?

ATTY. BARBER: Nothing further, Your Honor.

THE COURT: All right. Do you want to make brief statements on the proof? I mean, I've, I've heard it, but I, I'll listen to any comments you have.

ATTY. MARDER: I appreciate that. We -- the plaintiff submits that, yes, perhaps the, you know, the -- well, the language in the complaint, and when viewed and interpreted in a, as prescribed on dealing with the motion to dismiss, as we -- we feel that we have met both burdens, and one -- that, one, Mr. Tariq Abdulaziz' company have a specific interest, a legal interest that is attributable to, to him, and that the regulations -- it's the regulations that were approved by the commissioner, and the regulations that he determined were approved properly are the ones that -- that strive to change the relationship between the plaintiff and the state of -- and, and DSS through their regulation

requirements for recordkeeping.

The gentleman has an agreement with the state. It's been operated on under, with -- for many years, and the testimony, I think is, we contend clearly states that there has been a substantial difference between the previous, or the Provider Agreement and the new regulations, and the -- the, the direct consequence or the affect, the financial affect on the plaintiff by the new regulations is dramatic.

And the testimony is un-refuted, and so I believe that we've complied with and met our burden with respect to all of the prongs of being -- approving the elements of aggrievement, including the ability to prove that in furhter proceedings.

And I appreciate Your Honor's patients in hearing this matter. Thank you.

THE COURT: Certainly. Mr. Barber.

ATTY. BARBER: Thank you, Your Honor. I'd just like to briefly reiterate our -- our claims as to the sufficiency of the allegations in the complaint.

Again, particular, specific factual obligations are required as to the impact on specific, personal and legal interest, and the broad conclusory allegations are insufficient, and the broad conclusory allegation in paragraph 7 of the complaint that Tariq is aggrieved by the audit protocol being used by DSS in said audit is insufficient to demonstrate the particular factual aggrievement required.

As to the facts, Mr. McCormack has testified that, indeed, no audit was conducted. There's been testimony as to the impact of the monthly report requirement. That is a requirement of the, of the new regs that did not previously exist, but there's been no testimony or no evidence that that is in any way related to record-retention requirements. The document services provided. It was relevant to the claim of aggrievement in the complaint; namely, aggrieved by audit protocol.

There's no testimony, as a matter of fact, that the record retirement -- record-retention requirements, which are more specific clearly in the amended regs are in fact any more onerous than what would have been required anyway by operation of the Provider Agreement in order to, to document sufficiently that services were provided, that qualify for, for Medicaid payment.

So that's what we're left with. A broad conclusory allegation of aggrievement and a claim -- as the monthly reports, which, which is mentioned nowhere in the complaint, and a claim that, that has physical costs. And pulling it altogether, the plaintiff has neither pled sufficiently nor proven that he's aggrieved by the requirements of the regs that the agency is operating under and, therefore, does not have standing to challenge the agency's operation under the said regs.

THE COURT: All right. Thank you, sir. Anything further, Mr. Marder?

ATTY. MARDER: Oh, I'm sorry. The only other comment I can make is, again, the attempt by the state to extract from the declaratory ruling of the commissioner. I think that approved and, and, and -- and indicated that all, all of the proposed regulations not just the, all -- I'm sorry. All of the proposed regulations that he claimed were, were approved properly are in effect, and that the letters from Attorney Smiga that are in the record, the letter that we submitted just today, Plaintiffs' Exhibit 1, all indicate that the regulations, the proposed regulations in their entirety will be applied to this party, to the plaintiff. And that in the complaint, we did allege that he was advised that the proposed regulations would apply to him. That's Attorney Smiga's letter. And, certainly, as of January of 2015, they're still requiring him to make reports.

You can't distinguish, and that's what the state has attempted to say, distinguish recordkeeping from reports. The, the recordkeeping might be the same, but the reports is the additional element, and I believe there was sufficient pleading and the addition of the reasonable facts to be established by a reasonable implicate and, and -- that can be found through reasonable implications from the, from the facts that are pled in the complaint. I have no other comments, Your Honor.

THE COURT: All right. Thank you. One moment. I'm prepared to rule.

I've considered the pleadings, the memoranda, the

evidence produced today and the arguments of counsel, and for the following reasons, the motion to dismiss is granted.

The plaintiff has the burden of alleging and proving aggrievement and must do both. I'll address both, but, clearly, in my view, the plaintiff did not sufficiently allege aggrievement.

The only allegation in the complaint that directly addresses the issue of aggrievement is paragraph 7, wherein the plaintiff alleges Tariq is aggrieved by the audit protocol being used by DSS in said audit. This is a general allegation of aggrievement. It doesn't say how the plaintiff is aggrieved, in what way the plaintiff is, is harmed, and it certainly doesn't link any unspecified aggrievement to the declaratory ruling, which is what the plaintiff must do. The plaintiff must allege in, at some greater level of specificity how he, how they are harmed by the declaratory ruling. It does not do this.

This is exactly the type of situation addressed in many cases. I'll cite one of the more recent. *Connecticut Independent Utility Workers, Local 12924 v. Department of Public Utility Control*, 312 Conn. 265 at 275 to 276, when our Supreme Court stated that the mere statement that the appellant is aggrieved without supporting allegations as to the particular nature of the aggrievement is insufficient, and it goes on, but that, that is essentially what we have here.

I've considered the plaintiff's theory, and I've, I

have applied, I think a liberal construction of the complaint, but there's no way from reading this complaint that the reader would know that, of plaintiffs' theory that section 16 of the regulations impose more onerous and costly reporting and recordkeeping requirements than did the provider agreement.

There's no specific mention of paragraph 16 in the complaint. There's no way of knowing from the complaint that, that section 16 causes more harm than did paragraph 9 of the Provider Agreement, and there's no way in reading the complaint that any such harm was the result of the declaratory ruling. So even construing the complaint liberally, I just cannot discern plaintiffs' theory from what they have alleged.

If anything, if I read paragraph 6 of the complaint, it seems that plaintiff claims -- or plaintiffs. There are two. Claim that they were harmed because they were audited by DSS, and they were harmed by the audit protocol being used by DSS in this audit. That's perhaps the most specific thing that the plaintiff alleges. It does not at all allege that the plaintiff was harmed by paragraph 16 and more onerous and costly reporting and disclosure requirements. So I find that plaintiff has not sufficiently alleged aggrievement, and for that reason alone, lacks standing and the court lacks jurisdiction.

I will go on to address the issue of proof because there was evidence here, and in the event that it becomes

relevant, I, I do want to address it. I do find that the plaintiff proved that he was harmed, or they were harmed by section 16 in that the reporting and disclosure requirements are more onerous and costly than what was required under paragraph 9 of the Provider Agreement, and I rely primarily on the plaintiffs', on, on Mr. Abdulaziz' testimony in that regard.

I'm not convinced that, that it amounted to 120 hours of extra work, that's, that -- that would certainly be a grievous harm. That would leave little time to do anything else. But I am convinced, at least by a preponderance of the evidence, that the plaintiff has proven harm from section 16 of the proposed regulations.

I will add, however, that this is not -- there's no way I can read the complaint to make that sort of harm relevant to what's alleged in the complaint. If anything, again, the plaintiff has alleged that he was harmed by, by the audit protocol being used by DSS in an audit, and I do accept the testimony and evidence that the plaintiff was, the plaintiffs were not audited. It was not an audit. And, therefore, the plaintiffs could not have been harmed by an audit protocol being used in an audit.

So, although, the plaintiff has shown some harm from the new regulations, it's, it's not within the scope of the complaint, and that makes it technically irrelevant. But, again, the plaintiff -- we, we -- I don't have to get that far, because I don't believe that the plaintiff has

sufficiently alleged aggrievement. Therefore, the motion to dismiss is granted. And at this time, I will not take up the other pending matters.

I do thank counsel for their efficiency and courtesy and corporation. Is there anything else that we need to do on the record?

ATTY. BARBER: Nothing further, Your Honor.

THE COURT: All right.

ATTY. MARDER: Nothing further, Your Honor.

THE COURT: Thank you very much. We'll stand adjourned. Everyone have a good holiday.

(Court adjourned 12:57:11 PM).

No: HHBCV15-6029943 S	:	SUPERIOR COURT
NEUROSTRATEGIES, INC. And TARIQ ABDULAZIZ, Ph.D, M.S., MBA	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN, CONNECTICUT
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES, RODERICK l. BREMBY, COMMISSIONER OF SOCIAL SERVICES	:	November 25, 2015

C E R T I F I C A T E

I hereby certify that the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Britain, New Britain, Connecticut, before the Honorable Carl J. Schuman, Judge, on the 25th day of November, 2015.

Dated this 4th day of December, 2015, in New Britain, Connecticut.

Donna L. Peluso,
Court Recording Monitor

State of Connecticut Judicial Branch

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HHB-CV16-6034437-S **NEUROSTRTAEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al**

Prefix/Suffix: [none] **Case Type:** A90 **File Date:** 08/08/2016 **Return Date:** 08/23/2016

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help

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Information Updated as of: 02/28/2017

Case Information

Case Type: A90 - Appeals - All other
Court Location: NEW BRITAIN JD
List Type: ADMINISTRATIVE APPEALS (AA)
Trial List Claim: 08/09/2016
Last Action Date: 01/25/2017 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 09/22/2016
Disposition: JUDGMENT OF NONSUIT BEFORE TRIAL COMMENCED
Judge or Magistrate: HON GEORGE LEVINE

Party & Appearance Information

Party		No Fee Party	Category
P-01	**NEUROSTRTAEGIES, INC.** **Attorney:** MICHAEL T KOGUT (419933) File Date 08/08/2016 75 MARKET PLACE SPRINGFIELD, MA 011031640		Plaintiff
P-02	**TARIQ ABDULAZIZ, PH.D., M.S., M.S., MBA** **Attorney:** MICHAEL T KOGUT (419933) File Date 08/08/2016 75 MARKET PLACE SPRINGFIELD, MA 011031640		Plaintiff
D-01	**CT DEPARTMENT OF SOCIAL SERVICES** **Attorney:** AAG HUGH BARBER (085484) File Date 08/30/2016 ATTY GEN-HEALTH PO BOX 120 HARTFORD, CT 061410120		Defendant
D-02	**RODERICK L. BREMBY** **Attorney:** AAG HUGH BARBER (085484) File Date 08/30/2016 ATTY GEN-HEALTH PO BOX 120 HARTFORD, CT 061410120		Defendant

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case is Any documents protected by law or by court order that are not open to the public cannot be viewed online and can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	08/30/2016	D	APPEARANCE Appearance	
100 30	08/08/2016	P	SUMMONS AND COMPLAINT	No
101 61	08/09/2016	C	CERTIFICATE OF CLOSED PLEADINGS AND CLAIM FOR TRIAL LIST	No
102 00	09/08/2016	D	CERTIFIED LIST OF PAPERS IN THE RECORD PB 14-7A(b)/14-7B(b)	No
103 00	09/08/2016	D	NOTICE OF SUBMISSION OF THE RECORD	No
104 00	09/08/2016	D	RECORD IN ADMINISTRATIVE APPEALS	No
105 00	09/14/2016	D	RECORD IN ADMINISTRATIVE APPEALS Record Pages 501-1959	No
105 50	09/22/2016	C	ORDER *RESULT* Order 9/22/2016 HON GEORGE LEVINE	No
106 00	09/22/2016	C	**JUDGMENT OF NONSUIT BEFORE TRIAL COMMENCED** *RESULT* HON GEORGE LEVINE	No
107 00	01/13/2017	P	MOTION TO OPEN JUDGMENT *RESULT* Denied 1/25/2017 HON SHEILA HUDDLESTON	No
107 10	01/25/2017	C	ORDER *RESULT* Denied 1/25/2017 HON SHEILA HUDDLESTON	No
108 00	01/24/2017	D	MEMORANDUM IN OPPOSITION TO MOTION Defendants' Memorandum in Opposition to Plaintiffs' Motion to Open Judgment *RESULT* Sustained 1/25/2017 HON SHEILA HUDDLESTON	No
108 10	01/25/2017	C	ORDER *RESULT* Sustained 1/25/2017 HON SHEILA HUDDLESTON	No

Scheduled Court Dates as of 02/27/2017

HHB-CV16-6034437-S - **NEUROSTRTAEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al**

#	Date	Time	Event Description	Status
			No Events Scheduled	

Judicial ADR events may be heard in a court that is different from the court where the case is filed To check location information about an ADR event, select the **Notices** tab on the top of the case detail page

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page The date displayed on this page is the date of the calendar

All matters on a family support magistrate calendar are presumed ready to go forward

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the civil or

family standing orders Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services Markings made by telephone can only be obtained through the clerk's office If more than one motion is on a single short calendar, the calendar will be listed once on this page You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the Civil/Family Case Look-Up page and Short Calendars By Juris Number or By Court Location.

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RETURN DATE: AUGUST 23, 2016	:	SUPERIOR COURT
NEUROSTRATEGIES, INC. AND TARIQ ABDULAZIZ, Ph.D., M.S., M.S., MBA	:	J. D. OF NEW BRITAIN
VS.	:	AT NEW BRITAIN
CT DEPARTMENT OF SOCIAL SERVICES; RODERICK L. BREMBY, COMMISSIONER DEPARTMENT OF SOCIAL SERVICES	:	AUGUST 8, 2016

ADMINISTRATIVE APPEAL

Pursuant to Section 4-183(a) of the Connecticut General Statutes, plaintiffs/appellants NeuroStrategies, Inc. and Tariq Abdulaziz, Ph.D., M.S., M.S., MBA (hereinafter referred to collectively as "Plaintiffs"), as aggrieved parties to a Connecticut agency decision, hereby appeal the final decision of the defendant/appellee, Department of Social Services made through its designee Roderick L. Bremby, Commissioner of the Department of Social Services all collectively referred to as the "Department" as set forth in its Declaratory Ruling date June 24, 2016.[1]

1. In its declaratory ruling, DSS stated that effective July 1, 2016 a provider signature only needs to be obtained once. Plaintiffs appeal this declaratory ruling relative to the Department's interpretation of its regulations adopted April 1, 2013. The Department's regulation, 17b-260a-16(a)(1), at best, is vague. Plaintiffs have spent a tremendous amount of time attempting to obtain signatures on an ongoing basis. Plaintiff, Tariq Abdulaziz, Ph.D., M.S., M.S., MBA has spent a tremendous amount of time and money in an attempt to obtain signatures as vaguely described and acknowledged by DSS in its ruling. (See 17b-260a-16(a)(1) below):

Sec. 17b-260a-16. Client Documentation and Provider Reporting

(a) Providers are required to retain records to document services submitted for Medicaid reimbursement for at least five years from the date the service or item was provided. Documentation shall include the following:

[1] All references contained in this administrative appeal refer and relate to the Department's "Declaratory Ruling" signed by Commissioner Roderick L Bremby, dated June 22, 2016 and post marked by the United States Postal Service on June 24, 2016.

(1) Individual's name and the signature of the individual or their legal representative:

(2) provider's name and signature;

(3) dates of service;

(4) start time for each visit;

(5) end time for each visit; and

(6) a brief description of duties performed.

(a) Upon written request presented to the provider, the department or its authorized agent may be given immediate access to, and permitted to review and copy any and all records and documentation used to support claims billed to Medicaid.

(b) For purposes of subsection (b) of this section, "immediate access" means access to records at the time the written request is presented to the provider.

(d) The provider shall submit monthly reports and written updates on the individual's progress in a form that is set forth by the department.

(e) The failure of a provider to comply with subsections (a) to (e), inclusive, of this section, may result in the nonpayment of the services.

2. The Department in its declaratory ruling erroneously determined that the regulations adopted on April 1, 2013 were properly adopted which required the plaintiffs to document information that the plaintiffs were never required to document according to the plaintiffs' provider agreement. The provider agreement signed January 2004 required the following;

I WILL MAINTAIN RECORDS THAT FULLY DISCLOSE GOODS AND SERVICES RENDERED AND I WILL MAKE RECORDS AVAILABLE TO REPRESENTATIVES OF THE DEPARTMENT UPON REQUEST

The April 1, 2013 policies required the following documentation

(1) Individual's name and the signature of the individual or their legal representative:

(2) provider's name and signature;

(3) dates of service;

(4) start time for each visit;

(5) end time for each visit; and

(6) a brief description of duties performed.

The plaintiffs were never required to document these items and spent tremendous time and money documenting the information outlined in the April 1, 2013 regulations.

3. The January 2004 regulations did not require the plaintiffs to provide monthly reports and written updates. The April 1, 2013 regulations required written updates and monthly reports and providers were not allowed to invoice for the reports. In addition, plaintiffs have been informed that they will be terminated from the program if they do not provide written updates and reports

4. The department misled the Center for Medicaid and Medicare Services ("CMS"), the federal agency granting such waiver, the plaintiffs, and the superior court in the original administrative appeal when it indicated that it conducts audits. The question from CMS was in the ABI Waiver application. It was not a general question about other waiver programs or any other DSS program but was very specific to the ABI Waiver program. The plaintiffs had an "ad hoc" review or records review which was conducted by DSS. Which explained as follows:

These audits include ad hoc reviews when the Department's fiscal intermediary or DSS Social Work Services staff alert QA to potential issues.
(ABI I Renewal Application, October 6, 2006. Petitioner's Exhibit 51)[2]

John McCormick, Director of the department's Office of Quality Assurance, ("QA") in a deposition held July 20, 2016 at the Office of the Connecticut Attorney General, testified under oath, that the records review conducted of the plaintiffs on June 16, 2014 was conducted in response to a report from the fiscal intermediary of a high frequency of billing. In November 2015 the New Britain District of the Superior Court ruled that this was a "records review" and not an audit.

These audits include ad hoc reviews when the Department's fiscal intermediary or DSS Social Work Services staff alert QA to potential issues.
(ABI I Renewal Application, October 6, 2006. Petitioner's Exhibit 51)

The plaintiffs properly acted based on the information in the department's application for the ABI Waiver. In addition, despite the departments' claim that it does not have audit regulations, the department conducted audits of providers on the ABI Waiver (Exhibits 65A-65H). In addition, DSS employed CGS 17b-99 and used extrapolation against these providers and exacted fines.

[2] References to Exhibits refer to those on file in Administrative Appeal Docket No.. HHB-CV15-6029943-S in New Britain Superior Court.

The plaintiffs reasonably believed that the records review as indicated by the department were audits as in their words "audits" include "ad hoc" reviews or so-called "record reviews."

The plaintiffs, herein, were aggrieved and continue to be aggrieved by the arbitrary and capricious actions against them and as petitioners to this court, have been aggrieved as follows:

1. The department, by adopting new regulations which changed the documentation requirements in item number nine of the new provider agreement within the regulations, without proper notice and without a hearing in violation of state and federal law;

2. The department, by requiring these plaintiffs to pursue signatures that were not required prior to the illegal and unlawful adoption of the new regulations in violation of state and federal law;

3. The department, by unlawfully and arbitrarily requiring the documentation of "time in and out" which had never been required previous to the promulgation of the newly and unlawfully adopted regulations;

4. The department, by requiring completion of monthly reports and written updates which, again, had never been required previous to the promulgation of the newly and unlawfully adopted regulations;.

Tariq Abdulaziz, Ph.D., M.S., M.S., MBA (Individually)

23 Kate Way
Windsor Locks, Connecticut 06096
(860) 377-0641 Voice/(860) 831-1044 Fax
tariqabdulaziz@neurostrategies.info

Tariq Abdulaziz, Ph.D., M.S., M.S., MBA
Duly appointed representative of NeuroStrategies, Inc.

NeuroStrategies, Inc.
Second Floor, Suite 8
91 Schraffts Drive
Waterbury, Connecticut 06705
(860) 377-0641 Voice/(860) 831-1044 Fax
tariqabdulaziz@neurostrategies.info

CERTIFICATION

I, Tariq Abdulaziz, Ph.D., M.S., M.S., MBA hereby certify that, individually and as duly appointed representative of NeuroStrategies, Inc., caused this appeal of a final agency decision/declaratory ruling to be served upon the parties in this action by certified mail, return receipt requested, postage prepaid with the United States Postal Service in accordance with C.G.S. Sec. 4-183(c) on August 7, 2016.

Tariq Abdulaziz, M.S., M.S., MBA

ORDER 409665

DOCKET NO: HHBCV166034437S

SUPERIOR COURT

NEUROSTRTAEGIES, INC. Et Al
V.
CT DEPARTMENT OF SOCIAL SERVICES
Et Al

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

9/22/2016

ORDER

The following order is entered in the above matter:

ORDER:

A judgment of nonsuit has been entered for plaintiff's failure to attend the 9/22/16 pretrial, which was noticed on 9/2/16.

Judicial Notice (JDNO) was sent regarding this order.

409665

Judge: GEORGE LEVINE
Processed by: Stephen Goldschmidt

DOCKET NO.: HHB-CV16-6034437-S	:	SUPERIOR COURT
NEUROSTRATEGIES, INC. AND TARIQ ABDULAZIZ, Ph.D., M.S., M.S., MBA	:	J. D. OF NEW BRITAIN
VS.	:	AT NEW BRITAIN
CT DEPARTMENT OF SOCIAL SERVICES; RODERICK L. BREMBY, COMMISSIONER DEPARTMENT OF SOCIAL SERVICES	:	January 13, 2017

MOTION TO OPEN JUDGMENT

NOW comes the above-named plaintiffs and, pursuant to Conn. P.B. 24-31, hereby moves this Honorable Court to open judgment for nonsuit entered on September 22, 2016. Plaintiffs state that the motion to open judgment for nonsuit is within the four (4) month period allowed by Conn. P.B.

CERTIFICATION

The undersigned counsel hereby certifies that a copy of the foregoing motion to open judgment was served upon Assistant Attorney General Hugh Barber, counsel of record for the defendants, electronically at hugh.barber@ct.gov.

/s/ Michael T. Kogut

Michael T. Kogut

ORDER 434440

DOCKET NO: HHBCV166034437S

SUPERIOR COURT

NEUROSTRTAEGIES, INC. Et Al
V.
CT DEPARTMENT OF SOCIAL SERVICES
Et Al

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

1/25/2017

ORDER

ORDER REGARDING:
01/13/2017 107.00 MOTION TO OPEN JUDGMENT

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

434440

Judge: SHEILA HUDDLESTON

DOCKET NO. HHB-CV16-6034437-S	:	SUPERIOR COURT
NEUROSTRATEGIES, INC. AND	:	JUDICIAL DISTRICT OF
TARIQ ABDULAZIZ, PH.D., M.S., M.S., MBA	:	NEW BRITAIN AT NEW BRITAIN
Plaintiffs	:	
v.	:	
CONNECTICUT DEPARTMENT OF SOCIAL SERVICES RODERICK L. BREMBY, COMMISSIONER DEPARTMENT OF SOCIAL SERVICES	:	
Defendants	:	JANUARY 24, 2017

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO OPEN JUDGMENT

The defendants, Connecticut Department of Social Services and Roderick L. Bremby, Commissioner, Department of Social Services (hereinafter "defendants") file this Memorandum in Opposition to object to plaintiffs' legally deficient Motion to Open Judgment.

In support thereof, the defendants represent that this Court issued a notice requiring the parties to appear for a pretrial on September 22, 2013. The notice specifically advised the parties that "Failure to comply with the terms of this order may result in sanctions, including nonsuit or default." Exhibit A. Plaintiffs failed to attend the pretrial. Upon information and belief, court personnel were unable to contact plaintiffs' counsel to inquire about his whereabouts. This Court (Levine, J.) then entered a Judgment of Nonsuit, sua sponte, on September 22, 2016 as a result of plaintiffs' failure to appear at the scheduled pretrial.

No contact was received from plaintiffs on the Judgment of Nonsuit until a few days before January 13, 2016 (about a week shy of the four month limitation on opening

Judgments of Nonsuit) when plaintiffs sought the consent of defendants' counsel on opening the Judgment – which consent was denied under the circumstances.

On January 13, 2017 plaintiffs' filed a "Motion to Open Judgment." Said motion indicates that it is made "pursuant to P.B. 24-31" and only recites that "the motion to open judgment for nonsuit is within the four (4) month period allowed by Conn. P.B. [24-31]." No other justification is provided. Specifically, plaintiffs' Motion to Open Judgment fails to specify the reason for their failure to appear at the pretrial or demonstrate that such reason contributes "reasonable cause." Plaintiffs further fail to explain their inexplicable delay in seeking to open the Judgment of Nonsuit, and fail to assert that they had a good cause of action. Furthermore, none of the required (but absent) representations are made under oath.

Plaintiffs' motion to open must be denied because is it wholly legally insufficient to meet the requirements of the Practice Book section that actually applies to this Motion for Judgment. The Practice Book section erroneously relied upon by plaintiffs, only applies to Small Claims Judgments. P.B. 17-43 is the section of the Practice Book that actually applies to this Motion to Open Judgment. P.B. § 17-43 sets forth a number of requirements that must be satisfied before a Judgment of Nonsuit can be opened – none of which are satisfied in this case. Specifically, P.B. 17-43 requires a written motion that is verified under oath "particularly setting forth the reason why the plaintiff . . . failed to appear," shows both "reasonable cause" for the failure to appear and

represents that a "good cause of action" existed at the time of the entry of the nonsuit. Plaintiffs' motion makes no attempt to satisfy any of these requirements.[1]

The failure of plaintiffs' motion to open to meet the requirements of P.B. 17-43 and Conn. Gen. Stat. § 52-212 is, by itself, sufficient to deny the Motion to Open Judgment. Water Pollution Control Authority of New Haven v. OTP Realty, LLC, 76 Conn. App. 711 (2003), Fontaine v. Thomas, 51 Conn. App. 77, 83 (1998). Note also, had a "particular reason" been proffered under oath as required by the rule and statute, the Connecticut courts have been rather strict in insisting that the proffered reason constitute "reasonable cause." Inadvertence or negligence does not constitute "reasonable cause." Weinstein and Wisser, P.C. v. Cornelius, 151 Conn. App. 174 (2014); Berzins v. Berzins, 105 Conn. App. 648 (200*).

Moore v. Brancard, 89 Conn. App. 129 (2005) is particularly on point to this case because a Judgment of Nonsuit entered as a result of plaintiff's failure to attend a pretrial. The Appellate Court held that the bald assertion that "good cause" exists wholly failed to satisfy the pre-requisites of P.B. 17-43 and Conn. Gen. Stat. § 52-212. In this case, plaintiffs do not even make the bald assertion that "good cause" exists.

Furthermore, Judgments of Nonsuit "may be set aside" by the Court only "within four months succeeding the date on which notice was sent," P.B. 17-43, Conn. Gen. Stat. § 52-212, which period has now expired since notice of the nonsuit was sent on September 22, 2016, more than four months ago. Doc. 105.50. Accordingly, even if plaintiffs' motion met the requirements of the Practice Book section that actually applies,

[1] The requirement of P.B. 17-43 mirror statutory requirements for opening judgments of nonsuit that are set forth in Conn. Gen. Stat. § 52-212.

P.B. 17-43, this Court could not set aside the nonsuit because the four month limitation on the Court's authority to act has expired.[2]

CONCLUSION

Plaintiffs' Motion to Open Judgment must be denied.

Respectfully submitted,

DEFENDANTS

CONNECTICUT DEPARTMENT OF SOCIAL SERVICES, RODERICK L. BREMBY, COMMISSIONER, DEPARTMENT OF SOCIAL SERVICES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: 085484
Hugh Barber
Assistant Attorney General
Juris No.085484
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
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Fax: (860) 808-5385
Email: hugh.barber@ct.gov

[2] Since no reason for plaintiffs' failure to attend the pretrial has been proffered, it is not necessary to consider whether any proffered reason constitutes "reasonable cause."

CERTIFICATION

I hereby certify that a copy of the foregoing Notice of Submission of the Administrative Record was mailed; first class postage prepaid this 24th day of January, 2017 to:

Michael T. Kogut, Esq.
75 Market Place
Springfield, MA 01103-1640

085484
Hugh Barber
Assistant Attorney General

CLERK, SUPERIOR COURT
JUDICIAL DISTRICT OF NEW BRITAIN
20 FRANKLIN SQUARE
NEW BRITAIN, CT 06051

AAG HUGH BARBER
ATTY GEN-HEALTH
PO BOX 120
HARTFORD, CT 06141

Docket Number: **HHB-CV-16-6034437-S** Notice Issued: 09/02/2016

Case Caption: **NEUROSTRTAEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al**

JDNO NOTICE Sequence #: 1

THIS CASE IS ASSIGNED FOR A PRETRIAL CONFERENCE ON 9/22/16 AT 3:30 P.M. PLEASE REPORT TO ROOM 310, 20 FRANKLIN SQUARE, NEW BRITAIN.
AS TO EACH PARTY REPRESENTED BY COUNSEL, THE ATTORNEY WHO WILL TRY THE CASE, AS WELL AS THE ATTORNEY HAVING ULTIMATE AUTHORITY TO MAKE A RECOMMENDATION TO THE CLIENT (IF THEY ARE DIFFERENT), ARE REQUIRED TO ATTEND. IF A PARTY IS AN INDIVIDUAL, THE PARTY MUST ATTEND. IF A PARTY IS A CORPORATION OR OTHER TYPE OF LEGAL ENTITY, A PERSON WHO HAS ULTIMATE AUTHORITY TO NEGOTIATE A SETTLEMENT MUST BE PRESENT ON BEHALF OF THE PARTY. "ULTIMATE AUTHORITY" MEANS THE ABILITY TO MEET ANOTHER PARTY'S POSITION, WITHOUT CONSULTING WITH ANY OTHER PERSON IN HIS OR HER ENTITY IF PERSUADED IT IS IN THE ENTITY'S BEST INTEREST TO DO SO. SOMEONE WITH AUTHORITY TO NEGOTIATE A SETTLEMENT ONLY ON A PREESTABLISHED BASIS DOES NOT HAVE "ULTIMATE AUTHORITY." IF THIS DATE IS INCONVENIENT, PLEASE SELECT ALTERNATE DATES WITH ALL COUNSEL/PRO SE PARTIES AND E-FILE A REQUEST FOR CONTINUANCE WITH PROPOSED DATES. FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN SANCTIONS, INCLUDING NONSUIT OR DEFAULT.
BY ORDER OF THE HONORABLE GEORGE LEVINE, JTR.
TAX AND ADMINISTRATIVE APPEALS SESSION 9/2/16
STEPHEN GOLDSCHMIDT, COURT OFFICER 860-515-5145

Exhibit A

State of Connecticut Judicial Branch
Civil and Family E-Services

Attorney/Firm: AAG HUGH BARBER (085484) E-Mail: hugh.barber@ct.gov Logout

HHB-CV15-6029943-S NEUROSTRATEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al

Prefix/Suffix: [none] **Case Type:** A64 **File Date:** 07/10/2015 **Return Date:** 07/28/2015

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Docket Number: HHB-CV-15-6029943-S
Case Name: NEUROSTRATEGIES, INC v CT DEPARTMENT OF SOCIAL SERVICES
Type of Transaction: Appearance
Date Filed: Jul 20 2015
Appearance by: 085484 AAG HUGH BARBER

Appearance for this Party(ies)

Party #	Party Name
D-01	CT DEPARTMENT OF SOCIAL SERVICES
D-02	RODERICK L BREMBY, COMMISSIONER, DEPT OF SOCIAL SERVICES

Document Filed: JD-CL-12 Appearance
Date and Time of Transaction: Jul 20 2015 1:11:08 PM

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APPEARANCE

JD-CL-12 Rev 1-12
P B §§ 3-1 thru 3-6 3-8, 10-13, 25A-2

STATE OF CONNECTICUT
SUPERIOR COURT
www.jud.ct.gov

Instructions — *See Back/Page 2*

Notice To Self-Represented Parties

A self-represented party is a person who represents himself or herself. *If you are a self-represented party and you filed an appearance before and you have since changed your address, you must let the court and all attorneys and self-represented parties of record know that you have changed your address by checking the box below*

☐ *I am filing this appearance to let the court and all attorneys and self-represented parties of record know that I have changed my address. My new address is below*

Return date	Docket number
Jul-28-2015	HHB-CV-15-6029943

Name of case *(Full name of Plaintiff vs. Full name of Defendant)*

NEUROSTRATEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al

☒ Judicial District ☐ Housing Session ☐ Small Claims ☐ Geographic Area number ____

Address of Court *(Number, street, town and zip code)*: **20 FRANKLIN SQUARE NEW BRITAIN, CT 06051**

Scheduled Court date *(Criminal/Motor Vehicle Matters)*

Please Enter the Appearance of

Name of self-represented party *(See "Notice to Self-Represented Parties" at top)*, or name of official firm, professional corporation, or individual attorney: **AAG HUGH BARBER**

Juris number of attorney or firm: **085484**

Mailing Address *(Number street) (Notice to attorneys and law firms - The address to which papers will be mailed from the court is the one registered or affiliated with your juris number That address cannot be changed in this form.)*: **ATTY GEN-HEALTH PO BOX 120**

Post office box:

Telephone number *(Area code first)*: **860-808-5210**

City/town	State	Zip code	Fax number *(Area code first)*	E-mail address
HARTFORD	CT	06141	860-808-5385	hugh.barber@ct.gov

In the case named above for *("x" one of the following parties, if this is a Family Matters case, also indicate the scope of your appearance)*

- ☐ The Plaintiff *(includes the person suing another person)*
- ☐ All Plaintiffs
- ☐ The following Plaintiff(s) only: ____
- ☐ The Defendant *(includes the person being sued or charged with a crime)*
- ☐ The Defendant for the purpose of the bail hearing only *(in criminal and motor vehicle cases only)*
- ☒ All Defendants
- ☐ The following Defendant(s) only ____
- ☐ Other *(Specify)*. ____
- ☐ This is a Family Matters case and my appearance is for *("x" one or both)*
  - ☐ matters in the Family Division of the Superior Court ☐ Title IV-D Child Support matters

Note. If other counsel or a self-represented party has already filed an appearance for the party or parties "x'd" above, put an "x" in box 1 or 2 below.

1 ☐ This appearance is in place of the appearance of the following attorney, firm or self-represented party on file *(P.B. Sec 3-8)* ____ *(Name and Juris Number)*

2 ☐ This appearance is in addition to an appearance already on file.

I agree to accept papers (service) electronically in this case under Practice Book Section 10-13 ☒ **Yes** ☐ **No**

Signed *(Individual attorney or self-represented party)*	Name of person signing at left *(Print or type)*	Date signed
▶ 085484	AAG HUGH BARBER	Jul 20 2015

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on *(date)* **Jul 20 2015** to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery

Name and address of each party and attorney that copy was mailed or delivered to*: **MARDER ROBERSON & DEFELICE LAW OFFICES L - 76 SOUTH FRONTAGE ROAD/VERNON, CT 06066**

For Court Use Only

Signed *(Signature of filer)*	Print or type name of person signing	Date signed	Telephone number
▶ 085484	AAG HUGH BARBER	Jul 20 2015	860-808-5210

*If necessary, attach an additional sheet or sheets with the name of each party and the address which the copy was mailed or delivered to

Continuation of JDCL12 Appearance Form for HHB-CV-15-6029943-S

Submitted By AAG HUGH BARBER (085484)

Additional Party(ies) (Continued from JDCL12)

For these party(ies)

Pty# D-01 CT DEPARTMENT OF SOCIAL SERVICES

Pty# D-02 RODERICK L. BREMBY, COMMISSIONER, DEPT. OF SOCIAL SERVICE

******* End of Party List *******

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Case Name:	NEUROSTRATEGIES, INC Et Al v CT DEPARTMENT OF SOCIAL SERVICES Et Al
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Date Filed:	Jul-20-2015
Motion/Pleading by:	AAG HUGH BARBER (085484)
Document Filed:	103.00 REQUEST FOR ACTION ADMINISTRATIVE AND TAX APPEALS (JD-CV-114)
	Notice of Appearance
Date and Time of Transaction:	Monday, July 20, 2015 1 19 36 PM

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REQUEST FOR ACTION —
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1 File this form immediately after filing an Appearance or motion in an administrative or tax appeal, not for use in land use appeals.
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Judicial District of	Name of case		Docket number
New Britain	**Neurostrategies, Inc., et al. v. Department of Social Services, et al.**		**HHB-CV15-6029943-S**
Title of motion that you want decided		Date of motion	Motion entry number

1 Are you filing this form because you have filed an Appearance? ☐ No ☒ Yes

If you checked No, answer 2-5

2 Is oral argument requested? ☐ No ☐ Yes

3 Is testimony required? ☐ No ☐ Yes

4 Does opposing counsel object to this motion? ☐ No ☐ Yes

5. Has an objection already been filed? ☐ No ☐ Yes

If yes, please provide the date of objection _____ and the entry number _____

Certification

I certify that a copy of this document was mailed or delivered electronically or non-electronically on *(date)* **07/20/2015** to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery

Name and address of each party and attorney that copy was mailed or delivered to*
T. Ryan McNeil, Law Offices of Marder Roberson & DeFelice, 76 South Frontage Road, Vernon, CT 06066
Tariq Abdulaziz, Ph.D., M.S., MBA, 23 Kate Way, Windsor Locks, CT 06096

*If necessary, attach additional sheet or sheets with name and address which the copy was mailed or delivered to

Signed *(Signature of filer)*	Print or type name of person signing	Date signed
▶	**Hugh Barber**	**07/20/2015**
Mailing address *(Number, street, town, state and zip code)*		Telephone number
55 Elm Street, P.O. Box 120, Hartford, CT 06141-0120		**860-808-5210**

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HHB-CV15-6029943-S NEUROSTRATEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al

Prefix/Suffix: [none] **Case Type:** A64 **File Date:** 07/10/2015 **Return Date:** 07/28/2015

Case Detail Notices History Scheduled Court Dates E-Services Login Screen Section Help

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Information Updated as of: 07/20/2015

Case Information

Case Type: A64 - Appeals - Social Services Commission
Court Location: NEW BRITAIN
List Type: ADMINISTRATIVE APPEALS (AA)
Trial List Claim: 07/10/2015
Referral Judge or Magistrate:
Last Action Date: 07/10/2015 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party
P-01 **NEUROSTRATEGIES, INC.**	
Attorney: MARDER ROBERSON & DEFELICE LAW OFFICES L (103095) File Date 07/10/2015 NEW 76 SOUTH FRONTAGE ROAD VERNON, CT 06066	
P-02 **TARIQ ABDULAZIZ**	
Attorney: MARDER ROBERSON & DEFELICE LAW OFFICES L (103095) File Date 07/10/2015 NEW 76 SOUTH FRONTAGE ROAD VERNON, CT 06066	
D-01 **CT DEPARTMENT OF SOCIAL SERVICES** Non-Appearing	
D-02 **RODERICK L. BREMBY, COMMISSIONER, DEPT. OF SOCIAL SERVICES** Non-Appearing	

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- Documents, court orders and judicial notices in 2014 and future civil cases are available publicly over the internet.*
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Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable

100 30	07/10/2015	P	SUMMONS AND CITATION ! NEW	No
100 31	07/10/2015	P	APPEAL TO JD SUPERIOR COURT ! NEW	No
101 00	07/10/2015	P	RETURN OF SERVICE ! NEW	No
102 61	07/10/2015	C	CERTIFICATE OF CLOSED PLEADINGS AND CLAIM FOR TRIAL LIST ! NEW	No

Scheduled Court Dates as of 07/17/2015

HHB-CV15-6029943-S - NEUROSTRATEGIES, INC. Et Al v. CT DEPARTMENT OF SOCIAL SERVICES Et Al

#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed To check location information about an ADR event, select the **Notices** tab on the top of the case detail page

Short Calendar and family support magistrate calendar matters are shown as scheduled court dates If there are multiple motions on a single short calendar, the calendar will be listed once You can see more information on matters appearing on short calendars and family support magistrate calendars by going to the Civil/Family Case Look-Up page and Short Calendars By Juris Number or By Court Location

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