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STATE OF NEW HAMPSHIRE
SUPREME COURT
Docket No. 2018-0092

PETITION OF KYLE GUILLEMETTE

Rule 11 Petition for Original Jurisdiction
From the N.H. Department of Health and Human Services Administrative Appeals Unit
BRIEF OF MONADNOCK WORKSOURCE

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STATEMENT OF THE CASE

Monadnock Developmental Services ("MDS"), the area agency legally obligated to provide services to Appellant, contracted with Monadnock Worksource ("Worksource") to provide day program services to Appellant. On March 31, 2017, Worksource notified MDS that Worksource was discontinuing its services to Appellant. On April 24, 2017, Appellant filed an administrative appeal and complaint with the New Hampshire Department of Health and Human Services Office of Client and Legal Services (respectively, "DHHS" and "OCLS") alleging that Worksource had improperly discontinued services, even though MDS had offered to engage an alternative service provider.

On June 29, 2017, the DHHS Bureau of Developmental Services ("BDS") administrator determined that Appellant's services had not been terminated since MDS was still responsible for ensuring all necessary services for Appellant.[1] On July 13, 2017, Appellant appealed the BDS determination to the Administrative Appeals Unit ("AAU").

The parties agreed that the matter could be decided by the AAU through summary judgment motions. On December 1, 2017, the AAU determined that Appellant's services had not been terminated since MDS, as the area agency, remained responsible for ensuring that Appellant continue to receive all appropriate services. The AAU concluded that Appellant's services were not ending; rather, the entity providing the services was changing.

Appellant timely filed a motion for reconsideration which was denied. Appellant also filed a motion to stay the AAU order which was denied.

[1] The copy of BDS' decision provided by Appellant at page 189 of his Appendix is not entirely legible. Worksource has provided a clearer copy at page 1 of its Appendix.

STATEMENT OF THE FACTS

Worksource is certified by the State of New Hampshire to provide direct services to individuals with developmental and intellectual disabilities. Worksource is not an area agency within the meaning of RSA 171-A: 2, I-b. Worksource is also not an administrator within the meaning of RSA 171-A: 2, I, since it is not conducted under the supervision of the commissioner of health and human services.

Worksource entered into a Master Agreement with MDS, the Region V area agency, to provide direct services to clients.[2] Appellant's App. at 228-235. Under the terms of the Master Agreement, MDS could, using a variety of criteria and procedures, "select [Worksource] to provide some or all of the services required for an eligible" client. Appellant's App. at 228 at ¶ 1. MDS agreed to pay Worksource for services upon consumer-specific and/or programs-specific bases. Appellant's App. at 229 at ¶ 4.

Paragraph 9 of the Master Agreement contains broad provisions allowing Worksource to, without cause, end its relationship with MDS, end its services to one client, or discontinue providing certain specific services to one client, by merely providing thirty (30) days' notice to MDS. Appellant's App. at 233 at ¶ 9. In the event of reasonable cause, MDS or Worksource could terminate the Master Agreement, effective immediately, without the need to provide thirty (30) days' notice. *Id.*

The Master Agreement contains additional provisions allowing Worksource to terminate its services. For example, Worksource may also discontinue providing services to a specific client in instances where the scope of services and/or budget is changed and, as a result, Worksource cannot or does not desire to serve the client. Appellant's App. at 229 at ¶ 3. Worksource may additionally end its relationship with MDS if new terms are imposed upon Worksource through Procedure Bulletins, which would result in discontinuing services to a client. Appellant's App. at 229 at ¶ 4.

Worksource began providing day services to Appellant on August 29, 2012. On March 31, 2017, Worksource notified MDS by letter that it would cease to provide

[2] The Master Agreement describes recipients of services as consumers. We have referred to recipients of services as individuals or clients, consistent with RSA 171-A.

services to Appellant 30 days hence. Appellant's App. 183. Worksource's letter was sent in compliance with Section 9 of the Master Agreement. Appellant's App. at 233 at ¶ 9. Thereafter, MDS notified Appellant's guardian.

Following Appellant's appeal to the AAU, Worksource continued to provide services to Appellant as required under He-M 310.07(e) through the appeal. On December 1, 2017, the AAU determined that Appellant's right to receive services was guaranteed by statute, that MDS was the entity responsible for providing the services to Appellant, and that Appellant's services had not been terminated. In short, MDS' statutory obligation to provide services was not terminating, but the entity providing the services would change.

Although not required by law, following the AAU's denial of Appellant's request for reconsideration, Worksource agreed to continue providing services to Appellant through February 21, 2018, thereby giving Appellant and MDS an additional thirty (30) days to arrange for new services. Appellee Worksource App. at 13 at ¶ 3. Appellant's guardian had not previously engaged with MDS in its efforts to obtain a suitable successor provider, even though an alternative provider had been available to Appellant since the spring/summer 2017. Appellee Worksource App. at 7 at ¶ 4. On February 21, 2018, Appellant's guardian again refused permission for MDS to engage with the successor provider to provide services to Appellant. Appellee Worksource App. at 7 at ¶ 5.

On February 21, 2018, Appellant filed this appeal. On that same day, Appellant also filed a Motion to Stay Order Pending Appeal with the AAU, requesting that the AAU stay its January 22, 2018 order, and order Worksource to continue providing services to Appellant. Appellee Worksource App. at 4. Worksource and MDS objected, with MDS noting that an alternative vendor had been available to Appellant since spring/summer of 2017, but that Appellant's mother/guardian had refused to consider the option. Appellee Worksource App. at 7-8. Moreover, Appellant's mother/guardian had again refused permission for MDS to engage the alternative vendor as recently as

February 21, 2018. Appellee Worksource App. at 7 at ¶ 5. Following an expedited hearing, the AAU denied Appellant's motion and found:

> Appellant's guardian had apparently pinned her hopes in prevailing at the fair hearing level, so she did not made [sic] any concrete commitment to transfer care of Appellant to another company. Even after the motion for reconsideration was denied, MWS [Worksource] offered to extend services for an additional 30 days to assist in the transition of services before they were discontinued. Appellant's guardian again took no action to seek out other service providers.

Appellee Worksource App. at 38-39.

SUMMARY OF THE ARGUMENT

Appellant's position, from his initial complaint to the AAU to his appeal to this Court, is based on the flawed assertion that his services have been terminated. This assertion is objectively untrue. Under RSA 171-A, MDS remains the primary vehicle for the delivery of services to Appellant. MDS simply contracted with Worksource to provide services which MDS was legally obligated to provide. MDS has indicated at every stage of the proceedings that it will continue to provide services to Appellant.

As a contracted service provider, Worksource exercised its contractual rights to cease providing services to Appellant. Worksource did not and does not have the statutory or regulatory authority to terminate Appellant's services. Appellant requests this court adopt regulatory interpretations which exceed the statutory authority granted to DHHS by impressing upon direct service provider agencies obligations and duties statutorily imposed only on area agencies. Finally, Appellant's interpretation of the regulations would lead to absurd results.

The distinction between Appellant's services being terminated – which did not occur – and Worksource ceasing to be the provider of Appellant's services – which is what did happen – is important for purposes of this appeal. Worksource urges that this distinction be kept in mind when evaluating the legal arguments of the parties to this matter. Worksource requests that this Court affirm the AAU's decision because Appellant's services have not been "terminated."

ARGUMENT

I. AREA AGENCIES ARE OBLIGATED TO PROVIDE SERVICES TO INDIVIDUALS UNDER RSA 171-A.

When engaging in statutory and regulatory interpretation, "[w]e construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. ...Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole....This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." *Appeal of Michele* 168 N.H. 98, 102 (2015).

The provision of services for individuals with developmental disabilities is governed in New Hampshire by RSA Chapter 171-A. RSA 171-A requires DHHS and area agencies to provide services to eligible persons in a timely manner. RSA 171-A:1-a, I. The scheme established by Chapter 171-A includes the designation of area agencies throughout the state, with area agencies being defined as entities "established by rules adopted by the commissioner for the purpose of providing services to developmentally disabled persons." RSA 171-A:2, I-b

Area agencies are expressly and unequivocally responsible for administering area-wide programs and services for developmentally disabled persons. RSA 171-A:18. Each area agency is the primary recipient of funds that may be dispensed by the commissioner for use in establishing, operating or administering such programs and services. RSA 171-A:18, I. These programs include diagnosis and evaluation, service coordination, community living arrangements, employment and day services, and programs designed to enhance personal and social competence. *Id.* Area agencies are required to prepare and submit to the department for approval a plan for provision of programs and services to developmentally disabled persons. RSA 171-A:18, V. An area agency may contract with individuals or organizations for the expenditures of portions of such funds for developmentally disabled persons. RSA 171-A:18, II. DHHS is required to assume area agency responsibilities during any time that an area agency is not designated. RSA 171-A:18, VII.

Area agencies also take on broad responsibilities on connection with its provision of services to individuals. A person seeking services enters the system by making application in accordance with rules adopted by the commissioner to the area agency in his or her appropriate area. RSA 171-A:6, I. The area agency determines the scope of the person's disability and locus and nature of the services to be provided. RSA 171-A:6, II. The area agency is required to include a physical examination and individual intellectual assessment and functional behavior scale as part of its evaluation. *Id.* The area agency's recommendations must utilize the criterion of the least restrictive environment for the client. RSA 171-A:6, III.

A service coordinator designated by the area agency is required to develop a preliminary written individual service agreement for each client. RSA 171-A:12, I. The area agency must continually review the individual service agreement which may be modified if necessary. *Id.* Each individual service agreement developed under the guidance of the area agency must include "a statement of specific services to be provided and the amount, frequency, and duration of each service." RSA 171-A:12, II, (c). Since an area agency has the ability to determine the duration of services, an area agency would also undeniably have the right to terminate services under RSA 171-A.

In addition, under RSA 171-A, administrators[3] may also terminate services to a client in certain situations, but in every instance, must refer the individual to the area agency which "shall recommend an appropriate service or be responsible for contacting the client at regular intervals after termination for as long as deemed necessary". RSA 171-A:8, I. Area agencies are thus responsible for developmentally disabled persons *even after* services are terminated.

For all of the reasons above, area agencies are the central figure in the state achieving its goal of establishing, maintaining, implementing and coordinating a comprehensive service delivery system for developmentally disabled persons.

[3] Worksource is not an "administrator" under RSA 171-A as addressed in section IV below.

II. MDS, AS THE APPLICABLE AREA AGENCY, AGREED IT WAS RESPONSIBLE FOR PROVIDING SERVICES TO APPELLANT, AND OFFERED APPELLANT AN ALTERNATIVE SERVICE PROVIDER AS EARLY AS SPRING/SUMMER OF 2017.

MDS is the applicable area agency and is thus responsible for providing services to Appellant. Consistent with this obligation, MDS initially entered into the Master Agreement with Worksource, which allowed MDS to use a variety of criteria when selecting Worksource to provide some or all of the services required by Appellant. Appellant's App. at 228 at ¶ 1. MDS agreed to pay Worksource for these contracted services. Appellant's App. at 229 at ¶ 4. The Master Agreement also included broad terms which allowed either Worksource or MDS to discontinue providing services with, or without cause, by providing thirty (30) day notice to the other party. Appellant's App. at 233 at ¶ 9. The Master Agreement additionally allowed Worksource to discontinue services in the event that scope of services or budget was changed, and Worksource could not or did not desire to continue to serve the client. Appellant's App. at 229 at ¶ 3. Finally, the Master Agreement allowed Worksource to discontinue its work if new terms were imposed pursuant to a Procedure Bulletin. On March 31, 2017, consistent with the provisions of the Master Agreement, Appellant's App. at 229 at ¶ 4, Worksource notified MDS by letter that it would discontinue its services to Appellant 30 days hence. Appellant's App. at 183.

Throughout these proceedings, MDS has acknowledged its responsibility to provide services to Appellant. MDS even identified an alternative vendor for the Appellant as early as the spring/summer of 2017. Appellee Worksource App. at 7 at ¶ 4. Instead of working with MDS, Appellant's mother/guardian refused to consider this option, and even as late as February 21, 2018, Appellant's mother/guardian refused to allow MDS to contract with the alternative provider. Appellee Worksource App. at 7 at ¶ 5.

As required by law, Worksource continued to provide services to Appellant through the AAU's ruling on Appellant's motion for reconsideration. Worksource thereafter agreed to provide services for an additional thirty (30) days so as to allow for

the arrangement of new services. Appellee Worksource App. at 13 at ¶ 3. Instead of arranging for new services, Appellant sought an order from the AAU which required Worksource to provide services through this appeal. Appellee Worksource App. at 6 at ¶ B. The AAU declined to issue such an order, finding:

> Appellant's guardian had apparently pinned her hopes in prevailing at the fair hearing level, so she did not made [sic] any concrete commitment to transfer care of Appellant to another company. Even after the motion for reconsideration was denied, MWS [Worksource] offered to extend services for an additional 30 days to assist in the transition of services before they were discontinued. Appellant's guardian again took no action to seek out other service providers.

Appellee Worksource App. at 38-39.

As previously noted, Appellant's services have not been terminated. Rather, this matter involves the changing of a service provider.

III. WORKSOURCE IS NOT AN AREA AGENCY. WORKSOURCE IS A PROVIDER AGENCY AND IS NOT OBLIGATED UNDER RSA 171-A TO PROVIDE SERVICES TO APPELLANT.

Worksource is not an area agency for a multitude of reasons. Worksource was not established by rules adopted by the commissioner to provide services to developmentally disabled persons in a specific area. Worksource cannot and does not exercise area agency powers under RSA 171-A. Worksource is not the primary recipient of funds directly from the state under RSA 171-A. Worksource is also not required to prepare and submit for approval to the department a plan for provision of programs and services to developmentally disabled persons within an area as area agencies are. Worksource is simply not an area agency.

Rather, Worksource is an organization which contracted with MDS to provide services to Appellant which MDS was legally obligated to provide. In return, MDS agreed to pay Worksource for the services which were rendered from funds it received from the state. As such, Worksource may be considered a provider agency.

While provider agencies are clearly envisioned under RSA 171-A, there are very few references to provider agencies. RSA 171-A:2, V-a defines "direct support staff" as a person employed by an area agency or contract provider in which time is spent

providing direct care or support to a client. Area agencies are required to specify a provider to furnish services. RSA 171-A:12, II(d). The New Hampshire Council on Autism Spectrum Disorders is required to serve as a clearinghouse and establish regional collaboratives for individuals, including providers, who work with autism spectrum disorders. RSA 171-A:32, II(e) & (f). The Developmental Services Quality Council is encouraged to gather information from DHHS, area agencies and providers, and to make recommendations regarding standards of quality and performance for area agencies and provider agencies. RSA 171-A:33, II & III(a).

None of these provisions impose any duties or obligations upon provider agencies to provide services.

IV. RSA 171-A DOES NOT IMPOSE ANY RESTRICTIONS ON WORKSOURCE'S ABILITY TO CEASE PROVIDING SERVICES TO APPELLANT.

As previously noted, area agencies are the primary vehicle for the delivery of services to clients under RSA 171-A. While direct service providers are envisioned within the statute, the statute does not impose any duties or obligations upon service providers. RSA 171-A also does not restrict in any way Worksource's ability to cease providing services.

Appellant expends a great deal of time in its brief arguing that Worksource is an "administrator" under RSA 171-A: 2, I. Appellant does so because RSA 171-A: 8, I authorizes an administrator to terminate services to a client under certain terms and conditions. Appellant reasons that if Worksource is an administrator then it had to meet the burden imposed by RSA 171-A: 8 prior to ceasing to provide services. Appellant is incorrect.

Worksource is not an "administrator," which is defined as the "the superintendent or chief administrative officer of any facility or of any program or service for the developmentally disabled conducted under the supervision of the commissioner or any employee he so designates as his deputy." RSA 171-A:2, I. Appellant asserts that

because Worksource is certified[4] by DHHS, Worksource is under the supervision of the commissioner, and therefore an administrator under RSA 171-A:2, I. Worksource is simply not an administrator under RSA 171-A.

Certification does not place Worksource "under the supervision" of the DHHS commissioner. Through its police power, the state has the power to enact regulations as are deemed necessary for the security and protection of the lives and health of all persons with the state. *State v. Forcier* 65 N.H. 42, (1889). He-M 507.02(f) defines "certification" as "the written approval by the bureau of health facilities administration for the operation of community participation services in accordance with the requirements set forth in He-M 507."

Thus, the granting of a certificate to Worksource means that Worksource has the right to engage in the business of providing services to developmentally disabled clients. It does not mean Worksource is being supervised by DHHS, because "supervision" means far more than certification. "When a term is not defined in the statute, we look to its common usage, using the dictionary for guidance." *K.L.N. Construction Co. v. Town of Pelham* 167 N.H. 180, 185 (2014). *Webster's Third New International Dictionary* defines "supervision" as "direction, inspection, and critical evaluation: oversight, superintendence." *Webster's Third New International Dictionary* 2296 (unabridged ed. 2002). DHHS is not directing, critically evaluating, or superintending Worksource's operations.[5]

Furthermore, if Appellant were correct, and mere certification places an individual or entity under the supervision of the state department issuing the license, then almost everyone in the state would be under the supervision of the state. Any teacher with a certification would be under the supervision of the NH Department of Education. Any hospital would be under the supervision of DHHS. Business corporations and limited

[4] Appellant asserts that Worksource is licensed by DHHS. However, Worksource is not licensed, but does have program specific certificates, with the Appellants' days services program being certified under He-M 507. There is probably little distinction between licenses and certifications.

[5] While Worksource may be subject to inspection or evaluation at the time of licensing, its day to day operations are not being supervised

liability companies would be under the supervision of the NH Secretary of State. None of these certified entities are being directed, critically evaluated, or superintended by the department which granted its certificate.

When reading RSA 171-A as a whole, it is clear that Worksource is not an administrator since administrators have more obligations and duties than Worksource. Administrators are obligated to notify an area agency if a client seeks a change in services or to withdraw entirely from the service delivery system. RSA 171-A:7. An administrator is required to take appropriate steps to safeguard a person under RSA 464-A or 547-B if the client is incapable of managing his or her own affairs or is at risk of substantial harm to person or estate. RSA 171-A:10. An administrator may deny visiting rights to a client if the administrator determines that the visits would adversely affect the client. RSA 171-A:14, III. An administrator may deny a client access to telephones to make calls if good cause exists. RSA 171-A:14, I

Worksource does not have these powers, and thus cannot be considered an administrator.

V. WORKSOURCE DID NOT TERMINATE APPELLANT'S SERVICES WITHIN THE MEANING OF HE-M 503.02(an).

A. Area agencies are expressly empowered to terminate services under He-M 503.

It is well settled law that "[w]hile the legislature may delegate to administrative agencies the power to promulgate rules necessary for the proper execution of the laws, this authority 'is designed only to permit the [agency] to fill in the details to effectuate the purpose of the statute.' . . . 'Thus, administrative rules may not add to, detract from, or modify the statute which they are intended to implement.'" *Appeal of Cook*, 186 A. 3d 228, 232 (NH 2018) (citation omitted). Moreover, agency regulations which contradict the terms of a governing statute exceed the agency's authority. *Id.*

DHHS has promulgated rules to implement the requirements of RSA 171-A, in accordance with RSA 171-A:3. NH Admin. R. He-M 503 was adopted for purposes of establishing standards and procedures for eligibility and the development of service agreements. Consistent with RSA 171-A, area agencies are required to conduct

comprehensive screening evaluations for applicants, determine applicant eligibility, apply to the bureau for eligibility funding, conduct planning sessions with the guardian or representative at the time of intake, and develop service agreements. N.H. Admin. R. He-M 503.05, 503.09 & 503.10

As noted previously, area agencies are impliedly granted the authority under RSA 171-A to terminate services since area agencies can determine amount, frequency and duration of services. RSA 171-A:12, II(c). In addition to the statutory authority granted to area agencies, area agencies, along with clients, guardians or representatives are also expressly authorized to terminate services under N.H. Admin R. He-M 503.15. "'Termination" is defined as "the cessation of a service **by an area agency director** with or without the informed consent of the individual or his or her guardian or representative." N.H. Admin. R. He-M 503.02(an) (emphasis added).

He-M 503.15 describes a process for area agencies, which requires interviews, reports and meetings. *Id.* Termination must be based upon a determination that the client can function without services, or that services are no longer necessary because they have been replaced by other supports or services. N.H. Admin R. He-M 503.15(b). The area agency director is empowered to make the final decision. N.H. Admin R. He-M 503.15(e). He-M 503.15 also includes provisions for the resumption of services upon request.

Provider agencies are not authorized to terminate services under He-M 503.15. "We reiterate the familiar axiom of statutory construction *expressio unius est exclusio alterius*: Normally the expression of one thing in a statute implies the exclusion of another." *In re Campaign for Ratepayers' Rights*, 162 N.H. 245, 251 (2011). Since provider agencies were not listed in He-M 503.15, the only conclusion is that Worksource did not, and does not have the authority to terminate services.

Accordingly, the AAU correctly determined that Worksource had not terminated Appellant's services – because it is not an area agency and is therefore without authority to terminate services – **and** furthermore that there had been no cessation of services,

because MDS remained "responsible for ensuring that Appellant continue[d] to receive all appropriate services." Appellant's App. at 318.

B. Appellant misrelies upon He-M 310.07.

Appellant misrelies upon He-M 310.07, which addresses the termination of services by provider agencies: "Provider agencies shall only terminate services to individuals in accordance with RSA 171-A:8." RSA 171-A:8 provides, in relevant part:

> I. The administrator may terminate service to a client at any time that such termination is deemed in the best interest of the client or when the client can function independently without such service or when the client has received optimal benefit from such service.
>
> II. In every instance of termination, the administrator shall refer the client to the area agency which, in turn, shall recommend an appropriate service, or be responsible for contacting the client at regular intervals after termination for as long as deemed necessary.
>
> III. Prior to any termination of service, the administrator shall give 30 days' notice to the client, if over 18 years of age, or to the parent or guardian, if the client is a minor or has been found to be legally incapacitated. Consent of the parent or guardian is required prior to termination if the client is a minor or has been declared legally incapacitated. Service may be terminated sooner than 30 days with the consent of the client, his or her parent or guardian.
>
> IV. The client or, where appropriate, his parent or legal guardian, may seek review of the decision to terminate from the commissioner. The decision of the commissioner shall be final.

Thus, it is clear from the statute that only the administrator can terminate services, and for all of the reasons previously cited, Worksource is not an administrator. This understanding of Worksource's inability to terminate Appellant's services is consistent with the definition of "termination" that was relied upon by the AAU.

VI. APPELLANT ASKS THIS COURT TO ADOPT AN INTERPRETATION OF HE-M 310 THAT EXCEEDS DHHS' STATUTORY AUTHORITY.

RSA 171-A:3 provides authority to the DHHS commissioner to promulgate rules to implement the statute. However, Chapter 171-A contains no explicit mention of "provider agency" and imposes no restrictions, duties, or obligations on "provider agencies."

"It is well settled that the legislature may delegate to administrative agencies the power to promulgate rules necessary for the proper execution of the laws." *In re Mays*, 161 N.H. 470, 473 (2011), citing *Appeal of the N.H. Dep't of Transportation*, 152 N.H. 565, 571 (2005). "The authority to promulgate rules and regulations is designed only to permit the [administrative agency] to fill in the details to effectuate the purpose of the statute." *Appeal of Anderson*, 147 N.H. 181, 183 (2001) (quotation omitted). "Thus, administrative rules may not add to, detract from, or modify the statute which they are intended to implement." *Id.*; *see also Appeal of Cook*, 186 A.3d 228, 222-23 (N.H. 2018).

In determining whether regulations constitute a proper exercise of rule-making authority, courts look first to the intended scope of the rule-making power granted by the legislature to the administrative agency and the purpose of the authorizing statute. *In re Mays*, 161 N.H. at 473. The stated purpose of Chapter 171-A is "to enable [DHHS] to establish, maintain, implement and coordinate a comprehensive service delivery system for developmentally disabled persons." RSA 171-A:1. RSA 171-A:3 specifically states: "The commissioner of [DHHS] shall adopt rules pursuant to RSA 541-A to implement this chapter." The statute includes many references to specific items for which DHHS is expected to adopt rules, including: establishing geographic regions in which services will be administered by area agencies (171-A:2, I(a) & (b)); creating application procedures for entering into the service delivery system (171-A:6, I); establishing "transfer criteria and procedures for the challenge of transfer decisions by the persons so transferred" (171-A:8-a, I); and setting forth parameters for the conduct of the periodic review of the delivery of services and the personnel who shall carry out the review (171-A:11, III). RSA 171-A did not authorize DHHS to adopt rules which grossly expand the obligations and duties of provider agencies, which again, are not even mentioned in RSA 171-A.

In its rules at He-M 310, DHHS added the requirement for termination of services that provider agencies must follow the procedures set forth in RSA 171-A:8. N.H. Admin. R. He-M 310.07(b). However, RSA 171-A:8 does not include any such requirement for provider agencies, and therefore DHHS went beyond the requirements

imposed in the statute. *See Appeal of the Local Government Center, Inc.*, 165 N.H. 790, 809 (2014) (holding that presiding officer "impermissibly modified" the statute and exceeded his statutory authority by imposing a required reserve amount on non-profit organization that is not contained in the statute). "Whether this rule is viewed as an attempt to fill in the details [of the statute] . . . or as implementing a new substantive requirement, the result is the same. Because [DHHS] may not add to, detract from, or modify the statute whish [the rule] is intended to implement," He-M 310.07 is invalid. *In re Mays*, 161 N.H. at 476 (holding that licensing board's addition of requirement for CPA applicant's experience that was not contained in statute was impermissible) (internal citation and quotation marks omitted).

By imposing restrictions on Worksource that are not contained in RSA Chapter 171-A, DHHS has exceeded its regulatory authority. Accordingly, the inconsistent regulations are invalid.

VII. ADOPTION OF APPELLANT'S INTERPRETATION OF RSA 171 AND RELATED DHHS REGULATIONS WOULD RESULT IN ABSURD AND UNREASONABLE RESULTS.

The Court should not adopt Appellant's interpretation of RSA 171-A and He-M 310 because such an interpretation would lead to absurd results. *See State v. Breest*, 167 N.H. 210, 212–13 (2014) ("[W]e will not interpret statutory language in a literal manner when such a reading would lead to an absurd result." (quotation omitted)); *Petition of Poulicakos*, 160 N.H. 438, 444 (2010) ("[A]s between a reasonable and unreasonable meaning of the language used, the reasonable meaning is to be adopted.").

At its core, Appellant's position is that "provider agencies" in New Hampshire are required to provide services to individuals with developmental disabilities and may only cease providing those services in the limited situations set forth at He-M 310.07(a). However, there are a number of legitimate reasons why a provider agency would seek to stop providing services that are not contemplated in He-M 310.07(a), and in those situations the provider agency would be forced to continue providing services. For example, if it was no longer financially feasible for a provider agency to continue

providing some specific service to an individual with developmental disabilities, the provider agency would nonetheless be required to continue providing such services or be in violation of He-M 310.07. Or if a provider agency only has one provider who is able to provide some specific service and that provider leaves, the provider agency will be in violation if it is unable to maintain continuous service to the affected individuals. These absurd results reveal the patent unreasonableness of Appellant's proffered interpretation of the statute and regulations.

A more reasonable interpretation is that the termination requirements are meant only to apply to the area agency, since the area agency is better equipped to ensure that individuals continuously receive the services to which they are entitled. Imposing these requirements on provider agencies is an inefficient method of administering the service delivery system, as it forces providers to continue providing services to individuals in situations in which the providers have determined that they can no longer provide services, either for financial, personality, or other reasons.

VIII. CONCLUSION

For the foregoing reasons, Worksource respectfully request that this Court affirm the AAU's decision.

IX. REQUEST FOR ORAL ARGUMENT

Worksource requests oral argument of not less than fifteen minutes. Karyn P. Forbes will argue for Worksource.

Respectfully submitted,

MONADNOCK WORKSOURCE

By its attorneys,
SHAHEEN & GORDON, P.A.

Date: 9-12-18

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CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the within Brief to James Ziegra, attorney for Appellant, and John MacIntosh, attorney for Monadnock Developmental Services, and to Laura Lombardi, attorney for Attorney General.

Dated: 9-12-18

Karyn P. Forbes, Esq.