THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2018-0092

PETITION OF KYLE GUILLEMETTE

APPEAL PURSUANT TO RULE 11 FROM A DECISION OF THE NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES ADMINISTRATIVE APPEALS UNIT

BRIEF FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, BUREAU OF DEVELOPMENTAL SERVICES

THE STATE OF NEW HAMPSHIRE

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2. Whether the Department of Health and Human Services Administrative Appeals Unit properly determined that there was no termination of Petitioner's developmental services because his area agency, Monadnock Developmental Services, Inc., remained willing and able to continue providing Petitioner all services for which he qualifies under RSA chapter 171-A.

STATEMENT OF THE CASE AND FACTS

I. The Developmental Services System in New Hampshire

The Department of Health and Human Services ("DHHS") is responsible for establishing, maintaining, and coordinating a "comprehensive service delivery system for developmentally disabled persons," known as the developmental services system. *Petition of Sawyer*, 170 N.H. 197, 198–99 (2017) (quoting RSA 171-A:1). DHHS administers the developmental services system pursuant to RSA chapter 171–A. RSA 171-A:4. Persons voluntarily participating in the system have certain statutory and regulatory rights, *see* RSA 171–A:14, and may, at any time, "seek a change in services or withdraw entirely from the service delivery system," RSA 171–A:7. *See also* N.H. Admin. Rules, He–M 310.

"To receive voluntary developmental services, an individual must apply through the area agency serving his or her region." *Petition of Sawyer*, 170 N.H. at 199 (citing RSA 171–A:6, I; N.H. Admin. Rules, He–M 503.04(b)). "The state is divided into ten regions, with one area agency serving each region." *Id.* (citing N.H. Admin. Rules, He–M 505.04). "Area agencies are the primary recipients of funds dispensed by DHHS for use in administering developmental services and programs, and as such, serve as the nucleus of services for individuals living in each service region." *Id.* (citing RSA 171–A:18, I; N.H. Admin. Rules, He–M 505.03(a)–(b)). "Area agencies are responsible for, among other things, screening

for eligibility, identifying appropriate services, and developing and reviewing service agreements." *Id.* (citing RSA 171-A:6, II; RSA 171-A:18, I; N.H. Admin. Rules, He–M 505.03).

All developmental services offered by the State are provided by contractual agreement between DHHS's Bureau of Developmental Services and the ten designated non-profit area agencies located throughout New Hampshire. RSA 171-A:18; N.H. Admin. Rules, He-M 505; *see also* https://www.dhhs.nh.gov/dcbcs/bds/agencies.htm (listing the ten area agencies); http://www.drcnh.org/areaagencies.html (same). While area agencies may enter into contracts with individuals or organizations to provide direct services to developmentally disabled persons, at all times area agencies remain responsible for providing services to individuals under RSA chapter 171-A. RSA 171-A:18; *see also* N.H. Admin. Rules, He-M 505.03(ac) ("The area agency shall be responsible and accountable for all area agency services *whether administered directly by the area agency or provided under contracts with persons or organizations*. Monitoring and evaluation of all area agency services, whether administered directly or by contract, shall be conducted by the area agency with its findings and any remedial action taken reported to the area board.") (emphasis added). An individual receiving services under RSA chapter 171-A is not a party

to a service contract between an area agency and a direct service provider. *See* 171-A:18, II; N.H. Admin. Rules, He-M 503.07(d); *see also* A.[1] 228-39.

The services to be provided to a particular individual are set forth in an individual service plan, or "service agreement," which is a written agreement between the area agency and the individual receiving services. *See* RSA 171-A:12; N.H. Admin. Rules, He-M 503.10. The service agreement must include the "specific services to be provided and the amount, frequency, and duration of each service." RSA 171-A:12, II(c). While the agreement also specifies which provider will furnish each service identified in the agreement, *see* RSA 171-A:12, II(d), a direct service provider delivering services under a contract with an area agency is not a party to an individual's service agreement with the area agency, *see* RSA 171-A:12; N.H. Admin. Rules, He-M 503.02 (ah) ("'Service agreement' means a written agreement between the individual, guardian, or representative and the area agency . . . ."); N.H. Admin. Rules, He-M 503.10.[2]

[1] Citations to the records are as follows: "A." refers to the Appendix to Petitioner's brief; "WA." refers to the Appendix to Brief of Monadnock Worksource; and "PB" refers to Petitioner's brief.

[2] While all providers delivering services are required to "sign" the service agreement, *see* N.H. Admin. Rules, He-M 503.10(b)(3), and are provided a copy of the service agreement, *id.* 503.10(b)(5), the purpose of those requirements is to ensure that the direct service providers are aware of the specific services the area agency has agreed to provide the individual so that the provider knows what services to deliver, *see id.* 503.07(d). It is only the area agency and the individual who must agree to the service agreement. *Id.* 503.10(b)(3), (m). The direct service provider's contractual relationship is with the area agency, not the individual. *Id.* 503.07(d).

An area agency cannot terminate RSA chapter 171-A services that an individual is receiving without first providing 30 days' notice to the individual. RSA 171-A:8, III; N.H. Admin. Rules, He-M 503.15(f). In the notice, "the area agency shall provide information on the reason for termination, the right to appeal, and the process for appealing the decision . . . ." N.H. Admin. Rules, He-M 503.15(g); *see also* RSA 171-A:8, IV (providing an individual the right to "seek review of the decision to terminate from the commissioner"). Services provided under RSA chapter 171-A may be terminated "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." RSA 171-A:8, I.

The administrative rules also grant individuals certain rights relative to choice of provider, and place limits on an area agency's ability to change an individual's direct service provider by terminating its service contract with the provider. *See* N.H. Admin. Rules, He-M 310.06(a)(7)(b); *id.* 310.06(a)(11); *id* 503.07(d)-(h); *see also* RSA 171-A:1, V (indicating an intent to provide "[s]ervices based on individual choice"). However, nothing in the statute or rules limits a direct service provider's right to terminate a service contract with an area agency.

II. Petitioner's Dispute

Petitioner receives developmental services from Monadnock Developmental Services, Inc. ("MDS"), the designated area agency for his region of the state. PB 2-3. The specific services for which Petitioner qualifies under RSA chapter 171-A are set forth in his service agreement with MDS. *Id.*

Monadnock Worksource ("Worksource") is a direct service provider that provides support and services to individuals with various abilities and disabilities under a Master Agreement for Services with MDS. A. 224, 228-39. Worksource began providing day services to Petitioner under its Master Agreement with MDS on August 29, 2012. A. 224. The Master Agreement allows Worksource to cease providing services to an individual "for any reason or no reason (e.g., without cause)" so long as it provides 30 days written notice to MDS. A. 233.

On March 31, 2017, Worksource sent a letter to MDS notifying it that Worksource would cease to provide services to Petitioner as of midnight on April 30, 2017. A. 225, 241. MDS notified Petitioner's guardian about Worksource's decision on April 3, 2017, and the guardian received a copy of Worksource's letter to MDS on April 10, 2017. A. 185-86, 191. Although Worksource was no longer willing to be Petitioner's direct service provider, MDS intended to continue providing the services set forth in Petitioner's service agreement through a different direct service provider. A. 191, 281.

Petitioner filed an appeal with the Department of Health and Human Services Administrative Appeals Unit ("AAU"), as well as a complaint with the Office of Client and Legal Services ("OCLS"), challenging Worksource's decision to no longer be Petitioner's direct service provider. PB 1, 3. The two proceedings were ultimately consolidated when the OCLS action reached the AAU. PB 1, 3. Because the facts were largely undisputed, the parties agreed to submit cross motions for summary judgment. PB 3. Petitioner argued that Worksource failed to comply with the 30 day notice requirement set forth in RSA 171-A:8 and He-M 310.07 before "terminating" Petitioner as a client. A. 193-202. Worksource and DHHS's Bureau of Developmental Services ("BDS") argued that the provisions of RSA 171-A:8 and He-M 310.07 relating to "termination of services" did not apply because Petitioner would continue to receive his services through MDS, which bears the contractual obligation to Petitioner and which remained willing and able to provide the services set forth in Petitioner's service agreement. MDS joined in Worksource's filing.

The AAU issued a decision on December 1, 2017, granting Worksource's and BDS's motions for summary judgment. PB 23-31. The AAU based its decision on a finding that there had been no termination of services. PB 30-31. The AAU explained that because MDS, as the area agency, remained responsible for ensuring that Petitioner continued to receive all appropriate services, there was no termination of services, only a change of provider. *Id.* Petitioner moved for

reconsideration, A. 320-29, which the AAU denied on January 22, 2018, PB 32-35.

Throughout the entire AAU appeal period, and for an additional 30 days following the AAU's final order, Worksource continued to provide services to Petitioner. WA. 28. In the meantime, MDS identified a successor provider in the spring or summer of 2017 willing to provide the same services to Petitioner. WA. 7, 38-39. The new provider only needed approximately 60 days to hire and train staff in order to transition Petitioner's services from Worksource, so the transition would not have resulted in any break in Petitioner's services. WA. 7, 38-39. Unfortunately, Petitioner's guardian refused the services, causing a lapse in Petitioner's services. WA. 7, 28, 38-39.

Petitioner filed the instant petition for original jurisdiction challenging the AAU's decision, which was accepted by this court.

STANDARD OF REVIEW

"The only judicial review of a fair hearings decision issued by the department is by petition for a writ of certiorari." *Petition of Sawyer*, 170 N.H. at 202 (quoting *Petition of Kalar*, 162 N.H. 314, 318 (2011)). "Review on certiorari is an extraordinary remedy, usually available only in the absence of a right to appeal, and only at the discretion of the court." *Id.* (quoting *Petition of Chase Home for Children*, 155 N.H. 528, 532 (2007). This court's "review of an AAU decision on a petition for writ of certiorari entails examination of whether the AAU acted illegally with respect to jurisdiction, authority or observance of the law or has unsustainably exercised its discretion or acted arbitrarily, unreasonably or capriciously." *Id.* (citation and quotation marks omitted). This court exercises its "power to grant such writs sparingly and only where to do otherwise would result in substantial injustice." *Id.* (citation omitted).

SUMMARY OF THE ARGUMENT

The court should dismiss this case for lack of subject matter jurisdiction because Petitioner has not alleged or proved that he suffered any concrete injury. Worksource continued to provide services to Petitioner for over nine months after notifying MDS of its decision to cease providing services to Petitioner, and during that time MDS identified a new provider who could take over with no break at all in Petitioner's services. Petitioner did not allege or prove that MDS refused to provide the RSA chapter 171-A services set forth in his service agreement, or that the services available from the new provider would have been inferior or incomplete in any way. Because Petitioner has not alleged or proved that he suffered any injury, he lacks standing and this case should be dismissed.

In the alternative, if the court considers Petitioner's claim, it should affirm the AAU's decision because there has been no termination of Petitioner's services. MDS—the entity legally responsible for providing Petitioner's services—was at all times and remains willing and able to provide Petitioner all services for which he qualifies under RSA chapter 171-A. Petitioner confuses termination of services to an individual with termination of a service contract between an area agency and a direct service provider. While the administrative rules place some limits on an *area agency's* ability to terminate a service contract with a willing provider, nothing in the rules places any limitation on a direct service provider's ability to terminate a service contract if it is no longer willing to be an individual's direct

service provider. While individuals receiving services under RSA chapter 171-A have certain rights regarding choice of provider, individuals do not have the right to force an unwilling provider to be their direct service provider. Petitioner's reliance on RSA 171-A:8 and He-M 310.07 is misplaced because they deal with the termination of services, not a change of provider. The AAU correctly determined that there has been no termination of services because MDS at all times has remained willing and able to provide Petitioner's services.

ARGUMENT

I. PETITIONER LACKS STANDING BECAUSE HE HAS NOT SUFFERED THE TYPE OF CONCRETE INJURY THAT WOULD GIVE THIS COURT SUBJECT MATTER JURISDICTION TO ADJUDICATE THIS DISPUTE.

"A party's standing is a question of subject matter jurisdiction, which may be addressed at any time." *In re Stonyfield Farm, Inc.*, 159 N.H. 227, 231 (2009). "[A] person seeking to challenge an agency's action through a petition for a writ of certiorari must show that his personal rights have been or will be 'impaired or prejudiced' by the agency's decision." *Petition of Lath*, 169 N.H. 616, 621 (2017) (citing *Duncan v. State*, 166 N.H. 630, 640-45 (2014)). "[A] mere general interest in an administrative proceeding . . . is not sufficient to confer standing." *Id.* Rather, a party must demonstrate that he has suffered or will suffer an injury in fact. *In re Stonyfield Farm, Inc.*, 159 N.H. at 231.

Petitioner raises a purely academic question of statutory and regulatory interpretation without alleging that he has suffered any actual injury. Specifically, Petitioner asks this court for an opinion on whether the notice requirements of RSA 171-A:8 and New Hampshire Administrative Rules, He-M 310.07 apply when an entity is no longer willing to be the direct service provider for an individual's services, but the area agency legally responsible for providing the services under RSA chapter 171-A remains willing and able to continue providing the same services through a different provider. Petitioner does not, and could not,

allege that his area agency, MDS, has refused to provide the services for which he qualifies under RSA chapter 171-A. Nor does Petitioner allege that available providers are either unable or unwilling to provide equivalent services. Petitioner's sole complaint is that he did not receive 30 days' notice from Worksource explaining the basis for its decision and the opportunity to challenge that decision.

Petitioner fails to allege a concrete injury that would give this court subject matter jurisdiction over this dispute. Petitioner's guardian learned on April 3, 2017, that Worksource was no longer willing to be Petitioner's direct service provider. A. 185-86, 191. Although Worksource initially stated that it would discontinue services as of midnight on April 30, 2017, in fact Worksource continued to provide services to Petitioner for an additional 9 months, until February 21, 2018. WA. 28. In the meantime, MDS identified a successor provider able to take over with no break at all in Petitioner's services. WA. 7, 38-39. There is no evidence in the record that these services would be inferior in any way to the services provided by Worksource.

MDS is still legally required to provide Petitioner the services for which he qualifies under RSA chapter 171-A. RSA 171-A:18; N.H. Admin. Rules, He-M 505.03(ac). Petitioner did not allege or prove that MDS has refused to provide such services or has offered replacement services that are inferior or incomplete in any way. Any lapse in service occurred as a result of his guardian's conduct in

refusing to allow MDS to engage the new provider. Because Petitioner has not alleged or proved that he suffered any injury, he lacks standing and this case should be dismissed. *Cf. Petition of Sawyer*, 170 N.H. at 209-10 (*Lynn, J.*, dissenting).

II. THE AAU PROPERLY DETERMINED THERE WAS NO TERMINATION OF SERVICES BECAUSE MDS REMAINED WILLING AND ABLE TO PROVIDE PETITIONER'S SERVICES.

Petitioner argues that the AAU's decision "effectively renders null and void the specific mandates of both RSA 171-A:8 and He-M 310.07, thereby denying individuals receiving developmental services their right to due process when a direct service provider chooses to stop providing services." PB 5. Petitioner confuses the termination of RSA chapter 171-A services to an individual with the termination of a service contract between an area agency and a direct service provider. His focus on RSA 171-A:8 and He-M 310.07 is therefore misplaced. By their plain language, both the statute and rule apply in circumstances where there is a *termination* of services, not simply a change of provider. *See* RSA 171-A:8; N.H. Admin. Rules, He-M 310.07. No statute or administrative rule entitles an individual to any particular process when a direct service provider decides to cease providing services to an individual, necessitating a change of provider.

A. He-M 503.07 only places limits on an area agency's ability to terminate a service contract with a direct service provider; it does not limit a service provider's ability to terminate the contract.

The administrative rule relevant to the termination of a service contract between an area agency and a service provider—as opposed to the termination of services received by an individual under his or her service agreement with the area agency—is New Hampshire Administrative Rules, He-M 503.07. *See In re Parker*, 158 N.H. 499 (2009) (applying former version of this rule in addressing termination of direct service contract by area agency where area agency believed the residential placement posed risks to the individual); *see also* N.H. Admin. Rules, He-M 503.17(c) (listing termination of service contract under He-M 503.07(f) and (g) and termination of services under He-M 503.15(f) as two different types of agency action subject to challenge and appeal). He-M 503.07 provides an individual with certain rights regarding choice of provider and places certain limits on an *area agency*'s ability to terminate a service contract with a provider chosen by an individual. *See* N.H. Admin. Rules, He-M 503.07(d)-(h). The rule does not, however, place any limitations on a *service provider*'s ability to terminate a service contract if it is no longer willing to be an individual's direct service provider. *Id.*

Notably, Petitioner does not argue that either MDS or Worksource violated He-M 503.07. Nor does Petitioner point to any parallel administrative rule granting an individual a right to challenge a change of provider under

circumstances where the change is necessary because the provider, as opposed to the area agency, has decided to terminate the service contract. That is because no such rule exists.

B. RSA 171-A:8 and He-M 310.07 do not apply because there has not been a termination of Petitioner's RSA 171-A services, only a change of provider.

In the absence of a statute or rule expressly granting Petitioner a right to challenge a direct service provider's decision to terminate its service contract with an area agency, Petitioner turns to RSA 171-A:8 and He-M 310.07 and attempts to interpret them in such a way as to guarantee the rights he seeks. This court reviews the interpretation of statutes and regulations de novo. *Petition of Sawyer*, 170 N.H. at 203. The court uses "the same principles of construction when interpreting both statutes and administrative rules." *Id.* When interpreting statutes, this court is the final arbiter of the legislature's intent, as expressed in the words of the statute considered as a whole. *Id.* The court "first examine[s] the language of the statute, and, where possible, ascribe[s] the plain and ordinary meanings to the words used." *Id.* "When a statute's language is plain and unambiguous, [the court] need not look beyond it for further indication of legislative intent, and . . . will not consider what the legislature might have said or add language that the legislature did not see fit to include." *Id*. This court's "goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme." *Id.*

RSA 171-A:8, I, provides, "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." He-M 310.07(a) further specifies the situations under which a termination of services is permissible, stating:

> (a) Except as provided in (g) below, an individual's services shall not be terminated unless:
>
> (1) Such termination is deemed in the best interest of the individual;
> (2) The individual can function independently without such service;
> (3) The individual has received optimal benefit from the service;
> (4) The individual or representative refuses to pay for the services that he or she is receiving despite having the financial resources to do so; or
> (5) The individual or representative refuses to apply for benefits that could cover the cost of the services that he or she is receiving despite the fact that the individual is or might be eligible for such benefits.

The plain language of both the statute and the rule addresses the termination of RSA 171-A services to an individual, not the termination of a service contract between an area agency and a direct service provider. Moreover, the conditions under which a service may be terminated only make sense if "termination" is interpreted as the individual no longer receiving the service, not simply being transitioned to a different service provider. Not only is that consistent with the plain meaning of termination, but it is consistent with the

statutory and regulatory scheme. *See* RSA 171-A:8, I (permitting termination if the client "can function independently *without such service*") (emphasis added); *see also* N.H. Admin. Rules, He-M 310.07(a) (allowing termination of a service if the individual can "function independently *without such service*," "has *received optimal benefit* from the service," or *refuses to pay for* the service when financially able or apply for benefits that could cover the cost of the service) (emphasis added). Had the legislature intended to apply these same conditions to a change of provider, in addition to a termination of services, it would have expressly so stated in RSA 171-A:8. *See Adams v. Woodlands of Nashua*, 151 N.H. 640, 641 (2005) (This court "will not consider what the legislature might have said or add words that the legislature did not include.").

Other provisions within RSA chapter 171-A demonstrate that the legislature knows how to expressly provide for individual choice if it intends to do so. In RSA 171-A:1, the legislature expressed an intent that the system provide "[s]ervices based on individual choice," RSA 171-A:1, V, and encourage "[p]articipation of people with developmental disabilities and their families in decisions concerning necessary, desirable, and appropriate services, recognizing that they are best able to determine their own needs," RSA 171-A:1, I. "To that end, RSA chapter 171-A provides individuals the right to, at any time, 'seek a change in services or withdraw entirely from the service delivery system.'" *Petitioner of Sawyer*, 170 N.H. at 204 (quoting RSA 171-A:7 and also citing N.H.

Admin. Rules, He–M 310)). Notably, neither RSA 171-A:7, nor any other provision of RSA chapter 171-A, entitles an individual to receive services from a direct service provider that is *unwilling* to provide the services. Had the legislature intended to limit a direct service provider's ability to discontinue its role as direct service provider for an individual, it would have stated that somewhere in RSA chapter 171-A. Instead, the statutory scheme sets up a service delivery system in which the area agencies, not direct service providers, are legally responsible for providing RSA 171-A services to individuals. *See* RSA 171-A:6, (requiring area agencies to evaluate persons seeking entry into the service delivery system and make recommendations), :12 (requiring area agencies to develop and continually review individual service plans), :18 (requiring area agencies to administer the programs and services for developmentally disabled persons); *see also* RSA 171-A:18, II (conditioning direct service provider's ability to provide RSA chapter 171-A services on provider entering into a contract with an area agency); N.H. Admin. Rules, He-M 503.07(d) (same).

Similarly, the administrative rules governing the developmental services system support the policy goals of individual choice, but do not limit a direct service provider's right to decline to serve a particular individual. While He-M 310.06(a)(7)(b), He-M 310.06(a)(11), and He-M 503.07(d) grant an individual certain rights relative to choice of provider, the assumption is that the provider chosen is *willing* to provide the services. He-M 503.07(d) requires a direct service

provider to enter into a contract with an area agency in order to provide RSA chapter 171-A services. Absent such a contract, a service arrangement between the individual and the direct service provider cannot be established. N.H. Admin. Rules, He-M 503.07(d); RSA 171-A:18, II. The service contract is between the direct service provider and the area agency, not the individual. Nothing in the administrative rules prohibits a direct service provider from terminating such a contract if it chooses to do so, nor the service contract from prescribing how termination can take place.

As discussed in the Statement of the Case and Facts above, it is the area agency, not the direct service provider, that is legally responsible for providing services to an individual under RSA chapter 171-A. RSA 171-A:18; N.H. Admin. Rules, He-M 505.03(ac). While area agencies may contract with direct service providers *willing* to provide services, nothing in RSA chapter 171-A or the administrative rules governing the developmental services system enables either an area agency or an individual receiving services to force an unwilling service provider to provide services under RSA chapter 171-A to a particular individual, particularly when transition to a new provider can occur without any break or lapse in services. Yet Petitioner's interpretation of RSA 171-A:8 and He-M 310.07 would grant individuals just such a right. The statute and rule should not be interpreted to lead to such an absurd result. *See Appeal of Morton*, 158 N.H.

76, 81 (2008) (The court will not interpret statutes and rules in such a way as to lead to an absurd result).

Petitioner places undue emphasis on the legislature's use of the term "administrator" in RSA 171-A:8. *See* PB 7, 11-14, 17, 19. Contrary to Petitioner's assertion throughout his brief, direct service providers are not "administrators" as that term is defined in RSA chapter 171-A because they are not "under the supervision of the commissioner or any employee he so designates as his deputy." RSA 171-A:2, I. The commissioner of DHHS does not supervise all direct service providers in the state. Rather, area agencies contract with and are accountable for developmental services provided by direct service providers. *See* RSA 171-A:18; N.H. Admin. Rules, He-M 505.03(ac). In contrast, area agencies are established by rules adopted by the commissioner, and conduct their responsibilities and operations under the supervision of the commissioner. *See* RSA 171-A:2, I-b; RSA 171-A:18; N.H. Admin. Rules, He-M 505.03. The term "administrator" is likely a remnant from the time when RSA chapter 171-A was first enacted in 1975 and the Laconia State School, headed by an administrator under the supervision of the state, was still part of the service delivery system. *See* Laws 1975, 242:1 (including Laconia State School as part of state service delivery system in 1975 version of RSA 171-A:4); *see also Garrity v. Gallen*, 522 F. Supp. 171, 227-36 (D. N.H. 1981) (discussing enactment of RSA chapter 171-A and creation of state's developmental service system).

The term "administrator" is used in at least one other section of the statute when referring to area agencies. RSA 171-A:11 requires periodic reviews to be conducted "under the supervision of the administrator." The periodic reviews required by RSA 171-A:11 are performed by area agencies, not direct service providers. *See* N.H. Admin. Rules, He-M 503.09(k) and (l) (requiring area agencies to conduct the periodic reviews required by RSA 171-A:11). Just as RSA 171-A:11's use of the term "administrator" refers to an area agency, so to does RSA 171-A:8's use of the term "administrator." *See also* RSA 171-A:23 (referring to "an administrator at an area agency"). Moreover, when the statute uses the term "administrator" to refer to an entity *other* than an area agency, it is often referring to the administrator of a receiving facility. *See* RSA 171-A:21, :22, :27. Similar to area agencies, receiving facilities are designated by rules adopted by the commissioner and operate under the supervision of the commissioner. *See* RSA 171-A:20; N.H. Admin. Rules, He-M 526-529. Nothing in RSA chapter 171-A suggests that the term "administrator" is meant to broadly refer to any and all direct service providers in the state. And even if it does, there has been no termination of services in this case, only a change of provider; therefore, RSA 171-A:8 does not apply.

Because MDS—the entity legally responsible for providing Petitioner's services—remains willing and able to provide Petitioner all services for which he

qualifies under RSA chapter 171-A, the AAU correctly determined that there has been no termination of services under RSA 171-A:8 or He-M 310.07.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this court dismiss Petitioner's petition for original jurisdiction because Petitioner has not alleged a concrete injury that would give this court subject matter jurisdiction. In the alternative, the State asks this court to affirm the decision of the Department of Health and Human Services Administrative Appeals Unit.

REQUEST FOR ORAL ARGUMENT

The State requests oral argument, to be presented by Senior Assistant Attorney General Laura Lombardi.

Respectfully submitted,

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, BUREAU OF DEVELOPMENTAL SERVICES

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Certificate of Service

I hereby certify that two copies of the foregoing were mailed this day, postage prepaid, to James Ziegra, Esq., counsel for Petitioner, Karyn Forbes, Esq., counsel for Monadnock Worksource, and John MacIntosh, Esq., counsel for Monadnock Developmental Services.

Laura E. B. Lombardi