

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

EINSTEIN MONTESSORI,	:	
	:	
Appellant,	:	CASE NO. 16-CVH-8026
-vs-	:	JUDGE COLLEEN O'DONNELL
	:	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	
	:	
Appellee.	:	

DECISION AND ENTRY

O'DONNELL, JUDGE

This matter comes before this Court upon the motion to dismiss filed September 9, 2016, by Appellee, Ohio Department of Job and Family Services (ODJFS). Appellant, Einstein Montessori, filed a memorandum contra on October 14, 2016. Appellee filed its reply on October 26, 2016. Pursuant to R.C. 119.12, Appellant appeals the August 9, 2016 Letter (“Letter”) conveying ODJFS’s Decision on Reconsideration of Overpayment Calculation. In that Letter, Robert J. Cintala, Bureau Chief, Office of Fiscal and Monitoring Services (OFMS), determined that:

the attendance records submitted by the Provider do not meet the requirements of the Ohio Administrative Code. The records submitted as Exhibit C by the Provider are generated by the Ohio ECC and do not include a record of daily attendance for each child. By not keeping attendance records as required by OAC, the Provider does not have documentation to support the children actually being in attendance.

The reviewer finds that the Provider was required to record daily attendance and to maintain those records for one year. The reviewer also finds that the Provider must submit accurate attendance records. The reviewer finds that the Provider was required to maintain attendance records so to full disclose the extent of child care services provided.

August 9, 2016 Decision on Reconsideration of Overpayment Calculation.

Appellant argues that this Court has subject matter jurisdiction for this appeal pursuant to R.C. 119.12 because ODJFS is an “agency” and thus, its August 9, 2016 Letter is an “adjudication.” Appellant also argues that ODJFS failed to comply with R.C. 5104.37.

Appellee argues that the August 9, 2016 Letter regarding overpayments is not an “adjudication” by an “agency” as those terms are defined by R.C. 119.01 and case law. Furthermore, Appellee submits that no statute outside of Chapter 119 authorizes this appeal. Thus, Appellant submits that under the facts of this case, no right of appeal exists, absent statutory authority authorizing a court of common pleas to review an administrative action. Article IV, Section 4, Ohio Constitution.

LAW AND ANALYSIS

The Ohio Supreme Court has recognized that there exists a limitation upon appeals pursuant to R.C. 119.12. Before an appeal can be brought successfully to the court of common pleas pursuant to R.C. 119.12, the administrative agency’s proceedings must have been quasi-judicial in nature. Proceedings of administrative officers and agencies are not quasi-judicial where there is no requirement for notice, hearing, and the opportunity for the introduction of evidence. See *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, 176 (1972). Thus, before a matter may be appealed from an administrative order, the proceedings of the administrative agency must have been quasi-judicial in nature. See Section 4(B), Article IV of the Ohio Constitution; paragraph one of the syllabus in *Fortner v. Thomas*, 22 Ohio St.2d 13 (1970); see also *Ohio Assn. of Pub. School Emps. v. Lorain Cty. Bd. of Mental Retardation*, 72 Ohio App. 3d 74, 77 (1991).

Here, it is undisputed that no hearing occurred before the ODJFS director or a hearing officer; there was no opportunity to testify; no right to confront or cross-examine any witnesses; no opportunity to secure evidence by subpoena, and no notice requirement. “Adjudication” means that there must be a determination by the highest or ultimate authority of an agency, of the rights, duties, privileges, benefits, or legal relationships of a specified person. It does not include the issuance of a license in response to an application with respect to which no question is raised, or other acts of a ministerial nature. R.C. 119.06 provides, in part: “No adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with R.C. 119.01 through 119.13.”

The purported “adjudication” that provides the basis for this appeal is an August 9, 2016 Letter from Robert J. Cintala, Bureau Chief, OFMS, to Saif Dari, statutory agent for Appellant, Einstein Montessori. The undisputed fact is that the Letter was not issued by the ODJFS Director, its highest and ultimate authority. R.C. 5101.02. The context of this Letter references several prior communications between Appellant and Appellee regarding a \$610,369.64 overpayment for reimbursements, where, according to Appellee, Appellant provided insufficient documentary support for attendance records, as required by O.A.C. 5101:2-12-20. The decision does not involve rule-making or the issuance, suspension, revocation, or cancellation of a license under R.C. 119.01(A)(2).

Appellant never appeared before the ODJFS director or a hearing officer, there was never a recorded hearing, there was no sworn testimony taken, and thus, there is no record of hearing evidence for this Court to review. Thus, Appellant has not based this appeal on an “adjudication” or determination by the highest or ultimate authority of ODJFS.

Moreover, the August 9, 2016 Letter itself does not rise to the level of an “adjudication.” It does not resemble any other written adjudication that is prepared by an agency with explicit instructions on how to appeal, and identifying the specific statute authorizing the appeal. Additionally, the Letter does not contain traditional indicia of a final action. *Trans Rail America, Inc. v. Enyeart*, 187 Ohio App.3d 703 (2010).

The case law cited by Appellant is distinguishable, as those cases involve Medicaid audits wherein former R.C. 5110.06 required audit decisions to be made by adjudication pursuant to Chapter 119, and authorized an appeal to the common pleas court. Here, though, Appellant has not demonstrated a statutory right to appeal decisions involving overpayments. Consequently, as a matter of law, this Court lacks subject matter jurisdiction to address the merits of this appeal pursuant to R.C. 119.12.

R.C. 119.12 provides that in order for a party to have a right to an appeal pursuant to that statute, that person must have been adversely affected by an order of an agency pursuant to an adjudication. See R.C. 119.12. It is only those administrative actions of administrative officers and agencies resulting from quasi-judicial proceedings which are appealable to the common pleas court. Upon review, the action of ODJFS, under the facts presented, was not as a result of quasi-judicial proceedings, and thus, there is no statute that authorizes an appeal to this Court of the August 9, 2016 Letter.

Additionally, Appellant asserts a right to appeal pursuant to R.C. 5104.37. A review of the language of that statute does not provide any rights of appeal to the common pleas court.

R.C. 5104.37(H) provides

An eligible provider may file an appeal with the department regarding any proposal by the department to suspend the provider’s contract pursuant to division (D) of this section. The appeal must be received by the department not later than fifteen days after the date the provider receives the notification described in division (G) of this section. The

department shall review the evidence and issue a decision not later than thirty days after receiving the appeal. The department shall not suspend a contract pursuant to division (D) of this section until the time for filing the appeal has passed or, if the provider files a timely appeal, the department has issued a decision on the appeal.

Appellee's motion to dismiss is hereby **GRANTED**. This is a final, appealable Order.

Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to all persons registered for e-filing

Franklin County Court of Common Pleas

Date: 11-28-2016
Case Title: EINSTEIN MONTESSORI -VS- OHIO STATE DEPARTMENT JOB
AND FAMILY SER
Case Number: 16CV008026
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, "Colleen O'Donnell", is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE TRUE".

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 16CV008026

Case Style: EINSTEIN MONTESSORI -VS- OHIO STATE
DEPARTMENT JOB AND FAMILY SER

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0080262016-09-0999980000
Document Title: 09-09-2016-MOTION TO DISMISS -
DEFENDANT: OHIO STATE DEPARTMENT JOB AND FAMILY SER
Disposition: MOTION GRANTED