11-16-2006

LIFE ACTION OF TENNESSEE, INC., Respondent

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BEFORE THE DEPUTY COMMISSIONER OF THE
TENNESSEE DIVISION OF MENTAL RETARDATION SERVICES

IN THE MATTER OF: )
LIFE ACTION OF TENNESSEE, INC. ) DOCKET NO. 15.00-077378J
Respondent )

ORDER ON MOTION TO DISMISS

This contested administrative matter was heard on November 16, 2006, before James A. Hornsby, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Deputy Commissioner of the Tennessee Division of Mental Retardation Services in Nashville, Tennessee. The Respondent, Life Action of Tennessee, was represented by its attorneys, Hugh C. Howser, Jr. and Mary E. Morris. The State was represented by Marilynn A. Tucker, counsel for the Division of Mental Retardation Services.

The issue to be resolved is whether the Petitioner, Tennessee Division of Mental Retardation Services (hereafter “DMRS”), can assess a $100.00 per day sanction on the Respondent, Life Action of Tennessee, Inc. (hereafter “Life Action”) for allegedly failing to provide DMRS with a subcontract agreement between Life Action and Josh Morris Staffing, LLC (hereafter “Josh Morris”).

At the conclusion of the State’s proof, the Respondent orally moved to dismiss the matter in accordance with Rule 41.02(2) of the Tennessee Rules of Civil Procedure. That oral motion was taken under advisement. The hearing continued with the Respondent’s proof, but with the understanding that a decision on the Respondent’s motion would be made solely on the information in the record at the time the motion was made.
The Motion to Dismiss became ready for consideration on January 29, 2006, after the parties submitted written briefs. After consideration of the record and the arguments of the parties, it is DETERMINED that the Respondent’s motion should be GRANTED and the matter DISMISSED.

**FACTS**

1. On September 2, 2003, Life Action entered into a contract with DMRS to provide care to qualified persons diagnosed with mental retardation. Under the terms of the contract, DMRS pays Life Action to provide the designated services, and Life Action is not allowed to subcontract the services to another provider without the approval of DMRS.

2. At the time it contracted with DMRS, Life Action had a contract with Josh Morris to provide Life Action with licensed nurses. Josh Morris is a medical staffing company that specializes in providing clients like Life Action with medical personnel. Life Action pays a lump sum to Josh Morris for the nurses it provides, and Josh Morris, in turn, pays the individual nurses. Josh Morris takes care of all the clerical functions associated with payroll, such as deductions for taxes.

3. Josh Morris is an employment agency and is not licensed to provide medical care. It provides the nursing personnel to Life Action, but Life Action then manages the nurses and the patient services they provide. Life Action keeps time cards showing the hours the nurses work and sends the time cards to Josh Morris with a payment for the total hours worked. Josh Morris then pays each nurse based upon the number of hours the nurse worked.
4. Life Action did not get approval from DMRS for its employment arrangement with Josh Morris because it did not consider the contract to be a “subcontract” under the terms of its contract with DMRS.

5. In December of 2004, DMRS conducted an audit of Life Action’s services under its provider contract. DMRS asked for all subcontracts as a part of that audit. Life Action gave the auditor a copy of the agreement with Josh Morris, but contended that it was not a “subcontract” because Life Action managed all nursing services.

6. The DMRS auditor did not consider the written agreement sufficient documentation and advised Life Action, by letter, that if documentation of the “subcontract arrangements” was not provided by April 15, 2005, a sanction of $100.00 per day would be assessed. The assessment began to run on April 16, 2005.

7. There has been some misunderstanding as to what documentation existed as to Life Action’s arrangement with Josh Morris. This misunderstanding likely occurred because Life Action does not consider the arrangement to be a “subcontract” as defined by its contract with DMRS. However, the written agreement Life Action gave the auditor at the time of the audit is the only documentation that it could provide DMRS of its association with Josh Morris.

**DETERMINATION**

8. The issues of: 1) whether the agreement between Life Action and Josh Morris is a “subcontract” as defined by Life Action’s provider contract with DMRS and 2) whether the Josh Morris agreement required DMRS approval are not before the Administrative Judge in this matter and are irrelevant to the decision.
9. The sole issue in this matter is whether DMRS can assess Life Action $100.00 per day for not providing documentation of “subcontract arrangements” prior to April 15, 2005. The proof is convincing that Life Action provided DMRS with the only available documentation of the Josh Morris “subcontract” in December of 2004, when the audit was conducted.

10. Rule 41.02(2) of the Tennessee Rules of Civil Procedure concerns involuntary dismissal and provides that, “After the plaintiff...has completed the presentation of the plaintiff’s evidence, the defendant, without waiving the right to offer evidence...may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.” It is DETERMINED that DMRS has shown no right to relief.

11. Since DMRS already had all the documentation that Life Action could provide concerning the arrangement with Josh Morris, it is DETERMINED that it was impossible for Life Action to comply with the DMRS request for additional documentation. It is DETERMINED that DMRS is not entitled to assess Life Action $100.00 per day for failing to provide additional documentation. It is ORDERED that the Respondent’s Motion to Dismiss be, and is hereby, GRANTED and this matter DISMISSED.

Entered and effective this 8th day of March, 2007.

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James A. Hornsby
Administrative Judge