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**COMPLIANCE RULING**

In the matter of the Department of Medical Assistance Services  
Ruling Number 2021-5225  
March 18, 2021

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management regarding alleged noncompliance with the grievance procedure by the Department of Medical Assistance Services (the “agency”).

FACTS

On or about April 17, 2020, the grievant initiated a grievance challenging her receipt of a Group I Written Notice, which she received on or about March 18, 2020. The grievance appears to have had limited progression through the management steps to this point with a variety of back-and-forth communication about the grievance steps, documents requested, and a prolonged medical absence by the grievant. The grievant submitted a request to EDR on March 3, 2021, seeking an extension for submitting a rebuttal, and also challenging a purported denial of access to documents. The issues the grievant has identified appear to reflect technology-related difficulties she has experienced, for example, in locating email records within her state email account. The grievant has also asserted that management discriminated and/or retaliated against her due to the filing of her grievance. For example, the grievant believes that her technology use is being monitored by the agency and that she has experienced different treatment in that her email access was deactivated during an extended absence, whereas, she asserts, the same was not done for other agency employees.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party of any noncompliance in writing and allow five workdays for the opposing party to correct it.<sup>2</sup> If the

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See id.*

opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, which may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When EDR finds that either party to a grievance is in noncompliance, its ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.<sup>3</sup>

Based upon EDR's review of the grievance record as submitted by the grievant, it does not appear that the grievant has provided the agency with the notice of noncompliance required by Section 6.3 of the *Grievance Procedure Manual*. As such, it would be premature for EDR to address a compliance matter in a ruling at this time. In addition, we cannot identify a document request that the grievant has submitted to the agency that the agency has not addressed. Rather, it appears that the grievant is attempting to locate documents herself. Accordingly, the grievant has not identified a grievance procedure requirement with which the agency has failed to comply. The issues the grievant has identified do not appear to be concerns under the grievance procedure, but rather technological challenges she has experienced. Should the grievant have a need for relevant documentation, she can submit a request to the agency for the information to be produced consistent with the document request provisions of the grievance procedure.<sup>4</sup> Further, if there are other matters of noncompliance with the grievance process, she should provide the agency with notice of those issues so they can be addressed before requesting a ruling from EDR.

The grievant has also identified certain actions and/or inactions by agency management that she believes demonstrates discrimination and/or retaliation for use of the grievance procedure. Those alleged management actions are not the subject of her April 17, 2020 grievance. To the extent the grievant wishes to address those matters, she would need to file a new grievance (if timely) or other complaint.

The grievant's compliance ruling request also appears to describe the delays that have occurred in her grievance. Given that this grievance was filed nearly a year ago, there certainly have been delays in this matter, though it appears that there are multiple reasonable explanations at various times. Nevertheless, the grievant's ruling request to EDR seeks further time to present a rebuttal. EDR is unable to identify what rebuttal the grievant is attempting to present under the grievance process. It appears that the next step in this grievance is for a meeting to be held with the appropriate step respondent. EDR's understanding is that this meeting has been scheduled. As such, EDR is not able to identify an issue of noncompliance in the grievance procedure with regard to a rebuttal.

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<sup>3</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will typically order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears to be driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

<sup>4</sup> *Grievance Procedure Manual* § 8.2.

CONCLUSION

For the reasons described above, EDR has no basis to find that noncompliance has occurred under the grievance procedure at this time. As the meeting with the step respondent is currently scheduled, that appears to be the appropriate next step for this grievance.

EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).