

Issue: Compliance/30 day rule; Ruling Date: December 29, 2005; Ruling #2006-1195;
Agency: Department of Medical Assistance Services; Outcome: grievant in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Medical Assistance Services
Ruling Number 2006-1195
December 29, 2005

The grievant has requested a compliance ruling in his November 8, 2005¹ grievance with the Department of Medical Assistance Services (DMAS or the agency). The first step-respondent asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons set forth below, this grievance is ruled to be timely filed.

FACTS

The grievant is employed as a Hearing and Legal Services Officer II with DMAS. The grievant claims that he requested an in-band adjustment based on internal alignment in June 2005. In response, the grievant's supervisor allegedly advised the grievant that she would complete the appropriate paperwork and submit it for consideration. On June 30, 2005, the grievant allegedly failed to adequately perform his duties as a hearing officer and as such, was issued a Group II Written Notice with suspension on July 22, 2005.²

On October 28, 2005, the grievant e-mailed his supervisor reminding her of his earlier request for an in-band adjustment and asked that she "revisit the possibility of an in-band adjustment" for him. In a November 1, 2005 response, the grievant's supervisor stated that although she had originally stated that she would submit the in-band adjustment request for consideration, she had subsequently informed the grievant that she had decided not to submit the request, more specifically, that she had informed

¹ The grievant signed and dated the grievance November 4, 2005. However, both parties agree that the grievance was not initiated with the first step-respondent until November 8, 2005.

² The grievant subsequently challenged the disciplinary action through the grievance process. In a September 27, 2005 hearing decision, the hearing officer reduced the Group II Written Notice to a Group I Written Notice and ordered the agency to reimburse the grievant for the 5 days he lost pay as a result of his suspension. See Decision of Hearing Officer Case No. 8171, issued September 27, 2005.

the grievant just prior to the July 22, 2005 disciplinary action that as a result of his actions on June 30th, he would not be considered for an in-band adjustment.

On November 2, 2005, the grievant asked his supervisor to “reconsider” him for an in-band adjustment due to his satisfactory work performance prior to and after the June 30th incident. At a meeting with the grievant on November 3, 2005, the grievant’s supervisor allegedly stated that she would not submit a request for an in-band adjustment on behalf of the grievant “now or in the near future.” On November 8, 2005, the grievant initiated a grievance challenging the agency’s failure to consider him for an in-band adjustment.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.³ When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure, and may be administratively closed.

In this case, it is the agency’s November 3rd denial of the grievant’s request for an in-band adjustment that forms the basis of the November 8th grievance, not the agency’s July 2005 denial of grievant’s June 2005 request for an in-band adjustment as alleged by DMAS. Thus, the grievant had 30 calendar days from November 3rd to initiate a grievance challenging his supervisor’s actions. The grievant initiated his grievance on November 8, 2005, thus it was timely.⁴

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30-calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this ruling to advance or conclude his grievance. This

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1).

⁴ This ruling concludes that the agency’s November 3rd denial of the grievant’s second request for an in-band adjustment constituted a new management action, thus starting the 30-calendar day clock anew. We note that to rule otherwise would permanently bar the grievant from ever challenging through the grievance process the denial of an in-band adjustment. Importantly, however, this ruling would not apply to affirmative management actions, such as performance evaluations or written notices, which must be challenged within 30 calendar days. In addition, this Department deems it important to note that should the grievant ask for and be denied an in-band adjustment in the future and initiate another grievance based on the new denial, the subsequent grievance could be considered to be harassing unless the grievant can show that there has been some material change in circumstances since the filing of his November 8th grievance (e.g., expiration of the written notice upon which the agency appears to have relied at least in part in denying the grievant’s request for an in-band adjustment.)

December 29, 2005

Ruling #2006-1195

Page 4

Department's rulings on matters of compliance are final and nonappealable.⁵ Further, this ruling only recognizes that this grievance was timely filed, and in no way reflects the substantive merits of the grievant's claim.

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⁵ Va. Code § 2.2-1001(5).