

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
Caremark PCS Health, LLC	*	Docket No. MSBCA 3277
	*	
Under DBM MS-IFB No. BPM039929	*	
	*	
Appearance for Appellant	*	Margaret M. Witherup, Esq.
	*	Witherup Allen Law LLC
	*	Burtonsville, Maryland 20866
	*	
Appearance for Respondent	*	Clifton R. Gray, Esq.
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	*	Baltimore, Maryland 21201
	*	
Appearance for Interested Party	*	John F. Dougherty, Esq.
	*	Sheila R. Gibbs, Esq.
	*	Kramon & Graham, P.A.
	*	Baltimore, Maryland 21202
	*	
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OPINION AND ORDER BY CHAIRMAN CHO

MedImpact Healthcare Systems, Inc. (“MedImpact” or “Interested Party”) moves to dismiss, asserting that the Board lacks jurisdiction because the appeal filed by Caremark PCS Health, LLC (“Caremark” or “Appellant”) is untimely. Upon consideration of Interested Party’s Motion to Dismiss (“Motion”), Appellant’s Opposition thereto, Respondent Department of Budget and Management’s Response in Support of the Motion, as well as argument heard on August 1, 2024, the Board grants the Motion and dismisses the appeal for lack of jurisdiction.

FACTS

The Department of Budget and Management (“DBM”) issued an Invitation for Bids for Pharmacy Benefits Management Services and Purchasing Pool Management (the “IFB”). DBM

posted the final bid results on May 28, 2024, which showed that MedImpact was the winning bidder. On June 4, 2024, Caremark filed its protest with the Procurement Officer. The Procurement Officer emailed a final decision letter dated June 26, 2024 to Caremark's counsel, denying the protest. On July 8, 2024, Caremark filed its Notice of Appeal with the Board.

GOVERNING LAW

An appeal from a denial of a protest “shall be filed ... within 10 days after receipt of the notice” of the final agency action. Md. Code Ann., State Fin. & Proc. § 15-220(b)(1); COMAR 21.10.02.10A. Under COMAR 21.01.02.01B(32), “day” is defined as “calendar day, unless otherwise designated.” COMAR 21.10.07.01B(1) provides that “an appeal must be filed within the number of calendar days set forth in COMAR 21.10.02.10.” Further, “[a]n appeal received by the Appeals Board after the time prescribed in §A of this regulation may not be considered[.]” COMAR 21.10.02.10B.

DECISION

Caremark's Notice of Appeal, filed electronically with the Board on Monday, July 8, 2024, was untimely because it was filed two calendar days later than required.

DBM's final action letter dated June 26, 2024 denying Appellant's bid protest was sent by email to Appellant's counsel on the same day. Appellant concedes that the letter was received by counsel on June 26, 2024. Counting ten calendar days from June 26, 2024, the appeal should have been filed no later than Saturday, July 6, 2024.

We have consistently held that the statutory appeal period is a mandatory requirement which must be satisfied to perfect jurisdiction. ... When Appellant by its attorney did not file its appeal within the ten calendar day period prescribed by State and Finance and Procurement Article § 15-220(b) and COMAR 21.10.02.10A, the final decision of the Procurement Officer became binding and the right to an appeal was lost.

Glenbeigh Inc., MSBCA 1699 at 2 (1993) (internal citations omitted). Because Caremark’s appeal was filed untimely, the Board lacks jurisdiction and may not consider it.

Appellant asserts that, because the filing deadline landed on a non-business day (Saturday), it had until the next business day (Monday) to file its appeal. Unfortunately, neither the statutes nor the regulations build in additional days to allow for deadlines falling on a Saturday. Md. Code Ann., Gen. Prov. § 1-302(b)(1) states that if the last day of a time period computed under this subsection falls on a Sunday or legal holiday, the time to file is extended to the next day that is not a Sunday or legal holiday. It makes no such provision for a last day to file that falls on a Saturday.

And although Md. Code Ann., Gen. Prov. § 1-302(b)(2) allows for court filings to be made on the next day following when the deadline falls on “a Saturday, Sunday, legal holiday, or day on which the office is not open the entire day during ordinary business hours,” this Board is neither “a court of competent jurisdiction nor judicial tribunal.” *See Fallston Meadows Comm. Ass’n, Inc. v. Board of Child Care*, 122 Md. App. 683, 351 (1998). *See also Maryland Dep’t of Transp. v. Harbel, Inc.*, 2021 WL 5122022 at *5 (Nov. 4, 2021) (“seven days means seven calendar days, including Saturdays, Sundays, and holidays, and § 1-302 does not preclude that because, by its terms, it applies only to times set by statute.”).¹

¹ The full text of Md. Code Ann., Gen. Prov. § 1-302, Computation of period of time, states:

In general (a) In computing a period of time described in a statute, the day of the act, event, or default after which the designated period of time begins to run may not be included.

Last day (b) The last day of the period of time computed under subsection (a) of this section shall be included unless: (1) it is a Sunday or legal holiday, in which case the period runs until the end of the next day that is not a Sunday or legal holiday; or (2) the act to be done is the filing of a paper in court and the office of the clerk of the court is not open on the last day of the period of time, or is closed for a part of the day, in which case the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the office is not open the entire day during ordinary business hours.

We do not find other cases cited by Appellant to be apposite in so far as they address the timeliness of underlying bid protests, rather than late appeals filed that deprive the Board of jurisdiction.

ORDER

Based on the foregoing, it is this 1st day of August 2024 hereby:

ORDERED that the Interested Party's Motion to Dismiss is GRANTED and the Appeal be DISMISSED WITH PREJUDICE.

/s/
Sonia Cho, Esq., Chairman

I concur:

/s/
Senchal Dashiell Barrolle, Esq., Member

/s/
Lawrence F. Kreis, Jr., Esq., Member

Sundays and legal holidays (c)(1) When the period of time exceeds 7 days, intermediate Sundays and legal holidays shall be counted in computing the period of time. (2) When the period of time is 7 days or less, intermediate Sundays and legal holidays may not be counted in computing the period of time.

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.

Md. Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within ten days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I hereby certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3277, Appeal of Caremark PCS Health, LLC, under DBM MS-IFB No. BPM039929.

Date: August 1, 2024

/s/
Ruth W. Foy
Clerk