

WASHINGTON SUPREME COURT

King County Public Hospital District No. 2 v. Department of Health

178 Wash. 2d 363 (2013) · Decided September 5, 2013

SUMMARY

The Washington Supreme Court affirmed the Court of Appeals' reinstatement of a certificate of need issued to Odyssey for a hospice facility in King County. The court held that the health law judge did not abuse his discretion by considering a later need calculation, and that the Department of Health's findings regarding other certificate-of-need criteria were not arbitrary or capricious. The court also held that competing providers received sufficient notice and opportunity to comment and had no statutory or due process right to a full adjudicative hearing on the settlement.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	González, J.; Madsen, C.J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Wiggins, J.; Gordon McCloud, J.
JURISDICTION	Washington
DECIDED	September 5, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Competing hospice providers sought review of the Court of Appeals decision reversing the King County Superior Court's revocation of Odyssey's certificate of need and remand to the health law judge.
STANDARD OF REVIEW	Under the Washington Administrative Procedure Act, the agency decision is presumed correct and the challenger bears the burden of proof. The court applies the APA standards directly to the agency record, may substitute its interpretation of law while substantially deferring to agency interpretations involving special expertise, affirms factual findings supported by substantial evidence, and may grant relief for arbitrary or capricious action. An administrative law judge's evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	precedential
PARTIES	King County Public Hospital District No. 2 d/b/a Evergreen Healthcare, Providence Hospice and Home Care of Snohomish County, Hospice of Seattle v. Department of Health

TOPICS

administrative law

agency adjudication

judicial review of agency action

health law

procedural due process

PRACTICE AREAS

administrative law

health law

constitutional law

QUESTIONS PRESENTED

1. Whether the health law judge abused his discretion by considering the 2008 need calculation, which became available after Odyssey's 2006 certificate-of-need application and the close of the initial public-comment record.
2. Whether the Department's 2008 need analysis and the health law judge's finding that Odyssey satisfied the non-need certificate-of-need criteria were arbitrary or capricious or unsupported by substantial evidence.
3. Whether the health law judge violated competing providers' statutory or procedural due process rights by approving the settlement without holding a full adjudicative proceeding on the merits.

HOLDINGS

1. A health law judge may, in the exercise of substantial evidentiary discretion, consider a later need calculation when special circumstances justify doing so, even though the evidence was unavailable when the certificate-of-need application was initially evaluated and after the public-comment period closed.
2. The Department did not act arbitrarily or capriciously in relying on the 2008 need analysis, excluding Kline Galland and Providence ElderPlace from the calculation, or concluding that Odyssey satisfied the certificate-of-need criteria.
3. Competing providers who received notice and an opportunity to comment on a proposed certificate-of-need settlement were not entitled to demand a full adjudicative proceeding before the health law judge.

KEY QUOTATIONS

"It was within the sound discretion of the health law judge to admit, or not admit, evidence that came into existence after the close of the public comment period." (178 Wash. 2d at 374)

"The basic requirements of procedural due process are notice and the opportunity to be heard." (178 Wash. 2d at 379-380)

FACTUAL BACKGROUND

Odyssey applied in 2006 for hospice certificates of need in three Washington counties, including King County, but the Department initially found no need and concluded that other certificate-of-need criteria were unmet. While Odyssey's administrative proceeding and federal antitrust and constitutional litigation were pending, a later statewide analysis showed a need for an additional King County hospice provider. The Department and Odyssey negotiated a settlement under which the Department proposed approving Odyssey's King County

application after providing competing providers notice and an opportunity to comment. The health law judge approved the settlement and issued the certificate, which competing providers challenged.

PROCEDURAL HISTORY

The Department of Health initially denied Odyssey's 2006 certificate-of-need applications. During a pending adjudicative proceeding and related federal litigation, the Department negotiated a settlement under which it proposed approving Odyssey's King County application based partly on a later 2008 need calculation. A health law judge approved the settlement and issued the certificate. The King County Superior Court reversed and remanded, but the Court of Appeals reversed and reinstated the certificate. The Washington Supreme Court affirmed the Court of Appeals.

DISPOSITION

affirmed

CASES CITED

- Univ. of Wash. Med. Ctr. v. Dep't of Health, 164 Wn.2d 95, 187 P.3d 243 (2008)
- Odyssey Healthcare Operating B, LP v. Dep't of Health, 145 Wn. App. 131, 185 P.3d 652 (2008)
- Providence Hosp. of Everett v. Dep't of Soc. & Health Servs., 112 Wn.2d 353, 770 P.2d 1040 (1989)
- In re All-State Constr. Co., 70 Wn.2d 657, 425 P.2d 16 (1967)
- Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 858 P.2d 494 (1993)
- Franklin County Sheriff's Office v. Sellers, 97 Wn.2d 317, 646 P.2d 113 (1982)
- Barrie v. Kitsap County, 93 Wn.2d 843, 613 P.2d 1148 (1980)
- Port of Seattle v. Pollution Control Hr'gs Bd., 151 Wn.2d 568, 90 P.3d 659 (2004)
- Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 194 P.3d 255 (2008)
- Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950)
- St. Joseph Hosp. & Health Care Ctr. v. Dep't of Health, 125 Wn.2d 733, 887 P.2d 891 (1995)
- King County Pub. Hosp. Dist. No. 2 v. Dep't of Health, 167 Wn. App. 740, 275 P.3d 1141 (2012)