

COURT OF APPEALS OF MARYLAND

Washington Suburban Sanitary Commission v. Lafarge North America, Inc.

443 Md. 265 (2015) · No. No. 69, September Term, 2014 · Decided June 18, 2015

SUMMARY

The Maryland Court of Appeals held that a Washington Suburban Sanitary Commission refund claim is deemed finally denied when the Commission fails to decide it within the 180-day period required by Maryland law. The court concluded that the denial was subject to judicial review and that the reviewing court could remand with directions to calculate and issue the appropriate refund, rather than give the Commission another opportunity to deny the claim. The court affirmed the judgment requiring the Commission to determine and issue a refund to Lafarge North America, Inc.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Harrell, J.; Barbera, C.J.; Battaglia, J.; Greene, J.; Adkins, J.; McDonald, J.; Watts, J.
JURISDICTION	Maryland
DECIDED	June 18, 2015
DOCKET	No. 69, September Term, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	The WSSC appealed from a circuit court judgment reversing the WSSC's deemed denial of Lafarge's refund claim and remanding with directions to calculate and issue an appropriate refund. The Court of Special Appeals affirmed, and the Court of Appeals of Maryland granted the WSSC's petition for a writ of certiorari.
STANDARD OF REVIEW	The court reviews an agency decision for substantial evidence and determines whether the agency's discretionary determinations are arbitrary and capricious. Judicial review of a deemed denial is subject to the same general standard, but the court may reverse without remanding for a second opportunity to deny the claim when the agency failed to act within the statutory period and no administrative function remains concerning eligibility for a refund.
PRECEDENTIAL VALUE	published precedential opinion of the Court of Appeals of Maryland

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Washington Suburban Sanitary Commission v. Lafarge North America, Inc.

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QUESTIONS PRESENTED

1. Whether the Court of Special Appeals had jurisdiction to review the circuit court's judgment in a WSSC refund-claim proceeding.
2. Whether a refund claim for which a hearing is requested under Public Utilities Article § 25-106 constitutes a contested case under Maryland's Administrative Procedure Act.
3. Whether a reviewing court may reverse a deemed denial of a refund claim that is unsupported by substantial evidence and arbitrary and capricious and remand only for calculation and issuance of the refund, thereby foreclosing a second opportunity for the WSSC to deny the claim.
4. Whether the circuit court improperly ordered production of the WSSC's investigative file as part of the agency record.

HOLDINGS

1. The Court of Special Appeals had jurisdiction to review the circuit court's judgment because a WSSC refund claim for which the claimant requests a hearing is a contested case under Maryland's Administrative Procedure Act, and State Government Article § 10-223 authorizes an appeal to the intermediate appellate court.
2. When the WSSC fails to decide a refund claim within 180 days, the claim is deemed finally rejected by operation of law under Public Utilities Article § 25-106(d), and the claimant may seek judicial review of that deemed denial.
3. When a deemed denial is unsupported by substantial evidence and arbitrary and capricious because the WSSC failed to act timely, the reviewing court may reverse the denial and remand with directions to calculate and issue the appropriate refund; the WSSC may not reconsider whether to deny the refund altogether.
4. The court did not decide whether the circuit court erred by ordering production of the WSSC's investigative file because the issue was moot after the court affirmed the limited remand and the WSSC failed to show prejudice.

KEY QUOTATIONS

“A reviewing court is authorized to reverse the decision of the WSSC (assuming that the denial was not supported by substantial evidence and/or was arbitrary and capricious on the record) and remand the case to the WSSC with directions to calculate and issue the appropriate refund, thus foreclosing the agency’s ability to consider anew on remand the potential for denial of the refund request.” (at 1)

“The option to deny Lafarge’s claim is foreclosed by the failure to act within the allowed 180 days.” (at 21-22)

“The intent of the Legislature codified in PUA § 25-106 demands that the case not be remanded to the WSSC back to “Square One.”” (at 23)

FACTUAL BACKGROUND

Lafarge operated a ready-mix concrete plant whose operations used large quantities of water that generally did not enter the WSSC sewer system. The WSSC installed a submeter in 2000, but after the submeter was moved following a 2005 fire, Lafarge alleged that it malfunctioned and caused excessive sewer charges. Lafarge filed a refund claim in March 2012 and a hearing request in April 2012; the WSSC did not hold a hearing or decide the claim within 180 days.

PROCEDURAL HISTORY

Lafarge filed a refund claim with the WSSC for allegedly excessive water and sewer charges. The WSSC failed to hold a requested hearing or issue a decision within the 180-day period required by Public Utilities Article § 25-106(d), resulting in a deemed final rejection. The Circuit Court for Montgomery County reversed the deemed denial as unsupported by substantial evidence and arbitrary and capricious, ordered the WSSC to calculate and issue a refund, and later required payment within 30 days. The Court of Special Appeals affirmed, and the Court of Appeals affirmed that judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The WSSC must calculate and issue the appropriate refund according to its standard procedures, including Standard Procedures for Adjustment and Correction of Water/Sewer Bill, SP Number CUS 10-01. The WSSC may conduct additional fact-finding or a hearing limited to determining the proper amount of the refund, but may not reconsider whether Lafarge is entitled to a refund or deny the claim outright.

CASES CITED

- *Waterkeeper Alliance, Inc. v. Maryland Department of Agriculture*, 439 Md. 262, 96 A.3d 105 (2014)
- *Donocam Associates v. Washington Suburban Sanitary Commission*, 302 Md. 501, 489 A.2d 26 (1985)
- *Washington Suburban Sanitary Commission v. Phillips*, 413 Md. 606, 994 A.2d 411 (2010)
- *Anne Arundel County v. Halle Development, Inc.*, 408 Md. 539, 971 A.2d 214 (2009)

- *Spencer v. Maryland State Board of Pharmacy*, 380 Md. 515, 846 A.2d 341 (2004)
- *Crane v. Dunn*, 382 Md. 83, 854 A.2d 1180 (2004)
- *Montgomery County v. Stevens*, 337 Md. 471, 654 A.2d 877 (1995)
- *Perez v. State*, 420 Md. 57, 21 A.3d 1048 (2011)
- *Washington Suburban Sanitary Commission v. C.I. Mitchell & Best Co.*, 303 Md. 544, 495 A.2d 30 (1985)
- *Town of La Plata v. Faison-Rosewick LLC*, 434 Md. 496, 76 A.3d 1001 (2013)
- *Department of Natural Resources v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 334 A.2d 514 (1975)
- *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 783 A.2d 667 (2001)
- *Employees' Retirement System of City of Baltimore v. Dorsey*, 430 Md. 100, 59 A.3d 990 (2013)
- *Washington Suburban Sanitary Commission v. Lafarge North America, Inc.*, 440 Md. 115, 99 A.3d 778 (2014)

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