

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CUSTOM MOBILITY, INC.,                    )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 07-2136RU  
  )  
AGENCY FOR HEALTH CARE                 )  
ADMINISTRATION,                         )  
      Respondent.                         )  
\_\_\_\_\_ )

FINAL ORDER

On August 6, 2007, the Petitioner, Custom Mobility, Inc. ("Custom Mobility") filed Custom Mobility's Motion for Attorney's Fees and Costs pursuant to Section 57.105, Florida Statutes. In the motion, Custom Mobility sought attorney's fees and costs expended to defend itself against a Motion for Summary Final Order filed by the Agency for Health Care Administration ("AHCA"). On August 9, 2007, AHCA filed its response in opposition to Custom Mobility's motion seeking attorney's fees and costs. Having determined that the arguments set forth in the motion and response in opposition to the motion adequately present the arguments of the parties and that this matter may be resolved as a matter of law, this order is entered without hearing.

In its Motion for Summary Final Order, AHCA argued that Custom Mobility did not have standing to maintain its challenge

to an agency statement that had not adopted as a rule, as required in Section 120.54(1)(a), Florida Statutes(2007).<sup>1</sup> The agency statement challenged by Custom Mobility was a statistical formula for cluster sampling used to calculate an alleged Medicaid overpayment to Custom Mobility. AHCA argued that Custom Mobility had not shown that it had suffered an injury-in-fact as a result of AHCA's failure to adopt the statistical formula as a rule because it had received adequate notice of the use of the statistical formula to calculate the alleged Medicaid overpayments sought to be recovered by AHCA. AHCA's Motion for Summary Final Order was denied in an order entered July 13, 2007.

Custom Mobility argues in its motion that "AHCA has no legal or factual basis for arguing that Custom Mobility lacks standing to bring this action under Section 120.56(4), F.S.," and that it is, therefore, entitled to an award of attorney's fees pursuant to Section 57.105(1), Florida Statutes. Section 57.105, Florida Statutes (2007), provides in pertinent part:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have

known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.

(2) Paragraph (1)(b) does not apply if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.

(3) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

(5) In administrative proceedings under chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1)-(4). Such award shall be a final order subject to judicial review pursuant to s. 120.68. If the losing party is an agency as defined in s. 120.52(1), the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.

Custom Mobility is not entitled to an award of attorneys' fees and costs pursuant to Section 57.105(1), Florida Statutes, because the Motion for Summary Final Order filed by AHCA is not a "claim or defense." Furthermore, even if the motion was a "claim or defense," the request for an award of attorneys' fees and costs is duplicative. If Custom Mobility were the prevailing party in the challenge brought pursuant to Section 120.56(4), Florida Statutes, Custom Mobility would be entitled to an award of reasonable attorneys' fees and costs pursuant to Section 120.569(4), Florida Statutes. If Custom Mobility were not the prevailing party in the instant case, it

would not be entitled to attorneys' fees and costs pursuant to Section 57.105(1), Florida Statutes.<sup>2</sup>

CONCLUSION

Based on the foregoing, it is ORDERED that Custom Mobility's Motion for Attorney's Fees and Costs Pursuant to Section 57.105, Florida Statutes, is denied.

DONE AND ORDERED this 24th day of August, 2007, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of August, 2007.

ENDNOTES

<sup>1</sup>/ All references herein to the Florida Statutes are to the 2007 edition unless indicated otherwise.

<sup>2</sup>/ It is noted that Custom Mobility did not assert that AHCA's Motion for Summary Final Order was filed "for the purpose of unreasonable delay." See § 57.105(3), Fla. Stat.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.