STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

_____
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

In the name of:

SACRED HEART MEDICAL CENTER,
(re: Alexis F.)
Petitioner,

Case No. **CV 2011 3226**

MEMORANDUM DECISION AND ORDER DENYING RESPONDENT'S MOTION TO DISMISS

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on respondent Kootenai County Board of Commissioners and Kootenai County Assistance's (collectively Kootenai County) amended motion to dismiss filed on April 26, 2013.

On February 25, 2010, petitioner Sacred Heart Medical Center (SHMC) submitted an application for county indigent medical assistance for Alexis F. (A.F.), Request No. 2010-324. Amended Motion to Dismiss, p. 2. Kootenai County denied the application on March 22, 2010, and on March 28, 2010, SHMC appealed. *Id*. The appeal of Kootenai County's Initial Determination of Denial was heard on February 1, 2011, and Kootenai County upheld the denial. *Id*. SHMC sought judicial review of the denial and the parties stipulated to remand the matter to the Board of County Commissioners (Board). *Id*. On February 8, 2013, Request No. 2010-324 was heard again. *Id*. The hearing was continued and deliberations were held on February 19, 2013. *Id*. On March 25, 2013, Kootenai County issued its Findings of Fact, Conclusions of Law and Order, affirming the Initial Determination of Denial in Request

No. 2010-324, determining A.F. has sufficient income and resources to pay for the medical expenses for a period of five years. *Id*. On April 19, 2013, SHMC filed a "Second Petition for Judicial Review of Agency Decision".

On April 26, 2013, Kootenai County filed its "Amended Motion to Dismiss". Kootenai County seeks dismissal of SHMC's Petition for Review, claiming this Court lacks jurisdiction to hear such petition because SHMC allegedly failed to comply with conditions precedent to litigation, specifically, that SHMC failed to exhaust its administrative remedies as there was no request for a prelitigation screening panel. Amended Motion to Dismiss, pp. 1-4. Additionally, Kootenai County argues SHMC's petition should be dismissed because SHMC failed to comply with I.R.C.P. 84(f), by failing to pay the fee for preparing the administrative record or transcript. *Id.* On May 11, 2013, SHMC filed its "Petitioner's Response to Motion to Dismiss" and "Affidavit in Support of Petitioner's Response to Motion to Dismiss". SHMC argues Idaho appellate decisions regarding Idaho's medical malpractice prelitigation screening panel which are very similar to the statutes at issue in this case, by analogy, lead to the conclusion that this case should not be dismissed. Petitioner's Response to Motion to Dismiss, pp. 1-3. SHMC also argues failure to pay a fee is not a jurisdictional defect. *Id.,* pp. 3-4. On June 14, 2013, Kootenai County filed its "Reply in Support of Motion to Dismiss". Kootenai County explained its reasons why the statutes regarding medical malpractice and indigent medical assistance should be interpreted differently. Reply in Support of Motion to Dismiss, pp. 2-5. Kootenai County also states that I.R.C.P. 84(n) explains that failure to pay a fee, while not a jurisdictional failure, is grounds for the Court to exercise its discretion and sanction the non-complying party, up to and including dismissal of the petition. *Id.,* p. 5. Oral argument on Kootenai County's motion to dismiss was held on June 18, 2013.

II. STANDARD OF REVIEW.

As this is a case of statutory interpretation, specifically Title 31, Chapter 35, it is well-settled principle of statutory construction that statutes should not be construed to render other provisions meaningless. *Westerberg v. Andrus*, 114 Idaho 401, 403-04, 757 P.2d 664, 666-67 (1988). District Court review of an agency decision is subject to the existence of a statute granting a right of review. *In re City of Shelley,* 151 Idaho 289, 292, 255 P.3d 1175, 1178 (2011).

III. ANALYSIS.

A. Requirements of I.C. § 31-3551.

Idaho Code § 31-3505G establishes the right of judicial review of an agency decision in medical indigency cases, allowing judicial review of the Kootneai County Board of Commissioners' final determination to deny an application for financial assistance with necessary medical services in the manner provided in I.C. § 31-1506. I.C. § 31-3505G. Idaho Code § 31-1506 states: "[u]nless provided by law, judicial review of any act, order or proceeding of the board shall be initiated . . . in the same manner as provided in chapter 52, title 67, Idaho Code . . .", which is the Idaho Administrative Procedure Act (IDAPA). I.C. § 31-1506.

The Idaho Supreme Court has consistently held judicial review of an administrative decision should not be considered "until the full gamut of administrative proceedings has been conducted and all available administrative remedies have been exhausted." *Regan v. Kootenai County*, 140 Idaho 721, 724, 100 P.3d 615, 618 (2004); *Park v. Banbury*, 143 Idaho 576, 578, 149 P.3d 851, 853 (2006). If the appellant fails to exhaust administrative remedies, dismissal of the claim is warranted. *Regan*, 140 Idaho 721, 724, 100 P.3d 615, 618. This doctrine serves important policy

considerations, including "providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative process established by the Legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body." 140 Idaho 721, 725, 100 P.3d 615, 619 (quoting *White v. Bannock County Commissioners*, 139 Idaho 396, 401-02, 80 P.3d 332, 337-38 (2003).

Idaho Code § 31-3551 addresses the procedure for advisory panels for prelitigation consideration of indigent resource eligibility claims, and states:

> The counties in the state of Idaho and the health providers furnishing care to eligible medically indigent persons . . . are directed to cooperate in providing an advisory panel in the nature of a special civil grand jury and procedure for prelitigation consideration of claims arising out of contested resource availability of persons applying for indigent relief . . . which proceedings shall be informal and nonbinding, but nevertheless *compulsory as a condition precedent to litigation*.

I.C. § 31-3551 (emphasis added). The Idaho Supreme Court affirmed the compulsory nature of I.C. § 31-3551 in *Mercy Medical Center v. Ada County*, 143 Idaho 899, 155 P.3d 700 (2007). The Idaho Supreme Court held the advisory panel is compulsory, but only with regard to reviewing decisions dealing with financial resources (whether the patient was indigent or had the financial resources to pay the hospital bill). *Mercy*, 143 Idaho 899, 801, 155 P.3d 700, 702.

Kootenai County claims the primary issue in SHMC's Second Petition for Judicial Review of Agency Decision is whether the Board of County Commissioners erred in not reducing A.F.'s net worth by the amount of debt incurred via the Board's approval of county medical indigency; thus, the issues presented are ones of resource availability, as opposed to questions of residency or medical necessity. Amended Motion to Dismiss, p. 4. As such, Kootenai County argues there was a requirement to hold an

advisory panel. *Id*. As this has not yet occurred, Kootenai County claims this Court has no jurisdiction over this case because SHMC has failed to exhaust all administrative remedies. *Id*.

In its response, SHMC points to *Moss v. Bjornson*, 115 Idaho 165, 765 P.2d 676 (1988), a medical malpractice case. Petitioner's Response to Motion to Dismiss, p. 2. In *Moss*, the Idaho Supreme Court analyzed I.C. § 6-1001, specifically its provision requiring the Idaho state board of medicine to "cooperate in providing a hearing panel in the nature of a special civil grand jury and procedure . . . which proceedings shall be informal and nonbinding, but nonetheless *compulsory as a condition precedent to litigation*." 115 Idaho 165, 166, 765 P.2d 676, 677 (emphasis in original). Just as in the present case, the respondents in *Moss* argued I.C. § 6-1001 required dismissal of the case as the malpractice complaint was filed prior to requesting a prelitigation screening panel. *Id*. The Idaho Supreme Court was not convinced by that argument. *Id*. The Idaho Supreme Court referenced I.C. § 6-1006, which states:

> **Stay of other court proceedings in interest of hearing before panel.** – During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel *and the district or other courts having jurisdiction of any pending such claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.*

115 Idaho 165, 167, 765 P.2d 676, 678; I.C. § 6-1006 (emphasis added). The Idaho Supreme Court held I.C. § 6-1006 allows for the district court to stay civil proceedings until the prelitigation screening panel renders its advisory opinion, and to hold otherwise would be to hold I.C. § 6-1006 superfluous. *Id.*

As shown above (and as set forth verbatim in the attachment at the end of this decision), I.C. § 31-3551 almost exactly mirrors the language of I.C. § 6-1001 with

regard to the requirement of a panel prior to litigation. Idaho Code § 31-355 also has a provision with the exact language of I.C. § 6-1006. Idaho Code § 31-3555, states:

> **Stay of court proceedings in interest of hearing before panel** – During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any such pending claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.

I.C. § 31-3555.

Given the striking similarities between the statutes, it is reasonable to incorporate the Idaho Supreme Court's analysis in *Moss* to the case here. While the use of an advisory panel is compulsory in the present case, complete dismissal on that basis would render I.C. § 31-3555 superfluous. This Court finds I.C. § 31-3555 allows the district court to retain jurisdiction while a prelitigation panel is conducted, thus, the argument that this Court has no jurisdiction to hear the matter is without merit, as was the same argument in *Moss*.

Kootenai County argues *Moss* is not instructive in this case because it deals with the statute of limitations in a civil action; whereas, in the present case we are dealing with an administrative appeal. Reply in Support of Motion to Dismiss, p. 3. Kootenai County states *Moss* does not deal with the exhaustion of administrative remedies. *Id*. at 4. In addition, Kootenai County states SHMC has not filed a request for prelitigation consideration of its claim pursuant to I.C. § 31-3551, nor has SHMC sought a stay of judicial review for such under I.C. § 31-3555; thus, Kootenai County argues dismissal of this case is proper as SHMC has failed to exhaust all administrative remedies. *Id*.

As shown in the attached comparison table, prelitigation screening in medical indigency cases under I.C. § 31-3550 and the prelitigation screening in medical malpractice cases as discussed in *Moss* are virtually identical. Both indicate it is in the

public's best interest to encourage nonlitigation resolution of claims, whether medical malpractice claims or indigency medical assistance cases. In addition, both provide such a resolution by providing prelitigation screening of the claims via a hearing panel. It seems evident the goal of both is to facilitate resolution prior to judicial proceedings through the use of hearing panels. When analyzing the comparison table between Idaho Code Title 31, Chapter 35 and Idaho Code Title 6, Chapter 10, the similarities are apparent. Particularly, I.C. § 31-3554 and I.C. § 6-1005, both dealing with the tolling of limitation period during pendency of proceedings are exactly the same, as are I.C. § 31-3555 and I.C. § 6-1006, both dealing with stay of court proceedings in interest of hearing before panel. However, the similarities do not end there. The procedure for the panels in I.C. § 31-3551 and I.C. § 6-1001 are very similar and are identical in that both state the prelitigation panel is compulsory, proceedings are subject to disclosure according to Idaho Code Title 9, Chapter 3 and formal rules of evidence are not applicable in such proceedings. Also, after the panel has arrived at a decision, which is advisory under both I.C. § 31-3553 and I.C. § 6-1004, the panel must provide the parties with its comments and observations with respect to the claim or dispute. These similarities appear to be more than coincidental. Due to the strikingly similar language of the two code sections, the reasoning of the Idaho Supreme Court in *Moss* is instructive and must be followed. This Court specifically finds that Kootenai County is correct that *Moss* deals with the statute of limitations in a civil action; whereas, in the present case we are dealing with an administrative appeal. However, the Court finds that to be a distinction without a difference, and finds SHMC's petition for review must be stayed (rather than dismissed), until the prelitigation panel has been utilized.

Kootenai County is correct that SHMC has not yet filed a request for prelitigation consideration of its claim pursuant to I.C. § 31-3551. However, that does not change

this Court's conclusion. SHMC's petition for review will not proceed until SHMC has utilized the requisite screening panel, but in the interim, SHMC's petition for review is stayed. Certainly, if SHMC chooses not to file its request for a prelitigation screening panel, at a later time the case may be dismissed.

Kootenai County is also correct that SHMC sought a stay of judicial review for such under I.C. § 31-3555. This Court can discern no reason why a party must affirmatively seek a stay when *Moss* indicates that such is mandated by the district court. A review of both the majority opinion and the dissenting opinion of *Moss* do not reveal that it was Moss who sought a stay. Nowhere in the majority decision does the Idaho Supreme Court state that the petitioner must affirmatively seek a stay.

At the June 18, 2013, oral argument before this Court, counsel for Kootenai County discussed *Mercy Medical Center v. Ada County*, 143 Idaho 899, 155 P.2d 700 (2007). In *Mercy*, the hospital appealed the district court's dismissal of its petition for judicial review. 143 Idaho 899, 900, 155 P.3d 700, 701. The Idaho Supreme Court held the district court erred in dismissing Mercy's petition for judicial review as untimely. 143 Idaho 899, 901, 155 P.3d 700, 702. In coming to its decision, the Idaho Supreme Court analyzed I.C. § 31-3554 regarding the tolling of limitation periods during pendency of proceedings and held (quoted by Kootenai County):

> Mercy had twenty-eight days within which to file its petition for judicial review. Fourteen of those days ran before it requested prelitigation screening. Once the thirty-day period following the Panel decision had run, Mercy still had fourteen days remaining within which to file a petition for judicial review. It filed the petition before the expiration of that time period. Therefore, we reverse the district court's order dismissing the petition and remand for further proceedings.

Mercy, 143 Idaho 899, 902, 144 P.3d 700, 703.

Kootenai County argues this passage is dispositive in this case in a way *Moss* cannot be. Specifically, Kootenai County argues what is contemplated in proceedings

like the one before the Court is the petitioner seeks review by prelitigation panel, and once that review is completed, the time period for seeking judicial review is no longer tolled and the matter proceeds to the district court, a procedure which did not occur here. However, a reading of *Mercy* and *Moss* together does not result in a contradiction. *Mercy* analyzes the tolling of time periods; whereas, *Moss* analyzes the stay of court proceedings during the pendency of a prelitigation panel. Nowhere does *Mercy* state it is the petitioner's sole responsibility to request a prelitigation panel in medical indigency assistance cases. All *Mercy* did was clarify what the meaning of "toll" and "claim" are under the statute and determined the remaining time a party has to file a petition for judicial review is tacked on after the thirty-day period following the panel decision has run. This Court does not find that *Mercy* requires the present case be dismissed as a matter of law.

B. SHMC's Failure to Timely Pay Filing Fees.

Additionally, Kootenai County argues SHMC failed to comply with IRCP 84(f) and IRCP 84(g). *Id*. Both rules deal with judicial review of agency actions by the district court. Idaho Rule of Civil Procedure 84(f)(4) requires a petitioner to pay the agency, concurrent with filing the petition for judicial review, an estimated fee for preparation of the agency record, and I.R.C.P. 84(g)(1)(A) requires the petitioner to pay the estimated fee for preparation of the transcript prior to filing the petition for judicial review. Kootenai County argues these fees have not been paid and so the motion to dismiss should be granted. Amended Motion to Dismiss, pp. 4-5.

In its response, SHMC states the failure to timely pay the fees under I.R.C.P 84(f) and I.R.C.P. 84(g) was simply a breakdown in communication between SHMC's counsel and his staff, as counsel believed at the time of the filing of the petition the

filing fees had been paid (as he had directed his staff). Petitioner's Response to Motion to Dismiss, p. 3; Affidavit (of Michael B. Hague) in Support of Petitioner's Response to Motion to Dismiss, p. 2. SHMC points out the fee for the preparation of the record and transcript was paid on April 26, 2013. Affidavit (of Michael B. Hague) in Support of Petitioner's Response to Motion to Dismiss, p. 1. Given the fact that SHMC's "Second Petition for Judicial Review of Agency Decision" was filed on April 19, 2013, payment of the fees was seven days late. SHMC argues Kootenai County has failed to allege or show any prejudice from the timing of the payment as the fees have now been paid. Petitioner's Response to Motion to Dismiss, p. 3.

Based on the affidavit of counsel and his explanation for the timing of the fees, it is impossible to see how Kootenai County has been unduly prejudiced by the late submission. In any event, I.R.C.P. 84(n) vests this Court with discretion. It would be an abuse of this Court's discretion to dismiss SHMC's petition for review due payment of fees being seven days late, especially when such late payment was explained. As such, the motion to dismiss based upon timely failure to pay fees must be denied.

C. Attorney Fees.

Kootenai County has requested filing fees. As Kootenai County is not the prevailing party, at least not at the present time, it is not entitled to attorney fees.

IV. CONCLUSION AND ORDER.

For the reasons stated above, the respondent Kootenai County's motion to dismiss must be denied.

IT IS HEREBY ORDERED the Motion to Dismiss filed by respondent Kootenai County is DENIED.

Entered this 16th day of July, 2013.

_____

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of July, 2013, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Jamila D. Holmes	446-1621	Michael Hague	664-6338

_____
Jeanne Clausen, Deputy Clerk

I.C. § 31-3550. Declaration of public policy. – *It is the declaration of the legislature to be in the public interest to encourage nonlitigation resolution of claims* between the counties and health providers of the state of Idaho *by providing for prelitigation screening of such claims* contesting indigent resource eligibility *by a hearing panel as provided in this chapter*.	***Moss v. Bjornson*, 114 Idaho 165, 167, 765 P.2d 676, 678 (1988) (C.J. Shepard, dissenting)** *It is the declaration of the legislature* that appropriate measures are required in the public interest to assure that a liability insurance market be available to physicians and hospitals in this state and that the same be available at reasonable cost, thus assuring the availability of such health care providers for the provision of care to persons in this state. It is, therefore, further declared *to be in the public interest to encourage nonlitigation resolution of claims* against physicians and hospitals *by providing for prelitigation screening of such claims by a hearing panel as provided in this act.*
I.C. 31-3551. Advisory panel for prelitigation consideration of indigent resource eligibility claims – Procedure. – The counties in the state of Idaho and the health providers furnishing care to eligible medically indigent persons, as defined in section 31-3502, Idaho Code, are *directed to cooperate in providing an advisory panel in the nature of a special civil grand jury and procedure for prelitigation consideration of* claims arising out of contested resource availability of persons applying for indigent relief under the provisions of chapter 35, title 31, Idaho Code, *which proceedings shall be informal and nonbinding, but nevertheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal.* The panel, thus created, will render opinions where the resource eligibility of applicants, as herein described, has been contested.	**I.C. 6-1001. Hearing panel for prelitigation consideration of medical malpractice claims – Procedure. –** The Idaho state board of medicine, in alleged malpractice cases involving claims for damages against physicians and surgeons practicing in the state of Idaho or against licensed acute care general hospitals operating in the state of Idaho, is *directed to cooperate in providing a hearing panel in the nature of a special civil grand jury and procedure for prelitigation consideration* of personal injury and wrongful death claims for damages arising out of the provision of or alleged failure to provide hospital or medical care in the state of Idaho, *which proceedings shall be informal and nonbinding, but nonetheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this act shall at all times be subject to disclosure according to chapter 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal.*

I.C. 31-3552. Appointment and composition of advisory panel. – The panel will consist of three (3) members to be designated as follows: the chairman of the panel shall be an appointed designee by and of the director of the department of health and welfare of the state of Idaho, and must be without bias or conflict of interest; one (1) member will be appointed by and represent the Idaho association of counties; and one (1) member will be appointed by and represent the Idaho hospital association. *All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration.*	**I.C. 6-1002. Appointment and composition of hearing panel. –** The board of medicine shall provide for and appoint an appropriate panel or panels to accept and hear complaints of such negligence and damages, made by or on behalf of any patient who is an alleged victim of such negligence. Said panels, shall include one (1) person who is licensed to practice medicine in the state of Idaho. In cases involving claims again hospitals, one (1) additional member shall be a then serving administrator of a licensed acute care general hospital in the state of Idaho. One (1) additional member of each such panel shall be appointed by the commissioners of the Idaho state bar, which person shall be a residential lawyer licensed to practice law in the state of Idaho, and shall serve as chairman of the panel. The panelists so appointed shall select by unanimous decision a layman panelist who shall not be a lawyer, doctor or hospital employee but who shall be a responsible adult citizen of Idaho. *All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration.*
	I.C. § 6-1003. Informal proceedings. – There shall be no record of such proceedings and all evidence, documents and exhibits shall, at the close thereof, be returned to the parties or witnesses from whom the same were secured. The hearing panel shall have the authority to issue subpoenas and such proof shall provide the funds required to tender witness fees and order of the panel, and for good cause shown demonstrating extraordinary circumstances, there shall be no discovery or perpetuation of testimony in said proceedings.
I.C. § 31-3553. Advisory decisions of panel. – The general responsibility of the advisory panel will be to consider the eligibility of applicants on claims referred to them and render written opinions regarding such eligibility of applicants as based upon review of analysis of the resources available to the applicant, as defined in section 31-3502(17), Idaho Code. Following proceedings on each claims, the advisory panel *shall provide the* affected parties *with its comments and observations with respect to the* claim. They shall indicate in such comments whether the applicant appears to have resources available to him or her sufficient to pay for necessary medical services; does not have adequate resources; or any	**I.C. § 6-1004. Advisory decisions of panel. –** At the close of proceedings the panel, by majority and minority reports or by unanimous report, as the case may be, *shall provide the parties its comments and observations with respect to the* dispute, indicating whether the matter appears to be frivolous, meritorious or of any other particular description. If the panel is unanimous with respect to an amount of money in damages that in its opinion should fairly be offered or accepted in settlement, it may so advise the parties and affected insurers or third-party payors having subrogation, indemnity or other interest in the matter.

comments or observations which may be relevant and appropriate. The findings of the advisory panel may be used by affected parties in resolving contested claims in a manner consistent with the findings presented. However, such findings will be advisory in nature only and not binding on any of the affected parties.	
I.C. § 31-3554. Tolling of limitation periods during pendency of proceedings. – *There shall be no judicial or other review or appeal of such matters. No party shall be obligated to comply with or otherwise be affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not deemed to run during the time and such a claim is pending before the panel and for thirty (30) days thereafter.*	**I.C. § 6-1005. Tolling of limitation periods during pendency of proceedings. –** *There shall be no judicial or other review or appeal of such matters. No party shall be obliged to comply with or otherwise [be] affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member of segment thereof; however , in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not be deemed to run during the time that such claim is pending before such a panel and for thirty (30) days thereafter.*
I.C. § 31-3555. Stay of court proceedings in interest of hearing before panel. – *During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any such pending claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.*	**I.C. § 6-1006. Stay of other court proceedings in interest of hearing before panel. –** *During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any pending such claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.*