OAH 28-0900-39911

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Revocation of the Assisted Living License of Tolad Incorporated	**ORDER DENYING REQUEST FOR EXTENSION OF TIME FOR DISCOVERY**

This matter came before Administrative Law Judge Joseph C. Meyer on April 24, 2024, upon a motion requesting an extension of the discovery deadline (Motion) filed by Tolad Incorporated (Respondent). The Department of Health (Department) filed a response to the motion on April 25, 2024 (Response). The Respondent replied to the Response on April 29, 2024 (Reply).

Katrin C. Vohs, Bradley D. Simon, and Madeline M. Sheehy, Assistant Attorneys General, represent the Department. Marlene S. Garvis, Marlene S. Garvis, LLC, represents the Respondent.

Based upon the submissions of the parties and the record in this matter, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

The Respondent's Motion is **DENIED**.

Dated: May 6, 2024

JOSEPH C. MEYER
Administrative Law Judge

MEMORANDUM

On March 18, 2024, the Department initiated this proceeding by filing a Notice and Order for Hearing and Prehearing Conference, which called for a prehearing conference to be held by telephone on April 8, 2024.[1] During the prehearing conference on April 8, 2024, the parties agreed to a series of deadlines and scheduling milestones, including a deadline of May 1, 2024, for the close of discovery and a deadline to request subpoenas

[1] Notice and Order for Hr'g and Prehearing Conference at 2.

of July 25, 2024.[2] On April 24, 2024, the Respondent filed its Motion seeking an extension of the May 1, 2024, discovery deadline to June 30, 2024.[3] On April 25, 2024, the Department filed its Response, opposing the Motion,[4] and on April 29, 2024, the Respondent filed its Reply.

In its Motion, the Respondent states that it needs more time to perform discovery because it had not received the Department's investigative file until April 24, 2024.[5] The Department responds that (1) the parties agreed, at the prehearing conference, to a deadline of May 1, 2024, for the production of its file; (2) the Respondent has failed to specify what discovery it needs additional time to perform; and (3) the prehearing order continues to allow for subpoenas until July 25, 2024.[6] The Reply emphasized the importance of hearing preparation and discovery for the Respondent's due process rights, and suggested that there is doubt as to whether the provisions in the Revenue Recapture Rules[7] govern this proceeding.

I. Applicability of Revenue Recapture Rules

In the Reply, Respondent acknowledges that Minn. Stat. § 144G.20, subd. 16 (2022), calls for the Revenue Recapture Rules to govern hearings in license revocation matters. Respondent then points to language in the Revenue Recapture Rules suggesting that, by their own terms, the Revenue Recapture Rules are used "if all parties to a particular hearing and the administrative law judge agree to use them"[8] and then stating that the Respondent does not agree to the limitations set forth in the Revenue Recapture Rules.

While the provision cited by the Respondent, when read in isolation, suggests that parties must consent to the use of Revenue Recapture Rules, the Respondent omitted a key part of the Rule. Minn. R. 1400.8505 states, in full, that:

> Parts 1400.8505 to 1400.8612 govern hearings based on the Revenue Recapture Act, Minnesota Statutes, sections 114C.23; 115.076; 116.072, subdivision 6; 144.991; and 270A.01 to 270A.12; *and for other hearings as directed by statute*. In addition, parts 1400.8505 to 1400.8612 may be used for any other hearings conducted by the state Office of Administrative Hearings if all parties to a particular hearing and the administrative law judge agree to use them.[9]

Minn. R. 1400.8505, when read in its entirety, establishes that there are three types of hearings to which the Revenue Recapture Rules apply: (1) any of the types of hearings

[2] First Prehearing Order at 1–2.
[3] Motion at 2.
[4] Response.
[5] Motion at 1.
[6] Response at 1
[7] Minn. R. 1400.8505 - .8613 (2023).
[8] Reply at 1–2 (citing Minn. R. 1400.8505).
[9] Minn. R. 1400.8505 (emphasis added).

explicitly enumerated in Minn. R. 1400.8505; (2) any hearings where a statute provides for their use; and (3) any additional hearings upon the agreement of the parties and the Administrative Law Judge. By explicitly providing for the use of the Revenue Recapture Rules in license revocation hearings, Minn. Stat. § 144G.20, subd. 16, makes clear that this proceeding is one of the "other hearings as directed by statute" referred to in Minn. R. 1400.8505. Thus, there is no conflict between the statute and the rule, and the Revenue Recapture Rules govern this proceeding.

II. Extension of the Discovery Deadline

While May 1, 2024, is the discovery deadline established in the First Prehearing Order, that Order is not carved in stone. If there is good cause to modify the deadline, it could certainly be revisited. Thus, it bears examining whether the reasons articulated in the Motion justify an extension.

As an initial matter, the First Prehearing Order contemplated a deadline for discovery, to include the production of the Department's file, of May 1, 2024. This arrangement was discussed at the prehearing conference, and the Respondent did not object. The Department then produced its file on April 24, 2024, one week before the deadline. Far from justifying a modification, the Department's production seems to have been more conducive to the Respondent using the file to assist in it the discovery process than the May 1, 2024, deadline contemplated in the Order.

Furthermore, aside from asserting a generalized need for more time to perform discovery, the Respondent has failed to identify what discovery it needs an extended deadline to perform that it is not otherwise able to accomplish. The Department correctly points out that, with respect to prehearing discovery, the Revenue Recapture Rules provide that "[a] party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing,"[10] and that this is more limited in scope than the discovery provided for in contested cases.[11] Moreover, to the extent that its review of the Department's file causes the Respondent to believe that it needs to compel the attendance of a witness or the production of documents, the Revenue Recapture Rules provide a mechanism for requesting subpoenas.[12] Under the First Prehearing Order, the Respondent still has until July 25, 2024, to request subpoenas.

In its Reply, the Respondent stresses that "it is in the interest of due process that both parties have the opportunity to be prepared for the hearing" and that "denying Respondent the opportunity for discovery is a denial of its due process rights."[13] While both of these statements may be correct, neither of them speak to how the existing discovery deadline impairs the Respondent's ability to prepare for hearing or to exercise

[10] Minn. R. 1400.8600.
[11] *See* Minn. R. 1400.6700 (providing for "[a]ny means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota" in contested cases).
[12] Minn. R. 1400.8601.
[13] Reply at 2.

the discovery rights provided for in the Revenue Recapture Rules. It is of paramount importance that the Respondent have a fair opportunity to prepare for and present its case in this proceeding. If, during the course of preparation for the hearing, the Respondent identifies a more specific need for information that it is not otherwise able to access, this Order should not deter the Respondent from seeking appropriate relief at that time.[14] But, until such a need arises, a general desire for additional time to perform discovery does not justify an extension of the deadlines established in the First Prehearing Order.

For the foregoing reasons, the Motion is **DENIED**.

J. C. M.

[14] *See* Minn. R. 1400.8606, subp. 3(H) (requiring Administrative Law Judges to "make preliminary, interlocutory, or other orders as necessary to assure a fair hearing.")