11-1800-9485-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate Appeal of Norhaven, Inc.	ORDER GRANTING DEPARTMENT'S MOTION TO COMPEL DISCOVERY

The above-captioned matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Hearing and Prehearing Conference issued by the Deputy Commissioner of the Minnesota Department of Human Services on February 21, 1995. The Department filed a Motion to Compel Discovery on March 15, 1996. The record with respect to the motion closed on March 22, 1996, when Norhaven filed its Memorandum in Opposition to the Motion.

Peter B. Hofrenning, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Human Services ("the Department"). Louis M. Furlong, Jr., Attorney at Law, One Griggs Midway, 1821 University Avenue, St. Paul, Minnesota 55104, appeared on behalf of Norhaven, Inc. ("Norhaven" or "the Facility").

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the Memorandum attached hereto,

IT IS HEREBY ORDERED as follows:

(1) The Department's Motion to Compel Discovery is GRANTED.

(2) Norhaven shall respond to the Department's Interrogatories and Request for Production of Documents dated January 26, 1996, on or before April 10, 1996.

Dated this _____ day of April, 1996.

_____
BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The rules of the Office of Administrative Hearings pertaining to contested case hearings generally permit "[a]ny means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota" and provide that a party filing a motion to compel "shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery." Minn. Rules 1400.6700, subp. 2 (1995). Rule 26.02(a) of the Minnesota Rules of Civil Procedures specifies that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . ." The rule further provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The U.S. Supreme Court has provided guidance concerning the definition of relevancy in the discovery context. The Court held that relevancy in discovery matters:

> has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case. . . . Consistent with the notice pleading system established by the rules, discovery is not limited to issues raised by the pleadings, for discovery itself is designed to help define and clarify the issues. . . . Nor is discovery limited to the merits of the case for a variety of fact oriented issues may arise during litigation that are not related to the merits.

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350-51 (1978). The definition of "relevancy" for discovery purposes is not limited by the definition of "relevancy" for evidentiary purposes. 2 D. Herr & R. Haydock, Minnesota Practice 9 (2d Ed. 1985), citing Detweiler Brothers v. John Graham and Co., 412 F. Supp. 416 (E.D. Wash. 1976), and County of Ramsey v. S.M.F., 298 N.W.2d 40 (Minn. 1980). Documents deemed relevant at the discovery stage thus may not necessarily be admissible evidence at the trial in this matter.

The Department's Motion for Summary Disposition in this matter was denied in an Order dated December 21, 1995. In its motion papers, the Department indicated that it would have sought admissions during discovery regarding the nature of Mr. Deprey's employment relationship with Norhaven if it had been aware that Norhaven was asserting an argument that the $39,325 disallowed by the Department was for wages paid to a Norhaven employee. A telephone conference call was held on January 4, 1996, to discuss whether additional discovery was necessary and to set a hearing date. During the conference call, the Department requested and was granted an opportunity to conduct additional discovery, over the objection of Norhaven. The Administrative Law Judge indicated in a letter confirming the discussion that "[w]ritten discovery requests shall be served by January 26, 1996, and discovery shall be concluded by February 26." See letter to counsel dated January 17, 1996.

In this motion, the Department seeks to compel answers to the Interrogatories and Request for Production of Documents it served by mail on January 26, 1996. Interrogatories 1 and 2 ask whether Norhaven prepared and maintained any time distribution or payroll records relating to Tim Deprey's employment during the period from October 1, 1991, through October 1, 1992, and, if so, request a delineation of the time periods covered by the records, an identification of the person who prepared the records and when, a description of the information contained in the records, a statement of the purpose for which the records were used, an indication of whether the records were provided to the Department and when and how they were provided, and a statement indicating whether the records still exist and, if not, information concerning the date and reasons for their destruction and the identification of the person who destroyed them. Interrogatories 3-7 ask for a detailed description of the alleged employment relationship between Norhaven and Mr. Deprey and Arts, Etc., and Mr. Deprey, including a description of how Mr. Deprey was compensated and how Norhaven was reimbursed and the identity of documents describing the relationship; a description of where Mr. Deprey's office was located; a list of current addresses, phone numbers, and employers of Mssrs. Deprey, Leneau, and Sajevic; an identification of documents that Norhaven claims supports the allowance of costs claimed as compensation for Mr. Deprey during the relevant field audit period, with a delineation of which documents Norhaven provided to the Department during or after the field audit; and a detailed description of each fact, assumption, statutory or rule provision, or generally accepted accounting principle on which Norhaven bases its assertion that the $39,234 in dispute should be allowed. The two document requests seek copies of any documents identified in Norhaven's response to the interrogatories and any documents Norhaven intends to offer into evidence or as support for any motion or pleading in this contested case proceeding.

Norhaven objected to responding to the Department's discovery requests based upon an argument that the discovery was untimely because it was received on January 30, 1996, and the deadline for service was January 26. See letter response to the discovery request dated February 7, 1996, attached to the Department's Motion to Compel as Exhibit C. Norhaven's letter proceeded to provide an informal and partial response to some of the discovery requests reflecting information that was "readily available" to Norhaven.

Pursuant to the rules of the Office of Administrative Hearings governing contested case hearings, "[s]ervice by mail . . . is complete upon placing the item to be served in the mail . . . ." Minn. R. 1400.5100, subp. 9 (1995). The Department thus met the time limits specified by the Judge for service when it placed the discovery requests in the mail on January 26, 1996. A proper affidavit of service was prepared reflecting the timeliness of the service. Contrary to Norhaven's arguments, the fact that the discovery requests were not delivered to Norhaven until four days later does not run afoul of Minn. R. 1400.6100, subp. 2 (1995). That rule applies only where a party is required to take some action within a prescribed period after service and operates to add three days to the prescribed period if the paper is served by mail. It does not indicate that service is not effective until the document is actually delivered by the post office. The Department obviously has no control over the speed with which U.S. mail is delivered.

The discovery requests at issue are narrowly limited to the defenses asserted by Norhaven, are needed for the proper presentation of the Department's case, and do not appear to be interposed for purposes of delay. The issues and amounts in controversy in this contested case proceeding are sufficiently significant to warrant the requested discovery. The discovery requests are within the parameters that were described by the Department during the January 4 telephone conference in which the Administrative Law Judge determined that additional discovery was appropriate. The inquiries made by the Department are relevant to Norhaven's assertion that Mr. Deprey was a Norhaven employee and are reasonably calculated to lead to the discovery of admissible evidence. It is not proper grounds for objection to the requested discovery that Peter Sajevic, Norhaven's owner, was asked the same questions during his deposition or that he has provided affidavits encompassing these matters in conjunction with the Motion for Summary Disposition. Other individuals involved with Norhaven who participate in formulating the responses to the written discovery may have information that Mr. Sajevic lacked, and the diligent inquiry conducted by Norhaven representatives in preparing the responses may uncover additional documentation. Moreover, the Department is not precluded from seeking discovery of documents during litigation even if it previously requested documents while conducting the underlying field audit, particularly where Norhaven is allegedly now asserting a different basis to justify the allowability of the claimed costs.

The Department is entitled to a formal and complete response to the discovery requests it served by mail on January 26, 1996. Accordingly, the Department's Motion to Compel has been granted.

B.L.N.