OAH 23-1802-39363

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the determination of the Responsible Authority for the Minnesota Department of Human Services that certain data about D.A.L. are accurate and/or Complete	**ORDER DENYING SUBPOENA REQUESTS AND MOTION TO CONTINUE HEARING**

This matter is pending before Administrative Law Judge Suzanne Todnem upon requests by Dale Allen Lindsey (Petitioner) for issuance of subpoenas. The subpoena requests were filed on February 7, 2024.

Jacqueline Clayton, Assistant Attorney General, appears on behalf of the Department of Human Services (Department). Petitioner appears on his own behalf and without legal counsel.

This matter is scheduled for a hearing on February 28, 2024. Petitioner timely filed a request for five subpoenas on February 7, 2024. The Administrative Law Judge convened a prehearing conference on February 16, 2024, to discuss Petitioner's subpoena requests.

At the prehearing conference, the Department moved to reopen the dispositive motion deadline and continue the hearing. Petitioner objected to the Department's motion. The Administrative Law Judge denied the motion on the record for the reasons explained below.

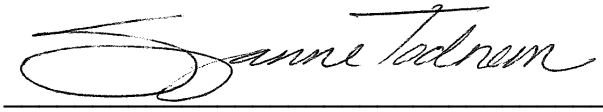
Based upon the record, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. Petitioner's requests for subpoenas for the hearing presence of Heidi Menard, Michelle Brownfield, Michelle Vrkljan, Crystal Leal, and Richard McHugh are **DENIED**.

2. The Department's motion to extend the deadline to file dispositive motions and continue the hearing date is **DENIED**.

Dated: February 22, 2024



SUZANNE TODNEM
Administrative Law Judge

MEMORANDUM

The factual issues involved in this matter are the accuracy and completeness of two documents under the Minnesota Government Data Practices Act (MGDPA):[1] (1) the polygraph report derived from Petitioner's January 24, 2020, polygraph examination performed by Richard McHugh; and (2) the April 24, 2020, mental health assessment drafted by Crystal Leal, Psy. D. LP., which references the 2020 polygraph report. These are the only two documents that are identified in the data accuracy and completeness complaint.

I. Petitioner's Subpoenas Directing Hearing Presence

Petitioner requested subpoenas for five individuals to attend and provide testimony at the hearing:

- Heidi Menard, Psy.D., L.P., to testify about a mental health assessment dated September 19, 2016;
- Michelle D. Brownfield, Psy. D., L.P.., to testify about mental health assessments dated September 6, 2016, and October 9, 2019;
- Michelle Vrkljan, M.S., to testify about mental health assessments dated June 30, 2022, and July 12, 2022;
- Crystal Leal, Psy. D., L.P., to testify about mental health assessments dated April 11, 2018, April 15, 2019, and April 24, 2020; and
- Richard McHugh, Certified Polygraph Examiner, to testify about a video of the polygraph examination administered on January 24, 2020.

[1] Minn. Stat. § 13.04 (2022).

A. Subpoena Requests Outside the Scope of this Matter

Mental health assessments, other than the April 24, 2020, assessment drafted by Dr. Crystal Leal, are beyond the scope of this data accuracy and completeness challenge. Therefore, the assessments prepared by Dr. Heidi Menard, Dr. Michelle D. Brownfield, and Ms. Michelle Vrkljan are outside the scope of this matter and any testimony sought from these witnesses related to those assessments would be irrelevant and immaterial to the issues of this case. It would also impose undue burden and expense on these non-parties. Accordingly, Petitioner's subpoena requests for these three individuals are **DENIED.**

B. Mental Health Assessment dated April 24, 2020

Petitioner challenges the accuracy and completeness of the April 24, 2020, mental health assessment prepared by Dr. Crystal Leal. According to Petitioner's challenge, he disputes the diagnosis indicated by Dr. Leal's assessment. While Petitioner may contest the accuracy and completeness of factual data contained in a document, he may not contest the professional opinions of the doctor drafting that document, including the diagnoses made by that doctor.[2] Dr. Leal's professional opinions and diagnoses are not subject to challenge in this proceeding. The April 24, 2020, assessment report speaks for itself, and Petitioner may challenge the factual data contained in that document, but he cannot subpoena Dr. Leal to challenge her diagnoses or the medical opinions she provides in that document. Petitioner's subpoena request for Dr. Leal is **DENIED.**

C. January 24, 2020, Polygraph Examination

Petitioner asserts that the 2020 polygraph examination report does not accurately reflect the polygraph administered by Richard McHugh on January 24, 2020. Therefore, Petitioner is seeking to subpoena Mr. McHugh to testify about his report. However, testimony from Mr. McHugh is unnecessary, overburdensome, and unduly repetitious. Petitioner has already expressed his intent to offer a video recording of the polygraph examination into evidence at the hearing. The Department has stipulated to the recording coming into evidence without requiring foundation testimony from Mr. McHugh. Indeed, the Department has offered to submit the recording into the hearing record itself to support the contents of the polygraph report.

Based upon the stipulations of the parties, the Administrative Law Judge will admit the video of the January 24, 2020, polygraph examination into the hearing record once offered by the parties. There is, thus, no need for testimony by Mr. McHugh. The

[2] "[M]ere dissatisfaction with a subjective judgment or opinion cannot support a challenge under the [MGDPA]." *Schwanke v. Minn. Dep't of Admin.*, 851 N.W.2d 591, 595 (Minn. 2014); s*ee also*, Minn. Stat. § 13.04, subd. 4 (2022).

recording and the polygraph report speak for themselves and establish sufficient evidence from which to determine whether the April 2020 mental health assessment accurately and completely reflects the 2020 polygraph test and report. Mr. McHugh's testimony would thus be unnecessary, unduly repetitious, and overburdensome to the witness. Petitioner's subpoena request for Mr. McHugh is **DENIED.**

II. Department's Motion to Reopen Dispositive Motion Dates

At the prehearing conference on February 16, 2024, the Department moved to reopen the summary disposition motion deadline so that it could file a dispositive motion. The Department's request would also require a continuance of the contested case hearing, which is scheduled for February 28, 2024. As its basis for her motion, the Department's counsel asserts that she was assigned to the case after the dispositive motion deadline had passed. Counsel's predecessor, a different Assistant Attorney General in the same office, decided not to file such motion.

Substitution of the Department's counsel is not a basis to reopen prehearing dates and extend the hearing date of this matter. While current counsel may have a different litigation strategy from her colleague, the Department has failed to identify any reasonable basis for continuing the hearing and reopening prehearing deadlines. The Department does not claim that any prejudice will result if it is denied the opportunity to bring such motion, and no due process right is lost as a result of this denial. Accordingly, the Department's motion is **DENIED.**

III. Conclusion

Because the February 7, 2024, subpoena requests are outside the scope of the complaint and irrelevant, Petitioner's requests for subpoenas are **DENIED**. The Department's motion to reopen prehearing dates is **DENIED**.

S. T.