

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Merakey Philadelphia, : **CASES CONSOLIDATED**
Petitioner :

v. :

Department of Human Services, :
Respondent : No. 244 C.D. 2026

Merakey Woodhaven, :
Petitioner :

v. :

Department of Human Services, :
Respondent : No. 246 C.D. 2026

Merakey Allegheny Valley Schools, :
Petitioner :

v. :

Department of Human Services, : No. 247 C.D. 2026
Respondent : Submitted: July 24, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION

BY JUDGE McCULLOUGH

FILED: September 29, 2026

In these consolidated cases filed in our appellate jurisdiction, Merakey Philadelphia, Merakey Woodhaven, and Merakey Allegheny Valley Schools (together, Merakey) petition for review of the January 30, 2026 order of the Chief Administrative Law Judge of the Department of Human Services (Department),

Bureau of Hearings and Appeals (BHA). That order adopted a January 15, 2026 administrative law judge (ALJ) recommendation to dismiss as untimely Merakey's requests for hearing associated with three tentative cost settlements issued by the Department on March 28, 2025.

In this Court, Merakey argues that BHA erred in dismissing the requests for hearing as untimely and, in the alternative, that BHA erred in denying *nunc pro tunc* relief due to an administrative breakdown within the Department.

After careful review, we reverse and remand for further proceedings.

I. Facts and Procedural History

The pertinent facts underlying these appeals largely are undisputed and may be summarized as follows.

A. The ICF/ID Reimbursement Program

By way of background, Merakey operates intermediate care facilities for individuals with intellectual disabilities (ICF/IDs), which provide specially designed care for persons with intellectual disabilities or related conditions. 55 Pa. Code § 6210.3. ICF/IDs are reimbursed by the Department through its Medical Assistance Program on a cost basis that utilizes interim payments during the fiscal year and a final reconciliation after the fiscal year closes. Based on a budget submitted by each provider, the Department establishes a standard *per diem* rate paid to each ICF/ID facility. Based on these interim payments and other factors, Pennsylvania submits estimates of its required funding for each quarter to the federal government, which then determines Pennsylvania's quarterly Medicaid grant amount. If, at the end of the fiscal year, Pennsylvania determines that it reimbursed providers in an amount greater than its federal Medicaid allocation, it has one year to recoup the overpayments from providers. If it does not, the overpayments will

result in downward adjustments to Pennsylvania’s Medicaid allocation for future fiscal years.

To facilitate the Department’s year-end cost reconciliation, providers submit annual cost reports for each facility. The Department then audits the reports, determines whether overpayments were made, computes any appropriate adjustment, and notifies the provider, by way of a “tentative cost settlement” if recoupment of any funds is required.

B. Proceedings before the BHA

On March 28, 2025, the Department emailed to Merakey three tentative cost settlements¹ indicating that Merakey owed approximately \$7 million to the Commonwealth of Pennsylvania. Thirty-one days later, on Monday, April 28, 2025, Merakey sent to the BHA, via e-mail and first-class United States mail, written requests for hearing to the BHA (Appeals). Although the hard copy Appeals sent via mail were marked with a private postage meter stamp, they were not postmarked by the United States Postal Service (USPS). The BHA received the e-mail requests on April 28, 2025, and the hard copies on May 2, 2025, and May 5, 2025.

On June 5, 2025, the BHA issued rules to show cause directing Merakey to address (1) why the requests for hearing should be considered timely,²

¹ The Department issued separate tentative cost settlements to Merakey Philadelphia, Merakey Woodhaven, and Merakey Allegheny Valley Schools for the 2023-2024 fiscal year.

² Section 41.32 of the Department’s regulations provides that a request for hearing must be filed with the BHA within (1) 33 days of the date notice is given of a Department action if the notice is sent by first-class United States mail. 55 Pa. Code § 41.32(a)(1)-(2). If a provider files a request for hearing by mail, the filing date is the date of the USPS postmark appearing on the envelope. *Id.* § 41.32(b). If a request for hearing is filed “in another manner,” or if a non-USPS postmark appears on the mailing envelope, the filing date is the date the request is received by the BHA. *Id.*

or, alternatively, (2) whether *nunc pro tunc* relief was warranted pursuant to 55 Pa. Code § 41.33.³ In its written response to the rules to show cause,⁴ Merakey asserted that the Appeals were timely because they were both e-mailed and postmarked on April 28, 2025, which was within the 33-day period provided in 55 Pa. Code § 41.32(a)(1).⁵ Merakey argued that e-mailing the Appeals was an acceptable alternative “manner” under Section 41.32(a)(2) and that, even if e-mail was not acceptable, the postmark date of April 28, 2025 should control. (Merakey Response to Rule to Show Cause, at 3-4; Reproduced Record (R.R.) at 353a-54a.) Merakey insisted that, “[i]n practice, the [BHA] has accepted e-mail filings for other pleadings, including motions for extension of time[,]” and that the Department suffered no prejudice from Merakey’s methods of filing. *Id.*, ¶¶ 17, 23; R.R. at 354a.

The Department’s Office of Developmental Programs responded to the rules to show cause on August 22, 2025, therein advising the BHA that the Department “does not contest [Merakey’s] assertion that their appeals were timely filed, based upon the April 28, 2025 postmark of the envelopes[.]” (R.R. at 371a.) The Department otherwise did not admit any of the allegations of Merakey’s responses to the rules to show cause.

An ALJ held hearings on the timeliness of the Appeals on September 30, 2025, and October 8, 2025. At the first hearing, Merakey questioned whether

³ Section 41.33(a) of the Department’s regulations governs appeals to the BHA *nunc pro tunc* and authorizes the BHA, “upon written motion and for good cause shown,” to “grant leave to a provider to file a request for hearing [*nunc pro tunc*] under the common law standard applicable in analogous cases in courts of original jurisdiction.” 55 Pa. Code § 41.33(a).

⁴ Merakey filed substantively identical responses to the rule to show cause in each of the three Appeals. We cite herein to only the first response.

⁵ There is no dispute that Merakey’s mailed Appeals were privately postmarked, and its e-mailed Appeals received by the BHA, within 30 days.

the Department’s “tentative cost settlements” were in fact final, appealable Department decisions. (R.R. at 383a-89a.) At the second hearing,⁶ Merakey’s counsel pertinently argued that the postmark date of the Appeals was dispositive but, even if it was not, filing by e-mail was acceptable under the Department’s regulations. (R.R. at 430a-31a, 437a-39a.) As to *nunc pro tunc* relief, Merakey’s counsel contended that the Department was setting “shifting goalposts” regarding acceptable formats of filing and that Merakey had received from the BHA “different information from various people . . . regarding what is appropriate for filing, whether it’s submitting it through email, whether it’s faxing, whether it’s filing in person.” (R.R. at 446a.) Counsel also noted that the “tentative” labeling of the cost settlements added to the confusion regarding whether the cost settlements could be immediately appealed, that the Department’s typical final actions regarding cost settlements previously were in a different format, and that the pertinent regulations governing timeliness were confusing and unclear. *Id.* at 418a-19a; 445a-48a; 458a.

In response, the Department’s counsel reiterated the Department’s position that it was not contesting the timeliness of the Appeals based on the postmark date, but nevertheless opposed any finding of timeliness based on the receipt of Merakey’s e-mailed Appeals. *Id.* at 455a-57a. The Department’s counsel acknowledged that the labeling of the notices as “tentative” was “understandably confusing” and that she did not “know who set that up.” *Id.* at 415a.

The ALJ issued a recommended decision on January 15, 2026, which was adopted in total by the Chief ALJ on January 30, 2026. Therein, the BHA concluded that the Appeals were untimely filed given that (1) e-mail was not an acceptable manner of filing requests for hearing under the Department’s regulations,

⁶ The September 30, 2025 hearing involved matters not at issue in this Court.

and (2) the date of the private postmark on the mailed Appeals' envelopes was insufficient to establish the date of mailing. (BHA Decision, at 14-15; R.R. at 15a-16a.) The BHA further concluded that, although the Department was not prejudiced by Merakey's method of filing and did not oppose the timeliness of the mailed Appeals, Merakey nevertheless was not entitled to *nunc pro tunc* relief because it did not establish that the Appeals' untimeliness was caused by non-negligent or extraordinary circumstances involving fraud or administrative breakdown within the Department. *Id.* at 17-18; R.R. at 18a-19a. The BHA therefore dismissed the Appeals as untimely.

Merakey timely petitioned for review in this Court.⁷

II. Issues⁸

In this Court, Merakey argues that (1) the BHA erred in concluding that the Department's regulations do not permit the filing of requests for hearing by e-mail; and (2) even if the Appeals are untimely, the BHA erred in denying *nunc pro tunc* relief given an administrative breakdown within the Department.⁹

⁷ By order entered on April 14, 2026, this Court temporarily enjoined the Department from retracting or recouping from Merakey any funds paid during the 2023-2024 fiscal year as detailed in the tentative cost settlements. The stay imposed by that order subsequently was lifted by this Court on May 5, 2026.

⁸ Our review of BHA decisions is limited to determining whether they (1) are supported by substantial evidence in the record, (2) comply with applicable substantive law and procedures, and (3) do not violate pertinent constitutional rights. *Albery v. Department of Human Services*, 342 A.3d 132, 136 n.8 (Pa. Cmwlth. 2025); 2 Pa.C.S. § 704. As to questions of law, including statutory and regulatory interpretation, we exercise *de novo*, plenary review. *S&H Transport, Inc. v. City of York*, 210 A.3d 1028, 1038 (Pa. 2019); *South Hills Catholic Academy v. Department of Human Services*, 308 A.3d 915, 924-25 (Pa. Cmwlth. 2024).

⁹ Merakey has abandoned the argument that the private postmark date on the envelopes of the mailed Appeals renders them timely.

III. Discussion

A. Applicable Regulatory Provisions and Legal Principles

We begin by addressing the strict timeliness¹⁰ of Merakey's requests for hearing. Appeals from final actions of the Department are governed by Chapter 41 of the Department's regulations. 55 Pa. Code § 41.1(a). The Department directs that Chapter 41's procedures "shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals. At every state of a provider appeal, the BHA may disregard any error or defect of procedure which does not affect the substantial rights of the parties." 55 Pa. Code § 41.2(a). General Rules of Administrative Practice and Procedure (GRAPP) also apply to provider appeals, except as they expressly are superseded by Chapter 41. *Id.* § 41.1(b); *see also* 55 Pa. Code § 41.3 (defining "GRAPP").

Aggrieved ICF/ID providers may challenge final actions of the Department by filing requests for hearing¹¹ with the BHA. 55 Pa. Code § 41.31(a). As to timeliness of filings, Section 41.6(a) of the Department's regulations directs that "[p]leadings and legal documents" must be "received for filing at the [BHA] within the time limits permitted for the filing." 55 Pa. Code § 41.6(a). Section 41.32 of the Department's regulations provides the time limits for filing requests for hearing and provides, in pertinent part, as follows:

¹⁰ A party's "failure to timely appeal an administrative agency's action constitutes a jurisdictional defect," and "the time for filing an appeal may not be extended as a matter of grace or mere indulgence." *Church of God Home, Inc. v. Department of Public Welfare*, 977 A.2d 591, 593 (Pa. Cmwlth. 2009) (citing *H.D. v. Department of Public Welfare*, 751 A.2d 1216 (Pa. Cmwlth. 2000)).

¹¹ Requests for hearing are "pleadings." *See* 55 Pa. Code § 41.3 (defining a "pleading" as "[a] request for hearing, and amendments thereto" and a "request for hearing" as "[t]he pleading filed by a provider in order to commence a provider appeal").

(a) Except as permitted in § 41.33 (relating to appeals [*nunc pro tunc*]), the [BHA] lacks jurisdiction to hear a request for hearing unless the request for hearing is in writing and is filed with the [BHA] in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the [BHA] within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the [BHA] within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for hearing. If the provider files a request for hearing *in another manner*, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

. . . .

(e) The [BHA] will dismiss a request for hearing, either on its own motion or on motion of a program office, if a provider fails to file its request in accordance with the time limits specified in subsection (a).

55 Pa. Code. § 41.32(a)-(b), (e) (emphasis provided). On March 21, 2020, the Department promulgated Section 41.32a, which clarified that the term “mailing” in Section 41.32(a)(1) and (2) includes delivery by United States or commercial mail service or delivery “through electronic communication.” 55 Pa. Code § 41.32a. *See also* 55 Pa. Code §§ 41.21(a)(1), 41.21a (unless otherwise provided by regulation,

the Department may give notice of an agency action by “mailing” written notice to a provider, which includes delivery by United States or commercial mail or by electronic communication).

Here, because the Department’s notices were sent to Merakey by e-mail, which constitutes “mailing” under Section 41.32a, Merakey was required to file its request for hearing within 33 days pursuant to 55 Pa. Code § 41.32(a)(1). Merakey filed the Appeals by both e-mail and first-class United States mail, but the envelopes of the United States mail filings bear only private postmarks. Thus, the date of the BHA’s *receipt* of those mailings governs, and they undisputedly were untimely. The only question that remains, then, is whether Merakey’s e-mail filings, which undisputedly were received by the BHA within 33 days, qualify as timely filings “in another manner” pursuant to Section 41.32(b).

In interpreting a regulation, we apply the same rules we would apply when interpreting statutory language. *South Hills Catholic Academy v. Department of Human Services*, 308 A.3d 915, 925 (Pa. Cmwlth. 2024) (citing *Quest Diagnostics Venture, LLC v. Commonwealth*, 119 A.3d 406, 412 (Pa. Cmwlth. 2015)). Those rules are set forth in the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501-1991. Our Supreme Court recently has explained how our analysis must proceed:

[Section 1921(a) of] [t]he Statutory Construction Act provides that the object of all [regulatory] interpretation “is to ascertain and effectuate the intention of the [Department].” 1 Pa. C.S. § 1921(a). Generally, the plain language of the [regulation] provides the best indication of [the Department’s] intent. If the [regulatory] language is clear and unambiguous in setting forth the intent of the [Department], then we cannot disregard the letter of the [regulation] under the pretext of pursuing its spirit. In this vein, we should not insert words into [a regulation] that

are plainly not there. When the [regulatory] language is ambiguous, however, we may ascertain the [Department's] intent by considering the factors set forth in Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. § 1921(c),^[12] and other rules of statutory construction. We also presume that the [Department] does not intend a result that is absurd, impossible of execution or unreasonable, and that the [Department] intends the entire [regulation] to be effective and certain.

Commonwealth v. Green, 291 A.3d 317, 327-28 (Pa. 2023) (most internal citations and quotation marks omitted); *see also id.* at 328 (“[The Pennsylvania Supreme Court] has consistently held that interpretive rules of statutory construction are to be utilized only where the statute [or regulation] at issue is ambiguous.”). Language is ambiguous where it may be understood to have two or more reasonable meanings. *Lutheran Home at Kane v. Department of Human Services*, 318 A.3d 164, 180 (Pa. Cmwlth. 2024), *appeal granted*, 333 A.3d 305 (Pa. 2025). The parties’ mere proffering of alternative meanings will not, in itself, establish ambiguity. *Id.*

¹² Those factors include:

- (1) The occasion and necessity for the statute;
- (2) The circumstances under which it was enacted;
- (3) The mischief to be remedied;
- (4) The object to be attained;
- (5) The former law, if any, including other statutes upon the same or similar subjects;
- (6) The consequences of a particular interpretation;
- (7) The contemporaneous legislative history; and
- (8) Legislative and administrative interpretations of such statute.

1 Pa.C.S. § 1921(c).

B. Analysis

The BHA concluded that Merakey's e-mailed Appeals were untimely because "in another manner" does not include e-mail. The BHA began its analysis not with Section 41.32(b), but instead with Section 41.12 of the Department's regulations, which governs the format of documentary filings. Section 41.12 provides, in pertinent part, as follows:

(a) Printed documents may not be less than 12-point font.

(b) An original hard copy of a pleading bearing an original signature must be filed with the Bureau by personal delivery or first-class mail.

(c) A legal document may be filed with the Bureau in hard copy by first-class mail or personal delivery.

(d) A legal document may be filed by facsimile if the document does not exceed 20 pages in length, including attachments and exhibits. An executed hard copy of a document filed by facsimile shall be maintained by the filing party and produced at the request of the Bureau or other party.

....

55 Pa. Code § 41.12(a)-(d) (emphasis added). Reading this section together with Section 41.32(a)(2), the BHA reasoned as follows:

[Merakey's] argument relies on the ph[r]ase "in another manner," other than by first-class mail with United States postmark, in contending the Bureau's receipt of the appeals by email on April 28, 2025, constituted filing. However, Chapter 41 restricts appeal filing to personal delivery or first-class mail. 55 Pa. Code §§ 41.3 (defining Pleading), 41.12(b). Chapter 41 does not permit electronic filing of pleadings, including appeals. The [BHA] finds that the ph[r]ase "in another manner," at 55 Pa. Code § 41.32(b), when read together with 55 Pa. Code § 41.12(b),

means personal delivery. As a result, the [BHA] finds [the Appeals] submitted by email on April 28, 2025, do not constitute filings.

....

Since [Merakey's] April 28, 2025[] email and private postage meter mark do not constitute filing dates, the date that the [BHA] received [Merakey's] [A]ppeals is the filing date. . . . The [BHA] did not receive [Merakey's] [mailed] [A]ppeals within 33 days from March 28, 2025; therefore, the [BHA] finds [Merakey] failed to timely appeal the Department's March 28, 2025 tentative cost settlements.

(BHA Decision, at 14-15) (footnotes omitted). The Department likewise argues that Sections 41.32(b) and 41.12(b), read together, clearly prohibit the filing of requests for hearing by e-mail. We disagree.

Where a regulation promulgated by a Commonwealth agency is ambiguous, Pennsylvania courts generally will defer to the agency's reasonable interpretation of its own regulation. *McHenry v. Goodyear Tire & Rubber Company*, 305 A.3d 257, 261 n.9 (Pa. Cmwlth. 2023). Here, however, we conclude that the phrase "in another manner" in Section 41.32(b) is unambiguous, and, accordingly, we may determine its meaning without deference to the BHA's interpretation. Although the phrase is not defined anywhere in Chapter 41 and its language is broad, it is not reasonably susceptible to multiple meanings. Importantly, we need not determine, for purposes of this appeal, the array of filing formats that could be contemplated by Section 41.32(b). There could be multiple, but that fact does not render "in another manner" ambiguous. Instead, we must narrowly determine whether the plain meaning of "in another manner" may here include e-mail. We conclude that it may, for the following reasons.

To begin, and contrary to the BHA’s analysis, Section 41.12(b) of the Department’s regulations does not clarify or govern what “in another manner” means. Section 41.12 governs the “form” of both pleadings and legal documents¹³ that are filed with the BHA. As to pleadings, it requires that *an* original hard copy of a pleading be filed with the BHA by personal delivery or first-class mail. 55 Pa. Code § 41.12(b). It says nothing about whether pleadings may *also* be delivered to the BHA in other formats, and it further says nothing about whether pleadings sent in other formats may satisfy timeliness requirements. Indeed, the use of the indefinite article “an” before “original hard copy” expressly contemplates that additional originals might be sent to the BHA in other formats. Section 41.12(b) thus merely provides for what the BHA must have in its file for every case: an original hard copy of all pleadings sent by either first-class mail or personal delivery.¹⁴ Because it does not address whether e-mail is an acceptable format of filing *for timeliness purposes* under Section 41.32(b), the BHA’s use of Section 41.12(b) to interpret Section 41.32(b) is incorrect.

In interpreting “in another manner,” our chief objective is to ascertain the Department’s intent. We begin, then, with the Department’s own directive in Section 41.2(a) that all procedures in Chapter 41 be construed liberally to “secure the just, speedy and inexpensive determination of provider appeals.” 55 Pa. Code §

¹³ “A legal document” includes “a motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory order, request for review by the Secretary [of Human Services] or other paper filed with the [BHA] in a provider appeal, other than a pleading.” 55 Pa. Code § 41.3.

¹⁴ This section likewise requires that “legal documents” be filed in hard copy with the Bureau by first-class mail or personal delivery, unless they are filed by facsimile. In that case, the hard copy must be kept and maintained by the filing party to be produced at the request of the BHA or another party. 55 Pa. Code § 41.12(c)-(d).

41.2(a). We therefore will construe Section 41.32(b) in the broadest way to allow for just, speedy, and inexpensive filings of requests for hearings. In light of that construction, the BHA's and the Department's interpretation of "in another manner" to mean only "personal delivery" is untenable. It is clear that the Department knew how to, and did, use the term "personal delivery" in Chapter 41, and it chose not to do so in Section 41.32(b). We assume that omission was intentional, applying the well-entrenched principle that, where a drafter includes specific language in one section of a document and omits it from another similar section, the omission is presumed to be intentional. *Gregg v. Ameriprise Financial, Inc.*, 245 A.3d 637, 650-51 (Pa. 2021); *Sivick v. State Ethics Commission*, 238 A.3d 1250, 1264 (Pa. 2020). Simply put, had the Department desired to restrict "in another manner" to only the *single* alternative of personal delivery, it would have said so. In this respect, we listen carefully to what the Department *did not say* in Section 41.32(b), and it did not say "personal delivery." *Sivick*, 238 A.3d at 1264.

Instead, the plain meaning of "in another manner" reasonably may include a number of other methods of delivery that the Department, in its discretion, could accept *for timeliness purposes*, including by electronic delivery via facsimile, e-mail, and the like. Nothing in Section 41.32(b) or anywhere else in Chapter 41 expressly precludes the filing of requests for hearing by methods other than first-class mail and personal delivery, provided that *an* original hard copy is delivered to the BHA for its file. 55 Pa. Code § 41.12(b). We reiterate that, for purposes of deciding this appeal, we do not need to say exactly what "in another manner" means. We need only determine whether it categorically excludes filing by e-mail. We cannot say that it does.

This interpretation is consistent with the remainder of Section 41.32, particularly Subsection 41.32(a)(2). That section shortens to 30 days the period for filing requests for hearing where the BHA serves notice of a final action “*in a manner other than by mail[.]*” 55 Pa. Code § 41.32(a)(2) (emphasis added). Although this language is not identical to that used in Section 41.32(b), it conveys the same meaning. Where a provider files a request for hearing by first-class mail, Section 41.32(b) designates the date of the United States postmark as the date of filing because it carries with it a presumption of reliability. Where a request for hearing is filed “in another manner,” the date of receipt by the BHA is used because alternative methods of filing either do not inherently have or do not need reliable indicia of a sending date.

The same rationale is imbedded in Section 41.32(a). Where the BHA gives notice of its final action by mailing (which, pursuant to Section 41.32a, now includes electronic communication), a provider has an extended 33-day period to file a request for hearing, presumably to account for the delay inherent in first-class mailing. Where the notice is served “in a manner other than” by mail, the shorter 30-day period applies. 55 Pa. Code § 41.32(a)(1), (a)(2). The Department expressly has designated alternative methods for service of agency actions, including by publication in the Pennsylvania Bulletin, by personal service, and by facsimile, none of which have or need reliable indicia of a mailing date. 55 Pa. Code § 41.21(a)(2)-(3); Pa.R.Civ.P. 400-441. Critically here, the Department did not similarly designate specific alternative methods for filing requests for hearing, and we will not read them into Section 41.32(b).

Our interpretation also is consistent with the Department’s March 2020 promulgation of the policy statements in Sections 41.32a and 41.21a of the

regulations, both of which clarify that service of notice of BHA actions by “mailing” includes service by “electronic communication.” 55 Pa. Code §§ 41.32(a)(1)-(2), 41.32a(a), 41.21(a)(1), 41.21a(a). That the Department did not similarly clarify “in another manner” to include e-mail does not mean that it intended to *exclude* it. The provisions governing the format of Department notices and those governing the timely filing of requests for hearing are distinct and do not address the same subject. Moreover, the Department’s authorization of e-mail notices could very well have been precipitated, during the height of the early COVID-19 restrictions, by its intention to, going forward, receive and accept e-mail filings by providers. Section 41.32(b), as we have interpreted it, would authorize the receipt of such filings without any need for amendment.

IV. Conclusion

Section 41.32(b) of the Department’s regulations does not preclude the filing of timely requests for hearing by e-mail. Because it is undisputed that the BHA received Merakey’s e-mailed Appeals within the time limits set forth in Section 41.32(a)(1), the BHA erred in dismissing them as untimely. We accordingly reverse the BHA’s order and remand for further proceedings.¹⁵

PATRICIA A. McCULLOUGH, Judge

¹⁵ Given our disposition, we need not address Merakey’s other theories of relief, including its alternative theory that the BHA erred in not considering Merakey’s requests for hearing *nunc pro tunc*. We nevertheless reiterate that Merakey’s counsel argued before the ALJ that the BHA had, for a period of time, accepted requests for hearing filed by e-mail and then changed course unannounced. (R.R. at 446a.) The Department conspicuously has not denied that fact in these proceedings, and the BHA failed to address it in its *nunc pro tunc* analysis. Although we need not reach the issue, we note that *nunc pro tunc* relief is appropriate where an agency’s misleading conduct causes an untimely filing. *Angels of Care by TLM, LLC v. Department of Human Services*, 323 A.3d 250, 258 (Pa. Cmwlth. 2024) (citing and quoting *Harris v. Unemployment Compensation Board of Review*, 247 A.3d 1223, 1229-30 (Pa. Cmwlth. 2021)).

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v.	:	
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Respondent	:	

ORDER

AND NOW, this 29th day of September, 2026, the January 30, 2026 order of the Department of Human Services, Bureau of Hearings and Appeals (BHA) is hereby REVERSED, and this matter is remanded to the BHA for further proceedings consistent herewith.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge