

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Merakey IDD Philadelphia and	:	
Merakey Woodhaven,	:	
Petitioners	:	
	:	
v.	:	No. 939 C.D. 2024
	:	
Department of Human Services,	:	Submitted: July 24, 2026
Respondent	:	

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

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: September 29, 2026

Merakey IDD Philadelphia (Merakey Philadelphia) and Merakey Woodhaven (together, Merakey) petition for review of (1) the February 2, 2024 order of the Department of Human Services' (Department) Bureau of Hearings and Appeals (BHA), which adopted a January 5, 2024 administrative law judge's (ALJ) recommendation to dismiss as untimely Merakey's requests for hearing filed with the BHA; and (2) the Secretary of Human Services' June 20, 2024 deemed denial of Merakey's Application for Reconsideration. Both the BHA's order and Merakey's Application for Reconsideration relate to six final cost settlement notices issued to Merakey by the Department on June 13 and 14, 2023.

In this Court, Merakey argues that the BHA erred in dismissing its requests for hearing and in denying *nunc pro tunc* relief. Merakey further argues that the Secretary abused her discretion by failing to consider and decide Merakey's Application for Reconsideration, which failure resulted in its deemed denial.

After careful review, we vacate the Secretary's deemed denial of Merakey's Application for Reconsideration 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.¹

By way of background,² Merakey operates intermediate care facilities for individuals with intellectual disabilities (ICF/ID), 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 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 Medicaid allocation, it has one year to recoup the overpayments from providers. If it does not, the overpayments will result in 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 report, determines whether overpayments were made, computes any appropriate adjustment,

¹ Unless otherwise indicated, our statement of facts is taken from the findings of fact adopted by the BHA in its Final Administrative Action.

² We take these facts from Merakey's brief. They are for background purposes only, are not controlling in our analysis, and are not disputed by the Department.

and notifies the provider, by way of a “tentative cost settlement” if recoupment of any funds is required.

On June 13 and 14, 2023, the Department sent, by first-class United States mail, six³ final cost settlement notices (Notices) to Merakey for fiscal years 2019 through 2021. Therein, the Department notified Merakey of approximately \$500,000.00 in cost overpayments that the Department would seek to recoup. On July 17, 2023, Merakey e-mailed, by counsel, six requests for hearing and appeals (Appeals) to the Department, which received the e-mailed Appeals the same day. On July 18, 2023, Merakey sent, via first-class United States mail, six hard copies of the Appeals to the Department. The envelopes of the hard-copy Appeals were postmarked by the United States Postal Service (USPS) on July 18, 2023. The BHA received Merakey’s hard-copy Appeals on July 24, 2023.

On July 28, 2023, the BHA issued a rule to show cause directing Merakey to explain why the Appeals should not be dismissed as untimely or, in the alternative, to identify any circumstances that would justify *nunc pro tunc* relief. In its response to the rule to show cause, Merakey explained that the Appeals are the most recent of more than 30 requests for hearing that Merakey and its affiliates have filed from Department-issued cost settlements dating back to fiscal year 2010. (Merakey Response to Rule to Show Cause, ¶¶ 5-6; Reproduced Record (R.R.) at 67a.) Merakey filed many of those requests for hearing and appeal electronically, and the BHA accepted the electronic filings as filed on the date the BHA received them. *Id.* ¶ 9; R.R. at 68a. Merakey argued that, pursuant to Section 41.32(a)(1) of the Department’s regulations, 55 Pa. Code § 41.32(a)(1), the Appeals had to be filed with the BHA within 33 days of June

³ The Department sent three cost settlements each to Merakey Philadelphia and Merakey Woodhaven for fiscal years 2019 through 2021.

13 and 14, 2023, the dates the Department's Notices were issued. Merakey further argued that, because it filed the Appeals via e-mail on July 17, 2023, they were timely pursuant to 55 Pa. Code § 41.32(b).⁴ (R.R. at 68a-69a, 71a-72a.) Merakey asserted that nothing in Chapter 41 of the Department's regulations prohibited filing by e-mail, which filings must be deemed to have been filed the day they are received by the BHA. *Id.* at 73a-74a. In the alternative, Merakey argued that, assuming that e-mail filing of requests for hearing was not permitted, *nunc pro tunc* relief was appropriate because the Department would not be prejudiced thereby. *Id.* at 75a.

The Department also responded to the rule to show cause, arguing that Merakey's Appeals were untimely because the postmark date on the hard-copy appeals was one day late and because Chapter 41 of the Department's regulations does not permit the filing of requests for hearing via e-mail. *Id.* at 79a-81a. As to *nunc pro tunc* relief, the Department argued that no extraordinary, non-negligent circumstances existed to justify permitting the filing of the Appeals *nunc pro tunc*. The Department noted that the issue of e-mail filing had arisen in multiple appeals filed by Merakey. *Id.* at 82a.

An ALJ held a timeliness hearing on November 28, 2023. Merakey's counsel argued that nothing in Chapter 41 of the Department's regulations prohibits filing requests for hearing by e-mail as long as they are followed by hard-copy filings.

⁴ Section 41.32(a)(1) of the Department's regulations provides that, when the Department issues notices of final actions via first-class mail, requests for hearing must be filed within 33 days of the date of the notice. Thirty-three days from June 13, 2023, was July 16, 2023, a Sunday. Pursuant to 1 Pa. Code § 31.12, the filing deadline extended to the next business day, July 17, 2023. Requests for hearing as to the July 14, 2023 Notices had to be filed on or before the same date. Section 41.32(b) provides that, if requests for hearing are filed in a manner other than by first-class United States mail, the filing date is the date they are received by the BHA. 55 Pa. Code § 41.32(b). There is no dispute that the Appeals were received by the BHA via e-mail on July 17, 2023, and that the hard-copy Appeals were stamped with a United States postmark the next day, July 18, 2023.

Id. at 99a. Counsel further argued that the BHA in practice has accepted the filing of requests for hearing by facsimile, provided that the faxed copies are followed up with hard copies for the BHA's file. *Id.* at 99a-100a. Counsel contended that the filing of requests for hearing by e-mail should be no different, particularly given the administrative difficulty in navigating the filing of requests for hearing in response to the Department's late issuance of several years of cost settlements. *Id.* at 100a-01a, 111a. Given all of those circumstances, counsel insisted that dismissing the Appeals as untimely based on a one-day-late postmark would subvert the purpose of the Department's regulations. *Id.*

Counsel for the Department argued that Section 41.12(b) of the regulations required the filing of requests for hearing by personal delivery or first-class mail, which means that the "in another manner" language in Section 41.32(b) could not mean to permit filings by e-mail. *Id.* at 109a. Counsel for the Department did not dispute that the BHA has permitted the filing of requests for hearing by electronic means, but instead argued that "there have been prior appeals where this issue has been raised and flagged" and that "filing a request for hearing by e-mail [has] at least been an issue [that] has been flagged as not appropriate under the regulations." *Id.* Counsel for Merakey rejoined that the e-mailing issue was never "flagged" with him, that the Department's position regarding e-mail filings was new, and that no problems had been flagged "in any other electronic e-mail filings and requests for hearing that [counsel had] personally done before. This was a new issue, and it wasn't published or issued [in] any guidance that could give counsel or [Merakey] a hint about the discontinuance of accepting electronically filed requests for hearing." *Id.* at 111a-12a. Counsel for the Department again did not dispute that electronic requests for hearing, including those done by e-mail, had been previously accepted by the BHA. *Id.* at 111a-12a.

The ALJ issued a written recommendation on January 5, 2024, recommending therein that the Appeals be dismissed as untimely and that *nunc pro tunc* relief be denied. The ALJ first concluded that e-mailed requests for hearing do not constitute “filings” pursuant to 55 Pa. Code §§ 41.12(b) and 41.32(b), and that “in another manner” in Section 41.32(b) “means personal delivery.” (ALJ Recommendation, at 13.) Second, the ALJ concluded that, because the mailed Appeals were postmarked the day after the 33-day appeal period expired, they were untimely. *Id.*

As to *nunc pro tunc* relief, the ALJ noted Merakey’s argument regarding the total number of requests for hearing that had been filed and that accepting the e-mailed filings as timely would not prejudice the Department, but nevertheless concluded that Merakey had not identified any extraordinary circumstances involving fraud or an administrative breakdown within the Department that caused the untimeliness of the Appeals. *Id.* at 15. The ALJ therefore concluded that *nunc pro tunc* relief was inappropriate. *Id.*

The BHA adopted the ALJ’s recommendation in total by order issued February 2, 2024.

Approximately three and one-half months later, on May 21, 2024, Merakey filed its Application for Reconsideration *nunc pro tunc* of the BHA’s February 2, 2024 order, seeking review by the Secretary of Human Services. Merakey therein argued that the BHA failed to serve its February 2, 2024 order on Merakey or its counsel, who became aware of the order inadvertently. (R.R. at 117a-18a.) Merakey further asserted that, “despite [Merakey’s requests], [the] BHA has failed to reissue the order or provide [Merakey] with a true and correct copy of the [o]rder.” *Id.* at 118a. Merakey accordingly argued that, pursuant to Section 41.212(b) of the

Department's regulations, it was entitled to *nunc pro tunc* reconsideration of the BHA's order due to an administrative breakdown within the BHA. *Id.* at 118a-22a. If necessary, Merakey requested a hearing to prove why *nunc pro tunc* reconsideration was warranted. *Id.* at 122a.

As to the merits of the Application for Reconsideration, Merakey reiterated, as it had set forth in its response to the BHA's rule to show cause, that many of its other requests for hearing had been filed, and accepted, electronically by the BHA as of the date they were received. *Id.* at 124a. Merakey further indicated that BHA staff had, on prior occasions, directed Merakey's counsel to file requests for hearing by e-mail instead of facsimile and that they would be deemed filed the date they were received by the BHA. *Id.* Merakey attached to the Application for Reconsideration copies of e-mailed requests for hearing that were deemed accepted "for filing" by the BHA's filing clerk without objection. *Id.* at 124a, 159a. It also attached a sworn declaration of the office manager for Merakey's counsel, who therein attested that (1) the office timely filed for Merakey several requests for hearing with the BHA by e-mail that were accepted by the BHA; (2) the BHA's docketing clerk instructed counsel's office to file the requests for hearing by e-mail instead of facsimile; (3) counsel's office had considerable difficulty communicating with the BHA's filing office, which a BHA clerk advised was due to staff retirements. *Id.* at 154a-55a. Merakey thus characterized the Department's position in these Appeals as "patently disingenuous, as BHA routinely accepts, files and processes electronic filings of all types, including without limitation, requests for continuances and status reports." *Id.* at 125a. As to *nunc pro tunc* relief, Merakey insisted that it "adduced substantial evidence . . . that the BHA docketing coordinator directed [Merakey] and its [c]ounsel to file [r]equests for [h]earing by e[-]mail and routinely accepted and docketed same.

[Merakey] relied upon BHA’s directions and pattern and practice in this regard.” *Id.* at 127a.

The Secretary took no action on the Application for Reconsideration within the 30-day period prescribed by 55 Pa. Code § 41.212(a), (f). The application therefore was deemed denied by operation of law on June 20, 2024. *Id.* The Secretary subsequently issued, on August 5, 2024, two orders denying as untimely Merakey’s Application for Reconsideration as to all six BHA docket numbers. Merakey then filed six petitions for review in this Court on September 3, 2024. *See* Nos. 1150 – 1155 C.D. 2024. We dismissed the petitions for review, noting that Merakey’s application was deemed denied by operation of law on June 20, 2024, after which date Merakey had 30 days to petition this Court for review. We deemed the Secretary’s August 5, 2024 orders to be nullities, leaving this Court with nothing to review.⁵

Merakey now petitions for review in this Court, seeking review of both the BHA’s order and the Secretary’s deemed denial of Merakey’s Application for Reconsideration. (Petition for Review at 1-2, ¶¶ 13, 61-64.)

II. Issues

In this Court, Merakey argues that (1) the BHA erred in dismissing the Appeals as untimely because Chapter 41 of the Department’s regulations does not foreclose the filing of requests for hearing by e-mail, which Merakey here undisputedly

⁵ *See Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1150 C.D. 2024, filed September 26, 2025), slip op. at 2-3; *Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1151 C.D. 2024, filed September 26, 2025), slip op. at 2-3; *Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1152 C.D. 2024, filed September 26, 2025), slip op. at 2-3; *Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1153 C.D. 2024, filed September 26, 2025), slip op. at 2-3; *Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1154 C.D. 2024, filed September 26, 2025), slip op. at 2-3; and *Merakey Philadelphia v. Department of Human Services* (Pa. Cmwlth., No. 1155 C.D. 2024, filed September 26, 2025), slip op. at 2-3.

did in a timely manner; (2) the BHA’s new interpretation of Section 41.32(b) to preclude filings by e-mail is an unpromulgated new binding norm that violates Merakey’s right to due process; (3) alternatively, the BHA erred in denying *nunc pro tunc* relief because Merakey e-mailed the Appeals to the BHA in reliance on the BHA’s prior acceptance of e-mailed requests for hearing and the BHA’s specific instructions to do so; and (4) the Secretary abused her discretion in failing to decide Merakey’s Application for Reconsideration, which failure was manifestly unreasonable. (Merakey Br. at 6-8, 25-40.)

The Department contends that Merakey’s issues are without merit and further argues that Merakey’s issues are “waived” because (1) Merakey “abandoned” this appeal to pursue the appeals at Nos. 1150 – 1155 C.D. 2024; and (2) Merakey appealed only the deemed denial of its Application for Reconsideration, not the BHA’s order. The Department accordingly insists that Merakey’s petition for review in this Court is untimely as to the BHA’s order, precluding this Court’s consideration of the merits of the BHA’s determination. (Department Br. at 12-15.)

III. Discussion⁶

We begin with the Department’s waiver arguments. The Department first argues that Merakey has waived all issues in this appeal because it chose to pursue its claims in the appeals filed at Nos. 1150 – 1155 C.D. 2024, which this Court ultimately dismissed. We disagree. Merakey timely petitioned for review in this case from the

⁶ 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).

Secretary's deemed denial of the Application for Reconsideration. Merakey only filed the subsequent petitions for review at Nos. 1150 – 1155 C.D. 2024 because the Secretary issued null and void orders denying the Application on August 5, 2024. Merely because Merakey elected to pursue its claims first in those appeals does not mean that it abandoned and, therefore, waived its ability to do so here. At no point did this Court dismiss any of Merakey's claims in this case for failure to prosecute or to file a brief or reproduced record. The issues also were never considered or adjudicated by this Court at the later-filed cases, and we therefore decline to find waiver here.

The Department next contends that, because Merakey failed to file a petition for review in this Court within 30 days of the BHA's order, it "waived" review of the merits of the BHA's decision. The Department therefore insists that the scope of our review in this case is limited to the Secretary's deemed denial of Merakey's Application for Reconsideration. (Department Br. at 14-15.) Merakey argues in response that, pursuant to Section 41.212(f) of the Department's regulations, where, as here, a request for reconsideration by the Secretary is deemed denied by operation of law, the BHA's final determination becomes the final, appealable adjudication from which a provider may petition this Court for review within 30 days. (Merakey Reply Br. at 2-3.) On this issue, we must agree with the Department.

Ordinarily, a party aggrieved by a BHA order may (1) take no action; (2) petition this Court for review within 30 days, (3) request reconsideration of the order by the Secretary within 15 days, or (4) petition for review in this Court within 30 days *and* timely seek reconsideration by the Secretary within 15 days. *K.G. v. Department of Human Services*, 187 A.3d 276, 279 n.3 (Pa. Cmwlth. 2018) (citing *Keith v. Department of Public Welfare*, 551 A.2d 333, 337 n.8 (Pa. Cmwlth. 1988)); Section 35.241(a) of the General Rules of Administrative Practice and Procedure (GRAPP), 1

Pa. Code § 35.241(a) (applications for reconsideration by the Secretary must be filed within 15 days, or as otherwise expressly provided by statute governing the proceeding).⁷

An application for reconsideration filed with the Secretary ordinarily does not toll the 30-day period for filing a petition for review in this Court, and failure to file a timely petition for review ordinarily waives this Court's review of the merits of the BHA's decision. *K.G.*, 187 A.3d at 279; *see also* 1 Pa Code. § 35.241(e), (f) (reconsideration by the Secretary and review by this Court may be sought concurrently, but a request for reconsideration will not toll the period for petitioning for review). Thus, where a party fails to timely petition this Court for review but timely requests reconsideration from the Secretary, our review in any further appeal from the Secretary's decision of a reconsideration request is ordinarily limited to that request and not the underlying merits of the BHA's decision. *K.G.*, 187 A.3d at 279-80.

Pertinent here, Section 41.212 of the Department's regulations governs requests for reconsideration to the Secretary of Human Services and provides, in pertinent part, as follows:

(a) A determination of the [BHA] will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) **unless an aggrieved party requests review by the Secretary within that 30-day time period.**

(b) A request for review shall be filed within 30 days of the mailing date of the [BHA] determination. **An untimely request for review will be dismissed as of course unless the filing party can satisfy the requirements of § 41.33 (relating to appeals nunc pro tunc).**

⁷ GRAPP governs practice and procedure before Commonwealth agencies except where applicable statutes or regulations provide for alternative and inconsistent practices and procedures. 1 Pa. Code § 31.1(a)-(c).

....

(d) If an aggrieved party timely requests review of a [BHA] determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a [BHA] determination reviewed by the Secretary, but only a right to request this review. The decision to grant or deny a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the [BHA]'s determination will be deemed the final adjudication of the Department effective on the date of the order denying the request for review.

(f) If the Secretary fails to act on a request for review within 30 days of receipt of the request, the request for review will be deemed denied. The Bureau's determination will be deemed the final adjudication of the Department effective on the date on which the request for review is deemed denied.

....

55 Pa. Code. § 41.212(a)-(b), (d)-(f).⁸ In sum, then, under Section 41.212, an aggrieved party has 30 days within which to either request reconsideration with the Secretary or petition for review in this Court. *Id.* § 41.212(a). Where a party files a *timely* request for reconsideration with the Secretary, the BHA's order does not become final until the Secretary either denies the request or it is deemed denied by operation of law. In other words, where a party *timely* requests reconsideration by the Secretary, that request effectively tolls the 30-day period for petitioning for review because, until the Secretary grants or denies the request, the BHA's order is not yet final. *Id.* § 41.212(d)-(f).

⁸ The Department does not reference, cite to, or discuss Section 41.212 in its brief.

Where a request for reconsideration is *untimely* filed with the Secretary, however, Section 41.212(b) requires that the request be *dismissed* as a matter of course without any provision for the BHA's determination *then* becoming a final, appealable adjudication. The only exception to that rule is where the party filing an untimely request for reconsideration establishes its entitlement to *nunc pro tunc* relief. *Id.* If the Secretary either enters an order denying such relief *or* the request is deemed denied as a matter of law, then the request for review remains *untimely*. In those instances, and reading Subsections 41.212(a) and (b) together with Subsections 41.212(e) and (f), the BHA's decision is *not* considered to be the final adjudication for appeal purposes because the provider's request for review was filed *after* the mandatory 30-day period expired and *nunc pro tunc* relief was denied. Stated differently, Subsections 41.212(e) and (f) both assume that the request for review was either timely filed or considered *nunc pro tunc* before it was denied or deemed denied by the Secretary.

Here, Merakey filed an undisputedly untimely request for reconsideration with the Secretary together with a request for *nunc pro tunc* relief. The Secretary took no action on the request, which was deemed denied by operation of law. The request accordingly remained untimely, and the BHA's determination is not the final, appealable adjudication from which Merakey could appeal. We simply cannot, as Merakey would have us do, interpret Subsections 41.212(e) and (f) to *always* deem the BHA's determination to be the final, appealable adjudication where a provider files an untimely request for reconsideration that is then denied or deemed denied by the Secretary. To do so would permit a provider to extend the appeal period indefinitely by filing, at any time, a request for reconsideration with the Secretary. The subsequent denial of the request under Subsections 41.212(e) or (f) would render the BHA's determination final no matter whether it was issued 31 days, 31 months, or 31 years

prior. That is an absurd result that we must avoid. *See Vellon v. Department of Transportation, Bureau of Driver Licensing*, 292 A.3d 882, 890 (Pa. 2023) (we interpret language in the light of “reason and common sense” to avoid absurd or unreasonable results) (citing, in part, Section 1922(1) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1922(1))).

We therefore agree with the Department that the merits of the BHA’s final merits are not before us in this appeal because Merakey’s request for review was untimely filed and the Secretary did not grant *nunc pro tunc* relief. Thus, only the Secretary’s deemed denial of Merakey’s Application for Reconsideration may be reviewed by this Court. *Tri-County Respite, Inc., d/b/a New Vitae, Inc.-Quakertown v. Department of Human Services*, ___ A.3d ___, (Pa. Cmwlth., No. 755 C.D. 2025, filed August 3, 2026), 2026 WL 2219197, at *4; *K.G.*, 187 A.3d at 279 & n.3. On that issue, Merakey contends that the Secretary abused her discretion in taking no action on the Application, in which it identified clear legal defects in the BHA’s determination. (Merakey Br. at 38-40.) We agree.

“An agency’s decision to grant or deny a request for reconsideration is a matter of discretion and will be reversed only where that discretion is abused.” *K.G.* 187 A.3d at 279. “[A]n abuse of discretion occurs when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will.” *B.B. v. Department of Public Welfare*, 118 A.3d 482, 485 (Pa. Cmwlth. 2015) (internal quotation marks omitted) (quoting *Payne v. Workers’ Compensation Appeal Board (Elwyn, Inc.)*, 928 A.2d 377, 379 (Pa. Cmwlth. 2007)). We will find an abuse of discretion where the evidence shows there was fraud, bad faith, capricious action or an abuse of power. *K.G.*, 187 A.3d at 279.

Reconsideration requests submitted to the Secretary must “identify new and novel arguments or matters which [the BHA] may have overlooked.”

We conclude that the Secretary abused her discretion in failing to timely consider and decide the Application for Reconsideration, which contained allegations and accompanying evidence indicating that (1) the BHA failed to *ever* properly serve its order on Merakey, which failure caused the untimely filing of the request for review; (2) Merakey previously had filed, and the BHA previously accepted as timely, e-mailed requests for hearing, and (3) the Department instructed Merakey to file requests for hearing via e-mail. (R.R. at 117a-25a, 127a, 154a-55a, 159a.) Further, Merakey argued before the ALJ that it previously had filed, and the BHA accepted as timely, electronic requests for hearing. The BHA overlooked or ignored that fact in its decision, which further warranted review by the Secretary. Nevertheless, rather than deciding the Application, the Secretary did nothing, causing the Application to be deemed denied by operation of law on June 20, 2024. Approximately 45 days later, the Secretary entered null and void orders denying the Application as untimely without explanation, of which orders Merakey unsuccessfully petitioned this Court for review. *See supra* note 5.

Although Section 41.212(d) of the Department’s regulations provides that parties do not have a right to review by the Secretary, the Secretary may not abuse, *i.e.*, act unreasonably or capriciously in exercising, such discretion. We conclude, in these circumstances, that the Secretary’s failure to timely act on Merakey’s Application for Reconsideration and subsequent issuance of untimely and unexplained orders denying the Application as untimely was manifestly unreasonable, capricious conduct constituting an abuse of discretion.

We accordingly vacate the Secretary's deemed denial of Merakey's Application for Reconsideration and remand for further proceedings. On remand, the Secretary shall consider whether *nunc pro tunc* relief is appropriate and, if so, shall also determine whether to grant reconsideration of the BHA's February 2, 2024 determination. In the event that the Secretary grants reconsideration, it shall thereafter enter a final order affirming, reversing, or modifying the BHA's determination in accordance with 55 Pa. Code § 41.212(h).⁹

PATRICIA A. McCULLOUGH, Judge

⁹ Given our disposition, we need not address Merakey's other issues.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Merakey IDD Philadelphia and	:	
Merakey Woodhaven,	:	
Petitioners	:	
	:	
v.	:	No. 939 C.D. 2024
	:	
Department of Human Services,	:	
Respondent	:	

ORDER

AND NOW, this 29th day of September, 2026, the Secretary of Human Services' June 20, 2024, deemed denial of the Application for Reconsideration filed by Merakey IDD Philadelphia and Merakey Woodhaven is hereby VACATED, and this matter is remanded to the Secretary of Human Services for further proceedings consistent with the foregoing Memorandum Opinion.

Jurisdiction relinquished.

PATRICIA A. McCULLOUGH, Judge