Circuit Court for Montgomery County
Case No. C-15-CV-23-003753

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 717

September Term, 2024

IN THE MATTER OF PATRIOT MEDICAL LABORATORIES, LLC

Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: August 14, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a dispute between Patriot Medical Laboratories, LLC, doing business as CIAN Diagnostics ("CIAN"), appellant, and the Maryland Department of Health ("MDH"), appellee, over a contract for diagnostic tests provided during the COVID-19 pandemic. CIAN filed a claim with MDH challenging the amounts of certain payments made under the contract. MDH denied the claim. The Maryland State Board of Contract Appeals ("Board") granted summary decision against CIAN on grounds that CIAN's contract claim was not filed timely. The Circuit Court for Montgomery County affirmed the Board's decision.

CIAN presents three issues for our review, which we have reordered and rephrased as follows[1]:

I. Whether the Board's decision exceeded the scope of its statutory authority and was therefore *ultra vires*.

II. Whether the Board's decision was arbitrary, capricious, and erroneous for other reasons.

III. Whether the Board erred when it failed to distinguish between invoices that were submitted on different dates.

[1] CIAN phrased the issues as:

I. Whether the [Board's] contraction of its jurisdiction, and definition of a "contract claim," both at odds with that set forth in STATE FIN. & PROC. §§ 15-215 & 15-217 are *ultra vires*.

II. Whether the [Board] was arbitrary, capricious, and erroneous as a matter of law when the [Board] abandoned its precedent treating the certification regulation as a defense to liability, applying a substantial compliance and material prejudice test.

III. Whether the [Board] erred as a matter of law when it held that CIAN's August 30, 2022 Final Claim was untimely as to those invoiced amounts rejected by MDH no earlier than August 4, 2022.

For the reasons set forth below, we hold that the Board's grant of summary decision was not erroneous, and we affirm the judgment of the circuit court.

BACKGROUND

CIAN is a firm that performs diagnostic testing, including the processing of reverse transcription polymerase chain reaction ("RT-PCR") tests for the COVID-19 virus. CIAN entered into a laboratory services contract (the "Emergency Contract") with MDH through emergency procurement, effective May 2, 2020, for the provision of RT-PCR tests. Pursuant to the terms of the Emergency Contract, MDH agreed to pay CIAN $98 for each RT-PCR test performed. The term of the Emergency Contract was three months, with an automatic renewal for another term of three months unless terminated by either party with fifteen days' written notice.

As a result of four modifications effective July 14, 2020, September 10, 2020, December 28, 2020, and April 13, 2021, the term of the Emergency Contract was extended to December 31, 2021, and the price was reduced to $93 per test.

On April 28, 2021, MDH issued an invitation for bids on a statewide RT-PCR testing contract. CIAN submitted a bid price of $25 per RT-PCR test and became one of three bidders awarded a contract ("New Contract"). CIAN signed the New Contract on September 1, 2021 and MDH signed it on December 1, 2021. Due to an internal computer problem, MDH did not send a fully executed copy of the New Contract to CIAN until February 18, 2022. The term of the New Contract began on the date the New Contract was signed by MDH, December 1, 2021, and extended through November 17, 2022.

From December 1, 2021 through December 31, 2021, CIAN performed 80,328 tests.

By email dated December 30, 2021, CIAN notified MDH that it was experiencing "extraordinary supply chain problems[,]" increased supply costs, and increased labor costs. CIAN explained that the reimbursement rate under the Emergency Contract was sufficient to "survive" the increased costs but that it would "lose money on every PCR test" if it was paid at the New Contract price. CIAN stated that the Emergency Contract expired on December 31, 2021, but "[e]ven worse" was that MDH "would have [the Emergency Contract] expire retroactively on December 1st instead of the original sunset date of December 31st, and the [N]ew [C]ontract with its lower reimbursement rate would retroactively commence on December 1st." CIAN requested that MDH extend the Emergency Contract through March 31, 2022, making the New Contract effective April 1, 2022.

On or about January 2, 2022, CIAN submitted Invoice No. 381 for 80,328 RT-PCR tests performed during December 2021 at a rate of $93 per test.

From January 1, 2022 through February 17, 2022, CIAN performed 152,294 tests.

MDH notified CIAN by letter dated April 19, 2022, that there were insufficient funds under the Emergency Contract to cover all of the tests completed in December 2021. MDH maintained that the New Contract became effective December 1, 2021.

On or about May 17, 2022, CIAN submitted Invoice Nos. 482 and 483 for tests completed in January 2022 and the period of February 1 through February 17, 2022. Those invoices sought payment at the rate of $93 per test.

On or about June 9, 2022, MDH exhausted the funds available under the Emergency Contract and paid CIAN for RT-PCR tests completed between December 1 and December 9, 2021 at the rate of $93 per test. For tests completed during the remainder of December 2021, MDH paid CIAN at the rate of $25 per test.

On June 27, 2022, CIAN's counsel sent a letter to MDH regarding a "reservation of rights with respect to partial payment and notice of claims." In the June 27, 2022 letter, CIAN's counsel included a chart showing the "number and prices of tests subject to this notice of claims under COMAR 21.10.04." The chart listed the invoices at issue as Invoice Nos. 381, 482 and 483, covered the period from December 1, 2021 through February 17, 2022, the total number of tests, and the disputed balance in the amount of $14,623,536.

MDH responded to CIAN's counsel by letter dated July 7, 2022, asking whether the June 27, 2022 "letter [was] intended to be a notice of claim and claim under COMAR 21.10.04.02A and B" and noted that, "[i]f it is intended to be a claim, … it does not comply with the requirements of COMAR 21.10.04.02B."

On July 27, 2022, CIAN and MDH officials met to discuss the invoices.

By letter dated August 4, 2022, MDH notified CIAN that MDH was unable to pay "any additional amount" for services performed in December of 2021. MDH further advised that "[w]ith respect to payments for tests performed in January and February 2022, the [N]ew [C]ontract is the only one available to pay for those tests."

On August 4, 2022, MDH paid CIAN for tests shown on Invoice No. 483 at a rate of $23.73 per test. On August 10, 2022, MDH paid CIAN for tests shown on Invoice No. 482 at the rate of $25 per test.

On August 30, 2022, CIAN's counsel sent MDH a letter titled, "Claims for damages for breach of contract[.]" CIAN's counsel stated that CIAN was requesting final agency action on the claims arising out of the contracts and that the letter served as a supplement to its letter of June 27, 2022. The August 30, 2022 letter also included a chart listing the invoices at issue as Invoice Nos. 381A, 482 and 483. The chart reflected 215,872 total tests performed from December 10, 2021 through February 17, 2022, and claimed $14,679,296, the difference between what CIAN believed should have been paid and the amount actually paid.

On January 11, 2023, MDH issued its final decision denying CIAN's claim. MDH found that CIAN's claim was untimely, as CIAN had failed to file its claim within thirty days of notice of the claim, as required by COMAR 21.10.04.02A. MDH also found that CIAN's claims were not meritorious.

CIAN noted an appeal to the Board and submitted a motion for summary decision. In its motion for summary decision, CIAN argued that MDH was obligated to pay $93 per test for tests provided between December 1, 2021 and February 17, 2022 under the terms of the Emergency Contract because the New Contract was not enforceable until February 18, 2022. CIAN further argued that its claim was timely because its "Initial Claim," filed on June 27, 2022, was "certified" by its incorporation into its "Final Claim," filed on August 30, 2022.

MDH filed a cross-motion for summary decision on grounds that CIAN's claim was untimely and it lacked merit. MDH asserted that, assuming CIAN's June 27, 2022 letter

was a timely notice of claim, CIAN failed to file a timely claim within thirty days of its June 27, 2022 notice.

On September 7, 2023, the Board issued an Opinion and Order denying CIAN's motion and granting MDH's cross-motion for summary decision. The Board ruled that CIAN's claim was untimely.

COMAR 21.10.04.02A provides that written notice of a claim relating to a contract must be filed "with the appropriate procurement officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier." The Board based its decision on COMAR 21.10.04.02B, which sets forth certain requirements for filing a claim, including that the claim include "[a] certification by a senior official, officer, or general partner . . . that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the procurement agency is liable." COMAR 21.10.04.02B(5).

The Board found that CIAN's letter of June 27, 2022 served as a timely notice of claim under COMAR 21.10.04.02A. The Board disagreed, however, that the June 27, 2022 letter also served as a valid claim under COMAR 21.10.04.02B because the June 27, 2022 letter did not include a certification as required by COMAR 21.10.04.02B(5). The Board concluded that CIAN's claim submitted on August 30, 2022 complied with the certification requirement of COMAR 21.10.04.02B, however, that claim was untimely because it was submitted more than thirty days after its June 27, 2022 notice of claim. The Board further concluded that CIAN's June 27, 2022 letter did not serve as a "reservation of rights" as a

matter of law, as there was no basis in law for CIAN to unilaterally alter or extend the filing requirements under COMAR 21.10.04.02B.

CIAN filed a motion for reconsideration of the Board's decision, which the Board denied.

CIAN filed a petition for judicial review in the circuit court. After briefing and argument, the circuit court issued an oral opinion on the record affirming the Board's grant of summary decision in MDH's favor, followed by a written order.

This timely appeal followed.

STANDARD OF REVIEW

In reviewing an administrative agency's decision, this Court "review[s] the agency's decision directly[,]" not the circuit court's decision. *Brawner Builders, Inc. v. State Highway Admin.*, 476 Md. 15, 30 (2021) (quotation marks and citation omitted). We review an agency's legal conclusions *de novo*. *Montgomery Park, LLC v. Md. Dep't of Gen. Servs.*, 254 Md. App. 73, 99 (2022). Specifically, we review an agency's grant or denial of a motion for summary decision under a *de novo* standard. *Brawner Builders*, 476 Md. at 30-31. "[S]ummary disposition is appropriate if 'there is no genuine issue of material fact[,] and [a] party is entitled to prevail as a matter of law.'" *Id*. at 31 (quoting COMAR 21.10.05.06D(2)(a), (b)).

"We also review questions of statutory interpretation *de novo*, but 'occasionally apply agency deference when reviewing errors of law related to [whether the agency correctly interpreted an applicable statute or regulation].'" *Matter of Md. Bio Energy LLC*, 263 Md. App. 215, 233 (quoting *Comptroller v. FC-GEN Operations Invs. LLC*, 482 Md.

343, 360 (2022)), *cert. denied*, 489 Md. 287 (2024); *see also Montgomery v. E. Corr. Inst*., 377 Md. 615, 625 (2003) (explaining that the Court "ordinarily give[s] considerable weight to the administrative agency's interpretation and application of the statute that the agency administers"). Because we consider the Board's decision to be "prima facie correct and presumed valid[,]" we review it "in the light most favorable to [the Board.]" *Md. Bio Energy*, 263 Md. App. at 234 (quotation marks and citation omitted).

DISCUSSION

First, CIAN argues that the Board elevated a regulatory requirement to the level of subject matter jurisdiction by expanding the statutory definition of "contract claim" to include a certification requirement. *See* § 15-217(b) of the State Finance and Procurement Article ("Fin. & Proc.") of the Maryland Code (1985, 2021 Repl. Vol.). Next, CIAN argues that, assuming the decision was not jurisdictional in nature, the Board arbitrarily and capriciously applied its regulations. Finally, CIAN argues that, regardless, the certified claim was filed within thirty days after the basis of the claim was known with respect to Invoice Nos. 482 and 483. CIAN explains that the Board failed to address the "indisputable fact that Invoice Nos. 482 & 483 remained outstanding until at least August 4, 2022[,]" and therefore, its claim filed on August 30, 2022 was timely.

MDH responds that the Board properly entered summary decision against CIAN based on its finding that CIAN filed its claim on August 30, 2022, more than thirty days after its notice of claim of June 27, 2022.

I.

Fin. & Proc. § 15-215(a) and (b) provide that a "contract claim" means a claim that relates to a procurement contract and includes "a claim about the performance, breach, modification, or termination of the procurement contract."

Fin. & Proc. § 15-217(b) provides that a "contract claim shall be submitted within the time required under regulations adopted by the primary procurement unit responsible for the procurement."

The relevant regulation is set forth in COMAR 21.10.04.02 and provides:

> A. Unless a lesser period is prescribed by law or by contract, a contractor shall file a written notice of a claim relating to a contract with the appropriate procurement officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier.
>
> B. Contemporaneously with or within 90 days of the filing of a notice of a claim on a construction contract, or 30 days of this filing on a nonconstruction contract, but no later than the date that final payment is made, a contractor shall submit the claim to the appropriate procurement officer. On conditions the procurement officer considers satisfactory to the unit, the procurement officer may extend the time in which a contractor, after timely submitting a notice of claim, must submit a contract claim under a procurement contract for construction. An example of when a procurement officer may grant an extension includes situations in which the procurement officer finds that a contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical. The claim shall be in writing and shall contain:
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> (1) An explanation of the claim, including reference to all contract provisions upon which it is based;
>
> (2) The amount of the claim;
>
> (3) The facts upon which the claim is based;
>
> (4) All pertinent data and correspondence that the contractor relies upon

to substantiate the claim; and

(5) A certification by a senior official, officer, or general partner of the contractor or the subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the procurement agency is liable.

C. A notice of claim or a claim that is not filed within the time prescribed in Regulation .02 of this chapter shall be dismissed.

As is apparent, subsection A of the regulation addresses "notice of a claim" and subsection B addresses the "claim" and its content.

CIAN argues that the Board exceeded its authority by "elevat[ing] a regulatory requirement to the level of subject matter jurisdiction without statutory authority." CIAN further asserts that the Board acted *ultra vires* when it misapplied the regulatory requirements and effectively imposed a "jurisdictional bar" to CIAN's claim.

In the course of CIAN's contract claim proceedings before the Board, CIAN did not raise this argument challenging the Board's authority to impose a certification requirement on contract claims under COMAR 21.10.04.02B(5). CIAN raised this argument for the first time in its motion for reconsideration of the Board's decision, and the Board declined to review it. The Board's order on CIAN's motion for reconsideration stated that the Board's decision "was limited to a single issue, *i.e.*, whether [CIAN's] claim was timely filed as required under [Fin. & Proc.] § 15-217(b) and COMAR 21.10.04.02." In denying CIAN's motion for reconsideration, the Board stated that it was "baffled" by CIAN's characterization of its decision as a matter of subject matter jurisdiction, noting that nothing in its opinion "remotely suggests that our decision was based on anything 'jurisdictional'

in nature." The Board "express[ed] no opinion as to [CIAN's] contention that the certification regulation is *ultra vires*[,]" as "this issue was not raised previously and, therefore, not part of the record that led to our Opinion and Order."

Because CIAN raised this argument for the first time on reconsideration, ordinarily, it is waived. *See Halici v. City of Gaithersburg*, 180 Md. App. 238, 248-49 (2008) ("Ordinarily, a court reviewing the decision of an administrative agency may not pass upon issues presented to it for the first time on judicial review. . . . The failure to raise an issue before the administrative agency is a failure to exhaust administrative remedies and an improper request for the courts to resolve matters *ab initio* that have been committed to the jurisdiction and expertise of the agency." (cleaned up)); *Motor Vehicle Admin. v. Shepard*, 399 Md. 241, 260 (2007) (Eldridge, J., concurring) ("It is a settled principle of Maryland administrative law that, in an action for judicial review of an adjudicatory administrative agency decision, the reviewing courts should decline to consider 'an issue not raised before the agency[.]'" (quoting *Brodie v. Motor Vehicle Admin.*, 367 Md. 1, 4 (2001))).

Nevertheless, because CIAN characterizes its argument as one of subject matter jurisdiction, we will address it, as did the Board. The Board's decision was not based on lack of subject matter jurisdiction. The Board simply ruled on the timeliness issue.

With respect to the general argument that the regulatory requirement of certification exceeded statutory authority, the legislature expressly authorized MDH, the primary procurement unit in this case, to adopt regulations relating to the timeliness of submitting contract claims. The regulatory requirement with respect to the form and content of a claim is not inconsistent with the statute and was within its regulatory authority.

II.

CIAN asserted before the Board, and the Board agreed, that CIAN was on notice of its claim as of June 9, 2022, when MDH submitted a partial payment of Invoice No. 381. CIAN characterized it as such in its June 27, 2022 letter. The heading stated: "**Reservation of Rights with Respect to Partial Payment and Notice of Claims**." (Emphasis in original.) *Compare Brawner*, 476 Md. at 41-42 (rejecting subcontractor's assertion that the contractor's letter was a notice of claim where the letter explicitly stated that they were not requesting relief at that time, but that they reserved their right to request such relief at a later time).

CIAN's letter of June 27, 2022 also made clear that CIAN was aware that MDH disputed or would dispute the payments requested in Invoice Nos. 482 and 483:

> To summarize, for the period of December 1, 2021, through February 18, 2022, CIAN has submitted invoices for $93/test. On June 22, 2022, MDH made a payment of less than $93/test, which, in turn, gives rise to the claims, **notice for which is hereby filed**. MDH has made partial payments of $25/test for 215,052 tests, as noted, and CIAN reserves the right to follow up **this notice of claim and submit full claims** within 90 days to recover $68/test, covering approximately December 9, 2021, through February 18, 2022.

(Emphasis added.)

The notice of claim triggered the thirty-day limitations period. *Manekin Constr., Inc. v. Md. Dep't of Gen. Servs*., 233 Md. App. 156, 175-76 (2017). "The thirty-day limitations period . . . would begin, therefore, once the contractor knows or should have known of a dispute or denial of its request." *Id. See also David A. Bramble, Inc.*, No. MSBCA 2823 (2013), *aff'd*, *David A. Bramble, Inc. v. State Highway Admin.*, No. 1568,

Sept. Term 2014 (filed unreported Sept. 25, 2015) (finding that the Board properly dismissed the contractor's claim as untimely where the contractor admitted that he had actual notice of the agency's rejection of his proposal more than thirty days before the filing of his claim), *cert. denied*, 446 Md. 219 (2016)).

The June 27, 2022 letter did not satisfy the requirements of COMAR 21.10.04.02B(5), however, because it did not include a certification of a senior official, officer, or general partner of the contractor. *See A-Del. Constr.*, *Inc*., Nos. MSBCA 3127 & 3128, at 13 (2022) (holding that "[f]ailure to satisfy each of the[] requirements [of COMAR 21.10.04.02B] renders the purported claim invalid"); *W.M. Schlosser Co., Inc. ex rel. W.G. Tomko, Inc.*, No. MSBCA 3211, at 5 (2022) ("The requirements for filing of a timely notice of claim and claim are mandatory, and neither a State agency nor the Board has the discretion to ignore or waive them.").

Pursuant to COMAR 21.10.04.02B, CIAN was required to file a valid claim within thirty days of June 27, 2022, *i.e*., no later than July 27, 2022. *See* COMAR 21.10.04.02B (stating that a claim is due "[c]ontemporaneously with or within . . . 30 days" of the filing of the notice of claim). Though CIAN's August 30, 2022 claim contained the required certification, it was filed more than thirty days after its notice of claim and, therefore, was untimely. Because under COMAR 21.10.04.02C the requirements for filing a timely claim are mandatory, the Board dismissed CIAN's untimely claim. *See David A. Bramble*, No. MSBCA 2823, at 7 (stating that "[t]he Board is without discretion to deviate from this plain [thirty-day notice] requirement of law and regulation").

CIAN argues that the Board acted arbitrarily and capriciously by ignoring its precedent and dismissing CIAN's claim. Specifically, CIAN contends that the Board erred in failing to consider whether MDH was materially prejudiced by the absence of a certification in the June 27, 2022 letter, and whether CIAN had substantially complied with the certification requirement and cured that defect by filing the August 30, 2022 claim. According to CIAN, the Board's ruling was inconsistent with its decisions in *A-Del Construction*, and *Absolute Environmental Contractors, Inc*., No. MSBCA 2266 (2003), cases in which the Board examined the issue of whether the agency was "materially prejudiced" by the contractor's failure to certify a claim in the manner set forth in the regulation and whether such failure was cured by subsequent filings.

In its order on reconsideration, the Board stated that it did not ignore its decision in *Absolute Environmental Contractors* in making its determination that CIAN's claim was untimely. The Board stated that it was "not persuaded that *Absolute* is apposite to this appeal, as [CIAN] argued." The Board pointed out that "substantial compliance" and "material prejudice to the State" were factors not specified in the statute or regulations governing the time requirements for filing a claim. The Board further noted its express acknowledgement in *Absolute* that its decision was "'a retreat' from *Cherry Hill Construction, Inc*., which held that 'the Government is not required to show prejudice as a result of the late filing, and the failure of the Contractor to timely file its claim is fatal.' MSBCA 2056 at 10 (1999)."

In this case, the Board further explained:

> Here, unlike in *Absolute* and *A-Del*, we are not dealing with a missing or defective certification. [CIAN] submitted a compliant certification on August 30, 2022, with all other required components of a claim. It was just too late. A late claim "shall be dismissed." COMAR 21.10.04.02C.
>
> In so far as *Absolute* was decided on factors not specified in, and was therefore inconsistent with, the statutory and regulatory law, as well a deviation from other Board precedent, in determining what is required to file a valid claim, *Absolute* is hereby overruled.

With respect to the issue of prejudice, the Board noted that the reference to prejudice in *A-Del Construction* "was dicta," in the context of a defective certification.

In *Absolute Environmental Contractors*, the contractor had failed to file a formal written certification as required by COMAR 21.10.04.02B(5). No. MSBCA 2266, at 5. The contractor had, however, submitted two letters to the procurement officer detailing the basis of the claims, and the letters were signed by its president. *Id*. at 5-6. The Board concluded that the contractor had complied with the substantive requirements of certification under COMAR 21.10.04.02B(5) by virtue of the two letters and his testimony at trial, and it did not appear that the agency was prejudiced by the contractor's failure to mirror the technical requirements of the certification language. *Id*. The Board in *Absolute Environmental Contractors* indicated that its opinion was a "retreat" and that "retreat" was "limited to the issue of certification under the particular facts of this appeal." *Id*. at 7.

Here, the Board's ruling was consistent with *Cherry Hill Construction, Inc.*, No. MSBCA 2056 (1999), *A-Del Construction, Inc*., and *Morrison's Health Care, Inc.*, No. MSBCA 2253 (2002). In *Cherry Hill Construction*, the Board dismissed Cherry Hill's contract appeal for failure to file a timely notice of claim. No. MSBCA 2056, at 7. Cherry Hill did not dispute the basic facts giving rise to its notice of claim and its failure to file a

timely notice of claim. *Id*. at 8. It argued, however, that the notice requirement should be waived because the agency was not prejudiced by its failure to give timely notice. *Id*. The Board rejected that argument, holding that the alleged lack of prejudice did not excuse Cherry Hill's obligation to file timely notice, and dismissal of the appeal was mandated by COMAR 21.10.04.02. *Id*. at 16.

A-Del Construction involved contract claims filed by the contractor on behalf of the subcontractor for damage to the subcontractor's equipment. Nos. MSBCA 3127 & 3128, at 5. The claims contained a certification by the subcontractor pursuant to COMAR 21.10.04.02B(5). *Id*. at 6. The claims also included a footnote, however, stating that the subcontractor "does not take a position regarding the identity of the person(s) or entity(ies) who may have been responsible" for the damage which formed the basis of the claim. *Id*. The Board held that the certification was invalid because it contradicted the statement required by COMAR 21.10.04.02B(5), that the claim accurately reflected the amount for which the agency was liable. *Id*. The Board explained that an invalid certification requires that the claim be dismissed, holding "that the language of COMAR 21.10.04.02B(5) is mandatory, not discretionary[,]" and the "[f]ailure to satisfy each of these requirements renders the purported claim invalid for failure to comply with COMAR." *Id*. at 13.

In *Morrison's Health Care, Inc*., the Board distinguished between the requirements for filing a notice of claim and the requirements for filing of the claim. No. MSBCA 2253, at 4. The Board detailed the "substantive" contents that must be included in the claim as well as the required content of the certification. *Id*. The Board explained that "COMAR 21.10.04.02.C further provides that the consequence of non-compliance [with the time

prescribed in COMAR 21.10.04.02A] is that the claim must be dismissed, i.e., it cannot be considered on its merits under the statutory disputes resolution process." *Id.*

Each case turns on its facts. In certain situations, the concept of substantial compliance that does not result in undue prejudice to a party will apply. The distinction between notice of claim and a claim in this regulatory context may result in factual circumstances that prevent strict application of the regulatory requirements in COMAR 21.10.04.02. The distinction is analogous to application of the discovery rule to statutes of limitations in court proceedings. An entity can be on notice of a claim based on sufficient information to know that there is a genuine dispute with knowledge of the details including potential damages. In the limitations context in court proceedings, if a suit is filed based on notice of a claim, there is considerably more time than thirty days to explore the details of that claim in order to perfect it.

In the administrative context, dependent on the facts, it would be arbitrary, especially on summary disposition, to apply the thirty-day requirement in COMAR 21.10.04.02B when a contractor files a notice of claim based on sufficient but incomplete material information and could not reasonably obtain the missing information within thirty days. When the contractor has some information relating to a claim, if the contractor waits too long to give notice, the claim may be barred for that reason. If the contractor gives notice, and cannot comply with COMAR 21.10.04.02B in thirty days, the claim may be barred for that reason. Consequently, based on the facts in a given case, COMAR 21.10.04.02 could be applied in an arbitrary and capricious manner.

To the extent that the Board concluded that it must apply COMAR 21.10.04.02 facially in all cases, we disagree. Substantial compliance may be applicable in a given situation, including when a contractor is in a Catch 22 situation.[2] Here, however, the Board's application of COMAR 21.10.04.02A and B was not arbitrary or capricious. There is no compelling reason, equitable or otherwise, not to apply the language of COMAR 21.10.04.02A and B. CIAN had the information necessary to comply with COMAR 21.10.04.02B in a timely manner. It knew the number of tests that were in dispute, and it knew the amount it was charging for those tests. The "claim" is what CIAN, the contractor, states it is owed, not what MDH, the procurement unit, has agreed it owes.

Consequently, the Board did not err in applying the applicable regulation facially and granting summary decision on the ground that CIAN's claim was untimely.

III.

With respect to CIAN's last issue, as stated above, the June 27, 2022 notice of claim was based on all three invoices in dispute and, as explained above, CIAN had the necessary information to file timely a claim in compliance with COMAR 21.10.04.02B.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[2] Heller, Joseph, *Catch 22* (1961).