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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1170**

Samiras Day Care Center,
Appellant,

vs.

Minnesota Department of Human Services,
Respondent,

Hennepin County Human Services and Public Health Department,
Respondent.

**Filed January 14, 2019
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-17-13562

Nahid Abuelhassan, Abuelhassan Law, P.L.L.C., St. Paul, Minnesota (for appellant)

Keith M. Ellison, Attorney General, Heather Kjos, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Michael O. Freeman, Hennepin County Attorney, Daniel D. Kaczor, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant childcare provider challenges the decision of the human-services commissioner that appellant was overpaid through the Minnesota Child Care Assistance Program (CCAP). Appellant argues that (1) substantial evidence does not support the determination that it failed to maintain required attendance records and (2) the commissioner erred by holding it, not parents, responsible for record-keeping deficiencies. We affirm.

FACTS

Appellant Samiras Day Care Center received CCAP payments in 2016. That August, respondent Hennepin County Human Services and Public Health Department (the county) rescinded Samiras's authorization to receive CCAP payments,¹ and in December, the county sent Samiras a notice of overpayment. The notice indicated that Samiras received \$22,773.93 of CCAP payments for the period May 1 to August 14, 2016, to which it was not entitled because it failed to comply with CCAP record-keeping requirements. The notice also stated that Samiras must repay that amount. Samiras appealed.

A human-services judge (HSJ) conducted a two-day evidentiary hearing, receiving testimony and voluminous exhibits. Based on that evidence, the HSJ issued recommended findings that (1) many of Samiras's attendance records are either missing entirely or lack

¹ The county rescinded the authorization because Samiras failed to comply with the CCAP record-keeping requirements and failed to provide CCAP records upon request. Samiras does not challenge the rescission in this appeal.

required elements (such as the child’s last name or arrival and departure times), indicating an overpayment, but (2) discrepancies between billing forms and attendance records regarding absence or holidays do not indicate an overpayment. The HSJ recommended an overpayment assessment of \$18,365.58 for the established record-keeping failures. The Commissioner of respondent Minnesota Department of Human Services adopted the HSJ’s recommended findings and order. Samiras requested reconsideration, which the commissioner denied.

Samiras appealed to the district court. The district court affirmed the commissioner’s decision. Samiras appeals.

D E C I S I O N

A childcare provider receiving CCAP payments must keep daily attendance records. Minn. Stat. § 119B.125, subd. 6 (2018). The records must include the date, first and last name of each child in attendance, and the time each child was dropped off and picked up. *Id.* Failure to comply with these record-keeping requirements is grounds for an overpayment claim against the provider, and the commissioner must seek to recover the overpayment. *Id.*, subds. 6, 7(d) (2018).

On appeal from a district court order affirming an overpayment determination, we independently review the commissioner’s order. *Verhein v. Piper*, 917 N.W.2d 96, 101 (Minn. App. 2018). Our scope of review is governed by Minn. Stat. § 14.69 (2018). *Id.* We may affirm, remand, reverse, or modify the commissioner’s decision if the appellant shows the decision is affected by an error of law or unsupported by substantial evidence “in view of the entire record as submitted,” and the error prejudiced appellant’s substantial

rights. Minn. Stat. § 14.69. Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Zahler v. Minn. Dep’t of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. June 19, 2001).

I. Substantial evidence supports the commissioner’s determination that Samiras failed to maintain required records.

Samiras does not dispute that some of its attendance records were deficient but asserts that substantial evidence does not support the determination that other required records were entirely missing.² Samiras’s only specific evidentiary challenge is to the commissioner’s finding that Samiras did not provide an attendance record for A.S. for July 4 to July 17, despite obtaining \$366 in CCAP payments for this period. Samiras insists that this finding is erroneous because this attendance record was not missing—it existed at the time of the hearing but Samiras could not provide it to the HSJ because the bureau of criminal apprehension (BCA) collected it as part of a criminal investigation, then returned it to the county, which did not produce it.

The commissioner properly rejected this argument on reconsideration, when Samiras submitted the attendance record in question. Samiras was aware of the basis of the claimed overpayment and that the BCA had returned the numerous records it collected to the county before the hearing began. And, prior to the hearing, the HSJ granted

² Samiras also argues that the evidence does not sustain a determination that it failed to provide attendance records on demand, as required under Minn. Stat. § 119B.125, subd. 6. Because the overpayment at issue in this appeal is not based on any such failure, this argument is not properly before us.

Samiras's request for a subpoena to obtain documents from the county. The exhibits Samiras offered during the hearing largely duplicated the county's exhibits; they did not include A.S.'s July 4 to July 17 attendance record. Samiras did not object to any of the exhibits and did not assert that anything was missing. On this record, Samiras has not established any error in the finding that A.S.'s attendance record was missing.

More fundamentally, Samiras's assertion that A.S.'s July 4 to July 17 attendance record existed (despite not being in the record) does not support its argument that therefore "no attendance records were missing." This particular attendance record was just one example noted in the commissioner's written decision. The undisputed record reflects that numerous attendance records were missing, including those for A.S. for other time periods.

In short, the record as submitted to the commissioner, and which the commissioner properly declined to enlarge on reconsideration, contains substantial evidence that Samiras entirely failed to maintain required records.

II. The commissioner did not err in interpreting Minn. Stat. § 119B.125 (2018) to hold Samiras responsible for compliance with record-keeping requirements.

We review questions of statutory interpretation de novo. *Verhein*, 917 N.W.2d at 101. We look to the plain language of the statute to ascertain the legislature's intent. Minn. Stat. § 645.16 (2018). When the intent is clear from the statute's plain and unambiguous language, we will give that meaning effect without considering other principles of statutory interpretation. *Verhein*, 917 N.W.2d at 102. Only if the statute is ambiguous will we "look beyond statutory language to discern legislative intent." *Id.*

Samiras argues that under Minn. Stat. § 119B.125, subd. 6, “the responsibility of attendance records *rests* on the parent dropping off or picking up the child.” We disagree. CCAP attendance records must include five pieces of information: (1) the date, (2) each child’s first name, (3) each child’s last name, (4) each child’s drop-off time, and (5) each child’s pick-up time. Minn. Stat. § 119B.125, subd. 6. The statute provides that, “[t]o the extent possible, . . . the person dropping off or picking up the child” must enter the drop-off time and the pick-up time. *Id.* But nothing in the statute makes parents responsible for ensuring the records include the other required pieces of information—the date and the child’s first and last name. And, ultimately, it is the provider receiving the CCAP benefits that “must keep [the] daily attendance records,” retain them onsite, and “make [them] available immediately” upon request. *Id.*

Moreover, the legislature plainly made providers responsible for any record-keeping shortfalls. When “the provider has not complied with the record-keeping requirement,” the commissioner may establish an overpayment claim “against [the] . . . provider.” *Id.*, subds. 6, 7(c). And the commissioner must seek to recover the overpayments from the provider. *Id.*, subd. 7(d), (e). For that reason, it is the provider that is entitled to notice and an opportunity to be heard regarding the assessment of an overpayment. *See id.*, subd. 7(c) (requiring detailed notice, including “the provider’s right to appeal”). Viewing the plain language of Minn. Stat. § 119B.125 as a whole, we conclude the commissioner did not err in assessing Samiras an overpayment based on its established failure to comply with the statutory record-keeping requests.

Affirmed.