

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1047**

In the Matter of the SIRS Appeal of Community Involvement Programs-FSE.

**Filed April 12, 2021
Affirmed
Florey, Judge**

Office of Administrative Hearings
File No. 60-1800-35962

Samuel D. Orbovich, Pari I. McGarraugh, Fredrikson & Byron, PA, Minneapolis, Minnesota (for relator Community Involvement Programs-FSE)

Keith Ellison, Attorney General, Molly Beckius, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Considered and decided by Florey, Presiding Judge; Frisch, Judge; and John Smith, Judge.*

NONPRECEDENTIAL OPINION

FLOREY, Judge

Relator, a provider of personal-care-assistant (PCA) services, challenges a final decision by an administrative-law judge (ALJ) determining that the Minnesota Department of Human Services (DHS) was entitled to recover from relator \$103,897.95 paid to relator for services provided by a PCA who had not been reinstated as an approved provider after a two-year suspension. The ALJ's recommendation became the final agency decision

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

based on the commissioner's failure to act pursuant to Minn. Stat. § 14.62, subd. 2a (2020). Relator asserts that the ALJ (1) erred in interpreting Minn. Stat. § 256B.064, subd. 1c (2020), and Minn. R. 9505.2235 (2019) to allow recovery of funds even though the PCA's suspension had expired and (2) erred by interpreting the language of Minn. R. 9505.2235, subp. 3, to require recovery when relator did not know and did not have reason to know of the PCA's expired suspension. Relator also argues that the commissioner of human services erred by failing to exercise discretion as to the recovery. Because we determine the ALJ's recommendation and the commissioner's failure to exercise discretion were consistent with the applicable law, we affirm.

FACTS

Community Involvement Partners (CIP or relator) appeals the summary disposition in favor of respondent DHS. CIP is a PCA-provider agency that supplies or assists with home- and community-based services in the Consumer Directed Community Support (CDCS) program. The CDCS program enables certain waived recipients to receive PCA services. K.W. was a PCA who was affiliated with CIP.

In March 2009, respondent DHS suspended K.W. from the Minnesota Health Care Program (MHCP) for two years, until March 28, 2011. In the letter of suspension, DHS informed K.W. that she "may apply for reinstatement at the end of the two-year period. However, reinstatement is not automatic. You must formally reapply."

After her suspension ended but before she had been reinstated, K.W. applied to provide services through the CDCS program, using CIP as the fiscal-support entity (FSE), the conduit through which providers are paid for authorized services. CIP performed

employee-related services, including submitting claims to DHS for PCA services provided by K.W.¹ CIP submitted K.W. for a background study through DHS's Background Studies Division. DHS completed the background study and informed CIP that K.W. was approved to work. CIP also checked K.W.'s name against the Office of the Inspector General's exclusion list and confirmed that she did not appear on that list.

At the time K.W. was hired in 2012, DHS did not have a "public facing exclusion list." In 2013, DHS created a public-facing state exclusion list that identified people and entities deemed ineligible, suspended, or terminated from the Minnesota Medical Assistance program. K.W. did not appear on DHS's state exclusion list until June 1, 2015.

On September 28, 2015, DHS again cleared K.W. to continue working after CIP submitted an updated background-study request. K.W. continued working with CIP until February 28, 2017.

In March 2016, DHS notified providers that background studies would include a check of the state exclusion list both when the study was first submitted and later when "rap-back" searches were performed. On August 1, 2019, the Minnesota Legislature enacted a new statute requiring vendors to check the state exclusion list "on a monthly basis and document the date and time the exclusion list was checked and the name and title of the person who checked the exclusion list." Minn. Stat. § 256B.064, subd. 3 (2020).

On February 8, 2018, the Surveillance and Integrity Review Section (SIRS) of DHS issued a notice of overpayment to CIP seeking reimbursement of \$123,678.93 for services

¹ It is uncontested that CIP never received a copy of K.W.'s suspension letter and had no relationship with K.W. during the period of her suspension.

provided by K.W. between January 1, 2014, and February 28, 2017, because she “was excluded from providing services in the [MHCP].” CIP appealed, and the notice was later withdrawn to allow for further investigation. On June 4, 2018, DHS issued an amended notice of overpayment to CIP seeking reimbursement of \$103,897.95 for services provided by K.W. between January 1, 2014, and February 28, 2017.² DHS noted the reason for the amended notice was, again, that CIP submitted claims for services provided by K.W. “after she had been suspended but before she had been reinstated.”

CIP appealed the amended notice, and DHS initiated a contested-case proceeding. On cross-motions for summary disposition, the ALJ recommended granting DHS’s motion, finding that money paid to CIP for K.W.’s services was paid “in error” and was recoverable because K.W. had not been reinstated to MHCP at the time she provided services. The ALJ also determined that although CIP did not know and could not have known of K.W.’s suspension, that fact only limited DHS’s ability to impose a sanction, not to seek monetary recovery. The ALJ stated:

This is an incredibly harsh result. CIP did nothing wrong. [K.W.’s] suspension had run its course prior to her being affiliated with CIP. CIP twice submitted her name to [DHS] for background studies. Each time [DHS] cleared her to work. [DHS] did not establish its exclusion list until 2013 and [K.W.’s] name did not even appear on the list until 2015. And there was no obligation for an organization like CIP to even check the exclusion list until August of 2019. When [K.W.] applied for reinstatement [to the Minnesota Medical Assistance program] in 2017, [DHS] granted her request. The record is

² DHS limited the time period over which is sought to recover the alleged overpayment to January 1, 2014, even though K.W.’s affiliation with CIP began in 2012 because “there was not online access to check the exclusion list until 2014.”

clear, CIP did not know and had no reason to know that [K.W.] had been suspended and not reinstated.

Nevertheless, the ALJ concluded:

Under the statutory scheme implemented by the Legislature none of that matters. Monies were paid to [K.W.] in error. The law allows DHS to recover those sums even if [CIP] was blameless and the money was paid as a result of DHS mistakes.

The DHS commissioner took no action in response to the ALJ recommendation, and the recommendation became the final decision.

This appeal follows.

DECISION

Standard of Review

“Summary disposition is the administrative equivalent of summary judgment.” *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004). We review a summary-judgment award to determine whether there are any genuine issues of material fact and whether there was an error in applying the law to the facts. *Jorgensen v. Knutson*, 662 N.W.2d 893, 897 (Minn. 2003). When summary judgment is granted after applying the law to undisputed facts, the legal conclusion is reviewed de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

Agency decisions are presumptively valid, and “deference should be shown by [appellate] courts to the agencies’ expertise and their special knowledge in the field of their technical training, education and experience.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). Upon review of an agency decision, we must exercise judicial restraint, lest we substitute our judgment for that of the agency. *In re Denial of Eller Media*

Co.'s Applications for Outdoor Advert. Device Permits, 664 N.W.2d 1, 7 (Minn. 2003); *See In re Minn. Power's Transfer of M.L. Hibbard Units 3 & 4 Boilers*, 399 N.W.2d 147, 149 (Minn. App. 1987) (holding that "[a] reviewing court must not substitute its judgment on a question the agency is authorized to decide").

"If an administrative agency engages in reasoned decision making, the court will affirm, even though it may have reached a different conclusion." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984). We review de novo errors of law that arise when an agency decision is based on the meaning of words in a statute. *See St. Otto's Home v. Minn. Dept. of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989)."

I. The ALJ did not err by finding that DHS could recover monies paid to K.W.

CIP argues that the ALJ erred by determining that DHS may recover money paid to K.W. through CIP because K.W.'s suspension expired prior to her affiliation with CIP. In response, DHS argues that the ALJ correctly determined that it can recover the money because DHS paid for services performed by K.W., who was ineligible. We affirm the ALJ's decision because it correctly applies the relevant statute and rule.

Minn. Stat. § 256B.064, subd. 1c(a), provides that DHS "may obtain monetary recovery from a vendor who has been improperly paid . . . as a result of a vendor or department error, regardless of whether the error was intentional." Under Minn. R. 9505.2235, subp. 2:

A vendor who is under suspension or terminated from participation is eligible to apply for reinstatement as a provider or vendor at the end of the period of suspension or

when the basis for termination no longer exists. The department shall review a vendor's application to determine whether the vendor is qualified to participate as specified by the participation requirements.

Under Minn. R. 9505.2235 subp. 3:

A provider shall not submit a claim for a health service under a program provided by a vendor who is under suspension or terminated from participation unless the health service was provided before the vendor's suspension or termination. If a provider receives payment under a program for a health service provided by a vendor after the vendor's suspension or termination from participation, the department shall recover the amount of the payment and may impose administrative sanctions against the provider if the commissioner determines that the provider knew or had reason to know of the suspension or termination.

CIP argues that

although DHS may have erred by failing to identify [K.W.'s] expired suspension when it twice cleared her to work under the background study law and it may have erred when it failed to place her name on the state exclusion list, the agency did not commit an "error" triggering a monetary recovery within the meaning of Minn. Stat. § 256B.064, subd. 1c. This is because CIP was never "improperly paid."

In support of this argument, CIP contends that Minn. R. 9505.2235 contemplates two types of vendors: those who are "under suspension" and those who "apply for reinstatement as a provider or vendor at the end of the period of suspension or when the basis for termination no longer exists." CIP thus argues that a plain reading of Minn. R. 9505.2235 "shows that the monetary recovery provision in subparagraph 3 only applies to individuals 'under *suspension*,'" and because K.W.'s suspension had expired before she became affiliated with CIP, she could no longer be considered under suspension.

Therefore, CIP concludes “there is no relevant ‘error’ here for SIRS to correct under the authority granted by Minn. Stat. § 256B.064, subd. 1c.”

The ALJ determined that while it was true that K.W.’s suspension period had ended before she was affiliated with CIP, it was also true that K.W. had not been reinstated, which was required for her to be eligible to participate in MHCP. K.W. was required to apply to DHS for reinstatement, and DHS “needed to make an independent [judgment] as to whether [K.W.] was qualified to participate in the program.” *See* Minn. R. 9505.2235, subp. 2. We agree.

The statutory language at issue here is clear: DHS was authorized to recover the funds paid in error to K.W., regardless of whether the error was intentional. *See* Minn. Stat. § 256B.064, subd. 1c(a). When K.W. was suspended from participating in MHCP, DHS informed her that she “may apply for reinstatement at the end of the two-year period. However, reinstatement is not automatic. You must formally reapply.” K.W. did not apply for reinstatement and was therefore ineligible to receive funds for the duration of her employ with CIP. *See* Minn. R. 9505.2232, subp. 2. Because K.W. was ineligible to receive funds, the monies DHS paid to CIP for her services were paid in error. Therefore, the ALJ did not err in determining that K.W. was “improperly paid” as a result of an “error,” and we affirm the ALJ’s recommendation allowing DHS to recover those monies.

II. The ALJ did not err in determining that DHS was entitled to recover despite CIP's lack of knowledge that K.W. had not been reinstated.

CIP argues that the “[r]ecommendation must be reversed because it improperly disregards the undisputed facts demonstrating that CIP did not know, and did not have reason to know, that [K.W.] has been suspended for a two-year period beginning more than three years before her affiliation with CIP.” Specifically, CIP contends that Minn. R. 9505.2235, subp. 3, requires knowledge of K.W.’s ineligibility in order for DHS to recover. While we are sympathetic to this argument, we affirm the ALJ’s recommendation that DHS can recover despite CIP’s lack of knowledge because it correctly applied the language of the applicable rule.

The ALJ determined that CIP misinterpreted Minn. R. 9505.2235, subp. 3, by arguing that the law allows DHS to collect only if it can establish CIP knew or should have known that K.W. had been suspended. Rather, the ALJ determined that the rule should be interpreted as containing two independent clauses as follows: first, “if a provider receives payment under a program for health services provided by a vendor after the vendor’s suspension or termination from participation, [DHS] shall recover the amount of the payment;” and second, DHS “may impose administrative sanctions against the provider if the commissioner determines that the provider knew or had reason to know of the suspension or termination.” The first clause does not condition recovery on whether the provider knew or should have known of the vendor’s suspension. However, the second clause contains a modifier that conditions the imposition of sanctions on whether the provider “knew or had reason to know of the suspension.” Therefore, the ALJ concluded

that under the plain language of the statute “‘the knew or had reason to know’ provision applies to the imposition of administrative sanctions,” but “not to the recovery of money paid.”

We agree. The ALJ’s interpretation of the statute; namely, that the “knew or should have known” provision conditions only DHS’s ability to impose sanctions, not its ability to recover payment, is consistent with the plain language of Minn. Stat. § 256B.064, subd. 1c(a). Based on this plain reading, because K.W. received payment after she was suspended and before she applied to DHS to be reinstated, DHS can recover the amount of the payment even though CIP did not know or have reason to know about K.W.’s failure to be reinstated.

Furthermore, even if we were to conclude that the Minn. R. 9505.2235 is ambiguous because it is unclear whether the “knew or should have known” provision applies to DHS’s ability to recover monies paid in error, this interpretation conflicts with Minn. Stat. § 256B.064, subd. 1c(a), which states that “whether the error was intentional” is inconsequential to DHS’s ability to obtain monetary recovery from a vendor who has been improperly paid. To construe the rule to deny recovery unless knowledge can be proved would effectively limit the broad authority given to DHS by the statute to recover improperly paid monies “regardless of whether the error was intentional.” See Minn. Stat. § 256B.064, subd. 1c(a). The ALJ determined that

The terms of Minn. Stat. § 256B.064, subd 1c and Minn. R. 9505.2235, subp. 3 may easily be read to give effect to both. Minn. Stat. § 256B.064, subd 1c allows [DHS] to recover money paid in error. Minn. R. 9505.2235, subp. 3 requires the [DHS] to recover money paid to a vendor after suspension and

permits the imposition of administrative sanctions if the provider knew or had reason to know of the suspension. The statute is broader than the rule, covering any monies paid in error, while the rule addresses situations regarding monies paid while a vendor was suspended. The terms of Minn. Stat. § 256B.064, subd 1c and Minn. R. 9505.2235, subp. 3 are not in conflict and are, in fact, complementary.

It is well settled that an administrative rule cannot contradict or override a statute. *See Billon v. Comm’r of Rev.*, 827 N.W.2d 773, 781 (Minn. 2013) (stating that when an applicable statute and administrative rule conflict, the statute prevails). Also, this court does not interpret laws in a way that renders other statutes meaningless or irreconcilable. *See Village Lofts at St. Anthony Falls Ass’n v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430, 439 (Minn. 2020) (citing Minn. Stat. § 645.26, subd. 1 (2020)). For the foregoing reasons, we conclude that the ALJ did not err in concluding that DHS was required to recover under Minn. R. 9505.2235.

CIP next argues that the ALJ’s recommendation impermissibly seeks to enforce a requirement to check the state exclusions list, even though no such requirement was in existence during the relevant time period. The ALJ determined that “there was no obligation for an organization like CIP to check the exclusion list until August of 2019,” when Minn. Stat. § 256B.064, subd. 3, was adopted by the Minnesota Legislature. We agree with the ALJ, but DHS’s ability to recover is based on the fact that the money paid to K.W. was paid in error, not on the fact that CIP failed to check the state exclusions list.

Finally, CIP argues that the ALJ’s decision must be reversed because the ALJ adopted a strict-liability standard that is inconsistent with DHS’s authority to recover under Minn. R. 9505.2235, citing *St. Otto’s Home*, 437 N.W.2d at 43, 45, in support of this

contention. In that case, the Minnesota Supreme Court determined that DHS's interpretation of an amended administrative rule was unreasonable in light of its past interpretation of similar language in a previous version of the rule and because DHS's interpretation contradicted the plain language of the rule. CIP argues that DHS has again put forth a "new and contrary" interpretation of an administrative rule, but provides no authority for its assertion that DHS has changed its own interpretation of Minn. R. 9505.2235.

The ALJ observed that this is "an incredibly harsh result." The record not only demonstrates that CIP did not know that K.W. had been suspended for a two-year period before her affiliation with CIP, but also demonstrates that CIP did nothing wrong. CIP took reasonable steps to comply with the law and to determine K.W.'s eligibility by submitting her name to DHS for background studies. We also highlight that DHS twice cleared K.W. to provide services, did not establish its exclusion list until 2013, and, even more troubling, K.W.'s name did not appear on that list until 2015. Adding to the "harshness" of this result is the fact that there was no requirement for CIP to check the exclusion list until August 2019, when the Minnesota Legislature added Minn. Stat. § 256B.064 subd. 3(d). 2019 Minn. Laws ch. 9, art. 2, § 114, at 1602-1603. Based on these undisputed facts, we agree with the ALJ that to grant summary disposition to DHS is "incredibly harsh;" nevertheless, the law supports this result. *See County of Freeborn v. Bryson*, 294 N.W.2d 851, 853 (Minn. 1980) ("Although we are sympathetic to appellants' position, we are bound by the statutory language" [and] "arguments for change[s to statutory provisions] must be directed to the legislature, not to the courts.").

III. The commissioner did not err by failing to issue a final order.

CIP argues that the commissioner “amplified” the ALJ’s misreading of the statute and committed reversible error “by refusing to exercise any discretion at all as evidenced by her refusal to either adopt or reject the [r]ecommendation.” While we are sympathetic to the CIP’s position, the commissioner did not err based on the applicable law.

An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences, conclusions or decisions that are unsupported by substantial evidence in view of the entire record, or arbitrary and capricious, but the court must also recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest [the court] substitute its judgment for that of the agency.

In re Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 277 (Minn. 2001) (quotation and citation omitted). When there is room for two opinions on the matter, the action is not arbitrary and capricious, even though the court may believe an erroneous decision was reached. *Brown v. Wells*, 181 N.W.2d 708, 711 (1970).

Under Minn. Stat. § 14.62, subd. 2a, “[u]nless otherwise provided by law, the report or order of the administrative law judge constitutes the final decision in the case unless the agency modifies or rejects it . . . within 90 days after the record of the proceeding closes.” Here, the commissioner did not issue a final order, but a designee notified the ALJ and the parties that the recommendation would constitute the final order of the agency pursuant to Minn. Stat. § 14.62, subd. 2a. Nothing in the applicable statutes or case law mandates the commissioner review the ALJ’s recommendation and suggest modifications, nor does the record demonstrate that the commissioner acted arbitrarily or capriciously.

Notwithstanding the commissioner's compliance with the law, we note that the commissioner could have amended the order, acting within her discretionary power, to soften the "extremely harsh result" to CIP. See Minn. Stat. § 256B.064, subd. 1c. However, we have no choice but to exercise judicial restraint and determine that the commissioner did not err by failing to issue a final order on the contested matter and allowing the ALJ's recommendation to become the final agency decision. See *County of Freeborn*, 294 N.W.2d at 853; see also *Brown*, 181 N.W.2d at 711.

IV. Relator did not raise an argument for estoppel.

DHS argues that CIP implicitly raised an estoppel argument as a defense. However, the record does not support DHS's contention that CIP raised an estoppel claim either in the contested-case proceeding or on appeal and, therefore, we need not address it here. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts generally will not consider new issues on appeal).

Affirmed.