

*This opinion is nonprecedential except as provided by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
A21-1206**

In the Matter of the Surveillance and Integrity Review (SIRS)
Appeal by Matthew Wright.

**Filed May 16, 2022
Affirmed
Connolly, Judge**

Minnesota Department of Human Services
File No. 37060

Jason Schellack, Nathaniel Gurol, Autism Advocacy & Law Center, Minneapolis,
Minnesota (for appellant Wright)

Keith Ellison, Attorney General, Peter Shaw, Assistant Attorney General, St. Paul,
Minnesota (for respondent department)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this certiorari appeal, relator argues that respondent's decision to suspend him from participating in the Minnesota Health Care Program (MHCP) for three years is arbitrary and capricious and is unsupported by substantial evidence. We affirm.

FACTS

The facts of this case are undisputed. Relator Matthew Wright resides with his girlfriend, the couple's child, and Wright's girlfriend's two children from previous

relationships. All three children have special needs, and Wright's girlfriend's oldest child (Child 1) is autistic.

In August 2015, Wright entered into a provider agreement with respondent Minnesota Department of Human Services (department) to be a personal care assistant (PCA) and to provide community directed consumer support services (CDCS). CDCS is a program offered by Minnesota Medical Assistance (MMA) through which certain recipients may receive personal support services. MMA is administered by the department. See Minn. Stat. §§ 256B.04, subd. 1, .02, subd. 5 (2020). To ensure that MMA funds are properly spent, the department created the Surveillance and Integrity Review Section (SIRS), which is charged with "identifying and investigating fraud, theft, abuse, or error by vendors or recipients of health services through a program . . . that is administered by the department, and for the imposition of sanctions against vendors and recipients of health services." Minn. R. 9505.2160, subp. 1 (2021).

Wright began providing PCA services for Child 1 through Accra Care and, later, through Mains'1 FSE (Mains'1). Accra Care and Mains'1 are "MHCP enrolled provider[s] that can bill the state directly for services." Thus, to receive payment for the services, Wright submitted his time records to Accra Care, and later to Mains'1, who billed the MMA program and then paid Wright.

In June 2019, a county fraud prevention investigator filed a complaint with the department alleging that Wright was billing for time caring for Child 1 when the child could not have been receiving services. Following an investigation, a SIRS investigator determined that, between January 1, 2017, and July 22, 2017, Wright submitted numerous

claims for payment when Child 1 was at an after-school program and was not available for services. The investigation determined that Wright's conduct resulted in 344 unallowed hours and an overpayment to Mains'1 of \$6,559.23. The department then issued a notice of suspension on May 26, 2020, informing Wright that his conduct constituted abuse under the program, and imposed a three-year suspension.

Wright appealed the suspension, and a hearing was held before an administrative law judge (ALJ) in January 2021. The SIRS investigator and his supervisor testified for the department. The supervisor testified that, in deciding to impose a three-year suspension, the department considered the appropriate statutory factors, including the nature, chronicity, and severity of Wright's conduct, as well as the effect Wright's conduct had on the health and safety of Child 1. The supervisor testified that some factors are given more weight than others and stated that the number of instances of overlap, the number of unallowed hours, the length of the review period, and the dollar amount of overpayment reflected the seriousness of Wright's conduct.

Wright testified at the hearing and admitted that there was "100 percent proof" of the overlaps alleged by the department and that there was "no contesting" the department's proof. But Wright claimed that he was unable to keep accurate timesheets because the system implemented by Mains'1 did not allow him to input more than one entry per day. According to Wright, he did not realize that he was engaging in wrongful conduct because he was told by a county social worker to group all of his services into one daily entry, rather than report them as separate entries.

The ALJ found that the department “proved that on 81 occasions over a six-and-one-half-month period, [Wright] submitted timecards for providing PCA services to Child #1 that overlapped with times that Child #1 was attending an after-school program.”¹ The ALJ also found that although Wright’s conduct was “a wrong-headed attempt to simplify his bookkeeping,” he “testified credibly about why he filled out the timecards the way he did,” and he was not “trying to cheat or obfuscate.” The ALJ then determined that the department “presented credible evidence that it had considered the nature, chronicity, and severity of [Wright’s] conduct, but its consideration of the effect of [Wright’s] conduct on the person receiving services was superficial.” The ALJ concluded that the “severity of an administrative sanction must reflect the seriousness of the violation” and that the department’s “sanction of a three-year suspension of [Wright’s] license is not appropriate given the violations.” Thus, the ALJ recommended that Wright’s license be suspended for one year rather than three years.

The department filed exceptions to the ALJ’s report, arguing that the commissioner of human services should affirm and impose a three-year suspension. The commissioner subsequently filed a final order suspending Wright from “participation as a provider in [MHCP] for three years.” This certiorari appeal follows.

¹ Again, we note that, at the hearing, Wright admitted there was “100 percent proof” of the overlaps alleged by the department and that there was “no contesting” the department’s proof. Wright also admitted his “false information led to a string of illegal maneuvers” and that there were “probably a lot more” overlaps than what the investigator found in his investigation of the limited seven-month review period.

DECISION

Wright challenges his three-year suspension from participating in MHCP. “Administrative-agency decisions enjoy a presumption of correctness and may be reversed only when they are arbitrary and capricious, exceed the agency’s jurisdiction or statutory authority, are made upon unlawful procedure, reflect an error of law, or are unsupported by substantial evidence in view of the entire record.” *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003); Minn. Stat. § 14.69 (2020). “The relator has the burden of proof when challenging an agency decision” *Minn. Ctr. For Env’tl. Advocacy v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 433 (Minn. App. 2003).

Minnesota law allows the commissioner to impose sanctions, including suspensions, against vendors for:

(1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentment of false or duplicate claims or claims for services not medically necessary; [or] (3) a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled[.]

Minn. Stat. § 256B.064, subd. 1a (2020). When imposing these sanctions, the commissioner must consider “the nature, chronicity, or severity of the conduct and the effect of the conduct on the health and safety of persons served by the vendor.” *Id.*, subd. 1b (2020). Minnesota Rule 9505.2165 defines “vendor” to include a PCA and defines “abuse” to include submitting repeated claims, or causing claims to be submitted (1) from which required information is missing or incorrect; (2) using procedure codes that overstate

the level or amount of health service provided; or (3) for health services which are not reimbursable under the programs. Minn. R. 9505.2165, subps. 2(A)(1)-(3), 16a (2021).

Wright argues that the decision to impose a three-year suspension is “unsupported by substantial evidence in view of the entire record,” and was “arbitrary and capricious.” But, as the department points out, Wright “does not dispute the facts determined by [the department’s] investigation or the finding [that] he engaged in sanctionable abuse.” Instead, Wright only challenges the severity of the sanction imposed. The department contends that because Wright “is solely challenging the Commissioner’s choice of sanction, does not dispute he engaged in sanctionable conduct, and does not dispute any of the ALJ’s findings which were adopted by the Commissioner, the proper standard for reviewing [Wright’s] claims is . . . the clear abuse of discretion standard.”

We agree with the department. “[T]he severity of an administrative sanction must reflect the seriousness of the violation.” *Burke*, 666 N.W.2d at 728. But an appellate court does not issue sanctions, and its review is limited to whether the sanctions imposed constituted a clear abuse of discretion. *Id.*; see *In re Henry Youth Hockey Ass’n, License No. 02795*, 511 N.W.2d 452, 456 (Minn. App. 1994) (“An administrative agency’s assessment of penalties or sanctions is an exercise of its discretionary power.”), *rev’d in part on other grounds*, 559 N.W.2d 410 (Minn. 1994); *Proetz v. Minn. Bd. of Chiropractic Exam’rs*, 382 N.W.2d 527, 532-33 (Minn. App. 1986) (“The assessment of sanctions by a professional board is discretionary,” and “[a]bsent an abuse of discretion, the Board’s decision will not be disturbed on appeal.”), *rev. denied* (Minn. May 16, 1986). Therefore, because Wright challenges only the severity of the sanction imposed by the commissioner,

our review of that issue is limited to whether the commissioner abused its discretion by imposing a three-year suspension.

Wright argues that the department's suspension is excessive because the decision placed too much emphasis on certain conduct and failed to place enough weight on his conduct's effect, or lack thereof, on Child 1. Specifically, he contends that a three-year suspension was not appropriate because the department "only considered the number of instances of overlap and the number of unallowed hours," which he claims was exacerbated by the department's failure to provide a warning. Wright also contends that the department "seemingly only considered the effect on [Child 1] using the instances of overlap and the number of unallowed hours and otherwise seemingly did not investigate that factor at all."

We are not persuaded. The ALJ determined that the department presented "credible evidence" that it considered the appropriate statutory factors, and Wright does not challenge this determination. Indeed, both the SIRS investigator and his supervisor testified that, in contemplating the appropriate sanction, they considered the nature, chronicity, and severity of Wright's conduct, as well as the effect of this conduct on Child 1. *See* Minn. Stat. § 256B.064, subd. 1a (establishing the appropriate sanctions to be considered in imposing sanctions). The SIRS supervisor testified about the high percentage of overlaps involved in Wright's conduct, which consisted of 81 instances of overlap out of 109 dates during the review period when Child 1 was documented as being at an after-school program. The supervisor also noted the length of the review period and the dollar amount of overpayment, which were elements of the discussion. According to the

supervisor, the number of overlaps was a “high percentage,” and was an important factor in deciding the appropriate sanction to be imposed.

Wright argues that the department improperly focused on the number of overlaps and takes issue with the department’s policy “to disallow an entire shift of work hours for people providing care services, regardless of how much overlap is identified.” He argues that “this policy will more significantly affect those providing care to recipients who are allotted more service hours than others, namely, those who are more disabled and require the most care.” Wright further contends that because he falls into this category, and was never warned of the “problematic nature of his timecards,” the three-year suspension was not appropriate.

We acknowledge that Wright never received a warning related to his submission of overlapping timecards. But there is no requirement that the department issue any type of warning when it discovers wrongful conduct. And, as the department points out, the misconduct occurred between the dates of January 1, 2017, to July 22, 2017, approximately two years before the investigation began. There is no evidence suggesting that, prior to the beginning of the investigation in 2019, the department was aware that Wright was engaging in wrongful conduct. Thus, under the facts and circumstances in this case, any type of warning would have been issued far too late.

Moreover, despite Wright’s displeasure with the department’s practice of deeming an entire claimed shift unallowed if any portion of the shift overlapped with times the recipient was at the after-school program and not available for services, the SIRS supervisor explained that the overlapping timesheets call into question the veracity of the

entire claimed shift, so the department views the entire shift as unsupported when there is a false documentation for any part of the shift. And according to the supervisor, the department follows this practice consistently when assessing provider sanctions. Although Wright may not agree with the department's policy, we generally do not interfere with an agency's decision to use certain factors in making agency decisions. *See A.A.A. v. Minn. Dept. of Human Servs.*, 832 N.W.2d 816, 828 (Minn. 2013) (stating that reviewing courts "generally defer to reasonable agency decisions").

Wright further argues that the department failed to consider the effect of his conduct on Child 1 and whether the child was actually harmed. Indeed, the department "concedes there is no evidence substantiating a detrimental impact on the health and safety of [Child 1]." But the SIRS supervisor testified that they "always consider. . . the patient's safety and if the patient – or the recipient itself was receiving services." And the supervisor acknowledged that some factors are given more weight than others, including the number of occurrences, which "is probably given the most weight." Although Wright claims that the department put too much weight on this factor, there is no statutory requirement that factors be weighed in a certain manner. Rather, as the department points out, "[e]vidence or lack thereof regarding harmful impacts on the recipient is a factor to be considered," but "it does not mean [that the department] is barred from imposing sanctions under the statute, nor does it mean the Commissioner's decision to impose a three-year suspension is unjustified." The department considered all the statutory factors and weighed them in its discretion. Therefore, we cannot conclude that, because the department placed more

weight on the severity of Wright's conduct, the department abused its discretion by imposing a three-year suspension.

Finally, Wright argues that the suspension was excessive when compared to prior cases that are factually similar. To support his position, Wright cites two cases discussed by the ALJ: *In the Matter of SIRS Appeal of Caring Professionals Homecare LLC, Matthew Dewey and Flavianna Tesha*, OAH 15-1800-22193-2 (Apr. 23, 2012) (*Caring Professionals*), and *In the Matter of SIRS Appeal of Kofoworola Adeyeye*, OHA 16-1800-21068-2 (Aug. 9, 2010) (*Adeyeye*). Wright argues that, as the ALJ found, "[t]his matter clearly falls between those two cases," which demonstrates that his suspension is excessive.

In *Caring Professionals*, the ALJ recommended that the full overpayment of \$91,870.33 be recovered by the department and that a two-year suspension be imposed. 2012 WL 6568303, at *1. In contrast, the ALJ in *Adeyeye* determined that a two-year suspension was too harsh for an individual who reported providing services to a recipient during a time when the recipient was attending school. 2010 WL 3430427, at *1-3. The ALJ instead recommended "a sanction less severe than suspension, such as a monetary recovery," where the overpayment involved only four days and ten PCA hours. *Id.* at *3-4.

As the department points out, *Caring Professionals* and *Adeyeye* are readily distinguishable from this case and do not show that the sanctions here are inconsistent with prior decisions. Although the amount of overpayment in *Caring Professionals* was substantially more than the overpayment in this case, the two-year suspension was not based on the amount of overpayment, but rather on the parties' "Stipulated Provider

Agreements.” 2012 WL 6568303, at *1. And, although the ALJ in *Adeyeye* recommended a sanction less severe than suspension, the overpayment in that case involved only four days and ten PCA hours. 2010 WL 3430427, at *1-3. In contrast, the number of unallowed hours in this case was 344, which is substantially more egregious than the conduct at issue in *Adeyeye*.

The department contends that this case is comparable to *In the Matter of SIRS Appeal of Britani Arlean Hodges*, OAH 68-1800-33981 (May 3, 2017) (*Hodges*). In that case, the ALJ found that there were 355.5 overlapping hours totaling an overpayment of \$6,071.94. *Hodges*, 2017 WL 2304338, at *3. But the ALJ also found that there was no evidence that the wrongful conduct had any effect on the health or safety of the recipients. *Id.* at *6. Thus, the ALJ recommended a three-year suspension because the department’s recommended suspension of five years was “too severe a sanction.” *Id.*

The number of overlapping hours and amount of overpayment in *Hodges* are very similar to this case. And, as in *Hodges*, there is no indication that Wright’s conduct adversely affected the recipient. Because the three-year suspension imposed in this case is similar to the suspension recommended in *Hodges* for similar conduct, Wright is unable to show that the department’s sanction is inconsistent with prior decisions. Accordingly, the department’s decision to impose a three-year suspension was not an abuse of discretion.

Affirmed.