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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1506**

In re:
New American Development Center Appeal
of MDE-NPS January through April 2022
Claims Disallowance Decision in the
Child and Adult Care Food Program.

**Filed July 17, 2023
Affirmed in part, reversed in part, and remanded
Worke, Judge**

Minnesota Department of Education

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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this certiorari appeal, relator challenges the denial and recovery of reimbursements under the federal Child and Adult Care Food Program (CACFP). We affirm in part, reverse in part, and remand.

FACTS

Respondent Minnesota Department of Education (MDE) administers CACFP under federal regulations. 7 C.F.R. §§ 226.2 (defining “[s]tate agency” to include “the [s]tate educational agency”), .3(b) (charging the relevant state agency with administering CACFP in each state) (2023). Under an April 2021 agreement with MDE, relator New American Development Center agreed to be a CACFP “institution” that operates an “[a]t-risk afterschool care center” providing free suppers and snacks to children facing food insecurity. *See* 7 C.F.R. § 226.2 (defining “[i]nstitution” to include an “at-risk afterschool care center”). MDE reimburses institutions such as relator with federal money for CACFP expenses. 7 C.F.R. §§ 226.4(b), .7(k) (2023). This appeal stems from disputes between relator and MDE regarding whether one of relator’s food-service methods is reimbursable under CACFP regulations, what notice MDE must give when denying or recovering reimbursement, and whether relator produced sufficient documents to support the reimbursement claims at issue.

Relator’s CACFP food service involves two methods. First, relator’s “dry meals” method involves “packag[ing] a week’s worth of meal” and snack “components” into a “[g]rocery [b]ox” “and deliver[ing] them to CACFP participants every week.” Second, relator’s “hot meals” method involves restaurant vendors delivering “hot meals” and snacks to CACFP participants.

In April 2021, before MDE and relator entered the CACFP agreement, MDE’s at-risk coordinator met with relator’s executive director for an approval visit. According to the coordinator’s notes, relator would be “[d]istributing (home delivering) seven days of

food on Thursdays.” The coordinator noted that she did “[n]ot observe[]” the building where relator “stored” and “prepared” food, nor did she observe any “[m]eal service.” As to the “[t]ype of meal service” that relator would provide, the box for “[u]nitized/[b]agged” was checked.

The at-risk coordinator met with relator’s executive director again in late May 2021 regarding preapproval for the Summer Food Service Program (SFSP), which is separate from CACFP. *See generally* 7 C.F.R. pt. 225 (2023) (governing SFSP). The coordinator noted that “[m]eals are prepared by one of three vendors and . . . packaged . . . for . . . pick-up . . . or delivery to homes.” The notes indicated that the vendors were supplying both “packaged” and “hot” meals.

The at-risk coordinator visited relator’s “dry meals” packing site in July 2021 for “technical assistance” regarding SFSP. In an email to relator’s executive director, the coordinator stated that the visit could include topics such as “meal pattern, meal service, and meal counting/claiming.” In the record, there is a photo of the coordinator at the packing site during the visit. Relator claims that in the photo, the coordinator was “personally observ[ing] [relator]’s packaging of bulk meal components.”

Two days after the technical-assistance visit, the coordinator emailed relator’s executive director a photo of a “packing sheet” for relator’s SFSP meals. The sheet listed items such as, “[two] tuna, “[four] potato[es],” and “[two] onion[s]” in columns respectively labeled one, two, and three “kid[s].” In the email, the coordinator asked, “Which items should a child be eating each day of the week for a SFSP breakfast and for a SFSP supper, and what should the portion size be for each item?” Relator’s executive

director replied with a list of food components and quantities “per child,” such as three-fourths cup of “[c]ereal” for breakfast and one-half cup of “enriched pasta” for supper.

During June and July 2021, relator’s executive director emailed the contents of relator’s SFSP “[seven]-[d]ay [g]rocery [b]ox” to the at-risk coordinator. The listed contents included quantities of “frozen” chicken, “raw” beef, eggs, and various “fresh” or “frozen” vegetables.

The at-risk coordinator visited the packing site again in November 2021, this time regarding CACFP. The following notes of the visit are in the record:

- Site is packaging groceries for distribution to children.
- [Relator] reported that children will have snack on-site; supper will be a hot meal/vended.

On April 6, 2022, MDE ordered relator to produce documents supporting relator’s reimbursement claims for January through March 2022. The demanded documents included “[m]eal and snack count records,” “[a]ttendance records,” “[m]enus for all meals and snacks served,” and “[r]eceipts and invoices for . . . meals purchased” by relator.

On June 29, 2022, after receiving the supporting documents from relator, MDE sent relator a notice of appealable action denying relator’s reimbursement claims for March and April 2022. In the notice, MDE stated that it would also recover the reimbursements paid for January and February 2022. MDE’s stated “[r]eason[s] for [d]enial” and recovery of reimbursements for January through March 2022 were that (1) relator “[d]elivered [g]roceries (ingredients) not meals”; and (2) relator’s “[s]upporting documentation” was “not consistent with [the] [c]laim[s] submitted.” MDE denied relator’s April 2022

reimbursements “based on consistent operations of Jan-March[;] [d]elivered [g]roceries (ingredients) not meals.” MDE explained that federal regulations “require documentation [to] support[] [c]laim[s]” for reimbursement and require “meals to be served and not ingredients.”

On July 14, 2022, relator filed a notice of appeal to MDE’s appeal panel, including exhibits and written argument but waiving an in-person hearing. Relevant to this appeal, relator argued that: (1) 7 C.F.R. § 226.20 (2023) permits relator’s “dry meals” method and does not require individually unitized meals; (2) MDE is equitably estopped from enforcing any unitized-meal requirement; (3) MDE’s claim of inconsistent documents without explanation or example was insufficiently specific notice under 7 C.F.R. § 226.2 and “raise[d] due process concerns”; and (5) relator should be reimbursed for claims “that have nothing to do with” MDE’s “‘grocery item’ objection.”

On July 29, 2022, MDE filed a document with the appeal panel titled “Summary of Documents.” In this summary, MDE provided nonexhaustive examples of how it considered relator’s reimbursement claims inconsistent with the supporting documents. Additionally, MDE filed copies of the April 6, 2022 correspondence between MDE and relator, a USDA CACFP at-risk afterschool meals guide, relator’s CACFP application, and a spreadsheet of all relator’s past CACFP reimbursement claims.

Later on July 29, relator filed a reply letter asserting that MDE violated due process because the notice of appealable action vaguely stated the basis for denying and recovering relator’s reimbursements for snacks and unitized meals. Relator also asserted that MDE violated 7 C.F.R. § 226.6(k)(5)(iv) (2023), by filing new documents after relator filed its

notice of appeal to the MDE appeal panel. Relator claimed that, in any event, MDE lacked authority under CACFP regulations to file these documents when it did.

The appeal panel affirmed MDE's denial-and-recovery decision in full based on various factual findings and legal conclusions, rejecting each of relator's arguments. Relator appealed to this court by petition for a writ of certiorari.

DECISION

MDE “undertook a quasi-judicial function” by “conduct[ing] an investigation into” relator’s “disputed claim[s]” for reimbursement, weigh[ing] evidence,” “appl[ying] th[e] facts to . . . prescribed standard[s]” under CACFP regulations, and “reach[ing] a binding decision on the matter.” *Eneh v. Minn. Dep’t of Health*, 906 N.W.2d 611, 614 (Minn. App. 2018).¹ We may review a quasi-judicial decision “by writ of certiorari when,” as here, “there is no statute or appellate rule that otherwise permits judicial review.” *Id.* We review quasi-judicial decisions as to “questions affecting the jurisdiction of the [agency], the regularity of the proceedings, and . . . whether the . . . determination was arbitrary, oppressive, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Partners in Nutrition’s Appeal*, 904 N.W.2d 223, 228 (Minn. App. 2017) (alteration in original) (quotation omitted).

Quasi-judicial decisions “enjoy a presumption of correctness.” *Indep. Sch. Dist. No. 709 v. Bonney*, 705 N.W.2d 209, 213 (Minn. App. 2005) (quotation omitted). We “will

¹ CACFP regulations required “administrative review” only after MDE made its denial-and-recovery decision. 7 C.F.R. § 226.6 (k)(2)(ix), (xii) (2023). Therefore, this is not a contested case governed by the Minnesota Administrative Procedure Act. *See* Minn. Stat. § 14.02, subd. 3 (2022); *Eneh*, 906 N.W.2d at 613-14.

uphold the decision if the agency provided ‘any legal and substantial basis’ for its action.” *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 284 (Minn. App. 2001) (quoting *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996)). “The party seeking reversal has the burden of demonstrating error[.]” *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001), and prejudice from the error. *Partners in Nutrition’s Appeal*, 904 N.W.2d at 231 (declining to reverse quasi-judicial denial of CACFP application for nonprejudicial legal error).

I. Unitized-meal requirement

A. Interpretation of “meals”

Relator argues that MDE erroneously based its denial-and-recovery decision in part on the conclusion that 7 C.F.R. § 226.20 required relator to serve “ready-to-eat-meals rather than groceries.” Relator specifically asserts that MDE incorrectly interpreted the term “meals” to require a reimbursable CACFP meal to be prepared and unitized. We reject relator’s argument and defer to MDE’s reasonable interpretation of “meals.”

“Interpreting a federal regulation is a question of law” reviewed de novo. *In re Ali*, 938 N.W.2d 835, 838 (Minn. 2020). When the regulation’s “language is plain and unambiguous,” we must “follow that plain language” without deference to the agency’s interpretation. *In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021) (*U.S. Steel*). Language is ambiguous when it “is subject to more than one reasonable interpretation.” *Id.* When determining “whether words or phrases are ambiguous,” courts must consider them in context “with the apparent purpose of the regulation as a whole.” *In re Cities of Annandale & Maple Lake NPDES/SDS Permit*

Issuance for Discharge of Treated Wastewater, 731 N.W.2d 502, 517 (Minn. 2007) (*Annandale*).

Deference may be required to an “agency’s interpretation of a federal regulation” that the agency “is charged with enforcing and administering” if the regulation is ambiguous. *Id.* at 512-13, 516. Here, we treat CACFP regulations as “MDE’s own” because “MDE has day-to-day responsibility for enforcing and administering” CACFP. *See Indep. Sch. Dist. No. 622 v. North St. Paul-Maplewood-Oakdale Educ. Ass’n (In re Petition for Clarification of an Appropriate Unit)*, 880 N.W.2d 383, 389 n.3 (Minn. App. 2016). When an agency’s own regulation is ambiguous, we will defer to the agency’s interpretation if it is reasonable. *U.S. Steel*, 954 N.W.2d at 576. Whether the agency’s interpretation is reasonable can depend on “several factors,” including “the nature of the regulation at issue.” *Id.*

Under 7 C.F.R. § 226.20(a), “each *meal* served” in CACFP generally “must contain, at a minimum,” various “food components.” (Emphasis added.) The components include various quantities and types of milk, vegetables, fruits, grains, and meat or “meat alternates.” 7 C.F.R. § 226.20(a)(1)-(5). Additionally, “at-risk afterschool *meals*” must meet one of “the *meal*[-]pattern requirements” in 7 C.F.R. § 226.20(c)(1)-(3). 7 C.F.R. §§ 226.2 (defining “[a]t-risk afterschool meal”); .17a (emphasis added) (2023). We interpret 7 C.F.R. § 226.20 with focus on the term “meals.”

CACFP regulations define “[m]eals” as “food . . . served to” CACFP “participants” that “meets the nutritional requirements set forth in this part.” 7 C.F.R. § 226.2. This definition does not resolve whether the “food . . . served” must be prepared and unitized

into a ready-to-eat meal for reimbursement. But there is strong support for MDE's interpretation of "meals" when reading 7 C.F.R. § 226.20 contextually.

For example, 7 C.F.R. § 226.20(a) states that "each meal . . . must contain" the listed food components. The phrase "each meal" suggests that a "meal" is a prepared unit, not a mere collection of food components. That the meal must "contain" the ingredients further supports this reading. Conversely, in setting forth what must be in a "[b]reakfast," "[l]unch," or "[s]upper," the regulation distinguishes the "required components" of a meal from "the breakfast meal" and the "lunch and supper meals" themselves. 7 C.F.R. § 226.20(c)(1)-(2).

The regulation also specifies how some food components must be served within a meal. This suggests that a CACFP meal must be prepared and unitized before service, perhaps to ensure the full nutritional value of the meal. "Meat and meat alternates," for example, "must be served in a main dish, or in a main dish and one other menu item." *Id.*, (a)(5)(i). "Nuts and seeds and their butters . . . must be combined with other meat and meat alternates to meet the full requirement for a reimbursable lunch or supper." *Id.*, (a)(5)(ii).

Further, the regulation permits "[f]amily style meal service," which "allows children and adults to serve themselves from . . . platters of food with the assistance of supervising adults." *Id.*, (n). "[S]ufficient . . . *prepared food* must be placed on each table to provide the full required portions of each of the components" required by 7 C.F.R. § 226.20(c)(1)-(2). *Id.*, (n)(1) (emphasis added). "During the course of *the meal*,"

supervising adults must “encourage each child and adult to serve themselves the full required portion of each food component of the meal pattern.” *Id.*, (n)(2) (emphasis added).

Even if the above context does not unambiguously favor MDE’s interpretation, MDE’s interpretation is at least reasonable given the nature of CACFP regulations. *See Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d at 576. CACFP’s purpose is improving the health and development of “young children” along with the health of “older adults and chronically impaired persons.” 7 C.F.R. § 226.1 (2023). Thus, as the appeal panel explained, the apparent “policy reason behind requiring . . . ready-to-eat meals rather than groceries is to ensure that children can meet daily nutritional needs even if they are not able to cook for themselves or do not have capable adults who can make meals for them.” We defer to this policy judgment by resolving any ambiguity in MDE’s favor and affirming its interpretation of 7 C.F.R. § 226.20.

We affirm on this ground only as to MDE’s denial and recovery of reimbursement for “dry” suppers. The appeal panel’s findings and conclusions do not clarify whether MDE’s denial and recovery of reimbursement for snacks and “hot” suppers was based on failing to serve unitized “meals” in accord with 7 C.F.R. § 226.20, inconsistent supporting documentation, or both. *See* 7 C.F.R. § 226.2 (defining “[s]nack” separately from “[m]eals” to mean a “meal supplement”). We therefore address MDE’s denial and recovery of reimbursement for snacks and “hot” suppers separately and on different grounds in Sections II through IV below.

B. Equitable estoppel regarding unitized-meal requirement

Relator argues that the appeal panel should have applied equitable estoppel against MDE's enforcement of any unitized-meal requirement. To support this claim, relator points to the actions of the MDE at-risk coordinator and MDE's past reimbursement of relator for nonunitized meals. Our supreme court has reviewed the district court's application of equitable-estoppel against the government for an abuse of discretion—that is, for erroneous applications of law, clearly erroneous factfinding, and “arbitrary or capricious” exercises of discretion. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 23-24 (Minn. 2011) (quotation omitted). Analogously, we review whether the appeal panel's equitable-estoppel decision relied on an erroneous application of law, lacked substantial evidentiary support, or was arbitrary and capricious. *Partners in Nutrition's Appeal*, 904 N.W.2d at 233 (reviewing whether quasi-judicial denial of CACFP application was arbitrary and capricious); *In re Application of N. Metro Harness, Inc.*, 711 N.W.2d 129, 137 (Minn. App. 2006) (“When an agency acts in a quasi-judicial capacity, an appellate court applies the substantial[-]evidence test on review.”), *rev. denied* (Minn. June 20, 2006).

Evidence is substantial if “a reasonable person would accept [it] as adequate to support a conclusion.” *In re Appeal by Waters*, 977 N.W.2d 874, 885 (Minn. App. 2022) (quotation omitted). It “requires more than a scintilla of evidence, more than some evidence, and more than any evidence.” *Id.* (quotation omitted). Under the substantial-evidence test, we will affirm if the “agency engage[d] in reasoned decisionmaking,” even if this court “may have reached a different conclusion had it been

the factfinder.” *N. Metro Harness*, 711 N.W.2d at 137 (Minn. App. 2006) (quotation omitted), *rev. denied* (Minn. June 20, 2006).

[A]n agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.

Partners in Nutrition’s Appeal, 904 N.W.2d at 233 (alteration in original) (quotation omitted).

Estoppel is not “freely applied against the government.” *City of North Oaks*, 797 N.W.2d at 25 (quotation omitted). “Accordingly, one seeking to assert estoppel against a governmental entity has a heavy burden of proof.” *Id.* (quotation omitted). To establish a claim of equitable estoppel against the government, a party must prove, among other elements, that the government engaged in “wrongful conduct” by “ma[king] a misrepresentation of material fact” that the government “knew . . . was false.” *Id.* (quotation omitted); *AAA Striping Serv. Co. v. Minn. Dep’t of Transp.*, 681 N.W.2d 706, 720 (Minn. App. 2004). Such a misrepresentation must be “affirmative . . . rather than a mere impression.” *Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 821 (Minn. App. 2005), *rev. denied* (Minn. July 19, 2005). “Affirmative misconduct is not simple inadvertence, mistake, or imperfect conduct.” *Bond v. Comm’r of Revenue*, 691 N.W.2d 831, 838 (Minn. 2005).

Here, the appeal panel appropriately concluded that MDE made no affirmative or knowing misrepresentation of material fact. Relator alleges a misrepresentation of law, not of fact. And substantial evidence supports the appeal panel’s factual findings.

The appeal panel specifically found that MDE previously reimbursed relator for nonunitized meals based on “an inadvertent oversight.” As to the April 2021 approval-visit notes, the appeal panel reasonably found that *relator* “represented that the only type of meal service . . . would be “[u]nitized/[b]agged.” These notes also support that the at-risk coordinator did not observe relator’s packing site or meal service during the visit. With that context, the note about delivering “seven days of food on Thursdays” does not compel a finding that the coordinator knew about relator’s “dry” suppers method or that she assured relator that CACFP permitted this method.

The coordinator’s notes of her May 2021 meeting with relator’s executive director regarding SFSP—not CACFP—also do not compel such findings from the meeting. To the contrary, the notes support that relator’s executive director informed the at-risk coordinator only that relator was using vendors to supply “packaged” and “hot” meals without clarifying that “packaged” meals apparently consisted of groceries. And the appeal panel reasonably found that during the coordinator’s visit to relator’s packing site in July 2021 regarding SFSP, the coordinator “did not personally witness in what form” the groceries “eventually reached the children. She merely witnessed food items being grouped together into bags.”

The coordinator might have discerned the “dry” suppers method after relator’s executive director emailed her the SFSP packing list and the contents of relator’s grocery

boxes. But the appeal panel made no finding on this point and, again, that correspondence pertained to SFSP, not CACFP. Even if the at-risk coordinator learned of relator’s “dry” suppers method at that time, the correspondence contains no affirmative representation by the coordinator that such suppers would be reimbursable.

Regarding the November 2021 visit for CACFP, the appeal panel found that the at-risk coordinator either (1) believed that relator was “packag[ing] and process[ing] the ingredients” into suppers, or (2) did not know about the unitized-meal requirement. The preceding visits and correspondence discussed above, and the ambiguous November 2021 visit notes, reasonably support both possibilities. Given the above considerations, substantial evidence supports the appeal panel’s finding that the at-risk coordinator made no affirmative or knowing misrepresentation on which to base estoppel, but at most made a simple mistake.

That MDE previously reimbursed relator for “dry” suppers does not arise to an affirmative or knowing misrepresentation either. Our supreme court rejected a similar equitable-estoppel claim in *Brown v. Minnesota Department of Public Welfare*, 368 N.W.2d 906 (Minn. 1985). In *Brown*, a medical provider argued—much like relator does here—that the state was equitably estopped from recovering erroneously paid and otherwise nonreimbursable medical-assistance funds from over 900 claims submitted by the provider. 368 N.W.2d at 911. The supreme court held that previously failing to “catch” these errors was not “wrongful conduct,” which is required to estop the state, when applicable regulations “clearly provide[d] for the recovery of erroneous payments, thus informing medical providers that by paying a claim, the government is not representing

that there are no defects in the claim [that] would require recovery of the funds paid.” *Id.* at 912.

Likewise, substantial evidence supports that MDE simply failed to catch its prior reimbursements to relator for nonunitized meals. And CACFP regulations provide that MDE “shall . . . recover any payment to an institution not properly payable under this part.” 7 C.F.R. § 226.14(a). Therefore, erroneously reimbursing relator in the past for “dry” suppers was not an affirmative or knowing misrepresentation that relator’s “dry” suppers would be reimbursable here. Without addressing any other element of equitable estoppel, we conclude that substantial evidence supports the appeal panel’s finding that MDE made no affirmative or knowing misrepresentation of fact on which to base estoppel. Moreover, the appeal panel correctly applied the law on this element. Because relator failed to establish the elements of equitable estoppel, the appeal panel did not arbitrarily and capriciously reject relator’s equitable-estoppel claim. We accordingly reject relator’s equitable-estoppel claim.

C. Waiver of unitized-meal requirement

For the first time on appeal, relator argues that any unitized-meal requirement was waived during the relevant period by the United States Department of Agriculture. *See* U.S. Dep’t of Agric., COVID–19: Child Nutrition Response #91, Nationwide Waiver to Allow Specific Meal Pattern Flexibility in the Child and Adult Care Food Program for School Year 2021-2022 (Apr. 20, 2021). “The general rule that matters not raised below are not addressed on appeal extends to appeals from administrative decisions.” *Indep. Sch.*

Dist. No. 709, 705 N.W.2d at 219. We apply that rule here and deem relator’s waiver claim forfeited regardless of its merit.

II. Notice of reasons for denying snack and unitized-meal reimbursements

Next, relator argues that MDE violated 7 C.F.R. § 226.6(k)(5)(i) (2023) and procedural due process by giving partly insufficient notice of the basis for denying and recovering reimbursements in the notice of appealable action.² Relator specifically asserts that “supporting documentation not [being] consistent with [the] [c]laim[s] submitted” was too vague for relator to effectively respond.³ Relator fails to demonstrate as much with respect to its reimbursement claims for January through March 2022. And because we reverse and remand in Section IV below due to insufficient findings as to relator’s April 2022 reimbursement claims for snacks and “hot” suppers, we need not decide whether relator received sufficient notice of the basis to deny those claims.

“Interpreting a federal regulation is a question of law” reviewed de novo. *Ali*, 938 N.W.2d at 838. Likewise, “[w]hether an administrative agency has provided sufficient notice” to satisfy “procedural due process is a legal issue” reviewed de novo. *Wilhite v. Scott Cnty. Hous. & Redev. Auth.*, 759 N.W.2d 252, 257 (Minn. App. 2009).

MDE must offer “administrative review” when it denies or demands recovery of CACFP reimbursements. *See* 7 C.F.R. § 226.6(k)(2)(ix), (xii). “Administrative review”

² MDE does not dispute that we may address this claim under our common-law standard of review for quasi-judicial decisions. We review the claim as a matter affecting the regularity of the proceedings.

³ Relator does not dispute that “[d]eliver[ing] groceries (ingredients)” rather than “meals” was sufficient notice of the basis for denying and recovering nonunitized-meal reimbursements.

means “the fair hearing provided upon request to” “[a]n institution that has been given notice by the [s]tate agency of any action or proposed action that will affect” the institution’s CACFP “reimbursement . . . in accordance with” 7 C.F.R. § 226.6(k) (2023). 7 C.F.R. § 226.2. “Notice” means “a letter . . . that describes an action proposed or taken by a [s]tate agency” and “*specif[ies] . . . the basis* for the action.” *Id.* (emphasis added). Accordingly, the state agency must “give[] notice of . . . the basis for [an] action” subject to administrative review. 7 C.F.R. § 226.6(k)(5)(i); *see also Anderson v. Moberg Rodlund Sheet Metal Co.*, 316 N.W.2d 286, 288 (Minn. 1982) (stating that when “a . . . rule provides the manner, form, and time of notice, the notice must conform with the prescribed provisions” (quotation omitted)).

“[Q]uasi-judicial proceedings do not invoke the full panoply of procedures required” to satisfy due process “in regular judicial proceedings.” *N. Metro Harness, Inc.*, 711 N.W.2d at 136 (alteration in original) (quotation omitted). But “administrative agencies must observe the basic rules of fairness as to parties appearing before them.” *Schulte v. Transp. Unltd., Inc.*, 354 N.W.2d 830, 834 (Minn. 1984) (quotation omitted). Basic fairness includes “notice . . . reasonably calculated . . . to . . . afford the[] [parties] an opportunity to present their objections.” *Godbout v. Dep’t of Emp. & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013) (quotation omitted). That “include[s] notice of the claims of the opposing party and an opportunity to meet them.” *Anderson*, 316 N.W.2d at 288 (holding that former employee received insufficient notice “of the grounds” for former employer’s administrative appeal because employee did not receive employer’s letter explaining “the basis for appeal”); *see also In re Kindt*, 542 N.W.2d 391, 394 (Minn. App.

1996) (citing *Anderson* in due-process context). Put differently, it is “fundamental that notice . . . timely and clearly inform the individual of . . . the grounds for” the claims so that the individual can “marshal[] evidence and prepare his case.” *Anderson*, 316 N.W.2d at 288 (quotation omitted).

Here, the appeal panel concluded that MDE’s notice of inconsistent documentation sufficiently informed relator of the reasons for denial and recovery because the inconsistencies were “blatant and ubiquitous.” The appeal panel highlighted examples of “red flags” and “irregularities,” noting that: (i) relator submitted December 2021 meal counts to support its January 2022 meal counts; (ii) the “hot meals” vendor invoices showed significantly fewer meals purchased than relator’s “hot meals” counts showed that it served; (iii) an invoice from a “hot meals” vendor indicated that it was for SFSP, not CACFP; and (iv) the vendor’s attendance sheet “show[ed] all 285 children on the roster participating on all 31 days” of January 2022 “with uniform check marks next to blank rows with no . . . names listed . . . indicating that the record might have been filled out in one sitting” and “in haste” after the fact and “justif[ying]” MDE’s “inquest for further substantiating evidence.”

MDE raised the same issues in its July 29, 2022 summary of documents. MDE noted, among other things, that: one of relator’s “hot meals” vendor invoices improperly listed the vendor as a CACFP site; the number of meals that relator purportedly served and the number it claimed for reimbursement were inconsistent; and that relator’s wholesale invoices for its “dry meals” program included items not on relator’s menus.

We do not laud the notice given by MDE. But relator has not established that it received insufficient notice under CACFP regulations or due process to address the above issues or any other documentation issue to the appeal panel. Relator cites no authority showing that MDE's claim of inconsistent documents was insufficiently specific under CACFP regulations or due process. And "the notice required by due process . . . var[ies] with the circumstances . . . of each case, making it impossible to draw a standard set of specifications as to what is constitutionally adequate notice." *In re Application of Christenson*, 417 N.W.2d 607, 611-12 (Minn. 1987) (quotation omitted). Here, it is critical that relator is not an individual. Relator is an entity that is "*expected* to be sophisticated" and is "subject to a host of detailed rules" that it is "expected to know to be entitled to . . . reimbursement." *In re Emmanuel Nursing Home*, 411 N.W.2d 511, 516-17 (Minn. App. 1987) (holding that due process did not require nursing home providing care to medical-assistance recipients to be notified of right to appeal rate adjustment because it was "*expected* to be sophisticated" and "had to be at least somewhat familiar with" rule permitting appeal "to complete its cost reports"), *rev. denied* (Minn. Oct. 13, 1987); *Youth Leadership Acad.*, No. A22-0378, 2023 WL 1941593, at *1 (Minn. App. Feb. 13, 2023) (noting that CACFP participants "are subject to detailed regulatory requirements"); *cf. Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 63 (1984) (stating that "those who seek public funds" must "act with scrupulous regard for the requirements of law" and are "held to the most demanding standards").

In the notice of appealable action, MDE cited the most relevant CACFP rules. Those rules required relator to keep, "[a]t a minimum," records including those requested

by MDE. *See* 7 C.F.R. § 226.15(e)(4), (6)(ii), (10) (2023). They also required relator to “establish procedures to collect and maintain all” such records. *See id.*(e) (2023). Failing to adequately keep these records “shall be grounds” to deny or recover reimbursement “for meals served during the period covered by the records in question.” *See id.*; 7 C.F.R. §§ 226.10(b)(4) (2023) (requiring state agency to “demand repayment” of excess reimbursement), .14(a) (requiring state agency to “disallow any portion of” reimbursement claims that do “not comply with the recordkeeping requirements”).

Relator was also required to “edit check[]” each monthly reimbursement claim before submitting it. 7 C.F.R. § 226.10(c) (2023). “At a minimum,” that required relator to “[v]erify that each facility ha[d] been approved to serve the types of meals claimed[.]” *Id.*(c)(1). And when submitting each claim, relator needed to “certify that the claim [was] correct and that records [we]re available to support” it. *See id.*(c).

The above regulations—together with the expectation that relator be sophisticated in following them—minimized the specificity needed to put relator on reasonable notice of the basis for MDE’s denial-and-recovery decision. Relator was required to have a recordkeeping process by which it thoroughly reviewed and certified the accuracy of each monthly reimbursement claim based on the relevant records before submitting the claim. Relator was expected to know that failing to adequately keep these records would be grounds to deny and recover reimbursement for the relevant period. Within 15 days of receiving notice of inconsistent documentation, relator was expected to investigate its recordkeeping process, review the submitted records, follow-up with MDE, and identify the documentation issues discussed above before seeking administrative review. *See*

7 C.F.R. § 226.6(k)(5)(ii). Indeed, a reason for MDE’s denial-and-recovery decision was that one of relator’s “hot meals” vendors was operating a CACFP site without approval—an issue that relator’s edit check should have squarely addressed.

If relator’s documentation issues were explainable or relator failed to discern those issues, relator should have requested the in-person hearing to which it was entitled “in addition to . . . a review of written information” by the appeal panel. *See id.*(k)(5)(vi). At the hearing, relator could have clarified the documentation issues with MDE and presented testimony by those responsible for the relevant documents. *See id.* (permitting “testimony” by “the institution,” “responsible principals[,] and responsible individuals”). By waiving this hearing, relator contributed to any notice issue. Relator asks us to reverse based in part on this contribution. We decline to do so.

“Under the facts and circumstances of this case,” relator fails to show that the notice of inconsistent documentation was not reasonably calculated to give relator a fair opportunity to respond. *Kindt*, 542 N.W.2d at 394-95 (holding that notice terminating medical assistance on basis that recipient’s “personal or real property [was] more than the medical assistance limits” adequately notified recipient of “the reason for” termination to satisfy procedural due process). Relator also fails to show that 7 C.F.R. § 226.6(k)(5)(i) required anything more than the notice given. As a result, we reject relator’s notice arguments as to its January through March 2022 reimbursements claims. *See Montella*, 633 N.W.2d at 88. We do not decide relator’s notice argument as to its April 2022 reimbursement claim for snacks and “hot” suppers.

III. MDE’s alleged reliance on “information” not previously “available” to relator

Alternatively, relator appears to argue that by relying on documents submitted after receiving relator’s requests for administrative review, MDE relied on “information” not previously “available” to relator in violation of 7 C.F.R. § 226.6(k)(5)(iv). Under 7 C.F.R. § 226.6(k)(5)(iv), “[a]ny information on which the [s]tate agency’s action was based must be available to the institution . . . for inspection from the date of receipt of the request for an administrative review.”

The appeal panel found that all documents filed by MDE on July 29, 2022, contained information created by relator, already in relator’s possession, or otherwise available to relator. Relator does not appear to argue that the appeal panel based these findings on an erroneous application of law or that the findings lack substantial evidentiary support. We do not disturb these findings. And even if CACFP regulations did not authorize MDE to file documents after relator sought administrative review—as relator seems to claim—these findings render any lack of authorization nonprejudicial and insufficient for reversal. *See Partners in Nutrition’s Appeal*, 904 N.W.2d at 231.

Relator primarily focuses on the summary of documents, seeming to claim that the examples of inconsistency in the summary were new arguments constituting new “information.” Relator’s claim requires us to interpret 7 C.F.R. § 226.6(k)(5)(iv). We do so de novo. *See Ali*, 938 N.W.2d at 838.

Context suggests that relator is incorrect. *Annandale*, 731 N.W.2d at 517. CACFP regulations do not appear to define “information.” But 7 C.F.R. § 226.6(k)(5)(iv) requires that the “information . . . be available . . . *for inspection*,” suggesting that “information”

refers to evidentiary facts and not arguments. (Emphasis added.) The applicable subheading of this regulation—“[r]eview of *record*”—further supports this reading. 7 C.F.R. § 226.6(k)(5)(iv) (emphasis added). This is at least one if not the only reasonable reading of the regulation. Yet relator assumes without explanation that its reading of “information” follows from the plain language of the regulation.

Thus, we need not decide whether “information” is ambiguous. Nor need we resolve any ambiguity. Relator fails to show ambiguity or that any ambiguity should be resolved in relator’s favor. We therefore decline to reverse under relator’s interpretation of “information.” *See Montella*, 633 N.W.2d at 88.

IV. Denial and recovery in reliance on specified and unspecified “irregularities” in supporting documents

Relator argues that the appeal panel arbitrarily and capriciously relied on four “irregularities” in relator’s recordkeeping to affirm MDE’s denial-and-recovery decision. In our review, we keep in mind that relator not only has the burden of establishing error here, but also had the burden of producing the records requested by MDE “in sufficient detail to justify the reimbursement claimed.” *See* 7 C.F.R. §§ 226.10(c), .14(a), .15(e).

First, relator challenges the appeal panel’s reliance on an invoice from one of relator’s “hot meals” vendors stating that the invoice was for SFSP, not CACFP. Without citing the record, relator claims that it used this vendor for both programs, and that the invoice contained a typo. Nothing in the record required the appeal panel to find that the SFSP notation was a typo. And the appeal panel implicitly found the notation—as with the other recordkeeping discrepancies at issue—to be a “red flag” indicating that relator

failed to properly keep the invoices requested by MDE. *See In re Petition of Interstate Power Co.*, 416 N.W.2d 800, 807 (Minn. App. 1987) (recognizing that quasi-judicial finding may be “[i]mplied within the” agency’s “entire analysis”), *rev. denied* (Minn. Feb. 17, 1988). Without a hearing at which relator “refute[d]” MDE’s finding of inconsistent documentation as to the SFSP notation, *see* 7 C.F.R. § 226.6(k)(5)(v), relator has not shown that it was arbitrary and capricious to rely on the SFSP notation as an inconsistency justifying reimbursement denial and recovery.

Second, relator argues that MDE arbitrarily and capriciously relied on relator purportedly serving more snacks and meals than relator claimed for reimbursement. In its “[s]ummary of [d]ocuments,” MDE specifically cited relator’s January 2022 counts. In January 2022, relator counted 43,363 suppers and the same numbers of snacks served in its “hot meals” program. Relator counted 111,699 suppers and the same number of snacks served in its “dry meals” program. Ultimately, relator did claim fewer meals and snacks for reimbursement in January 2022 (128,950 suppers and snacks) than it purportedly served (around 155,000 suppers and snacks).

But, again, relator has pointed to no evidence explaining the discrepancies between its meal and snack counts and its reimbursement claims. Indeed, as MDE pointed out in its “[s]ummary of [d]ocuments,” relator’s January 2022 vendor invoices suggest that relator only purchased 37,580 “hot meals”—almost 6,000 less than it counted, which was itself less than relator claimed for reimbursement. In arguing that discrepancies in relator’s meal and snacks numbers are explainable, relator points only to contracts with two of its “hot meals” vendors, claiming that relator and the vendors gratuitously served more meals

and snacks than agreed in their contracts. But the record shows invoices from three such vendors. And the contracts in the record do not specify how many meals or snacks relator would buy. Given relator's burden to justify reimbursement, and considering relator's January 2022 vendor invoices, meal and snack counts, and reimbursement claims as a whole, relator has not shown that it was arbitrary and capricious to base reimbursement denial and recovery on the mathematical inconsistencies in these documents.

Third, relator claims that the appeal panel "speculat[ed]" that the attendance sheets from one of relator's "hot meals" vendors were "highly unrealistic." After reviewing the attendance sheets, we cannot say that the appeal panel's suspicion was arbitrary or capricious. The appeal panel appropriately noted that the attendance sheets appeared hastily filled out after the fact with "uniform check marks next to blank rows with no . . . names listed" and with almost no absences. *See* 7 C.F.R. § 226.10(c) ("In submitting a [c]laim for [r]eimbursement, each institution shall certify . . . *that records are available to support that claim.*" (emphasis added)). The appeal panel also appropriately noted that CACFP regulations expressly recognize expected "fluctuation in participation levels." 7 C.F.R. § 226.20(j). In conjunction with other unexplained discrepancies, relator has not shown that it was arbitrary and capricious to rely on the attendance sheets to justify reimbursement denial and recovery.

Next, relator seems to argue that the appeal panel arbitrarily and capriciously affirmed MDE's denial-and-recovery decision after reviewing only the documents supporting relator's January 2022 reimbursement claim. We reject this argument. The appeal panel remarked that there were "sufficient irregularities" in relator's January 2022

supporting documents to “raise red flags.” Thus, the appeal panel specified irregularities only from relator’s January 2022 supporting documents. The appeal panel stated, however, that it considered all documents submitted, listing each document at the end of its order. Relator has not shown that the appeal panel arbitrarily and capriciously failed to consider the entire record.

Finally, relator seems to argue that by justifying reimbursement denial and recovery based on the “small sampling” of above discrepancies with other unspecified “irregularities,” the appeal panel provided an “[in]adequate explanation for its decision” to satisfy the substantial-evidence test. Relator is correct that “the first part of the substantial-evidence inquiry” is “whether the [a]gency provided adequate explanations for its conclusions.” *In re PolyMet Mining, Inc.*, 965 N.W.2d 1, 9 (Minn. App. 2021), *rev. denied* (Minn. Sept. 30, 2021). “[O]nly after receiving a reasoned decision are we able to determine whether that conclusion is supported by the record.” *Id.* at 12.

Here, the appeal panel made adequate findings to support reimbursement denial and recovery as to January through March 2022. We have reviewed the record. And it is apparent that the three recordkeeping discrepancies discussed above represent pervasive patterns in the supporting documentation for January through March 2022, not isolated incidents. In its “[s]ummary of [d]ocuments,” MDE identified inconsistent menus and invoices from the “dry meals” program as a further basis for reimbursement recovery and denial. And as discussed above, MDE discerned that the invoices from one of relator’s “hot meals” vendors indicate that the vendor was operating as a CACFP site without authorization.

Ultimately, the appeal panel found that it could not separate any valid “portion of a claim” for reimbursement from the invalid portions because of the ubiquitous recordkeeping discrepancies identified by MDE. *See* 7 C.F.R. § 226.14(a). In affirming MDE’s decision in full, the appeal panel noted that its review does “not preclude” MDE from verifying portions of relator’s reimbursement claims for January through April 2022 and paying those portions to relator “on a case-by-case basis.” Considering the appeal panel’s findings and conclusions with the record as a whole, relator has failed to show that MDE’s denial-and-recovery decision was arbitrary, capricious, or based on insufficient findings as to January through March 2022.⁴

However, MDE did not ask relator to produce supporting documents for its April 2022 reimbursements. No such documents are in the record. And the appeal panel did not explain how inconsistent documentation otherwise justified denying relator’s April 2022 reimbursement claim for snacks and “hot” suppers. We cannot assume that substantial evidence supports this denial without at least further explanation by MDE.

We therefore reverse and remand this matter to MDE, but only as to its denial of reimbursement for snacks and “hot” suppers that relator claims to have served in April 2022. *See In re Restorff*, 932 N.W.2d 12, 18 (Minn. 2019) (“[W]e may remand . . . for additional fact finding if the agency’s findings are insufficient.”); *PolyMet Mining, Inc.*,

⁴ Relator also challenges MDE’s reliance on the fact that relator included December 2021 documents to support relator’s January 2022 reimbursement claim. We need not decide whether relying on this fact to deny and recover reimbursement was arbitrary and capricious because the bases discussed above are sufficient for us to affirm. Relator therefore cannot establish prejudice regarding the December 2021 records. *See Partners in Nutrition’s Appeal*, 904 N.W.2d at 231.

965 N.W.2d at 12 (remanding for “additional findings and . . . a revised decision” when agency did not adequately explain reasons for decision). On remand, MDE may request April 2022 supporting documents and deny reimbursement if it determines that (1) relator’s “hot” suppers do not constitute reimbursable “meals” under 7 C.F.R. § 226.20; or (2) denying reimbursement is otherwise justified in accord with other law and this opinion. *See Restorff*, 932 N.W.2d at 24 (“Remand is appropriate to permit further evidence to be taken or additional findings to be made in accordance with the applicable law.” (quotations omitted)). If MDE so determines, relator may again seek administrative review before the MDE appeal panel. *Cf. Partners in Nutrition’s Appeal*, 904 N.W.2d at 233-34 (reversing and remanding for reconsideration of relator’s CACFP application even though CACFP “regulations require that MDE make a decision on a complete application within 30 days”).

Affirmed in part, reversed in part, and remanded.