

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Laurens Pediatric Clinic,

Appellant,

vs.

South Carolina Department of Health and  
Human Services,

Respondent.

Docket No. 15-ALJ-08-0109-AP

ORDER

RECEIVED

OCT 02 2015

SC Court of Appeals

This matter comes before the Administrative Law Court (Court or ALC) pursuant to the appeal of Laurens Pediatric Clinic (Appellant) from a decision of the South Carolina Department of Health and Human Services (DHHS or Department) to recoup overpayments for Medicaid services identified in an audit performed by the Department's Division of Program Integrity.

**BACKGROUND**

The Department's Division of Program Integrity performed an audit of Medicaid services provided by Appellant during the period from September 1, 2009 to August 31, 2011. The Department performed a comprehensive review of twenty-nine (29) Medicaid recipients' records and found a number of errors, such as coding errors and insufficient documentation. After an informal conference with Appellant, the Department determined that Appellant had been overpaid \$11,199.49 for Medicaid services during the audited time period. On June 14, 2012, Appellant's sole owner, Dr. Nilsa I. Nazario, appealed the Department's proposed recoupment. A hearing was held on October 31, 2012, before the Department's Hearing Officer, Robert French. In a detailed written Final Administrative Decision, French found that the Department was entitled to recoup the entire amount of \$11,199.49 from Appellant.

**ISSUES**

1. Was the Hearing Officer's January 25, 2015 decision supported by substantial evidence in the record?
2. Was the Hearing Officer biased in his January 25, 2015 decision?

**FILED**

September 2, 2015

SC ADMIN. LAW COURT

## STANDARD OF REVIEW

The ALC hears appeals from decisions of DHHS pursuant to the Administrative Procedures Act (APA), S.C. Code Ann. § 44-6-190 (2002 & Supp. 2014); Estate of Nicholson ex rel. Nicholson v. S.C. Dept. of Health and Human Servs., 377 S.C. 590, 660 S.E.2d 303 (Ct. App. 2008). Accordingly, the APA's standard of review as set forth in § 1-23-380 governs these appeals. See S.C. Code Ann. § 1-23-600(D) (Supp. 2014). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2014).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dept. of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). However, the ALC may reverse or remand a decision which is affected by an error of law. Gilliam v. Woodside Mills, et al., 312 S.C. 523, 435 S.E.2d 872 (Ct. App. 1993). An error of law occurs when the lower court is vested with discretion but the order reveals the lower court did not exercise that discretion. Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987).

## DISCUSSION

The Department administers the South Carolina Medicaid Program. The Department's Division of Program Integrity is entrusted to "safeguard against unnecessary, harmful, wasteful, and uncoordinated utilization of services by Medicaid eligible recipients and health care providers." S.C. Code Reg. § 126-435. Appellant's medical practice, Laurens Pediatric Clinic, is a health care provider enrolled in the state's Medicaid program. The Division of Program Integrity performed an audit of Medicaid services rendered by Appellant between September 1, 2009 and August 31, 2011. After auditing twenty-nine (29) Medicaid recipients' records, the Department's auditor discovered a number of issues, including coding errors and insufficient documentation. After an informal conference with Appellant, the Department determined that Appellant had been overpaid \$11,199.49 in Medicaid payments during the review period. On January 25, 2015, the Hearing Officer determined that the Department was entitled to recoup the overpayments from Appellant.

In her brief, Appellant repeats the same arguments she presented at the hearing concerning the proper billing codes to apply to services she rendered. She does not show a lack of substantial evidence supporting the Hearing Officer's January 25, 2015 decision or that there is an error of law in the Department's decision. Instead, she invites this Court to reweigh the evidence and overturn the Hearing Officer's findings of fact. It is evident from the record that the hearing officer painstakingly reviewed all of the contested Medicaid beneficiary files, analyzed the Department's findings on each contested charge, and considered the testimony and evidence presented by Appellant and Respondent. Hearing Officer Robert French's 73-page Final Decision exhaustively details the evidence, or lack thereof, relied upon to reach a finding on each and every one of over 300 contested charges. Appellant fails to demonstrate a lack of evidence to support any one of these findings, instead restating her own view and interpretation of the medical records. The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters, 321 S.C. at 226. Based on a thorough review of the whole record, this Court finds that the Hearing Officer's findings are supported by the evidence in the record.

Appellant argued at the hearing and again alleges in her brief, that she was prejudiced by inconsistencies in documents produced by the Department in relation to the audit. As part of the audit, the Department utilizes a checklist, which is referred to as an HCPro form. This checklist

was a tool utilized by the auditor to determine whether or not a medical record meets criteria in the Medicaid guidelines to receive a certain billing code. Appellant argues that the checklists the Department presented at the informal hearing are substantially different than those at the October 31, 2012 hearing. She claimed that the names of Medicaid recipients as well as dates of service were missing from certain checklists. The Hearing Officer clearly stated in his decision that he did not use the Department's checklists in his review of the audit. They were simply a tool used by the auditors in doing their work. The Hearing Officer's decision ignored those worksheets and measured the evidence before him against the standards contained in the controlling publications: American Medical Association, Current Procedural Terminology, (4th ed.); U.S. National Center for Health Statistics, International Classification of Diseases, (9<sup>th</sup> ed.); and the Physicians' Provider Manual (2010) published by the Department. I find no error in the Hearing Officer's decision related to the HCPro forms.

Appellant next argues that she did not receive due process because the Hearing Officer was biased toward her. She points to two circumstances in support of this argument – the Hearing Officer's reference to a previous audit in which the Department recouped money from Appellant, and the timing of the issuance of the Department's Final Decision.

Appellant argues that the Hearing Officer mentioned her previous audit in his opinion with a "negative tone." At the hearing, Appellant testified that she had been audited by the Department when she was cross-examined by the Department's attorney. There is only one mention of this previous audit in the Hearing Officer's decision, it states, "The [Appellant] did testify that she had been audited in the past and SCDHHS had recouped money." Under the South Carolina Code of Regulations § 126-402C, the Department's prior imposition of sanctions against a particular party is one of the grounds that must be considered when determining whether or not the Department should issue a particular sanction. There is nothing in the hearing transcript or decision to support Appellant's assertion of bias. Rather, with respect to the language Appellant asserts demonstrates bias, the Hearing Officer was required by South Carolina law to consider the prior audit as part of his determination as to whether the Department's sanctions were appropriate.

Appellant also argues in her brief that the Hearing Officer's decision was timed to arrive days before Appellant was to receive a payment from the Department for services rendered under the Affordable Care Act (ACA payment) in early 2014. Due to an administrative delay, Appellant's ACA payment was scheduled to be paid on January 30, 2015. Appellant asserts that

the Hearing Officer “rushed to issue a decision” so that the Department could send her a bill for the recouped payments just before she received the APA payment. Appellant has not given any explanation as to how the coincidence of timing benefited the Department, nor presented any evidence tending to show that the Hearing Officer was even aware of the unrelated payment. Moreover, the decision issued by Hearing Officer French could hardly be characterized as “rushed.” It is obvious from the most casual reading of the order that French spent untold hours meticulously reviewing the evidence. Moreover, the case was pending for two years between the hearing and decision. Appellant’s argument concerning the timing of the decision demonstrates only that the timing of the ruling and resulting bill from the Department were inconvenient to her. I find no indication of bias against Appellant in the timing of the order and the ACA payment.

I will not substitute my judgment for that of the agency because there is adequate evidence to support the decision which is clearly not arbitrary, capricious or affected by any personal bias or prejudice. The Hearing Officer’s decision dated January 25, 2015, is supported by substantial evidence and does not exhibit any errors of law or abuse of discretion.

**IT IS HEREBY ORDERED** that the decision finding the Department was entitled to recoup Medicaid payments from Appellant is **AFFIRMED**.

**AND IT IS SO ORDERED.**



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Deborah Brooks Durden  
Administrative Law Judge

September 2, 2015  
Columbia, South Carolina