



no one was present. As a result, the Department suspended new client referrals for ninety (90) days as a sanction specified in the Department's Community Long Term Care Provider (CLTC) Manual. On February 20, 2017, the Department conducted a survey of the Appellant's office and cited her for numerous noncompliance issues.

The Department's survey system assesses a certain number of points for each finding of noncompliance by the provider. Each finding of noncompliance is inputted in the system and a numerical score is generated. The decision to impose sanctions depends on the number of points assessed per the CLTC manual, however, a contract can be terminated for any score exceeding 400 points. The Appellant's noncompliance findings resulted in a preliminary score of 963 points. On February 23, 2017, the Department issued the Appellant a letter requiring the Appellant to submit a corrective action plan. On March 9, 2017, the Appellant submitted her corrective action plan. After a final review, the Department assessed a final review score of 906 points. On April 6, 2017, the Department issued its termination decision.

In May 2017, the Appellant filed an appeal with the Department's Division of Appeals and Hearings. A hearing was held on June 8, 2017 and July 24, 2017. The hearing officer issued his order affirming the Department's decision to terminate the contract on August 16, 2017. The Appellant then filed a timely appeal with this court on September 13, 2017.

### **ISSUE ON APPEAL**

Whether substantial evidence exists to support the Hearing Officer's decision to uphold the Department's decision to terminate the Appellant's contract?

### **STANDARD OF REVIEW**

The ALC hears appeals from decisions of the Department pursuant to the Administrative Procedures Act (APA). S.C. Code Ann. § 44-6-190 (2002 & Supp. 2016); *Estate of Nicholson ex rel. Nicholson v. S.C. Dep't 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 S.C. Code Ann. § 1-23-380 governs these appeals. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2016). 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. 2016).

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. Dep't 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)).

### DISCUSSION

The Appellant appealed the Department's decision to terminate her contract to the Division of Appeals and Hearings. A hearing was held on June 8, 2017 and July 24, 2017. At the hearing, the Department's witness testified that the Appellant was enrolled in the program on June 24, 2016, following the completion of an online enrollment application and attending a pre-contractual meeting that the Appellant attended on June 2, 2016. The Department also introduced the contract between the Department and the Appellant that was signed on June 24, 2016. (Respondent's

exhibit 3). The Department's witness testified that once a provider begins receiving clients under the term of the contract, the Department starts conducting surveys of the provider to ensure compliance. ~~The Department sent a surveyor to the Appellant's office on January 2, 2017 and again on February 3, 2017 but was unable to conduct a review because no one was at the office.~~ The Department sent the Appellant a letter informing her of this and reminding her of the program requirement to maintain business hour between the hours of 10:00 am and 4:00 p.m. Monday through Friday. Due to the Appellant's noncompliance to the terms of her contract, the Department suspended new participant referrals for 90 days effective February 8, 2017.

The Department went to the Appellant's office on February 20, 2017 and conducted an inspection. The surveyor found numerous instances of noncompliance.<sup>1</sup> The Appellant's noncompliance findings resulted in a preliminary score of 963 points. On February 23, 2017, the Department issued the Appellant a letter requiring the Appellant to submit a corrective action plan, which could possibly, if the Appellant was able to show that some of the violations did not occur, reduce the Appellant's score and the corresponding sanction. On March 9, 2017, the Appellant submitted her corrective action plan but did not deny that any of the violations occurred. After a final review, the Department assessed a final review score of 906 points.

At the hearing, the Appellant argued that the Department could not terminate the Contract absent a determination of fraud or conviction of a crime related to a Provider's participation in Medicaid pursuant to S.C. Code Ann. Regs. 126-401(B); because she was still subject to the Department's previous sanctions, the Department could not subject her to additional sanctions; the Corrective Action Plan she was required to submit following the February 20, 2017 inspection was the sanction the Department chose to impose and therefore the termination was a duplicative sanction; the Appellant was entitled to a Compliance Review 90 days after initiating service with CLTC; she was entitled to training and technical support per the contract; and the termination decision should be dismissed because the Department was a day late in responding to the Appeals and Hearings' Order to Produce documents and that the Department did not fully comply with the Order to Produce because it did not provide the version of the training module that was presented

*2 1/2 days*

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<sup>1</sup> The Review Report, marked as Respondent's Exhibit 4, consists of sixteen pages and notes issues like the Appellant's failure to maintain a current worker's compensation insurance policy and individual participant or employee records, employees did not have the minimum experience requirements or were not properly licensed, and employees not being up to date on required medical tests.

during her training.<sup>2</sup>

The court disagrees with the Appellant's interpretation of the CLTC manual. Section 6G of the CLTC manual outlines the Department's Compliance Review Process. On page 6-125 of the CLTC manual, it states that provider records will be reviewed periodically at the provider's office through unannounced onsite visits. (R. p 334.) The CLTC manual also states that if the reviewer arrives at the provider's office to conduct a survey and no one is there, a thirty-day suspension of new referrals will be imposed for the first occurrence and a ninety-day suspension of new referrals for a second occurrence. In addition, the CLTC manual on page 6-123, states that "[p]roviders who have two consecutive reviews that result in suspension of new referrals, will be terminated if the third consecutive review has a final score that would result in a suspension of new referrals (400 and above)." (R. p 332.)

In the Appellant's case, the surveyor attempted to perform a review of the Appellant's office on two separate occasions but could not gain access either time because no one was there. The Department then imposed a ninety-day suspension of new referrals. The Department conducted a third consecutive review of the Appellant's office and the Appellant's final score ultimately was 906, well above a score that would result in a suspension of new referrals. The Department then terminated the Appellant's contract. The court finds no impropriety with the sanctions the Department imposed.

Furthermore, the contract the Appellant signed specifically requires her to, amongst other things, retain all records for five years, provide for the inspection of all records and offices by applicable state and federal agencies whenever deemed necessary, and maintain worker's compensation insurance. The Appellant's claim that she was unaware of the program requirements because the Department did not provide her with additional training is without merit. Additionally, the contract allows either party to cancel or terminate the contract for a material breach, or for otherwise materially failing to comply with their obligations under the contract. In light of the these findings, the court concludes that substantial evidence in the record supports the Hearing

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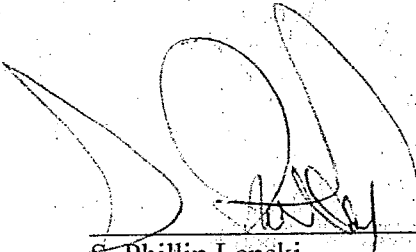
<sup>2</sup> Specifically, the Appellant objected to the Department's introduction of the Medicaid-Provider participation training module because it had changed from the time of her training. The Department's witness testified that the portions of the module relating to compliance and sanctions had not changed and that the training module was only being used to demonstrate that the Appellant had been informed on the requirements of the program. The Hearing Officer noted that he gave little weight to the document in arriving at his decision.

Officer's decision to uphold the Department's decision to terminate the Appellant's contract to provide Personal Care I and II Services, HASCI Attendant Care and Respite Care Services, Companion Services and MCC Respite Services under the Medicaid Home and Community Based Waiver Services program.

**IT IS HEREBY ORDERED** that the decision of the South Carolina Department of Health and Human Services is **AFFIRMED**.

**AND IT IS SO ORDERED.**

April 11, 2018  
Columbia, South Carolina



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S. Phillip Lenski  
Administrative Law Judge