

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Philip Lenski, Administrative Law Judge

Case No. 2018-000895

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SC Court of Appeals

Jeanette's Loving In-Home Care Agency, Appellant,

v.

South Carolina Department of Health and Human Services..... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR BY AFFIRMING THE DECISION OF THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES?

STATEMENT OF THE CASE

The Respondent in this case is the South Carolina Department of Health and Human Services (SCDHHS). SCDHHS is the single state agency that administers the South Carolina Medicaid Program. The Appellant in this case is Jeanette's Loving In-Home Care Agency, a provider that provided services to Medicaid beneficiaries.

Pursuant to an agreement dated June 24th, 2016, the Appellant enrolled as a provider of Personal Care I and II Services, HASCI Attendant Care and Respite Care Services, Companion Services and MCC Respite Services. On April 6, 2017, The Respondent issued a decision terminating Appellant's contract to provide Personal Care I and II Services, HASCI Attendant Care and Respite Care Services, Companion Services and MCC Respite Services. In May of 2017, the Appellant filed an appeal with SCDHHS's Division of Appeals and Hearings. A hearing in the matter was held on June 8, 2017 and July 24, 2017. On August 16, 2017, Alexander Shissias, a Hearing Officer for SCDHHS's Division of Appeals and Hearings issued an order affirming SCDHHS's decision to terminate Appellant's contract to provide Personal Care I and II Services, HASCI Attendant Care and Respite Care Services, Companion Services and MCC Respite Services. On September 13, 2017, the Appellant then filed a timely appeal with the South Carolina Administrative Law Court (SCALC). On April 17, 2018, the SCALC issued an order affirming the decision of SCDHHS.

ARGUMENT

I. Standard of Review

This case is before the Court of Appeals as an appeal of an agency action. As such, the Court of Appeals sits in an appellate capacity under the Administrative Procedures Act (APA), rather than as an independent finder of fact. In South Carolina, the provisions of the APA – specifically S.C. Code Ann. § 1-23-380(5) – require a reviewing court to apply the “substantial evidence” rule. See e.g., Waters v. S.C. Land Resources Conservation Comm’n, 321 S.C. 219, 467 S.E.2d 913 (1996) and Palmetto Alliance, Inc. v. S.C. Public Service Comm’n, 282 S.C. 430, 319 S.E.2d 695 (1984).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The well-settled case law in this state has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981). 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 finding from being supported by substantial evidence. Waters, 321 S.C. 219, 467 S.E.2d 913 and Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995), both citing Palmetto Alliance, 282 S.C. 430, 319 S.E.2d 695. See also, Miller v. State Roofing Co., 312 S.C. 452, 441 S.E.2d 323 (1994) and Bilton, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996), citing Kearse v. State Health and Human Services Finance Comm’n, 318 S.C. 198, 456 S.E.2d 892

(1995). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant, 319 S.C. 348, 461 S.E.2d 388, citing Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (1984). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. 219, 467 S.E.2d 913, citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1994).

Of course, the Court of Appeals may always 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), reversed on other grounds, 319 S.C. 385, 461 S.E.2d 818 (1995). However, in reviewing the errors of law asserted by the Appellant, the Court of Appeals does need to give deference to the Department's interpretation of its own rules and the relevant federal rules and manual provisions applied. Hampton Nursing Center v. State Health and Human Services Finance Comm'n, 303 S.C. 143, 399 S.E.2d 434 (Ct. App. 1990) and Ruocco v. S.C. Board of Registration for Professional Engineers and Land Surveyors, 314 S.C. 111, 441 S.E.2d 829 (Ct. App. 1994).

II. The Lower Court Did Not Err By Affirming the Decision of SCDHHS.

1. Substantial Evidence In The Record Supports the Lower Court's Decision.

The main issue of this appeal is whether substantial evidence in the record supports the hearing officer's order. Substantial evidence in the record supports the hearing officer's decision to affirm SCDHHS's decision to terminate Appellant's contract to provide Personal Care I and II Services, HASCI Attendant Care and Respite Care Services, Companion Services and MCC Respite Services. The hearing officer made numerous factual findings, all of which must be presumed correct, and this Court cannot substitute its judgment on the weight of the evidence. See

Rodney, 320 S.C. 515, 466 S.E.2d 357; Grant, 319 S.C. 348, 461 S.E.2d 388. During the June 8, 2017 hearing, Deborah Carter, representative of the Respondent, testified that as the result of an initial review of the Appellant's agency, the Appellant received an initial score of 963 (Record on Appeal pg. 55). Ms. Carter further testified that a final score of over 400 would result in the termination of a provider's contract (Record on Appeal pg. 60). Finally, Ms. Carter testified that the Appellant's final score was 906 points, therefore 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 was terminated.

2. Appellant has Failed to Show A Reversible Error of Law

Because the Appellant cannot show that the hearing officer's order is not supported by substantial evidence in the record, she must then attempt to show that the hearing officer erred as a matter of law. Appellant in her brief before this Court, has failed to show a reversible error of law and, as a result, this Court must find for the Respondent and affirm the hearing officer's order.

CONCLUSION

For the reasons set forth above, the hearing officer's determination should be upheld. Substantial evidence exists in the record to uphold the hearing officer's ruling in favor of SCDHHS. Additionally, there exists no reversible error of law in the hearing officer's order. Therefore, this Court must find in favor of the Respondent, SCDHHS, and uphold the hearing officer's order.

Respectfully Submitted,



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August 3, 2018
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on this, the 3rd day of August, 2018, I sent a copy of Respondent's Brief to Appellant's counsel by U.S. mail with first class postage affixed, addressed to:

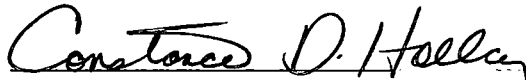
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Re: Jeanette's Loving In-Home Care Agency v. South Carolina Department of Health and Human Services

Appellate case No. 2018-00895

Dear Honorable Kitchings:

Please find enclosed the original and one copy of the Respondent's Initial Brief and Designation of Matter to Included in the Record on Appeal in the above referenced matter. I have enclosed a self-addressed envelope for the return of the clocked copies. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Constance D. Holloway
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Assistant General Counsel

cc. Jeanette Vinson, Appellant

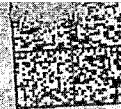
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