

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAMES H. SINNETT, Registered Agent
for ALASKA FAMILY HOSPICES, INC.,
and for ALASKA FAMILY WOMEN'S
HEALTHCARE OHS, INC.,

Appellants,

vs.

STATE OF ALASKA, DEPARTMENT
OF HEALTH & SOCIAL SERVICES,
and KARLEEN JACKSON, in her
official capacity as Commissioner of
the Department,

Appellees.

Case No. 3AN-07-5206 CI

MEMORANDUM OF DECISION

I. INTRODUCTION

This matter comes before the Court as an administrative appeal of Appellee Department of Health and Social Service's (the "Department") denial of Appellant Alaska Family Hospices, Inc.'s ("AFH") request for an administrative hearing regarding the Department's decision to recoup \$362,410.54 from AFH for alleged overpayment for Medicaid services provided by AFH. AFH argues that the Department's denial of AFH's appeal request was unreasonable and violated due process. The Court remands to the Department to conduct a hearing in accordance with requirements of procedural due process.

II. BACKGROUND

In 1997, AFH enrolled as an Alaska Medicaid provider to provide accommodation and meal services to Alaska Medicaid patients and their escorts.¹

In 2000, the Alaska Medicaid Fraud Control Unit (the "Fraud Unit") initiated an investigation of AFH's Medicaid billing practices.² On October 3, 2000, the Anchorage Police Department and the Fraud Unit served search warrants on Last Frontier Restaurant and AFH. From Last Frontier Restaurant, the Fraud Unit seized records related to meal services provided to AFH clientele.³ From AFH, the Fraud Unit seized Medicaid billing records and computers and other electronic equipment used in billing. The Fraud Unit audited these records to review the Medicaid billing practices utilized by AFH. Specifically, the audit focused on review of rates and fees charged to non-Medicaid clientele in comparison to the rates and fees billed to Medicaid and whether AFH actually rendered the services for which it billed.

On August 8, 2005, approximately 5 years after confiscating these records, the Fraud Unit completed its audit.⁴ The audit covered all AFH Medicaid claims

¹ R. 8.

² R. 8.

³ R. 8.

⁴ R. 7-34.

submitted between September 2, 1997 and September 30, 2000.⁵ The audit encompassed 4,268 Medicaid claims for services rendered by AFH to 744 Medicaid recipients and 412 escorts for 838 stays, for which AFH received payments totaling \$505,202.84 for accommodations services and \$266,985.68 for meal services.⁶ The Fraud Unit did not bring criminal charges against AFH.

In November 2005, after the statutory period for filing criminal fraud charges had lapsed, AFH requested the Department return the seized property.⁷ The Department did not respond to the request. In January 2006, AFH petitioned the superior court for release of the seized property.⁸ The Department opposed releasing the records claiming that the property claiming that it was integral to the Department's impending administrative sanctions against AFH.⁹ On March 9, 2008, Superior Court Judge Phillip Volland ordered that the Department make a good faith effort to copy and return all records by March 17, 2008.¹⁰

On March 8, 2006, relying on the Fraud Unit audit, the Department issued its Notice of Sanctions and Recoupment of Overpayment. The Department found AFH received the following overpayments; \$172,783.90 for

⁵ R. 11.

⁶ R. 31-32.

⁷ R. 53-55.

⁸ Memo. Supp. Mot. Return Property and Review Search Warrant Aff., In re Search Warrant 00-541 SW (Alaska Super., Jan. 24, 2006).

⁹ Memo. Supp. Partial Opp'n Mot. Return Property and Review Search Warrant Aff., In re Search Warrant 00-541 SW (Alaska Super., Feb. 16, 2006).

¹⁰ Oral Argument, In re Search Warrant 00-541 SW (Alaska Super., March 9, 2006).

charging inflated room rates, \$9,762.93 for double billed services, \$13,268 for services without occupancy, \$147,000.68 for meals claimed but not consumed, and 31,848.03 for charging inflated meal rates.¹¹ The Department demanded repayment of \$362,410.54 from AFH.¹² The Department notified AFH of its right, pursuant to 7 AAC 43.980, to an intra-agency appeal of the Department's decision.¹³

7 AAC 43.980 allows a Medicaid provider to request an appeal and formal hearing. "The request for appeal must be in writing and must contain a statement accompanied by supporting documents that describe the asserted violations, discrepancies, or dollar amounts that the provider contends are in compliance with [title 7, chapter 43] and the reasons for those contentions."¹⁴

On March 28, 2006, even though the Department had not yet returned the seized records, AFH submitted an extensive 15-page appeal request.¹⁵ The request outlined in great detail AFH's objection to each of the five areas where

¹¹ R. 5.

¹² R. 6.

¹³ R. 6-7.

¹⁴ 7 AAC 43.980(a) (amended 2006). In December of 2006 the language of this regulations provision was amended. The current version of 7 AAC 43.980(a) in part reads: "The request for appeal must be in writing and contain a statement and supporting documents that describe the alleged violations or discrepancies, specify the basis upon which the notice is challenged, and explain the reasons that the provider is in compliance with this chapter."

¹⁵ R. 35-49.

the Department found overpayment.¹⁶ On May 9, 2006, after receive no response from the Department regarding the appeal request, AFH requested the Department respond.¹⁷ On July 17, 2006, AFH submitted a third appeal request.¹⁸

On August 17, 2006, the Department responded to AFH's appeal request and notified AFH that its request did not comply with 7 AAC 43.980 because the request did not include "supporting documents."¹⁹ The Department recognized that AFH was not in possession of all documents necessary to support its appeal when AFH made its initial appeal request. The Department gave AFH until September 18, 2006 to comply with the requirements of 7 AAC 43.980.

On September 11, 2006 and November 18, 2006, through written correspondence, AFH contested the Department's conclusion that AFH's appeal requests were incomplete.²⁰ AFH incorporated by reference its previous appeal requests, which specifically outlined the grounds for appeal and objections to the Departments audit; again requested records that, as of November 11, 2006, the Department had allegedly failed to provide; and made general references to documents still in the possession of the Department that supported AFH's position.

¹⁶ R. 35-49.

¹⁷ R. 62.

¹⁸ R. 78.

¹⁹ R. 83.

²⁰ R. 85, 88.

On January 19, 2007, the Department issued a final denial of AFH's appeal request because the Department deemed AFH did not comply with 7 AAC 43.980 and notified AFH that it would initiate recoupment.²¹ The Department notified AFH of its right to appeal to the superior court.

Pursuant to Alaska Appellate Rule 602, AFH filed this appeal. AFH seeks an order requiring that the Department conduct an administrative hearing. AFH argues that the Department misinterprets the requirements of 7 AAC 43.980 and argues that not providing AFH a hearing violated due process.²²

The Department requests the Court dismiss this appeal because AFH failed to satisfy prerequisites for an administrative hearing, and thus did not exhaust administrative remedies.²³ In the alternative, if the Court does not dismiss this appeal for failing to exhaust administrative remedies, then the Department argues that it correctly denied AFH's request for an administrative hearing since AFH did not comply with 7 AAC 43.980.

III. DISCUSSION

The dispositive issue before the Court is whether the Department should have afforded AFH an administrative hearing.

7 AAC 43.980(a) sets forth procedure for requesting an appeal and formal hearing: "The request for appeal must be in writing and must contain a statement

²¹ R. 94-98.

²² See generally, Br. Appellant.

²³ Br. Appellee 13.

accompanied by supporting documents that describe the asserted violations, discrepancies, or dollar amounts that the provider contends are in compliance with [title 7, chapter 43] and the reasons for those contentions.”²⁴ The term “supporting documents” is not defined in the regulations. The Department denied AFH’s request because the Department deemed AFH did not submit adequate supporting documents.

In reviewing challenges to an agency’s interpretation of its own regulations, Alaska courts use the “reasonable and not arbitrary” test.²⁵ Under this standard, Alaska courts will affirm an agency’s interpretation if the interpretation is a reasonable one.²⁶

The Department interprets 7 AAC 43.980 as mandating a provider submit evidence supporting the provider’s grounds for appeal. Under the Department’s interpretation, submitting an extremely detailed appeal request that outlines specific objections to the Department findings and conclusions is inadequate. Because the Department concluded AFH’s appeal request did not conform to requirements of 7 AAC 43.980, the Department refused to afford AFH a hearing before recouping the alleged overpayments.

Since the Department seeks to recoup a substantial amount of money, the Court must examine due process implications of the Department’s interpretation.

²⁴ 7 AAC 43.980(a) (amended 2006).

²⁵ Anderson v. State, Dept. of Revenue, 26 P.3d 1106, 1109 (Alaska 2001).

²⁶ Id.

In Alaska, administrative procedures must comply with procedural due process.²⁷ While the crux of due process is the opportunity to be heard and the right to adequately represent one's interests,²⁸ the Alaska Supreme Court has adopted the position, at least in the area of administrative law, that due process does not mandate a hearing in absence of substantial and material issues crucial to the determination.²⁹ Thus, certain procedural prerequisites for access to an administrative hearing, such as those enumerated in 7 AAC 43.980, may be valid as necessary to examine whether substantial and material issues exist. Beyond this limited purpose, an agency cannot limit an individual's constitutional right to a pre-deprivation hearing.

AFH's appeal requests clearly illustrates substantial and material issues regarding the Department's determination. Thus, denying AFH an administrative hearing solely because AFH did not submit supporting documents adequate to satisfy the Department's interpretation of "supporting documents" violated AFH's right to a pre-deprivation hearing. A regulatory interpretation that results in a due process violation is not reasonable. The Court cannot review a case where an administrative agency fails to conform to the minimum requirements of due

²⁷ State, Dept. of Natural Res. v. Greenpeace, Inc., 96 P.3d 1056, 1064 (Alaska 2004).

²⁸ Id.

²⁹ Estate of Miner v. Commercial Fisheries Comm'n., 635 P.2d 827, 834 (Alaska 1981).

process.³⁰ Thus, the Court must remand this matter to the Department to conduct a hearing.

IV. CONCLUSION

This matter is remanded to the Department to conduct a hearing in accordance with requirements of procedural due process. The Court presumes that the Department has returned all records as required by Judge Volland's March 9, 2006 order or will do so prior to holding such a hearing.

DATED at Anchorage, Alaska, this 5th day of August 2008.



MARK RINDNER
Superior Court Judge

I certify that on 8/5/2008 a copy was mailed to:

Josephson/Kitchen



~~Administrative Assistant~~ LC

³⁰ Laidlaw Transit, Inc. v. Anchorage Sch. Dist., 118 P.3d 1018, 1025 (Alaska 2005).