

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

W [REDACTED] B [REDACTED],)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF HEALTH AND SOCIAL SERVICES,)
 DIVISION OF SENIOR AND)
 DISABILITY SERVICES)
)
 Appellee.)
 _____)

Case No. 3AN-13-[REDACTED] CI/APP

OPINION

Appellant, W [REDACTED] B [REDACTED], appeals the decision by the Department of Health and Social Services, Division of Senior and Disability Services (the “State”), to terminate his Medicaid Waiver services. After consideration of the briefing, the record, and the oral argument, this court reverses.

I. FACTS AND PROCEEDINGS

The State reassesses recipients each year to determine whether they continue to be eligible for the Waiver program. On March 11, 2013, the State sent Mr. B [REDACTED] a notice informing him that it was terminating his Waiver services, and Mr. B [REDACTED] requested a fair hearing. On July 19, 2013, the administrative law judge issued the decision (“Decision”), which was subsequently adopted by the State on July 30, 2013. This appeal followed. The primary issue on appeal is whether the State properly determined that Mr. B [REDACTED] had “materially improved” for purposes of the termination statute.¹

¹ Appellant’s Reply Br. 2.

II. STANDARD OF REVIEW

The Alaska Supreme Court has articulated that “[w]here questions of law do not involve agency expertise, the appropriate standard of review is ‘substitution of judgment’; where agency expertise is implicated, the ‘rational basis’ standard applies.”² Under the “substitution of judgment” standard, the reviewing court makes its own legal interpretations, and under the “rational basis” standard, it defers to agency interpretation so long as it is reasonable.³ The court reviews an agency’s application of its own regulations for whether the agency’s decision was “arbitrary, unreasonable, or an abuse of discretion.”⁴ And the court reviews findings of fact for clear error under the “substantial evidence” standard.⁵

III. ANALYSIS

The Waiver program is part of Medicaid, which is a jointly administered program operated by the United States Centers for Medicare and Medicaid Services and the State of Alaska.⁶ In Alaska, an adult may be eligible to receive home and community-based waiver services under certain circumstances.⁷ To maintain eligibility for the waiver program, a person must participate in a subsequent annual assessment.⁸ The assessment must be reviewed by an independent qualified health care professional, and it must show that the recipient’s condition has “materially improved” since the previous assessment.⁹ To support a determination of material improvement for an older Alaskan, two prongs must be satisfied. It must be determined that the person: (1) “no longer has a functional limitation or cognitive impairment that would result in the

² *Alaska Exch. Carriers Ass’n, Inc. v. Regulatory Comm’n of Alaska*, 202 P.3d 458, 460 (Alaska 2009) (citations omitted).

³ *Id.* at 460-61.

⁴ *Id.* at 461.

⁵ *Id.*

⁶ Br. of Appellee 7; Appellant’s Opening Br. 2.

⁷ 7 AAC 130.205; AS 47.07.045; 42 U.S.C. § 1396.

⁸ 7 AAC 130.213(d); AS 47.07.045(b)(1).

⁹ AS 47.07.045(b)(2) and (3).

need for nursing home placement” and (2) “is able to demonstrate the ability to function in a home setting without the need for waiver services.”¹⁰

In the case at bar, only the second prong is at issue. But after review of the Decision, it appears that the second prong was left without any analysis. For example, the Decision states that, in order to terminate the waiver services, the State need not show that the recipient has “gotten better,” but it “need only show that the recipient does not currently meet the eligibility requirements.”¹¹ Although this could be construed as partially true, it stops short of being an accurate statement of law. The State must instead show that the termination requirements are met—not merely that eligibility requirements are unmet. Whereas the State’s brief argues at length that both prongs of the material improvement statute were analyzed and satisfied in the Decision, the record does not support that claim. Although the Decision fully fleshes-out whether Mr. B [REDACTED] requires skilled nursing care or qualifies for Waiver services based on his Consumer Assessment Tool results, such findings only satisfy the first prong. That is, the State does not address the concern that Mr. B [REDACTED] lacks the ability to function in a home setting but for the services that he is presently receiving as part of the Waiver program.

A decision will be regarded as arbitrary “where an agency fails to consider an important factor in making its decision.”¹² And here, the court finds that, by omitting analysis of the second prong, the State has not “taken a hard look at the salient problems”¹³ and has not “genuinely engaged in reasoned decision making.”¹⁴ Likewise, the court finds unpersuasive the State’s

¹⁰ AS 47.07.045(b)(3)(C).

¹¹ R. at 247.

¹² Mortvedt v. State, Dep’t of Natural Res., 941 P.2d 126, 128 (Alaska 1997). See Trustees for Alaska v. State, Dep’t of Natural Res., 865 P.2d 745, 747 (Alaska 1993); Se. Alaska Conservation Council, Inc. v. State, 665 P.2d 544, 549 (Alaska 1983), State, Dep’t of Transp. & Pub. Facilities v. 0.644 Acres, More or Less, 613 P.2d 829, 833 (Alaska 1980).

¹³ Trustees, 865 P.2d at 747.

¹⁴ Id.

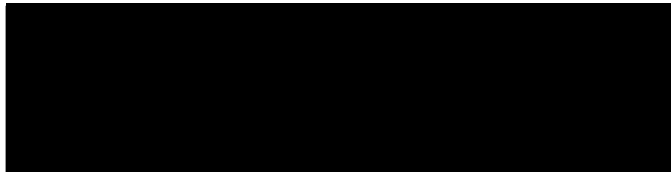
argument that such findings and analysis were implicit.¹⁵ Thus, the Decision does not pass muster even when applying the standard of review that would be most favorable to the State.

IV. CONCLUSION

As discussed in this Order, the State failed to adequately consider the entire issue regarding its material improvement finding. Therefore,

IT IS HEREBY ORDERED that the State's Decision is **REVERSED**.

ENTERED on December 8, 2014, at Anchorage, Alaska.



MICHAEL L. WOLVERTON
Superior Court Judge

I certify that on 12/8/14 a copy of the above was ~~mailed~~ to each of the following at their addresses of record: *Scanned*

1-Lynch 1-Vogel (A6)
caw

¹⁵ Br. of Appellee 28 (citing Berry v. Berry, 277 P.3d 771, 773 (Alaska 2012)).