

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LOVING CARE PCA,)
)
 Appellant,)
vs.)
)
STATE OF ALASKA, DEPARTMENT)
OF HEALTH AND SOCIAL SERVICES,)
)
 Appellee.) CASE NO. 3AN-16-04613CI
) OAH No. 15-0454-MPC
_____)

ORDER

Loving Care PCA appeals the decision of the Commissioner of the Department of Health and Social Services adopting the decision of Administrative Law Judge Lawrence A. Pederson issued 27 November 2015. The Commissioner concluded that Loving Care had failed to comply with background check requirements for several of its employees and partners. It permitted persons who should have been barred from the premises of the business to be on the premises repeatedly. In addition, Loving Care submitted claims to the Alaska Medicaid program without adequate backup documentation. The Commissioner terminated Loving Care from participating in the program because of these violations.

Loving Care argues that the decision of the administrative law judge was based upon inadmissible hearsay and the sanction was too severe. The State argues that Loving Care misunderstands the evidentiary rules applicable to the hearing and notes that all of the evidence and exhibits were admitted without

objection. The State defends the seriousness of the sanction in light of the repeated violations.

The Court affirms the Commissioner's decision. The parties agree that the applicable standard of review of the findings of fact is the "substantial evidence" standard. The Court adopts the State's arguments concerning the application of that standard.

The Court adopts the State's arguments about the evidentiary standards that were applicable to the hearing. The administrative law judge's reliance upon evidence that might have been hearsay in a superior court trial was not error.

Loving Care identified the alleged excessiveness of the sanction as an issue, but never discussed that assertion in the opening brief. The argument is waived. Even if not waived, the Court concludes that the Commissioner did not abuse his discretion in imposing the permanent sanction.¹

The Commissioner's decision is AFFIRMED.

¹ The Court concludes that the administrative law judge adequately explained his reasoning for the sanction, Decision at 10-11, and the violations warranted such a severe sanction.

DONE this 25th day of April 2017, at Anchorage, Alaska.

Signed

William F. Morse
Superior Court Judge

[This document has been modified to conform to the technical standards for publication.]