

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

Hearts & Hands of Care, Inc.,)
)
 Appellant,)
 v.)
)
 State of Alaska, Department of)
 Health and Social Services,)
)
 Appellee.)
_____)

Case No. 3AN-18-05154CI

ORDER DENYING RECONSIDERTION AND GRANTING CLARIFICATION

Hearts & Hands of Care, Inc. (“Hearts”) has filed a Motion for Reconsideration, asking the Court to reconsider its order remanding its case to the Commissioner of the Department of Health and Social Services (“DHSS”).¹

In its Motion, Hearts asserts that reconsideration is warranted because in its decision, the Court concluded that there was substantial evidence to support the Commissioner’s finding that DHSS “did not request that Hearts & Hands submit a form timesheet as part of their recertification process and therefore no governmental position was asserted,”² but, according to Hearts, the Commissioner made no such finding.

Hearts is correct; the Court was mistaken in stating that the Commissioner found that no such request occurred. In fact, in her final decision, the Commissioner concluded only that Hearts had failed to meet its burden to prove

¹ Mot. for Reconsideration and Request for Clarification (filed Mar. 22, 2019).

an element of equitable estoppel: that the government asserted a position by conduct or words.³ In coming to this conclusion, the Commissioner relied, in part, on her finding that “[t]he record does not establish if the Provider Certification Staff even asked for the PCA timesheets and if they did, for what purpose.” [R. 521] In other words, the evidence presented by Hearts on this point did not persuade the Commissioner that DHSS Provider Certification Staff requested Hearts’ PCA timesheets and whether, if they did, it was for a purpose that would justify a finding that recertification of Hearts constituted an assertion of a position (compliance of the timesheets with stop-start time requirements) such that DHSS should be estopped from arguing that Hearts’ timesheets were noncompliant.

The Court’s order affirming the Commissioner’s final decision with respect to equitable estoppel rests, in part, on the Court’s conclusion that substantial evidence supported the Commissioner’s finding with respect to this fact, although Hearts correctly notes that the Court’s description of the finding is incorrect. However, this error in description did not affect the Court’s decision and reconsideration is therefore denied.

Hearts also seeks an additional order from the Court directing the Commissioner to consider whether Hearts was treated arbitrarily when the Commissioner imposed monetary findings.⁴ The Court remanded this portion of the final decision for the Commissioner to consider, as a threshold matter, whether Hearts substantially complied with the regulation requiring stop and start

² *Id.* at 2.

³ Final Decision Adopting in Part and Reversing Proposed Decision in Part. [R. 520-521]

⁴ Mot. for Reconsideration at 6.

times. If the Commissioner finds substantial compliance, the Commissioner is directed to consider whether to impose non-monetary findings.

The decision whether to impose non-monetary findings is committed to the Commissioner's discretion. As such, the Court's review is limited to whether the decision is "arbitrary, unreasonable, or an abuse of discretion."⁵ The treatment of other providers in similar circumstances is an appropriate consideration in the Commissioner exercising its discretion.

The Court's remand was for a determination, on the current record, whether Hearts substantially complied with the regulation and if non-monetary findings should be imposed. The Court does not order the Commissioner to consider additional evidence. The Commissioner may, in her discretion, consider further argument by the parties. This Court retains jurisdiction of this appeal.

DONE this 16th day of April 2019, at Anchorage, Alaska.



JOSIE GARTON
Superior Court Judge

I certify that on 04/16/2019
a copy of the above was mailed to
each of the following at their
addresses of record:

Carolyn Heyman; Scott Friend

Elsie Roehl 
Judicial Assistant

⁵ Cf. *Caywood v. State, Dep't of Natural Resources*, 288 P.3d 745, 751 (Alaska 2012).