

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

Vladi & Associates, LLC,

*Appellant,*

v.

The Alaska Department of Health and  
Social Services, Division of Senior and  
Disability Services, and the Quality  
Assurance Department, and Office of  
Administrative Hearings,

*Appellee.*

Case No. 3AN-18-08218CI

**DECISION AND ORDER**

**I. INTRODUCTION**

In this administrative appeal, Vladi & Associates, LLC (“Vladi”) appeals the Department of Health and Social Services’ (“DHSS”) final decision to permanently terminate it from participation as a provider in the Alaska Medicaid program, and requiring Vladi to reimburse the Department for overpayments it received in the amount of \$14,397.10. Vladi challenges the severity of the sanction and the accompanying overpayment findings. Vladi alleges that it did not violate the background check regulations by allowing its employees to begin rendering services before they obtained valid background checks because it “retroactively hired” those employees. Vladi further alleges that it did not violate the background check regulations by allowing employees whose valid background checks were revoked to continue to provide services because the regulations contain an exception if the individual whose background check is revoked has a “positive impact on the financial well-being of the recipient of the services.” Alternatively, Vladi argues that even if it did violate the background check regulations, that DHSS is estopped from sanctioning it with termination and from recouping the overpayments because of the lack of DHSS guidance and oversight. DHSS asks the court

to affirm DHSS's decision to terminate Vladi from the Alaska Medicaid program, and DHSS's finding that Vladi reimburse the Department for the overpayment amount of \$14,397.10. The court affirms DHSS's decision to terminate Vladi from participation as a provider in the Alaska Medicaid program and affirms DHSS's conclusion that Vladi was overpaid \$14,397.10 and is required to reimburse the Department in that amount.

## II. FACTS

Vladi is an enrolled Medicaid provider.<sup>1</sup> Vladi provides personal care services ("PCS") to eligible Medicaid recipients.<sup>2</sup> These services mostly occur in a recipient's home and include assistance with activities of daily living (dressings, bathing, etc.), instrumental activities of daily living (meal preparation, housekeeping, etc.) and other related tasks (medication administration, travel to medical appointments, etc.).<sup>3</sup> The employees of personal care services agencies that provide these services to qualified Medicaid recipients are personal care assistants ("PCAs").<sup>4</sup>

In June 2014, the Division of Senior and Disabilities Services ("Division") received a phone call from [REDACTED]<sup>5</sup> Ms. [REDACTED] reported that she had not passed the background clearance required for PCAs, and had applied for a variance.<sup>6</sup> She also reported to the Division that she was working for Vladi as a PCA for her father and wanted to know when her variance would be approved so that she could turn in her timesheets.<sup>7</sup>

After receiving this call, DHSS conducted an investigation and determined that Vladi was allowing PCAs to work before they had passed a background check or obtained a variance.<sup>8</sup> On July 16, 2014, DHSS sent Vladi a "Notice to Correct."<sup>9</sup> This noticed instructed Vladi that "any staff person who does not have a provisional or

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<sup>1</sup> See Exhibit B, p. 4.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

approved status or an approved variance must immediately stop providing services until they have at least a provisional clearance or an approved variance.”<sup>10</sup>

On January 6, 2015, DHSS met with Vladi.<sup>11</sup> During this visit, Vladi’s compliance with the background check process for their PCAs and their billing practices for their PCAs was discussed.<sup>12</sup> According to Vladi, it hired PCAs and allowed them to begin rendering personal care services before they had valid background checks.<sup>13</sup> Vladi would begin the background check application process at approximately the same time the PCA was hired and began providing care.<sup>14</sup> Vladi would wait until the PCA received a valid background check before submitting claims for the services rendered prior to the PCA receiving a valid background check.<sup>15</sup> Vladi stated that if the PCA was not able to obtain a valid background check, it would not submit claims to Medicaid for the services.<sup>16</sup> Vladi referred to this process as “retroactive hiring.”<sup>17</sup> Vladi stated that it knew it was a violation of Medicaid regulations to bill for services that occurred before a caregiver had a valid background check.<sup>18</sup> However, Vladi claimed that despite Medicaid regulations, it had to bill for services rendered before a PCA had a valid background check in order to comply with labor laws.<sup>19</sup> During this visit, Theresa Rosso (“Rosso”) offered an alternative solution, suggesting that Vladi require employees to wait to start work until their approval came through.<sup>20</sup>

On December 14, 2015, DHSS conducted an interview to address Vladi’s compliance with Medicaid background check requirements. This interview revealed that Vladi was still not compliant with Medicaid regulations.<sup>21</sup> Despite Rosso’s suggestion, Vladi maintained that it had to bill Medicaid for services rendered before PCAs had

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Unofficial Audio Transcript of 1/6/2015 Interview p. 10-12.

<sup>14</sup> *Id.* at 49.

<sup>15</sup> *Id.* at 50-54.

<sup>16</sup> *Id.*

<sup>17</sup> See Appeal Brief at 10.

<sup>18</sup> See Unofficial Audio Transcript of 12/14/15 Interview p. 52-53.

<sup>19</sup> *Id.*

<sup>20</sup> See Unofficial Audio Transcript of 1/6/2015 Interview p. 11.

<sup>21</sup> See Unofficial Audio Transcript of 12/14/15 Interview p. 13-14.

background checks to avoid violating labor laws.<sup>22</sup> Additionally, further investigation revealed that Vladi allowed PCAs to continue to provide services even after their background checks had been revoked.<sup>23</sup>

On October 6, 2016, DHSS sanctioned Vladi with termination due to its repeated background check violations.<sup>24</sup> On November 2, 2016, DHSS issued a notice of overpayments related to these background check violations.<sup>25</sup> DHSS then revised overpayment findings and issued revised findings on November 16, 2016.<sup>26</sup> Vladi appealed the sanction on November 4, 2016, and appealed the overpayment findings on December 16, 2016.<sup>27</sup> An administrative hearing was held from August 28th through the 30th, 2017, and Administrative Law Judge Pederson issued a proposed decision on December 29, 2017.<sup>28</sup> The proposed decision found that Vladi was required to reimburse DHSS for improperly provided services.<sup>29</sup> However, Administrative Judge Pederson found that DHSS did not meet its burden on all the asserted overpayment claims and was required to recalculate the overpayment amount based upon the court's decision.<sup>30</sup> Finally, the court found that DHSS had met its burden and demonstrate that Vladi should be permanently terminated from participation as a provider in the Alaska Medicaid program.<sup>31</sup>

On June 25, 2018, DHSS issued a Final Decision After Recalculation of Overpayment.<sup>32</sup> DHSS found that Vladi had been overpaid \$14,397.10 and was required to reimburse the Department in that amount.<sup>33</sup> Vladi now seeks judicial review of this decision in accordance with Alaska Rule of Appellate Procedure 602(a)(2) and asks this

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<sup>22</sup> *Id.* at 52-53.

<sup>23</sup> *See* Appeal Brief at 3-4.

<sup>24</sup> *See* Exhibit B, p. 5.

<sup>25</sup> *See* Corrected Brief of Appellee State of Alaska, Department of Health And Social Services at 8.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *See* Exhibit B, p. 21.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *See* Exhibit A, p. 1.

<sup>33</sup> *Id.*

court to reverse the overpayment finding as well as DHSS's decision to terminate it from the Alaska Medicaid program.<sup>34</sup>

### III. STANDARD OF REVIEW

In reviewing agency decisions, the superior court recognizes four principal standards of review.<sup>35</sup> When reviewing questions of fact, the court will apply the "substantial evidence" test.<sup>36</sup> "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" based on the record as a whole.<sup>37</sup> When reviewing questions of law involving agency expertise, the court will apply a "reasonable basis" test.<sup>38</sup> Under this standard, the court defers to the agency unless the "interpretation is 'plainly erroneous and inconsistent with the regulation.'"<sup>39</sup> For questions of law where no expertise is involved, the court will apply a "substitution of judgment" test.<sup>40</sup> Finally, the court will apply the "reasonable and not arbitrary" test when reviewing administrative regulations.<sup>41</sup>

### IV. DISCUSSION

#### a. PCAs Are Required To Have Valid Background Checks Prior To Providing Care To Medicaid Recipients.

The majority of Medicaid providers are required to have valid background checks in order to render services if they have direct contact with recipients or access to their medical and financial records.<sup>42</sup> PCAs are among the providers that are required to have valid background checks in order to render services to Medicaid recipients.<sup>43</sup> The process

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<sup>34</sup> See Notice of Appeal at 1.

<sup>35</sup> *State, Dept. of Health & Social Services v. North Star Hosp.*, 280 P.3d 575, 579 (Alaska 2012) (citing *Handley v. State, Dep't of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992)).

<sup>36</sup> *Id.*

<sup>37</sup> *Hidden Heights Assisted Living, Inc. v. State, Dept. of Health and Social Services, Div. of Health Care Services*, 222 P.3d 258, 267 (Alaska 2009) (citing *Bauder v. Alaska Airlines, Inc.*, 52 P.3d 166, 174 (Alaska 2002)).

<sup>38</sup> *State, Dept. of Health & Social Services*, 280 P.3d at 579.

<sup>39</sup> *Hidden Heights*, 222 P.3d at 267 (citing *May v. State, Commercial Fisheries Entry Comm'n*, 175 P.3d 1211, 1216 (Alaska 2007)).

<sup>40</sup> *State, Dept. of Health & Social Services*, 280 P.3d at 579.

<sup>41</sup> *Id.*

<sup>42</sup> 7 AAC 10.900(b).

<sup>43</sup> 7 AAC 125.090(a)(4).

of obtaining a background check is clearly outlined in Title 7 of the Alaska Administrative Code.

There are three ways to have a valid background check. First, a provider can have an approved background check under 7 AAC 10.915(c). Second, a provider can obtain a provisional background check while waiting for their background check to be approved.<sup>44</sup> Finally, a provider can be granted a variance if a barring condition exists.<sup>45</sup> DHSS will not pay for services rendered by a PCA without a valid background check,<sup>46</sup> and failing to comply with background check requirements is grounds for sanctions.<sup>47</sup>

Vladi does not dispute the fact that it allowed PCAs to render care prior to a valid background check being issued.<sup>48</sup> Additionally, Vladi does not dispute that a valid background check is required for a PCA to provide services.<sup>49</sup> Instead, Vladi argues that it “retroactively hired” PCAs once they obtained a valid background check.<sup>50</sup> In support of its “retroactively hiring” theory, Vladi makes three arguments: (1) Vladi was required to “retroactively hire” to avoid violating labor laws;<sup>51</sup> (2) DHSS’s allowance of retroactive application of recipient eligibility;<sup>52</sup> and (3) a change in regulations that Vladi asserts was made to prohibit “retroactive hiring,” therefore making his hiring practice prior to this change legal.<sup>53</sup> The court does not find any of these arguments persuasive.

As a preliminary matter, the Appellee correctly points out that Vladi’s “retroactive hiring” process is more accurately described as “retroactive billing” which is the normal Medicaid billing process and not an exception to the background check requirements.<sup>54</sup> The majority of Medicaid billing occurs after the services were rendered, and Medicaid

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<sup>44</sup> 7 AAC 10.920.

<sup>45</sup> 7 AAC 10.930 – 7 AAC 10.935.

<sup>46</sup> 7 AAC 125.090(c).

<sup>47</sup> 7 AAC 105.400(30).

<sup>48</sup> See Appeal Brief at 10.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See Unofficial Audio Transcript of 12/14/15 Interview p. 52-53.

<sup>52</sup> See Appeal Brief at 15.

<sup>53</sup> *Id.* at 13-14.

<sup>54</sup> See Corrected Brief Of Appellee State of Alaska, Department Of Health And Social Services at 11.

providers have up to one year to submit claims for these services.<sup>55</sup> Additionally, Vladi's "retroactive hiring" procedure does not change the fact that it allowed PCAs without a valid background check to provide care which is a direct violation of 7 AAC 125.090(a)(4).

Vladi's first argument that it had to "retroactively hire" PCAs to comply with labor laws is without merit. While it is generally understood that labor laws require an employer to pay its employees for work rendered on behalf of the employer, Vladi does not point the court to any specific labor law it believed it would be violating. Instead, Vladi asserts that because many PCAs and recipients are related and live together, the prospective PCA might already be caring for the recipient, prior to having a valid background check, and it would be a violation of labor laws not to pay this PCA for those services.<sup>56</sup>

It is undisputed that some PCAs are related to Medicaid recipients and therefore already taking care of these recipients prior to becoming authorized to render Medicaid services. However, waiting for a valid background check to be issued before *hiring* a family member to provide PCA authorized Medicaid services does not preclude that family member from continuing to care for their loved one in the interim. Medicaid regulations requiring a valid background check do not suggest that a prospective PCA stop providing care to their loved one. Rather, Medicaid regulations require valid background checks to be obtained before a family member can be *hired* as a PCA and reimbursed for providing authorized Medicaid services in accordance with all applicable Medicaid regulations and requirements. The solution to this conflict is simple. Family members can continue to care for their loved ones until they receive valid background checks. Once the family member receives a valid background check, they can be hired by Vladi as a PCA and begin filling out timesheets for services rendered in compliance with Medicaid regulations.

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<sup>55</sup> 7 AAC 145.005(c)

<sup>56</sup> See Appeal Brief at 10.

The court finds Vladi's second argument that it assumed it could "retroactively hire" PCAs because DHSS allows the effective date of eligibility for some Medicaid recipients to be applied retroactively without merit. The regulations for Medicaid recipient eligibility have no bearing on the background check requirements for Medicaid providers. Additionally, Vladi was instructed both in the notice to correct<sup>57</sup> and in January 2015<sup>58</sup> that retroactively applying background check clearances was not permitted.

Finally, Vladi's third argument that a July 22, 2017 change to the wording of a PCA regulation, allegedly made to prohibit "retroactive hiring," by extension proves this practice was previously allowed is not persuasive. The only relevant question is whether Vladi complied with background check requirements in place at the time it hired PCAs. The Medicaid regulation in place at all relevant times states that, as a requirement of employment as a PCA in the Medicaid program, the individual must pass a background check unless DHSS grants a variance.<sup>59</sup> This regulation makes it clear that, if a PCA does not yet have a valid background check, they cannot be employed as a PCA.

The evidence presented above, taken together, supports DHSS's determination that a preponderance of the evidence shows that Vladi did not comply with Medicaid regulations requiring PCAs to have valid background checks. The court does not find Vladi's theory of "retroactive hiring" as an exception to the background check requirements persuasive.

**b. Personal Care Services May Not Be Provided Under 7 AAC 10.960(2)(C)(i) By A PCA Whose Background Check Was Revoked Under 7 AAC 10.945.**

DHSS regulation 7 AAC 10.900(b) requires each individual who is going to be associated with the entity or provider to have a valid criminal history check conducted under 7 AAC 10.900 – 7 AAC 10.990. Vladi is an enrolled Medicaid provider.<sup>60</sup>

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<sup>57</sup> See Exhibit B, p. 4.

<sup>58</sup> See Unofficial Audio Transcript of 1/6/2015 Interview p. 11-13.

<sup>59</sup> 7 AAC 125.090(a)(4).

<sup>60</sup> See Exhibit B, p. 4.



Therefore, Vladi's PCAs providing services to eligible Medicaid recipients are subject to this rule.

An investigation conducted by DHSS revealed that Vladi allowed PCAs who had their valid background check revoked under 7 AAC 10.945 to continue to provide personal care services.<sup>61</sup> Vladi does not dispute this point. Instead, Vladi asserts that 7 AAC 10.960(a)(2)(C)(i) permits a PCA whose background check has been revoked to continue to provide services if they have a "positive impact on the well-being of the recipient."<sup>62</sup> The court disagrees.

The regulation Vladi relies on allows, in narrowly defined circumstances, an individual who would otherwise be subject to termination of association with an entity due to their lack of a valid background check to continue to work on a restricted basis. This regulation states, that if an entity or provider intends to request a variance under 7 AAC 10.930 for an individual without a valid background check, the individual may remain associated with the entity if the individual is immediately reassigned so that they do not have contact with the recipient of services.<sup>63</sup> Additionally, an individual cannot have control over or impact the financial well-being of a recipient of services,<sup>64</sup> unless the only recipient whose financial well-being is affected is a relative of the individual who has legally authorized that individual to make financial decisions for that relative.<sup>65</sup> Additionally, the individual must be provided with direct supervision if present in the entity or premises where the provider is providing services during the hours of operation.<sup>66</sup>

The exception Vladi relies on is specific to the individual having control over, or an impact on, the financial well-being of a recipient of services. This narrow exception explicitly states that the individual, whose variance is pending, must be reassigned so that

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<sup>61</sup> See Appeal Brief at 3-4.

<sup>62</sup> *Id.*

<sup>63</sup> 7 AAC 10.960(a)(2)(A).

<sup>64</sup> 7 AAC 10.960(a)(2)(B).

<sup>65</sup> 7 AAC 10.960(a)(2)(C)(i).

<sup>66</sup> 7 AAC 10.960(a)(2)(D).

they do not have contact with the recipient of Medicaid services.<sup>67</sup> Additionally, this exception requires that the individual is a relative who is legally authorized to make financial decisions, and must be provided with direct supervision.<sup>68</sup> It is clear legislation did not intend for this exception to extend to PCAs providing personal care services without a valid background check, as providing personal care services requires direct contact with the Medicaid recipient and lacks supervision.

The court upholds DHSS's determination that Vladi violated Medicaid regulations requiring PCA's to have a valid background check. Additionally, the court finds no merit to Vladi's argument that 7 AAC 10.960(2)(C)(i) operates as an exception to this general rule.

**c. DHSS Is Not Estopped From Terminating Vladi As A Medicaid Provider Or Requiring Reimbursement For Overpayment.**

Vladi argues that even if it did violate the background check regulations, DHSS is estopped from sanctioning it with termination and from recouping the overpayments because of the lack of DHSS's guidance and oversight.<sup>69</sup> The court disagrees.

To successfully invoke the defense of estoppel, four general elements must be established: (1) assertion of a position by conduct or word, (2) reasonable reliance thereon, (3) resulting prejudice, and (4) the estoppel serves the interest of justice so as to limit public injury.<sup>70</sup> It is Vladi's contention that had DHSS provided more guidance and more timely compliance reviews, it would have understood the ambiguous background check requirements and would have come into compliance with these requirements. The court does not find this argument persuasive.

Vladi claims that DHSS had an affirmative obligation to conduct a biannual compliance review and that their four-year delay in conducting the first compliance review resulted in its confusion regarding regulations and lack of compliance with

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<sup>67</sup> 7 AAC 10.960(a)(2)(A).

<sup>68</sup> 7 AAC 10.960(a)(2)(D).

<sup>69</sup> See Appeal Brief at 22-23.

<sup>70</sup> *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1984).

regulations.<sup>71</sup> The court disagrees. To the extent that DHSS's four-year delay in conducting a compliance review resulted in Vladi's lack of compliance with Medicaid regulations, Vladi was provided with an opportunity to remedy this non-compliance when DHSS issued a notice to correct. This notice instructed Vladi that any PCA without a valid background check must immediately stop rendering services and could not resume work until they received a valid background check.<sup>72</sup> Additionally, when Vladi shared its "retroactive hiring" theory as a means of complying with labor laws, DHSS offered an alternative solution, suggesting that Vladi require employees to wait to start work until their background check approval came through.<sup>73</sup> The record clearly establishes that the only assertions made by DHSS were to instruct Vladi of its lack of compliance with Medicaid regulations and provide Vladi with an opportunity to correct this lack of compliance.

Vladi claims that it relied on DHSS's four year delay in conducting its "biannual review" as legal guidance for its conduct.<sup>74</sup> The court does not find this persuasive. As previously stated, any lack of compliance resulting from the delay in conducting the first compliance review could have been remedied by Vladi when DHSS issued a notice to correct on July 16, 2014.<sup>75</sup> The court does not find that Vladi was reasonable in continuing to rely on a delay in the "biannual review" after it was clearly instructed to correct its lack of compliance in a notice from DHSS.

The court does not reach the third and fourth elements of Vladi's estoppel defense as the court does not find that Vladi reasonably relied on DHSS's untimely "biannual review" as an assertion of its position. Therefore, the court upholds DHSS's determination to terminate Vladi's certification as a Medicaid provider, and DHSS's requirement that Vladi reimburse them for overpayment in the amount of \$14,397.10.

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<sup>71</sup> See Response To Brief of Appellee at 7-8.

<sup>72</sup> See Exhibit B, p. 5.

<sup>73</sup> See Unofficial Audio Transcript of 1/6/2015 Interview p. 11.

<sup>74</sup> See Response To Brief of Appellee at 7-9.

<sup>75</sup> See Exhibit B, p. 5.

**V. CONCLUSION**

The court finds there is sufficient evidence to support DHSS's factual conclusions that Vladi violated Medicaid regulations by allowing its employees to begin rendering services before they obtained valid background checks. Additionally, the court does not find any merit to Vladi's arguments that 7 AAC 10.960(2)(C)(i) operates as an exception to the requirement that PCAs have valid background checks or Vladi's argument that DHSS is estopped from sanctioning it with termination and from recouping the overpayments because of the lack of DHSS guidance and oversight.

The court AFFIRMS DHSS's decision to terminate Vladi's certification as a Medicaid provider and DHSS's requirement that Vladi reimburse them for overpayment in the amount of \$14,397.10.

**IT IS SO ORDERED.**

DATED at Anchorage, Alaska this <sup>12</sup>13 day of NOV 2019.

  
CATHERINE M. EASTER  
Superior Court Judge

I certify that on 11/13/19  
a copy of the above was mailed to:

UP  
Secretary/Deputy Clerk  
offret/  
friend