IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

L.U.,	)	
Appellant,	)	
vs.	)	
	)	
STATE OF ALASKA, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF SENIOR AND DISABILITIES SERVICES,	)	
Appellee.	)	
	)	Case No. 3AN-21-06060 CI

ORDER AND DECISION ON ADMINISTRATIVE APPEAL

I. Introduction

L.U. challenges an administrative order (OAH No. 20-0775-MPC) affirming an Alaska Department of Health and Social Services' sanction that terminated her participation as a provider in a Medicaid program. The court heard oral argument on June 7, 2022. Having considered the administrative record and applicable law, the court now AFFIRMS the administrative decision.

II. Background

A. Facts

1. Alaska Medicaid covers community-based services for eligible individuals

Alaska's Home and Community-Based Waiver Services programs allow individuals to receive care at home or in the community rather than in an institutional setting.[1] Medicaid, as administered by the Alaska Department of Health and Social Services ("Department"), covers the cost of these programs.[2] To effectuate the programs, the Department's Division of Senior and Disabilities Services ("Division") works with providers to guarantee that qualified Medicaid recipients have a plan of care ("POC") in place that tailors services to meet each individual's needs. Day habilitation ("Day Hab") is one service that comprises part of a Medicaid recipient's plan and aims to help them learn skills outside the home and interact within their community.[3]

Home healthcare agencies providing Medicaid services may hire a personal care assistant ("PCA"), such as a family member, and enroll them as a Medicaid provider to provide specific services under a recipient's POC. The PCA must submit accurate timesheets documenting the hours and services they provide to their employing healthcare agency, which in turn bills the Department. The Department then bills Medicaid to reimburse the PCA for the completed services.[4]

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1 7 AAC 130.200.
2 *See* 7 AAC 130.205.
3 *See* 7 AAC 130.260.
4 *See* 7 AAC 105.210; 7 AAC 125.120.

Personal care assistants who are enrolled to bill Medicaid for their services also have responsibilities under the regulations. For example, if a PCA is charged with a "barrier crime" – an offense specified in the regulations – they must timely inform their employing agency, which must notify the Department.[5] Medical assistance fraud is a "barrier offense" that triggers this reporting requirement.[6]

2. L.U. provided personal care services to G.U.

L.U. was a certified PCA compensated by Medicaid to provide services for her child, G.U. She is married to G.U.'s father, S.U., and the two serve as G.U.'s co-guardians. G.U. is in his twenties and was diagnosed with several medical conditions as a child. He is nonverbal and communicates through gestures. G.U. is a qualified Medicaid recipient, and his approved POC includes up to 24 hours per week of Day Hab services, approximately 40 hours per week of in-home PCA services, and 1 0 hours per week of respite services.[7]

The home healthcare agency designated to provide services under G.U.'s POC. In 2011, the home healthcare agency hired L.U. as a PCA to provide services to G.U. As G.U.'s co-guardian, S.U. was authorized to sign L.U.'s timesheets.

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5 7 AAC 125.120(g); 7 AAC 10.925(b).
6 7 AAC 10.905(c)(11).
7 Administrative Record ("AR") p. 724-46.

3. The Department and Medicaid Fraud Control Unit investigated L.U.

In 2017, the Department initiated an investigation due to concerns that L.U. was not accurately billing for her PCA services.[8] A care coordinator with the home healthcare agency, reported to the Division that the U family would not allow her to meet with G.U. to evaluate his wellbeing and that the home healthcare agency staff were limited to seeing him in a family vehicle in the agency's parking lot.[9] The Division examined L.U.'s time sheets and noticed several billing discrepancies.[10]

On December 18, 2017, staff with the Division's Quality Assurance unit surveilled L.U.'s home from about 11:30 a.m. to 3:00 p.m.[11] Staff reported observing L.U. leave home with G.U. in the passenger seat of the car and then leaving G.U. unsupervised in the car while running errands.[12] They also reported observing L.U. stopping at the school to pick up her daughter.[13] Nonetheless, L.U. submitted a time sheet billing Medicaid for services to G.U. at home from 10:45

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8 AR p. 58-62.
9 *Id.*
10 AR p. 379-80.
11 *Id.*
12 *Id.*
13 *Id.*

a.m. to 5:00 p.m.[14] The Division then referred the matter to the Alaska Department of Law's Medicaid Fraud Control Unit ("MFCU").[15]

The MCFU initiated an investigation in March 2018 and detailed Investigator Don McLeod to the case.[16] As part of his investigation, Mr. McLeod conducted personal surveillance of L.U. and compared her activities as she reported them on her time sheets with his observations.[17] As the investigation progressed, the MCFU installed a camera on a telephone pole near the U Family home to monitor vehicles entering and exiting the driveway and obtained surveillance footage from the school and a nearby Fred Meyer store.[18] Mr. McLead then obtained time sheets and notes submitted by L.U. to the home healthcare agency, cross referenced L.U.'s reported activities with his surveillance and video footage, and noted inconsistencies.[19]

On November 29, 2018, the Department of Law charged L.U. and S.U. with felony Medicaid fraud.[20] A grand jury indicted L.U. on February 6, 2019. On October 11, 2019, in accordance with a plea agreement, L.U. pled guilty to a misdemeanor, Misapplication of Property under

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14 *Id.*
15 AR p. 58-60.
16 AR p. 591.
17 AR p. 592-95.
18 *Id.*
19 AR p. 589-685.
20 AR p. 1106-1116.

AS 11.46.620(D)(2). The Department of Law dismissed the felony charges against S.U.[21]

4. The Department sanctioned L.U. after she failed to report a felony Medicaid fraud charge

Following, and in part due to, the criminal charges, the Department conducted a review of the personal care services L.U. provided between 2017 and 2020. On September 1, 2020, the Department concluded its review by issuing a report that addressed four allegations against L.U.[22] Ultimately, the report substantiated the allegations, finding L.U. submitted timesheets for personal care services not provided on multiple occasions between December 2017 and May 2018 and that she failed to notify the personal care provider agency that she had been charged with a barrier crime.[23]

Based on the report's findings, the Department determined there were grounds for sanctioning L.U., and it convened a Sanctions Committee. After meeting, reviewing the report, and discussing appropriate sanctions, the Committee proposed terminating L.U.'s participation in the Medicaid program and issuing public notice of her termination.[24]

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21 AR p. 1786, 1117.
22 AR p. 12.
23 AR p. 16-17.
24 AR p. 17-18.

The Department mailed a letter containing the investigative report, the proposed sanctions, and instructions about how to contest them to L.U.[25] She timely appealed the Department's proposed sanctions under 7 AAC 105.460.

B. Procedural History

L.U. sought an appeal of the proposed sanctions on September 11, 2020. On October 1, Administrative Law Judge (ALJ) Andrew Lebo held a case planning conference. Then, on October 9, 2020, ALJ Lebo held an administrative hearing at which L.U. represented herself. The Department elicited testimony from Mr. McLeod, another investigator, and a Quality Assurance unit manager. L.U. cross-examined these witnesses and testified on her own behalf. On February 5, 2021, ALJ Lebo issued a decision affirming the sanctions. L.U. appealed to superior court.

III. Standards of Review

Under Alaska Statute 22.10.020(d), this court serves as an intermediate court of appeals in administrative matters. In reviewing an administrative agency's decision, the court applies four standards of review. The substantial evidence test is applied to questions of fact.[26] The reasonable basis test is applied to questions of law involving agency expertise.[27] The substitution of judgment test is applied for questions of law not involving

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25 *Id.*

26 *Cassel v. State, Dep't of Admin.*, 14 P.3d 278, 282 (Alaska 2000) (citations omitted).

27 *Id.*

agency expertise.[28] The reasonable and not arbitrary standard of review is applied to administrative regulations.[29]

IV. Discussion

L.U. challenges the administrative order affirming the proposed sanctions on five bases: (1) that the Sanctions Committee violated the Open Meetings Act, (2) that the Department's determination of sanctions violated the Administrative Procedure Act ("APA"), (3) that the Department deprived L.U. of due process, (4) that it failed to prove that she violated Medicaid regulations, and (5) that termination of her participation as a provider was an inappropriate sanction.

As explained below, each of these arguments fails.

A. L.U.'s claim under the Open Meetings Act is time-barred

L.U. argues that the Department's Sanction Committee was a governmental body subject to Alaska's Open Meetings Act and its decision to propose sanctions was an action that violated the Act. The Department responds that L.U.'s claim is time-barred and that there was no violation of the Act. This issue was first raised on appeal, and the court applies its independent judgment.

Alaska's Open Meetings Act requires "[a]ll meetings of a governmental body of a public entity of the state" be open to the public.[30] A lawsuit "to void an action taken in

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28 *Id.*
29 *Id.*
30 AS 44.62.310(a).

violation of [the Act] must be filed in superior court within 180 days after the date of the action."[31] Upon a timely challenge, the court may only hold an invalid action void if "the public interest in compliance with [the Act] outweighs the harm that would be caused to the public interest and to the public entity by voiding the action."[32]

L.U. did not file a lawsuit within 180 days of the action she challenges. The sanction committee met to consider sanctions against L.U. in August 2020 and mailed its decision proposing sanctions on September 1, 2020. At the latest, L.U. would have needed to file a lawsuit to challenge the committee's action on February 28, 2021. She did not.

L.U. filed this appeal on April 27, 2021. The court notes that an administrative appeal is not a substitute for a lawsuit, which the Act requires.[33] But even assuming a person could properly raise an Open Meetings Act violation in an administrative appeal, L.U. did not file her appeal within 180 days of the sanctions decision it challenges. Furthermore, L.U. did not mention a violation of the Open Meetings Act in her points on appeal. She first raised the Open Meetings Act issue in January 2022, when she filed her opening brief.

In sum, L.U.'s claim under the Open Meetings Act, AS 44.62.310 *et seq.*, fails because she failed to file suit within the time limit the Act imposes.

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31 AS 44.62.310(f).
32 *Id.*
33 *See id.*

B. The Department did not violate the Administrative Procedure Act as its sanctions procedure is not a "regulation"

L.U. contends that the Department's use of a sanctions committee and an investigator's report to propose sanctions together constitute a regulation and should have been promulgated by rulemaking because they make specific the Department's sanctions procedures. The Department argues that these methods are a common sense interpretation of its authority, not a regulation, and fall outside the ambit of the APA.[34]

The court applies its independent judgment to questions of law that do not involve agency expertise, such as whether an agency action is a regulation.[35]

An agency must conduct a rulemaking in order to establish a regulation.[36] Agency action that does not constitute a regulation does not require rulemaking. A "common sense" interpretation of a regulation according to its own terms does not constitute a regulation and does not require rulemaking.[37] On the other hand, when an agency adds specific criteria or values that clarify an existing statutory or regulatory standard and require the public to

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34 The process unfolds in two steps: (1) an investigator writes a report used in determining whether there are grounds for sanctions; and (2) if there are grounds for a sanction, a committee, which includes the investigator and other co-workers, discuss what sanction is appropriate and consider the factors outlined in the regulation in order to render a decision.

35 *Alaska Center for the Env't v. State*, 80 P.3d 231, 243 (Alaska 2003).

36 *See* AS 44.62.180 *et seq.*

37 *Alaska Center for the Env't v. State*, 80 P.3d 231, 243-44 (Alaska 2003).

comport with precise criteria not specified in existing rules, that is a regulation, and the agency must promulgate it in compliance with the APA.[38]

Existing regulations require the Department to ensure provider compliance with various laws and permit the review and sanctioning of providers under certain circumstances. As a matter of law, the Department must establish a quality assurance program to ensure provider compliance with various laws, including 7 AAC 105 – 7 AAC 160, and conduct program reviews of providers.[39] If adverse action is proposed based on a review, the Department must provide a written report of the findings to the provider.[40] The Department may impose one of a specified set of sanctions on providers on one or more of 42 grounds after it considers eight factors.[41]

Here, the Department's investigation of L.U. as well as the formation of a sanction committee to consider the investigation and determine whether to impose sanctions and, if so, which ones, were a common sense interpretation of the regulations. Although the Department did not interpret a specific word or phrase in the regulations, its actions were an interpretation of how to implement the regulations as a whole. Neither the investigation nor the formation of a committee created new substantive requirements.

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38 *Id.*; *Smart v. State, Dep't of Health and Soc. Servs.*, 237 P.3d 1010, 1017 (Alaska 2010).

39 7 AAC 160.140.

40 *Id.*

41 7 AAC 105.400 (enumerating the permissible reasons for sanction); 7 AAC 105.410 (specifying the possible sanctions the Department may impose); 7 AAC 105.420 (listing eight factors the Department will consider in determining a sanction).

The Department's actions are roughly analogous to those at issue in *Smart v. State, Department of Health and Social Services*.[42] There, the Department's regulations required it to calculate and recoup overpayments to Medicaid services providers during audits; to do so, the Department developed a protocol as a calculation tool. On appeal, the Alaska Supreme Court rejected the argument that Department violated the APA by not promulgating the protocol as a regulation, reasoning that the protocol was a common sense interpretation of a regulation requiring the Department use "statistically valid sampling methodologies" in its audits.[43] *Smart* is analogous to the present appeal: the Department's investigation was a tool to identify whether a provider failed to comply with applicable laws, and the formation of a sanctions committee was a tool to consider whether and how to sanction a provider, based on the results of the investigation.

Because the Department's procedures here are a common sense interpretation of regulations and do not themselves constitute a regulation, L.U.'s APA claim fails.

C. The Department did not violate L.U.'s due process rights as she was not deprived a property or liberty interest without process

L.U. argues that the Sanctions Committee's recommendation to terminate her status as a Medicaid provider deprived her of protected property and liberty interests without due process. Specifically, she claims that she suffered the deprivation of

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42 237 P.3d 1010 (Alaska 2010).
43 *Smart*, 237 P.3d at 1017-18.

a property interest in her status as a provider in the Medicaid waiver program and of a liberty interest in her reputation. For its part, the Department argues that L.U. did not suffer a violation of her due process rights because it did not deprive her of property or liberty interests.

The court applies its independent judgment to questions of constitutional law.

Under both the federal and state constitutions, "the state cannot deprive citizens of life, liberty, or property without due process of law."[44] "As a threshold matter, due process rights are only implicated by a deprivation of liberty or property interests."[45] Accordingly, L.U. must assert a deprivation of a recognized liberty or property interest to establish her due process claim.

1. L.U. has no property interest in future compensation and was not deprived of an interest in provider status prior to a hearing

L.U. argues that she has a property interest in future compensation from Medicaid. An individual may have a property interest in a government benefit when they have "a legitimate claim of entitlement to it."[46] Property interests "are created and their dimensions are defined by existing rules . . . that stem from an independent source such as state law" or contract.[47]

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44 *Chijide v. Maniilaq Ass'n of Kotzebue, Alaska*, 972 P.2d 167, 171 (Alaska 1999).
45 *Nickerson v. Univ. of Alaska Anchorage*, 975 P.2d 46, 52 (Alaska 1999).
46 *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).
47 *Id.*

Alaska courts have not addressed whether a person has a property interest in future reimbursements as a Medicaid provider. But federal courts have held that enrollment as a Medicaid provider does not create a property interest in subsequent contracts.[48] In *Geriatrics, Inc. v. Harris*, the Tenth Circuit found a nursing home had no property interest in the "expectation of continued participation" in a Medicaid program after its status was not renewed.[49] Because the nursing home's provider status was set to expire and would not be renewed absent an affirmative showing of qualification, it had "at most a unilateral hope" of receiving a government benefit, not an entitlement.[50]

Under Alaska regulations, a provider enrolls with the Department, provides services to a Medicaid recipient, and bills for reimbursement for the services they provide through a healthcare agency.[51] An entitlement to compensation under the state scheme does not arise until services are rendered. Until a provider has completed services for a Medicaid recipient, they are like the nursing home in *Geriatrics* and only have a unilateral hope of providing future services to be reimbursed. Thus, L.U. did not have a property interest in future reimbursements as a Medicaid provider.

As to status as a qualified Medicaid provider, the Alaska Supreme Court has not considered whether a property interest exists in a provider's status. Federal courts have

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48 *Cf. Geriatrics, Inc. v. Harris*, 640 F.2d 262, 264–65 (10th Cir.), *cert. denied sub nom. Geriatrics, Inc. v. Schweiker*, 454 U.S. 832 (1981) (holding an individual had no property interest in renewal of an expired provider agreement).

49 *Id.* at 264.

50 *Id.* at 264-65.

51 7 AAC 105.200(a).

found that existence of a property interest depends on whether the structure of a state's Medicaid statutes and regulations "vests in the state significant discretion over the continued conferral of that benefit."[52] For example, the Second Circuit held that "the structure of the [New York's] Medicaid laws suggests that a provider does not have a property interest in continued participation in the program" because their status could be terminated without cause.[53]

Alaska's regulatory scheme cabins the state's discretion over a provider's continued participation in the Medicaid program. The State may not terminate an individual's status as a provider unless it demonstrates that at least one of 42 enumerated grounds for sanction are met.[54] Furthermore, it must decide termination is the appropriate sanction after considering mandatory factors.[55] Otherwise, providers remain enrolled as long as they continue to submit claims.[56] Compared with New York's Medicaid laws – which allowed the state to terminate providers without cause and under which an individual had no property interest in their status – Alaska has limited discretion to terminate providers. This

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52 *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 175 (2d Cir. 1991); *see also Senape v. Constantino*, 926 F.2d 687, 690 (2d Cir 1991) ("Where the state provisions bestow a right that cannot properly be eliminated except for cause, that right constitutes property protected by procedural due process. On the other hand, the existence of provisions that retain for the state significant discretionary authority over the bestowal or continuation of a government benefit suggests that the recipients of such benefits have no entitlement to them.").

53 *Plaza Health Lab'ys, Inc. v. Perales*, 878 F.2d 577, 582 (2d Cir. 1989).

54 7 AAC 105.400 (listing grounds for sanction).

55 7 AAC 105.410 (listing potential sanctions).

56 7 AAC 105.210(d) (providing that the department may disenroll a provider who has not submitted a claim for at least 18 months).

indicates that individuals enrolled under the Alaska regulations may have a property interest in their status as a provider.

Assuming that L.U. has a property interest in her status as a provider under the Alaska regulatory scheme, the court must determine if the state unconstitutionally deprived her of that status. There is no violation of procedural due process when the state affords an individual "adequate notice and a meaningful opportunity to be heard" prior to the deprivation of a property interest.[57]

Here, the Department sent L.U. a letter on September 1, 2020, proposing to sanction her by terminating her provider status; the letter also informed her of the right to appeal. When L.U. appealed the proposed sanctions, the termination of her status as a provider paused under the regulations.[58] At the time of her appeal, L.U. had an active Medicaid number, and L.U. has not shown that the Department revoked her Medicaid certification and number prior to her administrative hearing or otherwise prevented her from working as a provider during this time period.[59]

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[57] *E.g.*, *Fantasies on 5th Ave., LLC v. Alcoholic Beverage Control Bd.*, 446 P.3d 360, 370 (Alaska 2019).

[58] *See* 7 AAC 105.440(b) ("[A] sanction by the Department should not take effect until after the date of the final administrative appeal decision.").

[59] AR p. 1270-71. L.U. argues that the home healthcare agency employing her as a provider stopped working with her because they received a letter indicating her status would be terminated. However, this is not supported by the record. Regardless, L.U. does not have a protected property interest in her employment with a private organization.

Because the Department did not terminate her status as a provider before the conclusion of administrative proceedings, L.U. did not suffer a deprivation of a property interest without due process.

2. L.U.'s liberty interest in her reputation is not implicated here

L.U. also argues that the Department deprived her of a liberty interest in her reputation.

An individual's liberty interest is implicated when government action is "so stigmatizing as to harm reputation or foreclose future employment."[60] "Remarks that impose a stigma of moral turpitude" or "impugn an individual's honesty, integrity, or morality" may infringe a liberty interest.[61] Similarly, dismissal from a government position for misconduct or other inappropriate behavior "sufficiently stigmatizes a person's professional reputation in a chosen career field to constitute an infringement of a liberty interest."[62] But accusations that relate to an individual's professional performance do not carry the same stigma.[63]

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60 *Revelle v. Marston*, 898 P.2d 917, 926 (Alaska 1995).

61 *Id.* (internal citations omitted).

62 *Nickerson v. Univ. of Alaska Anchorage*, 975 P.2d 46, 52 (Alaska 1999) (dismissal from a graduate program for allegedly "hostile," "abrasive," "intimidating," and "unprofessional" behavior sufficiently stigmatized professional reputation); *see also State, Dep't of Military and Veterans Affairs v. Bowen*, 953 P.2d 888, 900-01 (Alaska 1998) (general allegations of misconduct sufficiently damaged to the reputation of a military employee).

63 *See Revelle v. Marston*, 898 P.2d 917, 926 (Alaska 1995) (an employer's negative job evaluation did not infringe upon a liberty interest because it did not impugn the employee's honesty, integrity or morality); *Ramsey v. City of Sand Point*, 936 P.2d 126, 132 (Alaska 1997) (an accusation that a police officer used excessive force did not

L.U. claims that allegations of fraud and falsification contained in the Sanctions Committee's report and proposed sanctions impugned her reputation so severely as to harm her liberty interests. The government responds that any reputational harm caused by the Sanction Committee's notice is minor, that it will not affect her employment prospects as her status as a Medicaid provider has been terminated, and that reputation is not as important in the field of direct services.

As a provider, L.U. had the responsibility to submit accurate timesheets[64] and notify her personal care agency employer if she was charged with a "barrier crime," such as medical assistance fraud.[65] L.U.'s failure to accurately report her time and notify the home healthcare agency of her medical assistance fraud charge are accusations that relate to her performance of the requirements of a Medicaid provider.

L.U.'s case is similar to that of the police officer in *Ramsey v. City of Sand Point*. There, the court held that an accusation that a police officer used excessive force did not impugn his honesty, integrity, or morality as the accusation directly concerned his professional performance.[66] Similarly, the Sanction Committee's report and proposed sanction here do not impose a stigma of moral turpitude and deprive L.U. of a liberty interest.

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implicate his liberty interest because the accusation directly concerns his professional performance and does not impugn his honesty, integrity or morality).

64 *See* 7 AAC 105.210; 7 AAC 125.120.

65 7 AAC 125.120(g) (notification requirement); 7 AAC 10.905(c)(11) (defining barrier crimes).

66 936 P.2d at 132.

Furthermore, the Committee's report and proposed sanction are unlikely to harm L.U.'s future employment prospects. In *State, Department of Military and Veterans Affairs v. Bowen*, the court found Bowen's dismissal for misconduct sufficiently stigmatized his reputation because prospective employers routinely ask discharged servicemembers for relevant forms and would understand he had been discharged for misconduct. [67] In this case, employers who are not personal care services agencies are unlikely to ask about L.U.'s prior status as a Medicaid provider. And L.U. may not seek employment as a personal care assistant because her participation as a provider has been terminated.

In sum, the Sanctions Committee's report and proposed sanction were not sufficiently stigmatizing to harm L.U.'s future employment prospects and, as such, she could not have suffered a deprivation of a liberty interest.

3. Substantial evidence supports the Administrative Law Judge's determination that the Department established there were grounds for sanctions against L.U.

L.U. challenges the administrative law judge's determination that the Department established her violation of the applicable regulations. Specifically, she asserts that the Department failed to prove that she did not provide Medicaid services; rather, she argues, the Department only proved that L.U. did not provide the services at the

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[67] 953 P.2d at 900-01.

times indicated on her time sheets. The Department responds that the inaccurate billing is itself a sanctionable offense supported by the record.

The court reviews an administrative decision determining a question of fact to assess if the decision is supported by substantial evidence. "Substantial evidence exists when, in light of the whole record, reasonable minds might accept the administrative agency's decision."[68]

The Department may impose sanctions on enrolled Medicaid providers who bill falsely, breach the terms of their Medicaid provider agreement, or fail to maintain accurate records of the services provided to a Medicaid recipient.[69] Medicaid providers are also required to provide notice to their personal care services agency within 24 hours of being charged with a felony or other barrier crime.[70]

The record supports all four of the allegations that served as the grounds for sanctions against L.U.

The Department established the first, that L.U. submitted timesheets for personal care services not provided on multiple occasions between December 2017 and May 2018, through testimony and documentation that L.U. submitted billing for services at times where it would have been impossible for her to provide G.U. those services. The MCFU investigator's testimony and documentation detail these discrepancies.

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68 *Cassel v. State, Dep't of Admin.*, 14 P.3d 278, 282 (Alaska 2000).
69 7 AAC 105.400.
70 7 AAC 125.120(g).

The Department established the second, that she submitted service notes and time sheets for Day Hab services not provided in accordance with conditions of participation and regulations, by providing time sheets and Investigator McLeod's report. Together, these submissions show L.U. submitted time sheets for Day Hab services that she did not perform for G.U. at the times indicated on the sheets.

The same facts that established the Department's first two allegations also support its third: that L.U. violated the terms of her personal care assistant agreement signed on January 8, 2013 and again on October 24, 2018. The personal care assistant provider revalidation agreement signed by L.U. in 2018 includes a provision in which the PCA agrees to abide by mandated federal and state law and regulations related to the Medicaid program.[71] The Department proved by a preponderance of the evidence that L.U. violated this section of her PCA agreement.

Finally, the record wholly supports the Department's fourth allegation, that L.U. failed to notify the personal care provider agency that she had been charged with a barrier crime. The record does not indicate that L.U. informed the home healthcare agency of the criminal charge against her. And the home healthcare agency stated that it did not learn of the felony indictment of L.U. until the Department notified them.

Based on the foregoing, the Administrative Law Judge's factual findings are based on substantial evidence.

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71 AR. p. 754.

4. Termination of L.U.'s participation in the Medicaid program was an appropriate sanction

Finally, L.U. contends that the Department did not reasonably consider the factors required to determine a sanction. The Department responds that the record contains ample evidence that it considered all eight factors and that its decision was an appropriate use of its discretion. The court reviews an administrative decision determining a question of fact to assess if the decision is supported by substantial evidence.

Termination of L.U.'s participation in the Medicaid program was an appropriate sanction under the regulations. The Department retains discretion to impose sanctions on providers, including "termination from participation in the Medicaid program" and providing public notice of a termination.[72] In determining an appropriate sanction, the Department must consider eight factors: (1) seriousness of the offense; (2) extent of violations; (3) history of prior violations; (4) prior imposition of sanctions; (5) prior provision of provider education; (6) provider willingness to obey program rules; (7) whether a lesser sanction will be sufficient to remedy the problem; and (8) actions taken or recommended by peer-review groups or licensing boards.[73]

Although no record of the meeting in which the Sanctions Committee considered the factors exists, testimony by Mrs. Sampson, a Quality Assurance manager and a

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[72] 7 AAC 105.400 (providing the Department "may impose" sanctions for enumerated reasons); 7 AAC 105.410 (specifying the sanctions the Department may impose).

[73] 7 AAC 105.420.

participant in the meeting, reflects that the committee considered each regulatory factor. Mrs. Sampson testified that the committee discussed: (1) that the offense was quite serious because, in a sample of 20 days of observation, L.U.'s billings contained false entries and timesheet discrepancies for 15 of those days; (2) that the extent of the violations was serious due to their repetition; (3) that L.U. had no prior history of violations; (4) that L.U. had not been sanctioned before; (5) that the fact that L.U. had received prior provider education did not play a role in the committee's decision; (6) that the extent and severity of the violations indicated L.U.'s lack of willingness to obey Medicaid program rules; (7) that the violations were serious enough to warrant termination, even if a lesser sanction was possible; and (8) that actions taken by peer-review groups were not relevant to the decision.

Moreover, it is undisputed that L.U. failed to properly record the times she performed services for G.U. and repeatedly submitted incorrect timesheets. While L.U. may contend that she flawlessly performed services as a provider after being reinstated when the criminal charges against her were dismissed, the evidence is clear that, on multiple occasions, L.U. did not comply with the rules and regulations.

Based on the evidence that the Committee considered each factor and had reason to conclude L.U.'s violations were serious enough to warrant termination, the Administrative Law Judge had substantial evidence to conclude the Department's sanction was appropriate.

V. Conclusion

Based on the foregoing, L.U. has failed to show that the Department violated the Open Meetings Act, the Administrative Procedure Act, or her due process rights. The Administrative Law Judge correctly concluded that the Department met its burden of proving it had grounds for sanctions and appropriately considered eight factors as required by regulation before proposing its sanction. Accordingly, the court AFFIRMS the administrative decision.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 3 November 2022.

[redacted]

By: Signed
Name: Dani Crosby
Title: Superior Court Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]