OAH 71-1800-37361

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal by Shauna Latoya Murray

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing held by videoconference via Microsoft Teams on August 16, 2021. The record closed on September 14, 2021, upon receipt of the parties' final written submissions.[1]

Emily B. Anderson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Jon Geffen, Mitchell Hamline School of Law, appeared on behalf of Shauna Latoya Murray (Appellant).

STATEMENT OF THE ISSUES

1. Has the Department established that Appellant engaged in abuse, as defined in Minn. R. 9505.2165, subp. 2(A) (2021), in connection with claims submitted for payment from the Minnesota Health Care Programs (MHCP)?

2. Has the Department established that Appellant engaged in a pattern of making false statements of material fact in order to gain more compensation than that to which she was entitled, in violation of Minn. Stat. § 256B.064, subd. 1a(a)(3) (2020)?

3. Has the Department shown that the Commissioner of the Department (Commissioner) may terminate Appellant as a provider in the MHCP and bar her from reinstatement for 15 years?

SUMMARY OF RECOMMENDATION

The Department has established that Appellant engaged in abuse, as defined in Minn. R. 9505.2165, subp. 2(A), and that sanctions may be imposed under Minn. Stat. § 256B.064, subd. 1a(a)(1), (3) (2020). Because the Department did not establish all of its claims by a preponderance of the evidence, however, the Administrative Law Judge recommends that the Commissioner **RESCIND** Appellant's termination and impose a lesser sanction. The Administrative Law Judge recommends that the Commissioner

[1] The Administrative Law Judge set September 10, 2021, as the date for submission of the parties' final written arguments. Appellant's submission was dated September 10, 2021, but received on September 14, 2021. The Administrative Law Judge has extended the close of the record to allow consideration of Appellant's arguments.

suspend Appellant's participation as a provider in the MCHP for some period the Commissioner determines is warranted, or that if termination is imposed, the bar to reinstatement be for a shorter period than 15 years.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Regulatory Background

1. Minnesota participates in the Medicaid program,[2] which funds medical assistance (MA)[3] for eligible individuals who are unable to pay for their medical care.[4] The Department is charged with administering and overseeing this program through the MHCP.[5]

2. Personal care assistance is one of the services available to MA recipients through the MHCP.[6] Eligible personal care assistance services may include assistance with activities of daily living such as dressing, grooming, bathing, eating, and toileting, among others.[7] Recipients may also receive assistance with health-related procedures and tasks, including exercises, assistance with self-administration of medication, and seizure intervention.[8]

3. Personal care services are provided by a personal care assistant (PCA), who is employed by a personal care assistance provider agency (PCPO).[9] Services provided by PCAs are supervised by a qualified professional (QP).[10]

4. In some instances, shared personal care services may be provided to recipients. Shared personal care services are PCA services provided to two or three recipients who voluntarily enter into an agreement to receive services at the same time and in the same setting.[11] Shared care services are also defined as "personal care services provided by a personal care assistant to more than one qualified recipient residing in the same residential complex. The services of the assistant are shared by the qualified recipients and are provided on a 24 hour basis."[12] Shared personal care services eligible for payment from the MHCP include: (1) personal care services, as identified in Minn. R. 9505.0335, subp. 8; (2) services provided for the recipient's

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[2] *See generally* 42 U.S.C. § 1396-1396w (2018); Minn. Stat. §§ 256B.01-.851 (2020).
[3] *See* Minn. Stat. § 256B.02, subd. 8.
[4] *See* 42 U.S.C. § 1396-1; 42 C.F.R. § 430.0 (2021).
[5] Minn. Stat. § 256B.04; Minn. R. 9505.0011 (2021); *see also* Minn. Stat. §§ 256B.01-.851; Minn. R. 9505.0295, .0335 (2021).
[6] Minn. Stat. § 256B.0659; Minn. R. 9505.0335.
[7] Minn. Stat. § 256B.0659, subds. 1(b), 2(a)-(b).
[8] *Id.*, subds. 1(h), 2(c).
[9] *Id.*, subd. 1(m); Minn. R. 9505.0335, subp. 1(C).
[10] Minn. Stat. §§ 256B.0625, subd. 19c, .0659, subds. 1(k), 14(a).
[11] Minn. Stat. § 256B.0659, subd. 16(b).
[12] Minn. R. 9505.0335, subp. 1(J).

personal health and safety; (3) monitoring and control of a recipient's personal funds as required in the plan of care; and (4) helping the recipient to complete daily living skills such as personal and oral hygiene and medication schedules.[13] Shared care services must be provided through the same PCA agency for all recipients.[14] Shared care services are billed at a different rate than services provided to only one recipient.[15]

5. Minnesota has obtained authorization from the federal government to provide services for certain qualifying individuals in their homes, rather than in an institutional setting; these programs include the community access for disability inclusion (CADI) and developmental disability (DD) waiver plans.[16] Participants in these programs may receive such waiver services through the MHCP and the services are overseen by a case manager pursuant to a case management plan.[17] Recipients may receive basic support services at the "level of assistance, supervision, and care that is necessary to ensure the health and welfare of the person," and depending on the waivered service plan, these services may include adult companion services, personal support, PCA services, and night supervision.[18] Waiver services must comply with the requirements of the federally-approved applications.[19]

6. The Department has created an internal unit, called the Surveillance and Integrity Review Section (SIRS) unit, to review and monitor compliance with federal and state law related to the payment for MA-eligible services by service providers and recipients participating in the MHCP.[20] The SIRS unit is directed to identify and investigate "fraud, theft, abuse, or error by vendors or recipients of health services through" the MHCP, and in such cases impose "sanctions against vendors and recipients of health services."[21]

7. In identifying fraud, theft, abuse, or error, SIRS is authorized to use a variety of investigative tools. SIRS may contact any person, agency, organization, or other entity necessary to an investigation.[22] SIRS has express authority to contact:

A. government agencies;
B. third-party payers, including Medicare;
C. professional review organizations as defined in Minnesota Statutes, section 145.61, subdivision 5, or their representatives;
D. consultants under contract in part 9505.0185;
E. recipients and their responsible relatives;

[13] *Id.*, subp. 9.
[14] *See* Minn. Stat. § 256B.0659, subd. 16(e)(5).
[15] Test. of Kate King-Scribbins.
[16] *See* Minn. Stat. §§ 245D.02, subd. 10, 256B.092, .49 (2020).
[17] *See* Minn. Stat. §§ 245D.02, subd. 3, 256B.092, subds. 1a, 2, 4, .49, subds. 13, 18 (2020).
[18] Minn. Stat. § 245D.03, subd. 1(b) (2020).
[19] Minn. Stat. § 256B.49, subd. 11(b).
[20] Minn. Stat. § 256B.04, subd. 10; Minn. R. 9505.0180, .2160-.2245 (2021).
[21] Minn. R. 9505.2160, subp. 1.
[22] Minn. R. 9505.2200, subps. 1-2.

F. vendors and persons employed by or under contract to vendors;
G. professional associations of vendors and their peers;
H. recipients and recipient advocacy organizations; and
I. members of the public.[23]

8. The investigative authority provided to SIRS "extends to the examination of any person, document, or thing which is likely to lead to information relevant to the expenditure of funds, provision of services, or purchase of items, provided that the information sought is not privileged against such an investigation by operation of any state or federal law."[24]

II. The Department's Investigation

9. On September 28, 2018, the Department received a hotline referral from the owner of a PCPO expressing concerns about Appellant, who was a service provider to recipients through that agency.[25] Among other issues raised, the caller indicated that Appellant's address in Minnesota was a United Parcel Services (UPS) store, Appellant had a residential address in Chicago, Appellant was faxing timesheets from a Chicago-area fax number, and was on probation with the Illinois Department of Human Services.[26]

10. A SIRS investigator conducted a preliminary investigation, during which the investigator discovered that Appellant had previously been disqualified from providing health care services for a two-year period, beginning in April 2013, due to a conviction for wrongfully obtaining public assistance.[27] The preliminary investigator discovered that Appellant was receiving public assistance benefits in Illinois, while in Minnesota, she was the authorized representative for two recipients, was the responsible party on file for a third recipient, and was receiving rent payments from one of the recipients.[28] The investigator requested timesheets from two PCA agencies who billed for Appellant's services, and these timesheets showed overlapping service claims between the agencies and between multiple recipients.[29] The preliminary investigator recommended opening a full investigation.[30]

11. The investigation was assigned to Kate King-Scribbins.[31]

12. Ms. King-Scribbins obtained Appellant's Minnesota driver's license record, which showed that Appellant had been issued a Minnesota driver's license using the

[23] *Id.*, subp. 2.
[24] *Id.*, subp. 3.
[25] Ex. 3 at DHS 148.
[26] *Id.*
[27] *Id.*
[28] *Id.* at DHS 149.
[29] *Id.*
[30] *Id.*
[31] Test. of K. King-Scribbins; Ex. 3.

address 8014 Highway 55, #201, in Golden Valley, Minnesota; this is the same address Appellant had provided to the Department.[32]

13. Ms. King-Scribbins confirmed that this address is a UPS store in a strip mall in Golden Valley, as opposed to a residential address.[33]

14. The individual PCA enrollment form used by the Department requires that a residential address be provided.[34] This form also requires that the individual PCA enrolling in the program attest that all of the information submitted is "true and correct to the best of [the PCA's] knowledge.[35]

15. Ms. King-Scribbins notified the Department's Provider Eligibility and Compliance (PEC) staff that the address for Appellant on file was not a residential address.[36] Appellant was directed to provide the Department with a residential address or her record with PEC would be suspended.[37] Appellant completed an Individual DSW Information Change Form on September 11, 2020, changing her address to 6336 Boone Avenue North #205, in Brooklyn Park, Minnesota.[38]

16. Ms. King-Scribbins' supervisor, Kimberly Ralidak, used an investigative program to perform a search for information on Appellant.[39] The search revealed a residential address in Chicago for which Appellant had a utilities account in her name.[40]

17. Ms. King-Scribbins contacted the State of Illinois and received confirmation that Appellant was receiving Supplemental Nutrition Assistance Program (SNAP) benefits in Illinois using the same residential address in Chicago.[41] Ms. King-Scribbins' contact in Illinois advised her that the household contained three members, with one adult and two children.[42]

18. The investigative search also revealed that Appellant owned a car registered with a Chicago address, though the registration came back to a different address from Appellant's residential address.[43]

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[32] Ex. 3 at DHS 149, Ex. 5 at DHS 1262.
[33] Ex. 3 at DHS 149. Ms. King-Scribbins discovered two other PCAs who provided services to the same recipients as Appellant also used the same UPS Store address and shared the same telephone number with Appellant. *Id.*
[34] Test. of K. King-Scribbins; Test. of Kimberly Ralidak; Individual PCA Enrollment Application Form https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4469-ENG-pform (last visited Nov. 2, 2021).
[35] Individual PCA Enrollment Application Form https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4469-ENG-pform (last visited Nov. 2, 2021).
[36] Ex. 3 at DHS 151.
[37] *Id.*
[38] Ex. 10 at DHS 1555; Test. of K. King-Scribbins.
[39] Ex. 3 at DHS 150.
[40] *Id.*; Test. of K. King-Scribbins; Ex. 7 at DHS 1268.
[41] Test. of K. King-Scribbins; Exs. 8-9.
[42] Ex. 8 at DHS 232.
[43] Ex. 7 at DHS 1291.

19. Ms. King-Scribbins performed a claims search and discovered that Appellant had claims for PCA and waiver services for three recipients relevant to this case: W.M., J.M., and C.M.[44] All three recipients were reported to live at 6336 Boone Avenue North #205 in Brooklyn Park, the same address that Appellant gave to the Department as her residential address.[45]

20. Ms. King-Scribbins called the Property Manager, Bill,[46] at the Autumn Ridge Apartments, located at 6336 Boone Avenue North, to inquire about the identity of the tenants for apartment #205.[47] He reviewed the lease and advised Ms. King-Scribbins that W.M. was listed as the primary tenant and that J.M. was identified as her attendant.[48] Ms. King-Scribbins inquired whether anyone else would be living in the apartment, and the property manager said: "no, [W.M.] and [J.M.] are the only ones authorized to live there."[49]

21. Based on this information, Ms. King-Scribbins determined that Appellant lived in Illinois, rather than Minnesota, and so could not have been providing services to W.M., J.M., and C.M.[50] Ms. King-Scribbins did not speak with Appellant, W.M., J.M. or C.M., and did not contact the QP or case manager for W.M., J.M. and C.M.[51] Ms. King-Scribbins did not ask the PCA agencies for which Appellant worked whether Appellant was providing services in Minnesota.[52] Ms. King-Scribbins did not contact residents in the neighboring apartments to inquire whether anyone had seen Appellant at the apartment.[53] Ms. King-Scribbins did not engage in any surveillance efforts to determine whether Appellant was actually providing services in Minnesota.[54]

22. During the time period relevant to this case, Appellant had a residence in Chicago, Illinois.[55] When Appellant came to Minnesota to work, Appellant's two children remained in Illinois with their aunt, who cared for them in Appellant's absence.[56] Appellant considers herself to be an Illinois resident, and intends to live there in the future.[57]

23. Appellant came to Minnesota to care for her mother, W.M., her aunt, J.M., and uncle, C.M., in the apartment in Brooklyn Park, so that they could continue to

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[44] Ex. 3 at DHS 151.
[45] *Id.* at DHS 151-52; Ex. 10 at DHS 1555.
[46] Bill's last name is not reflected in the Memo of Phone Contact regarding this call or in Ms. King-Scribbins' Investigation Report. Ex. 3 at DHS 151-52; Ex. 11 at DHS 231.
[47] Ex. 11 at DHS 231.
[48] *Id.*
[49] *Id.*
[50] Ex. 3 at DHS 152; Test. of K. King-Scribbins.
[51] Test. of K. King-Scribbins.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] Test. of S. Murray.
[56] *Id.*
[57] *Id.*

receive care at home.[58] The apartment has two bedrooms.[59] W.M. and J.M. each have their own room; Appellant sleeps on an air mattress in W.M.'s room, and C.M. sleeps on a couch in the living room.[60]

24. Appellant is aware that she is not on the lease and that the apartment's management may not be aware that she and her uncle, C.M., also stay in the apartment.[61] Appellant does not consider herself to reside in the apartment, but rather that she stays there to provide care, and does not wish to be placed on the lease.[62]

25. Ms. King-Scribbins also examined data collected by the Minnesota Department of Employment and Economic Development (DEED), regarding the hours Appellant worked between October 1, 2019, and March 31, 2020.[63] DEED's records show that in the fourth quarter of 2019, Appellant worked 2,221 hours, earning $40,263.33.[64] For a quarter, 520 hours is considered full time work.[65] The total work hours recorded for Appellant is more than the number of hours in the fourth quarter.[66] In the first quarter of 2020, Appellant's record shows she worked over 1,460 hours and earned $53,726.03.[67]

26. DEED's records show that Appellant's 2019 earnings from PCA agencies amounted to $99,816.32.[68] In just the first half of 2020, Appellant's wages reported to DEED for PCA agency work amounted to $123,379.06.[69]

27. SIRS considers a very high number of recorded work hours to be an indicator of risk.[70] The amounts Appellant earned are also substantially higher than the earnings generally paid to PCAs.[71]

28. Ms. King-Scribbins contacted four provider agencies for which Appellant worked: Ace Home Health Inc. (Ace); Axis Home PCA Agency Inc. (Axis); Carepoint Home Health LLC (Carepoint); and Family First Home Care Inc. (Family First).[72] Ms. King-Scribbins requested documentation for all services provided by Appellant during shifts worked between October 1, 2019, and March 31, 2020.[73] Ms. King-Scribbins also requested personnel documents for Appellant, and documentation of her

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[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Ex. 3 at DHS 151.
[64] *Id.*; Ex. 4 at DHS1248-49.
[65] Test. of K. King-Scribbins.
[66] *Id.*
[67] *Id.*; Ex. 4 at DHS 1248.
[68] Ex. 4 at DHS 1248-49.
[69] *Id.* at DHS 1248.
[70] Test. of K. King-Scribbins.
[71] Test. of K. Ralidak.
[72] Exs. 12-15.
[73] Ex. 12 at DHS 198; Ex. 13 at DHS 201; Ex. 14 at DHS 204; Ex. 15 at DHS 207.

work during the specified time period, including in progress notes and any supervising professional's notes.[74]

29. Appellant's timesheets for shifts between October 1, 2019, and March 31, 2020, contain many instances in which Appellant documented overlapping night supervision shifts for different recipients through different agencies.[75] For example, on October 5, 2019, Appellant documented a night supervision shift from 12:00 a.m. until 8:00 a.m. for recipient J.M. through Axis, and she submitted a timesheet for the exact same hours on that date for services provided to W.M. through Carepoint.[76] Similarly, on March 4, 2020, Appellant's timesheets showed services provided to W.M. between 12:00 a.m. and 8:00 a.m. through Ace, while her timesheet submitted to Axis documents the same shift providing services to J.M.[77]

30. Ms. King-Scribbins contacted Department staff on the Waiver Policy & Compliance Team because she was not able to confirm whether shared services for night supervision were allowed, based on her review of the provider manual.[78] She received confirmation that night supervision shifts are not eligible for shared staffing.[79] Under both the DD and CADI waiver plans, night supervision is provided only on a 1:1 basis.[80]

31. As a result of shifts with overlapping employment and additional shifts claimed for the same dates, Appellant's timesheets reflect claims for more than 24 hours of work within one day on some occasions.[81] For example, Appellant's timesheets for December 3, 2019, include: an 8-hour night supervision shift through Ace for W.M. from 12:00 a.m. until 8:00 a.m.; the exact same 8-hour shift providing services to J.M. through Axis; a second shift through Axis from 5:00 p.m. until 8:00 p.m., also for J.M.; a shift from 12:00 p.m. until 4:45 p.m. for C.M. and W.M. through Family First; and a second Family First shift from 8:00 p.m. until 12:00 a.m. for W.M.[82] These shifts add up to over 24 hours billed in one day.

32. Appellant's timesheets also show that Appellant documented providing services every single day, without even one day's break, between October 1, 2019, and March 31, 2020.[83]

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[74] Ex. 12 at DHS 198; Ex. 13 at DHS 201; Ex. 14 at DHS 204; Ex. 15 at DHS 207. Personnel and supervision documents responsive to this request were not offered into the record.
[75] Test. of K. King-Scribbins; Exs. 16-19.
[76] Ex. 18 at DHS 481; Ex. 19 at DHS 784.
[77] Ex. 16 at DHS 279; Ex. 18 at DHS 501.
[78] Test. of K. King-Scribbins.
[79] *Id.*; Ex. 23 at DHS 160-61.
[80] Ex. 23 at DHS 160.
[81] Test. of K. King-Scribbins; Test. of K. Ralidak; Ex. 1 at DHS 8-43 (compiling timesheet data).
[82] Ex. 16 at DHS 288; Ex. 18 at DHS 489-90; Ex. 20 at DHS 871; Ex. 21 at DHS 1051; Ex. 22 at DHS 1145.
[83] *See* Exs. 16-21; Ex. 1 at DHS 8-43 (compiling timesheet data).

33. Appellant's timesheets submitted to Family First for February 29, 2020, included a shift for shared care services provided to W.M. and C.M., but the shift for W.M. was documented as occurring from 8:00 a.m. until noon, and Appellant's shift with C.M. lasted from 8:00 a.m. until 12:45 p.m., a 45-minute difference.[84] The Department considers both shifts unallowed in their entirety because the shift times claimed are not an exact match.[85]

34. Additionally, one of Appellant's timesheets submitted to Family First is dated prior to the dates of service claimed on the timesheet.[86] The timesheet covers shifts for services provided to C.M. between March 14, 2020, and March 20, 2020, but the timesheet is dated March 2, 2020.[87]

III. The Department's Action

31. On October 9, 2020, the Department issued a Notice of Termination and Payment Withhold to Appellant (Notice).[88] The Department notified Appellant that it was terminating her participation as a provider in the MHCP and that she would be barred from petitioning for reinstatement for 15 years.[89] The Department mailed the Notice to Appellant at the UPS store address in Golden Valley.[90]

32. The Department notified Appellant that her termination was based on its determination that she engaged in abuse, and it identified five bases for the determination: (1) repeatedly causing claims to be submitted from which information was missing or incorrect; (2) repeatedly causing claims to be submitted for health services that were not reimbursable; (3) repeatedly causing claims to be submitted for health services that were not provided; (4) engaging in a pattern of making false statements of material fact in order to obtain greater compensation than that to which Appellant was legally entitled; and (5) repeatedly failing to comply with requirements of the provider agreement relating to the programs covered by Minn. R. 9505.2160-

[84] Ex. 20 at DHS 884; Ex. 21 at DHS 1063; Test. of K. King-Scribbins.
[85] Test. of K. King-Scribbins. At the hearing, the Department maintained its policy is to consider an entire shift unallowable for both shared care recipients if the times do not exactly match, rather than only the portion of the shift that differs. If the Department were seeking recovery of an overpayment, the Department would be required to establish the legal basis for recovery of the entire amount, rather than only the portion billed for one recipient and not another. In this case, however, the Department does not seek a monetary recovery, and it has identified only one shift during the review period in which only 45 minutes of the time claimed for the service does not match. While the point is not moot, as this is a part of the Department's claims, this claim does not weigh heavily into the determination of the appropriate sanction.
[86] Ex. 21 at DHS 1066.
[87] *Id.*
[88] Ex. 2 at DHS 85.
[89] *Id.* at DHS 85-86. Ms. King-Scribbins originally recommended that Appellant be suspended as a provider, but the Department determined that termination was the appropriate sanction. Test. of K. King-Scribbins.
[90] Ex. 2 at DHS 85.

.2245.[91] The Department included a spreadsheet detailing the claims that it determined were unlawful.[92]

33. The Notice was based on Ms. King-Scribbins' conclusion that Appellant's timesheets between October 1, 2019, and March 31, 2020, showed: (1) 994 instances in which services were not provided because Appellant was "documented to live out of state;" (2) 755 instances in which Appellant was also the responsible party; (3) 498 instances in which there was no commute time; and (4) 448 instances of employment overlap.[93] In determining the sanction, the Department considered the "number of instances of employment and commute overlap, services not being provided, [Appellant] living in another state, and the general egregiousness" of the case.[94]

34. On October 16, 2020, the Department also implemented a payment withhold, effective October 9, 2020, because it determined that there was a credible allegation of fraud in connection with a pending investigation.[95] The Department noted the results of Ms. King-Scribbins' investigation showing that Appellant repeatedly caused claims to be submitted for more than 24 hours in each day; was the responsible party and treating provider for multiple recipients; received benefits in Illinois while claiming to provide services in Minnesota; and submitted claims that overlapped with other employment.[96] The Department referred the matter to the Medicaid Fraud Control Unit (MFCU) of the Minnesota Office of the Attorney General.[97] As of the date of the hearing, the MFCU had not commenced a criminal prosecution of Appellant.[98]

35. Ms. King-Scribbins also made a maltreatment report to Hennepin County based on her concerns that W.M., J.M., and C.M. were likely not receiving services from Appellant and that they were being financially exploited.[99] As of the date of the hearing in this matter, no determination of maltreatment had been made based on this report.[100]

36. Appellant appealed the Notice.[101]

37. Following Appellant's appeal, Ms. King-Scribbins revised her investigative findings to remove commute-related claims for services provided to C.M. because the Department did not have proof of C.M.'s address.[102] Some information collected

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[91] *Id*.
[92] *Id.* at DHS 88-146.
[93] Ex. 3 at DHS 151.
[94] *Id.* at DHS 152.
[95] *Id*.; Ex. 2 at DHS 86.
[96] Ex. 2 at DHS 86.
[97] Ex. 3 at DHS 152.
[98] Test. of K. King-Scribbins; Test. of S. Murray.
[99] Ex. 3 at DHS 152.
[100] Test. of K. King-Scribbins; Test. of S. Murray. Ms. King-Scribbins testified that she believed that the maltreatment report remained under investigation, but Appellant testified that she received a letter notifying her that maltreatment had not been substantiated. Test. of K. King-Scribbins; Test. of S. Murray.
[101] *See* Ex. 1 at DHS 5.
[102] Ex. 3 at DHS 152-53.

suggested that C.M. lived at a different address from the other recipients, but the Department also received information confirming that C.M. lived in the same apartment as W.M. and J.M.[103] Ms. King-Scribbins removed all claims related to Appellant's status as the responsible party for the recipients after consulting with Department staff related to waiver services and a re-review of assessment documentation for the recipients.[104]

38. Ms. King-Scribbins also revised her findings to include the following claims: (1) 990 instances in which she determined Appellant was "documented to live out of state;" (2) 452 instances of employment overlap; (3) two instances in which the shift times for shared services did not match exactly; and (4) seven instances in which the timesheet was signed prior to the date of service.[105]

39. The Department issued an Amended Notice of Termination and Payment Withhold (Amended Notice) on January 13, 2021, and sent the Amended Notice to Appellant at 6336 Boone Avenue North #205 in Brooklyn Park.[106] The Department advised Appellant that because her appeal was ongoing, she was not required to submit a new appeal of the Amended Notice.[107]

40. In the Amended Notice, the Department identified four grounds underlying its determination, including that Appellant: (1) repeatedly caused claims to be submitted with required information that was missing or incorrect; (2) repeatedly caused claims to be submitted for health services that are not reimbursable; (3) engaged in a pattern of making false statements to the Department in order to obtain greater compensation than that to which she was entitled; and (4) repeatedly failed to comply with the terms of the provider agreement relating to programs covered by Minn. R. 9505.2160-.2245.[108] Unlike the original Notice, the Amended Notice did not claim that Appellant repeatedly caused claims to be submitted for health services that were not provided.[109]

41. The Department attached a spreadsheet detailing claims it had determined violated these standards, stating the reason for each disallowed claim.[110] The Amended Notice also highlighted a particular example, stating that due to shifts billed on January 18, 2020, Appellant documented 38.75 hours of work for four recipients through three different agencies.[111]

42. The Amended Notice imposed the same sanction, termination with a 15-year bar to reinstatement, and noted that a payment withhold had been implemented under the earlier Notice.[112]

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[103] *Id.*
[104] *Id.* at DHS 153.
[105] *Id.*
[106] Ex. 1 at DHS 5.
[107] *Id.*
[108] *Id.*
[109] *Id.*; *see also* Ex. 2 at DHS 85.
[110] Ex. 1 at DHS 8-43.
[111] *Id.* at DHS 6.
[112] *Id.* at DHS 5-6.

43. Any Conclusion of Law more properly deemed to be a Finding of Fact is incorporated herein.

44. Any portion of the accompany Memorandum that is properly considered a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 256B.04, subd. 15, .064, subd. 2 (2020).

2. The Department has complied with all procedural requirements of law and rule and this matter is properly before the Administrative Law Judge and the Commissioner.

3. The Commissioner may impose sanctions against a "vendor of medical care" for fraud, theft, or abuse in connection with services provided to medical assistance recipients, or when a vendor engages in a pattern of making false statements to obtain greater compensation than that to which the vendor is entitled.[113]

4. As a provider of MA-covered services, Appellant is a "vendor of medical care."[114]

5. "Abuse" is defined to include the following conduct:

   a. submitting repeated claims, or causing claims to be submitted, from which required information is missing or incorrect;

   b. submitting repeated claims, or causing claims to be submitted, for health services that are not reimbursable; and

   c. repeatedly failing to comply with the terms of the provider agreement related to the program.[115]

6. Among the sanctions available for prohibited conduct, the Commissioner may suspend or terminate the vendor's participation in the MHCP.[116]

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[113] Minn. Stat. § 256B.064, subd. 1a(a)(1), (3).
[114] Minn. Stat. § 256B.02, subd. 7; Minn. R. 9505.2165, subp. 16a; *see also* Minn. R. 9505.0295, subp. 2(D).
[115] Minn. R. 9505.2165, subp. 2(A)(1), (3), (18).
[116] Minn. Stat. § 256B.064, subd. 1b; Minn. R. 9505.2210, subp. 2(A).

7. In imposing a sanction, the Commissioner must consider "the nature, chronicity, or severity of the conduct and the effect of the conduct on the health and safety of persons served by the vendor."[117]

8. The Department bears the burden to establish, by a preponderance of the evidence that Appellant engaged in violations of law and should be terminated from the MHCP, with no ability to apply for reinstatement for 15 years.[118]

9. The Department demonstrated by a preponderance of the evidence that Appellant engaged in abuse due to numerous instances of overlapping employment, as well as two instances of mismatched times for shared care and one timesheet dated prior to the dates of service. These actions qualify as abuse under Minn. R. 9505.2165, subp. 2(A)(1), (3), and (18), and subject Appellant to sanctions under Minn. Stat. § 256B.064, subd. 1a(a)(1), (3).

10. The Department did not establish by a preponderance of the evidence that Appellant was not in Minnesota and could not have provided any services between October 1, 2019, and March 31, 2020.

11. The Department did not establish that Appellant's failure to supply the Department with a residential address on her enrollment form constituted abuse.

12. The Department has established that a sanction is warranted as a result of Appellant's conduct, however, the nature, severity, and chronicity of the claims established by the Department does not support termination of Appellant's participation as a provider in the MHCP with a 15-year bar to reinstatement.

13. The nature, severity, and chronicity of the claims proven by the Department warrant imposition of a suspension for some period of time the Commissioner deems appropriate to address Appellant's conduct. Alternatively, if the Commissioner determines termination is warranted, the bar to reinstatement should be less than 15 years.

14. Any Finding of Fact more properly considered to be a Conclusion of Law is incorporated herein.

15. Any portion of the Memorandum below that is more properly considered as a Conclusion of Law is incorporated herein.

Based on these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

[117] Minn. Stat. § 256B.064, subd. 1b.
[118] Minn. R. 1400.7300, subp. 5 (2021).

RECOMMENDATION

The Department has established Appellant engaged in abuse, as defined in Minn. R. 9505.2165, subp. 2(A), and that a sanction may be imposed pursuant to Minn. Stat. § 256B.064, subd. 1a(a)(1), (3). As the Department did not prove all of its claims by a preponderance of the evidence, however, the nature, severity, and chronicity of Appellant's violations does not support terminating Appellant's participation in the MHCP with a 15-year bar to reinstatement. Instead, the Administrative Law Judge respectfully recommends suspension of Appellant's status as a provider for some time period determined by the Commissioner to be appropriate. If the Commissioner determines termination is warranted, the bar to reinstatement should be for a period of less than 15 years.

Dated: December 7, 2021

JESSICA A. PALMER-DENIG
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2020), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Administrative Law Office staff at DHS_AdminLaw@state.mn.us to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2020). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2020), the Commissioner is required to serve a final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. The Department Has Established Appellant Engaged in Abuse and May Be Sanctioned

The Department has shown that Appellant submitted timesheets with overlapping shifts to multiple employers for services provided to different recipients. As a result of these shift overlaps, Appellant was paid thousands of dollars of MHCP funds to which she was not entitled. The Department also established that Appellant submitted one timesheet for a shared care shift with a timing mismatch, and that on another timesheet, the date listed for the timesheet was prior to the dates of service.

The Department has established that Appellant engaged in abuse, as defined in Minn. R. 9505.2165, subp. 2(A)(1), (3), (18), related to these claims because she repeatedly submitted timesheets from which information was missing or incorrect, for services that were not reimbursable, and in violation of the provider agreement related to the program. As a result, the Commissioner may impose a sanction against Appellant pursuant to Minn. Stat. § 256B.064, subd. 1a(a)(1). The Department has also established grounds for imposition of sanction exist under Minn. Stat. § 256B.064, subd. 1a(a)(3), because Appellant engaged in a pattern of making false statements to obtain greater compensation than that to which she was entitled.

II. The Department Has Not Established that Appellant Provided No Services

The Department contends that Appellant was not in Minnesota providing services during the review period of October 1, 2019, to March 31, 2020, but was actually in Illinois during that time. According to the Department, Appellant's submission of timesheets for services during that period was abuse because she submitted claims for which required information was incorrect, violated the provider agreement by submitting claims for services she did not provide, and submitted false statements of material fact regarding her location and work hours to obtain greater compensation than that to which she was entitled.[119]

Appellant disputes the Department's claim that she was not in Minnesota. Appellant acknowledges that she maintained a residence in Illinois during the review period, where her children lived with their aunt.[120] She testified, however, that she was present during that period in Minnesota to care for W.M., J.M., and C.M., who are her mother, aunt, and uncle.[121]

The Department's initial concerns about whether Appellant was in Minnesota or Illinois were reasonable based on the circumstantial evidence the Department amassed.

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[119] *See* Minn. Stat. § 256B.064, subd. 1a(a)(3); Minn. R. 9505.2165, subp. 2(A)(1), (18).
[120] Test. of S. Murray.
[121] *Id.* The Department criticizes this testimony as self-serving. Direct testimony offered in support of the party's own case necessarily is intended to support that party's position. That the testimony serves Appellant's interests does not make it untruthful.

At this stage, however, the Department bears the burden of proof to show, by a preponderance of the evidence, that Appellant was not in Minnesota and could not have been providing services to J.M., W.M., and C.M. To establish a fact by a preponderance of the evidence, "it must be more probable that the fact exists than that the contrary exists."[122] If the evidence is equally balanced, then that fact or issue has not been proven by a preponderance of the evidence.[123]

Ms. King-Scribbins testified that she found no evidence establishing that Appellant lived in Minnesota.[124] But, a person is not required to be a Minnesota resident to provide services through the MHCP. The fact that Appellant maintains a home in Illinois does not establish that she was not in Minnesota during the relevant review period. Appellant testified that she provided services to J.M., W.M., and C.M., at the apartment on Boone Avenue in Brooklyn Park, while her children lived in the Chicago residence and were cared for by their aunt.[125] The Department did not counter this evidence, but instead continued to rely on its determination that Appellant was "documented to live out of state."[126]

SIRS investigations are often grounded in a review of documentary information. This is understandable, given that SIRS conducts post-payment reviews of documented services. A review of documents, however, will not always be enough to answer all of the questions that might be raised in an investigation, and SIRS has a wide variety of investigative tools at its disposal.[127] In this case, interviews of persons who might have knowledge of the conditions in the apartment could have yielded more definitive evidence about whether Appellant was there. Ms. King-Scribbins could have called the residence in Chicago and asked to speak to Appellant; if she found Appellant there on a day that Appellant billed for services provided in Minnesota, that would support the Department's position. She also might have called the apartment in Brooklyn Park to see if she could locate Appellant there. Ms. King-Scribbins acknowledged that she did not contact Appellant, W.M., J.M., C.M., the case workers or QPs for the recipients, the PCA agencies for which Appellant worked, or residents of the neighboring apartments to inquire about whether Appellant was ever in the apartment or providing services during the review period.[128]

Ms. King-Scribbins requested documentation from Appellant's personnel files at the PCA agencies for which she worked, as well as documentation of her work in progress notes and any supervising professional's notes.[129] Personnel records showing interactions with the PCA agencies could be a source of information establishing whether Appellant was actually in Minnesota or elsewhere. Appellant testified that waiver case workers and QPs visited the apartment in person for each recipient and

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[122] *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004).
[123] *Id.*
[124] Test. of K. King-Scribbins.
[125] Test. of S. Murray.
[126] *See* Ex. 1 at DHS 8-43.
[127] *See* Minn. R. 9505.2200, subps. 2-3.
[128] Test. of K. King-Scribbins.
[129] Ex. 12 at DHS 198; Ex. 13 at DHS 201; Ex. 14 at DHS 204; Ex. 15 at DHS 207.

that she personally interacted with them.[130] Therefore, case worker or QP records could substantiate whether there were in-person interactions with Appellant at the apartment, or whether the case managers or QPs discussed the services recipients received, or did not obtain, from Appellant. However, the record does not contain such documentation and does not disclose whether Ms. King-Scribbins received or reviewed documents responsive to her request.[131]

To determine whether Appellant was actually at the apartment, Ms. King-Scribbins asked the apartment manager who was on the lease.[132] He replied that only W.M. and J.M. were listed on the lease and authorized to be there.[133] But being legally authorized to stay in an apartment, and actually staying there, are two different things. The Department argues that it is not reasonable to believe that Appellant stayed at the apartment for long periods of time with three other adults, who did not constitute a nuclear family, without coming to the notice of the management office. There is no evidence in the record relating to how large the apartment building or complex is, or how regularly the management office engages with residents. It is possible for a resident to live in an apartment for some time without ever interacting with management, so long as the rent is paid. Whether or not the residents in the apartment constituted a nuclear family is not relevant to the issues to be determined. According to the record, C.M. was not permitted to reside in the apartment either, but the Department accepted evidence that he lived there along with J.M. and W.M.[134] Further, J.M. was listed on the lease as W.M.'s "attendant;"[135] given that J.M. is also a recipient of services, it seems unlikely that she is filling a role as W.M.'s attendant. Reliance on the names listed on the lease is of limited value in answering the essential questions here.

The Department maintains that Appellant's receipt of public assistance benefits in Illinois shows that she was an Illinois resident and, therefore, was not present in Minnesota to provide services here. Appellant testified that she applied for SNAP benefits during a period when she was not working; she subsequently informed Illinois authorities that she was working in Minnesota; and she has never been charged with any crime related to receipt of SNAP benefits in Illinois.[136] Appellant maintains that she believed she was in compliance with the benefit program's requirements.[137]

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[130] Test. of S. Murray.
[131] Counsel for the Department asked a question during her cross examination of Appellant that alluded to application documents for Appellant at the PCA agencies, but no such documentation was offered into the record, and an objection to this question was sustained. Hearing Digital Recording (Aug. 16, 2021) (on file with the Minn. Office Admin. Hearings).
[132] Ex. 3 at DHS 151-52; Ex. 11 at DHS 231.
[133] Ex. 11 at DHS 231.
[134] Ex. 3 at DHS 152-53. It should be noted that the Department accepted that C.M. lived in the apartment based upon "statements from professionals" indicating that he resided there. *Id.* at DHS 153. There is no information in the record showing that Ms. King-Scribbins asked the same professionals whether Appellant had provided services to C.M. there, though other providers or professionals working with C.M. might have this knowledge.
[135] Ex. 11 at DHS 231.
[136] Test. of S. Murray.
[137] *Id.*

The fact that Appellant had an open SNAP case in Illinois could suggest several conclusions. It is possible that Appellant was in Illinois and not in Minnesota. Alternatively, Appellant may have qualified for public assistance because her children remained in Illinois in the care of a relative. As another alternative, Appellant could be receiving public assistance benefits for which she is not eligible.[138] Her receipt of benefits does not establish that she was actually in Illinois, rather than in Minnesota.

The Department determined that all claims in the review period were unallowable, categorically, because Appellant was not present in Minnesota to provide the services. The Department bears the burden to prove by a preponderance of the evidence that Appellant was not in Minnesota. The Department cannot merely call this into question and then shift the burden to Appellant to establish that she was. The Department's investigation relied on circumstantial evidence that would tend to suggest its conclusion, but it did not close the loop sufficiently to show by a preponderance of the evidence that its suspicions were correct.

III. The Department Has Not Established Appellant's Failure to Provide a Residential Address in Her Enrollment Application Constitutes Abuse

The Department requires that a person seeking enrollment as a PCA provide a residential address on the enrollment form.[139] Appellant does not dispute that the address she provided was not a residential address. The Department contends that the failure to provide a residential address constitutes abuse under Minn. R. 9505.2165, subp. 2(A)(1), (18).

The crux of the Department's first argument is that Appellant submitted claims for services during a time when the address on file for her with the Department was not a residential address. Therefore, the Department argues that Appellant repeatedly submitted claims from which required information was missing or incorrect, constituting abuse under Minn. R. 9505.2165, subp. 2(A)(1). But the enrollment form is not a claim, and the timesheets Appellant submitted did not contain an area for her to provide her address. The Department seeks to extrapolate Appellant's failure to provide the correct address at the outset of her enrollment in order to invalidate all of Appellant's timesheets. The failure to provide the correct address on the enrollment form is not the kind of conduct addressed by Minn. R. 9505.2165, subp. 2(A)(1).

The Department also claims that the failure to provide a residential address constitutes abuse because Appellant repeatedly failed to comply with the terms of the provider agreement, which is deemed to be abuse under Minn. R. 9505.2165, subp. 2(A)(18). The Department has not shown that Appellant's failure to submit a residential address on her application form constitutes "repeatedly" failing to comply with the terms of the agreement.

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[138] Appellant's earnings report from DEED suggests she had income in excess of public assistance benefit thresholds, though that is a separate issue from determining her residence.

[139] Test. of K. King-Scribbins; Test. of K. Ralidak; Individual PCA Enrollment Application Form https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4469-ENG-pform (last visited Nov. 2, 2021).

Generally, the term "abuse" is applied to conduct with a relatively high degree of severity. Many of the examples of conduct constituting abuse require the Department to establish a repeated failure to perform correctly. Appellant's failure to provide a residential address required by a form does not rise to that level. The record also shows that the Department had a remedy easily at hand to enforce compliance. After Ms. King-Scribbins contacted the PEC unit at the Department, Appellant was advised that her record would be suspended if she did not provide a residential address, and Appellant did so.[140] The Administrative Law Judge determines that Appellant's failure to provide a residential address does not constitute abuse.

IV. Sanction

As the Department has not established that Appellant did not provide any services within the review period, a key claim underlying the Amended Notice, the nature, chronicity, and severity analysis in support of the sanction must be reexamined.[141] Of the Department's remaining claims, two are smaller timesheet issues: one shift on one day with a mismatch of the time claimed for shared care services, and one timesheet dated prior to the dates of service.[142]

Reviewing the record as a whole, and considering the nature, severity, and chronicity of the violations the Department has proven, the Administrative Law Judge determines a serious sanction is still appropriate based on Appellant's repeated submission of timesheets with employment overlaps. Appellant submitted timesheets throughout the review period that double-billed for certain portions of the day, and in some instances, billed for more than 24 hours in a day.

Appellant maintains that she made errors because she thought she could provide shared care services for night supervision. She claims she was told by a PCA agency for which she worked in the past that she could follow the shared care model for waiver services, and that she should work for different agencies to avoid triggering overtime eligibility.[143] She also testified that she consulted with the case managers for the recipients in seeking other PCA agency employers and that the case managers were

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[140] Ex. 3 at DHS 151; Ex. 10 at DHS 1555; Test. of K. King-Scribbins.

[141] Ms. King-Scribbins' investigative memorandum referenced a number of other concerning issues, including that and J.M. and C.M. made rent payments to Appellant, even though W.M. paid rent directly to the apartment complex where they lived, and other providers were using the same non-residential address and phone number as Appellant. It is unclear whether these issues were considered as part of the "general egregiousness" of the case when the Department made its initial decision as to the sanction to be imposed. *See* Ex. 3 at DHS 152. The Department did not pursue these allegations in the contested case, however, so these issues cannot serve as a basis for the ultimate sanction.

[142] The Administrative Law Judge notes that it is possible that the pre-dated timesheet was an inadvertent error, as the timesheet was for services provided for the period ending March 20, 2020, and Appellant and the recipient respectively listed "3/2/20" and "3/2/2020," instead of dating the timesheet "3/20/20." Nonetheless, the Department has established that one timesheet with seven dates of service was dated prior to the service dates. Appellant explained that the shift mismatch occurred because she was advised by the PCA agencies that she could work only 275 hours per month, and she decreased the shift time by 45 minutes for one recipient to stay under that cap. Test. of S. Murray.

[143] Test. of S. Murray.

aware of how she sought to provide services.[144] She points out that Ms. King-Scribbins was unable to determine on her own whether shared care services for night supervision were allowable and had to check with waiver policy staff at the Department.

Appellant had an obligation to submit accurate timesheets and to claim only the services actually provided, and she signed timesheets warning her that her signature was a certification to that effect.[145] Ms. King-Scribbins testified regarding safeguards for PCA agencies in connection with billing, such as training for billing staff, and the requirement that agencies double check PCA timesheets to ensure accuracy.[146] The obligations of these agencies, however, do not obviate the requirement that Appellant complete timesheets accurately. Appellant acknowledged that she completed timesheets in which she documented the exact same shift, but then submitted those timesheets to different employers.[147] The Administrative Law Judge does not find Appellant's professed belief that this was permissible to be reasonable. Additionally, night supervision shifts on Appellant's Axis timesheets are documented as 1:1, casting doubt on her claim that she believed night supervision to be a shared care, or 1:2, service.[148]

Additionally, the compensation Appellant received is so greatly in excess of typical PCA wages that her paychecks should have apprised her that something was amiss in the way that she was recording her hours. According to DEED's records, Appellant made over $93,000 during the review period.[149] Appellant's 2019 earnings for PCA work amounted to $99,816.32, and in just the first six months of 2020, Appellant was paid $123,379.06.[150] While working for multiple PCA agencies is permissible, had Appellant worked for only one agency the hours worked and compensation paid would likely have raised alarms and triggered a review and corrections. Appellant submitted the double-billed hours to multiple employers, and the agencies were not able to compare records and discover the issue. Appellant, nonetheless, knew the amount of compensation she received. She knew or should have known that it was excessive.[151]

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[144] *Id.*
[145] *See, e.g.*, Ex. 18 at DHS 479; Ex. 19 at 784.
[146] Test. of K. King-Scribbins.
[147] Test. of S. Murray.
[148] *See, e.g.*, Ex. 18 at DHS 491. Appellant testified that she understood PCA timesheets to require designation of services as 1:1 or 1:2, but that she was uncertain about the requirements for waiver services. Test. of S. Murray. She did not recall checking a box indicating 1:2 service provision for waiver care services, though that is what she maintains she was providing. *Id.*
[149] Ex. 4 at DHS 1248-49.
[150] *Id.*

[151] Appellant explained at the hearing that she believed that she should be able to claim all 24 hours per day as work hours so long as she was working with the recipients during those times, for example, eight hours of services with each recipient. Test. of S. Murray. However, Appellant's timesheets show that she claimed she worked many hours per day, and sometimes in excess of 24 hours per day, every day, for six straight months. The Administrative Law Judge does not find Appellant's explanation that she could submit timesheets covering nearly every moment over a six-month period to be reasonable, and frankly, does not consider it possible for Appellant to have worked as she claimed to. Notwithstanding this concern, the Department has not identified any particular dates or times when Appellant claimed to be working and was not.

At the same time, termination with a 15-year bar to reinstatement, which is the sanction originally selected by the Department, is not supported by the record. First, the Department has not proven all of the clams on which the sanction was based. Second, the Department has not established that the recipients' care in this case was compromised or that there was any impact on their health and safety. Ms. King-Scribbins testified that she had suspicions on this point, but acknowledged that she did not obtain evidence that the recipient's health or safety was impacted.[152] Third, a 15-year bar to reinstatement is akin to a 15-year disqualification. A consequence of this length is imposed when a person has engaged in conduct constituting a felony-level offense for crimes such as public assistance fraud, criminal vehicular homicide, various types of assault, criminal abuse or financial exploitation of a vulnerable adult, manslaughter of an unborn child, forgery or arson, among other serious offenses.[153] Finally, in determining the original sanction, the Department considered that Appellant had a prior disqualification for serious maltreatment in 2009.[154] The record does not contain any details about the basis for the maltreatment determination, and the present case does not include a finding of maltreatment, limiting an evaluation of the chronicity of the prior and current cases.

The Administrative Law Judge respectfully recommends that a lesser sanction than termination with a 15-year bar to reinstatement be imposed for the misconduct proven by the Department. Suspending Appellant as a provider in the MHCP for some period of time the Commissioner determines appropriate would meet some of the same goals as a termination and prevents Appellant from engaging in the conduct at issue here. If the Commissioner were to determine that termination remains the most appropriate sanction, the Administrative Law Judge recommends that the period before which Appellant could seek reinstatement be set for less than 15 years.

J. P. D.

[152] Test. of K. King-Scribbins. This admission is inconsistent with the Department's claim in support of termination that the recipients' health and safety was endangered. *See* Minnesota Dep't of Human Servs' Closing Argument at 9 (Sept. 10, 2021).
[153] Minn. Stat. § 245C.15, subd. 2 (2020).
[154] Test. of K. Ralidak.