

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Rate Appeal of  
Crest View Lutheran Home

**RECOMMENDATION ON  
MOTION FOR PARTIAL  
SUMMARY DISPOSITION**

This matter is pending before Administrative Law Judge Barbara L. Neilson on Crest View Lutheran Home's motion for summary disposition. Crest View filed its motion on November 18, 2003. The Department of Human Services filed its responsive memorandum on December 24, 2003, and Crest View submitted a reply brief on January 7, 2004. Oral argument was heard on January 15, 2004, and the record with respect to the motion closed on that date.

Samuel D. Orbovich, Attorney at Law, Orbovich & Gartner Chartered, 408 St. Peter Street, Suite 417, St. Paul, Minnesota 55102-1187, appeared on behalf of Crest View Lutheran Home (Crest View). David A. Rowley, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Minnesota Department of Human Services (DHS or the Department).

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED that:

1. Crest View's motion for partial summary disposition be GRANTED.
2. All rate adjustments and paybacks pertaining to Crest View's APS rate years commencing July 1, 1999, be reversed.
3. A prehearing conference shall be held by telephone conference call on February 19, 2004, at 10:30 a.m. to discuss the status of the case and briefing of the remaining issues. The Administrative Law Judge will initiate the conference call.

Dated: February 13, 2004.

/s/ Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

## MEMORANDUM

Crest View Lutheran Home (Crest View) has brought a motion for partial summary disposition arguing that DHS incorrectly recalculated its payment rates resulting in an “unauthorized adjustment” to its alternative payment system rates. The Department’s recalculation is based on field audits of Crest View’s reporting years ending September 30, 1993, and September 30, 1994. DHS applied the adjustments to Crest View’s subsequent rates including its Alternative Payment System (APS) rates beginning July 1, 1999, and thereafter. Crest View maintains that the APS statute expressly bars DHS from collecting payback of APS revenues. Based on this statutory bar, Crest View asserts that there are no material facts in dispute and that it is entitled to disposition of this issue in its favor as a matter of law. Crest View seeks an order reversing all adjustments and paybacks attributed to its APS years. DHS contends that it appropriately applied rate-setting law in recalculating Crest View’s payment rates and Crest View’s motion should be denied.

Summary disposition is the administrative equivalent of summary judgment.<sup>[1]</sup> Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.<sup>[2]</sup> A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>[3]</sup> To successfully resist a motion for summary disposition, the nonmoving party must show that specific facts are in dispute that have a bearing on the outcome of the case.<sup>[4]</sup> The nonmoving party must establish the existence of a genuine issue of material fact by substantial evidence; general averments are not enough to meet the nonmoving party’s burden under Minn. R. Civ. P. 56.05.<sup>[5]</sup> The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.<sup>[6]</sup> The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.<sup>[7]</sup>

This motion is confined to DHS’ adjustment to Crest View’s APS rates beginning July 1, 1999. It does not address Crest View’s disputes with adjustments taken to the other rate years that are contained in Crest View’s Letter of Appeal, which is included in the Notice of Hearing. Because this motion rests on the interpretation of the governing statutes and rules, it is appropriate for resolution by summary disposition.

### Background

Crest View is a long-term care facility that participates in Minnesota’s Medical Assistance (MA) program. DHS reimburses Crest View for the care it provides to qualifying residents according to statutes and rules governing payment rates. Historically, MA payments to nursing homes were governed by Minnesota Rules 9549.0010-.0080 and Minn. Stat. § 256B.41-.50, collectively known as “Rule 50.” In 1995, however, the legislature enacted the Alternative Payment System (APS), which allows Minnesota nursing homes to transition from the Rule 50 cost-based system for reimbursement to a contractual model for nursing home payment governed by Minn. Stat. § 256B.434. DHS implements the APS through voluntary contracts with participating facilities.

In March 1996, DHS conducted field audits of Crest View's reported costs for the years ending September 30, 1993, and September 30, 1994. Based on these field audits, DHS reclassified the salaries Crest View paid to its bed makers from the "nursing services" cost category to "housekeeping services" cost category. DHS reclassified \$30,071 for the reporting year ending September 30, 1993, and \$31,351 for the reporting year ending September 30, 1994. Because the housekeeping services cost category has a lower limit on yearly cost increases than does the nursing services cost category, the reclassification reduced Crest View's reimbursement rate for nursing services under the MA program for rate years 1994 and 1995.

In 1997, Crest View appealed the rate adjustments and the matter was set on for a contested case hearing at the Office of Administrative Hearings. On DHS' motion for summary disposition, the Administrative Law Judge recommended in October of 2001 that the Commissioner affirm the adjustments made by DHS. The Commissioner adopted the ALJ's recommendations and Crest View appealed the Commissioner's decision to the Minnesota Court of Appeals. In an unpublished decision issued December 10, 2002,<sup>[8]</sup> the Court of Appeals affirmed the Commissioner's decision and upheld DHS' adjustments for Crest View's rate years 1994 and 1995, which totaled \$61,522.

In June 1999, while its appeal was pending, Crest View entered into an Alternative Payment System (APS) contract with DHS. The contractual APS is an alternative to the standard cost-based payment system governed by Rule 50. Nursing homes participating in APS are paid the equivalent of a Rule 50 rate during the first rate year ("base year") and subsequent years are adjusted by a fixed statutory percentage.<sup>[9]</sup> The APS exempts participating facilities from several requirements of the cost-based system for reimbursement, including the filing of cost reports and auditing of those cost reports. DHS designated Crest View's September 30, 1997, cost report as the base year cost report for calculating Crest View's initial APS rate, which began July 1, 1999.

After the Court of Appeals affirmed the Commissioner's decision, DHS proceeded under Rule 50 to recalculate Crest View's payment rate based on the adjustments for rate years 1994 and 1995. On March 18, 2003, DHS issued Crest View a payback for ten rate years totaling \$179,832. Crest View disputed the additional years' adjustments by timely filing an Appeal Letter dated April 10, 2003.

### **Arguments of the Parties**

Crest View argues that DHS exceeded the scope of Minn. Stat. § 256B.434 when it relied on audits of cost reports ending September 30, 1993, and September 30, 1994 to demand a payback of APS revenues from July 1, 1999, and thereafter. Crest View contends that, once a facility is in the APS system, Minn. Stat. § 256B.434, subd. 10(a)(2), expressly bars DHS from auditing or collecting payback of APS revenues except for audits or adjustments related to a facility's base year cost report. Crest View's base year cost report under its APS contract is the reporting year ending September 30, 1997. Because DHS is not relying on audit adjustments related to Crest View's base year cost report, Crest View maintains that its adjustments are prohibited. In addition, Crest View contends that, pursuant to the Minnesota Court of Appeals

decision, DHS was only authorized to calculate and collect Rule 50 payback for the two rate years at issue, amounting to \$61,422. Instead, DHS recalculated 10 rate years and is, according to Crest View, erroneously seeking payback of \$179,832.

DHS argues that Minn. Stat. § 256B.434 does not prohibit it from recalculating Crest View's APS base year rate based on adjustments related to a prior rate year's field audit. DHS points out that a facility's base year rate is determined pursuant to the Rule 50 rate-setting system. Under the Rule 50 system, any audits or adjustments to prior rate years resulting in changes to the payment rate are carried or "rippled" forward into all subsequent years. According to DHS, this recalculation occurs regardless of whether the subsequent rate years are Rule 50 rates or rates under the APS. DHS asserts that entering into an APS contract does not shield a facility's payment rates from the ripple effect of adjustments to prior years. DHS further maintains that, if it were not able to recalculate a facility's rates based on audits of prior years, a facility could misreport costs to inflate their payment rates and thereafter enter into an APS contract to protect their erroneous rates from future downward adjustments.

### **Relevant Statutory Provisions**

Minn. Stat. § 256B.434, subd. 4, governs payment rates for nursing facilities under the APS. Minn. Stat. § 256B.434, subd. 4(b), provides as follows:

A nursing facility's case mix payment rate for the first rate year of a facility's contract under this section is the payment rate the facility would have received under section 256B.431.

Minn. Stat. § 256B.431 is a Rule 50 provision governing rate determination and spend up limits. Crest View maintains that the reference to § 256B.431 in this subdivision is only for setting the APS contract's first rate year or base year rate and not for applying Rule 50 spend-up limits retroactively. DHS, on the other hand, argues that this subdivision makes clear that a facility's base year rate is subject to Rule 50 spend up limits and must be calculated applying these limits. According to DHS, subdivision 4 authorizes DHS to adjust a facility's APS rates whenever any Rule 50 cost report is audited.

Minn. Stat. § 256B.434, subd. 6, states:

**Contract payment rates; appeals.** If an appeal is pending concerning the cost-based payment rates that are the basis for the calculation of the payment rate under the alternative payment demonstration project, the commissioner and the nursing facility may agree on an interim contract rate to be used until the appeal is resolved. When the appeal is resolved, the contract rate must be adjusted retroactively in accordance with the appeal decision.

DHS contends that the language of this subdivision makes it clear that retroactive adjustments will be made upon resolution of appeals involving more than just the base year rate. DHS argues that the use of the plural "cost based payment rates" clarifies that more than the base year's rates may impact a facility's APS contract rate. In other words, DHS asserts that this subdivision permits it to adjust a facility's APS rate each time a Rule 50 appeal is resolved, even if the base year cost report is not the one

adjudicated in the appeal. Crest View contends that such an interpretation is squarely at odds with the prohibition against paybacks or adjustments of APS revenues provided for in subdivision 10. And Crest View asserts that the pluralizing of the word “rates” in this subdivision is not inconsistent with subdivision 10 because a single Rule 50 cost report generates multiple rates (operating cost payment rate, property-based payment rate, and the real estate tax and special assessment rate). Thus, Crest View maintains that it is as plausible that the plural “rates” in subdivision 6 refers to the multiple rates at issue in the single base year cost report appeal. Moreover, Crest View argues that subdivision 6 doesn’t even apply here because DHS and Crest View did not, in this instance, negotiate an interim contract rate to be used until Crest View’s appeal was resolved.

Minn. Stat. § 256B.434, subd. 10, provides:

**Exemptions.** (a) To the extent permitted by federal law, (1) a facility that has entered into a contract under this section is not required to file a cost report, as defined in Minnesota Rules 9549.0020, subpart 13, for any year after the base year that is the basis for the calculation of the contract payment rate for the first rate year of the alternative payment demonstration project contract; and (2) a facility under contract is not subject to audits of historical costs or revenues, or paybacks or retroactive adjustments based on *these* costs or revenues, except audits, paybacks, or adjustments relating to the cost report that is the basis for calculation of the first rate year under the contract.

(Emphasis added.)

Crest View argues that the language in item (2) expressly restricts all audits, paybacks or adjustments to those relating to a facility’s base year cost report and prohibits DHS from making adjustments or seeking paybacks relating to prior cost reports. Crest View asserts that if the legislature wanted DHS to be able to collect paybacks relating to audits prior to the APS base year, it could have stated so explicitly in the statute. DHS maintains that when read in the context of the entire statutory provision, subdivision 10 only exempts from audits and adjustments the rate years *after* the base year. DHS contends that the use of the word “these” in subdivision 10(a)(2) refers to costs or revenues for “any year after the base year”, which is referenced in subdivision 10(a)(1). Crest View contends that DHS’ interpretation renders the express exemption in Minn. Stat. § 256B.434, subd. 10(a)(2), meaningless.

### **The APS Contract**

In addition to the governing statutes, Section § 8.6.2 of the APS contract between Crest View and DHS provides, in part, as follows:

**8.6.2. Audits.** Pursuant to Minn. Stat. § 16C.05, subd. 5, NURSING FACILITY shall fully cooperate in any audit conducted by the STATE . . . .

NURSING FACILITY shall be subject to audits, paybacks, or adjustments relating to the cost report for the reporting year ending September 30, 1997. Audit adjustments to the cost report for the reporting year ending

September 30, 1997 will be incorporated into the contract payment rate during the term of this Contract. . . . *Nothing in this Contract precludes the STATE from auditing reporting years prior to the reporting year ending September 30, 1997. Any paybacks or adjustments resulting from an audit of a reporting year prior to the reporting year ending September 30, 1997 shall be governed by Minnesota Statutes, Section 256B.431 and Minnesota Rules, Parts 9549.0010-9549.0080.*

(Emphasis added.)

DHS argues that the contract language authorizes DHS to adjust APS rate years based on audits of prior reporting years. Crest View points out that the last two sentences of § 8.6.2, which are emphasized above, were added to the contract during Crest View's second year of participating in the APS system and were not in the original contract. Crest View contends that the added language only confirms DHS' authority to audit prior Rule 50 rate years. According to Crest View, the language clarifies that, by entering into an APS contract with a facility, DHS does not waive its right to audit that facility's earlier Rule 50 years. Crest View maintains, however, that while DHS may continue to audit years prior to the base year, the language does not enable DHS to adjust APS rates downward based on these audits, which would be contrary to the express prohibition in Minn. Stat. § 256B.434, subd. 10. Moreover, Crest View points out that in the letter explaining changes made to the APS contract sent by DHS to Crest View on May 4, 2000, DHS stated that the language was merely clarifying that costs reports for years prior to the base year are subject to audit under Rule 50.<sup>[10]</sup>

## Discussion

Interpretation of statutes is a question of law.<sup>[11]</sup> The fundamental rule of statutory construction is that the court should look first to the specific statutory language and be guided by its natural and most obvious meaning.<sup>[12]</sup> When the language of a statute is unambiguous, the court must apply its plain meaning.<sup>[13]</sup> This principle of plain meaning has as its corollary that ordinary rules of grammar apply.<sup>[14]</sup> A statute is only ambiguous when the language is subject to more than one reasonable interpretation.<sup>[15]</sup> When the meaning of statute is doubtful, deference should be given to the construction placed upon it by the agency charged with its administration, especially when the agency's interpretation is a long-standing one.<sup>[16]</sup> In this matter, the APS statute at issue was enacted relatively recently. There is no case law interpreting the APS statutory provisions and the Department's interpretation is not one of long-standing. Both sides assert that the "plain language" of Minn. Stat. § 256B.434 controls in this matter, but both sides urge the Administrative Law Judge to interpret the "plain language" differently.

Minn. Stat. § 256B.434, subd. 10(a)(2), states that a facility that has entered into an APS contract with DHS is not subject to audits of historical costs or revenues, or paybacks or adjustments based on "these costs or revenues", except audits, paybacks or adjustments "relating to the cost report that is the basis for calculation of the first rate year under the contract." The ALJ finds the plain meaning of this statute exempts APS facilities from audits, paybacks or adjustments, except audits, paybacks or adjustments relating to the facility's base year cost report. Thus, once under an APS contract, a

facility's cost reports for years prior to its base year cost report cannot be audited and used to retroactively adjust the facility's APS contract rates. Under the rules of statutory construction, "exceptions expressed in a law shall be construed to exclude all others."<sup>17</sup> The proviso, "except audits, paybacks, or adjustments relating to the cost report that is the basis for calculation of the first rate year under the contract," identifies plainly the sole cost report that authorizes APS rate paybacks. This exception allows APS paybacks only if they arise from adjustments to the base year cost report and excludes all other cost reports. DHS' construction of Minn. Stat. § 256B.434, subd. 10(a)(2), and specifically its interpretation that the phrase "these costs or revenues" refers to years after the base year, is strained and does not reflect the provision's plain meaning.

The paybacks and rate adjustments challenged in this motion do not relate to Crest View's APS base year cost report of September 30, 1997. Instead they arise from audits of cost reports ending September 30, 1993, and September 30, 1994. The Administrative Law Judge finds that Minn. Stat. § 256B.434, subd. 10(a)(2), expressly restricts all audits, paybacks or adjustments to an APS facility's base year cost report. Because the Department's adjustments to Crest View's APS rates are based on its 1993 and 1994 cost reports, they are in direct conflict with Minn. Stat. § 256B.434, subd. 10(a)(2), and are therefore invalid. While DHS may, under Minn. Stat. § 256B.434, continue to audit cost reports for years prior to a facility's base year in order to adjust rates paid under Rule 50 (before the facility was under an APS contract), it cannot use these audits to recalculate or adjust downward a facility's APS rates.

In addition, the Administrative Law Judge does not find DHS' interpretation of the appeal adjustment provision of Minn. Stat. § 256B.434, subd. 6, to be persuasive. Subdivision 6 concerns pending appeals of Rule 50 cost-based payment rates "that are the basis for the calculation of the payment rate" under the APS. Unlike DHS, the Judge interprets the phrase "rates that are the basis for the calculation of the [APS] payment rate" to refer exclusively to a facility's base year payment rate under the APS contract and not to payment rates for any year prior to or including the base year. Thus, the Administrative Law Judge does not interpret subdivision 6 as supporting the Department's contention that it has the authority to adjust APS rates each time a Rule 50 appeal is resolved regardless of whether the appeal concerned a facility's base year cost report or a prior cost report. As with subdivision 10, the phrase "the basis for the calculation of the [APS] payment rate" refers specifically to a facility's first year rate under the APS contract. Consequently, subdivision 6 governs only those situations where there is a pending appeal of an APS facility's base year rate. In such cases, the facility and the Department may agree on an interim contract rate to use until the appeal is resolved.

Moreover, to interpret subdivision 6 as allowing DHS to adjust a facility's APS rates each time a Rule 50 appeal is resolved regardless whether the appeal concerned the facility's base year cost report or a prior cost report would render it in direct conflict with Minn. Stat. § 256B.434, subd. 10(a)(2), which prohibits retroactive adjustments based on costs reports other than a facility's base year cost report. Under rules governing statutory construction, when a general provision in a law is in conflict with a special provision in the same law, the two shall be construed, if possible, to give effect

to both. If the conflict between the two provisions is irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision.<sup>[18]</sup> In this case, reconciling the difference between subdivision 6's general provision and subdivision 10's special provision requires subdivision 10's provision to prevail. In addition, if clauses in the same law are irreconcilable, the clause "last in order of date or position shall prevail."<sup>[19]</sup> Here, subdivision 10's prohibition against audits, paybacks or adjustments is last in order of position when compared to subdivision 6. For all these reasons, the Administrative Law Judge finds that Minn. Stat. § 256B.434, subd. 10, restricts DHS' authority to adjust or collect paybacks of APS revenue to audits based on a facility's base year cost report.

Finally, the Administrative Law Judge does not find that the language contained in § 8.6.2 of the APS contract supports DHS' position that it may adjust APS contract payment rates based on audits of years prior to the base year. The contract states that Crest View shall be subject to audits, paybacks or adjustments relating to its September 30, 1997, cost report. And it states specifically that audit adjustments *based on the September 30, 1997 cost report* will be incorporated into the APS contract payment rate. While the contract goes on to state that DHS may still audit reporting years prior to the September 30, 1997, reporting year, it does not state that DHS may use *these* audits to make adjustments to a facility's APS rates. It does not say this because DHS is prohibited from doing so under Minn. Stat. § 256B.434, subd. 10. The contract language is consistent with the statute. It simply clarifies that, by entering into APS contracts with facilities, DHS does not waive its right to audit reporting years prior to a facility's base year when the facility was not under the APS contract. Yet, while DHS can audit prior reporting years, it cannot, under Minn. Stat. § 256B.434, subd. 10, use these audits to adjust a facility's APS rates. It can only adjust a facility's APS rates based on audits of its base year cost report. Moreover, even if the contract language was ambiguous, it could not be interpreted in such a way as to amend statutory rate-setting requirements.

In the view of the Administrative Law Judge, had DHS wished to protect its ability to adjust Crest View's future rates based upon its audit of rate years 1994 and 1995, it could either have refused to enter into an APS contract with Crest View or negotiated a interim contract rate under Minn. Stat. § 256B.434, subd. 6, to be used until the appeal was resolved. DHS did not take either approach, and the statute precludes it from adjusting Crest View's APS rate at this juncture.

Based on all of the reasons stated above, the Administrative Law Judge recommends that Crest View's motion for partial summary disposition be granted and that all adjustments and paybacks attributed to its APS years be reversed.

B.L.N.

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<sup>[1]</sup> Minn. R. 1400.5500 (K).

<sup>[2]</sup> *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03.

- <sup>[3]</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateaux. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).
- <sup>[4]</sup> *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).
- <sup>[5]</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).
- <sup>[6]</sup> *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).
- <sup>[7]</sup> See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).
- <sup>[8]</sup> In the Matter of the Rate Appeal of Crest View Lutheran Home v. DHS, C0-02-637 (Minn. Ct. App. Dec. 10, 2002) (unpublished).
- <sup>[9]</sup> Minn. Stat. § 256B.434, subd. 4(c).
- <sup>[10]</sup> Second Affidavit of Orbovich, Ex. D.
- <sup>[11]</sup> *McClain v. Begley*, 465 N.W.2d 680 (Minn. 1991).
- <sup>[12]</sup> *Heaslip v. Freeman*, 511 N.W.2d 21, 22 (Minn. App. 1994), *rev. denied* (Minn. February 24, 1994); *citing*, *Nadeau v. Austin Mut. Ins.*, 350 N.W.2d 368, 373 (Minn. 1984).
- <sup>[13]</sup> *Current Technology Concepts, Inc. v. Irie Enterprises, Inc.*, 530 N.W.2d 539 (Minn. 1995); see also, Minn. Stat. § 645.16 (when words of a statute are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.)
- <sup>[14]</sup> *Mattson v. Flynn*, 216 Minn. 354, 359, 13 N.W.2d 11, 14 (1944).
- <sup>[15]</sup> *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).
- <sup>[16]</sup> *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641, 644 (Minn. 1979); *St. Otto's Home v. State, Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989).
- <sup>[17]</sup> Minn. Stat. § 645.19.
- <sup>[18]</sup> Minn. Stat. § 645.26, subd. 1.
- <sup>[19]</sup> Minn. Stat. § 645.26, subd. 2.