

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Contested Case
of Mary T. Associates, Inc. ("MTAI");
MTAI-Albert Place; MTAI-Gladson;
MTAI-Sand Creek; MTAI-Minnehaha
Creek; St. Ann's Group Home and
St. Ann's Residence,

vs.

RECOMMENDED ORDER
ON MOTION FOR
SUMMARY DISPOSITION

Minnesota Department of
Human Services,

The above-entitled matter is before the undersigned Administrative Law Judge on cross-motions for summary disposition filed by Mary T. Associates, Inc. ("MTAI"), MTAI-Albert Place, MTAI-Gladson, MTAI-Sand Creek, MTAI-Minnehaha Creek, St. Ann's Group Home, and St. Ann's Residence (hereinafter "MTAI" or "the Providers") and the Minnesota Department of Human Services (hereinafter "DHS" or "the Department"). Neither party requested oral argument of this motion.

Mary K. Martin, Gray, Plant, Mooty, Mooty, and Bennett, P.A., Attorneys at Law, 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402-3796 appeared on behalf of the Providers. Alison E. Colton, Special Assistant Attorney General, 520 Lafayette Road, Suite 200, St. Paul, Minnesota 55155 appeared on behalf of the Department. The record closed on March 11, 1992, upon receipt of the final submission from the parties.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

Based on the record herein, and for the reasons set out in the attached Memorandum,

IT IS HEREBY RECOMMENDED-THAT:

1. The Department's Motion for Summary Disposition of this matter be DENIED.

2. The Providers' Motion for Summary Disposition be GRANTED.

Dated: March 26th 1992.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the administrative law judge by first class mail.

Reported: No Hearing.

MEMORANDUM

Both parties have moved for summary disposition on the grounds that there are no material issues of fact in dispute and each claims it is entitled to disposition of this case in its favor as a matter of law. 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. *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 (1984). Summary disposition is the administrative equivalent to summary judgment and the same standards apply. Minn. Rule 1400.5500, item (K).

In a motion for summary disposition, the initial burden is on the moving party to show facts that establish a prima facie case and assert that no material issues of fact remain for hearing. *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the non-moving party. *Minnesota Mutual Fire and Casualty Company v. Retrum*, 456 N.W.2d 719, 723 (Minn.App. 1990). To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case. *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986). General averments are not enough to meet the non-moving party's burden under Minn.R.Civ.P. 56.05. *id.*; *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn.App. 1988). However, the evidence introduced to defeat a summary judgment motion need not be admissible trial evidence. *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp v. Catrett*, 477 U.S. 317, 324 (1986)).

The Providers are 6 intermediate care facilities for the mentally retarded (ICF/MRs) which submit cost reports to establish reimbursement rates under Minn. Rules 9553.0010-9553.0080. Each of the ICF/MRs claimed costs arising from the operation of a vehicle for program purposes. The vehicle costs

claimed were incurred for automobile insurance and categorized by the Providers as a program cost in their cost reports for 1988, 1989, and 1990. DHS reclassified the insurance cost claimed in each of these years to the administrative category.

The parties do not dispute the Providers' assertion that the vehicles for which the insurance costs are claimed were used solely for program purposes. The amount of the costs is not at issue. The Providers assert that these costs are program expenses which should be reported as a direct cost of operating a vehicle under the program category. DHS maintains that these costs must be reported as insurance and therefore must be categorized as an administrative cost.

Neither party has raised any fact issue regarding the claims presented in this case. The only issue to be decided is the proper categorization of automobile insurance expenses in cost reports for ICF/MRs. This issue is appropriate for adjudication by summary judgment.

Prior Adjudications.

These cross-motions are the second summary disposition motions brought in this case. The Order on a prior motion denied a claim that the doctrines of collateral estoppel or res judicata applied due to prior adjudications of the automobile insurance issue presented herein. (Order dated December 2, 1991). The prior adjudications were Decisions issued by Administrative Law Judge Phyllis A. Reha (on June 20, 1989) and this Judge (on February 13, 1989) pursuant to the expedited rate appeal process established by Minn. Stat. 256B.50, subd. Id. The December 2, 1991 Order concluded that neither res judicata nor collateral estoppel applied and that expedited rate appeal decisions are not precedent. While the Judge has considered the reasoning in those Decisions herein, they have not been afforded any precedential weight or authority.

Rule Provisions.

The parties' dispute lies solely in the interpretations of several items in two subparts of Minn. Rule 9553.0040. Those items read, in pertinent part, as follows:

Subpart 1. Program Operating Costs. The direct costs of program functions must be reported in the program operating cost category. These costs include:

G. the operating costs of a facility owned vehicle except staff compensation costs, or reimbursement for mileage for use of a personal vehicle, to the extent that the vehicle is used to transport residents for program purposes;

Subpart 3. Administrative Operating Costs. The costs listed in this subpart are included in the administrative operating cost category:

C. motor vehicle operating costs, except as provided in subpart 1, items E and G;

F. insurance except as in subpart 6;

Subpart 6, the exemption to the insurance classification, applies only to real estate insurance and professional liability insurance. Minn. Rule 9553.0040, subp. 6(D) and (E).

MTAI maintains that motor vehicle insurance costs covering vehicles which are used only to provide program services are properly categorized as program costs under subpart 1(G). DHS argues that those costs are "insurance," and as such, must be categorized as administrative operating costs under subpart 3(F).

Close examination of the rule provisions indicates that motor vehicle insurance costs covering vehicles which are used only to provide program services could be legitimately placed under either category by virtue of the plain language of each rule provision. Motor vehicle insurance is clearly insurance. Motor vehicle insurance is also commonly understood to be a vehicle operating cost. The Department did not dispute the Providers' assertion that insurance is a vehicle operating cost. Additionally, vehicle insurance is a component in the mileage reimbursement authorized under subpart 1(G). Affidavit of Annette Rowland, at 3. The rules do not expressly refer to motor vehicle insurance in either the program or administrative cost categories. Consequently, the rule is unclear as to the proper allocation of this cost.

Department Manuals.

The Department maintains that the intent of the rule and a longstanding administrative interpretation is demonstrated by its manuals. These manuals were prepared by the Department to aid providers in preparing cost reports and all contain essentially identical language on this issue. The 1985 manual sets forth the following instructions for reporting vehicle operating costs and insurance costs:

Record only the directly identifiable costs of operating a vehicle when the vehicle is used to transport residents for programmatic purposes. Vehicle operating costs includes gas and oil for facility owned vehicles or reimbursement for mileage for

use of a personal vehicle of an employee.

Other insurance amounts, including Umbrella coverage, Extra Expense, Blanket Earnings, Crime Coverage and Automobile insurance must be reported on a historical cost basis in the administrative cost category.

Affidavit of David Ehrhardt, Exhibit B, at 9 and 12.

The Department argues that the manual defines vehicle operating costs as gas and oil. Characterizing the manual description of vehicle operating costs as a "definition" is not accurate. "Includes" is a word which implies a noninclusive list of components. The manual clearly permits other costs to fall under vehicle operating costs and be properly reported under the program cost category so long as the cost is "directly identifiable."

Automobile insurance is expressly listed in the manual as falling under the administrative cost category. However, the manual does not expressly include automobiles used for programmatic purposes or distinguish between automobiles used for administrative purposes from those used for program purposes. Minn. Rule 9553.0040, subp. 3(C) requires motor vehicle operating costs, except those used for programmatic purposes, to be reported as administrative operating costs. The manual does not resolve the ambiguity established in the rules because it does not expressly include as administrative costs, those which might otherwise fall in the program operating cost category. Since the manuals are no more specific than the rule itself, there is no need to reach the issue of whether reliance on the manuals constitutes illegal rulemaking.

Longstanding Departmental Practice.

DHS asserts that any ambiguity in the proposed rules must be resolved in favor of the Department because of its longstanding practice that all insurance not expressly exempted is categorized as administrative operating costs. MTAI disputes that any longstanding practice exists. The only evidence that a longstanding practice of classifying the costs at issue exists is through the expedited rate appeals which were decided adversely to the Department. The Department's manuals, put out each year from 1985 through 1990, are ambiguous and do not establish any longstanding practice. The proper application of the rule is not meaningfully clarified by any practice of the Department.

Cost category Approach to Reporting

The overall approach to reporting costs is set out in the Department's Statement of Need and Reasonableness (hereinafter "SONAR") for these rules. The SONAR identifies two goals, among others, which are to be met by the proposed rules. The goals are control of expenditures and directing scarce resources to resident care services and away from administrative areas. Affidavit of Alison E. Colton, Exhibit A, at 2. To accomplish these goals, program costs are reimbursed for actual expenditures, while administrative costs are subject to an upper limit or cap. This approach encourages providers to spend money on programs and cut costs in the administrative

area. In the rulemaking proceeding, the Department adopted the suggestions of commentators to allocate insurance costs for real estate insurance and

professional liability insurance to the special operating cost category. Coulton Affidavit, Exhibit B, at 46. The reason for this change is that the costs of those two types of insurance are not controllable by the facility.
Id.

The types of insurance costs identified in the Department's manual as falling under subpart 3(F) are umbrella coverage, extra expense, blanket earnings, crime coverage and automobile insurance. Ehrhardt Affidavit, Exhibit B, at 12. Of the coverages identified, all are optional except automobile insurance. Operating an automobile without obtaining automobile insurance is prohibited by law and constitutes a misdemeanor offense. The only way a facility can control automobile insurance costs is to do without an automobile. This outcome is directly contrary the Department's intent in adopting the rules. To require automobile insurance to be categorized as administrative operating costs in all cases would be contrary to Minn. Rule 9553.0040, subp. 1, which allows as a program cost the operating costs of a vehicle used for program purposes. It would also treat motor vehicle insurance costs differently where those costs are recovered through the mileage reimbursement and not allowed for facility owned vehicles used exclusively for program purposes.

The most consistent and appropriate reading of the rules at issue is to treat motor vehicle insurance as a vehicle operating cost for determining the appropriate reporting category. In this way, motor vehicle insurance costs are properly reported in the administrative operating costs category pursuant to Minn. Rule 9553.0040, subp. 3(C), unless the costs fall within the exemption in that item. The exemption is vehicle operating costs for program purposes under subpart 1(G). In this case, the motor vehicle insurance cost is directly identifiable for vehicles used solely for program purposes and, therefore, the insurance cost is properly reported as a program cost under the subpart 1(G). MTAI should be awarded summary disposition in its favor.

P.C.E.

I/ The June 20, 1989 Decision held that automobile insurance cost for vehicles used exclusively for program purposes must be reported as program, rather than administrative, costs.

21 A specific reference to what is or is not an operating cost can be found in the regulations of the Internal Revenue Service, 1.162-2(f). The

regulation states its purpose as aiding taxpayers to compute "the deductible costs ... of operating a passenger automobile for business ... purposes." CCH Standard Federal Tax Reports, at 21,879, section 1 (1991). The regulation further states "an employee may deduct the cost of operating a passenger automobile to the extent it is used in a trade or business." Id. at 21,880 (emphasis added). While the regulation identifies both fixed costs (depreciation, insurance, registration and license fees, and personal property taxes) and operating costs (gasoline, oil, tires, routine maintenance, and repairs) this distinction affects only accounting practices, not the type of expense. Sly id. at 21,811, section 3.04. Both fixed and operating costs are deductible costs of Operating a passenger automobile. at sections 4.02 and 4.03