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Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1115

Children's Advocate Programs, Inc.,
Relator,

vs.

Minnesota Department of Education,
Respondent.

Filed May 16, 2011
Affirmed
Ross, Judge

Minnesota Department of Education

Christopher E. Sandquist, Andrew M. Tatge, Gislason & Hunter, LLP, Mankato, Minnesota (for relator)

Lori Swanson, Attorney General, Martha J. Casserly, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

This appeal arises from a dispute between two of the bureaucratic agencies of a multitiered welfare system in which funds stream from the taxpayer to the federal treasury, to a federal agency, to a state agency, to nonprofit corporations, then eventually to local organizations like homeless shelters and daycares, which use the funds to

purchase food that they give to qualifying individuals. In this case, the state agency (the Minnesota Department of Education) brought an administrative action against a nonprofit corporation (the Children's Advocate Programs, Inc.) to recover nearly $23,000, which the department concluded was improperly reimbursed to the Children's Advocate Programs for deferred compensation, home internet charges, personal cellular telephone use, a digital scanner lease, and employee health insurance. The Children's Advocate Programs argues in this appeal that some of these expenses were allowable and also that it should not have to repay the reimbursed unallowable expenses because it incurred other expenses that would have been allowable if it had reported them. We affirm.

FACTS

We are asked to address a disagreement over the use of funds in the Child and Adult Care Food Program (CACFP). That program evolved from the 1946 National School Lunch Act, 42 U.S.C. § 1751, in which congress authorized federal subsidies for reduced-price lunches for low-income school children, and the 1966 Child Nutrition Act, 42 U.S.C. § 1771, which began expanding the program to reach substantially beyond school children during school hours eventually to subsidize meals for adult daycare centers, homeless shelters, and afterschool care programs. 42 U.S.C. § 1766.

CACFP money does not pass directly from the federal treasury to the food-providers. It starts at the United States Department of Agriculture (USDA). It moves to the Food and Nutrition Services (FNS) program. It then funnels to the state agencies that administer the program. In Minnesota, that agency is the Minnesota Department of Education (MDE). The MDE relays CACFP money to CACFP sponsors, such as

appellant Children's Advocate Programs, Inc. (CAPI). *See* 7 C.F.R. §§ 226.1, 226.6(b)(4) (2010). CACFP sponsors are nonprofit organizations that oversee the food-providing local organizations. They provide training, monitoring, and distribute the food-buying funds.

In addition to paying for food, CACFP money covers certain expenses incurred at each of the various administrative levels, provided that those expenses are allowable under federal regulations governing reimbursement. *See* 7 C.F.R. § 226; FNS Instruction 792-2 I A (describing allowable costs as those "necessary and reasonable for effective and efficient operation of the nonprofit food service"). This case specifically concerns the MDE's attempt to recoup funds for some of the expenses that CAPI received after it reported them as allowable for reimbursement.

In February 2009, the MDE approved CAPI's 2009 budget with five exceptions: it would authorize no funding for a scanner lease; it rejected CAPI's cellular telephone budget to the extent it sought personal telephone costs; it rejected CAPI's internet costs to exclude home internet services; it reduced the director's claim for health insurance costs that were not supported by documentation; and it reduced CAPI's allocation of time spent on monitoring activities. During an audit later in 2009, the MDE concluded that various of CAPI's claimed expenses were unallowable and eventually decided that CAPI's operation of CACFP was seriously deficient.

CAPI appealed administratively. It contended that it incurred allowable unreimbursed expenses that could be substituted for unallowable expenses. The departmental appeal panel affirmed the serious-deficiency determination and the MDE

finalized it. The MDE concluded that CAPI owed it $22,789.32, which represented reimbursements for unallowable costs for deferred compensation, home internet charges, personal cellular telephone use, a scanner lease, and health insurance. This certiorari appeal follows.

D E C I S I O N

CAPI challenges the MDE appeal panel's decision. We review de novo the MDE's construction of statutes and of clearly written regulations. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002) (statutes); *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002) (regulations). CAPI concedes that its reimbursement request for deferred compensation, home internet charges, and personal cellular telephone charges were unallowable. Because it was reimbursed for these expenses, the regulations require the MDE to recover the funds, *see* 7 C.F.R. § 226.14(a) (2010), and CAPI is required to repay them, *see* 7 C.F.R. § 226.10(b)(4) (2010). But CAPI argues that it should be excused from repaying the $22,789.32 because it had legitimate unreimbursed expenses that it can substitute for its illegitimate expenses. It also claims that some of the costs deemed unallowable—particularly the scanner lease and health insurance—were allowable. None of these arguments leads us to reverse.

I

We first resolve whether the MDE properly followed federal-subsidies law to reject CAPI's claim that it is entitled to an after-the-fact substitution of allowable costs for unallowable costs. The federal regulations contradict CAPI's replacement-expense theory. They require the party seeking reimbursement to file its claim within 60 days

after the last day of the month in which it incurred the costs. 7 C.F.R. § 226.10(e) (2010). Claims submitted late "shall not be paid with Program funds unless FNS determines that an exception should be granted." *Id*. CAPI submitted its substitution claims more than 60 days after it incurred them and FNS granted no exception. We agree with the MDE appeal panel that "[t]he fact that CAPI had potentially allowable charges that were not claimed . . . does not give rise to allowance of unallowable costs."

II

We next consider whether the MDE erroneously deemed "unallowable" costs that are allowable. CAPI maintains that its scanner lease and additional health insurance costs are allowable. We review the construction of the allowable-cost regulations de novo. *See Jasper*, 642 N.W.2d at 440. If the MDE appeal panel rightly construed the regulations, we will affirm its decision if it is based on factual findings that are supported by substantial evidence in the record. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984). Substantial evidence is more than a scintilla of relevant evidence that, considered in totality, could lead a reasonable person to the factual conclusion at issue. *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002). We believe that the appeal panel properly construed the regulations and applied them to the contested expenses.

CAPI's scanner lease is not an allowable expense. All sponsors must obtain "specific prior written approval" for equipment-lease arrangements. FNS Instruction 796-2 VIII I 36 d. The appeal panel found that the MDE did not approve CAPI's scanner lease until August 2009 and held that costs associated with the lease incurred before August

2009 were unallowable. CAPI maintains that the MDE's September 2008 letter acknowledging receipt of CAPI's budget is "tantamount" to prior written approval. The appeal panel's finding to the contrary is based on substantial evidence. The only statement in the MDE September 2008 letter related to the lease states, "Need signed copies of all contracts/agreements." This text, particularly when read with December 2008 and February 2009 letters from the MDE to CAPI, supports the appeal panel's understanding that the MDE would not treat CAPI's claim as complete until CAPI documented the existence of an executed lease. Its December letter stated, "The copy of the BSB Lease is not signed and therefore incomplete," and, "Submit a signed copy." Its February letter stated, "BSB/BMT Lease—approved at zero due to no supporting documentation." These letters are evidence that would allow a reasonable mind to reject CAPI's contention that specific prior approval existed.

The MDE's decision not to allow reimbursement of health insurance costs also comports with the law and the evidence. The MDE appeal panel found that documentation supporting CAPI's request for health insurance costs was untimely. Some health-insurance costs are generally allowable, but generally allowable costs can "become unallowable because the institution failed to maintain the required documentation to support the costs charged to the program." FNS Instruction 796-2 VII A 4 c. The MDE wrote CAPI approving a monthly budget of $242 for health insurance, specifically reducing CAPI's proposed $586 budget, and in so doing, it approved only those insurance costs supported by documentation.

Affirmed.