

No. 1-09-2764

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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AMEGROW GROUP, INC.,	)	Appeal from the Circuit
	)	Court of Cook County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08 CH 41075
	)	
DEPARTMENT OF HEALTHCARE AND	)	Honorable Kathleen M. Pantle,
FAMILY SERVICES, and BARRY S. MARAM,	)	Judge Presiding.
DIRECTOR,	)	
	)	
Defendants-Appellees.	)	

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Justice Murphy delivered the judgment of the court.

Presiding Justice Quinn and Justice Steele concurred in the judgment.

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**ORDER**

*HELD:* Administrative agency's decision to terminate and ban plaintiff from participating in program and recoup money paid to plaintiff based on plaintiff's failure to comply with the records requirements of the Illinois Administrative Code was not clearly erroneous; judgment affirmed.

Plaintiff Amegrow Group, Inc. appeals from an order of the circuit court of Cook County which affirmed the decision of defendant Illinois Department of Healthcare and Family Services (Department) to terminate and ban plaintiff as a provider of transportation services for recipients in the Medical Assistance Program (program) and for recoupment of \$284,435.35. Plaintiff

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claims that the Department's decision was based upon an erroneous finding that plaintiff was required to register the pick-up address for each transportation service it provided in its trip tickets as a record of its transportation services.

The facts, as gleaned from the pleadings filed in the circuit court, show that in 2002 plaintiff entered into an agreement with the Department to provide non-emergency transportation services for Medicaid recipients to and from dialysis centers. As part of the agreement, plaintiff agreed to comply with all applicable State and Federal laws and regulations and, upon demand, to furnish all records associated with submitted claims necessary to fully disclose the nature and extent of services provided to recipients.

The Department conducted a post-payment audit of plaintiff's claims for payment of transportation services provided from January 1, 2004, through December 31, 2005. The Department gave plaintiff a list of documents to produce, including, *inter alia*, all professional records including trip tickets, dispatcher's log and transportation invoices for 106 recipients, and a list of vehicles used and their identification (ID) numbers. At the audit exit interview, the Department informed plaintiff that the documents it submitted did not comply with its records requirements.

Plaintiff subsequently submitted two boxes of trip tickets, and a second audit was conducted. The Department audited a sample of plaintiff's claims in which it found 47 instances of overpayment based on plaintiff's failure to produce trip tickets or dispatcher's logs, and 1,925 instances of overpayment due to missing records of specific services. Based on these "discrepancies," the Department found plaintiff in violation of, *inter alia*, sections 140.16(a)(1), (3), (4) and (6) of the Illinois Administrative Code (Code) (89 Ill. Adm. Code 140.16 (a)(1), (3), (4) and (6) (1996)), and sought \$284,435.35 in overpayments for the audit period. The Department sent plaintiff notice of its intent to terminate and bar plaintiff from the program and to recover \$284,435.35, as well as notice of plaintiff's right to request a hearing, which it did.

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At that hearing, Caridad Beles testified that she is an auditor for the Department, and in that capacity, she verifies that the services billed by providers are the same services that were paid for by the Department. In doing so, Beles does not look at all the claims billed, but rather, uses the claims detail report which is a computer generated document that lists a sample of the claims the Department paid to the provider based on each service the provider reported. Beles explained that the records a provider submits in an audit should substantiate the claims billed.

Beles further testified that when providers enroll in the program, they are given the Department's handbook. Although the handbook provided at the hearing had a September 2005 publishing date, Beles noted that the policies therein were the same prior to that date. Beles stated that the handbook contains a sample trip ticket which has a section to list the recipient's address, but not the pick-up address, which is not necessarily the same as the recipient's address. Beles stated that she does not follow the trip ticket in auditing as it is a sample, but follows the T-205 record requirement provision in the handbook which requires a pick-up address to be listed in the trip ticket. However, when shown this provision, Beles observed that it did not specifically require a pick-up address. Beles further testified that when she conducts an audit to verify the bills submitted by providers, she focuses on the information in those bills, which, in this case, included pick-up addresses.

Victor Villaneuva, the auditing supervisor for the Department, testified that the handbook is a guideline, and that the records requirement provision therein, which requires trip tickets and lists the information that should be in the tickets, specifically states that these are the "minimum" record requirements. Villaneuva explained that the Department can impose additional requirements in trying to match information in the providers' records with the services billed to the Department, that any records provided in an audit should match the bills submitted, and that the trip ticket should contain the minimal information necessary to substantiate the services billed.

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On April 17, 2006, Villaneuva and auditors Beles and Brian McKeone held an initial interview with the owner of plaintiff, Ayodele Agunbiade, to inform him that his company had been selected for an audit and to provide him with a list of the records sought. Agunbiade submitted numerous documents, but no trip tickets. Beles testified that the documents submitted did not comply with the records requirements because they did not list the type of vehicles used for each service and their license plate numbers, the pick-up and drop-off addresses, and the names of the recipients' attendants.

Villaneuva testified that at the exit interview on May 9, 2006, he told Agunbiade that the records submitted did not qualify as trip tickets or substantiate the services plaintiff billed, and that the preliminary finding was that there were missing records. Beles stated that she told Agunbiade that the documents submitted did not comply with the Department's record requirements and that he should use the sample trip ticket in the handbook. Agunbiade informed her that he had a similar trip ticket form but did not use it. When Beles asked Agunbiade if he had any other records, he responded that he did not. Agunbiade later submitted a trip ticket form that he had on file, but did not use, during the audit period.

After Agunbiade received Beles' audit report, he sent in two boxes of trip tickets. Villaneuva testified that the tickets were "reconstructed" from the previous records that had been provided. He explained that the tickets submitted looked better than the sample ticket Agunbiade produced after indicating that he did not have any other records. Villaneuva ordered a second audit to determine if the trip tickets submitted matched the services billed. Beles stated that she did not want to review the tickets because they were new, "reconstructed" records, but Villaneuva ordered her to conduct a second audit.

After reviewing the trip tickets, Beles found that all the tickets were missing pick-up addresses, that they all had the same license plate number although plaintiff had four vehicles and more than one vehicle was listed in the claims billed, and that many of the tickets had no attendants' information. She labeled these findings A, B, and C, respectively, and noted them

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next to the claims that had these issues. Beles testified that she rejected the tickets because they were "manufactured after the fact," and were "not sufficient for [plaintiff's] bills" in that they did not show what services plaintiff performed based on its billing to the Department.

Villaneuva testified that the information in the trip tickets did not match the information in the services plaintiff billed to the Department. Accordingly, the Department rejected the reconstructed tickets which did not substantiate what plaintiff had billed.

On March 17, 2008, the administrative law judge (ALJ) recommended that the Department's decision be affirmed. The ALJ found that the purpose of the audit was to match and verify the information plaintiff entered in its bills to the Department with the information in plaintiff's records. The ALJ observed that the audit schedule, which contained Beles' audit findings, listed three reasons for why the trip tickets contained insufficient information. Reason A: all of the billed claims listed pick-up addresses, but none of the trip tickets contained this address; reason B: there were some tickets that denoted a license plate number which did not match the plate number in the services billed; and reason C: some of the tickets did not have the attendant information that was listed in the billed claims for those services.

The ALJ found that the testimony established that the handbook and sample trip ticket provided guidelines for the providers regarding the records that they need to maintain, and that the handbook specifically states that it provides the minimum record requirements. The ALJ thus concluded that the Department proved that the claims audited were not verified by the corresponding information in plaintiff's records.

On September 29, 2008, the Department Director adopted the ALJ's decision, and notified plaintiff that its eligibility to participate in the program was terminated and that it must pay \$284,435.35. On October 30, 2008, plaintiff filed a complaint for administrative review in the circuit court of Cook County. The circuit court affirmed the Director's decision.

In this appeal, plaintiff claims that the circuit court erred in affirming the Department's decision. Plaintiff maintains that the Department's rejection of the claims it billed based on the

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absence of the recipients' pick-up addresses on the trip tickets was arbitrary, capricious and against the manifest weight of the evidence where there is no rule or policy requiring the tickets to list a pick-up address.

As an initial matter, we observe that on appeal from an administrative review action, we review the agency's decision, not that of the circuit court. *McDonald v. Illinois Department of Human Services*, No. 4-10-0290, slip op. at 10 (Ill. App. Dec. 28, 2010). Since the issue presented involves a mixed question of fact and law, we will not reverse the agency's decision unless it is clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390-91 (2001). A decision is clearly erroneous if the record leaves the reviewing court with the firm and definite conviction that a mistake has been made. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395. For the reasons which follow, we find that this is not such a case.

The record shows that the Department terminated plaintiff's eligibility to participate in the program after finding that the records plaintiff submitted in the audit failed to verify the information contained in the claims plaintiff submitted for payment of services performed. Plaintiff was terminated under section 140.16 of the Code, which provides, in relevant part, that the Department may terminate a provider's eligibility to participate in the program if the provider violates the records requirements by failing to produce records required to be maintained by the Department or necessary to fully disclose the extent of services provided. 89 Ill. Adm. Code 140.16(a)(3) (1996). In addition, plaintiff was ordered to pay restitution, which, according to section 140.30(a) of the Code, is required if the records furnished do not support the payments that were made. 89 Ill. Adm. Code 140.30(a) (1996).

Plaintiff asserts that the Department's only reason for rejecting its claims was that the records it submitted, *i.e.*, the trip tickets, did not list the recipients' pick-up addresses, and that this reason was faulty where the Department's regulation, handbook and sample trip ticket do not require the pick-up address to be listed in the ticket. We disagree.

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The handbook, which contains the records requirement T-205 provision and the sample trip ticket, clearly indicates that these are the "minimum" record requirements. Further, Villaneuva's testimony established that the handbook and its sample ticket were merely guidelines to the providers. We also observe that section 140.494 of the Code, which sets forth the record requirements for transportation providers and is similar to the provision listed in the handbook, also specifically indicates that it provides the minimum records requirements. 89 Ill. Adm. Code 140.494 (2002).

Moreover, and as Villaneuva explained, post-payment audits are conducted with the purpose of examining selected records for discrepancies between them and the bills submitted, and if the records do not verify the bills, the Department is entitled to recoup excess payments made due to the improper billing practices and terminate the provider. *Meyers v. Illinois Department of Public Aid*, 114 Ill. App. 3d 288, 291-92 (1983). This verification requirement is not a new rule, but one that has been in effect for a long time as case law demonstrates. *Meyers*, 114 Ill. App. 3d at 291-92.

The evidence in this case shows that there were multiple discrepancies between plaintiff's records, namely, the trip tickets, and the claims billed such that the records did not fully disclose, support, or verify the information in the claims submitted for payment as required. The claims billed to the Department contained, in relevant part, pick-up addresses, several license plate numbers for the vehicles used to transport patients, and the names of the patients' attendants. Plaintiff's trip tickets, however, did not contain the pick-up addresses listed in the claims billed to the Department, a number of the tickets did not have the attendants' names, and all of the tickets contained the same license plate number whereas the claims billed listed several license plate numbers. Villaneuva indicated that the tickets did not substantiate the claims submitted for payment based on the discrepancies between the two. Accordingly, the Department's decision to terminate and bar plaintiff from the program and to recoup overpayments based on the finding that plaintiff's trip tickets did not satisfy the records requirement was not clearly erroneous since

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the tickets did not verify the claims billed. Ill. Adm. Code 140.16(a)(3) and 30(a) (1996); *Meyers*, 114 Ill. App. 3d at 291-92.

Plaintiff, however, claims that Beles was biased where she indicated that she wanted to reject the tickets because they were not produced during the first audit. The second audit was conducted however, and we find no bias in Beles' decision where she outlined the three reasons for it, as detailed above. Furthermore, her supervisor, Villaneuva, reviewed her decision and clearly found the reasons given sufficient to reject the trip tickets.

Plaintiff further claims, without citation to authority and in one concluding sentence, that the ALJ could not be impartial given the political pressure exerted at the hearing, and has raised no issue regarding the amount the Department determined it was entitled to recoup. Supreme Court Rule 341(h)(7) (eff. July 1, 2008) provides that the appellant's brief must contain the contentions of appellant and reasons therefor, with citations to the authorities and pages of record relied on, and that a point not argued on appeal is waived. Accordingly, we find that plaintiff has waived for review the impartiality issue which was not developed on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

In light of the foregoing, we affirm the judgment of the circuit court of Cook County.  
Affirmed.