2011 IL App (5th) 090651-U

NO. 5-09-0651

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



| | | |
|---|---|---|
| CENTRAL ILLINOIS TAXI, INC., | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Madison County. |
| | ) | |
| v. | ) | No. 07-MR-710 |
| | ) | |
| THE DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES, Formerly the Department of Public Aid, and BARRY S. MARAM, Director of Healthcare and Family Services, | ) | Honorable |
| | ) | Clarence W. Harrison II, |
| Defendants-Appellees. | ) | Judge, presiding. |

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Goldenhersh and Donovan concurred in the judgment.

**O R D E R**

¶ 1 *Held*: The administrative law judge did not err in the decision that the audit against the plaintiff was enforceable and appropriate.

¶ 2 The plaintiff, Central Illinois Taxi, Inc. (Central), provided nonemergency transportation services to Illinois Medicaid recipients. Central then billed the Illinois Department of Healthcare and Family Services[1] (the Department) for its transportation services. In 2003, Central was audited by the Department. The audit findings concluded that from October 2001 through March 2003, Central overbilled the Department in the amount of $1.1 million. Contesting the findings of the audit, Central requested an administrative

[1]The Illinois Department of Healthcare and Family Services was formerly known as the Illinois Department of Public Aid.

hearing. The administrative law judge (ALJ) ultimately agreed with the findings of the audit, and the Director of the Department thereafter adopted the ALJ's recommendation that the Department was entitled to recover more than $1.1 million in Medicaid overpayments from Central. Central subsequently filed a complaint for the review of the administrative decision in the circuit court of Madison County. The circuit court denied Central's motion for a summary judgment and issued a final order in favor of the Department, from which this appeal now stems. For reasons discussed herein, we hereby affirm the decision of the ALJ.

¶ 3 BACKGROUND

¶ 4 The Department administers the Illinois Medicaid program, which is a government-funded health insurance program for qualifying Illinois low-income residents. One of the services provided to Medicaid recipients is nonemergency transportation to and from medical services covered under the Medicaid program. Central was a provider under the program, offering transportation services to Medicaid recipients living in Madison, St. Clair, Jersey, Bond, Clinton, and Monroe Counties. Central billed for and was paid by the Department for its Medicaid transportation services. As a part of its regular course of business, the Department conducts audits of its various providers.[2] In 2003, Central was notified that the Department would be conducting an audit for the time period of October 2001 through March 2003 in order to determine whether Central had billed in compliance with regulatory billing procedures and Department policy.

---

[2]The Department offers that its authorization to conduct these "post-payment audits" arises from sections 140.12, 140.15, 140.25, 140.28, and 140.30 of Title 89 of the Illinois Administrative Code (89 Ill. Adm. Code §§ 140.12, amended at 31 Ill. Reg. 8485, 8504-07, eff. May 30, 2007; 140.15, amended at 31 Ill. Reg. 2413, 2433-34, eff. Jan. 19, 2007; 140.25, amended at 31 Ill. Reg. 2413, 2439, eff. Jan. 19, 2007; 140.28, amended at 31 Ill. Reg. 2413, 2439-41, eff. Jan. 19, 2007; 140.30, amended at 31 Ill. Reg. 2413, 2441, eff. Jan. 19, 2007).

¶ 5 The record indicates that during the audited time period, Central would often pick up passengers at different locations, transport them together for a time, and then drop them off at varying locations (herein referred to as a "simultaneous transport"). Central claimed that this was the most economical and efficient way for it to do business. Thus, as Central explains, the first passenger picked up might have been the third person dropped off, whereas the last passenger picked up might have been the first to get dropped off. Central billed for every passenger it transported by using the distance from each passenger's approved pick-up point to that person's approved drop-off point, regardless of whether there was a simultaneous transport.

¶ 6 Initially, the Department's "unwritten practice" was to pay its Medicaid transportation providers the base rate[3] and loaded mileage[4] for all the passengers in a simultaneous transport, but it later determined that while it was appropriate to reimburse the provider for the billed base rate for all the passengers, it could only reimburse loaded mileage for one passenger. This change precipitated the Department's audit of Central's billing.

¶ 7 The Department's initial audit findings revealed that Central had improperly billed for its simultaneous transport of Medicaid recipients in violation of section 140.490(d) of Title 89 of the Illinois Administrative Code (89 Ill. Adm. Code. § 140.490(d), amended at 32 Ill. Reg. 17133, 17157-62, eff. Oct. 15, 2008) (the Regulation), as well as the Department's policy set forth in section T-210.1 of its Handbook for Providers of Transportation Services (the Handbook). Thus, the Department initially concluded that from October 2001 through April 2003, it had overpaid Central in the amount of $1,610,791.86. In determining this amount, the Department's auditor reviewed Central's billing records from October 2001 to

---

[3]The base rate includes a pick-up fee as well as mileage reimbursement for 10 miles, whether or not a passenger was actually transported 10 miles.

[4]Loaded mileage is any mileage billed for a distance in excess of the first 10 miles.

April 2003, to identify instances in which Central had billed the loaded mileage for more than one passenger during a simultaneous transport. Applying the policy the auditor believed to be appropriate per the Regulation and section T-210.1 of the Handbook, the auditor adjusted Central's simultaneous transport billings to allow a loaded mileage reimbursement for the one passenger who had been transported the furthest from his or her approved pick-up point to the approved drop-off point.

¶ 8 The Regulation at issue provides as follows:

> "When more than one passenger requiring medical services is transported, payment for the first passenger will be at the full rate including mileage, base rate[,] and ancillaries, if provided; payment for the second or additional passengers requiring medical services will be at only the base rate and ancillaries, if provided." 89 Ill. Adm. Code § 140.490(d), amended at 32 Ill. Reg. 17133, 17159, eff. Oct. 15, 2008.

¶ 9 Back in September 2001, the Department had mailed its providers, including Central, an "informational notice" (the Notice), and it had posted the notice on its Web site. The Notice stated that chapter T-200 of the Handbook, covering the policy and procedures for transportation services, had been reorganized and rewritten. Specifically, it stated the following:

> "The [H]andbook contains major revisions and clarifications in the Medical Transportation Program. Providers are encouraged to review the [H]andbook in its entirety. Providers are strongly advised to review Topic 211, which provides information regarding the Department's new prior approval process. In addition, the attendant policy for service car, medicar[,] and taxicab providers has been added in this [H]andbook. The attendant policy can be located in Topic T-210.6[,] and the procedure codes are located in Appendix T-3a."

The Notice further stated that the revised Handbook could be reviewed in its entirety on the

Department's Web site. In addition, the Notice stated that printed copies of the Handbook would be made available upon written request to the Department.

¶ 10 One of the revisions to the Department's Handbook was section T-210.1, effective October 2001, which provided guidance regarding the Department's interpretation of the Regulation as follows:

> "When more than one participant is approved for transportation at the same time, in the same vehicle, the transportation provider may not bill mileage for each participant.
>
> Procedure:
>
> • A separate claim must be filed for each participant.
>
> • Mileage may only be charged on one participant's claim.
>
> • The base rate and other procedures may be charged on each claim.
>
> NOTE: Charges may only be submitted for a participant who is approved for transportation." IDPA Handbook for Providers of Transportation Services, § T-210.1 (Oct. 2001).

¶ 11 The Department later revised section T-210.1 of the Handbook in 2005 to its current version:[5]

> "Anytime more than one passenger is transported in the same vehicle for any portion of a trip, the transportation provider may only charge mileage for the first passenger.
>
> Procedure:
>
> • A separate DPA 2209 provider invoice must be filed for each passenger.
>
> • Allowable ancillaries, if provided, and the base rate may be charged

[5]According to testimony given during the administrative hearing, the 2005 revision of section T-210.1 was due to Central's inquiries regarding the interpretation of the Regulation and section T-210.1 for simultaneous passenger transport.

for each passenger.

- Mileage may only be charged for the first passenger picked up. The mileage charge is limited to the most direct (shortest) route between the origination address and the destination address for the first passenger, no matter how far the first passenger travels.
- Mileage may not be charged for another passenger until the vehicle is empty. (See example below.)

Example:

| Person | Pick-up Location | Drop-off Location | Claim Submittal |
|---|---|---|---|
| 1 | A | C | Charge base rate and direct mileage from A to C (the additional mileage to pick-up persons 2 and 3 should not be included in the mileage submitted on the claim) |
| 2 | B | C | Charge base rate |
| 3 | B | D | Charge base rate |
| 4 | D | E | Charge base rate and direct mileage from D to E |
| Note: When Person 3 is dropped off the vehicle is empty. Therefore, the provider may charge mileage for Person 4. Allowable ancillaries, if provided, may be charged for each person." | | | |

IDPA Handbook for Providers of Transportation Services, § T-210.1 (Sept. 2005).

¶ 12 In addition, back in January 2001, the parties entered into an "Agreement for Participation in the Illinois Medical Assistance Program" (the provider agreement). Among other things, paragraph 1 of the agreement provided as follows:

"[Central] agrees, on a continuing basis, to comply with all current and future program policy provisions as set forth in the applicable Department of Public Aid Medical Assistance Program handbooks. The Department shall notify [Central] of changes in policy 30 days before the effective date of the change unless there is an emergency,

as defined in the Administrative Procedure Act, or the change is to comply with State or Federal law or regulation."

Paragraph 4 of the agreement further provided, "[Central] agrees, on a continuing basis, to comply *** with all applicable Federal and State laws and regulations."

¶ 13 In June 2004, Central received a "Notice of Right to Hearing and Department Action to Recover" from the Inspector General, which sought to recover the amount of $1,610,791.86 in overpayments from the Department. On July 8, 2004, Central requested an administrative hearing to contest the findings of the audit on several grounds. The administrative hearing occurred over a two-year period, with evidence and argument received on several different hearing dates between April 2005 and April 2007. While this administrative hearing was pending, the Bureau of Medicaid Integrity conducted a reaudit of Central, and on March 6, 2007, it moved to amend the audit findings to change the amount being sought by the Department for overpayment to $1,110,292.02. This reduction reflected, among other things, an exclusion of the six-month period from October 1, 2001, through March 15, 2002, because the Regulation that Central was found to have violated, section 140.490(d), did not become effective until March 15, 2002.

¶ 14 Central's main contentions during the administrative hearing were that the audit findings were unenforceable due to the fact that both the Department's policy found in section T-210.1 and the Regulation were ambiguous and further because the Department had failed to give proper notice of its change in billing policy, as reflected in section T-210.1, when it was issued in October 2001. Approximately one month after the conclusion of the administrative hearing, the ALJ issued his report, which included his recommended decision. Within his findings and conclusions pertaining to the adequacy-of-notice issue, the ALJ found that the Department gave its providers, including Central, adequate notice of its policy change incorporated in the October 2001 version of section T-210.1. Further, the ALJ found

no obligation on the Department's behalf to give notice to its providers regarding any changes made to the Regulation itself, given that the provider agreement required Central to comply with all the applicable state laws and regulations. Thus, the ALJ concluded that Central was deemed to be on notice of the Regulation as of its effective date of March 15, 2002, because it was then considered to be officially of public record.

¶ 15 Regarding the ALJ's findings and conclusions regarding the clarity of the Regulation and section T-210.1, a plain language reading of both revealed that they were "clear, unambiguous, and understandable with regard to the issue involved in the audit, which is billing for and receiving payment for additional mileage for all passengers who were transported simultaneously in the same vehicle." *In the Matter of Central Illinois Taxi, Inc.*, No. 05 MVH 032, ALJ's Report (May 3, 2007). Thus, the ALJ ultimately concluded that the amended audit findings were enforceable against Central and recommended that the Department's decision to recover $1,110,292.02 from Central for audited overbillings be upheld. The Director of the Department adopted the ALJ's recommended decision.

¶ 16 Thereafter, Central filed its "Complaint for Review of Administrative Law Decision" in the circuit court of Madison County, Illinois. The circuit court denied Central's motion for a summary judgment, finding that the ALJ's interpretation of the Regulation and the enforcement of the Regulation against the plaintiff via the audit was neither erroneous nor against the manifest weight of the evidence. Rather, the circuit court agreed with the ALJ's conclusion that the Regulation was not ambiguous. Further, the circuit court posited that even had it found ambiguity within the language of the Regulation, Central failed to offer a credible interpretation of the Regulation that would have supported its billing practices for simultaneous transports. Thus, the circuit court's administrative review affirmed the Director's final administrative decision. Upon a judgment being entered in favor of the Department (and the Director), Central filed the instant appeal.

¶ 17 ANALYSIS

¶ 18 This appeal focuses on two main issues: (1) whether the ALJ properly concluded that the Regulation and section T-210.1 of the Handbook were clear and unambiguous in prohibiting transportation providers from billing loaded mileage for more than one passenger during a simultaneous transport and (2) whether the ALJ also properly concluded that the Department provided Central with sufficient notice of its policy regarding the billing for simultaneous transports prior to the audit.

¶ 19 Ambiguity

¶ 20 Pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)), when a party appeals a circuit court's decision on a complaint for administrative review, we must review the decision of the administrative agency rather than the ruling of the circuit court. *Siwek v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 324 Ill. App. 3d 820, 824 (2001). Agency decisions interpreting statutes or administrative regulations and rules are questions of law, and thus, we review these decisions *de novo*. *Sartwell v. Board of Trustees of the Teachers' Retirement System of the State of Illinois*, 403 Ill. App. 3d 719, 724 (2010). Further, because "[a]dministrative regulations have the force and effect of law," we construe them according to the same principles of construction that we use when dealing with statutes. *Id*. at 725.

¶ 21 Adhering to the principles of statutory construction, in determining whether the Regulation is ambiguous, we must first look to the plain language of the Regulation itself, because it provides the "best evidence of administrative intent." *Id*. If the language is clear and unambiguous, the Regulation will be given its ordinary meaning, as written. *Id*. at 728. However, only if the language of the Regulation is ambiguous, meaning that it is capable of more than one reasonable interpretation, must we then resort to applying other tools of statutory construction. *Id*.; see also *People ex rel. Madigan v. Illinois Commerce Comm'n*,

231 Ill. 2d 370, 380 (2008).

¶ 22 The language of the Regulation at issue in this matter states as follows: "When more than one passenger requiring medical services is transported, payment for the first passenger will be at the full rate ***; payment for the second or additional passengers requiring medical services will be at only the base rate and ancillaries, if provided." 89 Ill. Adm. Code § 140.490(d), amended at 32 Ill. Reg. 17133, 17159, eff. Oct. 15, 2008. The language of this Regulation clearly and unambiguously prohibits a provider, such as Central, from billing loaded mileage for more than the first passenger on simultaneous transport trips. Central billed for loaded mileage for all of its passengers during simultaneous transport trips. Its problem was not, as it has instead argued, determining whether to bill the remaining loaded mileage for a simultaneous passenger left in the taxi once the first passenger was dropped off at his or her approved location. Quite clearly, by billing loaded mileage for all of its passengers during a simultaneous transport, Central was in violation of the Regulation. Further, because we find that the plain language meaning of the Regulation prohibits those practices, it is enforceable against Central.

¶ 23 The plain language of section T-210.1 (the October 2001 version), which is the Department's policy interpretation of the Regulation, did not specify the passenger for whom loaded mileage may be billed by the provider (it merely provided that "[m]ileage may only be charged on one participant's claim").[6] Yet, while we recognize that the October 2001 version of section T-210.1 might not have given providers such as Central the best guidance possible regarding billing for simultaneous transport, it did plainly prohibit seeking reimbursement for the loaded mileage for more than one passenger during a simultaneous

[6]An agency's interpretation of its own regulations is also considered to be a question of law and, although presumed to be valid, is reviewed *de novo*. *Walk v. Department of Children & Family Services*, 399 Ill. App. 3d 1174, 1181 (2010).

transport, something for which we again find that Central, by seeking a mileage reimbursement for all of its passengers during a simultaneous transport, was in clear violation. Moreover, the record reflects that the Department, in conducting its audit, gave Central the benefit of the doubt regarding for which of its simultaneous transport passengers it could seek a loaded mileage reimbursement. Rather than adjusting Central's billing to calculate a loaded mileage reimbursement for only the first passenger, the auditor allowed a loaded mileage reimbursement for the passenger who had been transported for the greatest mileage during a simultaneous transport.[7]

¶ 24 Continuing, we see no need to analytically address Central's argument that the Regulation and section T-210.1 are latently ambiguous. "A latent ambiguity arises 'where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings.' " *Preuter v. State Officers Electoral Board*, 334 Ill. App. 3d 979, 988 (2002) (quoting *Hoglund v. State Farm Mutual Automobile Insurance Co.*, 148 Ill. 2d 272, 279 (1992)). Here, we do not reach multiple interpretations of the Regulation regarding how to bill for the *remaining* passengers in a simultaneous transport after the first passenger has been dropped off. Central does not offer another interpretation of either the Regulation or section T-210.1 that would support its billing during the time period of the audit. Again, Central clearly violated the plain language of the Regulation for billing loaded

---

[7]The audit seems to acknowledge the fact that although section T-210.1 made clear that loaded mileage could only be sought for one passenger during a simultaneous transport, it failed to specify *which* passenger. However, the Regulation itself specified that this was to be the *first* passenger. Therefore, ironically, if we were to apply the literal wording of the Regulation, the outcome of the audit would likely result in Central owing a greater amount to the Department than is currently being sought.

mileage for *all* of its passengers, not just a pro rata or combination thereof, during a simultaneous transport, despite the Regulation's clear statement that loaded mileage is only allowed to be billed for the "first passenger." Thus, we conclude that neither the Regulation nor section T-210.1 is ambiguous and their enforcement against Central via the audit is appropriate.

¶ 25 Notice

¶ 26 Central's second argument on appeal is that the Department failed to provide proper notice regarding its billing policy for simultaneous transport set forth in section T-210.1 of its Handbook. The determination of the sufficiency of the notice that the Department was obligated to provide Central regarding any policy change is a matter of contract, because that obligation stemmed from the provider agreement between the two parties. The interpretation of the terms of a contract is considered a question of law, which is reviewed *de novo*. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 129 (2005). The issue of whether Central received notice, however, is a question of fact and a determination thereof is only reversible if it is against the manifest weight of the evidence. *Siwek*, 324 Ill. App. 3d at 824. The ALJ's findings of fact will not be deemed to be against the manifest weight of the evidence unless "an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on [the] evidence." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 27 The provision of the provider agreement between the Department and Central stated, "The Department shall notify [Central] of changes in policy 30 days before the effective date of the change ***." From its plain language, the provider agreement only required that notice be provided of the Department's policy changes and not that notice be provided of any change to the regulations themselves. On appeal, Central does not assert otherwise. The Department's Notice, mailed to providers back in September 2001, informed of the policy

changes reflected in its Handbook. While the Notice did not specifically note any changes to section T-210.1 (effective October 2001), it did generally inform providers that the Department had revised the Handbook and that it should thereby be reviewed in its entirety. Additionally, the Notice stated that the Handbook was accessible via the Internet or that a hard copy would be provided upon written request. Central asserts that it had no Internet access during 2001 through 2003; however, the ALJ found no evidence showing that Central ever made a request in writing for a copy of the revised Handbook. Although the ALJ found that the Department had provided Central with adequate notice of the changes to section T-210.1 of the Handbook, we find this to be a moot issue, considering that the period of the audit was later amended to begin on March 15, 2002, which is when the Regulation itself became effective.

¶ 28 By way of another provision in the provider agreement, Central was obligated "to comply *** with all applicable Federal and State laws and regulations." The Regulation that was enforced against Central by way of the audit conducted by the Department became effective on March 15, 2002, which is also the amended start date of the audit period. Central was bound to comply with the Regulation on the date it became effective; there was no condition in the provider agreement requiring the Department to first give Central notice of the Regulation for it to comply with the required loaded mileage billing procedures for simultaneous transports.[8] In other words, the issue of whether Central received sufficient notice or any notice whatsoever of section T-210.1 back in 2001 is obviated by the fact that the audit period was amended to begin on March 15, 2002, which was when the Regulation

[8]As the ALJ concluded, Central would have been "on notice" of the Regulation as of its effective date anyway, given that one is deemed to be on "notice" of something if it can be "ascertain[ed] *** by checking an official filing or recording." Black's Law Dictionary (9th ed. 2009).

became effective. Central was thereafter obligated to comply with the Regulation regardless of whether the Department had previously notified it of its issuance. Accordingly, we find the issue of notice to be moot.

¶ 29 CONCLUSION

¶ 30 For the reasons discussed herein, we affirm the findings of the ALJ that the Department's audit was enforceable against Central in the amount of $1,110,292.02.

¶ 31 Affirmed.