


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEASA CARTER,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT
OF HEALTH AND HUMAN SERVICES,
DIVISION OF HEALTH CARE
FINANCING AND POLICY, NEVADA
MEDICAID,
Respondent.

No. 69199

FILED

NOV 16 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a Medicaid provider matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Leasa Carter, through her business, contracted with respondent State of Nevada Department of Health and Human Services Division of Health Care Financing and Policy, Nevada Medicaid (the State) to provide Medicaid services to patients in Nevada. The State, having received anonymous complaints about Carter's billing practices, conducted an investigation, which uncovered that Carter's business had been submitting claims for Medicaid reimbursement for over three years that failed to identify the correct service provider. As a result of this discovery, the State concluded that Carter had engaged in abusive billing practices, terminated its contract with her and her business, and sanctioned her by banning her from contracting with the State to provide Medicaid services for seven years. After an administrative hearing officer affirmed the State's decision, Carter filed a petition for judicial review

with the district court. The district court denied that petition and this appeal followed.

“When reviewing a district court’s denial of a petition for judicial review of an agency decision, this court engages in the same analysis as the district court.” *Taylor v. Dep’t of Health & Human Servs.*, 129 Nev. ___, ___, 314 P.3d 949, 951 (2013) (quoting *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010)). That is, this court reviews the agency’s decision to determine if it was affected by an abuse of discretion or clear error. *See id.*; *see also* NRS 422.279(3) (identifying the grounds upon which a court can reverse an agency decision regarding Medicaid). We defer to the agency’s findings of fact that are supported by substantial evidence, but questions of law are reviewed de novo. *Taylor*, 129 Nev. at ___, 314 P.3d at 951. And, “[a]lthough statutory construction is generally a question of law reviewed de novo, this court defer[s] to an agency’s interpretation of its governing . . . regulations if the interpretation is within the language of the statute.” *Id.* (second alteration in original) (internal quotation marks omitted).

Carter first argues substantial evidence does not support the conclusion that she engaged in abusive billing practices. The Medicaid Services Manual (MSM) 3302.1 defines abuse, as pertinent here, as practices inconsistent with sound business practices that result in an unnecessary cost to Medicaid. While Carter admits she did not list the proper service provider numbers in her billing statements, she claims that Medicaid did not pay any unnecessary costs and that she had no intent to

defraud Medicaid. Thus, she argues her actions did not rise to the level of abuse.

Carter's first point fails because the record demonstrates that Medicaid paid claims for which Carter should not have been paid when it reimbursed her for services billed under the wrong provider number. See MSM 105.1(I) (providing that Medicaid will not "reimburse professional billings for services rendered by other than the provider under whose name and provider number the claims is [sic] submitted"). Thus, substantial evidence supports the hearing officer's conclusion that Medicaid incurred unnecessary costs. See *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994) (defining substantial evidence as that which a reasonable person would accept as adequate to support a conclusion).

And as to Carter's second point, the MSM provides numerous examples of abusive billing practices, several of which do not include an intent element and apply directly to the facts presented in this case. See, e.g., MSM 3303.1A(2)(l), (t) (providing that "[s]ubmitting repeated claims from which required information is . . . incorrect" and "[s]ubmitting a claim which misrepresents . . . the identity of the . . . actual provider" constitute abusive billing practices). Thus, regardless of whether Carter had any intent to misrepresent the identity of the service providers, substantial evidence supports the hearing officer's conclusion that Carter engaged in abusive billing practices as Carter repeatedly admitted that several years' worth of her billings included incorrect provider numbers. See *Tighe*, 110 Nev. at 634, 877 P.2d at 1034.

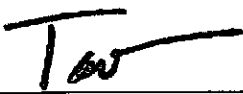
Carter next argues that the hearing officer's determination that a seven-year sanction was appropriate is not supported by substantial evidence. The MSM provides that a seven-year sanction is appropriate when a provider's contract has been terminated due to "inappropriate, fraudulent billing practices." MSM 106.3(b)(1). Carter asserts that, while her billing practices were inappropriate, they were not fraudulent, and both are required for the seven-year sanction to apply. The State asserts that the billing practices need only be either inappropriate or fraudulent for the sanction to apply.

While we recognize that both parties' interpretations are arguably reasonable, we must defer to the agency's interpretation of its own regulation "if the interpretation is within the language" of the regulation. *See Taylor*, 129 Nev. at ___, 314 P.3d at 951. Here, the State's interpretation that the billing practices need only be inappropriate for the seven-year sanction to apply is within the language of the regulation and, thus, we defer to that interpretation. *See id.* Furthermore, Carter's interpretation would render the word "inappropriate" superfluous because any fraudulent billing is necessarily inappropriate. *See Walker v. Eighth Judicial Dist. Court*, 120 Nev. 815, 819, 101 P.3d 787, 790-91 (2004) (providing that statutes should not be interpreted in a manner that would render any words superfluous); *see also Silver State Elec. Supply Co. v. State ex rel. Dep't of Taxation*, 123 Nev. 80, 85, 157 P.3d 710, 713 (2007) ("Statutory construction rules also apply to administrative regulations."). Therefore, substantial evidence supports the hearing officer's decision and there is no abuse of discretion or clear error in the hearing officer's affirmance of the seven-year sanction.

Based on the foregoing, we affirm the district court's order denying appellant's petition for judicial review.

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹Carter also asserts that the hearing officer abused her discretion by excluding certain evidence because it contained confidential patient information and by not allowing Carter to ask certain questions of one of the State's witnesses on cross-examination. Carter failed, however, to object or otherwise raise these issues with the hearing officer. Because Carter failed to give the hearing officer an opportunity to correct the alleged procedural errors, we decline to consider them on appeal. See *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952) (“[O]rderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts.”); *Hagblom v. Pers. Advisory Comm’n of Nev.*, 97 Nev. 35, 37, 623 P.2d 977, 978 (1981) (citing *L.A. Tucker Truck* with approval and concluding that appellant waived an argument regarding an alleged procedural error by failing to raise it during the administrative proceeding). The fact that Carter was representing herself and unfamiliar with the procedural rules does not change our decision. See generally *Gleash v. Yuswak*, 308 F.3d 758, 761 (7th Cir. 2002) (“Even pro se litigants must follow the rules.”); *Bonnell v. Lawrence*, 128 Nev. 394, 404, 282 P.3d 712, 718 (2012) (citing *Gleash* with approval).

cc: Hon. James Todd Russell, District Judge
Lansford W. Levitt, Settlement Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Attorney General/Reno
Carson City Clerk