STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1195

Partners in Nutrition d/b/a Partners in Quality Care (PIQC)'s Appeals of MDE's April 15, 2024 Decision Proposing to Terminate Agreement and Proposing to Disqualify PIQC and Responsible Individuals from Future Participation in the Child and Adult Care Food Program.

Filed June 16, 2025
Affirmed
Reyes, Judge

Department of Education

Benjamin D. Eastburn, Emily M. Asp, Stinson LLP, Minneapolis, Minnesota (for relators Partners in Nutrition, Ryan Seelau, Christine Twait, Jodie Luzum, Julius Scarver, Kara Lomen, Robyn Tousignant, Daniel Smeriglio, and James Handrigan)

Keith Ellison, Attorney General, Joseph D. Weiner, Assistant Attorneys General, St. Paul, Minnesota (for respondent Department of Education)

Considered and decided by Bond, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this certiorari appeal, relators Partners in Nutrition (Partners) and "responsible individuals" (collectively, relators) challenge a decision by respondent Minnesota Department of Education's (MDE) termination of their participation in the Child and Adult

Care Food Program and their disqualification from future program participation.[1] Relators argue that (1) the serious-deficiency notice issued by MDE failed to follow the program regulations under 7 C.F.R. § 226.6(c)(3)(iii)(A) (2025); (2) the serious-deficiency notice violated their right to procedural due process; and (3) MDE's final decision terminating them from the program is not supported by substantial evidence and is arbitrary and capricious. We affirm.

FACTS

The Child and Adult Care Food Program (the program) is a federal program administered in Minnesota by MDE that reimburses sites that participate in the program for meals provided to eligible children and adults. *See* 7 C.F.R. § 226.1 (2025). Relators participated as a sponsor in the program, subject to oversight by MDE. MDE and relators entered into a permanent agreement in November 2015. As a sponsor within the program, relators' responsibilities included the following: (1) "provid[ing] "adequate supervisory" and operational personnel for management and monitoring of the Program; (2) "[c]omply[ing] with all regulations issued by the United States Department of Agriculture (USDA)"; (3) "accept[ing] final financial and administrative responsibility for management of a[n] . . . effective food service"; (4) "maintain[ing] appropriate and effective management practices to ensure that program requirements are met"; and

[1] The responsible individuals identified by MDE were: Ryan Seelau, Christine Twait, Jodie Luzum, Julius Scarver, Kara Lomen, Robyn Tousignant, Daniel Smerglio, and Jim Handrigan.

(5) "maintain[ing] internal controls and other management systems to ensure fiscal accountability." 7 C.F.R. § 226.16 (c), (d) (2025).

Amidst the investigation into increased reimbursement requests by Feeding Our Future, another sponsor in the program, MDE learned that some individuals who operated sites sponsored by relators pleaded guilty to submitting fraudulent meal claims for reimbursement. In total, participants in the broader "Feeding Our Future" fraud scheme submitted $250,000,000 in false claims during the COVID-19 pandemic.[2] On December 4, 2023, MDE issued a serious-deficiency notice (the deficiency notice) to relators following the submission of false and fraudulent claims by a number of sites they sponsored. The notice explained that MDE learned of this activity through a federal investigation that revealed that various sites made fraudulent claims through Partners. Partners, including several of their management-level individuals, were responsible for critical actions within Partners, including (1) verifying claims that relators received from sites to ensure their accuracy prior to Partners submitting the claims for reimbursement; (2) executing meal contracts with sites; and (3) managing funds received for reimbursed meals. As a result of the underlying fraud, MDE determined that relators had been "seriously deficient in its operation" as a sponsor of the program that is required to "oversee[] vended meal contracts" in violation of 7 C.F.R. § 226.6 (2025), which governs

[2] *Five Defendants Found Guilty for Their Roles in $250 Million Fraud Scheme*, Dep't of Justice (2024), https://www.justice.gov/usao-mn/pr/five-defendants-found-guilty-their-roles-250-million-fraud-scheme [https://perma.cc/D574-BDX9]. We take judicial notice of this undisputed fact. *See Smisek v. Comm'r of Pub. Safety*, 400 N.W.2d 766, 768 (Minn. App. 1987) ("An appellate court may take judicial notice of a fact for the first time on appeal.").

the program. The notice indicated that the submission of false or fraudulent claims constitutes a serious deficiency under 7 C.F.R. § 226.6(c)(5)(ii)(A). In the deficiency notice, MDE also explained that relators were "seriously deficient" under 7 C.F.R. §§ 226.6(c)(3)(ii)(H), (I), which state that a sponsor may be terminated from the program if it commits a serious deficiency such as "[c]laiming reimbursement for meals not served to participants" and "[c]laiming reimbursement of a significant number of meals that do not meet [p]rogram requirements."

The deficiency notice required relators to submit a corrective-action plan to MDE, "describ[ing] what action was taken to ensure the serious deficiencies are fully and permanently corrected" by January 5, 2024. It further explained that, if the responsive documents were not provided by the deadline, MDE would "[p]ropose to terminate [relators'] agreement" and "[p]ropose to disqualify the responsible individuals from further . . . participation." The deficiency notice also included a link to the United States Department of Agriculture (USDA) CACFP Serious Deficiency handbook, which explained that a corrective action must "answer the questions *what*, *who*, *when*, *where*, and *how*." In January 2024, representatives from MDE and relators held an in-person meeting to discuss the deficiency notice, during which MDE gave realtors an additional 32 days to respond to the deficiency notice.

In response to the deficiency notice, relators claimed that MDE violated their procedural due-process rights by summarily denying Partners' site applications for the 2022-2023 program year, refusing to allow them to submit or adjust any pending or future claims, and shutting off their access to the online portal. Relators further alleged that MDE

acted with bias because MDE viewed them "as a co-conspirator in the fraud perpetrated by others" following reports that the FBI was investigating fraud within the program and relators' suspected relationship with individuals alleged to have perpetrated the fraud in the Feeding our Future scandal.

Relators further asserted that MDE had not identified a "specific step, function, activity, or process" indicating that relators "could have and should have been aware of . . . the food-fraud among certain sites and their vendors." Relators also submitted a corrective-action plan which included: (1) refuting that the criminal fraud was the result of their failure to follow the procedures in its own management plan; (2) a plan to work with professional advisors and qualified Certified Public Accountants to complete all federal tax-filing obligations and year-end audits; (3) plans to safeguard the program funds by keeping them in interest-bearing bank accounts while awaiting the final resolution of all claims; and (4) relators' assurance that they were "stand[ing] ready to modify the corrective action plan based on technical assistance from MDE."

Following receipt of relators' response and corrective-action plans, MDE issued an agency-action notice on April 15, 2024 (the April notice), proposing to terminate relators' agreement with the program and proposing to disqualify them from future participation in the program under 7 C.F.R. § 226.6(c)(3)(iii)(C), (c)(3)(ii)(H), (I), because (1) relators' response and proposed corrective actions "did not correct the serious deficienc[ies]" or "state what [relators] would do to correct the false claims submitted to MDE or in future [program] participation" and (2) relators' corrective-action response "showed [their] inability of operating the [program] and future risk for false claims" because it provided

"no updated policies, procedures or additional internal controls . . . to show that [relators] will ensure correct claims are submitted to the [MDE] for federal reimbursement." Two weeks later, relators appealed the April notice decision to an appeal panel.

After holding a hearing, the appeal panel issued a final decision on June 28, 2024, affirming MDE's proposed termination of Partners and eight "responsible individuals" from future program participation. It determined that (1) MDE highlighted the severity and nature of relators' serious deficiencies in failing to comply with program requirements for the period relevant to the December 2023 findings and "how they impacted overall program integrity"; (2) MDE gave relators 90 days to complete its corrective action, consistent with the USDA directives; (3) relators "did not deny" that they submitted reimbursement claims to the program for meals that in fact were not served to participants "but maintained that [they were] unaware of the fraud and deception undertaken by the sites it sponsored"; and (4) MDE properly relied on the language of subsections 7 C.F.R. § 226.6(c)(3)(ii)(H), (I), to identify the serious deficiencies which formed the basis of the April notice and properly proposed termination and disqualification of relators as a result of its "failure to take timely and successful corrective action" under 7 C.F.R. § 226.6 (c)(3)(ii)(C).

This certiorari appeal follows.

DECISION

I. The deficiency notice complied with the notice requirements under 7 C.F.R. § 226.6(c)(3) and provided relators with a meaningful opportunity to respond with updated policies and procedures.

Relators contend that MDE deprived them of an opportunity to provide a meaningful response to the deficiency notice because (1) they were not given notice of the specific deficiencies and (2) they were told not to submit updated policies and procedures because that would not be an acceptable corrective-action plan. We are not convinced.

"[U]nder the food-program regulations, [MDE] cannot immediately terminate (or propose to terminate) an institution's food-program agreement." *Partners in Nutrition*, 995 N.W.2d 631, 643 (Minn. App. 2023); *see also* 7 C.F.R. § 226.6(c)(3). It must first comply with the procedural requirements of the food-program regulations by noticing the institution's serious deficiencies and allowing corrective action. *See* 7 C.F.R. § 226.6(c)(3). A notice of serious deficiency must identify:

> (1) The serious deficiency(ies);
> (2) The actions to be taken to correct the serious deficiency(ies);
> (3) The time allotted to correct the serious deficiency(ies) in accordance with paragraph (c)(4) of this section;
> (4) That the serious deficiency determination is not subject to administrative review.
> (5) That failure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in the State agency's agreement with proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and responsible individuals . . . .

7 C.F.R. § 226.6(c)(3)(iii)(A)(1)-(5).

Here, the deficiency notice identified (1) the serious deficiencies; (2) the corrective actions MDE sought from relators; (3) the deadline by when relators had to respond; (4) that relators could not appeal the serious-deficiency determination; and (5) that relators' failure to provide the requested information by the deadline would result in its termination from the program and disqualification from future participation in the program.

More specifically, the deficiency notice contains two separate paragraphs which address two different aspects of the fraudulent claims submitted and the corrective action sought for each claim. The first paragraph identifies that the appropriate corrective action related to the submission of fraudulent claims is for relators to submit documentation that "describe[s] what action was taken to ensure the serious deficiencies are fully and permanently corrected." The second paragraph discusses the preferred corrective action for fraudulent claims, which MDE states "would include the reversal of claims." The notice further explained that reimbursement would not be appropriate because "[Partners] and the responsible individuals have not made any attempts to reverse the claims in a timely manner" and that the Department of Justice is now handling repayment of claims.

Relators' response to the deficiency notice shows that relators understood the corrective actions MDE sought because relators acknowledged the two regulatory provisions MDE relied upon, specifically sections 226.6(c)(3)(ii)(H) for "[c]laiming reimbursement for meals not served to participants" and subsection I for "[c]laiming reimbursement for a significant number of meals that do not meet [p]rogram requirements." Relators also confirmed that MDE claimed it was deficient from "September 2020 to January 2022" and that MDE "underst[ood] that there may be board members or

responsible individuals who were not around during this timeframe, [and] they are responsible to ensure these deficiencies will not reoccur."

Further, relators submitted several affidavits from current board members refuting the deficiency determination, in addition to its assurances that it was implementing a "post-termination financial accountability" plan, as well as a plan to "[s]afeguard[] [f]ederal [f]unds [p]ending a [r]esolution of [c]ompeting [c]laims." The proposed implementation of these corrective actions cuts against relators' argument that they were deprived of a meaningful opportunity to respond or that they were confused about what corrective actions MDE sought because they responded only after obtaining further clarification from MDE about the serious deficiencies and corrective actions sought.

Relators also argue that MDE told them that they could not initiate the reimbursement of the fraudulent claims because it "was too late and therefore not possible, then fault[ed] them for not stating how they would resolve the issue of false claims." As discussed above, the deficiency notice stated that relators could not initiate claims reversal to pay back the funds obtained for fraudulent claims because "the Department of Justice and the Federal Attorneys Office" had begun that process and that the appropriate corrective action included relators "submit[ting] documentation that refutes the . . . findings of serious deficiency" based on allegations that relators submitted fraudulent claims for approval. In addition to the guidance provided in the deficiency notice, the record also shows that MDE granted relators a 32-day extension to respond to the deficiency notice.

Relators also contend that MDE's "vast expansion of the factual basis" related to the submission of false claims violated their due-process rights because they were not provided with the information they needed to protect their interests. However, both the December deficiency notice and the appeal-panel final decision are based on largely the same underlying facts of MDE's findings that relators were seriously deficient in its responsibilities from September 2020 to January 2022 during which time fraudulent claims were submitted to MDE.

In sum, relators' detailed response and submission of a corrective action plan defeats their contention that the deficiency notice did not notify them of the specific deficiencies that it needed to correct. We therefore conclude that the deficiency notice comports with the relevant regulations.

II. MDE's deficiency notice did not violate relators' procedural due-process rights.

Relators argue that MDE violated their procedural due-process rights because it (1) failed to give them a meaningful opportunity to respond to the deficiency notice with updated policies and procedures; (2) failed to give them "a meaningful opportunity" to respond by preventing them from initiating reimbursements for fraudulent claims; and (3) failed to notify them of their specific deficiencies that needed to be corrected. Relators' arguments are misguided.

"Due process requires adequate notice and a meaningful opportunity to be heard." *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). Appellate courts analyze whether the government

has violated an individual's procedural due-process rights de novo. *State v. Rey*, 905 N.W.2d 490, 494 (Minn. 2018).

As noted above, the record reflects that the deficiency notice provided relators with notice of the serious deficiencies that it needed to address. MDE and relators also held a meeting to discuss the deficiencies, and MDE answered questions that relators had with respect to the deficiencies. Finally, relators had the opportunity to provide a response to the serious-deficiency notice. Relators' procedural-due-process argument fails.

III. The appeal panel's final decision is supported by sufficient evidence and is not arbitrary and capricious.

Relators argue that the appeal-panel final decision is not supported by substantial evidence and instead suggests MDE based its determination to terminate them from the program on its bias toward them and the guilty pleas of individuals formerly connected to relators, which were not part of the record. We disagree.

An agency acts in a quasi-judicial capacity by (1) investigating a disputed claim and weighing evidentiary facts; (2) applying those facts to a prescribed standard; and (3) issuing a binding decision regarding the disputed claim. *Minnesota Ctr. for Env't Advoc. v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999). "An agency's quasi-judicial determinations will be upheld unless they are . . . unsupported by substantial evidence[] or arbitrary and capricious." *Carter v. Olmsted Cnty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). "[A]n agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) failed to consider an important aspect of the problem; (c) offered an explanation contrary to the evidence; or (d) the decision is so

implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Citizens Advocating for Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

"[T]he substantial-evidence standard governs judicial review of factual issues requiring agency judgment." *In re PolyMet Mining, Inc.*, 965 N.W.2d 1, 8 (Minn. App. 2021), *rev. denied* (Minn. Sept. 30, 2021). Under this test, appellate courts first analyze whether the agency "adequately explained how it derived its conclusion" and "whether that conclusion is reasonable on the basis of the record." *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013) (quotation omitted). Substantial evidence requires "more than a scintilla of evidence, more than some evidence, and more than any evidence." *Webster v. Hennepin County*, 910 N.W.2d 420, 428 (Minn. 2018) (quotation omitted). "The appellant bears the burden of establishing that the agency findings are not supported by the evidence in the record." *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 118 (Minn. 2009).

Relators contend that MDE did not have substantial evidence that they intended to defraud the program. But the deficiency notice stated that MDE sought termination of relators from the program under 7 C.F.R. § 226.6(c)(3)(ii)(H), (I), for submitting fraudulent claims for reimbursement for meals that were not served to participants and claiming reimbursement for meals that did not meet the program requirements. Serious deficiencies under these subdivisions do not require a scienter or intent element. Rather, under the regulations, relators' submission of fraudulent claims constituted a serious deficiency,

which provided a basis for MDE to terminate relators from participating in the program. Moreover, relators, before the appeal panel, attempted to shift the responsibility of accurately describing and submitting claims to the sites but admitted that they "submit[ted] claims on behalf of sites" that they later learned were "false," and that they submitted claims for reimbursement for meals that were not served to participants. According to the regulation, relators are responsible for managing the program. Relators' admissions also showed that, rather than complying with its obligations as a sponsor by ensuring the claims were accurate prior to reimbursement, *see* 7 C.F.R. § 226.6(c)(3)(ii), it simply "passed through the claims believing that they were valid." Even if the sites are also required to "accurately describe and submit claims," relators have a continuing and independent obligation to ensure its conduct as a sponsor is in compliance with the regulations. Ultimately, these admissions not only show that relators did not "monitor[]. . . the program" or "ensure fiscal accountability," as required by the agreement with MDE, they also provide substantial support to MDE's termination of relators' participation in the program.

Additionally, the record shows that MDE submitted other documentation, including its prior deficiency notice, correspondence between MDE and relators clarifying the corrective action being sought, and that relators did not comply with the deficiency notices. The appeal panel stated that it relied on relators' admissions and the parties' submitted documents. We conclude that the appeal panel's final decision is supported by substantial evidence and is not arbitrary and capricious.

Affirmed.