IN THE COURT OF APPEALS OF IOWA

No. 1999-269 (9-499) / 98-1654
Filed October 27, 1999

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CLERK SUPREME COURT

BELLE PLAINE NURSING HOME AND REHAB CENTER,
Petitioner-Appellant,

BELLE PLAINE NURSING HOME AND REHAB CENTER,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS, HEALTH FACILITIES DIVISION,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Nursing facility appeals a district court decision affirming the Department of Inspection and Appeals' action issuing "deficiencies" alleging violations of federal nursing facility regulations and assessing a fine and citation. **AFFIRMED.**

Kendall R. Watkins and J.R. Lynn Boes of **Davis, Brown, Koehn,** Shors & **Roberts, P.C., Des Moines,** for appellant.

Thomas J. Miller, Attorney General, **and Jean Davis, Assistant** Attorney General, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

MAHAN, J.

Belle Plaine Nursing Home and Rehab Center (Belle Plaine) appeals a district court decision affirming the Department of Inspection and Appeals' action issuing "deficiencies" alleging violations of federal nursing facility regulations and assessing a fine and citation. Belle Plaine contends the agency's findings were affected by error of law, arbitrary and capricious, and unsupported by substantial evidence. We affirm.

The Department of Inspections and Appeals (department) is the state regulatory entity charged with licensing nursing facilities in Iowa and with enforcing both state and federal statutory and regulatory standards imposed upon licensed facilities. Belle Plaine is a licensed nursing facility subject to the department's jurisdiction. The department has the authority to conduct unannounced inspections and surveys pursuant to Iowa Code sections 135C.16 and 135C.38. In addition, the department is mandated to conduct an investigation upon the filing of a complaint. On March 17 through March 21, 1997, the department conducted an unannounced on-site inspection and reviewed clinical records of a sample of residents at Belle Plaine.[1] Federal and state standards require a comprehensive assessment of residents upon admission to a facility which includes the completion of a minimum data set (MDS) and resident assessment protocols. These assessments form the basis of the resident care plan.

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[1] This inspection and survey was also performed in response to the filing of a complaint.

The surveyors found the MDS assessments for three residents were improperly dated. Specifically, the surveyor reviewed records on March 20, 1997, which were signed and certified as complete and accurate as of March 21, 1997. The March 21, 1997 date was computer-generated and showed the deadline for the completion of the MDS assessment. The department determined these certifications did not meet the requirement imposed by the Code of Federal Regulations chapter 42, section 483.20(c) but found the deficient practice was still in substantial compliance (designated as "Tag 278").

The department reviewed the clinical records of a resident, referred to as Resident #9, and determined during the time period from December 6, 1996 to December 20, 1996, Resident #9 experienced a change in condition which was not throughly assessed by Belle Plaine staff and as a result of the failed assessment, staff failed to initiate timely interventions to respond to the change of condition thereby failing to meet the resident's needs or maintain her at her highest practicable level. The department determined this was a deficiency in violation of the Code of Federal Regulations chapter 42, section 483.25 and of the Iowa Administrative Code chapter 481, section 58.20(2)(designated as "Tag 309").

On April 11, 1997, the department issued a statement of deficiencies asserting Belle Plaine was in violation of designated federal regulations, including the Code of Federal Regulations chapter 42, sections 483.20(c) and 483.25.[2] The department also

[2] The deficiency statement asserted violations of five sections of chapter 42 of the Code of Federal Regulations. Only three were appealed to the administrative law judge, one

issued a Class II Fine and Citation No. 1222 asserting a violation of the Iowa Administrative Code chapter 481, section 58.20(2) and assessed a fine of $400. Upon appeal, the administrative law judge entered a proposed decision affirming these two deficiencies and the Class II Fine and Citation No. 1222. After exhausting all administrative remedies, Belle Plaine petitioned for judicial review. Upon judicial review, the district court sustained the Tag 278 and Tag 309 deficiencies and the Class II Fine and Citation No. 1222.

Belle Plaine appeals.

I. STANDARD OF REVIEW. In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. *Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863, 865 (Iowa 1996); *Henry v. Iowa Dep't of Transp.*, 426 N.W.2d 383, 385 (Iowa 1988). The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. *Henry*, 426 N.W.2d at 385. When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997); *Henry*, 426 N.W.2d at 385. If the conclusions are the same, we affirm; otherwise we reverse. *Downing v. Iowa Dep't of Transp.*, 415 N.W.2d 625, 627 (Iowa 1987).

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of which was reversed. Thus, only the remaining two, listed above, are relevant to this appeal.

We will reverse an agency's findings if, after we review the record as a whole, we determine substantial evidence does not support the agency findings. Iowa Code § 17A.19(8)(f); *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625 (Iowa 1996); *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 404 (Iowa 1993); *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991); *Aluminum Co. of America v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989). The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made. *Reed*, 478 N.W.2d at 846. The reviewing court should liberally apply the agency's findings in order to uphold rather than defeat the decision as long as the record shows the agency did not act in an arbitrary or capricious manner, commit an error of law, or otherwise violate Iowa Code section 17A.19(8). *Dubuque Community Sch. Dist. v. Public Employment Relations Bd.*, 424 N.W.2d 427, 431 (Iowa 1988).

I. THE TAG 278 VIOLATION. Belle Plaine contends the department's issuance of this deficiency was affected by error of law or, alternatively, was unreasonable, arbitrary, or capricious and involved an abuse of discretion. Specifically, Belle Plaine invites us to rule the dating procedure did not violate federal regulations because the practice does not affect the accuracy of the information contained in the assessment. We decline to do so.

Section 483.20(c) provides:

> The facility must conduct initially and particularly a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. (C) Accuracy of assessments. (1) Coordination. (I) Each assessment must be conducted or coordinated with the appropriate participation of health professionals. (ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

The State notes the MDS forms indicate the assessments were completed on March 21, 1997, even though the registered nurse signed the forms and certified their accuracy on March 20, 1997. The State argues Belle Plaine attempted to certify the accuracy of the assessment as of a date in the future. The State further argues federal regulations do not permit a facility to certify the accuracy of information for a date in the future and to permit such activity would undermine the purpose of the rule to insure assessments are accurate to ensure the needs of residents will be met.

Belle Plaine argues the March 21, 1997 date is a computer-generated date to remind the registered nurse coordinator to sign the form within the alloted period of time. However, we note the form itself labels the date as "Date RN Assessment Coordinator signed as complete." Although the State agrees it appears to be a benign error, we agree with the administrative law judge "[t]he practice of signing such a document early cerifying the accuracy of the assessment cannot be condoned. Such a practice can contribute to potential problems. Post dating assessments cannot under any circumstances be approved." Therefore, we conclude there is substantial evidence to support the administrative law judge's finding there had been a violation

of section 483.20. The department's decision is not affected by an error at law and is not unreasonable, arbitrary, or capricious. We affirm the district court on this issue.

II. THE TAG 309 VIOLATION. Belle Plaine contends there is not substantial evidence to support the department's statement of deficiencies alleging a violation of the Code of Federal Regulations chapter 42, section 483.25 and the Iowa Administrative Code chapter 481, section 59.20(2). We disagree.

Iowa Administrative Code section 59.20(2) provides:

> Duties of health service supervisor. Every intermediate care facility shall have a health service supervisor who shall (2) Plan for and direct the nursing care, service, treatments, procedures, and other services in order that each resident's needs are met.

Section 483.25 provides:

> Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

The review of the clinical .ecords disclosed Resident #9 had been admitted to Belle Plaine on December 6, 1996. On December 14, 1996, it was first noted Resident #9 had a distended abdomen. The symptoms continued and, on December 19, 1996, a physician's assistant (PA) was notified of the resident's condition and he ordered the staff to obtain a chest x-ray, a mini-catheter urinalysis, a suppository, and a soap suds enema to be given if the suppository was not successful. Belle Plaine's attempts to obtain the mini-catheter were unsuccessful and nearly two days passed before the catheterization was finally secured, at which time a large volume of urine

was removed. Nearly twenty hours passed before the soap suds enema was performed, at which time a large amount of stool was removed; records indicate Resident #9 had not had a bowel movement since December 11, 1996.

Belle Plaine staff interviewed by the surveyor indicated they did not have a written policy on monitoring bowel movements and there was no intervention for lack of bowel movements. Belle Plaine staff testifying at the hearing did acknowledge the need to routinely monitor bowel movements and urine output for residents of long-term care facilities and also acknowledged the inadequacy of facility records.

We find the record supports the findings made in this case. There is substantial evidence to support the finding Belle Plaine failed to properly assess Resident #9 and failed to initiate timely intervention for her bowel movement and urine output problems. Our standard of review dictates we affirm the district court on this issue. For these reasons, we affirm.

AFFIRMED.