IN THE COURT OF APPEALS OF IOWA

No. 0-712 / 99-1800
Filed June 29, 2001

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CLERK SUPREME COURT

PARKVIEW NURSING & REHAB CENTER,
Petitioner-Appellant,

vs.

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

Appeal from the Iowa District Court for Black Hawk County, R.J. Curnan, Judge.

The petitioner, a licensed health care facility, appeals from the district court's ruling on judicial review affirming the respondent's imposition of a citation, a fine and a deficiency finding regarding the provision of health care to a mobility impaired and dependent resident. **REVERSED.**

Kendall R. Watkins of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

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

Considered by Huitink, P.J., and vogel and Mahan, JJ.

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MAHAN, J.

The petitioner-appellant, Parkview Nursing & Rehabilitation Center (Parkview), appeals from the district court's ruling on judicial review affirming the respondent-appellee, Iowa Department of Inspections and Appeals's, imposition of a citation, fine, and deficiency finding regarding the provision of health care to a mobility impaired and dependent resident. Parkview claims the agency's determination it engaged in inadequate supervision of the resident was not supported by substantial evidence and the agency's decision was unreasonable, arbitrary, and capricious, and involved an abuse of discretion. We reverse.

I. Background facts and proceedings.

Parkview is a licensed health care facility under Iowa Code chapter 135C (1997). The Iowa Department of Inspections and Appeals conducts inspections to ensure licensed facilities provide adequate care. *See* Iowa Code §§ 135C.16 and 135C.38.

In June 1997, an obese, ninety-two-year-old resident suffered two leg fractures at the facility while two Parkview staff members were attempting to transfer her from her wheelchair to her bed. The written care plan for the resident provided such transfers should be conducted by two or three persons. Three staff members would normally conduct such a transfer after a meal or if the transfer was from a lower to a higher level. The resident's legs gave out and her legs became entangled with the staff members' legs as they lowered her quickly to the floor. The injuries required the resident to be hospitalized.

After an inspection of Parkview's records, Parkview was cited for a deficiency in health care and a violation of Iowa Administrative Code rule 481-58.28(3)(e) for which a $500 fine was assessed. The deficiency also included a violation of a federal regulation involving the lack of adequate supervision. *See* 42 C.F.R. § 483.25(2)(h)(2).

Parkview contested the finding of a deficiency and the imposition of a citation and a fine based on the incident throughout administrative proceedings. The agency upheld the finding of a deficiency, the citation, and fine.

Parkview filed a petition for judicial review challenging the final agency decision. The district court affirmed, determining "the use of two staff members rather than three under those[1] circumstances could be determined a violation by the administrative law judge." The court determined substantial evidence supported the agency's finding. Parkview appealed.

II. Appellate claims.

Parkview first claims the agency's issuance of a deficiency and assessment of a fine and citation was not supported by substantial evidence. It argues the uncontroverted medical testimony is the fracture was spontaneous and caused the fall rather than being caused by the fall. Second, Parkview claims the agency's issuance of a deficiency was unreasonable, arbitrary or capricious, and involved an abuse of discretion. It argues the agency's interpretation of the federal requirement for adequate supervision "flies in the

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[1] "Those" being "transfer from a wheelchair to a higher bed when the resident was tired or after having eaten."

face of the common sense interpretation of the intent of this regulation, and impermissibly alters the intent of this regulation."

III. Discussion.

Parkview's primary contention is it presented "uncontroverted testimony" from its expert, Dr. Verduyn, concerning the cause of the patient's injuries. The agency findings are the resident had "an avoidable fall with injury and pain for the resident." Parkview claims Dr. Verduyn testified the leg fracture was spontaneous and caused the patient's legs to give way, rather than the twisting of her leg causing the fracture.

The claim concerning Dr. Verduyn's testimony involves uncontroverted "testimony" or "opinions" but does not say uncontroverted "evidence." Dr. Verduyn answered "yes" to the question, "In your opinion, the fracture involving Resident No. 1, was it, in fact, a spontaneous fracture?" He also stated his opinion as to the cause of the femur fracture, "The cause is that she had a spiral fracture, or she had spiral movement which caused the fracture which then caused her to go down and the second issue is to move, when she went down, that's when she fractured her bone." The resident suffered both a spiral femur fracture and a fracture of her left knee. Parkview's own internal report of the incident notes:

> Resident's legs got entangled with [nurse aide] while attempting to transfer from [wheelchair] to bed. [Nurse aide] attempted to lower to floor quickly due to unable to hold resident. Resident's left leg turned under patient. This nurse noted bruise left inner knee. Did not see dislocation until transferring to bed.

The agency, a fact finder, determines the weight to be given to any evidence. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa Ct. App. 1991). The fact finder can accept or reject, in whole or in part, even uncontroverted testimony from an expert. *Frye v. Smith-Doyle Contractors*, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). "In the case of a conflict in the evidence, the court is not free to interfere with the commissioner's findings." *Schreckengast v. Hammermills, Inc.*, 369 N.W.2d 809, 811 (Iowa 1985). Substantial evidence, both from Parkview's own records and from the opinion given by Dr. Verduyn, supports the agency's findings.

Parkview also challenges the conclusion the "injury to the resident occurred due to an inadequate number of staff being used to effect the transfer." It asserts, because the individual care plan called for "transfer with 2-3 persons assist" and two persons were assisting, the plan was followed and the resident was receiving adequate supervision. Parkview also argues, without citing supporting authority, because the individual care plan document was created by Parkview, its interpretation must be based on Parkview's intent. It argues the agency used hindsight in considering the incident and effectively applied strict liability to the nursing home because an accident occurred.

The agency has discretion to issue a citation and impose a fine based on a single, isolated incident. *See* 42 C.F.R. § 488.404; Iowa Admin. Code r. 481-56.9 (1997). Citation for an isolated incident is not strict liability, but rather the exercise of discretion by the agency. In addition, the initial investigation revealed numerous deficiencies. The original citation and fine were based on two

particular injuries to residents. During contested case proceedings, one of the injuries was removed as a basis for the sanctions. The one remaining injury may still be the basis for a citation and fine.

The district court correctly understood the agency decision as being "this transfer should have been made with the assistance of three and not two staff members." The court listed the circumstances surrounding the accident. It evaluated the testimony of those closest to the incident in determining the agency decision was supported by substantial evidence.

Parkview argues there is little or no evidence the resident was tired, had just eaten, or the bed was higher than the wheelchair – all circumstances in which a third aide should have assisted the transfer. In addition, a third person assisting the transfer would be there to steady the wheelchair or bed, not to assist in lifting or moving the resident.

Under our scope of review, we may reverse, modify, or grant other appropriate relief only if the agency action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by abuse of discretion. Iowa Code § 17A.19(8). Most administrative agency contested cases are won or lost at the agency level. *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815-16 (Iowa 1991). This is largely because the decisions frequently are determined by the weight given to conflicting evidence, which is solely the province of the agency. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). Evidence is substantial if a reasonable person would find it adequate to reach the same conclusion, even if we might draw a contrary

inference. *Id.* We apply the agency findings broadly to uphold the decision. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994).

We disagree the failure to use a third aide in transferring the resident is a valid basis for the citation and fine. Certainly the resident was injured in the transfer and suffered great pain. It was an unfortunate accident. However, it was not caused by a violation of the applicable rules concerning supervision. The citation and fine were not premised on Parkview having an inadequate care plan, but simply on the number of aides assisting the transfer. Under the procedures provided for in the individual care plan, using three persons would not have changed the outcome. We conclude the agency erred in its application of the law to the circumstances of this case. Its decision is not supported by substantial evidence. We therefore reverse the district court's decision affirming the agency on judicial review and reverse the agency's decision affirming the citation and fine solely upon the injury to Resident No. 1.

Parkview also claims the agency's action was unreasonable, arbitrary, and capricious, and involved an abuse of discretion because of its interpretation of the term "supervision." Because we determined above that reversal is proper, we do not address this claim.

REVERSED.

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