

NEBRASKA SUPREME COURT

OMNI Behavioral Health v. State

308 Neb. 692 (2021) · No. No. S-19-1218 · Decided March 19, 2021

SUMMARY

The Nebraska Supreme Court affirmed a district court judgment upholding the Nebraska Department of Health and Human Services' determination that OMNI Behavioral Health had been overpaid \$34,876.44 under a contract. The court held that the contract authorized DHHS to audit OMNI's performance and demand repayment for audit exceptions, that OMNI bore the burden of challenging the administrative decision, and that competent evidence supported the overpayment determination.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	March 19, 2021
DOCKET	No. S-19-1218
DISPOSITION	affirmed
PROCEDURAL POSTURE	OMNI appealed from the Lancaster County District Court's affirmance of a final order of the Nebraska Department of Health and Human Services determining that OMNI had been overpaid \$34,876.44 under a services contract and demanding repayment.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the Nebraska Supreme Court reviews the district court's judgment for errors appearing on the record. The inquiry is whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. The appellate court does not substitute its factual findings for those of the district court when competent evidence supports them. The agency's decision is presumed correct, and the party challenging the agency action bears the burden of proof.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	OMNI Behavioral Health, a Nebraska nonprofit corporation v. State of Nebraska ex rel. Doug Peterson, Attorney General, Nebraska

TOPICS

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PRACTICE AREAS

administrative law

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QUESTIONS PRESENTED

1. Whether DHHS had authority under the contract to audit OMNI's performance and demand repayment even if the federal regulations referenced by the hearing officer did not apply.
2. Whether the district court improperly placed the burden of proof on OMNI rather than DHHS in reviewing DHHS's administrative overpayment determination.
3. Whether competent evidence supported the district court's finding that DHHS had overpaid OMNI for fidelity-and-adherence charges and a portion of an employee's salary.

HOLDINGS

1. DHHS was authorized by the contract to audit OMNI's performance and demand repayment for audit exceptions even if the referenced federal regulations were inapplicable.
2. The district court was not required to place the burden of proof on DHHS to prove the overpayment; in an APA challenge to an agency decision, the agency's decision is presumed correct and the challenger bears the burden of proof.
3. Competent evidence supported the district court's finding that OMNI failed to demonstrate actual contract costs for the challenged fidelity-and-adherence charges and the portion of the employee's salary, so affirmance of DHHS's overpayment determination was proper.

KEY QUOTATIONS

“Even if the federal regulations did not apply, the contract authorized DHHS to audit OMNI’s performance and demand repayment for audit exceptions.” (at 701)

“When challenging the decision of an administrative agency, in the manner OMNI did here, the presumption under Nebraska law is that the agency’s decision was correct, with the burden of proof upon the party challenging the agency’s actions.” (at 702)

FACTUAL BACKGROUND

OMNI contracted with DHHS to operate a group home and provide services for individuals with developmental disabilities, including intensive treatment mobile services and fidelity-and-adherence activities. The contract required OMNI to submit actual approved costs, permitted DHHS to audit records, and required OMNI to repay

amounts disallowed as audit exceptions. After reviewing OMNI's May and June 2017 billing, DHHS concluded that OMNI lacked adequate documentation for certain fidelity-and-adherence charges, a travel expense, and part of an employee's salary, resulting in a \$34,876.44 overpayment determination.

PROCEDURAL HISTORY

DHHS issued OMNI a notice of overpayment concerning amounts billed in May and June 2017. After an administrative hearing, the DHHS hearing officer recommended affirmance of the overpayment determination, and the director of the Division of Developmental Disabilities adopted that recommendation as DHHS's final order. OMNI petitioned for review under the Nebraska Administrative Procedure Act, but the district court affirmed. The Nebraska Supreme Court affirmed the district court.

DISPOSITION

affirmed

CASES CITED

- Tran v. State, 303 Neb. 1, 926 N.W.2d 641 (2019)
- Hersch Buildings, Inc. v. Steinbrecher, 198 Neb. 486, 253 N.W.2d 310 (1977)