

STATE OF MICHIGAN
COURT OF APPEALS

THORNAPPLE MANOR,

Petitioner-Appellee/Cross-
Appellant,

v

MICHIGAN DEPARTMENT OF COMMUNITY
HEALTH,

Respondent-Appellant/Cross-
Appellee.

UNPUBLISHED
December 10, 2002

No. 230565
Barry Circuit Court
LC No. 00-000227-AA

Before: Sawyer, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In this action, respondent appeals by leave granted from a circuit court order reversing the decision of a Department of Community Health hearing referee. We affirm the circuit court.

Respondent administered a “Continuous Quality Improvement Program” (CQIP), which was developed as a Medicaid program pursuant to the resolution of a class action lawsuit by nursing home providers against the state. The program was designed to provide financial incentives to nursing homes in order to encourage them to develop programs directed at enhancing their residents’ quality of life. Resident input was required, and the program was required to exceed minimum licensing requirements.

Petitioner applied for the CQIP incentives upon its development and implementation of a program aimed at reducing hallway congestion and creating “a more home-like, non-institutional type dining experience.” While the written report petitioner submitted with its application primarily outlined a change in dining room procedures, the record indicates that the program also involved the implementation of various renovations and the addition of activities.

Respondent disqualified the program for the CQIP incentives on the basis that it addressed a problem that was already required by licensing regulations. Petitioner sought review of this decision. Following a hearing, the referee affirmed respondent’s decision to deny the incentive payment. Petitioner then turned to the circuit court for review of this decision. The circuit court reviewed the administrative record and concluded that the agency’s decision was arbitrary and capricious and that the referee’s decision was not based upon competent, material and substantial evidence on the record. It is from this decision that respondent now appeals.

When reviewing a lower court's examination of administrative action, this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the factual findings, a standard of review "indistinguishable from the clearly erroneous standard of review." *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). As defined in numerous other contexts, a finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. *Id.* at 234-235.

On appeal, we have been asked to consider whether the circuit court employed the proper standard of review in its reversal of the referee's determination. A circuit court reviewing the determination of an administrative tribunal should reverse the tribunal's decision only if the decision or order: (a) violates the constitution or a statute, (b) exceeds the agency's authority or jurisdiction, (c) is made upon unlawful procedure, (d) is not supported by competent, material, or substantial evidence, (e) is arbitrary or capricious, or an abuse of discretion, or (f) is affected by any other substantial or material error of law. *General Motors Corp v Bureau of Safety & Regulation*, 133 Mich App 284, 287; 349 NW2d 157 (1984). We agree with the circuit court that the referee's decision was not supported by "competent, material or substantial evidence."

In applying the competent, material, or substantial evidence standard of review to an administrative decision, the circuit court is required to review the entire record, and not just portions that support the agency's findings. *Great Lakes Sales, Inc v State Tax Comm*, 194 Mich App 271, 280; 486 NW2d 367 (1992). Substantial evidence is less than a preponderance of the evidence, but is more than a mere scintilla. *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994). Our Supreme Court has cited the dictionary definitions of "competent," "material," and "substantial" with regard to a Worker's Compensation Appellate Commission decision: "Competent, material, and substantial evidence . . . is solid, true, reliable, authoritative, [and] capable" *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 514 n 5; 563 NW2d 214 (1997), overruled in part on other grounds *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 696-697; 614 NW2d 607 (2000).

Respondent asserts the trial court erroneously applied a de novo standard of review in overturning the referee's finding. However, we find that rather than substituting its judgment for that of the referee, the circuit court correctly found that his decision was not supported by substantial evidence on the record.

Respondent's primary reason for disqualifying petitioner's request for incentives was that petitioner's program addressed licensing compliance issues, and failed to exceed licensing minimums. The referee agreed with respondent's determination that petitioner's program did not exceed licensing minimums, thereby upholding the agency's determination. However, the record supports the circuit court's conclusion that the referee's decision was not supported by competent, material or substantial evidence. For example, the record established that petitioner had never been cited for licensing violations related to congestion or safety in the hallways, nor were any licensing violations cited upon respondent's denial of petitioner's incentive. Moreover, the evaluators admitted to having little, if any, knowledge with respect to licensing regulations.

Further, it was clearly established that pursuant to CQIP policy, a program qualified if it exceeded minimum licensing requirements. In this case, the report submitted to respondent, while referencing congestion, expressly indicated that the program's purpose was to create "a

more pleasant dining experience.” Although not fully documented in petitioner’s written report, the program at issue was clearly aimed beyond reducing hallway congestion. For example, dining room and day room renovations and redecorations, the implementation of additional activities, the serving of hors d’oeuvres and the addition of a television were all clearly in excess of the minimum licensing requirements. Moreover, there is no evidence, let alone substantial evidence, on the record to the contrary.

Ultimately, the evidence shows that respondent’s decision to deny petitioner CQIP incentives was based on the quality of petitioner’s written report, rather than whether the program requirements were actually met. However, even though the extent of the improvements was not fully documented in petitioner’s report, petitioner was reasonable in its expectation that respondent’s evaluation would extend beyond the written report. As noted, the CQIP bulletin expressly stated that the “audit will essentially consist of the surveyor’s review of appropriate documents enhanced by interview with facility staff member(s), resident(s), or other designee(s).” However, the record is clear that the review of petitioner’s report was not enhanced by any of these steps outlined in the CQIP policy bulletin. Specifically, evidence indicates that the evaluators’ neglected to visit the facility, or interview staff members, residents or other designees. Also in support of petitioner’s expectations of an extended review was the five-page limit on the written reports submitted to respondent in request of incentive payments pursuant to CQIP, making it arguable that there was not enough room to document the details of the project with such specificity.

Further, there is evidence on the record with regard to the active involvement of the residents in the formulation and implementation of petitioner’s program. Also, when presented a hypothetical program mirroring petitioner’s program, respondent’s program specialist involved in the formation of the CQIP policy agreed that the program at issue did indeed qualify for CQIP financial incentives.

We conclude that the circuit court did not apply the wrong legal standard, or commit clear error in failing to find competent, material or substantial evidence in support of the referee’s findings. The facts on the record clearly contradict the referee’s findings that the program at issue did not exceed minimum licensing requirements as proscribed by CQIP policy. Accordingly, it is clear the circuit court reviewed the entire record and it cannot be found, with a definite and firm conviction, that it erred in its determination that the referee’s decision was not supported by competent, material and substantial evidence.

Petitioner raised issues on cross appeal pursuant to MCR 7.207. However, because we agree with the circuit court’s findings in favor of petitioner, we refrain from addressing petitioner’s alternative arguments.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Michael J. Talbot