COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP293 **Cir. Ct. No. 2013CV2256**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

HOLY REDEEMER CHURCH OF GOD IN CHRIST, INC., D/B/A HOLY REDEEMER CHRISTIAN ACADEMY,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Holy Redeemer Church of God in Christ, Inc. (Holy Redeemer) appeals a circuit court order upholding an administrative decision denying reimbursements for its school meals program for September 2010 through

March 2012, and appeals an administrative decision prohibiting Holy Redeemer from relitigating meal claims prior to the 2011-12 academic year. We affirm.

BACKGROUND

¶2 Holy Redeemer runs a Milwaukee-area elementary and high school. Many students qualify for free meals under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). Both programs are funded by the U.S. Department of Agriculture and are administered by the State Department of Public Instruction (DPI).

The Federal Program.

¶3 The NSLP provides states with funds to reimburse public and nonprofit schools that provide meals to students if the schools meet certain standards pertaining to student eligibility and nutrition. According to the Code of Federal Regulations, schools are reimbursed for meals that are accurately counted, recorded, consolidated and reported if the children are eligible for free, reduced priced, or paid meals. The requirements are known as "Performance Standard 1." *See* 7 C.F.R. § 210.18(b)(2)(i). Schools are reimbursed after submitting a "benefit issuance list" to the DPI, documenting whether a student is eligible for reimbursable meals, the date the child became approved for eligibility, the category of meals the student is eligible for, and any changes in eligibility made after the initial approval process. *See* 7 C.F.R. § 210.7(c)(1). Schools must also file monthly claims for any meals for which they seek reimbursement. The final monthly claim must be filed within 60 days of the last day of the month for which reimbursement is sought. *See* 7 C.F.R. § 210.8(b)(1).

¶4 If a state's review of a school reveals violations of Performance Standard 1, states are required to take corrective action to ensure that the school's deficiencies are corrected. *See* 7 C.F.R. § 210.18(k). State agencies are required to "take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable [under 7 C.F.R. Part 210]." *See* 7 C.F.R. § 210.19(c). If a school violates Performance Standard 1 and has not taken corrective action within the prescribed compliance deadline, a school may also be placed on "withholding status," which allows the state agency to withhold payments to the school until the school completes its corrective action. *See* 7 C.F.R. §§ 210.18(l)(1)-(2); 210.24.

The DPI Letters.

¶5 The DPI and Holy Redeemer executed an agreement in 2003 governing Holy Redeemer's participation in the NSLP and SBP. On January 10, 2011, the DPI sent Holy Redeemer a letter noting deficiencies in Holy Redeemer's meal program and informing Holy Redeemer that it would not validate reimbursement claims for September and October 2010, thus requiring Holy Redeemer to repay the amounts the DPI had already paid for those months. The letter also informed Holy Redeemer that reimbursement for November 2010 was stopped and that the school was on withholding status as of December 15, 2010. The letter informed Holy Redeemer that it was required to correct the deficiencies, in part by filing an accurate benefit issuance list supported by valid documentation.

¶6 Holy Redeemer appealed the determination of the January 10, 2011 letter, but withdrew the appeal on April 11, 2011. Holy Redeemer refunded the

DPI roughly $44,000 for September and October 2010, and roughly $22,000 for November 2010, in order to have its withholding status removed.

¶7 The DPI sent Holy Redeemer a second letter on November 7, 2011, informing Holy Redeemer that it would not reimburse claims for meals from January 2011 through May 2011 because Holy Redeemer failed to comply with federal regulations. Holy Redeemer appealed this determination by letter, but specifically stated that it was appealing only "the claim status finding, for the months of March, April, and May of 2011." At a hearing before an Administrative Law Judge (ALJ), Holy Redeemer attempted to also challenge the DPI's denials of reimbursement for September 2010 through December 2010. In a decision dated March 7, 2012, the ALJ upheld the DPI's determination and rejected Holy Redeemer's attempt to challenge the DPI's determinations regarding the September 2010 through December 2010 claims, finding that Holy Redeemer waived its ability to challenge those claims because it withdrew its appeal relating to those months.

¶8 On September 26, 2012, the DPI sent Holy Redeemer another letter concerning the time period of September 2011 through March 2012. During that period, as well as during the months of April 2012 through June 2012, Holy Redeemer was in withholding status but continued to file timely reimbursement claims. The letter considered corrective action taken by Holy Redeemer and removed the school from withholding status. The letter also concluded that an accurate benefit list, provided by Holy Redeemer in late April 2012, allowed the DPI to begin reimbursing timely claims from April 2012 onward. The DPI then began validating claims for April, May and June 2012. The letter also concluded, however, that Holy Redeemer could not be reimbursed for claims filed between

September 2011 and March 2012 because the claims had inaccurate benefit issuance lists.

¶9 Holy Redeemer appealed the DPI's decision not to pay reimbursement claims for meals distributed between September 2010 and March 2012. The DPI moved to dismiss the appeal as it pertained to claims for meals served between September 2010 and December 2010 (prior to the 2011-2012 academic year). The ALJ granted the DPI's motion, but proceeded to a hearing on claims for meals served between September 2011 and March 2012, during the 2011-12 school year.

¶10 On February 8, 2012, the ALJ concluded that Holy Redeemer did not satisfactorily complete corrective action until April 2012, when it submitted a valid benefit issuance list, and that the DPI properly denied payment of Holy Redeemer's claims from September 2011 through March 2012. As the circuit court aptly summarized, the ALJ held:

> (1) that a school educational agency's removal of a school from withholding status entitles the school to reimbursement only for claims filed during the withholding period that are made in accordance with federal regulations; (2) that DPI is not required to reimburse claims that are 10 percent or less inaccurate; (3) that reimbursement for meals provided to eligible children between September 2011 and March 2012 is not required regardless of whether the claims contained errors; and (4) that a school is required to file final, amended claims within 60 days of the end of the claim month and that schools have no authority to adjust claims after the 60 day deadline.

¶11 Holy Redeemer appealed the ALJ's decision to the circuit court. The circuit court affirmed the ALJ. This appeal follows. Additional facts are discussed as relevant to the analysis.

DISCUSSION

¶12 On appeal, Holy Redeemer raises multiple issues. We have discerned the following arguments from Holy Redeemer's brief: (1) the DPI wrongfully converted its withholding of funds to a denial of funds; (2) the ALJ erroneously found that federal regulations require a 60-day time limit for submitting final reimbursement claims; (3) the DPI followed an incorrect procedure when it failed to reimburse Holy Redeemer for meals served between September 2010 and March 2012; (4) Holy Redeemer's due process rights were violated because claims can only be disallowed for meals that do not meet nutritional standards or for "overclaims," not for inaccurate benefit issuance claims; and (5) Holy Redeemer's claims as to September 2010 through March 2012 reimbursements are not barred by claim or issue preclusion.

Standard of Review.

¶13 "We grant one of three levels of deference to administrative agency decisions: great weight, due weight, or de novo review." ***Masri v. LIRC***, 2014 WI 81, ¶21, 356 Wis. 2d 405, 850 N.W.2d 298. "Reviewing courts apply due weight deference to agency interpretations 'when the agency has some experience in an area, but has not developed the expertise which necessarily places it in a better position to make judgments regarding the interpretation of the statute than a court.'" ***Id.***, ¶23 (citation omitted). "The decision to apply due weight deference is based more on the fact that the legislature charged the agency with administering the statute than on the agency's specialized knowledge or expertise." ***Id.*** "Under due weight deference, a reviewing court will not interfere with the agency's reasonable interpretation if it fits within the purpose of the statute unless there is a more reasonable interpretation available." ***Id.***

¶14 We review the decision of the agency, not the circuit court. *See* ***Wisconsin Cent. Ltd. v. Public Serv. Comm'n of Wis.***, 170 Wis. 2d 558, 567, 490 N.W.2d 27 (Ct. App. 1992). We apply a due weight standard of review here. The DPI is a state agency with experience administering the federal program described in 7 C.F.R. Part 210. We therefore reject Holy Redeemer's contention that *de novo* review is appropriate in this case.

I. The DPI reasonably reimbursed Holy Redeemer for only those claims which were accurately filed.

¶15 Holy Redeemer contends that once it was removed from withholding status, it was entitled to reimbursement for all claims filed during the withholding period—claims pertaining to meals served between September 2010 and March 2012. By not reimbursing Holy Redeemer, the school contends that the DPI essentially converted the withholding of funds into a denial of funds. Holy Redeemer misreads the federal regulations governing this program.

¶16 Once a school is removed from withholding status, federal regulations permit reimbursement for claims which were *sufficiently and timely* filed:

> In accordance with Departmental regulations at §3016.43 and § 3019.62 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with § 210.25 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

See 7 C.F.R. § 210.24.

¶17 To support its argument, Holy Redeemer contends that 7 C.F.R. § 210.19(c) permits fiscal action only if school meals fail to meet nutritional standards, not if schools submit noncompliant benefit issuance documents. Holy Redeemer ignores the plain language not only of 7 C.F.R. § 210.24, but also of the section it relies upon. Section 210.19(c), which addresses nutritional standards, states: "State agencies must take fiscal action against school food authorities for Claims of Reimbursement that are not properly payable *including*, if warranted, the disallowance of funds for failure to take corrective action to comply with the meal requirements in parts 210 and 220 of this chapter." (Emphasis added.) Section 210.19(c), therefore, does not limit a state agency's ability to take fiscal action against school fund authorities based on noncompliance with nutritional requirements, but rather, *includes* noncompliance with nutritional standards as a basis for taking fiscal action against schools. This notion is supported by 7 C.F.R. § 210.19(a)(1), which states: "Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service."

¶18 It follows then, that the DPI is not required to reimburse schools for *all claims* filed during the withholding period simply because the school's meals meet federal nutritional standards, regardless of whether those claims *fully* comply with other reimbursement requirements in 7 C.F.R. Part 210. To hold otherwise would allow a nutritionally compliant school to receive reimbursements even if the school filed massive overclaims. This would produce an absurd result. Inaccurate claims as to student eligibility clearly do not comply with federal regulations. Accordingly, the DPI properly denied reimbursement to Holy

Redeemer for its September 2010 through March 2012 claims because those claims did not accurately establish various students' eligibility.

II. The ALJ reasonably concluded that federal regulations establish a 60-day time limit for submitting a final monthly claim for reimbursement.

¶19 Holy Redeemer next contends that the DPI erroneously denied reimbursement for the school's September 2010 through March 2012 claims because Holy Redeemer corrected the errors on the benefit issuance lists. The heart of Holy Redeemer's argument is that once it corrected the benefit issuance lists, it was allowed to amend the September 2010 through March 2012 claims at a later time.

¶20 According to the federal regulations, specifically, 7 C.F.R. § 210.8, a *final* claim for reimbursement must be submitted *no later than* 60 days following the last day of the full month covered by the monthly claim:

> (b) Monthly claims. To be entitled to reimbursement under this part, each school food authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (c) of this section.
>
> (1) Submission timeframes. A final Claim for Reimbursement shall be postmarked or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless otherwise authorized by FNS.
>
> ….
>
> (c) Content of claim. The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d) of this part.

Relying on 7 C.F.R. § 210.8(b)(4), Holy Redeemer implies that because its September 2010 through March 2012 claims were filed within 60 days following the last day of the full month covered by the claims, it was under no time limit to correct the inaccuracies in those claims. The regulation dealing with corrective action provides:

> Corrective action. *The State agency* shall promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches served, by type, to eligible children. In taking corrective action, *State agencies* may make adjustments on claims filed within the 60-day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month required under § 210.5(d) of this part….

See § 210.8(b)(4) (emphasis added). Holy Redeemer again ignores the plain language of the regulation, which states that *state agencies*, not schools, may make adjustments on claims filed within the 60-day deadline under certain circumstances if those adjustments are completed within 90 days of the last day of the claim month. Nothing in this section allows for schools to circumvent the requirement that *the schools' final* claims must be submitted within a 60-day deadline and that those claims must be accurate.

III. Procedural Claims.

¶21 Holy Redeemer contends that the DPI failed to follow proper federal procedures when denying Holy Redeemer's September 2010 through March 2012 claims. The extent of Holy Redeemer's argument in its brief to this court is as follows: "Under a correct interpretation of the law, Holy Redeemer should be reimbursed for meals served from September 2010 through the end of March 2012 since it has corrected the errors on the Benefit Issuance List." We decline to

address arguments that are undeveloped or inadequately briefed. *See* ***Truttschel v. Martin***, 208 Wis. 2d 361, 369, 560 N.W.2d 315 (Ct. App. 1997); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

IV. Due Process.

¶22 Holy Redeemer raises a number of due process arguments, all stemming from its contention that the DPI failed to provide notice of an "accuracy standard." Specifically, Holy Redeemer contends that: (1) the DPI failed to advise Holy Redeemer that its claim could be denied for reasons other than nutritional deficiencies; (2) the DPI was required to refund Holy Redeemer for the amounts Holy Redeemer paid in September and October of 2010, before Holy Redeemer was removed from withholding; and (3) the DPI should have denied claims on a claim-by-claim basis, rather than placing the school in withholding status.

¶23 Holy Redeemer did not raise constitutional due process arguments during the administrative proceedings. "It is settled law that to preserve an issue for judicial review, a party must raise it before the administrative agency." ***State v. Outagamie Cnty. Bd. of Adjustment***, 2001 WI 78, ¶55, 244 Wis. 2d 613, 628 N.W.2d 376. "Judicial review of administrative agency decisions contemplates review of the record developed before the agency." ***Id.*** We "will not consider issues beyond those properly raised before the administrative agency, and a failure to raise an issue generally constitutes a waiver of the right to raise the issue before a reviewing court." ***Id.*** As such, we can not consider Holy Redeemer's constitutional due process claims.

V. Holy Redeemer's arguments are barred by claim and issue preclusion.

¶24 Finally, Holy Redeemer contends that the ALJ erroneously found that its claims submitted prior to the 2011-12 school year (September 2010 through May 2011) were barred by claim and issue preclusion. Specifically, Holy Redeemer contends that claim preclusion was inapplicable in this case, and that issue preclusion does not bar its claims for reimbursement for September 2010 through December 2010, and January 2011 through May 2011.

¶25 "The doctrine of issue preclusion, formerly known as collateral estoppel, is designed to limit the relitigation of issues that have been actually litigated in a previous action." ***Aldrich v. LIRC***, 2012 WI 53, ¶88, 341 Wis. 2d 36, 814 N.W.2d 433. On the other hand, claim preclusion "is designed to prevent litigation of matters that were, or could have been, litigated in a prior proceeding." ***Aldrich v. LIRC***, 2008 WI App 63, ¶14, 310 Wis. 2d 796, 751 N.W.2d 866. Here, Holy Redeemer has either: (1) waived the opportunity to appeal certain claims because it either withdrew or specifically failed to challenge certain claims (September 2010 through February 2011); (2) already litigated certain issues (March 2011 through May 2011); or (3) lost the opportunity to raise claims it did not raise before the ALJ. Accordingly, Holy Redeemer's arguments are barred by both issue and claim preclusion.[1]

CONCLUSION

¶26 For the foregoing reasons, we affirm the circuit court.

[1] To the extent Holy Redeemer argues issues not addressed by this decision, we conclude that our resolution of the issues addressed is dispositive and that the record supports the ALJ's factual and legal conclusions.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.