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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0183**

In the Matter of the Surveillance and Integrity Review (SIRS) Appeals
by Trinity Home Health Care Services and
Etyane Ayana.

**Filed October 10, 2022
Affirmed
Smith, Tracy M., Judge**

Minnesota Department of Human Services
File No. 36178

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Considered and decided by Smith, Tracy M., Presiding Judge; Larson, Judge; and
Hooten, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this administrative appeal, relators Etyane Ayana and Trinity Home Health Care
Services challenge the final order of the Minnesota Commissioner of Human Services
concluding that relators committed abuse resulting in overpayments of Medicaid

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

reimbursements and terminating relators' participation in the Medicaid program. We affirm.

FACTS

Trinity, which is owned by Ayana, is a health-services vendor that receives reimbursement from respondent Minnesota Department of Human Services (DHS) for providing homemaking, nursing, and personal-care-assistant (PCA) services to individuals with disabilities who are eligible for medical assistance under the federal Medicaid program.

DHS administers and oversees the Medicaid program through the Minnesota Health Care Programs (MHCP). *See* Minn. R. 9505.0011 (2021). As part of its oversight, DHS created the Surveillance and Integrity Review Section (SIRS), which is responsible for monitoring provider-agencies' compliance with federal and state statutes, rules, and regulations. *See* Minn. R. 9505.0180, .2160 (2021). SIRS is charged with "identifying and investigating fraud, theft, abuse, or error by vendors or recipients of health services" through the MHCP and "for the imposition of sanctions against vendors and recipients of health services." Minn. R. 9505.2160, subp. 1.

If SIRS establishes fraud, theft, abuse, or error by a preponderance of the evidence, the commissioner may impose sanctions and order recovery of overpayments. *See* Minn. Stat. § 256B.064 (2020) (describing the grounds for sanctions and for recovery of overpayment); Minn. R. 1400.7300, subp. 5 (2021). Potential sanctions include "suspension or withholding of payments to a vendor and suspending or terminating participation in the program." Minn. Stat. § 256B.064, subd. 1b. When imposing sanctions,

the commissioner must consider the nature, chronicity, or severity of the conduct and its effect on the health and safety of the persons served by the vendor. *Id.* The commissioner may also obtain monetary recovery from a vendor who has been improperly paid because of sanctionable conduct “or as a result of a vendor or department error, regardless of whether the error was intentional.” *Id.*, subd. 1c.

In 2015, following complaints regarding Trinity’s services, SIRS began an investigation. In March 2016, SIRS conducted its first onsite review at Trinity. On the day before the onsite review, SIRS faxed a letter to relators notifying them of the visit and identifying the date range for which SIRS intended to review documentation. Upon arriving at Trinity, SIRS investigators requested specific recipient files within the date range indicated in the notice letter. Investigators electronically scanned records provided in response to their requests. Following review of those records, SIRS Investigator Amanda Novak determined that relators had been overpaid \$640,641.12 for nursing services, \$277,187.30 for PCA services, and \$2,599 for homemaker services. Another SIRS investigator reviewing the files later slightly reduced the overpayment amount for PCA services. SIRS referred the case to Minnesota’s Medicaid Fraud Control Unit, which closed the case without action.

In July 2018, SIRS conducted a second onsite review of Trinity, which was led by Investigator Kailee Potocnik. This review was for a different date range than the first onsite review. Again, SIRS gave a day’s advance notice of the onsite visit and the date range at issue. Upon arrival, SIRS investigators requested specific recipient files within the date range as well as records for employed licensed practical nurses (LPNs) and registered

nurses (RNs). Investigators again scanned records provided in response to their requests. Following review of those records, Potocnik determined that Trinity was missing required documentation, had billed for RN services when an LPN provided the services, and had billed for more units than documented, resulting in overpayments of \$696.49 for homemaker services, \$52,660.10 for nursing services, and \$287,006.93 for PCA services. Potocnik determined that the total overpayment for PCA services, based on the 2016 and 2018 site reviews, was \$559,274.43. Based on the nature, severity, and chronicity of the offenses, SIRS decided that an immediate withholding of payment and termination of relators' participation in the MHCP would be appropriate sanctions.

In February 2019, DHS sent Trinity and Ayana notices of termination from the MHCP, as well as notices of overpayment and payment-withholding. Both Trinity and Ayana appealed the termination and overpayment claims in March 2019.

In April 2019, Angie Weidemann became the lead investigator in the Trinity investigation. At that time, Investigator Weidemann reviewed SIRS's overpayment spreadsheets to verify their accuracy, making two adjustments.

In May 2019, DHS sent relators amended notices that included Weidemann's updated calculations, which are the overpayment amounts at issue in this proceeding. In three notices, DHS alleged overpayment of \$681,810.84 for nursing services, \$614,982.05 for PCA services, and \$696.49 for home-care services. Attached to each notice was a spreadsheet prepared by investigators for each category of service, itemizing each overpayment. The spreadsheets included columns for the name of the service recipient, the date of service, the units allowed, the units and money paid for the service, the amount of

money DHS determined was overpaid, and the reason DHS believed there was an overpayment.

Relators' appeal proceeded to a three-day evidentiary hearing before an administrative law judge (ALJ) in June 2020. The three amended notices and their associated spreadsheets were admitted into evidence with the agreement of the parties as Exhibits 7, 18, and 25. Also admitted into evidence were three exhibits—Exhibits 17, 24, and 35—consisting of images of the records that SIRS scanned during their onsite reviews at Trinity. SIRS Investigators Novak, Potocnik, and Weidemann testified about their investigation and findings, including the process used to create the spreadsheets. Ayana testified for Trinity. She disputed DHS's findings of overpayments and introduced additional documents that she alleged contained the information that DHS identified as missing or incorrect.

On September 21, 2020, the ALJ issued his findings of fact, conclusions of law, and recommendation (first report). The ALJ found that the SIRS investigators testified credibly and that Ayana's testimony was not credible. But the ALJ concluded that DHS had not shown that relators committed abuse resulting in overpayments as alleged by DHS. The ALJ described "the problem with [DHS's] case" as its reliance on the spreadsheets in Exhibits 7, 18, and 25. The ALJ noted that the spreadsheets were "not the real evidence upon which [DHS's] allegations are based." That "real evidence," according to the ALJ, was in the scanned documents from the site visits that DHS submitted as Exhibits 17, 24, and 35. But, the ALJ wrote, those documents were "not specifically cited in the spreadsheets, reports, or even in [DHS's] summation of its case." The ALJ therefore

determined that DHS had not met its burden of proof and recommended that the commissioner rescind the notices of overpayment, termination, and withholding.

On January 14, 2021, pursuant to Minn. Stat. § 14.62, subd. 2a (2020), the commissioner moved for an order extending the 90-day deadline for the agency to act on the ALJ's report, requesting an additional 45 days. The chief ALJ granted that extension in part, extending the deadline by an additional 30 days, until March 3, 2021.

On March 3, 2021, the commissioner issued an order remanding the case to the ALJ for further proceedings. In that order, the commissioner stated that the ALJ apparently applied an improper standard in the first report when he concluded that the spreadsheets did not constitute "real evidence." The commissioner explained that Minnesota Rule of Evidence 1006 allows for the admission of summaries that describe voluminous evidence and that evidence introduced under rule 1006 must be evaluated for its reliability, accuracy, and weight. But, the commissioner explained, the ALJ had made no findings of fact suggesting that the spreadsheets admitted under rule 1006 or the investigators' testimony regarding the spreadsheets called their accuracy into question and had made no findings about the probative value or relative weight of the spreadsheets. The commissioner concluded:

Because it is the role of the [ALJ] to make the appropriate findings and because it is not clear that the [ALJ] applied the correct standard under Minnesota Rules of Evidence 1006, the Commissioner remands to the [ALJ] to amend the findings and conclusions in accordance with the applicable rules of law.

Specifically, this matter is remanded to the [ALJ] to:

1. Reconsider [DHS's] evidence in Exhibits 7, 18, and 25, using as guidance Minnesota Rule of Evidence 1006 and its permissive approach to summarizing voluminous evidence;
2. Consider whether to order further production of evidence related to these Exhibits, using Minnesota Rule of Evidence 1006 as guidance; and
3. Make additional Findings of Fact and Conclusions of Law based on reconsideration of these Exhibits, considering their relative weight and the remainder of the record.

The commissioner added that it was left to the ALJ's discretion whether to hold another evidentiary hearing to accomplish that work.

On March 9, 2021, the ALJ issued an order on remand, directing DHS to prepare an affidavit and index of the scanned documents in Exhibits 17, 24, and 35 to correlate that evidence, where it exists, to the entries on the spreadsheets. On April 14, 2021, DHS responded to this order by filing an affidavit from Investigator Novak with attached indexes. The indexes were the three spreadsheets with an added column in which each entry on the spreadsheet was linked to the corresponding documentation (or lack thereof) in Exhibits 17, 24, and 35.

On August 30, 2021, the ALJ filed his findings of fact, conclusions of law, and recommendation on remand (second report), in which the ALJ concluded that (1) the commissioner had authority to remand the case; (2) relators admitted to errors totaling \$2,330.06 and monetary recovery was appropriate for that amount; (3) besides that admitted amount, DHS failed to demonstrate that errors or abuse occurred that resulted in improper payments to relators; and (4) DHS's sanction of termination of relators' participation in the MHCP was not supported by the record. The ALJ concluded that the

commissioner had authority to remand the case because the commissioner's remand constituted a rejection of the ALJ's first report and that the commissioner had implicit authority to remand the case following that rejection. The ALJ stated that DHS failed to show a causal connection between relators' failure to meet documentation standards and the overpayments, emphasizing that DHS failed to meet its burden of showing that abuse occurred. The ALJ also commented on the commissioner's remand instructions, noting that ALJs are "required to exercise independent, fair, and impartial judgment in contested case hearings" and that "an agency decision-maker does not direct an [ALJ] as to the manner in which to conduct a contested case hearing, including the weighing of evidence."

On January 10, 2022, the commissioner issued a final order. The order rejected the ALJ's conclusions of law and concluded that DHS proved by a preponderance of the evidence that relators committed abuse per se. The order concluded that DHS established that relators committed abuse resulting in improper payments by (1) submitting repeated claims for which required information was missing or incorrect, (2) submitting repeated claims for health services that were not reimbursable under the programs, (3) failing to develop and maintain health-service records as required, and (4) repeatedly failing to comply with the requirements of the provider agreement.

In an accompanying memorandum, the commissioner noted that she gave probative value to DHS's spreadsheets and did not give probative value to the healthcare and financial records that relators provided at the contested-case hearing, which relators alleged were in existence at Trinity but not scanned by investigators. The commissioner found that relators committed abuse when they billed for homemaker services that were never

provided to recipients and billed non-reimbursable services when the same services were charged as two different services. The commissioner found that relators' nursing-services documentation was largely missing and that the documentation that relators did have showed billing for more services than relators provided. Even when relators had some form of documentation, the commissioner noted, relators "committed abuse when Trinity billed for more services than it provided, billed for RN services when an LPN was providing services and billed for overlapping services." Regarding PCA services, the commissioner found that "[n]one of the units [relators] billed had any documentation to support that [relators] provided services."

The order concluded that DHS proved by a preponderance of the evidence that it was entitled to reimbursement for overpayments of \$681,810.84 for nursing services, \$614,982.05 for PCA services, and \$696.49 for homemaker services. The commissioner also concluded that termination from the MHCP was warranted.

This certiorari appeal follows.

DECISION

Relators raise three main arguments on appeal. Relators first argue that the commissioner acted outside of her statutory authority when she remanded the case to the ALJ and that the ALJ's first report should therefore be the commissioner's final decision. Relators alternatively argue that the commissioner's final decision is unsupported by substantial evidence and that it is arbitrary or capricious.

When reviewing an agency decision, we may affirm, remand, reverse, or modify the agency's decision. Minn. Stat. § 14.69 (2020). We may reverse or modify the decision

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Id. Relators have the burden of proof when challenging an agency decision. *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

I. The commissioner had authority to remand after implicitly rejecting the first report, and the first report is thus not the “final decision.”

Relators argue that, under Minn. Stat. § 14.62, subd. 2a, the commissioner did not modify or reject the ALJ’s first report within the statutory timeframe, but instead remanded the matter without statutory authority, and that the first report therefore became the final agency decision. We disagree.

Section 14.62, subdivision 2a, provides that an ALJ’s report or order constitutes the agency’s final decision “unless the agency modifies or rejects it . . . within 90 days after the record of the proceeding closes” unless the chief ALJ orders an extension of the 90-day deadline. Relators argue that the commissioner failed to comply with the statutory deadline because, upon receiving the ALJ’s first report, she did not modify or reject the report but instead remanded the matter. A remand, relators argue, is outside the commissioner’s statutory authority. Thus, relators argue, because the commissioner did not modify or reject

the first report within the statutory timeframe but instead remanded it without authority, the first report became the agency's final decision by operation of law.

As an initial matter, we reject relators' argument that the commissioner did not reject the ALJ's first report. Although the commissioner's order remanding the matter did not explicitly say that the agency was rejecting the ALJ's first report, the order implicitly rejected it. The remand order states that the "[ALJ's] effective requirement that [DHS] link all underlying documents to the spreadsheets as a threshold requirement to prove its case is contrary to the evidentiary standard contemplated by Minnesota Rules of Evidence 1006" and that the commissioner was remanding to the ALJ "[b]ecause it is the role of the [ALJ] to make the appropriate findings and because it is not clear that the [ALJ] applied the correct standard under Minnesota Rules of Evidence 1006." In other words, the order found that the ALJ had misapplied rule 1006 and rejected the ALJ's report on that basis. Thus, because the commissioner rejected the ALJ's first report within the extended deadline permitted by the chief ALJ, relators' argument that the agency did not reject the first report within the statutory timeframe fails.

But the question remains whether the commissioner had authority to remand the case to the ALJ. Relators argue that she did not because section 14.62 (2020) does not include the word "remand." Again, we reject relators' argument.

An agency's powers are limited to those given to it by the legislature. *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985). "While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives

and powers expressly given by the legislature.” *Id.* We review issues of statutory interpretation de novo. *See State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). When interpreting a statute, the first question is whether the language of the statute is ambiguous; if the statute is unambiguous, the plain language controls. *Id.*

The plain language of section 14.62, subdivision 2a, provides that the ALJ’s report or order becomes final unless the agency modifies it or rejects it within the statutory timeframe, but the statute is silent on what must or may occur following a modification or rejection. We disagree that the absence of the word “remand” precludes the agency from taking that action. An administrative agency has a “well-established right to reopen, rehear, and redetermine the matter even after a determination has been made.” *State ex rel. Turnblad v. Dist. Ct.*, 107 N.W.2d 307, 312 (Minn. 1960).¹ An agency’s authority carries the implicit authority to correct erroneous decisions, including by remanding to an ALJ for a correct application of law. *See Pfalzgraff v. Comm’r of Econ. Security*, 350 N.W.2d 458, 460 (Minn. App. 1984) (upholding an agency’s reversal and remand of an unemployment-benefits decision when relator suffered no prejudice, noting that “Minnesota recognizes that administrative agencies have inherent or implied power to correct erroneous decisions”).

¹ We note, too, that relators’ assertion that this was the first time an agency has remanded to an ALJ is incorrect. *See, e.g., In re Application of the Golden Rule Ins. Co. for Approval of its Accident & Health Ins. Pol’y*, 1987 WL 59565, at *3 (Minn. Off. Admin. Hearings Sept. 30, 1987) (concluding that the Commissioner of Commerce had authority to remand for taking additional testimony and receiving additional evidence); *In re SIRS Appeal of Regina Delores Andrews*, 2018 WL 1059639, at *2 (Minn. Off. Admin. Hearings Feb. 16, 2018) (describing the commissioner’s remand to the ALJ to further develop the record).

Relators argue that their position is supported by *Rowe v. Department of Employment and Economic Development*, 704 N.W.2d 191 (Minn. App. 2005). In *Rowe*, we addressed the validity of an agency's attempt to amend a decision after the statutory 30-day period for appeal of an unemployment-benefits decision under Minn. Stat. § 268.105, subd. 2(a) (2004). 704 N.W.2d at 194-95. We held that it was not valid because any implicit authority held by the agency to correct its decision did not extend beyond the 30-day appeal period authorized by statute—at that point, we reasoned, the agency's jurisdiction expired. *Id.* at 194-96. Here, in contrast, DHS remanded the case while it retained jurisdiction over it. Nothing in *Rowe* precludes an agency from remanding a case to an ALJ during the statutory timeframe for its decision.

Relators argue that the ability to remand to the ALJ creates an absurd result because it would make section 14.62's 90-day deadline meaningless. They posit that the agencies could simply continue to remand until they received the results that they wanted. We do not agree. Agencies are required to give written reasons for their rejections of an ALJ's finding of fact, conclusion of law, or recommendation. Minn. Stat. § 14.62, subd. 1. Moreover, agencies cannot act arbitrarily or capriciously. *See* Minn. Stat. § 14.69. These constraints preclude agencies from repeatedly remanding cases simply to achieve a predetermined desired result.

Relators also argue that, even if there is authority to remand, they were prejudiced by the commissioner's remand here because their business remained closed during the proceedings following the remand. Under Minnesota law, any inherent agency power to correct erroneous decisions cannot prejudice the rights of the parties. *Rowe*, 704 N.W.2d

at 195. But relators do not argue that any of their rights were prejudiced by these proceedings. While their business remained closed during the time of the remand, that does not amount to prejudice of their rights.

We therefore conclude that the commissioner's remand was authorized by Minn. Stat. § 14.62.²

II. The commissioner's final decision was supported by substantial evidence.

We turn next to relators' argument that the commissioner's decision was unsupported by substantial evidence.

Minnesota Statute section 256B.064 gives DHS the authority to impose sanctions on a vendor of medical care for, among other things, "abuse in connection with the provision of medical care to recipients of public assistance." Minn. Stat. § 256B.064, subd. 1a. Minnesota Rule 9505.2165 (2021) defines "abuse" to include submitting repeated claims or causing claims to be submitted (1) from which required information is missing or incorrect, (2) using procedure codes that overstate the level or amount of health service provided, or (3) for health services which are not reimbursable under the programs. Minn. R. 9505.2165, subp. 2(A)(1)-(3). Additionally, abuse under rule 9505.2165 includes repeatedly failing to comply with the requirements of the provider agreement relating to the covered programs. *Id.*, subp. 2(A)(18). To impose sanctions, DHS must show, by a

² Because we conclude that the remand was authorized, we reject relators' argument that the Novak affidavit and accompanying indexes, which were submitted pursuant to an order on remand, should not have been considered. We need not address whether the affidavit constituted new evidence, because, in any event, the remand granted the authority to order further production of evidence related to the spreadsheets.

preponderance of the evidence, that abuse occurred. Minn. Stat. § 256B.064; Minn. R. 1400.7300, subp. 5.

The commissioner is required to make an independent decision based on the evidence before her. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001). The ALJ’s report is “only one part of the record,” and the commissioner is not required to treat the ALJ’s recommendation with the same deference an appellate court must accord the findings of a trial court. *Id.*

If an agency ruling is supported by substantial evidence, a reviewing court must affirm. *Id.* at 279. “The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). Substantial evidence is “more than a scintilla of evidence, more than ‘some’ evidence, and more than ‘any’ evidence.” *Webster v. Hennepin County*, 910 N.W.2d 420, 428 (Minn. 2018). It is such evidence “that a reasonable person would accept as adequate to support a conclusion.” *A.D.*, 883 N.W.2d at 259.

A. Spreadsheets

As an initial matter, much of relators’ argument relates to the commissioner’s reliance on the spreadsheets. Relators argue that substantial evidence is lacking because the commissioner erroneously relied on the credibility of SIRS investigators in finding that the spreadsheets were probative evidence. We disagree that it was error to consider the spreadsheets probative evidence.

DHS offered the spreadsheets pursuant to Minnesota Rule of Evidence 1006.³ Rule 1006 states:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

The spreadsheets are summaries of voluminous writings—specifically, of deficiencies in Trinity’s records or of missing records where records are required. The spreadsheets compare the amounts billed by and paid to relators with the relators’ documentation for the services. The spreadsheets include references to the underlying documents, unless those documents were missing, in which case there is no underlying document to reference.

SIRS investigators testified about how they created the spreadsheets, and the commissioner—as well as the ALJ—found that testimony credible. The investigators’ credible testimony regarding how they created the spreadsheets provides a reasonable basis for finding the spreadsheets to have probative value.⁴

³ Though the Minnesota Rules of Evidence do not explicitly apply to administrative proceedings, the rules for evidence in administrative proceedings are generally more permissive than the Minnesota Rules of Evidence. *See* Minn. Stat. § 14.60 (2020). Here, it is undisputed that the spreadsheets were offered pursuant to rule 1006.

⁴ In the second report, the ALJ appeared to reject the spreadsheets because, while the spreadsheets identify payments made to relators, DHS did not provide records of those payments. However, as DHS explained in its September 27, 2021 exceptions memorandum, DHS does not possess physical billing records for its payments, which are processed electronically. And witness testimony explained that the payment information in

B. Substantial Evidence of Abuse and Overpayment

Relators argue, though, that substantial evidence does not support the commissioner's factual findings of abuse and overpayment. We turn to those issues.

A “vendor must document each occurrence of a health service provided to a recipient.” Minn. R. 9505.2175 (2021). Submitting repeated claims for health services without the required documentation is abuse. Minn. R. 9505.2165, subp. 2(A)(1). It is also abuse to submit repeated claims that overstate the level of service provided or for health services that are not reimbursable. *Id.*, subp. 2(A)(2)-(3). Abuse under rule 9505.2165 also includes repeatedly failing to comply with the requirements of the provider agreement relating to the covered programs. *Id.*, subp. 2(A)(18).

The commissioner concluded that DHS established that relators committed abuse, including submitting repeated claims from which required information was missing or incorrect, submitting claims for non-reimbursable health services, failing to maintain required health-service records, and repeatedly failing to comply with the requirements of the provider agreement. The commissioner found abuse in all three categories of service.

The commissioner found that DHS showed that relators committed abuse when they billed for homemaker services that were never provided to recipients and billed non-reimbursable services when the same services were charged as two different services. The

the spreadsheets was derived from DHS's electronic system. In addition, rule 1006 does not require the party offering summary data to produce all original records absent an order to do so. *See* Minn. R. Evid. 1006.

spreadsheets show double billing for homemaker services and PCA services for the same service dates.

The commissioner also found that DHS showed that relators committed abuse when they billed for nursing services. The commissioner found that relators submitted claims without the required documentation and in many cases did not have any documentation at all. The commissioner also found that Trinity submitted claims for RN services when an LPN provided the services. The spreadsheets show that Trinity submitted many claims that were missing documentation, billed for more services than it provided, and billed for RN services when an LPN provided the services.

The commissioner also found that DHS showed that relators committed abuse when they billed for PCA services. The commissioner found that relators failed to maintain proper documentation, billed for PCA services that they did not provide, and billed for more time than was reimbursable. Again, evidence for those findings is found in the spreadsheets.

In addition to the spreadsheets and associated witness testimony, other evidence supports the commissioner's findings. In her testimony, which the ALJ found not to be credible and "largely self-serving," relator Ayana admitted to some overbilling, claiming it was unintentional. She acknowledged that there was incorrect documentation, stating that it was because the employees are documenting incorrectly. She also admitted adding "some information" to documents that she provided to DHS. Similarly, she told the ALJ that she had "corrected" the documents she submitted to the court by adding information that had been missing. The commissioner may obtain monetary recovery for improper

payments due to abuse, regardless of whether abuse was intentional. *See* Minn. Stat. § 256B.064.

Relators also suggest that the commissioner's determinations may have been faulty because SIRS may not have requested the "whole file" for a given recipient. But SIRS investigators testified that, when conducting a review, they request all supporting documentation for the services billed. Investigators described how, prior to conducting their onsite visits, they faxed relators notice of the visit with a date range and requested that "all documentation" within that range be available. Then, at the visit, they requested documentation for specific recipients. The investigators testified that they made attempts to ensure that all requested records were provided to them, that the documentation was "very important" to ensuring proper provision of services, and that SIRS does not accept documentation provided after the visit. Relators' argument that DHS may have simply not requested the whole file was rejected by the commissioner, and the record supports the commissioner's decision.

Relators also argue that the final decision was not supported by substantial evidence because DHS over time sent changing overpayment calculations and did not explain the differences. But the commissioner concluded that DHS established by a preponderance of the evidence that it was entitled to the overpayment amounts that it mailed to relators in the ultimate amended notices, and that determination is supported by the record. The nursing-services spreadsheet shows an overpayment of \$681,810.84. The homemaking-services spreadsheet shows an overpayment of \$696.49. The PCA-services spreadsheet shows an overpayment of \$614,982.05.

And SIRS investigators testified about how they arrived at these calculations and why the calculations changed over time. Investigator Novak testified that she initially compiled the spreadsheets and determined the overpayment calculations from the records that she obtained at the 2016 onsite visit. She testified that following that visit, she compared the documentation obtained from that visit with claims that relators had submitted and that were paid to relators. Investigator Potocnik testified that, after taking over the investigation, she reviewed the onsite documents from the 2016 visit to verify their accuracy, making corrections where necessary. Potocnik also testified that she created spreadsheets documenting the results of the 2018 onsite visit. Investigator Weidemann testified that she reviewed and amended the spreadsheets when she took over the investigation. The commissioner (and the ALJ) found that testimony to be credible.

Therefore, the record contains substantial evidence to support the overpayment calculations.

III. The commissioner's final decision was not arbitrary or capricious.

Relators argue that the commissioner's final decision was arbitrary or capricious because various actions by the commissioner showed that she was expressing her will rather than her judgment.

An agency ruling is arbitrary and capricious if the agency

- (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006).

When reviewing an agency decision, appellate courts must “recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest [the court] substitute its judgment for that of the agency.” *Blue Cross & Blue Shield of Minn.*, 624 N.W.2d at 277 (quotation omitted). A reviewing court must be guided by the principle that agency conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made is articulated. *Id.* Agency decisions “enjoy a presumption of correctness,” and the “agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency’s authority.” *Id.* at 278 (quotation omitted). The standard of review is not heightened where the final decision of the agency decision-maker differs from the ALJ’s report. *Id.* But an agency’s failure to give reasons for its rejection of the ALJ’s report may be evidence that the agency’s decision was arbitrary and capricious. *In re Grand Rapids Pub. Utils. Comm’n*, 731 N.W.2d 866, 870 (Minn. App. 2007).

Relators argue that the commissioner acted arbitrarily or capriciously by failing to correct “inherently wrong” findings of fact by the ALJ, accepting other facts that were detrimental to relators without any support, and rejecting the ALJ’s findings “because they were detrimental to DHS.” In the agency’s final order, the commissioner accepts some of the ALJ’s factual findings and conclusions of law and rejects others, and she rejects the ALJ’s recommendation. The 20-page, single-spaced final decision thoroughly explains the commissioner’s decision-making and reflects that the final decision rejects the ALJ’s

findings and conclusions for the rational reason that the commissioner gave probative value to the spreadsheets and the ALJ did not. *See Blue Cross & Blue Shield of Minn.*, 624 N.W.2d at 278.

Relators also argue that the commissioner's directions to the ALJ in the remand order regarding the spreadsheets demonstrated an expectation of report in favor of DHS. We disagree. The commissioner's remand order properly explained that summary evidence may be admitted into evidence under Minn. R. Evid. 1006, as were the spreadsheets in this case, and that it is the factfinder's role to determine the probative value, if any, to be afforded the summary evidence. The remand order directed the ALJ to make factual findings regarding the probative value of the spreadsheets—it did not dictate what those factual findings had to be.

Relators also argue that the commissioner improperly shifted the burden of proof from the agency to relators in both the remand order and the final order. We disagree. In the remand order, the commissioner did not say that relators had not disproved DHS's claims or that they had any obligation to do so. Rather, the commissioner directed the ALJ to apply Minn. R. Evid. 1006 to its review of the spreadsheets and to make factual findings regarding their probative value. And the final order repeatedly states that DHS bore the burden of proof and frames the final determinations in terms of DHS's burden. As relators note, the final order notes the inconsistency between the ALJ's treatment of DHS's spreadsheets and his treatment of relators' documents, but it does not state or suggest that relators were obligated to disprove DHS's case; rather, the final order simply disagrees with the ALJ's assessment of the spreadsheets.

Relators' arguments that the commissioner acted arbitrarily or capriciously generally rest on the premise—shared by the ALJ—that the spreadsheets were not probative. As a result, relators argue, DHS's reliance on those spreadsheets meant that it failed to meet its burden to show that abuse occurred, and the commissioner's discussion regarding the credibility of relators' documents therefore improperly shifted the burden to relators. Because the commissioner reasonably determined that the spreadsheets were probative, we reject relators' argument that the commissioner's decision was arbitrary or capricious.

Affirmed.