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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0378**

Re: Youth Leadership Academy dba Gar Gaar Family Services Appeal of Denial of
Application for the Child and Adult Care Food Program (CACFP).

**Filed February 13, 2023
Affirmed
Jesson, Judge**

Minnesota Department of Education

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Minnesota (for relator Youth Leadership Academy d/b/a Gar Gaar Family Services)

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Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After relator Youth Leadership Academy d/b/a Gar Gaar Family Services (Gar Gaar) participated as a sponsor in the Summer Food Service Program (Summer Program), Gar Gaar applied to be a sponsor of the Child and Adult Care Food Program (Child Care Program). Respondent Minnesota Department of Education (the Department) denied Gar Gaar's application. Gar Gaar appeals the denial of its application because it claims the Department's decision was based on erroneous theories of law; arbitrary, capricious, and unsupported by the record; and violated Gar Gaar's due process rights. Because the

Department's decision applied the correct federal regulations and its findings that Gar Gaar was neither financially viable nor had proper financial management in place were supported by substantial evidence, and neither arbitrary nor capricious, we affirm.

FACTS

Gar Gaar is a Minnesota nonprofit organization created in 2020 during the COVID-19 pandemic with the purpose of providing food to Somali children and adults who do not have access to regular meals. In order to achieve this mission, Gar Gaar sought to participate as a sponsor in two federal food-disbursement programs: the Summer Program and the Child Care Program. 7 C.F.R. §§ 225, 226 (2022).

There are four key components for the effective administration of the Summer Program and the Child Care Program:

- (1) sites—public or non-profit businesses that distribute food to children and/or adults;
- (2) sponsors (Gar Gaar sought this status)—public or non-profit businesses that regulate sites, provide sites with training and technical assistance, interact with the state agency on behalf of the sponsored sites, and reimburse sites for proper expenses;
- (3) state agency (the Department)—regulates sponsors and sites, provides technical assistance, and distributes program funds to sponsors; and
- (4) United States Department of Agriculture—promulgates and enforces program regulations, provides administrative guidance, and reimburses state agencies for funds properly paid to sponsors.

See 7 C.F.R. §§ 225.2-3, .6(b) (defining and explaining sites, new sponsors, state agency, and the United States Department of Agriculture's interplay).

Here, our focus is on the role of sponsors, which are subject to detailed regulatory requirements regarding operations. Sponsors are assessed against three core federal performance standards: (1) financial viability and financial management, (2) administrative capability, and (3) program accountability. 7 C.F.R. § 226.6(b)(1)(xviii)(A-C).

In summer 2021, Gar Gaar participated as a sponsor after the Department approved its application for the Summer Program. *See* 7 C.F.R. § 225. The Summer Program’s purpose is to provide food to children from needy areas during periods when schools are closed for summer vacation. 7 C.F.R. § 225.1. Through the Summer Program, Gar Gaar sponsored numerous sites and received about \$28 million in federal funding across the approximately three months that it operated in 2021.

In order to continue its work from the Summer Program, Gar Gaar sought to become a sponsor of the Child Care Program.¹ *See* C.F.R. § 226. The Child Care Program’s purpose is similar to the Summer Program’s purpose—to provide nutritional-food aid to child and adult participants and family or group daycare homes—but the Child Care Program operates during the school year, not just the summer, and the sponsor applications for the two programs are reviewed under two separate federal regulations. 7 C.F.R. §§ 225.1, 226.1.

¹ The Child Care Program evolved from two previous acts: the 1946 National School Lunch Act, in which Congress authorized federal subsidies for reduced-price lunches for low-income school children, and the 1966 Child Nutrition Act, which expanded the previous act to reach substantially beyond school children during school hours to subsidize meals for adult-daycare centers, homeless shelters, and after-school care programs. 42 U.S.C. § 1766 (1946); 42 U.S.C. § 1751 (1946); 42 U.S.C. § 1771 (1966).

Gar Gaar began its application to become a 2021-22 sponsor for the Child Care Program in August 2021 with the same mission and goal of operating approximately 52 sites. The Department provided technical assistance and guidance to Gar Gaar on its Child Care Program application from August 2021 to November 2021. For example, the Department exchanged emails and conducted telephone conversations with Gar Gaar in order to address some concerns the Department had with Gar Gaar’s application before it went under review.

In addition to email and telephone conversations, the Department and Gar Gaar had approximately five in-person meetings² to further discuss those concerns. And the Department conducted site visits to determine whether Gar Gaar and its chosen sites were meeting federal regulations. Of the four proposed sites the Department visited, all four sites were found ineligible. None met program eligibility requirements. *See* 7 C.F.R. § 226.6(b)(1)(xviii)(A-C).

Some of the Department’s other concerns included:

- Of the over one hundred sites submitted by Gar Gaar, almost all were either ineligible or sites already assigned to other Child Care Program sponsors;
- Three county health departments—Hennepin, Anoka, and Olmstead—refused to grant food and beverage licenses to Gar Gaar;
- During Gar Gaar’s sponsor participation in the Summer Program, over \$2 million of federal funds were expended in cashier’s checks and cash, within a short period, without

² The meetings were held on August 19, 2021, September 16, 2021, September 22, 2021, October 9, 2021, and October 16, 2021.

invoices or proper accounting, and were labeled as “miscellaneous debits” or “payroll”; and

- Gar Gaar lacked internal controls and management procedures to ensure meals met federal regulations for food disbursement.

After Gar Gaar attempted to rectify these concerns, Gar Gaar’s application was considered complete in November 2021, and the Department began its formal review of Gar Gaar’s application.

In December 2021, the Department denied Gar Gaar’s Child Care Program application, listing six main reasons for its denial:

- (1) failure to demonstrate financial viability and financial management (federal performance standard 1);
- (2) failure to demonstrate administrative capability (federal performance standard 2);
- (3) failure to demonstrate program accountability (federal performance standard 3);
- (4) failure to provide a budget;
- (5) failure to document that its sites met eligibility requirements; and
- (6) failure to demonstrate an unmet need in the community.

In addition to denying Gar Gaar’s Child Care Program application, the Department issued a notice of serious deficiency for Gar Gaar’s participation in the Summer Program for the submission of false information, which is not appealable according to the Department’s appeal process.

Gar Gaar filed an internal appeal of the denial of its application. In response, the Department sent Gar Gaar an acknowledgement of its appeal and a link to a site that contained all the Department's documentation related to Gar Gaar's application and appeal. Gar Gaar sent the Department its written appeal argument with accompanying exhibits, which included, but was not limited to, its financial documents, management plan, employee handbook, and corrective-action plan. The Department, through its appeal panel,³ reviewed Gar Gaar's materials.

In February 2022, the Department affirmed the denial of Gar Gaar's sponsor application for the Child Care Program. In its conclusions of law, the Department denied Gar Gaar's application for two main reasons: Gar Gaar failed to demonstrate (1) financial viability and financial management and (2) program accountability.⁴

Gar Gaar's certiorari appeal follows.

DECISION

Gar Gaar contends that the Department's denial of its application to participate as a sponsor of the Child Care Program was (1) based on erroneous theories of law when it referred to Gar Gaar's Summer Program's financial history in determining Gar Gaar lacked financial viability and financial management and (2) unsupported by substantial evidence

³ The Department's appeal panel includes independent and impartial Department staff acting as administrative-review officials. 7 C.F.R § 226.6(k)(5)(vii).

⁴ But the Department concluded that the appeal record was unclear as to whether Gar Gaar's management plan and employee handbook were considered by the Department, so it did not affirm as to the second reason for the Department's initial denial: failure to demonstrate administrative capability.

in the record, thus making the Department's determination that Gar Gaar lacked financial viability and financial management and program accountability arbitrary and capricious.⁵

Turning to the standard of review in this certiorari appeal, we examine whether the administrative agency's determination "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2012); *see also Axelson v. Minneapolis Tchrs.' Ret. Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996) (explaining that a quasi-judicial decision of an agency that does not have statewide jurisdiction will be reversed if the decision is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law); *see also In re Partners in Nutrition's Appeal of Disapproval of Site Expansion in the CACFP Program*, 904 N.W.2d 223, 228 (Minn. App. 2017) (applying standard of review for a quasi-judicial agency decision not subject to the Minnesota Administrative Procedure Act to a Child Care Program application).

It is important to note that an administrative agency's decision enjoys a presumption of correctness, and we defer to the relevant agency's expertise and special knowledge in its field when conducting our review. *In re Cities of Annandale & Maple Lake*

⁵ In addition, Gar Gaar asserts that the Department's reliance on its finding of serious deficiency was in violation of its due-process rights because this finding is not appealable in the Department's administrative appeal process. Because we do not rely on this finding of serious deficiency in our decision, we need not reach the merits of this argument on appeal.

NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater, 731 N.W.2d 502, 513 (Minn. 2007). In light of this deferential standard, we do not substitute our judgment for that of the administrative agency when the administrative agency's findings are properly supported by the evidence. *In re Denial of Eller Media Co.'s Applications for Outdoor Advert. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003). But we review a state agency's interpretation of a federal regulation de novo. *In re Cities of Annandale & Maple Lake*, 731 N.W.2d at 516.

I. The Department did not err in relying upon Gar Gaar's financial history with the Summer Program when it determined Gar Gaar was neither financially viable nor had proper financial management to be a sponsor of the Child Care Program.

Gar Gaar asserts that the Department, in reviewing Gar Gaar's financial history with the Summer Program, applied the wrong federal regulation to its new sponsor application for the Child Care Program. And as a result, Gar Gaar contends, the Department applied an erroneous theory of law when it determined Gar Gaar was neither financially viable nor had proper financial management. We disagree.

We review de novo whether the Department can rely on Gar Gaar's Summer Program financial history when evaluating Gar Gaar's Child Care Program sponsor application. *In re Cities of Annandale & Maple Lake*, 731 N.W.2d at 516. To address this issue, we turn first to the Child Care Program's federal standard relating to financial viability and financial management. 7 C.F.R. § 226.6(b)(1)(xviii)(A).

For a new sponsor applicant to meet this federal standard, an applicant must show all three of the following factors: (1) description of need/recruitment of sites, (2) fiscal

resources *and financial history*, and (3) budgets that are necessary, reasonable, allowable, and appropriately documented. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(1-3) (emphasis added).

Based on this federal standard, the Department properly relied on Gar Gaar's participation in the Summer Program because in order for Gar Gaar's Child Care Program application to be approved, it must have sufficiently documented its financial history—factor two cited above. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(2). Specifically, factor two explains that:

A new institution must demonstrate that it has adequate financial resources to operate the [Child Care Program] on a daily basis, has adequate sources of funds to continue to pay employees and suppliers, during periods of temporary interruptions in [Child Care Program] payments and/or to pay debts when fiscal claims have been assessed against the institution, and can document financial viability (for example, through audits, financial statements, etc.).

Id. And a significant part of Gar Gaar's financial history was its participation in the Summer Program. As a result, the Department did not apply an erroneous theory of law when it reviewed the Summer Program's finances. Factor two explicitly allows this review. *Id.*

Gar Gaar's performance in the Summer Program—when Gar Gaar was tasked with overseeing numerous sites and approximately \$28 million in federal funding—provides relevant insight into its ability to continue satisfactorily operating a similar program with approximately 52 proposed sites and about \$18 million in requested federal funding. Given the federal directive to assess a proposed sponsor's financial history, and Gar Gaar's recent experience, the Department did not err in looking into Gar Gaar's financial management

of the Summer Program in making its determination on Gar Gaar’s financial viability and financial management.

To persuade us otherwise, Gar Gaar argues that the Department “imposed more restrictive requirements” on Child Care Program applicants, relying on *Partners in Nutrition* to support this claim. *See* 904 N.W.2d at 232-33 (reversing the denial of an application to expand from a single-site sponsor to a multi-site sponsor for an existing approved sponsor for the Child Care Program because the Department created “its own unduly restrictive test” for financial viability). But *Partners in Nutrition* is distinguishable. *Partners in Nutrition* analyzed an already approved sponsor, not a new applicant, and the Department in that case applied a more stringent ratio for assets and liabilities for financial viability, which was not done here. *Id.* at 226, 232.

Further, Gar Gaar asserts that, as in *Partners in Nutrition*, the Department applied a “legal standard separate from . . . the applicable federal regulations.” *Id.* at 232-33. But the Department did not create its own legal standard when it took into consideration Gar Gaar’s Summer Program performance. The federal standards allow the Department to do so by listing financial history in its second factor under financial viability and financial management.⁶ *See* 7 C.F.R. § 226.6(b)(1)(xviii)(A)(2).

In sum, the Department did not err by reviewing Gar Gaar’s financial history with the Summer Program in making its evaluation that Gar Gaar failed to demonstrate adequate

⁶ Nor did the Department “focus on the incorrect federal food program” in its denial because it did not apply the federal regulation that governs the Summer Program when it took into consideration Gar Gaar’s Summer Program finances.

standards of financial viability and financial management to be a sponsor of the Child Care Program.

II. The Department's decision to deny Gar Gaar's application for failing to demonstrate financial viability and proper financial management was supported by substantial evidence in the record.

Next, Gar Gaar asserts that the Department's denial was unsupported by substantial evidence in the record because the Department ignored both Gar Gaar's documentation relating to its financial viability and financial management and the three factors for financial viability and financial management in the Child Care Program's federal regulation. Because the Department only needs to have substantial evidence that Gar Gaar did not demonstrate at least one federal performance standard to require its denial of Gar Gaar's application, we need not address the Department's finding that Gar Gaar failed to demonstrate program accountability.⁷ *See* 7 C.F.R. § 226.6(c)(1)(i) (requiring the Department to deny a prospective sponsor's application if it does not meet all three federal standards). Instead, we continue our review of whether the Department had substantial evidence in the record to support its finding that Gar Gaar was neither financially viable nor had effective financial management in place.

⁷ But even if we did review Gar Gaar's program accountability, we would have come to the same conclusions. Given the Department's undisputed finding that three county health departments have denied granting food and beverage licenses to Gar Gaar after observing improper distribution of bulk food to families and a lack of National Sanitation Foundation equipment at food-service facilities, the Department has sufficient evidence that this standard has not been met as well. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(3)(5)(ii-iii) (stating that the applicant must demonstrate that its facilities comply with licensure and have food service that complies with applicable state and local health sanitation requirements).

Whether an administrative body's decision is supported by the record is a substantial-evidence analysis. *See In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (stating that the substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it). And substantial evidence is defined as more than a scintilla of relevant evidence, considered in totality, that could lead a reasonable person to the factual conclusion at issue. *Minn. Ctr. For Env't. Advoc. v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

As outlined previously, to become a sponsor for the Child Care Program, a new applicant must demonstrate three factors to satisfy the federal standard for financial viability and financial management. Recall, these factors include (1) a description of need/recruitment of sites, (2) fiscal resources and financial history, and (3) budgets that are necessary, reasonable, allowable, and appropriately documented. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(1-3). If any of these three factors for financial viability and financial management are not demonstrated, the federal standard has not been met and the Department must deny the sponsor application. 7 C.F.R. § 226.6(b)(1)(c)(1)(i).

On this record, the Department's determination that Gar Gaar failed to demonstrate financial viability and financial management is supported by sufficient evidence. Gar Gaar failed to demonstrate financial viability and financial management for two main reasons: (1) deficient transactions from Gar Gaar's participation in the Summer Program and (2) numerous sites that failed to meet program-eligibility requirements. We address each in turn.

First, Gar Gaar admits that over \$2 million of federal funding was spent in cashier's checks and cash transactions within a short period, which violated federal regulations for financial management because these transactions were not recorded in invoices, receipts, or in an internal accounting procedure. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(1-3). The Department flagged these transactions in the initial application process and again in its internal administrative appeal. Gar Gaar labeled these funds as "miscellaneous debits" and "payroll" transactions, and Gar Gaar further admits that these transactions occurred in a "period of disruption caused by Gar Gaar's prior bank . . . which had been holding funds deposited by [the Department] for the [Summer Program]." Since Gar Gaar, to be approved as a sponsor, must demonstrate that its financial-management plan ensures the delivery of the Child Care Program benefits to its allocated sites and that the program funds would be accounted for and appropriately expended, the uncertainty of the expenses relating to this \$2 million is sufficient to deny Gar Gaar's application. 7 C.F.R. § 226.6(b)(1)(xviii)(A)(2-3) (stating that an applicant must demonstrate that it can document financial viability through financial statements and must show that costs in the applicant's budget are allowable and appropriately documented).

Yet Gar Gaar maintains that these transactions should not constitute substantial evidence because it rectified all these transactions as demonstrated through its appeal documents and exhibits. We disagree. These transactions are still not accounted for nor are there any invoices or receipts to explain where the federal funds were used, outside of Gar Gaar's personal statements. Although Gar Gaar contends that all the cashier's checks and cash were recorded in its "financial internal control process," Gar Gaar failed to explain

what this “financial internal control process” entailed in order to be vetted by the Department for Gar Gaar’s application. More fundamentally, rectification of deficient transactions does not mean the deficient transactions did not exist. Even assuming Gar Gaar tightened its financial controls after the Summer Program ended, the misaccounting of these funds remains as sufficient evidence to deny a sponsor application.

Finally, Gar Gaar argues that this \$2 million in miscellaneous costs was an inflated number and that it explained this all to the Department, citing to emails between itself and the Department. But these emails are not included in its exhibits. Nor is this an appropriate rationale to support the transfer of millions of dollars of undocumented federal spending, all occurring within a short period.⁸

In addition to deficient transactions, four sites that Gar Gaar submitted did not meet the Child Care Program eligibility requirements after a pre-approval visit by the Department and numerous submitted sites were already operating under other approved sponsors. Gar Gaar does not deny that these submitted sites were ineligible. Rather, Gar

⁸ Gar Gaar also contends that the Department misapplied the “rule of reason” when it reviewed Gar Gaar’s application because the Department did not apply a lower level of scrutiny. Child and Adult Care Food Program Improving Mgmt. and Program Integrity, 76 Fed. Reg. 34, 546 (June 13, 2011) (to be codified at 7 C.F.R. § 226) (stating that state agencies should “take into account a [sponsor’s] size and sophistication when examining different types of organizations’ applications,” and to “apply a ‘rule of reason’ when reviewing material submitted by different types of institutions, with . . . different levels of managerial sophistication.”) This argument fails. Gar Gaar is not the type of smaller organization, such as an independent child-care center, who would have greater difficulty meeting the federal performance standards that the rule of reason was proposed to protect. Gar Gaar is a large non-profit that utilized approximately \$28 million in federal funds in three months when it acted as a sponsor for the Summer Program. Accordingly, this lower level of scrutiny does not apply to Gar Gaar.

Gaar contends that this is not a proper basis for a denial of its sponsor application. But factor one requiring descriptions of need/recruitment of sites states that “[a] new sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities.” 7 C.F.R. § 226.6(b)(xviii)(A)(1). By failing to demonstrate its ability to properly recruit sites, Gar Gaar did not satisfy this federal standard. Thus the three ineligible sites also provide the Department with sufficient evidence for its decision.⁹

In sum, because the Department acted properly within federal regulations in relying on Gar Gaar’s Summer Program financial history and the record provided sufficient evidence to support its finding that Gar Gaar lacked financial viability and financial management, the Department did not err in its decision to deny Gar Gaar’s sponsor application for the Child Care Program.

Affirmed.

⁹ Nor are we persuaded by Gar Gaar’s assertion that the Department’s decision was arbitrary and capricious because the Department did not address all three factors for financial viability and financial management and ignored most of Gar Gaar’s appeal materials. There is no support for this contention in the record. The Department, in its findings of fact, address Gar Gaar’s arguments on appeal, referenced the exhibits Gar Gaar provided, and listed specific relevant documents it reviewed on appeal to support its decision. And Gar Gaar points to no authority to support its assertion that an administrative agency must review a sponsor applicant’s appeal argument line by line. Further, an agency’s conclusions are not arbitrary and capricious as long as a “rational connection between the facts found and the choice made has been articulated.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted).