

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**INDEPENDENT LIVING CENTER
OF MID MO INC. D/B/A SERVICES
FOR INDEPENDENT LIVING**

APPELLANT,

v.

**DEPARTMENT OF SOCIAL
SERVICES, MO HEALTHNET DIVISION**

RESPONDENT.

DOCKET NUMBER WD74707

DATE: January 8, 2013

Appeal From:

Boone County Circuit Court
The Honorable Kevin M.J. Crane, Judge

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin,
Judge

Attorneys:

Peter H. Ruger, St. Louis, MO, for appellant.

Daniel W. Follett, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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OF MID MO INC. D/B/A SERVICES
FOR INDEPENDENT LIVING,**

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**DEPARTMENT OF SOCIAL
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RESPONDENT.

No. WD74707

Boone County

Before Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

The MO HealthNet Division of the Missouri Department of Social Services ("DSS") issued a recoupment sanction for \$53,194.80 against Independent Living Center of Mid MO d/b/a Services for Independent Living ("SIL"). DSS indicated that SIL received Medicaid payments in the amount of \$53,194.80 for personal care attendant services provided by an attendant to her spouse in violation of 13 CSR 70-91.010(3)(K). SIL appealed the imposition of the sanction to the AHC, which found three bases for sanctioning SIL: (1) presenting false claims to DSS; (2) violating its provider agreement with DSS; and (3) violating the regulation that prohibited a personal care attendant from being married to the patient. SIL appeals, presenting three arguments: (1) SIL did not have intent to deceive or knowledge of the false or fraudulent nature of the claims; (2) third-party liability does not apply to hold SIL liable for the actions of its independent contractor; and (3) the sanction violates SIL's due process rights in that the sanction is not rationally related to a legitimate state interest.

AFFIRM.

Division Three holds:

(1) SIL's argument that the AHC's construction of the word "false" as used in 13 CSR 70-3.030(3)(A)1 is inconsistent with section 208.164.5 first appears in the reply brief. As such, SIL's argument is not properly preserved for appellate review. Even if SIL's argument were preserved, it would be without merit. There is no obvious connection between 13 CSR 70-3.030 and section 208.164, and SIL was not cited for violating section 208.164. Moreover, both the regulation and the statute reference "fraud" in a manner that differentiates it from false, supporting that "false" claims do not need to be knowingly false. Moreover, the AHC found two independent bases for sanctioning SIL, neither of which SIL challenged on appeal.

(2) The common law doctrine of respondeat superior is applicable in assigning tort liability and has no application to this case. The recoupment sanction is a function of the participation agreement, wherein SIL contractually consented to accepting legal responsibility for all services provided and billed under its provider number.

(3) Although SIL has a property interest in \$53,194.80, the amount of the recoupment sanction, avoiding payment for ineligible Medicaid claims is a legitimate state interest.

Opinion by Cynthia L. Martin, Judge

January 8, 2013

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