[U]09/10/96 MATTER LICENSE APPLICATIONS POLK COUNTY

1996 | Cited 0 times | Court of Appeals of Minnesota | September 10, 1996

[Editor's note: originally released as an unpublished opinion]

KALITOWSKI, Judge

The Commissioner of Health (Commissioner) issued a decision on two consolidated ambulance license applications: (1) granting the application of Polk County Ambulance Service (Polk Ambulance) to upgrade its ambulance license within its primary service area (PSA) from basic life service (BLS) to advanced life service (ALS); and (2) denying the application of County Emergency Medical Service (County Emergency) to provide ALS transfers from Riverview Hospital, a hospital located within the PSA of Polk Ambulance. On appeal, County Emergency argues the Commissioner's decision denying its application is based on an error of law, unsupported by substantial evidence, and arbitrary and capricious. We affirm.

DECISION

The Commissioner's determination in an ambulance licensing proceeding is a final agency decision. Minn. Stat. § 144.802, subd. 5 (1994). Agency decisions enjoy a presumption of correctness, and deference is given to agency expertise. Reserve Mining Co. v. Herbst , 256 N.W.2d 808, 824 (Minn. 1977) . On review, this court will reverse an agency decision that is based on an error of law, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 14.69 (1994).

The burden of proof is on the ambulance license applicant. Minn. R. 1400.7300, subpt. 5 (1995). Following a public hearing on a license application, the administrative law judge (ALJ) makes a written recommendation to the Commissioner as to whether the proposed ambulance service is "needed" by considering the following factors:

(1) the relationship of the proposed service * * * to the current community health plan * * *;

(2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;

(4) the estimated effect of the proposed service * * * on the public health;

(5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service * * * .

Minn. Stat. § 144.802, subd. 3 (g). After receiving the ALJ's report, the Commissioner grants or denies the proposed license based on a consideration of the five factors listed above. Minn. Stat. § 144.802, subd. 4.

Here, the Commissioner made specific findings and denied the application of County Emergency. County Emergency argues that the Commissioner's findings fail to address public health as required by factor four. We disagree. The Commissioner specifically addressed this issue by stating that granting the application of [County Emergency] will harm the public health by allowing operation of an ALS-S service within the PSA of an ALS provider when need for the [County Emergency] service has not been established.

Further, none of the evidence submitted on behalf of County Emergency specifically addressed public health. Thus, although the Commissioner's findings on public health are conclusory, County Emergency did not meet its burden of presenting evidence on public health.

County Emergency also contends that under the second factor, the Commissioner improperly failed to consider the recommendations of County Emergency supporters, including Riverview Hospital in Crookston and governing bodies from within the PSA of County Emergency. We disagree. County Emergency's list of unconditional supporters is not statutorily relevant because none of those supporters represent Polk County or the City of Crookston. See Minn. Stat. § 144.802, subd. 3(g)(2) (ALJ and Commissioner must consider recommendations made by the governing bodies of the counties and municipalities in which the service would be provided).

County Emergency also argues that under the third factor, the Commissioner failed to find deleterious effects on the public health from duplication of services. We disagree. The Commissioner's memorandum cited and discussed case law holding that in ambulance licensing proceedings, the public welfare is not promoted by free enterprise. The Commissioner further indicated that denial of County Emergency's application would lower the cost of ALS transfers for most Riverview patients. Additionally, the Commissioner expressed concern that the public welfare is harmed by the disturbing lack of cooperation between Polk Ambulance and County Emergency.

The law in this area places great emphasis on protecting the public from competition between ambulance services. In Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health , 257 N.W.2d 343 (Minn. 1977), the supreme court reasoned:

We interpret Minn. Stat. § 144.802 to manifest a legislative intention to protect the public welfare against deleterious competition in the ambulance services field. The provision embodies a legislative determination that the ambulance service business is one in which the public welfare is not

promoted by free enterprise. Ambulance service is essential to a community. It is also a service for which demand is inelastic and expenses largely fixed. Where the demand is insufficient to support additional services, either quality is sacrificed or rates and public subsidies increased, but in either event, the taxpayer-consumer suffers.

Id. at 348.

In North Memorial Medical Ctr. v. Minnesota Dep't of Health , 423 N.W.2d 737 (Minn. App. 1988), the relator applied for a license extending its scheduled nonemergency services beyond its PSA to include the entire seven county metropolitan area. The Commissioner denied the application, and we affirmed, focusing on the deleterious effect of competition and concluding that "in the face of an inelastic demand, any competition would be deleterious." Id. at 739.

In In re Rochester Ambulance , 500 N.W.2d 495 (Minn. App. 1993), an air ambulance license holder applied for a ground ambulance license even though another company already held a ground ambulance license in that PSA. In affirming the Commissioner's denial, we stated that in the absence of specific evidence to the contrary, the Commissioner was entitled to presume there would be a deleterious effect on the public health through a reduction in services or an increase in price.

Id. at 499 (emphasis added).

Here, the factor of "deleterious effects on the public health" weighs against County Emergency. Because Polk Ambulance now has an ALS license, duplication would necessarily result from County Emergency providing ALS transfers from Riverview Hospital, which is located in Polk Ambulance's PSA. The cases indicate that any competition between ambulance services is harmful to the public. While County Emergency apparently provided quality ALS transfer service from Riverview prior to Polk Ambulance being granted an ALS license, County Emergency has no statutory right to continue providing those services. Indeed, now that Polk Ambulance has an ALS license, County Emergency transfers from Riverview would, as the Commissioner noted, violate the rules governing the administration of PSAs. See Minn. R. 4690.3500 (1995) (an ambulance service may not regularly provide services within an area other than its PSA unless no other ambulance service is capable of providing the service).

Ultimately, County Emergency has not demonstrated a need for its proposed services. While County Emergency and Riverview make arguments supporting "choice" in ALS transfer services, the licensing statute, administrative rules, and case law all manifest a clear intent to limit ambulance competition. Because the Commissioner's findings adequately address all five statutory factors, we conclude the Commissioner's decision is not based on an error of law, unsupported by substantial evidence, or arbitrary and capricious.

Affirmed.