Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Northlake Nursing and Rehabilitation Center
Docket No. A-11-36
Decision No. 2376
April 1, 2011

FINAL DECISION ON REVIEW OF ADMINISTRATIVE LAW JUDGE DECISION

Northlake Nursing and Rehabilitation Center (Northlake) appealed the decision of Administrative Law Judge (ALJ) Steven T. Kessel dismissing Northlake's two requests for hearings. *Northlake Nursing and Rehabilitation Center*, DAB CR2271 (October 20, 2010) (ALJ Decision). The ALJ determined that Northlake failed to appeal noncompliance findings from the last of several surveys and that, consequently, the sole remedy that it sought to challenge (termination) was authorized as a matter of law. ALJ Decision at 8. Accordingly, the ALJ dismissed the cases on the ground that Northlake had no right to hearing. *Id*.

For the reasons explained below, we uphold the dismissal of Northlake's hearing requests.

Case background

Northlake is an Indiana skilled nursing facility (SNF). The Indiana state survey agency conducted a series of five surveys, ending on November 13, 2009, December 16, 2009, December 18, 2009, February 5, 2010 (February survey) and March 26, 2010 (March 26 survey), that found Northlake not in substantial compliance with applicable Medicare participation requirements. These findings led to several notices from CMS informing Northlake of various remedies being imposed, including civil money penalties (CMPs), denial of payment for new admissions (DPNA), and termination.

Northlake filed its first hearing request (Docket No. C-10-572) on March 17, 2010, in response to a CMS notice dated February 22, 2010 notifying Northlake of the results of the February survey and imposing continuing remedies, as well as a mandatory termination to take effect March 15, 2010. Northlake March 17,

2010 Hearing Request (3/17/11 HR).[1] Northlake asserted that it could show substantial compliance as of October 31, 2009, which is a "compliance date prior to the March 15, 2010 deadline," and that it "maintained substantial compliance after this time." 3/17/11 HR at 7.[2] Therefore, Northlake argued, its license should have been renewed and mandatory termination was therefore improper. Northlake stated that it had "not yet filed a request for hearing or administrative appeal" as to the remedies other than termination. *Id*. at 2.

Northlake filed its second hearing request on April 15, 2010 in response to CMS's March 31, 2010 notice. That notice rescinded the mandatory termination (in light of the stay of the license nonrenewal), but advised Northlake that a discretionary termination would go into effect on April 20, 2010 based on the February survey findings unless Northlake achieved substantial compliance by April 13, 2010. CMS Ex. 8, at 2. Northlake alleged again that it was in substantial compliance on October 31, 2009, and also that it was in substantial compliance on March 12, 2010 (when a limited complaint survey made no noncompliance findings), on March 31, 2010 (the date of the notice), and "in any event, before the April 20, 2010 discretionary termination date." 4/15/11 HR, at 2-3. Northlake argued that discretionary termination was improper for the same reasons it contested the mandatory termination. *Id*. Northlake did not address the CMPs or DPNA in the second hearing request either.

The ALJ consolidated the two hearing requests. ALJ Decision at 2. In both hearing requests, Northlake asserted that its contentions were supported by evidence, including survey records, resident medical records, facility policies and documentation, expert opinions, and staff statements. 3/17/11 HR at 7-8; 4/15/11 HR at 3-4. Neither hearing request identified specific noncompliance findings with which Northlake disagreed.

Pursuant to the ALJ's prehearing order dated March 30, 2010, both parties filed their prehearing exchanges which were to include all proposed exhibits and

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[1] The mandatory termination was based on Indiana's decision on February 1, 2010 not to renew Northlake's state license. CMS Ex. 7, at 1; 42 C.F.R. §498.75(a). Northlake obtained a court order staying the non-renewal, after which CMS, in a March 31 notice, lifted the mandatory termination order and instead set a discretionary termination date of April 20, 2010 based on noncompliance found at the February survey. CMS Ex. 9, at 1-2. According to Northlake, the matter of the license non-renewal remains pending in state court. Northlake Br. at 5.

[2] The October 31, 2009 date appears to relate to the end of the second renewal period of a probationary license status on which the state placed Northlake based on a consent order after an immediate jeopardy finding in January 2009. 3/17/11 HR, Attached Ex. F (Order of State ALJ Brian K. Lowe). A third probationary license period (the most allowed under state law) was granted in place of return to a full license and expired January 31, 2010. The failure to achieve substantial compliance at that time (as found by the two surveys in December 2009) led to the suspension mentioned above. Northlake does not explain how proof of substantial compliance on October 31, 2009 would be relevant to whether noncompliance existed as found in the February (or March 26) surveys.

written direct testimony of all proposed witnesses. CMS's prehearing brief dated August 2, 2010 was combined with a motion for summary affirmance.

Northlake's prehearing brief dated September 1, 2010 included its opposition to CMS's motion and a cross-motion for summary disposition in its favor. Northlake proffered five exhibits: (1) the transcript of a hearing before a state ALJ; (2) the consent order relating to its state license; (3) the emergency order for relocation of its residents as a result of the denial of license renewal; (4) the non-renewal notice; and (5) the court order staying the non-renewal. CMS proffered 56 exhibits and opposed Northlake's summary disposition motion.

On April 30, 2010, CMS sent Northlake notice that, based on the results of the March 26 survey, Northlake "continued not to be in substantial compliance" and informing it of the final disposition of the remedies resulting from the survey cycle. CMS Ex. 10, at 1. The discretionary termination had gone into effect on April 20, 2010 since Northlake had failed to show substantial compliance prior to April 13, 2010. *Id*. The April 30, 2010 letter notified Northlake that it had 60 days to file a hearing request if it disagreed with "the finding of noncompliance found during the March 26, 2010 survey which resulted in the continuation of previously imposed remedies . . . ." *Id*. at 3. Northlake did not file any further hearing request.

ALJ Decision

The ALJ admitted all proffered exhibits into the record and proceeded to decision on the cross-motions. ALJ Decision at 1-2. The ALJ first concluded that Northlake had challenged only the remedy of termination. *Id*. at 2. The ALJ next determined that CMS's motion for summary affirmance was effectively a motion to dismiss on the grounds that any challenge to the termination was moot because Northlake failed to appeal the deficiency findings from the March 26 survey, and therefore Northlake had no right to a hearing. *Id*. at 2-3.

The ALJ held that CMS had discretion to terminate Northlake's participation in Medicare based on noncompliance found at the March 26 survey. Because he found that Northlake never challenged the noncompliance findings from that survey, the ALJ concluded that they were administratively final. The ALJ recognized that Northlake did seek to challenge the previous survey and alleged substantial compliance on various dates. *Id*. at 3-4. The ALJ concluded, however, that the April 30, 2010 notice unambiguously advised Northlake that additional noncompliance findings were made at the March 26 survey, that the previously imposed remedies, including termination, were continued because of that noncompliance, and that Northlake had to act to preserve a right to challenge those findings. *Id*. at 5. The ALJ found unpersuasive Northlake's allegation that the April 30, 2010 notice confused or misled it about whether further action on its

part was necessary to preserve a right to a hearing on the March 26 survey noncompliance findings. *Id*. at 7.

Because Northlake failed to request a hearing on the March 26 survey findings despite clear notice, the ALJ concluded Northlake had no right to hearing on the termination. *Id*. at 8. The ALJ also pointed out that, even in its response to CMS's motion and prehearing brief, Northlake failed to discuss the merits of any of the noncompliance findings and failed to offer any exhibits addressing those findings. *Id*.

The ALJ further concluded that Northlake's challenges to the results of the prior surveys were either moot or irrelevant to any issue he could properly resolve. Northlake did not challenge the imposition of the additional remedies apart from termination. *Id*. at 8. Therefore, according to the ALJ, no issue arose as to the duration of remedies or the reasonableness of the amount of the CMPs. The ALJ concluded that the termination was authorized based on the unchallenged March 26 survey alone, and would therefore remain authorized even if the ALJ were to overturn any noncompliance findings made in the February survey. *Id*. at 6.

The ALJ also rejected Northlake's argument that CMS's termination should be overturned because it was the end result of wrongful state action against Northlake's license from which all the subsequent surveys flowed. *Id*. at 5-6. The ALJ held that no "exclusionary rule" prevents CMS from relying on survey findings that are unchallenged (as here) or supported on the record, "even assuming that the facility would never have been surveyed but for some error or even wrongful conduct by a State agency." *Id*. at 6.

Legal authority and standard of review

Long-term care facilities including SNFs must comply with participation requirements that are set forth at 42 C.F.R. Part 483. "Substantial compliance" means a level of compliance such that "any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm." 42 C.F.R. § 488.301. "Noncompliance," in turn, is defined as "any deficiency that causes a facility to not be in substantial compliance." *Id*. Survey findings are reported in a Statement of Deficiencies (SOD). A SNF found not to be in substantial compliance may be subject to various enforcement remedies, including CMPs, DPNAs, and termination. 42 C.F.R. §§ 488.402, 488.406, 488.408. [3]

A SNF may appeal to an ALJ a finding of noncompliance resulting in imposition of a remedy but may not appeal CMS's choice of which remedy to impose. 42 C.F.R. §§ 498.3(b)(13); 488.408(g). An ALJ may dismiss an appeal for cause

[3] Noncompliance need not be "substantial" to support an enforcement, since any noncompliance is, by definition, a lack of substantial compliance. *But see* ALJ Decision at 3.

where a party "does not . . . have a right to a hearing." 42 C.F.R. § 498.70(b). Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-25 (1986); *Everett Rehabilitation and Medical Center*, DAB No. 1628, at 3 (1997).

We review a disputed finding of fact by an ALJ to determine whether the finding is supported by substantial evidence on the record as a whole and a disputed conclusion of law to determine whether it is erroneous. *See* Departmental Appeals Board, Guidelines—Appellate Review of Decisions of Administrative Law Judges Affecting a Provider's Participation in the Medicare and Medicaid Programs, http://www.hhs.gov/dab/divisions/appellate/guidelines/prov.html.

We review an ALJ's exercise of discretion to dismiss a hearing request where dismissal is authorized by law for abuse of discretion. *Capitol House Nursing and Rehab Center*, DAB No. 2252, at 3 (2009); *High Tech Home Health, Inc.*, DAB No. 2105, at 7-8 (2007) (and cases cited therein), *aff'd*, *High Tech Home Health, Inc. v. Leavitt*, Civ. No. 07-80940 (S.D. Fla. Aug. 15, 2008). Whether summary judgment is appropriate is a legal issue that we address de novo. *Lebanon Nursing and Rehabilitation Center*, DAB No. 1918 (2004).

Analysis

1. *The ALJ did not err in concluding that Northlake failed to appeal the March 26 survey findings.*

Northlake argues that the dismissal should be reversed because nothing in CMS's notices informed it that "failing to object to two of the sanctions would irreparably prevent it from appealing the termination sanction." Northlake Br. at 9-10. Instead, according to Northlake, the notices were contradictory and led Northlake to believe that its hearing requests already "appealed everything it could appeal . . . ." *Id*. at 14.

To begin with, Northlake's argument reflects its misunderstanding of the applicable appeal process. The regulations at 42 C.F.R. Part 498 do not provide for appeals by SNFs of individual sanctions in isolation but rather for appeals from "initial determinations," defined (as relevant here) to include "a finding of noncompliance that results in the imposition of a remedy specified in § 488.406" which includes the remedies imposed on Northlake. 42 C.F.R. §§ 498.3(b)(13) (emphasis added); 488.408(g)(1). Northlake appears instead to contest only the

selection of a discretionary termination as a remedy.[4] Thus, Northlake argues that the CMPs and DPNA were "sufficient penalties for the findings alleged in the surveys," while termination "is entirely too harsh under these circumstances." Northlake Br. at 9. The choice of remedies imposed by CMS is, however, placed expressly outside the scope of review by regulation. 42 C.F.R. §§ 498.3(c)(11), 488.408(g)(2), 488.438(e)(2); *see also Beechwood Sanatorium*, DAB No. 1906, at 31-33 (2004); *Beverly Health & Rehab. – Spring Hill*, DAB No. 1696, at 20-21, 23 (1999).

Northlake also misunderstands the ALJ Decision. The ALJ did not hold that Northlake was precluded from appealing the termination because it failed to appeal the CMPs and DPNA. The ALJ instead held that Northlake could not pursue its objection to the termination remedy because it failed to challenge findings of noncompliance made at the March 26 survey which were sufficient in themselves to authorize CMS to terminate Northlake. ALJ Decision at 7-8. The ALJ further dismissed the challenge to the February survey findings as moot because the termination would stand regardless of whether those findings were overturned. *Id*. at 5. The Board has repeatedly affirmed that CMS "has discretion to proceed with termination" whenever a facility is not in substantial compliance with the requirements. *Beechwood Sanatorium* at 27; *Emerald Oaks*, DAB No. 1800, at 39 (2001); *see also* 42 C.F.R. § 488.402(c)(CMS "may apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance."). Here, Northlake was on notice that discretionary termination would go into effect unless it demonstrated substantial compliance prior to April 13, 2010.

Had Northlake objected to the duration of the DPNA or the CMPs (or the reasonableness of the CMP amounts), the dispute might not have been entirely moot, since resolving the facts surrounding the February survey might have made a difference to the outcome of such objections.[5] Northlake chose not to raise such

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[4] Different provisions allow any provider to appeal "an initial determination to terminate its provider agreement" for reasons set out in section 489.53. 42 C.F.R. § 498.3(b)(8); *see also* 42 C.F.R. § 498.5(b)(providers entitled to hearings if dissatisfied with "initial determination" to terminate). The reasons set out in section 489.53 include a determination that the provider "no longer meets the requirements for SNFs . . . set forth elsewhere" in title 42 of the Code of Federal Regulations. This provision has to be read, however, with the more specific appeals provisions in sections 498.3 and 488.408.

[5] Northlake is thus also confused in its assertion that a provider is required to "appeal each and every notice of every sanction issued," to avoid CMS asserting that the "underlying facts of Remedy One bind the provider to the facts underlying Remedy Two." Northlake Reply Br. at 1-2. Rather, a provider needs to appeal each finding of noncompliance with which it disagrees in order to challenge a remedy imposed based on that noncompliance. Where the provider concedes, or fails to dispute, the noncompliance findings, it is precluded from challenging the choice of remedies, but may dispute the reasonableness of a CMP amount, the level of noncompliance (in limited circumstances), or the time at which it achieved substantial compliance if those are relevant to the remedies imposed. *See* 42 C.F.R. §§ 488.438(e); 498.3(b)(14); 498.3(d)(10) & (11).

objections. Even if it had, however, their resolution would not have altered the outcome as to the termination.

Furthermore, Northlake has not shown that, at the time it filed its last hearing request on April 15, 2010, it had received the SOD from the state agency identifying what noncompliance findings were made, was aware of whether CMS had adopted the noncompliance findings from the March 26, 2010 survey or knew whether CMS had determined to impose new remedies or continue the existing ones based on those findings. Without that information, Northlake logically could not have appealed the March 26 survey findings in its April 15 hearing request.

In short, Northlake could not have appealed the March 26 survey findings before receiving the notice of CMS's determinations in the April 30, 2010 letter and did not appeal them afterward. The ALJ did not err in concluding that, in the absence of any challenge to the March 26 survey noncompliance findings, no relief from the termination could be granted regardless of the outcome to Northlake's challenge to the February survey. Since Northlake sought no other relief, it had no right to a hearing and dismissal was proper under 42 C.F.R. § 498.70(b).[6]

2. *The ALJ did not err in concluding that Northlake was not prevented from perfecting an appeal of the March 26 survey findings by misleading CMS notices*.

The language from CMS's April 30, 2010 notice to which Northlake points as misleading "[a]ny reasonable provider" into believing that "no further action would be needed to perfect its appeal" is as follows:

> **We have received a copy of your request for hearing** to the Departmental Appeals Board in Washington, D.C., where an Administrative Law Judge will be designated to hear the case. You will be contacted by that office concerning the time and place of hearing. The CMP will not be collected until a final administrative decision upholding its imposition has been made. **There are no other outstanding appeal issues**.

Northlake Br. at 10, quoting CMS Ex. 10, at 3 (emphasis added by Northlake).

The ALJ held that, even if the quoted selection could be "misleading if it were read in a vacuum," Northlake could not have been misled. ALJ Decision at 7. The ALJ pointed out that, preceding the language on which Northlake relies, the notice expressly advises Northlake as follows:

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[6] Since this regulation empowers the ALJ to dismiss an appeal in which a party has no right to a hearing on his own motion, we need not address in detail Northlake's argument that it was error for the ALJ to treat CMS's motion for summary affirmance as a motion to dismiss. We note, in any case, that CMS's motion did cite the dismissal regulations at 42 C.F.R. § 498.70. CMS Prehearing Br. at 2 n.1, 3.

> If you disagree with the finding of noncompliance found during the March 26, 2010 survey which resulted in the continuation of previously imposed remedies, you or your legal representative may request a hearing before an administrative law judge of the Department of Human Services, Departmental Appeals Board (DAB). Procedures governing this process are set out in Federal regulations at 42 CFR Section 498.40, et. seq. **A <u>written</u> request for a hearing must be filed <u>no later than 60 days</u> from the date of receipt of this notice.**
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> * * *
>
> A request for a hearing should identify the specific issues and the findings of fact and conclusions of law with which you disagree . . . . It should also specify the basis for contending that the findings and conclusions are incorrect.

CMS Ex. 10, at 3 (emphasis in original).

We agree that, in context, it is evident that CMS was notifying Northlake that it must take action within 60 days if it disagreed with the findings made at the March 26 survey. This message is not contradicted by the later inclusion of the information that CMS had received a copy of the prior hearing requests arising from the February survey. The April 30, 2010 notice was issued after the DPNA of December 13, 2009 through April 19, 2010, after the April 20, 2010 termination had gone into effect, and after the total CMPs of $42,450 had been calculated. The statement that collection of the CMPs would be delayed until after a final ALJ decision was issued, but that no other appeal issues remained outstanding, while inartful, reflects the status of the remedies at that point. It is not reasonable to read it as negating the detailed explanation of what Northlake should do if it wished to appeal the findings of the last survey which resulted in the remedies continuing after March 26, 2010, including the imposition of the discretionary termination on April 20.

We conclude that Northlake received adequate notice of its hearing rights with respect to the noncompliance findings in the March survey.

3. *Even had the ALJ not properly dismissed, CMS would have been entitled to summary disposition on the record as to both the February and March 26 surveys.*

Even if we accepted (which we do not) the claim that Northlake was somehow confused by the notices and believed it was unnecessary to file an additional hearing request or the claim that the earlier hearing requests somehow included a challenge to the noncompliance findings from the March 26 survey, we would still conclude that the record supports summary disposition in favor of CMS.

Northlake's own filings make clear that it does not seek to dispute the factual allegations set out in the March 26 survey SOD nor does not it seek to dispute that those factual allegations constitute noncompliance under the applicable legal standards. Under the ALJ's pre-hearing order, all exhibits and direct testimony had to be submitted with the parties' pre-hearing exchange. ALJ Prehearing Order at 2-3. Thus, Northlake should have presented its affirmative case by the time the ALJ ruled on the cross-motions for summary disposition that accompanied the pre-hearing exchange.

Furthermore, CMS's motion for summary affirmance, in addition to arguing that the March 26 survey noncompliance findings had become final and binding because Northlake did not appeal them, laid out the evidentiary bases for each finding accompanied by its supporting evidence. CMS Prehearing Br. at 3, 5-21. Northlake did not thereafter seek leave to amend its prehearing exchange, as permitted by the prehearing order, to offer any conflicting evidence or argument about the merits of those noncompliance findings. *See* ALJ Prehearing Order at 3.

In fact, none of Northlake's pleadings or exhibits even mentions any of the noncompliance findings, apart from the general assertions that Northlake was in substantial compliance on various dates. Thus, we agree with the ALJ that Northlake "never – not even in its response to CMS's motion – challenged" the merits of the March 26 survey findings. ALJ Decision at 8. Northlake had multiple opportunities to show that it challenged the March 26 survey findings and did not do so. Neither did Northlake ever come forward with evidence or argument contesting the February survey noncompliance findings. Even on appeal to the Board, Northlake does not contend that it was denied an opportunity to present evidence that would have negated any of the noncompliance findings.

The gravamen of Northlake's complaint is, instead, that but for the malfeasance of the state survey agency in its treatment of Northlake, the February and March 26 surveys would not have taken place and that therefore no noncompliance would have been found. The ALJ correctly concluded that this is not the forum to resolve that complaint and that the conduct or motives of the state survey agency are irrelevant to the issues which the ALJ (and this Board) have the authority to review.

The Board has held that CMS must come forward "with evidence related to disputed findings that is sufficient (together with any undisputed findings and relevant legal authority) to establish a prima facie case of noncompliance with a regulatory requirement." *Azalea Court*, DAB No. 2352, at 2 (2010)(emphasis added), quoting *Evergreene Nursing Care Center*, DAB No. 2069, at 4 (2007); *Batavia Nursing and Convalescent Center*, DAB No. 1904 (2004), *aff'd, Batavia Nursing & Convalescent Ctr. v. Thompson*, 129 F. App'x 181 (6th Cir. 2005). Northlake did not dispute any of the findings or argue that they did not constitute noncompliance under relevant legal authority. Neither its prehearing brief (with

its cross-motion for summary disposition) before the ALJ nor its briefing on appeal here identifies any material facts in dispute.
Under the applicable standard for summary judgment, which Northlake does not dispute, the ALJ could properly find for CMS if the case presents no genuine issues of material fact even viewed in the light most favorable to the nonmovant. Northlake Br. at 8. No reasonable inference could be drawn in Northlake's favor from its complete silence as to the merits of both the February and March 26 survey findings. Termination was authorized as a matter of law in light of those uncontested findings.

We disagree with Northlake's assertion that the ALJ's analysis involved improperly weighing conflicting evidence or making credibility determinations. *Cf.* Northlake Br. at 9. On the relevant questions, there was no conflicting evidence or testimony in the record.

We therefore conclude that, even had the ALJ not dismissed but applied the summary judgment standards here, CMS would be entitled to summary judgment in its favor.

4. *Northlake had no due process right to review before the ALJ of the conduct of the state survey agency.*

Northlake argues that the Board should overturn the ALJ's conclusion that alleged malfeasance by a state survey agency does not preclude a de novo review of whether noncompliance was present. Northlake Br. at 6. Northlake contends that we should adopt "an 'exclusionary rule' and permit Northlake an opportunity to raise the issue of the State's unlawful conduct at an evidentiary hearing and explore how this conduct resulted in the unnecessarily harsh termination sanction." *Id*. According to Northlake, to do otherwise "would effectively gut a provider's ability to object meaningfully to a State's unlawful action." *Id*.

We disagree. The federal administrative appeals process addresses whether a proposed federal action is lawfully authorized. As the Board has repeatedly explained, that question hangs on the ALJ's de novo review of the evidence presented, not on the conduct of the state survey agency. *See, e.g., North Carolina State Veterans Nursing Home, Salisbury*, DAB No. 2256, at 23 (2009). Northlake must look outside the federal administrative appeals process to prosecute any complaint it may have about state government misconduct.

The Board has rejected in past cases similar arguments that a facility's allegations of unduly harsh or unfairly differential treatment can serve as a defense to the imposition of an otherwise supported remedy. Thus, in *Jewish Home of Eastern Pennsylvania,* the Board noted that --

> . . . allegations by a party against which an action has been taken that the treatment accorded to it is harsher than that accorded to others similarly situated "do not prohibit an agency of this Department from exercising its responsibility to enforce statutory requirements[.]" *Municipality of Santa [Isabel]*, DAB No. 2230, at 126 (2009) (ACF termination of Head Start grant); *Mountain View Manor*, DAB No. 1913, at 14 (2004) (CMS imposition of a CMP on a nursing facility); *National Behavioral Center, Inc.*, DAB No. 1760, at 4 (2001) (CMS decision not to certify appellant as a community mental health center); *Edison Medical Laboratories, Inc.*, DAB No. 1713, at 5 (1999) (CMS imposition of remedies under the Clinical Laboratory Improvement Amendments of 1988); and *Rural Day Care Association of Northeastern North Carolina*, DAB No. 1489 (ACF termination of Head Start grant).

DAB No. 2254, at 15 (2009), *aff'd*, *Jewish Home of Eastern Pa. v. Ctrs. for Medicare and Medicaid Servs, Dept. of Health and Human Services*, Civ. No. 09-3006, 2011 WL 477818 (3rd Cir. Feb. 11, 2011). Furthermore, the regulations expressly provide that missteps by the State survey agency "will not invalidate otherwise legitimate determinations that a facility's deficiencies exist." 42 C.F.R. § 488.305(b).

We agree with the ALJ that the history of Northlake's relations with the state agency, including any possible animus the state agency may have allegedly held toward the facility, are simply irrelevant to the question of whether CMS was authorized to impose the remedies based on the uncontested noncompliance findings.

Conclusion

For the reasons explained above, we affirm the ALJ Decision.

/s/
Judith A. Ballard

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member