

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ELIZABETH SHEEHY : ORDER OF SUSPENSION
_____ : DOCKET NO: 1718-158

At its meeting of December 8, 2017, the State Board of Examiners (Board) reviewed information it received from the Monmouth County Prosecutor's Office regarding Elizabeth Sheehy (Sheehy). Sheehy, a contracted consultant Visual Aid teacher, was accused of False Representation in Payment Claims on a Government Contract after she allegedly submitted claims for payment to several school districts for services she never provided to students. On September 25, 2017, Sheehy received an Order of Postponement and was accepted into a Pretrial Intervention program (PTI) for 12 months. She was also ordered to perform 100 hours of community service.

Sheehy currently holds a Teacher of Blind or Partially Sighted (TBVI) and Teacher of Handicapped Certificates. After reviewing the above information, at its January 19, 2018 meeting, the Board voted to issue an Order to Show Cause to Sheehy as to why her certificates should not be revoked.

After finding a correct address, the Board sent Sheehy the Order to Show Cause by regular and certified mail on February 8, 2018. The Order provided that Sheehy must file an Answer within 30 days. Sheehy responded on March 7, 2018. In her Answer, Sheehy acknowledges that due to a shortage of TBVI teachers she was contracted to provide services in various school districts. Answer at ¶ 1c. She denied the allegations regarding the criminal Accusation. *Id.* at ¶ 3. Sheehy indicates that she provides both direct and indirect services to students. *Id.* at ¶ 3d. Sheehy indicates that she would bill for both services and that she was not trained in record keeping or bills. *Id.* She states that when she was contacted by the prosecutor's office regarding billing for Freehold Township School District, she returned \$1,540 for 20 hours of services she had billed. *Id.* at ¶ 3h. Sheehy acknowledged that she received pretrial intervention and community services based upon the criminal Accusation. *Id.* at ¶ 4.

Since there were material facts in dispute, the Board transmitted the matter to the Office of Administrative Law (OAL) on March 15, 2018 for hearing as a contested case. Administrative Law Judge (ALJ) Jeff S. Masin, retired on recall, decided the matter after reviewing the hearing testimony when the matter was previously heard by Judge James-Beavers. ALJ Masin determined that a re-hearing of the matter was not required because ALJ Masin listened to the recorded testimony and determined that the re-presentation of testimony was not necessary for him to decide the matter. Accordingly, the record closed on May 1, 2020. *In the Matter of the Certificates of Elizabeth Sheehy*, Dkt. No. EDE 4106-18 (Initial Decision, June 11, 2020).

After reviewing the testimony and the record, ALJ Masin found that Sheehy did not act with a knowing purpose or intent to defraud the contracted districts. (Initial Decision, slip op. at p. 25). ALJ Masin found that Sheehy did not seek to steal from the district or that she engaged in an illicit scheme. *Id.* ALJ Masin found that “there is some inefficiency” but that it would be “highly inappropriate to sanction Ms. Sheehy’s certificates and effectively end her career in this seriously important field and specialty.” *Id.* at p. 41. Furthermore, ALJ Masin found that any sanction should be modest, at most 6 months. Nevertheless, he determined to dismiss the matter. *Id.*

ALJ Masin found that there is nothing to suggest that Sheehy ever had the quality of her services challenged at any other time. The only evidence suggesting a reduction in quality of service is the reduction in time spent with a student versus the IEP time requirement. *Id.* at p. 26. Further, ALJ Masin determined that there are three categories of concern in Sheehy’s billing. The first is that Sheehy billed for services, but records indicate that while one or both students were present at Hawkswood, the time records do not indicate that Sheehy was at Hawkswood at the time of service. *Id.* at p. 26. The second category are days when the students were both not present, but Sheehy billed for services because she was present and ready to provide services. *Id.* at p. 27. The final category are the days where either one or both students were present as was Sheehy but notes and testimony do not concur with Sheehy’s billing dates. *Id.*

As to the first category of billing, ALJ Masin found Sheehy's testimony credible in that she did not knowingly bill for dates when she knew she had not appeared at Hawkswood. Her lengthy history with the District suggests that she would not have tried to take advantage of the District or the family. *Id.* at p 28. He found that it is not proper to bill for services on a day when the provider is not even on the premises, but that honest errors had been made and where no fraudulent intent exists, "the remedy is to reach a reasonable adjustment in the billings. Had the parties met to address the concerns raised and once the records had been examined, it is likely the proper adjustments would have been made. Here, the Board has been reimbursed." *Id.* at p. 27-28.

As to the second billing category, ALJ Masin finds that Sheehy's actions cannot be viewed as fraudulent when she bills for services where the students were not present. *Id.* at p. 30. Sheehy was present, and there was no contract that addressed how Sheehy should handle such issues or anything that establishes an allowable cancelation time, etc. ALJ Masin found that if proper advance notice was given, the provider should not bill for services, but without such notice billing is not unreasonable. *Id.*

The third category of billing issues stem from Sheehy billing for one hour of services where the IEP called for 45 minutes of services. *Id.* at p. 31. ALJ Masin found that Sheehy justified the additional 30 minutes of billing beyond the IEP service time as her travel time between the Barkalow Middle School and Hawkswood, a trip which took about 25 minutes. *Id.* The travel time was included in the contract with Wall Township and Holmdel school districts. ALJ Masin found that Sheehy's actions were not fraud or misconduct. *Id.* at p. 32.

ALJ Masin also found that Sheehy regularly held sessions with L.V. that were not 45 minutes in length, but were mostly 30 minutes, with a few of even lesser length. *Id.* at p. 39. There was no evidence presented to evaluate the actual impact of the shortened session on L.V.'s progress toward goals. *Id.* Sheehy should have spoken to L.V.'s case manager regarding the shortened sessions and/or interfering conditions. ALJ Masin found that although there are "no doubt lessons here for her" the case "does not support discipline, which should be reserved for clear-cut instances of wrong doing." *Id.* at p. 40.

The Deputy Attorney General (DAG) representing the Board filed Exceptions and Sheehy filed Exceptions as well. The DAG argued that the facts warrant a finding of unbecoming conduct. Sheehy was regularly scheduled to meet with multiply disabled students to provide vision services for which she billed 90 minutes of services but only provided 71 minutes of services between the two students. Exceptions at p. 5. The DAG further argued that on seven separate occasions Sheehy actively decided to submit bills for services that she did not provide. Additionally, on more than 20 occasions, Sheehy did not provide the full 45 minutes of vision therapy services to L.V., as required by the IEP. Accordingly, Sheehy's actions demonstrate a pattern of inappropriate conduct beyond what a reasonable person would consider a mistake. *Id.* at p. 5.

The DAG further argued that although the ALJ found Sheehy's billing errors were "honest," the record demonstrates that for 4 sessions, the student was ready, willing and able to learn, yet Sheehy did not show, but billed the district. *Id.* at p. 7. Missing a session and billing for it is not an honest error. Notably, the initial decision does not address testimony given by a student's parents, indicating that Sheehy was contacted prior to a child's absence. *Id.* at p. 8. The DAG argues that a reasonable person could mistakenly bill once, but not for multiple dates.

The DAG also states that Sheehy's failure to communicate with the district regarding issues with completing a 45-minute session is concerning. The fact that Sheehy continued to bill for 45 minutes but routinely provide 30 minutes of services is a "clear lack of judgment in her billing practice" and not just simple lax billing practices. *Id.* at p. 11.

Sheehy submitted Exceptions, arguing that ALJ Masin made critical credibility determinations, finding Sheehy to be credible. Sheehy argues that there is no evidence regarding whether there was inefficiency and that the case should not pivot to a different issue. An inefficiency argument now would be improper.

At its July 30, 2020 meeting, the Board voted to adopt the factual findings in the Initial Decision but found that it constitutes unbecoming conduct warranting a penalty of a one (1) year suspension of

Sheehy's certificates. On October 29, 2021, the Board voted to adopt the written decision in this matter. The written decision indicated that the Board found Sheehy's behavior to be "egregious and she exhibited a lack of judgment and no sense of responsibility to make sure she provided the services for which she was paid." *IMO Certificates of E. Sheehy*, Decided October 29, 2020, State Board of Examiners at p. 5. Moreover, the Board noted that Sheehy "did not bill by mistake, she knowingly overbilled, or under provided services, on a regular basis without asking any questions or seeking to correct the errors." *Id.*

Sheehy appealed the Board's decision to the Commissioner of Education in accordance with applicable regulation. On May 4, 2021, the Commissioner issued a Final Decision on the appeal, finding that the Board's decision was "arbitrary and capricious because it incorrectly rejected or modified the ALJ's credibility findings." New Jersey Commissioner of Education Final Decision, *In the Matter of the Suspension of the Certificates of Elizabeth Sheehy*, State Board of Examiners, New Jersey Department of Education, Agency Dkt. No. 1-1/21A (May 4, 2021) at p. 2. As a result of this finding, the Commissioner directed that the matter be remanded "to the Board to make explicit findings as to whether the ALJ's assessment of the testimony regarding appellant's billing practices was arbitrary, capricious, or unreasonable, or was not supported by sufficient competent and credible evidence in the record." *Id.* at p. 3.

At its meetings of May 13, 2021, the Board voted to vacate its October 29, 2020 Suspension Decision, indicating it would consider the matter on remand at a later meeting. The Board notified all parties of the vacate order and took appropriate action to remove information regarding the suspension from the Board's records.

At its June 25, 2021 meeting, the Board substantively considered the matter on remand. The Board acknowledges that it erred when it found Sheehy's conduct to be intentional. The Board does not find that there is cause to disagree with the ALJ's factual determinations in this regard and therefore accepts the factual findings. Nevertheless, the Board finds that accepting the conduct as unintentional, Sheehy's actions remain unbecoming and warrant a penalty.

Accordingly, after further consideration of the Decision and the other submissions, along with the Commissioner's Decision to remand, the Board again voted to adopt the findings of fact contained in the Initial Decision, finding unbecoming conduct based upon the facts which warrants imposition of a suspension of certificates.

"Teachers ... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." *Tenure of Sammons*, 1972 *S.L.D.* 302, 321. There is no doubt that the ALJ is in the best position to render credibility determinations in this matter. Accordingly, the Board will defer to those findings. As noted above, after assessing the evidence and the credibility of the witnesses, ALJ Masin made several conclusions regarding Sheehy's conduct. He concluded that Sheehy's billing practices were unknowingly lax, that she billed for services she did not provide on several occasions, and that she overbilled for the services she actually provided. ALJ Masin rationalized those factual findings by indicating that Sheehy's conduct was not intentionally fraudulent, that her conduct was unknowing, that the contracts did not contain specific terms on how to handle cancelled sessions, etc.

The fact remains that Sheehy billed when students were not present, billed for longer periods of time than services were provided, and billed for student absences. Sheehy's failure to provide the full 45 minutes of instruction per the IEP and the fact that Sheehy billed and was paid is unbecoming conduct.

The Board agrees with the DAG's argument that as a TBVI teacher for 16 years, Sheehy should have known the importance of ensuring compliance with the students' IEP and should have alerted the district to the failure. Moreover, Sheehy's lack of responsibility in performing the services for which she was paid is conduct below what we expect of educators. Sheehy had multiple chances to correct some of her billing issues, but she failed to do so. Accordingly, whether intentional or not, the conduct is unbecoming and warrants a penalty of a six (6) month suspension. The suspension length is mitigated by the ALJ's finding that her conduct was not intentionally fraudulent.

Accordingly, on June 25, 2021, the Board voted to adopt the factual findings in the Initial Decision, found her conduct unbecoming and modified the decision to include a penalty of a six (6) month suspension of Sheehy's certificates. It is therefore ORDERED that Elizabeth Sheehy's a Teacher of Blind or Partially Sighted (TBVI) and Teacher of Handicapped Certificates are hereby suspended for a period of six (6) months. Due to the remand on the Board's October 29, 2020 Decision and the fact that her suspension was in effect until the Board vacated it on May 13, 2021, the Board finds that Sheehy has served the six (6) month suspension from October 29, 2020 to April 27, 2021. Accordingly, as of the date of this decision, Sheehy's suspension has ended and her certificates are valid and in good standing.

Rani Singh, Secretary
State Board of Examiners

RS/KAG

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to the provisions of *N.J.S.A.* 18A:6-38.4.