

No. 04-4199  
File Name: 05a0964n.06  
Filed: December 14, 2005

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

TRI-COUNTY EXTENDED CARE CENTER,	)	
	)	
Petitioner,	)	
	)	ON PETITION FOR REVIEW OF
v.	)	A DECISION OF THE
	)	DEPARTMENTAL APPEALS
MICHAEL O. LEAVITT, SECRETARY,	)	BOARD, UNITED STATES
UNITED STATES DEPARTMENT OF	)	DEPARTMENT OF HEALTH
HEALTH AND HUMAN SERVICES,	)	AND HUMAN SERVICES
	)	
Respondent.	)	

Before: **NELSON, DAUGHTREY, and SUTTON**, Circuit Judges.

**DAVID A. NELSON**, Circuit Judge. This case is here on a petition for review of a decision of the Departmental Appeals Board, United States Department of Health and Human Services (“HHS”). The petitioner, Tri-County Extended Care Center, is a long-term care facility that participates in the federal Medicare and Ohio Medicaid programs. HHS assessed a civil monetary penalty against Tri-County after a survey of the facility resulted in findings of non-compliance with certain program requirements.

An administrative law judge (“ALJ”) affirmed the penalty imposed by HHS, and Tri-County sought review before the Departmental Appeals Board. The Board affirmed the ALJ’s findings that: (1) Tri-County used half side rails on a resident’s bed without

adequately assessing the risk of entrapment; (2) Tri-County failed to investigate and report a resident's injury of unknown cause; (3) Tri-County allowed a resident to develop an avoidable pressure sore and failed to promote healing of the resident's pressure sores; and (4) Tri-County failed to provide appropriate incontinence care to two residents. The facility challenges each of these findings in its petition for review.

“The findings of [HHS] with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.” 42 U.S.C. § 1320a-7a(e). The court “do[es] not consider the case *de novo*, nor resolve conflicts in the evidence, nor decide questions of credibility.” *MeadowWood Nursing Home v. United States Dep’t of Health and Human Services*, 364 F.3d 786, 788 (6<sup>th</sup> Cir. 2004).

Having reviewed the record, we are satisfied that substantial evidence supports the agency's findings. Therefore, and in the absence of any challenge to the amount of the civil monetary penalty, Tri-County's petition for review is **DENIED**.