

MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

IN RE: MATTER OF JAY HURD)
AND THE MAINE PULL) **DECISION AND ORDER**
EVENTS COMMISSION)
)
)

I. INTRODUCTION

On June 26, 2024, at 11 am, the Maine Department of Agriculture, Conservation and Forestry (“DACF”) held an adjudicatory hearing at the Deering Building in Augusta, Maine, pursuant to 7 M.R.S. § 96(8). The hearing was a hybrid-style hearing, whereby three witnesses were allowed by the Hearing Officer to participate remotely via Microsoft Teams (a virtual meeting platform), and the remaining witnesses testified in person. The purpose of the hearing was to allow the Department and Mr. Hurd an opportunity to present evidence concerning the allegations that Mr. Hurd had refused to submit his two pulling animals to blood sampling for testing purposes at a pull event at the Fryeburg Fair on October 4, 2023, in violation of 7 M.R.S. § 96(4). Nancy McBrady, Deputy Commissioner, served as the Hearing Officer. Assistant Attorney General Caleb Elwell served as legal counsel for the Hearing Officer. Assistant Attorney General Cary Gustanski represented the Department’s Pull Events Commission (the Department). The DACF and the Office of the Attorney General instituted an ethical wall between DACF staff and counsel assisting the Hearing Officer and those assisting the Department in presenting the Pull Event’s Commission request for suspension.

The following individuals appeared for their respective parties. Mr. Hurd appeared on his own behalf. The Department presented testimony and exhibits via the following sworn witnesses: Josh Battles, Lou Clark, Greg Baker, Steven Allen, and Amy McGee, DVM. Mr. Hurd did not offer any

further witnesses. Mr. Ed Wilke, a member of the public, offered testimony during the public comment portion of the hearing. The following exhibits were entered into the record:

- Department's Exhibit 1, Photograph of pull event competition area at Fryeburg Fair, October 4, 2023;
- Department's Exhibit 2, Additional photograph of pull event competition area at Fryeburg Fair, October 4, 2023;
- Department's Exhibit 3, Additional photograph of pull event competition area at Fryeburg Fair, October 4, 2023;
- Department's Exhibit 4, Correspondence dated October 10, 2023, from David Hastings, President of the Fryeburg Fair, to Mr. Jay Hurd;
- Department's Exhibit 5, 2023, Fryeburg Fair Entry Form from Mr. Jay Hurd, dated October 4, 2023;
- Department's Exhibit 6, 2023, Certificate of Insurance for Mr. Jay Hurd, dated August 10, 2023.
- Department's Exhibit 7, Equine Infectious Anemia Test form for Mr. Jay Hurd's horse "Lovie" dated April 18 (year obscured).
- Department's Exhibit 8, Equine Infectious Anemia Test Form for Mr. Jay Hurd's horse "Slick," dated April 28, 2023.

The Hearing Officer heard testimony from Mr. Josh Battles, who owns his own construction company and is the Assistant Pull Superintendent at the Fryeburg Fair. He has participated in pull events for at least 25 years. He testified that he was in attendance at the "Free for All" pull event on October 4, 2023, at the Fryeburg Fair, where Mr. Jay Hurd was a participant. He testified that he trailed behind the horses during the pull event and heard an announcement that all participants were told to stay in the ring at the end of the event. When asked what it means when such announcements are made, Mr. Battles testified that, based on his experience, it means the pull animals will get drug tested. He also testified that after the event, "two guys" walked around the ring and told the participants that they "were going to get drug tested." Mr. Battles stated that the veterinarian came into the ring to conduct the testing, and he observed Mr. Hurd leave the ring before his team was tested.

Mr. Battles also testified that he called Mr. Hurd's cell phone to try to contact him but was unable to reach him, and left a message. He called again that evening and reached Mr. Hurd, who advised that his father was sick and he had to take him to the doctor. Mr. Battles testified that Mr. Hurd

told him during that conversation that he knew he would “get” a positive result for having left before the animals were tested. Mr. Battles stated that every team that competed in the pull event on October 4, 2023, was tested except for Mr. Hurd’s.

Mr. Clark was the second witness for the Department. He is retired and works as a pull superintendent at various New England fairs. He testified that he had participated in pull events himself for 45 years and had been a pull superintendent at the Fryeburg Fair for the last four to five years. He was present for the pull event on October 4, 2023, in which Mr. Hurd competed. Mr. Clark explained that the event Mr. Hurd participated in is referred to as the “Sweepstakes Pull Event” in addition to the “Free for All” event. Mr. Clark testified that his role was to “police” the event and keep things orderly, which included telling all pullers to stay in the ring in order for the animals to be tested. Mr. Clark testified that Mr. Hurd said his horses were hot and had to get them out of the ring. He witnessed them leaving the ring before being tested.

Doctor Amy White was the next witness for the Department. Dr. White is a veterinarian who works on a per diem basis for the Department at fairs and pull events. She testified to the normal procedure for drawing blood from animals competing in pull events. Dr. White and her technician will first review the list of participants and their animals and verify that they are present. She draws the blood, and a sticker is placed over the capsule. A number on that sticker coincides with the subject animal. The participant responsible for that animal then signs off on the blood draw, signifying that the blood taken matches with the animal.

Dr. White testified that she was present at the Fryeburg Fair for the week and during the Sweepstakes pull event in which Mr. Hurd participated. She testified that she and her technician received a list of the participating teams and began drawing blood from one horse from each team. She testified that when she got to the end of the list, she was informed Mr. Hurd’s team had left before she

could perform the tests. Dr. White could not recall whether it was a security guard or a member of the pulling crew who told her that the “team was no longer present.”

Mr. Steven Allen was the fourth witness for the Department. He is a retired professor from Northern Vermont University, and he testified that he has pulled since he was 10 or 11 years old. He has been the Oxen Pull Superintendent at the Fryeburg Fair for the past four to five years. He testified that he had experience rounding up pullers during these events. Mr. Allen testified that he was at the Fryeburg Fair for the entire week, including at the Sweepstakes Pull Event in which Mr. Hurd competed. He testified that he was in the holding area at one end of the pull ring with Mr. Clark and Mr. Greg Baker (the Department’s fifth witness). Mr. Allen was asked to describe Department Exhibits 1 through 3, which are photographs of the pull ring during the October 4, 2023, Sweepstakes Pull Event. Mr. Allen referred to the exhibits to show the holding area where pullers must keep all of their animals. Mr. Allen testified that while in the ring, he heard an announcement over the PA system that pullers were to stay in the pulling area until released by the superintendent. Mr. Allen testified that such an announcement is significant because “you know you’re going to be tested.” He then testified that he recalls telling Mr. Hurd to stay and be tested and that Mr. Hurd “grumbled” about it being hot. Everyone received their ribbons and then waited for the veterinarian to arrive. Mr. Clark testified that he heard “Obi,” the security guard at the exit gate, asking Mr. Hurd whether he had been tested. Mr. Clark testified that he heard Mr. Hurd reply “Yup” and that he (Mr. Clark) then “hollered” after Mr. Hurd as he left the scene in an attempt to get Mr. Hurd to return to have his animals tested. Mr. Clark testified that he was within 30 feet of Mr. Hurd during this interchange.

Mr. Greg Baker was the final witness for the Department. He is a retired Teamsters driver. He testified that he started pulling in 1984 and has been a certified pulling superintendent since 1986. He testified that he was the Horse Superintendent at the pull event that Mr. Hurd participated in at the

Fryeburg Fair on October 4, 2023. His duties as Pull Superintendent include checking insurance and other pull team-related paperwork, weighing horses, and confirming their microchip identification. Mr. Baker testified that Department Exhibit 5 was Mr. Hurd's entry form, Exhibit 6 was Mr. Hurd's proof of insurance, and that Exhibits 7 and 8 were the "Coggins Test" paperwork that showed certain blood test results (Equine Infectious Anemia as stated on the forms).

Mr. Baker reviewed the Department's Exhibit 1 photograph and identified where he was standing on October 4, 2023. He testified that he did not hear the PA announcement at the end of the pull, but his job was to make sure that the pullers knew that "the vets were coming." At the beginning of the blood draw, Mr. Baker testified that he used the restroom and, on his return, was told that Mr. Hurd had left without being tested. Mr. Baker testified that he "went after him" to get Mr. Hurd to return and have his animals tested. He testified that he saw Mr. Hurd leaving with his animals and hollered after him but could not get Mr. Hurd's attention. Mr. Baker testified he then spoke to the veterinarian (either Dr. White or her technician) and confirmed that a "pair of horses had took off." Mr. Baker also testified that Obi, the security guard, told him that Mr. Hurd said he was "all tested" and that Obi let Mr. Hurd leave via the exit.

Mr. Baker testified that after the pull competition was over, he consulted with the president of the Fryeburg Fair and other fair officials, who determined that Mr. Hurd would be barred from participating in future Fryeburg Fair pull events. This was memorialized in a letter sent to Mr. Hurd, which Mr. Baker verified was Department Exhibit 4.

On cross-examination by Mr. Hurd, Mr. Baker admitted that Department Exhibit 6 was not a certificate of insurance for Mr. Hurd's participation at the Fryeburg Fair but was, in fact, for the Topsham Fair. Mr. Hurd stressed that this was an example of a mistake made by the Pull

Superintendent, despite Mr. Baker's prior testimony that he carefully checked all pull-related paperwork.

Mr. Hurd testified on his own behalf. He testified that he has been pulling for 15 years and enjoys pulling in Maine. Mr. Hurd did not deny that he missed the drug testing that occurred after the end of the pull event on October 4, 2023. He insisted that missing the testing was not intentional and had been a mistake. He testified that upon receiving his ribbon, he went up to the announcer's booth and spoke with the announcer and another person for "quite some time." Mr. Hurd testified that when he arrived back in the pull ring, the veterinarian, or her assistant, was there, and he asked if he was "all set." He testified that either the veterinarian or his wife said "yes," indicating to him that the animals had been tested. Mr. Hurd testified that based on that answer, he believed his team had been tested and then left. Mr. Hurd also testified that he wanted to get his father home because he had recently had a triple bypass and was not feeling well. Mr. Hurd testified that he received a call that evening from "the fair" and was told that he was going to be suspended because of missing the blood testing. Mr. Hurd recalls offering to load up his animals and drive them back to the fair to be tested but was told that he could not.

Upon cross-examination, Mr. Hurd testified that he did not sign a blood card from the veterinarian, verifying that a blood draw had been taken from his animals. He testified that he did not make sure that any vials had been drawn or that they were accurate. Mr. Hurd emphasized he made a mistake and does not "dope" his animals. He testified that he has had his animals' blood tested before but never had to sign any documentation. He did agree on cross-examination that it is the responsibility of a puller to comply with pull rules and regulations. He argued that this mistake on his part should not result in a two-year suspension.

After the conclusion of the parties' testimony, the Hearing Officer allowed members of the public present to testify. Mr. Ed Wilke, Assistant General Superintendent at the Fryeburg Fair, provided

testimony stating that Mr. Hurd had left through a gate that he was not permitted to use instead of the main fair gate. Mr. Hurd, in response, stated that he was not aware he was not supposed to use the gate in question and had used it to enter the fair as well.

II. STATUTORY CRITERIA

Pull events are regulated under 7 M.R.S. §§96-101. Under 7 M.R.S. § 96(3), pull animals entered in an event are subject to examination under the direction of a licensed veterinarian. The intent of this statute is to prevent the use of prohibited substances in pull animals. 7 M.R.S. § 96(1). Title 7 M.R.S. §96(4) states that an owner or driver may not “refuse to secure or restrain an animal for examination” by a licensed veterinarian and “may not interfere with the restraining or securing of an animal for that examination.” Pursuant to 7 M.R.S. § 96(7), “[i]n the absence of substantial evidence to the contrary, the owner and driver of an animal are responsible for the condition of the animal, ... and are charged with knowledge of all the provisions contained in this section and the rules adopted pursuant to this section.”

If the Commissioner of the Department concludes, after conducting an administrative hearing, that a person has committed a violation of 7 M.R.S. § 96, the Commissioner must prohibit that person from competing in any pull event within Maine for two years for the first offense and must also exclude the animal from competing in any event within Maine for one year. 7 M.R.S. §96(8). The Commissioner may impose an administrative monetary penalty not exceeding \$1,000 for violating these provisions.

III. FACTS

The Commissioner finds the following facts;

1. Mr. Hurd was a competitor in the October 4, 2023, Sweepstakes Pull Event competition at the Fryeburg Fair.

2. Every team that competed in the pull event on October 4, 2024, was tested except for Mr. Hurd's team.
3. Dr. White did not test Mr. Hurd's animals, and at no point told him that his animals had been tested and he could leave.
4. Blood was not drawn from either of Mr. Hurd's two animals who participated in the pull event.
5. An announcement was made after the pull event telling pullers to stay in the ring. Mr. Hurd left with his animals before being tested.
6. Mr. Clark witnessed Mr. Hurd leave and tell the security guard that his animals had been tested.
7. Mr. Allen observed Mr. Hurd leave without his animals being tested.
8. Mr. Baker witnessed Mr. Hurd leaving with his animals after Mr. Baker had been advised that the animals had not been tested.
9. Both Mr. Baker and Mr. Clark attempted to get Mr. Hurd to stop and return to allow his animals to be tested, but he did not respond.
10. No witness observed or heard Dr. White or her assistant inform Mr. Hurd that his animals had been tested and he could leave.

IV. DELIBERATIONS AND DECISIONS

The burden is on the department to demonstrate by a preponderance of evidence that suspension is warranted.

The Department presented evidence from five witnesses that verified that Mr. Hurd was a competitor during the October 4, 2023, Sweepstakes Pull event at the Fryeburg Fair. Four of the five witnesses have many years of personal pull racing experience, and Messrs. Battles, Clark, Allen, and Baker have experience as assistant superintendents or superintendents at the Fryeburg Fair (horse and/or oxen). Their familiarity with the sport supports their testimonies that when blood testing is required at

the end of a pull event, it is clearly conveyed to each pull team that they must remain within the ring and submit to testing. The witnesses all agreed in their testimony that pull participants would know that they must stay in the ring until their animals have been tested. None of the witnesses could recall a time from their experience when a pull participant had left prior to his or her animal being tested when tests were called for. Mr. Battles testified that when he spoke on the phone with Mr. Hurd on the evening of October 4, 2023, Mr. Hurd stated he knew his animals would be considered to have received a positive test result as a result of Mr. Hurd leaving before they were tested.

Specifically, Mr. Clark stated that his role is to police the event and ensure that pullers stay at the end of the ring for testing. Mr. Allen testified to hearing a PA announcement after the October 4, 2024, pull event stating that pullers were to submit their animals for testing. These witnesses all established that Mr. Hurd was seen leaving the pull area before blood was taken from his pull animal(s). The witnesses further all testified that they were aware, as Mr. Hurd was leaving, that he was doing so without his animals having been tested. Dr. White confirmed that she did not conduct a blood test on either of Mr. Hurd's animals. Two witnesses testified that they called after Mr. Hurd in an attempt to get him to return as he left with his animals, but he did not heed them.

Importantly, Mr. Hurd himself does not deny that he missed drug testing his animals. Mr. Hurd contends that this was the result of a mistake and that he relied on either his wife or the veterinarian technician to advise him that the testing had been conducted. He did not, however, verify this to be true, as he admitted to not signing a blood card for the animals or inspecting any blood containers. His testimony contradicts that of Dr. White, who recounted that she had not tested his animals and is inconsistent with the procedure she describes for confirming that animals had received their tests. This testimony is inconsistent with that provided by the other witnesses, who all were aware that Mr. Hurd

was leaving without allowing his animals to be tested, and it is improbable that such a mistake would be made given the testing procedures described by Dr. White.

Furthermore, Mr. Hurd testified that he has been pulling for 15 years and enjoys pulling in Maine. It is reasonable to expect an experienced pull competitor to be aware of the state's blood sampling requirements. Moreover, Mr. Hurd has an obligation under Maine law to maintain responsibility for his animals and be aware of all relevant laws and rules related to pull events. 7 M.R.S. § 96(7). Even if Mr. Hurd was verbally informed that he was "all set," as he testified, I conclude that he did not follow due diligence by leaving with his animals without confirming that they had been properly tested in accordance with the procedures established by the Fryeburg Fair. Based on the evidence presented, I find that Mr. Hurd failed to submit his animals to blood testing as required by 7 M.R.S. §96(4).

Accordingly, Mr. Hurd is prohibited from competing in any pull event within Maine for two years from the date of this decision, and his two horses, Lovie and Slick, are excluded from competing in any event within Maine for one year from the date of this decision, as set forth in 7 M.R.S. §96(8). I decline to impose any administrative penalty in this case.

V. RIGHT OF APPEAL

Any aggrieved party to these proceedings may seek review of this Decision, to the extent that review is permitted by law, by filing a petition for review in Superior Court pursuant to 5 M.R.S. § 11001, et seq., within thirty (30) days after receiving notice of this Decision.

The petition must specify the person seeking review, the manner in which she/he is aggrieved, and the final agency action which she/he wishes to be reviewed. It must also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a

demand for relief. Copies of the Petition for Review must be served by Certified Mail, Return Receipt Requested on the Maine Pull Commission, all parties to the agency proceedings, and the Attorney General. Any other person aggrieved by this Decision may seek judicial review in like manner by filing a petition for review in Superior Court within forty (40) days after the date of this Decision.

Amanda E. Beal

Dated: July 9, 2024

Amanda E. Beal, Commissioner
Department of Agriculture, Conservation and Forestry