2-28-03

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

JEANETTE E. NORRIS, M.D.
AND SANDCASTLE PEDIATRICS,

Petitioner,

AT

DOAH CASE NO. 02-0019MPI
AHCA NO. C.I. 99-1279-000
RENDITION NO. AHCA-04- -FOF-MDO

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

SFD-CWS

Respondent.
_____/

FINAL ORDER

This cause was referred to the Division of Administrative Hearings and assigned to an Administrative Law Judge (ALJ) for a formal administrative hearing and the entry of a Recommended Order. The Recommended Order of February 28, 2003, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Petitioner filed exceptions to findings of fact 36, 38, 41, 44, and 45, and to conclusion of law 57(d). None of exceptions seek to change the recommendation of the ALJ. The exceptions are denied for the following reasons.

All of Petitioner's exceptions to findings of fact are denied because Petitioner does not state or argue that no competent, substantial evidence exists in the record to support them. Further, the Agency finds that there is competent, substantial evidence in the record to support these findings and that, in order to grant these exceptions, it would have to reweigh the evidence, which it is not free to do. See generally Section 120.57(1)(*l*), Fla. Stat. (providing in pertinent part that "(t)he agency may not reject or

modify the findings of fact unless the agency first determines from a review of the entire record...that the findings of fact were not based upon competent substantial evidence."); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1985) (holding that an agency "may not reject the hearing officer's finding (of fact) unless there is no competent, substantial evidence from which the finding could reasonably be inferred.").

Conclusion of law 57(d) deals with the expert testimony of the Agency's witness Dr. Johnson concerning the appropriateness and validity of the formula actually used by the Agency in determining the amount of Medicaid overpayments. This conclusion of law is directly based on accepted findings of fact and could not be altered without changing these findings of fact. Therefore, the Agency cannot alter this conclusion of law. Further, the Agency finds that it cannot come to a conclusion of law that is as, or more, reasonable than that of the ALJ. See Section 120.57(1)(*l*), Fla. Stat.

The Agency filed exceptions to finding of fact 44, and conclusions of law 57(d) and 60. None of exceptions seek to change the recommendation of the ALJ. The exceptions are denied for the following reasons.

Finding of fact 44 deals with the statistical formula used to calculate the amount of the Medicaid overpayment. The Agency argues that there is no competent, substantial evidence to support the finding that Petitioner was correct in that the formula reported by the Agency was inappropriate. However, the Agency's argument shows that the ALJ did have competent, substantial evidence before him in the form of expert witness testimony from Petitioner and the Agency on this issue, and that he weighed it in reaching his finding. Therefore, the Agency may not alter this finding of fact. See generally Section 120.57(1)(*l*), Fla. Stat. (providing in pertinent part that "(t)he agency may not reject or

modify the findings of fact unless the agency first determines from a review of the entire record...that the findings of fact were not based upon competent substantial evidence."); Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1985) (holding that an agency "may not reject the hearing officer's finding (of fact) unless there is no competent, substantial evidence from which the finding could reasonably be inferred.").

Conclusion of law 57(d) deals with the expert testimony of the Agency's witness Dr. Johnson concerning the appropriateness and validity of the formula actually used by the Agency in determining the amount of Medicaid overpayments. This conclusion of law is directly based on accepted findings of fact and could not be altered without changing these findings of fact. Therefore, the Agency cannot alter this conclusion of law. Further, the Agency finds that it cannot come to a conclusion of law that is as, or more, reasonable than that of the ALJ. See Section 120.57(1)(*l*), Fla. Stat.

Conclusion of law 60 again deals with the statistical formula used to calculate the Medicaid overpayment. Because finding of fact is adopted, and because this conclusion of law is directly based on it, the Agency is not free to alter the conclusion. Further, the Agency finds that it cannot come to a conclusion of law that is as, or more, reasonable than that of the ALJ. See Section 120.57(1)(*l*), Fla. Stat.

The Agency also filed a response to Petitioner's exceptions, which is permitted under Rule 28-106.217(2), Fla. Admin. Code.

Petitioner filed a response to the Agency's response to Petitioner's exceptions. The Agency filed a motion to strike the Petitioner's response. The motion is granted because neither statute nor rule allows for such a submission.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

The Agency takes official notice of the Discharge of Debtor entered March 3, 2004, in Case No. 03-42668-LMK by United States Bankruptcy Judge Lewis M. Killiam, Jr., United States Bankruptcy Court for the Northern District of Florida, Pensacola Division (copy attached). The Petitioner has been discharged from the debt resulting from the overpayment in this case.

IT IS THEREFORE ADJUDGED THAT:

In accordance with the Recommended Order, Petitioner, Jeanette E. Norris, M.D., d/b/a Sandcastle Pediatrics was overpaid $4,000.48 in Medicaid reimbursement by the Agency for Health Care Administration. However, Petitioner's personal liability for such overpayment has been discharged pursuant to 11 U.S.C. Section 727(b) and the Agency may not seek to collect the overpayment from the Petitioner. 11 U.S.C. Section 524(a).

DONE and ORDERED in DOAH Case No. 02-0019MPI this 31 day of July, 2004, in Tallahassee, Florida.

ALAN LEVINE, SECRETARY
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH

THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. or interoffice mail to the persons named below on this 5 day of August, 2004.

Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

COPIES FURNISHED TO:

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