

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LILY-SCOTT FORMATO,)
d/b/a TENDER LOVING CHILDBIRTH,)
)
Petitioner,)
)
vs.) Case No. 03-1920MPI
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent.)
-----)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on August 8, 2003, in Tallahassee, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Debora E. Fridie, Esquire
Agency for Health Care Administration
Fort Knox Building III, Mail Station 3
2727 Mahan Drive, Suite 343
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether the Petitioner owes the amount assessed in the Respondent's Final Agency Audit Report for a Medicaid overpayment of \$6,487.20.

PRELIMINARY STATEMENT

This case began on April 21, 2000, when the Respondent, Agency for Health Care Administration, Medicaid Program Integrity Office (Respondent or Agency), completed a review of the Petitioner's Medicaid claim for the period February 22, 1997 through February 22, 1999. For the two-year period of the audit the Agency determined that the Petitioner, Lily-Scott Formato, d/b/a Tender Loving Childbirth (Petitioner), had been overpaid \$15,039.05. The overpayment was based upon a rejection of claims that were in whole or in part not covered by Medicaid.

The Petitioner requested an administrative hearing to contest the findings of the audit, and the case was forwarded to the Division of Administrative Hearings and assigned DOAH Case No. 01-4525MPI. Thereafter, the case was remanded to the Agency after the parties represented the issues had been or would be settled.

On May 7, 2003, the Agency filed a Motion to Reopen the Proceeding as the parties had failed to amicably resolve the case. On June 5, 2003, the case was reopened as DOAH Case No. 03-1920MPI. On July 7, 2003, the case was scheduled for formal hearing. Both the order reopening the case and the notice of hearing were furnished to Petitioner at the address of record. Neither was returned to the Division of

Administrative Hearings as undelivered by the postal service. It is presumed the Petitioner received the notice of hearing.

Prior to the hearing, the Agency filed a Motion for an Order Deeming Request for Admissions Admitted. An order to the Petitioner to show cause why the motion should not be granted was returned by the postal service with the notice "moved left no address" and "unable to forward." Similarly, the Agency's effort to supply the Petitioner with its prehearing exhibits was undeliverable to the Petitioner at the address of record.

At the hearing, the Agency requested that the admissions be deemed admitted as the Petitioner failed or refused to timely respond to the discovery. Such motion was granted. Additionally, it was determined that the Petitioner had moved subsequent to notice of the hearing. The Petitioner failed to appear for hearing and thereby waived a challenge of the findings set forth by the audit.

Additionally, the Agency timely filed a Motion for Costs to which the Petitioner has not responded. Having determined the Agency should prevail in this cause, it is further determined the Agency is entitled to recover costs of the audit and administrative proceeding.

A transcript of the proceeding was filed with the Division of Administrative Hearings on August 12, 2003.

Thereafter, the Agency timely filed a Proposed Recommended Order that has been considered in the preparation of this Recommended Order. The Petitioner did not file a post-hearing proposed recommended order. All citations are to Florida Statutes (2002) unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner was an authorized Medicaid provider during the period of the audit.

2. Petitioner's Medicaid provider number was 376782500.

3. As a Medicaid provider, the Petitioner was obligated to comply with the Medicaid Provider Agreement(s), statutes, rules, and policy guidelines that the Agency uses to govern Medicaid providers.

4. During the audit period of this case, the Petitioner was required to maintain all "Medicaid-related records" to support the Medicaid invoices and claims for which payment was requested of the Agency.

5. In fact, by law the records are to be maintained for a five-year period of time so that the Petitioner would be able to "satisfy all necessary inquiries by the agency." See Section 409.907(3)(c).

6. In this case the Agency computed the overpayment based upon the records submitted by the Petitioner. The

Petitioner did not contest the randomness of the clusters applied by the Agency in creating the overpayment amount.

7. The Petitioner billed for the payments in the overpayment amount and received payment from the Agency.

8. The overpayment to Petitioner was originally calculated to be \$15,039.05. At hearing the Agency announced the overpayment had been reduced to \$6,487.20.

9. Based upon the failure of the Petitioner to appear at hearing and the return of the mail that had been provided to the Petitioner's last known address, the Agency believes the Petitioner is out of business and has relocated to an unknown address.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57.

11. Based upon the admissions in this cause and the failure of the Petitioner to appear at hearing, the Agency has established the overpayment of the Medicaid claims as set forth in the Final Agency Audit Report dated April 21, 2000.

12. Additionally, the Agency is entitled to recover a reasonable amount to cover the costs of pursuing this matter, including, expert witness fees, process server fees, investigative fees and mailing costs.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order against the Petitioner for a Medicaid overpayment in the amount of \$6,487.20, together with reasonable costs incurred in this cause.

DONE AND ENTERED this 29th day of September, 2003, in Tallahassee, Leon County, Florida.



J. D. Parrish
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of September, 2003.

COPIES FURNISHED:

Rhonda M. Medows, M.D., Secretary
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building, Suite 3116
Tallahassee, Florida 32308

Valda Clark Christian, General Counsel
Agency for Health Care Administration
2727 Mahan Drive
Fort Knox Building, Suite 3431
Tallahassee, Florida 32308

Lily Scott Formato
Tender Loving Childbirth
10046 Daisy Avenue
Palm Beach Gardens, Florida 33410

Debra E. Fridie, Esquire
Agency for Health Care Administration
Fort Knox Building III, Mail Station No. 3
2727 Mahan Drive, Suite 343
Tallahassee, Florida 32308

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.