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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

2005 APR 27 A 9:30

CA Closed

ARNALDO R. QUINONES, M.D.,

Petitioner,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

DOAH CASE NO. 04-1279MPI
AHCA AUDIT NO. C.I. 97-1069-000
AHCA RENDITION NO.

AT

05 APR 29 AM 9:29

## 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 January 20, 2005, is attached to this Final Order and incorporated herein by reference.

## RULING ON EXCEPTIONS

The Petitioner filed exceptions to which the Agency did not file a response. Petitioner excepted to the preliminary statement, requesting that an addition be made. However, Petitioner's exception to the preliminary statement is not valid. First, a preliminary statement is not a finding of fact or a conclusion of law. Second, Petitioner appears to not be disputing the substance of the preliminary statement, but is rather seeking to add to it. Third, the preliminary statement does not have any bearing on the decision reached in the case. Therefore, Petitioner's exception to the preliminary statement is denied.

Petitioner excepted to the finding of fact in Paragraph 3 of the Recommended Order, wherein the ALJ found "Petitioner had served as an advisor to the director of the NIH on issues related to HIV (human immunodeficiency virus) and AIDS (acquired immunodeficiency

syndrome)." Petitioner argued that the phrase should be deleted and it should state that Petitioner was a member of several committees charged with providing advice to the Director of the National Institute on Drug Abuse on HIV/AIDS related issues. However, Petitioner did not state that the ALJ's finding of fact was not based on competent substantial evidence, nor did the Petitioner cite to the record in the case in support of his argument that the finding of fact be changed as stated. Additionally, the Agency may not reject or modify an ALJ's findings of fact unless it determines that such findings are not based upon competent substantial evidence in the record. See § 120.57(1)(*l*), Fla. Stat.; 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"). The Agency finds the challenged findings of fact to be supported by competent substantial evidence in the record. Therefore, Petitioner's exception to the finding of fact in Paragraph 3 is denied.

Petitioner excepted to Paragraphs 5 and 12 of the Recommended Order, along with Footnote [Endnote] 3, arguing that the findings of fact be deleted based on the principals of fairness as well as Medicaid requirements. Again, Petitioner failed to argue that the ALJ's findings of fact in these paragraphs were not based on competent substantial evidence, nor did the Petitioner cite to the record in the case in support of his argument. The Agency may not reject or modify an ALJ's findings of fact unless it determines that such findings are not based upon competent substantial evidence in the record. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Since there has been no evidence presented to show the ALJ's findings of fact were not based on competent substantial evidence, Petitioner's exceptions to Paragraphs 5 and 12 of the Recommended Order, and Footnote 3, are denied.

Petitioner excepted to the Finding of Fact in Paragraph 6 of the Recommended Order, arguing that an addition should be made stating that the Petitioner had moved to dismiss Dr. Joseph Shands's testimony. However, it appears that Petitioner is not contending with the substance of the finding of fact. Rather, Petitioner is contending with the issue of whether Dr. Shands should have testified. Therefore, Petitioner's argument in regard to the motion to dismiss is not within the scope of exceptions and will not be addressed. Petitioner also argued that the statement that Dr. Shands's practice consisted almost entirely of HIV/AIDS was incorrect and should be stricken. However, the Petitioner failed to cite to the record in support of this statement or state that it was not based on competent substantial evidence. The Agency may not reject or modify an ALJ's findings of fact unless it determines that such findings are not based upon competent substantial evidence in the record. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioner's exception to the finding of fact in Paragraph 6 of the Recommended Order is denied.

Petitioner excepted to the findings of fact in Paragraphs 13 and 14 of the Recommended Order wherein the ALJ stated the Petitioner did not dispute most of the down codings at the final hearing. The Petitioner argued that the findings of fact should state that many of the down codings were disputed and that the greater weight of the evidence supported the billing codes identified by the Petitioner at the hearing as correct. However, the Agency has no authority to reject findings of fact for being contrary to the greater weight of the evidence; rather, as discussed above and pertinent here, the Agency may not reject or modify an ALJ's findings of fact unless it determines that such findings are not based upon competent substantial evidence in the record. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. The Agency finds the challenged findings of

fact to be supported by competent substantial evidence in the record. Therefore the Petitioner's exceptions to the findings of fact in Paragraphs 13 and 14 are accordingly denied.

Petitioner excepted to the findings of fact in Paragraphs 16, 17, and 20 of the Recommended Order. However, Petitioner is, in essence, re-arguing his case. The Agency cannot re-weigh the evidence presented at hearing. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioner's exceptions to Paragraphs 16, 17, and 20 of the Recommended Order are denied.

Petitioner excepted to the findings of fact in Paragraph 19 of the Recommended Order, stating that the testimony offered by Dr. Shands and Dr. Nadler at hearing, upon which the findings of fact in Paragraph 19 were based, should not be considered. However, the ALJ found their testimony to be credible and based the findings of fact upon it. Thus, the Agency cannot overturn the findings of fact in Paragraph 19 of the Recommended Order. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioner's exception to Paragraph 19 of the Recommended Order is denied.

Petitioner excepted to Footnote [Endnote] 9 of the Recommended Order, whereby the ALJ found he was not persuaded by Petitioner's testimony pertaining to each recipient who was administered intravenous immunoglobulin (IVIG) treatments. In his exception, Petitioner is again re-arguing the merits of his case. The Agency cannot re-weigh the evidence presented at hearing. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioner's exception to Footnote 9 of the Recommended Order is denied.

Petitioner excepted to the conclusion of law in Paragraph 25 of the Recommended Order, whereby the ALJ found the Agency had met its burden of proof in the case and the Respondent was obligated to reimburse the Agency for overpayments. However, Petitioner's exception is

premised on the granting of his exceptions to the Findings of Fact that were discussed above. Since his exceptions to the Findings of Fact were denied, Petitioner's proposed conclusion of law is not as or more reasonable than that of the ALJ and is also denied. See § 120.57(1)(*l*), Fla. Stat.

## 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.

**IT IS THEREFORE ADJUDGED THAT:**

Petitioner is required to repay the sum of the overpayment as determined by the Agency based on the Findings of Fact set forth in the Recommended Order. That sum is $261,185.86. Petitioner shall make full payment of the monies, totaling $261,185.86, plus any statutory interest, to the Agency for Health Care Administration within 30 days of the rendition of this Final Order. Petitioner shall pay by check payable to the Agency for Health Care Administration and mailed to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, Florida 32308.

**DONE and ORDERED** this 15th day of April, 2005, in Tallahassee, Florida.

Alan Levine

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 27 day of April, 2005.

RICHARD J. SHOOP, Agency Clerk
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