

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
) Case No. 07-2450MPI
vs.)
)
HUMANE MINORITY, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This case came before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings for final hearing by video teleconference on February 11, 2009, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: L. William Porter, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop No. 3
Tallahassee, Florida 32308

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether Petitioner, Agency for Health Care Administration (AHCA or Petitioner), is entitled to a recoupment for a Medicaid overpayment to Respondent, Humane Minority, Inc. (Humane or Respondent), in the amount of \$177,581.26.

PRELIMINARY STATEMENT

On or about May 22, 2007, Petitioner issued a Final Audit Report-Corrected Copy that advised Respondent that an audit of Humane's Medicaid claims for the period January 1, 2005, through February 28, 2006, had been completed. According to Petitioner's claim, Respondent was overpaid \$177,581.26 for services that in whole or in part are not covered by Medicaid.

Thereafter, Respondent filed a Petition for Formal Hearing to dispute the factual allegations of the audit and to request a formal hearing to address the allegations of the audit. The case was then forwarded to the Division of Administrative Hearings for formal proceedings on May 30, 2007. The case was continued on August 16, 2007, and ultimately rescheduled to February 10 and 11, 2009. The case was held as scheduled on February 11, 2009.

At the hearing, Petitioner presented the testimony of Gary Mosier and expert testimony of Ronald Machado, M.D.; Elliott Reisman, M.D.; and James R. Edgar, M.D. Petitioner's Exhibits 3, 4, 5, 6, 8, 11, 12, 13, 15, 16, 17, 18, 19, 20, 25, and 26 were admitted into evidence without objection. Respondent did not appear for the hearing and no evidence was presented on its behalf.

The final hearing Transcript of the proceeding was filed on April 24, 2009. The parties were afforded 45 days within which

to file Proposed Recommended Orders. Petitioner timely filed a proposal that has been considered in the preparation of this Recommended Order. Respondent did not present any proposed findings or conclusions.

Unless otherwise indicated, all statutory references are to the codification in effect at the time of the alleged overpayment.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for administering the Florida Medicaid Program. As part of its duties, Petitioner attempts to recover Medicaid overpayments from Medicaid providers.

2. At all times material to this case, Humane was licensed to provide various health care services to Medicaid recipients under a contract to AHCA as a Medicaid provider. As provider number 255724000, Humane participated in the Medicaid program from January 1, 2005, to February 8, 2006 (audit period).

3. As a Medicaid provider, Respondent was subject to audit. This case arose when the Discovery Unit of Medicaid Program Integrity (MPI) identified that during the audit period Humane billed 1.5 times as much for one week as compared to ten other weeks, which is an indicator of billing irregularities. As a result, the Discovery Unit of MPI recommended a comprehensive audit of Humane.

4. Gary Mosier, a Registered Nursing Consultant employed by AHCA in the bureau of MPI, initiated the audit of Humane after receiving the Discovery Unit's File #47650 Recommendation memo dated May 19, 2006, referring Humane for a comprehensive audit.

5. On or about June 13, 2006, MPI requested 30 random Medicaid patients' records from Humane's entire Medicaid patient group for the audit period.

6. Humane complied with the request and supplied records. The submitted medical records included a Certificate of Completeness of Records from Humane stating the documents supplied constituted all of the Medicaid-related records for the 30 patients during the Audit period.

7. After Humane provided the requested medical records to Mosier, he forwarded the records to three physician consultants: Machado, a general practitioner; Edgar, a psychiatrist; and Reisman, an urologist.

8. Each physician consultant reviewed Humane's records relevant to his area of expertise and filled out agency worksheets detailing why claims should be disallowed.

9. MPI reviewed Humane's records provided and the worksheets filled out by the three physician consultants and determined that overpayments were made to Humane due to numerous services in whole or in part not being covered by Medicaid,

which violated various Medicaid policy guidelines set forth in both the Florida Medicaid Provider General Handbook (General Handbook)¹ and the Florida Medicaid Physician Services Coverage and Limitations Handbook (Physician Services Handbook).²

10. Humane violated policy by providing documentation that supported a lower level of office visit than the one for which Humane billed and received payment.

11. Humane violated policy by billing and receiving payments for some services that were not documented.

12. Humane violated policy by billing and receiving payment for services rendered by a practitioner who was not a member of Humane's group.

13. Humane violated policy by billing for procedure codes that have time requirements but not documenting the time spent providing the service.

14. Humane violated policy by billing and receiving payment for services performed by another practitioner who was not enrolled in Medicaid at the time the services were rendered.

15. Humane violated policy by billing and receiving payment for services for which the medical records, when reviewed by a Medicaid physician consultant, indicated that the services provided did not meet the Medicaid criteria for medical necessity.

16. Humane violated policy by billing for radiology services when the reading and interpretation was done by a radiologist outside of the physician's group.

17. Humane violated policy and was paid for billing and received payment for portable x-ray services where Humane performed only the technical component and an independent interpreter performed the professional component.

18. Humane violated policy and received payment when Humane did not bill according to the current procedural terminology guidelines in certain instances.

19. On March 13, 2007, MPI issued its Preliminary Audit Report (PAR). The report detailed the Medicaid policy violations, overpayment amounts, and provided Humane the opportunity to submit an explanation or additional documentation demonstrating that some or all of the claims were properly paid. The report also notified Humane that a Final Audit Report (FAR) would be issued identifying the amount of overpayment due.

20. Humane did not respond to the PAR. Consequently, on April 27, 2007, MPI issued a FAR, that included the amount of \$177,581.26 that Humane received from Medicaid that was not authorized to be paid. This grand total of \$177,581.26 constitutes an overpayment that Humane must return to the agency.

21. A Final Audit Report-Corrected Copy was issued on May 22, 2007, correcting the total amount due.³

22. In addition to the overpayment amount, Petitioner also seeks a fine in the amount of \$3,000.00. The fine is a calculated amount as authorized by rule.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

24. AHCA is empowered to "recover overpayments and impose sanctions as appropriate." § 409.913, Fla. Stat. An overpayment includes any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake." § 409.913(1)(e), Fla. Stat.

25. As the party asserting the overpayment, AHCA bears the burden of proof to establish the alleged overpayment by a preponderance of the evidence. See Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So. 2d 106 (Fla. 1st DCA 1992).

26. Section 409.913(7)(e), Florida Statutes, provides in pertinent part as follows:

* * *

(7) When presenting a claim for payment under the Medicaid program, a provider has an affirmative duty to supervise the provision of, and be responsible for, goods and services claimed to have been provided, to supervise and be responsible for preparation and submission of the claim, and to present a claim that is true and accurate and that is for goods and services that:

* * *

(e) Are provided in accord with applicable provisions of all Medicaid rules, regulations, handbooks, and policies and in accordance with federal, state, and local law.

27. Petitioner established a prima facie case of overpayment with its audit report supported by the work papers showing the overpayment to Humane. Such evidence demonstrates an overpayment pursuant to Section 409.913(22), Florida Statutes. The courts have also held that the agency can make a prima facie case by merely proffering a properly supported audit report, which must be received in evidence. See Maz Pharmaceuticals, Inc. v. Agency for Health Care Administration, DOAH Care No. 97-3791, 1998 WL 870139 (Recommended Order Mar. 20, 1998; Final Order issued June 26, 1998).

28. In addition, Petitioner met its burden of persuasion and demonstrated that during the audit period, when Respondent presented its claims for payments, Humane failed to comply with

the Medicaid statutes, rules, General Handbook, and Physician Services Handbook.

29. Respondent failed to present any evidence and in doing so failed in its duty to meet the Agency's prima facie case with any written proof to rebut, impeach or otherwise undermine AHCA's statutorily-authorized evidence.

30. Therefore, the audit report supports and constitutes evidence of the overpayment claimed. In this case, it is established that Respondent received an overpayment in the amount of \$177,581.26.

31. Florida Administrative Code Rule 59G-9.070 authorizes the imposition of fines for Medicaid violations. Section 409.913(25)(c), Florida Statutes, provides that overpayments owed to AHCA bear interest at the rate of 10 percent per annum from the date of determination of the overpayment. The fine in the amount of \$3,000.00 is within the guidelines of the rule.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency enter a final order requiring Humane to repay the Agency for the principal amount of \$177,581.26 together with an administrative fine of \$3000.00.

DONE AND ENTERED this 22nd day of June, 2009, in
Tallahassee, Leon County, Florida.

June C. McKinney

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of June, 2009.

ENDNOTES

- ^{1/} The General Handbook is incorporated by reference into AHCA's regulations by Florida Administrative Code Rule 59G-5.020.
- ^{2/} The Physician Services Handbook is incorporated by reference into AHCA's Florida Administrative Code Rule 59G-4.230.
- ^{3/} AHCA's revised version of the FAR was issued to correct the arithmetic mistake.

COPIES FURNISHED:

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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.