STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
RENDITION NO. AHCA-09-232-FOF-MDR

MADISON POINTE REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1691

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

EXCEL REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1692

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

COURTYARDS OF ORLANDO REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1694

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

BAYSIDE REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1695

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

SHORE ACRES REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1697

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

PALMETTO REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1698

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

ADVANCED REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1699

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

WOODBRIDGE REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-1700

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

NORTH LAKE REHABILITATION AND HEALTH CENTER,

Petitioner,

DOAH CASE NO. 08-3155

vs.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), R. Bruce McKibben, conducted a formal administrative hearing. At issue in this proceeding is whether the Agency for Health Care Administration ("AHCA" or "Agency") applied the proper reimbursement principles to Petitioners' initial Medicaid rate setting, and whether elements of detrimental reliance exist so as to require the Agency to establish a particular initial rate for Petitioners' facilities. The Recommended Order dated February 23, 2009 is attached to this final order and incorporated herein by reference, except where noted infra.

RULINGS ON EXCEPTIONS

Petitioners filed exceptions to the recommended order, and Respondent filed a response to Petitioners' exceptions.

While Endnote 1 that appears after the first sentence in Paragraph 3 of the Recommended Order is not present in the modifications noted above due to formatting issues, the Agency notes that it should remain as part of the Recommended Order and also incorporates it as part of the final order.

In their second exception, Petitioners took exception to the findings of fact in Paragraph 5 of the Recommended Order, arguing that the findings were not based on competent, substantial evidence. Specifically, Petitioners again objected to the ALJ's use of the acronym "CHOP" and argued that the findings of fact inferred that the Florida Medicaid Program is a separate and distinct entity. The Agency again states that there is competent, substantial evidence to support the ALJ's usage of the acronym "CHOP" to describe the application. See Exhibit 16 at Page 410. In regards to Petitioners' argument that the findings of fact infer that the Florida Medicaid Program is a separate agency, Paragraph 4 of the Recommended Order demonstrates that it is not a separate agency because the ALJ found that "AHCA also is responsible for managing the federal Medicaid program within this state." Therefore, Petitioners' second exception is denied.

In their third exception, Petitioners took exception to the findings of fact in Paragraph 6 of the Recommended Order, arguing that they were not based on competent, substantial evidence. A review of Petitioners' third exception, Respondent's Response to Petitioners' exceptions and the record itself, indicates that the ALJ erred in describing the Medicaid side of the change of ownership process. First, Petitioners' Medicaid applications were submitted to Medicaid Contract Management at the Agency, which reviewed Petitioners' Medicaid applications. The applications were neither submitted to the Medicaid Program fiscal agent nor reviewed by Medicaid Program Analysis as found by the ALJ. See Transcript, Volume II, Pages 151-152. Second, the ALJ erred in finding that CMS creates the state Medicaid plan ("Plan").

In reality, the Agency creates the Plan and submits it to CMS for approval. See Transcript, Volume II, Pages 161-163. Thus, the Agency finds that the findings of fact in Paragraph 6 of the Recommended Order, as written, are not based on competent, substantial evidence. Because of this finding, Petitioners' third exception is granted to the extent that Paragraph 6 of the Recommended Order shall be modified to state:

> 6. Madison Pointe also chose to submit a Medicaid provider application to enroll as a Medicaid provider and to be eligible for Medicaid reimbursement. (Participation by nursing homes in the Medicaid program is voluntary.) After Medicaid Contract Management approved the Medicaid provider application, the Medicaid Program Analysis Office (MPA) set an interim per diem rate for reimbursement. Interim rate-setting is dependent upon legislative direction provided in the General Appropriations Act and also in the Title XIX Long-Term Care Reimbursement Plan (the Plan). The Plan is created by the Agency and approved by the federal Centers for Medicare and Medicaid Services (CMS). CMS (formerly known as the Health Care Financing Administration) is a federal agency within the Department of Health and Human Services. CMS is responsible for administering the Medicare and Medicaid programs, utilizing state agencies for assistance when appropriate.

In their fourth exception, Petitioners took exception to the findings of fact in Paragraph 9 of the Recommended Order, arguing that the findings were not based on competent, substantial evidence because the ALJ had misused the terms "re-basing" and "step-up." Contrary to Petitioners' argument, the findings of fact in Paragraph 9 of the Recommended Order were reasonable inferences based on competent, substantial evidence. See, e.g., Transcript, Volume I, Pages 34-35; and Exhibit 14. Therefore, Petitioners' fourth exception must be denied because the Agency is unable to reject or modify the findings of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz.

In their fifth exception, the Petitioners took exception to the findings of fact in Paragraph 20 of the Recommended Order, arguing that the findings were not based on competent,

substantial evidence. Petitioners' argument is incorrect because the findings of fact in Paragraph 20 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume II, Pages 152-172 and 220. The Agency is prohibited from rejecting or modifying findings of fact based on competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioners' fifth exception is denied.

In their sixth exception, the Petitioners took exception to the findings of fact in Paragraph 21 of the Recommended Order, arguing that the findings were not based on competent, substantial evidence, and that they were actually conclusions of law. Paragraph 21 of the Recommended Order does not contain conclusions of law. However, even if the findings of fact in Paragraph 21 of the Recommended Order could be construed as conclusions of law, they were reached by the ALJ's weighing of competent, substantial evidence. See, e.g., Transcript, Volume II, Pages 152-183 and 220-222; Exhibit 13 at Page 131; Exhibit 14 at Page 135; and Exhibit 16 at Pages 340, 344 and 380-409. The Agency cannot re-weigh evidence to reach conclusions that are more favorable to the Petitioners. See Heifetz at 1281 ("The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion."). Thus, the Agency must deny Petitioners' sixth exception.

In their seventh exception, the Petitioners took exception to the findings of fact in Paragraph 22 of the Recommended Order, arguing that the findings were actually conclusions of law that were clearly erroneous. The Agency finds that Paragraph 22 of the Recommended Order does not contain conclusions of law. Even, assuming arguendo, the findings of fact in Paragraph 22 of the Recommended Order were conclusions of law, they were reached by the ALJ's weighing of competent, substantial evidence. See, e.g., Transcript, Volume II, Pages 152-

183 and 220-222; Exhibit 14 at Page 135; and Exhibit 16 at Pages 340, 344 and 380-409. The Agency must deny Petitioners' seventh exception because it is prohibited from re-weighing evidence to reach conclusions that are more favorable to the Petitioners. See Heifetz.

In their eighth exception, the Petitioners took exception to the findings of fact in Paragraph 25 of the Recommended Order, arguing that the findings of fact were not based on competent, substantial evidence, and were actually conclusions of law that were clearly erroneous. Based upon the ruling on Petitioners' sixth exception supra, the Agency also denies Petitioners' eighth exception.

In their ninth exception, the Petitioners took exception to the findings of fact in Paragraph 26 of the Recommended Order, arguing that the findings of fact were not based on competent, substantial evidence, and were actually conclusions of law that were clearly erroneous. The Agency denies Petitioners' ninth exception based upon the ruling on Petitioners' sixth exception supra.

In their tenth exception, the Petitioners took exception to the findings of fact in Paragraph 29 of the Recommended Order, arguing that the findings were not based on competent, substantial evidence. Contrary to Petitioners' argument, the findings of fact in Paragraph 29 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 105-112 and 130-131. Thus, the Agency must deny Petitioners' tenth exception because it is unable to reject or modify the findings of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz.

In their eleventh exception, the Petitioners took exception to the findings of fact in Paragraph 30 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence, and were clearly incorrect. The Agency finds that, after a

review of the record, the findings of fact in Paragraph 30 of the Recommended Order were based on competent, substantial evidence. See, e.g., Transcript, Volume II, Pages 152-183 and 220-222; Exhibit 13 at Page 131; Exhibit 14 at Page 135; and Exhibit 16 at Pages 340, 344 and 380-409. Thus, the Agency is unable to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioners' eleventh exception is denied.

In their twelfth exception, the Petitioners took exception to the findings of fact in Paragraph 31 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. Contrary to Petitioners' argument, the findings of fact in Paragraph 31 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 105-112 and 130-131. Thus, the Agency denies Petitioners' twelfth exception because it cannot reject or modify the findings of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz.

In their thirteenth exception, the Petitioners took exception to the findings of fact in Paragraph 32 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. Petitioners' argument is erroneous because a review of the record reveals that the findings of fact in Paragraph 32 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 105-115, 130-131 and 146-157. Findings of fact based on competent, substantial evidence cannot be rejected or modified by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, Petitioners' thirteenth exception is denied.

In their fourteenth exception, the Petitioners took exception to the findings of fact in Paragraph 33 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. Notwithstanding Petitioners' argument to the contrary, the

findings of fact in Paragraph 33 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 105-115, 130-131, 146-157 and 174-180. Therefore, Petitioners' fourteenth exception is denied because the Agency is unable to reject or modify the findings of fact. See § 120.57(1)(*l*), Fla. Stat.; Heifetz.

In their fifteenth exception, the Petitioners took exception to the findings of fact in Paragraph 34 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. The Agency reviewed the record and found that the findings of fact in Paragraph 34 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 105-144, 146-153 and 173-180. Petitioners' are, in essence, asking the Agency to re-weigh the evidence in order to reach findings that are more favorable to their position, which the Agency cannot do. See Heifetz. Thus, the Agency must deny Petitioners' fifteenth exception.

In their sixteenth exception, the Petitioners took exception to the findings of fact in Paragraph 35 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. Petitioners' argument is erroneous because the findings of fact in Paragraph 35 of the Recommended Order were based on competent, substantial evidence. See Transcript, Volume II, Pages 113-118; Exhibit 16 at Pages 365-366; and Exhibit 25 at Pages 1647-1648. Thus, the Agency is unable to reject or modify them (See § 120.57(1)(*l*), Fla. Stat.; Heifetz.), and must deny Petitioners' sixteenth exception.

In their seventeenth exception, the Petitioners took exception to the findings of fact in Paragraph 36 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. Petitioners are again, in essence, asking the Agency to re-weigh the evidence in order to reach findings that are more favorable to the Petitioners, which

the Agency cannot do. See Heifetz. The findings of fact in Paragraph 36 of the Recommended Order were based on competent, substantial evidence (See, e.g., Transcript, Volume II, Pages 105-132; and Exhibit 16 at Pages 363-364), and cannot be rejected or modified by the Agency. See § 120.57(1)(*l*), Fla. Stat.; Heifetz. Therefore, the Agency denies Petitioners' seventeenth exception.

In their eighteenth exception, the Petitioners took exception to the findings of fact in Paragraph 37 of the Recommended Order, arguing that the findings of fact were not supported by competent, substantial evidence. The Agency denies Petitioners' eighteenth exception based upon the ruling on Petitioners' fourteenth exception supra.

In their nineteenth exception, Petitioners took exception to the conclusions of law in Paragraph 42 of the Recommended Order, arguing that the ALJ's use of "CHOP" was improper. The Agency denies Petitioners' nineteenth exception based on the ruling on Petitioners' first and second exceptions supra.

In their twentieth exception, Petitioners took exception to the conclusions of law in Paragraph 54 of the Recommended Order, arguing that, contrary to the ALJ's conclusions, the Agency's interpretation of the Plan was clearly erroneous. The Agency disagrees with Petitioners and instead finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 54 of the Recommended Order, it could not substitute conclusions of law as or more reasonable than those of the ALJ. See § 120.57(1)(*l*), Fla. Stat. Therefore, the Agency denies Petitioners' twentieth exception.

In their twenty-first exception, Petitioners took exception to the conclusions of law in Paragraph 55 of the Recommended Order, arguing that they were irrelevant. However, arguing that a conclusion of law is irrelevant is not a valid exception. The conclusions of law in

Paragraph 55 of Recommended Order were based on the findings of fact, which, in turn, were based on competent, substantial evidence. See, e.g., the ruling on Petitioners' tenth exception supra. Petitioners are, again, asking the Agency to re-weigh the evidence, which it cannot do. See Heifetz. Because of this, the Agency must deny Petitioners' twenty-first exception.

In their twenty-second exception, Petitioners took exception to the conclusions of law in Paragraph 57 of the Recommended Order, arguing that it ignores the facts. However, Petitioners' argument is irrelevant. The conclusions of law in Paragraph 57 of Recommended Order were based on the findings of fact, which, in turn, were based on competent, substantial evidence. See, e.g., the ruling on Petitioners' sixteenth exception supra. Petitioners are, again, asking the Agency to re-weigh the evidence, which it cannot do. See Heifetz. Therefore, the Agency denies Petitioners' twenty-second exception.

In their twenty-third exception, Petitioners took exception to the conclusions of law in Paragraph 58 of the Recommended Order based on its previous exceptions. The Agency denies Petitioners' twenty-third exception based upon the rulings on Petitioners' first through twenty-second exceptions supra.

In their twenty-fourth exception, Petitioners took exception to the conclusion of law in Paragraph 59 of the Recommended Order, arguing that it was clearly erroneous. The Agency denies Petitioners' twenty-fourth exception based upon the rulings on Petitioners' first through twenty-third exceptions supra.

FINDINGS OF FACT

The Agency hereby adopts the findings of fact set forth in the Recommended Order, except where noted supra.

CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, the Medicaid interim per diem rates established by the Agency for Petitioners are hereby upheld. Petitioners shall govern themselves accordingly.

DONE and **ORDERED** this 15th day of April, 2009, in Tallahassee, Florida.

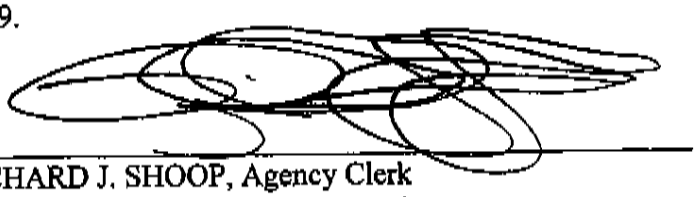
HOLLY BENSON, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH THE FILING FEE AS 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 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. Mail, or by the method indicated, to the persons named below on this 21st day of April, 2009.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS#3
Tallahassee, Florida 32308-5403
(850) 922-5873

COPIES FURNISHED TO:

Honorable R. Bruce McKibben
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Peter A. Lewis, Esquire
Law Offices of Peter A. Lewis, P.L.
2931 Kerry Forest Parkway, Suite 202
Tallahassee, Florida 32309

Debora Fridie, Esquire
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308

Lisa Milton
Medicaid Program Analysis