

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 09-6165MPI
)
LYNK SERVICES, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On February 8, 2010, a formal administrative hearing in this case was held in Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Andrew T. Sheeran, Esquire
Agency for Health Care Administration
Fort Knox Building, Mail Stop 3
2727 Mahan Drive, Suite 3431
Tallahassee, Florida 32308

For Respondent: Lynne Ballou, CEO, WSC
Qualified Representative
Lynk Services, Inc.
2189 Cleveland Street, Suite 207
Clearwater, Florida 33765

STATEMENT OF THE ISSUES

The issues in the case are whether Lynk Services, Inc. (Respondent), violated applicable provisions of the Florida Administrative Code, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By letter dated October 2, 2009, the Agency for Health Care Administration (Petitioner) alleged that the Respondent violated Florida Administrative Code Rule 59G-9.070(7)(f). As stated in the letter, the Petitioner sought to impose a \$1,000 fine and to require compliance with a corrective action plan to address the violation.

The Respondent disputed the alleged violation and penalty and requested a hearing. The Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of one witness and had one composite exhibit admitted into evidence. The Respondent presented the testimony of one witness.

No transcript of the hearing was filed. The Petitioner filed a Proposed Recommended Order on March 10, 2009, pursuant to the schedule adopted at the hearing.

FINDINGS OF FACT

1. The Florida Medicaid Developmental Disabilities Waiver Program (Waiver) provides approved health and personal services to qualified recipients. The Agency for Persons with Disabilities (APD) administers the Waiver and conducts audits of participating health care providers.

2. The time period relevant to this case (the "audit period") was April 1, 2006, through June 30, 2006.

3. At all times material to this case, the Respondent was the Waiver Support Coordinator (WSC) for Waiver recipient R.M.

4. At all times material to this case, Premier Health Care (Premier) was the personal care assistance provider assigned by the Respondent to R.M.

5. On March 31, 2006, the Respondent filed with APD, an authorization for personal care services to be provided to R.M. by Premier for the one-year period commencing on April 1, 2006.

6. Premier filed claims for the provision of personal care service to R.M. during at least part of the audit period. The Florida Medicaid program paid the claims.

7. Premier did not provide personal care assistance to R.M. during the audit period.

8. The only service provided to R.M. during the audit period by a Premier employee was supervision of oxygen usage, which is not a personal care service.

9. The Respondent did not file any request to amend the service authorization to reflect the services actually provided by Premier to R.M.

10. An overpayment of \$2,006.00 occurred, based on payment by APD for personal care services that were not provided to R.M.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

12. The Petitioner has the burden of proving by a preponderance of the evidence the overpayments for which it seeks reimbursement. Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So. 2d 106 (Fla. 1st DCA 1992). In this case, the burden has been met.

13. The Florida Medicaid Developmental Disabilities Waiver Services Coverage and Limitations Handbook (Handbook) governs the operation of the Waiver.

14. The Handbook assigns responsibility to the WSC for managing the provision of personal care assistance to a Waiver recipient by a provider. Handbook page 2-60 requires that the WSC monitor the provision of personal care services by a provider to a Waiver recipient and to request changes to the applicable care plan to increase or decrease services as appropriate.

15. Handbook page 2-92 requires that the WSC review documentation and monitor services to determine whether such services meet the recipient's expectations. Handbook page 2-93 requires that within five days of becoming aware that a recipient's needs have changed, the WSC must update the cost plan to reflect the recipient's current need for services.

16. Handbook page 3-4 states that reimbursement for services not delivered is considered overpayment and is subject to action by the Petitioner to recoup the disbursed funds.

17. In this case, the Respondent failed to monitor the provision of personal care services by Premier to R.M. The Respondent further failed to request appropriate changes to R.M.'s care plan to delete the authorization for personal care services that were not provided. The payment of funds during the audit period for personal care assistance to R.M. was an overpayment because the services were not delivered to R.M. by Premier.

18. Florida Administrative Code Rule 59G-9.070(7)(f) provides, in relevant part, as follows:

(7) SANCTIONS: Except when the Secretary of the Agency determines not to impose a sanction, pursuant to Section 409.913(16)(j), F.S., sanctions shall be imposed for the following:

* * *

(f) Furnishing or ordering goods or services that are inappropriate or unnecessary because they are out of compliance with the practice standards governing the provider's profession, are excessive, of inferior quality, or that are found to be harmful to the recipient. [Section 409.913(15)(f), F.S.];

19. Pursuant to Florida Administrative Code Rule 59G-9.070(10)(i), the appropriate penalty applicable to this case is a fine of \$1,000 and the submission of a corrective action plan.

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 stating that the Respondent violated applicable requirements as set forth herein and assessing a fine of \$1,000 and requiring the submission of an acceptable corrective action plan.

DONE AND ENTERED this 6th day of April, 2010, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of April, 2010.

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.