

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

DOAH CASE NO. 10-0262MPI
AUDIT NO. C.I. 04-2413-000
RENDITION NO.: AHCA-11-0087-FOF-MDO

MARIA D. GONZALEZ,

Respondent.

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Edward T. Bauer, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether Respondent was overpaid by Medicaid for claims that did not comply with Medicaid requirements. The Recommended Order dated November 23, 2010, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

The Petitioner filed an exception to the Recommended Order.

In determining how to rule upon the Petitioner's exception and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency for Health Care Administration ("Agency" or "AHCA") must follow Section 120.57(1)(l), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state

with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

Fla. Stat. § 120.57(1)(I). In accordance with these legal standards, the Agency makes the following ruling on the Petitioner's exception:

In its sole exception to the Recommended Order, Petitioner takes exception to the conclusions of law in Paragraph 162 of the Recommended Order, wherein the ALJ concluded that "although the imposition of a fine is authorized by Subsection 409.913(15)(c), Florida Statutes, Petitioner's Proposed Recommended Order does not request such a penalty. Accordingly, the undersigned has elected to omit a fine from his recommendation." According to Petitioner, the ALJ's conclusion of law is erroneous and results in AHCA violating the laws it is charged with implementing.

In Paragraph 162 of the Recommended Order, the ALJ states he did not recommend the imposition a fine because Petitioner did not request the imposition of a fine in its Proposed Recommended Order. There are two flaws with the ALJ's conclusions. First, AHCA imposed a fine in its Final Audit Report, which is considered to be the administrative complaint in this matter pursuant to Rule 28-106.2015(1), F.A.C. It is the contents of an administrative complaint, not a proposed recommended order, that dictate whether penalties can be imposed. See, e.g., Willner v. Dep't of Prof'l Reg., Bd. of Medicine, 563 So.2d 805 (Fla. 1st DCA 1990) (physician could not be found guilty of violations that were not charge in administrative complaints). Second, Petitioner's Proposed Recommended Order asked the ALJ to impose the fine requested

in its Final Audit Report by “request[ing] that the ALJ find that the Agency’s FAR be accepted.” See Petitioner’s Proposed Recommended Order at Page 28. Thus, the ALJ’s conclusion that “Petitioner’s Proposed Recommended Order does not request such a penalty” is erroneous.

In 2008, § 409.913(15), Fla. Stat., gave AHCA the discretion to impose sanctions on Medicaid providers who could not substantiate their billing. See § 409.913(15), Fla. Stat. (2008) (stating that the Agency “may seek” remedies provided by law, including sanctions under § 409.913(16)). In 2009, the legislature changed this “may” to “shall.” See § 409.913(15), Fla. Stat. (2009). Accordingly, Florida law now generally requires AHCA to impose sanctions on providers like the one here. In imposing required sanctions, AHCA can choose among the various punishments listed in §409.913(16), one of which is the imposition of a fine. § 409.913(16), Fla. Stat. If AHCA chooses to impose a fine, it can choose to set the fine at any amount up to \$5,000 per violation. *Id.* This is what AHCA did in this case.¹

There is one exception to the statutory requirement that the Agency sanction providers like the one here. Section 409.913(16), Florida Statutes, states that the Agency’s Secretary may, in her discretion, find that imposing a sanction will not serve the best interests of the Medicaid program. The Agency reads the language of §409.913(16), Fla. Stat., to mean that, in order for the ALJ to recommend that a fine not be imposed in this matter, the ALJ must first make a finding that the Secretary of AHCA has made a determination that imposition of a sanction or disincentive is not in the best interest of the Medicaid program. See §409.913(16), Fla. Stat. (“The Secretary of Health Care Administration may make a determination that imposition of a sanction or disincentive is not in the best interest of the Medicaid program, in which case a sanction or disincentive shall not be imposed.”). If no such finding is made, then

¹ The Agency could have suspended or terminated this provider from the Medicaid program in addition to, or as an alternative to, imposing a fine. See §409.913(16)(a),(b), Fla. Stat. The Agency has chosen not to do so.

§409.913(16)(c), Fla. Stat., dictates that “[t]he agency shall impose ... a fine of up to \$5,000 ... [for] [e]ach instance of improper billing of a Medicaid recipient.” (Emphasis added).

Here, the Agency’s Secretary made no such finding. The Agency’s Final Audit Report imposed a fine, and the Agency specifically asked the ALJ to adopt the Final Audit Report. Since the ALJ found several instances where the Respondent improperly billed Medicaid for services to a Medicaid recipient (See Paragraphs 28, 38, 41, 42, 44, 48-49, 52-53, 55-57, 60-61, 65-67, 70-71, 74-78, 81-82, 90, 96-98, 101, 104-106, 107, 110-112, 114-115, 118, 123-126, 136-139, 142, and 146-147) and did not make any finding that AHCA’s Secretary had determined that imposition of a sanction is not in the best interest of the Medicaid program in this case, he erred by not recommending the imposition of a fine as requested by Petitioner.

AHCA is the single state agency responsible for administering Florida’s Medicaid program and for ensuring state compliance with federal Medicaid laws and rules. § 409.902, Fla. Stat. As such, it has substantive jurisdiction over the laws in Chapter 409, Florida Statutes, including the one at issue in Paragraph 162 of the Recommended Order. Furthermore, AHCA finds that it could substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants Petitioner’s exception and modifies Paragraph 162 of the Recommended Order as follows:

162. Finally, because Petitioner proved several instances where Respondent had improperly billed Medicaid for services to a Medicaid recipient, the Agency’s imposition of a \$2,000 fine must be upheld pursuant to §409.913(15) and (16)(c), 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, except where noted supra.

IT IS THEREFORE ADJUDGED THAT:

Respondent is required to repay \$284,568.39 in Medicaid overpayments, plus statutory interest at a rate of ten (10) percent per annum, to the Agency for paid claims covering the period from January 1, 2003 to December 31, 2004. Additionally, the Agency imposes a \$2,000 fine on the Respondent. Respondent shall make full payment of the overpayment and fine to the Agency for Health Care Administration within 30 days of the rendition of this Final Order. Respondent 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 1 day of January, 2011, in Tallahassee, Florida.



ELIZABETH DUDEK, INTERIM 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 20th day of February, 2011.



RICHARD J. SHOOP, Agency Clerk
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