

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,)
)
vs.) Case No. 10-0262MPI
)
MARIA D. GONZALEZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This case came before Administrative Law Judge Edward T. Bauer for final hearing by video teleconference on July 28 and 29, 2010, and August 5, 2010, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: L. William Porter, II, Esquire
Agency for Health Care Administration
Fort Knox Executive Center III
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

For Respondent: Joseph W. Gibson, Esquire
19 West Flagler Street, Suite 620
Miami, Florida 33130

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent was overpaid \$312,773.67 for claims which, according to Petitioner, did not comply with Medicaid requirements.

PRELIMINARY STATEMENT

Petitioner Agency for Health Care Administration (hereinafter "AHCA") is the agency responsible for administering the Florida Medicaid Program. Respondent Maria D. Gonzalez is a Home and Community-Based (HCB) Medicaid Waiver Services Provider who has furnished goods or services to Medicaid beneficiaries.

On October 7, 2005, after detecting possible irregularities in Respondent's billing patterns, AHCA notified Respondent that it was initiating an audit of her billings. To that end, AHCA requested that Respondent produce records relating to a sampling of the services she provided to 34 Medicaid recipients during the period of January 1, 2003, through December 31, 2004.

On October 21, 2005, Respondent provided records in response to the request, which AHCA found to be insufficient to document some of the claims. Consequently, on May 24, 2007, AHCA issued a Preliminary Agency Audit Report, wherein it alleged that Respondent had been overpaid \$5,309,263.56 for Medicaid services during the audit period. In response to the preliminary audit, Respondent provided additional documentation to Petitioner on June 10, 2007. After reviewing the supplemental records, AHCA issued a Final Agency Audit Report on June 28, 2007, which alleged that Respondent had been overpaid \$1,647,960.81 for Medicaid services.

Through counsel, Respondent requested a hearing to dispute the overpayment assessment. The matter was referred to the Division of Administrative Hearings ("DOAH"), on July 25, 2007, and was assigned DOAH Case No. 07-3456MPI. At the parties' request, the matter was placed in abeyance while they attempted to reach a settlement. On October 12, 2009, the parties filed a Joint Status Report indicating that settlement negotiations remained ongoing. Administrative Law Judge John G. Van Laningham entered an Order Closing File on November 6, 2009, which authorized the parties to reopen the case should a settlement not be finalized. On January 15, 2010, AHCA filed a Motion to Re-open, which was granted on January 19, 2010. The Order Granting Request to Reopen Case reopened the instant matter as DOAH Case No. 10-262MPI.

A final hearing was subsequently held on July 28 and 29, 2010, and August 5, 2010. At the outset of the hearing, AHCA announced that the alleged overpayment had been reduced to \$312,773.67. The parties also noted that Respondent did not dispute the statistical methodology utilized by AHCA in calculating the overpayment. AHCA called three witnesses: Ms. Robi Olmstead, who serves as the administrator of the wavier unit within AHCA's Bureau of Medicaid Program Integrity, Ms. Effie Green, and Ms. Robin Satchell. AHCA also introduced ten exhibits, identified as Petitioner's Exhibits A, B, C, D, E,

F, G, H, I, and J. The parties also introduced eight joint exhibits, identified as Joint Exhibits A, B, C, D, E, F, G, and H. Respondent testified on her own behalf, but presented no other witnesses or exhibits.

Prior to the submission of testimony, the undersigned took official recognition of the Florida Medicaid Provider Reimbursement Handbook, November 1996¹; the Florida Medicaid Provider General Handbook²; and, the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook, July 2002.³

At the conclusion of the hearing, AHCA requested 30 days to submit a proposed recommended order following the filing of the hearing transcript. As Respondent did not object, the undersigned granted AHCA's request.

The final hearing transcript was filed on September 2, 2010. On September 27, 2010, Respondent filed a motion for extension of time to submit a proposed recommended order. The undersigned granted the motion by written order, which directed the parties to file proposed recommended orders by November 1, 2010. Each party subsequently filed Proposed Recommended Orders, which were considered in the preparation of this Recommended Order.

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

FINDINGS OF FACT

The Parties

1. Petitioner Agency for Health Care Administration ("AHCA") is the state agency responsible for administering the Florida Medicaid Program ("Medicaid").

2. At all relevant times, Respondent has been a Home and Community Based (HCB) Medicaid provider that is authorized to receive reimbursement for covered services rendered to Medicaid recipients.

Developmental Disability Home and Community Based Services Waiver Program

3. The alleged overpayment in this case relates to services Respondent provided through the Medicaid Developmental Disability Home and Community Based Waiver Program ("the Program"). As explained during Ms. Olmstead's final hearing testimony, the Program was established to help developmentally-disabled individuals remain in their homes or home-like settings within the community, as opposed to institutions such as nursing homes or intermediate care facilities.

4. Medicaid recipients that desire to receive services through the Program undergo an initial evaluation performed by a

waiver support coordinator. The support coordinator is a Medicaid provider that is selected by the Medicaid recipient or his or her guardian.

5. To determine the services needed by the recipient to remain in the home, the support coordinator assesses the recipient by conducting an in-home visit. Upon completion of this initial assessment, the support coordinator formulates a "support plan," a document which describes the recipient's personality, likes, dislikes, strengths, and weaknesses, as well as the recipient's existing support system, such as family, friends, and neighbors. In addition, the support plan details the services the recipient needs to stay in the home and identifies who will provide the services. The expected costs of the proposed services are described on a form titled "cost plan," which, combined with the support plan, comprise the plan of care for the recipient.

6. The support coordinator is required to submit the plan of care, as detailed in the support plan and cost plan, to the Department of Children and Families ("DCF"). If the plan of care is approved, DCF staff will create a "service authorization form." This form, which the support coordinator forwards to the service provider, describes the services to be rendered, as well as the duration and frequency of each service. Without the

service authorization form, a provider cannot be assured payment from Medicaid.

7. At least one time per year, the support coordinator must assess the recipient's needs, complete updated support and cost plans, and submit the updated plans for approval. If the updated plan of care is approved, DCF will draft a new service authorization form, which is forwarded to the provider by the support coordinator, along with copy of pertinent support plan information. Should the recipient's services or support require modification, the support coordinator is required to update the cost report and submit it for approval.

8. Communication between the support coordinator and providers such as Respondent is encouraged, as the support coordinator reviews with the provider the goals to be achieved for the recipient. A service provider is expected to assist in establishing support plan outcomes for a recipient's goals and participate in the personal outcome process. Moreover, a service provider expressly consents to such communication by virtue of the provider's contract with Medicaid, which includes an agreement to participate in discussions with the support coordinator on matters such as a recipient's progress, the extent to which a recipient's needs are being met, and modifications to the recipient's support plan.

The Preliminary Audit and Final Audit

9. Exercising its statutory authority to oversee the integrity of Medicaid, Petitioner conducted a review or audit of Respondent's records to verify that claims paid by Medicaid during the period from January 1, 2003, through December 31, 2004 (the "audit period"), were billed and paid in accordance with Medicaid statutes, rules, and policies.

10. As the average number of claims per recipient during the audit period was substantial, Petitioner utilized "two stage cluster sampling." This first stage involved a random selection of 34 receipts for whom Respondent submitted claims during the audit period. Next, from those 34 recipients, a total of 255 claims was randomly selected.

11. On October 7, 2005, AHCA requested that Respondent provide "the documentation for services paid by the Florida Medicaid Program" in connection with the 255 claims that comprised the random sample. On or about October 21, 2005, Respondent submitted 37 packages of documents in response to Petitioner's request. Respondent also executed an affidavit which alleged that the documents were true and correct copies, and that the records were made at or near the time that the services were rendered.

12. The documents submitted by Respondent were initially examined by Ms. Effie Green, a program analyst employed by

Petitioner. Ms. Green immediately noticed that the records from at least some of the packages were covered in dust with a crystal-like appearance. Law enforcement officers called to the scene ultimately determined that the substance was harmless. There is no evidence that any of the records were tampered with or removed from Petitioner's offices during the investigation. On the contrary, the evidence demonstrates that the documents remained in Ms. Green's office until the dust was analyzed.

13. Following the events described above, the audit of Respondent's records was delayed for approximately one year while an appeal, which involved a different Medicaid provider, was completed. The appeal, which was resolved in AHCA's favor, concerned the validity of the statistical formula utilized in calculating probable Medicaid overpayments.⁴

14. The responsibility of reviewing the documents provided by Respondent was later transferred to Ms. Robin Satchell, an investigator employed by Petitioner in the Bureau of Program Integrity. Prior to her employment with AHCA, Ms. Satchell worked for eight years as an HCB Medicaid provider.

15. Ms. Satchell fully reviewed the records previously submitted on October 20, 2005, and also examined additional records subsequently provided by Respondent to verify that the claims paid during the audit period were billed and paid in accordance with Medicaid statutes, rules, and policies.

16. Rules applicable to the claims reviewed in this case are enumerated in the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook, and include:

- Only those services that have been identified in a recipient's plan of care and which have been approved and authorized prior to delivery are covered. Providers are limited to the amount, duration, and scope of the services described on the recipient's support plan and current approved cost plan.
- Only those services that are medically necessary are covered. Services furnished through the developmental disability waiver program are deemed to be medically necessary only if certain elements are present, including but not limited to the following: the service is not in excess of the recipient's needs; and, the service is furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.
- In order to receive payment for services, the provider must document the service appropriately. Documentation is a written record that supports the fact that a service has been rendered. Depending upon the particular service provided (e.g., Personal Care Assistance, Homemaker Services, Chore Services), the documentation requirements

may vary and are detailed in the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook.

17. On May 24, 2007, AHCA issued a Final Agency Audit Report, which alleged that Respondent was overpaid \$1,647,960.81 during the audit period for services that were not covered by Medicaid.

18. Following the issuance of the Final Agency Audit Report, and as announced at the outset of the final hearing in his matter, Petitioner now alleges that Respondent was overpaid \$312,773.26.

19. The manner in which AHCA reached the alleged overpayment of \$312,773.67 is as follows: of the 255 claims examined by Ms. Satchell, 197 were allowed.⁵ Ms. Satchell made downward adjustments to 52 claims, and 6 were denied outright. Based upon the adjustments and denials, Ms. Satchell concluded that Respondent had received \$1,287.26 in reimbursement of claims in the sample for services not covered by Medicaid, either in whole or in part. Having discovered this "empirical overpayment" of \$1,287.26, AHCA employed a statistical formula to ascertain the "probable total overpayment" that Respondent received from Medicaid in connection with the total number of claims made during the Audit Period.⁶ As noted above, Petitioner contends that the "probable total overpayment" is \$312,773.67.

20. In her Proposed Recommended Order, Respondent asserts that with respect to the entire sample of claims, only one instance of incorrect billing occurred. In particular, Respondent concedes that that services provided to Recipient number 24 on September 2, 2003, were inadvertently overbilled in the amount of \$0.96. Respondent disputes the remaining 51 downward adjustments and six outright denials, which are discussed separately below by recipient.⁷

Recipient No. 1

21. The support plan for this recipient authorized Personal Care Assistance, which is described in the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook as follows:

[A] service that assists a beneficiary with eating and meal preparation, bathing, dressing, personal hygiene, and activities of daily living. The service also includes activities such as assistance with meal preparation, bed marking and vacuuming when these activities are essential to the health and welfare of the beneficiary and when no one else is available to perform them Personal Care Assistance is limited to the amount, duration and scope of the services described in the beneficiaries [sic] support plan and current approved cost plan.⁸

(Emphasis added).

22. The support plan indicates that this recipient lived with his mother and three siblings, all but one of whom were capable of completing homemaker tasks.

23. AHCA alleges that of the five claims examined during the audit, one is problematic.

24. In particular, AHCA contends that six of the activities performed on November 12, 2004, constituted unauthorized homemaker tasks, and therefore overbilling occurred in the amount of \$12.90. According to AHCA, the unauthorized activities included organizing clothes, cleaning the kitchen, washing dishes, cleaning tables, cleaning the living room, and washing laundry.

25. The undersigned finds that four of the six activities were unauthorized homemaker tasks: organizing clothes, cleaning the living room, washing laundry, and cleaning tables.

26. The undersigned cannot agree, however, that Respondent inappropriately billed for washing dishes and cleaning the kitchen. Notably, and as demonstrated by the service log, meal preparation was one of the services provided to the recipient on November 12, 2004. There is no allegation that meal preparation was unauthorized, and the various exhibits submitted by AHCA plainly reveal that the service was appropriate (i.e., meal preparation was not included in AHCA's list of unauthorized activities for that date). In the undersigned's judgment, if a service provider is authorized to cook a meal for a beneficiary, it necessarily follows that the provider be permitted, and indeed expected, to wash the dishes and clean the kitchen.

27. The undersigned's conclusion that Respondent appropriately billed for cleaning the kitchen and washing dishes is supported by the notes made by Ms. Satchell in one of AHCA's exhibits. In particular, page 3 of Petitioner's Exhibit H indicates that with respect to the October 17, 2004, services provided to Recipient No. 6 (who likewise received Personal Care Assistance), one unit of service was deducted for cleaning the kitchen because there was "no meal prep that day." The obvious implication of this notation is that cleaning the kitchen would not have been considered improper if a meal had been prepared.

28. As Respondent was authorized to prepare a meal for the recipient on November 12, 2004, Respondent properly billed for the services of washing the dishes and cleaning the kitchen. Accordingly, the \$12.90 alleged overpayment should be adjusted, as only four unauthorized activities (organizing clothes, cleaning the living room, washing laundry, and cleaning tables) were billed.

Recipient No. 3

29. The service authorization for Recipient No. 3 provided for four hours of Homemaker Services per week. The service authorization further indicated that the Homemaker Services were intended to achieve the support plan goal of providing "the beneficiary with [a] clean environment. General household activities, such meal [sic] preparation, vacuuming, and routine

cleaning." It appears from the support plan that the Homemaker Services were authorized due to the poor health of the recipient's mother.

30. Homemaker Services are defined in the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook as follows:

Homemaker services are those general household activities such as meal preparation, laundry, vacuuming and routine household cleaning provided by a trained homemaker, when the person who usually handles these tasks is unable to perform them. The intent of this service is to ensure that the beneficiary's home environment remains clean, safe, and sanitary.

Homemaker services are provided only when there is no one else capable of accomplishing the household tasks

* * *

Homemaker services shall be provided in the beneficiary's own home or family home. This service is available in the family home only when there is documentation as to why the family cannot provide the support If approved, homemaker services will be limited to the beneficiary's primary living areas such as bedroom and bathroom. This includes the kitchen and a common area, if regularly utilized by the beneficiary.

(Emphasis added).

31. On December 11, 2004, Respondent provided four hours of Homemaker Services, which were billed in the amount of \$59.20.

32. AHCA concedes that nine of the services provided on December 11, 2004, were authorized and therefore appropriately billed: making the bed; changing the bed sheets; throwing garbage away; cleaning the room; organizing the room; organizing the clothes; cleaning the bathroom; changing the towels; organizing the bathroom; vacuuming; cleaning the rugs; and meal preparation.

33. However, AHCA contends that ten other activities provided on December 11, 2004, were unauthorized: cleaning the kitchen; washing the dishes; cleaning the tables; cleaning / organizing the cabinets; cleaning the stove; cleaning the refrigerator; cleaning the living room; washing laundry; ironing; and cleaning windows. It is evident from Ms. Satchell's notes (in the "MPI worksheet") that she found these tasks unnecessary because they occurred "outside of recipient's bedroom / bathroom."⁹ As a consequence, Ms. Satchell concluded that Respondent was overpaid for one hour of services in the amount of \$14.80

34. Once again, the undersigned cannot agree that Respondent inappropriately billed for cleaning the kitchen, washing dishes, and cleaning the stove. Cooking was permitted by the service authorization, and there is no allegation that Respondent should not have billed for the meal that was prepared for the recipient on December 11, 2004. If a provider is

authorized to prepare a meal, it is only logical that he or she clean up afterward and bill for the time.

35. Nor can the undersigned agree that Respondent should not have billed for cleaning the living room, tables, windows, and refrigerator. These four activities plainly fall within the services contemplated by the service authorization, which directed Respondent to provide "the beneficiary with [a] clean environment" and carry out "general household activities . . . such as routine cleaning." Moreover, these activities are comparable to "cleaning rugs," an activity performed on the same date that was not alleged to be improper. Although, as AHCA point out, these activities may have occurred outside of the recipient's bedroom and bathroom, that fact is not controlling, as the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook provides that Homemaker Services extend to "the kitchen and a common area, if regularly utilized by the beneficiary."¹⁰

36. The undersigned also finds that washing laundry was not an unauthorized activity, as it falls within the definition homemaker services. Further, in light of the recipient's incontinence, washing laundry is obviously essential to achieving the support plan goal of providing "the beneficiary with [a] clean environment."

37. The undersigned does agree with AHCA that ironing and "cleaning / organizing cabinets" were unauthorized because these activities were not related to the support plan goals.

38. Based on the findings herein that only two of the activities were unauthorized (ironing and "cleaning / organizing" cabinets), an adjustment should be made to the alleged overpayment of \$14.80.

Recipient No. 6

39. This recipient was authorized to receive six hours of Personal Care Assistance per day. Pursuant to the support plan, Respondent was authorized to provide bathing, dressing and eating assistance to the recipient.

40. On October 17, 2004, Respondent provided six hours of services to the recipient, at a cost of \$120.96.

41. AHCA alleges, correctly, that one of the services provided on that date, cleaning the kitchen, was unauthorized because the service documentation provided by Respondent reflects that no meal was prepared. Accordingly, the undersigned finds that Respondent was overpaid \$5.04.

42. Although Respondent has suggested that cleaning the kitchen may have been necessary due to the recipient (who is incontinent) defecating on the kitchen floor, no documentation has been provided that would support such a finding. In the absence of appropriate documentation, AHCA appropriately found

that an adjustment of one unit was required for the October 17, 2004, services.

43. Respondent also provided six hours of services to the recipient on November 26, 2004, at a cost of \$120.96.

44. With respect to this date, AHCA contends, and the undersigned agrees, that overbilling for one unit in the amount of \$5.04 occurred, as one of the activities performed, "organizing clothes," constituted an unauthorized homemaker service.

45. For the reasons expressed above, AHCA demonstrated by a preponderance of the evidence overbilling totaling \$10.08 with respect to this recipient.

Recipient No. 7

46. This recipient was authorized to receive Personal Care Assistance. Significantly, the recipient's support plan clearly indicated that her mother prepared meals for her.

47. The service logs indicate that Respondent provided four hours of services to the recipient on the following dates: September 4 and November 25, 2003, and February 10 and April 26, 2004.

48. AHCA contends that on each of the four dates listed above, Respondent provided the unauthorized service of meal preparation, and as a result, Respondent was overpaid a total of \$18.68.

49. As the recipient's support plan clearly indicated that meals were prepared by a parent, AHCA has demonstrated an overpayment of \$18.68 by a preponderance of the evidence.

Recipient No. 8

50. Recipient No. 8 was authorized to receive Personal Care Assistance and Companion Services, both of which were provided by Respondent.

51. AHCA alleges that of the eleven claims reviewed pursuant to the audit, two were problematic. Specifically, AHCA contends the service logs associated with the personal care assistance provided on October 26 and November 19, 2004, were obvious photocopies of Respondent's service log from March of 2004 for the same recipient. Accordingly, AHCA asserts that the records submitted by Respondent in connection with the October 26 and November 19 services were not contemporaneous and therefore inadequate.

52. As no contemporaneous records document the services provided on October 26 and November 19, 2004, AHCA contends that Respondent was overpaid \$275.20 (\$137.60 for each of the dates).

53. The undersigned has examined the service logs for October and November 2004 for this recipient and finds that they do not constitute contemporaneous records. As such, Respondent was overpaid in the amount alleged by AHCA.

Recipient No. 9

54. This recipient was authorized to receive Homemaker Services.

55. AHCA alleges, and the undersigned agrees, that of the five claims audited, two involved overpayments.

56. In particular, Respondent's service log reveals that on April 29, 2003, the unauthorized activity of "shopping" was performed. As such, Respondent was overpaid in the amount of \$3.70.

57. Further, Respondent's service log indicates that on January 7, 2004, homemaker activities were provided from 9:00 a.m. through 11:00 a.m., which included shopping and meal preparation. As noted above, shopping is an unauthorized activity. In addition, the support plan indicates that the recipient's mother was responsible for preparing meals. Accordingly, an overpayment of \$3.70 occurred with respect to this date of service.

58. For these reasons, AHCA has demonstrated a total overpayment of \$7.40 in connection with this recipient.

Recipient No. 10

59. Recipient No. 10 was authorized to receive Companion Services, which, pursuant to the support plan, were intended to help the recipient "continue to be exposed to different options in the community."

60. AHCA contends that two of the five claims examined during the audit are problematic. First, with respect to the July 29, 2003, claim, Respondent provided no documentation to support the \$49.44 billed for the four hours of service. As such, AHCA correctly determined that Respondent was overpaid in that amount.

61. In addition, AHCA properly found that Respondent was overpaid \$3.70 in connection with the September 26, 2003, services. Specifically, the service log indicates that a meal was prepared, which is an activity unrelated to the specific goals identified in the support plan.

62. Based on the above findings, Respondent was overpaid a total of \$53.14 with respect to this recipient.

Recipient No. 12

63. Recipient No. 12 was authorized to receive eight hours of Companion Services per week. Pursuant to the support plan and service authorization, the services were intended to help the recipient be "socially active in the community." The support plan further indicated that the recipient was able to "clean her room, clean the bathroom . . . wash dishes and help her mother with chores."

64. AHCA correctly alleges that of the five claims examined, three involved overpayments.

65. First, for the 32 units of service provided on December 28, 2003, Respondent was overpaid \$3.70 because the service log indicates that dishwashing was provided. This was obviously inappropriate because, as noted above, the support plan expressly provided that the recipient was capable of washing dishes.

66. Next, Respondent's service log indicates that dishwashing was performed for the recipient on April 24, 2004. As such, Respondent was overpaid \$3.70.

67. An overpayment of \$3.70 was also proven in connection with the July 3, 2004, services, as the service log demonstrates that the unauthorized activities of dishwashing and "organizing the bathroom" were performed.

68. For these reasons, AHCA appropriately determined that Respondent was overpaid in the total amount of \$11.10 for the services provided to this recipient during the audit period.

Recipient No. 17

69. This recipient was authorized to receive Personal Care Assistance and Homemaker Services.

70. Of the twelve claims reviewed concerning this recipient, AHCA alleges that only the November 11, 2004, services are problematic. In particular, a review of the service logs demonstrates that seven activities billed as

homemaker services for November 11, 2004, were also provided and billed as personal care assistance for the same date.

71. Based upon this unauthorized duplication of services, AHCA has proven that an overpayment of \$14.80 occurred.

Recipient No. 18

72. This recipient was authorized to receive forty hours of Personal Care Assistance per week. According to the support plan, the recipient lived alone with her father (who worked full time) and had little contact with her mother, who lived "far away" and visited only occasionally on weekends. The support plan further provided that the personal care assistance was intended to provide assistance with "bathing, dressing, grooming, food preparation, feeding, and transportation to . . . therapy."

73. AHCA determined, following a review of the service logs and other documentation, that Respondent was overpaid in connection with two of the seven claims reviewed during the audit.

74. First, AHCA alleges that Respondent was overpaid \$7.72 by performing unauthorized homemaker tasks on September 19, 2003, which included shopping, washing dishes (although no meal was prepared), and assisting with household activities that would not typically be completed by an eight-year-old child.

75. The undersigned agrees that the activities identified by AHCA in connection with the services rendered on September 19, 2003, were unauthorized, and that Respondent was overpaid in the amount of \$7.72.

76. AHCA also contends that Respondent was overpaid \$7.72 in connection with the services provided on February 27, 2004. Specifically, AHCA asserts that three of the activities (shopping, laundry, and washing dishes) were unauthorized homemaker tasks.

77. It is critical to note that in contrast to the services provided on September 19, 2003, the provider prepared a meal (as authorized by the support plan) for the recipient on February 27, 2004. As such, and for the reasons expressed previously in this Recommended Order, dishwashing should not be deemed an unauthorized activity.

78. However, the undersigned concludes that shopping and laundry, the other two questionable activities performed on February 27, 2004, were indeed unauthorized.

79. In light of the undersigned's finding that meal preparation was not an unauthorized activity, AHCA should make an appropriate adjustment to the February 27, 2004, overpayment.

Recipient No. 19

80. Of the eight claims examined for Recipient No. 19, who was authorized to receive Companion Services, AHCA found fault with only one.

81. In particular, AHCA determined that of the \$59.20 billed on November 26, 2004, Respondent was overpaid \$3.70 by performing the unauthorized homemaker activity of "organizing bathroom."

82. The undersigned agrees with AHCA's finding, as organizing the recipient's bathroom is a homemaker activity that does not fall within the ambit of companion services. As such, an overpayment of \$3.70 occurred.

Recipient No. 20

83. This recipient was authorized to receive twenty hours of Companion Services per week, which were typically provided in four hour blocks from 1:00 p.m. to 5:00 p.m.

84. Companion Services are defined in the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook as follows:

Companion services consist of non-medical care, supervision, and socialization activities provided to an adult on a one-on-one basis. This service must be provided in direct relation to the achievement of the beneficiary's goals per his or her support plan. A companion provider may also assist the beneficiary with such tasks as meal preparation, laundry and shopping

Providers may also perform light housekeeping tasks, incidental to the care and supervision of the beneficiary.

(Emphasis added).

85. Significantly, the support plan expressly provided that the recipient "receive[d] assistance from her companion in some house chores, like cleaning the kitchen and meal preparation to avoid risky situations in the kitchen."

(Emphasis added).

86. AHCA contends that overpayments occurred with respect to four of the five claims audited.

87. First, AHCA alleges that with regard to the November 11, 2003, services, Respondent was overpaid \$3.70 by performing the unauthorized activity of "light housekeeping." The undersigned cannot agree, as the support plan plainly allowed the provider to assist the recipient with "some house chores," which is indistinguishable from "light housekeeping." Further, and as noted above, companion services may include "light housekeeping tasks, incidental to the care and supervision of the beneficiary." The service log for November 11, 2003, demonstrates that supervision was provided to the recipient. Accordingly, Respondent did not overbill in the amount of \$3.70 for this date of service.

88. Next, AHCA contends that with respect to the services provided on December 10, 2003 (which included non-medical care,

supervision, shopping, and "goals and support plan assistant"), one activity was unauthorized: meal preparation. As such, AHCA alleges that an overpayment of \$3.70 occurred.

89. The undersigned concludes, based on the unambiguous language of the support plan, that meal preparation was authorized. As detailed above, the recipient "receive[d] assistance from her companion in some house chores, like cleaning the kitchen and meal preparation to avoid risky situations in the kitchen." (Emphasis added). Accordingly, an overpayment of \$3.70 did not occur with respect to the December 10, 2003, services.

90. Turning to the services provided on May 6, 2004, AHCA contends that the unauthorized activity of washing laundry resulted in an overbilling of \$3.70. As referenced in the definition of companion services previously quoted, laundry may only be performed "in direct relation to the achievement of the beneficiary's goals per his or her support plan." In this instance, the documentation submitted by Respondent fails to make such a showing. As a result, AHCA correctly found that \$3.70 was overbilled for this date.

91. Finally, with respect to the May 12, 2004, services, AHCA alleges that Respondent was overpaid \$3.70 for the unauthorized activity of "dishwashing."

92. The undersigned does not agree that dishwashing was unauthorized, since the support plan contemplated that the recipient would receive assistance from a "companion in some house chores, like cleaning the kitchen." As washing dishes is integral to the process of cleaning a kitchen, Respondent was not overpaid in connection with this date of service.

93. Based on the above findings, the total overbilling for this recipient was \$3.70, which related to the May 6, 2004, services. Respondent was not overpaid in connection with the services provided on November 11 and December 10, 2003, and May 12, 2004.

Recipient No. 21

94. This recipient was authorized to receive 20 hours of Personal Care Assistance per week, which was typically provided from 2:00 p.m. through 6:00 p.m. The support plan for this recipient, who is incontinent, reads in relevant part as follows:

Food requires modification. Food needs to be blend [sic] or puree [sic] at all times to avoid choking [Recipient] arrives home around 2:00 p.m. Personal Care service changes her diaper. Then she prepares her a snack. She is [sic] assists with eating.

95. AHCA contends that Respondent was overpaid in connection with three of the four dates of service examined during the audit.

96. First, with respect to the services provided on April 14, 2004, AHCA asserts that two unauthorized activities were performed (organizing clothes and performing a massage), which resulted in overbilling of \$3.86. Having reviewed the support plan carefully, the undersigned agrees that these activities were unauthorized and that an overpayment occurred in the amount alleged.

97. Turning to the services provided on October 14, 2004, AHCA alleges that five unauthorized activities (providing a massage, washing dishes, changing sheets, organizing the bathroom, and cleaning a table) resulted in overbilling of \$11.58.

98. The undersigned concurs with AHCA's assertion that the activities of "massage," change sheets, organize bathroom, and clean table were unauthorized.

99. However, overbilling did not occur for washing dishes, as the service log reveals that a meal was prepared for the recipient on October 14, 2004, an activity that was expressly authorized by the support plan. As meal preparation was permitted, washing the dishes constituted a permissible activity.

100. In light of the above findings, AHCA should make an appropriate adjustment to the overpayment associated with the October 14, 2004, services.

101. Finally, AHCA contends that with regard to the December 24, 2004, services, Respondent was overpaid \$7.72 by providing four unauthorized activities: performing a massage, making the bed, changing towels, and cleaning the living room. The undersigned agrees that these activities were not approved and that an overpayment occurred in the amount alleged.

Recipient No. 23

102. Recipient No. 23 was authorized to receive Personal Care Assistance, which was typically provided multiple times each week for eight hours.

103. AHCA contends that Respondent was overpaid in connection with eight of the nine claims examined during the audit.

104. Six of the claims involve identical issues. In particular, with respect to the services provided on August 29, 2003, and February 2, February 17, April 5, May 28, and September 13, 2004, AHCA asserts that the unauthorized activities of "make bed, meal prep, [and] clean table" resulted in overbilling totaling \$60.48 (i.e., \$10.08 for each of the six dates). As it appears from a review of the support plan that the recipient's mother was able to complete these activities, the undersigned agrees that overbilling occurred in the amount alleged.

105. AHCA also alleges, and has demonstrated by a preponderance of the evidence, that \$10.08 was overbilled in connection with the services provided on August 8, 2003. In particular, the activities of "played outside, played with castle set, and lunch" are beyond the scope of the services contemplated by the support plan.

106. Finally, AHCA has met its burden with respect to the alleged \$5.04 in overbilling associated with the September 10, 2003, services, as "went to pool" and "watered deck flowers before dinner" plainly constitute unauthorized activities.

Recipient No. 24

107. As noted previously, Respondent concedes that an overpayment of \$0.96 occurred with respect to this recipient.

Recipient No. 25

108. Recipient No. 25 was authorized to receive 16 hours of Companion Services each week to assist with socialization and supervision. Of the six claims examined during the audit, AHCA contends that two are problematic.

109. First, with regard to the services provided on January 29, 2003, AHCA contends that the entire billing for that date (\$24.72) should be denied due to inadequate documentation. In particular, AHCA notes that the service log provided during the preliminary audit and final audit was different than a log submitted by Respondent in April of 2009. Further, the earlier

log is vague (it merely indicates "assist household, escort activities, other") and fails to address any specific support plan activities. AHCA also points out that the later log was incomplete and failed to indicate the date of the activities.

110. AHCA has demonstrated by a preponderance of the evidence that the services provided on January 29, 2003, were not adequately documented, and therefore Respondent was overpaid in the amount of \$24.72.

111. Next, AHCA alleges that the services provided on March 25, 2004, were not adequately documented, and therefore the entire billing of \$44.40 should be denied for that date. Specifically, AHCA points out that the service log only reads "supervision" and "escort activities" and failed to address any of the activities enumerated in the support plan. Although a later service log was submitted, it was incomplete, vague, and failed to delineate which activities were performed on March 25, 2004, as opposed to the other nine dates of service during that month.

112. For the reasons detailed above, AHCA demonstrated by a preponderance of the evidence that the March 25, 2004, services were not properly documented, and therefore the \$44.40 payment should be denied.

Recipient No. 26

113. AHCA contends that of the nine claims examined during the audit concerning this recipient, one should be fully denied due to the lack of proper documentation.

114. Specifically, AHCA alleges that the \$74.00 payment for the services rendered on May 31, 2004, should be denied outright, as the service log for May of 2004 was created by photocopying the service log for the previous month and changing the date.

115. The undersigned has examined the documents¹¹ and concludes that the May 2004 service log was not contemporaneously prepared. As a result, AHCA has demonstrated by a preponderance of the evidence that the \$74.00 payment associated with the May 31, 2004, services should be denied.

Recipient No. 28

116. This recipient was authorized to receive Personal Care Assistance to address daily needs such as grooming and dressing. Significantly, the support plan also indicates that meal preparation was authorized.

117. AHCA contends that with respect to the services provided on May 15, 2003, four unauthorized homemaker activities were performed: cleaning the bathroom, washing laundry, cleaning the kitchen, and washing dishes. As a result, AHCA alleges an overpayment of \$12.00, which represents four units of service.

118. AHCA has demonstrated by a preponderance of the evidence that cleaning the bathroom and washing laundry were unauthorized.

119. However, AHCA has failed to prove that dishwashing and cleaning the kitchen were unauthorized, as the provider prepared a meal (as indicated by the service log) for the recipient on May 15, 2003, an activity that was authorized by the support plan. As explained previously in this Recommended Order, if a provider is authorized to prepare a meal, then it is entirely reasonable for the provider to wash the dishes and clean the kitchen afterward. This is particularly true with respect to this recipient, who lived alone with her stepfather (who, according to the support plan, worked "intensive hours"), and was incapable of performing basic tasks (e.g., grooming and dressing) without assistance.

120. Accordingly, AHCA should make an appropriate adjustment to the alleged \$12.00 overpayment based on the above findings that cleaning the kitchen and washing dishes were not unauthorized.

Recipient No. 29

121. Recipient No. 29 was authorized to receive Personal Care Assistance in the amount of two hours each weekday and five hours on weekends. Pursuant to the support plan, the recipient

required assistance with basic activities such as dressing, bathing, brushing teeth, and preparing meals.

122. AHCA contends that overbilling occurred with respect to four of the eight dates of service examined during the audit.

123. First, AHCA alleges, and has demonstrated by a preponderance of the evidence that \$10.08 was overbilled for the October 6, 2004, services, as the following unauthorized homemaker activities were performed: cleaning the recipient's room, cleaning the bathroom, organizing the room, organizing the bathroom, and changing towels.

124. In addition, AHCA has proven an overpayment of \$10.08 in connection with the November 24, 2004, services, where the service log demonstrates that unauthorized homemaker activities (identical to the services identified in the previous paragraph) were performed on that date.

125. With regard to the services rendered on December 14, 2004, AHCA has demonstrated overbilling of \$10.08 for the unauthorized homemaker services of cleaning the room and changing towels.

126. Finally, AHCA alleges, and has demonstrated by a preponderance of the evidence, a \$5.04 overpayment in connection with the December 29, 2004, services. In particular, the service logs demonstrate that the unauthorized homemaker

activities of vacuuming, organizing the bathroom, and taking out garbage were performed.

Recipient No. 31

127. This recipient was authorized to receive Personal Care Assistance, which was provided eight hours per day, Monday through Friday, and ten hours on both Saturday and Sunday. As the recipient is a quadriplegic, personal care assistance was obviously necessary for feeding and maintaining personal hygiene.

128. Of the nine claims examined during the audit concerning this recipient, AHCA alleges that overbilling occurred with respect to two.

129. First, with regard to the October 27, 2003, services, AHCA contends that insufficient documentation was provided by Respondent to support ten hours of billing. In particular, AHCA asserts that "ate well" is the only activity described in the contemporaneous service log.¹² As a result, AHCA argues that one hour of billing should be permitted for meal prep, and that the remaining billing in the amount of \$181.44 should be disallowed.

130. Contrary to AHCA's contention, "ate well" is not the only event described in the contemporaneous service log. Significantly, the log also reads, "Incontinent B & B." Given the recipient's physical condition, this notation obviously means that the service provider was required to address at least

one episode of bladder and bowel incontinence during the ten hours of service. As such, billing should be permitted for toileting.

131. Based on the above finding that services were documented for toileting, AHCA should make an appropriate adjustment to the October 27, 2003, overpayment.

132. Next, AHCA contends that that due to inadequate documentation, overbilling of \$161.28 occurred with regard to the ten hours of services provided on February 16, 2004. In particular, AHCA contends that the documentation submitted by Respondent supports only two hours of billing, as bathing was the only activity described in the contemporaneous service log.

133. Once again, however, the contemporaneous service log also indicates that the service provider was required to address the recipient's bladder and bowel incontinence. Accordingly, additional billing should be permitted for toileting, and AHCA should make an appropriate adjustment to the February 16, 2004, overpayment.

Recipient No. 32

134. Recipient No. 32 was authorized to receive Personal Care Assistance and Companion Services.

135. AHCA contends that Respondent was overpaid in connection with eight of the fifteen claims examined pursuant to the audit.

136. With respect to the services provided on March 21 and 23, 2003, AHCA has demonstrated by a preponderance of the evidence that Respondent was overpaid \$61.80 in connection with each of the two dates (totaling \$123.60) where the documentation does not support the units of service billed.

137. Next, AHCA contends, and the undersigned agrees, that Respondent inappropriately billed for recreational activities in connection with the personal care assistance services provided on August 13, 2003, and December 1, 2003. As a result, \$3.86 was overbilled for each date, for a total of \$7.72.

138. AHCA also alleges, and has demonstrated by a preponderance of the evidence, that unauthorized homemaker activities were billed in connection with the companion services rendered on October 7 and 11, 2003, and December 2, 2003, which resulted in overbilling of \$11.10, \$11.10, and \$7.40, respectively. In particular, the service logs indicate that meal prep, laundry, and housekeeping were performed on October 7 and 11, 2003, and that laundry and housekeeping were provided on December 2, 2003.

139. Finally, AHCA has proven an overpayment of \$15.44 with respect to the personal care assistance services provided on March 25, 2004. Specifically, the service log indicates that the service provider "walked the dog" and "checked live bait,"

tasks which do not fall within the scope of personal care assistance.

140. Based on the above findings, AHCA demonstrated a total overpayment of \$176.36 with respect to this recipient.

Recipient No. 33

141. This recipient was authorized to receive three hours per week of Companion Services, which were intended to "increase awareness of community resources and increase community integration skills."

142. AHCA alleges that Respondent was overpaid in connection with one of the two claims examined during the audit. Specifically, with respect to the services provided on July 15, 2003, the only activities described in the service log are "shopping" and "exercise." AHCA contends, and the undersigned agrees, that neither shopping nor exercise constitute goal oriented activities in under the circumstances of this recipient.

143. Accordingly, AHCA has demonstrated an overpayment of \$15.44, which represents one hour of billing.

Recipient No. 34

144. This recipient was authorized to receive Personal Care Assistance. Pursuant to the support plan, the recipient lived with her able-bodied mother and older brother.

145. Of the five claims examined during the audit, AHCA contends that Respondent was overpaid with respect to two.

146. First, AHCA alleges that \$5.29 was overpaid in connection with the August 4, 2004, services, where the service log suggested that the provider took the recipient to the park. The undersigned has examined the monthly summary, and agrees with AHCA's assessment of the documentation. Accordingly, AHCA has demonstrated an overpayment in the amount alleged.

147. Turning to the services provided on December 9, 2004, AHCA has demonstrated an overpayment of \$5.29 by a preponderance of the evidence, as "cleaning the living room" is an activity that could have been performed by the recipient's mother.

CONCLUSIONS OF LAW

Jurisdiction

148. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2010).

Recovery of Overpayments and Burden of Proof

149. AHCA is empowered to "recover overpayments . . . 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. Specifically,

as well, AHCA is authorized to "require repayment for inappropriate, medically unnecessary, or excessive goods or services from the person furnishing them, the person under whose supervision they were furnished, or the person causing them to be furnished." § 409.913(10), Fla. Stat.¹³

150. The burden of establishing an alleged Medicaid overpayment by a preponderance of the evidence falls on Petitioner. South Medical Services, Inc. v. Agency for Health Care Admin., 653 So. 2d 440, 441 (Fla. 3d DCA 1995); Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

151. Although AHCA bears the ultimate burden of persuasion and thus must present a prima facie case, Section 409.913(21),¹⁴ Florida Statutes, provides that "[t]he audit report, supported by agency work papers, showing an overpayment to the provider constitutes evidence of the overpayment." Thus, AHCA can make a prima facie case, and did so in the instant cause, merely by proffering a properly supported audit report, which must be received in evidence. See Maz Pharmaceuticals, Inc. v. Agency for Health Care Administration, DOAH Case No. 97-3791, 1998 Fla. Div. Adm. Hear. LEXIS 6245, *6-7 (DOAH March 20, 1998). It is then "incumbent upon the provider to rebut, impeach, or otherwise undermine AHCA's evidence." See Agency for Health

Care Admin. v. Bagloo, DOAH Case No. 08-4921 (DOAH September 10, 2009).¹⁵

152. Section 409.913, Florida Statutes, spells out the duties of providers who make claims under Medicaid:

(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:

(a) Have actually been furnished to the recipient by the provider prior to submitting the claim.

(b) Are Medicaid-covered goods or services that are medically necessary.

* * *

(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.

(f) Are documented by records made at the time the goods or services were provided, demonstrating the medical necessity for the goods or services rendered. Medicaid goods or services are excessive or not medically necessary unless both the medical basis and the specific need for them are fully and properly documented in the recipient's medical record.

(Emphasis added).

153. Applying the foregoing principles to the findings of fact contained herein, the undersigned concludes that AHCA has met its burden of proof that Respondent was overpaid in the total amounts alleged with respect to the following recipients:

- Recipient No. 6: \$10.08
- Recipient No. 7: \$18.68
- Recipient No. 8: \$275.20
- Recipient No. 9: \$7.40
- Recipient No. 10: \$53.14
- Recipient No. 12: \$11.10
- Recipient No. 17: \$14.80
- Recipient No. 19: \$3.70
- Recipient No. 23: \$75.60
- Recipient No. 24: \$0.96
- Recipient No. 25: \$69.12
- Recipient No. 26: \$74.00
- Recipient No. 29: \$35.28
- Recipient No. 32: \$176.36
- Recipient No. 33: \$15.44
- Recipient No. 34: \$10.58

154. With respect to Recipient No. 1, AHCA demonstrated by a preponderance of the evidence that four unauthorized activities were performed on November 12, 2004. However, as

discussed in paragraphs 26 through 28 of this Recommended Order, the undersigned has determined that two activities (cleaning the kitchen and washing dishes) were appropriately furnished. As such, AHCA should recalculate the overpayment.

155. Turning to Recipient No. 3, of the numerous activities alleged to be unauthorized in connection with the December 1, 2004, services, AHCA only met its burden of proof with regard to two: organizing cabinets and ironing. Accordingly, AHCA should make an appropriate adjustment to the overpayment.

156. With regard to Recipient No. 18, the undersigned concludes as follows:

- September 19, 2003, services: AHCA has proven by a preponderance of the evidence that Respondent was overpaid \$7.72 for activities provided on that date.
- February 27, 2004, services: AHCA failed to prove that washing dishes was unauthorized, but met its burden with respect to the other unauthorized activities. As such, AHCA should adjust the overpayment for this date.

157. With respect to Recipient No. 20, the undersigned concludes:

- May 6, 2004, services: AHCA has demonstrated that Respondent was overpaid \$3.70 for the services provided on May 12, 2004.

- November 11, 2003, services: AHCA failed to prove any overpayment.
- December 10, 2003, services: AHCA failed to prove any overpayment.
- May 12, 2004, services: AHCA failed to prove any overpayment.

158. Turning to Recipient No. 21, the undersigned concludes:

- April 14, 2004, services: AHCA has demonstrated an overpayment of \$3.86 by a preponderance of the evidence.
- October 14, 2004, services: AHCA failed to prove that washing dishes was unauthorized, but met its burden with respect to the other unauthorized activities. As such, AHCA should adjust the overpayment for this date.

159. With respect to Recipient No. 28, AHCA has proven by a preponderance of the evidence that two activities performed on May 15, 2003, were unauthorized. However, AHCA failed to prove that Respondent was not entitled to bill for cleaning the kitchen and washing dishes. Therefore, AHCA should make an appropriate adjustment to the overpayment.

160. Finally, turning to Recipient No. 31, AHCA shall adjust the overpayments associated with the October 27, 2003, and February 16, 2004, services, in accordance with the

undersigned's finding that the service provider was required to address the recipient's incontinence on both dates.

161. Subsection 409.913(24)(b),¹⁶ Florida Statutes, provides that overpayments owed to AHCA bear interest at the rate of 10 percent per year from the date of determination of the overpayment by the agency.

162. Finally, although the imposition of a fine is authorized by Subsection 409.913(15)(c), Florida Statutes,¹⁷ Petitioner's Proposed Recommended Order does not request such a penalty. Accordingly, the undersigned has elected to omit a fine from his recommendation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is Recommended that AHCA:

(1) Make appropriate adjustments to the empirical overpayment;

(2) Recalculate the probable total overpayment using the adjusted empirical overpayment and the statistical formula previously employed, and enter a final order requiring Respondent to repay AHCA the amount determined through such recalculation;

(3) The final order should further require Respondent to pay interest at the rate of 10 percent per annum on the recalculated total overpayment.

DONE AND ENTERED this 23rd day of November, 2010, in
Tallahassee, Leon County, Florida.



Edward T. Bauer
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of November, 2010.

ENDNOTES

¹ This handbook, which was incorporated by reference into Florida Administrative Code Rule 59G-8.020(12), was in effect from November 1996 through November 2003. As such, the handbook applies to some, but not all, of the services provided by Respondent in this case, which occurred during various dates in 2003 and 2004.

² The Florida Medicaid Provider General Handbook, which was incorporated by reference into Florida Administrative Code Rule 59G-5.020(1), was in effect from October through July 2008, and therefore applies only to services that were provided within those dates.

³ The Florida Medicaid Developmental Services Waiver Services coverage and Limitations Handbook, July 2002, was incorporated by reference into Florida Administrative Code Rule 59G-8.200(12). This handbook was in effect from October 2002 through June 2005, and applies to all of the disputed claims in this case.

⁴ See Agency for health Care Admin. v. Custom Mobility, Inc., 995 So. 2d 984 (Fla. 1st DCA 2008).

⁵ Petitioner's Exhibit H, which consists of a spreadsheet that details the 255 claims, erroneously indicates in the "Grand Total" column (on page 25 of the exhibit) that 190 claims were allowed. This total should instead read 197, as seven allowed claims with respect to Recipient No. 6 were not marked in the "Allow" column on page three of Exhibit H, and were therefore omitted from the "Grand Total."

⁶ The undersigned will use the term "empirical overpayment" to reference the sum of all amounts received by Respondent in excess of Medicaid-authorized amounts on the claims made during the audit period. The term "probable total overpayment" will refer to the total amount that Respondent was likely overpaid on claims made during the audit period in connection with the entire population of recipients served, as determined through the use of a statistical formula.

⁷ The undersigned will refer to the recipients by the numbers assigned during the audit, which are enumerated in Petitioner's Exhibits F and H.

⁸ See pages 2-48 and 2-49 of the Florida Medicaid Developmental Services Waiver Services Coverage and Limitations Handbook.

⁹ See Petitioner's Exhibit F, page 56.

¹⁰ The support plan demonstrates that the recipient is mobile (although with poor balance), so it is reasonable to infer that the recipient "regularly utilized" the common areas of the home.

¹¹ See Petitioner's Exhibit F, pages 341-342.

¹² Although a more detailed checklist was prepared, it was considered a non-contemporaneous record because Respondent provided it to AHCA after the final audit report was issued.

¹³ This provision has been renumbered as Subsection 409.913(11), Fla. Stat. (2010).

¹⁴ This provision has been renumbered as Subsection 409.913(22), Fla. Stat. (2010).

¹⁵ In its Proposed Recommended Order, AHCA contends that because Respondent "put forth no additional written documentation which effectively overcame the Agency's prima facie determination of Medicaid overpayments," the undersigned is required to find that Respondent was overpaid \$312,773.67, the amount alleged. While it is true that Respondent did not introduce any documentary

evidence at the final hearing, Respondent was free to undermine or rebut particular overpayment allegations by referring to the support plans and other exhibits introduced by AHCA.

¹⁶ This provision has been renumbered as Subsection 409.913(25)(c), Fla. Stat. (2010).

¹⁷ This provision has been renumbered as Subsection 409.913(16)(c), Fla. Stat. (2010).

COPIES FURNISHED:

Joseph W. Gibson, Esquire
19 West Flagler Street, Suite 620
Miami, Florida 33130

L. William Porter, II, Esquire
Agency for Health Care Administration
Fort Knox Executive Center III
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

Justin Senior, General Counsel
Agency for Health Care Administration
Fort Knox Building, Suite 3431
2727 Mahan Drive, Mail Station 3
Tallahassee, Florida 32308

Thomas W. Arnold, Secretary
Agency for Health Care Administration
Fort Knox Building, Suite 3116
2727 Mahan Drive
Tallahassee, Florida 32308

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.