STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

BAY REGIONAL AND INTERNATIONAL INSTITUTE OF NEUROLOGY/ DR. RADHAKRISHNA RAO,

Respondent.
_____/

DOAH CASE NO. 12-1447MPI
C.I. NO. 11-1327-400
RENDITION NO.: AHCA-14-0641 -FOF-MDO

AMENDED FINAL ORDER[1]

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), William F. Quattlebaum, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether the Agency for Health Care Administration ("Agency") is entitled to recover alleged Medicaid overpayments from Respondent, and whether a fine should be imposed on Respondent. The Recommended Order dated April 24, 2014, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

Both parties filed exceptions to the Recommended Order.

In determining how to rule upon each party's exceptions 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:

[1] The Amended Final Order is being issued to correct a scrivener's error in the first sentence of the last paragraph Page 6 of the original Final Order rendered on June 19, 2014, that erroneously mentioned sanctions when only the amount of costs was left to be determined.

> 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. . . .

§ 120.57(1)(*l*), Fla. Stat. Additionally, "[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." § 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on both parties' exceptions:

Petitioner's Exceptions

In its sole exception to the Recommended Order, Petitioner takes exception to the ALJ's conclusions of law in Paragraph 55 of the Recommended Order, wherein the ALJ concluded that the imposition of a fine in this case would not be appropriate. Petitioner argues that the ALJ's conclusions of law are "based on an incorrect and unreasonable interpretation of the applicable sanction statutes and rules, most of which the Administrative Law Judge ignored." As stated in Ag. for Health Care Admin. v. Gonzalez, DOAH Case No. 10-0262MPI (DOAH Recommended Order November 23, 2010; AHCA Final Order February 2, 2011), 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 Section 409.913(16), Florida Statutes, to mean that, in order for the ALJ to recommend that a fine not be imposed, the ALJ must first make a finding that the Secretary of AHCA has made a determination that the imposition of a sanction or disincentive is not in the best interest of the Medicaid program. See § 409.913(16), Fla. Stat. If no such finding is made, then Section 409.913(16)(c), Florida Statutes, 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 did not find that a sanction was not in the best interests of the Medicaid program. The Agency's Final Audit Report imposed a fine, and the Agency specifically asked the ALJ to adopt the findings of the Final Audit Report as they related to the fine. See Pages 45-46 of Petitioner's Proposed Recommended Order. Since the ALJ found several instances where the Respondent improperly billed Medicaid for services to a Medicaid recipient (See Paragraphs 21, 24, 27, 30, 33, 36, 37, 41, 43, 44 and 47) 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 concluding that the imposition of a $3,500 fine in this matter (referenced in Paragraph 53 of the Recommended Order) would not be appropriate. The Agency finds that it has substantive jurisdiction over the ALJ's conclusions of law in Paragraph 55 of the Recommended Order since it 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.), and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants Petitioner's exception and modifies the ALJ's conclusions of law in Paragraph 55 of the Recommended Order as follows:

> 55. The issue in the case presented for hearing was whether the records that existed at the time of disputed services were sufficient to establish that the services were medically necessary. Dr. Abram persuasively opined that the records provided to the Petitioner during the audit period were insufficient to establish that the disputed services were medically necessary. ~~However, the evidence presented by the Respondent was sufficient to establish that there was at least a reasonable argument to the contrary. Nothing in section 409.913(17) suggests that the imposition of a fine in this case would be appropriate.~~Thus, Respondent improperly billed the Florida Medicaid program for services rendered to Medicaid recipients. Therefore, the imposition of a $3,500 fine is appropriate.

As a result of the granting of Petitioner's exception, the Agency also modifies Paragraph 53 of the Recommended Order as follows:

> 53. As previously noted, the Petitioner announced at the commencement of the hearing that the proposed fine had been reduced to $3,500. The revision was based on a fine of $500 for alleged violations of the version of Florida Administrative Code Rules 59G-9.070(7)(c) and (e) in effect during the audit period. ~~In order to impose a fine in this case, the Petitioner must establish the violations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).~~ The evidence is ~~in~~sufficient to warrant imposition of a fine in this case.

Respondent's Exceptions

In Exception 1, Respondent takes exception to the findings of fact in Paragraph 9 of the Recommended Order, and the conclusions of law in Paragraph 52 of the Recommended Order. Respondent argues that both the findings of fact in Paragraph 9 of the Recommended Order and the conclusions of law in Paragraph 52 of the Recommended Order fail to address Respondent's arguments. Respondent is correct that an ALJ must make factual findings on substantial issues. See Memorial Healthcare Group, Inc. v. Ag. for Health Care Admin., 879 So. 2d 72, 79 (Fla. 1st DCA 2004). However, that does not mean that an ALJ is required to specifically address and rule on each and every argument put forth by a party on a substantial issue. Indeed, "[t]he

second sentence of former section 120.59(2), Florida Statutes (1995)—mandating rulings on each proposed finding of fact—was excised by the repeal of section 120.59." Life Care Centers of Am., Inc. v. Sawgrass Care Ctr., Inc., 683 So. 2d 609, 612-13 (Fla. 1st DCA 1996). The ALJ's finding that "Petitioner presented sufficient evidence to establish that the extrapolation technique produced a valid calculation of the overpayment in this case" is supported by competent, substantial evidence. See Transcript, Volume II, Pages 257-260; Transcript, Volume III, Pages 267-273. If an ALJ's finding of fact is based upon any competent substantial evidence, it cannot be disturbed by the Agency. See, e.g., Stinson v. Winn, 938 So. 2d 554 (Fla. 1st DCA 2006) (finding that an ALJ is entitled to rely on the testimony of one witness even if that testimony conflicts with the testimony of several other witnesses). In addition, the conclusions of law in Paragraph 52 of the Recommended Order are based on the ALJ's weighing of the evidence presented in this matter. The Agency is prohibited from re-weighing that evidence in order to change the proposed outcome. See Heifetz v. Dep't of Bus. Reg., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Therefore, the Agency denies Exception 1.

In Exception 2, Respondent takes exception to the findings of fact in Paragraphs 21, 24, 27, 29, 30, 32, 33, 36, 41, 43, 44 and 47 of the Recommended Order, and the conclusions of law in Paragraphs 52 and 55 of the Recommended Order. Respondent argues that these findings and conclusions are not supported by competent, substantial evidence because the ALJ failed to explain in the Recommended Order why he gave more weight to Petitioner's expert witnesses than Respondent's expert witnesses. As explained in the ruling on Respondent's Exception 1, the ALJ does not need to give detailed explanations regarding his rulings on substantive issues. The findings of fact in these paragraphs are supported by competent, substantial evidence. See Transcript, Volume III, Pages 345-359 and 365-404; Petitioner's Exhibit N. Thus, the Agency

cannot reject or modify them. Additionally, the conclusions of law in Paragraphs 52 and 55 (with the exception of the last two sentences of Paragraph 55 that were addressed by the Agency in its ruling on Petitioner's exception supra) are based on the ALJ's weighing of that competent, substantial evidence, and thus the Agency cannot re-weigh such evidence in order to reach contrary conclusions of law. See Heifetz. Therefore, the Agency denies Exception 2.

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:

Based on the ALJ's findings of fact and the parties' pre-hearing agreement regarding some of the claims at issue, which was memorialized in Petitioner's Exhibit Q, Respondent is required to repay $100,135.48 in Medicaid overpayments, plus interest at a rate of ten (10) percent per annum as required by Section 409.913(25)(c), Florida Statutes, to the Agency. In addition, the Agency hereby imposes a $3,500.00 fine on Respondent. Respondent shall make full payment of the overpayment and fine to the Agency for Health Care Administration within 30 days of the rendition date of this Final Order unless other payment arrangements have been agreed to by the parties. 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, Mail Stop 14, Tallahassee, Florida 32308.

Additionally, the parties shall attempt to agree to amount of investigative, legal, and expert witness costs for this matter. If the parties are unable to reach such agreement, either

either party may file a request for hearing with the Division of Administrative Hearings under this case style within 30 days of the date of rendition of this Final Order, and the Administrative Law Judge who presided over this matter shall determine the amount of such costs.

DONE and ORDERED this 17 day of July, 2014, in Tallahassee, Florida.

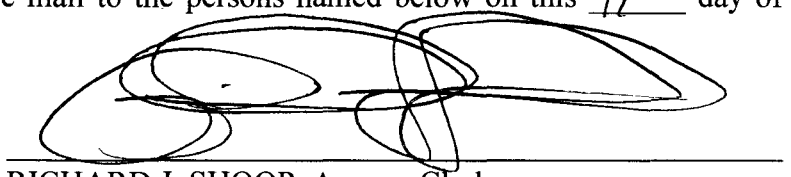
ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 17th day of July, 2014.



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