STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

LEE MEMORIAL HEALTH SYSTEM d/b/a LEE MEMORIAL HOSPITAL,

Respondent.
_____/

DOAH CASE NOS. 14-4171MPI
15-3271MPI
C.I. NOS. 11-1456-000
11-2468-000
PROVIDER NO. 010110900
LICENSE NO. 4186
RENDITION NO.: AHCA-16-0570 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Lynne A. Quimby-Pennock, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether the Agency for Health Care Administration ("Agency" or "AHCA") is entitled to recover alleged Medicaid overpayments from Respondent for claims the Agency paid to it during the period from January 1, 2006 to December 31, 2006 (14-4171MPI); and from January 1, 2007 to December 31, 2007 (15-3271MPI) for goods or services Respondent provided to undocumented aliens whom the Department of Children and Families ("DCF") had found eligible for Medicaid for the period of an emergency medical condition. The Recommended Order, dated April 27, 2016, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

Respondent filed exceptions to the Recommended Order, and Petitioner filed a response to Respondent's exceptions.

In determining how to rule upon Respondent's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency must follow section 120.57(1)(*l*), Florida Statutes (2015), 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. . . .

§ 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 Respondent's exceptions:

In its first exception (numbered paragraph 5), Respondent takes exception to Paragraph 5 of the Recommended Order, arguing: 1) the paragraph constitutes a conclusion of law; 2) the cited regulation implements section 409.904, Florida Statutes, rather than section 409.902(1), Florida Statutes; and 3) the ALJ's underlining of certain parts of the rules is "misleading." The ALJ's statement in the first sentence of Paragraph 5 of the Recommended Order that DCF adopted rule 65A-1.715, Florida Administrative Code, pursuant to section 409.902(1), Florida

Statutes, is an incorrect factual statement that is not based on competent and substantial evidence in the record and is contrary to the plain text of the rule, which identifies sections 409.904 and 409.916, Florida Statutes, as the "Law Implemented." The remainder of Paragraph 5 is comprised of statements of or quotations from rules that are not administered by AHCA and, as such, are not within AHCA's substantive jurisdiction for purposes of section 120.57(1)(l). Moreover, whether the ALJ's placement of added emphasis with due notation on portions of a quoted rule is "misleading" is not grounds for modifying or rejecting a finding a fact or conclusion of law under the plain language of section 120.57(1)(l). Thus, the Agency grants Respondent's exception only to extent that it modifies the first sentence of Paragraph 5 of the Recommended Order as follows:

> 5. Pursuant to section 409.~~902(1)~~904, DCF has adopted Florida Administrative Code Rule 65A-1.715 which addresses Medicaid eligibility for aliens. . . .

In its second exception (numbered paragraph 6), Respondent takes exception to Paragraph 6 of the Recommended Order, arguing the ALJ's findings are contrary to the law and are not supported by competent, substantial evidence. However, all of the ALJ's statements in Paragraph 6 are findings of fact, are based on competent and substantial record evidence, and were made without reference to or application of any specific law, including any law within AHCA's substantive jurisdiction. See Respondent's Exhibit 19 at pages 42-43, 62-72 and 76-77; Respondent's Exhibit 23 at pages 12-13. As such, the Agency is not permitted to reject or modify Paragraph 6 of the Recommended Order. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Accordingly, the Agency denies Respondent's second exception.

In its third exception (numbered paragraph 7), Respondent takes exception to Paragraph 7 of the Recommended Order, arguing it is a conclusion of law that is incomplete and misleading.

Although labeled simply as a finding of fact by the ALJ, Paragraph 7 of the Recommended Order is actually a mixed finding of fact and conclusion of law because the ALJ makes her findings therein based in part on AHCA's handbooks, which are law. The findings of fact in Paragraph 7 may not be rejected or modified by AHCA because they are based on competent, substantial evidence in the record. E.g., Respondent's Exhibit 19 at pages 41-42; see § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Additionally, to the extent that Paragraph 7 interprets the Agency's handbooks, AHCA has substantive jurisdiction over the handbooks because it is the single state agency in charge of administering Florida's Medicaid Program and finds that it cannot substitute conclusions of law that that are as or more reasonable than those of the ALJ. See § 120.57(1)(l), Fla. Stat. Therefore, the Agency denies Respondent's third exception.

In its fourth exception (numbered paragraph 8), Respondent takes exception to: 1) the first two sentences of Paragraph 8 of the Recommended Order, arguing that section 409.902(2), Florida Statutes, is not applicable to this matter; and 2) to the last sentence of the Paragraph 8, arguing it incorrectly suggests the undocumented aliens at issue in this matter were not eligible for Medicaid. The first two sentences of Paragraph 8 are conclusions of law within AHCA's substantive jurisdiction because they involve the interpretation of section 409.902(2), a statute that AHCA is charged with administering. Respondent is correct that section 409.902(2) does not apply in this case because it did not exist at the time that Respondent submitted the claims at issue. However, section 414.095(2), Florida Statutes, which was in effect at during the time Respondent submitted the claims at issue in this matter, says substantially the same thing as section 409.902(2), Florida Statutes. Furthermore, the ALJ's interpretation of section 414.095(3), Florida Statutes, which also existed during the time Respondent submitted the claims

at issue in this matter, is consistent with the plain statutory language and is not misleading as Respondent suggests. Thus, AHCA concludes that it can substitute conclusions of law that are as or more reasonable than the ALJ's, as follows. With regard to the last sentence of Paragraph 8, that sentence is a finding of fact that is supported by competent and substantial record evidence; as such AHCA does may not modify or reject it. See, generally, Petitioner's Exhibits 2 through 8. Thus, the Agency grants Respondent's exception only to extent that it modifies the first sentence of Paragraph 8 of the Recommended Order as follows in order to conform to the language of 414.095(2), Florida Statutes:

> 8. According to section ~~409.902~~414.095(2), Medicaid eligibility is restricted to U.S. citizens and lawfully admitted ~~and lawfully admitted~~ or qualified noncitizens who meet the criteria provided in section 414.095(3), Florida Statutes.[4/] The criteria mean that undocumented or illegal aliens are generally not eligible for Medicaid assistance. All of the claims in dispute in this case involve payments on behalf of undocumented noncitizens who will be referred to herein as "aliens."

In its fifth exception (numbered paragraph 9), Respondent takes exception to Paragraph 9 of the Recommended Order, arguing: 1) it is a legal conclusion; 2) it misuses the term "episodic"; and 3) the ALJ erroneously relied on section 409.902(2), Florida Statutes. Paragraph 9 quotes section 409.902(2), and draws conclusions based on the statutory language; as such, it is a conclusion of law. As AHCA stated previously in its ruling on Respondent's exceptions to Paragraph 8, Respondent's argument concerning section 409.902(2)(b), Florida Statutes, is correct; however, substantially similar language is found in section 409.904(4), Florida Statutes, which was in existence during the time period Respondent submitted the claims at issue. AHCA has substantive jurisdiction over both statutes because it is the single state agency in charge of administering Florida's Medicaid Program and can substitute conclusions of law that are as or more reasonable than the ALJ's. Finally, Respondent's argument concerning the ALJ's use of

the term "episodic" is unpersuasive, as the ALJ appears to have been referencing "the period of the emergency," consistent with the plain meaning of the term and with the statutory language. Indeed, the common and ordinary meaning of "episode" is "an event or a short period of time that is important or unusual" or "an occurrence of an illness." Meriam-Webster Online Dictionary at "episode," available at http://www.merriam-webster.com/dictionary/episode (last visited July 15, 2016). For these reasons, the Agency grants Respondent's fifth exception only to extent that it modifies Paragraph 9 of the Recommended Order as follows:

> 9. As an exception to the general rule, episodic eligibility is available to an alien who is "in need of emergency medical services~~either pregnant or seeking "services [which] are necessary to treat an emergency medical condition.~~" § 409.904(4)~~902(2)(b)~~, Fla. Stat. "The eligibility of . . . a recipient [who meets all other requirements for Medicaid eligibility except citizenship and who is in need of emergency medical services] is *limited to the period of the emergency*, in accordance with federal regulations." Id.§ ~~409.904(4), Fla. Stat.~~ (emphasis added).

In its sixth exception (numbered paragraph 10), Respondent takes exception to Paragraph 10 of the Recommended Order, arguing it is an erroneous conclusion of law that confuses eligibility with coverage and refers to section 409.902(2), Florida Statutes, which is not applicable to this matter. Paragraph 10 of the Recommended Order is a conclusion of law that correctly interprets the laws and rules governing eligibility of non-citizens. See Transcript, pages 60-61; Respondent's Exhibit 26 at pages 42-43 and 48; 42 U.S.C. § 1396b(v)(2); 42 C.F.R. § 440.255; § 409.904(4), Fla. Stat.; Fla. Admin. Code R. 65A-1.715(1). While the Agency has substantive jurisdiction over the conclusions of law in Paragraph 10 of the Recommended Order because it is the single state agency in charge of administering Florida's Medicaid program, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Respondent's sixth exception.

In its seventh exception (numbered paragraph 14), Respondent takes exception to Paragraph 14 of the Recommended Order, arguing the term "covered payments is not a term of art and has no meaning and there is no evidence in the record regarding 'covered payments.'" Whether or not a term used by an ALJ is a term of art is not a ground upon which AHCA may modify or reject the term, according to section 120.57(1)(l), Florida Statutes. Further, when the sentence is read in context, it appears that the ALJ used the term "covered payments" to refer to whether or not services were "covered" by and, therefore, reimburseable or payable by Medicaid under section 409.905(5). The interpretation and application of section 409.905(5) are conclusions of law within AHCA's substantive jurisdiction because it is the single state agency in charge of administering Florida's Medicaid Program; however, AHCA cannot substitute a conclusion of law that is as or more reasonable than the ALJ's. Therefore, the Agency denies Respondent's seventh exception.

In its eighth exception (numbered paragraph 15), Respondent takes exception to Paragraph 15 of the Recommended Order, arguing that it is a conclusion of law and that the ALJ omitted part of the statutory test, causing the quotation to be "misleading." Paragraph 15 of the Recommended Order directly quotes section 409.913(2), Florida Statutes, which is a statute within AHCA's substantive authority. Section 120.57(1)(l) does not authorize AHCA to modify or reject a direct quotation of established law, stated without any accompanying interpretation or application, just because a portion of the text was omitted. Moreover, AHCA disagrees that the omission is misleading where, as here, the ALJ clearly indicated he was leaving out portions of the text with ellipses. Therefore, the Agency denies Respondent's eighth exception.

In its ninth exception (numbered paragraph 18), Respondent takes exception to Paragraph 18 of the Recommended Order based on its argument in regard to Paragraph 15 of the

Recommended Order, and also based on relevance. Paragraph 18 of the Recommended Order directly quotes section 409.913(1)(e), Florida Statutes, which is a statute within AHCA's substantive authority. Section 120.57(1)(l) does not authorize AHCA to modify or reject a direct quotation of established law, stated without any accompanying interpretation or application. Further, Respondent's relevancy argument does not constitute a valid basis upon which the Agency can reject or modify a finding of fact or conclusion of law. See § 120.57(1)(l), Fla. Stat. Therefore, the Agency denies Respondent's ninth exception.

In its tenth exception (numbered paragraph 19), Respondent takes exception to Paragraph 19 of the Recommended Order, arguing it is irrelevant. Paragraph 19 of the Recommended Order is a direct quotation to section 409.919, Florida Statutes, which is a statute within AHCA's substantive authority. Section 120.57(1)(l) does not authorize AHCA to modify or reject a direct quotation of established law, stated without any accompanying interpretation or application. Further, Respondent's relevancy argument does not constitute a valid basis upon which the Agency can reject or modify a finding of fact or conclusion of law. See § 120.57(1)(l), Fla. Stat. Therefore, the Agency denies Respondent's tenth exception.

In its eleventh exception (numbered paragraph 22), Respondent takes exception to Paragraphs 22 through 24 of the Recommended Order, arguing they are irrelevant. Section 120.57(1)(*l*), Florida Statutes, does not allow agencies to reject or modify findings of fact based on relevancy. Instead, agencies may only reject findings of fact if they are not based on competent, substantial evidence in the record or the proceedings on which they are based departed from the essential requirements of law. Respondent made no such allegations in regard to the findings of fact in Paragraphs 22 through 24 of the Recommended Order. Additionally, the findings of fact in Paragraphs 22 through 24 of the Recommended Order are based on

competent, substantial evidence. See Transcript, pages 59-60; Petitioner's Exhibit 45. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Respondent's eleventh exception.

In its twelfth exception (numbered paragraph 24), Respondent takes exception to Paragraph 24 of the Recommended Order for a second time, arguing the findings of fact in that paragraph are irrelevant. Again, relevancy is not a valid basis upon which the Agency can reject or modify findings of fact. The findings of fact in Paragraph 24 of the Recommended Order are based on competent, substantial record evidence. See Transcript, pages 59-60; Petitioner's Exhibit 45. Thus the Agency is not allowed to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Respondent's twelfth exception.

In its thirteenth exception (numbered paragraph 25), Respondent takes exception to Paragraph 25 of the Recommended Order, arguing that whether the Agency complied with a final order is outside the ALJ's authority. Respondent's argument does not constitute a valid basis upon which the Agency can reject or modify the findings of fact in Paragraph 25 of the Recommended Order. Since those findings of fact are based on competent, substantial evidence in the record (See Bayfront Medical Center et al. v. Agency for Health Care Administration ("Bayfront I"), DOAH Case No. 12-2757RU, 2012 WL 6720229 (Fla. Div. Admin. Hrgs. Dec. 21, 2012); and Petitioner's Exhibits 46 and 47), the Agency is not permitted to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Respondent's thirteenth exception.

In its fourteenth exception (numbered paragraph 26), Respondent takes exception to Paragraph 26 of the Recommended Order, arguing that it is incomplete because it fails to

mention the case is currently on appeal. The Agency cannot reject or modify findings of fact because they are "incomplete," as Respondent believes. The findings of fact in Paragraph 26 of the Recommended Order are based on competent, substantial evidence in the record. See Bayfront Medical Center et al. v. Agency for Health Care Administration ("Bayfront II"), DOAH Case No. 14-4758RU (Fla. Div. Admin. Hrgs. Apr. 20, 2015). Furthermore, Respondent's argument is incorrect as Endnote 5, which appears in that paragraph, specifically states the final order is on appeal. Finally, as of the date of this Final Order, the appeal in Bayfront II has concluded with the First District Court of Appeal finding in AHCA's favor and affirming the final order referenced by the ALJ herein. Bayfront Medical Center et al. v. Agency for Health Care Administration, 2016 WL 3523316 (Fla. 1st DCA 2016). Therefore, the Agency denies Respondent's fourteenth exception.

In its fifteenth exception (numbered paragraph 27), Respondent takes exception to Paragraph 27 of the Recommended Order, arguing the findings of fact within the paragraph are irrelevant and/or unsupported by competent and substantial evidence in the record. Respondent's relevancy argument does not constitute a valid basis upon which the Agency can reject or modify the ALJ's findings of fact. Further, the findings of fact in Paragraph 27 of the Recommended Order are based on competent, substantial record evidence. See Respondent's Exhibit 16 at pages 149-150; Respondent's Exhibit 30 at pages 7-8; § 409.913(3), (7), (8), Fla. Stat. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Respondent's fifteenth exception.

In its sixteenth exception (numbered paragraph 28), Respondent takes exception to Paragraph 28 and Endnote 6 of the Recommended Order, arguing that the findings of fact in that paragraph and endnote are not factually supported and are erroneous. Respondent is correct that

the first two sentences of Paragraph 28 of the Recommended Order are not based on competent, substantial record evidence. However, the remainder of Paragraph 28 of the Recommended Order, as well as Endnote 6 of the Recommended Order, are supported by competent, substantial record evidence. See Respondent's Exhibit 23 at pages 11-18; Respondent's Exhibit 24 at pages 15-18. Therefore, the Agency grants Respondent's exception to the extent that it rejects the first two sentences of Paragraph 28 of the Recommended Order in their entirety but makes no changes to the remainder of the Paragraph, as follows:

> 28. As an example: ~~An alien is in need of medical care, emergent or otherwise. The alien applies through DCF to become eligible for medical services, and is deemed eligible.~~ An EMC arises, and the alien immediately presents to a duly enrolled Medicaid Provider, a health care facility of some type.[6/] The alien is admitted as an inpatient on day one, and emergency health care services are provided. The EMC is alleviated as of day three, yet the alien remains in the health care facility for ten more days, receiving medical services, but not of the emergent type. The alien is discharged from the facility on day 13. The facility bills the Medicaid program for 13 days of service. It is not uncommon for the alien's eligibility to be determined after the hospitalization has ended, and the provider is seeking to cover its costs.

In its seventeenth exception (numbered paragraph 29), Respondent takes exception to Paragraph 29 of the Recommended Order, arguing it contains erroneous conclusions of law. The Agency disagrees. Paragraph 29 of the Recommended Order consists of findings of fact that are based on competent, substantial evidence in the record. See Transcript, pages 63-64, 70, 77-78; Petitioner's Exhibits 46 and 47. As a result, the Agency is not permitted to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's seventeenth exception.

In its eighteenth exception (numbered paragraph 30), Respondent takes exception to Paragraph 30 of the Recommended Order, arguing there is no competent, substantial record

evidence to support the ALJ's finding that "[t]he physicians were trained by their peer review organization on the statutes and rules regarding emergency Medicaid for aliens." However, the finding of fact in question is fully supported by competent, substantial evidence in the record. See Transcript at pages 76-80; Petitioner's Exhibits 48, 49, 55 at pages 13-15, 56 at pages 10-12, 57 at pages 7-12, 58 at pages 10 and 12-13, 59 at pages 17-21, 61 at pages 16-20, 63 at pages 12-18. Thus, the Agency cannot reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's eighteenth exception.

In its nineteenth exception (numbered paragraph 31), Respondent takes exception to Paragraphs 31 through 41 of the Recommended Order, arguing that they are not being supported by competent, substantial evidence in the record and/or are irrelevant. The relevancy of a finding of fact is not a factor the Agency can consider when determining whether it should reject or modify findings of fact under section 120.57(1)(l). Furthermore, the findings of fact in Paragraphs 31 through 41 of the Recommended Order are supported by competent, substantial evidence in the record. See Petitioner's Exhibits 6, 9 through 38, 55 at pages 39-42 and 43-47, 56 at pages 22-27 and 34-43, 57 at pages 24-30 and 35-39, 59 at pages 33-36, 38-76 and 124-125, 60 at pages 8-17, 20-22, 39-40 and 53-62, 62 at pages 16-27. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's nineteenth exception.

In its twentieth exception (numbered paragraph 42), Respondent takes exception to Paragraph 42 of the Recommended Order and claims that it did provide evidence or testimony disputing or rebutting the testimony on the claims at issue. However, Respondent does not point out where in the record it presented such evidence. Respondent's exception amounts to an attempt to re-argue its case, which has been rejected by the ALJ. The Agency may not re-weigh

the evidence, nor may it modify the findings of fact in Paragraph 42 of the Recommended Order to be more favorable to Respondent's position. See Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Respondent's twentieth exception.

In its twenty-first exception (numbered paragraph 46), Respondent takes exception to Paragraph 46 of the Recommended Order, arguing the ALJ's conclusion of law is erroneous. The ALJ's conclusion of law in Paragraph 46 of the Recommended Order is a correct interpretation of sections 409.913(21) and (22), Florida Statutes. While the Agency has substantive jurisdiction over the conclusions of law in Paragraph 46 of the Recommended Order because it is the single state agency in charge of administering Florida's Medicaid Program, it could not substitute a conclusion of law that is as or more reasonable than that of the ALJ; indeed, AHCA agrees with the ALJ's interpretation. Therefore, the Agency denies Respondent's twenty-first exception.

In its twenty-second exception (numbered paragraph 49), Respondent takes exception to Paragraph 49 of the Recommended Order, arguing that the Agency was barred from conducting the audit at issue in this proceeding under the provisions of section 409.905, Florida Statutes, because it had implemented a prior authorization program. Construing section 409.905, Florida Statutes, as a bar that prohibits the Agency from conducting any retrospective audits under section 409.913, Florida Statutes, would lead to an absurd result. Instead, the Agency interprets the two statutory sections in the same manner as the ALJ did in the case of Agency for Health Care Administration v. Florida Hospital Orlando, 11-2892MPI (AHCA 2012), which also dealt with the issue of whether services rendered to undocumented aliens were medically necessary to treat an EMC, and which AHCA hereby adopts and incorporates by reference. In the Florida Hospital Orlando case, the ALJ concluded

> Prior approval by KeP[RO] does not estop AHCA from pursuing overpayment claims when an audit does not support the charges and services billed to Medicaid. AHCA has the daunting task of chasing monies already paid to providers who may or may not have submitted accurate or truthful information to KeP[RO]. Prior approval does not justify payment when contrary to law. AHCA must always protect the Medicaid funds it is challenged to conserve so that bona fide recipients receive the medical care they require.

Recommended Order at Page 11 (adopted by AHCA's Final Order). Thus, while the Agency has substantive jurisdiction over the conclusions of law in Paragraph 49 of the Recommended Order because it is the single state agency in charge of administering Florida's Medicaid program, it cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Respondent's twenty-second exception.

In its twenty-third exception (numbered paragraph 50), Respondent takes exception to Paragraph 50 of the Recommended Order, arguing the ALJ erred in concluding there were overpayments in both cases because such a conclusion of law was not based on any findings of fact that there was an overpayment, and for the reasons set forth in Respondent's nineteenth exception regarding Paragraphs 31 through 42 of the Recommended Order, and in paragraphs 32 through 37, 96 through 102, and 125 through 134, and Exhibits A sections I, V, and IV of Respondent's Proposed Recommended Order. Respondent is incorrect. The findings of fact in Paragraphs 31 through 42 of the Recommended Order demonstrate that the ALJ found the overpayments were made by the Agency to the Respondent. These findings of fact are based on competent, substantial record evidence, as demonstrated by the Agency's rulings on Respondent's nineteenth and twentieth exceptions supra. Therefore, based on the reasoning set forth in the Agency's rulings on Respondent's nineteenth and twentieth exceptions, which are hereby incorporated by reference, the Agency denies Respondent's twenty-third exception.

In its twenty-fourth exception (numbered paragraph 51), Respondent takes exception to Paragraph 51 of the Recommended Order, arguing the ALJ's conclusions of law omit a critical part of section 409.913, Florida Statutes, that prohibits audits of prior authorized claims, and omit any reference to section 409.905, which Respondent claims prohibits retrospective review of prior authorized claims. The ALJ's conclusion of law in Paragraph 51 of the Recommended Order concerning the applicability of the doctrine of administrative finality to this matter is a conclusion of law that is outside of the Agency's substantive jurisdiction. See, e.g., Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140, 1142 (Fla. 2d DCA 2001) (stating an agency does not have substantive jurisdiction to decide whether the doctrine of collateral estoppel applies to a particular case). As for the other conclusions of law in Paragraph 51 that concern sections 409.905 and 409.913, Florida Statutes, AHCA has substantive jurisdiction because it is the single state agency in charge of administering Florida's Medicaid Program and agrees with the ALJ's statutory interpretation, as it stated previously in its ruling on Respondent's twenty-second exception, which is hereby incorporated by reference. Therefore, the Agency denies Respondent's twenty-fourth exception.

In its twenty-fifth exception (numbered paragraph 52), Respondent takes exception to Paragraph 52 of the Recommended Order, arguing the ALJ's conclusions of law in that paragraph are erroneous. The Agency disagrees with Respondent's argument for the following reasons:

As the ALJ concluded, DCF is the state agency responsible for determining whether persons are eligible[1] to enroll in Medicaid. § 409.902, Fla. Stat.[2] DCF reviews applications for

[1] Webster's Dictionary defines the term "eligible" as "able to be chosen for something; able to do or receive something; qualified to participate or be chosen." Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/eligible (last visited March 21, 2016).

Medicaid enrollment submitted by or on behalf of individuals and families to determine whether they meet the income, asset, and categorical eligibility tests set forth in federal and state law such that they may be enrolled as Medicaid recipients. § 409.902, Fla. Stat.; § 409.903, Fla. Stat.; § 409.904, Fla. Stat. In determining whether an applicant is categorically eligible to enroll in Medicaid based on a medical condition (such as pregnancy, age, blindness or other disability, or the need for certain services, including undocumented aliens in need of emergency medical services), DCF may consider any documentation submitted to it by or on behalf of the applicant. § 409.902, Fla. Stat.; § 409.903(5), (8), Fla. Stat.; § 409.904(1), (2), (3), (4), (5), Fla. Stat. With respect to undocumented aliens, DCF must consider the application and supporting documentation to determine whether and when the alien had an emergency medical condition ("EMC"), as such aliens are only Medicaid-eligible for the period of the EMC. See Respondent's Exhibit 23 at Pages 8-9; 42 U.S.C. § 1396b(v)(2); 42 C.F.R. § 440.255; § 409.902, Fla. Stat.; § 409.904(4), Fla. Stat.; Fla. Admin. Code R. 65A-1.715(1). However, in making its eligibility determinations, DCF relies on the documentation provided to it, and does not necessarily receive and review any medical records. See Respondent's Exhibit 23 at Pages 33-34.

In contrast, AHCA is "the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act," codified at 42 U.S.C. § 1396a, et seq. § 409.902, Fla. Stat. AHCA contracts with health care providers to provide medical goods and services to enrolled Medicaid recipients, receives and pays the claims health care providers submit for goods and services furnished, conducts claims audits, and recovers any overpayments for paid claims that it determines were not reimbursable.

[2] Unless otherwise stated, all statutory references from this point forward are to the 2005 through 2007 versions of the Florida Statutes, which were in effect during the period when the claims at issue in this case were submitted to AHCA for payment.

§§ 409.903-.906, Fla. Stat.; § 409.907(1)-(3), (5)(a), (5)(b), (7)-(9), Fla. Stat.; § 409.908, Fla. Stat.; § 409.913(1)(e), (2), (3), (5), (7), (9), (11), (15), (20)-(23), (27), Fla. Stat. As part of its post-payment audits, AHCA requests and then reviews the provider's contemporaneous records, including medical records, supporting each audited claim to determine whether the goods or services billed for were rendered in accordance with the requirements of federal and state Medicaid law, including whether they were "medically necessary" for the recipient, as determined by a contracted, licensed physician or "peer"; if not, the claim is not payable by Medicaid, and the Agency may refuse to pay it or require repayment. § 409.905, Fla. Stat.; § 409.906, Fla. Stat.; §409.913(1)(d), (7)(b), (7)(f), (9), (11), (15), (20)-(23), Fla. Stat.; § 409.9131, Fla. Stat.; Fla. Admin. Code R. 59G-1.010(166). See also 42 C.F.R. § 440.230(d); Moore ex rel. Moore v. Reese, 637 F.3d 1220, 1232-33 (11th Cir. 2011) ("Although the standard of "medical necessity" is not explicitly denoted in the Medicaid Act, it has become a judicially accepted component of the federal legislative scheme. . . . Accordingly, even if a category of medical services or treatments is mandatory under the Medicaid Act, participating states must provide those medical services or treatments for Medicaid recipients only if they are 'medically necessary.'"). With respect to undocumented aliens, AHCA must make the additional determination whether the goods or services billed were necessary to treat an EMC, as determined by a contracted, licensed physician or "peer" and based on the provider's supporting medical records; if not, the claim is not payable. See 42 U.S.C. § 1396b(v)(2); 42 C.F.R. § 440.255; § 409.902, Fla. Stat.; § 409.904(4), Fla. Stat.; § 409.913(1)(d), (7), (9), (11), (15)(b)-(d), Fla. Stat.; § 409.9131, Fla. Stat.; Fla. Admin. Code R. 59G-1.010(166).

Indeed, for Medicaid payment purposes, a provider's claims must be "documented by records made at the time the goods or services were provided, demonstrating the medical

necessity for the goods or services rendered. Medical goods or services are excessive or not medically necessary unless both the medical basis and specific need for them are fully and properly documented in the recipient's medical record." § 409.913(7)(f), Fla. Stat. In addition, a Medicaid provider must "retain medical, professional, financial, and business records pertaining to services and goods furnished to a Medicaid recipient and billed to Medicaid for a period of 5 years after the date of furnishing such services or goods." § 409.913(9), Fla. Stat. Section 409.913(1)(d), Florida Statutes, expressly provides: "For purposes of determining Medicaid reimbursement, [AHCA] is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician or "peer" employed by or under contract with [AHCA] and must be based upon information available at the time the goods or services are provided." See § 409.901, Fla. Stat.; § 409.9131(2), (5)(b), Fla. Stat.

AHCA cannot refuse to make payments to a Medicaid provider on the basis that it believes DCF erroneously determined the recipient was eligible for Medicaid, based on the application submitted to DCF. § 409.907(5)(b), Fla. Stat. However, AHCA **can and must** refuse to pay the provider or require repayment if it finds a claim is not supported by the provider's contemporaneous records, including medical records, demonstrating that the goods or services billed for were provided in accordance with the requirement of law and were "medically necessary" for the recipient, as determined by the Agency's contracted, licensed physician or "peer." § 409.905, Fla. Stat.; § 409.906, Fla. Stat.; §409.913(1)(d), (2), (7)(b), (7)(f), (9), (11), (15), (20)-(23), Fla. Stat.; § 409.9131, Fla. Stat.

The difference in the roles played by the agencies is made quite clear in the record of this case. In Respondent's Exhibit 36 at Pages 23-24, Tracy Ryder, an investigator with AHCA's Bureau of Medicaid Program Integrity, testified that DCF "is determining eligibility to receive

Medicaid, while the other determination as performed by AHCA is to determine whether or not – to determine the duration of the emergency medical condition in terms of the medical presentation and care and the patient's response to treatment. It is a medical review." In Respondent's Exhibit 19 at Page 64, Shevaun Harris, an administrator for AHCA's Bureau of Medicaid Services, stated that "DCF determines a from and through date of when someone is eligible for Medicaid but that does not mean that that person is eligible – would have a condition that requires [AHCA] to pay for services during that entire time frame." In Respondent's Exhibit 20 at Page 57, Johnnie Shepherd, an administrator with AHCA's Bureau of Medicaid Program Integrity, stated that "Department of Children and Families determines eligibility ... they do not determine coverage." In Respondent's Exhibit 23 at Page 12, Dianna Laffey, the chief of program policy for DCF, stated that "we just do the Medicaid eligibility piece, and then AHCA is the one that pays claims in that. So from what I have always understood, they then determine whether or not those services met that higher level, that higher threshold ... we don't determine that because we don't get medical records." In Respondent's Exhibit 26 at Page 43, Beth Kidder, AHCA's Deputy Secretary for Medicaid Operations, explained that "[e]ligibility and coverage are two different things, and so I want to make that distinction that a span of eligibility may be open but not all services would be covered for that person."

Thus, an application for Medicaid eligibility submitted to DCF by or on behalf of a person seeking to enroll in the Medicaid program and a claim for payment submitted to AHCA by a provider seeking reimbursement from Medicaid for a good or service provided to an enrolled recipient **have no meaningful overlap**. The fact that DCF has determined an undocumented alien is eligible for Medicaid due to an EMC based on the documentation in the eligibility application does not mean that all claims submitted by a provider for goods or services

provided to the alien are payable by AHCA. The eligibility application and claim are submitted to different agencies, by different persons, for different purposes, and require different documentation and levels of documentation, i.e. type, detail, and completeness, in support. The eligibility application reviewed by DCF may be accompanied by different documentation, including medical records, than those maintained and supplied by the provider in support of a claim for payment. For instance, this could occur if there was more than one provider of goods or services, if the alien did not submit complete documentation to DCF, or if the provider did not maintain and supply contemporaneous medical record supporting his or her claims to AHCA upon request, as required by law.

Further, even assuming the same documentation is submitted in support of both an application for Medicaid eligibility and a provider's claim for payment, DCF's eligibility determination is not the equivalent of AHCA's medical necessity determination. See Respondent's Exhibit 22 at page 12; Respondent's Exhibit 26 at Page 50. AHCA utilizes a contracted, licensed physician to conduct a medical review of claims and supporting documentation; DCF's review of eligibility applications utilizes no such personnel and includes no such component. See Respondent's Exhibit 22 at page 12; Respondent's Exhibit 20 at Page 28. Also, a provider may submit a bill to AHCA for goods or services that were not provided in accordance with the requirements of law, were not medically necessary, or were provided to treat some condition other than the EMC. The legislature has specified that AHCA is the final arbiter of "medical necessity" for Medicaid payment purposes. § 409.913(1)(d), Fla. Stat.

Thus, the ALJ's conclusions of law in Paragraph 52 of the Recommended Order are reasonable and are the correct interpretation of the laws and rules governing Florida's Medicaid program, which are within AHCA's substantive jurisdiction because it is the single state agency

in charge of administering Florida's Medicaid Program. Therefore, the Agency denies Respondent's twenty-fifth exception.

In its twenty-sixth exception (numbered paragraph 53), Respondent takes exception to Paragraph 53 of the Recommended Order "based on the reasons set forth above," and because it alleges there are no findings of fact to support the ALJ's conclusion that there was an overpayment in these cases. The Agency is unsure what "reasons set forth above" Respondent is referring to, so it denies Respondent's exception based on the Agency's rulings on Respondent's twenty-five other exceptions, which are hereby incorporated by reference. As for Respondent's assertion that there are no findings of fact that supported the ALJ's conclusion of law that there is an overpayment in these cases, the Agency has already rejected that argument in the ruling on Respondent's twenty-third exception, which is hereby incorporated by reference. Therefore, the Agency denies Respondent's twenty-sixth exception.

The Agency notes that Respondent mentioned other paragraphs of the Recommended Order in Respondent's Memorandum in Support of Exceptions to Recommended Order ("Memorandum") (attached as Exhibit A to its Exceptions), and even made arguments which could be construed as exceptions to additional paragraphs in the Memorandum. However, because the Exceptions themselves are very clear and specific as to what portions of the Recommended Order Respondent has taken exception to, and because the Memorandum was filed in support of those exceptions, AHCA does not find that the statements in the Memorandum to constitute separate exceptions, and will not rule on them as such.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

IT IS THEREFORE ADJUDGED THAT:

In DOAH Case No. 14-4171MPI, Respondent is hereby required to repay $57,337.71 in 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, a $2,500 fine and $2,062.04 in costs are hereby imposed on Respondent. In DOAH Case No 15-3271MPI, Respondent is hereby required to repay $86,496.19 in 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, $3,528.41 in costs are hereby imposed on Respondent. The parties shall govern themselves accordingly.

Unless payment has already been made, Respondent shall make full payment of the overpayments, costs 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.

DONE and ORDERED this 3rd day of August, 2016, in Tallahassee, Florida.

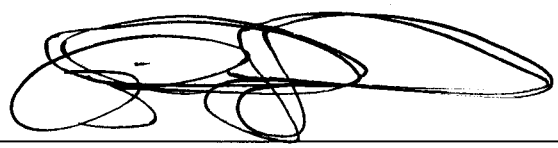
For: ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 4th day of August, 2016.



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Medicaid Program Integrity
Office of the Inspector General

Medicaid Accounts Receivable
Finance & Accounting