

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2015 APR 13 P 4: 02

BHI, LLC d/b/a BLOUNTSTOWN
HEALTH AND REHABILITATION
CENTER,

Petitioner,

DOAH CASE NO. 15-0190
ENGAGEMENT NO. NH11-033C

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

AMENDED FINAL ORDER¹

This case was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (“ALJ”), E. Gary Early, conducted a formal administrative hearing. At issue in this proceeding is whether the Petitioner utilized the correct Medicaid per diem rates at its facility for the 18-month audit period identified in the November 7, 2011 Medicaid Examination Report. The Recommended Order of Dismissal dated March 11, 2015, is incorporated herein by reference.

RULINGS ON EXCEPTIONS

Neither party filed any exceptions to the Recommended Order of Dismissal.

FINDINGS OF FACT

The Agency hereby adopts the findings of fact set forth in the Recommended Order of Dismissal.

¹ The Amended Final Order corrects a scrivener’s error in the first paragraph of the Final Order on Page 1.


CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, Petitioner's Petition for Formal Administrative Hearing is hereby dismissed with prejudice and the Agency's Medicaid Examination Report is hereby upheld as final. The parties shall govern themselves accordingly.

DONE and ORDERED this 13 day of April, 2015, 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 A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH THE FILING FEE AS 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 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. Mail, or by the method indicated, to the persons named below on this 13th day of April, 2015.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308-5403
(850) 412-3630

COPIES FURNISHED TO:

Honorable E. Gary Early
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

John F. Gilroy III, Esquire
Registered Agent for BHI, LLC
John F. Gilroy III, P.A.
1695 Metropolitan Circle, Suite 2
Tallahassee, Florida 32308

Steven L. Perry, Esquire
Office of the Attorney General
Plaza Level 01
The Capitol
Tallahassee, Florida 32399-1050

Zainab Day
Medicaid Program Analysis

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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2015 MAR 11 P 3:55

BHI, LLC d/b/a BLOUNTSTOWN
HEALTH AND REHABILITATION
CENTER,

Petitioner,

Case No. 15-0190

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice, this case was heard on March 9, 2015, in Tallahassee, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No appearance

For Respondent: Steven L. Perry, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner utilized the correct Medicaid per diem rates at its facility for the 18-month audit period identified in the November 7, 2011, Medicaid Examination Report.

PRELIMINARY STATEMENT

On May 8, 2012, the Agency for Health Care Administration (Respondent) issued a Medicaid Examination Report to BHI, LLC d/b/a Blountstown Health and Rehabilitation Center (Petitioner) for the 18-month audit period ending on October 31, 2004. Petitioner was informed of its right to contest the results of the audit, and a timely Petition for Formal Administrative Hearing was filed by Petitioner. The Petition was transmitted to Division of Administrative Hearings and was assigned to the undersigned.

The Initial Order was entered on January 13, 2015. On January 20, 2015, a "Response to Initial Order" was filed by the registered agent for Petitioner, in which the registered agent acknowledged receipt of the pleadings in this case and, since Petitioner had been administratively dissolved, indicated that he had transmitted them to a manager of Petitioner's corporate parent.

On January 26, 2015, the undersigned entered an Order to Show Cause why the case should not be dismissed based on the administrative dissolution of the corporate facility-owning entities. The response filed by Respondent provided satisfactory grounds for the case to proceed, and the case was set for hearing to commence on March 9, 2015.

On February 18, 2015, the registered agent filed a Notice of Non-Representation and Request for Clarification. On February 19, 2015, an Order on Request for Clarification was entered. The substance of the Order may be determined by reference to the docket in this case.

Petitioner did not file or exchange a witness list, exhibit list, or proposed exhibits, pursuant to the Order of Pre-Hearing Instructions. Respondent timely filed and served its exhibit list, along with an affidavit of a person familiar with the records at issue.

The final hearing was convened at 9:00 a.m. on March 9, 2015, as noticed. No one appeared on behalf of Petitioner. Counsel for Respondent appeared. A court reporter was in attendance, having been retained by Respondent. After preliminary matters were disposed of, a 15-minute recess was granted to allow for an appearance by Petitioner. The final hearing was reconvened at 9:20 a.m., without an appearance by Petitioner. Respondent's Exhibits 1 and 2, consisting of the Medicaid Audit Report and a recent review thereof, were received in evidence. The final hearing was thereafter adjourned.

Given the burden of proof as discussed herein, post-hearing submittals were determined to be unnecessary.

References to statutes are to Florida Statutes (2014) unless otherwise noted.

FINDINGS OF FACT

1. By letter dated May 8, 2012, which included the Medicaid Audit Report that is the subject of this proceeding, Respondent gave Petitioner notice of its Medicaid reimbursement rate errors, subject to Petitioner's right to contest the determinations of error and to demonstrate that its rates were correct in an administrative hearing.

2. A timely Petition for Formal Administrative Hearing involving disputed issues of material fact was filed on behalf of Petitioner.

3. After filing the hearing request, Petitioner took no further action to contest Respondent's audit results. Despite having knowledge of these proceedings through its registered agent, Petitioner failed to comply with the Initial Order or the Order of Pre-Hearing Instructions, and failed to appear at the final hearing.

4. Based on Petitioner's failure to appear and offer evidence, there is no evidentiary basis on which findings can be made regarding the Medicaid Audit Report, other than it was provided to Petitioner with a notice of rights.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2014).

6. As the party challenging the audited Medicaid rates, Petitioner has the burden of proving that its rates were correct. Sunrise Community, Inc. v. Ag. for Health Care Admin., Case Nos. 10-4204, et al., (Fla. DOAH Apr. 25, 2011; AHCA Aug. 25, 2011).

7. Petitioner failed to meet its burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order dismissing the Petition for Formal Administrative Hearing and adopting the Medicaid Audit Report as final agency action in this proceeding.

DONE AND ENTERED this 11th day of March, 2015, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of March, 2015.

COPIES FURNISHED:

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1695 Metropolitan Circle, Suite 2
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(eServed)

Steven Lee Perry, Esquire
Office of Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399
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Richard J. Shoop, Agency Clerk
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Stuart Williams, General Counsel
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Elizabeth Dudek, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)

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.

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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RULINGS ON EXCEPTIONS

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FINDINGS OF FACT

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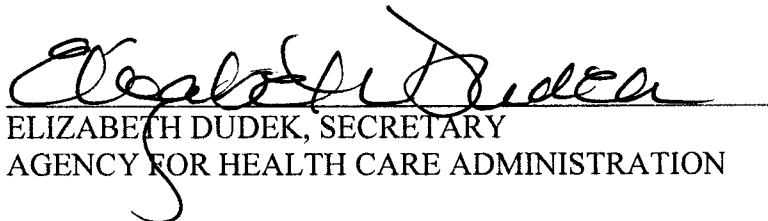
CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, Petitioner's Petition for Formal Administrative Hearing is hereby dismissed with prejudice and the Agency's Medicaid Examination Report is hereby upheld as final. The parties shall govern themselves accordingly.

DONE and ORDERED this 9 day of April, 2015, in Tallahassee, Florida.


ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

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9th day of April, 2015.



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Zainab Day
Medicaid Program Analysis

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Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
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