STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

VYASA RAMCHARAN, D.M.D.,

Respondent.
_____/

DOAH CASE NO. 15-3877MPI
C.I. NO. 15-0107-000
PROVIDER NO. 071518200
RENDITION NO.: AHCA-16-0304 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), D.R. Alexander, 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 it made to Respondent for paid claims covering the period from January 1, 2011 to June 30, 2013, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated March 30, 2016, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

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

In determining how to rule upon the parties' 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, 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 the parties' exceptions:

Petitioner's Exceptions

In its Exceptions to Recommended Order, Petitioner takes exception to Paragraphs 45 and 56 of the Recommended Order, in which the ALJ found and concluded that Petitioner's imposition of a fine in this matter was not warranted. Petitioner argues that the imposition of a fine in this matter is not discretionary based on the language of the rule and corresponding statute. Petitioner is partially correct. Section 409.913(16), Florida Statutes, states the Agency "shall impose" a "fine of up to $5,000 for each violation." Likewise, rule 59G-9.070(7), Florida Administrative Code, states that "sanctions shall be imposed" for failing to comply with the laws and rules that govern Florida's Medicaid program. However, before the Agency can impose such a sanction, section 409.913(17), Florida Statutes, requires the Agency to consider several

factors. There is no record evidence that the Agency considered the factors enumerated in section 409.913(17), Florida Statutes, before it imposed the $88,000 fine.[1] Therefore, the Agency must deny Petitioner's Exceptions to Recommended Order.

Respondent's Exceptions

In Exception #1, Respondent takes exception to the last sentence of Paragraph 17 of the Recommended Order, arguing there is no competent, substantial evidence to support the finding of fact. According to Respondent, Petitioner's peer should have been a licensed physician as required by section 409.9131(2)(c), Florida Statutes. Respondent's argument is quite bold, in light of the fact that his own expert was not a licensed physician either (See Transcript, Volume III, Page 289); and quite wrong. Section 409.9131(2)(c), Florida Statutes, cannot be read in a vacuum. Instead, it must be read in conjunction with the rest of the section. For example, section 409.9131(1), Florida Statutes, states that "[i]t is the intent of the Legislature that physicians, as defined in this section, be subject to Medicaid fraud and abuse investigations in accordance with the provisions set forth in this section as a supplement to the provisions contained in s. 409.913." (emphasis added). Additionally, section 409.9131(2)(b), Florida Statutes, states that, "[i]n making determinations of medical necessity, the agency must, to the maximum extent possible, use a physician in active practice, either employed by or under contract with the agency, of the same specialty or subspecialty as the physician under review." (emphasis added). As Respondent states in Exception #1, he is not a physician. He is a dentist. Thus, section 409.9131, Florida Statutes, does not apply to this matter. Instead, the provisions of section 409.913, Florida Statutes, apply, and, while section 409.913(1)(d), Florida Statutes, also

[1] Petitioner's Exhibit 5, Page 160 is a worksheet for imposing sanctions. It contains a section where the Agency can attest that the factors enumerated in section 409.913(17), Florida Statutes, were considered by the Agency before it imposed the sanction. However, that section was left blank, which results in an inference that the Agency did not correctly impose the sanctions it sought to impose in this case.

uses the term "physician" in relation to who must make medical necessity determinations on behalf of the Agency, it is not defined in the same manner as section 409.9131(2)(e), Florida Statutes, defines the term. There is a good reason for the difference in the two statutes. The intent of section 409.913(1)(d), Florida Statutes, is that a peer of a Medicaid provider will review the provider's records in order to determine that the goods or services provided were medically necessary. If the provider is not a physician, as is the case with Respondent, then the peer should also not be a physician. Instead, the peer should have substantially the same education, training and experience as the Medicaid provider being audited. Interpreting section 409.913(1)(d), Florida Statutes, to restrict the Agency from using anyone other than a physician, as the term is defined by section 409.9131(2)(e), Florida Statutes, to conduct medical necessity reviews of all Medicaid providers, regardless of the provider's credentials, would lead to absurd results because the practice standards of physicians licensed under chapters 458 and 459, Florida Statutes, differ from those of other medical professionals, such as Respondent. "[I]t is ... an axiom of statutory construction that an interpretation of a statute which relates to an unreasonable or ridiculous conclusion or a result obviously not designed by the Legislature will not be adopted." Allied Fid. Ins. Co. v. State, 415 So. 2d 109, 110–11 (Fla. 3d DCA 1982). The last sentence of Paragraph 17 of the Recommended Order is as much a conclusion of law as it is a finding of fact, and the Agency agrees with the ALJ's interpretation of section 409.913(1)(d), Florida Statutes, to the extent that it allows for someone of the same specialty as the audited Medicaid provider to conduct a medical necessity review even if they are not a "physician" in the literal sense. Therefore, the Agency denies Exception #1.

In Exception #2, Respondent takes exception to the finding of fact in the third sentence of Paragraph 21 of the Recommended Order that Respondent "was reimbursed as much as

$1,150.00 if bone grafts were performed." Respondent argues this finding of fact is inaccurate and misleading. Respondent also argues that the last sentence of Paragraph 21 is not based on competent, substantial evidence Respondent's first argument does not constitute a valid basis upon which the Agency can reject or modify a finding of fact. The Agency can only reject or modify findings of fact that are not based on competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (holding that an agency "may not reject the hearing officer's finding [of fact] unless there is no competent, substantial evidence from which the finding could reasonably be inferred"). The finding of fact in the third sentence of Paragraph 21 of the Recommended Order is based on competent, substantial evidence. See Transcript, Volume III, Page 282; Petitioner's Exhibit 15. In regard to Petitioner's second argument, the finding of fact in the last sentence of Paragraph 21 of the Recommended Order is a reasonable inference based on competent, substantial evidence, specifically the amount of the alleged overpayment, which was $1,152,237.19. Therefore, the Agency denies Respondent's Exception #2.

In Exception #3, Respondent takes exception to the finding of fact in the last sentence of Paragraph 23 of the Recommended Order, arguing that the finding of fact is not based on competent, substantial evidence. Respondent's argument is incorrect. The finding of fact in the last sentence of Paragraph 23 of the Recommended Order is a reasonable inference based on competent, substantial evidence. See Transcript, Volume II, Pages 147-148. 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 Exception #3.

In Exception #4, Respondent takes exception to the finding of fact in the last sentence of Paragraph 27 of the Recommended Order, arguing that it is not based on competent, substantial

evidence. Contrary to Respondent's argument, the finding of fact in the last sentence of Paragraph 27 of the Recommended Order is based on competent, substantial evidence. See Transcript, Volume I, Pages 99-100. Thus, the Agency is not at liberty to reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception #4.

In Exception #5, Respondent takes exception to the finding of fact in the last sentence of Paragraph 32 of the Recommended Order, arguing that it is not based on competent, substantial evidence. In essence, Respondent is asking the Agency to re-weigh the testimony presented at hearing on this issue in order to reject the finding of fact and substitute one that is more favorable to Respondent. The Agency cannot do so. The Agency is only permitted to reject or modify a finding of fact if it is not based on competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. The finding of fact in the last sentence of Paragraph 32 of the Recommended Order is based on competent, substantial evidence. See Transcript, Volume I, Pages 95-97 and 112-113; Transcript, Volume II, Pages 135-136. Therefore, the Agency denies Exception #5.

In Exception #6, Respondent takes exception to findings of fact in Paragraph 36 of the Recommended Order, arguing they are not based on competent, substantial evidence because the ALJ misinterpreted Respondent's testimony. Respondent's argument that the ALJ misinterpreted his testimony does not constitute a valid basis for the Agency to reject or modify the findings of fact in Paragraph 36 of the Recommended Order. Since the findings of fact are based on competent, substantial evidence (See Transcript, Volume II, Pages 187-188), the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception #6.

In Exception #7, Respondent takes exception to the finding of fact in the second sentence of Paragraph 37 of the Recommended Order, arguing the finding of fact is not based on competent, substantial evidence. The second sentence of Paragraph 37 of the Recommended Order is an ultimate finding of fact by the ALJ in regard to the weight of the evidence presented in this matter. The Agency cannot re-weigh the evidence in order to reach a contrary finding of fact. Furthermore, the finding of fact in the second sentence of Paragraph 37 of the Recommended Order is based on competent, substantial evidence. See Transcript, Volume I, Pages 92-94, 104-111 and 121; Transcript, Volume II, Pages 140-142. Thus, the Agency is not at liberty to reject or modify it. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception #7.

In Exception #8, Respondent takes exception to Paragraph 54 of the Recommended Order, arguing it is not based on competent, substantial evidence. Paragraph 54 of the Recommended Order is the ALJ's conclusion of law that Petitioner proved the alleged overpayment by a preponderance of the evidence. This conclusion of law clearly involved the ALJ's weighing of the evidence presented by both parties in this matter. The Agency cannot re-weigh the evidence in order to change the ALJ's conclusion. See Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception #8.

In Exception #9, Respondent takes exception to Paragraph 57 of the Recommended Order, arguing that it is not based on competent, substantial evidence. Paragraph 57 of the Recommended Order is a conclusion of law based on the ALJ's interpretation of section 409.913(22), Florida Statutes, which entitles Petitioner to recover certain costs if it prevails in this matter. While the Agency has substantive jurisdiction over the conclusion of law in Paragraph 57 of the Recommended Order because it is the single state agency in charge of

administering Florida's Medicaid program, it cannot substitute a conclusion of law that is as or more reasonable than that of the ALJ. Therefore, the Agency denies Exception #9.

In Exception #10, Respondent takes exception to the conclusions of law in Paragraphs 58 and 59 of the Recommended Order, arguing they are erroneous and unreasonable interpretations of law. Paragraphs 58 and 59 contain the ALJ's conclusions of law concerning whether the doctrine of equitable estoppel should apply to this case in order to bar Petitioner from recovering the alleged overpayment from Respondent. Equitable estoppel 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). However, even if the Agency did have substantive jurisdiction over the conclusions of law in Paragraphs 58 and 59 of the Recommended Order, it could not substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, Exception #10 is denied.

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.

IT IS THEREFORE ADJUDGED THAT:

Respondent is hereby required to repay $1,152,257.19 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. Respondent shall make full payment of the overpayment 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, since the Agency has prevailed in this matter, it is entitled to recover the investigative, legal and expert witness costs it incurred in this matter. § 409.913(23), F.S. 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 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 6 day of May, 2016, in Tallahassee, Florida.

ELIZABETH DUDEK, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

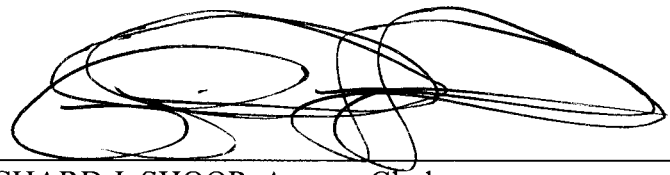
NOTICE OF RIGHT TO JUDICIAL REVIEW

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 to the persons named below by the method designated on this 6th day of May, 2016.



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