

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHC
AGENCY CLERK

2017 MAY 19 P 4:08

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

ASON MAXILLOFACIAL SURGERY,
P.A.,

Respondent.

DOAH CASE NO. 16-4735MPI

MPI CASE ID. 2015-0004172

PROVIDER NO. 007294600

RENDITION NO.: AHCA-17-0368-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”) is entitled to recover alleged Medicaid overpayments it made to Respondent for paid claims covering the period from January 1, 2013 to June 30, 2014, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated March 23, 2017, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

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

In determining how to rule upon Petitioner’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, 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 Petitioner’s exceptions:

In its first exception, Petitioner takes exception to the portion of Paragraph 48 of the Recommended Order, wherein the ALJ found that “[t]here was no direct testimony on the bone grafts performed on this Recipient.” Petitioner argues the ALJ’s finding of fact is not supported by competent, substantial evidence. Petitioner points to Page 76 of the final hearing transcript, wherein Dr. John Hardeman testified in relation to Recipient 31 as follows:

Q Again, it looks like we have grafting, four claims, 3 through 8. Is that correct?

A Yes.

Q And what do the medical records tell you about the necessity for bone grafting here?

A Again, there were multiple teeth that were extracted, and grafts were placed to preserve the socket.

Dr. Hardeman goes on to adopt and incorporate the statements he made in his worksheets as part of his testimony. See Transcript, Volume I, Pages 76-77. The statements he made in his worksheets in regard to Recipient 31 are that claims 3 through 8 were all incorrectly coded, and were not a covered service. See Transcript, Volume I, Pages 97-98. Thus, the Agency agrees the ALJ's finding that "[t]here was no direct testimony on the bone grafts performed on [Recipient 31]" is not supported by the competent, substantial record evidence of this case. Therefore, the Agency grants Petitioner's first exception and modifies Paragraph 48 of the Recommended Order as follows:

48. Recipient 31's claims 3 and 4 were coded as 21215 for a lower jaw bone graft for teeth 22 and 27, and claims 5, 6, 7, and 8 were coded as 21210 for a face bone graft for teeth 5, 6, 11, and 12. ~~There was no direct testimony on the bone grafts performed on this Recipient. Dr. Hardeman testified that these were socket grafts that were incorrectly coded and not covered by Medicaid.~~ The documentation (Exhibit 18-31: Bates-stamped pages 1031 through 1062) reflected Dr. Hardeman wrote "socket graft" at each claim. ~~However, this is insufficient to support a finding of fact. Thus, these claims should be denied.~~

In its second exception, Petitioner takes exception to the portion of Paragraph 51 of the Recommended Order, wherein the ALJ found that "[n]o testimony was received regarding claims 7 and 8" for Recipient 7, and thus recommended that the claims be paid by the Agency. Petitioner argues that no testimony on these claims is necessary because the audit work papers constitute evidence of the overpayment. Indeed, section 409.913(22), Florida Statutes, "[t]he audit report, supported by agency work papers, showing an overpayment to a provider constitutes evidence of the overpayment." The audit report and accompanying work papers were admitted into evidence by the parties as a joint exhibit. See Transcript, Volume I, Page 9.

However, in Exhibit 30 at Page 70, Dr. Hardeman testified that he made a mistake with regard to his findings of no documentation to support claims 7 and 8 of Recipient 7. Additionally, both Steven Dickson and Dr. Raymond Fonseca testified that Respondent's documentation supported the claims. See Transcript, Volume II, Page 160; and Transcript, Volume III, Page 323. Thus, the ALJ's finding of fact that there was "no testimony received regarding claims 7 and 8" is not supported by competent, substantial evidence. Therefore, the Agency grants Petitioner's second exception to the extent that it modifies Paragraph 51 of the Recommended Order as follows:

51. Recipient 7's claim 2 involved a missing panoramic image, claims 7 and 8 involved no documentation for the "Repair Tooth Socket" for unknown teeth, and claims 9 and 12 involved the removal of impacted teeth 1 and 16. During the hearing, Petitioner's counsel affirmed that "claim 7, page 2" was paid,^{8/} and claims 2, 9, and 12^{9/} were paid. In his deposition, Dr. Hardeman testified that he erred in finding there no documentation to support claims 7 and 8. Additionally, both Dr. Fonseca and Mr. Dickson testified that Respondent's documentation supported claims 7 and 8. ~~No testimony was received regarding claims 7 and 8. Thus, the~~ claims (7 and 8) are allowed.

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:

Respondent is hereby required to repay \$638,314.61 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; and the Agency hereby imposes an \$104,000.00 fine on Respondent pursuant to rule 59G-9.070(7)(e), Florida Administrative Code. 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, 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 19th day of May, 2017, in Tallahassee, Florida.




JUSTIN M. SENIOR, 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 17th day of May, 2017.



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

COPIES FURNISHED TO:

Honorable Lynne A. Quimby-Pennock
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(via electronic filing)

Joseph G. Hern, Jr., Esquire
Ephraim D. Livingston, Esquire
James Countess, Esquire
Assistant General Counsels
(via electronic mail to Joseph.Hern@ahca.myflorida.com,
Ephraim.Livingston@ahca.myflorida.com, and
Bart.Countess@ahca.myflorida.com)

Joseph Scott Justice, Esquire
Pierre Seacord, Esquire
Ringer, Henry, Buckley & Seacord, P.A.
105 East Robinson Street, Suite 400
Orlando, Florida 32801
(via electronic mail to service-justice@ringerhenry.com
and service-all@ringerhenry.com)

Medicaid Program Integrity
Office of the Inspector General
(via electronic mail)

Medicaid Accounts Receivable
Finance & Accounting
(via electronic mail)