

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION 2017 OCT 27 P 2:10

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

RONALD M. MARINI, D.M.D., P.A.,

Respondent.

DOAH CASE NO. 16-5641MPI

C.I. NO. 14-1345-000

PROVIDER NO. 076031500

RENDITION NO.: AHCA-17-0634 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (“DOAH”) where the assigned Administrative Law Judge (“ALJ”), Linzie F. Bogan, 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 March 1, 2010 to August 31, 2012, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated August 29, 2017, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Respondent filed exceptions to the Recommended Order¹, 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, which provides in pertinent part:

¹ The Agency notes that Respondent’s exceptions were not timely filed pursuant to rule 28-106.217, Florida Administrative Code, and that Respondent did not demonstrate excusable neglect for their untimeliness. Nevertheless, in the abundance of caution and in furtherance of a swift resolution of this matter, the Agency shall address the merits of Respondent’s exceptions in this Final Order.

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 his first exception, Respondent takes exception to Paragraph 11, alleging the ALJ made an evidentiary error by improperly allowing and considering expert witness testimony from someone who was not qualified to be a peer reviewer under section 409.9131, Florida Statutes. To the extent Respondent’s exception concerns an evidentiary issue involving the admission of testimony and the weight given by the ALJ thereto, evidentiary issues are not within the Agency’s substantive jurisdiction. See Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1st DCA 2002). To the extent Respondent’s exception concerns the ALJ’s interpretation of section 409.9131, Florida Statutes, such interpretation is a conclusion of law within the Agency’s

substantive jurisdiction and the Agency finds that it cannot substitute a conclusion of law as or more reasonable than that of the ALJ in regard to whether Mark Kuhl, D.M.D. qualifies as a peer reviewer under section 409.9131, Florida Statutes. See Murciano v. Agency for Health Care Administration, 208 So. 3d 130 (Fla. 3d DCA 2016). Therefore, the Agency must deny Respondent's first exception.

In his second exception, Respondent takes exception to Paragraph 44 of the Recommended Order "to the extent that it requires a separate, written justification for any service whose medical necessity is otherwise self-evident." The extent to which a finding of fact may or may not impose a requirement is not a valid basis upon which a party may take exception to it. Findings of fact can only be overturned if they are not based upon competent, substantial evidence or a reasonable inference therefrom. See § 120.57(1)(I), Fla. Stat. The findings of fact in Paragraph 44 of the Recommended Order are based on competent, substantial evidence. See, e.g., Petitioner's Exhibit 18; and Petitioner's Exhibit 20 at deposition pages 53-55. Thus, the Agency cannot reject or modify them. See § 120.57(1)(I), 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"). Therefore, the Agency denies Respondent's second exception.

In his third exception, Respondent takes exception to Paragraph 48 of the Recommended Order, arguing the findings of fact therein misinterpret the testimony of Respondent's expert. The findings of fact in Paragraph 48 of the Recommended Order are based on a reasonable inference from the testimony of Respondent's expert, Dr. Ingalls, at Pages 409-413 of the

hearing transcript. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(l), Fla. Stat.; Heifetz. Therefore, the Agency denies Respondent's third exception.

In his fourth exception, Respondent takes exception to Paragraph 49 of the Recommended Order based on the reasoning set forth in his third exception, and because it claims the ALJ erred by finding that the opinions of Dr. Kuhl and Dr. Ingalls were consistent in regard to Respondent's responsibility to document a medical basis and a need for the x-rays at issue in this matter. Respondent's arguments have no merit. The findings of fact in Paragraph 49 of the Recommended Order are based on competent, substantial evidence. See Transcript, Volume III, Pages 278-279; Petitioner's Exhibit 20 at deposition pages 53-56 and 60-67. Thus, the Agency cannot disturb them. See § 120.57(1)(l), Fla. Stat.; Heifetz. Therefore, the Agency denies Respondent's fourth exception.

In his fifth exception, Respondent takes exception to Paragraph 50 of the Recommended Order based on the reasoning set forth in its third and fourth exceptions. Based on the reasoning set forth in the Agency's rulings on Respondent's third and fourth exceptions supra, which are hereby incorporated by reference, Respondent's fifth exception is hereby denied.

In his sixth exception, Respondent takes exception to Paragraph 51 of the Recommended Order based on the reasoning set forth in his third and fourth exceptions, and also argues that it contains conclusions of law. Respondent is wrong about there being conclusions of law in Paragraph 51 of the Recommended Order. It only contains findings of fact. Additionally, the Agency denies Respondent's sixth exception based on the reasoning set forth in the Agency's rulings on Respondent's third and fourth exceptions supra, which are hereby incorporated by reference.

In his seventh exception, Respondent takes exception to Paragraph 52 of the Recommended Order, using the same arguments he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's seventh exception.

In his eighth exception, Respondent takes exception to Paragraph 53 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exception supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's eighth exception.

In his ninth exception, Respondent takes exception to Paragraph 54 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's ninth exception.

In his tenth exception, Respondent takes exception to Paragraph 55 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's tenth exception.

In his eleventh exception, Respondent takes exception to Paragraph 56 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's eleventh exception.

In his twelfth exception, Respondent takes exception to Paragraph 57 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's twelfth exception.

In his thirteenth exception, Respondent takes exception to Paragraph 58 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's rulings on Respondent's third, fourth and sixth exceptions supra, which are hereby incorporated by reference, the Agency hereby denied Respondent's thirteenth exception.

In his fourteenth exception, Respondent takes exception to Paragraph 59 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's sixth exception supra, which is hereby incorporated by reference, the Agency hereby denied Respondent's fourteenth exception.

In his fifteenth exception, Respondent takes exception to Paragraph 60 of the Recommended Order using the same reasoning he put forth in his sixth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's sixth exception supra, which is hereby incorporated by reference, the Agency hereby denied Respondent's fifteenth exception.

In his sixteenth exception, Respondent takes exception to Paragraph 62 "to the extent that it adopts the definition of CDT codes D2391 and 2392 to be the operative definitions of composite resin restorations under Florida Medicaid," and argues the ALJ's interpretation regarding the use of resin restorations is erroneous.² Again, as was stated in the ruling on

² Respondent also argues that, if the Agency were to adopt the findings of fact in Paragraph 62 of the Recommended Order, they would constitute an unpromulgated rule because the findings of fact were based on the peer reviewer's

Respondent's second exception supra, the extent to which a finding of fact may or may not do something is not a valid basis upon which a party can take exception to it. Furthermore, ALJ did not err in making the findings of fact in Paragraph 62 of the Recommended Order. Instead, the findings of fact in Paragraph 62 of the Recommended Order are based on competent, substantial evidence. See Petitioner's Exhibit 13 at page 328; Petitioner's Exhibit 17 at Page 411; and Petitioner's Exhibit 18 at pages 484-485 and 498-500. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, the Agency denies Respondent's sixteenth exception.

In his seventeenth exception, Respondent takes exception to Paragraph 63 of the Recommended Order, "object[ing] to the ALJ's definition of sealant services" because Respondent believes it contains an erroneous implication by the ALJ as to what sealant services are used for. Respondent's objection does not constitute a valid basis upon which the Agency can reject or modify the findings of fact in Paragraph 63 of the Recommended Order. The findings of fact in Paragraph 63 of the Recommended Order are based on competent, substantial evidence. See Petitioner's Exhibit 13 at page 328; Petitioner's Exhibit 17 at Page 411; Petitioner's Exhibit 18 at pages 484-485 and 498-500; and Petitioner's Exhibit 20 at deposition pages 40-42 and 68-72. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, the Agency denies Respondent's seventeenth exception.

In his eighteenth exception, Respondent takes exception to Paragraph 65 of the Recommended Order "to the extent it approves of Dr. Kuhl's application of the four factors

decisions and not that of the Agency. Respondent argument is rejected because 1) nowhere in Paragraph 62 of the Recommended Order is there any discussion as to decision making by a peer reviewer as opposed to the Agency; and 2) assuming arguendo there was some validity to Respondent's argument, the argument is not ripe for adjudication at this point in time because the findings of fact will not be final until the Final Order is rendered and the 30-day time period for a party to appeal the Final Order has passed.

listed.” As has been stated previously, a party cannot validly take exception to a finding of fact on the basis that it may or may not do something. The Agency is only allowed to reject or modify findings of fact if they are not based on competent, substantial evidence or a reasonable inference therefrom. See § 120.57(1)(l), Fla. Stat.; Heifetz. The findings of fact in Paragraph 65 of the Recommended Order are based on competent, substantial evidence. See Petitioner’s Exhibit 4; Petitioner’s Exhibit 4A; and Petitioner’s Exhibit 20 at deposition pages 70-72, 84 and 89. Therefore, the Agency must deny Respondent’s eighteenth exception.

In his nineteenth exception, Respondent takes exception to Paragraph 66 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 66 of the Recommended Order contains findings of fact, the Agency denies Respondent’s nineteenth exception based on the reasoning set forth in the Agency’s rulings on Respondent’s sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 66 of the Recommended Order contains conclusions of law, the Agency finds that, while it does have substantive jurisdiction over the conclusions of law in Paragraph 66 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 nineteenth exception.

In his twentieth exception, Respondent takes exception to Paragraph 67 “on the grounds that it is based on acceptance of Dr. Kuhl’s erroneous interpretation of the Medicaid handbooks and his four ‘factors.’” Respondent also argues the ALJ erred in finding that the teeth at issue were not eligible for replacement. Respondent’s exception does not constitute a valid basis upon which the Agency can reject or modify the findings of fact in Paragraph 67 of the Recommended

Order. To the extent that Paragraph 67 of the Recommended Order contains findings of fact, the findings of fact are based on competent, substantial evidence. See Petitioner's Exhibit 18 at Page 480; and Petitioner's Exhibit 20 at Pages 67-80. To the extent that Paragraph 67 of the Recommended Order contains conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 67 of the Recommended Order since 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 twentieth exception.

In his twenty-first exception, Respondent takes exception to Paragraph 68 of the Recommended Order based on the same reasoning set forth in his twentieth exception, as well as arguing that the ALJ erred in finding that the teeth at issue were not eligible for replacement. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-first exception.

In his twenty-second exception, Respondent takes exception to Paragraph 69 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-second exception.

In his twenty-third exception, Respondent takes exception to Paragraph 70 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is

hereby incorporated by reference, the Agency hereby denies Respondent's twenty-third exception.

In his twenty-fourth exception, Respondent takes exception to Paragraph 71 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-fourth exception.

In his twenty-fifth exception, Respondent takes exception to Paragraph 72 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-fifth exception.

In his twenty-sixth exception, Respondent takes exception to Paragraph 73 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-sixth exception.

In his twenty-seventh exception, Respondent takes exception to Paragraph 74 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 74 of the Recommended Order contains findings of fact, the Agency denies Respondent's twenty-seventh exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 74 of the

Recommended Order contains conclusions of law, the Agency hereby denies Respondent's twenty-seventh exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 74 of the Recommended Order since 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.

In his twenty-eighth exception, Respondent takes exception to Paragraph 75 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-eighth exception.

In his twenty-ninth exception, Respondent takes exception to Paragraph 76 of the Recommended Order for the same reasons he put forth in his twentieth exception. Based on the reasoning set forth in the Agency's ruling on Respondent's twentieth exception supra, which is hereby incorporated by reference, the Agency hereby denies Respondent's twenty-ninth exception.

In his thirtieth exception, Respondent takes exception to Paragraph 78 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 78 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirtieth exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 78 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirtieth exception because it finds that, while it has substantive jurisdiction over the conclusions

of law in paragraph 74 of the Recommended Order since 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.

In his thirty-first exception, Respondent takes exception to Paragraph 79 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 79 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-first exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 79 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-first exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 79 of the Recommended Order since 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.

In his thirty-second exception, Respondent takes exception to Paragraph 80 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 80 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-second exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 80 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-second exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 80 of the Recommended Order since 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.

In his thirty-third exception, Respondent takes exception to Paragraph 81 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 81 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-third exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 81 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-third exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 81 of the Recommended Order since 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.

In his thirty-fourth exception, Respondent takes exception to Paragraph 82 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 82 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-fourth exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 82 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-fourth exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 82 of the Recommended Order since 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.

In his thirty-fifth exception, Respondent takes exception to Paragraph 83 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 83 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-fifth exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 83 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-fifth exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 83 of the Recommended Order since 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.

In his thirty-sixth exception, Respondent takes exception to Paragraph 84 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 84 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-sixth exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 84 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-sixth exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 84 of the Recommended Order since 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.

In his thirty-seventh exception, Respondent takes exception to Paragraph 85 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 85 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-seventh exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 85 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-seventh exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 85 of the Recommended Order since 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.

In his thirty-eighth exception, Respondent takes exception to Paragraph 86 of the Recommended Order based on the reasoning set forth in his sixteenth, seventeenth and eighteenth exceptions. To the extent Paragraph 86 of the Recommended Order contains findings of fact, the Agency hereby denies Respondent's thirty-eighth exception based on the reasoning set forth in the Agency's rulings on Respondent's sixteenth, seventeenth and eighteenth exceptions supra, which are hereby incorporated by reference. To the extent Paragraph 86 of the Recommended Order contains conclusions of law, the Agency hereby denies Respondent's thirty-eighth exception because it finds that, while it has substantive jurisdiction over the conclusions of law in paragraph 86 of the Recommended Order since 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.

In his thirty-ninth exception, Respondent takes exception to the conclusion of law in Paragraph 100 of the Recommended Order, incorporating by reference the arguments set forth in his first thirty-eight exceptions. Based on the reasoning set forth in the Agency's rulings on Respondent's first thirty-eight exceptions supra, which are all hereby incorporated by reference, the Agency hereby denies Respondent's thirty-ninth exception.

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

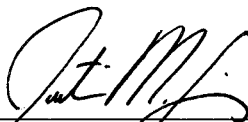
The Agency adopts the conclusions of law set forth in the Recommended Order.

IT IS THEREFORE ADJUDGED THAT:

Based on the ALJ's resolution of the claims in dispute, and using the statistical formula that was not contested by Respondent, Respondent is hereby required to repay the Agency \$424,031.64 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. Additionally, the Agency hereby imposes a fine of \$84,806.33 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.³

DONE and ORDERED this 27th day of October, 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

³ Contrary to what the ALJ stated in the Recommended Order, the ALJ cannot retain jurisdiction over this matter once he has entered the Recommended Order in order to determine the amount of costs due to the Agency. Instead, costs are more appropriately determined in a separate proceeding, as was stated by the ALJ in Agency for Health Care Administration v. Brown Pharmacy, DOAH Case No. 05-3366MPI (Recommended Order November 3, 2006). Therefore, the Agency declines to adopt the ALJ's Recommendation as it relates to the issue of costs, and orders that costs will be determined in the manner stated above.

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 27th day of October, 2017.



RICHARD J. SHOOP, Agency Clerk
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