

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

HALIFAX HOSPICE, INC. d/b/a
HALIFAX HEALTH HOSPICE,

Respondent.

DOAH CASE NO. 16-6490MPI

MPI CASE ID. 2015-0002752

PROVIDER NO. 087523600

RENDITION NO.: AHCA-17-0478-FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), Yolonda Y. Green, 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 September 1, 2009 to December 31, 2012, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated June 30, 2017, is attached to this Final Order and incorporated herein by reference.

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 finding of fact in Paragraph 87 of the Recommended Order, arguing that it is not supported by any competent, substantial evidence. While Petitioner argues that Paragraphs 79-85 of the Recommended Order contain enough evidence to show that the Agency met its burden of proof in regard to whether it overpaid Respondent for services rendered to Patient O, it glosses over Paragraph 86 of the Recommended Order, wherein the ALJ explained that the opinion of Petitioner’s expert witness concerning Patient O was not credible due to the fact that the expert lacked training and experience in chronic obstructive pulmonary disease (“COPD”). The ALJ’s ultimate finding of fact in Paragraph 87 of the Recommended Order that Petitioner did not meet its burden of proof in

regard to Patient O is directly based on her determination of the credibility (or lack thereof) of the Agency's expert witness in Paragraph 86. If the Agency were to grant Petitioner's first exception and modify the finding of fact in Paragraph 87 of the Recommended Order, it would be venturing into the province of the ALJ, which is not allowed. See Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) ("The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion."); Stinson v. Winn; 938 So. 2d 554 (Fla. 1st DCA 2006) ("Credibility of the witnesses is a matter that is within the province of the administrative law judge, as is the weight to be given the evidence."). Therefore, the Agency must deny Petitioner's first exception.

In Petitioner's second exception, Petitioner takes exception to the conclusions of law in Paragraphs 104, 107 and 108 of the Recommended Order based on the arguments set forth in its first exception. Based on the reasoning set forth in the Agency's ruling on Petitioner's first exception supra, which is hereby incorporated by reference, the Agency denies Petitioner's second exception.

In its third exception, Petitioner takes exception to the ALJ's Recommendation based on the arguments set forth in its first exception, as well as the fact that the ALJ cannot retain jurisdiction over this matter in order to determine the costs should the parties not agree. The Agency denies Petitioner's first exception in regard to revising the amount of the overpayment, fine and costs based on the reasoning set forth in the ruling on Petitioner's first exception supra, which is hereby incorporated by reference. However, the Agency agrees with Petitioner that the ALJ cannot continue to have jurisdiction over this matter in order to determine the amount of costs due to Petitioner. 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 instead notifies the parties of the appropriate procedure for the determination of the costs that should be assessed in this matter in the "Ordered and Adjudged" section of this Final Order.

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.

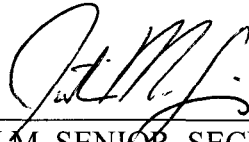
IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent is hereby required to repay \$371,672.22 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 \$64,981.38 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 27th day of July, 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 27th day of July, 2017.



RICHARD J. SHOOP, Agency Clerk
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