STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

GREEN CROSS HOME CARE SERVICES,

Respondent.
_____/

DOAH CASE NO. 17-3268MPI
MPI CASE ID: 2015-0002077
PROVIDER NO. 650811100
RENDITION NO.: AHCA-18-0298 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings ("DOAH") where the assigned Administrative Law Judge ("ALJ"), John D.C. Newton II, 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 July 1, 2009 to June 30, 2013, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated April 25, 2018, 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.

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 exceptions, Petitioner takes exception to the conclusions of law in Paragraphs 61 through 72 and Endnote 4 of the Recommended Order, as well as the mixed findings of fact and conclusions of law in Paragraph 38 of the Recommended Order, arguing that the conclusions of law in those paragraphs involve an erroneous interpretation of section 409.913(22), Florida Statutes, by the ALJ. To an extent, the Agency is correct. The ALJ did err by concluding that the Final Audit Report, and accompanying work papers are not prima facie evidence of an overpayment. The portion of section 409.913(22), Florida Statutes, which says "[t]he audit report, supported by agency work papers, showing an overpayment to a provider constitutes evidence of the overpayment" means that those documents constitute Petitioner's prima facie case for an overpayment, which then must be rebutted by Respondent. See, e.g., Maz

Pharmaceuticals Inc. v. Agency for Health Care Administration, DOAH Case No. 97-3791, (DOAH Mar. 20, 1998; AHCA June 25, 1998) ("Since the Legislature determined that the audit report and work papers constitute evidence which must be considered, the Agency presented a prima facie case, which Petitioner chose not to rebut."); Full Health Care Inc. v. Agency for Health Care Administration, DOAH Case No. 00-4441, (DOAH June 25, 2001; AHCA Oct. 3, 2001) ("the Agency can make a prima facie case without doing any heavy lifting: it need only proffer a properly-supported audit report, which must be received in evidence."); and Disney Medical Equipment, Inc., d/b/a Disney Pharmacy Discount, v. Agency For Health Care Administration, DOAH Case No. 05-2277MPI (DOAH Apr. 11, 2006, AHCA May 31, 2006) ("The Agency can make a prima facie case by proffering a properly supported audit report, which must be received in evidence"). The ALJ's conclusions of law in Paragraphs 66 through 71 of the Recommended Order contradict 20 years of prior Agency precedent with no rational explanation, and give no deference to the Agency's reasonable interpretation of the statute that it is charged with implementing. Thus, the Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraphs 66 through 71 of the Recommended because it is the single state agency in charge of administering Florida's Medicaid program, and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. However, in regard to the conclusions of law in Paragraphs 38, 61 through 62 and 72 of the Recommended Order, the ALJ was correct in this case when he concluded that he could not make a finding of fact that there was an overpayment based solely on the hospital claims because the hospital claims were hearsay and hearsay, by itself, cannot support a finding of fact. The ALJ would have erred as a matter of law if he had ignored the requirements of section 120.57(1)(c), Florida Statutes, which states "[h]earsay evidence may be used for the purpose of supplementing or explaining other

evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." Furthermore, the conclusions of law in these paragraphs involve an evidentiary issue, and evidentiary issues are not within the substantive jurisdiction of the Agency. See Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1st DCA 2002). Thus, the Agency cannot disturb the conclusions of law in Paragraphs 38, 61 through 62 and 72 of the Recommended Order. In regard to Paragraphs 63 through 65 of the Recommended Order, the ALJ erred by concluding that the Agency's use of the hospital billing claims was not an "acceptable and valid auditing, accounting, analytical, statistical or peer-review method" under section 409.913(2), Florida Statutes. The use of the hospital claims by the Agency was a valid auditing method. However, the Agency should have presented evidence to demonstrate the hospital claims met a hearsay exception, or otherwise provided supplementary evidence at hearing. The Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraphs 63 through 65 of the Recommended Order, and that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, for all the reasons set forth above, the Agency grants Petitioner's exceptions in regard to the conclusions of law in Paragraphs 63 through 71 of Recommended Order and rejects the conclusions of law in those paragraphs in their entirety, and denies Petitioner's exceptions in regard to Paragraphs 38, 61 through 62 and 72 of the Recommended 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, except where noted supra.

IT IS THEREFORE ADJUDGED THAT:

Respondent is hereby required to repay the Agency $16,657.68 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 $3,331.54 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 24th day of May, 2018, in Tallahassee, Florida.

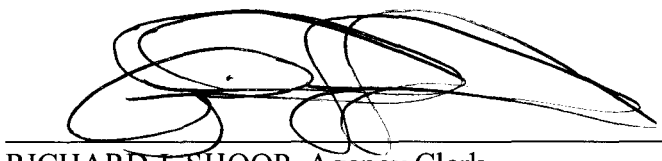
JUSTIN M. SENIOR, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 24th day of May, 2018.



RICHARD J. SHOOP, Agency Clerk
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