

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

Case No. 17-3320MPI

ACCESS MENTAL SOLUTIONS, LLC,

*AMENDED AS TO APPEARANCES
ONLY

Respondent.
_____ /

*AMENDED RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy of the Division of Administrative Hearings ("DOAH") in Tallahassee, Florida, on December 11, 2017, and January 11, 2018.

APPEARANCES

For Petitioner: Joseph G. Hern, Esquire
Kimberly Murray, Esquire
Agency for Health Care Administration
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For Respondent: Michael P. Gennett, Esquire
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STATEMENT OF THE ISSUE

Whether certain employees of Respondent, who provided services to Medicaid recipients, met the prior work experience requirement to be certified as targeted case managers ("TCMs").^{1/}

The nine disputed employees are identified in the Joint Prehearing Stipulation as Arian Melgarejo, Isis Lopez, Sadaiky Morejon, Karen Cuellar, Elisa Alonso Knapp, Ilineis Gonzalez Torres, Andres Gutierrez, Ana Sarai Llanes, and Berto Mirabal Lopez.

PRELIMINARY STATEMENT

Respondent, Access Mental Solutions, LLC ("Access"), is a provider of mental health targeted case management services ("TCM services") reimbursed under the Florida Medicaid program. The purpose of TCM services, as described in the Florida Medicaid Mental Health Targeted Case Management Handbook (the "Handbook"), is to assist individuals (recipients) in gaining access to needed medical, social, educational, and other services. The primary goal of TCM services is to optimize the functioning of recipients who have complex needs by coordinating the provision of quality treatment and support services in the most efficient and effective manner. Significant to this appeal, the Handbook specifies that TCM services do not include "direct therapeutic, medical or clinical services." In order to be certified as a TCM for the adult mental health target group, an individual must have a bachelor's degree from an accredited university and have a "minimum of one year of full time or equivalent experience working with adults experiencing serious mental illness." It is

this work experience requirement which is the focus of this appeal.

On January 4, 2017, Petitioner, Agency for Health Care Administration (the "Agency" or "AHCA"), issued a Final Audit Report ("FAR") to Access reflecting that AHCA completed a review of claims for Medicaid reimbursement for dates of service during the period of January 1, 2013, through December 31, 2014. Pursuant to the FAR, MPI Case ID No. 2016-0006148, AHCA sought repayment from Access in the amount of \$738,890.52 as an alleged Medicaid overpayment for claims AHCA alleges in whole or in part are not covered by Medicaid, together with a fine and the costs of the audit. A post-FAR review of the claims has reduced the overpayment alleged by AHCA to \$526,500.11.

The overpayment is based upon two types of allegedly non-covered claims: (1) claims for services provided by the disputed employees whom AHCA determined did not have the requisite work experience; and (2) claims provided to specific recipients that AHCA determined were not covered for various reasons. Again, for purposes of this hearing, only the issue of employee eligibility was litigated.

AHCA analyzed a total of 24 of Access' TCMs and determined that 11 had the requisite work experience and 13 did not. Of the 13, two employees were conceded by Access to be ineligible, and another two employees deemed ineligible by AHCA had no claims

in the audit and, therefore, are not relevant to this proceeding. The nine remaining TCMs are the disputed employees.

On June 9, 2017, AHCA forwarded the request to DOAH. On September 14, 2017, Respondent filed its Agreed Motion to Bifurcate Final Hearing, reciting that the parties were in agreement that the best use of judicial and the parties' own resources was to first litigate the issue of whether certain employees of Respondent met the prior work experience requirement of the Florida Medicaid program necessary for one to provide TCM services. An Order Granting Motion to Bifurcate Hearing was entered on September 19, 2017, and an Amended Notice of Hearing setting the matter for December 11 and 12, 2017, was filed the same date.

On December 1, 2017, the parties submitted a Joint Prehearing Stipulation, including a statement of undisputed facts. To the extent that the stipulated facts are relevant, the facts are adopted and incorporated herein as necessary.

The hearing commenced as scheduled on December 11, 2017. AHCA presented the testimony of: AHCA Administrator Robi Olmstead; Stephanie Gregie; and the deposition testimony of Demian Laudisio. AHCA's Exhibits 1 through 16, including subparts, were admitted. Access presented the testimony of: Marieta Garcia de Porto and Denia Lazo-Santalla. Access'

Exhibits 1 through 5, 7, and 8, including subparts, were admitted.

The four-volume Transcript was filed on January 29 and 31, 2018. Both parties timely submitted their proposed recommended orders, and each has been considered in the preparation of this Recommended Order.

Except as otherwise indicated, citations to Florida Statutes or rules of the Florida Administrative Code refer to the versions in effect during the time in which the alleged overpayments were made.

FINDINGS OF FACT

1. This case involves a Medicaid audit by AHCA of Access, which relates to dates of service from January 1, 2013, through December 31, 2014 ("audit period").

2. During the audit period, Access was an enrolled Medicaid provider and had a valid Medicaid provider agreement with AHCA, Medicaid Provider No. 004073400.

3. As an enrolled Medicaid provider, Access was subject to the duly-enacted federal and state statutes, regulations, rules, policy guidelines, and Medicaid handbooks incorporated by reference into rule, which were in effect during the audit period.

4. The AHCA Bureau of Medicaid Program Integrity ("MPI"), pursuant to its statutory authority, conducted an audit of

Medicaid claims paid to Access for services to Medicaid recipients.

5. AHCA issued an FAR dated January 4, 2017, MPI Case ID No. 2016-0006148, alleging that Access was overpaid \$738,890.52 for certain services that in whole or in part are not covered by Medicaid. In addition, the FAR informed Access that AHCA was seeking to impose a fine of \$147,778.11 as a sanction for violation of Florida Administrative Code Rule 59G-9.070(7)(e) and costs pursuant to section 409.913(23), Florida Statutes. The overpayment and sanction amounts sought by AHCA were amended post-FAR to \$526,500.11 and \$105,300.02.

6. AHCA is designated as the single state agency authorized to make payments for medical assistance and related services under Title XIX of the Social Security Act. This program of medical assistance is designated the "Medicaid Program." See § 409.902, Fla. Stat. AHCA has the responsibility for overseeing and administering the Medicaid program for the State of Florida, pursuant to section 409.913.

7. The Handbook requires that, in order to be certified as a TCM, an applicant must "have a minimum of one year of full time or equivalent experience working with adults experiencing serious mental illness." The Handbook also requires, via the completion and retention of Appendix H, that the provider certify that all of the requirements to be a TCM have been met. Appendix H must

be signed by the provider administrator, the case manager, and the case manager's supervisor. There are no AHCA rules or any agency guidance as to exactly what type of work experience with these individuals is required.

8. TCM services include things like coordinating transportation services, obtaining medical records to give to a provider or locating a new provider that may be closer to a recipient's home, things that are not clinical in nature, but which are beyond a recipient's ability to do or his family's ability to assist them with. In fact, Medicaid will not reimburse mental health TCM services for the provision of direct therapeutic, medical, or clinical services.

9. Significantly, the Handbook does not require a provider to secure or maintain an applicant's resume, reference letters, or any particular documentation reflecting work history, nor does it specify who must be contacted to verify prior employment or indicate references need to be contacted at all. The one year of experience does not have to come from an applicant's most recent employer, or even one individual employer. AHCA provides no webinars or training for providers on how to check the work history of an applicant.

10. However, AHCA contends that a provider cannot, in good faith, certify a case manager without verifying that the employee possessed the necessary experience with the target population.

AHCA's Audit Procedure

11. Robi Olmstead, an Agency Administrator over the Practitioner Unit at the Bureau of MPI, testified regarding her experience and her supervisory role in the audit of Access.

12. Ms. Olmstead explained that the instant case against Access was opened based on "an analysis . . . from our data detection unit identifying a high number of services billed and high utilization by this provider of targeted mental health . . . case management services."

13. Ms. Olmstead opened the audit, and assigned the matter to Stephanie Gregie, a Medicaid program health care analyst, who obtained a list of claims for 35 random recipients from AHCA's cluster sample program. After the sample was obtained, AHCA then requested the records of the sample recipients from Access.

14. Ms. Gregie requested detailed documentation from Respondent via a Request for Records. The Request for Records included Document Organizational Guidelines. The guidelines requested that Access provide, inter alia, employment applications and/or resumes and evidence of employment background checks.

15. Ms. Gregie determined that the employees at issue all met the regulatory educational requirement. However, she was concerned that the TCMs in dispute lacked the prerequisite experience working with the target population.

16. Upon review of the records provided by Access, Ms. Gregie was disturbed that some job titles listed on the applications or resumes seemed inconsistent with listed job duties. According to Ms. Gregie, the prior work history of the TCMS was not thoroughly "certified" because the reference forms completed by Access' owner, Marieta Garcia de Porto, did not identify the dates of employment, the name of the employer which she contacted, the job title of the individual who verified past employment, or additional details of the conversation. Further, the reference checks generally seemed insufficient to Ms. Gregie because of her belief that the best reference check is through a former employers' human resources department rather than from past supervisors or co-workers.

17. Ms. Gregie was also suspicious of the veracity of the reported work histories because several employees had reference letters signed by different people but which were notarized by the same individual. Some of the reference letters had similar, if not identical, language. Also, many of the employees purportedly had their references checked the day before or the day of hiring.

18. Due to her concerns regarding the certifications provided by Access, Ms. Gregie "did something we typically wouldn't normally do, and that is I developed a verification process in [an] attempt to determine whether the employees were,

in fact--did, in fact, have the required experience, and I began to document my own verifications of the employees' work experience with their prior employers." Tr. 48/5-13. Ms. Gregie created a worksheet to document her attempts at employment verification for the TCMs. Ms. Gregie requested additional documentation from Access, which was provided, and she attempted to verify those documents as well.

Access' Response

19. Ms. Garcia, as the owner of Access, is also the clinical director and the supervisor of its TCMs. Ms. Garcia, who is a Cuban immigrant, obtained her degree in psychology in Cuba and her master's degree in the United States. She is a licensed mental health counselor. Ms. Garcia had a five-year course of study in Cuba, which included a practicum every semester working with a targeted mental health population and required a thesis. However, her degree was equated to a bachelor's degree in the United States. In Cuba, to begin working as a psychologist, a new graduate does not provide a resume. They only provide a transcript and complete an interview.

20. Ms. Garcia hired the TCMs for Access, whose work histories are in dispute. Ms. Garcia explained that the Handbook does not provide any direction as to how to verify or document the verification of prior work experience for TCMs. She used the

process used when she was first hired as a TCM in 2005. She asked each applicant for a resume or job application and three letters of reference, which she maintained in their employment files. Although the Handbook does not require reference letters or notarization, she chose to ask that these letters be notarized because when she immigrated to the United States, all of her documents were required to be notarized. Ms. Garcia then contacted the individuals who signed the letters to verify employment.

21. The TCMs hired by Ms. Garcia were primarily doctors and nurses from Cuba. It did not surprise her that their resumes looked similar because these people worked together in Cuba and likely worked on crafting their resumes together because the use of resumes is not common in the medical profession in Cuba. Further, Ms. Garcia is not a lawyer or a notary, and it did not cause her any concern that the same notary was used for reference letters from different employers.

22. Additionally, three of the TCMs (Arain Melgarejo, Sadaiky Morejon, and Andres Gutierrez) were referred to Ms. Garcia by Yoandes Fuentes, a medical doctor who was employed by Access as a TCM. Dr. Fuentes previously supervised these TCMs at a medical mission in Venezuela as part of a Cuban/Venezuelan program that exchanged the services of Cuban medical professionals for Venezuelan oil. Dr. Fuentes, who was a trusted

Access employee, personally verified the one year or more employment of these three TCMS with the adult mental health population in Venezuela. Both Ms. Morejon and Mr. Gutierrez were medical doctors in Cuba. Ms. Morejon is also married to Dr. Fuentes.

23. Based upon the applications/resumes and reference letters submitted and verified by Ms. Garcia, she believed the TCMS all had the requisite work experience and both the TCMS and she certified this on Appendix H for each of the nine TCMS in dispute.

The Experience of the Disputed TCMS

a. Arian Melgarejo

24. As discussed above, Arian Melgarejo was referred to Ms. Garcia by Dr. Fuentes. Mr. Melgarejo obtained a doctoral degree in dental surgery in Cuba in 2007. He is not licensed in the United States as a dentist. This makes him subject to the three-year work requirement applicable to TCM applicants without a degree in a "human services" field.

25. Dr. Fuentes supervised Mr. Melgarejo at the Venezuelan medical mission, Comprehensive Diagnostic Center ("Comprehensive"), from October 2009 through May 2011. Comprehensive provided medical and mental health services to poor people in rural areas of Venezuela.

26. Denia Lazo-Santalla, who is employed by Access as a TCM supervisor, also testified regarding the work at Comprehensive. As a medical doctor from Cuba, Ms. Lazo-Santalla also worked at the mission and is familiar with its workload. Comprehensive has locations in rural areas all over Venezuela. They are generally the sole providers of health care in these areas, so any of the physicians or, in Mr. Melgarejo's case, a dentist, working there would see a significant population of adults with serious mental illnesses.

27. Mr. Melgarejo's employment records include a reference letter from Katia Avila Garcia, who acknowledged working with Mr. Melgarejo at the mission. Mr. Melgarejo's resume also lists two employment stints at Isidro de Armas Psychiatric Hospital in Cuba from January 2000 through September 2002, and from September 2007 through September 2009. A printout of Isidro de Armas Psychiatric Hospital on the InfoMED website shows that its mission is providing specialized medical care (treatment and rehabilitation) to chronic psychotic patients. Ms. Lazo-Santalla testified that, as a medical doctor in Havana, Cuba, she was familiar with Isidro de Armas Psychiatric Hospital and that it is a huge facility that provides all kinds of services, including dental care, to psychiatric patients.

28. Ms. Gregie disputes that Mr. Melgarejo meets the three-year experience requirement based upon her own "verification"

process. According to Ms. Gregie, dentists do not typically provide mental health services. She contacted the practice administrator at SOMA Medical Center ("SOMA"), which was identified on Mr. Melgarejo's resume as his last place of employment. Mr. Melgarejo claims to have worked there as a social worker, "[a]ssisting chronic patients who were diagnosed with psychiatric illnesses to receive the proper treatment and link them with outside recommended services."

29. According to Ms. Gregie, she was told that SOMA does not employ social workers and that Mr. Melgarejo never worked there. However, even discounting the time alleged worked at SOMA, Mr. Melgarejo's experience with adult mental health patients was verified by Dr. Fuentes. Further, Ms. Gregie made no effort to independently verify his employment at Comprehensive or Isidro de Armas Psychiatric Hospital.

b. Sadaiky Morejon

30. Sadaiky Morejon was a medical doctor in Cuba. Ms. Morejon and Dr. Fuentes are husband and wife, and they worked together in almost every place. This accounts for the similarity in resumes. According to her resume, Ms. Morejon worked at the mission in Venezuela, Comprehensive, from August 2007 through May 2011. As discussed herein, she worked with and was supervised during part of this time by Dr. Fuentes, who referred her to Ms. Garcia for employment. A reference letter from

Dr. Fuentes, dated February 22, 2017, provides extensive detail of Ms. Morejon's work during her time at the mission in Venezuela.

31. According to her resume, Ms. Morejon also worked at Psychiatric Clinic of Cinefuegos in Cuba from April 2007 to August 2007. A printout of the profile for Psychiatric Clinic of Cienfuegos from the InfoMED website states that the hospital has a mission of providing specialized medical care (treatment and rehabilitation) for chronic psychotic patients.

32. Ms. Morejon's resume lists her most recent employment at Miami Community Health Center. Ms. Gregie was unable to locate a business by that name. In case Ms. Morejon confused the name with Miami Behavioral Health Center, now known as Banyan Health Center ("Banyan"), Ms. Gregie contacted Banyan but was told that Ms. Morejon was not employed there. However, Ms. Morejon's file includes a 2013 reference letter from her former supervisor, Dr. Ernesto Fernandez, which reflects that she worked for him at the address she listed as "Miami Community Health Center." Ms. Gregie discounted this reference because it did not include the specific dates of employment or a detailed description of job duties.

33. Further, Ms. Gregie noted that Ms. Morejon's resume is "highly similar" to that of Dr. Fuentes. She found it improbable that they would have the same career path with the same

employers. Apparently, she did not account for the fact that they are husband and wife. Nor did Ms. Gregie attempt to verify Ms. Morejon's employment in Cuba or Venezuela.

c. Berto Mirabal Lopez

34. Berto Mirabal Lopez obtained a bachelor's degree in nursing from the University of Havana, Cuba, in 2009. Mr. Lopez worked as a charge nurse in the crisis stabilization unit at Hospital Miguel Enriquez in Havana, Cuba, from December 2009 through April 2011. One of his reference letters was from Marleny Almeida dated October 12, 2013. After the FAR was issued, Ms. Garcia contacted Ms. Almeida and told her that Mr. Lopez was not approved in the Medicaid audit. Ms. Almeida authored a second reference letter dated February 14, 2017, that provided more specific detail of the work that Mr. Lopez did as a nurse in the crisis stabilization unit at Miguel Enriquez Hospital with the mentally ill.

35. Miguel Enriquez Hospital is a large hospital in Havana with multi-specialties, including psychiatric and mental health services. Mr. Lopez' employment there satisfies the one-year work requirement.

36. Mr. Lopez' resume also states that he worked as a mental health technician at Citrus Health Network from 2011 until the time of his application. However, the Citrus Human Resources Department told Ms. Gregie they had no record of him working

there. She also found the three reference letters provided not credible because they do not specify where these individuals worked with Mr. Lopez, are similar in format, and, although written on different dates, were all signed by the same notary on the same date. Ms. Gregie did not attempt to verify Mr. Lopez' employment in Cuba.

d. Isis Lopez

37. Isis Lopez was personally known to Ms. Garcia prior to Ms. Lopez' hiring because they studied psychology together in Cuba. They are also family friends. Ms. Lopez' application reflects that she worked at Centro de Orientacion y Atencion Psicologica ("COAP") at the University of Havana, Cuba from 2000 to 2008. COAP is a center for psychological counseling. Ms. Garcia was personally familiar with Ms. Lopez' work experience at COAP.

38. One of the reference letters is from Alain Abreau, verifying that Ms. Lopez worked as a counselor under his supervision at COAP from January 2000 through March 2001. Her resume indicates she worked there from 2000 to 2008, and Mr. Abreau acknowledged that she continued to work there, but no longer under his supervision.

39. Ms. Gregie attempted to speak with Mr. Abreau but Mr. Abreau hung up on her after she announced herself, and

despite immediately calling back, she was only able to leave a voicemail requesting a return call, which did not occur.

40. Ms. Garcia knows Mr. Abreau personally because she used to work with him at Miami Behavioral Health Center (now called "Banyan") when she was employed as a TCM in 2005. In February 2017, Ms. Garcia called Mr. Abreau and told him that Ms. Lopez was not approved by Medicaid, and that is why Mr. Abreau wrote the detailed reference letter.

41. Mr. Abreau was told by Ms. Garcia that he would receive a call from AHCA to verify, and he did. Mr. Abreau told Ms. Garcia that the call broke off and, when Mr. Abreau called the same number back, it was a general line for AHCA and he did not know who to ask for. Mr. Abreau did not get a voicemail from Ms. Gregie.

42. According to Ms. Lopez' resume, she worked from August 2011 until August 2012 as a TCM at Miami Behavioral Health Center. Ms. Gregie contacted Ana Marie Rodriguez in the Human Resources Department at Banyan and was told that Ms. Lopez actually only worked there for two months. Ms. Rodriguez signed and returned a form confirming this. Ms. Gregie questions why Ms. Lopez would make a misrepresentation about her employment at Banyan if she in fact already had the requisite experience from her employment in Cuba.

43. Although it is understandable that these interactions with Mr. Abreau and Banyan would raise Ms. Gregie's suspicion, it does not invalidate either Ms. Garcia's personal knowledge of Ms. Lopez' course of study and her work at COAP, or the letter provided by Mr. Abreau, verifying more than a year of experience working with the target population.

e. Elisa Alonso Knapp

44. Elisa Alonso Knapp has a bachelor's degree in psychology and a master's degree in human resource management. Her course of study in Cuba to obtain her psychology degree would have included work experience with the target population.

45. Ms. Knapp's resume listed her most recent place of employment as New Life Staffing, Inc. The resume recites her work there as including "case management assistance to adults and elderly with chronic mental disorders." Staffing agencies generally do not provide direct mental health services. The other positions on her resume are all human resource positions.

46. Access' Employment Reference Check dated May 12, 2014, listed only three names, three telephone numbers, and three different years of experience. Ms. Knapp listed Oscar Villegas Flores as a reference. When Ms. Gregie spoke with Mr. Villegas Flores, he admitted that Ms. Knapp was not a case manager and did not provide TCM services.

47. Post-FAR, Access also offered a letter from Reinaldo Carnota in support of Ms. Knapp's experience. The letter stated that Ms. Knapp worked as a psychotherapist at Sanatorio Los Cocos, Santiago de las Vegas, Cuba, from July 1995 to December 1997. When Ms. Gregie spoke with Mr. Carnota, he was unable to remember the name of the place of employment where he worked with Ms. Knapp and was "evasive."

48. Ms. Knapp also provided reference letters from Emeterio Santovenia, Lissett Nardo, and Ana-Elvy Hernandez Cordero. According to Ms. Cordero, Ms. Knapp worked as a volunteer psychologist from 2009 to 2010 at Docent Polyclinic in Havana, Cuba, working with elderly patients suffering psychiatric disorders. Ms. Nardo stated that Ms. Knapp worked as a volunteer at the Psychology College of Havana University assisting elderly mental health patients in accessing services.

49. Ms. Gregie did not contact these three additional references. Ms. Knapp attested to her one year of required experience on the Appendix H form. Although it is clear that Ms. Knapp did not have recent psychology experience, her training and letters of reference reflect that she had worked with the target population for at least one year.

f. Karen Cuellar

50. Karen Cuellar obtained a bachelor's degree in psychology in Cuba. Her resume states that she worked at

Community House in Havana as a mental health counselor from June 2006 through September 2008. This is supported by a notarized reference letter from Lissette Gallardo which states that Ms. Cuellar worked with adults with severe mental disorders.

51. Ms. Cuellar's resume lists her most recent employment as the Chrysalis Center as a "targeted case manager." However when Ms. Gregie contacted Chrysalis Center she was told that they do not employ case managers, they do not provide mental health services, and that Ms. Cuellar was never employed by them. Although this deception places the validity of Ms. Cuellar's resume in doubt, Ms. Gregie did not attempt to verify Ms. Cuellar's employment with Community House which, standing alone, meets the experience requirement.

g. Ana Sarai Llanes

52. Ana Sarai Llanes holds a master's degree in psychology from Cuba. According to Ms. Garcia, Ms. Llanes' course of study required a practicum that meets the requirements of working with the target population. Ms. Garcia also indicated she personally knew Ms. Llanes.

53. Ms. Llanes' resume listed her last "Experience" as volunteer community work for Sion Baptist Church. The resume further cited this as case management work, including "[a]ssisting elderly and adults to access community resources." Ms. Gregie determined Ms. Llanes was ineligible as she was unable

to locate the Sion Baptist Church in her research. She also testified that in her experience, she never heard of voluntary case management services or professional mental health services being provided at a church. She further stated that the services listed on the resume, such as "DCF, LIHEAP, Logisticare, and housing applications" are the exact services Respondent provides to all recipients which led her to conclude this experience was fabricated.

54. Post-FAR, Access offered a letter of reference from Moriama Alfonso. Ms. Garcia personally knows Ms. Alfonso, who was Ms. Llanes' supervisor at COAP in Havana.

55. Ms. Gregie spoke with Ms. Alfonso via an interpreter and determined the letter was non-credible because Ms. Alfonso could not remember the name of the employer where she worked with Ms. Llanes. Ms. Gregie also determined, based upon her own experience in the mental health field, that Ms. Alfonso's statement that Ms. Llanes provided eight hours per day of direct mental health counseling was not plausible. Ms. Gregie also assumed that COAP was a "cultural center" and did not provide mental health services. However, Ms. Gregie did not attempt to contact COAP or the other references provided by Ms. Llanes regarding her volunteer work with the mentally ill for the "ZunZun" project in Cuba which would provide more than a year of working with the targeted population.

h. Ilineis Gonzalez Torres

56. Ilineis Gonzalez Torres has a doctor of medicine degree from Cuba. In order to obtain her degree, Mr. Torres would have completed a six-month work training program in psychiatry.

57. Ms. Garcia believed Ms. Torres was qualified based on her work as a general doctor at Policlinic "Victoria de Giron" in Havana, Cuba, from 2007 to 2010. "Policlinics" in Cuba are multidisciplinary facilities that include mental health services. A web-profile of Policlinic Victoria de Giron from the InfoMed confirms that mental health services are included.

58. Ms. Garcia also reached out to Dr. Soto for a letter of reference. Dr. Soto verified that she worked with Ms. Gonzalez part-time for a year on a clinical trial regarding patients taking anti-depressants.

59. Ms. Torres also worked from 2004 to 2006 at the COAP center as evidenced by her resume and the reference letter from Idania Garcia Barrios. This is the same facility that Ms. Lopez worked at.

60. Ms. Gregie contacted Ms. Torres' most recently listed employer, Med-Care. Ms. Gregie was told that Ms. Torres worked there as a medical assistant rather than as a "social worker," which is listed on her resume. Ms. Gregie researched Med-Care on-line and determined it provided medical services to the

general public, not mental health or TCM services. Ms. Gregie did not attempt to verify Ms. Torres' work in Cuba.

i. Andres Gutierrez

61. Andres Gutierrez is a medical doctor from Cuba who was referred to Access by Dr. Fuentes. His medical training would have included a six-month work program in psychiatry with the target population.

62. From 2006 through 2012, Mr. Gutierrez worked at Comprehensive. According to Ms. Gregie, there is nothing to verify this employment or that it complies with the one year of full-time or equivalent experience working with adults experiencing serious mental illness. However, his employment in Venezuela working with patients with mental illness was verified by Dr. Fuentes.

63. Dr. DeLeon is listed as Mr. Gutierrez' supervisor at Miami Beach Medical Group. He provided a letter of reference for Mr. Gutierrez. Ms. Gregie contacted the Human Resources Department at Miami Beach Medical Group and was told that Mr. Gutierrez was not a "case worker" but rather in Quality Assurance where he reviewed medical records. Also, the dates of employment were different than listed on the resume. On this basis, Ms. Gregie decided Mr. Gutierrez' resume was fraudulent.

64. Ms. Gregie did not contact Dr. DeLeon or the other individuals who provided Mr. Gutierrez with a letter of reference.

CONCLUSIONS OF LAW

65. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2017).

66. The burden of proof is on Petitioner to prove the material allegations by a preponderance of the evidence. See e.g., S. Med. Servs., Inc. v. Ag. for Health Care Admin., 653 So. 2d 440, 441 (Fla. 3d DCA 1995); Southpointe Pharm. v. Dep't of HRS, 596 So. 2d 106, 109 (Fla. 1st DCA 1992).

67. AHCA is authorized to impose sanctions on a provider, including administrative fines. § 409.913(16), Fla. Stat. To impose an administrative fine, AHCA must establish by clear and convincing evidence the factual grounds for doing so. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996); Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 857 (Fla. 2015).

68. Section 409.913(11) provides the following:

The agency shall deny payment or require repayment for inappropriate, medically unnecessary, or excessive goods or services from the person furnishing them, the person under whose supervision they were furnished, or the person causing them to be furnished.

69. AHCA contends that any services provided by these nine TCMs in dispute are "inappropriate" because these individuals did not meet the experience requirement to provide TCM services.

70. However, AHCA did not prove by a preponderance of the evidence that these TCMs, who all certified they met the experience requirement, and provided back up documentation of the same, were not qualified.

71. Ms. Gregie's inquiries were primarily of the most recent employers listed in the United States by the TCMs. By her own admission, her "investigation" was out of the ordinary and not consistent with any guidelines. Ms. Gregie completely discounted the personal knowledge that Ms. Garcia and Dr. Fuentes had of these individuals and their experience. She did not make any efforts to contact employers in Venezuela and Cuba and made generalized assumptions that these workers did not work for a year or its full-time equivalent with the target population, contrary to their certifications on Appendix H.

72. Ms. Gregie placed great weight on the fact that many of the letters of reference were notarized by the same individual, even though they purported to be written by many different supervisors. However, Access was not required by AHCA regulation to obtain notarized letters. Ms. Gregie also found the reference checks conducted by Ms. Garcia to be suspect because often they were performed the day before, the day of, or the day after

hiring. As explained by Ms. Garcia, it is not unusual for a small business such as Access to verify references at or near the time of hiring.

73. While certainly the discrepancies of the recent employment histories discovered by Ms. Gregie are concerning and suggest, at best, a pattern of cursory employment checks by Access, they can also be explained by the passage of time since the references were checked by Ms. Garcia, the fact that Ms. Gregie contacted human resources departments rather than the supervisors contacted by Ms. Garcia, some of the businesses are no longer operating, there may have been a language barrier, and she did not check the employment references in Cuba or Venezuela.

74. If AHCA published standards requiring notarized letters of reference, or any other mandatory form of employment history and experience verification, the issues identified by Ms. Gregie could serve as a basis to claim that payments to Access for TCM services were "inappropriate." However, given the complete lack of direction to healthcare providers regarding what documentation is needed to verify the experience requirement for TCMs, there is no basis here to claim overpayments.

75. The Handbook only requires, via the completion and retention of Appendix H, that the provider certify that all of the requirements to be a TCM have been met. This was, in fact, done for each of the nine workers in dispute. Ms. Garcia's

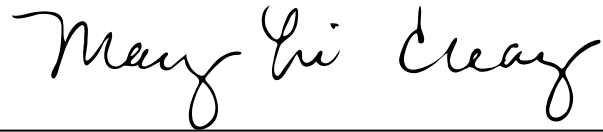
testimony was credible that she verified the workers' experience with the target population prior to or at the time of hiring. Further, their resumes and letters of reference support the conclusion that at the time of application, each TCM had "a minimum of one year of full time or equivalent experience working with adults experiencing serious mental illness."

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order incorporating the terms of this Recommended Order as follows:

1. All of the disputed employees shall be allowed, and no Medicaid overpayments shall be based on their failure to have the requisite work experience.
2. Petitioner will not apply an administrative sanction against Respondent.
3. Because AHCA is not the prevailing party in this action, it shall not be entitled to recover any of its costs.

DONE AND ENTERED this 12th day of April, 2018, in
Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of April, 2018.

ENDNOTE

^{1/} By Order dated September 19, 2017, on Respondent's Agreed Motion to Bifurcate Final Hearing, the issue for this final hearing is limited to the work experience of case managers which will be determinative of approximately 265 Medicaid claims at issue. The second issue presented by the Administrative Complaint relates to various documentation issues such as medical necessity, missing documentation, non-billable activity and recipient eligibility. There are approximately 85 claims that are controlled by this issue. The parties have agreed to wait until the issuance of this Recommended Order to determine the necessity of a second final hearing on the remaining issues and claims.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with AHCA that will issue the Final Order in this case.