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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

COVENANT HOSPICE, INC.,

Respondent.
_______________________________________/

DOAH CASE NO. 17-4641MPI
MPI CASE ID. 2015-0002746
PROVIDER NO. 087517100
RENDITION NO.: AHCA-18-0701-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 January 1, 2011 to December 31, 2012, and whether the Agency should impose costs and a fine on Respondent. The Recommended Order dated August 15, 2018, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

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

In determining how to rule upon the parties' 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

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> 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 the parties' exceptions:

Petitioner's Exceptions

In its First Exception, Petitioner takes exception to the portion of the Preliminary Statement on Page 3 of the Recommended Order wherein the ALJ states "AHCA presented the live testimony of four witnesses: ... Mike Armstrong, the auditor in charge for Health Integrity, LLC ("Health Integrity"); ..." Petitioner argues this is an error on the part of the ALJ, since Petitioner presented the live testimony of Terry Satchell, R.N., not Mike Armstrong. The Hearing Transcript supports Petitioner's argument. <u>See</u> Transcript, Volume I at Pages 89-165. The Agency will treat Petitioner's First Exception as a motion to correct a scrivener's error, and will grant it. Therefore, the Preliminary Statement is hereby changed to state:

> AHCA presented the live testimony of four witnesses: Robert Reifinger, FCCM, a program administrator of AHCA's MPI; ~~Mike Armstrong, the auditor in charge~~Terry Satchell, R.N., the Medical Review Manager for Health Integrity, LLC ("Health Integrity"); Nada Boskovic, M.D., AHCA's expert in hospice and palliative care; and Charles D. Talakkottur, M.D., AHCA's expert in internal medicine. AHCA also presented by deposition Dr. Todd Eisner, AHCA's expert in internal medicine and gastroenterology. Covenant presented live testimony of David McGrew, M.D., FAAHPM, HMFC, Covenant's expert in hospice and palliative care; and James Smith, DO, Covenant's interim chief medical officer and corporate medical director for Covenant.

In its Second Exception, Petitioner takes exception to Paragraph 17 of the Recommended Order, arguing it contains a scrivener's error. Specifically, Petitioner argues the AMR physicians determined twenty-three (23) patients were eligible for Medicaid hospice services, not twenty-five (25) patients, as the ALJ states in Paragraph 17. Petitioner's argument is supported by the parties' Joint Prehearing Stipulation at Page 10, Paragraph 14. The Agency will treat Petitioner's Second Exception as a motion to correct a scrivener's error, and will grant it. Therefore, the Paragraph 17 of the Recommended Order is hereby changed to state:

> 17. The peer reviewers formulated their opinions based on their own training, experience, and the generally accepted standards in the medical community within the respective specialty. After the AMR peer review physicians reviewed the 52 Covenant recipient files loaded into the AMR Portal, the AMR physicians determined that ~~25~~23 recipients were eligible for Medicaid hospice services and 29 patients were ineligible. The peer review physicians determined that 29 patients were ineligible for Medicaid hospice services.

In its Third Exception, Petitioner takes exception to Paragraph 70 of the Recommended Order, arguing the ALJ incorrectly stated Dr. Talakkottur is board-certified in pediatrics. Petitioner is correct. Dr. Talakkottur testified that he is board-certified in internal medicine, not pediatrics. See Transcript, Volume 2 at Page 233. Therefore, the Agency grants Petitioner's Third Exception and modifies Paragraph 70 of the Recommended Order as follows:

> 70. Dr. Talakkottur, who is board-certified in ~~pediatrics~~internal medicine, opined that Patient C.D. had a chronic condition but was not terminal. He noted that the patient's weight had increased, his PPS was 50 percent, and he was playing ball with his siblings. In addition, the patient was receiving physical therapy and active rehabilitation, both of which are inconsistent with hospice palliative care. The patient did not show any signs of being at the end-stage of his chronic disease. Finally, Patient C.D. remained oriented to self and had no recurrent or intractable infections. Although Patient C.D. was at risk for pneumonia or sepsis as noted by Dr. McGrew, he did not show any symptoms of the two conditions.

In its Fourth Exception, Petitioner takes exception to Paragraph 49 of the Recommended Order, arguing the overpayment amount listed in that paragraph is incorrect. According to Joint Exhibit 12, the overpayment amount for Patient 8 (E.H.) is $6,279.66, not $6,029.66 as the ALJ found. Therefore, the Agency grants Petitioner's Fourth Exception and modifies Paragraph 49 of the Recommended Order as follows:

> 49. The greater weight of the evidence demonstrates that Patient E.H. was not eligible for hospice services during the disputed period of January 22, 2012, through March 21, 2012. Thus, AHCA is entitled to repayment of ~~$6,029.66~~$6,279.66 for hospice services rendered to Patient E.H.

In its Fifth Exception, Petitioner takes exception to Paragraph 53 of the Recommended Order, arguing the overpayment amount listed in that paragraph is incorrect. According to Joint Exhibit 12, the overpayment amount for Patient 10 (K.H.) is $16,340.60, not $16,240.60 as the ALJ found. Therefore, the Agency grants Petitioner's Fifth Exception and modifies Paragraph 53 of the Recommended Order as follows:

> 53. Dr. Talakkottur credibly testified that Patient K.H. was not eligible for hospice services during the disputed period of August 11, 2011, through December 9, 2011. Thus, AHCA is entitled to recover overpayment of ~~$16,240.60~~$16,340.60 for the hospice services rendered to Patient K.H. during the disputed period.

In its Sixth Exception, Petitioner takes exception to Paragraphs 39-42 of the Recommended Order, arguing the findings of fact in Paragraphs 41 and 42 of the Recommended Order are not supported by competent, substantial evidence. Contrary to Petitioner's argument, the findings of fact in Paragraphs 41 and 42 of the Recommended Order are all supported by competent, substantial record evidence. See Transcript, Volume 2 at Pages 319, 323-324, 347-348 and 350; Transcript, Volume 6 at Pages 759 and 762-763; and Joint Exhibit 24 at Page 43390. Thus, the Agency is not allowed to disturb them. See § 120.57(1)(*l*), 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 must deny Petitioner's Sixth Exception.

In its Seventh Exception, Petitioner takes exception to Paragraphs 74 and 76, as well as Paragraphs 90 and 91 of the Recommended Order, arguing the ALJ's overpayment and fine calculations in those paragraph are incorrect. According to Joint Exhibit 12, the total amount in dispute is $265,451.79. Subtracting the overpayment amounts for Patient 2 (J.R.) and Patient 3 (D.M.), which total $39,050.34, leaves a balance of $226,401.45, not $226,060.50 as the ALJ found. In addition, adding $226,401.45 to the $411,571.65 overpayment amount the parties stipulated to results in a total overpayment amount of $637,973.10, not $637,632.15 as the ALJ found. Since the overpayment amount in Paragraphs 74 and 91 of the Recommended Order is incorrect, the fine amount in Paragraphs 76, 90 and 91 of the Recommended Order is also incorrect. The correct fine amount should be $127,594.62, not $127,526.43 as the ALJ found. Therefore, the Agency grants Petitioner's Seventh Exception and modifies Paragraphs 74, 76 of the Recommended Order as follows:

> 74. At the time of the hearing, the parties had stipulated that AHCA was entitled to overpayment of $411,571.65. The Findings of Fact above upheld AHCA's entitlement to additional overpayment of hospice services as indicated. Respondent rebutted the evidence regarding eligibility of Patients 2 and 3. Therefore, in addition to the amount the parties agreed upon, AHCA is entitled to recover an additional overpayment of ~~$226,060.50~~$226,401.45 for services rendered to patients who were not eligible for hospice services during the Audit Period. Thus, AHCA is entitled to recover a total overpayment of ~~$637,632.15~~$637,973.10.
>
> 76. When calculating the appropriate fine to impose against a provider, MPI uses a formula based on the number of claims that are in violation of Florida Administrative Code Rule 59G-9.070(7)(e). The formula involves multiplying the number of claims in violation of the rule by $1,000 to calculate the total fine. The final total may not exceed 20 percent of the total overpayment, which results in a fine of ~~$127,526.43~~$127,594.62.
>
> 90. Each monthly period that Covenant billed for services for these 17 patients that were determined to be ineligible for Medicaid reimbursement, Covenant is liable for a $1,000 fine, which is capped at 20 percent of the overpayment. The fine of $135,404.68, per the revised fine worksheet, should be recalculated to impose a fine of $~~127,526.43~~127,594.62 in this case.
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> 91. The FAR should be revised consistent with the findings herein, to reflect a final overpayment amount of $~~637,632.15~~637,973.10 and fine of $~~127,526.43~~127,594.62.

Finally, Petitioner takes exception to the Recommendation section of the Recommended Order, in regard to both the incorrect overpayment and fine amounts contained within the Recommendation section, as well as the ALJ's reservation of jurisdiction to award costs. The Agency declines to adopt the overpayment and fine amount the ALJ recommended based on its ruling on Petitioner's Seventh Exception supra, which is hereby incorporated by reference. In addition, 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 also 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.

Respondent's Exceptions

In its first exception (Paragraph 7 of Respondent's exceptions), Respondent takes exception to Paragraphs 15, 17, 28, 44-53 and 63-64 of the Recommended Order, arguing the ALJ failed to properly apply federal law and Florida law when she inappropriately took into account hindsight testimony from certain peer reviewers in reaching her factual conclusions and recommendations. Respondent also argues these paragraphs are mislabeled conclusions of law. In regard to Paragraph 15 of the Recommended Order, that paragraph is nothing more than a recitation of section 409.9131(2), Florida Statutes. Thus, Respondent's argument is inapplicable to that paragraph. Therefore, the Agency denies Respondent's first exception as it pertains to Paragraph 15 of the Recommended Order. In regard to Paragraph 17 of the Recommended Order, the finding of fact in the first sentence of that paragraph is based on competent, substantial evidence. See Joint Exhibits 6 and 9. The findings of fact in the remaining sentences of Paragraph 17 of the Recommended Order were specifically stipulated to by the parties, except for the scrivener's error noted by Petitioner in its Second Exception. See Page 10 of the Joint Prehearing Stipulation. Therefore, the Agency denies Respondent's first exception as it pertains to Paragraph 17 of the Recommended Order. In regard to the remaining paragraphs at issue, contrary to what Respondent believes, Paragraphs 28, 44-53 and 63-64 of the Recommended Order are clearly findings of fact, not conclusions of law. Additionally, all of these findings of fact are based on competent, substantial record evidence.[1] See Transcript, Volume 1 at Pages

[1] Except for the overpayment amount listed in Paragraphs 49 and 53 of the Recommended Order, which are addressed in the Agency's rulings on Petitioner's Fourth and Fifth Exceptions supra.

181-182, 184 and 186-187; Transcript, Volume 2 at Pages 354-355, 367-369, 386-390 and 410-413; Transcript, Volume 3 at Pages 457-463; Transcript, Volume 6 at Pages 793, 806-807, 808, 898 and 900; and Joint Exhibits 6, 9, 29, 32, 34, 42, 43, 44, 45, 47, 48, 49, 50, 74, 75 and 116. Thus, the Agency is not permitted to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's first exception as it pertains to Paragraphs 17, 28, 44-53 and 63-64 of the Recommended Order.

In its second exception (Paragraph 8 of Respondent's exceptions), Respondent takes exception to Paragraphs 17, 22, 28, 44-45, 48-56, 60-64, 70-73 and 74 of the Recommended Order, arguing the ALJ failed to acknowledge and/or ignored the legal premise that prognostication does not require 100% certainty of death within six months in order for a patient to be eligible for hospice. Respondent's argument does not present a valid basis for the Agency to reject or modify the findings of fact in these paragraphs. Additionally, the Agency denies Respondent's second exception as it pertains to Paragraphs 17, 28, 44-45, 48-53 and 63-64 of the Recommended Order based on the ruling on Respondent's first exception supra, which is hereby incorporated by reference. In regard to the findings of fact in Paragraphs 22, 54-56, 60-62, 70-73 and 74 of the Recommended Order, the findings of fact in these paragraphs are all based on competent, substantial record evidence.[2] See Transcript, Volume 2 at Pages 422-425; Transcript, Volume 3 at Pages 439-448, 477, 479, 482-485; Transcript, Volume 7 at Pages 936-937; and Joint Exhibits 1, 54, 55, 59, 60, 69, 70, 72, 89, 90, 92, 94, 95 and 99. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's second exception as it pertains to Paragraphs 22, 54-56, 60-62, 70-73 and 74 of the Recommended Order.

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[2] Except the first sentence of Paragraph 70, which is addressed in the Agency's ruling on Petitioner's Third Exception supra, and the overpayment and fines amounts in Paragraph 74, which are addressed in the ruling on Petitioner's Seventh Exception supra.

In its third exception (Paragraph 9 of Respondent's exceptions), Respondent takes exception to Paragraphs 32-34, 57-62 and 65-66 of the Recommended Order, arguing the ALJ misapplied the legal principle that two physicians reviewing the same patient may disagree about hospice eligibility but that does not demonstrate an incorrect certification. Respondent's argument does not give the Agency a legitimate basis to reject or modify the findings of fact in these paragraphs. In addition, the findings of fact in Paragraphs 32-34, 57-62 and 65-66 of the Recommended Order are all based on competent, substantial record evidence. See Transcript, Volume 3 at Pages 457-463; Transcript, Volume 4 at Pages 580-585, 586, 588-589, 590-592 and 606; Transcript, Volume 5 at Pages 704-705; and Joint Exhibits 14, 15, 17, 64, 65, 74, 75, 79, 80 and 99. Thus, the Agency cannot disturb them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's third exception.

In its fourth exception (Paragraph 10 of Respondent's exceptions), Respondent takes exception to Paragraphs 17, 28, 44-45, 48-56, 63-64 and 70-73 of the Recommended Order, arguing the ALJ ignored Dr. Talakkottur's clear auditing bias in determining whether Respondent's patients were eligible for hospice. In essence, Respondent is asking the Agency to re-weigh the evidence the ALJ considered in making the findings of fact in the paragraphs at issue. If the Agency were to grant Respondent's fourth exception and modify the finding of fact in these paragraphs, 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.").

Furthermore, as stated in the ruling on Respondent's second exception supra, which is hereby incorporated by reference, the findings of fact in these paragraphs are based on competent, substantial record evidence and cannot be disturbed by the Agency. Therefore, the Agency must deny Petitioner's fourth exception.

In its fifth exception (Paragraph 11 of Respondent's exceptions), Respondent takes exception to Paragraphs 22, 33-34, 46-47, 52-53, 60 and 62-64 of the Recommended Order, arguing the ALJ erred in her interpretation of the Florida Medicaid Hospice Services Coverage and Limitations Handbook. Respondent's argument is incorrect. These paragraphs do not involve any interpretation of the Florida Medicaid Hospice Services Coverage and Limitations Handbook. Instead, they are simply findings of fact based on competent, substantial record evidence, as the Agency has demonstrated in its rulings on Respondent's first, second and third exceptions supra, which are all hereby incorporated by reference. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's fifth exception.

In its sixth exception (Paragraph 12 of Respondent's exceptions), Respondent takes exception to Paragraphs 15, 17, 22-28, 32-34, 43-73 and 75 of the Recommended Order, arguing the Agency's experts failed to apply the correct auditing standards in this case. Respondent's argument does not present a valid basis for the Agency to reject or modify the findings of fact in these paragraphs. Furthermore, the Agency denies Respondent's sixth exception as it pertains to Paragraphs 15, 17, 22, 28, 32-34, 44-66 and 70-73 of the Recommended Order based on the Agency's rulings on Respondent's first, second, third and fourth exceptions supra, which are all hereby incorporated by reference. In regard to Paragraphs 23-27, 43, 67-69 and 75, the findings of fact in these paragraphs are all based on competent, substantial record evidence. See

Transcript, Volume 1 at Pages 99-104, 168-174 and 188-190; Transcript, Volume 2 at Pages 237-240; Transcript, Volume 4 at Pages 569-575; and Joint Exhibits 12, 29, 32, 33, 84, 85, 87, 88, 89, 90, 91, 92, 99, 101, 102, 104, 105, 107, 116 and 118. Thus, the Agency cannot reject or modify them. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's sixth exception.

In its seventh exception (Paragraph 13 of Respondent's exceptions), Respondent takes exception to the ALJ's perceived assumption in Paragraphs 2, 3, and 4 of the Recommended Order that this matter involved a state audit when it was actually a federal audit. What Respondent believes the ALJ may or may not have assumed in making findings of fact is not a valid basis for rejecting or modifying findings of fact. The Agency can only reject findings of fact is they are not supported by competent, substantial evidence. See § 120.57(1)(*l*), Fla. Stat.; Heifetz, 475 So. 2d at 1281. In regard to Paragraphs 2 and 4 of the Recommended Order, Respondent expressly stipulated to the findings of fact in these paragraphs (See the Joint Prehearing Stipulation at Pages 7 through 8). In regard to Paragraph 3 of the Recommended Order, it is simply a summary of section 409.902, Florida Statutes, and is supported by the plain language of the statute itself. Therefore, the Agency denies Respondent's seventh exception.

In its eighth exception (Paragraph 14 of Respondent's exceptions), Respondent takes exception to Paragraphs 21 and 76 of the Recommended Order, arguing the ALJ did not state that Petitioner proved the allegations by clear and convincing evidence in order to impose a fine on Respondent. Paragraph 21 of the Recommended Order has nothing to do with the ALJ's determination of whether to impose a fine on Respondent. Instead, it is simply a summary of the Agency's Final Audit Report ("FAR"), as well as events that occurred prior to the final hearing. Thus, the Agency denies Respondent's eighth exception as it pertains to Paragraph 21 of the

Recommended Order. Likewise, Paragraph 76 of the Recommended Order also has nothing to do with the ALJ's determination of whether to impose a fine on Respondent. Instead, it is simply the ALJ's explanation of how the Agency calculates the amount of the fine imposed on providers for a violation of rule 59G-9.070(7)(e), Florida Administrative Code. Therefore, the Agency denies Respondent's eighth exception as it pertains to Paragraph 76 of the Recommended Order.

In its ninth exception (Paragraph 15 of Respondent's exceptions), Respondent takes exception to Paragraphs 17, 22-28, 32-34, 43-73 and 75-76 of the Recommended Order, arguing the ALJ ignored several of the legal positions and proposed findings of fact in Respondent's Proposed Recommended Order. Based on the ruling on Petitioner's six exception supra, which is hereby incorporated by reference, the Agency denies Respondent's ninth exception as it pertains to Paragraphs 17, 22-28, 32-34, 43-73 and 75 of the Recommended Order. Based on the ruling on Respondent's eighth exception supra, which is hereby incorporated by reference, the Agency denies Respondent's ninth exception as it pertains to Paragraph 76 of the Recommended Order.

In its tenth exception, Respondent takes exception to Paragraph 74 of the Recommended Order, arguing the ALJ misunderstood the parties' Joint Prehearing Stipulation. Respondent's exception is without merit. Not only does the Joint Stipulation support Paragraph 74 of the Recommended Order (See Paragraph 29 of the Joint Prehearing Stipulation at Pages 29 through 30), but also Joint Exhibits 10, 12 and 23, which Respondent agreed to enter into evidence. Additionally, Petitioner's counsel stated the parties had stipulated to the $411,571.65 in overpayments in his opening statement (See Transcript, Volume 1, at Page 14), and

Respondent's counsel did not contest it. Therefore, the Agency denies Respondent's tenth exception.

In its eleventh exception (Paragraph 17 of Respondent's exceptions), Respondent takes exception to Paragraphs 78, 89 and 90 of the Recommended Order, arguing the ALJ failed to apply the correct burden of proof as it relates to the imposition of a fine. In regard to Paragraph 78 of the Recommended Order, the ALJ laid out the correct burden of proof for both the fine and the overpayment. Thus, the Agency cannot substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Respondent's tenth exception as it pertains to Paragraph 78 of the Recommended Order. In regard to Paragraphs 89 and 90 of the Recommended Order, it is obvious that the ALJ applied the correct burden of proof in reaching her conclusions of law concerning the imposition of a fine on Respondent even though she did not expressly state it. The Agency cannot substitute conclusions of law that are as or more reasonable than those of the ALJ.[3] Therefore, the Agency denies Respondent's eleventh exception as it pertains to Paragraphs 89 and 90 of the Recommended Order.

In its twelfth exception (Paragraph 18 of Respondent's exceptions), Respondent takes exception to Paragraph 92 of the Recommended Order, as well as the ALJ's Recommendation, based upon the same reasoning set forth in its seventh exception. Based upon the reasoning set forth in the Agency's ruling on Respondent's seventh exception supra, which is hereby incorporated by reference, and because the Agency finds that it cannot substitute conclusions of law that are as or more reasonable than the ALJ's, the Agency denies Respondent's twelfth exception.

In its thirteenth exception (Paragraph 19 of Respondent's exceptions), Respondent takes exception to Paragraphs 85-88 of the Recommended Order, arguing Petitioner cannot recover an

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[3] Except for the fine amount, which is addressed in the ruling on Petitioner's Seventh Exception supra.

overpayment since its experts failed to properly utilize accepted medical and auditing standards in their reviews. Paragraph 85 simply references Respondent's rule challenge that was decided in a separate proceeding, and is not relevant to Respondent's exception. Therefore, the Agency denies Respondent's thirteenth exception as it pertains to Paragraph 85 of the Recommended Order. In regard to Paragraphs 86 and 87 of the Recommended Order, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in these paragraphs 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 thirteenth exception as it pertains to Paragraphs 86 and 87 of the Recommended Order. In regard to Paragraph 88 of the Recommended Order, the conclusion of law contained in that paragraph is the direct result of the ALJ's weighing of the competent, substantial record evidence presented in this matter. The Agency is not permitted to re-weigh the evidence in order to reach a different conclusion of law. See Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Respondent's thirteenth exception as it pertains to Paragraph 88 of the Recommended Order.

In its fourteenth exception, Respondent takes exception to the ALJ's improper denial of its Motion for Exclusion of Re-Review. Respondent is asking the Agency to reverse the ALJ's ruling on an evidentiary issue that is clearly outside of the Agency's substantive jurisdiction. See Barfield v. Department of Health, 805 So. 2d 1008 (Fla. 1st DCA 2002). Therefore, the Agency must deny Respondent's fourteenth exception.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order, except where noted supra.

CONCLUSIONS OF LAW

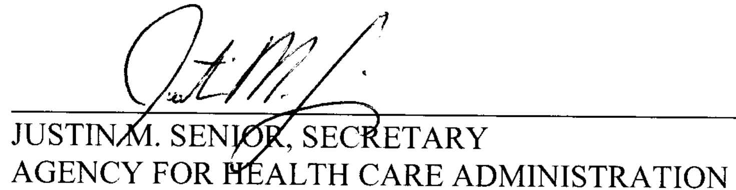
The Agency adopts the conclusions of law set forth in the Recommended Order, except where noted supra.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent is hereby required to repay $637,973.10 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 $127,594.62 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 17th day of October, 2018, in Tallahassee, Florida.



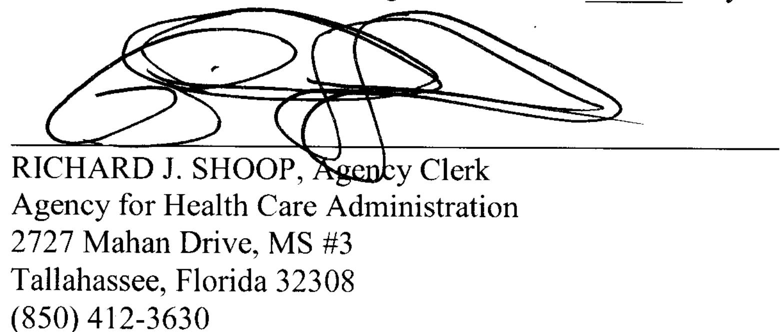
JUSTIN M. SENIOR, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 17th day of October, 2018.



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