

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FELICIA WHIPPLE, AS
OWNER/OPERATOR OF MIRACLES
HOUSE, INC.,

Petitioner,

vs.

Case No. 17-6025FL

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on January 16, 2018, by video teleconference at sites in Miami and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in sections 120.569 and 120.57(1), Florida Statutes (2017).

APPEARANCES

For Petitioner: Adres Jackson-Whyte, Esquire
10735 Northwest 7th Avenue
Miami, Florida 33168

For Respondent: Trevor S. Suter, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 315C
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUE

Whether Petitioner's Medicaid Waiver Services Agreement should be terminated with cause by Respondent Agency for Persons with Disabilities.

PRELIMINARY STATEMENT

By letter dated October 5, 2017, Respondent notified Felicia Whipple, as Owner/Operator of Miracles House, Inc. ("Petitioner" or "Whipple") of Respondent's intent to terminate Petitioner's Medicaid Waiver Services Agreement ("MWSA") with cause. Dissatisfied with Respondent's decision, Petitioner challenged the termination and timely requested a formal hearing. On November 2, 2017, Respondent referred the case to the Division of Administrative Hearings ("DOAH") for assignment of an administrative law judge to conduct the hearing. On January 16, 2018, the formal hearing was held as scheduled.

At the formal hearing, Whipple testified on her own behalf but did not offer any evidentiary exhibits. Respondent presented the testimony of Cassandra Jenkins and Tom Rice. Respondent's Exhibits 1 through 3 and 8 were received into evidence.

The proceedings of the hearing were recorded. On April 2, 2018, the Transcript of the hearing was filed at DOAH. Petitioner did not file any post-hearing pleadings. Respondent filed a timely Proposed Recommended Order, which the undersigned has considered, as well as the testimony and exhibits presented

at hearing, in the preparation of this Recommended Order. The undersigned is prohibited from taking any new evidence after a hearing adjourns. Accordingly, the undersigned did not consider Respondent's exhibits attached to Respondent's Proposed Recommended Order in deciding this matter.

Unless otherwise indicated, all references are to the 2017 version of Florida Statutes.

FINDINGS OF FACT

1. The Agency for Health Care Administration ("AHCA") is Florida's designated Medicaid agent pursuant to chapter 409, Florida Statutes. In that role, AHCA has delegated duties with respect to the MWSA to Agency for Persons with Disabilities ("APD" or "Respondent").

2. APD ensures that Medicaid waiver providers comply with applicable Medicaid rules. To ensure compliance, APD enters into a MWSA with providers to facilitate payment. AHCA pays the providers for services rendered according to the MWSA.

3. On April 22, 2015, Petitioner entered into a MWSA with Respondent. As a qualified provider, the MWSA allowed Petitioner to perform services for APD clients and get paid through the Medicaid program by reimbursement.

4. Section I.B. of the MWSA provides:

Prior to executing this Agreement and furnishing any waiver services, the Provider must have executed a Medicaid Provider

Agreement with the Agency for Health Care Administration (AHCA), and be issued a Medicaid provider number by AHCA. The Provider must at all times during the term of this Agreement maintain a current and valid Medicaid Provider Agreement with AHCA, and comply with the terms and conditions of the Medicaid Provider Agreement.

5. On or about August 3, 2017, AHCA terminated Petitioner's Medicaid Provider Agreement and notified Petitioner by letter that "Medicaid will no longer pay for claims for reimbursement for goods or services that you furnish."

6. APD investigated AHCA's termination and concluded that Petitioner did not comply with section I.B. of the MWSA that required Petitioner to maintain a current and valid Medicaid Provider Agreement with AHCA.

7. On October 5, 2017, by letter, APD terminated Petitioner's MWSA pursuant to section III.B., which provides Petitioner's "agreement may be terminated for the Provider's unacceptable performance, non-performance or misconduct." APD's letter detailed the basis for Petitioner's termination as follows:

Provider's Medicaid Provider Number was terminated by the Agency for Health Care Administration (AHCA) on September 2, 2017. Therefore, the Provider is not performing in accordance with the MWSA, Section I., B., which requires that "The Provider must at all times during the term of this Agreement, maintain a current and valid Medicaid Provider Agreement with AHCA, and comply with

the terms and conditions of the Medicaid Provider Agreement.

8. At hearing, Petitioner admitted that Respondent terminated the MWSA when APD became aware of ACHA's termination. Petitioner also acknowledged that Miracles House, Inc., has been unable to bill since ACHA suspended its services, but Whipple is contesting ACHA's actions.

9. On or about October 27, 2017, Petitioner challenged APD's termination and timely requested a formal hearing.

CONCLUSIONS OF LAW

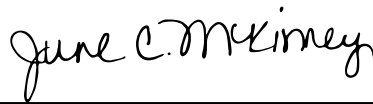
10. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017).

11. Petitioner lost its Medicaid provider authorization rights to furnish Medicaid services and receive Medicaid reimbursements from ACHA. Uncontested evidence at hearing demonstrated that Petitioner no longer met the MWSA's section I.B. after ACHA terminated Petitioner's Medicaid Provider Agreement. By Petitioner no longer being a Medicaid provider in good standing, APD properly sought termination of the MWSA according to section III.B. Accordingly, APD met its burden in this matter and demonstrated that Petitioner's MWSA should be terminated with cause.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Persons with Disabilities enter a final order terminating Petitioner's Medicaid Waiver Services Agreement.

DONE AND ENTERED this 23rd day of May, 2018, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of May, 2018.

COPIES FURNISHED:

Adres Jackson-Whyte, Esquire
10735 Northwest 7th Avenue
Miami, Florida 33168
(eServed)

Trevor S. Suter, Esquire
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 315C
Tallahassee, Florida 32399-0950
(eServed)

Gypsy Bailey, Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 335E
Tallahassee, Florida 32399-0950
(eServed)

Richard D. Tritschler, General Counsel
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Barbara Palmer, Director
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

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 the agency that will issue the Final Order in this case.