

2020 FEB 12 A 11: 35

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

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

ZENITH PSYCHOLOGICAL SERVICES,
INC.,

Respondent.

DOAH CASE NO. 19-3666MPI
MPI CASE ID: 2017-0008498
PROVIDER NO. 019521800

PETITION NO.: AHCA-20 125 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (“DOAH”) where the assigned Administrative Law Judge (“ALJ”), Cathy M. Sellers, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether the Agency for Health Care Administration (“Agency”) overpaid Respondent for the provision of behavior analysis services, and, if so, what is the Medicaid overpayment amount Respondent owes to the Agency; and whether the Agency should impose a fine and costs on Respondent. The Recommended Order dated January 14, 2020, 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 first exception, Petitioner takes exception to Paragraphs 39 and 41 of the Recommended Order, arguing the ALJ’s conclusions of law regarding the amount of the fine are incorrect, and are based on a scrivener’s error in the transcript. After a review of the Record of this matter, the Agency agrees. It is clear from other parts of the Record, and other parts of the hearing transcript as well, that the Agency is seeking a fine of \$176,123.52 in this matter. See Transcript at Pages 59-60; Petitioner’s Exhibit 5a and 5d at Bates Page 208. It is obvious that the \$14,792 referenced on Page 59 of the hearing transcript should have been \$14,492,000 (\$1,000 fine x 14,492 violations). The Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraphs 39 and 41 of the Recommended Order because it is the single state agency in charge of administering Florida’s Medicaid program, and finds that it can

substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants Petitioner's first exception, and modifies Paragraphs 39 and 41 of the Recommended Order as follows:

39. Here, Petitioner's witness testified that in calculating the administrative fine to be imposed in this case, Petitioner applied a sanction of \$1,000 per claim that was in violation and that would have come out to ~~\$14,792~~[\$14,492,000] and no cents. However, the statute allows us to cap 70 violations at 20 percent of the overpayment. So that's what was done in this instance. So the overpayment was \$880,617.59, capped at 20 percent, that gave us the sanction of \$176,123.52 for (7)(e).

41. ~~However,~~ Petitioner's witness testified that the amount of the fine calculated under subsection (7)(e) of the rule was ~~\$14,492.~~\$176,123.52, which is ~~This amount is substantially less than~~ 20 percent of the amount of the overpayment, ~~which equals~~ \$176,123.52.

In its second exception, Petitioner takes exception to Paragraph 42, based on the arguments it put forth in its first exception. Based on the ruling on Petitioner's first exception supra, which is hereby incorporated by reference, the Agency grants Petitioner's second exception and rejects the conclusions of law in Paragraph 42 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 \$880,617.59 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 \$176,123.52 on Respondent. 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 10 day of February, 2020, in Tallahassee, Florida.



MARY C. MAYHEW, 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 12th day of February, 2020.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
(850) 412-3630

COPIES FURNISHED TO:

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