

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

Case No. 19-6584MPI

vs.

HOUR BLISS, INC.,

Respondent.

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”) on March 9, 2020, by video teleconference at sites located in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Susan Sapoznikoff, Esquire
Kimberly Murray, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

For Respondent: Julio Cesar Perez-Delgado, pro se
Hour Bliss, Inc.
Apartment 406
888 Brickell Key Drive
Miami, Florida 33131

STATEMENT OF THE ISSUES

Whether Respondent was overpaid \$237,802.50 for services that in whole, or in part, are not covered by Medicaid because the services were performed

by rendering providers who did not have the requisite education or work experience to meet the eligibility requirements in the Behavior Analysis Services Coverage Handbook (“BA Handbook”) to perform the services or for whom documentation was insufficient to determine eligibility; and, if so, the amount of the overpayment to be repaid, the amount of any fine to be imposed against Respondent, and the amount of any investigative, legal, and expert witness costs to be assessed against Respondent.

PRELIMINARY STATEMENT

Respondent, Hour Bliss, Inc., was an entity that provided high quality behavior analysis services, to families with children with developmental disabilities and neurological conditions, for which Respondent received reimbursement under the Florida Medicaid program.

In order for behavior analysis services to be reimbursed by Medicaid, the services must be provided by a Behavior Assistant (“BA”) who meets certain educational, training, and experience requirements set forth in Section 3.2 of the BA Handbook to work with the vulnerable target population (children with medical and mental disabilities).

Petitioner, Florida’s Agency for Health Care Administration (“AHCA”) performed an audit of Respondent’s business records and Medicaid-related records for the period of November 1, 2017, through December 31, 2018, to determine if Respondent sufficiently documented the qualifications of its BAs.

AHCA issued the Final Audit Report (“FAR”), dated July 19, 2019, that constitutes the challenged agency action in this proceeding. The FAR concluded that AHCA overpaid Respondent \$905,838.36 for behavior analysis services that, in whole or in part, were not covered by the Medicaid program.

Additionally, the FAR sought to impose a sanction of \$2,500.00 pursuant to Florida Administrative Code Rule 59G-9.070(7)(c), for failure to comply with Medicaid rules, and costs of \$1,280.00 incurred as a result of the audit.

Respondent timely requested an administrative hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes, challenging the amounts assessed and the findings in the FAR. In this proceeding, AHCA, as the party seeking to establish a Medicaid overpayment, has the burden of proving the allegation by a preponderance of the evidence. *Southpointe Pharm. v. Dep't of HRS*, 596 So. 2d 106, 109 (Fla. 1st DCA 1992). After an initial abeyance, the matter was referred to DOAH to conduct a final hearing. The parties filed a Joint Pre-Hearing Stipulation on March 2, 2020, including a statement of undisputed facts. To the extent that the stipulated facts are relevant, the facts are adopted and incorporated herein as necessary. Based on additional information received during the litigation process, AHCA reduced the asserted overpayment to \$237,802.50.

Despite repeated requests from AHCA prior to the filing of the Joint Pre-Hearing Stipulation, Respondent failed to identify or provide any exhibits upon which the business intended to rely. On March 5, 2020, four days prior to the final hearing, Respondent provided AHCA with additional resumes and training certificates for its BAs whose qualifications were in dispute. AHCA repeatedly requested these documents from the outset of the audit and through the discovery process in this proceeding. Respondent's owner, Julio Perez-Delgado, previously insisted he did not have these records.

On March 9, 2020, the final hearing was held as scheduled. As a preliminary matter, oral argument was held on AHCA's "Motion to Strike/Exclude from Evidence Documents that Were Untimely Provided, Previously Withheld, and/or Were Advised to be Non-Existent." After hearing

from the parties, this motion was granted, holding that any document of Respondent not provided to AHCA before March 5, 2020, was excluded.

AHCA offered Exhibits 1 through 11, which were admitted into evidence without objection. Respondent offered no exhibits. AHCA presented testimony of Ramona Stewart, AHCA Administrator, and Kathy Herold, AHCA Senior Pharmacist. Respondent's owner, Julio C. Perez-Delgado, testified on behalf of Respondent.

The one-volume Transcript of the final hearing was filed on March 26, 2020. Both parties timely filed proposed recommended orders that were considered in the drafting of this Recommended Order. All references to statutes refer to the 2017 version unless otherwise specified.

FINDINGS OF FACT

1. This case involves a Medicaid audit by AHCA of Respondent, which relates to dates of service from November 1, 2017, through December 31, 2018 ("audit period").

2. During the audit period, Respondent was an enrolled Medicaid provider and had a valid Medicaid provider agreement with AHCA, Medicaid Provider No. 017421300.

3. As an enrolled Medicaid provider, Respondent 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. 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, Florida Statutes.

5. AHCA's Bureau of Medicaid Program Integrity (MPI), pursuant to its statutory authority, conducted an audit of Respondent of paid Medicaid claims for services to Medicaid recipients.

6. Medicaid claims are paid under what is known as a "pay and chase" system. Claims are quickly paid under the presumption the provider is billing in accordance with Medicaid law and rules. When paid claims are later audited and AHCA finds non-compliant claims, the payments are deemed overpayments and AHCA requests reimbursement.

7. Section 409.913 allows MPI to audit for fraud and abuse. Abuse includes "[p]rovider practices that are inconsistent with generally accepted business...practices and that result in an unnecessary cost to the Medicaid program...." *See* § 409.913(1)(a)1., Fla. Stat.

8. All Florida Medicaid providers are required to maintain, for at least five years, "contemporaneous documentation of entitlement to payment, including employment eligibility, compliance with all Medicaid Rules, regulations, handbooks and policies." This includes business records, Medicaid-related records and medical records. *See* § 409.913(7)(e) and (f), Fla. Stat.

9. A provider's failure to document, in accordance with Medicaid handbooks and the Provider Enrollment Agreement, whether its rendering providers met the criteria to provide services, as stated in the promulgated handbook, is inconsistent with generally accepted business practices.

10. Behavior analysis services are "highly structured interventions, strategies, and approaches provided to decrease maladaptive behaviors and increase or reinforce appropriate behavior for persons with mental health disorders, and developmental or intellectual disabilities."¹ Medicaid coverage for these services is limited to children under the age of 21. Behavior analysis

¹ *See* Section 1.0 "Introduction" of Florida Medicaid Behavior Analysis Services Coverage Policy (October 2017); Fla. Admin. Code R. 59G-4.125.

recipients are a vulnerable population, consisting of individuals that have mental health disorders, and intellectual and developmental disabilities, including, but not limited to, autism and Down Syndrome. They often have severe deficits in their abilities to complete self-care tasks and communicate their wants and needs. These clients are at a heightened risk of abuse, neglect, and exploitation because of their developmental disabilities and inability to self-preserve. For these reasons, persons entrusted to provide critical services must meet the minimum qualifications.

11. To provide appropriate services to this vulnerable population, BAs are required to meet the criteria set forth in Section 3.2 of the BA Handbook, incorporated by reference in Florida Administrative Code Rule 59G-4.125, “Behavior Analysis Services,” as amended, October 29, 2017.

12. The BA Handbook requires a BA to have “a bachelor’s degree from an accredited university or college in a related human service field” and an agreement to become a Registered Behavior Technician (“RBT”) by 1/1/19; or, alternatively: (1) be at least 18 years old; (2) have a high school diploma; (3) have “at least two years of experience providing direct services to recipients with mental health disorders, developmental or intellectual disabilities”; and (4) have at least “20 hours of documented in-service trainings in the treatment of mental health, developmental or intellectual disabilities, recipient rights, crisis management strategies and confidentiality.”

AHCA’S AUDIT

13. This audit was opened in follow-up to AHCA’s statewide review of behavior analysis services. The assessment of these services revealed rampant fraud and abuse within the behavior analysis program including more than twice as many providers as recipients, providers billing unbelievable hours (such as more than 24 hours per day), and unsubstantiated qualifications, meaning that patients were receiving BA services from unqualified providers.

14. Based on information obtained in the statewide behavior analysis review, AHCA issued a moratorium regarding new enrollments in Southeast Florida and chose a number of providers for audits. Respondent was selected for audit.

15. Petitioner audited Respondent's records related to paid claims from November 1, 2017, through December 31, 2018. This audit period was selected because an updated Behavior Analysis Handbook was promulgated and became effective October 29, 2017.²

16. AHCA's review of Respondent's records consisted of identifying the rendering providers for whom Respondent provided insufficient or no documentation to support their qualifications to render behavior analysis services.

17. The parties stipulated that none of the rendering providers at issue had both a bachelor's degree "in a related human services field" and had obtained their RBT by January 1, 2019. Respondent and AHCA also stipulated that the records for each rendering provider indicate they were at least 18 years old and had obtained at least a high school diploma or its equivalent. The only questions that remained was did the BA provider have the requisite two years of experience with the target population and did they have 20 hours or more of the required applicable in-service training.

18. During the Audit Period, Respondent submitted claims for services rendered by 169 rendering providers, for which Medicaid paid Respondent a total of \$3,999,828.65. Based on the audit, Petitioner initially determined Respondent had been overpaid in the amount of \$1,060,590.41. AHCA issued a Preliminary Audit Report ("PAR") dated March 25, 2019, notifying Respondent of the rendering providers deemed not qualified and the amount

² During the MPI audit period, Respondent was placed under pre-payment review by a different section of AHCA. Respondent stopped billing during the audit period and its Medicaid provider number was terminated without cause in October 2018. As such, although the audit period was from November 1, 2017, through December 31, 2018, the last claims reviewed in the audit were for date of service March 28, 2018, as that was the date of the last paid claim.

of the overpayment associated with each. Respondent was given the opportunity to pay the PAR amount or submit additional records.

19. In response to the PAR, Respondent submitted additional records. Based on the those additional records, AHCA issued a FAR dated July 19, 2019, alleging Respondent was overpaid \$905,838.36 for BA services it billed for 41 BA rendering providers who did not meet the criteria specified in the BA Handbook. In addition, the FAR informed Respondent that AHCA was seeking to impose a sanction of \$2,500.00 pursuant to rule 59G-9.070(7)(c), and costs of \$1,280.00 pursuant to section 409.913(23)(a). In sum, Petitioner asserted in the FAR that Respondent owed a total of \$909,618.36.

20. Kathy Herold is a Senior Pharmacist with AHCA's MPI unit. In that capacity she assists with MPI audits. She compiles and analyzes data; applies appropriate rules, regulations, policies, and procedures to oversee the activities of Florida Medicaid providers to detect fraudulent or abusive behavior and minimize the neglect of recipients; recovers overpayments; imposes sanctions; and makes referrals as appropriate to the Florida Attorney General's Medicaid Fraud Control Unit, the Florida Department of Health, and the Florida Department of Business and Professional Regulation. She has over seventeen years' experience in administrative investigations. She is a Certified Fraud Examiner.

21. Ms. Herold re-reviewed the records provided by Respondent to determine whether the rendering providers for whom behavior analysis services were billed met the qualifications. AHCA did not place any limitations on how Respondent documented the qualifications of its rendering providers. AHCA's only concern was whether the criteria were met.

22. During the audit, and through the discovery process, Respondent supplied AHCA with copies of employment applications, resumes, letters of recommendation, and training certificates of the BAs in question. At the time of the final hearing, the qualifications of only 14 BAs remained in dispute and the amount sought in overpayment was calculated by AHCA as

\$237,802.50. Based on the competent, substantial, and persuasive evidence, AHCA demonstrated that the audit was properly conducted.

RENDERING PROVIDERS AT ISSUE

Eduardo Rodriguez

23. The resume for Eduardo Rodriguez lists work with Abreu Quality (“Abreu”) from 2017 to “present.” It does not indicate a job title or reference any work with the target population in that job. There is no contact information that would have allowed Respondent the opportunity to verify the alleged work experience. The resume also lists “Private Case” work with a child with disabilities from 2010-2014 and 2016-2017. There is no contact information that would have allowed Respondent the opportunity to verify the alleged work experience.

24. The application for Mr. Rodriguez, dated December 27, 2017, Mr. Rodriguez lists BA work with Abreu from February 2017 to “present” (December 27, 2017). While that listing (unlike the resume) contains contact information that would have allowed Respondent the opportunity to verify the alleged work experience, that work, even if verified, did not meet the requisite work experience as it was at most ten months. The application also lists two BA jobs for “Private Case.” There is no information provided that would have allowed Respondent the opportunity to verify the alleged work experience met the requisite work experience or the target population requirements. One private job was from 2010-2014 and the other was from 2016-2017

25. The documents submitted to AHCA by Respondent contained a letter of recommendation by Felicia Noval. That letter makes no reference to work with the target population. There is no indication who Ms. Noval is or how she knows Mr. Rodriguez.

26. The documents submitted to AHCA by Respondent contained a letter of recommendation by Jose Chao. However, that letter contains no indication

of work with the target population. There is no indication of who Mr. Chao is or how he knows Mr. Rodriguez.

27. The documents submitted to AHCA by Respondent contained a background screening requested by Respondent. The background screening indicates that Mr. Rodriguez was not eligible to work with the target population until April 2017. Because Respondent requested the screening, it knew or should have known that Mr. Rodriguez did not have the requisite work experience.

28. Based on conflicting information as to when Mr. Rodriguez worked at Abreu, Ms. Herold reviewed documentation submitted by Abreu to AHCA. This documentation indicates that Mr. Rodriguez only worked for them from May 18, 2017, to June 17, 2017.

29. The documents submitted by Respondent to AHCA for Mr. Rodriguez contained training certificates for both the 20-hour BA course and the 40-hour RBT course.

30. Mr. Rodriguez began working for Respondent on February 8, 2018. The last paid claim for Mr. Rodriguez was March 23, 2018.

31. Based on the documentation provided by Respondent, Mr. Rodriguez did not have documented requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period.

32. Despite Respondent having documentation that Mr. Rodriguez satisfied the training requirement, payments made by AHCA to Respondent for services billed for him are an overpayment because he did not have the requisite work experience or there is insufficient documentation that he had the requisite work experience.

Fanny Vargas

33. The application for Fanny Vargas, dated March 1, 2017, lists work as a BA/AHH for Children's Home Services ("CHS") from 2015-2017. There is no indication of how long Ms. Vargas performed each function. There is no

indication of work with the target population in the job as an AHH. There is insufficient information to determine how long Ms. Vargas worked for CHS. The application did not provide sufficient information regarding whether Ms. Vargas had the requisite work experience.

34. The resume for Ms. Vargas only lists BA work with CHS from 2015-“still working” (presumably March 1, 2017, the date of the application). There is still insufficient information on the resume to determine when Ms. Vargas began at CHS or if Ms. Vargas worked at CHS for over two years. The resume also lists “private service” for children with special needs from 2012-2015. The “private service” job was not listed on the application. There is no contact information listed on the resume for the “private service” job that would have allowed anyone to verify it. The resume did not provide sufficient information regarding whether Ms. Vargas had the requisite work experience.

35. The documents submitted to AHCA by Respondent indicate Ms. Vargas was not screened as a Medicaid Provider until January 14, 2017. She was enrolled as a Medicaid provider on April 4, 2017, effective January 9, 2017. She could not have provided services to the target population with CHS before then.

36. The date of service for the last paid claim for Ms. Vargas is December 31, 2017.

37. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Vargas had the requisite work experience at the time of hire, at the beginning of the audit period or by the end of the audit period, or that she satisfied the training requirement.

Javier Collazo Veloz

38. The application for Javier Collazo Veloz, dated May 4, 2017, lists work as Private Practice BA in Miami for Melissa Catano, from “08/01/2016–” (presumably May 4, 2017) and BA work for Fe y Alegria in Ecuador from

March 9, 2015–April 3, 2016. Combined, those jobs do not satisfy the requisite work experience.

39. The resume for Mr. Collazo Veloz only lists work as a BA for Fe y Alegria. However, on the resume the dates of employment are listed as July 1, 2013–July 1, 2015. Those dates conflict with the information Mr. Collazo Veloz listed on his application.

40. Based on the conflict regarding the work with Fe y Alegria, Ms. Herold attempted to verify it. She located a website for Fe y Alegria, but the website makes no mention of work with the target population.

41. The last paid claim for Mr. Collazo Veloz was February 16, 2018.

42. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Mr. Collazo Veloz had the documented requisite work experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that he satisfied the training requirement.

Jorge N. Bernal

43. The application for Jorge N. Bernal, dated March 29, 2017, lists work as an x-ray technician from April 15, 2015, to July 17, 2015. There is no indication of work with the target population and the nature of that work would not contribute to the requisite work experience. Overlapping with the x-ray technician job, Mr. Bernal also lists he was a teacher at Jesus Para Todos from December 1, 2012, to March 15, 2016. The resume makes no mention of work with the target population associated with that job and there is no contact information on the application that Respondent could have used to verify the alleged work experience.

44. The resume for Mr. Bernal only lists the teacher job at Jesus Para Todos, but there is no contact information to verify the employment. The resume indicates that job involved work with the target population.

45. The documents submitted to AHCA by Respondent contained numerous documents indicating Mr. Bernal was born June 16, 1993. That means that Mr. Bernal was purportedly “teaching” when he was only 17.

46. The documents submitted to AHCA by Respondent also contained an honor roll certificate which indicates that Mr. Bernal was attending college while purportedly “teaching.”

47. The documents submitted to AHCA by Respondent post-PAR contained a letter of reference from International Ministry of Jesus for All (“Jesus Para Todos”) dated March 19, 2019. That letter does not clearly corroborate that Mr. Bernal was teaching there. The letter from Jesus Para Todos indicated it was a church, not a school. The letter further indicates that Mr. Bernal “was able to serve to the kid’s ministry and youth groups, teaching kids and youth and serving in our community, and participate in helping special need kids in our church.”

48. Mr. Bernal began work for Respondent on November 7, 2017. The last paid claim for Mr. Bernal is February 17, 2018. Thus, not only could the letter from Jesus Para Todos not have been used to verify work in the hiring process, it also was not created until after the audit period and almost one year after the end of Mr. Bernal’s employment with Respondent.

49. Given the conflicting information regarding Jesus Para Todos, Ms. Herold attempted to verify the facility. She discovered there was no online presence for the facility, and it was not listed in the State’s database of private schools or licensed daycares.

50. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Mr. Bernal had the requisite work experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that he satisfied the training requirement.

Leyanis Morffi

51. The application for Leyanis Morffi, dated June 30, 2017, lists two cashier jobs. The nature of that work would not contribute to the requisite work experience. The application also lists work as a paid childcare worker at Smiles Childcare from October 2014 to November 2016. However, there is no mention of work with the target population at that job.

52. The resume for Ms. Morffi lists the same work experience that was listed on the application. Again, there is no reference to work with the target population at the childcare job. The resume further indicates that Ms. Morffi “specializes in homes for the elderly and youth detention facilities.” However, there is no listing of that type of work on the application or resume.

53. The documents submitted to AHCA by Respondent contained a background screening requested by Respondent. The screening indicates that Ms. Morffi was not eligible to work with the target population until February 2017. Because Respondent requested the screening, it knew or should have known that Ms. Morffi did not have the requisite work experience.

54. Documents submitted to AHCA by Respondent contained a letter of reference dated September 5, 2017, from Lazaro Noel Suarez. That letter is dated post-hire and was provided to AHCA post-PAR. It references one year of BA work. However, it provides no specific dates or date range, and contains no contact information that could be used to verify the information. Neither the application nor the resume indicates any BA work prior to Respondent to which this letter could correlate.

55. Documents submitted to AHCA by Respondent contained a letter of reference dated July 30, 2017, from Doris Jimenez. That letter is dated post-hire and was provided to AHCA post-PAR. It makes no reference to work with the target population. It makes no mention of the relationship between Ms. Morffi and Ms. Jimenez. The letter does not indicate where the work was performed.

56. Documents submitted to AHCA by Respondent contain a letter of reference dated April 5, 2018. The author is unknown as the signature is illegible. That letter is dated post-hire and was provided to AHCA post-PAR. It references work at Smiles Childcare from October 2014 to May 2017. While the letter mentions work with the target population, there is no way to determine who wrote the letter or the author's relationship to Ms. Morffi. The letter contains no contact information that could be used to verify the information. The dates of service in the letter conflict with the dates of service listed by Ms. Morffi in her application and resume. The letter indicates that Ms. Morffi was a volunteer, while her application indicates she earned \$10.00 per hour. While volunteer work would count toward requisite work experience, the conflicting information undermines the credibility of both this letter and the information provided by Ms. Morffi.

57. Based on the conflicting information regarding Smiles Childcare, Ms. Herold attempted to verify the information. Smiles Childcare had no internet website and was not listed by the State as a childcare facility.

58. The last paid claim for Ms. Morffi is March 16, 2018. Not only could the April 5, 2018, letter not have been used to verify work in the hiring process, it also was not created until after the audit period and over two weeks after the end of Ms. Morffi's employment with Respondent.

59. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Morffi had the documented requisite work experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Luigui Melendez Tijerino

60. The application for Luigui Melendez Tijerino, dated January 30, 2017, lists overlapping work as a Pharmacy Tech at Walmart from June 2012 to "present" (presumably the date of the application) and as a food prepper at Wendy's from October 2013 to June 2014. There is no indication of work with

the target population and the nature of those jobs would not contribute to the requisite work experience. Overlapping with the Pharmacy technician job, Mr. Melendez Tijerino also listed BA work with ABA Pro Support Services (“ABA Pro Support”) from May 2015 to January 31, 2017.

61. The resume for Mr. Melendez Tijerino lists the same jobs as indicated on the application and also lists work as a server at “The Chelsea” from April 2011 to September 2013. There is no indication of work with the target population and the nature of that job would not contribute to the requisite work experience.

62. Documents submitted to AHCA by Respondent contain a background screening requested by Respondent. The screening indicates that Mr. Melendez Tijerino was not eligible to work with the target population until October 2016. Because Respondent requested the screening, it knew or should have known that Mr. Melendez Tijerino did not have the requisite work experience.

63. Documents submitted to AHCA by Respondent contain an undated letter of reference from Xochilt Povsic.³ That letter was provided to AHCA post-PAR. That letter references work with the target population, but it does not mention any dates that would allow anyone to determine if it satisfied the requisite work experience. The letter does not mention where the BA services were allegedly performed, and the only indication of BA work on Mr. Melendez Tijerino’s application and resume was at ABA Pro Support.

64. Based on the conflicting information regarding work at ABA Pro Support, Ms. Herold looked further into the matter. In response to the letter sent to ABA Pro Support for the BA statewide review, ABA Pro Support advised that Mr. Melendez Tijerino was never an employee. That information was provided to AHCA on January 12, 2018.

³ Ms. Povsic is another rendering provider at issue in the audit. Ms. Povsic may be or may have been related to Mr. Melendez Tijerino as the documents submitted by Respondent for her indicate she used to be called Xochilt Tijerino.

65. Documents submitted to AHCA by Respondent contain a letter of reference dated September 23, 2016, from Walmart, that was provided to AHCA post-PAR. That letter does not reference work with the target population and the nature of the job would not contribute to the requisite work experience.

66. Mr. Melendez Tijerino began working for Respondent on November 1, 2017. The last paid claim for Mr. Melendez Tijerino was January 27, 2018.

67. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Mr. Melendez Tijerino had the requisite work experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that he satisfied the training requirement.

Maria Oduber

68. The application for Maria Oduber, dated November 29, 2017, lists “young care worker” with “Loyal Resource/CHS” from August 2015 to March 2017. There is no mention of work with the target population associated with that job. Overlapping with that job, the application lists work as client support with HOPWA Housing from March 2010 to January 2017. The application also lists work as an ESOL (English for Speakers of Other Languages) teacher at Greystone Elementary School and as a theater teacher in “Caracas.” There is no indication of work with the target population and the nature of those jobs would not contribute to the requisite work experience.

69. The resume for Ms. Oduber listed the same jobs as listed on the application. There was still no mention of work with the target population for any of those jobs.

70. Ms. Oduber began working for Respondent on January 2, 2018. The last paid claim for Ms. Oduber was March 17, 2018.

71. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Oduber had the requisite work

experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Mey Weiss Rodriguez

72. The application for Mey Weiss Rodriguez is dated October 4, 2017, on the front and October 10, 2017, on the back. The application lists work as an assistant at Eliseo Reyes School in “S. Spiritus, Cuba,” from September 2010 to December 2014. There is no mention of work with the target population associated with the job. The application also lists work at Provincial Veterinary Laboratory from August 1997 to August 2010. There is no indication of work with the target population and the nature of that job would not contribute to the requisite work experience.

73. The resume submitted for Ms. Weiss Rodriguez lists the same work on the application, but with less specific information regarding dates, and no information regarding location or contact information. Contrary to the application, work with the target population is listed for Eliseo Reyes School. The resume also claims that Ms. Weiss Rodriguez is an RBT even though Respondent stipulated that none of the rendering providers at issue obtained an RBT by January 1, 2019.

74. The documents submitted to AHCA by Respondent contained a letter of recommendation dated October 4, 2017, from Carmen Yebra. The letter was provided to AHCA post-PAR and makes no mention of work with the target population.

75. Due to the conflict regarding whether there was work with the target population, and the fact there was no documentation of independent verification of that matter, Ms. Herold attempted to verify the work experience. No search engine provided a listing for Eliseo Reyes School and Google Maps, while providing detailed information on Sancti Spiritus, Cuba, indicated the address listed on the application does not exist.

76. The last paid claim for Ms. Weiss Rodriguez was March 17, 2018.

77. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Weiss Rodriguez had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Sorelys Ferros

78. On her application dated March 14, 2017, Sorelys Ferros lists work as an RBT with MHB Consultants Group (“MHB”) beginning in December 2015 with no end date listed. However, Respondent stipulated that none of the rendering providers at issue obtained an RBT by January 1, 2019.

79. The resume for Ms. Ferros lists the job at MHB and also lists work at Respondent from March 2017 to present. On her resume, Ms. Ferros also indicates that she obtained her RBT certification in December 2015. However, as indicated above, Respondent stipulated that none of the rendering providers at issue obtained an RBT by January 1, 2019.

80. Documents submitted to AHCA by Respondent contain a background screening requested by Respondent. The screening indicates that Ms. Ferros was not eligible to work with the target population until June 2016. As such, she could not have obtained her RBT certification by December 2015. Because Respondent requested the screening, it knew or should have known that Ms. Ferros did not have the requisite work experience and that she was not actually an RBT.

81. The last paid claim for Ms. Ferros was February 2, 2018.

82. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Ferros had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Teresita Rodriguez

83. The application for Teresita Rodriguez, dated August 10, 2017, lists two jobs as an HHA-BA,⁴ one with Gifted Health Group, Inc. (“Gifted”), from January 2010 to February 2014, and the other with Nory’s Home Services, Inc. (“Nory’s”), from February 2014 to April 2015. There is no indication of how long Ms. Rodriguez worked in the capacity of an HHA versus as a BA at either job. There is no indication of work with the target population in the HHA job at Gifted or Nory’s. The application also listed work as an HHA at Homecare for Neighborhood Home Health (“Neighborhood”) from April 2015 to “actual” (presumably, the date of the application, August 10, 2017). There is no mention of work with the target population in the job with Neighborhood.

84. The resume for Ms. Rodriguez, lists the same jobs listed on the application; however, the work with Neighborhood is listed on the resume as HHA-BA, and not HHA Homecare. The resume provides more description for each job, and only the job at Gifted describes work with the target population.

85. Documents submitted to AHCA by Respondent contain a background screening requested by Respondent. The screening indicates that Ms. Rodriguez was not eligible to work with the target population until September 2015. Based on the screening, Ms. Rodriguez could not have worked with the target population at Nory’s, Neighborhood, or Gifted before then. Because Respondent requested the screening, it knew or should have known that Ms. Rodriguez did not have the requisite work experience.

86. The documents submitted to AHCA by Respondent contained an undated letter of reference from Josie Vallejo. That letter does not reference any work with the target population but specifically mentions work with Ms. Vallejo’s mother, a senior, although it does not provide any dates. The letter mentioned that Ms. Vallejo had been a friend of Ms. Rodriguez for six years.

⁴ Presumably, “HHA” as used in applications and on resumes of rendering providers stands for Home Health Aide.

87. The documents submitted to AHCA by Respondent contain an undated letter of reference from Danitza Montero. The letter from Ms. Montero states Ms. Rodriguez cared for Ms. Montero's son, but does not indicate the son was a member of the target population.

88. Ms. Rodriguez began working for Respondent on December 26, 2017. There is no documentation indicating that Ms. Rodriguez worked for Gifted past August 10, 2017. The last paid claim for Ms. Rodriguez was March 17, 2018.

89. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Rodriguez had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Xochilt Povsic

90. The application for Xochilt Povsic, dated January 31, 2017, states she worked as a membership coordinator for Sam's Club, and a dietary aide at Bentley Commons at Paragon Village in New Jersey. There is no indication of work with the target population at either job, and the nature of those jobs would not contribute to the requisite work experience. Overlapping the dietary aide job, on her application Ms. Povsic also indicates work as a BA at two private practice/personal care jobs. Ms. Povsic states she worked for Maria Mora from August 2013 to June 2015 and that she worked for Miriam Ponzano from September 2014 to December 2015.

91. The resume for Ms. Povsic listed the same jobs and dates as listed on the application and also listed another dietary aide job with Fellowship Village in New Jersey. The resume contains descriptions of the type of work performed at each job. There is no mention of work with the target population at either dietary aide job or in the job at Sam's Club, and those jobs would not be of the type to contribute to the requisite work experience. The work for Ms. Mora was described by Ms. Povsic as providing BA services from

August 2013 to June 2015 to a “3-4 [year old child]” with autism, ADHD, and behavior disorders. The work for Ms. Ponzano was described by Ms. Povsic as providing BA services from September 2014 to December 2015 to twin boys, “1-2 years old” with behavior disorders and ADHD.

92. The documents submitted to AHCA by Respondent contained a letter from Miriam Ponzano that is not dated and was provided to AHCA post-PAR. While Ms. Ponzano confirms that Ms. Povsic cared for her boys, there is no indication that the children were part of the target population or that any work performed contributed to the requisite work experience. In addition, the dates of service listed by Ms. Ponzano conflict with the dates listed by Ms. Povsic. Ms. Ponzano indicated the Ms. Povsic cared for her sons from November 2015 to March 2016, not September 2014 to December 2015, as had been asserted by Ms. Povsic on her application and resume.

93. The documents submitted to AHCA by Respondent also contained a letter from Maria Mora, that is not dated, and was provided to AHCA post-PAR. Ms. Mora did not confirm that Ms. Povsic had cared for her 3 to 4-year-old son with autism, ADHD, and behavior disorders, as Ms. Povsic had indicated. Rather, Ms. Mora’s letter indicates that Ms. Povsic was her caretaker, performing personal tasks such as picking up medicines and buying groceries. Ms. Mora does not indicate that she is part of the target population and the services listed are not of the type to contribute to the requisite work experience. In addition, the dates of service listed by Ms. Mora conflict with the dates listed by Ms. Povsic. Ms. Mora indicates that Ms. Povsic cared for her during the winter of 2014 to 2015 (even mentioning that Ms. Povsic shoveled snow for her), not August 2013 to June 2015, as had been indicated by Ms. Povsic on her application and resume.

94. The documents submitted to AHCA by Respondent contained a letter from Maydelis Cruz. The letter is not dated and was provided to AHCA post-PAR. Ms. Cruz indicates she has known Ms. Povsic for 20 years. Ms. Cruz indicates that Ms. Povsic assisted with her son, who has Down Syndrome,

from November 2011 to March 2013. Ms. Povsic would only have been 17 years old at that time.

95. The last paid claim for Ms. Povsic was March 17, 2018.

96. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Xochilt Povsic had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Yaima Alvarez

97. The application for Yaima Alvarez, dated August 10, 2017, listed two overlapping HHA jobs: “Faith,” from July 2016 to “present” (presumably August 10, 2017, the date of the application); and Home Health Solutions, from June 2017 to present (August 10, 2017). There is no indication of work with the target population for either job.

98. The resume for Ms. Alvarez lists no work experience, but has listings under “Professional Affiliations” that appear to be a work history. Faith Health Care, Inc., is listed with dates that correspond to the listing for Faith on the application. There is no mention of a job title or work with the target population regarding Faith Health Care, Inc. Solutions Group, Inc., is also listed under “Professional Affiliations.” As with Faith Health Care, Inc., there is no mention of her job title or work with the target population. That listing does not appear to be the same job that is listed as Home Health Solutions on the resume as the dates do not correspond. There is no indication of work with the target population for Faith Health Care, Inc., or Solutions Group, Inc. There is also a listing for “L.G. (R.B.T. patient).” However, as indicated before, Respondent stipulated that none of the rendering providers at issue obtained an RBT by January 1, 2019.

99. Ms. Alvarez began working for Respondent on December 12, 2017. The last paid claim for Ms. Alvarez was February 8, 2018.

100. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Alvarez had the requisite work experience at the time of hire, at the beginning of the audit period or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Yudisley Garces

101. The application for Yudisley Garces, dated April 20, 2017, lists overlapping CNA (Certified Nursing Assistant) jobs. One was with AAA Home Health Service (“AAA”) from June 2014 to today (April 20, 2017) and the other is with Alma Care, Inc. (“Alma Care”), from August 2015 to “today” (presumably the date of the application, April 20, 2017). There is no indication of work with the target population for either job.

102. The resume for Ms. Garces only lists the job for AAA. However, the dates listed on the resume for that job (beginning June 2014) conflict with the dates listed on the application (beginning February 2014). There is no indication of work with the target population associated with that job. The resume also listed two jobs (one at a hospital in Cuba and the other at a hospital in Venezuela) performing puncture aspiration biopsies and cervical cancer diagnoses. There is no mention of work with the target population at either of those hospital jobs, and those jobs would not be of the type to contribute to the requisite work experience.

103. The last paid claim for Ms. Garces was March 17, 2018.

104. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Garces had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period, or that she satisfied the training requirement.

Zerelys Lauzerique

105. The resume for Zerelys Lauzerique lists work with “Lenin & Daughter” and Ignite Christian Academy (“Ignite”). There is no indication of

work with the target population regarding the job at Ignite. It also lists work as a fitness coach with Beach Body, as a Youth Pastor at Cross Church, and as an Assistant Director at Flames of Fire Bible School (“Flames of Fire”), that is not listed on the application. The Beach Body work overlaps the BA work with Lenin & Daughter. There is no indication of working with the target population associated with the jobs at Beach Body, Cross Church, or Flames of Fire, and those jobs would not be of the type to contribute to the requisite work experience.

106. The application for Ms. Lauzerique, dated December 4, 2017, lists work as a BA with Lenin & Daughter from December 2016 to “current” (presumably the date of the application, December 4, 2017) and as a Teacher Assistant with Ignite from August 2014 to August 2015. There is no mention of work with the target population regarding the job at Ignite.

107. The documents submitted to AHCA by Respondent contained a letter of reference dated December 5, 2016, from Melanie Reyes, a “close friend.” The letter from Ms. Reyes does not indicate any work with the target population and instead pertains to Ms. Lauzerique’s work at Beach Body.

108. The documents submitted to AHCA by Respondent also contained a letter of reference dated December 2016 from Reverend Abram Gomez of Cross Church. The letter indicates that he worked with Ms. Lauzerique for two years, but does not indicate any work with the target population.

109. Ms. Lauzerique began working for Respondent on December 11, 2017. The last paid claim for Ms. Lauzerique was January 6, 2018.

110. The documents submitted by Respondent to AHCA for Ms. Lauzerique contained training certificates for both the 20-hour BA course and the 40-hour RBT course.

111. The documents provided by Respondent to AHCA during the audit and during litigation did not substantiate that Ms. Lauzerique had the requisite work experience at the time of hire, at the beginning of the audit period, or by the end of the last paid claim in the audit period.

Respondent's Response

112. The owner of Hour Bliss, Inc., Mr. Perez-Delgado, testified on behalf of Respondent. He is a Board-Certified Behavior Analyst, has a master's certification in addiction, and is a Licensed Mental Health Counselor. Mr. Perez-Delgado testified that Respondent served populations in Miami that no other company would because of the crime.

113. Mr. Perez-Delgado said that when he enrolled Respondent as a BA provider, many of the rendering providers he hired had worked at other companies where he had also worked, and because of this, he believed they met the qualifications required to serve as BAs.

114. Mr. Perez-Delgado testified that he provided records he thought were relevant to the Medicaid investigation beginning in August 2017, and again in January 2018 and April 2019. If there had been a problem, he would have liked AHCA to institute a corrective action plan. However, he alleges the next communication from AHCA was terminating his Medicaid provider number without cause. Later, he received notice of the audit. Much of the testimony from Mr. Perez-Delgado concerned events that occurred prior to the audit beginning in November 2018, and the issuance of the PAR and FAR in 2019. These events are obviously related to the pre-payment review or other matters with AHCA, and not the audit.

115. Mr. Perez-Delgado testified that several of his rendering providers were parents of children with autism or ADHD. Accordingly, they had more than the requisite experience with the target population. However, he did not document that in the files provided to the Agency. Nor did he timely provide records demonstrating that these same workers met the training requirement. Mr. Perez-Delgado offered no information regarding how or whether he verified prior work experience of these BAs in question.

ULTIMATE FINDINGS OF FACT

116. In this case, AHCA presented credible, persuasive evidence establishing that the audit giving rise to this proceeding was properly

conducted. AHCA obtained and reviewed records from Respondent, issued a PAR, reviewed additional records submitted after the PAR, issued the FAR, and even then continued to review records and consider evidenced that, by giving Respondent the benefit of the doubt whenever possible, further reduced the overpayment.

117. In this audit, AHCA examined the records provided by Respondent to determine if it maintained business records and Medicaid-related records establishing that its rendering providers met the qualifications set forth in the BA Handbook. The BA Handbook required no special documentation. Respondent, as are all providers who contract to provide Medicaid services, was required to keep contemporaneous records regarding entitlement to payment, including employment eligibility, and compliance with all Medicaid rules, regulations, handbooks, and policies.

118. Respondent failed to provide AHCA with documentation that its rendering providers met the qualifications set forth in the BA Handbook. Of the 14 BA providers in dispute, 12 lacked any documentation of the requisite work experience with the target population and meeting the training requirement. Only two BAs, Mr. Rodriguez and Ms. Lazerique, met the training requirements, but did not meet the required work experience with the target population.

CONCLUSIONS OF LAW

119. 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.

120. 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).

121. Pursuant to section 409.913, Petitioner is authorized to recover Medicaid overpayments from Medicaid providers. Under section 409.913(1)(e), an “overpayment” is defined as “any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.” Under section 409.913(1)(a), “abuse” is defined, in pertinent part, as “[p]rovider practices that are inconsistent with generally accepted business...practices and that result in an unnecessary cost to the Medicaid program....”

122. The failure of a Medicaid provider to document that its employees meet the applicable qualifications to provide services in accordance with the applicable Medicaid handbooks and the Provider Enrollment Agreement is inconsistent with generally accepted business practices. *See Ag. For Health Care Admin. v. Zenith Psych. Servs.*, Case No. 19-3666MPI (Fla. DOAH Jan. 14, 2020, p. 12, ¶ 28; Fla. AHCA Feb. 12, 2020).

123. 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).

124. Sections 409.913(7) (e) and (f), require providers to present claims for reimbursement in accordance with all Medicaid rules, regulations, and handbooks, and to appropriately document all goods and services provided. The Medicaid rules and handbooks applicable to all Medicaid providers, and the Non-Institutional Medicaid Provider Agreement signed by Respondent set forth the type of documentation required to be kept. No specialized documentation was required by the BA Handbook or requested in this audit.

125. In this case, AHCA presented credible, persuasive evidence establishing that the audit giving rise to this proceeding was properly

conducted. AHCA presented documentary and testimonial evidence that supports the denial of the claims at issue in this proceeding. Respondent was required to keep contemporaneous records regarding entitlement to payment, including employment eligibility, and compliance with all Medicaid Rules, regulations, handbooks, and policies. Respondent failed to provide AHCA with documentation that its rendering providers met the qualifications set forth in the BA Handbook.

126. Based on these standards and the foregoing Findings of Fact, AHCA proved, by a preponderance of the evidence, that Respondent was overpaid a total of \$237,802.50 for claims that failed to comply with the laws, rules, and regulations governing Medicaid providers.

127. AHCA presented unrefuted, competent, and substantial testimony that Respondent provided additional documentation after the PAR was issued. AHCA demonstrated its entitlement to sanctions by clear and convincing evidence in this proceeding. AHCA is entitled to a sanction of \$2,500.00 pursuant to rule 59G-9.070(7)(c).

128. Pursuant to section 409.913(23), as the prevailing party in this proceeding, AHCA is entitled to recover, as costs, all investigative, legal, and expert witness costs. At the time AHCA issued the FAR, it was seeking costs in the amount of \$1,280.00. Additional costs were incurred in preparing for and attending the final hearing and filing post-hearing submittals.

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. AHCA overpaid Respondent the sum of \$237,802.50 for BA services and Respondent must reimburse the Agency for those payments.

2. AHCA is entitled to an administrative sanction in the amount of \$2,500.00.

3. AHCA, as the prevailing party in this proceeding, is entitled to recover, from Respondent, costs including all investigative, legal, and expert witness costs.

DONE AND ENTERED this 27th day of April, 2020, in Tallahassee, Leon County, Florida.



MARY LI CREASY
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 27th day of April, 2020.

COPIES FURNISHED:

Julio Cesar Perez-Delgado
Hour Bliss, Inc.
Apartment 406
888 Brickell Key Drive
Miami, Florida 33131
(eServed)

Susan Sapoznikoff, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Kimberly Murray, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Stefan Grow, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Mary C. Mayhew, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)

Shena L. Grantham, Esquire
Agency for Health Care Administration
Building 3, Room 3407B
2727 Mahan Drive
Tallahassee, Florida 32308
(eServed)

Thomas M. Hoeler, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(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.