

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

Case No. 21-1350F

vs.

ABELLA YOSE CARE SERVICES, INC.,

Respondent.

FINAL ORDER

This matter came before the undersigned administrative law judge (“ALJ”) on Petitioner Agency for Health Care Administration’s (“Agency”) Motion to Re-open Case to Determine Costs (“Motion to Re-open”), filed in Division of Administrative Hearings (“DOAH”) Case No. 20-2884MPI. DOAH opened a new case to consider the fees and costs sought in the Motion to Re-open and, based upon a response to the Motion to Re-open, as described more fully below, no hearing is necessary to consider the request for an award of fees and costs.

APPEARANCES

For Petitioner: Bradley Stephen Butler, Jr., Esquire
Susan Sapoznikoff, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

For Respondent: Anthony Vitale, Esquire
Daniel Ferrante, Esquire
The Health Law Offices of
Anthony C. Vitale, P.A.
2333 Brickell Avenue, Suite A-1
Miami, Florida 33129

Sean Michael Ellsworth, Esquire
Ellsworth Law Firm, P.A.
1000 5th Street, Suite 223
Miami Beach, Florida 33139

STATEMENT OF THE ISSUE

The issue for determination in this matter is the amount of costs, pursuant to section 409.913(23), Florida Statutes (2020), to be awarded to the Agency, the prevailing party in Case No. 20-2884MPI.

PRELIMINARY STATEMENT

This proceeding to determine the amount of costs to be awarded to the Agency arose from a Recommended Order entered by the undersigned on February 3, 2021, in Case No. 20-2884MPI, awarding \$263,791.60 in overpayments to Respondent, along with a sanction of \$2,500.00, pursuant to Florida Administrative Code Rule 59G-9.070(7)(c), and a sanction of \$52,758.32, pursuant to rule 59G-9.070(7)(e). The Agency entered its Final Order adopting the Recommended Order on March 23, 2021, and providing that the Agency is entitled to recover “all investigative and legal costs incurred as a result of [the] audit, investigation, or enforcement action.”

The Agency seeks \$17,715.11 in taxable costs and filed the Agency’s Motion to Re-open on April 19, 2021. DOAH opened a new case file (DOAH Case No. 21-1350F) to deal with the issue of any awardable fees and costs.

Respondent filed a Response to Agency’s Motion to Re-open Case to Determine Costs in which it noted that an appeal of the Final Order in Case No. 20-2884MPI had been taken to the First District Court of Appeal and assigned Case No. 1D21-1206. Without waiving any rights that would result from a reversal of the underlying matter on appeal (i.e., legal costs and fees

would not be awarded to the Agency), Respondent does not object to the amount of costs and fees submitted by the Agency.

FINDINGS OF FACT

1. A Recommended Order was entered in Case No. 20-2884MPI by the undersigned ALJ on February 3, 2021, upholding the overpayment determined by the Agency, including the assessed sanctions, and awarding costs.

2. The Recommended Order states, “the Agency has established by a preponderance of the evidence that it overpaid Respondent the sum of \$263,791.60 and that Respondent must reimburse the Agency for those payments.” Recommended Order, p. 37, ¶ 2. The Recommended Order also states, “the Agency has proven by clear and convincing evidence that it is entitled to a sanction of \$2,500.00 pursuant to rule 59G-9.070(7)(c), and a sanction of \$52,758.32 pursuant to rule 59G9.070(7)(e) (capped at 20 percent of the amount of the overpayment), for a total sanction of \$55,258.32, to be paid by Respondent[.]” *Id.* at ¶ 3.

3. On the issue of costs, the Recommended Order states:

[P]ursuant to section 409.913(23), the Agency, as the prevailing party in this proceeding, is entitled to recover costs, from Respondent, including all investigative, legal, and expert witness costs as the prevailing party. As of the time of the FAR, the amount of these costs was \$528.00. The final amount of costs will be determined in a subsequent proceeding to include costs incurred since issuance of the FAR. The undersigned hereby reserves jurisdiction regarding the final amount of costs, and, if the amount of the costs cannot be resolved between the parties, the Agency may request a hearing solely to establish the amount of the costs to be awarded.

Id. at ¶ 3.

4. The Final Order was rendered by the Agency on March 23, 2021.

5. The Final Order requires repayment by Respondent of \$263,791.60 in Medicaid overpayments and sanctions of \$55,258.32.

6. The Final Order provides that the Agency is entitled to recover costs, including all investigative, legal, and expert witness costs in accordance with section 409.913(23).

7. Based upon Exhibit “A” to the Motion to Re-open, the Agency is entitled to an award of taxable costs in the amount of \$17,715.11. The Agency’s costs include cost of the court reporter per diem for the hearing; transcript costs for the hearing and depositions of Agency personnel taken by Respondent; copies of documents obtained in discovery; copies of documents filed with the tribunal that were necessary to assist the undersigned ALJ in reaching a conclusion; and the Agency’s personnel costs for investigative costs and legal actions.

8. On April 21, 2021, Respondent filed a Notice of Appeal in the First District Court of Appeal, which has been assigned Case No. 1D21-1206. If successful, Respondent’s appeal would impact the Agency’s entitlement to fees and costs in this case. Without waiving any claims related to this appeal, however, Respondent stated in its response to the Motion to Re-open that it does not object to the amount of costs and fees submitted by the Agency.

9. Based upon the pleadings filed by the Agency and Respondent, as well as an independent review by the undersigned, the fees and costs claimed in the Agency’s Motion to Re-open are reasonable.

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 409.913(23)(a), Florida Statutes (2020).

11. The MPI costs, salary costs, printing costs, deposition transcript of Riley Edwards Seay, and final hearing costs consisting of the court reporter


per diem and one copy of the hearing transcript are reasonable and properly awardable under section 409.913(23)(a).

12. The total amount of fees and costs sought by the Agency in the amount of \$17,715.11 are, therefore, reasonable.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent shall remit to the Agency \$17,715.11 for fees and costs associated with DOAH Case No. 20-2884MPI. The undersigned ALJ reserves jurisdiction to consider the amount of appellate attorney's fees and costs should those be sought by the Agency and awarded by the appellate court.

DONE AND ORDERED this 4th day of June, 2021, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of June, 2021.

COPIES FURNISHED:

Bradley Stephen Butler, Jr., Esquire
Susan Sapoznikoff, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Sean Michael Ellsworth, Esquire
Ellsworth Law Firm, P.A.
1000 5th Street, Suite 223
Miami Beach, Florida 33139

Anthony Vitale, Esquire
Daniel Ferrante, Esquire
Christopher A. Parrella, Esquire
The Health Law Offices of
Anthony C. Vitale, P.A.
2333 Brickell Avenue, Suite A-1
Miami, Florida 33129

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

Simone Marstiller, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Building 3
Tallahassee, Florida 32308-5407

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

James D. Varnado, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

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

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.