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STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09DHR05790

Stonesthrow Group Home Medicaid Provider # 6603018 Owned by Alberta Professional Services Inc. Petitioner, v. N. C. Department of Health and Human Services, Div. of Mental Health/Developmental Disabilities/Substance Abuse, and Division of Medical Assistance, Respondent.	**DECISION**

THIS CAUSE came on for hearing before the undersigned Administrative Law Judge J. Randall May on October 30, 2012 in High Point, North Carolina.

APPEARANCES

For Petitioner: Erik W. Krohn
Stonesthrow Group Home
Alberta Professional Services, Inc.
P.O. Box 114884
Greensboro, NC 27415

For Respondent: Thomas J. Campbell
Associate Attorney
N.C. Dept. of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUE

Whether the Division of Medical Assistance recoupment in the amount of $25,454.78, including penalty and interest, for improperly paid Medicaid claims due to documentation errors was erroneous and not in compliance with rule or law, depriving Petitioner of property.

APPLICABLE STATUTES AND RULES

42 U.S.C. §§ 1396a - 1396v

42 C.F.R. Parts 455 and 456
N.C. Gen. Stat. § 150B-22 *et seq.*
10A N.C.A.C. 22F *et seq.*
N.C. State Plan for Medical Assistance

EXHIBITS

Petitioner's Exhibits A – H, and J were admitted into evidence.
Exhibit K was admitted post-hearing.

Respondent's Exhibits 1 – 5, 6 (a, b, c, d), 7, 8 (a, b, c, d), and 9 were admitted into evidence.

WITNESSES

Kathy Reid, DMA
Gwyn Ingle, QP
Derek Mitchell, QP

FINDINGS OF FACT

The findings of fact are made after careful consideration and observation of the sworn testimony of the witnesses presented at the hearing, either by their audio and/or video presentation and the entire record in this proceeding. In making the findings of fact, the Undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and the admitted evidence, or the lack thereof, the undersigned makes the following:

1. At all times material to this matter, Petitioner, Stonesthrow Group Home, was an enrolled provider of Residential Treatment Services in the North Carolina Medicaid Program and entered into a North Carolina Medicaid Participation Agreement with the Division of Medical Assistance ("DMA") to participate in this program. Derek Mitchell, identified as "Business Manager" signed the Medicaid Participation Agreement effective January 1, 2007. (Respondent's Ex. 1).

2. By entering into the Medicaid Participation Agreement, Petitioner agreed to the following:

    a. "comply with federal and state laws, regulations, state reimbursement plan and policies governing the services authorized under the Medicaid Program and this agreement (including, but not limited to, Medicaid provider manuals and Medicaid

bulletins published by the Division of Medical Assistance and/or its fiscal agent)." (Respondent's Ex. 1).

b. "[m]aintain for a period of five (5) years from the date of service: . . . (b) other records as necessary to disclose and document fully the nature and extent of services provided and billed to the Medicaid Program." (Respondent's Ex. 1).

c. "[o]n request, furnish to the Division of Medical Assistance (DMA) . . . any information or records, . . . for costs related to services provided to Medicaid patients and billed to the Medicaid Program." (Respondent's Ex. 1).

3. This matter involves an audit and monitoring of Petitioner conducted by the Accountability Team of the Resource/Regulatory Management Section of the Division of Mental Health/Developmental Disabilities/Substance Abuse Services ("DMH/DD/SAS") on or about June 16, 2009. (Respondent's Ex. 2) The audit and monitoring revealed non-compliance with policy and the results of the audit were forwarded to DMA. (Respondent's Ex. 2). As a result of the audit, DMA identified an overpayment of $24,733.24, which was identified as Program Integrity Case No. 2008-3623. (Respondent's Ex. 2).

4. On June 16, 2009, DMA notified Petitioner of the audit results via certified mail and requested that Petitioner send in a check for the overpayment within thirty (30) days or file a Request for Reconsideration within fifteen (15) days. (Respondent's Ex. 2).

5. Following Petitioner's timely Request for Reconsideration, the audit was reviewed by Kathy Reid, a Certified Investigator with the Behavioral Review Section of DMA, who modified the overpayment down to $22,966.58, upon revised findings for recipient J.T. for the week of 7/2/07 through 7/8/07. (Respondent's Ex. 6a).

6. DMA Clinical Coverage Policy No.: 8D-2, Revised August 1, 2007, Residential Treatment Services, a properly promulgated medical coverage policy, was in effect at the time of the audit and monitoring. (Petitioner's Ex. P-B; Respondent's Ex. 6d).

7. It is undisputed that Stonesthrow Group Home is a Level III Residential Treatment Facility.

8. The documentation reviewed by the DMH/DD/SAS Accountability Team showed that Petitioner failed to document that it had provided a minimum of four (4) hours per week of consultative and treatment services at a qualified professional level for four (4) individual patients, which treatment is required by DMA Clinical Coverage Policy No. 8D-2, Attachment C: Residential Treatment-Level III. (Petitioner's Ex. P-B; Respondent's Ex. 6d).

9. Petitioner kept records of Consultative Treatment Services which indicated the dates of said treatment, the times, and the names of the patients participating in the treatment. (Respondent's Ex. 8a, b, c and d).

10. Specifically, the records of Consultative Treatment Services provided by Petitioner and reviewed by the DMH/DD/SAS Accountability Team showed that Petitioner documented the following amounts of consultative and treatment services at a qualified professional level for the following patients during the following time periods:

    J.T. 8/20/07 - 8/26/07 (0 hours); 8/27/07 - 9/02/07 (1.5 hours); 9/03/07 - 9/09/07 (0 hours); and 9/10/07 (1.5 hours). (Respondent's Ex. 8a);

    D.C 12/17/07 - 12/23/07 (1.5 hours). (Respondent's Ex. 8b);

    R.D. 8/13/07 – 8/19/07 (1.5 hours); 9/24/07 – 9/30/07 (1.5 hours); 11/05/07 – 11/11/07 (1.25 hours); and 12/10/07 – 12/16/07 (1.25 hours). (Respondent's Ex. 8c);

    J.H. 7/14/07 – 7/22/07 (0 hours); 10/08/07 – 10/14/07 (0 hours); 10/22/07 – 10/28/07 (1.5 hours); and 11/12/07 – 11/18/07 (1 hour). (Respondent's Ex. 8d).

11. Petitioner also maintained records of group counseling which recorded the date, duration, identity of the counselor and approval of Dr. Krohn, but which failed to identify the patients participating in the counseling. (Respondent's Ex. 9).

12. The total amount billed and paid for the foregoing treatment periods for the foregoing patients was $22,966.58. (Respondent's Ex. 6c).

13. The parties have stipulated that Respondent has recouped a total of $25,454.78 from Petitioner, broken down as follows: Recoupment - $22,966.58, Penalty - $2,296.66 and Interest $196.54.

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings, and this tribunal has jurisdiction of the parties and of the subject matter at issue.

2. As the initiation of this case predates the adoption of N.C. G.S. 108C, Petitioner has the burden of proof in this matter. Overcash v. N.C. Dep't of Env't & Natural Res., 179 N.C. App. 697, 699, 635 S.E.2d 442, 444-45 (2006) ("[C]ontrolling case law places the burden of proof on the petitioner in an administrative contested case proceeding to prove that he is entitled to relief from an agency decision . . . ."), disc. review denied, 361 N.C. 220, 642 S.E.2d 445 (2007). The burden of proving that Respondent acted erroneously in seeking recoupment of $25,454.78 (including penalty and interest) in this matter rests with Petitioner.

3. Under 10A NCAC 22F .0103(b)(5), DMA "shall institute methods and procedures to recoup improperly paid claims."

4. Under 10A NCAC 22F .0601(a), DMA "will seek full restitution of any and all improper payments made to providers by the Medicaid Program."

5. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[m]aintain for a period of five (5) years from the date of service: . . . (b) other records as necessary to disclose and document fully the nature and extent of services provided and billed to the Medicaid Program."

6. Petitioner did not meet its burden of showing by a preponderance of the evidence that DMA's identification of the improper overpayment and any subsequent action to recoup such overpayment was in error.

7. Petitioner failed to document fully that it had provided a minimum of four (4) hours per week of consultative and treatment services at a qualified professional level for the four (4) individual patients identified in the DMA audit, which treatment is required by DMA Clinical Coverage Policy No. 8D-2, Attachment C: Residential Treatment-Level III

8. Petitioner's argument that, while the DMA Clinical Policy 8D-2 requires that a minimum of four (4) hours per week of consultative and treatment services at a qualified professional level be provided to its patients, there is no requirement in the Policy or in any other code or regulation that said treatment be documented, is found to be without merit.

9. Petitioner's own records show that it was on notice to document, and did in fact keep, records of consultative treatment services provided to its patients, including the duration of said treatment.

10. Under N.C. Gen. Stat. § 150B-34, based upon the preponderance of the evidence and "giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency," Respondent properly identified an improper overpayment in the amount of $22,966.58 (not including penalty and interest) which was repaid to the North Carolina Medicaid program.

DECISION

The decision by Respondent DMA to recoup $25,454.78 from Petitioner, including appropriate penalty and interest as set forth in State law, is supported by the evidence and hereby is AFFIRMED.

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Resources, Division of Health Service Regulation.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail, the evidence in the record relied upon by the agency in making the finding of fact.

This the 10th day of May, 2013.

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J. Randall May
Administrative Law Judge