STATE OF NORTH CAROLINA | IN THE OFFICE OF ADMINISTRATIVE HEARINGS

COUNTY OF ORANGE | 11 DHR 9197

COMPREHENSIVE PT CENTER, Petitioner vs. NC Dept. of Health and Human Services Division of Medical Assistance Respondent.	))))))))	**DECISION**

On May 16, 2012, Administrative Law Judge Melissa Owens Lassiter conducted an administrative hearing in this case. Pursuant to the undersigned's June 11, 2012 Order, Respondent filed a proposed Decision with the Office of Administrative Hearings on July 2, 2012.

APPEARANCES

Petitioner appeared *pro se*. Respondent is represented by Brenda Eaddy, Assistant Attorney General, North Carolina Department of Justice.

ISSUE

Whether Respondent acted properly when it denied payment on Petitioner's claims for Medicaid reimbursement for providing physical therapy services?

STATUTES AND POLICIES AT ISSUE

42 U.S.C. §§ 1396a-1396v
42 C.F.R. part 430-456
N.C. Gen. Stat. § 108C-1 *et seq*
North Carolina State Plan for Medical Assistance
Clinical Coverage Policy No. 10A Outpatient Specialized Therapies

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1

For Respondent: A and B

PROCEDURAL BACKGROUND

1. On June 16, 2011, Respondent issued a Final Agency Decision, upholding the initial decision to deny Petitioner's claims for Medicaid payment for physical therapy services for four Medicaid recipients/patients. Respondent denied payment to Petitioner, because "Prior Approval (PA) is required. There is no PA request on file. All requests for PA must be submitted in accordance with DMA's clinical coverage policies and published procedures." (Pet. Exh. 1)

2. On July 15, 2011, Petitioner Bruce Buley and Petitioner Comprehensive PT Center filed a petition for a contested case hearing in the North Carolina Office of Administrative Hearings contesting Respondent's denial of payment for physical therapy services.

3. On December 12, 2011, the undersigned issued a Final Decision In Part dismissing Bruce Buley as a Petitioner in his individual capacity.

FINDINGS OF FACT

1. Petitioner Comprehensive P.T. Center ("Center") is a group of physical therapy providers, and is enrolled in the NC Medicaid program as a Medicaid provider. Petitioner submits requests for payment to Respondent for physical therapy services provided to Medicaid recipients under its Medicaid group provider number 720778A.

2. Bruce Buley is a physical therapist who provides physical therapy services at Petitioner Center. Mr. Buley is enrolled as a Medicaid provider in his individual capacity with his own individual Medicaid provider number 7200046. Mr. Buley is also the manager of Petitioner Center's facility.

3. Respondent Division of Medical Assistance (DMA) is responsible for administering and managing the State Medicaid plan and program. Pursuant to N.C. Gen. Stat. §108A-54, Respondent is authorized to adopt rules and regulations for program operation.

4. Respondent's Clinical Coverage Policy No. 10A explains the coverage criteria for Medicaid covered outpatient specialized therapies, including skilled physical therapy. This clinical coverage policy states in part that providers of physical therapy services must obtain prior approval to provide the treatment to Medicaid recipients.

5. In approximately May 2011, Petitioner Center submitted claims to Respondent for Medicaid payment for services rendered to four Medicaid recipients in 2010. Those claims were submitted under Petitioner Center's provider number 720778A. (See North Carolina Medicaid-Remittance and Status Advice)

6. On June 16, 2011, Respondent denied payment for Petitioner's claims of service to four Medicaid recipients in the amount of $12,253.04. Respondent denied payment, because

Petitioner did not follow Clinical Coverage Policy 10A when it failed to obtain prior authorization to treat four Medicaid recipients, before Petitioner provided physical therapy treatments to those Medicaid recipients.

7. At hearing, Petitioner presented its evidence first. Petitioner's manager, Mr. Buley, presented documentation showing that Petitioner Center received medical authorization to provide physical therapy to four Medicaid recipients. He presented documentation showing that Petitioner actually rendered physical therapy services to those four Medicaid recipients. Buley also presented several forms, titled "North Carolina Medicaid –Remittance and Status Advice" that showed Respondent's initial denial of payment for the services Petitioner provided to those four Medicaid recipients. The Remittance and Status Advice forms listed Petitioner's Medicaid provider number, at the top left hand corner of the form, as the Medicaid provider for all four Medicaid recipients whom Respondent denied Medicaid reimbursement.

8. Mr. Buley also explained facts related to his individual Medicaid provider status in 2009, and his reenrollment as a Medicaid provider in 2010. Respondent conducted cross-examination of Mr. Buley. Respondent introduced Respondent's Exhibits A and B into evidence through Mr. Buley's identification of such exhibits on cross-examination. Those exhibits relate to Mr. Buley's Medicaid provider number.

9. Since Respondent denied Medicaid payment under Petitioner Center's Medicaid provider number, not Mr. Buley's Medicaid provider number, the status of Mr. Buley's Medicaid provider number is immaterial to the determination of this case.

10. At hearing, Respondent argued that Petitioner Center was aware of and abided by the prior approval requirements in Clinical Coverage Policy 10A, because it obtained prior approval for physical therapy services it supplied other Medicaid recipients in 2010. Respondent argued that none of Petitioner's claims for those recipients was denied payment for failure to obtain prior approval.

11. However, Respondent failed to present any evidence at hearing, through witnesses or documentation, demonstrating the reasons Respondent denied payment to Petitioner for the claims in question. First, Respondent failed to present any evidence explaining Respondent's initial denial of payments listed on the North Carolina Medicaid - Remittance and Status Advice forms in question. Second, Respondent failed to present any evidence showing that Petitioner knew of the prior approval requirement under Clinical Policy 10A because Petitioner had requested and received prior approval for other Medicaid recipients during 2010. Third, neither did Respondent cite any claims where Respondent paid Petitioner for services rendered to other Medicaid recipients in 2010, where Petitioner had requested and received prior approval for services.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. §150B-23 *et seq.*, and N.C. Gen. Stat. § 108C-12, and there is no question as to misjoinder or nonjoinder. The parties received

proper notice of the hearing in this matter.

2. Pursuant to N.C. Gen. Stat. §108A-54, Respondent is authorized to adopt rules and regulations for program operation. Respondent's Clinical Coverage Policy No. 10A states that physical therapy providers must obtain prior approval before treating Medicaid recipients.

3. N.C. Gen. Stat. § 108C-1 provides that Chapter 108C applies to providers enrolled in Medicaid, and to Respondent's adverse determinations to deny, terminate, suspend, reduce, or recoup a Medicaid payment.

4. N.C. Gen. Stat. § 108C-12(d) provides that Respondent "shall have the burden of proof in appeals of Medicaid providers or applicants concerning an adverse determination."

5. Respondent failed to present sufficient evidence that it acted properly, and did not deprive Petitioner of property when it denied payment of Petitioner's claims for Medicaid reimbursement because Petitioner failed to obtain the required prior authorization. First, Respondent failed to present any evidence that Petitioner knew about the prior approval requirement as it had requested prior approval to provide services for other Medicaid recipients in 2010. Second, Respondent failed to prove that Respondent granted Petitioner prior approval to provide services to other Medicaid recipients in 2010. Third, Respondent failed to prove that it paid Petitioner for other Medicaid claims for services in 2010, where Respondent had granted prior approval to Petitioner before Petitioner rendered such services.

6. For the foregoing reasons, Respondent failed to meet its burden of proof under N.C. Gen. Stat. § 108C-12(d), and deprived Petitioner of property in the amount of $12,253.04 in Medicaid reimbursements.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that Respondent's denial of Medicaid payments of Petitioner's claims for service on four patients in 2010, should be **REVERSED.** Respondent should issue Medicaid payments to Petitioner for services rendered in 2010 to the four Medicaid recipients at issue in this case.

NOTICE AND ORDER

The North Carolina Department of Health and Human Services will make the final decision in this case. That agency shall adopt the Decision of the Administrative Law Judge, unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency is required to give each party an opportunity to file exceptions to this Decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. §150B-36(a)

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, giving due regard to the opportunity of the Administrative Law Judge to evaluate the credibility of witnesses. 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. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. 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 establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

This 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' attorneys of record and to the Office of Administrative Hearings.

This is the 14th day of August, 2012.

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Melissa Owens Lassiter
Administrative Law Judge