

STATE OF NORTH CAROLINA
COUNTY OF

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR01393

Triumph LLC, Petitioner, v. North Carolina Department of Health and Human Services, Division of Medical Assistance, Respondent.	FINAL DECISION
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This contested case was heard before Beecher Gray, Administrative Law Judge, on November 7, 2012, in Raleigh, North Carolina. Petitioner filed a proposed decision on January 7, 2014.

APPEARANCES

For Petitioner: Curtis B. Venable, Attorney at Law
OTT CONE & REDPATH, P.A.
P.O. Box 3016
Asheville, NC 28802

For Respondent: Jennifer Hillman, Assistant Attorney General
Iain Stauffer, Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

ISSUE

Whether the Department of Health & Human Services (“DHHS”) Hearing Officer correctly decided to uphold the decision of the Division of Medical Assistance (“DMA”) to review behavioral health services provided to Medicaid recipients by Petitioner, and that Petitioner Triumph, LLC received an overpayment of \$123,178 as a result of allegedly improperly documenting claims for behavioral health services delivered to Medicaid recipients.

JURISDICTION

As stipulated by the parties: This matter is in the appropriate form and venue. The matter was filed in a timely and appropriate fashion. All necessary parties are joined.

BURDEN OF PROOF

Respondent bears the burden of proof in this matter, under N.C. Gen. Stat. §108C-12(d).

DOCUMENTARY EVIDENCE

As stipulated by the parties as to authenticity and admissibility:

For Respondent:

1. Notice of Decision dated February 16, 2012, PI Case #2009-3867
2. Excerpt of Claims Data
3. Screenshot of Procedure Codes
4. Strata Assignment Table
5. RAT-STATS Sample Size Determination Output dated 5/26/10
6. Records Request Letter dated 6/3/10
7. Tentative Notice of Overpayment dated 12/8/11
8. Revised Provider Summary Report dated 2/15/12
9. Audit Findings Table
10. RAT-STATS Stratified Variable Appraisal Output dated 2/15/12
11. RAT-STATS Stratified Variable Appraisal Output dated 10/9/012, post Notice of Decision
12. Resume of Dennis D. Boos, Ph.D.
13. Excerpt of RAT-STATS 2007 User Guide
14. Report dated 7/23/12 prepared by Barraclough NY, LLC
15. Comparison of Means and Standard Deviations of the Universe of Paid Values to Sample Values
16. Audit Tool for A.C., date of service 6/26/09
17. Complete Person-Centered Plan for A.C.
18. Wake County MH/DD/SAS Emergency Services Evaluations Form for A.C. dated 2/25/08
19. Response by Triumph, LLC to audit findings for A.C., date of service 6/26/09
20. Crisis Plan for K.G.
21. Person-Centered Planning Instruction Manual
22. Excerpt of Medicaid Clinical Coverage Policy 8A, effective 3/1/08
23. Medicaid Participation Agreement dated 1/8/07

For Petitioner:

1. Sample Size Table #1
2. Sample Size Table #2
3. RAT-STATS screen shot
4. Standard Deviation for strata

5. Probability notation
6. Precision scale
7. Report dated 7/23/12 prepared by Barraclough NY, LLC

WITNESSES

Witnesses for Petitioner:

Stephanie Beck, Clinical Director
Professor Jeffrey A. Witmer

Witnesses for Respondent:

Ashley Odom, Business Analyst, Public Consulting Group
Professor Dennis D. Boos, Ph.D.
Carolyn Wiser, Nurse Consultant, CorVel

Expert Witnesses:

The parties stipulate that Professor Jeffrey A. Witmer and Professor Dennis D. Boos possess the scientific, technical or other specialized knowledge to assist the trier of fact to understand the evidence or to determine a fact in issue and by virtue of the knowledge, skill, experience, training or education of each, Professors Witmer and Boos each qualify as experts in the area of statistics, pursuant to Rule 702 of the North Carolina Rules of Evidence.

Based upon the preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner does not dispute the following findings from the Hearing Officer's decision:
 - That Petitioner received an overpayment in the amount of \$73.00 for the claim billed for I. Albarran for services rendered on 5/21/09
 - That Petitioner received an overpayment in the amount of \$54.75 for the claim billed for A. Bonillamejia for services rendered on 5/5/09
 - That Petitioner received an overpayment in the amount of \$36.50 for the claim billed for A. Bonillamejia for services rendered on 5/20/09
 - That Petitioner received an overpayment in the amount of \$374.68 for the claim billed for K. Gakumo for services rendered on 6/16/09
 - That Petitioner received an overpayment in the amount of \$72.03 for the claim billed for F. Griffin for services rendered on 4/17/09

- That Petitioner received an overpayment in the amount of \$82.32 for the claim billed for A. Harrismarble for services rendered on 6/22/09
 - That Petitioner received an overpayment in the amount of \$41.16 for the claim billed for F. Martinez for services rendered on 4/24/09
 - That Petitioner received an overpayment in the amount of \$18.25 for the claim billed for A. McClean for services rendered on 8/6/09
 - That Petitioner received an overpayment in the amount of \$292.00 for the claim billed for M. Pafford for services rendered on 6/12/09
 - That Petitioner received an overpayment in the amount of \$146.00 for the claim billed for T. Romero for services rendered on 7/20/09
 - That Petitioner received an overpayment in the amount of \$292.00 for the claim billed for A. Turrentine for services rendered on 6/26/09.
2. The total value of claims conceded by Petitioner is \$4,913.26 (R. Ex. 11, p. 1).
 3. Respondent audited Community Support claims of Medicaid services provided by Petitioner for dates between March 1, 2009 and August 31, 2009.
 4. During this period, Petitioner submitted 8,751 Community Support claims.
 5. For the audit of these 8,751 claims, Respondent reviewed 44 claims.
 6. Respondent's Reconsideration Review decision of February 16, 2012, contained a calculation of Petitioner's total extrapolated overpayment of \$169,918 arising from twelve claims in error, with the total value of these claims in error being \$6,505.45 (R. Ex. 1, p. 9).
 7. Respondent's Exhibit 11, entitled "RAT-STATS Stratified Variable Appraisal Output, dated 10/9/012, post Decision" contained a calculation of Petitioner's total extrapolated overpayment of \$123,178 arising from the same twelve claims in error from the Reconsideration Review decision, with the total value of these claims in error being \$4,913.26 (pp. 1 and 9).
 8. In extrapolating the results, Respondent utilized a series of statistical calculations.
 9. In these extrapolation calculations, Respondent divided the 44 sampled claims into 5 different groups or strata.

Data Assessed

10. Respondent calculated the strata based upon the Community Support claims paid to Petitioner.

11. Respondent's calculations resulted in Standard Deviations for each strata as:
 - Strata 1: \$14.26
 - Strata 2: \$18.96
 - Strata 3: \$19.25
 - Strata 4: \$26.53
 - Strata 5: \$58.05
12. These calculations assess the variability of amounts paid to Petitioner.
13. Petitioner's statistical expert performed calculations based upon the amounts overpaid to Petitioner.
14. These calculations resulted in standard deviations for each strata as:
 - Strata 1: \$20.72
 - Strata 2: \$50.27
 - Strata 3: \$46.17
 - Strata 4: \$128.76
 - Strata 5: \$336.73
15. Respondent's calculations treated all payments as the same as all overpayments.

Sample Size

16. Respondent sampled or evaluated 44 claims.
17. Calculations performed by Petitioner's statistical expert treated Respondent's sample of 44 as a probe sample. A probe sample is a preliminary evaluation of claims.
18. The probe sample determined the variability of Petitioner's overpayments.
19. Calculations performed by Petitioner's statistical expert determined that the required sample size to appropriately assess Petitioner's errors was 2,291 claims, an amount 52 times larger than Respondent's sample of 44 claims.

Confidence Interval

20. Respondent's sample size of 44 results in a precision of 43% with a Confidence Interval of 90%.
21. Respondent's sample size of 44 results in a precision of 51.74% with a Confidence Interval of 95%.

22. Both statistical expert witnesses, Dr. Boos and Dr. Witmer were accepted as experts concerning statistics. Dr. Boos testified as to his knowledge concerning Respondent's statistical calculations and procedures. This decision has considered Dr. Boos testimony and knowledge and accorded appropriate weight to his opinions.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.
2. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-11(d).
3. There has been no assertion or allegation in this proceeding that Petitioner was in any way responsible for fraud as defined in N.C.G.S. §108A-63, i.e., there is no allegation or assertion of the Petitioner "knowingly and willfully making or causing to be made any false statement or representation of material fact" or other type of fraud as defined therein.
4. Respondent's determination of Petitioner's overpayment must arise from correct calculations.
5. Just as Respondent could not prevail upon a calculation that two plus two equals five, Respondent cannot prevail when it fails to properly engage in more complex statistical procedures such as extrapolation.
6. Petitioner's statistical expert demonstrated to the satisfaction of the undersigned that Respondent's extrapolation calculations were flawed.
7. Respondent's own recalculation of Petitioner's alleged overpayment between the original Reconsideration Review decision (R. Ex. 1) and this hearing (R. Ex. 11), which resulted in a change in Petitioner's alleged overpayment of more than \$60,000, demonstrated errors in Respondent's processes.
8. The testimony of Petitioner's statistical expert demonstrated how Respondent's calculation flowed from its initial assessment of the variability of Petitioner's paid claims rather than Petitioner's overpaid claims.
9. The assessment of paid claims versus overpaid claims results in significant difference in data. For instance, in Respondent's calculation of Standard Deviation of Strata 4 using paid claims equals 26.53 within a total of 1,355 claims. The calculation of Standard Deviation of Strata 4 using overpaid claims equals 128.76 within the same total of 1,355 claims.
10. The failure to properly evaluate overpaid claims rather than paid claims meant that Respondent inserted the wrong numbers into the correct formulae.

11. This initial error, in turn, flowed into a determination of the proper number of Petitioner's claims to assess.
12. Petitioner's statistical expert calculated, using the same statistical software as Respondent, RAT-STAT, the appropriate numbers of claims for sampling, considering the variability of the overpayments, the number of total claims and Respondent's desired level of accuracy (95% Confidence Interval and 5% precision), should have been 2,291 claims. Calculated at a slightly lower level of accuracy (90% Confidence Interval and 15% precision) resulted in a need to sample 297 claims. Respondent's sampled amount was 44 claims.
13. Respondent's small sample size resulted in a large level of imprecision in its extrapolation calculation. Petitioner's statistical expert demonstrated that with a sample size of 44 claims and a desired 90% Confidence Interval, the precision is reduced to 43%. This is in contrast to the desired precision levels ranging from 5 to 15%.
14. Respondent failed to demonstrate that it properly and accurately extrapolated Petitioner's overpayments. As such, Respondent acted erroneously, failed to use proper procedure and/or failed to act as required by law and/or rule.
15. As Respondent has failed to demonstrate the validity of any overpayment on the part of Petitioner (other than those conceded by Petitioner), it has failed to carry its burden to prove that the Department of Health and Human Services (DHHS) Hearing Officer correctly decided to uphold the decision of the Division of Medical Assistance (DMA) to review behavioral health services provided to Medicaid recipients by Petitioner and that Triumph, LLC received an overpayment of \$123,178.00 as a result of improperly documenting claims for behavioral health services delivered to Medicaid recipients.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Petitioner received overpayments in the amount of \$4,913.26 for the twelve claims conceded by Petitioner. Respondent was in error in concluding any further amounts were overpaid to Petitioner arising from claims evaluated in Respondent's PI#2009-3867. Based upon the evidence in this contested case hearing, I find that Respondent's action to collect overpayments to Petitioner should be, and the same hereby is, reduced to \$4,913.26, consistent with and supported by the greater weight of the evidence.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides,

or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 8th day of January, 2014.

Beecher R. Gray
Administrative Law Judge