STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
12DHR01802

KATHERINE YOUNG, Petitioner, v. NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES/ DIVISON OF MEDICAL ASSISTANCE EMERY MILLIKIN APPEALS LEGAL DEPARTMENT, Respondent.	**FINAL DECISION**

This contested case was commenced by the filing of a petition in the Office of Administrative Hearings on March 21, 2012. This case was heard before administrative law judge Beecher R. Gray on September 24, 2012, in Raleigh North Carolina. The final decision in this case was delayed by extensive negotiations between the parties in an effort to settle the issues pending. As of today's date, Petitioner has indicated that she will not settle this case.

APPEARANCES

Petitioner: Katherine Young, appearing pro se

Respondent: Michael Butler, Assistant Attorney General

ISSUE

Whether Respondent is entitled to recoup the sum of $3,958.20 from Petitioner for noncompliance with service documentation requirements and noncompliance with plan of care requirements.

FINDINGS OF FACT

1) The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.

2) In a letter dated October 24, 2011, the Carolinas Center for Medical Excellence (CCME), which is under contract with the NC Division of Medical Assistance (DMA) to conduct post-payment reviews of Medicaid paid claims, notified Petitioner that a review of her claims for outpatient specialized therapy services revealed documentation deficiencies resulting in an overpayment in the amount of $3,958.20. The deficiencies noted by CCME were:

- Noncompliance with service documentation requirements
- Noncompliance with plan of care requirements

Petitioner appealed CCME's recoupment decision and requested a reconsideration review.

3) The *North Carolina Administrative Code,* at Title 10A, Chapter 22, Subchapter F, provides authority for Program Integrity to conduct investigations of providers in order to ensure compliance with Medicaid laws, regulations, policies, and guidelines, and 10A NCAC 22F .0103(b)(5) specifically provides DMA with the authority to recoup "improperly paid claims."

4) All providers wishing to participate in the North Carolina Medicaid program are required to sign a "Provider Administrative Participation Agreement" requiring them to abide by specific terms and conditions listed within the agreement, including an agreement in section 3 of that contract to operate and provide services in accordance with state laws and regulations, medical coverage policies of the Department, and all guidelines, policies, provider manuals, implementation updates, and bulletins published by CMS, the Department, its divisions and/or its fiscal agent in effect at the time the service is rendered.

5) DMA's policies regarding outpatient specialized therapies can be found in DMA's Clinical Coverage Policy 10A, *Outpatient Specialized Therapies.*

6) The following information was submitted to Respondent's Hearing Office for the review:
   - CCME recoupment letter dated October 24, 2011
   - Petitioner's request for reconsideration dated November 11, 2011
   - CCME review summary dated January 19, 2012
   - Copies of Petitioner's treatment records for recipient Mark B.

7) Prior to the review, CCME submitted a 'Review Summary' to Respondent's Hearing Office explaining the basis for the recoupment request and including supporting references from Medicaid's *Clinical Coverage Policy 10A.* Portions of CCME's review summary are included below:

> One recipient was re-reviewed and all service documentation was found to be non-compliant with policy guidelines. All daily therapy notes lacked the complete date of service (the year) and the duration of each service in minutes, per Sections 7.2d and e There was no note at all to document any treatment performed on 12/15/10, per Sections 7.2a, d, e and f.
>
> Additionally, there was no therapy plan of care to cover the dates reviewed, per Sections 5.1b and 7.2b. While goals addressed for the period reviewed are listed on page 3, it appears that this page was written on 2/1/11, as it contains progress on these goals as of 2/11/11 and also lacks all the requirements of a plan of care, as specified in Section 5.1d

Addendum 1/19/12: The newly submitted therapy plan of care meets the requirements of the current review. However, the daily therapy notes submitted upon appeal differed from the originally submitted daily therapy notes and the provider reported that she created the "corrected documents" after the initial review Medicaid Clinical Coverage Policy 10A, Attachment A specifies that "reimbursement requires compliance with all Medicaid guidelines"; therefore, documentation is expected to be in proper policy formal at the time services are billed. All dates reviewed remain non-compliant with the documentation standards for the service documentation.

CCME Recommendation:

CCME recommends that the DHHS Hearing Office uphold the original request for recoupment.

8) At the review, Ms. Browning presented the information in CCME's review summary (see above). Ms. Browning stated that the resubmitted therapy plan of care was compliant, but that the daily treatment notes did not include the length of treatment sessions in minutes. Ms. Browning recommended that the recoupment be upheld.

9) In response, Petitioner admitted that the reviewed claim documents did not include items required by DMA clinical policy, but the documents do clearly demonstrate the multiple deficits of the recipient (a 12 year old child with Down's syndrome, language deficiencies and an inability to properly chew food) and several individualized treatment goals she formulated for treatment. Petitioner further stated that she cannot afford to lose a substantial amount of money as a solo practitioner for failure to follow technicalities of documentation.

CONCLUSIONS OF LAW

1) The parties properly are before the Office of Administrative Hearings.

2) There is no question that Petitioner furnished speech language pathology therapy services to the audited recipient. However, the daily treatment notes do not identify the duration of the twice-weekly treatment sessions, as required by DMA Clinical Policy No. 10A.

FINAL DECISION

Respondent’s recoupment against Petitioner in the amount of $3,958.20 is supported by the evidence and is **affirmed.**

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