

STATE OF NORTH CAROLINA

COUNTY OF DAVIDSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR11180

DAVID KEITH TRAYFORD Petitioner, v. DIVISION OF MEDICAL ASSISTANCE VIA ADMINISTRATIVE HEARING OFFICE Respondent.	FINAL DECISION
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THIS CAUSE came on for hearing before the undersigned Administrative Law Judge J. Randall May on May 30, 2013 in High Point, North Carolina.

APPEARANCES

For Petitioner: David Keith Trayford LPA, LPC
110 Woodhaven Drive
Lexington, NC 27295

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

ISSUE

Whether DMA substantially prejudiced Petitioner's rights, exceeded its authority and jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it terminated Petitioner's participation in the NC Medicaid program as a provider of outpatient behavioral health services.

APPLICABLE STATUTES AND RULES

42 U.S.C. §§ 1396a - 1396v, generally;
42 C.F.R. Parts 455 and 456, generally;
N.C. Gen. Stat. Ch. 108A, Article 2, Parts 1 and 6;
N.C. Gen. Stat. § 150B-22 *et seq.*;
10A N.C.A.C. 22F *et seq.*;

10A N.C.A.C. 27G *et seq.*;
DMA Clinical Coverage Policy 8C;
DMA Basic Medicaid Billing Guide;
N.C. State Plan for Medical Assistance; and
Medicaid Provider Administrative Participation Agreement.

EXHIBITS

Respondent's Exhibits 1 – 12 were admitted into evidence.
Petitioner's Exhibits A and C were admitted into evidence.

WITNESSES

M. Kimberly Carter, DHSS/DMA
David Keith Trayford

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence, or 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 of witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. At all times material to this matter, Petitioner, David Keith Trayford, was an enrolled provider 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. *See*, Medicaid Participation Agreement (Respondent's Ex. 5).
2. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[b]e licensed, certified, registered, accredited and/or endorsed as required by State and/or Federal laws and regulations, and NC DHHS policies and procedures at all times that services are provided." (Respondent's Ex. 5)
3. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[n]otify the Department within seven (7) calendar days of learning of any adverse action initiated against the license, certification, registration, accreditation and/or endorsement of the Provider or any of its officers, agents, or employees." (Respondent's Ex. 5).

4. By entering into the Medicaid Participation Agreement, Petitioner agreed that Respondent may terminate the participation agreement if “[t]he Provider fails to meet conditions for participation, including licensure, certification, endorsement or other terms and conditions stated in this Agreement, . . .”(Respondent’s Ex. 5).
5. By entering into the Medicaid Participation Agreement, Petitioner agreed “. . . to operate and provide services in accordance with all federal and state laws, regulations and rules, and all policies, provider manuals, implementation updates, and bulletins published by the Department, its Divisions and/or its fiscal agent in effect at the time the service is rendered, which are incorporated into this Agreement by reference.” (Respondent’s Ex. 5).
6. This matter involves the termination of the Petitioner from the NC Medicaid program due to the suspension of his license as a Licensed Psychological Associate “LPA” and his failure to report said suspension to the Respondent. (Respondent’s Ex. 10).
7. M. Kimberly Carter, a Supervisor in the Provider Services Section of the NC Division of Medical Assistance, testified on behalf of Respondent.
8. Ms. Carter testified that since his enrollment as a Medicaid Provider, Petitioner had only been assigned one (1) Medicaid provider number, that being 6107456.
9. Ms. Carter testified that the Medicaid provider number 6107456 fell in the range of Medicaid provider numbers for LPA’s. (Respondent’s Ex.1).
10. Ms. Carter testified that, despite the allegations of the Petitioner, only one Medicaid provider number was ever assigned to the Petitioner and that if Petitioner was enrolled as a Licensed Professional Counselor “LPC,” he would have been assigned a separate Medicaid provider number in the range for LPCs. (Respondent’s Ex.1).
11. DMA Clinical Coverage Policy 8C, which governs both LPAs and LPCs, requires that licensed professionals shall be direct-enrolled with Medicaid, which means that one Medicaid provider number is assigned to each professional designation, such as LPA or LPC. (Respondent’s Ex. 2).
12. The Basic Medicaid and NC Health Choice Billing Guide, “[p]roviders must be licensed, accredited, endorsed and/or certified according to the specific laws and regulations that apply to their service type” and that “[a]ll providers are responsible for maintaining the required license, endorsement, and accreditation specific to their provider type to remain qualified as NC Medicaid/Health Choice providers and are required to notify DMA immediately is a change in status occurs.” (Respondent’s Ex. 4).
13. On July 19, 2012, Petitioner entered into a Consent Order with the North Carolina Psychology Board wherein Petitioner consented to his license as an LPA being

- suspended until such time as he completed a number of conditions for his reinstatement. (Respondent's Ex. 7).
14. Petitioner failed to notify Respondent of the suspension of his LPA license; to the contrary, Respondent was notified directly by the North Carolina Psychology Board. (Respondent's Ex. 6).
 15. Upon receipt of this notification, Respondent terminated Petitioner's participation as a Medicaid provider. (Respondent's Ex. 6).

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. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-12.
3. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[b]e licensed, certified, registered, accredited and/or endorsed as required by State and/or Federal laws and regulations, and NC DHHS policies and procedures at all times that services are provided."
4. By entering into the Medicaid Participation Agreement, Petitioner agreed to "[n]otify the Department within seven (7) calendar days of learning of any adverse action initiated against the license, certification, registration, accreditation and/or endorsement of the Provider or any of its officers, agents, or employees."
5. By entering into the Medicaid Participation Agreement, Petitioner agreed that Respondent may terminate the participation agreement if "[t]he Provider fails to meet conditions for participation, including licensure, certification, endorsement or other terms and conditions stated in this Agreement, . . ."
6. By entering into the Medicaid Participation Agreement, Petitioner agreed ". . . to operate and provide services in accordance with all federal and state laws, regulations and rules, and all policies, provider manuals, implementation updates, and bulletins published by the Department, its Divisions and/or its fiscal agent in effect at the time the service is rendered, which are incorporated into this Agreement by reference."
7. Clinical Coverage Policy 8C was adopted according to the procedures set forth in N.C.G.S. § 108A-54.2 (2009).
8. Medicaid Clinical Coverage Policy 8C contains enrollment and documentation requirements for providers who provide Outpatient Behavioral Health Services, including LPAs and LPCs.

9. Medicaid Clinical Coverage Policy 8C requires that licensed professionals shall be direct-enrolled with Medicaid, which means that one Medicaid provider number is assigned to each professional designation, such as LPA or LPC. *See*, Medicaid Clinical Coverage Policy 8C, 6.1.
10. The Basic Medicaid and NC Health Choice Billing Guide requires that, “[p]roviders must be licensed, accredited, endorsed and/or certified according to the specific laws and regulations that apply to their service type” and that “[a]ll providers are responsible for maintaining the required license, endorsement, and accreditation specific to their provider type to remain qualified as NC Medicaid/Health Choice providers and are required to notify DMA immediately is a change in status occurs.”
11. Respondent has met its burden of proof in establishing that the termination of Petitioner’s Medicaid Provider Participation Agreement was proper.
12. The court finds that Ms. Carter’s testimony as to the Petitioner being enrolled to provide Medicaid services solely as an LPA is credible.
13. The Petitioner was assigned one Medicaid Provider Number (6107456), which number clearly designated Petitioner as an LPA and which was the only Medicaid Provider Number used on all communications between the parties.
14. The Petitioner has been suspended from practice as an LPA, and accordingly, cannot fulfill the terms and conditions of the Medicaid Provider Agreement or the Basic Medicaid and NC Health Choice Billing Guide, as he is no longer able to provide services as an LPA to Medicaid recipients.
15. The Petitioner breached the terms of the Medicaid Provider Agreement and the Basic Medicaid and NC Health Choice Billing Guide by failing to notify Respondent of the suspension of his LPA license.
16. 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 terminated Petitioner’s participation as a provider in the North Carolina Medicaid program.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Respondent properly terminated Petitioner's participation as a provider in the North Carolina Medicaid Program, and the decision of the DHHS Hearing Officer is therefore **AFFIRMED**.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-I, 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 22nd day of August, 2013.

J. Randall May
Administrative Law Judge