

STATE OF NORTH CAROLINA
COUNTY OF LENOIR

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 14222

NEOGENESIS, LLC)
)
Petitioner,)
)
v.)
)
NC DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, DIVISION OF)
MEDICAL ASSISTANCE AND ITS AGENT)
EASTPOINTE HUMAN SERVICES LOCAL)
MANAGEMENT ENTITY ,)
)
Respondent.)

FINAL DECISION

On April 2, 2014, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Lenoir County, North Carolina. On May 12, 2014, the undersigned issued an Order ruling that Respondent Eastpointe Human Services acted properly, used proper procedure, acted as required by law or rule; did not deprive Petitioner of property, exceed its authority or jurisdiction, or act arbitrarily or capriciously; and did not otherwise substantially prejudiced Petitioner's rights when it terminated Petitioner's Medicaid contract to provide Medicaid services in Eastpointe's catchment area for providing false and misleading information in its application to Eastpointe. The undersigned further denied Petitioner's pretrial Motion for Attorney's Fees based on the preponderance of the evidence produced at hearing.

APPEARANCES

For Petitioner: Knicole C. Emanuel, Esq., Williams Mullen, 301 Fayetteville St., Ste. 1700, Raleigh, N.C. 27601

For Respondent Eastpointe Human Services: Jose A. Coker, Esq., The Charleston Group, P.O. Box 1762, Fayetteville, N.C. 28302-1762

For Respondent NC DHHS: Thomas J. Campbell, Esq., Assistant Attorney General, Public Assistance Section, N.C. Department of Justice, P.O. Box 629, Raleigh, N.C. 27602-0629

ISSUES

1. Whether Petitioner made materially false or misleading statements in its attestation and enrollment application to Eastpointe Human Service ("Eastpointe")?

2. Whether Eastpointe erred, exceeded its authority or jurisdiction, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in terminating Petitioner's contract to provide Medicaid services in Eastpointe's catchment area?

3. Whether Petitioner is entitled to reasonable attorney's fees pursuant to N.C.G.S. § 150B-33(b)(11)?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

Exhibit 1	July 26, 2012	ECBH letter to K. Britton
Exhibit 2	August 2, 2012	ECBH letter to K. Britton
Exhibit 3	August 16, 2012	NeoGenesis letter to ECBH
Exhibit 4	September 11, 2012	ECBH's Reconsideration Decision
Exhibit 6	October 11, 2012	ECBH letter to NeoGenesis
Exhibit 7	November 2, 2012	ECBH's Reconsideration Decision
Exhibit 8	September 18, 2012	Eastpointe Provider Enrollment Application
Exhibit 9	May 30, 2013	Eastpointe's termination letter to NeoGenesis

For Respondent Eastpointe:

Exhibit 1	December 3, 2012	Eastpointe Procurement Contract for Provision of Services-Agency
Exhibit 2	January 1, 2013	Eastpointe Provider Operations Manual

WITNESSES

For Petitioner: Kendrick Britton, Clinical Director and Owner of NeoGenesis, LLC

For Respondent Eastpointe: Karen Salacki, Chief of External Operations for Eastpointe Human Services

FINDINGS OF FACT

1. Petitioner is a North Carolina Limited Liability Company that provides mental health, developmental disabilities and substance abuse services to Medicaid recipients within the catchment areas of East Carolina Behavioral Health (“ECBH”) and Eastpointe.

2. Respondent North Carolina Department of Health and Human Services, Division of Medical Assistance (“DHHS”) is the agency responsible for operating the State’s Medicaid Plan under N.C.G.S. § 180A-54. Respondent Eastpointe is a managed care organization (“MCO”) that manages, coordinates, facilitates and monitors the provision of state and federal Medicaid-funded mental health, intellectual, and developmental disabilities and substance abuse services for members in the Eastpointe catchment area. Residents of Bladen, Columbus, Duplin, Edgecombe, Greene, Lenoir, Nash, Robeson, Sampson, Scotland, Wayne, and Wilson are eligible members for the Eastpointe MCO. (Resp. Ex. 2, p. 8)

3. DHHS delegates responsibilities to manage the 1915(b) & (c) Medicaid Waiver to local management entities/managed care organizations such as ECBH and Eastpointe.

4. By letter dated July 26, 2012, ECBH notified Petitioner that it was out of compliance with sixteen requirements of its contract with ECBH, and therefore, was terminating its contract with Petitioner effective August 25, 2012. (P. Ex. 1).

5. In the July 26, 2012 letter, ECBH further notified Petitioner that it was: (i) “responsible for the transition of all consumers currently enrolled and being served” “prior to August 25, 2012,” and (ii) not allowed to admit any new consumers for service during the transition period. (P. Ex. 1).

6. By letter dated August 2, 2012, ECBH reiterated its termination of Petitioner’s contract effective August 25, 2012. (P. Ex. 2). On September 11, 2012, and November 2, 2012, ECBH upheld its decision to terminate Petitioner’s contract through First Level and Second Level Peer Review Panels. (P. Ex. 4 & 7).

7. Although Petitioner disagreed with ECBH’s termination of its contract, Petitioner transitioned its consumers in accordance with ECBH’s termination directive. (T. p. 41, 61, 64).

8. Due to ECBH’s termination of its contracts with Petitioner, Petitioner’s consumers decreased, and Petitioner’s business was negatively impacted. (T. p. 75). Eastpointe did not cause this. (T. p. 75).

9. On September 18, 2012, Petitioner submitted an application (“Eastpointe Provider Enrollment Application”) to become a member of Eastpointe’s Provider Network. (P. Ex. 8)

10. As part of the application process, Petitioner executed an Authorization to File Enrollment Application which read as follows:

To the best of my knowledge, my Agency is able to meet all requirements necessary to apply for Eastpointe Enrollment. I am submitting the attached Eastpointe Provider Enrollment Application, which, to my knowledge, is a true and complete representation of the requested materials.

(P. Ex. 8) (T. p. 68).

11. Question Twelve (12) of that Application stated:

Have you ever had a contract cancelled by another LME/Area Authority/County Program in North Carolina or similar entity in another state?[:] If yes, attach explanation.

Petitioner responded “No” to that question without any explanation of its answer. (P. Ex. 8) (T. pp. 70-71)

12. Before completing the Eastpointe Provider Enrollment Application, Petitioner retained a consulting firm to review question no. 12, because of its significance. (T. p. 86, 88-89, 101-102). Kendrick Britton, the owner of Petitioner, asked the consulting group how should they answer question number 12 on Eastpointe’s application since Petitioner had appealed ECBH’s termination of its contract with Petitioner.

13. The consulting group advised Petitioner that termination is not final till the appeal is over, and that Petitioner wasn’t making a false statement when it answered “no” to question number 12.

14. Petitioner never contacted Eastpointe to seek clarification or guidance regarding Question No. 12. (T. p. 86).

15. Petitioner also executed and submitted an Attestation Statement, dated September 27, 2012, as part of its application that read:

All information submitted by [Petitioner] in this application, as well as any attachments, or supplemental information, is true, current, and complete to my best knowledge and belief as of the date of the signature below. I fully understand that any significant misstatement in this application may constitute cause for denial or termination of a resulting participation agreement.

(P. Ex. 8) (T. p. 69).

16. The Attestation Statement on the Eastpointe application further provided: "I further agree to notify Eastpointe in a timely manner (not to exceed 30 days) of any changes to the information requested on the initial application." (P. Ex. 8).

17. On November 28, 2012, Petitioner signed a Procurement Contract for Provision of [Medicaid] Services (the "Contract") with Eastpointe in Eastpointe's catchment area. (R. Ex. 1).

18. Based on the representations made by Petitioner in its application, Eastpointe entered into the Contract with Petitioner. The effective date of the Contract was January 1, 2013 through June 2014. (R. Ex. 1). (T. p. 114, 152).

19. Article II, Section 4 of the Contract provided:

[Neogenesis] must report to EASTPOINTE any sanctions under the Medicare or Medicaid programs, including paybacks, lawsuits, insurance claims, or payouts, as well as adverse actions by regulatory agencies within the previous five (5) years. This information must be disclosed to EASTPOINTE at the time of Contract signature.

(R. Ex. 1).

20. Petitioner contractually agreed that Eastpointe could terminate its contract for any significant misstatement. (T. p. 112-113).

21. Petitioner had an affirmative duty to disclose information so that Eastpointe could ensure that Petitioner was an eligible and compliant provider able to participate in the Medicaid program. (T. p. 111-112, 126).

22. Eastpointe first became aware of ECBH's termination of Petitioner's contract in May 2013. (T. p. 122).

23. A subsequent review of Petitioner's application revealed that Petitioner provided materially false and misleading information to Eastpointe concerning Petitioner's prior contract termination by ECBH. (T. p. 123)

24. Petitioner did not notify Eastpointe that ECBH terminated Petitioner's contract effective August 25, 2012. Petitioner provided false and misleading representations to questions 6, 9, 12, and 17 of the Eastpointe Provider Enrollment Application. (T. p. 111, 123-124)

25. After careful consideration of Petitioner's false and misleading representations on the Eastpointe Provider Enrollment Application, Eastpointe terminated Petitioner's contract, effective June 30, 2013, by issuing Petitioner a Notice of Termination letter dated May 30, 2013. (T. p. 130).

26. Petitioner had “twenty (20) calendar days” to submit a written request for appeal and all supporting documentation to “Eastpointe Grievance and Appeals Department.” (P. Ex. 9) (R. Ex 2).

27. Petitioner did not appeal that termination to Eastpointe’s Grievance and Appeals Department. (T. p. 73).

28. On June 24, 2013, Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings (“OAH”) claiming that DHHS, through its agents ECBH and Eastpointe, improperly terminated Petitioner’s contracts to provide Medicaid services within their respective catchment areas.

29. By *ex parte* Order dated July 30, 2013, the undersigned granted Petitioner’s Motion for Temporary Restraining Order (“TRO”) under Rule 65 of the North Carolina Rules of Civil Procedure.

30. As a condition of the TRO, Petitioner was required to pay a \$10,000 bond on or before August 2, 2013.

31. By Order dated July 31, 2013, the undersigned entered a Final Decision, Order of Dismissal, dismissing this “contested case petition, *with prejudice*, against Respondent ECBH . . . regarding the claims involving ECBH’s termination of Petitioner’s Medicaid contracts.”

32. On August 7, 2013, the undersigned heard Petitioner’s Motion for Preliminary Injunction, took the Motion for Preliminary Injunction under advisement, and extended the July 30, 2013 TRO still subject to the requirement of a \$10,000 bond.

33. By *ex mero motu* Order dated August 14, 2013, the Court further extended the July 30th TRO until September 13, 2013.

34. On August 19, 2013, Eastpointe filed an Objection and Motion to Vacate the Temporary Restraining Order.

35. On or about August 21, 2013, Petitioner paid the bond to secure the July 30, 2013 TRO.

36. On August 23, 2014, Petitioner filed a Verified Motion to Show Cause for Civil Contempt, Motion for Enforcement of Temporary Restraining Order, and a Motion for Attorney’s Fees.

37. By Order dated August 29, 2013, the undersigned denied both Eastpointe’s Motion to Vacate the Temporary Restraining Order, and Petitioner’s Motion for Show Cause for Civil Contempt, Motion for Enforcement of Temporary Restraining Order, and Motion for Attorney’s Fees. Further, the Court granted Petitioner’s Preliminary Injunction effective August 29, 2013.

38. At all times relevant, Eastpointe provided Petitioner a Calcium Calendar that allowed Petitioner to schedule appointments with consumers screened through Eastpointe.

39. Petitioner was responsible for setting up slots on the Calcium Calendar as only the provider can set up slots on that calendar. (T. p. 80, 134, 137, 138, 140).

40. In January 2014, Petitioner had four slots open on the Calcium Calendar; three of the slots were filled. Petitioner did not have any slots set up for February, March, or April 2014. (T. p. 139).

41. Before July 30, 2013, Petitioner had four consumers. By April 2014, Petitioner had nine consumers. (T. p. 76).

42. The majority of Petitioner's consumers were primarily walk-ins and not referrals from Eastpointe. (T. p. 78).

43. Eastpointe never refused services or referrals to Petitioner. Eastpointe paid Petitioner every time it submitted invoices for payment for services rendered. (T. p.82, 102).

44. Eastpointe never refused to comply with the Court's injunction nor did it treat Petitioner differently from other providers in its catchment area. (T. p. 140).

45. Petitioner has neither presented any evidence of any action taken by DHHS against Petitioner, nor has it requested any relief from DHHS in this case.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 126 and 150B of the North Carolina General Statutes. The parties have been given proper notice of the hearing.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law contain Findings of Fact, they should be so considered without regard to the given labels.

3. N.C. Gen. Stat. §108C-12 requires this tribunal to issue a final agency decision within 180 days of the date of filing of the contested case petition. "The time to make a final decision shall be extended in the event of delays caused or requested by the Department."

4. Because Respondent requested a continuance, and the parties jointly requested continuances in this case, the time for making the final agency decision was extended both as a result of and at the request of the Agency. Under N.C. Gen. Stat. § 108C-12, this final decision is timely.

5. Eastpointe complied with the terms of the preliminary injunction entered in this case and maintained the status quo.

6. N.C.G. S. § 108C-9(a) provides:

Applicants who submit an initial application for enrollment in North Carolina Medicaid . . . shall be required to submit an attestation and complete trainings prior to being enrolled.

7. Pursuant to N.C.G.S. § 108C-9(d), Eastpointe can terminate or deny a provider who has made “any materially false or misleading statement in an attestation or enrollment application.”

8. Petitioner had an affirmative duty to disclose the terminations by ECBH to Eastpointe at the time it submitted its application, and it did not. The fact that ECBH's termination was on appeal had no effect on the effective date of ECBH's termination of its contract with Petitioner. That is, ECBH's contract with Petitioner terminated on the effective date of termination, regardless whether Petitioner appealed that termination or not. Not disclosing the termination hindered Eastpointe's ability to fully investigate Petitioner's application.

9. Petitioner provided materially false and misleading representations in its Eastpointe Provider Enrollment Application, which are grounds for Eastpointe terminating Petitioner's Contract.

10. Eastpointe did not substantially prejudice the rights of Petitioner or act arbitrarily or capriciously in terminating Petitioner's Contract. Thus, Petitioner is not entitled to reasonable attorney's fees against Respondents pursuant N.C.G.S. § 150B-33(b)(11).

11. Based on the preponderance of the evidence, Respondents have met their burden of proof that they did not substantially prejudice Petitioner's rights, exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act in violation of Constitutional provisions, fail to act as required by law, act arbitrarily or capriciously, and/or abuse their discretion when Eastpointe terminated Petitioner's contract for providing false and misleading information in its application to Eastpointe.

12. Petitioner failed to show that Respondents (1) deprived Petitioner of property, (2) otherwise substantially prejudiced Petitioner's rights, (3) exceeded its authority or jurisdiction, (4) acted erroneously, (5) failed to use proper procedure, (6) acted arbitrarily or capriciously; or (7) failed to act as required by law or rule. N.C.G.S. § 150B-23(a).

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent Eastpointe's termination of its contract with Petitioner. The preliminary injunction is hereby dissolved, and Petitioner's pretrial Motion for Attorney's Fees is **DENIED**.

NOTICE

Under the provisions of N.C. Gen. Stat. §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 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 26 N.C. Admin. Code 03.012, and the Rule of Civil Procedure, N.C. Gen. Stat. §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 the 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 Hearing at the time the appeal is initiated in order to ensure the timely filing of the record.

This 9th day of June, 2014.

Melissa Owens Lassiter
Administrative Law Judge