

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DHR 1594

FIDELITY COMMUNITY SUPPORT
GROUP, INC.,

Petitioner,

v.

ALLIANCE BEHAVIORAL HEALTHCARE,
as legally authorized contractor of and agent for
N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Respondent.

AMENDED FINAL DECISION

THIS MATTER came on for hearing before the undersigned, Donald W. Overby, Administrative Law Judge, on December 10, 2014 in Raleigh, North Carolina. A Final Decision was issued by the Undersigned on April 2, 2015. This Revised Final Decision is intended to correct typographical errors in the second paragraph of the Decision Section, whereby the name Carolina Community was inadvertently used in place of Fidelity and on page 8 in the Findings of Fact, whereby the principal place of business of Petitioner Fidelity Community Support Group, Inc. was inadvertently identified as Raleigh, North Carolina when it should have been identified as Durham, North Carolina. The entire Final Decision is not set forth herein, and those portions not specifically set forth are not affected by this Amended Final Decision, and remain in full force and effect.

APPEARANCES

For Petitioner Fidelity Community Support Group, Inc. ("Petitioner" or "Fidelity"):

Robert A. Leandro

Parker Poe Adams & Bernstein, LLP

301 Fayetteville Street, Suite 1400

Raleigh, North Carolina 27601

For Respondent Alliance Behavioral Healthcare *as legally authorized contractor and agent for* the North Carolina Department of Health and Human Services ("Alliance"):

Joseph T. Carruthers

Wall Esleeck Babcock

1076 West Fourth Street, Suite 100

Winston-Salem, North Carolina 27101

APPLICABLE LAW

The laws and regulations applicable to this contested case are N.C. Gen. Stat. Chapter 108C, Article 3 of N.C. Gen. Stat. Chapter 150B, and 42 C.F.R. § 438.214.

FINDINGS OF FACT

1. Petitioner Fidelity is a provider of mental health and behavioral health services with its principal place of business in Durham, North Carolina. Fidelity assists consumers, including Medicaid recipients, at home, in school, and in the community in preventing, overcoming, and managing functional deficits caused by mental health issues and developmental delays.

BURDEN OF PROOF

Under N.C. Gen. Stat. § 108C-12(d), Respondent Alliance has the burden of proof in this contested case.

35. Based on the Findings of Fact, there is no basis for Alliance to terminate Fidelity's participation in these Medicaid program and ability to operate as an agency-based CABHA provider in the Alliance network. Fidelity should have received passing desk review and interview scores. The Alliance RFP process was not conducted in a manner that complied with federal law, the State Contract requirements, or Alliance's own policies and procedures. Further, in the desk review Alliance erred in the manner it calculated Fidelity's SAIOP and IIH scores.
36. Fidelity has met every standard to continue to be a provider of IIH, CST, and SAIOP services in the Alliance Network. But for the erroneous and legally improper RFP decision, Fidelity could still participate in these Medicaid program and could still qualify as a CABHA.
37. Alliance's decision to terminate Fidelity's ability to participate in these Medicaid programs as an agency-based CABHA provider was in excess of Alliance's authority, erroneous, in violation of the law and Alliance's own policies and procedures, and arbitrary and capricious. N.C. Gen. Stat. § 150B-23(a).

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that Respondent substantially prejudiced Petitioner's rights, acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, and failed to act as required by law or rule in its decision to terminate Fidelity as a provider of CST, IIH, and SAIOP services in the Alliance service area. The Undersigned also finds that the RFP process itself violated procedure and law and was arbitrary and capricious in its design and implementation. Respondent's decision is hereby **REVERSED**.

Alliance is accordingly ordered to disregard its RFP findings and treat Fidelity as it would any other provider that was offered a contract extension based on the RFP process. Based on the evidence in the record, this means that Fidelity should be allowed to continue to provide these services until such time as Alliance determines that Fidelity should not be retained in its network based on the requirements of federal law, the State contract, and its own policies as interpreted herein.

This Court further finds that reasonable attorney's fees should be awarded to Petitioner pursuant to N.C. Gen. Stat. § 150B-33(b)(11). As set forth above, Respondent's decision was arbitrary and capricious and substantially prejudiced Petitioner.

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 where the person aggrieved by the administrative decision 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 03.0102, 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 enclosed in a wrapper addressed to the person to be served and placed in an official depository of the United States Postal Service, as evidenced by the postmark date of the wrapper.

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.

Entered, *nunc pro tunc*, the 2nd day of April 2015.

This Revised Final Decision signed and entered this the 28th day of April, 2015

Donald W. Overby
Administrative Law Judge