

STATE OF NORTH CAROLINA  
COUNTY OF EDGECOMBE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DHR 01234

<p>Harrold Associates II DDS Nickie Rogerson Petitioner,</p> <p>v.</p> <p>NC Department Of Health And Human Services, DMA Respondent.</p>	<p style="text-align: center;"><b>FINAL DECISION</b></p>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on February 16, 2016 in Halifax, North Carolina. Following an opportunity for the parties to submit post-hearing arguments and proposed orders, this Decision was prepared.

**APPEARANCES**

For Petitioner: Nickie Rogerson, *Pro se*.

For Respondent: Neal T. McHenry  
Assistant Attorney General  
North Carolina Department of Justice  
Raleigh, North Carolina

**ISSUE**

The issue in this matter is whether the North Carolina Department of Health and Human Services, Division of Medical Assistance (hereinafter “DMA”) correctly determined that Petitioner received overpayments totaling \$7,538.10 for providing dental services to beneficiaries who were covered under the Medicaid for Pregnant Women (“MPW”) program after those beneficiaries were no longer pregnant.

**STATUTES AT ISSUE**

N.C. Gen. Stat. §§ 108C-2(1); 108C-12(d); and, 108A-54.

**WITNESSES**

**For Petitioner:** Ms. Nickie Rogerson, Practice Administrator  
Harrold Associates II DDS, P.A.

**For Respondent:** Ms. Paula Blake, RDH, Dental Investigator  
Division of Medical Assistance

## **EXHIBITS**

### **Petitioner's Exhibit**

Petitioner's Exhibit 1 was offered and admitted without objection.

### **Respondent's Exhibits**

The Respondent's Exhibits 1-8 were stipulated to be relevant and admitted.

**UPON DUE CONSIDERATION** of the arguments and stipulations of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, viewed in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and, upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

## **FINDINGS OF FACT**

1. The Respondent's Division of Medical Assistance ("DMA") administers and manages North Carolina's Medicaid Plan and Program. Pursuant to N.C. Gen. Stat. § 108A-54, DMA is authorized to adopt rules, regulations, and policies for program operation.
2. At all times pertinent hereto, Petitioner was an enrolled dental provider in the North Carolina Medicaid Program and entered into a Medicaid Participation Agreement with DMA as part of its enrollment. (Respondent's Ex. 1, hereinafter, "R Ex 1.")
3. By entering into the Medicaid Participation Agreement, Petitioner agreed to "comply with all [F]ederal and [S]tate laws, regulations, and rules, State Medicaid Plan, and policies, provider manuals, and Medicaid bulletins published by [DMA] and/or its fiscal agent in effect at the time the service is rendered," and to "submit claims for services rendered to eligible beneficiaries, as identified by [DMA], in accordance with rules and billing instructions in effect at the time the service is rendered." (R Ex 1, p. 5.)
4. Petitioner and its principal, Dr. James A. Harrold, participated in the North Carolina Medicaid for Pregnant Women program ("MPW") as a service to the community, accepting the substantially lower reimbursement for dental services provided by the Medicaid fee schedule.
5. Medicaid recipients in some eligibility categories were ineligible for dental services. Pregnant Medicaid eligible recipients covered under the Medicaid for Pregnant Women program were identified with the code "MPWN" in online Medicaid records that

- participating dental practices could access, and prior to 2009, received a pink Medicaid identification card.
6. Beneficiaries in the MPW program received gynecological, screening, diagnostic and treatment services during pregnancy and postpartum. Typically, recipients were followed for two or three months following delivery, but for much longer periods if there were complications resulting from the pregnancy or delivery.
  7. Unlike medical and allied health services, the MPW beneficiaries' eligibility for dental services terminated on "the day of delivery." (R Ex 6, p. 8.) However, the online information that the participating dental practices could access did not reflect any change in MPW beneficiaries' status following delivery.
  8. As a practical matter, Petitioner's staff frequently could not rely on visual contact with MPW beneficiaries when they arrived at their dental office to determine if they were pregnant. Consequently, Petitioner's staff routinely inquired of MPW beneficiaries, on each visit, whether they were pregnant. When they were told or were otherwise made aware that a MPW beneficiary was not pregnant, Petitioner's staff did not bill Medicaid.
  9. The Respondent purposefully and designedly blocked dental practices participating in the MPW program, along with the general public, from accessing Medicaid's online records of gynecological and other medical services rendered to MPW beneficiaries which would have aided them in determining whether those patients remained eligible for dental services. As a foreseeable and known consequence, Petitioner was impelled to rely upon the statements of MPW beneficiaries in some instances to determine their eligibility for dental services under the MPW program. The *Basic Medicaid Billing Guide* instructed providers to question patients when their eligibility could not otherwise be determined. (R Ex 7, p. 2-13.)
  10. By 2014, improvements in the computer programs handling the State's Medicaid records made it relatively easy for the Respondent's Program Integrity Unit to query this data and compare the dates when services were rendered for MPW beneficiaries.
  11. In December 2014, Respondent notified Petitioner that a post payment review had "revealed program abuse," evidenced by data showing that 19 MPW beneficiaries during the period January 15, 2009 through June 11, 2012 had received some dental services from Petitioner on dates established to be after their pregnancy, in one instance by two days. (R Ex 2; R Ex 3, p. 1.)
  12. Petitioner's Administrator testified that their records concerning these 19 patients were reviewed following Respondent's notice. It was discovered in the file of the third patient listed in Respondent's Exhibit 3 that the fact that she was no longer pregnant had been noted, but that Petitioner had mistakenly billed Medicaid \$1,073.45 for this MPW beneficiary's treatment.

13. As a part of Petitioner's agreement with DMA, Petitioner agreed "[t]o refund or allow the Department to recoup or recover any monies received in error or in excess of the amount to which the provider is entitled ... regardless of whether the error was caused by the provider or the Department and/or its agents." (R Ex 1, "Provider Enrollment Form," p. 6 of 9.)
14. There is no evidence that any other payment to Petitioner for these services actually rendered was the result of a mistake by either party, or due to any violation of or deviation from any law, regulation, rule, policy, provider manual, Medicaid bulletin, or the State Medicaid Plan.
15. Petitioner timely filed a request for a contested case hearing in the Office of Administrative Hearings. See, *Order Denying Motion to Dismiss*, filed July 17, 2015.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing.
2. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).
3. Petitioner bears the burden of proof in this appeal of an adverse determination by the Respondent to seek to recoup a Medicaid payment. N.C. Gen. Stat. §§ 108C-2(1); 108C-12(d).
4. The uncontroverted evidence shows that Respondent is entitled to recoup \$1,073.45.
5. Petitioner met its burden of showing by a preponderance of the evidence that it has not otherwise received funds in contravention of its agreement with the Respondent.

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

### **DECISION**

**IT IS ORDERED** that the Petitioner shall pay over to the Respondent Department of Health and Human Services, Division of Medical Assistance to sum of ONE THOUSAND SEVENTY-THREE and 45/100 DOLLARS (\$1,073.45).

**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 29th day of April, 2016.

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J Randolph Ward  
Administrative Law Judge