

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DHR 08051

<p>Christopher H Brown, DDS, PA Petitioner,</p> <p>v.</p> <p>NC Department Of Health And Human Services, Division of Medical Assistance Respondent.</p>	<p><b>ORDER GRANTING PARTIAL SUMMARY JUDGMENT</b></p>
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Having reviewed the documents of record, the Undersigned Administrative Law Judge finds and so holds that there is no genuine issue as to any material fact and Petitioner is entitled to judgment as a matter of law based on arguments two and three of Petitioner's Motion for Partial Summary Judgment. For the reasons stated herein, the Undersigned **GRANTS** the Motion for Partial Summary Judgment and **DENIES** the Motion for Summary Judgment.

### **FINDINGS OF FACT**

#### **I. Procedural Background**

1. On or about May 13, 2015, Petitioner Christopher Brown, DDS, PA ("Petitioner") received two notices of overpayment: one for \$3,317.40, and the other for \$2,516.61.
2. Petitioner timely appealed these alleged overpayments, and Respondent Department of Health and Human Services ("DHHS") upheld both alleged overpayments in two, separate decisions dated August 31, 2015 ("Reconsideration Reviews").
3. Petitioner timely appealed the two Reconsideration Reviews to the Office of Administrative Hearings ("OAH").
4. On or about May 4, 2016, Petitioner filed a Motion for Summary Judgment, and, in the alternative, a Motion for Partial Summary Judgment.
5. Petitioner provides dental services to Medicaid enrollees in Hickory, North Carolina, and the surrounding area.
6. Respondent North Carolina Department of Health and Human Services, Division of Medical Assistance ("DMA"), is the single State agency that regulates Medicaid in North Carolina.

7. Public Consulting Group (“PCG”) is an agent of DMA and was contracted to conduct audits of health care providers. PCG conducted both of Petitioner’s audits. (Hereinafter referred to as Audit 1 and Audit 2).

## **II. Jurisdiction**

8. OAH has jurisdiction over this contested case pursuant to N.C. Gen. Stat. § 108C-12 and Chapter 150B of the General Statutes.

9. OAH also has jurisdiction over this contested case based on the State Plan under Title XIX of the Social Security Act, as amended on December 27, 2012.

## **III. Case Facts**

10. The Tentative Notices of Decisions were issued on May 13, 2015.

11. Of the eight claims for recoupment identified in Audit 1, seven claims for recoupment were submitted for reimbursement of claims paid more than three years prior to May 13, 2015. Of the seven claims for recoupment identified in Audit 2, four claims were submitted for reimbursement of claims paid more than three years prior to May 13, 2015.

## **CONCLUSIONS OF LAW**

12. “A three-year statute of limitations applies for any action ‘[u]pon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.’” N.C. Gen. Stat. § 1-52(2).” *Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ.*, 188 N.C. App. 454, 465, 655 S.E.2d 850, 857 (2008) (quoting N.C. Gen. Stat. § 1-52(3)).

13. Statutes of limitation serve an important purpose: to afford security against stale demands. *Congleton v. City of Asheboro*, 8 N.C. App. 571, 574, 174 S.E.2d 870 (1970). The protection of a statute of limitations is particularly important in a case such as this one, as some of the claims pertain to Medicaid consumers that were seen in some cases over five years ago.

14. A total of eleven out of the fifteen claims audited were outside the three-year look-back period. Therefore, these eleven out of fifteen claims are barred by N.C. Gen. Stat. § 1-52(1) as a matter of law.

15. The Medicaid recovery audit contractor program (“RAC” program) disallows review of claims more than three years old.

16. The RAC program is administered by the State (DMA or one of its contractors) to identify overpayments and underpayments and to recoup overpayments. *See* 42 C.F.R. § 455.506. Under 42 U.S.C. § 1396a(a)(42),

the State shall—(i) establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1893(h), subject to such exceptions or requirements as the Secretary may require for purposes of this title or a particular State) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver[].

17. Section 1893(h) referenced in the above excerpt pertains to the Medicare recovery audit contractor program, pursuant to which “the Secretary shall enter into contracts with recovery audit contractors in accordance with this subsection for the purpose of identifying underpayments and overpayments and recouping overpayments under this title with respect to all services for which payment is made under this title.”

18. 42 CFR § 455.506(a) defines a recovery audit contractor as an entity that “...will review claims submitted by providers of items and services or other individuals furnishing items and services for which payment has been made under section 1902(a) of the Act or under any waiver of the State Plan to identify underpayments and overpayment and recoup overpayments for the States.”

19. Under this definition, PCG is a recovery audit contractor.

20. RACs must follow federal and state guidelines to recover overpayments. Pursuant to 42 C.F.R. § 455.508(f), a Medicaid RAC “must not review claims that are older than 3 years from the date of the claim, unless it receives approval from the State.”

21. In order to approve a request from its RAC to review claims that are greater than three years from the date of the claim, a State must first obtain an exception from the three-year look back period from the Centers for Medicare & Medicaid Services (“CMS”) through the State Plan amendment (“SPA”) process, as provided under 42 CFR § 455.516. Similarly, a State must also seek an exception as provided for under section 455.516, if the State decides to structure its RAC program with a look-back period of less than three years.

22. A total of eleven of the fifteen claims audited were outside the three-year look-back period. Of note, Respondent DMA failed to obtain an exception from the three-year look-back period from CMS through the SPA process. Absent an exception, the look-back period cannot exceed three years.

23. In this case, there is no genuine issue of material fact that Respondent DMA failed to comply with the requirements of 42 CFR § 455.508(f) by reviewing claims that are more than three years from the date the claim was filed. Moreover, there is no genuine issue of material fact that Respondent DMA failed to obtain an exception from the three-year look-back period from CMS through the SPA process, as provided under 42 CFR § 455.516.

24. Accordingly, summary judgment in Petitioner's favor should be granted for the following claims from the audit report: Audit 1: (E.G., 2/25/2010), (S.F., 3/25/2010), (B.P., 3/16/2010), (B.S., 10/4/2011), (J.J., 1/10/2012), (S.L., 1/26/2012), (S.L., 2/7/2012), Audit 2: (C.B., 3/25/2010), (S.B., 4/21/2011), (D.V., 7/6/2011), (D.V., 7/12/2011) because there are no genuine issues of fact and Petitioner is entitled to summary judgment as a matter of law.

IT IS SO ORDERED.

This is the 25th day of May, 2016.

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David F Sutton  
Administrative Law Judge