

## **ISSUE**

Is the Department entitled to Summary Disposition following the issuance of a December 23, 2019, Order of Summary Suspension and Notice of Termination of Provider Agreement.

## **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an enrolled provider in the Michigan Medicaid program and agreed to the enrollment conditions found within the Medical Assistance Provider Enrollment & Trading Partner Agreement. (Exhibit 4)
2. On REDACTED 2018, a two-count felony complaint was issued against Petitioner:

COUNT 1: CRIMINAL SEXUAL CONDUCT —  
FOURTH DEGREE

One [Petitioner], late of the County of Saginaw, State

of Michigan, did engage in sexual contact with another person, to-wit: [redacted], using force or coercion to accomplish the sexual contact; contrary to MCL 750.520e(1)(b). [750.520E1A]

**COUNT 2: CRIMINAL SEXUAL CONDUCT —  
FOURTH DEGREE**

One [Petitioner], late of the County of Saginaw, State of Michigan, did engage in sexual contact with another person, to-wit: [redacted], using force or coercion to accomplish the sexual contact; contrary to MCL 750.520e(1)(b). [750.520E1A]

(Exhibit 2)

3. Petitioner pled *nolo contendere* to a third count, Aggravated Assault. (Exhibit 3)
4. On December 23, 2019, the Department issued an Order of Summary Suspension and Notice of Termination of Provider Agreement against Petitioner, effective December 23, 2019. (Exhibit 5)
5. On December 23, 2019, Petitioner's hearing request was received by MOAHR. (Hearing Request)

**CONCLUSIONS OF LAW**

The Administrative Procedures Act (APA) allows parties "an opportunity to present oral and written arguments on issues of law and policy[.]"<sup>1</sup> Pursuant to MCL 24.272(3), a party may pursue a motion for summary disposition to address questions of law that do not involve factual disputes.<sup>2</sup>

MCR 2.116(3) serves as a guide for summary disposition motions under MCL 24.272(3).<sup>3</sup> Pursuant to MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine dispute of material fact among parties to an action and the moving party is entitled to judgment as a matter of law. A motion under MCR 2.116(C)(10) requires the ALJ to consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Rambin v Allstate Ins Co*, 495 Mich 316, 325 (2014). If in doing this the ALJ concludes there is no genuine issue of material fact, then the tribunal should grant the Department judgment as a matter of law. MCR 2.116(C)(10).

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<sup>1</sup> MCL 24.272(3).

<sup>2</sup> *Smith v Lansing Sch Dist*, 428 Mich 248, 256-257; 406 NW2d 825 (1987).

<sup>3</sup> See e.g. *American Community Mutual Ins Co v Commr of Ins*, 195 Mich App 351, 361-363; 491 NW2d 597 (1992).

Furthermore, the Michigan Administrative Code allows for summary disposition under Rule 792.10129, which provides, in pertinent part:

(1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that that any of the following exists:

- (a) There is no genuine issue of material fact.
- (b) There is a failure to state a claim for which relief may be granted.
- (c) There is a lack of jurisdiction or standing.

(2) If the administrative law judge has final decision authority, he or she may determine the motion for summary decision without first issuing a proposal for decision.

(3) If the motion for summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

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As such, this Administrative Law Judge has the authority to hear and decide preliminary dispositive motions and the authority to issue a decision for summary disposition.

MCL 400.111a provides, in pertinent part:

(1) The director of the department of community health, after appropriate consultation with affected providers and the medical care advisory council established according to federal regulations, may establish policies and procedures that he or she considers appropriate, relating to the conditions of participation and requirements for providers established by section 111b and to applicable federal law and regulations, to assure that the implementation and enforcement of state and federal laws are all of the following:

- (a) Reasonable, fair, effective, and efficient.
- (b) In conformance with law.
- (c) In conformance with the state plan for medical assistance adopted under section 10 and

approved by the United States department of  
health and human services.

(Underline added by All)

Pursuant to the June 20, 2019, modification submission of the Medical Assistance Provider Enrollment & Trading Partner Agreement, Petitioner agreed to read the *Medicaid Provider Manual*; comply with the terms and conditions of participation noted in the manual; and comply with the Department's policies and procedures for the Medical Assistance program contained in the manual, provider bulletins, and other program notifications. (Exhibit 4)

The *Michigan Medicaid Provider Manual* governs termination of Medicaid Providers enrollments. It states as follows:

#### SECTION 6 - DENIAL OF ENROLLMENT, TERMINATION AND SUSPENSION

##### 6.1 TERMINATION OR DENIAL OF ENROLLMENT

MDHHS may terminate or deny enrollment in the Michigan Medicaid program. Termination of enrollment means a provider's billing privileges have been revoked and all appeal rights have been exhausted or the timeline for appeal has expired. Denial of enrollment means the provider's application will not be approved for participation in the Medicaid program.

MDHHS must terminate or deny a provider's enrollment in Michigan's Medicaid program for the following reasons:

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- The provider has a federal or state felony conviction within the preceding 10 years of their provider enrollment application, including but not limited to, any criminal offense related to:
  - murder, rape, abuse or neglect, assault, or other similar crimes against persons;
  - extortion, embezzlement, income tax evasion, insurance fraud, and other similar financial crimes;
  - the use of firearms or dangerous weapons; or
  - any felony that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

- The provider has a federal or state misdemeanor conviction within the preceding five years of their provider enrollment application, including but not limited to, any criminal offense related to:
  - any misdemeanor crime listed as a permissive exclusion in 42 USC 1320a-7(b);
  - rape, abuse or neglect, assault, or other similar crimes against persons;
  - extortion, embezzlement, income tax evasion, insurance fraud, or other similar financial crimes; or
  - any misdemeanor that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.

For the purposes of the excluded offenses mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

- a judgment of conviction has been entered against the individual or entity by a federal, state, tribal or local court regardless of whether there is an appeal pending;
- there has been a finding of guilt against the individual or entity by a federal, state, tribal or local court; or
- a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, tribal, or local court.

*Medicaid Provider Manual  
General Information for Providers Chapter  
October 1, 2019, pp 16-18*

MCL 400.111d and MCL 400.111e provides the Director of the Department with the ability to suspend a provider indefinitely or for a term certain if he or she determines that the suspension is necessary to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program. Pursuant to MCL 400.111f, the suspension may be pursued through an emergency action to protect the state's interest in the public health, welfare, or safety; medically indigent individuals; or public funds of the program of medical assistance.

Under the above Medicaid Provider Manual policy, the list of circumstances under which the Department is to terminate or deny a provider's enrollment includes: when the provider has a federal or state felony conviction within 10 years for any criminal offense

relating to murder, rape, abuse or neglect, assault, or other similar crimes against persons; or a federal or state misdemeanor conviction within 5 years for any criminal offense relating to murder, rape, abuse or neglect, assault, or other similar crimes against persons.

The felony complaint against Petitioner indicates two counts of Criminal Sexual Conduct- Fourth Degree. (Exhibit 2) However, the Judgment of Sentence shows that Petitioner pled *nolo contendere* to a third count, Aggravated Assault, in violation of 750.81A. (Exhibit 3) MCL 750.81a(1) states:

(1) Except as otherwise provided in this section, a person who assaults an individual without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

The Department argues that summary disposition is appropriate because there is no issue of material fact, and the Department is entitled to judgment as a matter of law. Petitioner's enrollment as a provider in the Michigan Medicaid program is precluded by the plain language of state law and *Medicaid Provider Manual* policy. Petitioner has a state misdemeanor conviction related to assault within the preceding five years of his provider enrollment application. Specifically, Petitioner pled *nolo contendere* to Aggravated Assault, as evidenced by the Judgment of Sentence. Therefore, the provisions of section 6.1 of the *Medicaid Provider Manual* have been satisfied and the Department must exclude/terminate Petitioner from the Michigan Medicaid program.

Petitioner asserts that there is a question of fact and Petitioner is entitled to a hearing at which time the tribunal should assess Petitioner's veracity regarding the allegations; whether or not there is a genuine issue of material fact as it pertains to the allegation and charge; and the reasons for which Petitioner entered a plea of *nolo contendere* as it pertains to this case. Petitioner also noted that the case does not stem from care provided to a patient, rather the allegations involved a granddaughter that was transporting a patient to and from Petitioner's office. The alleged conduct did not relate to patient care in any way.

Petitioner's argument is without merit. It is uncontested that Petitioner pled *nolo contendere* to Aggravated Assault. The *Medicaid Provider Manual* policy does not make any distinction regarding whether the criminal conviction related to patient care in any way. Similarly, Petitioner's veracity regarding the allegations; whether or not there is a genuine issue of material fact as it pertains to the allegation and charge; and the reasons for which Petitioner entered a plea of *nolo contendere* are not relevant.

Based upon the filings received and the arguments presented, Respondent has shown there is no genuine issue of material fact. It is uncontested that Petitioner pled *nolo contendere* to Aggravated Assault, as evidenced by the Judgment of Sentence.

Pursuant to the above cited section 6.1 of the *Medicaid Provider Manual*, a provider's enrollment in the Michigan Medicaid program must be terminated when the provider has a state misdemeanor conviction within the preceding five years of their provider enrollment application for any criminal offense related to assault. Further, a plea of *nolo contendere* that has been accepted by a state court is considered a conviction of a criminal offense for the excluded offenses listed in that policy. Therefore, Petitioner's enrollment in the Michigan Medicaid program was proper based on his plea of *nolo contendere* to Aggravated Assault. The summary suspension was appropriate to protect the state's interest in the public health, welfare, or safety; and medically indigent individuals. As a result, Respondent's Motion for Summary Disposition should be granted and the summary suspension was proper.

IT IS THEREFORE ORDERED that:

- Respondent's Motion for Summary Disposition is GRANTED.
- The Order of Summary Suspension and Notice of Termination of Provider Agreement issued by the Department on December 19, 2019, effective December 23, 2019, is UPHeld.