

ISSUE

Whether the Departments Orders of Summary Suspension should be upheld.

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 has an ownership/controlling interest in Petitioner 2. (Exhibit (Ex), A, pp 21-22, 25, 27.)
2. Petitioner and Petitioner 2 are enrolled providers in the Michigan Medicaid program. (Ex A, pp 39-43, 46-95.)
3. On February 10, 2020, a felony complaint was issued against Petitioner. The felony complaint charged Petitioner with one count of Medicaid Fraud – False Claim:

COUNT 1: Medicaid Fraud – False Claim

did knowingly make, present, or cause to be made or presented to a state employee or officer a false claim under the social welfare act, being MCL 400.1 et seq; contrary to MCL 400.607(1). [400.6071] Felony: 4 Years and/or \$50,000.00 (Ex A, p 13.)

4. On February 21, 2020, the REDACTED Circuit Court bound Petitioner over for trial in REDACTED County Circuit Court. (Ex A, po 14-15.)
5. On March 30, 2020, the Department issued Orders of Summary Suspension against both Petitioner and Petitioner 2, effective REDACTED, 2020. (Ex A, pp 6-7.)
6. On March 12, 2020, Petitioner's, requested a hearing.

CONCLUSIONS OF LAW

The Administrative Procedures Act (APA) allows parties “an opportunity to present oral and written arguments on issues of law and policy[.]”¹ 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.²

MCR 2.116(3) serves as a guide for summary disposition motions under MCL 24.272(3).³ Pursuant to MCR 2.116(c)(10), summary disposition is appropriate when

¹ MCL 24.272(3).

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

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

there is no genuine dispute of material fact among parties to an action. Pursuant to MCR 2.116(c)(8), summary disposition is appropriate when the opposing party has failed to state a claim on which relief can be granted.

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.

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.

The Social Welfare Act of 1939, 1939 PA 280, (Act) as amended, provides for the summary suspension of Medicaid providers.

MCL 400.111f provides, in pertinent part:

(1) The director may issue an order incorporating a finding that emergency action is required to protect the state's interest, as the state's interest is described in this subsection by the statement of circumstances warranting emergency action, in any of the following: the public health, welfare, or safety; medically indigent individuals; or public funds of the program of medical assistance. Circumstances that warrant emergency action include, but are not limited to, any of the following:

(a) A reasonable belief, determined in accordance with professionally accepted standards, that rendered services for which a provider has submitted claims were medically unnecessary, inappropriate, or of inferior quality, and therefore that the continued participation in the program by the provider or payments to the provider for services constitutes a threat to the public health, safety, or welfare or to the health, safety, or welfare of recipient medically indigent individuals.

(b) A reasonable belief that the provider has violated the Medicaid false claims act, Act No. 72 of the Public Acts of 1977, being sections 400.601 to 400.613 of the Michigan Compiled Laws, the health care false claims act, Act No. 323 of the Public Acts of 1984, being sections 752.1001 to 752.1011 of the Michigan Compiled Laws, or a substantially similar statute of another state or the federal government.

(c) A reasonable belief that the overpayment sought to be recovered pursuant to this section, or pursuant to any other section of this act, is in jeopardy of not being recovered.

(d) A reasonable belief that 10% or \$10,000.00, whichever is less, for a noninstitutional provider, or 10% or \$50,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted at any time during the most recent 12-month period was unsubstantiated or was for services that were noncovered.

(e) A reasonable belief that 10% or \$10,000.00, whichever is less, for a noninstitutional provider, or 10% or \$50,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted at any time during the most recent 12-month period were medically unnecessary, inappropriate, or of inferior quality.

(f) A reasonable belief that 15% or \$15,000.00, whichever is less, for a noninstitutional provider, or 15% or \$75,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted at any time during a consecutive 12-month period, and that 5% or \$5,000.00, whichever is less, for a noninstitutional provider, or 5% or \$25,000.00, whichever

is less, for an institutional provider, of the provider's total program dollar amount for claims submitted during the most recent 12-month period, was for services that were noncovered.

(g) A reasonable belief that 15% or \$15,000.00, whichever is less, for a noninstitutional provider, or 15% or \$75,000.00, whichever is less, for an institutional provider, of the provider's claims submitted at any time during a consecutive 12-month period, and that 5% or \$5,000.00, whichever is less, for a noninstitutional provider, or 5% or \$25,000.00, whichever is less, for an institutional provider, of the provider's total program dollar amount for claims submitted during the most recent 12-month period, was for services that were medically unnecessary, inappropriate, or of inferior quality.

(h) A reasonable belief that the provider is refusing to comply with section 111b(7), (19), or (25).

(5) Upon a determination that circumstances described in subsection (1) exist, the director may issue an order for the summary suspension of payments on pending or subsequent claims, in whole or in part, or for the summary suspension of a provider from participation in the program of medical assistance. The summary suspension shall be effective on the date specified in the order or on service of a certified copy of the order on the provider, whichever occurs later, and shall remain in effect during administrative or judicial proceedings on the suspension. Upon request of a provider, a contested case hearing pursuant to chapter 4 and chapter 6 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 and 24.301 to 24.306 of the Michigan Compiled Laws, shall be commenced not later than 15 days after the summary suspension. If a contested case hearing is requested by a provider relative to an emergency suspension under this section, a hearing shall be held to determine whether the emergency suspension is supported by competent, material, and substantial evidence on the whole record. Under appropriate circumstances, the state department may hold or institute a hearing under section 111c(1), or take an action under section 111d at the same time an action is taken under this section, while an action under this section is pending, or after a decision on an action is made. The presiding officer

may consolidate the 2 hearings into a single proceeding in the interest of economy. However, the director shall not make a final decision in a contested case under section 111c(1) or 111d arising from or related to an emergency action or the circumstances upon which an emergency action was taken.⁴

MCL 400.111d provides, in pertinent part:

(1) Participation as a provider in the program is subject to denial, suspension, termination, or probation on the grounds specified by section 111e. The director may take 1 or more of the following actions:

(a) Refuse to enroll an applicant.

(b) Suspend a provider indefinitely or for a term certain.

MCL 400.111e provides, in pertinent part:

(1) The grounds for action by the director under section 111d(1) and the actions to which they may be applied shall be as follows:

(5) In addition to or in place of the grounds specified in subsection (1), (2), or (3), the director may base an action provided for in section 111d(1)(a), (b), (c), (d), (e), or (f) on his or her judgment that the action is necessary to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program. (Emphasis added.)

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

SECTION 6 – DENIAL OF ENROLLMENT, TERMINATION AND SUSPENSION

6.3 Suspension [Subsection Added 7/1/19]

⁴ MCL 400.111f(1)(a)-(h), (5).

Summary suspension prevents further payment after a specified date, regardless of the date of service (DOS).

If an indication of fraud or Medicaid misuse/abuse is discovered during any of the following, MDHSS considers it as a basis for summary suspension:

- An evaluation of billing practices.
- The prior authorization (PA) process.
- An on-site review of financial and medical records and a written report of this review if filed.
- The construction of a profile to evaluate patterns of utilization of Medicaid beneficiaries served by the provider.
- A peer review of services or practices.
- A hearing or conference between MDHSS and the provider (and counsel, if so requested).
- Indictment or bindover on charges under the Medicaid or Health Care False Claims Act or similar state/federal statute. (added per bulletin MSA 19-03)⁵

Policy 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 or the funds appropriated for the program. The suspension may be pursued through an emergency action.⁶

The Legislature determined the Department must only meet a reasonable belief standard of proof when taking emergency action under the Social Welfare Act.⁷ The rationale for this standard of proof is clear. A temporary suspension of Medicaid enrollment may be necessary to protect the public health, welfare, safety of the medically indigent individuals, or public funds of the program until definitive proceedings are held on the merits.

The Department argues that the evidence presented supports its summary suspension action because there is no issue of material fact, and the Department is entitled to judgment as a matter of law. In support, the Department relies on the felony complaint and the fact Petitioner was bound over for trial on the basis of that complaint. The Department relies on these facts as evidence that its Order of Summary Suspension was

⁵ *Medicaid Provider Manual*, General Information for Providers, October 1, 2019, pp 18-19.

⁶ MCL 400.111f(1).

⁷ MCL 400.111f(1).

necessary “to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program,” as contemplated in MCL 400.111f.⁸

Having considered the parties’ arguments in full, Respondent has shown there is no genuine issue of material fact and has established by a preponderance of the evidence, that its summary suspension was proper under MCL 400.111f.

IT IS THEREFORE ORDERED that:

The Order of Summary Suspension issued by the Department on March 30, 2020, effective April 1, 2020, is **AFFIRMED/UPHELD**.

⁸ *Iqbal Nasir, et al v Michigan Department of Health & Human Services*, Case No 19-004341-AA. The court found that an order of summary suspension of an Appellant’s Medicaid privileges was both warranted, and a lawful exercise of the Department’s authority based upon a District Court’s probable cause finding.