

ISSUE

Whether the Department acted properly when it issued an Order of Summary Suspension to Petitioner on March 3, 2023, effective March 6, 2023.

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 is an enrolled provider in the State of Michigan's Medicaid program. (Exhibit A, pp 25-29, 46-50; Testimony.)
2. On March 28, 2019 and November 27, 2019, Petitioner signed Medicaid Provider Enrollment agreements in which he agreed to comply with all rules and terms of the Medicaid program. (Exhibit A, pp 25-29, 46-50; Testimony.)
3. According to Michigan Medicaid records, including the provider's CHAMPS profile, Petitioner is listed as the 100% owner of Complete Home Services, Inc. (CHS). (Exhibit A, pp 10-13; Testimony.)
4. In 2022, OIG identified CHS as one of the highest paid Home Help Agencies during the review period of January 1, 2018 to December 31, 2021, ranking 182 out of 1,082 Home Help Agency providers. (Exhibit A, p 3; Testimony.) OIG then began an audit of CHS. (*Id.*)
5. On December 20, 2022, OIG's investigator called CHS and spoke to a gentleman named REDACTED who indicated that he was the owner of CHS. (Exhibit A, p 73; Testimony.) When asked about the CHAMPS profile indicating that Petitioner was the owner, REDACTED indicated that Petitioner is his partner but owns only 5% of the company. (*Id.*)
6. Also on December 20, 2022, a Pre-Review Questionnaire (PRQ) and Direct Caregiver List (DCL) were sent to CHS for completion as part of the audit. (Exhibit A, pp 3, 064-065; Testimony.)

7. On January 12, 2023, OIG's investigator called the number listed in the NPI registry for CHS and spoke to Petitioner. Petitioner indicated that REDACTED was the owner of the agency and all inquiries should be sent to him. (Exhibit A, p 73; Testimony.)
8. On February 1, 2023, OIG sent a Facility Ownership Warning letter to CHS, attention REDACTEDREDACTED, indicating that ownership information for CHS must be updated by February 15, 2023. (Exhibit A, p 15; Testimony.) CHS' ownership information was never updated. (*Id.*)
9. OIG's investigator followed up with CHS on December 21, 2022, January 9, 2023, January 13, 2023, January 18, 2023, January 19, 2023, January 24, 2023, January 26, 2023, February 7, 2023, February 10, 2023, February 16, 2023, February 27, 2023, and March 6, 2023 regarding completion of the PRQ, the DCL, and the request for updated ownership information. (Exhibit A, pp 51-74; Testimony.) OIG did not receive a response or documents in response to these inquiries. (*Id.*)
10. On March 2, 2023, the Department issued an Order of Summary Suspension to CHS, REDACTED and Petitioner, REDACTED REDACTED, effective March 6, 2023. (Exhibit A, pp 7-9; Testimony.)
11. On March 15, 2023, Petitioner's request for hearing was received by MOAHR. (Exhibit 1.)

CONCLUSIONS OF LAW

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

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:

(a) The director may take action under section 111d(1)(a), (b), (c), (d), or (f) for a provider's failure to disclose the information required by section 111b(7), (19), or (25).

(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.)

MCL 400.111b provides:

(1) As a condition of participation, a provider shall meet all of the requirements specified in this section except as provided in subsections (25), (26), and (27).

(7) Upon request and at a reasonable time and place, a provider shall make available any record required to be maintained by subsection (6) for examination and photocopying by authorized agents of the director, the department of attorney general, or federal authorities whose duties and functions are related to state programs of medical assistance under title XIX. If a provider releases records in response to a request by the director made under section 111a(13) or in compliance with this subsection, that provider is not civilly liable in damages to a patient or to another provider to whom, respectively, the records relate solely, on account of the response or compliance.

(19) A provider shall file with the department, on disclosure forms provided by the director, a complete and truthful statement of all of the following:

(a) The identity of each individual having, directly or indirectly, an ownership or beneficial interest in a partnership, corporation, organization, or other legal entity, . . .

(Emphasis added)

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... .

(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.

(Emphasis added)

The *Medicaid Provider Manual* contains Medicaid policy in Michigan. 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.

....

Pursuant to MCL 400.111e, the Medicaid Director may terminate or deny enrollment if that action is necessary to protect the health of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid program. Additionally, the Medicaid Director may reduce or extend a provider's exclusion from the Medicaid program if, in the Medicaid Director's judgment, the continuation or reduction of the exclusion period is necessary to protect beneficiaries or the Medicaid program.

Providers who are already enrolled at the time of a finding by MDHHS will have their enrollment ended as of the date MDHHS was notified of the excluded offense. Claims with dates of service on and after the provider's enrollment termination date will be denied.

*Medicaid Provider Manual General
Information for Providers Chapter
October 1, 2022, pp 15-17 Emphasis
added*

42 CFR 1001.1551 provides, in pertinent part:

(a) Circumstance for exclusion. The OIG may exclude any individual who -

(1) Has a direct or indirect ownership or control interest in a sanctioned entity, and who knows or should know (as defined in section 1128A(i)(6) of the Act) of the action constituting the basis for the conviction or exclusion set forth in paragraph (b) of this section; or

(2) Is an officer or managing employee (as defined in section 1126(b) of the Act) of such an entity.

Should know is defined under 42 U.S.C. 1128A(i)(7), which provides:

(7) The term "should know" means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

In this case, the Department argues that the evidence presented supports its summary suspension action because Petitioner has a direct or indirect ownership or control interest in a sanctioned entity (CHS) and Petitioner knew or should have known about the action leading to the sanction.

Petitioner argues that he should not be sanctioned because he has not been involved with CHS since he left the company in approximately 2013. Petitioner indicated that he only stayed on as the owner to have some leverage over REDACTED who owed him money. Petitioner indicated that he also had no way to access the records the Department sought from CHS, although he did try to get REDACTED to provide the records. Petitioner testified that REDACTED told him right after the Summary Suspension was issued that he was walking away from CHS and no longer wanted anything to do with the company.

Having considered the parties' arguments in full, the Department has established by a preponderance of the evidence, that its summary suspension was proper under MCL 400.111d(1), MCL 400.111e(1)(a), and MCL 400.111e(5).

While the undersigned has great sympathy for Petitioner and his situation, there is no question that he knew or should have known that something was wrong at CHS. Petitioner informed the OIG investigator, and testified at the hearing, that REDACTED had stopped paying him per their agreement and became difficult to contact. Petitioner also indicated to the OIG investigator that he had heard from other people that REDACTED had difficulty paying his employees and has had difficulty with checks bouncing. (Exhibit A, p 75.) Given these facts, Petitioner should have surmised that there were difficulties or irregularities at CHS and taken action to remove himself from the company. Since Petitioner did not take any steps to be removed as the owner of the company, he was a person with a direct ownership interest in a sanctioned entity who knew or should have known, i.e. acted with reckless disregard of the truth or deliberate ignorance of the truth as defined in 42 U.S.C. 1128A(i)(7), of the action that constituted the basis for this sanction, contrary to 42 CFR 1001.1551. As such, the Department properly sanctioned Petitioner under 400.111d(1), MCL 400.111e(1)(a), and MCL 400.111e(5).

As indicated above, MCL 400.111d(1) gives the Director the authority to suspend a provider based on the grounds in MCL 400.111e. Those grounds include failing to make available any record required to be maintained (MCL 400.111e(7)) and disclosing the identity of each owner of the company (MCL 400.111e(19)(a)). Petitioner failed to make the requested records available to the Department, the records are required to be maintained, and Petitioner failed to disclose the identity of the real owner of the company. Also, pursuant to MCL 400.111e(5), the Medicaid Director may terminate or deny enrollment if that action is necessary to protect the health of medically indigent individuals, the welfare of the public, and/or the funds appropriated for the Medicaid

program. Here, given the problems at CHS, the suspension was necessary to protect Medicaid beneficiaries and Medicaid funds.

Having determined that the Department has met its burden, the Department's Order of Summary Suspension is proper and should remain in place.

IT IS THEREFORE ORDERED that:

The Order of Summary Suspension issued by the Department on March 2, 2023, effective March 6, 2023, is **AFFIRMED/UPHELD**.