

ISSUE

Whether the Department acted properly when it issued an Order of Summary Suspension to Petitioner on March 27, 2023, effective March 29, 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. On March 31, 2017; October 6, 2020; October 7, 2020; October 21, 2020; November 30, 2020; January 20, 2021; March 19, 2021; and August 5, 2021, REDACTED REDACTED, on behalf of Petitioner, signed Medicaid Provider Enrollment agreements in which the Provider agreed to comply with all rules and terms of the Medicaid program. (Exhibit A, pp 30-61; Testimony.)
2. According to Michigan Medicaid records, including the provider's CHAMPS profile, REDACTED REDACTED is listed as the 100% owner Petitioner. (Exhibit A, pp 23, 29; Testimony.)
3. On March 23, 2023, the Department issued an Order of Summary Suspension to REDACTED REDACTED, effective March 6, 2023. (Exhibit A, pp 12-13; Testimony.)
4. On March 23, 2023, a Final Order was issued affirming the Department's Summary Suspension of REDACTED REDACTED. (Exhibit A, pp 12-21; Testimony.)
5. On March 27, 2023, The Department issued Petitioner an Order of Summary Suspension as a result of REDACTED REDACTED being Summarily Suspended from participation in the Michigan Medicaid Program. (Exhibit A, pp 7-8; Testimony.)
6. On April 5, 2023, the MOAHR, received from Petitioner, a request for hearing regarding the March 27, 2023, Order of Summary Suspension.

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 400.111f 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)

42 CFR 1001.1001(a)(1)(iii) and (2) provides, in pertinent part:

(a) Circumstance for exclusion. The OIG may exclude an entity:

(1) If a person with a relationship with such entity —

(iii) Has been excluded from participation in Medicare or any State health care program and

(2) Such a person has direct or indirect ownership or control interest in the entity, or formerly held an ownership or control interest in the entity but no longer holds an ownership or control interest because of a transfer of the interest to an immediate family member or member of the person's household in anticipation of or following a conviction, imposition of a civil money penalty or assessment under section 1128A of the Act, or imposition of an exclusion.

In this case, the Department argues that the evidence presented supports its summary suspension action because REDACTED REDACTED was suspended from the Michigan Medicaid Program effective March 6, 2023, and REDACTED is the sole owner of Petitioner.

REDACTED REDACTED argues that Petitioner should not be sanctioned because he, the owner of Petitioner, was not directly involved with some of the operations and that he relied on a Mr. REDACTED to provide certain records to the Department and that at this time he was working to provide the records being requested.

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, the policy is clear in that it gives the Director the authority to suspend Petitioner where the owner has been suspended from the Michigan Medicaid Program so as to protect the health of medically indigent individuals, the welfare of the public, and the funds appropriated for the program.

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 27, 2023, effective March 29, 2023, is **AFFIRMED/UPHELD**.