

ISSUE

Whether the Department properly issued an Order of Summary Suspension to Petitioner on May 12, 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 both the sole owner and a managing employee of REDACTED LLC (REDACTED). (Exhibit A, page 12; Testimony of Petitioner).
2. REDACTED is an enrolled provider in in the Michigan Medicaid Program. (Exhibit A, page 13).
3. REDACTED is also contracted to provide Medicaid services with Pines Behavioral Health (Pines), a Community Mental Health Services Program (CMHSP) affiliated with Southwest Michigan Behavioral Mental Health (SWMBH), a prepaid inpatient health plan (PIHP) under MDHHS. (Exhibit A, pages 25-93; Testimony of Chief Compliance and Privacy Officer).
4. On REDACTED, 2022, there was a gas leak at one of REDACTED's buildings, and no services were provided in the clinic on that day. (Exhibit A, pages 127-129; Testimony of Petitioner).
5. However, REDACTED still billed and received payment for such services for REDACTED 2022. (Exhibit A, pages 101-102, 110; Testimony of Petitioner; Testimony of Chief Compliance and Privacy Officer).

6. Session notes describing services purportedly provided by REDACTED on REDACTED 2022, were also generated. (Exhibit A, pages 114-126).
7. The building remained closed on REDACTED, 2022, and no services were provided in the clinic on that day either. (Exhibit A, pages 127-129; Testimony of Petitioner).
8. However, REDACTED still billed and received payment for such services for REDACTED 2022. (Exhibit A, page 110; Testimony of Petitioner; Testimony of Chief Compliance and Privacy Officer).
9. Session notes, including notes signed by Petitioner as the therapist and billing provider, describing services purportedly provided by REDACTED on REDACTED 2022, were also generated. (Exhibit A, pages 138-150).
10. In September of 2022, while investigating a recipient rights complaint, Pines learned of potentially invalid claims submitted by REDACTED. (Exhibit A, page 21).
11. A compliance officer then contacted the parents or guardians of Medicaid beneficiaries who purportedly received services on REDACTED 2022, and six of the seven contacted stated that no services were received that day because of a reported gas leak, with the seventh stating that services were instead received in the home. (Exhibit A, page 99).
12. On December 2, 2022, Pines formally referred the potential fraud issues to SWMBH. (Exhibit A, pages 22, 99).
13. As part of its review, SWMBH contacted the therapists who were identified from the session notes as providing services on REDACTED 2022, and the therapists stated both that no clinic-based services were provided on REDACTED 2022, and that they did not write service documents for that date. (Exhibit A, pages 132-135, 137; Testimony of Chief Compliance and Privacy Officer).
14. Some of the therapists also indicated that the clinic was also closed on REDACTED 2022, so SWMBH expanded its review and requested the session notes for that date from REDACTED. (Testimony of Chief Compliance and Privacy Officer).
15. Petitioner provided the session notes for REDACTED 2022, on behalf of REDACTED. (Testimony of Petitioner).
16. SWMBH then contacted the therapists who were identified from the session notes as providing services on REDACTED 2022, and the therapists stated that no clinic-based services were provided on REDACTED 2022, and that they did not write service documents for that

date. (Exhibit A, pages 132-135, 137; Testimony of Chief Compliance and Privacy Officer).

17. SWMBH also spoke with a parent of a Medicaid beneficiary who reported that she had contacted REDACTED on REDACTED 2022 and cancelled services for the entire week and that none were provided. (Exhibit A, page 131; Testimony of Chief Compliance and Privacy Officer)

18. For that Medicaid beneficiary, REDACTED had billed and received payment for services purportedly provided on multiple days during the week when the beneficiary had canceled. (Exhibit A, page 136; Testimony of Chief Compliance and Privacy Officer).

19. SWMBH further conducted a random claims review, and discovered issues with REDACTED's documentation, including undated signatures; start/stop times in records not corresponding with what was billed; the place of service on records not coinciding with what was billed; and an instance of a single provider having overlapping services. (Exhibit A, pages 104-109, 113; Testimony of Chief Compliance and Privacy Officer).

20. On January 5, 2023, SWMBH sent REDACTED requests for recoupment of payments due to ineligible/inappropriate billing. (Exhibit A, pages 110-111).

21. On January 23, 2023, SWMBH submitted a fraud referral to the Department's OIG with respect to Petitioner and REDACTED, along with the results of its investigation and Pines' earlier investigation. (Exhibit A, pages 21-24).

22. The Department's OIG then reviewed everything received from SWMBH and determined that credible allegations of fraud existed. (Testimony of Managed Care Oversight Unit Manager).

23. The OIG also forwarded a copy of the Fraud Referral to the Michigan Department of Attorney General Health Care Fraud Division (HCFD). (Exhibit A, page 16).

24. On January 23, 2023, the OIG emailed the HCFD and asked it to respond within 30 days whether the HCFD "accepts, declines, or submits this referral back to SWMBH for further development." (Exhibit A, pages 16-17).

25. The OIG also asked that, if the referral was accepted, the HCFD should indicate "whether the Health Care Fraud Division requests a payment suspension not be imposed, pursuant to 42 CFR 455.23(e)(1)." (Exhibit A, page 17).

26. On March 16, 2023, the HCFD notified the Department's OIG that HCFD had accepted the referral and that Petitioner was under investigation, and that: "Payment suspension in whole or part will not compromise or jeopardize the HCFD investigation." (Exhibit A, page 15).

27. The three-member Review Committee at the Department's OIG then voted unanimously to suspend REDACTED and exclude Petitioner from the Medicaid program. (Testimony of Managed Care Oversight Unit Manager).

28. On May 12, 2023, the Department issued an Order of Summary Suspension with respect to Petitioner and REDACTED. (Exhibit A. pages 12-14).

29. In part, that Order of Summary Suspension stated:

The Michigan Department of Health and Human Services (MDHHS) Office of Inspector General (OIG) has determined that emergency action is necessary to protect the State's interest in medically indigent individuals and the public funds of the medical assistance program under MCL 400.111f.

MDHHS OIG has determined that evidence exists in support of the summary suspension of REDACTED Learning Center LLC (REDACTED). NPI REDACTED, and the exclusion of owner REDACTED REDACTED (REDACTED), NPI REDACTED and such evidence includes but is not limited to:

1. It is suspected that services billed through REDACTED were not rendered based on an investigation conducted by Southwest Michigan Behavioral Health (SWMBH).
 - a. On REDACTED 2022 and REDACTED, 2022, all clinic-based services were canceled due to REDACTED being closed as there was a reported gas leak, but services were billed as if they were provided on both days. Some therapists identified on the service notes stated in interviews with SWMBH that they did not write service documents for those dates.

b. A consumer's guardian confirmed services were canceled for the week of REDACTED 2022.

c. There is one instance of a single provider having overlapping services, two sessions with two different consumers on the same date and time.

d. REDACTED's service documentation was insufficient, including provider signatures not dated, start/stop times in records not corresponding with what was billed, and place of service on records not coinciding with what was billed.

2. REDACTED reported to Michigan Medicaid that REDACTED REDACTED is the sole owner and managing employee.

REDACTED signed a Medical Assistance Provider Enrollment & Trading Partner Agreement on February 1, 2022. By signing that agreement, REDACTED agreed to comply with the provisions of 42 CFR §455.104, 42 CFR §455.105, 42 CFR §431.107 and Act No. 280 of the Public Acts of 1939, as amended, which state the conditions and requirements under which participation in the medical assistance program is allowed.

Pursuant to 42 CFR §455.23, MDHHS must suspend all Medicaid payments to a provider after the department determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless the agency has good cause to not suspend payments or to suspend payment only in part.

42 CFR §1001.1551(a)(1) and (2) indicate that an individual may be excluded from participation in a federal health program where that person has direct or indirect ownership or control interest or is an officer or managing employee of a sanctioned entity, and who knows or should know of the action constituting the basis for the exclusion.

Pursuant to Sections 111d, 111e and 111f of the Social Welfare Act, 1939 PA 280; MCL 400.01 et seq., participation as a provider in the Medicaid program is subject to suspension when:

There is 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.

The provider submits a claim for services, supplies, or equipment that was not provided to a recipient.

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 Section 111f of the Social Welfare Act, MDHHS finds that emergency action is required to protect the public funds of the Medicaid program; now therefore,

IT IS HEREBY ORDERED that REDACTED is excluded and REDACTED is summarily suspended from any direct or indirect participation in the Michigan Medicaid program commencing on May 16, 2023.

Exhibit A, pages 12-13

30. On May 22, 2023, MOAHR received the request for hearing filed by Petitioner and REDACTED in this matter with respect to the Order of Summary Suspension. (Exhibit #1, pages 1-25).

31. The appeals by Petitioner and REDACTED were consolidated for purposes of hearing by agreement of all parties.

32. During the hearing, REDACTED withdrew its request for hearing with respect to the Order of Summary Suspension. (Testimony of Petitioner).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

All Medicaid providers are required to enter into Medicaid Provider agreements:

- (4) A provider shall enter into an agreement of enrollment specified by the director.

MCL 400.111b(4)

The Social Welfare Act, MCL 400.1 et seq., provides that as a condition of participation in the Medicaid program a provider must meet all the requirements listed in MCL 400.111b:

- (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).

MCL 400.111b(1)

A Medicaid provider must also comply with all Department policies and procedures related to the conditions of participation in the Medicaid program, requirements for Medicaid providers, and with all applicable federal laws and regulations. In particular, the Social Welfare Act plainly states:

- (18) A provider shall comply with all requirements established under section 111a (1), (2), and (3).

MCL 400.111b(18)

With respect to orders of summary suspension like the one at issue in this case, the Social Welfare Act, specifically 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:

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* *

(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.

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(2) If the director finds that emergency action is required under subsection (1) in a clinic, corporation, partnership, or other entity with multiple providers or locations, the director may extend any emergency action to the entire legal entity and its providers.

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(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.

MCL 400.111f

Moreover, regarding the exclusion of individuals with individuals with ownership in sanctioned entities, 42 CFR 1001.1551 states:

(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.

(b) For purposes of paragraph (a) of this section, the term "sanctioned entity" means an entity that—

(1) Has been convicted of any offense described in §§ 1001.101 through 1001.401 of this part; or

(2) Has been terminated or excluded from participation in Medicare, Medicaid and all other Federal health care programs.

(c) Length of exclusion.

(1) If the entity has been excluded, the length of the individual's exclusion will be for the same period as that of the sanctioned entity.

(2) If the entity was not excluded, the length of the individual's exclusion will be determined by considering the factors that would have been considered if the entity had been excluded.

- (3) An individual excluded under this section may apply for reinstatement in accordance with the procedures set forth in § 1001.3001.

42 CFR 1001.1551

The definition of "should know" referenced in the above regulation is:

- (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.

42 USC 1320a-7a

Accordingly, in order to support the summary exclusion in this case, the Department must show by competent, material, and substantial evidence on the record that Petitioner has a direct or indirect ownership or control interest in a sanctioned entity, and that she knew or should have known of the action constituting the basis for the sanction.

In support of the Department's action, the Chief Compliance and Privacy Officer at SWMBH described the referral it received from Pines regarding REDACTED and the investigation it subsequently completed; with the investigation eventually expanded based on further information developed during the investigation, including session notes from Petitioner. She also testified regarding the results of SWMBH's investigation and the subsequent actions it took; including seeking recoupment from REDACTED and submitting a fraud referral to Department.

The Managed Care Oversight Unit Manager for MDHHS OIG testified regarding the receipt of the fraud referral from SWMBH; the review of that referral; and the finding of credible allegations of fraud against REDACTED. He also testified regarding the decision to suspend REDACTED and the Order of Summary Suspension subsequently issued, which included the exclusion of Petitioner from the Medicaid program based on her sole ownership of REDACTED and her name being tied to fraudulent session notes.

In response, Petitioner testified that she is in agreement with the Department's actions with respect to REDACTED, as REDACTED improperly billed for services that were not provided on multiple instances. She also testified that REDACTED did develop and submit a corrective action plan later, but that it has also since dissolved.

Petitioner further testified that the initial billing errors were caused when scheduled appointments were never cancelled in REDACTED's computer system, with software also mistakenly imputing sessions notes, including ones involving Petitioner, from completed appointments to appointments that never occurred.

Petitioner also testified that the Clinical Supervisor who was responsible for daily operations was terminated in October of 2022, due to failing to do her duties; and that REDACTED discontinued its relationship with its software company, Total ABA, in November of 2022 after Petitioner learned of the discrepancies. Petitioner further testified that she sent the faulty session notes to SWMBH because she presumed they were correct, with Petitioner only having an overall director role at the time.

According to Petitioner, there was never any malicious intent on her end, and she just wants to go forward as a practitioner.

Having considered the whole record and the parties' arguments in full, the undersigned Administrative Law Judge finds that the Department has established by competent, material, and substantial evidence on the whole record that the exclusion of Petitioner from the Medicaid program is proper under MCL 400.11f and 42 CFR 1001.1551.

It is undisputed in this case that Petitioner had direct ownership of REDACTED, in addition to being a managing employee, and that REDACTED has been suspended from participation in Medicaid based on credible allegations of fraud, with REDACTED subsequently withdrawing any appeal of that sanction.

Moreover, the record further demonstrates that Petitioner knew, or should have known of the actions constituting the basis for the emergency suspension of REDACTED, *i.e.*, the improper billing for services never provided and the insufficient service documentation. Petitioner may not have intended to defraud the Medicaid program or acted with any malicious intent, but her signature, as the therapist or billing provider, was on session notes describing services billed for, but never provided. Additionally, she was both the sole owner and a managing employee at REDACTED, where the deficiencies in documentation and billing were significant enough to suggest that Petitioner was acting in deliberate ignorance or reckless disregard of the sanctionable actions.

Accordingly, the Department has met its burden of proof in this case, and its decision to exclude Petitioner from the Medicaid program as part of the Order of Summary Suspension issued to Petitioner and her company is proper and the order should remain in place.

IT IS THEREFORE ORDERED that:

The exclusion of Petitioner provided for in the Order of Summary Suspension issued by the Department on May 12, 2023 is **UPHELD**.