OAH 28-1800-39959

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the MPAI Appeal by Homemakers of MN

FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION, AND ORDER TO SEAL

The above-entitled matter came before Administrative Law Judge Joseph C. Meyer for a hearing on February 5, 2025. The record closed on February 5, 2025, at the conclusion of the hearing.

Ayan Hassan, Assistant Attorney General, appeared on behalf of the Department of Human Services (Department). Frances Howard, Owner, appeared on behalf of Homemakers of MN (Appellant).

Exhibits 1 through 16 were received into the record.

STATEMENT OF THE ISSUES

1. Did the Department properly seek monetary recovery of $1,419.88 pursuant to Minnesota Statutes, section 256B.0625, subdivision 6a, 256B.064, 256B.4912, and 256B.0641, and Minnesota Rules, 9505.0180, 9505.0210, 9505.0295, 9505.0465, and 9505.2160 to 9505.2245?

2. Did the Department properly seek forfeiture of a $221.28 fine pursuant to Minnesota Statutes, section 256B.0625, subdivision 6a, 256B.064, 256B.4912, and 256B.0641, and Minnesota Rules, 9505.0180, 9505.0210, 9505.0295, 9505.0465, and 9505.2160 to 9505.2245?

SUMMARY OF RECOMMENDATION

The Department properly sought monetary recovery of $1,419.88 and properly sought forfeiture of a $202.84 fine.[1]

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

[1] As explained in the accompanying Memorandum below, one claim line for which the Department sought to impose a fine on Appellant was not supported by the record.

FINDINGS OF FACT

1. Appellant is a business located in New Brunswick, Minnesota that provides homemaker services.[2]

2. Frances Howard (Howard) is the owner of Appellant.[3]

3. Kelly Merdan (Merdan) is a Supervisor of Investigations with the Department's Medicaid Provider Audits and Investigations (MPAI).[4]

4. On May 3, 2021, Merdan faxed a request to Appellant for timesheets for three clients for service dates April 1, 2020 through June 30, 2020.[5]

5. The May 3, 2021 request instructed Appellant to send responsive documents to Merdan no later than May 7, 2021.[6]

6. Also on May 3, 2021, Howard spoke on the phone with Merdan. Merdan agreed to extend the due date for the requested records to May 10, 2021.[7]

7. Appellant did not provide responsive records by the May 10, 2021 deadline.[8]

8. On May 26, 2021, based on Appellant's failure to provide the requested records, MPAI issued a Notice of Agency Action (NOAA) Termination and Payment Withhold to Appellant (First Notice). The First Notice indicated that the Department would withhold all Minnesota Health Care Programs (MHCP) payments to Appellant.[9]

9. On June 16, 2021, Appellant emailed some of the requested records to Merdan.[10]

10. On June 22, 2021, Appellant appealed the Notice.[11]

11. On June 29, 2021, Appellant emailed additional documents to Merdan. Merdan reviewed these documents.[12]

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[2] Exhibit (Ex.) 2 at 1 (Investigation Report); Testimony (Test.) of Frances Howard.
[3] Ex. 2 at 1; Test. of F. Howard.
[4] Ex. 7 at 2 (Request for Client Records) (May 3, 2021); Test. of K. Merdan. MPAI was previously known as the Surveillance and Integrity Review Section (SIRS) and referred to as such in some of the exhibits. For clarity, this Report will refer to this unit as MPAI throughout.
[5] Ex. 7 at 2; Test. of K. Merdan. The clients are identified by the initials S.H., I.H., and H.R.
[6] Ex. 7 at 2; Test. of K. Merdan.
[7] Ex. 6 at 4 (Merdan Memo of Phone Contact with Howard); Test. of K. Merdan.
[8] Ex. 2 at 2; Test. of K. Merdan.
[9] Ex. 3 (Notice of Temporary Payment and Withhold) (May 26, 2021); Test. of K. Merdan.
[10] Ex. 2 at 3; Test. of K. Merdan.
[11] Ex. 2 at 3.
[12] Ex. 2 at 3; Test. of K. Merdan.

12. On July 23, 2021, MPAI mailed an NOAA Continued Payment Withhold (Continued Notice) to Appellant. The Continued Notice indicated that the Department would continue to withhold MHCP payments to Appellant.[13]

13. On July 28, 2021, MPAI referred this matter to the Medicaid Fraud Control Unit (MFCU) for investigation into possible criminal charges.[14]

14. On October 31, 2023, MFCU closed its case without charges. Merdan was notified of this decision on November 6, 2023.[15]

15. On November 14, 2023, MPAI mailed a Notice of Removal of Payment Withhold to Appellant removing the payment withhold in place against Appellant.[16]

16. Merdan reviewed 36 claim lines of data from the information Appellant provided to MPAI.[17]

17. The Department determined 19 claim lines were improperly paid because there was "no documentation to support services," "more units billed than documented," or "homemaker signature dated prior to services rendered." In total, these 19 claim lines amounted to $1,419.88 in improperly paid claims.[18]

18. 11 claim lines lacked "time in or out," "service name or description of service provided," or "differentiation between PCA and Homemaking services." In total, the reimbursable amount of these 11 lines was $1,014.20.[19]

19. The claim line for S.H. on May 8, 2020, contained a description of the services provided.

20. Merdan recommended a fine of $221.28 for the 12 claim lines with missing elements.[20]

21. The failure to properly document services potentially impacts recipient safety because the Department is unable to confirm that proper services are being provided.[21]

[13] Ex. 2 at 3; Ex. 4 (Continued Payment Withhold and Withdrawal of Notice of Termination) (Jul. 23, 2021); Test. of K. Merdan.
[14] Ex. 2 at 3; Ex. 12 (MFCU Fraud Referral Form) (Jul. 28, 2021); Test. of K. Merdan.
[15] Ex. 2 at 4; Test. of K. Merdan.
[16] Ex. 5 (Notice of Removal of Payment Withhold); Test. of K. Merdan.
[17] Ex. 2 at 4; Test. of K. Merdan.
[18] Ex. 2 at 4; Ex. 8 (Investigative Spreadsheet); Ex. 9 (S.H. Records).
[19] Ex. 2 at 4; Ex. 8; Ex. 9.
[20] Ex. 2 at 4. $202.84 is 20% of $1,106.40.
[21] Test. of Tinna Welter

22. On February 22, 2024, the Department sent a Notice of Monetary Recovery and Order to Forfeit a Fine (Recovery and Fine Notice) to Appellant, which ordered recovery of $1,419.88 and imposed a $221.28 fine.[22]

23. On March 20, 2024, Appellant appealed the Recovery and Fine Notice via email to the Department.[23]

24. Any Conclusion of Law more properly considered a Finding of Fact is incorporated herein.

25. Any portion of the accompanying Memorandum more properly considered to be a Finding of Fact is incorporated herein.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services (Commissioner) have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 256B.04, subd. 15(c), .064, subd. 2 (2024).

2. The Department has complied with all relevant procedural requirements of statute and rule and this matter is properly before the Administrative Law Judge and the Commissioner.

3. The Department bears the burden to establish, by a preponderance of the evidence, that it may recover the amounts it seeks and that sanctions are appropriate.[24]

4. As a condition of payment by MHCP, a vendor must document each occurrence of a health service rendered to a recipient. MHCP funds improperly paid for a health service is subject to recovery by the Department.[25]

5. Providers must document services daily using a form approved by the Commissioner. This documentation must include, among other things, the date and arrival and departure time of services.[26]

6. “Abuse” by a provider includes submitting repeated claims, or causing claims to be submitted, from which required information is missing or incorrect or failing to develop and maintain health service records as required under Minn. R. 9505.2175.[27]

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[22] Ex. 1 (Notice of Monetary Recovery and Order to Forfeit a Fine) (Feb. 22, 2024).
[23] Ex. 16 (Appeal Email) (Mar. 20, 2024).
[24] Minn. R. 1400.7300, subp. 5 (2023).
[25] Minn. R. 9505.2175, subp. 1.
[26] Minn. Stat. § 256B.0659, subd. 12.
[27] Minn. R. 9505.2165, subp. 2(A)(1), (7).

7. The Department established by a preponderance of the evidence that Appellant failed to maintain records and submitted claims lacking statutorily required information. Therefore, the Department has proved Appellant committed abuse.

8. The Commissioner may impose sanctions against any individual or entity that receives payments from medical assistance for fraud, theft, or abuse in connection with the provision of goods and services to recipients of public assistance for which payment is made from medical assistance.[28]

9. When imposing sanctions, the Commissioner must consider the nature, chronicity, and severity of the vendor's conduct, and the effect of the conduct on the health and safety of persons served by the vendor.[29]

10. The Commissioner may obtain monetary recovery from an individual or entity that has been improperly paid by the Department as a result of an error by the individual or entity submitting the claim.[30]

11. MHCP payments for services that are not documented are "improperly paid" and may be recovered.[31]

12. The Department established that $1,106.40 was improperly paid to Appellant and may be recovered by the Commissioner.

13. Minn. Stat. § 256B.064, subd. 2(g) provides:

> The Commissioner may assess fines if specific required components of documentation are missing. The fine for incomplete documentation shall equal 20 percent of the amount paid on the claims for reimbursement submitted by the individual or entity, or up to $5,000, whichever is less. If the commissioner determines that an individual or entity repeatedly violated this chapter, chapter 254B or 245G, or Minnesota Rules, chapter 9505, related to the provision of services to program recipients and the submission of claims for payment, the commissioner may order an individual or entity to forfeit a fine based on the nature, severity, and chronicity of the violations, in an amount of up to $5,000 or 20 percent of the value of the claims, whichever is greater.

[28] Minn. Stat. § 256B.064, subd. 1a.
[29] Minn. Stat. § 256B.064, subd. 1b.
[30] Minn. Stat. § 256B.064, subd. 1c(a).
[31] *In re SIRS Appeal by Nobility*, 999 N.W.2d 843, 864 (Minn. 2024); *see Matter of SIRS Appeal by Best Care, LLC,* 994 N.W.2d 333, 343 (Minn. Ct. App. 2023) (observing that missing or deficient documents could warrant an inference and finding of fact that a vendor billed for non-reimbursable services, resulting in improper payment).

14. The Department established that it properly assessed $202.84 in fines for Appellant's repeated failure to include required components of documentation. This amount represents 20 percent of the amount of the relevant claims.

15. The Minnesota Health Records Act broadly prevents the disclosure of health records of a person who received health care from a provider.[32]

16. Exhibits 9, 10, and 11 are health records and should be sealed in order to prevent their disclosure and to protect the privacy interests of the persons identified in them.

17. The nature, severity, and chronicity of Appellant's violations supports the imposition of the fine as assessed.

18. Any Finding of Fact more properly considered to be a Conclusion of Law is incorporated herein.

19. Any portion of the accompanying Memorandum more properly considered to be a Conclusion of Law is incorporated herein.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

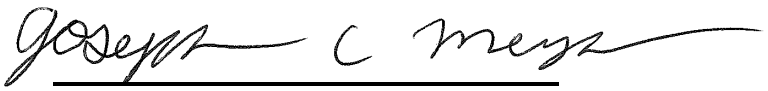
RECOMMENDATION

The Commissioner should **RECOVER** $1,419.88 in claims that were improperly paid to Appellant and **IMPOSE** a $202.84 fine against Appellant.

ORDER

The Department's motion to seal Exhibits 9, 10, and 11 is **GRANTED** and those exhibits are **SEALED**.

Dated: April 11, 2025



JOSEPH C. MEYER
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

[32] Minn. Stat. § 144.293, subd. 2 (2024).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2024), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Administrative Law Office staff at DHS_AdminLaw@state.mn.us to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2024).

Under Minn. Stat. § 14.62, subd. 1 (2024), the Commissioner is required to serve a final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department asserts that it is entitled to recover $1,419.88 in improperly paid MHCP money to Appellant and to impose $221.28 in fines on the Appellant for failures to include required components in its documentation for homemaking services.

As an initial matter, the manner in which Appellant's documentation was kept made it difficult to analyze compliance with the various legal provisions relevant to this proceeding. Specifically, Appellant often included information about more than seven days of information on timesheets designed to only reflect seven days of services.[33] This practice hindered attempts to discern which information was applicable to which date. Further, instead of filling in individual cells in the timesheet, Appellant often used arrows in a manner where it was not always readily apparent what the arrows were intended to convey.[34] The Department demonstrated that Appellant's timesheets failed to properly document required information in a manner that would allow Department to determine compliance.

Appellant's owner testified that the amount of hours authorized for Appellant's clients exceeded the amount of services actually provided, and that it was "impossible" to keep accurate timesheets.[35] Certainly, the homemaking services Appellant provided were important for recipients and required Appellant's staff to perform difficult work. The difficultly of the work and the record-keeping requirements do not, however, relieve

[33] Ex. 10.
[34] Exs. 9, 10, 11.
[35] Test. of F. Howard.

Appellant of the need to maintain records compliant with the law. This record-keeping is important because the Department relies on it to help verify that proper services are being provided and to safeguard public money that pays for those services.

Monetary Recovery

The Department identified 19 claim lines that it alleged were improperly paid.[36] For 12 of these lines, the Department alleged that there was "no documentation to support services."[37] Review of records submitted by Appellant establishes that all 12 of these claim lines lacked required documentation for the services it claimed it provided. Some of the claims were for dates that did not appear on any documents provided by Appellant at all. Other dates appeared on the time sheets as column headings, but had no content whatsoever in the columns where those dates appeared addressing the nature or amount of services provided, or in any way indicated that services were provided at all.[38] Appellant's failure to provide any documentation for services on these dates establishes that the claims were improperly paid because there is no documentary evidence that services were provided.[39]

For six claim lines, the Department alleged that there were "more units billed than documented."[40] Four of those claim lines were for services provided to I.H. For those four lines, the timesheets clearly show the discrepancy between the length of time documented and the amount of units billed. Two claim lines were for services provided to H.R.[41] For those claims, the recordkeeping was less clear. Each claim showed two sets of "time in" and "time out" on the timesheet.[42] For each of those claims, only one set of "time in" and "time out" appeared under the handwritten heading "homemaking." Thus, those hours are the only hours documented for homemaking services. In each instance, the Department has proven that claims paid in excess of the hours documented were improperly paid.

One claim was due to an allegation that one timesheet had a signature dated earlier than the services were provided.[43] The timesheets substantiate this allegation.[44] As the work could not possibly have been performed at the time the timesheet was dated, and in light of the other record-keeping deficiencies, this warrants an inference that no services were provided and the claim was improperly paid. Other than general denials of improper payment, there was no specific evidence that established services were provided on that date.

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[36] Ex. 8.
[37] Ex. 8.
[38] Ex. 8, 9, 11.
[39] S*ee Matter of SIRS Appeal by Best Care, LLC,* 994 N.W.2d 333, 343 (Minn. Ct. App. 2023) (observing that missing or deficient documents could warrant an inference and finding of fact that a vendor billed for non-reimbursable services, resulting in improper payment).
[40] Ex. 8.
[41] Ex. 8.
[42] Ex. 11.
[43] Ex. 8.
[44] Ex. 11.

Fine

The Commissioner may also impose a fine for documentation that lacks statutorily required components of documentation. The Department assessed a fine for 12 claim lines it alleged lacked required information.[45]

Timesheets are required to include "arrival and departure times with a.m. or p.m. notations."[46] Claims for services provided to (1) S.H. on April 8, 2020 and April 19, 2020; and (2) I.H. on April 8, 2020, May 1, 2020, May 10, 2020, May 20, 2020, and June 20, 2020 all lacked this required information.[47]

Appellant was required to document services provided daily on the timesheets.[48] Timesheets for services provided to (1) S.H. on May 1, 2020, and (2) I.H. on April 15, 2020, April 25, 2020, and May 28, 2020, did not include the services provided.[49]

For these 11 claim lines, the Department has proven by a preponderance of the evidence that a fine is appropriate.

One claim line did not support any of the deficiencies alleged by the Department. The Department alleged that Appellant failed to include a service name or description of the service provided to S.H. on May 8, 2020.[50] Review of this entry shows that Appellant marked that the services provided were "dressing," "grooming," and "IADLs."[51] While the Department faulted Appellant for identifying two entities in the "PCA Agency Name" field on the timesheets because that made it difficult to identify what services were provided,[52] this claim provided sufficient description of the services. The Department did not prove a violation that would support imposition of a fine for this claim.

Removing the one claim line for which a fine is not appropriate requires a new calculation to find 20 percent of the invalid claims. The new calculation results in a fine of $202.84.[53]

For these reasons, the Commissioner should **RECOVER** $1,419.88 in claims that were improperly paid to Appellant and **IMPOSE** a $202.84 fine against Appellant.

J. C. M.

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[45] Ex. 8. For many of these items, the Department identified multiple deficiencies. For claims where at least one deficiency was substantiated, this Memorandum will not separately analyze additional alleged deficiencies.
[46] Minn. Stat. § 256B.0659, subd. 12(c)(4).
[47] Ex. 9, 10.
[48] Minn. Stat. § 256B.0659, subd. 12(a).
[49] Ex. 9 and 10.
[50] Ex. 8.
[51] Ex. 9 at DHS000019.
[52] Test. of K. Merdan.
[53] $221.28 (total fine assessed by Department) - $18.44 (fine assessed for services provided to S.H. on May 8, 2020) = $202.84. Ex. 8.