

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal of Sura  
Ahmed Salem, a/k/a Sura Abdulrazzaq

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on January 25, 2016. The hearing record closed on that day at the end of the evidentiary hearing.

Marsha Eldot Devine, Assistant Attorney General, appeared on behalf of Minnesota Department of Human Services (Department). Sura Ahmed Salem, the Appellant, appeared on her own behalf and without counsel.

**STATEMENT OF THE ISSUE**

Was Ms. Salem properly suspended from participation as a provider in the Minnesota Health Care Program?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that because of Ms. Salem's failure to accurately complete time records, the proposed six-month suspension from the Minnesota Health Care Program is appropriate.

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

**FINDINGS OF FACT**

1. In 2015, Ms. Salem was employed as a personal care assistant (PCA), as defined by Minn. Stat. § 256B.0659, subd. 1(m) (2014).<sup>1</sup>
2. As an employee of Accra, Inc. (Accra), Ms. Salem provided PCA services to her mother.<sup>2</sup>

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<sup>1</sup> Testimony (Test.) of Sura Salem; Test. of Jodi Kritta.

<sup>2</sup> Exhibit (Ex.) 4.

3. While working as an employee of Accra, Ms. Salem also provided PCA services to other clients, as an employee of Midwest Community Residential Services, Inc. (MCRSI).<sup>3</sup>

4. To maintain sufficient coverage, MCRSI's policy in 2014 was that the work shift of a PCA ended upon the arrival of the PCA who had the next work shift.<sup>4</sup>

5. During the three month period between April 1, 2014 and June 30, 2014 (the "second quarter" of calendar year 2014), Ms. Salem submitted time sheets to Accra and MCRSI that reflected a combined total of 998 work hours.<sup>5</sup>

6. Over the course of the 13-week period between April 1 and June 30, 2014, 998 work hours reflects an average work week of 76.77 hours.<sup>6</sup>

7. Within this same period, Ms. Salem worked overnight for MCRSI providing PCA services to its clients.<sup>7</sup>

8. On more than one occasion during the second quarter of 2014, Ms. Salem's MCRSI time sheets reflected work shifts that were longer than 12 hours in a single 24-hour period.<sup>8</sup>

9. Ms. Salem's time sheets during this period reflect that she delivered PCA services to her mother between 7:30 a.m. and 11:25 a.m. each day.<sup>9</sup>

10. After filling in the claimed hours on the time sheet form, but before she remitted it to Accra, Ms. Salem put her signature below the following attestation: "Your signature verifies the recorded hours and cares checked are true and accurate and that the services were performed as specified in the PCA Care Plan. It is a Federal Crime to provide false information for Medical Assistance payments."<sup>10</sup>

11. Ms. Salem acknowledges that between April 1 and June 30, 2014, she did not always deliver services to her mother between 7:30 a.m. and 11:25 a.m. each day. She maintains that the services described in the time sheets were often delivered at other times of the day, whenever she was not working a scheduled shift for MCRSI.<sup>11</sup>

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<sup>3</sup> Exs. 3, 4, 5, 6; Test. of S. Salem.

<sup>4</sup> Ex. 6 at DHS 3; Test. of J. Kritt.

<sup>5</sup> Ex. 2.

<sup>6</sup> *Id.*

<sup>7</sup> Ex. 3.

<sup>8</sup> Exs. 3, 5.

<sup>9</sup> Ex. 4.

<sup>10</sup> *Id.*; Test. of S. Salem; Test. J. Kritt; see also, Minn. R. 9505.2175, subp. 7(H)(8) (2015).

<sup>11</sup> Test. of S. Salem.

12. On December 23, 2013, the Department's Surveillance Integrity Review Section (SIRS) received a telephone report that Ms. Salem was billing for PCA services that were not, in fact, delivered to Ms. Salem's mother. The reporter asserted that Ms. Salem had submitted claims for hours that Ms. Salem had not worked.<sup>12</sup>

13. Department Investigator Jodi Kritta undertook a review of the time sheets that Ms. Salem submitted to Accra and to MCRSI during March, April, May, June, and July of 2014.<sup>13</sup>

14. A comparison of the time sheets that Ms. Salem submitted to Accra with those she submitted to MCRSI, for the period between Monday, March 24, 2014 and Wednesday, July 9, 2014, reveals 44 instances of "overlapping." The Department considers a work shift to be "overlapping" when a PCA claims to have been working one or more hours of a shift for more than one home health care agency.<sup>14</sup>

15. In a separate effort, the Department has disallowed \$2,953.92 in amounts that it paid to Accra and seeks to recover this amount from that firm. This disallowance follows from Investigator Kritta's discovery of the 44 instances of "overlapping."<sup>15</sup>

16. The Department disallows all of the hours a PCA submits for a particular work shift if any one of those hours is "overlapping" with work for another agency.<sup>16</sup>

17. On July 8, 2015, the Department issued a Notice of Agency Action, stating its intention to suspend Ms. Salem's PCA enrollment in the Minnesota Health Care Program for a period of six months.<sup>17</sup>

18. By letter dated July 28, 2015, Ms. Salem timely appealed the Notice of Agency Action. This contested case followed.<sup>18</sup>

Based upon the 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 (2014).

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<sup>12</sup> Ex. 1.

<sup>13</sup> Test. J. Kritta.

<sup>14</sup> Ex. 5 at DHS 15a; Test. of J. Kritta.

<sup>15</sup> *Id.*

<sup>16</sup> Test. of J. Kritta.

<sup>17</sup> Ex. 7.

<sup>18</sup> Ex. 9.

2. The Department complied with all procedural requirements of statute and rule.

3. Medicaid is a jointly-financed program between the federal government and the states. The purpose of Medicaid is to provide assistance to those who have do not have the resources to pay for the medical care that they require.<sup>19</sup>

4. The federal government shares the cost of providing this assistance with the states that elect to participate in the Medicaid program. In return, the states agree to comply with program rules issued by the Centers for Medicare and Medicaid of the U.S. Department of Health and Human Services; including regulations on guarding against the “unnecessary or inappropriate use of Medicaid services and ... excess payments.”<sup>20</sup>

5. The Department may impose sanctions against a vendor of medical care services for, among other actions: “fraud, theft, or abuse in connection with the provision of medical care to Recipients of public assistance ....”<sup>21</sup>

6. The term “vendor” includes a personal care assistant.<sup>22</sup>

7. The definition of “abuse” in 42 C.F.R. § 455.2 (2014) provides:

Abuse means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program.<sup>23</sup>

8. The Department bears the burden of proof to show, by a preponderance of the evidence, that Ms. Salem engaged in conduct proscribed by Minn. Stat. § 256B.064, subd. 1a (2014); Minn. R. 9505.2165, subp. 2(A) (2015).<sup>24</sup>

9. Minn. Stat. § 256B.064, subd. 1a provides that the Department may sanction a vendor under the Minnesota Health Care Program. It provides that:

The commissioner may impose sanctions against a vendor of medical care for any of the following: (1) fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance; (2) a pattern of presentment of false or duplicate claims or claims for services not medically necessary; (3) a pattern of making false

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<sup>19</sup> See 42 U.S.C. § 1396 (2014); *Atkins v. Rivera*, 477 U.S. 154, 156 (1986).

<sup>20</sup> *Id.*; 42 C.F.R. § 456.3 (a) (2014).

<sup>21</sup> Minn. Stat. § 256B.064, subd. 1a.

<sup>22</sup> Minn. R. 9505.2165, subp. 16a (2015).

<sup>23</sup> 42 C.F.R. § 455.2 (emphasis added).

<sup>24</sup> Minn. R. 1400.7300, subp. 5 (2015).

statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled; ... and (8) any reason for which a vendor could be excluded from participation in the Medicare program under section 1128, 1128A, or 1866(b)(2) of the Social Security Act.

10. Minn. R. 9505.2165, subp. 2(A)(1) prohibits “submitting repeated claims, or causing claims to be submitted, from which required information is missing or incorrect.”

11. Minn. R. 9505.2165, subp. 2(A)(7) prohibits “failing to develop and maintain health service records as required under part 9505.2175.”

12. Minn. R. 9505.2175, subp. 7(H) requires PCAs to document the dates on which health services are provided, the services delivered and the length of time that services are delivered.<sup>25</sup>

13. Because of MCRSI’s work rules, which required Ms. Salem to be relieved of her duties by another PCA, the time records submitted to MCRSI are more credible than the records Ms. Salem submitted to Accra. The hearing record does not contain any similar, independent corroboration of the work hours submitted to Accra.

14. Notwithstanding the attestations made by Ms. Salem as to the accuracy of the time recorded, the time sheets from the second quarter of 2014 do not reflect the dates and times that PCA services were delivered to her mother.

15. A review of Ms. Salem’s time sheets and records does not yield an understanding of which services were delivered to her mother or the dates and times those services were delivered.

16. Ms. Salem’s assurances that useful services were delivered to her mother is not a substitute for the required records.

17. Ms. Salem’s time sheet and record-keeping practices are “inconsistent with sound business practices” and resulted “in an unnecessary cost to the Medicaid program,” as those terms are used in 42 C.F.R. § 455.2.

18. Ms. Salem submitted claims “for health services which are not reimbursable under the program,” as those terms are used in Minn. R. 9505.2165, subp. 2(A)(3).

19. The Department has cause to take disciplinary action in this matter.

20. Minn. R. 9505.2205 (2015) directs the Commissioner to apply a three-factor test when selecting an appropriate sanction for a vendor in the Minnesota Health Care Program: (a) the nature and extent of fraud, theft, abuse, or error; (b) the history of

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<sup>25</sup> Minn. R. 9505.2175, subp. 22(C)(1)-(3) (2015).

fraud, theft, abuse, or error; and (c) actions taken or recommended by other state regulatory agencies.

21. Minn. Stat. § 256B.064, subd. 1b (2014) further directs the Commissioner to consider “the effect of the conduct on the health and safety of persons served by the vendor.”

22. Forty-four instances of inappropriate billing during a 15-week audit period is an extensive record of error.

23. Forty-four instances of inappropriate billing during a 15-week audit period suggests that other errors would likely be detected if the audit review period was expanded to include other time periods.

24. Forty-four instances of inappropriate billing during a 15-week audit period signifies that Ms. Salem did not make a genuine effort to report her time accurately.

25. The hearing record does not include recommendations from other state agencies in this matter.

26. The hearing record does not include detail as to the quality of the care received by Ms. Salem’s mother during the 15-week review period, or at any other time.

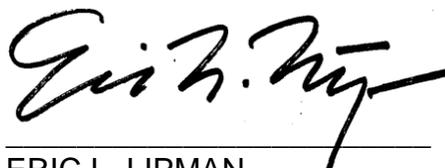
27. On this record, a six month suspension from the Minnesota Health Care Program is appropriate.

Based upon these Conclusions of Law, the Administrative Law Judge makes the following:

### RECOMMENDATION

**IT IS RECOMMENDED** that the Commissioner of Human Services **AFFIRM** the Notice of Agency Action dated July 8, 2015.

Dated: February 5, 2016



ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), 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 Debra Schumacher, Administrative Law Attorney, P.O. Box 64998, St. Paul, MN 55164, (651) 431-4319, 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 (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The Administrative Law Judge has carefully considered the testimony from the evidentiary hearing and the underlying record of documents.

While Ms. Salem is candid, forthcoming and contrite about her own record-keeping failures, the hearing record does not permit the Department to confidently determine what, if any services, were delivered to Ms. Salem's mother during 2014. From the point of view of the Department, and the taxpayers who underwrite these services, this is very problematic.

Moreover, Ms. Salem's own needs to maintain a certain kind of employment setting, or her mother preferences as to who provides PCA services, are not matters that the Commissioner may consider in the case of billing misconduct. It is true that Minn. Stat. § 256B.064, subd. 1b directs the Commissioner to consider "the effect of the conduct on the *health and safety* of persons served by the vendor." However, the hearing record does not establish the health or safety of Ms. Salem's mother will be undermined if Ms. Salem is not her PCA.

Affirming the program suspension is appropriate in this case.

**E. L. L.**