

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

In the Matter of the SIRS Appeal of
Nichole Wurl

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

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on July 18, 2016 at the Douglas County Courthouse in Alexandria, Minnesota. The record closed on July 18, 2016.

William Young, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Nichole Schultz (Respondent),¹ appeared on her own behalf, without counsel.

STATEMENT OF THE ISSUE

Whether the Department properly suspended Respondent's participation as a provider in the Minnesota Health Care Programs (MHCP) pursuant to Minn. Stat. § 256B.064, .0659 (2016), and Minn. R. 9505.0295, .0335, .2160-.2245 (2015) because Respondent submitted claims for having provided personal care assistance (PCA) services for hours when she was working at a different job.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge finds that Respondent violated the MHCP rules and respectfully recommends that the Department's suspension of Respondent from MHCP for two years be **AFFIRMED**.

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

FINDINGS OF FACT

Background

1. Respondent provides PCA services for a relative (Recipient) under provider number 806100000.

¹ Respondent's last name is currently Schultz. The exhibits show Respondent's last name as Wurl for one employer and Schultz for another.

2. The Recipient, a minor with severe disabilities, lives in a suburb of Minneapolis with Respondent's mother, who is the Responsible Party for purposes of PCA services.² The Recipient is the Responsible Party's nephew and the Respondent's cousin.

3. Respondent's employer for the provision of PCA services during the time relevant to this report was St. David's Center.³

4. Respondent entered into a written employee agreement with St. David's Center. This agreement stated, in part, "You understand that a timesheet can only be submitted for hours actually worked. Submission of a time sheet for hours not worked is fraud and evidence of fraud will be reported to the Utilization and Surveillance Unit for Medicare and Medicaid Fraud (SIRS)."⁴

5. The employee agreement was signed by Respondent on January 29, 2011.⁵

6. Each timesheet for PCA services submitted by Respondent stated, in part, "I certify that I have accurately reported on this time sheet the hours I actually worked, the services I provided, and the dates and times worked. I understand that misrepresenting my hours is fraud for which I could face criminal prosecution and civil proceedings."⁶

7. Respondent signed each of the timesheets she submitted to St. David's Center for PCA services provided from January 1, 2012 to July 20, 2013.⁷

8. The Recipient and Responsible Party lived in a Twin Cities suburb. When the Recipient received services from Respondent they were provided at Respondent's home, which was a three hour drive from the Recipient's home.⁸

Investigative Activities and Findings

9. On March 5, 2013,⁹ the Department received an allegation of fraud from Otter Tail County Attorney's Fraud Investigation Unit regarding the PCA claims being submitted by Respondent.¹⁰

² Testimony (Test.) of Investigator.

³ Exhibit (Ex.) 1; Test. of Respondent.

⁴ Ex. 4 at 67.

⁵ *Id.*

⁶ Ex. 5.

⁷ *Id.*; Test. of Respondent.

⁸ Test. of Respondent.

⁹ Ex. 1 at 1.

¹⁰ Exs. 1, 2.

10. Because of the allegation, the Department investigated Respondent's claims for PCA services for January, 2012 until July, 2013.¹¹

11. The Investigator began the investigation by requesting Respondent's employment data from the Minnesota Department of Employment and Economic Development (DEED).¹²

12. The Investigator contacted St. David's Center, the employer for Respondent's PCA services, on July 8, 2013 and requested information related to the investigation.¹³

13. On July 15, 2013, the Investigator requested Respondent's timesheets from Walgreens.¹⁴ On July 23, 2013, she sent a subpoena to Walgreens for Respondent's application and records of hours worked for the dates January 1, 2012 through July 16, 2013.¹⁵

14. On August 12, 2013, the Investigator received, in relevant part, the following information from Walgreens:

- a notarized affidavit from the Custodian of Records;
- Employee Maintenance screen shot from Walgreen's database;
- Walgreens application for employment; and
- Time Detail report of hours worked by Respondent from November 14, 2012 through June, 23 2013, (Respondent was terminated on July 9, 2013).

15. On August 27, 2013, the Investigator requested information from the Recipient's school district about the hours and dates Recipient attended school during the relevant time period and the medical services Recipient received there.¹⁶

16. On September 6, 2013, the Investigator received the information requested from the school.¹⁷

17. On October 11, 2013, the Investigator made an on-site visit to St. David's Center during which she requested and received all information held by St. David's Center related to Respondent.¹⁸

¹¹ Ex. 1 at 3; Ex. 5.

¹² Ex. 3; Test. of Investigator.

¹³ Ex. 1 at 2.

¹⁴ Ex. 1 at 3.

¹⁵ Ex. 9.

¹⁶ Ex. 1 at 3.

¹⁷ Ex. 1 at 4; Exs. 13, 14.

¹⁸ Ex. 1 at 5.

18. The Investigator compared the timesheets from Walgreens,¹⁹ the timesheets Respondent had submitted to St. David's Center, and Respondent's earnings statements from St. David's Center²⁰ to create a spreadsheet that compared overlapping times when Respondent was paid for working at Walgreens and for providing PCA services.²¹

19. The Investigator determined that Respondent submitted claims for providing PCA services through St. David's Center for dates of service when Respondent was working at Walgreens.²²

20. The Investigator found 49 days on which Respondent submitted timesheets for providing PCA services when Respondent was working at Walgreens for some of the hours for which she also sought reimbursement for providing PCA services.²³

21. The total overpayment to Respondent, calculated as the hours Respondent billed for PCA services when she was simultaneously working at Walgreens, was 4,925.70.²⁴

22. The Department did not sanction Respondent for the hours she billed for PCA services during which it was more likely that she could not have been providing services because the Recipient was in school.²⁵

Respondent's Explanation

23. Respondent explained that her time cards were completed by the Responsible Party and that Respondent signed them without reviewing them for accuracy.²⁶

24. Respondent explained that she and the Responsible Party were sleep-deprived because they worked so much, and because the Recipient was often so agitated that Respondent and the Responsible Party often went for days without sleep.²⁷ The Respondent contends that sleep deprivation resulted in the inaccurate timesheets.²⁸

¹⁹ Ex. 10.

²⁰ Exs. 6, 7.

²¹ Ex. 11.

²² Test. of Investigator.

²³ Test. of Investigator; Exs. 11, 10.

²⁴ Test. of Investigator; Ex. 11.

²⁵ Test. of Investigator.

²⁶ Test. of Respondent.

²⁷ *Id.*

²⁸ *Id.*

25. Respondent also stated that the Responsible Party would, when filling out their timesheets, transpose another PCA's schedule for Respondent's schedule.²⁹

26. Respondent stated that the time clock at Walgreens did not always work and time was then entered manually by her manager.³⁰

The Procedural Process

27. On July 1, 2014, the Department sent Respondent a Notice of Suspension. This Notice informed Respondent of the determination the Department had made and its basis. It informed Respondent that the Department was suspending her participation as a provider in the MHCP for two years. The Notice also informed Respondent of her right to appeal the suspension and of her right to apply for reinstatement at the end of the two-year suspension.³¹

28. On July 31, 2014, the Department received an appeal letter from Respondent.³²

29. The Department wrote to Respondent on August 5, 2014, and asked her to provide specific information about the basis of her appeal. The Department also explained that Respondent would not be suspended while the appeal was pending.³³

30. On August 28, 2014, the Department informed Respondent that it had not received information from her about what she believed to be in error in its findings, and explained that the matter had been referred to the Attorney General's Office for a contested case hearing.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department of Human Services (Commissioner) have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50; 256B.04, subd. 15(c); .064, subd. 2 (2016).

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

3. Respondent is a "vendor of medical care" within the meaning of the statutes pertaining to PCA services and Medicare.³⁴

²⁹ *Id.*

³⁰ *Id.*

³¹ Ex. 15.

³² Ex. 16.

³³ Ex. 17.

³⁴ Minn. Stat. 256B.02, subd. 4 (2016).

4. The Department may impose sanctions against a vendor of medical care for, among other actions:

“(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 statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled....”³⁵

5. The Department bears the burden of proof to show, by a preponderance of the evidence, that the Respondent violated Minn. Stat. § 256B.064 and Minn. R. 9505.2165, subp. 2(A)(1).³⁶

6. Minn. Stat. § 256B.064, subd. 1a, in relevant part, states:

[t]he commissioner of [DHS] may impose sanctions against a vendor of medical care for any of the following: fraud, theft, or abuse in connection with the provision of medical care to Recipients of public assistance; ... and a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which the vendor is legally entitled.... The term “vendor” includes a provider and also a personal care assistant.³⁷

7. The definition of “abuse” at Minn. R. 9505.2165, subp. 2A(3) includes submitting repeated claims, or causing claims to be submitted, for health services which are not reimbursable under the program.

8. The Department has established by a preponderance of the evidence that Respondent, on multiple occasions, submitted timecards which sought reimbursement for personal care assistance that was not reimbursable because required information was incorrect.³⁸ This constitutes “abuse” under Minn. Stat. § 256B.064, subd. 1a(1), (3), and as defined in Minn. R. 9505.2165, subp. 2A(3).

9. Minn. Stat. § 256B.064, subd. 1b, in relevant part, states:

The commissioner may impose the following sanctions for the conduct described in subdivision 1a: suspension or withholding of payments to a vendor and suspending or terminating participation in the program, or imposition of a fine under subdivision 2, paragraph (f). When imposing sanctions under this section, the commissioner shall consider the nature, chronicity, or severity of

³⁵ Minn. Stat. § 256B.064, subd. 1a.

³⁶ Minn. R. 1400.7300, subp. 5 (2015).

³⁷ Minn. R. 9505.2165, subp. 16a.

³⁸ Minn. R. 9505.2165, subp. 2.A.(1).

the conduct and the effect of the conduct on the health and safety of persons served by the vendor.

10. The Department presented credible evidence that it had considered the nature, chronicity and severity of the Respondent's conduct and weighed the possible sanctions available before determining that a two-year suspension was appropriate.

11. The Department's suspension is appropriate given that the Respondent knowingly and repeatedly misrepresented her provision of PCA services to the Recipient.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department's suspension of the Respondent as set forth in the July 1, 2014 Notice of Suspension be **AFFIRMED**.

Dated: August 4, 2016



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), 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, PO Box 64989, 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 (2016). 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 (2016), 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 Department is responsible for making sure that Medicaid funds, which are given to the state to assist in the care of disabled individuals, are used for that purpose. The Department's SIRS unit reviews the use of Medicaid funds provided for individuals with disabilities to assure they are lawfully used.³⁹ In this case, the Department initiated an investigation into the use of Medicaid funds because it received information that Respondent was providing PCA services to the Recipient although she lived three hours away from the Recipient and had other employment.⁴⁰

Respondent argues that she was not providing PCA services while simultaneously working at Walgreens. She claims what appears to be overlapping hours are errors in the PCA timesheets she submitted to St. David's Center. Respondent blames the majority of the "errors" on the Responsible Party. Respondent testified that she simply signed the timesheets without reviewing them. Respondent attributes the Responsible Party's errors to exhaustion from caregiving. Respondent also explains that she too was exhausted due to caregiving and working numerous jobs. It is believable that caring for the Recipient is demanding, however that fact does not explain the overlapping hours that were repeatedly reported.

Respondent also alleged that Walgreen's record keeping was not accurate.⁴¹ However, the Administrative Law Judge did not find it believable that Walgreens made repeated significant errors in its business records related to employee work hours and wages. Even if the Walgreen's timesheets are incorrect by a few minutes on either end of a work period, this does not negate the fact Respondent was putting in full days at Walgreens while also claiming to provide more than 8 hours of PCA services, and those PCA services overlapped with hours she was at Walgreens. Respondent's explanations are not supported by the timesheets from either employer. Furthermore, even if timesheet errors were made by the Responsible Party, Respondent was ultimately responsible for submitting accurate timesheets for her PCA services.⁴² The number of overlapping hours makes unbelievable Respondent's argument that these were all errors.

Taking just four days as examples of what the Department found in its investigation, the timesheets show the following:

³⁹ Test. of Investigator.

⁴⁰ *Id.*

⁴¹ Test. of Respondent.

⁴² Exs. 4, 5.

	Friday February 1, 2013	Saturday February 2, 2103	Friday April 5, 2013	Monday May 6, 2013
Walgreens	1:02 p.m. to 6:02 p.m. and 6:30 p.m. to 9:31 p.m. (8.01 hours) ⁴³	7:04 a.m. to 4:01 p.m. (9.03 hours) ⁴⁴	10:02 a.m. to 6:33 p.m. (total 8.31 hours) ⁴⁵	7:59 a.m. to 4:34 p.m. ⁴⁶ (total 8.33 hours)
PCA services	5 a.m. to 9 a.m. 6 p.m. to 12 a.m. (total 10 hours) ⁴⁷	5 a.m. to 1 p.m. 4 p.m. to 12 a.m. (total 16 hours) ⁴⁸	4 a.m. to 12 p.m. 4 p.m. to 12 a.m. (total 16 hours) ⁴⁹	4 a.m. to 9 a.m. and 3 p.m. to 6 p.m. ⁵⁰ (total 8 hours)
Total hours claimed worked	18.01	25.03	16	16.33
Overlapping hours and payment	3 hours \$46.80 ⁵¹	6 hours \$93.60 ⁵²	4.5 hours \$70.20 ⁵³	2.5 \$39.00 ⁵⁴
Recipient in school	Yes, received medical services at 11:30 a.m. ⁵⁵		Yes, received medical services at 11:30 a.m. ⁵⁶	Yes, received medical services at 11:30 a.m. ⁵⁷

⁴³ Ex. 10 at 103; Ex. 11.

⁴⁴ Ex. 10 at 104.

⁴⁵ Ex. 10 at 109.

⁴⁶ Ex. 10 at

⁴⁷ Ex. 10 at 103.

⁴⁸ Ex. 5 at 159.

⁴⁹ Ex. 5 at 150.

⁵⁰ Ex. 5 at 145.

⁵¹ Ex. 11.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Ex. 13.

⁵⁶ Ex. 13 at 409.

⁵⁷ Ex. 13 at 412.

These time records provide a representative example of the types of billing the Department found submitted by Respondent. The Recipient was typically in school from 9:30 to 3:30. Respondent argued that the Recipient frequently had to be picked up from school due to illness, but provided no evidence that this occurred or that it impacts the Department's calculations. School records show that the Recipient was in school on the representative days charted above because the records show that he received medical services in school at 11:30 a.m. on the days that were weekdays. Although the record shows that Respondent was billing for caring for the Recipient while working at Walgreens and while the Recipient was in school and while the Recipient allegedly was being driven the three hours to Recipient's home: the Department only recouped payment for the overlapping work time and not for the time claimed by Respondent when the Recipient must have been in school or in transit.⁵⁸

Respondent maintained that suspending her for these overpayments is not reasonable because she frequently has provided services for the Recipient without being paid. The fact that Respondent has provided services without payment in her role as a family member is laudable but does not negate the misrepresentations she made. Respondent also went unpaid for a period of time because St. David's Center did not timely reassess the Recipient⁵⁹ and because St. David's Center stopped working with Respondent.⁶⁰ These are issues outside of the scope of this hearing.

Respondent stated that the suspension is a hardship because there are no other potential PCA providers for the Recipient. However, she did not provide proof that the Responsible Party had unsuccessfully attempted to hire other PCA providers.

Finally, Respondent stated that she would be unable to secure other employment that would sufficiently provide for her family. However, the purpose of the Medicare payments is primarily to provide for the Recipient.

None of Respondent's arguments counter the fact that Respondent was remunerated for services she did not provide. The nature of her misrepresentation was deliberate; it was repeated; and it was for a significant number of hours. Given the nature, chronicity and severity of Respondent's misrepresentation, the Department's proposed sanction of a two-year suspension is reasonable. The Respondent is reminded that she may reapply to be a service provider after the two-year suspension is over.

B. J. C.

⁵⁸ Test. of Investigator.

⁵⁹ Test. of Respondent; Ex. 1 at 7.

⁶⁰ Ex. 1 at 6.