

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

In the Matter of the SIRS Appeal of Minnesota
Professional Health Services, Inc.

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

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on July 25, 2016. The record closed at the end of the hearing.

Elizabeth Oji, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Jonathan Geffen, Arneson & Geffen, PLLC, appeared on behalf of Minnesota Professional Health Services, Inc. (Respondent).

STATEMENT OF THE ISSUE

Whether the Department properly seeks recovery of \$47,273.84 from Respondent.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes the Department proved by a preponderance of the evidence that its request for repayment by Respondent of the funds paid for improperly billed services is appropriate. The Administrative Law Judge further respectfully recommends the Department develop a payment plan with Respondent for repayment of the funds.

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

FINDINGS OF FACT

The Complaint

1. Respondent is a personal care provider agency as defined by Minn. Stat. § 256B.0659 (2016).

2. On October 29, 2015, the Department's Surveillance Integrity Review Section (SIRS) received messages on its hotline regarding a personal care attendant (PCA).¹

3. The reporter (Reporter) left multiple messages explaining that a PCA, Joni Isabell Dorothy Ahlbeck (Ahlbeck), had been providing personal care services for the past two and a half years to two different clients, Ahlbeck's son and another client (Recipient). The Reporter stated that Ahlbeck and Ahlbeck's mother, Eldora Whipple (Whipple), had just informed Reporter that Ahlbeck did not have a valid PCA provider number.² According to Reporter, Ahlbeck and Whipple believed there would be an investigation by the Department and they asked Reporter to tell the investigators that Whipple had been providing the services, not Ahlbeck.³

4. Ahlbeck did not have a valid PCA provider number, but according to Reporter, she had been providing PCA services and collecting pay for them.⁴

5. Reporter was concerned that Whipple's social security payments would be reduced and she would have to repay money because of the income that she was receiving from Respondent for the PCA services.⁵

6. Whipple has a valid PCA number.⁶

7. On November 12, 2015, the SIRS investigator assigned to investigate the allegations spoke with Reporter by telephone.⁷

8. Reporter told the SIRS investigator that Whipple signed timesheets containing Whipple's provider number, claiming she had provided PCA services to both clients, when in fact, Ahlbeck provided the services.⁸

The SIRS Investigation

9. This case concerns payments made to Respondent by the Department for PCA services provided to Recipient.⁹

10. On November 25, 2015, two SIRS investigators interviewed Whipple in person.¹⁰

¹ Exhibit (Ex.) 1 at 1 (SIRS investigation report); Ex. 7 (audio file).

² Ex. 7 (audio file).

³ Ex. 7 (audio file).

⁴ Ex. 1 at 1 (SIRS investigation report).

⁵ Ex. 1 at 1 (SIRS investigation report).

⁶ Ex. 2 at 1 (SIRS interview report).

⁷ Ex. 1 at 1 (SIRS investigation report).

⁸ Ex. 1 at 1 (SIRS investigation report).

⁹ Ex. 3 (Notice of Agency Action).

¹⁰ Ex. 2 at 1 (SIRS interview report); Testimony (Test.) of Kris Kuhlmann.

11. Whipple told the SIRS investigators that she provided PCA services to Recipient.¹¹

12. Whipple told the SIRS investigators that “she may have to stop providing PCA services to [Recipient] because her Social Security income is being [a]ffected...”¹²

13. The SIRS investigator testified at the hearing that at the time of this interview, he had no reason not to believe Whipple.¹³

14. On November 30, 2015, Recipient’s mother, who is the responsible party (Responsible Party) for the PCA services provided to Recipient, left a message on the SIRS hotline.¹⁴

15. Sounding distressed, Responsible Party stated that she just learned that Recipient’s PCA, Ahlbeck, did not have a valid PCA number.¹⁵

16. On November 30, 2015, the SIRS investigators interviewed Responsible Party by telephone.¹⁶

17. Responsible Party told the SIRS investigators that on November 25, 2015, Ahlbeck and Whipple came to Responsible Party’s home and told her that Whipple had been signing Ahlbeck’s timecards because Ahlbeck did not have a valid provider number.¹⁷

18. Responsible Party was aware that Ahlbeck had been in legal trouble in the past for something having to do with her PCA number. Ahlbeck, however, told Responsible Party that Ahlbeck paid a fine and the matter was resolved.¹⁸

19. Ahlbeck and Whipple told Responsible Party that Whipple was under investigation and they asked Responsible Party to say that Whipple had been providing the PCA services to Recipient, not Ahlbeck.¹⁹

20. Responsible Party stated that when she signed the timesheets as the Responsible Party for Recipient, she only checked to make sure Ahlbeck’s hours were accurate and did not pay attention to any other details. She stated that the PCA name and signature section were not filled in on the timesheets Ahlbeck presented.²⁰

¹¹ Ex. 2 at 1 (SIRS interview report); Test. of K. Kuhlmann.

¹² Ex. 2 at 3 (SIRS interview report).

¹³ Test. of K. Kuhlmann.

¹⁴ Ex. 1 at 2 (SIRS investigation report).

¹⁵ Ex. 1 at 3 (SIRS investigation report).

¹⁶ Ex. 1 at 3 (SIRS investigation report); Ex. 7 (audio file).

¹⁷ Ex. 7 (audio file).

¹⁸ Ex. 1 at 3 (SIRS investigation report); Ex. 7 (audio file).

¹⁹ Ex. 7 (audio file).

²⁰ Ex. 1 at 3 (SIRS investigation report); Ex. 7 (audio file).

21. Responsible Party never paid attention to and could not remember whose initials were in the activities section of the timesheets.²¹

22. According to Responsible Party, Whipple had never provided PCA services to Recipient. She said Ahlbeck provided PCA services on a daily basis, typically in the mornings from 7:40 a.m. to 8:40 a.m. and then in the afternoons from 4:00 p.m. to 9:00 p.m.²²

23. Responsible Party texted Ahlbeck on Friday, November 27, 2015, and told Ahlbeck that she should not return to provide PCA services until after Responsible Party had talked to the Department.²³

24. The Department did not interview Ahlbeck as part of its investigation in this case.²⁴The SIRS investigator reviewed claims made through Respondent by Whipple for PCA services to Recipient between July 1, 2014 and November 30, 2015.²⁵

25. The claims information is stored in the Department's data warehouse.²⁶

26. Respondent's claim records show Ahlbeck provided PCA services to Recipient until June 19, 2014. From January 1, 2014, through July 19, 2014, Ahlbeck provided 3 to 12.5 hours of services to Recipient per day. The claim records show Whipple started providing PCA services to Recipient on July 11, 2014, and provided an average of seven hours per day.²⁷

27. Ahlbeck had a valid PCA provider number in the past but it was terminated based on her conviction for theft by false misrepresentation of Medicaid funds, a gross misdemeanor.²⁸

28. Ahlbeck's PCA provider status was revoked effective July 20, 2014.²⁹

29. During the period for which the Department seeks recovery, Whipple never provided PCA services to Recipient, Ahlbeck was always Recipient's PCA.³⁰

30. The SIRS investigator asked Respondent for information to support the claims, and Respondent provided the timesheets.³¹

²¹ Ex. 7 (audio file).

²² Ex. 7 (audio file).

²³ Ex. 7 (audio file).

²⁴ Test. of K. Kuhlmann.

²⁵ Ex. 3 (Notice of Agency Action).

²⁶ Test. of K. Kuhlmann.

²⁷ Ex. 2 at 2 (SIRS interview report).

²⁸ Ex. 9 (termination letter).

²⁹ Ex. 9 (termination letter).

³⁰ Ex. 7 (audio file).

³¹ Test. of K. Kuhlmann.

31. The Department determined the total overpayment to be \$47,273.84.³²

32. Respondent appealed the overpayment decision.³³

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 personal care provider agency within the meaning of the statutes pertaining to PCA services and Medicare.³⁴

4. The term vendor includes provider agencies.³⁵

5. 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....”³⁶

6. Abuse includes submitting repeated claims, or causing claims to be submitted, from which required information is missing or incorrect.³⁷

7. The Department bears the burden of proof to show, by a preponderance of the evidence, that Respondent violated Minn. Stat. § 256B.064 (2016) and Minn. R. 9505.2165, subp. 2(A)(1).³⁸

8. The Department has established by a preponderance of the evidence that Respondent repeatedly submitted incorrect claims to the Department by submitting claims for services that were provided to Recipient by an excluded provider, Ahlbeck.

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

³² Ex. 3 (Notice of Agency Action).

³³ Ex. 4 (request for appeal).

³⁴ Minn. Stat. § 256B.0659.

³⁵ Minn. R. 9505.2165, subp. 16a (2015).

³⁶ Minn. Stat. § 256B.064, subd. 1a (2016).

³⁷ Minn. R. 9505.2165, subp. 2(A)(1) (2015).

³⁸ Minn. R. 1400.7300, subp. 5 (2015).

RECOMMENDATION

The Department's recovery of \$47,273.84 from Respondent be confirmed.

Dated: August 23, 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, at P.O. Box 64989, St. Paul, MN 55164, or (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's Case

The Department relied entirely on hearsay in this matter, calling no witnesses with firsthand knowledge of the facts alleged in this case. Upon initial consideration, this made the outcome of the case uncertain, however, the recorded messages from the Responsible Party made the case for the Department. The Responsible Party sounded

truly distressed in the two recorded messages submitted into evidence.³⁹ The Administrative Law Judge found her to be credible in her reporting of the fraud. It may be that she sounded credible because she was reporting something she had just discovered, or because she was reporting something about to be uncovered by the Department. Whatever her underlying motivation, the Administrative Law Judge found her initial reports believable. For purposes of this case, the facts regarding Ahlbeck's fraud support a conclusion that Respondent submitted claims for reimbursement for PCA services provided by an excluded provider.

Respondent's Arguments

Respondent contends it did not knowingly submit false claims to the Department and, if there was fraud, Respondent was defrauded as well. Respondent's argument is unavailing. The Department is required to recover funds provided for improper claims. Further, Respondent had a responsibility to verify that the claims submitted were for services actually provided by the person whom Respondent was paying for those services.⁴⁰ The statute governing verification states:

For each service recipient, the agency must conduct at least one service verification every 90 days. If more than one PCA provides services to a single service recipient, the agency must conduct a service verification for each PCA providing services before conducting a service verification for a PCA whose services were previously verified by the agency. Service verification must occur on an ongoing basis while the agency provides PCA services to the recipient. During service verification, the agency must speak with both the PCA and the service recipient or recipient's authorized representative. Only qualified professional service verifications are eligible for reimbursement. An agency may substitute a visit by a qualified professional....

Had Respondent performed this verification, it likely would have uncovered the fact that Whipple was not performing the services.

Conclusion

It is unclear exactly when Reporter and Responsible Party became aware of the fraud. The Department, however, has met its burden based on the strength of the recordings of Reporter, and especially those of Responsible Party, together with the undisputed fact that Ahlbeck was an unauthorized provider. Respondent paid funds for services that were provided by an excluded provider and this violation of Medicare rules requires the Department to recover the funds.⁴¹

³⁹ Ex. 7 (audio file).

⁴⁰ Minn. Stat. § 256B.0705 (2016).

⁴¹ Minn. R. 9505.0465 (2015).

While Respondent did not actively perpetrate the fraud, it is not without responsibility for the misspent funds. Provider agencies employ PCAs to provide services and are responsible for verifying the accuracy of the claims that are submitted.

Respondent asks that, if the Department's sanction in this case is upheld, the Department stay recoupment until the case against Whipple is prosecuted. While the Administrative Law Judge finds that recoupment of the funds sought by the Department is supported, given the large amount due in this case it would be reasonable for the Department to develop a payment plan for Respondent.

B. J. C.