OAH 71-1800-35530

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal by Shalonda Latrease Stewart	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a hearing on March 29, 2019. The record closed on the same date at the conclusion of the hearing.

Nicholas W. Anderson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Shalonda Latrease Stewart (Appellant) appeared on her own behalf.

STATEMENT OF THE ISSUES

Does the Department have grounds to suspend Appellant's participation in the Minnesota Health Care Programs (MHCP) for a period of two years?

SUMMARY OF RECOMMENDATION

The Department has established that Appellant should be suspended from participation in the MHCP for two years.

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

FINDINGS OF FACT

I. Background

1. The Department's Surveillance and Integrity Review Section (SIRS Division) investigates vendors and aid recipients for the purposes of identifying fraud, theft, abuse, or error in the administration of medical assistance, or Medicaid, payments.[1]

[1] Testimony (Test.) of Katie Kalka; Minn. Stat. § 256B.04, subd. 10 (2018); Minn. R. 9505.2200, subp. 1 (2017).

2. The SIRS Division conducts post-payment reviews and investigates tips it receives.[2]

3. Appellant is enrolled in the MHCP as a personal care assistant (PCA).[3]

4. Personal care assistants provide services related to a client's activities of daily living, including assisting with transfers, bathing and grooming, eating, dressing, and medication administration, among other activities.[4]

5. Appellant provided personal care services to several clients, identified here by their initials. Some of Appellant's clients were relatives and/or lived in her home; these clients were R.S.-1, R.S.-2, K.J., and D.S.[5] Other clients, D.A.-1, D.A.-2, D.A.-3, and A.A., are all members of the same family and all four reside at the same address.[6]

6. Some of Appellant's clients were covered by MHCP and others had managed care insurance.[7]

7. Appellant provided PCA services to clients through two entities, Pro-Health Care, Inc. (Pro-Health) and St. David's Center (St. David's).[8]

II. Complaint Regarding Appellant

8. On September 6, 2016, the SIRS Division received a complaint regarding Appellant via voicemail from Abdulwahab Asamarai (Asamarai), the Chief Executive Officer of Pro-Health.[9] Asamarai reported that timesheets Appellant submitted to Pro-Health were in conflict with Appellant's timesheets for St. David's.[10]

9. Pro-Health discovered the issue when it received a telephone call from St. David's. St. David's informed Pro-Health that Appellant submitted a Pro-Health timesheet to St. David's, and that her timesheet contained three entries that overlapped with the times for services Appellant claimed on her St. David's timesheet.[11]

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[2] Test. of K. Kalka.
[3] *Id.*; Exhibit (Ex.) 8 at DHS000094-000095 (MMIS Provider Data); *see also* Minn. R. 9505.0335, subp. 1(C) (2017) (defining personal care assistant). Note that documents in the record are identified by title only in the first citation reference, and thereafter are referenced by exhibit number.
[4] Minn. R. 9505.0335, subps. 8-9 (2017).
[5] Ex. 5 at DHS000015 (SIRS Investigation Report). D.S. is now deceased. *Id.* K.J. reported being homeless, but the fraud unit for Anoka County placed K.J. in Appellant's home. *Id.*
[6] *Id.* at DHS000016.
[7] Test. of K. Kalka.
[8] *See* Ex. 6 (Fax from Pro-Health to DHS (Sept. 9, 2016)); Ex. 7 (Fax from St. David's to DHS (Sept. 8, 2016)).
[9] Test. of K. Kalka; Ex. 5 at DHS000015.
[10] Test. of K. Kalka; Ex. 5 at DHS000015.
[11] Test. of K. Kalka; Ex. 6 at DHS000019.

III. The SIRS Division Investigates Appellant

10. In response to the complaint, the SIRS Division began an investigation, assigning a preliminary investigator to gather information and documents.[12]

11. The preliminary investigator identified Appellant's employers as Pro-Health and St. David's, and obtained Appellant's timesheets from both entities for a nine-month period, from December 1, 2015 to August 28, 2016 (Review Period).[13]

12. In addition, the preliminary investigator obtained claims data from the SIRS software system for all billed services for which Appellant was the treating provider.[14] The claims data list each recipient, whether the recipient was a Fee for Service (FFS) client (which indicates coverage through MHCP), or a managed care client. The data also list the dates worked, the time in and the time out, and other information.[15]

13. Senior Investigator Katie Kalka (Kalka) was assigned as the investigator for Appellant's case.[16]

14. Kalka reviewed and compared Appellant's timesheets during the Review Period with the claims data regarding billings for Appellant's services.[17]

15. Kalka determined that Appellant's timesheets contained overlapping times billed for different clients.[18] Kalka created a spreadsheet showing the instances of overlap in Appellant's timesheets (Overlap Spreadsheet).[19]

16. Kalka documented 67 instances of overlap on Appellant's timesheets covering 56 dates of service.[20] The majority of Appellant's time sheets demonstrate overlaps of two to four hours.[21] Appellant's timesheets also show six instances in which Appellant lists the same stop and start times for different clients, even though these clients resided in different homes.[22]

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[12] Test. of K. Kalka.
[13] *Id.*; Ex. 5 at DHS000015; Exs. 6-7. The preliminary SIRS investigator determines the length of the review period to be used, which varies based on information received from the Minnesota Department of Employment and Economic Development and the allegations in the complaint. Test. of K. Kalka.
[14] Test. of K. Kalka; Ex. 5 at DHS000015. The preliminary SIRS investigator ran a query entitled "Claims Detail by Treating Provider Report (SAS)" on April 4, 2018, for the timeframe of December 1, 2015 to August 31, 2016. *Id. See also* Ex. 10 (Claims Detail spreadsheet).
[15] Test. of K. Kalka; Ex. 10.
[16] Test. of K. Kalka.
[17] *Id.*
[18] *Id.*
[19] *Id.*; Ex. 11 (Overlap Spreadsheet).
[20] Test. of K. Kalka; Ex. 11. Kalka initially found 66 instances of overlapping time, but later discovered one additional overlapping entry. *Id.*
[21] Ex. 11.
[22] *Id.*; Test. of K. Kalka.

IV. Appellant's Timesheets

17. A review of Appellant's timesheets confirms that she submitted timesheets with overlapping entries for different clients, as well as timesheets on which Appellant recorded stop and start times for care provided to different clients, without accounting for any travel time between them.

18. Specifically, the record supports Kalka's calculation that Appellant's timesheets included over 60 instances of overlapping time entries, as documented on the Overlap Spreadsheet.[23] The record also supports finding that, on multiple dates Appellant recorded the end of one client's services at the same time she began another client's services, notwithstanding that the clients did not reside in the same home. A representative selection of the timesheets is discussed in greater detail below.

19. On December 1, 2015, Appellant's St. David's timesheet shows services provided to D.S. from 6:00 p.m. until 10:00 p.m.[24] Appellant's timesheet for the same date submitted to Pro-Health contains an entry for services provided to D.A.-3 from 4:00 p.m. to 8:45 p.m.[25] These timesheets have a 2.75 hour billing overlap.

20. On December 7, 2015, Appellant's timesheet for St. David's shows Appellant billed for services to D.S. from 6:00 p.m. to 10:00 p.m.[26] On the same date, Appellant's Pro-Health timesheet indicates she provided services to D.A.-2 from 5:30 p.m. to 10:15 p.m.[27] These time entries overlap by four hours.

21. Appellant's St. David's timesheet for December 12, 2015, claims services were provided to R.S.-1 from 12:00 p.m. to 6:00 p.m.[28] Appellant's timesheet for the same date submitted to Pro-Health shows Appellant claimed providing services to R.S.-2 from 9:00 a.m. until 2:45 p.m.[29] These timesheets show a 2.75 hour overlap.

22. On February 15, 2016, Appellant's timesheet submitted to Pro-Health for services to R.S.-2 shows hours of work from 5:00 a.m. to 7:00 a.m.[30] Appellant submitted another timesheet to Pro-Health for the same date with hours of service to D.A.-3 from 7:00 a.m. to 8:45 a.m.[31] R.S.-2 and D.A.-3 reside at different addresses next door to

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[23] Exs. 6, 7, 11. Kalka determined that Appellant's timesheets contained 67 instances of overlapping entries. Test. of K. Kalka. For services provided to D.A.-2 on December 13 and 20, 2015, Appellant's timesheet shows a line crossing through the time entries, along with Appellant's initials. *See* Ex. 6 at DHS000060. Kalka counted these dates within the 67 instances of overlapping times, but neither party offered evidence regarding the significance of the line crossed through these time entries. Even if these two entries are deducted from the total number of overlaps that Kalka counted for the Overlap Spreadsheet, the Department has established an expensive pattern of overlapping time entries. Ex. 11. Therefore, the Administrative Law Judge determines that these two entries are not material to her recommendation.

[24] Ex. 7 at DHS000093.

[25] Ex. 6 at DHS000064.

[26] Ex. 7 at DHS000092.

[27] Ex. 6 at DHS000060.

[28] Ex. 7 at DHS000092.

[29] Ex. 6 at DHS000061.

[30] Ex. 6 at DHS000048.

[31] Ex. 6 at DHS000050.

each other, but Appellant's time entry for R.S.-2's services stops at the same time D.A.-3's services start, without any time for travel between the two residences.[32]

23. Appellant's timesheet for St. David's for services to D.S. on April 17, 2016, reflects work hours from 1:00 p.m. to 7:00 p.m.[33] Appellant's timesheet submitted to Pro-Health for the same date claims Appellant provided services to D.A.-1 from 5:00 p.m. to 9:45 p.m.[34] These timesheets overlap by two hours.

24. On April 23, 2016, Appellant submitted a timesheet to St. David's for services provided to D.S. from 1:00 p.m. to 5:00 p.m.[35] Appellant's timesheet for Pro-Health for services provided to D.A.-1 lists Appellant's time as 5:00 p.m. to 9:45 p.m.[36] D.S. and D.A.-1 did not live at the same residence, yet Appellant ended services for one client at the exact same time she began services for another client, without any travel time between them.[37]

25. On May 10, 2016, Appellant claimed on her timesheet for St. David's that she provided services to D.S. from 1:00 p.m. to 7:00 p.m.[38] Appellant submitted time for the same date to Pro-Health for services provided to A.A. from 4:00 p.m. to 5:00 p.m., and to D.A.-1 from 5:00 p.m. until 8:45 p.m.[39] Appellant's time on this date overlapped three hours between the three clients.

26. It is possible for a provider to provide services to two clients at the same time under a shared care agreement.[40] Appellant's clients did not have shared care agreements in place.[41]

27. Additionally, in all of the instances of overlapping billing, Appellant indicated on her timesheets that the services were provided "1:1," meaning that she provided one-on-one care.[42]

28. The majority of the claims Appellant submitted with overlapping times involved MHCP recipients.[43]

29. Some of Appellant's billing overlaps involved time for one managed care recipient overlapping with time for another managed care recipient.[44] The SIRS Division

[32] Test. of K. Kalka.
[33] Ex. 7 at DHS000078.
[34] Ex. 6 at DHS000039.
[35] Ex. 7 at DHS000078.
[36] Ex. 6 at DHS000039.
[37] Test. of K. Kalka.
[38] Ex. 7 at DHS000077.
[39] Ex. 6 at DHS000033-000034.
[40] Test. of K. Kalka.
[41] *Id.*
[42] *Id.*; *see also* Exs. 6-7.
[43] Test. of K. Kalka; Exs. 10-11.
[44] *See* Ex. 10; Test. of K. Kalka.

documented these instances to show a pattern of abuse and sent the information to the relevant managed care organization so that it could conduct its own investigation.[45]

30. Appellant signed and submitted the timesheets at issue in this case.[46]

31. All of Appellant's timesheets contained a warning regarding submission of false information regarding the time worked.[47]

32. Appellant's Pro-Health's timesheets included a warning stating:

> It is a federal crime to provide false information on PCA billings for any Medical Assistance payment. Your Signature verifies the time and services entered above are accurate and that the services were performed as specified in the PCA Care Plan.[48]

33. Appellant's St. David's timesheets included a similar statement, indicating:

> I certify and swear 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 mis-reporting my hours is fraud for which I could face criminal prosecution and civil proceedings.[49]

V. The Department Suspends Appellant

34. The SIRS Division concluded that Appellant committed "abuse" in violation of Minn. R. 9505.2165, subp. 2(A) (2017).[50]

35. The SIRS Division considered the nature, severity, and chronicity of Appellant's conduct.[51] In particular, the SIRS Division determined that Appellant's conduct included a pattern of providing false information and submission of incomplete and inaccurate records; that she failed to comply with the provider agreement under which she was operating; and that the health and safety of her clients was at risk because they were not actually receiving all of the care Appellant claimed she provided.[52]

36. As a result of the SIRS Division's determinations, the Department issued Appellant a Notice of Suspension on July 10, 2018, suspending Appellant from

[45] Test. of K. Kalka.
[46] Test. of. Shalonda Stewart; Exs. 6-7.
[47] *See* Exs. 6-7.
[48] *See, e.g.*, Ex. 6 at DHS000020.
[49] *See, e.g.*, Ex. 7 at DHS000067.
[50] Ex. 1 (Notice of Suspension (July 10, 2018)).
[51] Test. of K. Kalka.
[52] *Id.*

participation in the MHCP for two years.[53] The Notice of Suspension included an attachment detailing a pattern of overlapping time entries.[54]

37. On July 17, 2018, Appellant submitted an appeal letter seeking review of the Department's decision. In her appeal, Appellant stated that she "made some mistakes unintentionally an[d] at the time [she] was under stress physically an[d] mentally due to [Appellant] taking care of [her] ill mom," who had then passed away. She further stated that she "could have crossed hours" but "corrected the mistake." She also expressed that she was sorry for her timesheet mistakes.[55]

38. On July 27, 2018, the Department sent Appellant a letter acknowledging her appeal.[56]

39. Appellant has not worked as a PCA since July 2018.[57]

VI. Procedural History

40. The Department commenced this case by filing a Notice and Order for Prehearing Conference and Hearing, dated September 11, 2018.[58]

41. The Administrative Law Judge held a prehearing conference on October 29, 2018, at which both parties appeared. The Judge issued a First Prehearing Order establishing the schedule for this matter on October 30, 2018.[59]

42. The Administrative Law Judge convened an evidentiary hearing on March 21, 2019. Appellant appeared by telephone, but did not appear in person. The Department asked that a default order be entered against Appellant, but Appellant requested a continuance of the hearing so that she could appear in person. The Administrative Law Judge issued an Order for Continuance and Denying Motion for Default Order on March 21, 2019, setting the hearing on the calendar for March 29, 2019.[60]

43. This matter came on for hearing on March 29, 2019, with both parties appearing in person at the Office of Administrative Hearings.[61] The Administrative Law Judge heard testimony offered by both parties and received into the record the Department's Exhibits 1 through 12.

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[53] Ex. 1. The Department also sent out provider notices dated July 9 and 10, 2018. *See* Ex. 2 (Provider Notices).
[54] Ex. 1 at 1-2.
[55] Ex. 3 (Appellant Appeal Letter (July 19, 2018)).
[56] Ex. 4 (Appeal Acknowledgement and Provider Notices (July 27, 2018)).
[57] Test. of S. Stewart.
[58] Notice and Order for Prehearing Conference and Hearing (Sept. 11, 2018).
[59] First Prehearing Order (Oct. 30, 2018).
[60] Order for Continuance and Denying Motion for Default Order (Mar. 21, 2019).
[61] Hearing Digital Recording (Mar. 29, 2019) (on file with the Minn. Office Admin. Hearings).

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 over this matter pursuant to Minn. Stat. §§ 14.50, 256B.04, subd. 15, .064, subd. 2 (2018).

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

3. The Commissioner may impose sanctions against a "vendor of medical care" for fraud, theft, or abuse in connection with services provided to medical assistance recipients.[62]

4. In addition, the Commissioner may impose sanctions where a vendor engages in "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."[63]

5. As a PCA providing services covered by medical assistance, Appellant is a "vendor of medical care."[64]

6. "Abuse" is defined by rule to include "submitting repeated claims, or causing claims to be submitted, from which required information is missing or incorrect."[65] Abuse also includes "submitting repeated claims, or causing claims to be submitted, for health services which are not reimbursable under the program."[66]

7. Abuse may also occur for failure "to develop and maintain health service records as required under [Minnesota Rules] part 9505.2175 [governing health service records]."[67] Minn. R. 9505.2165, subp. 6 (2017) defines a "health service record" as "documentation of the health service that is electronically stored, written, or diagrammed that indicates the nature, extent, and evidence of the medical necessity of a health service provided by a vendor and billed to a program."[68] In order to receive payment from MHCP, a vendor is required to document each health service occurrence provided to a recipient.[69]

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[62] Minn. Stat. § 256B.064, subd. 1a (2018).
[63] Minn. Stat. § 256B.064, subd. 1a(3) (2018).
[64] Minn. Stat. § 256B.02, subd. 7 (2018); Minn. R. 9505.2165, subp. 16a (2017); *see also* Minn. R. 9505.0295, subp. 2(D) (2017).
[65] Minn. R. 9505.2165, subp. 2(A)(1).
[66] Minn. R. 9505.2165, subp. 2(A)(3).
[67] Minn. R. 9505.2165, subp. 2(A)(7).
[68] Minn. R. 9505.2165, subp. 6.
[69] Minn. R. 9505.2175, subp. 1.

8. Abuse" also includes "repeatedly failing to comply with the requirements of the provider agreement that relate to" a MHCP.[70]

9. Among the sanctions available, the Commissioner may suspend a PCA's participation in the MHCP.[71] Suspension of participation means that the PCA is ineligible for reimbursement through the program for a stated period.[72]

10. When imposing a sanction, the Commissioner must consider "the nature, chronicity, or severity of the conduct and the effect of the conduct on the health and safety of persons served by the vendor."[73]

11. The Department bears the burden to establish, by a preponderance of the evidence, that Appellant engaged in abuse and should be suspended from the MHCP for a period of two years.[74]

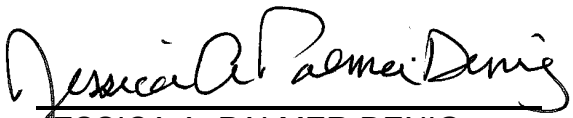
12. The Department demonstrated by a preponderance of the evidence that Appellant engaged in abuse and that a suspension of two years is warranted in this case.

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

RECOMMENDATION

The Commissioner should **AFFIRM** the Notice of Suspension and suspend Appellant from participation in the MHCP for a period of two years.

Dated: April 29, 2019



JESSICA A. PALMER-DENIG
Administrative Law Judge

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[70] Minn. R. 9505.2165, subp. 2(A)(18).
[71] Minn. Stat. § 256B.064, subd. 1b (2018).
[72] Minn. R. 9505.2165, subp. 12 (2017).
[73] Minn. Stat. § 256B.064, subd. 1b.
[74] Minn. R. 1400.7300, subp. 5 (2017).

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 (2018), 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 64254, St. Paul, MN 55164-0254, (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 (2018). 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 (2018), 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

Appellant submitted timesheets to Pro-Health and St. David's containing entries for hours of work that overlapped between clients. In some instances, Appellant claimed that she ended work with one client at the exact same time she began work with another client, without accounting for travel time.

Appellant does not dispute that her timesheets include entries that overlap each other or that contain identical start and stop times.[75] Appellant also does not dispute that she completed and signed these timesheets, and submitted them for payment.[76] Appellant denies, however, that she intentionally submitted inaccurate timesheets.[77] Instead, she contends she made mistakes because she was overburdened at the time due to caring for her ill mother, who later passed away.[78] She admits she was not careful in completing her timesheets.[79]

Even if the Administrative Law Judge credits Appellant's assertion that she made unintentional errors, her conduct would not comply with the rules governing the provision of PCA services. Ultimately, though, the Administrative Law Judge does not find

[75] Test. of S. Stewart; *see also* Ex. 3, Ex. 6 at DHS000018.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*

Appellant's explanations credible. This is not a case involving small errors in accounting for time. During the Review Period, a limited window of time, Appellant submitted timesheets containing over 60 instances of overlapping entries.[80] Some of the overlapping entries double-counted Appellant's time for several hours. Appellant's timesheets also contained multiple instances in which Appellant claimed identical start and stop times for clients in different locations. Appellant's timesheets display more than a minor lack of care, but instead suggest a pattern of overbilling.

Appellant knew that she could not bill the same hours for multiple clients; her timesheets document that she provided services "1:1," or one-to-one, with clients. Further, every timesheet warned her that submitting false information was a crime and that it could be considered fraud. With each timesheet, she certified that the information she provided was correct, even though some of the entries were not.

The sanction to be imposed by the Commissioner must be based upon the nature, severity, and chronicity of the conduct at issue.[81] The Department has shown that Appellant engaged in a pattern of non-compliant conduct, and determined she should be suspended from participation in the MHCP for two years.[82] The Administrative Law Judge concludes that, considering the nature, chronicity, and severity of Appellant's conduct, a suspension of two years from participation in the MHCP is supported by the record.

The Department has established that Appellant engaged in a pattern of making false statements of material fact in violation of Minn. Stat. § 256B.064, subd. 1a(3), by submitting timesheets on multiple occasions, claiming she was providing care to two different clients at the same time. Further, Appellant's conduct qualifies as abuse under Minn. Stat. § 256B.064, subd. 1a(1); Minn. R. 9505.2165, subps. 2(A)(1), 2(A)(3), 2(A)(7), and 2(A)(18). The Administrative Law Judge concludes a two-year suspension from participation in the MHCP is warranted and recommends that the Commissioner **AFFIRM** Appellant's suspension.

J. P. D.

[80] Test. of K. Kalka; Ex. 11.
[81] Minn. Stat. § 256B.064, subd. 1b.
[82] Ex. 1. In the case of Appellant's overlapping billings, the Department was unable to identify which client received services and which client did not, and therefore, it has not sought repayment of funds from Appellant for hours that were overbilled. Test. of K. Kalka.