OAH 21-1800-36197

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS Appeal by
Aydarus Jama Aden

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

This matter came before Administrative Law Judge Kimberly Middendorf for a hearing on October 24, 2019. The parties submitted written closing argument and the record closed on November 6, 2019.

Nicholas W. Anderson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Aydarus Jama Aden (Appellant) appeared on his own behalf without legal counsel.

STATEMENT OF THE ISSUES

Did the Department properly suspend Appellant from participating as a provider in Minnesota Health Care Programs (MHCP) for a period of three years?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge finds that Appellant violated MHCP rules and respectfully recommends that the Notice of Suspension be **AFFIRMED**.

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

FINDINGS OF FACT

1. Appellant was employed as a personal care assistant (PCA), as defined by Minn. Stat. § 256B.0659 (2018), through the agency Oday Home Care, Inc. (Oday).[1] Between April 1, 2017, and July 31, 2017 (the Review Period), Appellant was also employed full-time by First Transit.[2]

2. On February 28, 2019, the Medicaid Fraud Control Unit (MFCU) referred information, indicating Appellant was pre-signing timesheets, to the Surveillance and Integrity Review Section (SIRS).[3]

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[1] Testimony (Test.) of Jacob Shadis.
[2] Test. of J. Shadis; Test. of Aydarus Aden.
[3] Test. of J. Shadis.

3. The SIRS investigator reviewed Appellant's timesheets submitted to the Department through Oday, and compared them to Appellant's timesheets from First Transit for the Review Period. The SIRS investigator determined that there were 95 instances of overlapping time on Appellant's timesheets, with 272 hours of his reported PCA time overlapping with his time at First Transit. This resulted in the Department's payment of 384 PCA hours that were not reimbursable.[4]

4. S.M. is a client who requires PCA services due to autism. Appellant was S.M.'s step-father.[5] Appellant's timesheets, submitted to the Department through Oday, indicate PCA services were provided to S.M. every day from 4:00 p.m. to 9:15 p.m. For some weeks, the timesheets reflect that each day, Appellant assisted with dressing, grooming, bathing, eating, mobility, transfer, positioning, toileting, behavior, health-related activities, and instrumental activities of daily living. For other weeks, Appellant did not document assistance with mobility and transfer of S.M. Oday sought payment from the Department for 36.75 hours each week.[6]

5. Appellant testified, contrary to his timesheets, that he actually provided PCA services to S.M. according to the following schedule each week during the Review Period:

Day of the Week	Time In	Time Out
Sunday	11:00 p.m.	12:00 a.m.
Monday	8:00 p.m.	12:00 a.m.
Wednesday	8:00 p.m.	12:00 a.m.
Thursday	10:00 a.m.	6:30 p.m.
Friday	10:00 a.m.	6:15 p.m.
Saturday	10:00 a.m.	5:00 p.m.

According to Appellant, he provided 32.75 hours of PCA services to S.M. each week.[7]

6. Timesheets submitted to the Department through Oday for the Review Period report the provision of services to S.A.M., an elderly client, every day from 11 a.m. to 2:00 p.m. Regardless of whether fewer services were ostensibly provided, the Department was billed three hours each day.[8] For some weeks, no bathing or eating

[4] Test. of J. Shadis.
[5] Test. of Ijabo Mohamed.
[6] Exhibit (Ex.) 9 at DHS 72-77, 40-48.
[7] Ex. 2 at 2; Test. of A. Aden.
[8] Ex. 9 at DHS 78-84, 30-38.

assistance was apparently provided. During other weeks, Appellant indicated that bathing and eating assistance was provided.[9]

7. Appellant maintains that, during the Review Period, contrary to his PCA timesheets, he provided services to S.A.M. according to the following schedule each week:

Day of the Week	Time In	Time Out
Monday	4:00 a.m.	7:00 a.m.
Tuesday	4:00 a.m.	7:00 a.m.
Wednesday	4:00 a.m.	7:00 a.m.
Thursday	4:00 a.m.	7:00 a.m.
Friday	4:00 a.m.	7:00 a.m.
Saturday	4:00 a.m.	7:00 a.m.
Sunday	4:00 a.m.	7:00 a.m.

8. The PCA timesheet form used by Appellant contains the following acknowledgement:

> After the PCA has documented his/her time activity, the recipient must draw a line through any dates and times he/she did not receive services from the PCA. Review the completed timesheet for accuracy before signing. It is a Federal Crime to provide false information on PCA billings for 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.[10]

9. Appellant signed all timesheets for S.M. and S.A.M. during the Review Period without entering time in and out. Because of his employment at First Transit, Appellant could not have provided services at the times entered on the timesheets for 95 of the claims submitted during the Review Period.[11] According to Appellant, he signed his timesheets without entering his time at Oday's request.[12]

[9] *See, e.g.,* Ex. 9 at 80 and 81.
[10] Ex. 9.
[11] Ex. 2; Test. of A. Aden.
[12] Test. of A. Aden.

10. S.M.'s and S.A.M.'s responsible parties signed timesheets during the Review Period that did not have times in and out entered.[13]

11. The Department disallows an entire claim if any overlap between PCA time reported and other employment exists, because falsely reported time undermines SIRS' ability to verify that any of the reported PCA services were actually provided.[14]

12. In reliance on the false information in Appellant's timesheets, the Department paid funds in the amount of $6,574.28.[15]

13. The Department issued a Notice of Suspension to Appellant, on February 28, 2019, for a three-year suspension from MHCP.[16]

14. Appellant timely appealed the Notice of Suspension, which was received by the Department on March 15, 2019.[17]

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

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

3. Appellant is a "vendor of medical care" within the meaning of the statutes pertaining to PCA services and Medicare.[18]

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. . . ."[19]

5. PCAs are required to document PCA services on a daily basis, and timesheets must reflect, among other things, the date and time that services were

[13] Test. of Amal Mohamed; Test. of I. Mohamed.
[14] Test. of J. Shadis.
[15] *Id.*
[16] *Id.*; Ex. 1.
[17] Ex. 2.
[18] Minn. Stat. 256B.02, subd. 4 (2018).
[19] Minn. Stat. § 256B.064, subd. 1a (2018).

provided, the services that were provided, the PCA's signature, and the signature of the recipient, or the recipient's responsible party.[20]

6. The Department bears the burden of proof to show, by a preponderance of the evidence, that the Appellant violated Minn. Stat. § 256B.064 (2018); Minn. R. 9505.2165, subp. 2(A)(1) and (3) (2017).[21]

7. The Department established by a preponderance of the evidence that Appellant engaged in abuse of MHCP by repeatedly submitting claims from which required information was incorrect or that were not reimbursable, and engaged in a pattern of making false statements of material fact for the purpose of obtaining greater compensation than that to which he was legally entitled.[22]

8. In imposing sanctions, 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".[23]

9. Considering the nature, chronicity, and severity of the conduct, and the effect of the conduct on the health and safety of persons served, it is appropriate to suspend Appellant from participation in MHCP for a period of three years.

10. Any of the foregoing conclusions of law more properly designated as findings of fact are hereby adopted as such.

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

RECOMMENDATION

The Administrative Law Judge finds that Appellant engaged in abuse and in a pattern of making materially false statements for the purpose of obtaining greater compensation than that to which he was legally entitled, in violation of MHCP rules, and respectfully recommends that the Notice of Suspension be **AFFIRMED**.

Dated: December 16, 2019

KIMBERLY MIDDENDORF
Administrative Law Judge

[20] Minn. Stat. § 256B.0659, subds. 11, 12; Minn. R. 9505.2175, subp. 7(H).
[21] Minn. R. 1400.7300, subp. 5 (2017).
[22] *See* Minn. Stat. § 256B.064, subd. 1a; Minn. R. 9505.2165, subp. 2(A).
[23] Minn. Stat. § 256B.064, subd. 1b; *see also* Minn. R. 9505.2205 (2017) (stating that the Commissioner shall consider the nature, extent, and history of fraud, theft, abuse, or error and actions taken or recommended by other state regulatory agencies).

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (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, P.O. 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

The Department argues that Appellant committed abuse by repeatedly submitting claims for PCA services that were not reimbursable. In addition, the Department contends that there is a pattern of making false statements of material facts for the purpose of obtaining greater compensation than that to which Appellant would have been entitled. Appellant concedes that he pre-signed timesheets without entering time spent, but contends that he should not be sanctioned for this conduct. He maintains that a suspension may impact his employment with First Transit, and because Oday instructed him to submit timesheets without stating the time in and out.

By Appellant's own admission, however, the services allegedly provided to S.M. and S.A.M. were not provided as reported. He admits that he signed them without completing time in and out, as required. The responsible parties for his clients likewise signed for the provision of services that had not been documented. According to Appellant, he signed blank timesheets at the request of Oday. This does not excuse Appellant's violations. The rules require that the PCA and the recipient, or the recipient's responsible party, certify that services were provided as documented on the timesheets. Each and every claim submitted for services allegedly provided to S.M. and S.A.M. from

April 1, 2017, through July 31, 2017, was documented falsely. Appellant was party to the submission of false claims, which are not reimbursable.

According to Appellant, he provided the same number of hours of PCA services as were reported, and therefore did not obtain greater compensation than that to which he was legally entitled. This is simply wrong, because a provider is entitled to no compensation for services that were not documented. In any event, Appellant's testimony cannot be credited. The number of hours Appellant claims to have worked on some days seems excessive. For example, on April 3, 2017, Appellant claims to have provided PCA services to S.A.M. from 4:00 a.m. to 7:00 a.m., worked at First Transit from 8:00 a.m. to almost 6:30 p.m., and then provided PCA services to S.M. from 8:00 p.m. to 12:00 a.m. This schedule does not seem plausible. In addition, Ijabo Mohamed testified that Appellant initialed the activities he performed for her daughter. However, the activities do not appear to correspond with the amount of time Appellant claims to have spent providing PCA services. According to Appellant's testimony, and Exhibit 2, he provided services to S.M. for only one hour on Sundays, but seven hours on Saturdays. Appellant lists the same activities being performed whether he provided care for an hour or seven hours. The descriptions are not credible accounts of what happened on the days of service.

The nature, chronicity, and severity of Appellant's violations warrant a three-year suspension. Appellant's violations are severe. Appellant falsely verified that services were provided as documented on his timesheets for four months. There are 95 entries documenting services that could not have been provided, resulting in 384 hours of overlapping time. Appellant's false timesheets prevent the Department from ensuring that S.M. and S.A.M. received necessary care, and undermine the program at the expense of persons who depend upon MHCP.

Regrettably, Appellant does not take responsibility for the false claims in this case. It was Appellant's responsibility to complete his timesheets and certify their accuracy. Appellant's certifications are verifiably false and subject him to appropriate sanctions. Appellant demonstrated substantial untrustworthiness in his participation in MHCP, and therefore, should be suspended from participation in MHCP for three years.

K. J. M.