

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

In the Matter of the SIRS Appeal of
Farrah Fawcett Ross

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Linda F. Close on June 15, 2009. The OAH record closed at the conclusion of the hearing on that day.

Cara M. Hawkinson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (the Department). Farrah Fawcett Ross (Respondent) appeared on her own behalf.

STATEMENT OF THE ISSUES

1. Did Respondent file false statements of material facts in order to claim greater Medical Assistance compensation than she was entitled to?
2. May the Commissioner suspend Respondent's participation in Minnesota Health Care Programs based on a pattern of Respondent's filing of false statements of material facts?

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

FINDINGS OF FACT

1. On March 19, 2008, Respondent applied to the Department to provide personal care attendant (PCA) services through Minnesota Quality Care, Inc. (Minnesota Quality), a personal care provider organization. As part of the application, Respondent signed a Provider Agreement in which she agreed to comply with all federal and state laws and regulations regarding the delivery of

PCA services and submission of claims therefor.¹ The Department enrolled Respondent to provide care through Minnesota Quality on March 26, 2008.²

2. On May 5, 2008, Julia Twaddle, an investigator for the Surveillance and Integrity Review Section (SIRS) unit of the Department, received an investigative report from Medica Health Plans about Respondent. Based on that report, Twaddle conducted an investigation of Respondent's billing practices.³

3. During the course of the investigation, Twaddle found that Respondent began billing for daily PCA services provided through Minnesota Quality for her own mother, Mary Eskridge, beginning on April 9, 2008. Respondent also provided PCA services for clients of Lifetime Resources (Lifetime) until her employment was terminated there on April 25, 2008.⁴

4. Twaddle reviewed Respondent's billings for services to Lifetime clients and services to her mother through Minnesota Quality. She compared dates of service and discovered that, on April 11, 2008, Respondent billed for services for her mother from 7:00 p.m. until 11:00 p.m. Respondent also billed Lifetime for training from 5:30 p.m. until 9:00 p.m. that same day.⁵

5. Twaddle's investigation revealed that, on April 13, 2008, Respondent billed Lifetime for PCA services from 9:00 in the morning until 9:00 at night. That same day, Respondent billed for PCA services through Minnesota Quality for her mother from 8:00 until 11:00 in the morning and from 7:00 until 11:00 in the evening.⁶

6. On August 5, 2008, Respondent billed for PCA services rendered to her mother from 8:00 until 11:00 in the morning. At 8:30 in the morning that day, Respondent was in Hennepin County District Court being arraigned on traffic charges.⁷ Respondent had taken her mother to court with her.⁸

7. Respondent and her mother both had food stamp cards (EBTs) during the period of time being investigated. Twaddle reviewed the EBT transaction records as part of the investigation. Twaddle found that on April 14, 2008, Respondent's EBT was used for a purchase at 9:54, p.m. Respondent had billed for PCA services for her mother from 7:00 to 11:00 that evening. Respondent's EBT was also used on the evening of April 15, 2008 at a time when Respondent had also billed for caring for her mother. Finally,

¹ Ex. 1. Prior to submitting the application, Respondent had provided care for her mother through another personal care provider organization, HomeLife HomeCare, Inc. Testimony of Julia Twaddle.

² Ex. 2, B-2.

³ Test. of J. Twaddle; Ex. 2.

⁴ Test. of J. Twaddle; Ex. 2.

⁵ Test. of J. Twaddle; Ex. 2; Ex. 8; Ex. 9.

⁶ Test. of J. Twaddle; Ex. 2; Ex. 8; Ex. 10.

⁷ Test. of J. Twaddle; Ex. 2; Ex. 4.

⁸ Test. of Respondent.

Respondent's EBT was used to charge purchases on the evening of May 2, 2008 during a time when Respondent had billed for care provided to her mother.⁹

8. Twaddle found it unusual that Respondent's billings began precisely at 5:00 in the morning and ended at exactly 11:00 a.m. each day. Similarly, the evening hours never varied from day to day. Normally, PCA services have some variations in hours from day to day.¹⁰

9. Upon conclusion of the investigation, Twaddle met with three SIRS employees to discuss action on Respondent's case. They together determined that a two-year suspension was appropriate. On October 20, 2008, Twaddle and Ron Nail, manager of the SIRS unit, sent Respondent a Notice of Agency Action notifying Respondent of the decision to suspend her participation as a PCA. The letter informed Respondent of the reasons for the decision and of her right to an appeal.¹¹

10. By a letter dated October 27, 2008, Respondent appealed the decision, resulting in this hearing.¹²

11. Although SIRS could have immediately stopped all payments to Respondent, it allowed her to continue to be paid until conclusion of her appeal.¹³

12. After the Notice of Agency Action had been sent to Respondent, Twaddle discovered another instance of billing that she concluded was fraudulent. In March of 2008, Respondent worked for HomeLife HomeCare, Inc. (HomeLife) providing services to her mother. Through HomeLife, Respondent billed medical assistance for care provided to her mother on March 11, 2008 between 7:00 p.m. and 11:00 p.m. Records of Unity Hospital show that Respondent's mother was admitted to the hospital at 7:56 p.m. that evening and was discharged at 12:38 a.m. that night.¹⁴

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 256B.064.

2. The Notice of Hearing is proper in all respects. The Department has complied with all procedural requirements of law and rule.

⁹ Test. of J. Twaddle; Ex. 2; Ex. 21; Ex. 8; Ex. 7.

¹⁰ Test. of J. Twaddle.

¹¹ Test. of J. Twaddle; Ex. 16.

¹² Ex. 18.

¹³ Test. of J. Twaddle.

¹⁴ Test. of J. Twaddle; Ex., 14; Ex. 13.

3. The Commissioner may impose sanctions against a program participant if the participant engages in a pattern of submitting false statements of material facts to obtain greater compensation than that to which the person is entitled.¹⁵

4. Sanctions against a participant may include withholding of payments, suspension of the participant from the program, or termination of the participant from the program.¹⁶

5. At a hearing regarding a participant sanction under Minn. Stat. § 256B.064, the burden is on the Department to show, by a preponderance of the evidence, that the participant has engaged in a pattern of submitting false statements of material facts in connection with claims for compensation.¹⁷

6. The Department has shown, by a preponderance of the evidence that Respondent engaged in a pattern of submitting false statements of material facts to obtain greater compensation than she was entitled to.

7. The Department is authorized to impose sanctions against Respondent, including the sanction of suspension from participation as a PCA.¹⁸

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

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Commissioner AFFIRM the suspension of Respondent's participation as a PCA.

Dated: 13 July 2009

/s/ Linda F. Close

LINDA F. CLOSE
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

¹⁵ Minn. Stat. § 256B.064, subd. 1a.

¹⁶ Minn. Stat. § 256B.064, subd. 1b.

¹⁷ Minn. R. pt. 1400.7300, subpt. 5.

¹⁸ Minn. Stat. § 256B.064, subd. 1b.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Commissioner, Minnesota Department of Human Services, P.O. Box, 64998, St. Paul MN 55164-0998, to learn the procedure for filing exceptions or presenting argument.

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. 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 the Administrative Law Judge of the date on which the record closes.

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

MEMORANDUM

Through the Medical Assistance program, a low-income person who needs personal care services to be able to remain living at home may receive that help from a PCA.¹⁹ The services of a PCA are billed through a “personal care provider organization,” which is an organization enrolled in the medical assistance program.²⁰ Because home health services, by their nature, are not easily monitored, federal law requires the states to maintain a surveillance program to ensure that services are not abused and payments are appropriately made. This function is carried out in Minnesota by SIRS, which investigates to determine whether any program participant has engaged in fraud or abuse in billing practices.²¹

The Commissioner may impose sanctions against a PCA if a pattern of making false claims for compensation emerges.²² A pattern is established if more than one identifiable event of falsification occurs.²³

The Department here established multiple instances in which Respondent claimed compensation for services she did not render. For the days in April when Respondent was working at Lifetime and billing for her mother’s care through Minnesota Quality. Respondent admitted that she herself had not rendered the services. Respondent testified that she hired another PCA, Danita, to provide care to her mother when Respondent was at her Lifetime job. Apparently, Danita’s background check for participation as a PCA was negative, so Minnesota Quality refused to allow Danita to submit claims for time she worked. Respondent asserts that Minnesota Quality told Respondent to put Danita’s hours of work on Respondent’s own timesheets. According to Respondent, a Minnesota Quality employee told her that this was allowable. Respondent could then pay Danita directly for the time Danita spent caring for Respondent’s mother.

Respondent’s testimony about her reason for falsifying her timesheet for compensation does not ring true. Respondent did not subpoena the employee who allegedly instructed her to bill Danita’s time on Respondent’s own timesheet. She did not provide any written statement from Minnesota Quality to that effect, and she did not call Danita to testify at hearing. Moreover, each Minnesota Quality timesheet contains an acknowledgement of the criminal nature of filing a false claim. Respondent admitted she knew about the acknowledgement and signed false claims anyway. Finally, it seems very doubtful that Minnesota Quality, as a provider organization, would have counseled Respondent to file a claim that was so clearly false.

¹⁹ Minn. Stat. § 256B.0651, subd. 2.

²⁰ Minn. Stat. § 256B.0655, subd. 1g.

²¹ Test. of J. Twaddle; Minn. R. pts. 9505.2160-.2245.

²² Minn. Stat. § 256B.064, subd. 1.

²³ Minn. R. pt. 9505.2165, subpt. 6g.

The Department also showed that Respondent, more likely than not, either billed Medical Assistance when she left her mother alone at home while she ran personal errands, or Respondent ran personal errands and brought her mother along on these personal trips. Services of a PCA are provided in the recipient's home.²⁴ A personal care service is one that is intended to assist the recipient to continue living in the recipient's home.²⁵ For this reason, the Department requires that a recipient's care plan state whether the PCA may remove the recipient from the home for a specific purpose.²⁶ The Respondent admitted that she "takes her mother everywhere" Respondent goes. She believes her mother should not be alone, so Respondent takes her on all of Respondent's own personal errands. From the Department's perspective, it is fine for Respondent to do this. It is just that Respondent may not bill medical assistance for time Respondent spends attending to personal matters, even if her mother is with her.

The statutes and rules governing compensation for PCA services are extensive. In essence, these services are directed at the needs of the recipient for daily living assistance such as eating, dressing, bathing, toileting, and the like.²⁷ Respondent took her mother on outings for Respondent's own convenience, not for the purpose of attending to her mother's personal needs. For this reason, the ALJ has not credited Respondent's justification for claiming compensation when she brought her mother along when Respondent had a court hearing or on any other outing of a personal nature..

Respondent offered similar reasons for why charges against her EBT card were made during times when Respondent billed medical assistance for caring for her mother. Respondent offered that probably took her mother to the store with her. Alternatively, Respondent thought she might have given her EBT card to a neighbor to shop for her. Respondent also asserted that it was important for her mother to learn life activities like how to shop, because her mother wanted to return to live in Mississippi.²⁸ If these skills were an important part of Ms. Eskridge's care, such outings would surely have been included in her care plan. They were not, and it is therefore more likely than not that Respondent's claim of helping her mother is mere rationalization for attending to Respondent's needs while simultaneously billing medical assistance.

For the foregoing reasons, the ALJ recommends that the Commissioner affirm the Department's suspension of Respondent as a program participant.

L. F. C.

²⁴ See Minn. R. pt. 95905.0295, subpt. 1.

²⁵ See Minn. R. pt. 9505.0335, subpt. 1E.

²⁶ Test. of J. Twaddle. The Department also provides PCAs with advice by telephone, should they call with questions.

²⁷ See Minn. Stat. § 256B 0655, subd. 2; Minn. R. pt. 9505.0335, subpt. 8.

²⁸ Test. of Respondent.