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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

Udoka J. Ejiofor, APN, PETITIONER, v. DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES AND MEDICAID FRAUD DIVISION RESPONDENTS.	**ADMINISTRATIVE ACTION** **FINAL AGENCY DECISION** **OAL DKT. NO. HMA 10634-17**

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this matter including the Initial Decision and the contents of the OAL case file. Procedurally, the time period for the Agency Head to file a Final Decision is May 31, 2018 in accordance with an Order of Extension. The Initial Decision was received on March 1, 2018.

I hereby ADOPT the findings, conclusions and recommended decision of the Administrative Law Judge (ALJ) in their entirety and incorporate the same herein by reference. As noted in the Initial Decision, summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled

to prevail as a matter of law. See Initial Decision at page 6, citing N.J.A.C. 1:1-12.1, et seq., and Brill . Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Once the moving party has shown competent evidence of the absence of any genuine issue of fact, the non-moving party must do more than simply create some doubts as to the material facts; it must raise a factual issue substantial enough to sustain a reasonable conclusion in the non-moving party's favor.

Based upon my review of the record, I agree with the ALJ that Mr. Udoka J. Ejiofor has failed to raise any genuine issue of material fact that would require a hearing in this matter. I also agree that Respondent is entitled to prevail as a matter of law. Thus, I find that the decision to suspend Medicaid payments to Mr. Ejiofor pending the resolution of the fraud investigation is appropriate.

The matter arose from a Notice of Suspension of Payments (Notice) issued by the Office of the State Comptroller's Medicaid Fraud Division (MFD), to Petitioner, a licensed Advanced Practice Nurse (APN), with an operating practice in Essex County, on June 21, 2017. MFD issued the Notice to Petitioner, after concluding that there was a credible allegation of fraud. The evidence was obtained after a routine, federally-mandated Quarterly Surveillance and Utilization Review Study (QSURS) for the period of June 1, 2014 through June 30, 2015, revealed that claims submitted by Petitioner to the New Jersey Division of Medical Assistance and Health Services (DMAHS) for Medicaid payment were outside of the accepted deviation from his peer group. MFD found there to be a credible allegation of fraud and issued the Notice of Suspension of Payments pursuant to 42 C.F.R. 455.23, N.J.A.C. 10:49-1.5(b) and N.J.A.C. 10:49-9.10. Billing documentation produced by MFD indicates that on at least ten (10) of the days

surveilled, Petitioner billed Medicaid for services exceeding twenty-one (21) hours per day.

Following a pre-hearing Order dated September 5, 2017, the MFD filed a Motion for Summary Decision on November 8, 2017. Petitioner then filed an Opposition and Cross-Motion asserting the material facts are in dispute and seeking Conditional Reinstatement of Medicaid payment or in the alternative a grant a waiver because Petitioner's practice is located in a Health Resources & Services Administration (HRSA) designated medically underserved area of the state. The Initial Decision granted MFD's motion and denied Petitioner's Motion in its entirety.

The New Jersey Medical Assistance and Health Services Act provides that the Director may suspend, debar or disqualify for good cause any provider who is presently participating or who has applied for participation in the Medicaid program. N.J.S.A. 30:4D-17.1(a). Suspension means "an exclusion from State contracting for a period of time, pending the completion of an investigation or legal proceedings." N.J.A.C. 10:49-11.1(c). The purpose of a temporary suspension from participation in the Medicaid program is not punitive; rather it is to protect the integrity of the program. N.J.A.C. 10:49-11.1(b). Furthermore, the suspension only affects Petitioner's participation in the Medicaid program, it does not prevent Petitioner from practicing. See Greenspan v. Klein, 442 F. Supp. 860, 862 (D.N.J. 1977).

State Medicaid agencies are required to suspend all Medicaid payments to a provider after the agency determines there is a "credible allegation of fraud." See 42 C.F.R. §445.23. A credible allegation of fraud is defined as an allegation, which has been verified by the State, from any source, including but not limited to claims data

mining and patterns identified through provider audits. "Allegations are considered to be credible when they have indicia of reliability and the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis." 42 C.F.R. §455.2.

State regulations also set forth the circumstances in which DMAHS may exclude a provider from participating in the Medicaid program for the purpose of protecting the interest of the New Jersey Medicaid and NJ FamilyCare programs. N.J.A.C. 10:49-11.1(b). Specifically, N.J.A.C. 10:49-11.1(d)(2), (11) and (23) state that any offense indicating a lack of business integrity or honesty, presentment for allowance or payment of any false or fraudulent claim for services, or any other cause affecting responsibility as a provider of Medicaid services as may be determined by DMAHS provide good cause for suspension.

Here, it is undisputed that on ten (10) dates, Mr. Ejiofor billed Medicaid for at least twenty-one (21) hours for services and on seven (7) of the ten (10) days, Mr. Ejiofor's billings exceeded the total number of hours in a day. As a result, I FIND that DMAHS acted reasonably and within its regulatory authority to suspend Mr. Ejiofor pending resolution of the fraud investigation.

Moreover, I FIND that there exists no good cause to exempt the Petitioner from suspension of Medicaid payments. A State may find that good cause exists not to suspend payments, or not to continue a payment suspension previously imposed, to an individual or entity against which there is an investigation of a credible allegation of fraud under certain circumstances. 42 C.F.R. 455.23(e)(4)(ii). One such consideration, argued by Petitioner, takes into account in whether Medicaid beneficiaries' access to

services, such as those provided by Petitioner, would be jeopardized because Petitioner's practice is within a HRSA-designated medically underserved area. Petitioner provides psychiatric services at his office, which is located in East Orange, New Jersey. While Petitioner's office may be located in a medically underserved area, there is not a mental health professional shortage in that location.

Here, the issue is whether Respondent's reliance on documentation and information obtained during the federally-mandated QSURS, as credible allegation of fraud, was sufficient to support the suspension of payments to Petitioner. I FIND that it was and Petitioner has produced nothing to the contrary.

The Director of DMAHS or MFD[1] must suspend all Medicaid payments to a provider once the agency determines there is a "credible allegation of fraud" for which an investigation is pending under the Medicaid program unless the agency has good cause to not suspend payments or to suspend payment only in part. 42 C.F.R. 455.23. Under New Jersey regulations, suspension of payment actions is temporary. N.J.A.C. 10:49-1.5(b).

Petitioner has not disputed Respondent's Statement of Facts nor presented evidence contradicting those facts. Rather, Petitioner seeks a hearing as a means to litigate the underlying fraud allegation in the OAL. As stated above, Petitioner may have a valid defense to the underlying fraud allegation, but that is not the issue here. Here, the issue is whether Respondent's reliance on the information obtained during the mandatory surveillance period, as credible allegation of fraud, was sufficient to support the suspension of payments to Petitioner. I FIND that it was and Petitioner has

[3] The DMAHS Director has delegated her responsibility to the MFD Director through a Memorandum of Understanding.

produced nothing to the contrary.

Thus for the reasons set forth above and in the Initial Decision which is incorporated by reference, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 11th day of MAY 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Meghan Davey, Director
Division of Medical Assistance
and Health Services