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

OSCAR E. SANDOVAL
CASTELLANOS, M.D.,

PETITIONER,

v.

MEDICAID FRAUD DIVISION,

RESPONDENT.

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ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 03522-21

As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is May 22, 2025, in accordance with an Order of Extension.

This matter arises from the Medicaid Fraud Division's (MFD) Notice of Claim dated July 21, 2020. Ultimately, the Fourth Amended Notice of Claim dated December 8, 2022, alleged Petitioner caused NJ Medicaid to pay \$238,215.70 for 313 Nuedexta prescriptions to patients who did not have the requisite pseudobulbar affect (PBA) diagnosis. Petitioner requested a fair hearing at the OAL. On November 7, 2022, Petitioner filed a Motion to Dismiss. ID at 2. Administrative Law Judge (ALJ) Testa denied the motion by Order dated February 9, 2023. Ibid. Petitioner filed a Motion for Reconsideration on June

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7, 2023. Ibid. ALJ Testa denied the motion by Order dated June 27, 2023. ID at 2-3. Petitioner then requested interlocutory review of the June 27, 2023, Order. ID at 3. That request was denied by Assistant Commissioner Jennifer Langer Jacobs by letter dated August 14, 2023. Ibid. This matter was transferred from ALJ Testa to ALJ Betancourt, as ALJ Testa was elevated to the Superior Court. Ibid. Respondent filed a Motion for Summary Decision dated July 2, 2024, and Petitioner filed their opposition along with a Motion to Dismiss, on August 16, 2024. Ibid. Oral argument on the motions was held on December 19, 2024, whereupon the record was closed. Ibid.

A summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

A determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party. The "judge's function is not ... to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).

In evaluating the merits of the motion, "all inferences of doubt are drawn against the movant and in favor of the opponent of the motion." Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954). However, "when a motion for summary decision is made and supported, an adverse party in order to prevail must by

responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b).

In the Initial Decision, the ALJ found that Dr. Sandoval is a physician licensed in New Jersey who specializes in psychiatry and who is enrolled as a New Jersey Medicaid provider. (Lasher Cert. ¶ 16-19). Nuedexta is a prescription medication that the United States Food and Drug Administration (FDA) approved to treat PBA. (Ibid. at ¶ 10-11). The FDA has not approved Nuedexta to treat any other medical condition or disease, such as depression. (Ibid. at ¶ 15). The fee-for-service system requires prescription claims for Nuedexta to go through a prior authorization protocol before the prescription claim is paid. (Lasher Cert. Exhibit 6B). Fee-for-service protocol criteria #2 requires patients to have a PBA diagnosis to receive prior authorization approval for Nuedexta. Ibid. Amerigroup, Horizon, United Healthcare, and Wellcare require prior authorization to fill a Nuedexta prescription for a Medicaid beneficiary, and such prior authorization requires that a physician diagnosed the beneficiary with PBA. (Lasher Cert. ¶ 36, Exhibit 10B). The Medicaid Fraud Division investigated Dr. Sandoval from a tip by the Division's Data Mining Unit, who noticed Dr. Sandoval's unusually high number of Nuedexta prescriptions. (Lasher Cert. ¶ 37). The Medicaid Fraud Division determined that 22 Medicaid recipients lacked the requisite PBA diagnosis but still received Nuedexta prescriptions from Dr. Sandoval. (Lasher Cert. ¶ 52). For all 22 patients, Dr. Sandoval's medical records fail to document a PBA diagnosis, but they do indicate that he prescribed them with Nuedexta. ID at 5-15. For all 22 patients, Dr. Sandoval submitted a prior authorization request for Nuedexta indicating a PBA diagnosis. Ibid. For two patients, Dr. Sandoval's medical records state that the patient is taking Nuedexta "for depression." ID at 5-6. For one patient, Dr. Sandoval's medical records state that the patient "does not have all the symptoms to meet criteria for the diagnosis of pseudobulbar affect." ID at 5.

NJ Medicaid paid \$238,215.70 for 313 Nuedexta prescriptions issued to the 22 patients, who did not have the requisite PBA diagnosis. ID at 15.

The ALJ concluded that the material facts were not in dispute and therefore the matter was ripe for summary decision. ID at 16. Petitioner's argument is that the preauthorization forms submitted for the Nuedexta show the requisite diagnosis of PBA. The ALJ found that the preauthorization forms were not part of Dr. Sandoval's medical records and he did not retain copies of these forms. Ibid. Further, Dr. Sandoval's actual patient records fail to disclose the requisite diagnosis of PBA for any of the patients for which Nuedexta was prescribed, which forms the basis of the Fourth Amended Notice of Claim. Ibid. The forms were provided by the Medicaid Fraud Division, not by Petitioner, after the Medicaid Fraud Division issued subpoenas for the same. Ibid. The ALJ went on to state that Petitioner's argument that somehow non-retained forms merit dismissal, or in the alternative, a hearing, is frivolous. Ibid. I agree.

N.J.A.C. 10:49-9.8, N.J.S.A. 30:4D-12 and Medicaid's fee-for-service program require that patients prescribed Nuedexta have a diagnosis of PBA prior to NJ Medicaid paying for the prescription and that providers keep such records as are necessary to disclose fully the extent of services provided. The medical records of Dr. Sandoval's 22 patients did not contain the required diagnosis.

Accordingly, and based on my review of the record, I hereby ADOPT the Initial Decision and FIND that Petitioner shall reimburse the State of New Jersey the sum of \$238,215.70.

THEREFORE, it is on this 19th day of May 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

Gregory Woods

Gregory Woods, Assistant Commissioner
Division of Medical Assistance and Health Services