

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

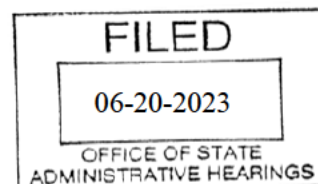
WALKER THERAPY SERVICES LLC,
Petitioner,

v.

**DEPARTMENT OF COMMUNITY
HEALTH,**
Respondent.

**Docket No. 2215510
2215510-OSAH-DCH-PROP-42-Kennedy**

Agency Reference No. P15-OIG1802027



**INITIAL DECISION
ORDER GRANTING PETITIONER'S MOTION FOR INVOLUNTARY DISMISSAL**

On July 27, 2021, the Department of Community Health (Respondent) issued a Notice of Adverse Action to Meredith Stevens, a physical therapist who provided services for clients through Walker Therapy Services, LLC (Petitioner). In the letter, Respondent states it recently conducted an administrative review of claims for the period of January 1, 2016, through April 30, 2018. Based on this administrative review, Respondent determined that the initially identified overpayment amount of \$7,664.09 would be adjusted to \$6,184.67.¹ Petitioner timely appealed Respondent's adverse notice on August 9, 2021. Respondent subsequently referred Petitioner's appeal to the Office of State Administrative Hearings (OSAH) on December 28, 2021.

At a hearing in this matter, Respondent would bear the burden of proof to establish the findings made during the audit and that such findings authorize recoupment of the alleged overpayment. OSAH Rule 7(1).

The Court ordered Respondent, through both a January 20, 2023, *Order Regarding Petitioner's Motion to Exclude Exhibits, Witnesses and Motion to Dismiss or Directed Verdict*, and a follow-up *Order Following March 9, 2023 Pre-Hearing Telephone Conference*, to "submit written direct testimony . . . for each of the witnesses Respondent intends to call in its case-in-chief."

¹ The adverse notice states that there is an "enclosed Administrative Review Findings table [that] provides specific details regarding each decision" and which provides citations to policy that were "in effect at the time services were rendered." At no time was this Administrative Review Findings table submitted to the Court.

On April 10, Respondent submitted the testimony of one witness, Jennifer Brannin, Doctor of Physical Therapy, who had conducted the audit of claims submitted by Petitioner for services provided by Meredith Stevens.² Thereafter, pursuant to OSAH Rule 35,³ Petitioner filed a *Motion for Involuntary Dismissal*. Respondent did not file a response within the permitted ten (10) calendar days of service. OSAH Rule 16(2). However, the Court afforded the parties an opportunity to present oral arguments the morning of May 22, 2023, prior to the scheduled hearing that would commence if the *Motion* was denied. *See* OSAH Rule 16(6).

Respondent's Part I Policies and Procedures for Medicaid/Peachcare for Kids provides the following:

- Providers must not submit false or inaccurate information to the Division relating to provider costs or claims for services rendered. Section 106(J)
- Providers must maintain written records for Medicaid/PeachCare for Kids members as necessary to disclose fully the extent of services provided and the medical necessity for the provision of such services, for a minimum of six (6) years after the date of service. Section 106(R).
- Providers must adhere to all applicable policies and procedures of the Department. Section 106(U).
- Providers must not alter patient records, even in an effort to correct an error. All errors shall be corrected according to *currently accepted standards of medical practice* (corrections shall evidence the error, the correction, the initials of the corrector and the date of the correction). Section 106(FF) (emphasis added).

Respondent's Part II Policies and Procedures for Children Intervention Services provides the following:

- Providers must bill the Division the procedure code(s) which best describes the level and complexity of the service rendered. Section 603.7.
- Providers must maintain legible, accurate, and complete charts and records in order to support and justify the services provided. Section 903.
- When billing procedure codes, 1 unit equals a minimum of 15 minutes unless otherwise specified. Section 1001.
- Procedure Code 97002 may only be billed once every 180 days. Section 1001(6).

² Respondent re-submitted Dr. Brannin's testimony on April 21, 2023, along with an Affidavit to comply with OSAH Rule 20(3)(c).

³ OSAH Rule 35 provides that "[a]fter a party with the burden of proof has presented its evidence, any other party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden."

Respondent presented limited testimony. The limited testimony did not specifically address the accepted standards of medical practice regarding corrections/delayed entries during the time period in question, although Dr. Brannin did reference that Medicare policy states a reasonable timeframe for delayed entries means 24 to 48 hours. The limited testimony also did not identify any exhibit to support the witness's findings or Respondent's authorization to seek recoupment. Moreover, Respondent's Exhibits submitted pursuant to a Scheduling Order in January 2023 only included Petitioner's Daily Physical Therapy Notes; it did not include Respondent's Adverse Notice, Petitioner's Appeal Letter, Respondent's Administrative Review Findings Table, or any records establishing the amount paid to Petitioner for each claim that Respondent is seeking to recoup. *See generally* O.C.G.A. 24-10-1002. Based on consideration of the entire record, the Court concludes the limited evidence presented by the Respondent fails to meet the burden of proof in this matter. Therefore, the Court **HEREBY GRANTS** Petitioner's Motion for Involuntary Dismissal. Accordingly, Respondent shall refund any recoupment received within 60 calendar days of this Order.

SO ORDERED, this 20th day of June, 2023.

Ana Kennedy

Ana Kennedy
Administrative Law Judge

