

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

NSCH RURAL HEALTH CLINIC

FILED
MAY 16 2019

APPELLANT

V.

EDDIE JEAN CARR, CHANCERY CLERK
BY J. Vann D.C.

CIVIL ACTION NO. G-2018-474 T/1

DREW SNYDER, IN HIS OFFICIAL
CAPACITY AS EXECUTIVE DIRECTOR
OF THE DIVISION OF MEDICAID, OFFICE
OF THE GOVERNOR AND THE DIVISION
OF MEDICAID, OFFICE OF THE
GOVERNOR, STATE OF MISSISSIPPI

APPELLEES

OPINION AND ORDER OF THE COURT

BEFORE THIS COURT is an appeal of the February 9, 2018, decision of the Mississippi Division of Medicaid (hereinafter "DOM") affirming the suspension of payments to NSCH Rural Health Clinic-Sunflower ("NSCH") as noticed on August 31, 2017 and September 8, 2017. This Court has held hearing on this matter and has considered all oral and written argument, as well as all relevant case and statutory law, and makes the following findings of fact and conclusions of law.

Facts

NSCH is a rural health clinic that provides medical, dental, vision and mental health services to its patients, primarily in the Delta region of Mississippi. NSCH provides these services to many Medicaid beneficiaries pursuant to its Provider Agreement with the Mississippi Division of Medicaid ("DOM"). In addition to providing services at its facility on Highway 49W in Ruleville, Mississippi, NSCH has instituted two programs that provide

services in the surrounding communities: (1) certain dental services to nursing home residents in various nursing homes around the state (the "Dental Outreach Program") and (2) certain Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") and inoculation services to schools and Head Start programs across the state (the "School Outreach Program"). The physical facility is open until midnight every day of the week and accepts walk-in patients. The two Outreach programs reach numerous nursing home patients and school and Head Start students, the majority of whom are beneficiaries of the Medicaid program. The evidence is clear that NSCH has made laudable attempts to serve the needy and impoverished citizens of the state both in its facility and in the community.

By letter dated August 30, 2017, DOM informed RSCH that it was suspending payments on claims made using the reimbursement code D0140, which is the primary code that RSCH bills when providing dental services to nursing home residents through its outreach program. The reason provided by DOM for the suspension was the claim that it had received a credible allegation of fraud related to the Dental Outreach Program. By letter dated September 8, 2017, DOM sent a follow-up letter explaining that it would suspend all payments for any reimbursement code to RSCH in accordance with Miss. Admin. Code Tit. 23, Part 300, Rule 1.1(B)(1).

RSCH timely appealed both of DOM's suspension determinations on October 10, 2017. An administrative hearing was conducted on November 16, 2017. Prior to the hearing, on October 25, 2017, RSCH was notified that no testimony concerning the allegations of fraud would be provided at the hearing. At hearing, the Hearing Officer declined attempts by RSCH to proffer evidence challenging the credibility of the source of the fraud allegations. On December 11, 2017, DOM modified its suspension to allow reimbursement to RSCH

for services provided at its physical location in Sunflower County. On January 24, 2018, the Hearing Officer issued his report determining that the suspension was appropriate and that the DOM's determination that no good cause existed to lift the suspension of payments was supported by the evidence. On February 9, 2018, the DOM Executive Director wholly adopted the Hearing Officer's recommendation. Feeling aggrieved, RSCH timely perfected its appeal to this Court.

Standard of Review and Scope of Review

The standard and scope of judicial review of an administrative decision is limited. See *Loftin v. George County Bd. of Educ.*, 183 So. 2d 621, 622 (Miss. 1996). In particular, appeals to the chancery court of decisions made by DOM are limited to consideration of whether the agency's order (1) is unsupported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the agency's scope or the power granted to the agency, or (4) violates some statutory or constitutional right of the complaining party. *Electronic Data Systems Corp. V. Miss. Div. of Medicaid*, 853 So. 2d 1192, 1203 (Miss. 2003) (quoting *Tillmon v. Miss. State Dep't of Health*, 749 So. 2d 1017, 1020-21(Miss. 1999)).

Discussion

This Court has the duty to determine whether the February 9, 2018, decision of DOM to affirm the suspension of payments to NSCH is reversible under the strict standards set forth above. After much consideration, the Court finds that it is not.

Under the applicable federal and state regulations, DOM is required to immediately suspend payments to providers upon receipt of a credible allegation of fraud. Subsection (a)(1) of 42 CFR §455.23 provides as follows:

(1) The State Medicaid agency must suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless the agency has good cause to not suspend payments or to suspend payment only in part.

42 C.F.R. § 455.23(a)(1). Additionally, Administrative Code Part 305, Rule 1.2 provides, in pertinent part:

(C). The Division of Medicaid must suspend all payments to a provider when the Division of Medicaid determines there is a credible allegation of fraud for which an investigation is pending unless the Division of Medicaid determines that good cause exists not to suspend or partially suspend such payments or not to continue a payment suspension previously imposed including, but not limited to: 1. Law enforcement: a) Specifically requesting payments not be suspended, or b) Declining to cooperate in certifying that a matter continues to be under investigation. 2. The Division of Medicaid determining: a) Other available remedies exist that could be implemented by the Division of Medicaid to more effectively or quickly protect Medicaid funds, b) A payment suspension is not in the best interest of the Medicaid program, or c) A payment suspension would have an adverse effect on beneficiary access to necessary items or services because either of the following is true: 1) An individual or entity is the sole community physician or the sole source of essential specialized services in a community, or 2) The individual or entity serves a large number of beneficiaries within a Health Resources and Services Administration (HRSA) designated medically underserved area. d) A payment suspension should be removed based upon the submission of written evidence by the individual or entity that is the subject of the payment suspension.

23 Code Miss. R. Pt. 305, R. 1.2. DOM asserts that it properly suspended payments to

RSCH based upon a credible allegation of fraud in accordance with applicable federal and state regulations.

RSCH sets forth three (3) assignments of error: (1) DOM violated its due process rights by denying a hearing on the issue of credibility of the allegations of fraud against it; (2) DOM's determination that there was a credible allegation of fraud against RSCH was completely unsupported by substantial evidence and was arbitrary and capricious; and (3) DOM' determination that there was no good cause reason not to suspend payments to RSCH was unsupported by substantial evidence and was arbitrary and capricious.

RSCH does not dispute the **existence** of an allegation of fraud nor does it dispute that DOM made a formal fraud referral to the Medicaid Fraud Control Unit of the Mississippi Attorney General's Office where a criminal investigation is ongoing. Instead, RSCH challenges the **credibility** of the allegation of fraud. However, the pertinent federal and state regulatory schemes do not provide for the challenge of the credibility of the allegations of fraud in the administrative review of suspension of payments. The state regulatory scheme provides the opportunity for a hearing "to determine whether or not good cause exists to remove a payment suspension or suspend payment only in part". 23 Code Miss. R. Pt. 305, R. 1.2. It further provides: "Suspension of payments will continue until: 1. The Division of Medicaid or the prosecuting authorities determine that there is insufficient evidence of fraud by the provider, or 2. Legal proceedings related to the provider's alleged fraud are completed." 23 Code Miss. R. Pt. 305, R. 1.2. Therefore, the state regulations clearly provide that the provider may seek administrative appeal regarding good cause; however, the credibility of the allegations is determined through the

appropriate legal proceedings. Federal regulations specifically provide for “administrative review where State law so requires”. 42 C.F.R. § 455.23. Similarly, the federal scheme provides that notice of suspension must “[s]et forth the general allegations as to the nature of the suspension action, but need not disclose any specific information concerning an ongoing investigation.” 42 C.F.R. § 455.23. Accordingly, all relevant regulations regarding suspension of payment in Mississippi provide for an administrative review of the issue of good cause. Any challenges or examination of the credibility of an allegation of fraud is a matter for the appropriate authorities in legal proceedings. Therefore, this Court cannot find that DOM violated any due process rights by denying RSCH a hearing on the issue of the credibility of the allegation of fraud. Likewise, this Court cannot find that DOM's determination that there was a credible allegation of fraud was unsupported by substantial evidence. Instead, this Court finds that DOM referred the allegation of fraud to the appropriate legal authorities and an ongoing criminal investigation has ensued. Therefore, DOM had substantial evidence that the allegation was credible.

NSCH also asserts that DOM lacked substantial evidence that no good cause reason existed to prevent suspension of payments. NSCH argues that good cause exists not to suspend payments as:

A payment suspension would have an adverse effect on beneficiary access to necessary items or services because either of the following is true: 1) An individual or entity is the sole community physician or the sole source of essential specialized services in a community, or 2) The individual or entity serves a large number of beneficiaries within a Health Resources and Services Administration (HRSA) designated medically underserved area.

23 Code Miss. R. Pt. 305, R. 1.2. However, at administrative hearing, the testimony

demonstrated that DOM had considered these good cause exception and had determined that the suspension would not have an adverse effect on beneficiary access. Specifically, the evidence demonstrated that DOM had considered whether beneficiaries could get services without NSCH. NSCH demonstrated at hearing that its Outreach Programs served underserved areas. However, the evidence clearly demonstrated that NSCH was not the “sole source” of those services in a community. DOM Program Integrity Director testified that NSCH was not the only qualified provider of the specialized services. Instead, there are numerous Medicaid providers currently offering the services that NSCH provides. NSCH argues that its Outreach Programs and irregular clinic hours provide services which are not readily available through other providers. While it is apparent that NSCH provides more easily accessible services than many providers, the same is simply not sufficient evidence that NSCH is the “sole source” provider.

Similarly, NSCH provided evidence that it serves a “large number of beneficiaries within a HRSA designated medically underserved area”. At hearing, DOM demonstrated that almost all of Mississippi is a HRSA designated region. Therefore, DOM considers this factor in determining whether a good cause exception exists, but the same is not dispositive. Again, DOM provided ample evidence at hearing that there are other providers who can adequately serve each of the areas that NSCH services to the extent it provides covered services. While the same may not be as easily accessible, it is unequivocally available. Therefore, DOM determined that the suspension would not have an adverse effect on beneficiary access to necessary items or services. It is not the role of this Court to “adjudicate the wisdom/sageness of the agency's decision”; instead, this Court must consider whether the same is based upon substantial evidence. *See Equifax, Inc. v.*

Mississippi Dep't of Rev., 125 So. 3d 36, 41 (Miss. 2013). This Court finds that DOM had substantial evidence upon which to base its decision that no good cause exception to the suspension existed.

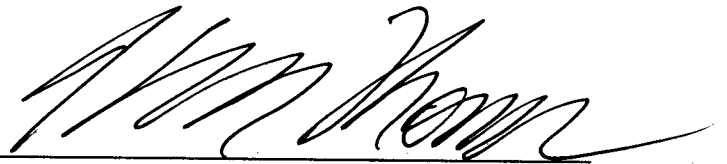
The actions taken by DOM are clearly within its statutory authority. Likewise, the decisions and determinations are based upon substantial evidence and are neither arbitrary nor capricious. The Hearing Officer issued a well-reasoned opinion specifically addressing NSCH's concerns and reviewing the facts and law in support of the DOM decision. NSCH was provided with full and complete due process, both procedurally and substantively. While the result for NSCH is unfortunate, DOM has acted within its obligations under applicable Mississippi and federal law.

Conclusion

For the foregoing reasons and in accordance with case law and statutory law, this Court finds that the February 9, 2018, decision of the Mississippi Division of Medicaid affirming the suspension of payments to NSCH does not qualify as an administrative order to be vacated or set aside under the stringent requirements of Mississippi law. In the case at hand, NSCH has not met its burden of proof that the final decision was unsupported by substantial evidence, arbitrary or capricious, in excess of the statutory authority or jurisdiction of DOM, or a violation of any vested constitutional rights of any party involved. Further, the record clearly proves the contrary. Absent evidence that DOM acted arbitrarily, capriciously, or unreasonably, this Court will not substitute its own judgment.

Therefore, this Court affirms the final decision of DOM regarding the suspension of payments to NSCH and hereby dismisses appeal of same.

SO ORDERED, ADJUDGED, AND DECREED THIS the 16th day of May, 2019.

A handwritten signature in black ink, appearing to read "J. Dewayne Thomas", written over a horizontal line.

CHANCELLOR J. DEWAYNE THOMAS