

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
) OAH No. 14-1069-MDA
C CARE SERVICES, LLC)
_____)

FINAL DECISION

This matter has come before me to consider the proposed decision prepared by Administrative Law Judge (ALJ) Jeffrey A. Friedman dated October 22, 2015. Also before me is a proposal for action filed by the Program Integrity Unit.

I concur with the proposed decision in most respects. Pursuant to AS 44.64.060(e), the proposed decision is modified below in two particulars. In all other respects it is adopted as the final decision.

A. *Amendment of Factual Findings (AS 44.64.060(e)(4))*

Part III-B of the proposed decision, the ALJ made a credibility determination that the documentation submitted in support of claims 7, 9, 54, and 55 was sufficiently believable to support the services billed. The credibility determination is found in the last two paragraphs of Part III-B. Upon review of the relevant evidence in the record, I reject that determination and assess the credibility issue as follows:

The service notes C Care submitted in support of claims 7, 9, 54, and 55 have activity descriptions that were photocopied and used without change on more than one date.

Claim 7 is shown at pages 254-270 of the record. The translated description for Claim 7 is:

I say hello and pay my respect to her for a long time while I examine how grandmother is doing.

We listen to hymns and sing together.

Grandmother likes to sing a lot.

I talk to her a lot, touch her hair, hold her hands, and massage her arms and legs.

I turn grandmother's body to the left and right sides.

I give her water and Ensure milk.

I read her bible...

I sit beside her while she is sleeping.^[1]

This description has been photocopied for use on at least five days.²

¹ Exhibit 1.

² Record at 260-264.

Claim 9 appears at pages 285-307 of the record. The translated activity description for Claim 9 is:

Father usually sits on a chair and watches TV and he sometimes falls asleep. When a phone rings, he wakes up to answer the phone, he often wants to drink water, I make sure to give him his medicine, so that he can take it well. I help him whenever he goes to the bathroom, sometimes he often has a hard time getting up.^[3]

Again, this description was photocopied for use on at least five days.⁴

Claim 54 appears at pages 1115-1121 of the record. As translated, its activity description reads:

Today as well, without change, he/she chain-smokes while sitting at a table in the dining room. When I try to tell him/her that he/she should smoke less for health reasons, he/she doesn't like to hear it and seems to be angry at something. It seems that he/she is emotionally unstable and easily changes the tone of his/her speech. When he/she goes to the bathroom while watching TV, although he/she says that he/she can handle it, I help him/her to walk to the bathroom because I worry that he/she may fall. He/she goes inside a room, smokes again, repeats closing and opening his/her eyes while watching a video tape, and sometimes falls asleep for a while. Sometimes, as he/she may suddenly reminiscence things in the past, he/she misses the past and talks about it a lot. He/she tries to moves his/her body and hands to do something, but it seems that is beyond his/her control. Sometimes, when he/she walks up to the second floor, he/she feels it very difficult.^[5]

The identical description has been photocopied for use on at least five days.⁶

Claim 55 is found at pages 1123-1135. The supporting service notes for this claim were written entirely in English. The "activity performed" is described as follows:

helping the body position,
transfer to chair to bed.
Bathing, stretching, foot care,
sterile dressing, on off toilet.^[7]

Once again, a photocopier has been used to recycle this note for use on at least five occasions.⁸

The ultimate factual question for each disputed claim is whether there is sufficient credible documentation to support payment of the claim. In my view, the pattern of using photocopied, identical activity descriptions taken from a prior day, and passing them off as contemporaneous

³ Exhibit 2.
⁴ Record at 303-307.
⁵ Exhibit 3.
⁶ Record at 1117-1121.
⁷ Record at 1125-1129.
⁸ *Id.*

records, renders these records wholly unusable for lack of credibility. To be sure, some parts of the records do not seem to have been photocopied, but in this context, information entered onto a record that was deliberately designed to be deceptive is not credible. This leaves C Care without credible documentary support for claims 7, 9, 54, and 55.

In making this finding, I make no finding as to whether services did or did not occur on the dates in question. I find only that credible documentation was not submitted to support the claim for payment for services on those dates.

B. Revised Disposition (AS 44.64.060(e)(3))

Claims 7, 9, 54, and 55 were the only audit findings that the proposed decision did not sustain. Because I find C Care's documentation of these claims not to be credible, I sustain the audit findings disallowing them. Accordingly, the final audit findings adopted by Program Integrity Manager Douglas Jones on June 4, 2014 are sustained in full. The determination that C Care Services, LLC owed the Department of Health and Social Services \$146, 674.58 as of that date is sustained.

* * *

Done this 4th day of December, 2015 under the authority delegated to me by the Commissioner of Health and Social Services.

Signed

Jared C. Kosin
Executive Director
Office of Rate Review

[This document has been modified to conform to the technical standards for publication.]

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
) OAH No. 14-1069-MDA
C CARE SERVICES, LLC)
_____)

DECISION

I. Introduction

This is an appeal of a Medicaid provider audit. C Care Services, LLC, (C Care) provides a variety of Medicaid services to Alaskans. The Department of Health and Social Services' Program Integrity Unit (Program Integrity) conducted an audit of C Care's billings for respite and chore services performed from January 1, 2009 through December 31, 2009. Program Integrity found an overpayment, and C Care appealed that finding.

C Care appealed the specific findings of error that Program Integrity found to constitute individual overpayments, and also appealed the methods used to extrapolate the amount of overpayment from the audited claims. The issues on appeal were bifurcated. A hearing on the first bifurcated issue was held on September 17, 2014, with closing arguments heard on September 18, 2014.⁹ C Care was represented by Goriune Dudukgian, of the Northern Justice Project. Program Integrity was represented by Assistant Attorney General Scott Friend.

A ruling was issued on the first issue which reversed the audit findings as to some of the alleged overpayments. Program Integrity was ordered to recalculate its overpayment claim consistent with that ruling. Program Integrity's recalculation was served and filed on September 8, 2015. C Care had thirty days from that date in which to decide whether it still wished a hearing on the audit methods.¹⁰ After that time period expired, C Care was given a second opportunity to indicate whether it still wished a hearing on the audit methods.¹¹ C Care has not responded and therefore no additional hearing will be held.

Based on the evidence presented, Program Integrity may recoup the revised overpayment amount of \$108,493.13.

⁹ This case was previously assigned to Administrative Law Judge Christopher Kennedy, who conducted the preliminary proceedings and presided over the hearing. This case was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record, including the hearing recordings.

¹⁰ See Ruling on Substantive Audit Findings

¹¹ See Notice Regarding Issuance of Proposed Decision dated October 13, 2015.

II. Facts

Procedural History

Myers and Stauffer LC is a Certified Public Accountant firm contracted to provide Medicaid audits for Program Integrity.¹² On April 26, 2012, Myers and Stauffer notified C Care that it had been selected for an audit.¹³ The preliminary audit findings were sent to C Care on April 7, 2014. C Care was given an opportunity to respond to those findings and to submit additional information related to the findings.¹⁴ Myers and Stauffer issued its final audit findings on May 29, 2014.¹⁵ Program Integrity sent those findings to C Care on June 4, 2014.¹⁶ C Care appealed.¹⁷

On August 12, 2014, ALJ Kennedy issued a Third Scheduling Order bifurcating the hearing:

A first hearing will be held on the substantive correctness of the error findings in the audit report. If necessary, the Program Integrity Unit may then be given an opportunity to run a new extrapolation on a modified set of error findings, and a hearing may be held on the existing or revised extrapolation.^[18]

C Care submitted a pre-hearing brief identifying each finding it disputed.¹⁹ That brief identified eight claims. During the hearing, one additional claim was added, but two claims were resolved, one in C Care's favor and one in Program Integrity's favor. Thus, there were seven disputed findings: Claims 7, 9, 34, 40, 41, 54, and 55. These claims are divided into two groups, with each group having a common issue.

Claims Involving Photocopies of Notes

The service notes C Care submitted in support of claims 7, 9, 54, and 55 have activity descriptions that were photocopied and used without change on more than one date.²⁰

Claim 7 is shown at pages 254-270 of the record. The claim is for three days of respite service provided to client Y C. Each date of service is documented with a service note that has the

¹² Hansen Testimony. T. Allan Hansen is a principal with the firm who manages the firm's contract with Program Integrity. He was the only witness who testified in this first hearing.

¹³ Administrative Record (Record) at 103.

¹⁴ Record at 60.

¹⁵ Record at 5.

¹⁶ Record at 2.

¹⁷ Record at 1.

¹⁸ August 12, 2014 Scheduling Order. The methods used to conduct the audit and extrapolate the overpayment amount from a small sample of claims is discussed in detail in a prior decision: *In re C Care Services LLC*, OAH No. 11-0015-DHS (Commissioner of Health & Soc. Serv. 2012) available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDA/DHS110015.pdf>.

¹⁹ The audit examined a sample of claims, or billings, submitted by C Care for payment. Each claim is represented by a seven character code consisting of the letter D followed by six numbers. The claims were identified by the parties by the last two numbers, or the last number for claims one through nine.

²⁰ Record at 11. Claim 46 also involved a photocopy, but C Care withdrew its dispute of this claim because there was an independent and undisputed reason for denying the claim.

client's name, signature, type of service provided, as well as the date, time and duration of the service.²¹ There is also a section in the service note for the provider to include a narrative describing the activity performed, with instructions to be specific.²² This section has been completed in Korean. For each of the service notes, the Korean statement appears to be identical. The spacing on each page is the same, and the Korean characters used all appear to be the same.

The service notes for Claims 9 and 54 also have some information in English, with the activity description in Korean.²³ Again the spacing and Korean characters appear identical on each day. Claim 55 is similar, except that the narrative description is in English.²⁴

Meyers and Stauffer concluded that C Care had used a photocopy for each of these service notes, and then the service provider wrote in the remaining information, in English, for each day of service.²⁵ C Care did not present any evidence to dispute that conclusion, and the notes all appear to be identical. It is more likely true than not true that C Care used photocopied narrative descriptions for these service notes before having the provider fill in the remaining information for each date of service.

C Care provided translations of the activity descriptions written in Korean. The translated description for Claim 7 is:

I say hello and pay my respect to her for a long time while I examine how grandmother is doing.
We listen to hymns and sing together.
Grandmother likes to sing a lot.
I talk to her a lot, touch her hair, hold her hands, and massage her arms and legs.
I turn grandmother's body to the left and right sides.
I give her water and Ensure milk.
I read her bible...
I sit beside her while she is sleeping.^[26]

The translated description for Claim 9 is:

Father usually sits on a chair and watches TV and he sometimes falls asleep.
When a phone rings, he wakes up to answer the phone, he often wants to drink water,
I make sure to give him his medicine, so that he can take it well.

²¹ Record at 260-264.

²² *Id.*

²³ Record at 303-307 and 1117-1121.

²⁴ Record at 1125-1129.

²⁵ Hansen testimony.

²⁶ Exhibit 1.

I help him whenever he goes to the bathroom, sometimes he often has a hard time getting up.^[27]

The translated description for claim 54 is:

Today as well, without change, he/she chain-smokes while sitting at a table in the dining room. When I try to tell him/her that he/she should smoke less for health reasons, he/she doesn't like to hear it and seems to be angry at something. It seems that he/she is emotionally unstable and easily changes the tone of his/her speech. When he/she goes to the bathroom while watching TV, although he/she says that he/she can handle it, I help him/her to walk to the bathroom because I worry that he/she may fall. He/she goes inside a room, smokes again, repeats closing and opening his/her eyes while watching a video tape, and sometimes falls asleep for a while. Sometimes, as he/she may suddenly reminiscence things in the past, he/she misses the past and talks about it a lot. He/she tries to moves his/her body and hands to do something, but it seems that is beyond his/her control. Sometimes, when he/she walks up to the second floor, he/she feels it very difficult.^[28]

As noted, Claim 55 was written in English. The copied description for each note says:

helping the body position,
transfer to chair to bed.
Bathing, stretching, foot care,
sterile dressing, on off toilet.^[29]

Service Notes Covering Multiple Dates

The service notes C Care submitted in support of claims 34, 40, and 41 each covered more than one date.³⁰ Claim 34 is for five days of respite care, May 4, 2009 through May 8, 2009.³¹ A single service note dated May 4-May 8 was submitted to support this claim.³² The description for the activity says:

[Client] is not very active. Because of her health. She does not get enough water because she doesn't have enough strength to get up very often. She watches a lot of T.V. to help pass the time because it helps her to forget about her pain.^[33]

Claim 40 is also for five days of respite care.³⁴ Two service notes were submitted in support of this claim. One note covered January 12 and January 13. The description in that note says:

²⁷ Exhibit 2.
²⁸ Exhibit 3.
²⁹ Record at 1129.
³⁰ Record at 12.
³¹ Record at 744-759.
³² Record at 1175.
³³ *Id.*
³⁴ Record at 865-876.

“Helped to Restroom. She wasn’t feeling very good. Head Ache. Watched TV.”³⁵ The second service note was for three days, January 14-16, 2009. The description says: “Helped to Restroom. Feeling Better. Played Cards watch TV.”³⁶

Finally, Claim 41 covered five days of respite care.³⁷ The first service note covers March 2 and March 3. The description in that note says: “Helped to Restroom. Went to friends house for dinner. Had a nice visit.”³⁸ The second service note was for March 4 through March 6. That note says: “Helped to restroom. Watched movies. Read book.”³⁹

III. Discussion

A. *Governing Law*

The parties agreed that the governing statutes and regulations were those that were in effect in 2009 when the billed services were rendered. Medical assistance providers are required to maintain accurate records to “support the care and services for which payment is requested.”⁴⁰

Those records must identify patient information including the:

- (1) recipient receiving treatment;
- (2) specific services provided;
- (3) extent of each service provided;
- (4) date on which each service is provide; and
- (5) individual who provided each service.^[41]

Program Integrity is required audit a sample of all medical assistance providers each year.⁴² The audits may not be conducted by employees of the Department of Health and Social Services, and the organization conducting the audit must retain individuals with expertise and recent professional practice in the general areas of standard account and financial auditing, and in the specific areas of medical records review, investigative research, and Alaska health care criminal law.⁴³ If the audit identifies an overpayment, Program Integrity may seek to recoup that overpayment.⁴⁴

³⁵ Record at 1190.

³⁶ Record at 1191.

³⁷ Record at 877-894.

³⁸ Record at 1192.

³⁹ Record at 1193.

⁴⁰ Former 7 AAC 43.030(a).

⁴¹ Former 7 AAC 43.030(b).

⁴² AS 47.05.200.

⁴³ AS 47.05.200(a).

⁴⁴ AS 47.05.200(b); former 7 AAC 43.081 (recovery of overpayment).

Claims With Photocopied Narrative Descriptions

Meyers and Stauffer identified five claims as overpayments because “the submitted service notes were identical to service notes submitted for another date of service.”⁴⁵ The auditors were looking for credible documents that support each claim submitted by C Care.⁴⁶ Meyers and Stauffer did not find the notes credible because a description of services provided would not be the same each day. The auditors allowed payment for one day of service, but not for the additional days that used the same photocopied narrative description.⁴⁷

The form at issue here is a single page labeled Non-Habilitative Service Notes.⁴⁸ There is space on that form for the client’s name and signature, and for the service provided as well as the date, time, and duration of service. There is also a larger space with a label that says “Describe the Activity performed (Please be specific):” The contents of this space are at issue here.

Respite care services are the provision of alternative caregivers to relieve a recipient’s primary caregiver.⁴⁹ The duration of the respite services for each of the disputed claims was two or three hours each day. During that time, the recipient may have needed some form of care, but may also have been asleep, or sitting quietly watching TV. There was no requirement in the 2009 regulations that the respite caregiver write down what if any activities were performed during the time the respite services were provided.

Mr. Hansen noted that even though there was no requirement for a narrative description, when there is a description, it cannot be a misrepresentation of what occurred each day.⁵⁰ Mr. Hansen is correct. If it appears that the narrative description is inaccurate, then other portions of the document might also be inaccurate. If the document as a whole is not credible, it is reasonable to find a lack of credible support for the claim submitted by the provider.

Program Integrity highlighted examples from some of the undisputed claims where the narrative description appears to be unreliable. For example, there are service notes for client E.S. where the C Care has used a description from one day to describe what occurred on a different day as well.⁵¹ These appear to be written as descriptions of what actually happened on the specific day

⁴⁵ Record at 11. Claim 46 was conceded by C Care, leaving four to be resolved here.

⁴⁶ Hansen testimony.

⁴⁷ *Id.*

⁴⁸ Record at 260, 303, 1117, and 1129.

⁴⁹ Former 7 AAC 43.1049(b).

⁵⁰ Hansen testimony.

⁵¹ Record at 1303-1316.

of service, and it is questionable whether some of these are accurate. For example, the descriptions for May 15 and May 28, 2009 both say:

Got home from a check-up due to her stomach ache. Help her get out from the car. Walk her to the house. Sit her slowly to the couch to rest up a little bit. Prepare her meal. Woke her up from a nap. Walk her to the kitchen to have her meal. After meal she took her medicine. Help her get up the stairs to her room. Assist her from changing clothes to house clothes. Help her on her mouth hygiene and took her back to bed to sleep.^[52]

Based on the spacing and handwriting on these notes, at least one of these two descriptions was photocopied and used for a second date. The activity narrative also appears to be very specific to activities that occurred on a specific date in a particular order. It is unlikely that these same things would have happened in this order on both May 15 and May 28. It is also unlikely that the caretaker would have known prior to filing in the date of May 15 on this form that he would have wanted a copy to use on a subsequent date. It would be reasonable for the auditors to question the credibility of these service notes. It would also be reasonable, based on the misuse of photocopied description narratives on May 15 and 28, to be skeptical of the use of photocopies for other narrative descriptions found during the audit.

Skepticism, however, does not automatically result in a finding of an overpayment. For each of the four claims at issue, the question is whether the narrative description is misleading, or otherwise suggests the service note is not credible. The service being provided for each client is two or three hours of respite care. The narrative descriptions, which are quoted in section II B, above, are general descriptions of what respite care is for each of these clients.⁵³ Unlike the example for client E.S., these are not specific descriptions of events on a specific date. Because each description is a general description of what respite care consists of for that specific client, these photocopied descriptions are not misleading.

The ultimate question for each disputed claim is whether there is sufficient credible documentation to support payment of the claim. The service notes for each of these four claims provides the information required by former 7 AAC 43.030(b).⁵⁴ The service notes establish that respite service was provided, and Program Integrity has not shown that the narrative descriptions

⁵² Record at 1309 & 1310.

⁵³ Stauffer & Meyer did not obtain a translation of the three Korean descriptions. Its conclusion was based on the fact that the descriptions were identical without knowing what was actually said in the descriptions. Hansen testimony.

⁵⁴ In its closing argument, C Care referred to 7 AAC 43.030(d), but that is not the regulation relied on by the auditors. Subsection d also does not appear to be applicable to the services at issue here because that subsection addresses clinical records. Home caretakers are not providing clinical services.

were misleading or otherwise called into question the credibility of the service notes. Because C Care was not required to include a narrative description of the activities performed each day, and because these narrative descriptions are not misleading, these four claims should have been allowed.

Service Notes Covering Multiple Dates

Meyers and Stauffer identified three claims that had service notes spanning more than one date.⁵⁵ These claims were disallowed because “the narrative description of services did not indicate that services were provided on more than one day.”⁵⁶ During the hearing, Program Integrity raised an additional reason for disallowing these claims. Program Integrity showed through other uncontested claims that C Care had modified some of the documents it had submitted in support of its claims for services. Program Integrity then argued that these three claims were also modified after C Care received notice of the audit.⁵⁷ That argument is not considered here because it was not the reason Meyers and Stauffer disallowed the claims, and C Care was not provided proper notice of this additional reason.

There was no statute or regulation in 2009 that prohibited a service provider from using a single service note to record more than one day of respite service. Based on the auditors’ judgment, however, service notes that spanned multiple dates were not considered adequate support for C Care’s claim.⁵⁸

As with the use of a photocopied description, it is important to look at the document as a whole. The note for Claim 34 has a general narrative description that could be read as covering one date, or covering more than one date. The time listed for the service provided is 1-3 pm, and the duration is listed as 2 hours.⁵⁹ The time and duration could either be read as the service being provided once, on the first date listed, or being provided for the same time and duration for each of the five dates listed. Because the time and duration statements are ambiguous, and because the narrative description does not indicate that the service was provided over multiple dates, this service note does not provide credible support for more than one day’s worth of respite service. The auditors’ determination that this note only supports one day of service is upheld.

⁵⁵ Claims 34, 40, & 41.

⁵⁶ Record at 12.

⁵⁷ Program Integrity’s argument focused on the dates listed on each note. These notes may have originally only listed one date, with the span of dates added later. While Program Integrity has shown that it is probable that C Care did modify some of the documents in the record, no ruling is made here as to whether these three documents were modified.

⁵⁸ Hansen testimony.

⁵⁹ Record at 1175.

Claim 40 is supported by two service notes, each spanning more than one day. The narrative description for January 12 and January 13 is written to describe a single day's activity.⁶⁰ Similarly, the narrative description for January 14 through 16 is written to describe a single day's activity.⁶¹ While the care taker might have intended these notes to describe multiple days, it is more likely that they were each written to describe only one day. In addition, the time and duration listed on the service note could reasonably be read as applying to only one day of service. Each service note as a whole is not credible support for more than one day's worth of service. The auditors' determination that these notes only support one day of service each is upheld.

Claim 41 was also supported by two service notes.⁶² As with claim 40, these notes were written to describe only one day's worth of activity. Each service note as a whole is not credible support for more than one day's worth of service. The auditors' determination that these notes only support one day of service each is upheld.

IV. Conclusion

Providers are required to keep adequate records of the services provided. Even where the records meet the minimum statutory and regulatory requirements, Program Integrity must still review those records to determine whether they provide credible support for the claims submitted. In regards to the disputed claims in this case, the documents submitted do not provide credible support for the entire amount claimed in claims 34, 40, and 41. The auditors' determination as to those three claims is upheld. The documents do, however, provide credible support for claims 7, 9, 54, and 55, and the auditors' determination regarding those four claims is reversed.

Program Integrity may recoup the revised overpayment amount of \$108,493.13.

Dated this 22nd day of October, 2015.

Signed

Jeffrey A. Friedman

Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

⁶⁰ Record at 1190.

⁶¹ Record at 1191.

⁶² Record at 1192 & 1193.