

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

In the Matter of)
)
CONSUMER CARE NETWORK, INC.) OAH No. 17-0933-MDA
) 17-0983-MDA (Consolidated)

DECISION

I. Introduction

Consumer Care Network, Inc. (“CCN”) is a Medicaid provider that provides personal care services (PCS services) and home and community based waiver services (waiver services) to Medicaid-eligible persons. The Department of Health and Social Services, Medicaid Program Integrity Unit (“Program Integrity”), through its agent Meyers & Stauffer, LC (“M & S”), conducted two audits of CCN’s Medicaid billings for calendar year 2012: one for CCN’s PCS services (provider number 1028169) and the other for CCN’s waiver services (provider number 1004497).

The audits were performed on a random sample of CCN’s billing claims. Each of the audits resulted in several of the sampled claims being disallowed. The results of the audited sample were then statistically extrapolated to arrive at a total overpayment figure. The M & S audit identified a total overpayment of \$326,858.42 for PCS services for 2012 and \$26,010.60 for Waiver services for 2012.

CCN requested a hearing to challenge some of the disallowed claims. The two audits were consolidated in this appeal. As discussed in detail below, Program Integrity is equitably estopped from disallowing the 27 claims M & S identified in its audit based upon the lack of start and stop times, where the provider noted “live in.”¹ Program Integrity is precluded from disallowing payment for the services for which the timesheet for Claim D252033 contains times in and times out. And Program Integrity is precluded from disallowing payment for Claim D252050. The M & S audit’s disallowance of Claims D152023, D152024, D152027, D152070, D252029, and D252049 is upheld.

¹ Claims D152002, D152003, D152004, D152011, D152012, D152013, D152014, D152021, D152032, D152049, D152050, D152059, D152072, D152073, D152074, D152075, D252040, D252041, D252042, D252043, D252044, D252058, D252059, D252060, D252061, D252064, and D252065.

II. Facts²

A. *Procedural History*

The Department of Health and Social Services, Medicaid Program Integrity Unit (“Program Integrity”), through its agent Meyers & Stauffer, LC (“M & S”), conducted two audits of CCN’s Medicaid billings for calendar year 2012: one for CCN’s PCS services (provider number 1028169) and the other for CCN’s waiver services (provider number 1004497). After receiving the final results of the audits, CCN requested an evidentiary hearing to challenge the results of both. The two audit cases were consolidated. An evidentiary hearing was held over the course of two days, February 14-15, 2017. Assistant Attorney General Scott Friend represented Program Integrity. Carolyn Heyman represented CCN. T. Allen Hansen from M & S; Douglas Jones, the manager of Program Integrity; and Lynne Keilman-Cruz, Health Program Manager, testified on Program Integrity’s behalf. Steve Ulofoshio, CCN’s Administrator; Patricia Stringer, former-Administrator of CCN’s Kenai office; Kisha Smaw, the owner and chief executive officer of Helping Hearts and Hands, Inc.; and Fue Yang, the owner of U-Care Services, Inc. testified on CCN’s behalf.

B. *Contested Overpayment Findings*

In calendar year 2012, CCN submitted a total of 1,078 PCS claims.³ The Medicaid program paid CCN a total of \$1,106,579.43 based on those claims.⁴ On March 23, 2016, Program Integrity notified CCN that it had been chosen for an audit of its PCS claims.⁵ In conjunction with that audit, M & S, which had been selected to perform that audit on behalf of Program Integrity, requested CCN’s records for a designated sample of its Medicaid claims submitted for calendar year 2012.⁶ The sample consisted of 75 claims which were selected using a random sample process.⁷ Of the 75 sampled claims, 35 contained overpayment findings in six different categories of overpayments.⁸ Based upon its audit of those 75 claims, and a statistical

² The following facts were established by a preponderance of the evidence.

³ Agency Record for Medicaid provider number 1028169 (PCS AR) at 38; Testimony of T. Allen Hansen.

⁴ PCS AR at 38

⁵ PCS AR at 207.

⁶ PCS AR at 208, 215-229; Hansen Testimony.

⁷ PCS AR at 38, 215-229; Hansen Testimony. These claims are identified in the record as claims D152001 – D152075. See PCS AR at 215-229.

⁸ PCS AR at 38.

extrapolation of the errors it found, M & S found that Medicaid overpaid CCN a total of \$324,197.94 for PCS claims in calendar year 2012.⁹

For its waiver services, CCN submitted 341 claims for which the Medicaid program paid a total of \$158,917.29 in calendar year 2012.¹⁰ On May 4, 2016, Program Integrity notified CCN that it had also been chosen for an audit of its claims for Waiver services.¹¹ Like it did in the PCS audit, M & S requested a designated sample of 65 randomly selected Medicaid Waiver claims for calendar year 2012.¹² Of the 65 claims sampled, 19 contained overpayment findings in four different categories of overpayments.¹³ Based on a statistical extrapolation of the errors found in those 65 claims, M & S found that Medicaid overpaid CCN a total of \$26,010.60 for Waiver services claims in calendar year 2012.¹⁴

CCN did not dispute all the audit findings. Instead, CCN only contests the overpayment findings for the following two categories: (1) those where CCN wrote “live in” in lieu of start and stop times for time-based Medicaid services; and (2) those where no start and stop time was recorded and the time sheet did not say “live in.”

1. *Timesheets where CCN wrote “live in” in lieu of start and stop times.*

This category covers 16 of the 75 audited PCS claims¹⁵ and 11 of the 65 audited Waiver claims.¹⁶ The timesheets for each of the contested PCS claims are on a standardized form that indicates the name of the recipient, the name of the personal care assistant, the dates of service, the number of daily hours, and a list of the services the recipient receives on a daily basis.¹⁷ The timesheets for the contested PCS claims in this category do not contain start or stop times, but they indicate that the provider lives with the recipient.¹⁸ They also provide the total number of hours of services provided each day.¹⁹ Similarly, each of the contested Waiver claims is on a

⁹ PCS AR at 38; Hansen Testimony.

¹⁰ Agency Record for Medicaid provider number 1004497 (Waiver AR) at 38; Hansen Testimony.

¹¹ Waiver AR at 59.

¹² Waiver AR at 60, 67-77; Hansen Testimony.

¹³ Waiver AR at 38.

¹⁴ Waiver AR at 38; Hansen Testimony.

¹⁵ PCS AR at 9-10. Hansen Testimony. Claims D152002, D152003, D152004, D152011, D152012, D152013, D152014, D152021, D152032, D152049, D152050, D152059, D152072, D152073, D152074, and D152075. PCS AR at 10.

¹⁶ Waiver AR at 2. Hansen Testimony. Claims D252040, D252041, D252042, D252043, D252044, D252058, D252059, D252060, D252061, D252064, and D252065. Waiver AR at 2.

¹⁷ Waiver AR at 2. Claims D252040, D252041, D252042, D252043, D252044, D252058, D252059, D252060, D252061, D252064, and D252065. Waiver AR at 2.

¹⁸ PCS AR at 564, 600-601, 805-808, 996, 2003, 2259, 2293, 2488, 2702-2703, 2743-2744.

¹⁹ PCS AR at 564, 600-601, 805-808, 996, 2003, 2259, 2293, 2488, 2702-2703, 2743-2744.

standardized form that indicates the name of the recipient, the name of the provider, the dates of service, and a list of services the recipient receives on a daily basis.²⁰ Like the timesheets for the contested PCS claims in this category, the timesheets for the Waiver claims do not contain start or stop times, but they indicate that the provider lives with the recipient, and they provide the total number of hours of services provided each day.²¹

M & S found that all 27 claims should be disallowed. The finding was based on the fact that there was insufficient documentation to verify the amount of service provided to the recipient, and none of the timesheets supporting the claims complied with the regulation requiring a start time and a stop time.²²

Before 2010, providers were not required to document time in or time out.²³ When the regulations were changed in 2010, CCN's Administrator Steve Ulofoshio and other Medicaid service providers raised concerns about the requirement for live-in providers.²⁴ Specifically, Mr. Ulofoshio and the other providers were concerned about Department of Labor enforcement of wage and hour laws for services provided by caregivers over a 24-hour period.²⁵ For example, most of CCN's live-in providers are family members, who provide care sporadically, 24 hours per day, seven days per week.²⁶ Many work more than the hours authorized for payment by Medicaid.²⁷ It is difficult to write a time in and time out for every service provided throughout a 24-hour period.²⁸ Mr. Ulofoshio and other agency administrators discussed the problem to see how other agencies were handling it.²⁹ Several providers were writing "live in" on the timesheets in lieu of time in and time out.³⁰

Still unsure about how to proceed with live in provider timesheets, Mr. Ulofoshio discussed his concerns with Beverly Churchill, a staff member of the Division of Senior and Disabilities Services (SDS), Medicaid Provider Certification and Quality Assurance Program.³¹

²⁰ Waiver AR at 944, 1007, 1123-1125, 1174-1175, 1275, 1333, 1450-1453, 1492-1493.

²¹ Waiver AR at 1123-1125, 1174-1175, 1450-1453, 1492-1493.

²² Testimony of Douglas Jones; Testimony of Steve Ulofoshio; Hansen testimony.

²³ Hansen testimony; PCS AR at 9-10, 16-34; Waiver AR at 2, 5-9.

²⁴ Ulofoshio Testimony; Testimony of Fue Yang; Testimony of Kisha Smaw; Testimony of Patricia Stringer.

²⁵ Ulofoshio Testimony; Yang Testimony; Smaw Testimony.

²⁶ Ulofoshio Testimony; Stringer Testimony.

²⁷ Ulofoshio Testimony; Stringer Testimony.

²⁸ Ulofoshio Testimony; Stringer Testimony.

²⁹ Ulofoshio Testimony; Stringer Testimony.

³⁰ Smaw Testimony; Ulofoshio Testimony; Yang Testimony. *See also* Hansen Testimony; Jones Testimony; Testimony of Lynne Keilman-Cruz.

³¹ Ulofoshio Testimony; Ex Q. *See also* Yang Testimony; Smaw Testimony.

Ms. Churchill had the authority to certify Medicaid providers, and Mr. Ulofoshio and other providers routinely communicated with her via telephone and email with questions about compliance with Medicaid regulations.³² Mr. Ulofoshio asked Ms. Churchill if live-in providers could write “live in” on timesheets rather than time in and time out.³³ Similarly, Ms. Smaw and Mr. Yang sought guidance from Ms. Churchill, specifically asking if live in providers could write “live in” instead of times in and times out.³⁴ Mr. Yang showed Ms. Churchill the timesheet used by his agency and explained his plan for documenting services provided by live-in providers.³⁵ Ms. Churchill told Mr. Ulofoshio, Mr. Yang, and Ms. Smaw that if the provider lived with the recipient, the provider could write “live-in” on the timesheets instead of time in and time out.³⁶ Similarly, someone in the SDS Personal Care Assistance Unit in 2010, told CCN’s Kenai Administrator, Patricia Stringer to continue doing what they were doing—i.e. writing “live in” on timesheets—as long as the tasks were signed by the recipient.³⁷

Sometime in 2010 or 2011, SDS staff discussed the live-in provider issue.³⁸ They determined that writing “live in” instead of times in and times out was not sufficient to comply with the regulation.³⁹ Ms. Churchill was not included in those discussions.⁴⁰ Although Mr. Jones and Ms. Keilman-Cruz acknowledged that several providers were writing “live-in” instead of time in and time out for live-in providers, they believe the regulation is clear, and that the error by a limited number of providers did not warrant a policy statement or other notice to providers.⁴¹ Neither Mr. Jones nor Ms. Keilman-Cruz discussed the issue with Ms. Churchill.⁴² They did not talk to Ms. Churchill about guidance she gave to providers.⁴³

³² Ulofoshio Testimony; *see also* Stringer Testimony (testifying that she spoke to someone in the SDS Personal Care Assistance Unit in 2010, who told her to continue doing what they were doing—i.e. writing “live in” on timesheets—as long as the tasks were signed by the recipient).

³³ Ulofoshio Testimony.

³⁴ Yang Testimony; Smaw Testimony.

³⁵ Yang Testimony.

³⁶ Ulofoshio Testimony; Yang Testimony; Smaw Testimony; *see also* Stringer Testimony (testifying that she spoke to someone in the SDS Personal Care Assistance Unit in 2010, who told her to continue doing what they were doing—i.e. writing “live in” on timesheets—as long as the tasks were signed by the recipient).

³⁷ Stringer Testimony.

³⁸ Jones Testimony.

³⁹ Jones Testimony; Keilman-Cruz Testimony.

⁴⁰ Jones Testimony; Keilman-Cruz Testimony.

⁴¹ Jones Testimony; Keilman-Cruz Testimony.

⁴² Jones Testimony; Keilman-Cruz Testimony.

⁴³ Jones Testimony; Keilman-Cruz Testimony.

2. *Individual timesheets where CCN recorded no start and stop time, and the timesheet does not say “live in.”*

This category covers 4 of the 75 audited PCS claims⁴⁴ and 4 of the 65 audited Waiver claims.⁴⁵ Like the “live-in in lieu of time in and time out” category of overpayment findings, the timesheets for each of the contested PCS claims in this category are on a standardized form that indicates the name of the recipient, the name of the personal care assistant, the dates of service, the number of daily hours, and a list of the services the recipient receives on a daily basis.⁴⁶ They also provide the total number of hours of services provided each day.⁴⁷ The timesheets have spots for documenting start and stop times, but those parts of the form are blank on each of the timesheets in this category.⁴⁸ Similarly, each of the contested Waiver claims is on a standardized form that indicates the name of the recipient, the name of the provider, the dates of service, and a list of services the recipient receives on a daily basis.⁴⁹ Two of the timesheets for the Waiver claims do not contain start or stop times—those sections are left blank.⁵⁰ The time sheet for Claim D252033 contains the time in and time out for every day service was provided except for one.⁵¹ And the timesheet for Claim D252050 indicates a time in of 8:30 a.m. and a time out of 10:30 a.m., but the time in and time out is not written for each individual day.⁵² All of the Waiver timesheets provide the total number of hours of services provided each day.⁵³

The record contains at least one other time sheet where the provider wrote the time in and time out generally but failed to write the times for each day separately, and the Division did not make an overpayment finding.⁵⁴ According to Mr. Hansen, providing a general time in and time out, combined with the total number of hours each day, was enough to substantiate the services provided and the extent the services were provided.⁵⁵ Mr. Hansen believes that from the

⁴⁴ PCS AR at 9-10. Hansen Testimony. Claims D152023, D152024, D152027, and D152070. PCS AR at 1051, 1054, 1162, and 2618.

⁴⁵ Waiver AR at 2. Hansen Testimony. Claims D252029, D252033, D252049, and D252050. Waiver AR at 944, 1007, 1275, and 1333.

⁴⁶ PCS AR at 1051, 1054, 1162, and 2618.

⁴⁷ PCS AR at 1051, 1054, 1162, and 2618.

⁴⁸ PCS AR at 1051, 1054, 1162, and 2618.

⁴⁹ Waiver AR at 944 1007, 1275, and 1333.

⁵⁰ Waiver AR at 944 and 1275.

⁵¹ Waiver AR at 1007.

⁵² Waiver AR at 1333.

⁵³ Waiver AR at 944, 1007, 1275, and 1333.

⁵⁴ Waiver AR at 431. *Compare with* Waiver AR at 1333.

⁵⁵ Hansen Testimony.

information provided, it is a reasonable inference that the person was there at the same time each day.⁵⁶

III. Discussion

In order for a business to receive payment from the Medicaid system for services provided to Medicaid recipients, that business must be enrolled as a Medicaid provider with the Department.⁵⁷ A Medicaid provider is required to comply with all applicable federal and state requirements.⁵⁸ In this case, because Program Integrity is seeking affirmative financial relief against CCN, based upon its allegation that CCN has not complied with Medicaid requirements. It has the burden of proving by a preponderance of the evidence that CCN did not comply with the Medicaid requirements.

A. *Timesheets where CCN wrote “live in” in lieu of start and stop times.*

Before 2010, the general Medicaid regulations contained the requirement that provider records show the date services were rendered.⁵⁹ Revised Medicaid regulations were adopted, effective February 1, 2010, which specifically require that provider records not only show the date the services were provided, but also that they include the “stop and start times for time-based billing codes.”⁶⁰ PCS and Waiver services are time-based: services are authorized on a service plan, which provides for a certain number of services per day or week. Consequently, a timesheet must include not only the date, but must also contain a start and stop time for the services. For PCA services, the timesheet must include the date, time, length of each visit, and a start and stop time for the services.⁶¹

It is undisputed that CCN’s individual PCA and Waiver timesheets at issue in this case contained the date, time, and length of each visit. Apart from two of the timesheets for Waiver services,⁶² it is also undisputed that they did not contain a starting time or a stopping time. CCN argued that it was in substantial compliance: that its timesheets, which recorded a duration and noted that the providers lived with the Medicaid recipients, supplied a reasonable basis from which to infer the extent of services on a particular day. However, this argument is not persuasive.

⁵⁶ Hansen Testimony.

⁵⁷ 7 AAC 105.210(a).

⁵⁸ See 7 AAC 105.220.

⁵⁹ 7 AAC 43.030(b)(4) (repealed effective 2/1/2010, Register 193).

⁶⁰ 7 AAC 105.230(d)(5).

⁶¹ 7 AAC 125.120.

⁶² Waiver AR at 1007, 1333.

When the specific PCS regulation, 7 AAC 125.120, and the general Medicaid regulation for time-based billing units, 7 AAC 105.230(d)(5), are read together, the Medicaid program requires a PCS caregiver’s timesheet to contain a start time, a stop time, and a duration. For both PCS and Waiver services, the general regulation requires documentation of the extent of each service provided *and* start times and stop times for services. CCN’s timesheets, which contain only one of those elements, the duration or extent of services, do not satisfy or substantially comply with the regulatory requirements.

Although noting “live in” on the time-sheet indicates that the recipient and the caregiver live together, it does not provide any information about when services were provided or how much time the caregiver spent with the recipient. Just because individuals live together does not mean that they spend 24 hours, 7 days a week with each other. The purpose of the start and stop times requirement is to pinpoint when Medicaid-paid services are provided. The requirement is intended to give the Division oversight tools to ensure accountability and to detect and prevent fraud. Writing “live in” in lieu of start and stop times does not sufficiently document when the provider delivered services.

Nevertheless, CCN raised another argument, which was that when the timesheets note that it is a live-in provider, equitable estoppel precludes the Division from using the lack of a start and stop time on its timesheet as a basis for denying payment. To successfully invoke estoppel against a governmental agency, four elements must be established:

1. the assertion of a governmental position by either conduct or words;
2. an act which reasonably relied upon the governmental position;
3. resulting prejudice; and
4. “estoppel serves the interest of justice so as to limit public injury.”⁶³

The evidence on the first element consists of testimony from Mr. Ulofoshio, Ms. Stringer, Mr. Yang, and Ms. Smaw that they asked the Division of Senior and Disabilities Services (SDS) Medicaid Provider Certification staff whether live-in providers could write “live in” on timesheets rather than time in and time out.⁶⁴ Beverly Churchill, a staff member of SDS who had the authority to certify Medicaid providers and with whom providers routinely

⁶³ *Wassink v. Hawkins*, 763 P.3d 971, 975 (Alaska 1988).

⁶⁴ Ulofoshio Testimony; Stringer Testimony; Yang Testimony; Smaw Testimony; Stringer Testimony.

communicated for guidance on compliance with Medicaid regulations,⁶⁵ told Mr. Ulofoshio, Mr. Yang, and Ms. Smaw that if the provider lived with the recipient, the provider could write “live-in” on the timesheets instead of time in and time out.⁶⁶ There is nothing in the evidence that suggests that any of these witnesses was not credible. Nor was there any meaningful evidence controverting any of the witnesses’ accounts. Accordingly, CCN has shown that the Division, through Ms. Churchill, approved CCN’s practice of writing “live in” in lieu of start and stop times. This satisfies the first element of the estoppel test, the assertion of a governmental position.

The evidence on the second element is that Ms. Churchill was a primary point of contact at SDS for guidance on compliance with the regulations for Mr. Ulofoshio and other providers.⁶⁷ Ms. Churchill was not a file clerk or other administrative assistant. She was, instead, an SDS employee known to have knowledge of the regulatory requirements.⁶⁸ Ms. Churchill had the authority to certify Medicaid providers, and she had approved at least one variance before.⁶⁹ Ms. Churchill regularly answered Mr. Ulofoshio’s questions and never informed him that questions about how to address the live-in provider issue was outside her role.⁷⁰ Given the course of conduct and Ms. Churchill’s position, it was reasonable for Mr. Ulofoshio to believe that Ms. Churchill had the authority to answer questions about compliance with the regulations. Because Ms. Churchill routinely gave verbal guidance on compliance, it was not unreasonable for CCN to rely on her guidance without getting her responses in writing. Moreover, given Ms. Churchill’s consistent, repeated response to numerous providers authorizing the practice at issue, it was reasonable for Mr. Ulofoshio to rely on Ms. Churchill’s response as the Division’s position on the matter. In other words, this was a reasonable reliance upon the asserted governmental position, which satisfies the second element of the estoppel test.

The evidence on the third element is that CCN has been substantially prejudiced by its reliance on the governmental position. SDS was aware that multiple providers were writing “live in” instead of start and stop times—it was enough of an issue that in 2010 or 2011, key personnel

⁶⁵ Ulofoshio Testimony; Ex Q. *See also* Yang Testimony; Smaw Testimony.

⁶⁶ Ulofoshio Testimony; Yang Testimony; Smaw Testimony; *see also* Stringer Testimony (testifying that she spoke to someone in the SDS Personal Care Assistance Unit in 2010, who told her to continue doing what they were doing—i.e. writing “live in” on timesheets—as long as the tasks were signed by the recipient).

⁶⁷ Ulofoshio Testimony; Ex Q. *See also* Yang Testimony; Smaw Testimony.

⁶⁸ Ulofoshio Testimony; Ex. Q; Ex R.

⁶⁹ Ulofoshio Testimony; Ex R.

⁷⁰ Ulofoshio Testimony.

within SDS discussed it and determined that the practice was insufficient. Yet, they did not notify providers of their determination. Nor did they discuss the issue with Ms. Churchill. As a result, CCN has been subjected to years of potential overpayment findings. If CCN had not been advised by Ms. Churchill that writing “live in” instead of time in and time out was acceptable, or if the Division had corrected Ms. Churchill’s incorrect guidance when they became aware of the problem, CCN could have stopped the practice and avoided findings in an audit conducted four years later that result in a disallowance of many of its billings.

The fourth element is also satisfied. In this case, the regulations at issue appeared to conflict with Department of Labor regulations. CCN acted reasonably when it sought clarification on how to apply the regulations in a way that would keep it in compliance with both regulatory schemes. Regulated businesses should be able to rely upon the basic competence of the governmental regulators to provide correct guidance when incorrect guidance could invalidate all their billings. This is especially true in a case like this, where the business actively sought guidance from the governmental agency, the governmental agency gave consistent guidance to several businesses, and then, after determining that the practice was in error, the governmental agency failed to notify the business and other businesses that the practice was inadequate. Based on these facts, estoppel serves the interest of justice so as to limit public injury.

CCN has therefore established that equitable estoppel precludes Program Integrity from disallowing the 27 claims M & S identified in its audit based upon the lack of a start and stop times, where the provider noted “live in.”

B. Timesheets where CCN recorded no start and stop time, and the timesheet does not say “live in.”

As discussed, PCS and Waiver services are time-based. Consequently, a timesheet must include not only the date, but must also contain a start and stop time for the services. For PCA services, the timesheet must include the date, time, length of each visit, and a start and stop time for the services.⁷¹

It is undisputed that CCN’s individual PCA and Waiver timesheets at issue in this case contained the date, time, and length of each visit. Except for two of the timesheets for Waiver

⁷¹ 7 AAC 125.120.

services,⁷² it is also undisputed that they did not contain a starting time or a stopping time. CCN argued that all claims were supported by documentation and it was in substantial compliance: that the full set of documentation retained for each recipient provides all the information required to substantiate the services and accomplish the Division's stated intent. Alternatively, CCN argues that because prior audits made non-monetary findings where the timesheet included a duration of time worked but no start and stop times, Program Integrity is prohibited from finding an overpayment finding based on lack of time in and time out here. Neither argument is persuasive.

First, it is clear that the Medicaid program requires a PCS caregiver's timesheet to contain a start time, a stop time, and a duration. For both PCS and Waiver services, the general regulation requires documentation of the extent of each service provided *and* start times and stop times for services.⁷³ CCN's timesheets, which contain only one of those elements, the duration or extent of services, do not satisfy or substantially comply with the regulatory requirements. As discussed, the purpose of the start and stop times requirement is to determine when Medicaid-paid services are provided. The requirement is intended to give the Division oversight tools to ensure accountability and to detect and prevent fraud. Failure to provide any start and stop times does not serve the regulation's purpose and cannot be deemed substantial compliance.

Second, the prior audit findings do not preclude Program Integrity from making overpayment findings in this case. CCN could not have relied on the earlier audit findings when it failed to document times in and times out on its timesheets. Nor did the audits set a different standard for in-home care agencies. Instead, the first audit identified by CCN contained a clerical error, and the claim was deemed a monetary overpayment on two other grounds.⁷⁴ And the second audit identified by CCN was based on guidance given by the Division of Behavioral Health to behavioral health providers—the exemption to start and stop times is limited to certain behavioral health services.⁷⁵ Neither audit supports a conclusion that Program Integrity's application of its regulations is arbitrary.

⁷² Waiver AR at 1007, 1333.

⁷³ 7 AAC 105.230(d).

⁷⁴ Hansen Testimony.

⁷⁵ Hansen Testimony.

Nevertheless, two of the timesheets for Waiver services contained some start and stop times.⁷⁶ The timesheet for Claim D252033 contains the time in and time out for every day service was provided except one.⁷⁷ And the timesheet for D252050 generally indicates a time in of 8:30 a.m. and a time out of 10:30 a.m., but the time in and time out is not written for each individual day.⁷⁸ It is not clear from the record whether Claim D252033⁷⁹ was deemed an overpayment in its entirety or whether the services for the one day where time in and time out are missing was deemed an overpayment. Program Integrity is precluded from disallowing payment for the services for which the timesheet for Claim D252033 contains times in and times out.

For Claim D252050, the record contains at least one other time sheet where the provider wrote the time in and time out generally but failed to write the times for each day separately, and the Division did not make an overpayment finding.⁸⁰ According to Mr. Hansen, providing a general time in and time out, combined with the total number of hours each day, was enough to substantiate the services provided and the extent the services were provided, and from the information provided, it is a reasonable inference that the person was there at the same time each day.⁸¹ Accordingly, Program Integrity is precluded from disallowing payment for the services for which the timesheet for Claim D252050.

IV. Conclusion

The M & S audit's disallowance of claims pertaining to lack of start and stop times, where the provider noted "live in" is reversed under the doctrine of equitable estoppel.⁸² The M & S audit's disallowance of payment for the services for which the timesheet for Claim D252033 contains times in and times out is reversed.⁸³ The M & S audit's disallowance of for Claim D252050 is reversed.⁸⁴ And the M & S audit's disallowance of Claims D152023, D152024, D152027, D152070, D252029, and D252049 is upheld. Program Integrity is to

⁷⁶ Waiver AR at 1007, 1333.

⁷⁷ Waiver AR at 1007.

⁷⁸ Waiver AR at 1333.

⁷⁹ Waiver AR at 1007.

⁸⁰ Waiver AR at 431. *Compare with* Waiver AR at 1333.

⁸¹ Hansen Testimony.

⁸² Claims D152002, D152003, D152004, D152011, D152012, D152013, D152014, D152021, D152032, D152049, D152050, D152059, D152072, D152073, D152074, D152075, D252040, D252041, D252042, D252043, D252044, D252058, D252059, D252060, D252061, D252064, and D252065.

⁸³ Waiver AR at 1007.

⁸⁴ Waiver AR at 1333.

recalculate the overpayment, based upon this decision. If CCN disputes the recalculation, it will have new appeal rights confined to that issue alone. Jurisdiction is not retained.

Dated: March 19, 2018

Signed _____
Jessica Leeah
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3 day of May, 2018.

By: *Signed* _____
Name: Erin Shine
Title: Special Assistant, DHSS

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]