

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

In the Matter of:)
)
 ESTELA MARIN) OAH No. 14-1840-MPC
_____)

DECISION

I. Introduction

Estela Marin is enrolled as a Personal Care Attendant (PCA) with the Alaska Medicaid program. The Department of Health and Social Services, Program Integrity unit, initiated this action suspending Ms. Marin’s certification as an enrolled Medicaid provider. Ms. Marin requested a hearing to challenge the suspension.

A hearing was held on November 25, 2014, which was continued to December 22, 2014 by mutual agreement until after Ms. Marin’s December 18, 2014 court date in a related criminal case, Case No. 3AN-14-08602CR. At the December 18 hearing in the criminal case, Ms. Marin pled guilty to medical assistance fraud. Program Integrity moved for summary adjudication in its favor on December 18, 2014, relying upon that criminal conviction.¹ The December 22, 2014 hearing was vacated to allow consideration of Program Integrity’s motion. Ms. Marin did not file a response to that motion.

This case does not present any genuine issues of material fact. Instead, there is a narrow legal issue: whether Ms. Marin’s 2014 investigation for medical assistance fraud and her subsequent misdemeanor conviction for medical assistance fraud support suspension of her certification as an enrolled Medicaid provider. A review of the facts demonstrates that there are credible allegations that Ms. Marin committed Medicaid Fraud. Summary adjudication is therefore GRANTED to Program Integrity. Accordingly, the suspension of Ms. Marin’s certification as an enrolled Medicaid provider is upheld and there will be no further hearing or other proceedings held in this case.

II. Uncontroverted Facts

Ms. Marin was enrolled with Alaska Medicaid as an authorized PCA provider. During the course of an investigation, Program Integrity became aware of irregularities with the billings for PCA services that Ms. Marin submitted, and Program Integrity referred the matter for

¹ Program Integrity filed a motion to dismiss. However, because the motion to dismiss presented matters outside the pleadings, it is more properly addressed as a motion for summary adjudication.

criminal prosecution.² On September 10, 2014, Program Integrity notified Ms. Marin that it was suspending her ability to bill for Medicaid services effective September 9, 2014, due to “Credible Allegation[s] of Fraud.”³ Shortly thereafter, on September 19, 2014, Ms. Marin was criminally charged with one felony count of medical assistance fraud, in violation of AS 47.05.210(a)(1), and one misdemeanor count of medical assistance fraud, in violation of AS 47.05.210(a)(5).⁴ Ms. Marin, who was represented by counsel, pled guilty to, and was convicted of one misdemeanor count of medical assistance fraud, a violation of 47.05.210(a)(5) on December 18, 2014. She was placed on probation for five years, in addition to other sanctions, which included 180 days of suspended imprisonment. As part of her sentence, the Court ordered she could not be employed as a PCA, nor provide Medicaid Waiver services.⁵

III. Discussion

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁶ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. Under these circumstances, the evidentiary hearing is not required.⁷ Summary adjudication, however, is not automatically granted when one party does not file an opposition to a motion for summary adjudication. In order to grant summary adjudication, even when an opposition is not filed, there must still be a determination that there is no genuine issue of material fact and that the moving party is legally entitled to judgment.⁸

Medicaid is a federal program administered by the states. The state Medicaid agency is required to suspend all payments to a provider if it 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 the payments or to suspend the payment only in part.⁹

When Program Integrity suspends payments, it must notify the provider of that suspension.¹⁰ Among other requirements, the notice must inform the provider of the

² Program Integrity Record, pp. 13 – 22.

³ Program Integrity Record, pp. 7 – 9.

⁴ Program Integrity Record, pp. 10 – 12.

⁵ Ex. A to Program Integrity’s Motion to Dismiss.

⁶ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁷ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Pierce, *Administrative Law Treatise* § 9.5 at 813 (5th ed. 2010).

⁸ See, e.g., *Martinez v. Ha*, 12 P.3d 1159, 1162 (Alaska 2000).

⁹ 42 C.F.R. §455.23(a)(1).

¹⁰ 42 C.F.R. §455.23(b).

applicable administrative appeal process.¹¹ According to the notice sent in this case, that appeal process is set out in 7 AAC 105.460.

There is no dispute that Ms. Marin had been investigated for Medicaid Fraud at the time her Medicaid certification was suspended. She was shortly thereafter criminally charged with, and subsequently found guilty, after a guilty plea, of Medicaid fraud. With the benefit of hindsight, it is clear that Program Integrity's allegations of fraud were credible, given that Ms. Marin pled guilty to the criminal charges.

IV. Conclusion

Program Integrity's suspension of Ms. Marin's certification as an enrolled Medicaid provider is upheld.

Dated this 9th day of January, 2015.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned 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 18th day of February, 2015.

By: Signed
Jared Kosin, Executive Director
DHSS Office of Rate Review

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

¹¹ 42 C.F.R. §455.23(b)(2)(vi).