

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

In the Matter of:)
)
A LOVING CARE PCA) OAH No. 15-0454-MPC
_____)

DECISION

I. Introduction

A Loving Care PCA (“Loving Care”) is a Medicaid enrolled PCA provider which provides personal care assistance (PCA) to Medicaid eligible persons. Rosalina Mavaega is one of its owners. The Department of Health and Social Services, Division of Senior and Disability Services (Department) initiated this action to permanently bar Loving Care and Rosalina Mavaega from being Medicaid providers.

Loving Care and Rosalina Mavaega requested a hearing to challenge the permanent termination from being Medicaid providers. The hearing was held on October 6 and 7, 2015. Jon Buchholdt represented Loving Care and Rosalina Mavaega. Assistant Attorney General Scott Friend represented the Department. All exhibits were admitted without objection. The record was held open until October 16, 2015 for the parties to submit post-hearing briefing.

The evidence demonstrates that Loving Care, including Rosalina Mavaega, committed multiple violations against the Medicaid program, after having been notified that these were violations which could lead to their termination as Medicaid providers. These violations consisted of ongoing billing errors and allowing individuals to be involved/employed at Loving Care, who had either been barred from participation in the Medicaid program due to the results of the required criminal history background check, or who had not undergone the required criminal history background check. The Department’s determination that Loving Care and Rosalina Mavaega should be terminated permanently from participation as providers in the Medicaid program is **AFFIRMED**.

II. Facts¹

Loving Care PCA applied with the Department in 2013 to be enrolled as a Medicaid provider for PCA services to Medicaid eligible persons. Rosalina Mavaega signed Medicaid

¹ The following facts were established by a preponderance of the evidence.

provider agreements, as the CEO/owner/administrator of Loving Care, several occasions: May 20, 2013, May 30, 2013, July 9, 2013, and August 5, 2013. Each of those agreements contained a provision that the provider, in this case Loving Care, would “abide by all Alaska laws, regulations, rules, written policies and billing manual instructions related to the Alaska Medical Assistance Program”² Loving Care was approved as an Alaska Medicaid Provider effective May 31, 2013.³

Loving Care was a partnership. Rosalina Mavaega, Eni Mavaega, and Alyssia Thampithak were its partners during the relevant time period. Other persons who were involved/associated with the business were Lou Saeturn, Baykham Keoduangdy, Stefanie Matthews, and Nikita Mavaega. The Department also alleged that three other persons were involved with the business. They were Esau Fualema, Seneca Neal, and Isapella “Pela” Mavaega.

The Division notified Rosalina Mavaega, as the owner of Loving Care, on March 16, 2015, that Loving Care and its owners would be terminated and permanently barred from participation in the Medicaid program for four separate reasons: violation of background check requirements, submitting billing claims without adequate documentation, offering a rebate for Medicaid referrals, and submitting claims for care coordination without supporting documentation.⁴ This decision will only address the first two issues, being the background check requirements and billing requirements. Because resolution of those two issues is fully dispositive of this case, the others are not addressed.

A. Background Check Requirements

The Department received an anonymous letter on January 16, 2014, that Loving Care had a staff member “who is a previous or current felon and is not cleared to work in that office.”⁵ Theresa Rosso, a healthcare program manager employed by the Department, then interviewed Rosalina Mavaega on January 27, 2014. Rosalina Mavaega told her that Esau Fualema, Jr. had been at Loving Care’s offices to perform renovation and to bring her lunch. Esau Fualema is Rosalina Mavaega’s husband and is a convicted felon.⁶

² Ex. B, pp. 5 - 8, 11 - 24.

³ Ex. B, p. 9.

⁴ Ex. A, pp. 2 - 6.

⁵ Ex. A, p. 101; Theresa Rosso’s testimony.

⁶ Theresa Rosso’s testimony.

On February 3, 2014, Theresa Rosso sent Loving Care, to Rosalina Mavaega’s attention, a “Notice to Correct.” In addition to requesting corrective action, it explained the general requirement that individuals who were associated with a Medicaid provider, including independent contractors, must undergo a criminal history background check and that individuals who received a “barred” status after that background check could not be onsite. That same notice informed Rosalina Mavaega that an independent contractor, who did Loving Care’s billing, must similarly undergo the background check.⁷

On March 6, 2014, Theresa Rosso sent Loving Care, to Rosalina Mavaega’s attention, a “Notice of Compliance,” which stated that Loving Care had complied with the February 3, 2014 “Notice to Correct.”⁸ However, the background check issue turned out to be broader than first thought and involved two persons in addition to Esau Fualema: Seneca Neal, and Isapella “Pela” Mavaega.

1. Seneca Neal

Seneca Neal is a convicted felon.⁹ On January 10, 2014, Alyssia Thampithak wrote a letter stating that Seneca Neal was a partner in Loving Care.¹⁰ A background check was not requested for him.¹¹ Seneca Neal was frequently present at Loving Care’s business, from December 2013 through April 2014, as demonstrated by the following:

- The May 7, 2014 interview statements of Tedavon Chindarak, Loving Care’s receptionist, in which she stated that she began employment with Loving Care in December 2013, and that Seneca Neal was present at the offices, including the client records area in the back, approximately once a week.¹²
- The April 24, 2014 interview statements of Nikita Mavaega, a former Loving Care employee and sister of Rosalina Mavaega, that Seneca Neal was a partner in Loving Care, who was present at its office for partners’ meetings.¹³
- The March 10, 2014 text message from Rosalina Mavaega to Thampithak: “Ally did you call a meeting at the office at noon? Because we didn’t get a text and why would

⁷ Ex. A, pp. 102 - 103; Theresa Rosso’s testimony.

⁸ Ex. A, p. 100.

⁹ Theresa Rosso’s testimony.

¹⁰ Ex. E, p. 57.

¹¹ Ex. E, pp. 31 - 32 (list of persons for whom Loving Care requested background checks).

¹² Ex. G, pp. 5, 7 - 9.

¹³ Ex. G, pp. 26 - 27.

you do a partners meeting at the office when you know the boys can't be in the office at noon? . . . ”¹⁴ In this context, “boys” is taken to mean both Seneca Neal and Esau Fualema, whose involvement is discussed below. Rosalina Mavaega testified that the text did not refer to Seneca Neal or Esau Fualema but rather that it referred to other men who were associated with Loving Care. She also testified that she frequently lost her phone and speculated that the text messages were created by another. Her testimony was directly contradicted by other evidence, recited above, and is not credible.

Based upon the evidence, as recited above, the Department has shown that it is more likely true than not true that Seneca Neal was involved/associated with Loving Care and present at its office, which included access to recipient records, during the time period from December 2013 through April 2014.

2. Esau Fualema

Esau Fualema was a partner, along with Rosalina Mavaega, in Loving Care in 2011. He does not appear as a listed partner in any of Loving Care’s 2013 – 2014 filings with the Department of Commerce and Economic Development.¹⁵ He underwent a criminal background check in November 2013 for his employment with Loving Care. On November 21, 2013, both he and Loving Care were notified that he did not pass the background check and that he could not be associated/employed with Loving Care.¹⁶ Theresa Rosso was informed by Loving Care staff in April 2014 that Esau Fualema was still a silent partner with Loving Care.¹⁷

There are text messages between Lou Saeturn, who provided computer services for Loving Care, and Esau Fualema, which state that Esau Fualema was accessing and using the computers at Loving Care’s offices in December 2013:

- “Every one had a comp, you know I want get on Bay comp. he’s pick about his comp :) sorry 4 letting u know that was my comp. and don’t know who open my c.”¹⁸
- “omp to the Receipt;/ I needed our do our company taxes and I go through records faster through the scans in records and ect 24, start dates, bcu d”¹⁹
- “You good now brother. Your computer is setup.”²⁰

¹⁴ Text message from Rosalina Mavaega to Alyssia Thampithak on March 10, 2014. Ex. E, p. 171, entry 55.

¹⁵ Ex. C, pp. 2 - 7.

¹⁶ Ex. A, pp. 135 - 143.

¹⁷ Theresa Rosso’s testimony.

¹⁸ Text message from Esau Fualema to Lou Saeturn on December 20, 2013. Ex. E, p. 18, entry 28926.

¹⁹ Text message from Esau Fualema to Lou Saeturn on December 20, 2013. Ex. E, p. 19, entry 28927.

There are also text messages to Alyssia Thampithak that demonstrate Esau Fualema’s continued involvement with the business after February 3, 2014:

- “Ally did you call a meeting at the office at noon? Because we didn’t get a text and why would you do a partners meeting at the office when you know the boys can’t be in the office at noon? . . . ”²¹
- “Ok Ally let’s do a partners meeting at noon and you push back the office meeting til 1 pm. . . . ”²²
- “Hey guys the stuff you guys need to file taxes is due by April 1st. I though Esau was going to do it but he stopped talk to me since Sunday. . . . ”²³
- “Now please Ally please! Just stop with the bull and just get over here so we can solve this problem. If you want Esau gone let me know and I will tell him to leave but do this for the seniors and their families at least.”²⁴

In addition, Tedavon Chindarak, Lou Saeturn, and Nikita Mavaega, during their interviews with the Department, stated that Esau Fualema was present at the office of, and involved with, Loving Care during the time period from December 2013 through the beginning of April 2014.²⁵ Further, Lynne Keilman-Cruz, a Department employee, who was watching Loving Care’s office from its parking lot, saw Esau Fualema present in Loving Care’s office in March 2014.²⁶

Rosalina Mavaega told Department staff in January 2014 that Esau Fualema was only on the premises for renovation/remodeling. Her testimony was similar. As found above, she was not credible. Given the text messages and interview statements, the Department has proven that it is more likely true than not true that Esau Fualema was involved with Loving Care and present at its office from December 2013 through April 2014.

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²⁰ Text message from Lou Saeturn to Esau Fualema on December 20, 2013. Ex. E, p. 20, entry 28936.
²¹ Text message from Rosalina Mavaega to Alyssia Thampithak on March 10, 2014. Ex. E, p. 171, entry 55.
²² Text message from Rosalina Mavaega to Alyssia Thampithak on March 10, 2014. Ex. E, p. 171, entry 58.
²³ Text message from Rosalina Mavaega to Alyssia Thampithak on March 26, 2014. Ex. E, p. 175, entry 92.
²⁴ Text message from Eni Mavaega to Alyssia Thampithak on May 4, 2014. Ex. E, p. 184, entry 345.
²⁵ Ex. E, pp. 2 – 3, 13 - 14, 27.
²⁶ Lynne Keilman-Cruz’s testimony.

3. Isapella “Pela” Mavaega

Pela Mavaega is Rosalina Mavaega’s sister. She did not undergo a background check.²⁷ There are a series of text messages between Alyssia Thampithak and Rosalina Mavaega that reveal that Pela Mavaega was working for Loving Care as a biller as early as February 27, 2014:

- “Who is in Enterprise waiver?”²⁸
- “It’s not Pela she texted because she can’t get in she’s locked out.”²⁹
- “Somehow the account is locked. So we need to either limit who has access because it takes us a week sometimes to get access and we need to do billing today.”³⁰

Enterprise is the computer system accessed by Medicaid providers for billing purposes.³¹

A subsequent text message from Rosalina Mavaega to Alyssia Thampithak on March 13, 2014 shows that Pela Mavaega was continuing to work as a biller for Loving Care, and that she was being paid in cash to avoid state scrutiny: “and [P]ela did the work [for] alc not for me so I don’t understand why you would have her ask me for \$500 and she cannot get a check unless you want the state to come down our ass again.”³²

In addition, Alyssia Thampitak and Nikita Mavaega, during their interviews with the Department, stated that Pela Mavaega worked as a biller for Loving Care.³³

Lynne Keilman-Cruz is the chief of quality assurance for the Department. She spoke to both Rosalina Mavaega and Pela Mavaega regarding Pela Mavaega’s involvement with Loving Care. Both sisters denied that Pela Mavaega had any involvement, including doing its billing, with Loving Care.³⁴ At hearing, Rosalina Mavaega testified that Pela Mavaega did not work for Loving Care. Rosalina Mavaega was unable to explain the text messages. Given the interview statements and the text messages, she is not credible on this issue and the Department has demonstrated it is more likely true than not true that Pela Mavaega performed billing functions for Loving Care without undergoing the necessary background check. This occurred, at a minimum, between February 27 and March 13, 2014.

²⁷ Lynne Keilman-Cruz’s testimony.

²⁸ Text message from Rosalina Mavaega to Alyssia Thampithak on February 27, 2014. Ex. E, p. 22, line 20.

²⁹ Text message from Rosalina Mavaega to Alyssia Thampithak on February 27, 2014. Ex. E, p. 22, line 21.

³⁰ Text message from Rosalina Mavaega to Alyssia Thampithak on February 27, 2014. Ex. E, p. 22, line 23.

³¹ Lynne Keilman-Cruz’s testimony.

³² Text messages from Rosalina Mavaega to Alyssia Thampithak on March 13, 2014, Ex. E, pp. 61 – 65.

³³ Ex. G, pp. 19 – 22.

³⁴ Lynne Keilman-Cruz’s testimony.

B. Billing

In the fall of 2013, Loving Care had difficulty getting paid for its services from Medicaid. Part of that problem was attributable to well-publicized problems with the Department of Health and Social Services' new Medicaid computer system. Loving Care and other similar businesses requested and received cash advances from the Department to keep their businesses operational, while the problems with the new Medicaid computer system were resolved.

In the course of processing Loving Care's payment advances, the Department started a review of its Medicaid bills in December 2013. This included a review of the underlying documentation for the bills, such as PCA timesheets. The Department discovered a large number of errors. As a consequence, Loving Care was notified on March 5, 2014 that it was placed on prepayment review. Prepayment review is a time consuming practice, which is seldom implemented, whereby the Medicaid provider is required to submit documents that support its billings, including time sheets, at the same time as it submits its billing. After the Department reviews the supporting documents, it authorizes payments of the bills.³⁵

Margaret Sampson, who is employed with the Department as a health program manager, participated in the prepayment review process. Loving Care was in the prepayment review process from March 5, 2014 through June 2, 2014. She testified that, during the prepayment review process, she found billing errors including there being no documents to support individual claims for payment, timesheets that had totals which were not consistent with the itemized time for the services, and timesheets submitted for services when the individual PCA was out of town or did not work. Margaret Sampson and Theresa Rosso met with Rosalina Mavaega on April 21, 2014 to discuss the billing errors. However, the billing errors continued until the beginning of June 2014, when Loving Care was suspended from the Medicaid program.³⁶ Margaret Sampson's testimony referred to specific billing errors, which she identified in the record. For example, Margaret Sampson pointed out that time sheets were completed showing services for a Medicaid recipient, with a C. S. as the providing PCA, but the billing claim provided that a T. J. was the PCA.³⁷ Her credible detailed testimony, with its references to the timesheets and billing date in the record, showed pervasive billing errors, which continued after Loving Care was

³⁵ Douglas Jones' testimony; Lynne Keilman-Cruz's testimony; Margaret Sampson's testimony; Theresa Rosso's testimony; Ex. A, pp. 91 – 98.

³⁶ Margaret Sampson's testimony.

³⁷ Margaret Sampson's testimony; Ex. F, p. 23; Ex. H, p. 22.

placed on prepayment review. Her testimony was not refuted by Loving Care. The Department therefore established, by a preponderance of the evidence, that Loving Care, despite being placed on prepayment review, and being that there were errors in its billings, continued to submit bills for PCA services which were erroneous.

Rosalina Mavaega did not dispute that there were continued billing errors after Loving Care was placed on prepayment review.³⁸

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.³⁹ This includes acknowledging responsibility for “all information and claims submitted to the department” by the business and agreeing to comply with background check requirements.⁴⁰

A provider is subject to sanctions for submitting false billings for services, for engaging in a course of conduct which is deceptive or abusive to the Medicaid program, for breaching the terms of the Medicaid provider agreement, and for failing to maintain accurate records for services provided to Medicaid recipients.⁴¹

The background check requirement includes a criminal history check, which applies to owners of a business, its officers, directors, partners, members, principals. It also applies to employees and independent contractors if those persons have regular contact with service recipients or their personal or financial records.⁴² This criminal history check is mandatory.⁴³ A Medicaid enrolled provider may not have a person who has been convicted of a barrier crime as an owner, officer, director, partner, member, principal, employee, or independent contractor of the business.⁴⁴

A failure to comply with the criminal history background check requirement is sanctionable by the Department. Similarly, the involvement/employment of a person who has

³⁸ Rosalina Mavaega’s testimony.

³⁹ 7 AAC 105.210(a).

⁴⁰ 7 AAC 105.210(b)(4) and (6).

⁴¹ 7 AAC 105.400(1), (6), (7) and (41).

⁴² 7 AAC 10.900(b).

⁴³ 7 AAC 10.910.

⁴⁴ AS 47.05.310(a); 7 AAC 10.905.

failed the criminal history background check requirement, unless a variance is requested, is sanctionable.⁴⁵

A provider is also subject to sanctions if it has failed to correct deficiencies in its operations after the Department have given it written notification of those deficiencies.⁴⁶

The sanctions that are available to the Department include intermediate measures such as prepayment review, audits, mandatory training, and suspension. The Department may also terminate a provider from participation in the Medicaid program.⁴⁷

A. *Background Check Requirements*

As found above, the Department established the following:

- Loving Care had three people who were involved in its operation who did not comply with the statutory and regulatory requirements for the criminal history background check. One of those was Esau Fualema, who had undergone the criminal history background check and did not pass it. Another was Seneca Neal who did not apply for the criminal history background check. The third was Pela Mavaega, who did not apply for the criminal history background check.
- Esau Fualema and Seneca Neal were both involved with Loving Care in an ownership capacity as shown by Alyssia Thampithak’s letter that he was a partner in Loving Care and the reference to the “boys” not being able to attend a partners’ meeting. They had access to the Medicaid recipient’s information. Their involvement predated the Department’s February 3, 2014 “Notice to Correct.” Their involvement continued after the “Notice to Correct.”
- Pela Mavaega was involved with Loving Care doing its billing, which meant she had access to Medicaid recipients’ information. Her involvement began after the Department’s February 3, 2014 “Notice to Correct.”
- Rosalina Mavaega, who was an owner of Loving Care, intentionally and knowingly misrepresented and hid Esau Fualema’s, Seneca Neal’s, and Pela Mavaega’s involvement with Loving Care from the Department.

The Department therefore has shown, with regard to Esau Fualema, Seneca Neal, and Pela Mavaega, that Loving Care and its owner, Rosalina Mavaega, engaged in behavior that was

⁴⁵ 7 AAC 105.400(7), (10), and (30).

⁴⁶ 7 AAC 105.400(18).

⁴⁷ 7 AAC 105.410(a).

deceptive and abusive to the Medicaid program, that violated the terms of the Medicaid provider agreement, that failed to comply with the criminal history background check requirements, and continued to engage in that same behavior despite being advised, in writing on February 3, 2014, that it could not. This is sanctionable behavior.

B. Billing

As found above, the Department established that Loving Care provided Medicaid billings which were not supported by the underlying paperwork, that as a result, it was notified in writing of the billing errors, was sanctioned by being placed on prepayment review, and despite that sanction, the billing errors continued. Rosalina Mavaega did not argue that the billing errors did not exist. Instead, she testified about the delays in receiving payments due to well-publicized problems with the Department's newly implemented Medicaid billing and payment system. However, she did not demonstrate any correlation that the payment delays contributed to Loving Care's internal billing errors. As a result, her argument is not persuasive. Consequently, the continued billing errors constituted behavior that was deceptive and abusive to the Medicaid program, that violated the terms of the Medicaid provider agreement, and failed to maintain accurate records for services provided to Medicaid recipients. Loving Care continued to submit erroneous billings after being notified in writing on March 6, 2015 that the billing deficiencies needed to be corrected, and after being placed on prepayment review as an intermediate sanction. This is sanctionable behavior.

C. Sanction

The behavior that stands out is the flouting of the criminal history background check requirement. Loving Care applied to have Esau Fualema undergo the requisite criminal history background check requirement. It was notified, in writing in November 2013, that Esau Fualema did not pass the check and was barred from being involved with Loving Care. However, Loving Care continued to have Esau Fualema and Seneca Neal, who did not apply for a background check, involved with the operation of the business. Rosalina Mavaega then misrepresented Esau Fualema's involvement when interviewed by the Department in late January 2014. She was explicitly notified in writing on February 3, 2014, that barred individuals and persons who did not undergo the necessary background check could not be involved with Loving Care. She then continued to have ineligible persons, Esau Fualema, Seneca Neal, and Pela Mavaega involved with the operation of the business, knowing that they could not be involved – and intentionally

concealed their involvement. The knowing persistence of the offending behavior, despite notice, constitutes grounds for termination of Loving Care and its owner, Rosalina Mavaega, from participation in the Medicaid program.

With regard to the billing issues, the record is clear that pervasive billing errors persisted, despite the application of the intermediate sanction of prepayment review. The intermediate sanction did not achieve its desired result. As a result, the Department has shown that the billing errors provide grounds for a more severe sanction to be implemented. While the billing errors on their own might not support termination as a sanction, when viewed in the overall context of Loving Care's business operation, they provide support for the termination.

IV. Conclusion

Rosalina Mavaega, one of the owners of Loving Care, participated in conduct that is sanctionable under the Medicaid program: allowing persons who had either failed the required criminal history background check, or did not apply for the required criminal history background check, to be involved with/employed by Loving Care, and submitting erroneous billings. This deliberate flouting of the background check requirement and the continued billing errors, both of which continued after Loving Care was provided notice from the Department, justifies termination as a sanction. The Department has therefore demonstrated that Loving Care and Rosalina Mavaega should be permanently terminated from participation as providers in the Medicaid program.

DATED this 27th day of November, 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 6th day of January, 2016.

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

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