

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

In the Matter of)
)
BJORGE HOUSE ENTERPRISES, LLC) OAH No. 17-1175-MDA
) Agency No. PCG314
_____)

DECISION

I. Introduction

Bjorge House Enterprises, LLC (“Bjorge House”) was a Medicaid-approved assisted living home that provided residential rehabilitation services to Medicaid-eligible persons. The Department of Health and Social Services (“the Department”), Medicaid Program Integrity Unit (“Program Integrity”), through its agent Meyers & Stauffer, LC (“M & S”), audited Bjorge House’s Medicaid billings for calendar year 2012. Due to inadequate documentation of services, the M & S audit identified a total overpayment of \$218,624.42, and Program Integrity demanded reimbursement in that amount. Bjorge House challenged the audit findings. Because the failure to document services encompasses all claims submitted by Bjorge House, the M&S audit results are affirmed.

II. Factual and Procedural Background¹

Bjorge House was an assisted living home based in Wrangell, Alaska that provided residential rehabilitation services to Medicaid-eligible recipients.² Bjorge House was owned by Linda and Melville Bjorge.³ Their daughter, Charlotte Neff, was the home’s administrator, responsible for all of the home’s paperwork.⁴ Ms. Neff resided in the home with her family.⁵ Ms. Bjorge, who is a licensed nurse, administered medicines when needed, assisted with some of the accounting, and paid routine bills.⁶

Bjorge House billed Medicaid \$218,624.42 for 26 claims for two Medicaid recipients, M.G. and C.L. in 2012⁷ On May 4, 2016, Program Integrity notified Ms. Neff that Bjorge House had been selected for an audit of its Medicaid-paid claims for the period of January 1, 2012

¹ The following facts were established by a preponderance of the evidence.
² AR 483. Bjorge House closed in or about 2016 due to the administrator’s health problems. AR 1.
³ Testimony of Linda Bjorge.
⁴ Bjorge Testimony.
⁵ Bjorge Testimony.
⁶ Bjorge Testimony.
⁷ AR 502, 505-522, 524.

through December 31, 2012.⁸ Due to the relatively small number of claims submitted by Bjorge House, M & S asked for documentation for all of Bjorge House’s claims during the audit period—rather than reviewing a random sample and extrapolating the results over the entire population of claims as is often done in Medicaid audit cases, the audit encompassed all claims.⁹

After receiving no response and no documentation from Bjorge House, M & S sent two follow-up letters, reminding of the audit and explaining the potential consequences if Bjorge House did not submit the requested documentation.¹⁰ Ms. Neff, who was seriously ill, hired a local accounting firm, C.F. James, to assist with the audit.¹¹ C.F. James accountant, Kelley Decker sent a packet of information to M & S on or about July 20, 2016.¹² Ms. Decker informed M & S that she was working with Ms. Neff to gather additional documents.¹³ Ms. Decker sent additional documents to M & S on or about July 28, 2016.¹⁴

Medicaid reimburses residential rehabilitation services on a per diem basis, so M & S audited the records for each day of the year for the two Medicaid recipients.¹⁵ For M.G., Bjorge House submitted twelve monthly service logs or flowsheets with rows of tasks or activities of daily living (ADLs) and columns for days—all with a computer-generated or typed “x” to indicate the services that were provided for the day.¹⁶ The logs contain very little day-to-day variation.¹⁷ Other than the different month and date, several of the logs look identical: July is identical to January;¹⁸ and August, September, October, November, and December are identical.¹⁹ In addition, the monthly logs for M.G. contain an “x” for tasks performed on 31 days in September and November—even though there are only 30 days in those months.²⁰ For C.L.,

⁸ AR 530-535.

⁹ AR 499, 530-535.

¹⁰ AR 526-529.

¹¹ AR 193; Testimony of Kelley Decker. Ms. Neff passed away in March 2017. Testimony of Linda Bjorge.

¹² AR 499; *see also* AR 193, 196, 361.

¹³ AR 193; *see also* Decker Testimony.

¹⁴ AR 284; *see also* Decker Testimony.

¹⁵ Hansen Testimony. Documentation submitted by Bjorge House in support of claims for services for M.G. is found at pages 136 – 162, 209 – 239, 241 – 280, 324, 331 – 338, 611 – 638, and 642 – 651 of the Agency Record. The documentation in support of claims for services for C.L. is found at pages 115 – 135, 285 – 289, 301 – 323, 344 – 359, 362 – 424, 559 – 574, 587 – 610, 639 – 641, and 652 – 679 of the Agency Record. Supplemental documents purporting to cover all 26 claims are found at pages 36 – 64, 102 – 114, 163 – 166, 281 – 282, and 575 – 587 of the record. Some of the documentation is duplicative.

¹⁶ AR 269-280; Hansen Testimony.

¹⁷ AR 269-280; Hansen Testimony.

¹⁸ *Compare* AR 269 with 275.

¹⁹ *Compare* AR 276, 277, 278, 279, and 280.

²⁰ AR 269-280; Hansen Testimony.

Bjorge House submitted similar service logs with rows of tasks and columns for days.²¹ Logs for January through June have handwritten check marks to indicate that a service was provided for the day,²² and the logs for July through December have a computer-generated “x” to indicate the services provided.²³ After the final audit, Bjorge House provided handwritten logs for July through December for C.L.²⁴ The handwritten logs vary from the computer-generated logs for the same recipient for the same months. For the most part, the handwritten logs are exactly the same each month: the check marks, signatures, and year on each handwritten log are identical.²⁵ Each handwritten log has the note “Good—” followed by various comments. Although the comments vary, the note “Good—” is identical on each log.²⁶ The logs look like photocopies. The computer-generated logs are also exactly the same for each month.²⁷ None of the logs for C.L. have any day-to-day variation, and like the M.G. logs, the C.L. monthly logs contain an “x” for 31 days in September and November.²⁸

After months with no contact from Program Integrity or M & S, Ms. Bjorge thought that the documentation provided was sufficient and believed that the issue had been resolved.²⁹ Nevertheless, Program Integrity notified Bjorge House of the preliminary audit findings on August 10, 2017.³⁰ M & S made overpayment findings for all 26 claims, concluding that the records provided by Bjorge House were not contemporaneously maintained.³¹ Program Integrity gave Bjorge House an opportunity to respond and provide additional information or documentation.³² Unfortunately, Ms. Neff—the person with the most knowledge about Bjorge House’s paperwork and day-to-day operations—died in March 2017.³³ And Ms. Neff’s

²¹ AR 116-121, 285-289, 400-406; Hansen Testimony.

²² AR 269-280, 406; Hansen Testimony.

²³ AR 400-405; Hansen Testimony.

²⁴ AR 116-121; Hansen Testimony.

²⁵ AR 269-280, 406; Hansen Testimony. The day and month and some comments after the word “Good—” are different on each handwritten log for C.L.

²⁶ AR 269-280, 406; Hansen Testimony.

²⁷ AR 400-405; Hansen Testimony.

²⁸ AR 400-405; Hansen Testimony.

²⁹ Bjorge Testimony; *see also* Decker Testimony.

³⁰ *See* AR 494, 502.

³¹ AR 716.

³² AR 494.

³³ Bjorge Testimony; AR 1, 525.

husband, Dennis Neff lived in the house where Bjorge House's records were kept.³⁴ He would not allow Ms. Bjorge access to the home to retrieve any of the business records.³⁵

After receiving the preliminary audit findings, Ms. Bjorge called M & S to express her disagreement.³⁶ Ms. Bjorge asked if she could respond verbally.³⁷ She explained that she had a stroke a couple of years prior and that she could not see.³⁸ M & S Senior Manager Shelly Schmitz-Holmes informed Ms. Bjorge that M & S needed something in writing.³⁹ Ms. Schmitz-Holmes also advised Ms. Bjorge that she would have the opportunity to ask for reconsideration when the final audit results came out.⁴⁰

Program Integrity issued its final determination on October 9, 2017.⁴¹ In short, M & S made overpayment findings for all 26 claims, concluding that the documentation Bjorge House provided was insufficient to verify that billed services were actually rendered to the recipients.⁴² In particular, M & S noted irregularities in the paperwork and concluded that the monthly service logs submitted by Bjorge House were "most likely created for the sole purpose of satisfying [M & S's] desk review request, and are not an accurate reflection of services actually provided on a daily basis."⁴³

Ms. Bjorge asked Terri Wenger to assist her with the appeal.⁴⁴ Ms. Wenger contacted Mr. Neff to see if she could search his house for additional records.⁴⁵ Mr. Neff's daughter allowed Ms. Wenger access to the house.⁴⁶ Ms. Wenger found some records, including menus, procedures for evacuation drills, an inspection report dated June 27, 2012, and some monthly logs.⁴⁷ Although Ms. Neff reportedly used a new small laptop for Bjorge House business and kept Bjorge House records on a SpongeBob thumb drive, Ms. Wenger was unable to find the laptop or any thumb drives.⁴⁸

³⁴ Testimony of Terri Wenger; Bjorge Testimony.

³⁵ Wenger Testimony; Bjorge Testimony.

³⁶ AR 525.

³⁷ AR 525.

³⁸ AR 525.

³⁹ AR 525.

⁴⁰ AR 525.

⁴¹ AR 494-496.

⁴² AR 500.

⁴³ AR 501.

⁴⁴ Wenger Testimony.

⁴⁵ Wenger Testimony.

⁴⁶ Wenger Testimony.

⁴⁷ Wenger Testimony.

⁴⁸ Wenger Testimony.

On October 25, 2017, Ms. Wenger submitted the additional information and documentation she found and asked Program Integrity to reconsider the overpayment findings.⁴⁹ Ms. Wenger explained that after Ms. Neff’s passing, Ms. Bjorge had difficulties obtaining business records from Ms. Neff’s husband.⁵⁰ She denied that any documents were fabricated for the audit, explaining that Bjorge House switched to computerized activity reports in response to an inspection by the Division of Senior and Disabilities Services.⁵¹ Nevertheless, Ms. Wenger acknowledged that neither she nor Mr. Bjorge, nor Ms. Bjorge had any knowledge about the records.⁵² Ms. Wenger reported that Mr. and Ms. Bjorge were in their 70s and that Ms. Bjorge is disabled, lost most of her eyesight, and has major health issues.⁵³

M & S responded to this new round of information and materials on November 17, 2017, addressing each new attachment separately.⁵⁴ The new documentation did not change the auditor’s concerns about irregularities in the monthly reports submitted by Bjorge House.⁵⁵ Indeed, M & S noted “deepened concerns” about the authenticity of the records.⁵⁶ M & S stood by its original findings.⁵⁷ The case was referred to the Office of Administrative Hearings.

An evidentiary hearing was held by telephone on March 20, 2018. Assistant Attorney General Scott Friend represented Program Integrity. Terri Wenger represented Bjorge House. M & S auditor, T. Allen Hansen; and Program Integrity Manager Douglas Jones testified on behalf of Program Integrity. Ms. Bjorge; Ms. Wenger; private accountant, Kelley Decker; and former Bjorge House employee, Deborah Glass testified on Bjorge House’s behalf. At the hearing, the numbered agency record and all exhibits submitted by the parties were admitted without objections.

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.⁵⁸ A Medicaid provider is required to comply with all applicable federal and state

⁴⁹ AR 1-3.
⁵⁰ AR 1.
⁵¹ AR 1.
⁵² AR 2.
⁵³ AR 2.
⁵⁴ AR 483-493.
⁵⁵ AR 486-488.
⁵⁶ AR 486.
⁵⁷ AR 483-493.
⁵⁸ 7 AAC 105.210(a).

requirements.⁵⁹ They must maintain accurate records to support the services for which payment is requested.⁶⁰ A Medicaid provider must record, and be able to document upon audit, the name of the recipient receiving treatment, the service provided, the extent of the service provided, the date it was provided, and the individual providing the service.⁶¹ The provider must retain the records for seven years, and if the provider is unable to produce the records on demand, the Department “may deny payment or may initiate a recoupment.”⁶² The Department may also impose sanctions for failure “to maintain for each recipient a contemporaneous and accurate record of the services provided.”⁶³

An overpayment occurs when the department pays a provider incorrectly for services that do not meet standards established for payment of services.⁶⁴ Federal law requires the Department to seek recoupment of overpayments.⁶⁵ Because Program Integrity is seeking affirmative financial relief against Bjorge House, based upon its allegation that Bjorge House has not complied with Medicaid requirements, it has the burden of proving by a preponderance of the evidence that Bjorge House did not comply with the Medicaid requirements.⁶⁶ The central issue in this case, that applies to all 26 claims, is whether Bjorge House failed to provide the required documentation to show that it rendered the services for which it billed.

The documentation submitted by Bjorge House to satisfy the Medicaid documentation requirements was not credible. The computer-generated service logs were uniformly created—they contain very little day-to-day variation;⁶⁷ other than the different month and date, several of the logs are identical;⁶⁸ logs for several months contain the exact same narrative for monthly progress at the bottom of the monthly log;⁶⁹ and they contain an “x” for tasks performed on 31 days in September and November—even though there are only 30 days in those months.⁷⁰ Similarly, close examination of the hand-written logs shows that the handwritten logs were photocopied over the course of all twelve months for C.L. Every single check mark is identical

⁵⁹ See 7 AAC 105.220.

⁶⁰ 7 AAC 105.230; 7 AAC 105.220.

⁶¹ 7 AAC 105.230; 7 AAC 105.220(b).

⁶² 7 AAC 105.240(d).

⁶³ 7 AAC 105.400(41).

⁶⁴ 7 AAC 105.260.

⁶⁵ 42 CFR § 431.1002.

⁶⁶ See *In re Accredo Health Group*, OAH No. 13-0622-MDA (Comm’r Health & Soc. Services, 2014).

⁶⁷ AR 269-280; Hansen Testimony.

⁶⁸ Compare AR 269 with 275; Compare AR 276, 277, 278, 279, and 280; AR 400-405; Hansen Testimony.

⁶⁹ AR 269-280; AR 400-405; Hansen Testimony.

⁷⁰ AR 269-280; AR 400-405; Hansen Testimony.

from log-to-log—same handwriting, same form, same shape, same angles, same pen, and same location on each log.⁷¹ Likewise, the signatures and year on each handwritten log are simply photocopies of each other.⁷² Each log has a handwritten note, “Good—,” followed by various comments. Although the comments vary, the note “Good—” is identical in form and location on each log.⁷³ In addition, computer-generated logs for C.L. for July 2012 through December 2012 show services on fewer days than the handwritten logs.⁷⁴ And one handwritten note for C.L. for April 2012 conflicts with another handwritten note for C.L. for the same month: the two logs have substantially different markings, different progress notes, and one indicates 26 days of service while the other indicates 30 days of services.⁷⁵ In short, the monthly service logs provide little to no reassurance that the records are accurate or were maintained contemporaneously as the services were provided. At best, the evidence suggests that Ms. Neff completed the forms at the end of each month.⁷⁶ However, the irregularities in the monthly service logs combined with the difficulties of recovering documents after Ms. Neff’s death, suggest that at least some of the logs may have been created as a group to satisfy the audit.

The supplemental records provided after the final audit results do not repair the deficiencies. The vast majority of the supplemental records (i.e. Assisted Living Home Inspection Report dated June 27, 2012; Private Firm Accounting Audit on Actual Bjorge House Books; Menu Calendars; Quarterly Review and Treatment Plan for Recipient M.G.; Evacuation Drill Reports; Linda Bjorge Medical Plan; Letter from C.F. James; and Check Register with Employees’ Paycheck Cashed) are irrelevant to whether Bjorge House complied with Medicaid documentation requirements. They may provide support that C.L. and M.G. were residents of Bjorge House, but the records do not shed light on the specific services provided to C.L. or M.G. Likewise, the affidavit from Deborah Glass—a statement from a former employee made several years after services were purportedly provided—does not meet the Medicaid documentation standards, requiring documentation of the recipient receiving treatment, the service provided, the extent of the service provided, and the date it was provided. Finally, the medication

⁷¹ AR 269-280, 406; Hansen Testimony. The day and month and some comments after the word “Good—” are different on each handwritten log for C.L.

⁷² AR 269-280, 406; Hansen Testimony. The day and month and some comments after the word “Good—” are different on each handwritten log for C.L.

⁷³ AR 269-280, 406; Hansen Testimony.

⁷⁴ Compare AR 116-121 with AR 400-405.

⁷⁵ Compare AR 122 with AR 406.

⁷⁶ Testimony of Deborah Glass.

administration records simply document that the recipients were provided medication, but they do not document supported living services that should have been provided as outlined in the recipients' Plans of Care.

As noted, the evidence suggests that at least some of the logs may have been created as a group to satisfy the audit. But this case is about documentation, not fraud. It is well settled that Medicaid payments will be denied if the required documentation has not been maintained. This is so even if one might be able to infer that it is more likely than not that the services billed, or at least some services, were actually rendered.⁷⁷ In *In re Alaska Children's Services, Inc.*, the Commissioner of Health and Social Services affirmed Program Integrity's recoupment of funds from a conscientious provider on the basis of substandard documentation, even though most, and perhaps all, of the claimed services had probably been performed.

The single potential exception to this principle is where failure to comply with some nuance of a documentation requirement is "so insubstantial that the department must consider the records complete."⁷⁸ This is far from true in the present case. The point of the documentation requirements is to allow the Department to audit individual claims and cross-check them against other information that may be available. In the case of Medicaid waiver residential rehabilitation services, the combination of a vulnerable clientele and a lack of close supervision creates significant opportunities for fraud. By requiring providers to maintain contemporaneous and accurate records of the services provided, the Department can ensure that recipients are receiving services that the state is billed for. Moreover, by making enforcement possible, it deters misconduct in the first place. Thus, the Department's interest in requiring specific and real time records is substantial. But the records provided by Bjorge House are not accurate reflections of daily services provided. Nor were they maintained contemporaneously as the services were provided. At best, the evidence suggests that Ms. Neff completed the forms at the end of each month.⁷⁹ And Bjorge House's failure to maintain (or at least retain) accurate documentation was so persistent that, if accepted, would undermine the documentation requirement. For these reasons, the M&S audit results are upheld.

⁷⁷ OAH No. 13-0182-MDA (2014) (published at <http://aws.state.ak.us/officeofadministrativehearings/Documents/MDA/MDA130182.pdf>).

⁷⁸ *Id.*

⁷⁹ Glass Testimony.

IV. Conclusion

Due to inadequate documentation of services, the M & S audit identified a total overpayment of \$218,624.42, and Program Integrity demanded reimbursement in that amount. Because the failure to document services is a fundamental defect that encompasses all claims submitted by Bjorge House for 2012, the M&S audit results are affirmed. Accordingly, Program Integrity may recoup \$218,624.42 from Bjorge House.

Dated: April 20, 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 21st day of May, 2018.

By: *Signed* _____
Signature
Jessica Leeah
Name
Administrative Law Judge
Title

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