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

In the Matter of	)	
	)	
GENEVA WOODS PHARMACY, INC.	)	OAH No. 15-0023-MDA
___________________________________	)	

DECISION

I. Introduction

Geneva Woods Pharmacy, Inc. ("Geneva Woods") is a pharmacy that dispenses and delivers prescription drugs to Medicaid recipients. Like all Medicaid providers, Geneva Woods is subject to post-payment audits to determine whether the billed for products or services were actually provided and there was compliance with the Medicaid program's requirements. Alaska Medicaid's Program Integrity Unit ("Program Integrity") had audits performed for prescriptions dispensed and delivered by two Geneva Woods' pharmacies: Anchorage and Wasilla.

The auditors originally found that there were 189 billings from the combined billing samples for both the Anchorage and Wasilla pharmacies that were either dispensed improperly or for which there was insufficient documentation to support either the dispensation and/or delivery of the medication. Based upon these allegedly invalid billings, the auditor extrapolated that Medicaid overpaid the Anchorage pharmacy $2,110,335 and the Wasilla pharmacy $764,420. Geneva Woods was informed that it would be required to reimburse Alaska Medicaid for those overpayments.

Geneva Woods contested those overpayments. As explained further below, the vast majority of the alleged billing error claims were disposed of through the parties' cross-motions for summary adjudication, Program Integrity withdrawing a billing error claim, or by Geneva Woods conceding the billing error claim. Twenty-three billing error claims remained for the evidentiary hearing.

After consideration of the entirety of the evidence in this case, Program Integrity has prevailed on a total of 38 of the 189 billing error claims: 15 through the summary adjudication process, 4 by Geneva Woods' concession, and 19 through the evidentiary hearing. Accordingly,

this matter is remanded to Program Integrity to recalculate its statistical extrapolation of the overpayment due from Geneva Woods based upon those claims.

II. The Audit Process and Procedural History

A. The Audit Findings

Geneva Woods appealed the findings of two Medicaid provider audits conducted by HMS Federal Solutions (HMS). The purpose of these audits was to determine Geneva Woods' compliance with applicable Federal and State laws and regulations relative to paid claims for Medicaid services provided under Alaska's Department of Health and Social Services (DHSS) Medicaid program.[1] The audit report for Geneva Woods' Anchorage pharmacy covered the period from January 1, 2009 to December 31, 2012 ("Anchorage Audit"). The audit report for Geneva Woods' Wasilla pharmacy covered the period from January 1, 2010 through December 31, 2012 ("Wasilla Audit").[2] Altogether, 250 claims were reviewed for the Anchorage Audit and 250 claims were reviewed in connection with the Wasilla Audit. Both audits were issued on October 23, 2014 (collectively, the Anchorage Audit and Wasilla Audit are referred to as the "2014 Audit").

HMS arrived at the overpayment figure for each pharmacy through a process of statistical sampling and extrapolation. HMS alleged that of the total 500 claims contained in its sample, 189 claims in seven categories had recoupable billing errors in the 2014 Audit. Using an extrapolation process, HMS concluded that Geneva Woods' Anchorage pharmacy had received overpayments in the amount of $2,110,335 and that Geneva Woods' Wasilla pharmacy had received $764,420 in overpayments.[3] After receiving a copy of the 2014 Audit on November 14, 2014, Program Integrity shortly thereafter sought reimbursement for the overpayments identified in the HMS audit.[4]

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[1] Program Integrity (PI) Exh. 1, p. 3; PI Exh. 4, p. 3.

[2] PI Exh. 1, p. 1 (Anchorage Audit); PI Exh. 4, p. 1 (Wasilla Audit).

[3] Geneva Woods in its pre-hearing brief claimed that it was inappropriate to extrapolate claim 118039 as an alleged overpayment in the amount of $13,282.92 because it was an extreme outlier. However, testimony by Dr. Kvanli at the hearing established that this claim was audited separately rather than extrapolated. Geneva Woods did not pursue this argument further after Dr. Kvanli's testimony and did not raise it in its written closing argument.

[4] *See* Order Granting Partial Summary Adjudication, p. 3.

B. Procedural History

Geneva Woods appealed the audit findings on January 12, 2015, and the matter was referred to the Office of Administrative Hearings (OAH). This case was then placed on hold by the parties due to the potential impact of an administrative decision in an earlier related case.[5]

This case was placed back on the active hearing calendar and on April 24, 2017, Program Integrity and Geneva Woods filed cross-motions for Summary Adjudication regarding most of claims identified as overpayments in the audit.[6] Altogether, 151 claims out of 186 remaining claims were resolved in their entirety via the summary adjudication process. Ninety of those claims were resolved in favor of Geneva Woods under the legal theory of collateral estoppel, which resulted from the administrative decision entered in the earlier related case.[7] The remaining claims addressed in the summary adjudication process dealt primarily with factual issues regarding whether there was adequate documentation to show delivery of the underlying prescriptions. Of the remaining 61 claims, 46 claims were resolved in their entirety in favor of Geneva Woods, and 15 were resolved in their entirety in favor of Program Integrity.[8] The Order Granting Partial Summary Adjudication (SA Order) is set forth in Appendix A and is incorporated herein.

There were 35 claims which remained unresolved after the SA Order and were scheduled for a hearing. However, at the beginning of the hearing, nine additional claims were removed from consideration: Program Integrity decided not to pursue six overpayments after receiving and reviewing supplemental documents from Geneva Woods while Geneva Woods conceded

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[5] That prior decision, OAH No. 12-0953-MDA, reversed an overpayment determination involving mediset dispensing fees in Geneva Woods' favor. *See In re Geneva Woods Pharmacy*, OAH No. 12-0953-MDA (Comm'r of Health & Soc. Serv. 2015), available online at: https://aws.state.ak.us/OAH/Decision/Display?rec=2107.

[6] Program Integrity did not request summary adjudication for two claims (4871 and 15252) identified as overpayments in the audit. After filing its Summary Adjudication Motion, Program Integrity rescinded the overpayments findings for those two claims and for one additional claim (36625). Altogether, Program Integrity sought to resolve 186 of the claims in its favor via summary adjudication. Geneva Woods moved for summary adjudication with regard to 149 claims. *See ITMO Geneva Woods*, SA Order, OAH Case No. 15-0023-MDA, p. 2.

[7] This was the administrative decision which initially caused this case to be placed on hold. *See In re Geneva Woods Pharmacy*, OAH No. 12-0953-MDA (Comm'r of Health & Soc. Serv. 2015), available online at: https://aws.state.ak.us/OAH/Decision/Display?rec=2107

[8] There were four claims – 88479, 53835, 3920939, and 2806100 – in which dual grounds were alleged for the overpayments. Summary adjudication was only granted on the signature logs issue for those claims, leaving the "missing record specific service" (MRSS) issue to be decided on the merits. Thus, while 155 claims were resolved in favor on Geneva Woods as a result of the Order Granting Partial Summary Adjudication, four of those 155 claims proceeded to a hearing to resolve whether there was an overpayment on other grounds. *See id*.

three claims.[9] On the final day of the hearing, the parties removed three additional claims from consideration, with Program Integrity removing two additional overpayments in the "invalid prescription" category (claims 204648 and 403757) and Geneva Woods conceding one more claim (claim 77006, in the ineligible dispensing fee category). Consequently, 23 claims remained to be decided on the merits at the evidentiary hearing.

At the outset of the hearing, both parties agreed that Program Integrity bears the burden of proof to show that it is more likely than not that Geneva Woods was overpaid on the remaining 23 claims at issue for the hearing.[10]

C. Evidence Admitted

The record for the decision consists of the following items:

- Agency Record stamped 000001-003820 for the Wasilla pharmacy and 003821-007398 for the Anchorage Pharmacy;[11]
- Program Integrity's Amended Exhibits (Exhibits 1-6, 8-11, 13, 15, 17-23, 25-26, and 30-38);
- Geneva Woods' Hearing Exhibits as Revised (Exhibits 2, 3, 7, 9, 12, 17, 20, 24, 27, 30, and 33-35); and
- Oral Testimony received on October 3, 4 & 7, 2019.

Program Integrity's Amended Exhibits and Geneva Woods' Hearing Exhibits as Revised were admitted without objection.

D. The Hearing

This case was heard in three hearing sessions held on October 3, 4, and 7, 2019. Program Integrity was represented by Scott Friend, Assistant Attorney General. Geneva Woods was represented by Jennifer Alexander.

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9 The six overpayments that Program Integrity decided not to pursue were in the following categories: ineligible dispensing fee (claims 225797, 241523, and 2551145), invalid prescriptions (claims 204648 and 403757), and missing record specific services (claim 89626). The three claims that Geneva Woods conceded were claims in the categories of "invalid prescriptions" (claims 3381 and 281385) and "unauthorized refills" (claim 386507).

10 *See In re Family Medical Clinic*, OAH No. 10-0095-DHS (Commissioner Health & Social Services 2011) (available online at https://aws.state.ak.us/OAH/Decision/Display?rec=2099).

11 The Agency Record was considered in connection with the SA Order, which is located in Appendix A and is incorporated herein by reference.

1. Witnesses

The Division had three witnesses: Erin Narus, who is a pharmacist with DHSS' Division of Health Care Services (Division); Doug Jones, Program Manager for Program Integrity; and Alan Kvanli, who testified about the sampling and extrapolation methodology utilized during the 2014 Audit.[12] Dr. Narus has been DHSS's lead pharmacist since July of 2015 and in that capacity serves as the pharmacy manager and director of the Alaska Medicaid program. She has a Bachelor of Science degree in chemistry from the University of Alaska Fairbanks and holds a Doctorate of Pharmacy degree from the University of Wisconsin-Madison.[13] Dr. Narus was not DHSS's lead pharmacist when the 2014 Audit was conducted.[14] However, she reviewed each of the claims at issue in 2019 during the time the mediation in this case was occurring.[15]

After Program Integrity's counsel called Dr. Narus as a witness, he moved to have her admitted as an expert witness, although he had not previously identified her as such.[16] Since the issue of Dr. Narus' status as a witness was raised, it should be noted that the rules of evidence are not strictly applied at OAH, except as a guide.[17] Here, Dr. Narus testified about the requirements for reimbursement for the Alaska Medicaid program, where she serves as the lead pharmacist. She also examined documents related to the claims deemed overpayments in the 2014 Audit and had an opinion based on her review. Consequently, she was a hybrid witness in the case, as was Mr. Keith, who provided analogous testimony on behalf of Geneva Woods and was simply identified as a witness in the case.[18]

The sole witness for Geneva Woods was Matthew Keith. Mr. Keith is a pharmacist who was Vice President of Pharmacy for Geneva Woods from 2010 to 2018, which was during most

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[12] Dr. Kvanli was admitted as an expert witness. He wrote the software used for Medicaid audit appeals for the federal Department of Health and Social Services and has been involved in Medicaid appeals for about 30 years.

[13] Testimony of Dr. Narus. Dr. Narus has been a pharmacist for over 15 years and has been licensed in Alaska since 2011. During her career as a pharmacist, she has worked in in-patient hospitals, long-term care facilities, long-term acute care facilities, and in an outpatient pharmacy. *See* Testimony of Dr. Narus. Dr. Narus also testified that during her fourth year of pharmacy studies, she interned for two months in an independent pharmacy and two months in a chain pharmacy.

[14] At the time the 2014 Audit was conducted, HMS consulted with the chief pharmacist (Mr. Hope) about the claims at issue. However, that individual is no longer with DHSS. *See* Opening Statement of Scott Friend, AAG.

[15] Opening Statement of Scott Friend, AAG; Testimony of Dr. Narus. Prior to assuming her current position as lead pharmacist, Dr. Narus was the drug utilization review pharmacist for Health Care Services and worked under Mr. Hope, who was the lead pharmacist at the time of the 2014 audit. After Mr. Hope's departure, Dr. Narus became the interim lead pharmacist before being appointed as lead pharmacist. *See* Testimony of Dr. Narus.

[16] *See* PI's Witness List, p. 2; PI's Amended Witness List, p. 2

[17] *See* 2 AAC 64.290(b).

[18] *See Getchell v. Lodge*, 65 P. 3d 50, 56 (Alaska 2003).

of the period covered by the 2014 Audit. He graduated from pharmacy school at the University of Texas and spent several years as a drug information specialist for a seven-hospital complex. Mr. Keith also served as the director of the Texas prison system pharmacy and served as an expert to the Texas legislature.[19] In Alaska, Mr. Keith managed the Alaska Native Hospital pharmacy for three years. After that, he worked on a prison reform project, under the auspices of a judge for the Ninth Circuit, which involved the California Department of Corrections before he assumed his position at Geneva Woods. Mr. Keith has 50 publications on various topics involving pharmacy practice.

In this litigation, Mr. Keith testified about Geneva Woods' mediset program and about how he would interpret the documentation for some of the claims at issue.[20]

E. Regulatory Framework

Under 7 AAC 160.110, the Department of Health and Social Services or its designee is authorized to audit Medicaid providers.[21] The regulation authorizes DHSS to gather information "sufficient to support a reasonable basis for determining the provider's compliance with the legal requirements of the Medicaid program."[22] An overpayment results when a provider is incorrectly reimbursed for services that do not meet the standards established for the reimbursement of services. A second regulation, 7 AAC 160.120, provides that the "department or its designee may use statistically valid sampling methodologies to calculate overpayment amounts."[23] If an overpayment is found, DHSS must recoup that overpayment from the Medicaid provider.[24]

Pursuant to 7 AAC 105.230(a), a Medicaid provider "shall maintain accurate financial, clinical, and other records necessary to support the services for which the provider requests payment."[25] In addition, under 7 AAC 105.230(d), a provider "shall maintain a clinical record . . . in accordance with the professional standards applicable to the provider, for each recipient." Germane to this case is the regulatory requirement for licensed pharmacists, found in 12 AAC 52.460, which requires a pharmacist to obtain certain information before filling a prescription

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19 Testimony of Mr. Keith.
20 Testimony of Mr. Keith.
21 A substantially identical regulation, former 7 AAC 43.1440, was in effect when some of the charges at issue were billed.
22 7 AAC 160.110(i)(1) [former 7 AAC 1440(i)(1)].
23 *See* 7 AAC 120.
24 7 AAC 160.110(h).
25 7 AAC 105.230(a).

drug order.[26] Such information includes, *inter alia*, the quantity prescribed, directions for use, the date of issue, authorized refills (if any), and the date of dispensing if different from the date of issue.[27] In addition, if a prescription order is transferred to a different pharmacy, 12 AAC 52.500(d) requires additional information to be provided, such as the number of valid refills remaining and the date of the last refill.[28]

III. Disputed Overpayment Findings

A. Background

Geneva Woods operates a "closed door" pharmacy in Anchorage and in Wasilla. Neither of these locations offers traditional retail pharmacy services to the public. There is little to no walk-in business, other than an occasional care giver or a staff member from an assisted living facility. Instead, most prescription orders are transmitted by facsimile (fax) or electronically. Geneva Woods operates a mediset program at its closed-door pharmacies. Medisets are a packaging system which identifies the day of the week and the time of the day for each dose of medication. Medisets are commonly dispensed in 7-day allotments but can also be dispensed in a four-week, 28-day supply. They are used to help patients who might otherwise have difficulty following a medication regimen due to cognitive impairments and to ensure that there is not an interruption in a patient's medication. Typically, physicians recommend patients for the mediset program and then Geneva Woods attempts to get prescriptions transferred or rewritten.

B. Overview of the Overpayment Findings

Program Integrity maintains that the audit findings uncovered overpayments in four different categories of claims: invalid prescriptions, missing record specific service, overbilled quantity, and unauthorized refills.[29] A total of 23 claims are in dispute.

A previous OAH decision has explained that:

> It is well-settled in the area of Medicaid billing that payment will be denied of the required documentation is not maintain. This is so, even if one might be able to infer that it is more likely than not the services billed, or at least some services, were actually rendered . . ..
>
> The single potential exception to this principle is where failure to comply with some nuance of a documentation requirement is "so

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[26] 12 AAC 52.460.

[27] *See* 12 AAC 52.460.

[28] *See* 12 AAC 52.500(d).

[29] Program Integrity's Closing Argument, pp. 2, 9, 17 & 22.

insubstantial that the department must consider the records complete."[30]

Geneva Woods argues that the overpayment findings for those 23 claims should be reversed, claiming that Geneva Woods has "substantially complied" with the regulations with regard to each of those claims.[31]

"Substantial compliance" is a legal doctrine that excuses a party from strictly complying with a statute or regulation "in order to carry out legislative intent and give meaning to all parts of a statute 'without producing harsh and unrealistic results.'"[32] In other words, if Geneva Woods has substantially complied with the regulation at issue – *i.e.*, Geneva Woods' failure to comply with some aspect of the documentation requirement is insubstantial – then the overpayment finding should be reversed.[33]

At the hearing, Dr. Narus reviewed each of the 23 claims at issue using a two-step process. With the first step, she examined whether DHSS has established a deficiency in the documentation so as to justify the auditor's overpayment finding. During the second step, Dr. Narus looked at whether the documentation, taken as a whole, established "substantial compliance" in her opinion. Later, Mr. Keith provided testimony on Geneva Woods' behalf related to 10 claims of the claims at issue.[34]

IV. Discussion

A. Invalid Prescriptions (6 claims)

Each of the "invalid prescriptions" claims was from the Geneva Woods' Anchorage pharmacy.

1. <u>Claim 91255</u> (no quantity)

Pursuant to 12 AAC 52.460(a)(5), a pharmacist shall obtain certain specified information – including the quantity to be prescribed – before filling a prescription.[35] The auditors concluded that this claim was an overpayment, because the prescription drug order did not include a

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30 *In re Eben-Ezer Homecare, LLC*, OAH No. 13-1605-MDA (published at https://aws.state.ak.us/OAH/Decision/Display?rec=2110)(quoting *In re Children's Services, Inc*., OAH No. 13-0182-MDA.

31 Geneva Woods Pre-Hearing Brief, p. 2.

32 *See Adamson v. Municipality of Anchorage*, 333 P.3d 5, 13 (Alaska 2014)(*citing Jones v. Short*, 696 P. 2d 665, 667 (Alaska 1985)).

33 *See ITMO Geneva Woods*, SA Order, OAH Case No. 15-0023-MDA.

34 *See* Testimony of Mr. Keith.

35 12 AAC 52.460(a)(5).

quantity.[36] The prescription audited was dated October 22, 2010 and was for 1 milligram of Risperidone, to be taken three times a day.[37] It was issued by a physician affiliated with NorthStar Behavioral Health.[38]

NorthStar Behavioral Health is a mental health facility for adolescents and troubled youth in Anchorage and Wasilla. It is an in-patient facility and, accordingly, it operates more like a hospital setting with physicians issuing "orders." The order stays active until the physician modifies it or issues a different order.[39]

a. The NorthStar Memo

Throughout this litigation, Geneva Woods has maintained that the NorthStar Behavioral Health prescriptions must be read in conjunction with the NorthStar memo. The NorthStar memo, dated July 23, 2014, purports to set forth a longstanding agreement between Geneva Woods and NorthStar which has been in effect since January 1, 2008.[40] The NorthStar memo states, in pertinent part, that:

1. Medication orders are to be dispensed weekly in a mediset.
2. The duration for all medications is six months, unless otherwise noted.[41]

Geneva Woods has argued that this memo supplies a continuing instruction for the duration and quantity of a NorthStar prescription.[42]

The documentation accompanying each of Program Integrity's exhibits associated with a claim was preceded by a "face page," which contained an HMS checklist specifying the claim number, the patient, and a check next to the list of documents reviewed.[43] In addition, some of the claims arising out of prescription orders issued by NorthStar Behavioral Health had a second "face page" which had the following typewritten annotation at the top: "Received." Dr. Narus testified that she interpreted this as supplemental documentation for the claim which was

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[36] Testimony of Dr. Narus; *see also* PI Exh. 2, p. 4; PI Exh. 3, p. 1.
[37] *See* PI Exh. 8, pp. 1, 5 & 13. The prescription order used the term "tid," which is a pharmacy convention for three times a day. *See* Testimony of Dr. Narus; Testimony of Mr. Keith.
[38] PI Exh. 8, pp. 5 & 13.
[39] Testimony of Mr. Keith.
[40] PI Exh. 8, p. 12.
[41] PI Exh. 8, p. 12.
[42] Geneva Woods Pre-Hearing Brief, pp. 4-5; *see also* Opening Statement of Jennifer Alexander, counsel for Geneva Woods.
[43] Testimony of Dr. Narus; *see, e.g.*, PI Exh. 8, p. 1; Exh. 9, p. 1, Exh. 10, p. 1; Exh. 11, p. 1.

submitted later than the initial documentation.[44] The NorthStar memo, dated July 23, 2014, would follow the second face page.

In her testimony for this and other NorthStar claims where the memo was part of the documentation accompanying that claim, Dr. Narus considered the memo when she provided her opinion regarding whether there was "substantial compliance" vis-a-vis that claim.

b. The Prescription Order for Claim 91255

This prescription actually contained two orders: (1) an order to discontinue the previous Risperidone orders with the next mediset, and (2) a new order for Risperidone in a 1 milligram dosage, to be taken three times a day.[45] The audit's focus was on the second prescription order. The second prescription order was signed, dated, set forth the drug prescribed, and the frequency that the drug was to be taken, in accordance with the requirements of 12 AAC 52.460. However, the second prescription order did not contain the overall quantity being dispensed.[46] Dr. Narus testified that the prescription order suggested that it was probably a mediset, since it was dispensed for seven days and Geneva Woods generally dispensed its medisets for seven days.[47] Geneva Woods did not dispute her conclusion.[48] Additional support that this prescription order was for a mediset is contained in the NorthStar memo, which specifies that medication orders were to be dispensed in a mediset. That memo was included among the documentation for this claim.[49]

Because the second prescription did not contain an overall quantity as required, the analysis shifts to determining whether there is additional documentation, which would include the NorthStar memo, demonstrating "substantial compliance."[50] Accordingly, Dr. Narus reviewed the documentation accompanying claim 91255 to see if the documentation was consistent with the overall quantity delivered and the amount of medication prescribed. This

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[44] There was no evidence presented which contradicted this interpretation.

[45] Dr. Narus testified that the phrase "Risperidone 1 mg po TID" on the handwritten portion of the prescription meant a one milligram tablet of Risperidone to be taken by mouth three times a day, with Dr. Narus explaining that "po" is latin for "per os" or taken by mouth. Both Dr. Narus, the Division's witness, and Mr. Keith, Geneva Woods' witness, concurred that "TID" meant three times a day. *See* Testimony of Dr. Narus; testimony of Mr. Keith.

[46] Testimony of Dr. Narus.

[47] Testimony of Dr. Narus.

[48] *See* Testimony of Mr. Keith; *see also* Geneva Woods Closing Brief, pp.3-4.

[49] *See* PI Exh. 8, p. 12.

[50] *See* Testimony of Dr. Narus.

additional documentation included various screen shots of the prescription software that Geneva Woods used when filling claim 91255 (Rx No. 06449232), and the prescription labels. [51]

Based on the second prescription, the weekly mediset should have included 21 tablets of Risperidone – *i.e.,* three tablets per day for seven days. However, the additional documentation for Claim 91255 stated that 14 tablets of Risperidone – not 21 tablets – were dispensed on a weekly basis from October 22, 2019 through February 2, 2011. Because there was no overall quantity specified on the prescription, Dr. Narus was unable to explain the discrepancy between what was dispensed (14 tablets per week) and what was ordered (21 tablets per week) when this prescription was filled between October 22, 2010 and February 2, 2011.[52] She further testified that had the quantity dispensed been consistent with the dosage prescribed (one tablet, three times daily), she would have deemed this "substantial compliance," but this was not the case.[53]

Geneva Woods set forth two arguments to rebut the overpayment finding. First, Mr. Keith testified that there *could* have been a prescription order changing the medication to twice daily that simply did not get scanned into the system.[54] However, he also admitted that there *should* have been an order reflecting that change, yet there was no documentation which would support Mr. Keith's speculation. Secondly, Geneva Woods argued that since a lesser quantity (14 tablets per week) was filled and delivered than what had been prescribed (21 tablets per week), this discrepancy should not be deemed an "overpayment."[55] This argument is not persuasive, because the applicable regulation requires that an overall quantity *be specified on the prescription*. Here, there was no overall quantity specified on the prescription.

Since the additional documentation associated with Claim 91255 did not support an interpretation of an overall quantity consistent with the "one tablet, three times daily" notation in the second prescription which would have created an inference of "substantial compliance," the audit finding disallowing Claim 91255 is upheld.

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[51] *See* Testimony of Dr. Narus.

[52] *See* Testimony of Dr. Narus; *see also* PI Exh. 8, pp. 8-10. The prescription fills on October 22, 2010, December 15, 2010, January 5, 2011, and February 2, 2011 contained 56 pills, representing 14 pills per week for four weeks. The prescription fills for November 12, 2010, November 17, 2010, November 24, 2010, December 1, 2010, and December 6, 2010 contained 14 pills for those one-week refills.

[53] Testimony of Dr. Narus.

[54] Testimony of Mr. Keith.

[55] *See* Geneva Woods Closing Brief, pp. 3-4.

2. Claim 113979 (no quantity)

The auditors deemed this claim an overpayment because the prescription did not include an overall quantity, as required by 12 AAC 52.460(a)(5).[56] The prescription number on the handwritten prescription is "Rx 6399561" and the prescription is dated November 10th, but no year is specified. The prescription order states, using a pharmacy convention, that one tablet of 25 milligrams of Metoprolol was prescribed to be taken twice daily.[57] Dr. Narus testified that this prescription did not contain the overall quantity being prescribed, as required by the applicable regulation.[58] However, Mr. Keith disagreed with that interpretation. According to Mr. Keith, the prescription order (Rx 6399561) stated "PRN refills." Since Metoprolol is a scheduled drug – *i.e.,* is to be taken on a schedule because it is a heart medication – the "PRN refills" specified a quantity of 365 days of medication taken twice daily.[59] In other words, a finite quantity can be inferred from "PRN refills."

There was a discrepancy in the documents which called into question whether Rx 6399561 was the prescription related to the April 10, 2010 refill, which was the service being audited. This is because the screen shot for the service audited listed the prescription as Rx 06406106.[60] However, the date of the original prescription on that screen shot was November 10, 2009 and it was for Metroprolol. Although Rx 6399561 simply read "November 10" and did not specify a year, Mr. Keith explained that had Rx 6399561 been dated November 10, 2008, the prescription would have been expired and have been unable to be filled on April 10, 2010 because a prescription is only valid for one year. He also testified that Rx 06406096 was probably the new prescription number generated by the computer system for Rx 6399561.[61]

Mr. Keith's testimony regarding the use of "PRN refills" on the original prescription order as supplying a finite quantity of medication was credible. Accordingly, the audit's finding of an overpayment with regard to claim 113979 is reversed.

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56 Testimony of Dr. Narus; *see also* PI Exh. 2, p. 4; PI Exh. 3, p. 1.

57 The prescription uses a pharmacy convention ("bid") which means two times daily.

58 Testimony of Dr. Narus; *see also* PI Exh. 9, p. 4. Mr. Keith, however, claimed that the prescription order (Rx 6399561) did contain a quantity since it specified "PRN refills." Mr. Keith testified that PRN refills in the context of a scheduled medication like this heart drug meant a finite quantity of medication: 365 days of medication taken twice daily. *See* Testimony of Mr. Keith; *see also* PI Exh. 9, p. 4.

59 Testimony of Mr. Keith.

60 Testimony of Dr. Narus; PI Exh. 9, p. 2.

61 Testimony of Mr. Keith; *see also* PI Exh. 9, p. 4.

3. Claim 126942 (no quantity)

The auditors found this claim an overpayment because the prescription drug order did not include a quantity, as required by 12 AAC 52.460(a)(5).[62] The prescription order audited was for a 300 milligram tablet of Allopurinol taken once daily.[63] The prescription order included a handwritten instruction, dated August 20, 2009, to “renew all medications above including the ones with refills (PRN x 1 yr) . . . ..”[64] Dr. Narus testified that the term “PRN” is a pharmacy convention for “as needed.”[65] According to Dr. Narus, this handwritten instruction overrides the number of refills listed on the prescription – here, 50 refills -- and is treated as a new refill instruction.[66]

This particular prescription order was a telephone order, which the pharmacist read back to the prescribing physician.[67] There was, however, no quantity listed for the allopurinol tablets on the copy of the drug order reviewed by the auditors, since the box under quantity had been blacked out.[68] Because of this, Dr. Narus concluded that the prescription order did not satisfy the requirements 12 AAC 52.460(a)(5), which specifies that an overall quantity be specified. This deficiency in the prescription order might not, however, constitute an overpayment under the doctrine of “substantial compliance” if there is a reasonable interpretation of the overall quantity prescribed on the documents associated with this claim.[69]

Mr. Keith, however, pointed out that this prescription involved a renewal of various prescriptions that were being dispensed in a mediset, including Allopurinol. He testified that the handwritten instruction specified a quantity by stating: “Please renew all medications above . . . PRN x1 year.” Allopurinol was a scheduled medication taken on a regular basis. Thus, the

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62 Testimony of Dr. Narus; *see also* PI Exh. 2, p. 4; PI Exh. 3, p. 1.

63 Testimony of Dr. Narus. Although other drugs were also specified on the prescription order, those drugs were not audited. *See* Testimony of Dr. Narus.

64 PI Exh. 10, p. 4.

65 Testimony of Dr. Narus. Mr. Keith also testified that PRN in a prescription meant “as needed.” *See* Testimony of Mr. Keith.

66 Testimony of Dr. Narus. The typed portion of the prescription order had a “begin date” of August 23rd, with no year specified, and an “end date” of August 29, 2009. The handwritten instruction was dated August 20, 2009. A screen shot of the screen containing the transaction history of this prescription showed an origination date of July 24, 2008 and an expiration date of August 18, 2011. *See* Testimony of Dr. Narus; PI Exh. 10, p. 7.

67 Testimony of Dr. Narus. The term “TORB” on the prescription order is a pharmacy convention for an oral prescription, such as a telephone order, that the pharmacist writes down and reads back to the prescriber. *See* Testimony of Dr. Narus.

68 *See* PI Exh. 10, p. 4.

69 Testimony of Dr. Narus.

“PRN x1 year” meant that 365 doses were authorized for the year. Consequently, Mr. Keith argued, an overall quantity could be inferred.[70]

Dr. Narus was able to rebut this inference. She testified that she would, based on this prescription order, expect to see 7 tablets of Allopurinol prescribed for 7 days. She then reviewed the transaction history for this prescription of Allopurinol. Dr. Narus noted that on August 21, 2009, the first day this prescription was filled, 14 tablets were delivered. The next fill of this prescription occurred on September 1, 2009, and was for seven tablets. Thus, the first fill of this prescription (covering August 21, 2009 through August 31, 2009), three additional tablets had been delivered.[71] The remaining fills after September 1, 2008 until the date of the prescription fill that was audited (December 16, 2009) were for 7 tablets. Thus, as of the date of the audit, Geneva Woods had dispensed 133 tablets for the 125 days supplied.[72] Consequently, the total number of tablets delivered – *i.e.*, 133 tablets – was inconsistent with prescription order of 1 tablet per day.

Dr. Narus also reviewed the number of tablets dispensed from the date of the first fill to the last fill in order to determine if an overall quantity consistent with the “one tablet per day” instructions on the prescription order could be inferred – *i.e.*, whether there had been “substantial compliance” with one tablet per day. Dr. Narus noted that the prescription order was ambiguous regarding whether one pill per day was to be dispensed for a calendar year (365 days) or whether the prescription was authorizing a one-year quantity so that it could be filled up to the last day of the prescription. If the former interpretation was adopted, there should have been 365 pills distributed, rather than the 378 that were actually distributed over a 365-day period. This meant that there was no “reasonable interpretation” concerning the overall quantity for the prescription order.

Geneva Woods’ counsel countered this argument by pointing out that the date of the service audited was December 16, 2009, so that it was inappropriate to consider the number of tablets distributed after that date. Program Integrity did not present a witness who could testify

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[70] Testimony of Mr. Keith.

[71] Testimony of Dr. Narus. The period beginning on August 21 and ending on August 31, 2009 consisted of 11 days; a total for 14 pills – *i.e.*, more than the 11 pills one would have expected given the prescription order was one pill a day – were delivered.

[72] *See* PI Exh. 10, pp. 7-9; *see also* Program Integrity’s Closing Argument, p. 6. After the first fill, seven tablets were dispensed over a six-day period for the medication fills dated September 1, 2009; September 7, 2009; September 13, 2009; September 19, 2009; September 25, 2009; and October 1, 2009. *See* PI Exh. 10, pp.7-8.

about whether the auditors looked at the overall number of tablets distributed during the duration of the prescription or just the tablets distributed from the first fill until the date of the audit. Consequently, Geneva Woods' argument regarding Program Integrity's second argument has merit. However, this decision upholds the auditors' findings of an overpayment for claim 126942 because the number of tablets prescribed from the date of the first fill (August 21, 2009) through the date of the fill examined by the auditors (December 16, 2009) was not consistent with the "one tablet per day" order on the prescription. As a result, an overall quantity could not be inferred.

4. Claim 196908 (no quantity or duration)

This claim was considered an overpayment, because the prescription drug order did not include a quantity or duration.[73] The requirement that a quantity be specified on a prescription order before the order is filled is set forth in 12 AAC 52.460(a)(5).[74]

This claim was for a prescription order of 10 milligrams of Propranolol, which was to be taken three times a day – every morning, at 1:00 p.m., and at 6:00 p.m.[75] There was no overall quantity specified nor was the duration of the prescription listed on the prescription order. However, the duration issue was addressed by the NorthStar memo, which was applicable to this prescription order.[76] The NorthStar memo states, pertinent part, that the "duration for all medications is six months, unless otherwise noted."[77]

Dr. Narus testified that March 3, 2010, the service date audited for this claim, 21 pills were authorized to be dispensed but 22 pills were dispensed.[78] Mr. Keith, Geneva Woods' witness, explained this discrepancy by stating that it was not atypical for health care providers in a clinical setting to drop or lose a pill and then request that an extra be provided in the next mediset. He speculated that this is what had occurred here. However, there were no records or other documentation indicating that this is what actually happened.

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73 Testimony of Dr. Narus; *see also* PI Exh. 2, p. 4; PI Exh. 3, p. 1. The requirement that a prescription order contain a quantity in order to be filled is contained in 12 AAC 52.460(a)(5).

74 Dr. Narus did not provide a regulatory citation for the proposition that a prescription must include a duration. However, AAC 43.030(b)(3) and 7 AAC 105.230(b)(3). Both require a provider to maintain accurate record which contain, *inter alia*, the "extent of each service provided.

75 *See* Testimony of Dr. Narus; *see also* PI Exh. 11, p. 4. According to Dr. Narus the terminology "poq" on the prescription order meant every a.m.

76 It should be noted that in its closing brief, Program Integrity only addressed the quantity issue with regard to this claim. *See* Program Integrity's Closing Argument, p. 7.

77 PI Exh. 11, p. 14.

78 *See* Testimony of Dr. Narus; *see also* Exh. 11, p. 2.

The auditors' findings disallowed the *entire claim* (21 tablets) because of the discrepancy between the daily number of tablets authorized as set forth in the prescription order (*i.e.,* 21 tablets) versus the number of pills dispensed (*i.e.,* 22 tablets). Program Integrity bears the burden of proof for showing that the auditor's finding should be upheld. However, Program Integrity essentially conceded in its Closing Argument that there was "substantial compliance" by stating that Program Integrity was only seeking to recoup the payment for one dose of Propranolol – *i.e.*, the difference between 22 and 21 tablets. Accordingly, the auditor's finding of an overpayment for Claim 196908 is reversed.

5. Claim 244983 (no quantity)

The auditors considered Claim 244983 an overpayment was because the prescription order did not include an overall quantity as required by 12 AAC 52.460(a)(5).[79] This claim arose out of a prescription order for 150 milligrams of Trazodone, taken once daily. It was written by a physician at NorthStar Behavioral Health. However, none of the documentation accompanying this claim included the NorthStar memo.[80] Moreover, there was no testimony on behalf of Geneva Woods stating that the NorthStar memo applied to this prescription order.[81] Thus, the applicability of the NorthStar memo to this claim has not been substantiated.[82]

Because the prescription order failed to specify a quantity and there is insufficient evidence to conclude that the NorthStar memo was applicable to this claim, the auditor's finding of an overpayment is upheld.

6. Claim 372575 (no quantity)

The auditor's report found that this claim was an overpayment because "no quantity or directions for use" were specified on the prescription order as required under 12 AAC 52.460(a)(5)-(6).[83] The prescription order, dated September 22, 2009, changed the medication for the recipient from Risperidone to "Risperidone M form sublingual."[84] The prescription order

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79 Testimony of Dr. Narus; *see also* PI Exh. 2, p. 4; PI Exh. 3, p.2 (deeming claim 244983 to be an invalid prescription.

80 PI Exh. 13, pp. 1-16.

81 Exh. 13, p. 3; *see* Exh. 11, pp. 1-15; Testimony of Mr. Keith. In its Closing Brief, Geneva Woods argued that the NorthStar memo "resolves this claim" but conceded that a copy of the memo was not part of the documents accompanying this claim. *See* Geneva Woods Closing Brief, pp. 5-6.

82 Had there been evidence presented demonstrating that the NorthStar memo applied to this claim, Dr. Narus stated that the quantity of medication dispensed on October 16, 2012 would have been consistent with the NorthStar memo.

83 *See* PI Exh. 1, p. 4; *see also* 12 AA 52.460(a)(5)-(6).

84 Testimony of Dr. Narus; *see also* PI Exh. 15, pp. 4 & 11.

does not contain a quantity; there also are no directions for use indicating how many times a day the medication was to be taken.[85] In her testimony, Dr. Narus noted that the documents for this claim did not include the original prescription for Risperidone, which might have contained directions for use. Dr. Narus also testified that she was unable to infer an overall quantity from the documents associated with claim 372575.[86]

Geneva Woods' argued that since this was a NorthStar claim, "sufficient information can be gleaned from the orders and the refill history to resolve the outstanding discrepancies."[87] However, Geneva Woods provided no testimony from Mr. Keith, its sole witness, explaining what that sufficient information was or what documents were relevant to its argument.[88] Moreover, the NorthStar memo was not included among the documents for this claim nor was there testimony from Geneva Woods asserting that the NorthStar memo applied to this particular claim.[89]

Program Integrity has, therefore, established that claim 372575 did not contain a quantity or directions for use as required by regulation, and Geneva Woods has failed to show "substantial compliance." Accordingly, the auditor's finding of overpayment is upheld.

B. Missing Record Specific Service (8 claims)

It is axiomatic that a pharmacist must have a prescription drug order in hand before filling a prescription. Pursuant to 12 AAC 52.460(a), that prescription order must contain certain information.[90] In addition, 12 AAC 52.460(b) requires a pharmacist to add certain information to a prescription drug order at the time of dispensing, including the unique identification number of the prescription drug order.[91] There is also a delivery log requirement, which requires a pharmacy to maintain documentation showing receipt of the prescribed drugs by Medicaid recipients.[92] This documentation may be kept as a signature log (which is also referred to as a delivery log), or as mailing labels, if prescribed drugs are mailed to recipients.[93]

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85 Testimony of Dr. Narus; *see also* PI Exh. 15, pp. 4 & 11.

86 Testimony of Dr. Narus. Although the original prescription order for Risperidone might have suggested directions for use, it was not an exhibit for this claim. *See* Testimony of Dr. Narus.

87 Geneva Woods Closing Brief, p. 6.

88 *See* Testimony of Mr. Keith.

89 *See* PI Exh. 15; *see also* Testimony of Mr. Keith.

90 *See* 12 AAC 52.460(a)(specifying the information that must be on the prescription drug order before it is filled).

91 *See* 12 AAC 52.460(b)

92 7 AAC 120.110(f).

93 7 AAC 120.110(f).

The auditors issued an overpayment finding for claims in the "missing record specific services" category because the pharmacy records requested on November 19, 2013 and February 7, 2014 "were not sufficient enough to determine if the service was billed and paid appropriately."[94] Such claims were missing some type of required documentation.[95] Some of the claims in this category were also listed as having an invalid prescription, because the prescription failed to meet federal or state Medicaid requirements for a valid prescription.[96]

There were four claims in this category from Geneva Woods' Anchorage pharmacy (claims 9479, 296189, 325143, and 392030) and four claims were from Geneva Woods' Wasilla pharmacy (28061, 53835, 88479, and 95230).

1. Claim 9479 (no prescription and no delivery log)

The overpayment finding for Claim 9479 was based two different grounds: no prescription and no delivery log.[97] Several days before the hearing commenced, Geneva Woods produced additional documentation containing an original prescription for this claim.[98] At the hearing, Dr. Narus conceded that this document resolved the "no prescription" issue, leaving only the lack of a delivery log as the basis for the auditor's overpayment finding. [99]

The delivery log for claim 9479 listed the patient's name that appeared on the original prescription order.[100] Dr. Narus testified that there was nothing indicating that this delivery log was associated with the audited service related to Rx 06518644: a prescription order for Metformin filled on October 1, 2012.[101] For example, the delivery log had no prescription number on it and neither of the two dates listed on the delivery log were October 1, 2012.[102]

Geneva Woods did not contradict Dr. Narus's testimony.[103] Accordingly, the auditor's finding of an overpayment for this claim on the grounds that it was lacking a delivery log is upheld.

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94 PI Exh. 2, p. 3; PI Exh. 5, p. 3;
95 *See* PI Exh. 1, p. 14; PI Exh. 4, p. 11.
96 PI Exh. 2, pp. 3-4; PI Exh. 5, p. 2.
97 Testimony of Dr. Narus; *see also* PI Exh. 2, p. 3; PI Exh. 3, p. 1.
98 *See* Geneva Woods Exh. 2, p. 17.
99 Testimony of Dr. Narus.
100 *Compare* PI Exh. 17, p. 16 *with* PI Exh. P. 4.
101 Testimony of Dr. Narus; *compare* PI Exh 17, p. 16 *with* PI Exh. 17, p. 2.
102 Testimony of Dr. Narus; *see also* PI Exh. 17, p. 16.
103 *See* Testimony of Mr. Keith; *see also* Geneva Woods Closing Brief, p. 6.

2. Claim 296189 (missing prescription)

The auditor's overpayment finding for claim 296189 was based on the absence of a prescription order for the audited service provided on May 18, 2011.[104] Although there was a prescription order, dated October 3, 2011, in the documentation the auditors reviewed, it was for the *discontinuation* of Doxycycline.[105] There was no corresponding documentation *prescribing* Doxycycline among the documents provided to the auditors.[106]

Around the time of the hearing, Geneva Woods provided supplemental documentation for this claim, which included a "Refill Authorization Request" for 7 tablets of 50 mg of Doxycycline to be taken "orally at bedtime," dated April 25, 2011.[107] The Refill Authorization Request form is sent to a provider to authorize a refill because something is expiring with respect to the mediset.[108] The drug, the Medicaid recipient, the quantity of medication, the instructions for use, the prescriber, and the prescription origin date (April 25, 2011) on the "Refill Authorization Request" was identical to the information on the software screen shot for Rx 06472506 for the audited May 18, 2011 service related to this medication.[109]

Dr. Narus testified that she was unable to definitively tie the prescription number on the screen shot (Rx 06472506) to the Refill Authorization Request.[110] Geneva Woods countered by noting that the Refill Authorization Request precisely comports with information on the screen shot for the audited prescription.[111]

Geneva Woods' point is well taken. The real inquiry here is whether there is sufficient information to confirm that the prescription paid for by Medicare (*i.e*., claim 296189) was a prescription that the patient's physician had authorized. Since the information on the Refill Authorization Request was consistent with the software screen shot for the audited service vis-a-vis the patient's name, the patient's birthdate, the prescriber, the prescription origin date, the

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104 *See* PI Exh. 2, p. 3.

105 Testimony of Dr. Narus; *see* PI Exh. 18, p. 4

106 Testimony of Dr. Narus; *compare* PI Exh. 18, p. 4 (prescription order discontinuing doxycycline) *with* PI Exh. 18, pp. 1-11.

107 *See* Testimony of Dr. Narus; Geneva Woods Exh. 20, p. 12.

108 Testimony of Mr. Keith.

109 *Compare* Geneva Woods Exh. 20, p. 12 *with* PI Exh. 18, pp. 2 & 4.

110 Testimony of Dr. Narus; c*ompare* Geneva Woods Exh. 20, p. 12 *with* PI Exh. 18, p. 2. The Refill Authorization Request referenced Rx 6450722. Mr. Keith explained that this was the original prescription number and that when the Refill Authorization Request was put into the computer system, a new Rx number would be generated. *See* Testimony of Mr. Keith.

111 Geneva Woods Closing Brief, p. 6.

drug prescribed, and the instructions for use were identical, this decision concludes that Geneva Woods has demonstrated "substantial compliance." Accordingly, the auditor's finding of an overpayment with regard to Claim 296189 is reversed.

3. Claim 325143 (missing prescription)

The auditors determined that claim 325143 was an overpayment because the prescription order was missing. The date of the original prescription (Rx 06386803), as listed on the screen shot for the audited service, was June, 3, 2009.[112] The service being audited was a prescription fill for the drug Seroquel on July 4, 2009.[113] However, the prescription order originally provided to the auditors for Rx 06386803 was an order, dated July 30, 2009, for the *discontinuance* of Seroquel. Moreover, the discontinuance order is dated *after* the date of the audited service (July 4, 2009).[114]

Supplemental documents Geneva Woods provided to the auditors in May of 2019 included a document listing five prescription orders dated April 9, 2009, including a prescription order for "Seroquel 50 mg 4pm." But, there was no Rx number on this prescription order linking it to Rx 06386803.[115] In assessing whether the missing prescription number on the April prescription order could be inferred from other documentation accompanying this claim, Dr. Narus reviewed the screen shot from Geneva Woods' software for the July 4, 2009 fill.[116] She noted that the drug being filled was "Seroquel 50 mg tablet" and that the instructions were to "take 1 tablet by mouth daily at 4 p.m." Thus, the drug, the drug strength, and the instructions for the July 4, 2009 fill were consistent with the April prescription order. However, the date of the original prescription order listed on that screen shot was *June 3, 2009*, whereas the date of the supplemental prescription Geneva Woods provided was April 9, 2009.[117]

Had the date for the original prescription order noted on the screen shot been the same as the date of the April prescription order, Dr. Narus testified, she would have had a "higher level of confidence" that the April prescription order was indeed the prescription order for the July 4,

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112 PI Exh. 19, p. 2.

113 *See* PI Exh. 19, p. 2; Testimony of Dr. Narus. The regulations require that a pharmacist obtain a prescription order before filling a prescription that includes certain information. *See* 12 AAC 52.460.

114 Testimony of Dr. Narus. The prescription order, dated July 30, 2009, discontinued three different prescriptions for Seroquel, including Rx 6386803. *See* PI Exh. 19, p. 4; *see also* Program Integrity's Closing Argument, p. 11.

115 *See* PI Exh. 19, p. 11; Testimony of Dr. Narus; *see also* Program Integrity's Closing Argument, p. 11.

116 Testimony of Dr. Narus; *see also* PI Exh. 19, p. 2.

117 Testimony of Dr. Narus; PI Exh. 19, p. 8.

2009 fill. Although Dr. Narus acknowledged that it was possible that the April prescription order might not have been brought in to be filled until June 3, 2009, she also testified that it was equally plausible that there was another prescription order written before June 3, 2009.[118]

In his testimony, Mr. Keith admitted that the date listed on the screen shot as the date of the original prescription should match the date of the April prescription order. He speculated that the discrepancy could have occurred because somebody may have typed the wrong date for the original order. However, he also acknowledged that there could have been two different prescriptions involved. [119]

Given that the July 4, 2009 date for the original prescription order listed on the screen shot for the audited service was inconsistent with the date on the April prescription order, there is not enough evidence to reasonably conclude that the April prescription order, more likely than not, was the prescription associated with Rx 0638603. Consequently, the auditor's finding of an overpayment for claim 296189 is upheld.

4. Claim 392030 (missing label)

Whenever a prescription drug order is dispensed, one or more labels containing the information specified in 12 AAC 52.480 must be affixed to every container for the medication. [120] Under 7 AAC 105.230 and 7 AAC 105.240, a prescription label is one of the documents which a provider must maintain and provide if requested.[121] Here, the prescription label was missing for the prescription (Rx 6447392) associated with the service being audited: a prescription fill of the drug Zyprexa on December 22, 2010. The drug prescribed by Rx 6447392 was a 2.5 mg. tablet of Zyprexa. However, the label delivered to the auditors was for a *different prescription* order (Rx 643699) and a *different drug* (Amlodipine Resylate). This led to the overpayment finding.[122]

During this litigation, Geneva Woods provided a document containing a prescription label for Rx 6447392. This label was dated December 22, 2010 and was for a 2.5 mg tablet of

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118 Testimony of Dr. Narus.

119 Testimony of Mr. Keith.

120 *See* 12 AAC 52.480. Under this regulation, the label must include, *inter alia*, the: (1) name, address, and phone number of the dispensing pharmacy; unique identification number of the prescription drug order; date the prescription drug is dispensed; initials of the dispensing pharmacist; name of the prescribing practitioner; name of the patient, directions for use, quantity dispensed; appropriate ancillary instructions or cautions.

121 Testimony of Dr. Narus.

122 Testimony of Dr. Narus; *compare* PI Exh. 20, p. 9 *with* PI Exh. 20, p. 2.

Zyprexa.[123] Thus, the date of service, the prescription number, and the drug matched the service being audited. Dr. Narus concluded that this was the missing label.[124] Since Geneva Woods has produced the missing label, which was the issue flagged by the auditors, the overpayment finding for claim 392030 is reversed.

5. Claim 28061 (invalid prescription and excessive refills)

The auditor's overpayment finding for this claim cited several grounds: invalid prescription, excessive refills and incomplete delivery log, and missing Rx number.[125] The incomplete delivery log issue was resolved in Geneva Woods' favor in the Order Granting Partial Summary Adjudication.[126] The missing prescription number issue was resolved through supplemental documentation.[127] Thus, the only remaining reasons for the overpayment finding were: excessive refills and invalid prescription.

The original prescription drug order, dated August 10, 2010, was initially filled at Geneva Woods' Anchorage pharmacy. This prescription was for Metformin H1 in a 500 mg tablet, to be taken twice daily; 52 refills being authorized.[128] The prescription was transferred to the Wasilla pharmacy on February 25, 2011.[129] Because this was a transfer prescription drug order, it had to comply with the requirements of 12 AAC 52.500. This regulation permits original prescription drug order information to be transferred between pharmacies for the purpose of dispensing a refill if the requirements of 12 AAC 52.460 and 12 AAC 52.500 are met.

The service audited was the June 20, 2011 prescription fill for Rx 06832979, dispensed by the Wasilla pharmacy.[130] Consequently, the transfer prescription order was examined in connection with this service.[131] The transfer order was for Metformin HCL in a 500 mg tablet, to

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123 Testimony of Dr. Narus; *see* Geneva Woods Exh. 27, p. 13.

124 Testimony of Dr. Narus. Program Integrity, while not conceding this claim at the hearing, did not address this claim in its Closing Brief. *See* PI Closing Brief, at pp. 10-16 (the section of the brief addressing claims where the auditor had issued an overpayment finding due to "missing specific services"). During the hearing, Dr. Narus testified that there might be another ground for this overpayment that the auditors had not addressed. However, what is at issue in the case is the *auditor's findings*, and for this reason an objection from Geneva Woods pertaining to the relevancy of this testimony was sustained.

125 PI Exh. 5, p. 3.

126 SA Order, pp. 21 & Attachment B.

127 Testimony of Dr. Narus; *see also* PI Exh. 21, pp. 2 & 15.

128 Testimony of Dr. Narus; PI Exh. 21, p. 17.

129 Testimony of Dr. Narus; *see also* PI Exh. 21, p. 15.

130 Testimony of Dr. Narus; PI Exh. 21, p. 2.

131 Testimony of Dr. Narus.

be taken by mouth twice daily. The transfer order specified "PRN until 8/9/11," a pharmacy convention meaning "take as needed" until August 9, 2011.[132]

Since this was a transfer prescription order, it had to comply with the requirements of 12 AAC 52.500. This regulation permits original prescription drug order information to be transferred between pharmacies for the purpose of dispensing a refill if the requirements of 12 AAC 52.460 and 12 AAC 52.500 are met.[133] Under 12 AAC 52.500(d)(5), the pharmacist receiving the transferred prescription drug order shall record on the transferred prescription order, *inter alia*, the *number* of refills authorized on the original prescription order and the *number* of valid refills remaining as of the date of transfer.[134] Dr. Narus testified that there was a discrepancy between the transfer order and the original prescription order. The original order had authorized 52 refills. However, the transfer order referred to "PRN" ("as needed") and did not contain: (1) the number of refills authorized on the original prescription order; or (2) the number of valid refills remaining. Thus, the transfer prescription order was an invalid prescription because it did not comply with 12 AAC 52.500(d)(4)(B)(ii)-(iii).[135]

Mr. Keith explained that "PRN until 8/9/11" on the transfer order meant that the drug might be filled less often, since it was being filled on an "as needed basis." However, his testimony did not explain why Geneva Woods' failure to comply with the regulation governing transfer prescription orders did not result in an invalid prescription. The auditor's finding of an overpayment on the basis of an invalid prescription is upheld.

Dr. Narus' testimony regarding the "excessive refills" overpayment finding was inextricably intertwined with the deficiencies in the transfer order resulting from the use of "PRN." Documentation related the transfer order indicated that there were variously no refills, 1 refill, 23 refills, or 28 refills remaining, out of the 52 refills originally authorized.[136] The

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[132] Testimony of Dr. Narus; see PI Exh. 21, p. 15.

[133] *See* 12 AAC 52.500(a). Initially, Dr. Narus testified that it was unclear whether the transfer had been communicated directly between two licensed pharmacists in accordance with 12 AAC 52.500(d)(1) since she was unable to determine if "Joe" was a registered pharmacist and "Robin" was registered pharmacists. *See* PI Exh. 21, p. 15. However, Mr. Keith testified that Joe was a registered pharmacist in the Wasilla pharmacy at that time and that Robin still was employed by Geneva Woods as a registered pharmacist thus resolving that issue. *See* Testimony of Mr. Keith.

[134] *See* 12 AAC 52.500(d)(4)(B)(ii)-(iii); *see also* Testimony of Dr. Narus. The "shall record" language in a regulation means that this is a mandatory requirement.

[135] *See* Testimony of Dr. Narus; *Compare* PI Exh. 21, p. 17 *with* PI Exh. 21, pp. 15-16. Mr. Keith did not address the requirements of 12 AAC 52.500(d)(5) in his testimony. *See* Testimony of Mr. Keith.

[136] Testimony of Dr. Narus; *see also* PI Exh. 21, pp. 4 & 15

transaction history for claim 28061 shows that there were 24 fills of Rx 0832979 after the prescription was transferred.[137] On June 20, 2011 (date of the claim being audited), there had only been 17 refills since the transfer order.[138] Despite extensive testimony, Dr. Narus never successfully explained the reason for the excessive refills finding.[139] Since Program Integrity has the burden of proof, the auditor's finding of an overpayment because there were excessive refills is reversed.[140] However, claim 28061 remains an overpayment because there was an invalid prescription.

6. Claim 53835 (invalid prescription, missing prescription, missing Rx number)

The auditor's finding of an overpayment for Claim 53835 was based on three grounds: invalid prescription, missing prescription, and missing prescription number.[141]

Under 12 AAC 52.460(a), a pharmacist is required to obtain certain information regarding a prescription drug order before that order can be filled, including the date of issue and the prescribing practitioner's signature. A pharmacist is also required by 12 AAC 52.460(b) to add certain information to the prescription drug order at the time of dispensing, such as the unique identification number of the prescription drug order. Since claim 53835 involved a transfer order, it is covered by an additional regulation – 12 AAC 52.500.

Here, the auditors were provided with a document marked "transfer" (hereinafter, "Transfer Document").[142] The Transfer Document was lacking certain requisite elements that would allow it to be deemed a prescription. It failed to comply with 12 AAC 52.460 because: (1) there was no date of issue filled in at the bottom of the Transfer document; (2) the prescribing practitioner's signature was missing at the bottom of the page on the line provided for the practitioner's signature; and (3) the only signature whatsoever on the Transfer Document began with the initial "J," which was inconsistent with the name of the provider (Mary Loeb) on the prescription labels associated with this claim.[143]

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[137] Testimony of Dr. Narus; PI Exh. 21, p. 15.

[138] *Compare* 12 AAC 52.500(d)(5) *with* PI Exh. 21, pp. 8-10.

[139] PI Exh. 21, p. 15; Testimony of Dr. Narus. Dr. Narus testified for almost two hours regarding the overpayment finding for Claim 28061. Program Integrity's Closing Argument also failed to justify the "excessive refills" finding. Certainly, as of the audited service date, there had been 17 refills, which was far less than the number of refills listed on the transfer order. *Compare* PI Exh. 21, p. 10 *with* PI Exh. 21, p. 15.

[140] Mr. Keith's testimony also did not reference this regulation or address this issue.

[141] The auditors originally had a fourth ground for the audit finding – incomplete delivery log. *See* PI Exh. 5, p. 3. However, the SA Order resolved this issue in Geneva Woods' favor. *See* SA Order, pp. 22 & Attachment B.

[142] *See* Testimony of Dr. Narus; *see also* Exh. 22.

[143] Testimony of Dr. Narus; *see also* PI Exh. 22, pp. 4 (Transfer Document), 5-6 & 12 (prescription labels).

The Transfer Document also did not comply with 12 AAC 52.500 because: (1) the date of the transfer was not on the Transfer Document; (2) the name of both the pharmacist receiving the transfer order and the name of the pharmacist transferring the order must both be specified and there was only one name that might be associated with a pharmacist on the Transfer Document; (3) the number of refills authorized in the original prescription order was not specified on the Transfer Document; (4) the date of the last refill was unclear since the Transfer Document stated it was November 30, 2011, while the screen shot for the service audited stated that the last fill date was July 2, 2012; and (5) the Transfer Document should have contained both the Rx number for the original prescription and the new number for the transferred prescription.[144]

These missing elements for claim 53835 formed the basis for the auditor's conclusion there was an invalid prescription, a missing prescription number, and that there was no prescription order. Geneva Woods provided no evidence to contradict Dr. Narus' testimony concerning the deficiencies in the documentation associated with Claim 53835 Accordingly, the auditor's overpayment finding is upheld.

7. Claim 88479 (invalid prescription and missing prescriber's signature)

Originally, the auditor's overpayment finding for Claim 88479 was based on four grounds. However, the incomplete delivery log issue was resolved in Geneva Woods' favor by the SA Order while other documentation for this claim resolved the missing prescription number issue by the time of the hearing.[145] Thus, only two grounds remained for the auditor's overpayment finding: missing prescriber's signature and invalid prescription.

Under 12 AAC 52.460(a)(9), a written or hard copy of a prescription drug order is required to contain the prescribing practitioner's signature, which can be handwritten, digital, electronic or stamped.[146] Here, the prescription order was invalid because it was missing the prescriber's signature. While the prescription order contained several faint but illegible marks, there was no way to tell if this was a prescriber's signature.[147] It was Dr. Narus' contention that the pharmacist should have clarified the identity of the prescriber through a phone call or

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[144] Testimony of Dr. Narus; PI Exh. 22, p. 4; PI Exh. 22, p. 2; *see also* 12 AAC 52.500. Dr. Narus testified that both the Rx number of the original prescription and the Rx number for the transferred prescription should have been listed on the Transfer Document. *See* Testimony of Dr. Narus.

[145] *See* SA Order, p. 22 & Attachment B; Testimony of Dr. Narus.

[146] *See* 12 AAC 52.460(a)(9).

[147] Testimony of Dr. Narus; *see also* Exh. 23, p. 4.

provided other documentation showing that previous signatures of the provider which matched the signature at issue.[148] Mr. Keith countered this argument by stating that such a requirement would not be practicable for a mediset pharmacy and was not the practice in the industry.[149]

Program Integrity has met its burden of proof in establishing that this was an invalid prescription because it lacked the prescriber's signature. Although there were some faint and illegible marks on the prescription order, no reasonable person would construe these marks as constituting a signature. Accordingly, the auditor's finding of an overpayment for claim 88479 is upheld.

8. Claim 95230 (invalid prescription and unauthorized signature)

The auditor's overpayment finding for Claim 95230 was based on four grounds.[150] However, by the time of the hearing, only two grounds remained in support of the auditor's finding – invalid prescription and unauthorized signature.[151]

Dr. Narus testified that she could not determine if the prescription order for the audited claim was a written order, a fax order, or a telephone order.[152] Under 12 AAC 52.460(a)(9), a written or hard copy prescription drug order is required to contain the prescribing practitioner's signature, which can be handwritten, digital, electronic or stamped.[153] However, if a prescription order is received by fax 12 AAC 52.460(a)(10) the prescription order must contain the prescribing practitioner's handwritten, digital, electronic, or stamped signature, or an authorized agent's signature.[154] If a faxed prescription drug order is signed by an authorized agent, 12 AAC

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148 Testimony of Dr. Narus.

149 Testimony of Mr. Keith.

150 Initially, the overpayment finding was for incomplete delivery logs, missing Rx number, invalid prescription, and unauthorized signature. *See* PI Exh. 5, p. 3. The incomplete delivery log issue was resolved in Geneva Woods' favor in the SA Order. *See* SA Order, p. 22 & Attachment B.

151 At the beginning of her testimony concerning this claim, Dr. Narus stated that the missing Rx number issue was resolved because the number (Rx 6821052) was on the document containing prescription order and was consistent with the claim being audited. *See* Testimony of Dr. Narus; *compare* PI Exh. 25, p. 4 (prescription order) *with* PI Exh. 25, p. 2 (screen shot of claim being audited).

152 Testimony of Dr. Narus. She further noted that the prescription order did not contain any fax markings so she could not conclude it was a fax order. If the prescription order had been a fax order, Dr. Narus testified that there was no way of determining whether "Sara" – the name signed at the bottom of the prescription – was an authorized agent. Moreover, the prescription order still would not have complied with the regulation governing facsimile orders because there was no signature form the prescribing physician on the order.

153 *See* 12 AAC 52.460(a)(9). Since there were no fax markings on the prescription order, Dr. Narus concluded that 12 AAC 52.460(a)(10), which addressed prescription drug orders received by a pharmacy as a facsimile, was in applicable here.

154 Testimony of Dr. Narus; *see also* 12 AAC 52.460(a)(10).

52.460(a)(10) requires the name of the prescribing practitioner.[155] If, instead, the prescription order was a telephone order, only a pharmacist can accept that order.[156]

Here, the prescription order at the bottom of the page where it says "Authorized by" reads "Koivunen/himself" and, in what appears to be the same handwriting, the name "Sara" written below that line. There is nothing on the order to indicate who "Sara" was.[157] If the order was a written order or a fax order, it did not contain the signature of the prescribing physician or, in the case of a fax order, the signature of an authorized agent. [158] If it was a facsimile order, there also was nothing which demonstrated that "Sara" was an authorized agent, as required by 12 AAC 52.460(a)(11).[159] Finally, if the prescription order was a telephone order, there was nothing indicating that "Sara" was a registered pharmacist.[160] Geneva Woods has argued that presumably "Sara" was a pharmacist, but that is not apparent from the prescription order.[161] Moreover, in his testimony, Mr. Keith acknowledged that the best practice would have been to have more information on the order so that the status of "Sara" could have been ascertained.[162]

Regardless of how the prescription order originated – by a hard copy, facsimile, or as a telephone order – the prescription order failed to satisfy the requirements of 12 AAC 52.460(a)(9)-(11).[163] Accordingly, the auditor's finding of an overpayment is upheld.

C. Overbilled Quantity (4 claims)

Medicaid will only pay for the cost of the drugs dispensed. The auditor's report noted that with regard to the claims in the "overbilled quantity" category, the "quantity of the drug dispensed exceeds the quantity authorize by the prescriber or dispensed to the recipient."[164] In other words, the records showing the amount of drugs dispensed must be consistent with the records showing the quantity of drugs billed to Medicaid.[165]

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155 Testimony of Dr. Narus; *see also* 12 AAC 52.460(a)(10).
156 Testimony of Dr. Narus.
157 *See* Exh. 25, p. 4.
158 *See* Testimony of Dr. Narus; *see also* 12 AAC 52.460(a)(9)-(10). If the prescription order had been a fax order, Dr. Narus testified that there was no way of determining whether "Sara" – the name signed at the bottom of the prescription – was an authorized agent. Moreover, the prescription order still would not have complied with the regulation governing facsimile orders because there was no signature form the prescribing physician on the order.
159 *See* Testimony of Dr. Narus; *see also* Exh. 25, p. 4.
160 *See* Testimony of Dr. Narus; *see also* PI Exh 25, p. 4.
161 *See* Geneva Woods' Closing Brief, p. 9.
162 Testimony of Mr. Keith.
163 *See* 12 AAC 52.460(11).
164 PI Exh. 2, p. 6; PI Exh. 5, pp. 4-5.
165 *See* PI Hearing Brief, at p. 5. In his testimony, Doug Jones stated that the auditors disallowed the entire amount billed whenever the number of pills billed exceeded the amount of pills dispensed or delivered to the

1. Claim 150028

The auditors found an overpayment for Claim 150028 because the quantity of medication billed for was greater than the quantity provided to the recipient. Here, the prescription order was for Clonazepam in .5 mg tablet form to be taken twice daily. The quantity to be supplied was 60 tablets – *i.e.*, a month's supply.[166] The service audited was the prescription fill on September 20, 2011. The screen shot for this services shows that 56 tablets were authorized and 56 tablets were dispensed.[167] Similarly, the transaction history shows that 56 tablets were dispensed on September 20, 2011.[168] However, only 14 tablets were distributed to the Medicaid recipient when the prescription was filled on September 20, 2011, constituting one box of this medication.[169] Dr. Narus testified that while it was possible that three other boxes of Clonazepam might have been delivered on that date, which would have resulted in 56 tablets being delivered, there was no documentation establishing that this had occurred. She further stated that if such a delivery had occurred, there should have been a total of four documents associated with it, each with a different beginning and ending date. However, there was only one document for the September 20, 2011 delivery and that was for 14, not 56, tablets.[170]

Mr. Keith, testifying on Geneva Woods' behalf, noted that drugs can be dispensed once a month and that there can be four seven-day supplies delivered. However, his testimony failed to explain why the documentation for this September 20, 2011 delivery only showed a *one-week supply* of 14 tablets of Clonazepam. Since mere speculation does not constitute substantial compliance, the auditor's finding of an overpayment for claim 150028 is upheld.

2. Claim 212329

The auditor concluded that there had been an overpayment for Claim 212329 because the quantity billed for was greater than the quantity delivered to the Medicaid recipient. This claim involves a prescription order for Losartan written on July 27, 2011 and transferred to Geneva Woods on August 8, 2011. The prescription order was for one tablet daily, to be taken for 30

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recipient. Mr. Jones opined that it would have been appropriate to have just disallowed the cost of the excess pills rather than all the pills associated with that claim. However, he offered no statutory or regulatory support for that proposition. *See* Testimony of Doug Jones.

166 Testimony of Dr. Narus; PI Exh. 30, p. 5.

167 Testimony of Dr. Narus; PI Exh. 30, p. 2.

168 Testimony of Dr. Narus; PI Exh. 30, p. 8.

169 Testimony of Dr. Narus; PI Exh. 30, p. 14.

170 Testimony of Dr. Narus; PI Exh. 30, p. 14; *see also* GW Exh. 9, p. 14.

days, and includes 5 refills.[171] The service audited occurred on October 26, 2011, and at that time Losartan was being dispensed in a weekly mediset with seven doses – *i.e.*, one table per day. One mediset of *7 tablets* was filled on October 27 for the mediset beginning on November 6, 2011 and ending on November 12, 2011.[172] However, Geneva Woods billed Medicaid for *28 tablets* for the October 26, 2011 refill.[173] Dr. Narus testified that there were no documents showing that an additional 21 tablets – representing the dose for the three remaining three weeks – were dispensed on that date.[174] Geneva Woods acknowledged that the delivery logs did not show that the monthly fill was delivered all at once or was subsequently replenished. Geneva Woods also did not provide any additional evidence contradicting Dr. Narus' testimony.[175] Consequently, this overpayment finding is upheld.

3. Claim 260249

Concluding that the quantity of medication dispensed exceeded the amount authorized by the prescriber, the auditors found an overpayment for claim 260249.[176] Here, the prescription order (Rx 06534438), dated November 1, 2012, was for one tablet of Sucralfate per day; a quantity of 28 tablets was authorized per fill for a period of 180 days.[177] The audited date of service was November 28, 2012 and involved the prescription fill on that date. The screen shot for that particular fill states that 28 tablets were authorized.[178] Similarly, the screen shot of the transaction history for Rx 06534438 shows that 28 tablets were dispensed on November 28, 2012.[179] However, Geneva Woods' records show that it billed Medicaid for 56 tablets, or double the authorized amount, for the November 28, 2012.[180]

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[171] Testimony of Dr. Narus; PI Exh. 31, p. 4, GW Exh. 12, p. 6.

[172] Testimony of Dr. Narus; PI Exh. 31, p. 12; GW Exh. 12, p. 14; *see also* PI's Closing Argument, p. 19. Dr. Narus testified that so long as the date on which the provider fills Medicare is within 10 days of the date the medication is delivered to the Medicaid recipient, it is complaint. *See* Testimony of Dr. Narus.

[173] *See* Testimony of Dr. Narus; PI Exh. 31, p. 2; GW Exh. 12, p. 2.

[174] Testimony of Dr. Narus; *see* PI Exh. 31; GW Exh. 12. For example, the delivery log did not indicate that four boxes of medication in the weekly mediset format had been delivered on November 2, 2011 for the box week beginning on November 6, 2011. *See* Testimony of Dr. Narus; PI Exh. 31, p.11; GW Exh. 12, p. 13.

[175] *See* Geneva Woods Closing Brief, p. 9.

[176] PI Exh. 5, p. 5. GW Closing Brief, p. 9.

[177] Testimony of Dr. Narus; PI Exh. 32, p. 4.

[178] PI Exh. 32, pp. 2.

[179] PI Exh. 32, p. 2 & 7. Another document for Claim 260249 which suggested that 7 tablets of Sucralfate, rather than 28, were dispensed to the Medicaid recipient on December 3, 2012 and delivered on December 6, 2012. Dr. Narus testified that it was unclear whether 7 or 28 tablets altogether had been received by the Medicaid recipient. Testimony of Dr. Narus; *see also* PI Exh. 32, p. 14.

[180] *See* Testimony of Dr. Narus; *see also* PI Exh. 32, p. 3.

Geneva Woods did not explain the discrepancy between the number of tablets authorized on the service date and the 56 tablets billed to Alaska Medicaid on the date.[181] Therefore, since the amount billed (56 tablets) exceeded the amount prescribed (28 tablets), the overpayment finding is upheld.[182]

4. Claim 118039[183]

In claim 118039, the quantity of the medication billed by Geneva Woods to Alaska Medicaid exceeded the quantity dispensed to the recipient, thus resulting in the auditor's overpayment finding.[184] The prescription order, dated November 1, 2012, was for two tablets of Incivek to be taken three times a day. The medication was for a 28-day fill with two refills. Thus, during the 28-day period, a total of 168 pills would be dispensed.[185] The date of service audited was December 7, 2011, when a total of 168 pills were dispensed. What was recorded as billed and dispensed on the screen shots – *i.e.*, 168 pills – was consistent. However, the label for this medication shows that 42 pills, not 168 pills, were delivered to the Medicaid recipient.[186] Dr. Narus explained that this discrepancy could be because the pharmacy only had 42 pills on hand or because only a week's supply was delivered. However, there was no documentation showing that the Medicaid recipient received the remainder of the pills. Geneva Woods provided no evidence which would shed like on this discrepancy.[187] Accordingly, the audit's overpayment finding for Claim 118039 is upheld.

D. Unauthorized Refill (5 claims)

Pursuant to 12 AAC 52.460(a)(8), before a pharmacist fills a prescription drug order, the pharmacist shall obtain information regarding the number of refills authorized, if any.[188] For this category of claims, the number of refills supplied to the Medicaid recipient exceeded the number

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181 Mr. Keith did not cover this claim in his testimony and Geneva Woods did not address this aspect of the claim in its Closing Brief. *See* Testimony of Mr. Keith; GW Closing Brief, at p. 12.

182 *Compare* PI Exh. 32, p. 3 (56 tablets) *with* PI Exh. 32, p. 2 (28 tablets) & PI Exh. 32, p. 14 (7 tablets).

183 In its Pre-Hearing brief, Geneva Woods argued that it was "inappropriate to extrapolate claim 118039, as an alleged overpayment in the amount of $13,282.92, as it necessarily operates as an extreme outlier." Claim 118039 was from the Geneva Woods' Wasilla pharmacy. However, after hearing the testimony from Dr. Kvanli, an expert witness for Program Integrity, Geneva Woods withdrew its objection to the inclusion of Claim 118039 in the extrapolation methodology. It, however, did not withdraw its objection to the overpayment finding regarding Claim 118039.

184 *See* Testimony of Dr. Narus; *see also* PI Exh. 5, p. 5.

185 *See* Testimony of Dr. Narus; *see also* PI Exh. 33, p. 9.

186 Testimony of Dr. Narus; PI Exh. 33, p.14.

187 In its Closing Brief, Geneva Woods conceded that this overpayment finding should be upheld. *See* Geneva Woods Closing Brief, at p. 22.

188 12 AAC 52.460(a)(8).

of refills authorized by the prescriber.[189] Four of the claims at issue (27288, 33739, 263237, 301528) in this category were from Geneva Woods' Anchorage pharmacy.[190] The remaining claim (90197) involved Geneva Woods' Wasilla pharmacy.[191]

1. Claim 27288

The prescription order for this claim, dated September 27, 2011, was for 21 tablets of Topiramate, with one tablet to be taken each morning and one at bedtime. Dr. Narus interpreted this prescription order to be a seven-day mediset with 21 pills. The prescription order states that the provider authorizes "this refill plus 11 more refills." Dr. Narus interpreted this language on the prescription as authorizing one original fill plus 11 refills.[192]

The service being audited was a refill on May 16, 2012.[193] The transaction history for this prescription shows that this refill was the thirty-third refill for this prescription.[194] Thus, the prescription was filled 33 times, although the prescription order only authorized 11 refills, which was the basis for the overpayment finding.

Geneva Woods, through its cross-examination of Dr. Narus and through the testimony of Mr. Keith, argued that this prescription order might also be interpreted as a year-long prescription so that the "11" on the prescription meant 11 months.[195] If interpreted this way, the May 16, 2012 fill would have been within the number of refills contemplated by the prescription.[196] Dr. Narus rebutted Geneva Woods' argument by pointing out that a pharmacist cannot independently infer what a prescription means and must contact the physician if the prescription is not clear as to the number of refills.[197]

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[189] PI Exh. 1, p. 17; PI Exh. 2, p. 4; PI Exh. 4, p. 16; PI Exh. 5, p. 4; *see also* Testimony of Dr. Narus.

[190] PI Exh. 2, p. 4.

[191] PI Exh. 5, p. 4.

[192] Testimony of Dr. Narus; see also PI Exh. 34, p. 4.

[193] PI Exh. 34, p. 2.

[194] Testimony of Dr. Narus; PI Exh. 34, p. 13. Dr. Narus explained that the column "Seq #" on the transaction history lists how many refills there has been and that it indicated that the May 16, 2012 fill was the 33rd refill of this prescription.

[195] *See* Testimony of Mr. Keith. Mr. Keith argued that this interpretation was reasonable and within Geneva Woods' discretion. Dr. Narus; Testimony of Mr. Keith; *cf.* 12 AAC 52.460 (stating that a pharmacist must obtain, inter alia, the refills authorized, if any, before filling a prescription order).

[196] *See* Testimony of Mr. Keith.

[197] Testimony of Dr. Narus; *cf.* 12 AAC 52.470(a) (stating that a pharmacist may only dispense a refill in accordance with the prescribing practitioner's authorization as indicted on the prescription order and that if all refills authorized on the original prescription drug order have been dispensed, a pharmacist shall obtain authorization of the prescribing practitioner before dispensing a refill).

Here, the prescription on its face is clear: it says "11 refills," not "11 months of refills." Since the prescription order specified 11 refills and the fill on the audited date was the 33rd refill, the auditor's overpayment finding is upheld.

2. Claim 33739

The prescription order, dated March 22, 2010, for claim 33739 prescribed a 25 mg tablet of Hydrochlorothiazide, with half a tablet to be taken daily. The quantity was 30 tablets, which represented a two-month supply, and three refills were authorized.[198] Based on this prescription, a total of 120 tablets (30 x 3) could be dispensed. Altogether, the first fill and the three refills would constitute 240 days of medication since only one-half pill per day was prescribed.[199]

The prescription fill audited was dated November 10, 2010.[200] The transaction history for this prescription shows that with November 10, 2010 fill, 122 tablets had been dispensed.[201] Geneva Woods explanation for this discrepancy was not persuasive.[202] Consequently, since the quantity (122) of tablets dispensed exceeded the total number of tablets that the prescription authorized (120), the auditor's finding is upheld.

3. Claim 263237

The original prescription order for Claim 263237, dated May 12, 2009, was for seven tablets of Premarin to be taken once daily. Eleven refills were authorized, which means that 84 tablets in the aggregate could be dispensed.[203] The auditors reviewed the prescription fill with a September 16, 2009 date of service and determined that there had been excessive refills. The documentation for this claim includes a transaction history which shows that the September 16, 2009 fill was the 19th refill.[204] Geneva Woods provided no evidence establishing that that only 11 refills occurred but instead argued that the prescription order had been interpreted as a one-year prescription of weekly with an original fill and 11 months of refills.[205] However, the

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[198] Testimony of Dr. Narus; PI Exh. 35, p. 16.
[199] Testimony of Dr. Narus.
[200] Testimony of Dr. Dr. Narus; PI Exh. 35, p. 2.
[201] Testimony of Dr. Narus; PI Exh. 35, pp. 7-11
[202] Testimony of Mr. Keith.
[203] Testimony of Dr. Narus; PI Exh. 36, p. 4.
[204] Testimony of Dr. Narus; PI Exh. 36, p. 9 (the refill number in the "seq #" column); *see also* PI Exh. 36, p. 2. Dr. Narus noted that the transaction history was missing the first two fills, which could either mean that a page of the transaction history was missing or there had been an override so that the first fill was counted as the third fill. *See* Testimony of Dr. Narus. Regardless, whether there were a total of 19 fills or 16 fills, there were still more fills than the 11 that had been authorized.
[205] *See* Testimony of Mr. Keith; *see also* GW Closing Brief, p. 10.

prescription clearly states "11 refills," not "11 months of refills."[206] Earlier testimony from Dr. Narus on Claim 27288 established that the pharmacist should have contacted the prescriber to affirm the intent and documented any changes from the original prescription.[207] There was no such documentation here.[208] Consequently, the auditor's overpayment finding is upheld.

4. Claim 301528

Claim 301528 involved a prescription for 30 capsules of Duloxetine, with one capsule to be taken daily. The prescription order authorized two refills, so that the total number of capsules authorized for this prescription was 90 capsules (the original fill of 30 capsules plus two refills).[209] The date of service that was audited was the November 2, 2011 fill. [210] The transaction history records this as the thirteenth fill.[211] Each fill was for 7 capsules, so the total number of capsules dispensed from the time of the first fill through the November 2, 2011 fill was 91 capsules, or one more capsule than the authorized amount.[212] Dr. Narus testified that this constituted an overpayment since the regulations did not contain a *de minimus* exception that would negate the overpayment finding.[213] Geneva Woods did not rebut this testimony.[214] Accordingly, the auditor's finding of an overpayment is upheld.

5. Claim 90197

There were two prescription orders related to this claim. D. Narus concluded that the original prescription order was for Seroquel, in the form of a 50 mg tablet taken once daily. The prescription order says "PRN [as needed] until 12/29/09."[215] She further testified that the second prescription order appeared to be a transfer order and contained an additional handwritten notation reading: "PRN Refills remaining until 12/9/09."[216]

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206 *See* PI Exh. 35, p. 4.
207 *See* Testimony of Dr. Narus regarding Claim 27288.
208 *See* PI Exh. 35, pp. 1-12.
209 Testimony of Dr. Narus; PI Exh. 41, p. 4.
210 Testimony of Dr. Narus; PI Exh. 37, p. 8; *see also* PI Exh. 37, p. 4.
211 Testimony of Dr. Narus; PI Exh. 37, p. 8.
212 Testimony of Dr. Narus; PI Exh. 37, pp. 7-14.
213 Testimony of Dr. Narus.
214 Geneva Woods instead argued that "a refill tolerance would permit the *diminus* [sic] deviation under the circumstances" without citing authority for this proposition. Geneva Woods further argued that Dr. Narus did not assert that it was the practice "to find an overpayment in all such cases." *See* GW Closing Brief, at p. 11. However, Dr. Narus did testify that she was aware of similar overpayment findings with regard to one pill. *See* Testimony of Dr. Narus.
215 Testimony of Dr. Narus; see *also* Testimony of Dr. Narus (claim 126942).
216 Testimony of Dr. Narus.

The date of service audited was February 1, 2010.[217] The transaction history shows that this was the ninth refill of this prescription. Regardless of whether the prescription could be refilled until 12/9/09 or 12/29/09, it was filled on February 1, 2010 which is beyond the date of either prescription.[218] Geneva Woods did not contradict Dr. Narus' testimony or supply additional documentation in support of its argument that there may have been an additional refill authorization associated with this claim.[219] Consequently, the auditor's finding of an overpayment is upheld.

V. Conclusion

The auditor's overpayment findings on 19 of the 23 claims that received a hearing on the merits are upheld and the Division is entitled to recoup those payments. The Division did not meet its burden of proof for the other alleged overpayments and is not entitled to recoup those amounts. The disposition of these claims is set forth in the chart below.

Claim A=Anchorage W=Wasilla	**Issue**	**Disposition**
91255 A	Invalid Prescription	Program Integrity
113979 A	Invalid Prescription	Geneva Woods
126942 A	Invalid Prescription	Program Integrity
196908 A	Invalid Prescription	Geneva Woods
244983 A	Invalid Prescription	Program Integrity
372575 A	Invalid Prescription	Program Integrity
9479 A	Missing Record Specific Serv.	Program Integrity
296189 A	Missing Record Specific Serv.	Geneva Woods
325143 A	Missing Record Specific Serv.	Program Integrity
392030 A	Missing Record Specific Serv.	Geneva Woods
28061 W	Missing Record Specific Serv.	Program Integrity
53835 W	Missing Record Specific Serv.	Program Integrity

217 Testimony of Dr. Narus) PI Exh. 41, p. 10; *see also* PI Exh. 41, p. 2.
218 Testimony of Dr. Narus; *see also* PI Exh. 41, p. 10
219 In its Closing Brief, Geneva Woods conceded that there was no additional refill authorization to support this argument. *See* GW Closing Brief, at p. 11.

88479 W	Missing Record Specific Serv.	Program Integrity
95230 W	Missing Record Specific Serv.	Program Integrity
150028 A	Overbilled Quantity	Program Integrity
212329 A	Overbilled Quantity	Program Integrity
260249 A	Overbilled Quantity	Program Integrity
118039 W	Overbilled Quantity	Program Integrity
27288 A	Unauthorized Refill	Program Integrity
33739 A	Unauthorized Refill	Program Integrity
263237 A	Unauthorized Refill	Program Integrity
301528 A	Unauthorized Refill	Program Integrity
90197 W	Unauthorized Refill	Program Integrity

The claims which during the course of this litigation were decided in Program Integrity's favor or conceded by Geneva Woods are set forth in Appendix B.

The Division will need to recompute its statistical extrapolation of the total recoupment amount from Geneva Woods based on: (1) the number of claims decided in Program Integrity's favor in the SA Order; (2) the number of claims conceded by Geneva, and (3) the claims which were decided on the merits in Program Integrity's favor at the evidentiary hearing.

Dated: June 12, 2020

Signed
Kathleen A. Frederick
Chief 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 30th day of July 2020.

By: *Signed*______________________
Name: Jillian Gellings
Title: Project Analyst

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

APPENDIX A

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

In the Matter of	)	
	)	
GENEVA WOODS PHARMACY, INC.	)	OAH No. 15-0023-MDA
	)	

ORDER GRANTING PARTIAL SUMMARY ADJUDICATION

I. Introduction

On October 23, 2014, HMS Federal Solutions ("HMS") issued a final audit report of Medicaid payments made to the Wasilla pharmacy of Geneva Woods Pharmacy, Inc. ("Geneva Woods") from January 1, 2010 through December 31, 2012 ("Wasilla Audit").[1] The Wasilla Audit identified 92 claims which, when extrapolated to the total number of claims during the time period covered by the Wasilla Audit, resulted in $764,420 in alleged overpayments to Geneva Woods.[2] That same day, HMS also issued a final audit report for the Anchorage pharmacy of Geneva Woods covering the period from January 1, 2009 to December 31, 2012 ("Anchorage Audit").[3] The Anchorage Audit identified 97 claims which, when extrapolated to the total number of claims during the time period covered by the Anchorage Audit, resulted in $2,110,335 in alleged overpayments.[4]

Taken together, the Wasilla Audit and the Anchorage Audit (collectively referred to as the "2014 Audit") alleged that there were 189 claims in seven categories with recoupable billing errors.[5] These claims, when extrapolated, resulted in Geneva Woods receiving $2,874,755 in Medicaid payments that it should not have received, according to the 2014 Audit.[6]

Geneva Woods appealed the 2014 Audit's conclusions, and the matter was referred to the Office of Administrative Hearings (OAH). Although the appeal was stayed for more than two years at the

1 *See* AR 188-208.

2 *See* AR 195, 207. Geneva Woods' Wasilla pharmacy is further identified as State Medicaid provider No. PH0251 and NPI No. 1194816405. *See* AR 188. It is a clinical "closed door" pharmacy which does not offer retail services to the public. *See* Geneva Woods Pharmacy's Motion for Summary Adjudication, p. 4 (hereinafter, "Geneva Woods Motion").

3 *See* AR 3880-3898. Geneva Woods' Anchorage pharmacy is further identified as State Medicaid provider PH0466 and NPI No. 1578657854. *See* AR 3880. Like the Wasilla pharmacy, it is a clinical "closed door" pharmacy which does not offer retail pharmacy services to the public. *See* Geneva Woods Motion, p. 4.

4 AR 3885, 3898.

5 *Compare* AR 195 *with* AR 003885. The 2014 Audit also identified 145 claims identified as administrative findings for Geneva Woods' Wasilla pharmacy and 114 claims identified as "administrative findings" for Geneva Woods' Anchorage pharmacy. Collectively, these 259 claims are identified as "administrative error and are not recoupable monetary findings. *See* AR 206, 3898.

6 AR 207, 3898.

request of the parties, the Department of Health and Social Services, Program Integrity Unit (Program Integrity) eventually decided to pursue the claims that HMS had identified as overpayments. Shortly afterwards, the Program Integrity and Geneva Woods filed cross-motions motion for summary adjudication. Program Integrity seeks summary adjudication in its favor on 186 claims identified as overpayments in six different categories in the 2014 Audit.[7] Geneva Woods requested summary adjudication concerning 149 claims in the following categories: ineligible dispensing fees (94 claims) and no signature logs (55 claims).[8]

Based on undisputed facts and the arguments of counsel, summary adjudication is granted in favor of Geneva Woods on 140 claims: 90 claims alleging ineligible dispense fees and 50 claims in the "no signature log" category.[9] Summary adjudication is granted to Program Integrity with respect to 15 claims: ten claims in the "no signature logs" category and five claims in two other categories. [10] The remaining claims in dispute will be scheduled for an evidentiary hearing.[11]

II. Facts and Proceedings

A. The 2014 Audit

HMS is under a contract with the Centers for Medicare & Medicaid Services (CMS) to audit providers, like Geneva Woods, who participate in the Alaska Medicaid program.[12] The 2014 Audit covered Geneva Woods' Medicaid claims for its Wasilla location from January 1, 2010 through December 31, 2012 (Wasilla Audit) and for its Anchorage location from January 1, 2009 through December 31, 2012 (Anchorage Audit).[13]

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7 Program Integrity did not request summary adjudication for the two claims (4871 and 15252) which comprised the "exceeding dispensing requirements" category. *See* Program Integrity's Motion for Summary Adjudication, p. 1, n. 1 (hereinafter, Program Integrity Motion). Since filing its Motion for Summary Adjudication, Program Integrity has rescinded the overpayments for those two claims and for one claim (36625) in the "missing prescriptions" category. *See* Program Integrity's Response to Request for Additional Information, pp. 1-3. Accordingly, these three claims are no longer deemed "overpayments" and thus are not in dispute. The remaining 186 claims from the 2014 Audit are disputed and Program Integrity has sought summary adjudication on all of these claims.

8 *See generally* Geneva Woods Motion; Geneva Woods' Response to Request for Additional Information Regarding Motion for Summary Adjudication, pp. 1-5.

9 However, four of these claims still have an evidentiary issue in the "missing record specific services" category and thus these claims will need to be resolved at a hearing. *See infra*, at pp. 27-28.

10 The recoupable claims are in the following categories: missing record specific service and invalid prescriptions. Program Integrity sought summary adjudication on two grounds (no signature logs and missing record specific services) with regard to claim 54505, but this claim is only counted once vis-à-vis the total 186 claims at issue.

11 Charts listing the claims at issue and their disposition can be found at Attachments A-C.

12 AR 192, 3882.

13 AR 188-208, 3880-3898.

As part of the audit process, HMS reviewed a sample of 250 claims from each location.[14] The 2014 Audit concluded that 92 claims at the Wasilla location and 97 claims at the Anchorage location had recoupable billing errors – *i.e.* overpayments.[15] The overpayments for this sample from the Wasilla pharmacy totaled $51,115; the overpayments for the Anchorage pharmacy totaled $1,972.36.[16] HMS extrapolated these 189 overpayments to the universe of claims from which the sample was drawn and concluded that the overpayments in Wasilla totaled $764,420 while the overpayments in Anchorage totaled $2,110,335.[17] As a result, the aggregate amount alleged to be due to the Department from overpayments to both locations was $2,874,755.

Program Integrity received a copy of the 2014 Audit on November 14, 2014.[18] It is required to recoup any overpayments identified in the 2014 Audit.[19] On December 1, 2014, the Program Integrity sent Geneva Woods a copy of the final audit report and notified Geneva Woods of the overpayment.[20] The 2014 Audit concluded that there were overpayments in seven categories: (1) exceeding dispensing requirements, (2) ineligible dispensing fees, (3) invalid prescriptions; (4) missing record specific services; (5) no signature log; (6) overbilled quantities; and (7) unauthorized refills.[21] On January 2, 2015, Geneva Woods appealed the conclusions of the 2014 Audit. The case subsequently was stayed while Program Integrity considered, in consultation with CMS, whether to pursue some or all of the claims for overpayment stemming from the 2014 Audit.[22] After it decided to pursue the alleged overpayments, Program Integrity submitted its agency record consisting of more than 7,300 pages on April 7, 2017.

Originally, there were 189 claims that the 2014 Audit deemed overpayments. However, Program Integrity during these proceedings decided that it was no longer pursuing recoupment for three of these claims.[23] Accordingly, 186 claims remain in dispute.

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[14] HMS selected 250 claims totaling $9,620.59 for review, out of 412,837 claims with a total Medicaid payment of $15,895,686.15 for the Geneva Woods' Anchorage location. *See* AR 3885. For Geneva Woods' Wasilla location, HMS selected 250 claims totaling $65,431,97 for review, out of 118,039 claims with a total Medicaid payment of $5,844,682.23. *See* AR 195.

[15] AR 195, 297, 3885, 3898.

[16] AR 207, 3898.

[17] AR 207, 3898.

[18] AR 188, 3868.

[19] *See* 7 AAC 160.110(h).

[20] AR 208, 387.

[21] AR 195, 3868.

[22] *See* Notice of Telephonic Status Conference (October 30, 2015); Scheduling Order (October 1, 2016).

[23] Program Integrity no longer is pursuing recoupment for claims 4871 and 15252 ("exceeding dispensing requirements) and claim 366325 ("missing record specific services"). *See* Program Integrity's Response to Request for Additional Information, pp. 1 & 3.

B. Cross-Motions for Summary Adjudication are Filed

Both parties have filed cross-motions for summary adjudication. Program Integrity has argued that, as a matter of law, 186 claims for reimbursement received by Geneva Woods were not reimbursable, and were thus overpayments.[24] The majority of these contested claims are in two categories: 94 claims which exclusively involve "ineligible dispensing fees" and 55 claims for which the only basis for overpayment was that the claims had "no signature log."[25] Program Integrity and Geneva Woods are seeking to have these 149 claims addressed through their respective cross-motions for summary adjudication.

There are five additional "no signature log" claims from the Wasilla pharmacy where "missing record specific services" is a dual basis for the overpayment findings.[26] Geneva Woods seeks summary adjudication on the "signature logs" issue regarding those five claims, while Program Integrity seeks summary adjudication on both issues. Finally, Program Integrity requests summary adjudication in its favor for remaining 32 additional claims, spread across the categories of missing record specific services, invalid prescriptions, overbilled quantities, and unauthorized refills.[27]

Both parties in their cross-motions for summary adjudication failed to identify with specificity the claims subject to their respective motions and/or failed to provide references to the Agency Record corresponding to the conclusions in the 2014 Audit.[28] In addition, Program Integrity equivocated as to whether certain claims should be part of its motion.[29] Because of the voluminous record, multiple status conferences were held to identify which of the 186 claims comprising the alleged overpayments were in

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[24] *See* Program Integrity Motion, pp. 1-14.

[25] *See* Program Integrity Motion, pp. 4-5, 11-12; Geneva Woods Pharmacy's Opposition to Program Integrity's Motion for Summary Adjudication, p. 1; *see also* Attachment A and B.

[26] *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, pp. 1-4. These five Wasilla pharmacy claims are 28061, 53835, 88479, 95230, and 54504.

[27] *See* Program Integrity Motion, pp. 6-11, 13-14; *see also* Program Integrity's Response to Request for Additional Information, pp. 2-6. In certain instances, Program Integrity has sought summary adjudication on a claim on two different grounds so that the claim may be addressed in two separate sections of this decision on each ground alleged to be a basis for summary adjudication. *See, e.g., infra*, pp. 28-29.

[28] *See generally* Geneva Woods Motion (no claims cited with specificity); *see, e.g.,* Program Integrity's Motion, pp. 11-13 (citing to the 2014 Audit but failing to cite to the underlying documentation in the Agency Record or list the specific signature lob claims at issue). Although Program Integrity frequently cited to portions of the 2014 Audit as the supporting documentation for its Motion for Summary Adjudication, it is the 2014 Audit *that is in dispute*. Consequently, the documents needed to establish that a genuine dispute does not exist on an issue of material of fact are the underlying medical documents in the Agency Record, not the 2014 Audit itself. Program Integrity rectified this error to some extent in Program Integrity's Response to Request for Additional Information.

[29] *See* Program Integrity Motion, p.1 n.1 & p. 10 n. 42.

each category of overpayments.[30] The parties also submitted additional briefing to better identify those claims that each wanted to be encompassed in their respective motions.[31]

III. Discussion

A. The Standard for Summary Adjudication

Summary adjudication in an administrative proceeding is similar to summary judgment in a civil proceeding, and the same underlying legal principles apply. Summary adjudication may be granted where there are no material facts in dispute and one party is entitled to judgment as a matter of law.[32] The moving party has the burden of showing there is no genuine issue of material fact. In opposing summary adjudication, the non-moving party need not show that it will ultimately prevail, only that there are material facts to be litigated. All reasonable inferences of fact are drawn in favor of the party opposing summary adjudication. If the moving party has supported its motion with affidavits or other admissible evidence, the opposing party must show "by affidavit or other evidence" that a genuine factual dispute exists to defeat the motion.[33]

B. The "Ineligible Dispensing Fee" Claims[34] (94 claims)

1. Background

The "ineligible dispensing fee" claims arise out of Geneva Woods' mediset program.[35] Geneva Woods offers mediset services at its "closed door" pharmacies: the Geneva Medset Pharmacy in Anchorage and the Geneva Woods Matsu Medset Pharmacy in Wasilla. Neither of these locations offer traditional retail pharmacy services to the public. Instead, the Pharmacy staff at these locations works directly with a patient's physician and care coordinator team to set up a patient's mediset distribution. Geneva Woods' medisets have a weekly cycle: they begin on Sunday and end on Saturday. Typically,

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[30] *See* Order Regarding Unopposed Motion to Extend Status Report Deadline (September 5, 2017); Order and Notice of Status Conference (December 20, 2017); Order (January 3, 2018).

[31] *See* Program Integrity's Response to Request for Additional Information (September 11, 2017); Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (September 14, 2017); Program Integrity's Response to December 20, 2017 Order Requesting Additional Information (January 2, 2017); Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (January 10, 2018); Program Integrity's Response to January 3, 2018 Order Requesting Additional Information (January 11, 2018).

[32] *See* 2 AAC 64.250(a).

[33] *See* 2 AAC 64.250(b).

[34] A chart listing these claims and their disposition can be found at Attachment A.

[35] Geneva Woods refers to its unit dose packaging of prescriptions as "medsets," which are single or multiple prescriptions packaged in a weekly cassette or blister pak specifically labeled to provide for a patient's medication regime. The Alaska Board of Pharmacy refers to this type of packaging as a "patient medpak" while Program Integrity uses the term "medisets" when referring to this packaging. *See* Geneva Woods Motion, pp. 5- 6; Program Integrity Motion, p. 5. This Order uses the term "mediset," when referring to this type of packaging.

the medisets are delivered directly to residences or residential facilities on consistent weekly schedule, Saturday to Sunday. Medisets are used to help patients who might otherwise have difficulty adhering to their medication regime and suffer adverse effects as a result.[36] For years, the Department has struggled with regulating the cost of the increased dispensing fees associated with weekly medisets, as opposed to drugs which are dispensed monthly.

The 2014 Audit concluded that 94 claims in the sample involved overpayments to Geneva Woods because of "ineligible dispensing fees."[37] According to the 2014 Audit, Geneva Woods was only allowed "one dispensing fee every 28 days unless the prescriber indicated a 7-day cycle dispense quantity on the prescription/order." In support of this conclusion, the 2014 Audit cited 12 AAC 52.470 (effective January 16, 1998), which provides that a pharmacist may dispense a refill of a prescription drug order only in accordance with the prescribing practitioner's authorization as indicated on the prescription drug order.

Both parties have filed cross-motions for summary adjudication regarding 94 claims in the 2014 Audit where the alleged overpayment relates to the dispensing fees Geneva Woods received for its weekly medisets. There are two subsets of these claims: (1) 90 claims where the 2014 Audit found "ineligible dispensing fees" for prescriptions filled or refilled prior to September 7, 2011, and (2) four claims for prescriptions filled or refilled on or after September 7, 2011.[38]

With regard to the "ineligible dispense fee" claims, Program Integrity maintains that, as a matter of law, it is entitled to summary adjudication on these claims because "a pharmacist may dispense a refill of a prescription drug order only in accordance with the prescribing practitioner's authorization as indicated on the prescription drug order."[39] In other words, the prescriber must specify a seven-day dispense cycle and quantity on the prescription in order for Geneva Woods to receive fees for dispensing the weekly medisets.[40]

Geneva Woods argues that the Department is collaterally estopped from re-litigating the interpretation of its regulations regarding dispensing fees for filling and re-filling weekly medisets. In

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[36] Geneva Woods Motion, pp. 5-6.

[37] 32 of these claims related to the Wasilla Audit; the remaining 62 claims arose out of the Anchorage Audit. *See* Geneva Woods' Response to Request for Additional Information Regarding Motion for Summary Adjudication (September 14, 2017), p. 1; *see also* Attachment A.

[38] *See* AR 3854-3855. The emergency regulations were issued on September 7, 2007 and addressed mediset fees. *See* AR 7, 9-10, 16-17, 20.

[39] Program Integrity Motion, at p.4.

[40] *See* Program Integrity Motion, at pp. 4-5.

support of its position, Geneva Woods cites a decision in OAH No. 12-0953-MDA ("*Geneva I*").[41] Geneva I arose out of Geneva Woods' appeal of an audit of its 2008 billings. The regulations in effect at the time of the 2008 audit were the same regulations governing most of the mediset billings at issue in the 2014 Audit – *i.e.*, 90 of the "ineligible dispense fee" claims.

2. <u>Does Collateral Estoppel Bar the "Ineligible Dispensing Fee" Claims?</u>

Under the doctrine of collateral estoppel, a prior judgment may conclusively determine disputed issues which arise in another proceeding. This doctrine applies to administrative proceedings as well as to judicial proceedings.[42] Four requirements must be met in order for a party to be barred from litigating an issue due to collateral estoppel: (1) the doctrine must be asserted against a party or one in privity with a party to the first action; (2) the issue to be precluded must be identical to the one in the first action; (3) the issues in the first action must have been resolved by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.[43]

The first requirement is clearly met: Geneva Woods is asserting this doctrine against a party (DHSS) who was also a party to the first action (*Geneva I*).[44] The second requirement involves a more detailed analysis of whether the issue here is identical to the one in *Geneva I. Geneva I* resulted from Geneva Woods' appeal of the conclusions of an audit conducted by the accounting firm of Meyers and Stauffer at DHSS' request. That audit examined the Medicaid payments made to Geneva Woods for their 2008 billings. Both parties filed cross-motions for summary adjudication. In dispute was whether Geneva Woods received $553,030.77 in Medicaid overpayments by dispensing weekly medisets, when the underlying prescriptions were for more than seven days of medication and the prescriber did not explicitly instruct the medisets to be dispensed weekly. DHSS in *Geneva I* argued that Geneva Woods was not entitled to reimbursement for dispensing these medisets weekly, but only should have been reimbursed once for the number of days covered by the prescription. Here, Program Integrity makes the

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41 *In re: Geneva Woods Pharmacy*, OAH No. 12-0953-MDS (Comm'r of Health & Soc. Serv. 2015). This decision is available online at: http://aws.state.ak.us/officeofadminhearings/Documents/MDA/MDA120953.pdf

42 *See Matanuska Electric Ass'n v. Chugach Electric Ass'n*, 152 P.3d 460, 468 (Alaska 2007).

43 *Universal Motors, Inc. v. Neary*, 984 P.2d 515, 518 n. 11 (Alaska 1999).

44 In *Geneva I*, the State of Alaska, Department of Health and Social Services, Division of Health Care Services sought reimbursement of alleged overpayments made to Geneva Woods. In this case, the State of Alaska, Department of Health and Social Services, Program Integrity Unit is seeking reimbursement of alleged overpayments made to Geneva Woods.

same argument: a provider can only be reimbursed for dispensing medications every seven days if the underlying prescription calls for that dispensing pattern.[45]

Geneva I reviewed DHSS' policy and public declarations, from 2000 through 2014, regarding reimbursement for weekly medisets. Based on the history of DHSS' policy and the language of the applicable regulations, *Geneva I* held that: "[a]gency policies and public declaration prior to, during, and after the [2008] audit period show that these were interpreted to allow reimbursement for weekly mediset fills when the prescription covered a period of more than one week."[46] Here, there are 90 claims alleging "ineligible dispensing fees" governed by the same policies and regulations discussed in *Geneva I*.[47] Thus, the second requirement for the application of the doctrine of collateral estoppel is satisfied, *but only with regard to these 90 claims*.[48] The third requirement – that the issues in the first action were resolved by a final judgment on the merits – is also satisfied. *Geneva I* constituted a decision on the merits, since the decision could have been appealed to the Alaska Superior Court in accordance with AS 44.62.560. The fourth requirement likewise has been met: the central issue in the first action (*Geneva I*) was whether Geneva Woods could be reimbursed for dispensing medisets although the underlying prescription did not specify a weekly fill.[49]

a. Collateral Estoppel Applies to 90 "Ineligible Dispensing Fee" Claims

Because all four requirements have been met with regard to 90 of the "ineligible dispensing fee" claims, the doctrine of collateral estoppel is applicable. Accordingly, summary adjudication in favor of Geneva Woods for the 90 claims alleging "ineligible dispensing fees" which pre-date the September 7, 2011 is GRANTED.[50] This issue, involving the same policies and regulations, has been previously litigated. The Department, therefore, cannot re-litigate this issue.

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[45] *See* Program Integrity's Motion, pp. 4-5.

[46] OAH No. 12-0853-MDA. p. 5.

[47] As Geneva I and the Geneva Woods Motion notes, an emergency regulation on mediset billing went into effect on September 7, 2011. *See* Ex. 1, p. 6; *see also* Geneva Woods Motion, p. 15 & Ex. 8. The 2008 claims addressed in the Handley decision, like the 90 claims here, were not subject to the emergency regulation.

[48] Resolution of the remaining four "ineligible dispensing fee" claims, for prescriptions filled or refilled on or after September 7, 2011 when the emergency regulations went into effect, is reserved for a hearing.

[49] *See* Geneva I, pp. 6-7 (stating that the regulations in effect during the audit period "simply do not allow the Division to decline to reimburse Geneva Woods for the prescribed medisets that were provided weekly based on the fact that these prescriptions were for more than 7-day doses of the drug").

[50] A chart listing these claims and their disposition can be found at Attachment A.

b. Remaining "Ineligible Dispensing Fee" Claims (4 claims)

Claims 77006, 225797, 241523, and 251145 involve prescriptions filled or refilled on or after September 7, 2011, which is when emergency regulations applicable to these claims went into effect.[51] However, neither party discussed in their cross-motions for summary adjudication whether claims 77006, 225797, 241523, and 251145 met the criteria for reimbursement imposed by the emergency regulations. Accordingly, both parties' motion for summary adjudication is DENIED with regard to claims 77006, 225797, 241523, and 25114 in the "ineligible dispensing fee" category.[52]

C. The Signature Log Claims[53] (60 claims)

The 2014 Audit disallowed 51 medication payment claims from the Geneva Woods' Wasilla location and four medication claims from its Anchorage location because these claims failed to properly document the delivery of medications to Medicaid recipients pursuant to 7 AAC 120.110(m).[54] Five additional claims at the Wasilla location involved a finding of both "Missing Record Specific Services" in addition to the failure to properly document delivery of the medications.[55] Thus, 60 claims comprise the "signature logs" category. Both sides have moved for summary adjudication on this issue. Summary adjudication will be GRANTED in favor of Geneva Woods on 50 "signature log" claims. Summary Adjudication will be GRANTED in favor of Program Integrity on ten "signature log" claims.

1. Program Integrity's Argument

7 AAC 120.110(m) requires the following:

> A pharmacy shall maintain documentation of receipt of prescribed drugs by recipients. The documentation may be kept as a signature log showing which prescription numbers are received or as mailing labels if prescribed drugs are mailed to the recipient.

Program Integrity argues that Geneva Woods has not strictly complied with the regulation's requirement as interpreted by Program Integrity. A review of the record, as discussed in detail below, demonstrates that none of the signature logs, delivery logs, or mailing logs contains a prescription number corresponding to the claims at issue. Accordingly, Program Integrity

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51 *See* Geneva Woods Motion, p. 15.

52 *See* Attachment A for a chart listing the disposition of the "Ineligible Dispensing Fee" Claims.

53 A chart listing these claims and their disposition can be found at Attachment B.

54 AR 71-71, 203-204 (Wasilla); AR 2834-3856, 3894-3895 (Anchorage); *see also* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, pp. 1-4. These claims are listed in Attachment B.

55 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, pp. 1-4.

maintains that it should receive summary adjudication in its favor on all the claims because Geneva Woods failed to comply with the regulation's requirements.

2. Geneva Woods' Four Arguments

Although Geneva Woods failed to comply with the regulation's requirements as interpreted by Program Integrity, Geneva Woods asserts four arguments in support of its cross-motion for summary adjudication and in its opposition to Program Integrity's motion for summary adjudication on these claims. These arguments are: (1) Geneva Woods takes issue with the Department's interpretation of 7 AAC 120.110(m); (2) the Department's acceptance of Geneva Woods' billing claims without notifying Geneva Woods was out of compliance should preclude Program Integrity from pursuing this repayment action; (3) the statistical extrapolation method should be modified to take into account that the applicable regulation was only in effect for part of the sample period; and (4) Geneva Woods substantially complied with the regulatory requirements. For the reasons explained below, it is only the "substantial compliance" argument that has merit here.

a. The Interpretation of 7 AAC 120.110(m)

Geneva Woods posits that the regulation only requires the pharmacy to document that the recipient received the prescriptions. Geneva Woods argues that the second sentence in the regulation, that "[t]he documentation may be kept as a signature log showing which prescription numbers are received or as mailing labels if prescribed drugs are mailed to the recipient," does not prescribe two methods for showing compliance, depending upon whether the prescriptions are delivered or mailed. Instead, it argues that the term "may" implies that these are not exclusive options, and that a pharmacy may use other means to fulfill the regulatory requirement that it "maintain documentation of receipt of prescribed drugs by recipients."

Geneva Woods' argument is, however, not persuasive. The regulation affords two methods for documenting delivery/receipt of prescriptions. The "may" is not permissive. Instead, it indicates that the method is dependent upon whether the prescription is delivered *or* mailed.

b. Departmental Acquiescence in Geneva Woods' Practices

Geneva Woods has argued that any failure to comply with the regulation should be excused because the Department was aware of how Geneva Woods documented its deliveries, and that Geneva Woods was never notified that its delivery documentation practices were not

compliant. This is essentially an equitable estoppel argument. 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."[56]

Geneva Woods' argument goes toward the first element, assertion of a governmental position by conduct or words. In this case, Geneva Woods' argument is that the Department's non-objection to its delivery documentation practices was an implicit consent to those practices. However, Geneva Woods has provided no citations to the record, nor has it submitted any affidavits or other admissible evidence in support of its argument. "[A]ssertions of fact in unverified pleadings and memoranda cannot be relied on in denying a motion for summary judgment."[57] Because there is no admissible evidence supporting this argument, it cannot be used to either support Geneva Woods' motion for summary adjudication, nor can it be used to deny Program Integrity's cross-motion.

c. Revisions to the Extrapolation Method

Geneva Woods has pointed out that the issue regarding missing/inadequate signature logs only applies to a portion of this audit. The audit period encompasses January 1, 2010 through December 31, 2012 for the Wasilla pharmacy, and January 1, 2009 through December 31, 2012 for the Anchorage pharmacy. However, regulation 7 AAC 120.110(m) did not become enforceable until September 9, 2011.[58] Geneva Woods has, therefore, argued that the the 2014 Audit's statistical extrapolation process is flawed because any disallowed signature log claims are extrapolated over the entire audit period. Instead, the disallowed signature log claims should only be extrapolated against the more limited period of September 9, 2011 forward according to Geneva Woods.

Geneva Woods has not produced any admissible evidence supporting its argument, which was presented in its Opposition to Program Integrity's Motion for Summary Adjudication.[59] Given the lack of any evidence or legal authority on this issue, which would need to be fleshed

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56 *Wassink v. Hawkins,* 763 P.3d 971, 975 (Alaska 1988).
57 *Jennings v. State,* 566 P.2d 1304, 1309-10 (Alaska 1977).
58 AR 3911.
59 Geneva Woods Pharmacy's Opposition to Program Integrity's Motion for Summary Adjudication, pp. 3-4.

out by persons knowledgeable about the statistical extrapolation process used in these types of audits, this is an argument replete with factual issues and should be presented at hearing. As a result, Geneva Woods cannot receive summary adjudication on this point.

d. Substantial Compliance

Substantial compliance is a legal doctrine which excuses a party from strictly complying with a statute or regulation "in order to carry out legislative intent and give meaning to all parts of a statute 'without producing harsh and unrealistic results.'"[60] The Alaska Supreme Court explained the purpose of the doctrine as follows:

> In applying the substantial compliance doctrine, we consider the purpose served by the statutory requirements because "substantial compliance involves conduct which falls short of strict compliance . . . but which affords the public the same protection that strict compliance would offer."[61]

The doctrine of substantial compliance applies not only to statutes, but also to regulations.[62]

The public interest behind the regulatory requirement contained in 7 AAC 120.110(m) is clear: making sure that prescriptions paid for by Medicaid are actually delivered to the recipient. Therefore, to substantially comply with the regulation, Geneva Woods would need to provide documentation showing that the prescriptions in question were delivered or mailed to the recipient. If Geneva Woods demonstrates "substantial compliance," then summary adjudication in Geneva Woods' favor is appropriate. Otherwise, summary judgment for Program Integrity is appropriate. A detailed review of each signature log claim is thus required in order to determine whether Geneva Woods substantially complied with the regulation.

3. Has Geneva Woods Demonstrated Substantial Compliance with 7 AAC 120.110(m)?

To determine whether Geneva Woods has substantially complied with the regulation, the documentation applicable to each signature log claims must be reviewed. For most of these claims, the administrative record contains a preprinted document which contains a mediset identification number, the name of the patient, and a list of medications contained in the mediset. The medications are listed by name with the name of the prescribing physician for each medication, but no prescription number is contained on the form. Below the preprinted portion

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60 *Adamson v. Municipality of Anchorage*, 333 P.3d 5, 13 (Alaska 2014) (*citing Jones v. Short*, 696 P.2d 665, 667 (Alaska 1985)).

61 *Adamson*, p. 14 (*citing Jones*, p. 667 n. 10).

62 *Nenana City School District v. Coghill*, 898 P.2d 929 (Alaska 1995) (substantial compliance with regulatory requirements for renewal of a teaching certificate).

are what appear to be preprinted labels which contain the patient name and a start date and an expiration date for a seven-day duration. For the most part, each of these labels has a signature, initial, or name stamp written atop or alongside the label.[63]

a. Claims Demonstrating Substantial Compliance (50 claims)

A review of the record shows that there are 49 claims where the delivery logs do not state a prescription number, but identify the medication by name, and the record contains a copy of the actual prescription for that medication. So, although the prescription number is missing, these claims contain sufficient information to confirm that the prescriptions paid for by Medicaid were filled and delivered to the recipient. Thus, for each of these claims, Geneva Woods has substantially complied with 7 AAC 120.110(m). In addition, there is one claim for which Program Integrity has conceded that it did not include documents in the record to support its disallowance. Accordingly, summary adjudication is GRANTED in favor of Geneva Woods on the 50 "signature log" claims described below.[64]

1. Wasilla Pharmacy Claims (45 Claims)

1. Claim 43 is a $0.06 charge for prescription 6852733, Ferrous Sulfate, for C. J., which was filled on April 18, 2012.[65] The record contains a document which shows the delivery of a mediset containing Ferrous Sulfate for C. J. for the week starting April 22, 2012, which also contains what appears to be an initial of a person accepting delivery. However, there are no specific prescription numbers contained on that document.[66]

2. Claim 1071 is a $1.35 charge for prescription 6842177, Clozapine, for J. S., which was filled on November 6, 2011.[67] There is a page in the record which shows a delivery of medisets for J. S. for the weeks beginning November 6 and 13, 2011. The mediset list contains Clozapine, but no prescription number is provided.[68]

3. Claim 1875 is a $2.28 charge for prescription 4439245, Lorazepam, for R. W, which was filled on November 12, 2012.[69] There is a page in the record which shows a delivery

63 *See, e.g.,* AR 224, which shows labels indicating that a mediset containing four separate medications was delivered to patient C. J. for the weeks beginning April 1, April 15, April 22, and April 29, 2012. The attached labels each have a name stamp of a registered nurse, and two are additionally initialed.

64 A chart listing these claims and their disposition can be found at Attachment B.

65 AR 71, 214.

66 AR 224.

67 AR 71, 243.

68 AR 255.

69 AR 71, 260.

of a mediset for R. W. for the week of November 18, 2012. The mediset list contains Lorazepam, but no prescription number is provided.[70]

4. Claim 3822 is a $5.00 charge for prescription 6860997, Lisinopril, for M. B., which was filled on September 10, 2012.[71] A review of the record shows a delivery of a mediset for M. B. for the week of September 16, 2012. The mediset list contains Lisinopril, but no prescription number is provided.[72]

5. Claim 4479 is a $5.00 charge for prescription 6843216, Baclofen, for A. P., which was filled on April 4, 2012.[73] A review of the record shows a delivery of a mediset for A. P. for the week of April 8, 2012. The mediset list contains Baclofen, but no prescription number is provided.[74]

6. Claim 4794 is a $5.00 charge for prescription 6839831, Ranitidine, for T. A. which was filled on May 30, 2012.[75] A review of the record shows a delivery of a mediset for T. A. for the week of June 2, 2012. The mediset list contains Ranitidine, but no prescription number is provided.[76]

7. Claim 4809 is a $5.00 charge for prescription 6852200, Metformin, for T. A., which was filled on July 16, 2012.[77] A review of the record shows a mediset delivery for T. A. for the week of July 22, 2012. The mediset list contains Metformin, but no prescription number is provided.[78]

8. Claim 5027 is a $5.00 charge for prescription 6845116, Clonidine, for S. M., which was filled on March 28, 2012.[79] A review of the record shows a mediset delivery for S. M. for the week of April 1, 2012. The mediset list contains Clonidine, but no prescription number is provided.[80]

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70 AR 267.
71 AR 71, 293.
72 AR 300, 303.
73 AR 71, 307.
74 AR 318, 321.
75 AR 71, 326.
76 AR 341.
77 AR 71, 345.
78 AR 354.
79 AR 71, 362.
80 AR 374.

9. Claim 7072 is a $5.00 charge for prescription 6853754, Digoxin, for K. C., which was filled on November 19, 2012.[81] A review of the record shows a mediset delivery for K. C. for the week of November 25, 2012. The mediset list contains Digoxin, but no prescription number is provided.[82]

10. Claim 7083 is a $5.00 charge for prescription 6850787, Levothyroxine Sodium, for N. H., which was filled on May 2, 2012.[83] A review of the record shows a mediset delivery for N. H. for the week of May 6, 2012. The mediset list contains Levothyroxine, but no prescription number is provided.[84]

11. Claim 7090 is a $5.00 charge for prescription 6850787, Levothyroxine Sodium, for N. H., which was filled on July 9, 2012.[85] A review of the record shows a mediset delivery for N. H. for the week of July 15, 2012. The mediset list contains Levothyroxine, but no prescription number is provided.[86]

12. Claim 7585 is a $5.28 charge for prescription 6851637, Spironolactone, for K. C., which was filled on April 4, 2012.[87] A review of the record shows a mediset delivery for K. C. for the week of April 8, 2012. The mediset list contains Spironolactone, but no prescription number is provided.[88]

13. Claim 7684 is a $5.37 charge for prescription 6847918, Ranitidine, for H. G., which was filled on September 10, 2012.[89] A review of the record shows a mediset delivery for H. G. for the week of September 16, 2012. The mediset list contains Ranitidine, but no prescription number is provided.[90]

14. Claim 10016 is a $8.71 charge for prescription 6841048, Carbamazepine, for M. A., which was filled on October 31, 2011.[91] A review of the record shows a mediset delivery for

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81 AR 71, 379.
82 AR 394.
83 AR 71, 404.
84 AR 408.
85 AR 71, 423.
86 AR 424.
87 AR 71, 430.
88 AR 438.
89 AR 71, 443.
90 AR 452.
91 AR 71, 469.

M. A. for the week of November 6, 2011. The mediset list contains Carbamazepine, but no prescription number is provided.[92]

15. Claim 13201 is a $9.66 charge for prescription 6841989, Docusate Sodium, for L. S., which was filled on November 18, 2011.[93] A review of the record shows a mediset delivery for L. S. for the week of November 20, 2011. The mediset list contains Docusate Sodium, but no prescription number is provided.[94]

16. Claim 31104 is a $10.77 charge for prescription 6843630, Sulfamethoxazole/Trimetho, for A. T., which was filled on October 17, 2011.[95] A review of the record shows a mediset delivery for A. T. for the week of October 23, 2011. The mediset list contains "Sulfa/Trim", but no prescription number is provided.[96]

17. Claim 34848 is a $10.94 charge for prescription 6859389, Amlodipine Besylate, for C. S., which was filled on August 13, 2012.[97] A review of the record shows a mediset delivery for C. S. for the week of August 19, 2012. The mediset list contains Amlodipine, but no prescription number is provided.[98]

18. Claim 34920 is a $10.98 charge for prescription 6843354, Docusate Sodium, for J. Z., which was filled on April 4, 2012.[99] A review of the record shows a mediset delivery for J. Z. for the week of April 8, 2012. The mediset list contains Docusate Sodium, but no prescription number is provided.[100]

19. Claim 39528 is a $11.46 charge for prescription 6847489, Lisinopril, for S. T., which was filled on May 2, 2012.[101] A review of the record shows delivery to S. T. of a mediset for the week of May 6, 2012. The mediset list includes Lisinopril, but no prescription number is provided.[102]

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92 AR 479.
93 AR 71, 1939.
94 AR 1940.
95 AR 71, 2351.
96 AR 2352.
97 AR 71, 665.
98 AR 669.
99 AR 71, 682.
100 AR 683.
101 AR 71, 704.
102 AR 705.

20. Claim 41715 is a $11.65 charge for prescription 4437861, Alprazolam, for S. C., which was filled on April 11, 2012.[103] The record shows a mediset delivery for S. C. for the week of April 15, 2012. The mediset list contains Alprazolam, but no prescription number is provided.[104]

21. Claim 43182 is a $11.93 charge for prescription 6850323, Atenolol, for P. L., which was filled on April 11, 2012.[105] The record shows a mediset delivery for P. L. for the week of April 15, 2012. The mediset list contains Atenolol, but no prescription number is provided.[106]

22. Claim 43414 is a $11.97 charge for prescription 6859817, Simvastin, for A. S., which was filled on October 1, 2012.[107] The record shows a mediset delivery for A. S. for the week of October 7, 2012. The mediset list contains Simvastin, but no prescription number is provided.[108]

23. Claim 43511 is a $11.99 charge for prescription 4437530, Temazepam, for S. L., which was filled on February 15, 2012.[109] The record shows mediset deliveries for S. L. for the week of February 19, 2012. The mediset list contains Temazepam, but no prescription number is provided.[110]

24. Claim 49816 is a $12.93 charge for prescription 6867491, Fluphenazine, for J. M., which was filled on December 24, 2012.[111] The record shows a mediset delivery for J. M. for the week of December 30, 2012. The mediset list contains Fluphenazine, but no prescription number is provided.[112]

25. Claim 56427 is a $15.15 charge for prescription 6850394, Ropinirole, for L. B., which was filled on May 2, 2012.[113] The record shows a mediset delivery for L. B. for the week of May 6, 2012. The mediset list includes Ropinirole, but no prescription number is provided.[114]

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103 AR 71, 726.
104 AR 727.
105 AR 71, 739.
106 AR 740.
107 AR 71, 745.
108 AR 752.
109 AR 71, 764.
110 AR 765.
111 AR 71, 787.
112 AR 789.
113 AR 71, 943.
114 AR 944.

26. Claim 56453 is a $15.16 charge for prescription 6858253, Clopidogrel, for N. H., which was filled on July 3, 2012.[115] The record shows a mediset delivery for N. H. for the weeks of July 3 and July 8, 2012. The mediset list includes Clopidogrel, but no prescription number is provided.[116]

27. Claim 56714 is a $15.24 charge for prescription 6845011, Ferrous Sulfate, for N. V., which was filled on May 9, 2012.[117] The record shows a mediset delivery for N. V. for the week of May 13, 2012. The mediset list includes Ferrous Sulfate, but no prescription number is provided.[118]

28. Claim 57453 is a $15.44 charge for prescription 6849848, Amlodipine, for C. B., which was filled on April 11, 2012.[119] The record shows a mediset delivery for C. B. for the week of April 17, 2011. The mediset list includes Amlodipine, but no prescription number is provided.[120]

29. Claim 61701 is a $16.98 charge for prescription 6845591, Imipramine HCL, for K. L., which was filled on November 18, 2011.[121] The record shows a mediset delivery for K. L. for the week of November 20, 2011. The mediset list includes Imipramine, but no prescription number is provided.[122]

30. Claim 69993 is a $23.57 charge for prescription 6864628, Colestipol HCL, for V. H., which was filled on December 3, 2012.[123] The record shows a mediset delivery for V. H. for the week of December 9, 2012. The mediset list includes Colestipol, but no prescription number is provided.[124]

31. Claim 71205 is a $25.02 charge for prescription 6853055, Desmopressin Acetate, for M. B., which was filled on May 9, 2012.[125] The record shows a mediset delivery for M. B.

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115 AR 71, 956.
116 AR 958.
117 AR 71, 2937.
118 AR 2938.
119 AR 71, 2953.
120 AR 2954.
121 AR 72, 3072.
122 AR 3073.
123 AR 72, 1055.
124 AR 1056.
125 AR 72, 1093.

for the week of May 13, 2012. The mediset list includes Desmopressin Acetate, but no prescription number is provided.[126]

32. Claim 72276 is a $26.85 charge for prescription 6858707, Colestipol HCL, for V. H., which was filled on October 8, 2012.[127] The record shows a mediset delivery for V. H. for the week of October 14, 2012. The mediset list includes Colestipol, but no prescription number is provided.[128]

33. Claim 81858 is a $38.04 charge for prescription 6856778, Paroxetine HCL 25mg., for E. J., which was filled on June 25, 2012.[129] The record shows a mediset delivery for E. J. for the week of July 1, 2012. The mediset list includes Paroxetine CR 25 mg., but no prescription number is provided.[130]

34. Claim 87704 is a $44.03 charge for prescription 6847427, Desmopressin Acetate, for P. M., which was filled on December 14, 2011.[131] The record shows a mediset delivery for P. M. for the week of December 18, 2011. That mediset list includes Desmopressin Acetate, but no prescription number is provided.[132]

35. Claim 99348 is a $68.83 charge for prescription 6842565, Januvia, for M. S., which was filled on April 11, 2012.[133] The record shows mediset deliveries for M. S. for the weeks of April 15 and 22, 2012. The mediset list includes Januvia, but no prescription number is provided.[134]

36. Claim 99808 is a $70.53 charge for prescription 6847024, Olanzapine, for K. A., which was filled on February 22, 2012.[135] The record shows a mediset delivery for K. A. for the week of February 26, 2012. The mediset list includes Olanzapine, but no prescription number is provided.[136]

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126 AR 1094.
127 AR 72, 1114.
128 AR 1115.
129 AR 72, 1247.
130 AR 1248.
131 AR 72, 1307.
132 AR 1309.
133 AR 72, 1433.
134 AR 1447.
135 AR 72, 1472.
136 AR 1474.

37. Claim 101613 is a $78.91 charge for prescription 6853327, Mercaptopurine, for B. G., which was filled on September 10, 2012.[137] The record shows a mediset delivery for B. G. for the week of September 16, 2012. The mediset list includes Mercaptopurine, but no prescription number is provided.[138]

38. Claim 101700 is a $79.81 charge for prescription 6840883, Cymbalta, for T. S., which was filled on October 3, 2011.[139] The record shows a mediset delivery for T. S. for the week of October 9, 2011. The mediset list includes Cymbalta, but no prescription number is provided.[140]

39. Claim 103609 is a $90.97 charge for prescription 6866698, Olanzapine, for J. B., which was filled on December 24, 2012.[141] The record shows that a mediset was delivered for J. B. for the week of December 30, 2012. The mediset list includes Olanzapine, but no prescription number is provided.[142]

40. Claim 105777 is a $118.84 charge for prescription 6856345, Ziprasidone HCL 40 mg., for C. B., which was filled on August 20, 2012.[143] The record shows that a mediset was delivered for C. B. for the week of August 26, 2012. The mediset list includes Ziprasidone 40 mg., but no prescription number is provided.[144]

41. Claim 112100 is a $192.77 charge for prescription 6859641, Cymbalta, for M. S., which was filled on October 22, 2012.[145] The record shows that a mediset was delivered for M. S. for the week of October 28, 2012. The mediset list includes Cymbalta, but no prescription number is provided.[146]

42. Claim 114174 is a $235.70 charge for prescription 6855964, Januvia, for L. L., which was filled on July 16, 2012.[147] The record shows that a mediset was delivered for L. L.

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137 AR 72, 1505.
138 AR 1506.
139 AR 72, 1519.
140 AR 1521.
141 AR 72, 1577.
142 AR 1578.
143 AR 72, 1611.
144 AR 1612.
145 AR 72, 1702.
146 AR 1707.
147 AR 72, 1742.

for the week of July 22, 2012. The mediset list includes Januvia, but no prescription number is provided.[148]

43. Claim 115203 is a $275.43 charge for prescription 6843844, Celebrex, for L. V., which was filled on January 25, 2012.[149] The record shows that a mediset was delivered for L. V. for the week of January 29, 2012. The mediset list includes Celebrex, but no prescription number is provided.[150]

44. Claim 118037 is a $17,722.11 charge for prescription 6842990, Incivek, for L. B., which was filled on October 6, 2011.[151] The record shows that a mediset was delivered for L. B. for the week of October 9, 2011. The mediset list includes Incivek, but no prescription number is provided.[152]

45. Claim 118038 is a $17,722.11 charge for prescription 6842990, Incivek, for L. B., which was filled on November 6, 2011.[153] The record shows that a mediset was delivered for L. B. for the week of November 6, 2011. The mediset list includes Incivek, but no prescription number is provided.[154]

2. Wasilla Pharmacy Claims – Dual Basis Challenges (4 Claims)

The four claims listed below fall into a dual category. Program Integrity disallowed each of these claims for missing the requisite "signature log" and also for "missing record specific services." In other words, Program Integrity has two opportunities to have this claim resolved in its favor "through summary adjudication. This discussion only addresses with the "signature log" issue; the "missing record specific services" issue is discussed elsewhere in this decision.

1. Claim 28061 is a $10.51 charge for prescription 6832979, Metformin, for T. S., which was filled on June 20, 2011.[155] The record shows that a mediset was delivered for T. S. for the week of June 26, 2011. The mediset list includes Metformin, but no prescription number is provided.[156]

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148 AR 1744.
149 AR 72, 1776.
150 AR 1779.
151 AR 72, 3789.
152 AR 3790.
153 AR 72, 3804.
154 AR 3805.
155 AR 72, 2292.
156 AR 2301.

2. Claim 53835 is a $14.22 charge for prescription 6849165, Levothyroxine, for O. H., which was filled on July 2, 2012.[157] The record shows that a mediset was delivered for O. H. for the week of July 8, 2012. The mediset list includes Levothyroxine, but no prescription number is provided.

3. Claim 88479 is a $45.38 charge for prescription 6837405, Risperidone, for O. A., which was filled on August 15, 2011.[158] The record shows that a mediset was delivered for O. A. for the week of August 21, 2011. The mediset list includes Risperidone, but no prescription number is provided.[159]

4. Claim 95230 is a $55.29 charge for prescription 6821052, Nexium, for K. H., which was filled on February 14, 2011.[160] The record shows that a mediset was delivered for K. H. for the week of February 20, 2011. The mediset list includes Nexium, but no prescription number is provided.[161]

3. Program Integrity Failed to Prove the Disallowance (1 claim)

1. Claim 29322 is a $10.63 charge for prescription 6866430 for R.G., which was filled on December 31, 2012.[162] However, as per Program Integrity's January 2, 2018 filing, the documents which support the disallowance of this claim are apparently missing from the agency record.[163] Here, the record will, as a matter of law, be insufficient at hearing to support Program Integrity's assertion that the delivery documents do not sufficiently demonstrate delivery of the prescription, which supports its disallowance of this claim.

b. *Claims That Do Not Demonstrate Substantial Compliance* (10 claims)

Since Program Integrity has demonstrated a lack of compliance with 7 AAC 120.110(m) in connection with the "no signature logs" claims, Geneva Woods must demonstrate substantial compliance in order to defeat Program Integrity's Motion for Summary Adjudication on these claims. Geneva Woods has been unable to meet this burden for the ten "no signature

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157 AR 72, 872.
158 AR 72, 3556.
159 AR 3565.
160 AR 72, 1383.
161 AR 1385.
162 AR 71.
163 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Documentation, p. 3 n. 1.

log" ten claims described below. Accordingly, summary adjudication in favor of Program Integrity will be GRANTED on these ten claims.

1. No Documentation Showing Prescription Was Delivered

The six claims in this category are claims where there is documentation of delivery, but the documents lack any indication that the prescription in question was included in the delivery. As a result, Geneva Woods has not demonstrated substantial compliance for the claims described below.

a. Wasilla Pharmacy Claims (2 claims)

1. Claim 365 is a $0.41 charge for prescription 6865749, Pravastatin Sodium, for S. T., which was filled on December 10, 2012.[164] The record contains four pages which show medisets were delivered for S. T. for the time from September 2, 2012 through April 21, 2013. The mediset list mentions Pravastatin Sodium, but prescription numbers are not contained on the list of medications. Each of these pages contains a label which shows a start date and an expiration date. The start dates, from a review of applicable calendars, all start on a Sunday, and the expiration date is the following Saturday. However, there is no label corresponding to a mediset that would have been issued on or shortly after December 10, 2012. The four pages contain a label showing a start date of November 25, 2012 and expiring on December 1, 2012; the label showing the next date sequence contains a start date of December 23, 2012 with an expiration date of December 29, 2012.[165] The record therefore shows no documentation of a mediset delivery for the week of December 16, 2012.

2. Claim 82900 is a $39.42 charge for prescription 6844021, Prometrium, for T. A., which was filled on March 14, 2012.[166] The record shows mediset deliveries, which include Prometrium, for T. A. during January – March of 2011. However, the record does not show any deliveries for T. A. in March of 2012.[167]

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164 AR 71, 214.
165 AR 233 – 234, 237 – 238.
166 AR 72, 3402.
167 AR 3403.

b. Anchorage Pharmacy Claims[168] (4 claims)

1. Claim 7983 is a $5.00 charge for prescription 6497553, Ferrous Sulfate, for S. M., which was filled on May 30, 2012.[169] The record contains "Geneva Woods Pharmacy Delivery Sheets" which show a delivery for S. M. for the week of June 3, 2012. However, the delivery sheet does not contain a label for prescription 6497553, nor does it mention Ferrous Sulfate, but rather a label for prescription 6507092.[170]

2. Claim 110247 is a $10.42 charge for prescription 4055606, Clonazepam, for S. D., which was filled on May 4, 2012.[171] The record contains a "RX Patient Pick-up Log[s]" which show deliveries of prescriptions to S. D. on May 8 and 10, 2012. However, the log for May 8 shows a delivery of prescriptions 4055621, 6815070, and 6516060, and the log for May 10 simply shows delivery of a prescription without any identification of the prescription. Neither delivery log shows a delivery of prescription 4055606 or Clonazepam.[172]

3. Claim 160136 is a $11.45 charge for prescription 6491123, Amitriptyline, for J. L, which was filled on December 23, 2011.[173] While there is a delivery sheet in the record, dated December 29, 2011 and showing an unspecified delivery to J. L., the delivery sheet does not contain a label, a prescription number, or a prescription name.[174]

4. Claim 277466 is a $26.77 charge for prescription 6462017, Avodart, for A. B., which was filled on January 18, 2012.[175] There is a delivery sheet in the record, dated January 24, 2012, which shows an unspecified delivery to A. B. It does not contain a label, a prescription number, or a prescription name.[176]

2. The Delivery Documentation Is Obscured (3 claims)

There are three Wasilla pharmacy claims (51434, 54797, and 102137) where there is documentation of delivery, but the delivery documents are so obscured it is not possible to determine what, if anything was delivered. As a result, Program Integrity has shown a lack of

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168 The Anchorage pharmacy delivery documents are a bit different from the ones provided by the Wasilla pharmacy. Instead of a document containing a list of the medications with affixed delivery labels, there is a delivery sheet with a prescription label affixed to it.
169 AR 3854, 4122.
170 AR 4123.
171 AR 3854, 4783.
172 AR 4874-4875.
173 AR 3854, 4863.
174 AR 4864.
175 AR 3855, 5175.
176 AR 5174.

compliance with 7 AAC 120.110(m) and Geneva Woods has not demonstrated substantial compliance.

1. Claim 51434 is a $13.43 charge for prescription 6853046, Levetiracetam, for M. R., which was filled on May 16, 2012.[177] The record shows a mediset delivery for M. R. for the week of May 20, 2012. However, the labels evidencing deliveries obscure the mediset list to such an extent that it is not possible to determine whether this medication was contained in the mediset delivered on May 20, 2012.[178]

2. Claim 54797 is a $14.51 charge for prescription 6843393, Carvedilol, for D. N., which was filled on May 9, 2012.[179] The record shows four weekly medisets were mailed to D. N. on May 25, 2012. However, the portion of the form that contains the list of medications contained in the mediset is so badly obscured that it is impossible to determine whether Carvedilol is one of the included medications.[180]

3. Claim 102137 is a $82.30 charge for prescription 6852713, Seroquel, for C. W., which was filled on April 4, 2012.[181] The record contains a mediset list containing Seroquel, but there are no labels attached evincing delivery. The mediset lists which do show a mediset delivery for the week of April 8, 2012, the week immediately following the prescription being filled, is so obscured by delivery labels that it is not possible to determine whether Seroquel is contained in the mediset that was delivered.[182]

3. <u>Geneva Woods Has Conceded the Claim (dual basis challenge)</u>

This discussion only addresses the "no signature log" issue. Program Integrity also disallowed this claim because it was "missing record specific services," which is discussed elsewhere in this decision. Geneva Woods has conceded that is does not have the requisite documentation to support Wasilla pharmacy claim 54504.[183] Consequently, Geneva Woods has not shown substantial compliance.

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177 AR 71, 811.

178 AR 812. There is a mediset list showing deliveries during the same relative time period (delivery dates May 6 and May 13, 2012), which does list Levetiracetam. AR 813.

179 AR 71, 920.

180 AR 918.

181 AR 72, 1535.

182 AR 1531, 1536-1537.

183 *See* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (September 14, 2017), p. 2; *see also* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (January 10, 2018), p. 2.

D. Missing Record Specific Services[184] (11 claims)

Program Integrity has requested summary adjudication in its favor regarding 11 "missing record specific services" claims.[185] Specifically, Program Integrity requests summary adjudication with regard to Anchorage claims 9479, 55349, 296189, 325143, and 392030 and Wasilla claims 28061, 53835, 54504, 88479, 89826, and 92530.[186] Summary Adjudication will be GRANTED to Program Integrity on two of these claims.

1. <u>Claims Where Summary Adjudication is Appropriate</u>

1. Claim 54504 is a dual challenge claim involving "no signature logs" and "missing record specific services" issues.[187] Geneva Woods has conceded this claim.[188] Earlier in this decision, summary adjudication was granted in Program Integrity's favor on the "no signature logs" issue.[189]

2. Claim 55349 involves a missing prescription. In its Motion for Summary Adjudication, Program Integrity points out that 12 AAC 52.450(a) requires Geneva Woods to maintain prescription drug orders for a period of two years from the date of filing or the date of the last dispensed refill. [190] There is no prescription in the Agency Record.[191] Where, as here, a motion for summary adjudication is supported by documents establishing that a genuine dispute does not exist on an issue of material fact, a party cannot rely on a mere denial to defeat the

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184 A chart listing of these claims and their disposition can be found at Attachment C.

185 Program Integrity initially sought summary adjudication for12 claims in the "missing record specific services" category. *See* Program Integrity Motion, p. 10. Once such claim was Anchorage claim 366325. *See id.* at n. 43. However, Program Integrity subsequently rescinded its overpayment finding for claim 366325, leaving 11 claims as overpayments. *See* Program Integrity's Response to Request for Additional Information, pp. 2-3.

186 Program Integrity Motion, p. 10 n. 43 (Anchorage claims) and n. 44 and Wasilla claim 89826). Program Integrity initially was tentative as to whether Wasilla claims 28061, 53835, 5405, 88479, and 92530 were part of its summary judgment motion. *See id.*, p. 10 n. 42. However, Program Integrity later confirmed that it was seeking summary adjudication with regard to the remaining "missing record specific services" claims (28061, 53835, 88479, and 92530) from the Wasilla Audit. *See* Program Integrity's Response to Request for Additional Information, pp. 1-2.

187 AR 72; *see also* Geneva Woods Motion, p. 11; Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, pp. 1 & 4. According to Program Integrity, claim 54504 had no DEA number. *See* Program Integrity Motion, p. 11.

188 *See* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (January 10, 2018), p. 2; *see also* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication (September 14, 2017), p. 6.

189 *See supra*, at p. 25. Although there are two grounds for granting summary adjudication in Program Integrity's favor, this only counts as one claim vis-à-vis the total number of 186 claims.

190 *See* Program Integrity Motion, at p. 10.

191 *See* AR 4491-2502.

motion.[192] Yet, that is precisely what Geneva Woods did.[193] Consequently, summary adjudication is GRANTED in favor of Program Integrity regarding this claim.

2. Claims Where Summary Adjudication is Not Appropriate

Program Integrity's Motion for Summary Adjudication is DENIED on the remaining nine claims in this category for the reasons discussed below.

a. Not Enough Context Has Been Provided (5 claims)

1. Too little context has been provided to determine if summary adjudication is appropriate regarding claims 296189, 325143, 89826, and 95230.[194]

2. Claim 88479 is a dual basis challenge. Program Integrity has argued that there were "no signature logs" and also that the claim was "missing record specific services."[195] Summary adjudication in favor of Geneva Woods has been granted on the "no signature log" issue.[196] Program Integrity has not provided enough context to determine if summary adjudication on the "missing record specific services" issue is warranted.[197]

b. No Support in the Record Provided (1 claim)

1. Claim 9479 is a claim where Program Integrity only provided citations to portions of the Anchorage Audit in support of its motion for summary adjudication.[198] It is the conclusions of the Audit which are in dispute. Therefore, it is the underlying documentation which must provide support for a summary adjudication request. Program Integrity has failed to provide the requisite support in the Agency Record in support of its motion.

c. Lack of Clarity (3 claims)

1. Claim 53835 is a dual basis challenge on two issues: "no signature logs" and "missing record specific services."[199] Summary adjudication has been granted already in favor of Geneva Woods on the "no signature logs" issue.[200] With regard to the "missing record

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192 *See* 2 AAC 64.250(b).

193 *See* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication, p. 1.

194 *See* AR 5295-5305 (claim 269189), AR 7091-7100 (claim 325142); AR 3606-3626 (claim 89826); *see also* Program Integrity's Response to Request for Additional Information (September 11, 2017), p. 4.

195 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, pp. 1 & 4.

196 *See supra*, at p. 22.

197 AR 3552-3571.

198 *See* Program Integrity Motion, p. 10 n. 43.

199 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information (January 2, 2018), at pp. 1 & 4.

200 *See supra*, at p. 22.

specific services" issue, it is unclear from reviewing the Agency Record whether the prescription is inadequate.[201] Program Integrity will need to prove that this is an overpayment at a hearing.

2. Claim 392030 is a dual basis challenge on two grounds: "no signature logs" and "missing record specific services."[202] Summary adjudication has already been granted in Geneva Woods favor regarding the "no signature log" issue. With regard to the "missing record specific services" issue, Program Integrity's position is unclear. In its summary adjudication motion, Program Integrity claims that there was no prescription.[203] However, in a later filing Program Integrity asserts that the prescription was missing a label.[204] Accordingly, Program Integrity will need to prove this issue at a hearing.

3. Claim 28061 appears to be a dual basis challenge on two issues: "no signature logs" and "missing record specific services."[205] Summary adjudication on the "no signature logs" issue has been granted in Geneva Woods' favor in this decision.[206] Based on Program Integrity's January 2, 2018 filing, the only grounds for overpayment may be an incomplete signature log, which has already been addressed elsewhere in this decision.[207] It is unclear what Program Integrity is requesting regarding this claim. Given this confusion, the resolution of the "missing record specific services" issue on claim 28061 is reserved for a hearing.

E. Invalid Prescriptions[208] (14 claims)

Program Integrity seeks summary adjudication on 14 claims in this category, alleging that the prescriptions are deficient in some respect.[209] Summary Adjudication will be GRANTED with respect to four of the claims.

1. Summary Adjudication is Entered in favor of Program Integrity

The Agency Record in each of the four claims listed below supports Program Integrity's motion for summary adjudication. When a motion for summary adjudication is supported by documents establishing that a genuine dispute does not exist on an issue of material fact, the

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201 AR 861-873.
202 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information (January 2, 2018), at pp. 1,4 & 5.
203 *See* Program Integrity Motion, p. 10.
204 *See* Program Integrity's Response to Request for Additional Information (September 11, 2017), p. 5.
205 Program Integrity's Response to December 20, 2017 Order Requesting Additional Information (January 2, 2018), at pp. 1 & 4.
206 *See supra*, at p. 21.
207 *See* Program Integrity's Response to December 20, 2017 Order Requesting Additional Information, p. 5.
208 A chart listing these claims and their disposition can be found at Attachment C.
209 *See* Program Integrity Motion, pp. 6-11.

opposing party cannot rely on a mere denial to defeat the motion.[210] Here, Geneva Woods failed to show by affidavit or other evidence that a genuine dispute exists on a material fact that would require an evidentiary hearing on these claims. Instead, Geneva Woods relied upon a mere denial in each instance, stating that "the record is difficult to search."[211] Consequently, summary adjudication in Program Integrity's favor is appropriate for these claims.

1. Claim 38047 (Wasilla) was a claim where Program Integrity alleged the prescription was invalid because there was no date on the prescription. [212] A review of the underlying documentation for that claim shows that the prescription was not dated.[213]

2. Claim 192376 (Anchorage) was deemed an overpayment in the 2014 Audit because the prescription did not have directions for use.[214] A review of the Agency Record shows that there were no directions for use on the prescription.

3. Claim 275996 (Anchorage) was found to be an overpayment because there was no quantity listed on the prescription and no authorization for refills.[215] A review of the Agency Record shows that there is no quantity on the prescription.[216]

4. Claim 252660 (Anchorage) was deemed an overpayment because the there was no authorizing signature.[217] A review of the Agency Record shows that there is no signature on the prescription.[218]

2. <u>Summary Adjudication is Denied</u>

Summary Adjudication was denied on the remaining claims for the reasons described below.

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210 *See* 2 AAC 64.250(b).

211 *See* Geneva Woods Pharmacy's Response to Request for Additional Information Regarding Motion for Summary Adjudication, p. 1.

212 Program Integrity Motion, p. 6.

213 *See* AR 2628.

214 AR 516.

215 *See* Program Integrity Motion, p. 8 n. 31.

216 AR 6967. There was also a concurrent ground for this overpayment, which need not be addressed given the finding that there was no quantity listed.

217 *See* Program Integrity Motion, p. 9.

218 AR 6818.

a. Prescription Is Illegible

Program Integrity must show by affidavits or other documents that a genuine dispute does not exist on an issue of material fact.[219] Here, the issue of material fact in dispute was whether the prescription underlying each claim contained the requisite information.

1. Claim 372575 (Anchorage) was deemed an overpayment because its prescription had no quantity or directions for use. However, the prescription is illegible without the assistance of a witness, so it cannot not be determined whether the prescription is deficient.[220] To be clear, if the prescription remains undecipherable after a hearing, Program Integrity may prevail on this claim. However, in the context of summary adjudication, there is simply an issue of fact as to what the prescription shows.

2. Claim 204648 was deemed an overpayment for two reasons: the prescription failed to include a quantity and did not include an authorization for refills.[221] Because the prescription is illegible, it likewise cannot be determined if the prescription is deficient.

3. Claims 91255, 244983, and 403757 were listed as overpayments because there was no quantity on the prescription.[222] Because each of the underlying prescriptions is illegible as provided in this record, without the benefit of a witness, none of them support Program Integrity's position that no quantity was listed on the prescription.

b. No Documents Support Program Integrity's Position

Since the conclusions of the 2014 Audit are at issue in this proceeding, the 2014 Audit cannot be used to support Program Integrity's motion for summary adjudication. However, from time to time in its motion, Program Integrity cites to a portion of the 2014 Audit as the sole support for its request for summary adjudication on a claim.[223] Where no additional citations to the underlying documents have been provided, Program Integrity's request is doomed to fail.[224]

1. Claim 113979 alleges that the quantity is missing on the prescription. Program Integrity merely cites to the 2014 Audit as support for summary adjudication on this claim.[225]

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219 *See* 2 AAC 64.250(b).

220 AR 7272. There was also a concurrent ground of "no quantity" listed; however, since the prescription is illegible, summary adjudication is denied on that ground as well.

221 *See* Program Integrity Motion, p. 8 n. 31.

222 AR 5977 (claim 91255); AR 6762 (claim 244983); and AR 5737 (claim 403757).

223 Specifically, Program Integrity cites to the "Clinical Review Detail Report" produced by HMS as part of the 2014 Audit. *See* AR 3862-3687.

224 *See* 2 AAC 64.250(b)(stating that a motion for summary adjudication must be supported by an affidavit or other documents *establishing that a genuine dispute does not exist on an issue of material fact).*

225 *See* Program Integrity Motion, p. 8 n. 35.

2. Claim 196908 was considered an overpayment because the prescription had no quantity listed on it and the duration was not specified.[226] Program Integrity only cites to the 2014 Audit in support of its position. [227]

c. Not Enough Context Has Been Provided

1. Claim 3381 (Anchorage) is listed as an overpayment because the prescription had expired.[228] However, the documents standing alone without any context do not support summary adjudication for this claim.[229]

2. Claim 281385 (Anchorage) is a claim where Program Integrity maintains that there is no authorization for the prescription.[230] Without any context being provided, it is unclear whether this prescription, which had a nurse's signature and the physician's name circled, would be insufficient authorization.[231]

d. Lack of Clarity

1. Claim 126942 was deemed an overpayment because of no quantity for a certain medication. However, a review of the prescription suggested that the quantity was highlighted and simply might not have been visible on the photocopy

F. Overbilled Quantities[232] (4 claims)

Program Integrity seeks summary adjudication with respect to four claims in this category: 118039, 150028, 212329, and 260249. Summary Adjudication is denied on all four claims. Without any context, it is not apparent from the documentation for 118029, 150028, and 260249 that summary adjudication is appropriate.[233] With regard to claim 212329, Program Integrity has provided no support for its motion other than a citation to the 2014 Audit, which is in dispute.[234]

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226 *See* Program Integrity Motion, p. 8 n. 35.

227 *See* Program Integrity Motion, p. 8 n. 35.

228 See Program Integrity's Motion, p. 7. Program Integrity suggests that there were two claims in this category – claims 3381 and 3881-- but the 2014 Audit has no references to a claim 3881. *See* AR 71-72 (Wasilla Audit), 3854-3856 (Anchorage Audit). Accordingly, this decision assumes that Program Integrity's reference to claim 3881 was an inadvertent typographical error.

229 *See* AR 5822-5836.

230 AR 6986.

231 AR6986.

232 A chart listing these claims and their disposition can be found at Attachment C.

233 AR 3807-3820 (claim 118039), AR 4837-4840 (claim 150028), AR 5091-5100 (claim 260349).

234 *See* Program Integrity Motion, p. 13 n. 53.

G. Unauthorized Refills[235] (8 claims)

Program Integrity seeks summary adjudication with respect to the following eight claims where it contends there were unauthorized refills: 90197, 27288, 33739, 263237, 301528, 381177, 386507, and 387978. Summary Adjudication is denied on all claims for the reasons listed below:

1. Claims 91079, 33739, 263237, and 301528

Summary Adjudication is denied on these claims because Program Integrity only cited to the 2014 Audit in support of its motion.[236] Since the 2014 Audit Report is in dispute in this appeal, Program Integrity must provide the underlying documentation in support of the auditor's conclusions to make a viable motion for summary adjudication.

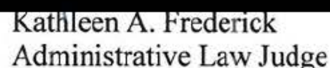
2. Claims 27288, 381177, 388607, and 38978

Summary adjudication is denied on each of these claims because Program Integrity did not provide enough context to determine if there was an unauthorized refill.[237]

IV. Conclusion

Partial summary adjudication is granted in favor of Geneva Woods on 90 of the "ineligible dispense fee" claims and on 50 of the "signature log" claims.[238] Partial summary adjudication is granted in favor of Program Integrity on 15 claims: nine "signature log" claims; two "missing record specific services" claims; four "invalid prescription" claims; and one claim that had a dual basis for overpayment ("signature logs" and "missing record specific services").[239] The remaining claims will need to be resolved at an evidentiary hearing.

Date: August 23, 2018



Kathleen A. Frederick
Administrative Law Judge

[235] A chart listing these claims and their disposition can be found at Attachment C.

[236] *See* Program Integrity Motion, pp. 13-14.

[237] AR 4316-4334 (claim 27288), AR5648-5661 (claim 38117), AR 7304-7315 (claim 386507); and AR 7316-7326 (claim 387978).

[238] However, for four of these claims (88479, 53835, 392030 and 28061), the "missing record specific services" issue is reserved for hearing.

[239] Summary adjudication was granted in Program Integrity's favor on claim 54504, both as to "missing record specific services" and as to "no signature logs." However, with respect to the total number of *claims* dismissed from this litigation through summary adjudication, claim 54504 is only counted as one *claim*.

Attachment A			
	Anchorage		
Claim No.	Audit Error Code	Overpayment	Summary Adjudication Granted
38120	Ineligible Dispensing Fee	$ 9.57	Geneva Woods
44984	Ineligible Dispensing Fee	$ 9.59	Geneva Woods
50960	Ineligible Dispensing Fee	$ 9.68	Geneva Woods
51721	Ineligible Dispensing Fee	$ 9.68	Geneva Woods
60165	Ineligible Dispensing Fee	$ 9.68	Geneva Woods
70606	Ineligible Dispensing Fee	$ 9.72	Geneva Woods
70727	Ineligible Dispensing Fee	$ 9.72	Geneva Woods
77006	Ineligible Dispensing Fee	$ 9.83	No
78858	Ineligible Dispensing Fee	$ 9.85	Geneva Woods
81384	Ineligible Dispensing Fee	$ 9.88	Geneva Woods
82088	Ineligible Dispensing Fee	$ 9.88	Geneva Woods
82762	Ineligible Dispensing Fee	$ 9.89	Geneva Woods
83170	Ineligible Dispensing Fee	$ 9.89	Geneva Woods
84953	Ineligible Dispensing Fee	$ 9.93	Geneva Woods
86496	Ineligible Dispensing Fee	$ 9.94	Geneva Woods
88143	Ineligible Dispensing Fee	$ 9.96	Geneva Woods
90504	Ineligible Dispensing Fee	$ 9.99	Geneva Woods
114684	Ineligible Dispensing Fee	$ 10.48	Geneva Woods
115189	Ineligible Dispensing Fee	$ 10.48	Geneva Woods
115433	Ineligible Dispensing Fee	$ 10.48	Geneva Woods
140007	Ineligible Dispensing Fee	$ 10.93	Geneva Woods
141371	Ineligible Dispensing Fee	$ 10.93	Geneva Woods
146945	Ineligible Dispensing Fee	$ 11.08	Geneva Woods
149185	Ineligible Dispensing Fee	$ 11.15	Geneva Woods
161119	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
167696	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
181986	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
198884	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
198908	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
202739	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
202966	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
219303	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
225797	Ineligible Dispensing Fee	$ 12.12	No
228722	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
241523	Ineligible Dispensing Fee	$ 12.12	No
251145	Ineligible Dispensing Fee	$ 12.12	No
251290	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
252834	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
256388	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
257255	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
264966	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
267827	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
283921	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
291045	Ineligible Dispensing Fee	$ 11.46	Geneva Woods

317131	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
327414	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
333501	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
342124	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
347583	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
351002	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
357695	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
359032	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
361599	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
364967	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
366536	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
373761	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
374208	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
375059	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
381705	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
393614	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
409154	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
409856	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
	Total from 62 Claims:	**$ 679.67**	

	Wasilla		
Claim No.	**Audit Error Code**	**Overpayment**	**Summary Adjudication Granted**
10483	Ineligible Dispensing Fee	$ 9.54	Geneva Woods
14216	Ineligible Dispensing Fee	$ 9.72	Geneva Woods
25770	Ineligible Dispensing Fee	$ 10.36	Geneva Woods
26942	Ineligible Dispensing Fee	$ 10.46	Geneva Woods
31947	Ineligible Dispensing Fee	$ 10.84	Geneva Woods
32633	Ineligible Dispensing Fee	$ 10.84	Geneva Woods
34024	Ineligible Dispensing Fee	$ 10.88	Geneva Woods
34337	Ineligible Dispensing Fee	$ 10.90	Geneva Woods
34540	Ineligible Dispensing Fee	$ 10.93	Geneva Woods
36463	Ineligible Dispensing Fee	$ 11.19	Geneva Woods
46812	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
50129	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
51713	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
59558	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
60992	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
62398	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
67289	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
68241	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
68429	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
72618	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
76710	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
79804	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
81464	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
84054	Ineligible Dispensing Fee	$ 11.46	Geneva Woods
84623	Ineligible Dispensing Fee	$ 11.46	Geneva Woods

89282	Ineligible Dispensing Fee	$	11.46	Geneva Woods
91488	Ineligible Dispensing Fee	$	11.46	Geneva Woods
98919	Ineligible Dispensing Fee	$	11.46	Geneva Woods
106939	Ineligible Dispensing Fee	$	11.46	Geneva Woods
107691	Ineligible Dispensing Fee	$	11.46	Geneva Woods
113789	Ineligible Dispensing Fee	$	11.46	Geneva Woods
116184	Ineligible Dispensing Fee	$	11.46	Geneva Woods
	Total from 32 Claims:	**$**	**357.78**	

Attachment B

Anchorage

Claim No.	Audit Error Code	Overpayment	Summary Adjudication Granted
7983	No Signature Log	$ 5.00	Program Integrity
110247	No Signature Log	$ 10.42	Program Integrity
160136	No Signature Log	$ 11.45	Program Integrity
277466	No Signature Log	$ 26.77	Program Integrity
	Total from 4 Claims:	**$ 53.64**	

Wasilla

Claim No.	Audit Error Code	Overpayment	Summary Adjudication Granted
43	No Signature Log	$ 0.06	Geneva Woods
365	No Signature Log	$ 0.41	Program Integrity
1071	No Signature Log	$ 1.35	Geneva Woods
1875	No Signature Log	$ 2.28	Geneva Woods
3822	No Signature Log	$ 5.00	Geneva Woods
4479	No Signature Log	$ 5.00	Geneva Woods
4794	No Signature Log	$ 5.00	Geneva Woods
4809	No Signature Log	$ 5.00	Geneva Woods
5027	No Signature Log	$ 5.00	Geneva Woods
7072	No Signature Log	$ 5.00	Geneva Woods
7083	No Signature Log	$ 5.00	Geneva Woods
7090	No Signature Log	$ 5.00	Geneva Woods
7585	No Signature Log	$ 5.28	Geneva Woods
7684	No Signature Log	$ 5.37	Geneva Woods
10016	No Signature Log	$ 8.71	Geneva Woods
13201	No Signature Log	$ 9.66	Geneva Woods
*28061	No Signature Log	$ 10.51	Geneva Woods
29322	No Signature Log	$ 10.63	Geneva Woods
31104	No Signature Log	$ 10.77	Geneva Woods
34848	No Signature Log	$ 10.94	Geneva Woods
34920	No Signature Log	$ 10.98	Geneva Woods
39528	No Signature Log	$ 11.46	Geneva Woods
41715	No Signature Log	$ 11.65	Geneva Woods
43182	No Signature Log	$ 11.93	Geneva Woods
43414	No Signature Log	$ 11.97	Geneva Woods
43511	No Signature Log	$ 11.99	Geneva Woods
49816	No Signature Log	$ 12.93	Geneva Woods
51434	No Signature Log	$ 13.43	Program Integrity
*53835	No Signature Log	$ 14.22	Geneva Woods
*54504	No Signature Log	$ 14.42	Program Integrity
54797	No Signature Log	$ 14.51	Program Integrity
56427	No Signature Log	$ 15.15	Geneva Woods
56453	No Signature Log	$ 15.16	Geneva Woods
56714	No Signature Log	$ 15.24	Geneva Woods
57453	No Signature Log	$ 15.44	Geneva Woods
61701	No Signature Log	$ 16.98	Geneva Woods

69993	No Signature Log	$ 23.57	Geneva Woods
71205	No Signature Log	$ 25.02	Geneva Woods
72276	No Signature Log	$ 26.85	Geneva Woods
81858	No Signature Log	$ 38.04	Geneva Woods
82900	No Signature Log	$ 39.42	Program Integrity
87704	No Signature Log	$ 44.03	Geneva Woods
*88479	No Signature Log	$ 45.38	Geneva Woods
*95230	No Signature Log	$ 55.29	Geneva Woods
99348	No Signature Log	$ 68.83	Geneva Woods
99808	No Signature Log	$ 70.53	Geneva Woods
101613	No Signature Log	$ 78.91	Geneva Woods
101700	No Signature Log	$ 79.81	Geneva Woods
102137	No Signature Log	$ 82.30	Program Integrity
103609	No Signature Log	$ 90.97	Geneva Woods
105777	No Signature Log	$ 118.84	Geneva Woods
112100	No Signature Log	$ 192.77	Geneva Woods
114174	No Signature Log	$ 235.70	Geneva Woods
115203	No Signature Log	$ 275.43	Geneva Woods
118037	No Signature Log	$ 17,722.11	Geneva Woods
118038	No Signature Log	$ 17,722.11	Geneva Woods
	Total from 56 Claims:	**$ 37,369.34**	

* Dual basis challenge: Program Integrity is also alleging an overpayment for “Missing Record Specific Services.” The disposition of the claim on the "Missing Record Specific basis is listed on Exhibit C.

Attachment C			
	Anchorage		
Claim No.	Error	Overpayment	Summary Adjudication Granted
3381	Invalid Prescription	$ 1.99	No
3881	Invalid Prescription	not applicable	No such claim exists
9479	Missing Record Specific Services	$ 5.00	No
27288	Unauthorized refills	$ 5.69	No
33739	Unauthorized refills	$ 9.53	No
55349	Missing Record Specific Services	$ 9.68	Program Integrity
91255	Invalid Prescription	$ 10.00	No
113979	Invalid Prescription	$ 10.47	No
126942	Invalid Prescription	$ 10.68	No
150028	Overbilled quantities	$ 0.70	No
192376	Invalid Prescription	$ 12.55	Program Integrity
196908	Invalid Prescription	$ 12.75	No
204648	Invalid Prescription	$ 13.27	No
212329	Overbilled quantities	$ 1.43	No
244983	Invalid Prescription	$ 17.94	No
252660	Invalid Prescription	$ 19.57	Program Integrity
260249	Overbilled quantities	$ 6.96	No
263237	Unauthorized refills	$ 22.26	No
275996	Invalid Prescription	$ 26.38	Program Integrity
281385	Invalid Prescription	$ 28.54	No
296189	Missing Record Specific Services	$ 34.21	No
301528	Unauthorized refills	$ 36.40	No
325143	Missing Record Specific Services	$ 42.94	No
372575	Invalid Prescription	$ 81.51	No
381177	Unauthorized refills	$ 107.37	No
386507	Unauthorized refills	$ 123.41	No
387978	Unauthorized refills	$ 129.32	No
392030	Mssing Record Specific Services	$ 147.43	No
403757	Invalid Prescription	$ 235.41	No
	Total from 28 claims	**$ 1,163.39**	

	Wasilla		
Claim No.	Error	Overpayment	Summary Adjudication Granted
*28061	Missing Record Specific Services	$ 10.51	No
38047	Invalid Prescription	$ 11.29	Program Integrity

*53835	Missing Record Specific Services	$ 14.22	No
*54504	Missing Record Specific Services	$ 14.42	Program Integrity **
*88479	Missing Record Specific Services	$ 45.38	No
89826	Missing Record Specific Services	$ 47.15	No
91097	Unauthorized Refills	$ 47.34	No
*95230	Missing Record Specific Services	$ 55.29	No
118039	Overbilled Quantities	$ 13,282.92	No
	Total from 9 claims	**$ 13,518.01**	

* Dual basis challenge. Program Integrity is also alleging an overpayment due to "no signature logs". The disposition of the claims on the "no signature log" basis are listed on Exhibit B.

** Program Integrity also received summary adjudication regarding claim 54504 or on "no signature log" grounds. Consequently, dollar value of that claim should only be counted one time.

APPENDIX A

APPENDIX B

Claims Conceded by Geneva Woods – 4 Claims			
Anchorage			
Claim No	**Issue**	**Overpayment**	**Disposition**
3381	Invalid Prescription	$ 1.99	GW Conceded
281385	Invalid Prescription	$ 28.54	GW Conceded
77006	Ineligible Dispensing Fee	$ 9.83	GW Conceded
386507	Unauthorized Refill	$ 123.41	GW Conceded

Claims Resolved in their Entirety in Program Integrity's Favor in SA – 15 Claims			
Anchorage			
Claim No.	**Audit Error Code**	**Overpayment**	**Summary Adjudication Granted**
7983	No Signature Log	$ 5.00	Program Integrity
110247	No Signature Log	$ 10.42	Program Integrity
160136	No Signature Log	$ 11.45	Program Integrity
277466	No Signature Log	$ 26.77	Program Integrity
55349	Missing Record Specific Services	$ 9.68	Program Integrity
192376	Invalid Prescription	$ 12.55	Program Integrity
252660	Invalid Prescription	$ 19.57	Program Integrity
275996	Invalid Prescription	$ 26.38	Program Integrity
Wasilla			
365	No Signature Log	$ 0.41	Program Integrity
51434	No Signature Log	$ 13.43	Program Integrity
*54504	No Signature Log/ Missing Record Specific Services	$ 14.42	Program Integrity
54797	No Signature Log	$ 14.51	Program Integrity
82900	No Signature Log	$ 39.42	Program Integrity
102137	No Signature Log	$ 82.30	Program Integrity
38047	Invalid Prescription	$ 11.29	Program Integrity

Claims Resolved in Program Integrity's Favor in Decision – 19 Claims			
Anchorage			
Claim No	**Issue**	**Overpayment**	**Disposition**
91255	Invalid Prescription	$ 10.00	Program Integrity
126942	Invalid Prescription	$ 10.68	Program Integrity
244983	Invalid Prescription	$ 17.94	Program Integrity
372575	Invalid Prescription	$ 81.50	Program Integrity
9479	Missing Record Specific Services	$ 5.00	Program Integrity

325143	Missing Record Specific Services	$	42.94	Program Integrity
150028	Overbilled Quantity	$	0.70	Program Integrity
212329	Overbilled Quantity	$	1.43	Program Integrity
260249	Overbilled Quantity	$	6.96	Program Integrity
27288	Unauthorized Refill	$	5.69	Program Integrity
33739	Unauthorized Refill	$	9.53	Program Integrity
263237	Unauthorized Refill	$	22.26	Program Integrity
301528	Unauthorized Refill	$	36.40	Program Integrity
Wasilla				
28061	Missing Record Specific Services	$	10.51	Program Integrity
53835	Missing Record Specific Services	$	14.22	Program Integrity
88479	Missing Record Specific Services	$	45.38	Program Integrity
95230	Missing Record Specific Services	$	55.29	Program Integrity
118039	Overbilled Quantity	$	13,282.92	Program Integrity
90197	Unauthorized Refill	$	47.34	Program Integrity