

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE “Settlement Agreement” is entered into this 7th day of May, 2019 (“Effective Date”) by and between Pediatric Speech Associates and Devorah Waldman (hereinafter collectively referred to as “PSA), represented by David Steinmetz, Esq. of Steinmetz LLC, and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division (“MFD”). PSA and MFD are hereinafter collectively referred to as the "Parties" and each individually as a “Party.”

WHEREAS, MFD conducted an investigation and alleged that during the period of review between January 1, 2011 and January 1, 2016, PSA was reimbursed by the Division of Medical Assistance and Health Services (“DMAHS”) and/or its fiscal agent and/or the Managed Care Organizations (“MCO”) for claims for Current Procedural Terminology (“CPT”) codes 97532 and/or 97533 billed in conjunction with CPT code 92507, that could not be supported by documentation, in violation of N.J.S.A. 30:4D-12(d) and N.J.A.C. 10:49-9.8 (this scope and period is hereafter referred to as the “Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, PSA received an overpayment from the Medicaid program; and

WHEREAS, MFD issued a Notice of Suspension of Payments and suspended Medicaid payments to PSA in accordance with 42 CFR 455.23 beginning in October 2018 (the “Suspension of Payments”); and

WHEREAS, MFD issued a Notice of Claim and Certificate of Debt in this matter in December 2018; and

WHEREAS, PSA has disputed the Suspension of Payments, Notice of Claim and Certificate of Debt issued by MFD;

WHEREAS, pursuant to the Suspension of Payments, DMAHS and/or the MCOs have suspended funds otherwise payable to PSA (the “Suspended Funds”); and

WHEREAS, the Parties understand that the Suspended Funds cannot be determined until MFD has completed an accounting of such funds; and

WHEREAS, at the time of this Settlement Agreement, the Parties believe that the Suspended Funds are equal to approximately \$210,000; and

WHEREAS, PSA supplied MFD with facts and information that it maintained would reduce the overpayment amount; and

WHEREAS, MFD took into consideration the additional facts and information that PSA supplied; and

WHEREAS, the Parties desire to amicably resolve the dispute regarding the alleged overpayment and have reached a mutually acceptable resolution of the controversies that exist between them; and

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to settle their dispute on the following terms:

- (1) PSA agrees to pay the Medicaid program the total amount of Four Hundred One Thousand and Fifteen Dollars (\$401,015.00) (the “Total Payment Amount”) by May 15, 2019.
- (2) The Total Payment Amount shall be paid by PSA to MFD as follows:
 - a. PSA hereby consents to allow MFD to retain \$210,000 from the Suspended Funds and apply such amount toward the Total Payment Amount.

- b. If the Suspended Funds exceed \$210,000, any such excess will be returned to PSA. If the Suspended Funds are less than \$210,000, MFD shall retain the entire amount of the Suspended Funds, and PSA will be responsible to pay MFD for the shortage (the “Shortage Payment”). Any such Shortage Payment shall be made on or before July 15, 2019.
- c. PSA agrees to pay the remaining \$191,015 in one, lump-sum payment on or before May 15, 2019.

(3) The Parties understand that the Suspended Funds cannot be determined until MFD has completed an accounting of such funds. Within seven (7) days of execution of this Settlement Agreement, MFD shall notify DMAHS and each MCO to immediately take the necessary steps to terminate the Suspension of Payments. MFD shall make all reasonable efforts to provide to PSA an accounting of the Suspended Funds no later than sixty (60) days after the effective date of this Settlement Agreement.

(4) Nothing in this Settlement Agreement precludes PSA from disputing the amount of the Suspended Funds by any means permitted by law.

(5) Within seven (7) business days of receipt of the final payment from PSA, MFD shall file a Warrant to Discharge with the Clerk of the Superior Court of New Jersey indicating that the Certificate of Debt filed against PSA is fully satisfied and should be removed from the Court’s docketed list of judgments.

(6) Payment to MFD shall be made by certified check, bank check, or attorney trust check made payable to “Treasurer, State of New Jersey,” and shall be mailed or delivered as follows:

Attention: Processing Bureau
Treasurer, State of New Jersey

Division of Revenue
200 Woolverton Street, Building 20
Lockbox 656
Trenton, New Jersey 08646

PSA will include “ [REDACTED] ” in the memo line to ensure it is properly credited.

(7) If payment as provided for in this Settlement Agreement is more than ten (10) days late (an “Event of Default”), PSA will be in default of this Settlement Agreement and the remaining unpaid balance of the Settlement Agreement, plus interest, accruing from the date of Event of Default will immediately become due (the “Default Amount”). Upon an Event of Default, MFD shall send a Notice of Default and Notice of Debarment to PSA. Should PSA fail to cure the default within five (5) days of receipt of the Notice of Default and Notice of Debarment, the following shall occur: (a) the Default Amount will be immediately collected through any means available to MFD, as provided by law; and (b) PSA, and Devorah Waldman in her individual capacity, by virtue of entering into this settlement agreement, consents to a voluntary debarment from the Medicaid program for a period of three (3) years, effective as of the date of the Notice of Default and Notice of Debarment.

(8) PSA agrees to act in full compliance with all applicable state and federal rules and regulations, including but not limited to submitting only claims that accurately and completely reflect the services provided by PSA. To that end, PSA agrees that it will only submit claims for services provided for which it possesses sufficient documentation to support such claims and that it will implement policies to ensure that the underlying issues that caused or contributed to the Covered Conduct will be appropriately addressed and thereby not repeated.

(9) The Parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct, and is intended by each party to release the other Party and its representatives from liability arising out of the Covered Conduct, unless MFD is mandated to act by federal or State law; or mandated by order or judgment of a court or administrative agency (other than MFD).

(10) Nothing in this Settlement Agreement waives the rights of any other state or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil or criminal investigation or other action for alleged conduct concerning PSA or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation of prior or future years for the improper submission of any claims or conduct not specifically covered by this Settlement Agreement, and to take any action civilly or criminally for such conduct. Nothing in this Settlement Agreement waives the rights of PSA to assert any rights, remedies or defenses not expressly released in this Settlement Agreement, all of which are expressly reserved.

(11) The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties.

(12) Subject to the express terms of this Settlement Agreement, by the signatures set forth below, the authorization of which is hereby affirmed, PSA and MFD agree to the following Release: in consideration of the terms of this Settlement Agreement, including this release, each Party agrees to release the other Party and its employees, representatives, officers and directors from liability, obligations and damages arising out of the submission by, and payments to, PSA of any and all claims for reimbursement by Medicaid or the MCOs for the Covered Conduct, referenced above.

(13) Nothing herein shall constitute an admission, concession or finding of wrongdoing or liability by any Party. Neither this Settlement Agreement or its execution, nor the performance of any obligation arising under it, including payment of the Settlement Amount, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression relating on the merits of the dispute by any Party to this Settlement Agreement.

(14) Devorah Waldman, individually, and as the owner of PSA, represents that she freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion, that she has had an adequate opportunity to review the terms of this Settlement Agreement with counsel, if desired, and is satisfied with the advice provided by his counsel, if applicable, and that she fully understands all of the terms of this Settlement Agreement.

(15) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(16) This Settlement Agreement may be executed in counterparts.

(17) This Settlement Agreement is effective upon the Effective Date reflected on the first page of the Settlement Agreement.

(18) This Settlement Agreement sets forth the entire agreement between and among the Parties hereto with respect to the claims described herein and supersedes any other written or oral understanding. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

PEDIATRIC SPEECH ASSOCIATES

DATE: 5/2/19

By: Devorah Waldman
Devorah Waldman, as owner of
Pediatric Speech Associates

DATE: 5/2/19

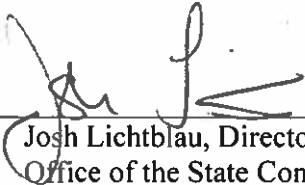
By: Devorah Waldman
Devorah Waldman,
individually

DATE:


By: David Steinmetz
David Steinmetz, Esq.
Counsel to Pediatric Speech
Associates and Devorah
Waldman

PHILIP JAMES DEGNAN
STATE COMPTROLLER


DATE: 5/7/19

By: 
Josh Lichtblau, Director
Office of the State Comptroller
Medicaid Fraud Division


DATE: 5/7/19

By: 
Don Catinello
Supervising Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division

DATE: 5/7/19

By: 
Nina Galletto, Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division

DATE: 5/7/19

By: 
William Holmes, Regulatory Officer
Office of the State Comptroller
Medicaid Fraud Division