

State of New Ilersev

DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES PO Box 712 Trenton, NJ 08625-0712

PHILIP D. MURPHY Governor

SHEILA Y. OLIVER Lt. Governor CAROLE JOHNSON Commissioner

JENNIFER LANGER JACOBS Assistant Commissioner

STATE OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NEW UNIVERSITY PHARMACY AND TOCHUKWU,	
PETITIONERS,	ADMINISTRATIVE ACTION
٧.	FINAL AGENCY DECISION
MEDICAID FRAUD DIVISION	OAL DKT. NO. HMA 02878-18
RESPONDENTS.	

As Assistant Commissioner of the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is September 30, 2019 in accordance with <u>N.J.S.A.</u> 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on August 14, 2019.

For the reasons that follow, I ADOPT the Initial Decision in its entirety and incorporate the same herein by reference. Summary disposition may be entered where there is no genuine issue as to any material fact and where the moving party is entitled to

prevail as a matter of law. <u>See</u> Initial Decision at page 2, citing <u>N.J.A.C.</u> 1:1-12.5 and <u>Brill</u> <u>v. Guardian Life Ins. Co. of Am.</u>, 142 <u>N.J.</u> 520, 523 (1995). Based upon my review of the record, I agree with the Administrative Law Judge that there are no genuine issues of material fact that would require a hearing in this matter.

From June 1, 2010 through June 1, 2013, the Medicaid Fraud Division (MFD) conducted an inventory analysis of the New University Pharmacy (Pharmacy). Petitioner is the sole owner of the Pharmacy. MFD is seeking reimbursement for overpayments totaling \$1,057,208.85 and accrued interest stemming from the Pharmacy's failure to produce invoices from pharmaceutical wholesalers to support 875 claims. N.J.S.A. 30:4D-12(d); N.J.S.A. 30:4D-17(e); N.J.A.C. 10:49-9.8 and N.J.A.C. 13:39-7.6. Petitioner does not dispute MFD's contentions regarding the shortages noted in the inventory nor does he claim that the 875 claims are supported by invoices. Rather, his sole argument is that the corporation should be liable for the Medicaid overpayment and he, personally, is not liable for any portion thereof as MFD has not "pierced the corporate veil".

The Initial Decision finds Petitioner personally liable for the \$1,057,208.85 Medicaid overpayment. The Department of Human Services Commissioner, acting through the Division of Medical Assistance and Health Services, is authorized to:

To take all necessary action to recover any and all payments incorrectly made to ...a provider from such provider...or from any other person...responsible for or receiving the benefit or possession of the incorrect payments or their estates...

<u>N.J.S.A.</u> 30:4D-7.h. In <u>Sendar v. State, Dept. of Human Services, Div. of Medical</u> <u>Assistance and Health Services,</u> 230 N.J. Super. 537 (App. Div. 1989), the court found that this provision "expands the common law bases for proceeding against stockholders and permits recovery of payments made to a provider from one who has received the benefits or possession of the payments." <u>Id.</u> at 552. Moreover, while Petitioner is the sole owner of the Pharmacy neither the statute nor <u>Sendar v. NJ. Dept. of Human Services</u> requires that Petitioner receive a benefit in order to be found personally liable for the overpayment. It may also be that either or both of the stockholders was separately liable for the alleged overpayments as a person "responsible for" the payments under <u>N.J.S.A. 30:4D-7</u>h. Either or both may have certified that the payments were correct or that the accounting methods were proper. If this is so, they may be liable, not as stockholders after a piercing of the corporate veil (applying the supplemental statutory standard), but vicariously, for the action of the corporation. The statute recognizes such an additional basis by the addition of the words "responsible for."

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Petitioner filled out, signed and submitted the Medicaid Provider Enrollment Application on behalf of the corporate entity doing business as the Pharmacy in order to become a Medicaid Provider. He identified himself as the President and sole owner of the Pharmacy. In doing so, he held himself out as the official responsible for certifying the accuracy of the claims submitted to Medicaid. Accordingly, he is the person responsible for the conduct of the corporation, and MFD need not pierce the corporate veil to find personal liability.

THEREFORE, it is on this

ORDERED:

That the Initial Decision is hereby ADOPTED.

day of SEPTEMBER, 2019

Jennifer LangerJacobs, Assistant Commissioner Division of Medical Assistance and Health Services