



prevail as a matter of law. See Initial Decision at page 2, citing N.J.A.C. 1:1-12.5 and Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 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...

N.J.S.A. 30:4D-7.h. In Sendar v. State, Dept. of Human Services, Div. of Medical Assistance and Health Services, 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." Id. at 552 . Moreover, while Petitioner is the sole owner of the Pharmacy neither the statute nor Sendar v. NJ. Dept. of Human Services requires that Petitioner receive a benefit in order to be found personally liable for the overpayment.

As the court pointed out:

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 N.J.S.A. 30:4D-7h. 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."

Id.

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 <sup>13<sup>th</sup></sup> day of SEPTEMBER, 2019

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner  
Division of Medical Assistance  
and Health Services