



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO
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Director

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

MERCER COUNTY CHILDREN'S
DAYCARE, LLC.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES, OFFICE OF
THE STATE COMPTROLLER

MEDICAID FRAUD DIVISION,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 05779-12

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the OAL case file and the Initial Decision. Both Petitioner and Respondent filed Exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision is April 6, 2017 in

accordance with an Order of Extension. The Initial Decision was received on January 5, 2017.

This matter arises from the Medicaid Fraud Division's (MFD) recovery of Medicaid overpayments following an audit of Mercer County Children's Daycare (Petitioner or Mercer). As noted by the ALJ, the issue is whether Petitioner knowingly provided care and billed Medicaid for sixteen children whose medical conditions did not meet the clinical eligibility necessary to qualify for pediatric medical day care (PMDC) services pursuant to N.J.A.C. 8:86-1.1a and N.J.A.C. 8:86-1.4(b)6i. Based upon my review of the record, I hereby ADOPT the findings, conclusions and recommended decision of the Administrative Law Judge and incorporate the same herein by reference, but MODIFY the decision to include one additional individual.

MFD relies on N.J.A.C. 8:86 to support the recovery sought for sixteen individuals for the time period of 2005 to 2009. N.J.A.C. 8:86 governed the eligibility requirements for the PMDC program from 2001 to 2010 before it was replaced by N.J.A.C. 8:87. In her Initial Decision, the ALJ concluded that because the eligibility criteria set forth in N.J.A.C. 8:86 was not sufficiently definite to prevent the admission of children to PMDC facilities based solely on an asthma diagnosis, MFD could not recover for those individuals who had received treatment for asthma, even if it occurred only intermittently. However, the ALJ determined that five individuals did not satisfy the eligibility criteria of N.J.A.C. 8:86 because they did not receive ongoing treatment for the entirety of their time at Mercer. Of these five individuals, two received no treatment for asthma and three ceased to receive treatments for two or more years. Accordingly, MFD could recover overpayment and penalty for those individuals.

In Exceptions, MFD notes that the standard applied by the ALJ also encompasses J.L. I agree. J.L., a female, attended Mercer from February 2005 until August 2009.¹ She received three nebulizer treatments in 2005, three in 2006, none in 2007, none in 2008 and none in 2009. As no evidence was presented that J.L. was receiving ongoing or even intermittent treatment for three years, she should also be included in the awarded recovery for the period following one year after her last treatment for asthma.

I am unpersuaded by Mercer's argument that MFD should not be able to recover for J.L. or the other five individuals because N.J.A.C. 8:86 permitted admission "solely on an asthma diagnosis, regardless of the condition and need for ongoing skilled nursing intervention." The ALJ correctly noted that effective February 1, 2006, N.J.A.C. 8:86 included the requirement that candidates for PMDC be "medically unstable requiring ongoing treatment." N.J.A.C. 8:86-1.15(i) and (j). All of the individuals at issue were admitted on a diagnosis of asthma. A.A. and Z.C., never received treatment for asthma during their time at Mercer and T.C., K.P., S.P., and J.L., ceased to be treated for asthma for two or three years. I agree with the ALJ that treatment that does not exist or had ceased to exist for more than a year's time cannot be ongoing or even intermittent.

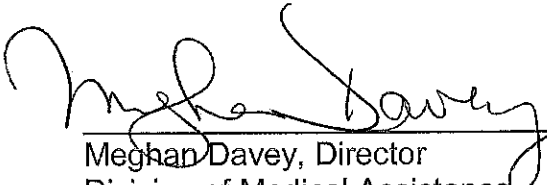
THEREFORE, it is on this 10th day of March 2017,

ORDERED:

¹ The audit reflects two individuals named J.L. The J.L. above is referenced at #10 on page 8 of the Initial Decision.

That the Initial Decision affirming the denial of eligibility for pediatric medical daycare for A.A., Z.C., T.C., K.P., and S.P. is hereby ADOPTED; and

That the Initial Decision is MODIFIED to include J.L. in the denial of eligibility for pediatric medical daycare for which MFD can recover overpayment and penalty.


Meghan Davey, Director
Division of Medical Assistance
and Health Services
