

THE UNITED STATES SUPREME COURT

Appeal From The Division Of Appeals And Hearings

South Carolina Department Of Health And Human Services

Case No. 12-PA-024

RECEIVED
AUG 16 2016
SC Court of Appeals

Laurens Pediatric Clinic, Appellant

vs.

South Carolina Department Of Health and Human Services, Respondent

MOTION FOR REHEARING

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ATTORNEY FOR RESPONDENT

MOTION FOR REHEARING

THE UNITED STATES SUPREME COURT

Laurens Pediatric Clinic, Appellant/Petitioner

vs.

South Carolina Department Of Health And Human Services

Case 12-PA-024 Division Of Appeals and Hearings
Docket Number 15-ALJ-08-0109-AP South Carolina Administrative Law Court

August 10, 2016

Dear Justices of the US Supreme Court:

I am a solo practitioner, American Board Of Pediatrics certified pediatrician in rural Laurens, SC for over 20 years. I only see Medicaid patients and uninsured. I have never contracted with private insurance. On November 2011, an audit by SCDHHS was held at my office. In 8 hours, 29 of 40 records requested were scanned and audited, for the period of September 1, 2009 through August 31, 2011. I appealed prose the decision of the SCDHHS informal hearing held on March 2012 to the SC Office Of Hearings and Appeals. The disallowance is for \$11,199.49, which is 27 percent of the amount paid, an to which I appealed.

A hearing was held October 31, 2012. On that hearing the instructions sent by Chief Officer Mr. Robert French (see Appendix), clearly stated that copy of all matters to be discussed in the hearing must be presented to himself and the other party. The hearing was taped and under oath. I presented thousands of pages to be discussed to Mr. French and SCDHHS counsel before beginning the hearing. I received nothing from SCDHHS Counsel. During the hearing they started to discussed documents (HcPro forms- called by counsel for SCDHHS scoring sheets)/as well as patient cases to be introduced as evidence. I warned the court I should have a copy, but I was told I will get it after the

case is presented. (see page R0088 lines 9 through 15 of the transcript). Later, on a break of the court, I received copies of the 7 office visits with patients names white out and stapled to each an HcPro form with patient name and date of service left blank. SCDHHS was asked to forward copies to Mr. French and myself of all the scoring sheets deemed basis for the audit (see transcript page R0187 lines 16 and 17). I only received later in November 2012, from Mr. French HcPro forms for commentary in original form (not 8 1/2"x11"), (now with names and date of service, without date of completion and signature of person completing them, not reflective of changes made from the first detailed claim report on February 2012 to the one after the informal hearing on May 2012). SCDHHS counsel violated his own testimony under oath that he will forward copies to me. These are scoring sheets, deemed basis for the audit which I had never seen, not even in the informal hearing, and to which I objected (on Appendix-see transcript pages R0097(lines 1-12), page R0100 (lines 1-17), page R0101 (lines 1-7and 17-31), page R0102 (lines 1-17). Mr. French, presiding officer, violated his own court rules and allowed them to be presented and discussed both these forms and cases attached to it without copies to me (Appellant) ahead of the hearing, and not in the proper paper size of 8 1/2" x 11".

Perhaps, being a female physician of Hispanic ethnicity going prose against a governmental agency, influenced the court to violate its own rules against me.

Another instance in 2014, occurred when Mr. French requested records from SCDHHS of all office visits audited. SCDHHS sent them by e-mail to Mr. French, who wanted me to review them. I reminded him of the court rules, and he accepted my objection as SCDHHS admitted they could not guarantee loss of records when copying to paper 8 1/2 " to 11". See copies on Appendix.

Mr. French ruled against me on January 25, 2015 ahead of an ACA payment for the period of January through September 2014, due to me by SCDHHS, paid on January 30, 2015. I appealed to SC Administrative Law Court which ruled also in favor of government SCDHHS. I appealed further to

SC Court Of Appeals but the case was dismissed on technicality, as I was a few days late on proof of service to the SC Administrative Law Court. The SC Supreme Court ruled against the writ of certiorari to override the technicality on June 23,2016. A Remittitur from the SC Court Of Appeals was received on July 06, 2016. The findings today should be considered by this Honorable Court as they denied me due process on the original Hearing held October 31, 2012.

In conclusion the rulings of the courts against me have been based on inadmissible evidence, as SCDHHS violated court rules to properly and timely present copies to the appellant. The Office Of Hearings And Appeals illegally allowed discussions and evidence to be presented by respondent SCDHHS without copies to appellant/petitioner.

I hereby request of the Most Honorable Justices of the United States Supreme Court to accept this motion for a rehearing at the SCDHHS Division Of Hearings and Appeals.

Respectfully submitted this 10th day of the month August of the year 2016, with Proof Of Service to SCDHHS Counsel/ Mr. Bruce Carter, Mr. Evan Gessner, SC Office Of Hearings And Appeals- Mr Robert French, SC Administrative Law Court- Clerk Of Court, SC Court Of Appeals- Clerk Of Court, and SC Supreme Court- Clerk Of Court.

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cc. SCDHHS- Mr. Evan Gessner
Division Of Hearings and Appeals- Mr Robert French Case No. 12-PA-024
SC Administrative Law Court- Clerk Of Court Case No. 2015ALJ080109AP
SC Court Of Appeals- Clerk Of Court Case No. 2015-002088
SC Supreme Court- Clerk Of Court Case No.2016-000328

**APPENDIX
MOTION FOR REHEARING**

TO THE UNITED STATES SUPREME COURT

Table Of Contents:

Letter dated July 17, 2012 from Mr French Appeals Case #12-PA-024 with notice of hearing and rules to follow for the proceedings.....pp. 02-07

Record On Appeal, Volume 1-pertinent portions of transcript of the Hearing held October 31, 2012
 French is Mr. Robert French presiding
 Carter is Mr. Bruce Carter – counsel for SCDHHS
 Casey is Cheryl Casey – auditor
 Nazario- is Nilsa I. Nazario, MD, FAAP – appellant
 From the record – transcript pp. R0087- hearing begins, R0088 (lines 9-17);
 R0097(lines 1-12) ; R0100(lines 1-17) ; R0101 (lines 1-7, 17-31); R0102 (lines 1-17); R0187 (lines 16-22)....., pp.08-15

E-mails from Mr. French pertaining records request from SCDHHS, sustained objection as format not compliant with rules of the court.....pp.16-17



July 17, 2012

CERTIFIED & REGULAR FIRST CLASS MAIL

Nilsa I. Nazario, M.D.
Laurens Pediatric Clinic
P.O. Box 1367
Laurens, SC 29360

RE: Fair Hearing of Laurens Pediatric Clinic v. SCDHHS
Appeals' Case # 12-PA-024 (Program Assessment)

- NOTICE OF HEARING -

Dear Dr. Nazario:

We received your request for a fair hearing on Thursday, June 14, 2012 and have scheduled the hearing for **Wednesday, October 31, 2012 at 12:30 PM, in the Ninth Floor Conference Room of the Jefferson Square Building, 1801 Main Street (corner of Main and Laurel Streets), Columbia, South Carolina.** The hearing will be about the disallowance of Medicaid payments in the amount of 11,199.49 for services rendered certain Medicaid recipients.

The rules for the hearing are enclosed with this letter. The appeal hearing is a formal process of review and adjudication of Department decisions. You may call witnesses to testify, present documents, and cross-examine the other party. You may represent the provider or request representation by someone else, including an attorney. You, or your representative, should be prepared to say why the decision you are appealing is wrong.

If either, or both, parties intend to offer documents as evidence for entry into the record, then it will be necessary for that party(ies) to make copies of the documents so that the other party and the Hearing Officer may each have a copy of the document(s). Further, should either party as a part of their testimony intend to refer to a particular paragraph or section of a policy or procedure manual, directive, memorandum, etc., then it will be necessary for the party(ies) to make copies in duplicate of these referenced sections. Also, should either party intend to utilize charts, graphs, visual aids, etc., as a part of their presentation, then it will be necessary for that party to have these items photocopied on 8 1/2 x 11 inch paper so that they may be easily integrated into the case record.

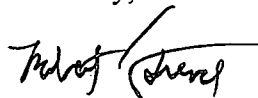
If you cannot meet on the date above or have questions, and you live in the Columbia area, you may contact me at (803) 898-2600; otherwise, if you live outside the Columbia area, you may contact me toll-free at 1-800-763-9087.

Nilsa I. Nazario, M.D.

July 17, 2012

Page Two

Sincerely,



Robert French, Chief Hearing Officer
Division of Appeals and Hearings

RF/sbs

Enclosure

cc: Bruce Carter, Esquire, Assistant General Counsel, SCDHHS
Nancy Pittman, Division of Program Integrity, SCDHHS
Kathleen Snider, Bureau Chief, Compliance & Performance Review, SCDHHS
B J Church, Director Program Integrity, SCDHHS

HEARING PROCESS & PROCEDURES

South Carolina Department of Health and Human Services (SCDHHS) hearings are in person, please be on time and make sure your witnesses are available on the date, time and location of the hearing. Make sure you have all the documents received from the agency and at least two (2) copies of exhibits that you want the Hearing Officer to consider in making the decision.

Nature of an administrative hearing: An administrative hearing is similar to a court trial but less formal. Like a trial, it is a contested proceeding and the purpose is to gather facts through testimony, documents and other evidence. The Petitioner is the person challenging an agency decision. The Respondent is the agency.

Speaking with the Hearing Officer prior to the hearing: No party is allowed to speak to the Hearing Officer about the case without all the other parties being involved. You may speak with the Hearing Officer about procedural and scheduling matters, but no one in the Hearing Officer's office can give you legal advice and you should never attempt to discuss the facts of your case with any Hearing Officer or employee of the SCDHHS Division of Appeals and Hearings. Your opportunity to explain the facts and your position is at the hearing.

Things you will need for the hearing:

1. All the exhibits that you have that you want the Hearing Officer to consider. Remember to bring at least two (2) copies of your exhibits-one for the Hearing Officer and one for the opposing party.
2. A written list of points you want to make.
3. A written list of any questions that you want to ask of all the witnesses, both your own and the opposing party's.
4. Pen and paper so that you can take notes during the hearing.

Hearing Procedure: The hearing procedure is as follows:

Conduct: Proper conduct to witnesses, agency representatives and the Hearing Officer is required. The hearing is recorded so you must speak clearly and concisely- focus on the key issues in the case. Do not interrupt witness testimony or talk with another witness during the hearing. If you need to discuss something with any of the witnesses, inform the Hearing Officer and he will go off the record and stop the recording.

Hearing preamble: The Hearing Officer will identify the parties, explain procedure and explain the rights of the parties.

Identification of issue: The Hearing Officer will identify the issue or issues to be decided in the case.

Identification of exhibits: The exhibits will be admitted into the hearing record, unless either party objects. To be "admitted" means that the Hearing Officer will consider them in reaching a decision in the case.

Oath: Testimony is taken under oath. If an individual's religious beliefs prevent him/her from swearing an oath, he/she will be asked to affirm that the information that they will give at the hearing is the truth.

Order of testimony and evidence: The Hearing Officer, pursuant to South Carolina Code of Regulations 126-154 will determine the order in which the parties present their arguments and any evidence. In most cases, the Respondent (SCDHHS) presents their case first. Then the Petitioner and the Hearing Officer have the option to cross-examine each of the Respondent's witnesses. The Respondent then has the option of presenting any follow-up testimony and the Petitioner has the option of recross examination of the Respondent's witnesses. Next, the Petitioner presents his/her case and the Respondent and Hearing Officer has the option to cross-examine each of the Petitioner's witnesses. The Petitioner then has the option to present any follow-up testimony and the Respondent has the option of recross examination of the Petitioner's witnesses. After all testimony is given, the Respondent has the option of presenting a closing statement in which the Respondent will point out the evidence (testimony and exhibits) and the law, which supports the Respondent's position. Then the Petitioner has the option of presenting a closing statement in which the Petitioner will point out the evidence (testimony and exhibits) and the law, which supports the Petitioner's position.

Burden of presenting evidence: In general, whoever is relying on a particular fact has the burden of proving it to the Hearing Officer. Therefore, you should be ready to present evidence (testimony and exhibits) supporting your position.

Keeping the record open: As the hearing progresses, one party may realize that the Hearing Officer does not have all the available information (such as medical reports) to make an accurate decision. If so, the party may ask the Hearing Officer to hold the record open, that is, to permit the party to submit more documents after the hearing ends. The Hearing Officer may or may not grant the request. However, it is each party's responsibility to ensure that they bring all exhibits with them to the hearing that they wish to present.

The decision: The Hearing Officer will not tell you the decision on the day of the hearing. After the hearing has ended and the record closes (that is, no more evidence will be considered), the Hearing Officer will review all the evidence and testimony. Each party will receive a lengthy written decision in the mail.

CHAPTER 126.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
(Statutory Authority: 1976 Code Section 44-6-90)

ARTICLE 1.

ADMINISTRATION

SUBARTICLE 3.

APPEALS AND HEARINGS

126-150. Definitions.

- A. Agency-The Department of Health and Human Services and its employees.
- B. Appeal-The formal process of review and adjudication of Agency determinations, which shall be afforded to any person possessing a right to appeal pursuant to statutory, regulatory and/or contractual law; Provided, that to the extent that an appellant's appellate rights are in any way limited by contract with the Agency or assigned to the Agency, said contractual provision shall control.
- C. Hearing Officer-Any Agency employee appointed by the Director to make Decisions either affirming or reversing Agency program determinations by setting forth findings of fact and conclusions of law in appeals arising under this regulation.
- D. Person-An individual, partnership, corporation, association, governmental subdivision, or public or private agency or organization.
- E. Provider-A person who provides services to individuals under programs administered by the Agency.

126-152. Appeal Procedure.

- A. An appeal shall be initiated by the filing of a notice of appeal within thirty (30) days of written notice of the Agency action or decision which forms the basis of the appeal. The failure to file the requisite notice of appeal within the thirty (30) day period specified above shall render the Agency action or decision final; provided, that should the written notice specify some period to appeal other than thirty (30) days, that period shall apply; provided, that the requirement that written notice be given by the Agency shall not be applicable to situations where applicants for Medicaid benefits acquire the right to appeal when the Agency fails to act on the application within the time period specified by federal regulation.
- B. The notice of appeal shall be in writing and shall be directed to Appeals and Hearings, Department of Health and Human Services, Post Office Box 8206, Columbia, South Carolina 29202-8206. In appeals by providers, the notice of appeal shall state with specificity the adjustment(s) or disallowance(s) in question, the nature of the Issue(s) in contest, the jurisdictional basis of the appeal and the legal authority upon which the appellant relies.
- C. If a notice of appeal does not satisfy the requirements of paragraph (B) above, the Hearing Officer, upon his own motion or by motion by an adverse party, may require a more definite and certain statement.

126-154. Hearing Officer.

A Hearing Officer has the authority, among other things to: direct all procedures; issue interlocutory orders; schedule hearings and conferences; preside at formal proceedings; rule on procedural and evidentiary issues; require the submission of briefs and/or proposed findings of fact and conclusions of law; call witnesses and cross-examine any witnesses; recess, continue, and conclude any proceedings; dismiss any appeal for failure to comply with requirements under this Subarticle.

126-156. Prehearing Conferences.

The Hearing Officer, within his discretion, may direct the parties in any appeal to meet prior to a formal hearing for the purpose of narrowing the issues and exploring the possibilities of settlement of matters in contest.

126-158. Hearing Procedures.

A. All parties to an appeal shall have the right to be represented by counsel, call witnesses, submit documentary evidence, cross-examine the witnesses of an adverse party, and make opening and closing statements.

B. Representation in Proceedings. A business entity, an agency, or an organization may elect to be represented by a non-attorney in an administrative hearing with the approval of the presiding hearing officer; non-lawyer persons including Certified Public Accountants, an officer of a corporation, or an owner of an interest in the business entity must present proof of unanimous consent of the owners or officers of the business entity before being allowed to proceed as representatives. Attorneys licensed in other jurisdictions must obtain a Limited Certificate of Admission, or such other leave as required by the South Carolina Supreme Court, before being allowed to proceed as representatives. This regulation in no way limits a person's right to self-representation, or to be represented by an attorney, or to be represented by a nonattorney of his or her own choosing, when such non-attorney representation is allowed by law.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Appeal from the Division of Appeals and Hearings
South Carolina Department of Health and Human Services

Robert French, Hearing Officer

Docket Number: 15-ALJ-08-0109-AP

Laurens Pediatric Clinic,

Appellant,

v.

South Carolina Department of Health
and Human Services,

Respondent.

RECORD ON APPEAL

VOLUME 1

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ATTORNEY FOR RESPONDENT

1 FRENCH: We are on the record. This is an administrative appeal brought by Nilsa
2 Nazario, M.D. This hearing concerns the South Carolina Department of
3 Health and Human Services, Division of Appeals and Hearings, Case
4 Number 12-PA-024. The present date is October 31, 2012. My name is
5 Robert French and I'll be the presiding officer in this matter. I'll conduct
6 this hearing in accordance with the South Carolina Administrative
7 Procedures Act and the South Carolina Department of Health and Human
8 Services Regulations 126-150 through 126-158. Those are the regulations
9 that tell me how to handle an appeal and how to conduct a hearing. I won't
10 make a decision today but when I make my decision both parties will
11 receive that decision in writing. During the hearing, each party has the
12 following rights. The right to ask questions, the right to call witnesses and
13 present documents, the right to cross-examine witnesses and examine
14 documents of the other party, and the right to review testimony of the other
15 party. The Petitioner is Laurens Pediatric Clinic who is being represented
16 by Dr. Nilsa Nazario. Also with Dr. Nazario is Gloria Holiday and I
17 understand that Ms. Holiday isn't going to be giving testimony.
18 NAZARIO: Correct.
19 FRENCH: Okay. All right, the Respondent is the South Carolina Department of Health
20 and Human Services who is being represented by Mr. Bruce Carter who is
21 an Attorney in the Office of General Counsel. Also giving testimony is
22 going to be Ms. Cheryl Casey who is a Nurse Medical Reviewer, okay, in
23 Program Integrity. Also giving testimony possibly is Ms. Nancy Pittman
24 who is a Supervisor in the Office of Program Integrity at the Agency, South
25 Carolina Department of Health and Human Services. And we've got a
26 number of observers. Ms. Karen Fanning who is a Nurse Medical Reviewer
27 at the Agency, Ms. Tresa Martin is also in Medical Review at the
28 Department of Health and Human Services, and Ms. Audrey Lutts, and I
29 assume that Ms. Lutts, Ms. Fanning, and Ms. Martin are also in Program
30 Integrity. Is that's correct?
31 VOICE: Yes.

1 FRENCH: Okay. Also as observers we have Mr. Luke Hughes who is an Attorney and
2 he one of the newest contracted hearing officers that will be working out of
3 the Division of Appeals and Hearings. Also, Mr. Bryan Jeffries who is also
4 an Attorney, also one of the newest contracted hearing officers out of the
5 Division of Appeals and Hearings. So that is everybody that we've got here
6 at the hearing today. The...

7 NAZARIO: Can I ask a question?

8 FRENCH: Yes ma'am?

9 NAZARIO: I have a question sir.

10 FRENCH: Okay.

11 NAZARIO: These are the copies for you and for the other party as requested of what
12 I'm going to present.

13 FRENCH: Okay.

14 NAZARIO: So I haven't received any copies of what they're going to present.

15 FRENCH: Okay. I'm sure that you're going to get that as soon as Mr. Carter starts
16 presenting his case.

17 NAZARIO: Thank you.

18 FRENCH: Okay. All right. Now we've all got to agree on the issue, okay, so the issue
19 as far as I can see it and either side, please correct me if I'm wrong, is
20 whether the decision of the Respondent, the South Carolina Department of
21 Health and Human Services to recoup \$11,199.49 from the Petitioner,
22 Laurens Pediatric Clinic, due to improperly filed claims on Medicaid
23 recipients during the review period of September 1, 2009 through August
24 31, 2011 is proper. Dr. Nazario, is that how you understand the issue?

25 NAZARIO: I understand that the claim I didn't—that I overbilled and I, but I...

26 FRENCH: But is that the issue as you understand it? I know you don't agree with what
27 the Agency did...

28 NAZARIO: Right, that's why I'm appealing.

29 FRENCH: But do you—okay. But do you agree that that's the issue?

30 NAZARIO: That's the issue.

31 FRENCH: Okay. And how about you, Mr. Carter?

1 CASEY: When I get the record, I look at the record in comparison with the score
2 sheet and I look at, I look for certain, certain things within a documentation
3 such as the chief complaint, the history of the present illness, the review of
4 systems, and the past family and medical history.

5 CARTER: Okay.

6 CASEY: And, and social history and then I look at the physical exam and then I look
7 at the medical decision making, the diagnosis and the plan of care for
8 treatment.

9 CARTER: Okay. The scoring sheet that you use, I'm sure you still have it. I'm going
10 to refer to it so Dr. Nazario if you're familiar with it, fine but—yes, that's
11 fine. Let me borrow it for just one second. There's two pages, one is from
12 our Provider Manual, correct?

13 CASEY: Right, and that is for—that is what I used to score if it was, it was stated that
14 it was a checkup what I did was I tried to go by Medicaid's policy and for
15 their early, its EPSDT Policy requirements at that visit and I tried to see how
16 many of the requirements that were met in the documentation.

17 CARTER: Okay.

18 CASEY: And if they were not met then I scored for evaluated, then I scored for an
19 office visit.

20 CARTER: Okay, so you looked—so, so this particular exhibit is related to the
21 EPSDT...

22 CASEY: Right, for them...

23 CARTER: ...screening for them to...

24 CASEY: ...to either, it's like a preventative or a checkup visit.

25 CARTER: Right, and I just totally forgot what the acronym stands for, Early...

26 CASEY: Early...

27 VOICE: Early...

28 CARTER: It's—Early...

29 VOICE: Early...

30 FRENCH: No ma'am, no ma'am. Not a tag team.

1 NAZARIO: Well, the objection I would have is that as providers we're not furnished
2 with this, you know, on a daily basis, you know or on a routine basis.

3 FRENCH: You're not familiar with this?

4 NAZARIO: Never seen it. You know, it must be in the manual but who reads a manual
5 that is so big, you know, all of the pages, I cannot read all the pages so we
6 concentrate on what are the CPT codes and what is it that we need to be
7 (unclear), you know, so.

8 FRENCH: Okay. Well...

9 NAZARIO: So I mean...

10 FRENCH: ...is this...

11 NAZARIO: ...so the CPT code, my progress notes do meet CPT code requirements.

12 FRENCH: Okay, hold on just a second—this document from Medicaid Integrity...
13 CARTER: Institute.

14 FRENCH: ...that's not in the Physician...

15 CARTER: It's not in the Provider—in the Physician's Manual. It's a tool that the
16 Agency uses simply to keep track of the findings that we make when we're
17 reviewing the documentation.

18 FRENCH: Okay. Medicaid Integrity Institute.

19 NAZARIO: So therefore, that's my objection because if we are, you know, if they're
20 gonna, you know, if we were to be aware that this is what they're going to
21 be requiring, you know, in this detail and everything so then we could adjust
22 our progress notes format, you know, to meet more criteria but I can assure
23 you from CPT code itself, I meet criteria.

24 FRENCH: Okay, I understand your objection. Mr. Carter?

25 CARTER: What I would say, Your Honor, is that Ms. Casey testified that, that this
26 document reflects both our policy and the 1995 Medicare Guidelines, that
27 it is simply a, it acts no more than as a piece of paper for us to remind us of
28 what we are reviewing and check off places where we have rece—where
29 we can identify that that particular standard has been met, that these are
30 from, these are essentially the CPT standards.

1 NAZARIO: But I have another objection. My objection is that we went to an informal
2 hearing prior to this appeal; appellant court and from that informal meeting
3 I brought all my documents as well and my records with two copies as well,
4 and this paper was never shown to me or these codes with me. And so I
5 object to these two papers because it's not something based on the data that
6 they accepted as properly coded which I have samples of. You can compare
7 all the rest of the notes and see that I meet criterias and my records...

8 FRENCH: Which criteria? The criteria here?

9 NAZARIO: For CPT's that I billed.

10 FRENCH: Okay, but, but not for this form here, right?

11 NAZARIO: This form, the criteria, well, then we have to discuss the criteria because the
12 criteria is clear that you have to meet two of three requirements.

13 FRENCH: Okay.

14 NAZARIO: One being the comprehensive...

15 FRENCH: What I'm asking about, I'm asking about this document, nothing else.
16 Okay.

17 NAZARIO: I have an, I have an objection because I have never seen it and it's not
18 reflected for what they have accepted as well, and it has never been exposed
19 to me before. And my notes is what we work with and my notes is what we
20 had been evaluated and when I went to the informal hearing, that's all that
21 we discussed was my notes.

22 FRENCH: All right.

23 NAZARIO: Not this. Not based on this or whatever.

24 FRENCH: Is there anything in the Physician's Provider Manual that, that would reflect
25 that this is being used by Program Integrity?

26 CARTER: That that particular piece of paper is being used, no.

27 FRENCH: Yes sir.

28 CARTER: The particular piece of paper simply, these are the 1995 guidelines and all
29 of the information that's contained in here is on that particular scoring sheet.
30 It reflects the CPT-4 guidelines from the CPT-4 manual. It reflects that our
31 policy manual says to the physician that you are to follow CPT-4 coding

1 guidelines and this is just simply a way for us to check off against the, the,
2 the guidelines that exist that as the reviewer's reviewing they see that it has
3 that history of the present illness is present and where they believe it falls
4 in this particular range. It's just a recordkeeping is what it is.
5 FRENCH: Okay. And Dr. Nazario, you say you're familiar with the CPT coding?
6 NAZARIO: Yes.
7 FRENCH: Okay. All right. Well, I'm going to overrule the objection and you can
8 certainly show me how your medical records meet the CPT coding
9 guidelines, okay?
10 NAZARIO: And I can give you a comparison of those they accepted.
11 FRENCH: Okay.
12 NAZARIO: As well.
13 FRENCH: All right. So I'm going to call this, this is one page, it's front and back and
14 that is from the Medicaid Integrity Institute and Mr. Carter you say this is
15 really a guideline for...
16 CARTER: Correct. It's really a scoring sheet for us...
17 FRENCH: Okay.
18 CARTER: ...simply to record what our findings are against the CPT-4 guidelines.
19 FRENCH: Okay. And the third page is a page from the...
20 CARTER: Provider Manual.
21 FRENCH: Physician's Provider Manual. Okay. I'm going to call all three of those
22 Respondent's Exhibit Number 1.
23 CARTER: Thank you, Your Honor.
24 FRENCH: Okay. All right.
25 CARTER: Mr. Hearing Officer, we're—I'd like to go through a couple of these
26 examples that were provided or allow Ms. Casey to go through them so that
27 we can—so she can walk through how her decisions were made and how
28 they were translated to the scoring sheets.
29 FRENCH: Okay.

1 NAZARIO: I have no further things to say.

2 FRENCH: Anything else that you want to tell me after hearing Mr. Carter's questions?

3 NAZARIO: Yeah, I think I've specified the purpose for my visit here and I appreciate
4 the court's time in reviewing this case and my appeal.

5 FRENCH: Okay. All right. So we've got, you're going to send me whatever you can
6 find that doesn't allow you to bill for an EPSDT visit.

7 NAZARIO: It was my understanding, yes.

8 FRENCH: Sure, sure, if you can find something.

9 NAZARIO: Yes.

10 FRENCH: And Mr. Carter, you were going to—were you going to try to find some of
11 the contractual information?

12 CARTER: We will give you, we will give you what we can find, what we can get from
13 other contracts area regarding the agreements that the Agency has with Dr.
14 Nazario.

15 FRENCH: Okay, and...

16 CARTER: And we will give you and Dr. Nazario the scoring sheet, the scoring sheets.

17 FRENCH: Yeah, all right. Okay, okay.

18 NAZARIO: Can I also get copies of those if they find those contracts and stuff, you
19 know.

20 CARTER: Yes.

21 FRENCH: Oh sure.

22 FRENCH: Yeah, he'll—Mr. Carter will send you that.

23 NAZARIO: Okay, that'd be great, thank you.

24 FRENCH: How long should I hold the record open for you to look for that, Dr. Nazario
25 and you, Mr. Carter?

26 NAZARIO: If you could give me till late December?

27 FRENCH: Late December?

28 NAZARIO: It's flu season. I have to give the flu shots. I'm so busy and I have to
29 (unclear) records, eighty hours. I have to put eighty hours of (unclear) for
30 records.

31 CARTER: We need a couple of weeks.



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RE: Records you provided/ objection

From: Robert French <FRENCHR@scdhhs.gov>
To: Bruce Carter <CARTERBD@scdhhs.gov>
Cc: Nilsa I Nazario <ninazario@aol.com>; Kathleen Snider <SNIDERK@scdhhs.gov>; Cheryl Casey <CASEY@scdhhs.gov>
Date: Thu, Feb 20, 2014 5:57 am

Mr. Carter,

Please see Dr. Nazario's email below. I am sustaining Dr. Nazario's objection to SCDHHS' submission of electronic records for the following reasons:

- (1) Dr. Nazario was required to bring a hard copy of the records she wished to have admitted; therefore, SCDHHS must present me with a hard copy of the records used in their proposed recoupment determination and they must send a copy of those records to Dr. Nazario.
 - (2) SCDHHS based their recoupment decision on the totality of Dr. Nazario's medical records and in order for me to make an informed and fair determination, I must have a copy of the records that SCDHHS used, it is improper for me to make a copy of the records that SCDHHS wishes me to use.
- Dr. Nazario states that she did not proffer a complete copy of her medical records that were used by SCDHHS in the proposed recoupment determination and it is clear based on my very preliminary look at the electronic records that those provided to me by SCDHHS are much more voluminous than those provided by Dr. Nazario.

Therefore, please provide me and Dr. Nazario with a complete hard copy record of those medical records that SCDHHS examined to determine that Dr. Nazario should repay \$11,199.49 to SCDHHS.

Sincerely,

Robert French

Robert French
Chief Hearing Officer
FRENCHR@scdhhs.gov
803.898.2714
cell: 803.413.3275
1801 Main Street
Columbia, SC - 29201
www.scdhhs.gov



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From: Nilsa I Nazario [mailto:ninazario@aol.com]
Sent: Wednesday, February 19, 2014 6:33 PM
To: Robert French
Subject: Re: Records you provided/ objection

In reconsideration perhaps I should review all records sent to which I have to respectfully object. I find that DHHS could have followed court instructions for the appellate hearing. The Court Officer and I should have received a paper copy of records DHHS wanted to introduce as evidence at the time of the hearing. It could misrepresent the truth and adversely affect my case now if any documentation submitted electronically by DHHS is missing. Be known to the court that all records of encounters in the detailed claim report, were properly copied from the originals, and I could meet with all parties with the originals.

It is overwhelming in flu season to be forced to further review these records for

comparison.

I strongly object to accept after the fact electronically sent records. I much rather show the court the original records.

Sent from my iPhone

On Feb 19, 2014, at 5:21 PM, Nilisa I Nazario <ninazario@aol.com> wrote:

Dear Mr French: DHHS came to my office in November of 2011 with a list of 40 records to scan. It took 8 hours to scan 29 charts, which they used for the audit. You probably received the entire chart, but I submitted to the court only the office visits chosen in the detailed claim report for each patient. Following instructions of the court, I submitted paper copy 8 1/2 by 11 to you the Chief Officer and the other party, as the court would not accept computer discs of scanned documents as evidence. I have all original records they scanned. My copies presented are true copies of the originals and a small sampling of your choosing would be enough for me to review, if so the court allows. Thank you

Sent from my iPhone

On Feb 19, 2014, at 3:05 PM, Robert French <FRENCHR@scdhhs.gov> wrote:

Dr. Nazario,

I have received approximately 1,400 pages of your medical records electronically from SCDHHS. I will be glad to copy them and send them to you if you like. You did provide me with a large box of your records (Petitioner's exhibit #13). If you included all of your records in that exhibit, it seems pointless to send you another copy; however, if you did not include all of the records used by SCDHHS to make their proposed recoupment determination, then I will need to send you this copy. What would you like for me to do?

Sincerely,

Robert French

Robert French
Chief Hearing Officer
FRENCHR@scdhhs.gov
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Columbia, SC - 29201
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THE UNITED STATES SUPREME COURT

Appeal From The Division Of Appeals And Hearings

South Carolina Department Of Health And Human Services

Case No. 12-PA-024

RECEIVED

AUG 16 2016

SC Court of Appeals

Laurens Pediatric Clinic, Appellant

vs.

South Carolina Department Of Health and Human Services, Respondent

PROOF OF SERVICE

This is to certify that I am sending by US Postal Service copy of the Motion for Rehearing with Appendix to SCDHHS, Counsel and Office of Appeals and Hearings, SCALC, SC Court Of Appeals, and The Supreme Court Of South Carolina, this 12th of August, 2016.

Nilsa I. Nazario M.D. F.A.A.P.

Nilsa I. Nazario, M.D., F.A.A.P.
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ATTORNEY FOR RESPONDENT

cc. Division Of Appeals and Hearings-Mr. Robert French
P.O. Box 8206, Columbia, SC 29202-8206

SC Administrative Law Court
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Columbia, SC 29201

SC Court Of Appeals
P.O. Box 11629, Columbia, SC 29211

The Supreme Court Of South Carolina
P.O. Box 11330, Columbia, SC 29211