

NEWCAP, INC.,
Petitioner,

MEMORANDUM DECISION

VS.

Case No. 16 CV 164

FILED

STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES,
Respondent.

MAY 30 2017

CLERK OF COURTS
OCONTO COUNTY, WI

Petitioner, NEWCAP, Inc., Petitions for Review of a final Administrative Decision entered by Respondent, State of Wisconsin Department of Health Services, on September 15, 2016. The Decision allows Respondent to recoup \$185,074.80 in alleged Medical Assistance overpayments from Petitioner based on alleged improper record-keeping and claims submissions on the part of Petitioner. The parties submitted briefs to this Court in support of their positions. The Court, also, received a transcript of the February 23, 2016, hearing before Administrative Law Judge Brian C. Schneider of the Division of Hearings and Appeals.

The controlling statute is Sec. 49.45(3)(f)1.&2. Wis. Stats. This Court is not bound by the opinion of any other Circuit Court of this State, in any manner. This Court, nonetheless, found the reasoning of the Waukesha Circuit Court, the Honorable Kathryn W. Foster presiding, in Case No. 15 CV 2403 persuasive in interpreting the statute, and this Court adopts the reasoning of Judge Foster as follows: Under the statute, the Dept. may recover claims where any of the following cannot be verified: (1) the actual provision of services; (2) the appropriateness of the claim; and (3) the accuracy of the claim. These, then, are the critical questions and Petitioner presented evidence at the hearing that services were provided and it was entitled to payments received. The key witness was Jennifer Waloway who testified at page 85 of the Transcript that patient charts provided evidence that the prescription drugs that were billed for had in fact been in stock and

were dispensed or administered to Medicaid enrollees (see Transcript page 85, 1.8 to page 86, 1.1). She had, also, been able to obtain the bulk (over \$150,000) of the missing invoices. The evidence presented by Petitioner at the hearing on these critical questions was, largely, uncontroverted. Indeed, Respondent objected to the relevancy of this evidence at Transcript page 85, 1.13. Respondent's position – until Respondent's brief – was that the alleged improper record-keeping and claims submissions were, in and of themselves, grounds for recoupment from Petitioner.

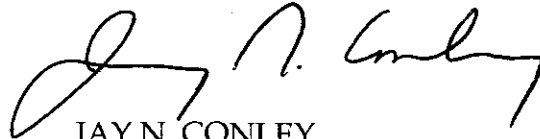
Assuming, for the sake of argument, that Petitioner didn't maintain proper invoices to document its claims for reimbursement, and further assuming, as Petitioner conceded, that it submitted claims with improper or no NDC codes, the Court finds that these errors alone do not justify recoupment under the statute, as a matter of law. The Court, therefore, reverses the final Decision entered by Respondent on September 15, 2016. Because this determines the controversy, the Court does not reach the other issues argued by the parties. The Court does not grant deference to Respondent, in this case, because Respondent, in its Decision, never interpreted or addressed the controlling statute at all.

In closing, Respondent makes valid arguments in Respondent's brief that the lack of proper record-keeping and claims submissions does bring into question whether services were provided, and the accuracy and appropriateness of claims. Of course it does! The problem here is that the argument is being made after a hearing in which Petitioner was allowed to introduce evidence of the validity of its claims almost uncontroverted. As Judge Schneider put it on the NDC disputes: "There is no allegation that the drugs were not properly dispensed." The same could be said of the entire proceeding. As a final comment, Respondent's continuing pursuit of this recoupment appears in violation of Judge Foster's Temporary Injunction.

Petitioner should draft an Order in conformity with this Decision.

Dated May 30, 2017.

BY THE COURT

A handwritten signature in black ink, appearing to read "Jay N. Conley". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JAY N. CONLEY
CIRCUIT JUDGE-BRANCH II

OCONTO COUNTY CIRCUIT COURT

JAY N. CONLEY
CIRCUIT JUDGE-BRANCH II

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May 30, 2017

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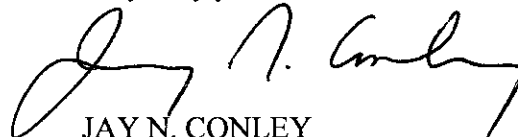
RE: NEWCAP, INC
VS. STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES

CASE NUMBER: 16 CV 164

Dear Counsel:

Enclosed please find a copy of my Memorandum Decision in the above matter.

Very truly yours,



JAY N. CONLEY
Circuit Judge-Branch II

JNC/kll

Enc.

cc: File