

RETURN DATE: NOVEMBER 7, 2017

STATE OF CONNECTICUT, : Superior Court
Plaintiff,

v. : Judicial District of Hartford

ELIJAH CALDWELL
A PROSPERING VISION, LLC
HOME OF HOPE, INC.
Defendants : OCTOBER 5, 2017

COMPLAINT

Plaintiff STATE OF CONNECTICUT alleges the following against Defendant ELIJAH CALDWELL, Defendant A PROSPERING VISION, LLC, and Defendant HOME OF HOPE, INC. (collectively, "Defendants").

SUMMARY

1. This action seeks treble damages, civil penalties, and other relief for the Defendants' knowing submission of false claims for reimbursement for behavioral health services provided to indigent and/or disabled Connecticut citizens who receive health care goods and services through the State of Connecticut's Medicaid program, administered by the Connecticut Department of Social Services ("DSS" or "Department") as part of the Connecticut Medical Assistance Program ("CMAP"). Defendants' conduct, as detailed herein, violated the Connecticut False Claims Act, Connecticut General Statutes § 4-274—§ 4-289.

PARTIES

2. The plaintiff is the STATE OF CONNECTICUT ("State"), represented by GEORGE JEPSEN, ATTORNEY GENERAL. This action is brought by virtue of the authority of GEORGE JEPSEN, ATTORNEY GENERAL, pursuant to Connecticut General Statutes § 4-276.

3. Defendant ELIJAH CALDWELL, LCSW ("Caldwell") is a clinical social worker licensed by the State of Connecticut. He is a resident of Waterbury, Connecticut. At all times relevant to this Complaint, Defendant Caldwell was enrolled in the CMAP as a behavioral health provider.

4. Defendant A PROSPERING VISION, LLC ("APV") is located at 60 North Main Street in Waterbury, Connecticut. At all times relevant to this Complaint, Defendant APV was enrolled in the CMAP both as a behavioral health provider and as an Advanced Practice Registered Nurse ("APRN" or "nurse practitioner") group provider.

5. At all times relevant to this Complaint, Defendant Caldwell was the sole owner/member of Defendant APV and exercised all management authority and control over the operations of Defendant APV, including exercising all authority and control over the submission of claims for reimbursement on behalf of Defendant APV for behavioral health services rendered to CMAP recipients.

6. Defendant HOME OF HOPE, INC. ("HOH") is located at 140 Willow Street in Waterbury, CT, and at all times relevant to this Complaint was enrolled in the CMAP as a behavioral health provider.

7. At all times relevant to this Complaint, Defendant Caldwell was the Executive Director and President of Defendant HOH and exercised all management authority and control over the operations of Defendant HOH, including exercising all authority and control over the

submission of claims for reimbursement on behalf of Defendant HOH for behavioral health services rendered to CMAP recipients.

GENERAL LEGAL AND REGULATORY BACKGROUND

8. Medicaid is a joint federal-state program that provides health care benefits for certain groups, including the indigent and disabled. The federal Medicaid statutes set forth the minimum requirements for state Medicaid programs to qualify for federal funding. 42 U.S.C. § 1396a. The federal share of each state's Medicaid payments is based on the state's per capita income compared to the national average. 42 U.S.C. § 1396d (b). State Medicaid programs pay the balance, which is referred to as the "state share." At all times relevant to this Complaint, the "state share" for the State of Connecticut's Medicaid program was approximately fifty (50%) percent.

9. The State of Connecticut, through the DSS, administers the CMAP, which includes the Connecticut Medicaid program. The DSS Commissioner is authorized to promulgate regulations as are necessary to administer the CMAP. Regs. of Conn. State Agencies § 17b-262-523 (13). The DSS reimburses participating providers for health benefits provided to CMAP recipients.

CMAP Provider Enrollment and Participation

10. A provider of goods and services to CMAP recipients is obligated to adhere to CMAP requirements in order to participate in and receive payment from the CMAP by the DSS. Regs. Conn. State Agencies § 17b-262-522.

11. Every person, organization, and entity that wishes to participate voluntarily as a provider in the CMAP is required to enter into a CMAP Provider Enrollment Agreement ("Provider Agreement").

12. A CMAP provider agrees in the Provider Agreement "to continually adhere to professional standards governing medical care and services and to continually meet state and federal licensure, accreditation, certification or other regulatory requirements, including all applicable provisions of the Connecticut General Statutes and any rule, regulation, or DSS policy promulgated pursuant thereto and certification in the Medicare program, if applicable." DSS Provider Enrollment Agreement, ¶ 3.

13. A CMAP provider further agrees to "abide by DSS' Medical Assistance Program Provider Manual(s), as amended from time to time, as well as all bulletins, policy transmittals, notices, and amendments" DSS Provider Enrollment Agreement, ¶ 10.

14. A CMAP provider also agrees in the Provider Agreement to "submit only those claims for goods and services that are covered by the Connecticut Medical Assistance Program and documented by Provider as being: . . . for compensation that Provider is legally entitled to receive" DSS Provider Enrollment Agreement, ¶ 15.

15. By executing the Provider Agreement, the CMAP provider, or the provider's authorized representative, acknowledges to "**HAVING READ THIS AGREEMENT AND UNDERSTANDING IT IN ITS ENTIRETY . . .**" (Emphasis in the original.). DSS Provider Enrollment Agreement, pp. 7.

DSS Requirements for Payment of Licensed Behavioral Health Clinicians

16. Regulations of Connecticut State Agencies § 17b-262–912 through § 17b-262-925 set forth the requirements for payment by the CMAP of claims for services of licensed behavioral health clinicians in independent practice who are enrolled in the CMAP as providers.

17. "Licensed behavioral health clinician" means a "licensed alcohol and drug counselor, licensed marital and family therapist, licensed clinical social worker or licensed professional counselor." Regs. of Conn. State Agencies §17b-262-913 (15).

18. "Behavioral health clinician services" means "preventative, diagnostic therapeutic rehabilitative or palliative services provided by a licensed behavioral health clinician within the licensed behavioral health clinician's scope of practice under state law." Regs. of Conn. State Agencies § 17b- 262-913 (2).

19. The DSS "shall pay only for behavioral clinician services that are (1) Within the *licensed behavioral health clinician's* scope of practice ...; and, (2) medically necessary to treat the recipient's condition." (Emphasis added.) Regs. of Conn. State Agencies § 17b-262-916.

20. The DSS *shall not* pay for "services provided by anyone other than the provider", which is defined under the relevant CMAP regulations as a "*licensed behavioral health clinician* enrolled in Medicaid pursuant to a valid provider agreement." (Emphasis added.) Regs. of Conn. State Agencies § 17b-262-918 (9); Regs. of Conn. State Agencies § 17b- 262-913 (25).

21. Further, the DSS *shall not* pay for "cancelled office visits or appointments not kept." Regs. of Conn. State Agencies § 17b-262-913 (5).

22. The DSS therefore will only pay a CMAP behavioral health services provider for a behavioral health service rendered to a CMAP recipient, only when and if an enrolled, licensed

behavioral health clinician *directly* performed the service within the licensed, enrolled behavioral health clinician's scope of practice.

DSS Requirements for Payment of Nurse Practitioner Services

23. At all times relevant to this Complaint, Defendant APV was enrolled in CMAP as an APRN/nurse practitioner group provider and as a CMAP behavioral health clinician group provider.

24. Regulations of Connecticut State Agencies § 17b-262–607 through § 17b-262-618 set forth the CMAP payment requirements for enrolled APRN/nurse practitioner group providers.

25. A "nurse practitioner" is "an advanced practice registered nurse (APRN) who holds a current license as such issued by the Department of Public Health (DPH) under Chapter 378 of the Connecticut General Statutes, and who performs within the scope of practice for APRNs established pursuant to the Connecticut General Statutes and all relevant regulations." Regs of Conn. State Agencies § 17b-262-608 (31).

26. It is within a nurse practitioner's scope of practice to prescribe, monitor, adjust and manage dosages of prescription medications for patients, including CMAP recipients, as well as to provide psychotherapy services to CMAP recipients. Conn. Gen. Stat. § 20-87a (3).

DSS's Reimbursement of Claims to CMAP Providers

27. The amount of reimbursement that the DSS pays enrolled providers for providing services to CMAP recipients is based upon the rates established by the DSS Commissioner ("Fee Schedule"). Regulations of Connecticut State Agencies §§ 17b-262-461; 17b-262-530 (a).

28. The Fee Schedule is based upon the American Medical Association's (AMA) Current Procedural Terminology ("CPT") codes that correspond to the type and level of service provided.¹

29. CPT code 90837 corresponds with providing individual psychotherapy for 53-60 minutes in length.

30. CPT code 99213 corresponds with an office visit of 15 minutes or less with a medical professional, including a nurse practitioner, for the purpose of the evaluation and management (E/M) of an established patient, including monitoring, modifying and managing the medications of an established patient.

31. At all times relevant to this Complaint, the DSS reimbursed CMAP providers \$94.63 for a behavioral health service billed as a CPT Code 90837 (individual psychotherapy, 53-60 minutes).

32. At all times relevant to this Complaint, the DSS reimbursed CMAP providers \$38.64 for a medical service performed by a nurse practitioner billed as a CPT Code 99213 (E/M – medication management).

33. At all times relevant to this Complaint, the DSS Fee Schedule reimbursed CMAP providers approximately \$56 more for a behavioral health services claim coded as a CPT code 90837 (53-60 minutes of individual psychotherapy), than for a claim coded as a CPT 99213 (office visit with an APRN/nurse practitioner for medication management).

¹ The CPT codes in effect during the time period alleged in this Complaint are the CPT codes effective as of January 1, 2013.

FALSE CLAIMS FOR SERVICES NOT PROVIDED

34. Between March 1, 2013, and December 31, 2016, Defendant Caldwell knowingly submitted claims, or caused claims to be submitted to the CMAP for reimbursement on behalf of Defendant APV and Defendant HOH for behavioral health services that were never rendered to CMAP recipients.

35. During all times relevant to this complaint, Hewlett Packard Enterprise ("HPE") was the fiscal agent with which the DSS contracted to process and issue (a) reimbursement to enrolled providers in accordance with DSS's Fee Schedule, and (b) remittance advices for claims submitted by CMAP providers for reimbursement for services rendered to CMAP recipients.²

36. Defendant Caldwell submitted claims for reimbursement to HPE on behalf of Defendant APV and Defendant HOH, or directed his employees at Defendant APV and Defendant HOH to submit claims for reimbursement to HPE for reimbursement, for CPT Code 90837, or 53-60 minutes of individual psychotherapy, even when the CMAP recipient's treatment records and/or the appointment calendars that corresponded with the CMAP recipient's dates of service for which Defendant Caldwell billed the CPT code 90837 indicated that the CMAP recipient had canceled the appointment or simply did not show up for the scheduled appointment.

37. Defendant Caldwell also submitted claims on behalf of Defendant APV and Defendant HOH, or directed his employees at Defendant APV and Defendant HOH to submit claims for reimbursement to the CMAP for payment for CPT Code 90837, or 53-60 minutes of individual psychotherapy, for CMAP recipients who were in prison, in-patients at a hospital or another inpatient facility, or otherwise had conflicts, on the very dates of service for which

² On April 3, 2017, HPE merged with Computer Sciences Corporation to form a new company, DXC Technology ("DXC"), DSS's current fiscal agent for processing CMAP claims for payment

Defendant Caldwell billed the DSS for providing services to these CMAP recipients at Defendant APV and Defendant HOH.

38. The DSS believed that the information contained in the claims for reimbursement submitted or caused to be submitted to the CMAP by Defendant Caldwell on behalf of Defendant APV and Defendant HOH for behavioral health services purportedly rendered to CMAP recipients which actually were never rendered to CMAP recipients, was accurate and truthful, and therefore, the DSS relied on this information in making its decision to pay the claims.

39. Had the DSS known that the individual psychotherapy services were never provided to these CMAP recipients, the DSS would not have reimbursed Defendant APV or Defendant HOH for those claims.

**FALSE CLAIMS FOR SERVICES RENDERED
BY UNLICENSED INDIVIDUALS**

40. From approximately March 1, 2013, through December 31, 2016, Defendant Caldwell knowingly submitted, or caused claims for reimbursement to be submitted to the DSS for behavioral health services that identified Defendant Caldwell, a licensed and enrolled CMAP provider, as having provided individual psychotherapy for 53-60 minutes to CMAP recipients (CPT code 90837), when, in fact, an unlicensed person actually performed the services.

41. At all times relevant to this Complaint, the web-based claims forms submitted by CMAP providers to HPE, the DSS's fiscal agent, for reimbursement for behavioral health services must include the name and National Provider Identifier ("NPI") number of the licensed behavioral health clinician or licensed medical professional who provided the service within their scope of practice to the CMAP recipient, as well as the CPT code corresponding to the services

rendered by the licensed behavioral health clinician or licensed medical professional within their scope of practice.

42. Between March 1, 2013, and December 31, 2016, Defendant Caldwell submitted claims for payment to the CMAP, or caused such claims to be submitted for reimbursement, in which Defendant Caldwell used his own name and his own NPI number on the claim form, thereby falsely representing that he directly provided the behavioral health service to the CMAP recipient.

43. Defendant APV's and Defendant HOH's appointment calendars, schedules, and/or the CMAP patient treatment notes that corresponded with the dates of service for which Defendant Caldwell sought reimbursement for purportedly providing psychotherapy to these CMAP recipients showed, however, that unlicensed employees of the Defendants actually had performed the behavioral health services rather than Defendant Caldwell.

44. The DSS believed that the information contained in the claims for reimbursement that were submitted or caused to be submitted by Defendant Caldwell on behalf of Defendant APV and Defendant HOH for behavioral health services purportedly rendered to CMAP recipients was accurate and truthful, and thus, the DSS relied on this information in making its decision to pay the claims.

45. Had the DSS known that the individual psychotherapy services were not provided to CMAP recipients by a licensed, enrolled behavioral health clinician, but, instead, by unlicensed, unenrolled individuals employed by Defendant APV and Defendant HOH, the DSS would not have reimbursed Defendant APV or Defendant HOH for those claims.

UPCODING OF SERVICES TO CMAP RECIPIENTS AT DEFENDANT APV

46. From approximately March 1, 2013, through December 31, 2016, Defendant Caldwell submitted claims for reimbursement on behalf of Defendant APV for payment by the CMAP, or caused claims to be submitted for reimbursement by CMAP on behalf of Defendant APV for individual psychotherapy for 53-60 minutes, when the medical service that was actually provided to those CMAP recipients at APV was medication management by APRNs who were employed by Defendant APV.

47. The practice of "upcoding" occurs when a CMAP provider knowingly uses a higher-paying CPT code on the web-based claim form for payment for services rendered to a CMAP recipient to reflect a more expensive service, procedure or device than was actually provided.

48. Although it was within the scope of their practice to conduct individual psychotherapy for CMAP recipients, the APRNs/nurse practitioners who worked at Defendant APV did not provide such services and instead primarily provided medication management --- that is prescribing, monitoring, and changing the CMAP recipient's drug prescription.

49. Defendant Caldwell submitted, or caused claims to be submitted for reimbursement for individual psychotherapy for 53-60 minutes to the CMAP using CPT code 90837. However, the appointment calendars and the treatment notes prepared by the APRNs/nurse practitioners clearly indicated that these CMAP patients actually had received medical treatment in the form of medication monitoring and management, a medical service that corresponds with CPT code 99213, a far less expensive service that has a lower level of reimbursement than CPT code 90837.

50. At all times relevant to this Complaint, the DSS Fee Schedule reimbursed CMAP providers approximately \$56 more for a behavioral health services claim coded as a CPT code 90837 (53-60 minutes of individual psychotherapy), than for a claim coded as a CPT 99213 (office visit with an APRN/nurse practitioner for medication management).

51. By falsely designating the behavioral health service that the CMAP patients received at APV as CPT code 90837 for 53-60 minutes of psychotherapy services rather than as CPT code 99213 for medication management, Defendant APV received reimbursement from the CMAP at a higher rate than Defendant APV was entitled to receive.

52. The DSS believed that the information contained in the claims for reimbursement for psychotherapy services rather than medication management office visits that Defendant Caldwell submitted or caused to be submitted for CMAP recipients for services rendered at Defendant APV was accurate and truthful, and thus, the DSS relied on this information in making its decision to pay these claims.

53. Had the DSS known that the 53-60 individual psychotherapy services were not provided to these CMAP recipients, but that, instead, these CMAP patients had a brief visit with a nurse practitioner at Defendant APV for the purposes of medication management, the DSS would not have reimbursed Defendant APV for the higher-paying CPT code 90837 corresponding with individual psychotherapy for 53-60 minutes.

CAUSE OF ACTION

COUNT I

Connecticut State False Claims Act

Conn. Gen. Stat. § 4-275 (a) (1), (b)

PRESENTATION OF FALSE OR FRAUDULENT CLAIMS

54. The allegations of ¶¶ 1 —53 of this Complaint are incorporated herein as allegations of Count I as if fully set forth herein. The STATE OF CONNECTICUT further alleges as follows:

55. The Connecticut False Claims Act (the "Act") provides that any person, corporation or limited liability company who knowingly presents or causes to be presented, to an officer or employee of the State, a false or fraudulent claim for payment or approval under a state-administered health or human services program or who knowingly makes, uses or causes to be made or used, a false record or statement to secure the payment or approval by the State of a false or fraudulent claim under a state administered health or human services program shall be liable to the State for relief including civil penalties, treble damages, and the costs of investigation and prosecution of the action. Conn. Gen. Stat. § 4-275 (a) and (b).

56. Specifically, Conn. Gen. Stat. § 4-275 (a) (1) of the Act prohibits the knowing presentation of a false or fraudulent claim under a state-administered health or human services program, including the CMAP.

57. For the purposes of the Act, “knowing” and “knowingly” means that a person, with respect to information: (a) has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information, without regard to whether the person intends to defraud. Conn. Gen. Stat. § 4-274 (1).

58. Between March 1, 2013, and December 31, 2016, the Defendants knowingly presented or caused to be presented, to an officer or employee of the State of Connecticut, false claims for payment or approval under the CMAP, a state administered health and human services.

59. Between March 1, 2013, and December 31, 2016, Defendant Caldwell knowingly submitted false claims to the DSS as detailed above.

60. By virtue of the false claims made or caused to be made by the Defendants, the State of Connecticut has suffered damages.

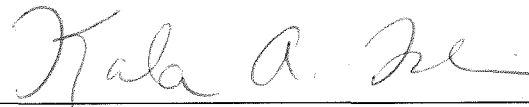
PRAYER FOR RELIEF

WHEREFORE, pursuant to Connecticut General Statutes § 4-275(b), the STATE OF CONNECTICUT requests the following relief:

1. A civil penalty of not less than five thousand five hundred dollars or more than eleven thousand dollars, or as adjusted from time to time by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and for each violation of the Act;
2. Three times the amount of damages that the STATE OF CONNECTICUT sustained because of the acts of the Defendants;
3. Costs of investigation and prosecution of this action.

**PLAINTIFF
STATE OF CONNECTICUT**

BY: GEORGE JEPSEN
ATTORNEY GENERAL



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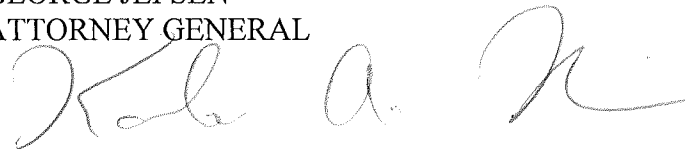
ELIJAH CALDWELL
A PROSPERING VISION, LLC
HOME OF HOPE, INC.
Defendants : OCTOBER 5, 2017

AMOUNT IN DEMAND

The amount, legal interest, or property in demand is \$15,000.00 or more, exclusive of interests or costs.

**PLAINTIFF
STATE OF CONNECTICUT**

BY: GEORGE JEPSEN
ATTORNEY GENERAL



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