April 9, 2024

Claims Commissioner

450 Columbus Tower

Suite 203

Hartford, Connecticut 06103

RE: 24260

Attention: Claims Commissioner

I am withdrawing my claim with the Claims Commission effective immediately.

Respectfully,



Tariq Abdulaziz

* * * Communication Result Report (Mar. 13. 2017 10:56AM) * * *

1) ATTY GEN HEALTH | EDUC | FIN
2)

Date/Time: Mar. 13. 2017 10:54AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
3861	Memory TX	98607061482	P. 3	OK	

Reason for error
E 1) Hang up or line fail
E 2) Busy
E 3) No answer
E 4) No facsimile connection
E 5) Exceeded max E-mail size
E 6) Destination does not support IP-Fax

George Jepsen
ATTORNEY GENERAL

TELEFAX COMMUNICATION

Date: March 13, 2017

To: Christy Scott
Claims Commissioner
Office of the Claims Commissioner
450 Columbus Boulevard
North Tower, Suite 203
Hartford, CT 06103

Fax: (860) 706-1482
Tel: (860) 713-5501

From: Tanya Feliciano DeMattia
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Tel: (860) 808-5210
Fax: (860) 808-5385

Number of pages: 3 (including cover)

Faxed by: Linda Morissette, Secretary 2

Comments: Tariq Abdulazrz and Neurostrategies, Inc v. State of CT, DSS; File No 24260; Appearance

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* * * Communication Result Report (Mar. 13. 2017 10:51AM) * * *

1) ATTY GEN HEALTH | EDUC | FIN
2)

Date/Time: Mar. 13. 2017 10:31AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
3858	Memory TX	98607091482	P. 3	E-2)3)2)3)	P. 1-3

Reason for error
E 1) Hang up or line fail
E 2) Busy
E 3) No answer
E 4) No facsimile connection
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FILE NO. 24260

TARIQ ABDULAZIZ AND NEUROSTRATEGIES, INC.	:	STATE OF CONNECTICUT
v.	:	OFFICE OF THE CLAIMS COMMISSIONER
STATE OF CONNECTICUT DEPARTMENT OF SOCIAL SERVICES	:	MARCH 13, 2017

APPEARANCE

Please enter the appearance of Tanya Feliciano DeMattia, Assistant Attorney General in lieu of Hugh Barber, Assistant Attorney General, for the Respondent State of Connecticut Department of Social Services.

THE RESPONDENT
STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

GEORGE JEPSEN
ATTORNEY GENERAL

BY: _____

Tanya Feliciano DeMattia
Assistant Attorney General
Juris No. 416478
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5210
Fax: (860) 808-5385
Tanya.demattia@ct.gov

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, first class postage prepaid, this 13th day of March, 2016 to:

Michael T. Kogut, Esq.
Law Offices of Michael T. Kogut
75 Market Place
Springfield, MA 01103

Tanya Feliciano DeMattia
Assistant Attorney General

MEMORANDUM

To: Kimberly Massicotte
Associate Attorney General

From: Henry Salton
Hugh Barber
Assistant Attorneys General
55 Elm Street
Hartford, CT 06106

Subject: Proposed position, Claim of Tariq Abdulaziz and Neurostrategies, Inc., File No. 24260

Date: December 3, 2015

Attached find the proposed position by the state on the foregoing claim which is submitted for your review and consideration.

Approved

Hugh Barber, AAG

Henry Salton, AAG
Department Head

Attachment

GEORGE JEPSEN
ATTORNEY GENERAL

55 Elm Street
P O. Box 120
Hartford, CT 06141-0120

Office of the Attorney General
State of Connecticut

Tel: (860) 808-5210
Fax: (860) 808-5385

December 3, 2015

The Honorable J. Paul Vance, Jr.
Claims Commissioner
Office of the Claims Commissioner
165 Capitol Avenue
Hartford, CT 06106

RE: CLAIM OF TARIQ ABDULAZIZ, PH.D. AND NEUROSTRATEGIES, INC., FILE NO. 24260

Dear Commissioner Vance

This letter is to inform you of the state's position regarding the above referenced claim

Introduction

The claim was filed with the Office of the Claims Commissioner on August 25, 2015, but the claim was reportedly postmarked on August 21, 2015. The claimants apparently assert three claims

First, the claimants allege that on or about August 22, 2014, claimants were sent correspondence advising them that "the rules of evaluation for reimbursement were unilaterally changed" which "in effect" allegedly "changed the provisions of this Provider's contract with the Department [of Social Services] and/or breached the existing contract..."

Second, claimants generally assert that "the Department knowingly and intentionally misled this Provider by informing the Provider that the federal requirements for the acquired brain injury ... waiver program had changed," which "knowing and intentional actions against this Provider have substantially affected its substantive and procedural due process rights ... including ... [by] referring this Provider's clinical practices for investigation by other agencies .. "

Finally, claimants allege that, "the Department ... unlawfully refused to supply this Provider with this provider's file. (See correspondence, August 2, 2015 attached)."

Claimants seek permission to sue the state for money damages in excess of $5,000.00, allegedly pursuant to Section 4 of C.G.S. § 4-147

The Position of the State

The position of the State is that the Claims Commissioner lacks subject matter jurisdiction to entertain the claims. Alternatively, the claims are not "just claims" which in equity and justice the state should pay, provided that it has caused damage and received a benefit. Conn Gen. Stat. §§ 4-160, 4-141. In addition, the claims do not "present [ ] an issue of law of fact under which the state, were it a private person, could be liable." Conn. Gen. Stat § 4-160

I. THE CLAIMS COMMISSIONER LACKS SUBJECT MATTER JURISDICTION

A The Claims Commissioner does not have subject matter jurisdiction over the first two claims because administrative and judicial relief was otherwise available and was, in fact, sought by claimants by way of a Petition for Declaratory Ruling and by a subsequent judicial administrative appeal from the declaratory ruling to the Superior Court for the Judicial District of New Britain, Docket No HHB-CV15-6029943-S. Accordingly, the Claims Commissioner lacks jurisdiction over these claims as a result of the limitations on jurisdiction provided by Conn. Gen. Stat. § 4-142.

B. The Claims Commissioner lacks Subject Matter Jurisdiction over the third claim related to the denial of access to the claimants' file because relief is otherwise provided by law by way of an administrative hearing procedure before the Freedom of Information Commission followed by the opportunity for state court judicial review. See, Conn. Gen. Stat. §§ 1-206 and 4-183. Claimants did not pursue or exhaust their Freedom of Information Commission statutory administrative and judicial remedies. Accordingly, the Claims Commissioner lacks jurisdiction over this claim as a result of the limitations on jurisdiction provided by Conn. Gen. Stat. § 4-142.

C. This Court lacks subject matter jurisdiction over the first two claims for the additional reason that the claims were not "presented under this chapter but within one year after it accrues " Conn. Gen. Stat. § 4-148(a). Claimants arbitrarily allege that the claim accrued when they received a letter from the Department, dated August 22, 2014, advising them that they would be held to the standards of the proposed ABI Waiver regulations for services provided after April 1, 2013

However, assuming the existence of a valid claim, any such claim would have accrued months earlier, in March 2013, when the Department of Social Services issued its Law Journal notice indicating it would operate under its proposed ABI Waiver

regulations, including the documentation requirements of proposed regulation 17b-260a-16, pursuant to Conn. Gen. Stat. § 17b-10. At a minimum, claimants clearly knew or should have known that the Department's review of its records for the period after April 1, 2014, would be governed by proposed regulation 17b-260a-16 when the Department clearly advised claimants of that fact by letter dated May 20, 2014. Accordingly, any claim accrued prior to August 22, 2014, such that the Claims Commissioner lacks subject matter jurisdiction to entertain these claims which were not presented within the one year time period from the date the claims actually accrued. See, Conn. Gen Stat § 4-148.

II. ALTERNATIVELY, CLAIMANTS' CLAIMS ARE NOT "JUST CLAIMS" AND DO NOT PRESENT ISSUES OF LAW OR FACT UNDER WHICH THE STATE COULD BE LIABLE IF IT WERE A PRIVATE PERSON

A. Claimants' claims fail to state claims upon which relief can be granted.

B. Alternatively claimants' fist two claims are barred by the doctrines of res judicata/collateral estoppel inasmuch as essentially the same issues and factual circumstances were presented to the Department in claimant's Petition for Declaratory Ruling. Claimant's Petition for a Declaratory Ruling specifically alleged that the document retention requirements in the proposed regulations "will require a detail of services and billing which has not been required before "in contrast to the requirements in claimant's Provider Agreement which more generally provides that, "I will maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver Participants." Petition for Declaratory Ruling, p. 5 The Department issued its declaratory ruling on Mary 28, 2015, which ruled, in pertinent part, that:

> Yes, section 17b-10(b) of the Connecticut General Statutes is applicable to the promulgation of regulations under the ABI Waiver Program. As stated above, section 17b-10(b) of the Connecticut General Statutes provides that the Department shall adopt as a regulation, in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8. See Exhibit F.
>
> The ABI Waiver Program operates under an approved federal waiver which was initiated in accordance with section 17b-8 of the Connecticut General Statutes. The ABI Waiver Regulations were promulgated as new policies necessary to

> conform to the requirements of that waiver Section 17b-10(b) of the Connecticut General Statutes, therefore, is applicable to regulations promulgated pursuant to the ABI Waiver.

Pursuant to Conn. Gen. Stat. § 4-176(h), a declaratory ruling "shall have the same status and binding effect as an order issued in a contested case ..." Claimants appeal the declaratory ruling to the Superior Court pursuant to the provisions of Conn. Gen. Stat §§ 4-176(h) and 4-183, Neurostrategies, Inc. and Abdulaziz v. Department of Social Services, No HHB-CV15-6029943-S, which appeal was dismissed by the Court by Judgment of Dismissal dated November 25, 2015. Accordingly, the declaratory ruling that the Department is lawfully operating under its proposed regulations, including the record documentation requirements of proposed regulation 17b-260a-16, is binding on claimants and must be given effect under principles of administrative res judicata and/or collateral estoppel

C. Contrary to the allegation in claimant's "second claim," the Department never represented "that the federal requirements for the acquired brain injury/traumatic brain injury waiver program had changed ." Conn. Gen. Stat. § 17b-10(b) authorizes the Department to operate under proposed regulations while it is in the process of adopting same as UAPA regulations in either of two distinct situations: 1) either when "necessary to conform to a requirement of an approved waiver application," or 2) when "necessary to conform to a requirement of a federal or a joint state and federal program . . " Contrary to the assertion in claimants' second claim, the Department never represented that it was necessary to operate under its proposed ABI Waiver regulation in order to conform to changed federal statutory requirements, but has always indicated that it was operating under its proposed ABI waiver regulations in order to conform to the requirements of an approved federal waiver. See, the Department's August 22, 2014 letter (attached to claimants' claim) and the Department's declaratory ruling, quoted in pertinent part, supra).

D. Alternatively, claimants have not suffered harm because they have not demonstrated that the more specific requirements of proposed regulation 17b-260a-16 are any more stringent than what was already effectively required by the more general requirements of claimants' provider agreement, or that their records "documenting the extent of services provided" were adequate under the more general provider agreement requirements but inadequate under the more specific requirements of proposed regulation § 17b-260a-16

E. As Medicaid providers, claimants participate in a regulated industry that is subject to extensive state regulation. The Department is specifically authorized to adopt

regulations implementing the program by Conn. Gen. Stat. §§ 17b-3, 17b-10(b), 4-8, 4-168, 17b-260 and 17b-260a. Nothing in the Provider Agreement precludes the Department from amending or adopting regulations or from operating under proposed regulations pursuant to Conn. Gen. Stat. § 17b-10(b). Accordingly, operating under proposed ABI Waiver regulations pursuant to the provisions of Conn Gen. Stat. § 17b-10 in no way constitutes a "breach of contract." The claimants are free to withdraw from the program if they are unwilling to abide by any new or amended regulation.

F. With respect to the third "failure to produce the provider file" claim, the Department lawfully and properly claimed exemptions from disclosure pursuant to the provisions of Conn. Gen. Stat. §§ 1-210(b)(13) exemption for "records of an investigation" and 4-276 (Attorney General investigation of possible false claims)

Respectfully submitted,

STATE OF CONNECTICUT

By: _____
Kimberly P Massicotte
Associate Attorney General

_____
Hugh Barber
Assistant Attorney General

GEORGE JEPSEN
ATTORNEY GENERAL

55 Elm Street
P O Box 120
Hartford, CT 06141-0120

Office of the Attorney General
State of Connecticut

Tel: (860) 808-5210
Fax: (860) 808-5385

December 14, 2015

The Honorable J Paul Vance, Jr
Claims Commissioner
Office of the Claims Commissioner
165 Capitol Avenue
Hartford, CT 06106

RE: CLAIM OF TARIQ ABDULAZIZ, PH.D. AND NEUROSTRATEGIES, INC., FILE NO. 24260

Dear Commissioner Vance

This letter is to inform you of the state's position regarding the above referenced claim

Introduction

The claim was filed with the Office of the Claims Commissioner on August 25, 2015, but the claim was reportedly postmarked on August 21, 2015. The claimants apparently assert three claims

First, the claimants allege that on or about August 22, 2014, claimants were sent correspondence advising them that "the rules of evaluation for reimbursement were unilaterally changed" which "in effect" allegedly "changed the provisions of this Provider's contract with the Department [of Social Services] and/or breached the existing contract. ."

Second, claimants generally assert that "the Department knowingly and intentionally misled this Provider by informing the Provider that the federal requirements for the acquired brain injury ... waiver program had changed," which "knowing and intentional actions against this Provider have substantially affected its substantive and procedural due process rights ... including ... [by] referring this Provider's clinical practices for investigation by other agencies ... "

Finally, claimants allege that, "the Department ... unlawfully refused to supply this Provider with this provider's file. (See correspondence, August 2, 2015 attached)."

Claimants seek permission to sue the state for money damages in excess of $5,000.00, allegedly pursuant to Section 4 of C.G S § 4-147.

The Position of the State

The position of the State is that the Claims Commissioner lacks subject matter jurisdiction to entertain the claims Alternatively, the claims are not "just claims" which in equity and justice the state should pay, provided that it has caused damage and received a benefit Conn Gen Stat. §§ 4-160, 4-141 In addition, the claims do not "present [ ] an issue of law of fact under which the state, were it a private person, could be liable " Conn Gen Stat § 4-160

I. THE CLAIMS COMMISSIONER LACKS SUBJECT MATTER JURISDICTION

A. The Claims Commissioner does not have subject matter jurisdiction over the first two claims because administrative and judicial relief was otherwise available and was, in fact, sought by claimants by way of a Petition for Declaratory Ruling and by a subsequent judicial administrative appeal from the declaratory ruling to the Superior Court for the Judicial District of New Britain, Docket No. HHB-CV15-6029943-S Accordingly, the Claims Commissioner lacks jurisdiction over these claims as a result of the limitations on jurisdiction provided by Conn Gen Stat. § 4-142

B The Claims Commissioner lacks Subject Matter Jurisdiction over the third claim related to the denial of access to the claimants' file because relief is otherwise provided by law by way of an administrative hearing procedure before the Freedom of Information Commission followed by the opportunity for state court judicial review. See, Conn. Gen Stat §§ 1-206 and 4-183 Claimants did not pursue or exhaust their Freedom of Information Commission statutory administrative and judicial remedies. Accordingly, the Claims Commissioner lacks jurisdiction over this claim as a result of the limitations on jurisdiction provided by Conn Gen Stat § 4-142

C This Court lacks subject matter jurisdiction over the first two claims for the additional reason that the claims were not "presented under this chapter but within one year after it accrues " Conn. Gen. Stat. § 4-148(a). Claimants arbitrarily allege that the claim accrued when they received a letter from the Department, dated August 22, 2014, advising them that they would be held to the standards of the proposed ABI Waiver regulations for services provided after April 1, 2013.

However, assuming the existence of a valid claim, any such claim would have accrued months earlier, in March 2013, when the Department of Social Services issued its Law Journal notice indicating it would operate under its proposed ABI Waiver

regulations, including the documentation requirements of proposed regulation 17b-260a-16, pursuant to Conn Gen Stat. § 17b-10. At a minimum, claimants clearly knew or should have known that the Department's review of its records for the period after April 1, 2014, would be governed by proposed regulation 17b-260a-16 when the Department clearly advised claimants of that fact by letter dated May 20, 2014. Accordingly, any claim accrued prior to August 22, 2014, such that the Claims Commissioner lacks subject matter jurisdiction to entertain these claims which were not presented within the one year time period from the date the claims actually accrued. See, Conn Gen. Stat. § 4-148.

II. ALTERNATIVELY, CLAIMANTS' CLAIMS ARE NOT "JUST CLAIMS" AND DO NOT PRESENT ISSUES OF LAW OR FACT UNDER WHICH THE STATE COULD BE LIABLE IF IT WERE A PRIVATE PERSON

A Claimants' claims fail to state claims upon which relief can be granted

B Alternatively claimants' first two claims are barred by the doctrines of res judicata/collateral estoppel inasmuch as essentially the same issues and factual circumstances were presented to the Department in claimant's Petition for Declaratory Ruling Claimant's Petition for a Declaratory Ruling specifically alleged that the document retention requirements in the proposed regulations "will require a detail of services and billing which has not been required before "in contrast to the requirements in claimant's Provider Agreement which more generally provides that, "I will maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver Participants " Petition for Declaratory Ruling, p. 5. The Department issued its declaratory ruling on Mary 28, 2015, which ruled, in pertinent part, that:

> Yes, section 17b-10(b) of the Connecticut General Statutes is applicable to the promulgation of regulations under the ABI Waiver Program. As stated above, section 17b-10(b) of the Connecticut General Statutes provides that the Department shall adopt as a regulation, in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8. See Exhibit F
>
> The ABI Waiver Program operates under an approved federal waiver which was initiated in accordance with section 17b-8 of the Connecticut General Statutes. The ABI Waiver Regulations were promulgated as new policies necessary to

conform to the requirements of that waiver. Section 17b-10(b) of the Connecticut General Statutes, therefore, is applicable to regulations promulgated pursuant to the ABI Waiver

Pursuant to Conn Gen. Stat § 4-176(h), a declaratory ruling "shall have the same status and binding effect as an order issued in a contested case " Claimants appeal the declaratory ruling to the Superior Court pursuant to the provisions of Conn. Gen Stat §§ 4-176(h) and 4-183, Neurostrategies, Inc and Abdulaziz v. Department of Social Services, No HHB-CV15-6029943-S, which appeal was dismissed by the Court by Judgment of Dismissal dated November 25, 2015 Accordingly, the declaratory ruling that the Department is lawfully operating under its proposed regulations, including the record documentation requirements of proposed regulation 17b-260a-16, is binding on claimants and must be given effect under principles of administrative res judicata and/or collateral estoppel

C Contrary to the allegation in claimant's "second claim," the Department never represented "that the federal requirements for the acquired brain injury/traumatic brain injury waiver program had changed " Conn Gen. Stat. § 17b-10(b) authorizes the Department to operate under proposed regulations while it is in the process of adopting same as UAPA regulations in either of two distinct situations 1) either when "necessary to conform to a requirement of an approved waiver application," or 2) when "necessary to conform to a requirement of a federal or a joint state and federal program " Contrary to the assertion in claimants' second claim, the Department never represented that it was necessary to operate under its proposed ABI Waiver regulation in order to conform to changed federal statutory requirements, but has always indicated that it was operating under its proposed ABI waiver regulations in order to conform to the requirements of an approved federal waiver. See, the Department's August 22, 2014 letter (attached to claimants' claim) and the Department's declaratory ruling, quoted in pertinent part, supra)

D Alternatively, claimants have not suffered harm because they have not demonstrated that the more specific requirements of proposed regulation 17b-260a-16 are any more stringent than what was already effectively required by the more general requirements of claimants' provider agreement, or that their records "documenting the extent of services provided" were adequate under the more general provider agreement requirements but inadequate under the more specific requirements of proposed regulation § 17b-260a-16.

E. As Medicaid providers, claimants participate in a regulated industry that is subject to extensive state regulation. The Department is specifically authorized to adopt

regulations implementing the program by Conn. Gen. Stat §§ 17b-3, 17b-10(b), 4-8, 4-168, 17b-260 and 17b-260a. Nothing in the Provider Agreement precludes the Department from amending or adopting regulations or from operating under proposed regulations pursuant to Conn Gen. Stat. § 17b-10(b) Accordingly, operating under proposed ABI Waiver regulations pursuant to the provisions of Conn Gen. Stat. § 17b-10 in no way constitutes a "breach of contract." The claimants are free to withdraw from the program if they are unwilling to abide by any new or amended regulation

F With respect to the third "failure to produce the provider file" claim, the Department lawfully and properly claimed exemptions from disclosure pursuant to the provisions of Conn Gen Stat §§ 1-210(b)(13) exemption for "records of an investigation" and 4-276 (Attorney General investigation of possible false claims)

Respectfully submitted,

STATE OF CONNECTICUT

By: _____
Kimberly P Massicotte
Associate Attorney General

_____
Hugh Barber
Assistant Attorney General

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS,
AND ADMINISTRATIVE HEARINGS

TELEPHONE
(860) 424-5760
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INFORMATION
(800) 462-0134

MEMORANDUM

To: Assistant Attorney General Hugh Barber
From: Phyllis E. Hyman, Legislative and Administrative Counsel
Date: October 14, 2015
Re: Claims Commission Filing by Tariq Abdulaziz and Neurostrategies, dated August 21, 2015

The purpose of this memorandum is respond to your email, dated September 30, 2015, in which you ask the Department of Social Services ("DSS") to investigate, recommend and report whether Tariq Abdulaziz and Neurostrategies (the "claimants") in the above-referenced case are submitting a "just claim." We conclude that the claimants are not submitting a "just claim."

A "just claim" is defined as "a claim which in equity and justice the state should pay, provided the state has caused damage or injury or has received a benefit." Conn. Gen. Stat. § 4-141. As will be described below, DSS has not caused any damage or injury to the claimants, and neither law nor equity requires the state to pay anything to the claimants.

Neurostrategies (Tariq Abdulaziz) is enrolled as a provider in the DSS ABI Waiver Program. This is evidenced by two provider agreements signed by Tariq Abdulaziz, one on January 15, 2004 (Exhibit A) and one on October 23, 2014 (Exhibits B). In both of those agreements, the provider agreed to "maintain records that fully disclose services and goods rendered and/or delivered to AIB waiver participants. These records will be made available to authorized representatives of the DSS [or the Department] upon request." Paragraph 7 Exhibit A, Paragraph 9 of Exhibit B.

DSS has not made any changes to the most recent provider agreement. Starting April 1, 2013, state regulations governing the ABI Waiver program became effective. One of those regulations specified what information ABI providers must document in their records. The regulation provides that the documentation must include the following: the client's name and the client's or legal representative's signature; the provider's name and signature; the dates of service; the start time for each visit; the end time of each visit; and a brief description of the duties performed. *See* section 17b-260a-16(a) of the Proposed Regulation (Exhibit C).[1]

[1] The ABI Waiver regulations were submitted pursuant to section 17b-10(b) of the Connecticut General Statutes, which, at the time this regulation was noticed, provided as follows: "The department shall

In a letter, dated August 14, 2014, to Attorney David Marder, who was representing the claimants at that time, DSS informed Attorney Marder of this proposed regulation, which has the force of law. The proposed regulation does not, as alleged by the claimants, represent a "unilateral change in the terms of the Provider Agreement," nor is it a "breach of contract." The letter simply informed Attorney Marder of the record-keeping standard that became effective on April 1, 2013, as a matter of law. The proposed regulation does not conflict with anything in the provider agreement.

Accordingly, contrary to what is stated in the claim, DSS has not misled the claimants in any way, nor has it changed or breached any agreements. DSS has not acted in any way that has deprived the claimants of their substantive or procedural due process rights.

Finally, on or about August 2, 2015, DSS denied Attorney Kogut's request under the Freedom of Information Act for the claimants' provider file, in accordance with sections 1-210(b) (13) and 4-276 of the Connecticut General Statutes (Exhibit D). This was not an unlawful refusal to provide the requested documents to the claimants. Moreover, claimants did not take advantage of their appeal rights under section 1-206(b) of the Connecticut General Statutes.

DSS is not aware of any financial harm or other damages to the claimants as a result of the actions about which they complain.

Based on all of the reasons set forth above, we conclude that the claimants are not submitting a just claim that should be paid by the state.

Attachments
Cc: Brenda Parrella, Agency Legal Director
Joseph Smiga, Staff Attorney

---

adopt as a regulation in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8. . . but the Department may operate under such policy while it is in the process of adopting the policy as a regulation, provided the Department of Social Service prints notice of intent to adopt the regulation in the Connecticut Law Journal within twenty days of adopting the policy. Such policy shall be valid until the time final regulations are effective."

The notice of intent for this proposed regulation was published in the Connecticut Law Journal on March 26, 2013, five days *before* the policy went into effect.

EXHIBIT

A

ABI WAIVER PROVIDER REGISTRY APPLICATION

The ABI Waiver Program provides 21 home and community-based services to eligible individuals with an acquired brain injury. Providers must be enrolled in the Department's ABI Provider Registry in order to receive payment. In order to be included in the Registry, providers must meet the Department's specific qualifications for each service. This is an application to be included in the ABI Provider Registry. Instructions for completion of this application are on the attached page. Please refer to the Department's ABI Provider Manual for a description of provider qualifications, as well as services, rates, billing and general program information.

ALL PAPERWORK MUST BE SUBMITTED PRIOR TO ATTENDING THE TRAINING.

A. *PROVIDER INFORMATION*

1. AGENCY: ☑ OR INDIVIDUAL: ☐
2. PROVIDER NAME NeuroStrategies, Inc.
   2a. CONTACT (if agency provider) TARIQ ABDULAZIZ
3. ADDRESS 75 (NO.) Hockanum Blvd (STREET) Unit 217
   Vernon (CITY) CT. (ZIP) 06066
4. MAILING ADDRESS (IF DIFFERENT) (Same)
5. TELEPHONE: (860) 377-0641 6. FAX: (860) 870-5738 Email: neurostrategies@earthlink.net
6. ☐ SSN (if individual): _____ OR ☒ FEIN (if agency): 02-0713098
9. SERVICE AREA (see instructions) Statewide ☒ OR NorthCentral ☐ SouthCentral ☐ NorthWest ☐ SouthWest ☐ Eastern ☐
10. PLEASE DO NOT INCLUDE MY NAME ON THE REGISTRY DISTRIBUTED TO THE DSS OFFICES: ☐

B. *PROVIDER SPECIALTY and QUALIFICATIONS (check all that apply)*

Column 1 CHECK (✓) SERVICE TYPE	Column 2 A.B.I. WAIVER SERVICES	Column 3 PROVIDER TYPE	Column 4 BRIEFLY DESCRIBE THE PROVIDER QUALIFICATION DOCUMENTATION YOU ARE SUBMITTING
	Case-Management		
	Chore Services		
✓	Cognitive Behavioral Programs		
	Community Living Support Services		
	Companion Services		
	Environmental Accessibility Adaptations		
	Home-Delivered Meals		
	Homemaker Services		
✓	Independent Living Skills Training & Devel.		
	Personal Care Assistance		
	Personal Emergency Response Systems		
	Pre-Vocational Services		
	Respite Services		
	Specialized Medical Equipment and Supplies		
	Substance Abuse Programs		
	Supported Employment		
	Transitional Living Services		
	Transportation		
	Vehicle Modification Services		

PROVIDER AGREEMENT

1. ALL OF THE STATEMENTS MADE BY ME ON THIS APPLICATION AND ALL INFORMATION CONTAINED IN MY SUPPORTING PROVIDER QUALIFICATION DOCUMENTATION IS TRUE AND CORRECT.

2. I ACKNOWLEDGE THAT I CAN PERFORM ALL STANDARDS AND DUTIES FOR THE SERVICES I AM APPLYING FOR, AS STATED IN THE PROVIDER MANUAL.

3. I WILL IMMEDIATELY NOTIFY THE DEPARTMENT IF ANY INFORMATION PROVIDED BY ME ON THIS APPLICATION CHANGES.

4. I WILL MAINTAIN CURRENT STANDING WITH RESPECT TO ANY LICENSE AND/OR CERTIFICATION REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR MY ABI PROVIDER TYPE AND SERVICE SPECIALTY.

5. I WILL IMMEDIATELY NOTIFY THE DEPARTMENT IF SUCH LICENSES AND/OR CERTIFICATIONS EXPIRE, ARE REVOKED, SUSPENDED OR OTHERWISE TERMINATED FOR ANY REASON.

6. I WILL PROVIDE ALL SERVICES IN ACCORDANCE WITH THE TERMS OF THE ABI WAIVER PARTICIPANT'S APPROVED SERVICE PLAN.

7. THE RATE PAID BY THE DEPARTMENT FOR THE PERFORMANCE OF ABI WAIVER SERVICES IS THE COMPLETE PAYMENT IN FULL FOR ALL SERVICE(S), GOODS OR PRODUCTS DELIVERED TO ELIGIBLE ABI WAIVER PARTICIPANTS.

8. EXCEPT FOR AUTHORIZED CO-PAYMENTS MADE BY ELIGIBLE WAIVER PARTICIPANTS, THE DEPARTMENT'S PAYMENTS TO ME FOR THE PERFORMANCE OF ABI SERVICES CONSTITUTE SOLE AND COMPLETE PAYMENT IN FULL.

9. I WILL MAINTAIN RECORDS THAT FULLY DISCLOSE SERVICES AND GOODS RENDERED AND/OR DELIVERED TO ABI WAIVER PARTICIPANTS. THESE RECORDS WILL BE MADE AVAILABLE TO AUTHORIZED REPRESENTATIVES OF THE DEPARTMENT UPON REQUEST.

10. I ACKNOWLEDGE THAT I MAY BE SUSPENDED OR TERMINATED FROM THE ABI PROVIDER REGISTRY IF I AM FOUND BY THE DEPARTMENT TO HAVE ENGAGED IN FRAUDULENT OR ABUSIVE PROGRAM SERVICES.

11. I AGREE TO NOT USE OR DISCLOSE PROTECTED HEALTH INFORMATION (PHI) OTHER THAN AS PERMITTED OR AS REQUIRED BY LAW AND TO USE APPROPRIATE SAFEGUARDS TO PREVENT IMPROPER USE OR DISCLOSURE OF PHI.

12. I AM OVER 18 YEARS OF AGE.

TARIQ M. ABDULAZIZ
PROVIDER NAME (please print individual or agency name)

AUTHORIZED SIGNATURE (individual or agency rep.) DATE 04/15/04

ALL PAPERWORK MUST BE SUBMITTED PRIOR TO ATTENDING THE TRAINING

EXHIBIT

B

ALLIED COMMUNITY Resources

FMS-Provider Services
PO Box 479, East Windsor, CT 06088-0479
Phone: 860-627-9500 Toll Free: 877-722-8833
Fax: 860-627-0230

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OCT 3 4 2014

DSS ABI MEDICAID WAIVER PROGRAM
PROVIDER SERVICES APPLICATION - AGENCY

Provider Information:

Agency Name: NeuroStrategies Inc

Agency Contact Name: Tang Abdulaziz

Agency Address: 23 Kate Way Windsor Locks, CT. 06096

Mailing Address (if different): SAME

Telephone: 8603770641 **Agency Contact Email:** tangabdulaziz@neurostrategies.info

Fax: 860 831 1044 **Cell Phone:** 860 377 0641

FEIN # 02-07 13098 **SS # (if applicable):** ___-___-___

☐ Please check here if you **DO NOT** want your name included on the ABI Provider Directory which is distributed to DSS Offices and participants on the ABI Waiver Program.***Please note that you will not be contacted by potential employers if you choose not to have your name listed on the directory***

See attached list of Agency provider services. Please ✓ each service you would like your agency to be considered for and determine if your agency meets the requirements in order to be considered for these services in the column to the right of each service.

See attached list of Connecticut towns and regions. Please indicate individual towns or regions of the state in which you will provide services.

DSS ABI MEDICAID WAIVER AGENCY PROVIDER DIRECTORY AGREEMENT

1. The agency is qualified to perform all the standards and duties for the services for which I am applying.
2. The agency will immediately notify the Fiduciary Agent- **Allied Community Resources (ACR),** if any information provided by me on this application changes.
3. The agency will maintain current standing with respect to any license and/or certification requirement established by the **Department of Social Services (DSS)** for the service specialty. The agency understands that copies of updated contracts, licenses, and accreditations as they become renewed or extended, will be requested. The agency will immediately notify ACR if such licenses and/or certifications expire, are revoked, suspended or otherwise terminated for any reason.
4. The agency will adhere to the units and services assigned in accordance with the ABI Waiver participant's service plan to which the agency is named as a service provider.
5. If the program participant is hospitalized or in a skilled nursing facility, the agency understands that it **MAY NOT** provide services, submit invoices, and receive payment during this time.

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OCT 24 2014

6. The rate paid by DSS for the performance of ABI Waiver Services is the complete payment in full for all service(s) or products delivered to eligible ABI Waiver participants. Payments to the agency for the performance of ABI services or delivery of goods constitute sole and complete payment in full.
7. The agency will maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver participants. These records will be made available to authorized representatives of DSS upon request.
8. The agency acknowledges that it may be suspended or terminated from the ABI Provider Directory if it is found by DSS to have engaged in fraudulent or abusive program services.
9. The agency agrees to not use or disclose protected health information (PHI) other than as permitted or as required by law and to use appropriate safeguards to prevent improper use or disclosure of PHI.
10. The agency understands that **NONE** of its employees may provide services to any ABI Waiver participant and receive payment **until the agency has been notified in writing by ACR** that the agency and its employees are approved providers on the ABI Medicaid Waiver Program and that the agency has been named to a program participant's service plan by DSS.
11. The agency understands that in order to add an existing provider as an employee of the agency, ACR must be notified in writing and the proper paperwork must be submitted and reviewed for completeness by ACR **BEFORE** the employee may begin working. The agency understands that employee approvals will **NOT** be backdated.
12. The agency understands that the employees and representatives (if applicable) may not provide services both privately and as an agency employee to the same waiver participant as this creates a conflict of interest. ***This is against program rules and is strictly prohibited.*** A Conflict of Interest form is required for any individual who is approved as an agency employee if he/she is currently a private provider.
13. This is a State and Federal Government program. Altering invoices or falsely claiming hours worked or services rendered is considered fraud. The agency will be subject to prosecution for fraud to the fullest extent of the law. The agency may be subject to prosecution for fraud on both a State and Federal level.
14. The agency understands that this program does not provide Worker's Compensation Coverage.
15. The agency understands that any employee **may not** work for a participant on the ABI Medicaid Waiver Program if he/she is a relative of the participant's conservator, if applicable.
16. Neither the agency nor its employees are employed by Allied Community Resources.
17. The agency understands that failure to comply with the above statements may result in the revocation of the agency's approval status from the ABI Medicaid Waiver Program.
18. The agency understands that if the agency name or the names of any of its officers appear on the OIG (Office of Inspector General) list of excluded entities/individuals, the agency is prohibited from becoming a paid provider under any DSS Program.

AS THE AGENCY'S REPRESENTATIVE, I HAVE READ AND ACCEPT THE TERMS OF THE PROVIDER AGREEMENT AS STATED ABOVE. ALL OF THE STATEMENTS MADE BY ME ON THIS APPLICATION AND ALL INFORMATION CONTAINED IN ANY SUPPORTING QUALIFICATION DOCUMENTATION ARE TRUE AND CORRECT.

NeuroStrategies Inc
Agency Name

Tariq Abdulazer — 10/23/14
Agency Representative Name (please print) **Agency Representative Signature** **Date**

EXHIBIT

C

(NEW) **Sec. 17b-260a-16. Client Documentation and Provider Reporting**

(a) Providers are required to retain records to document services submitted for Medicaid reimbursement for at least five years from the date the service or item was provided. Documentation shall include the following:

(1) Individual's name and the signature of the individual or their legal representative;

(2) provider's name and signature;

(3) dates of service;

(4) start time for each visit;

(5) end time for each visit; and

(6) a brief description of duties performed.

(b) Upon written request presented to the provider, the department or its authorized agent may be given immediate access to, and permitted to review and copy any and all records and documentation used to support claims billed to Medicaid.

(c) For purposes of subsection (b) of this section, "immediate access" means access to records at the time the written request is presented to the provider.

(d) The provider shall submit monthly reports and written updates on the individual's progress in a form that is set forth by the department.

(e) The failure of a provider to comply with subsections (a) to (e), inclusive, of this section, may result in the nonpayment of the services.

EXHIBIT

D

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF QUALITY ASSURANCE

John F. McCormick, CPA
Director

Telephone
(860) 424-5920
Facsimile
(860) 424-5900

August 2, 2015

Michael T. Kogut
The Law Offices of Michael T. Kogut
75 Market Place
Springfield, MA 01103

Re: Neurostrategies, Inc. / Tariq Abdulaziz

Dear Mr. Kogut:

The purpose of this letter is to respond to your communication to me, dated July 10, 2015, concerning the above-referenced provider (the "provider").

With regard to your request for the provider's file, the Department of Social Services (the "Department") did not conduct an audit, as you state in your letter. Rather, the Department conducted an on-site visit to review the client's records supporting claims paid under the Acquired Brain Injury Medicaid Waiver Program. This was done pursuant to the provider agreements that the provider signed on January 15, 2004 and October 23, 2014.

The Department's file concerning this record review is not public information, in accordance with sections 1-210(b) (13) and 4-276 of the Connecticut General Statutes. Accordingly, the Department will not be sending you the information in the provider's file.

Finally, contrary to the statement in your letter, the Department has not terminated any provider agreement with the provider.

Sincerely,

John F. McCormick, Director
Office of Quality Assurance

JFM

Cc: Kathleen Brennan, Deputy Commissioner
David Dearborn, Director of Communications
Brenda Parrella, Director of Legal Counsel, Regulations & Administrative Hearings
Kathy Bruni, Director of Alternate Care Unit

THE LAW OFFICES OF MICHAEL T. KOGUT

75 MARKET PLACE
SPRINGFIELD, MA 01103

TELEPHONE 413.348.2167
FACSIMILE 413.739-7168
MKOGUT@KOGUTLAW.COM

FILE # 24260

RECEIVED
AUG 25 2015
OFFICE OF CLAIMS COMMISSIONER
STATE OF CONNECTICUT

August 21, 2015

VIA PRIORITY MAIL
Mr. J. Paul Vance. Jr., Commissioner
Office of the Claims Commission
165 Capitol Avenue
Hartford, CT 06106

Re: **Presentment of Claim/Requesting Permission To Sue Connecticut**

Dear Commissioner Vance.:

Please acknowledge this correspondence as a presentment of claim for permission to bring a civil suit against the State of Connecticut on behalf of Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc., both of whom the undersigned represents.

The claimants, Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc. have a usual and customary business address of 23 Kate Way, Windsor Locks. CT 06090. As counsel for both claimants, I maitian a business address at 75 Market Place, Springfield, MA 01103.

The concise statement of claim, pursuant to C.G.S. § 4-147(2) is as follows:

On or about August 22, 2014, Claimants Tariq Abdulaziz, Ph.D., M.S., MBA the Connecticut Department of Social Services ("Department") were sent correspondence informing this Provider that the rules for evaluation and reimbursement were unilaterally changed. In effect, the Department either unilaterally changed the provisions of this Provider's contract with the Department and/or breached the existing contract with this Provider for which the Provider now seeks permission to sue for damages and financial harm, in excess of one hundred thousand ($100,000.00) dollars.

The unilateral change in terms of the Provider Agreement essentially amounted to a breach of contract for which this Provider seeks permission to sue for damages and financial harm to the professional business, including loss of case referrals and revenues.

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AUG 25 2015

The Department knowingly and intentionally misled this Provider by informing the Provider that the federal requirements for the acquired brain injury/traumatic brain injury waiver program had changed for this Provider specialty when in fact there were no such changes in the federal standards for this waiver program. All the knowing and intentional actions against this Provider have substantially affected its substantive and procedural due process rights, including but not limited to, on information and belief, referring this Provider's clinical practices for investigation by other agencies, clearly in violation of this Provider's state and federal constitutional rights.

In addition, the Department, by and through John McCormick, Director of Office of Quality Assurance, unlawfully refused to supply this Provider with this Provider's file. (See correspondence, August 2, 2015, attached.)

Pursuant to C.G.S. § 4-147, this Presentment on behalf of Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc. of 23 Kate Way, Windsor Locks. CT 06090 is specifically a request for permission to sue (Sec. 4), seeking in excess of five thousand ($5,000.00) dollars insofar as the claimant has suffered financial harm and damages well in excess of that amount to be proven before this Commission.

Also, pursuant to statute, the claimant's counsel has enclosed a check in the amount of fifty ($50.00) dollars, with petition for permission to sue in duplicate.

Thanking you for your attention to this presentment, on behalf of the Provider, I remain,

Very truly yours,

Michael T. Kegut

Cc: Tariq Abdulaziz, Ph.D., M.S., MBA

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE • HARTFORD, CONNECTICUT 06105

August 22, 2014

I. David Marder, Esq.
Marder & DeFelice Law Office, LLC
76 South Frontage Road
Vernon, CT 06066-5518

Re: NeuroStrategies, Inc. – Tariq Abdulaziz

Dear Attorney Marder,

The purpose of this letter is to respond to your correspondence to me, dated May 22, 2014 and August 6, 2014.

In your August 6, 2014 letter, you question social workers' requests for monthly reports for 2013. Such requests should not have been made.

Next, you want to know about the audit standards that apply to the Department's review of your client's records. It is not clear what you mean by this question. The Department conducted a records review in accordance with the Provider Agreement your client signed on January 15, 2004 and section 17b-260a-16(b) of the regulations, which states that, "[u]pon written request presented to the provider, the department...may be given immediate access to, and permitted to review and copy any and all records and documentation used to support claims billed to Medicaid." As mentioned in my letter to you, dated May 28, 2014, the purpose for this records review is to review the documentation that supports the services your client claimed to have provided, for which the Department paid.

By signing the Provider Agreement, your client has agreed to maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver participants. Your client will be held to that standard. Moreover, for services provided on or after April 1, 2013, your client will be held to the standards outlined in section 17b-260a-16(a) of the regulations. This section provides as follows:

> Providers are required to retain records to document services submitted for Medicaid reimbursement for at least five years from the date the service or item was provided. Documentation shall include the following:
>
> (1) Individual's name and the signature of the individual or their legal representative;
> (2) provider's name and signature;
> (3) dates of service;

(4) start time for each visit;
(5) end time for each visit; and
(6) a brief description of duties performed.

In your May 22, 2014 letter, you also ask for information about the adoption of the Department's ABI waiver regulations. These are new policies necessary to conform to the requirement of an approved federal waiver, and the statute is clear that the Department may operate under them until the time final regulations are effective. *See* Conn. Gen. Stat. § 17b-10(b). The Department published its Notice of its Intent to adopt the regulations on March 26, 2013, five days prior to the policy going into effect on April 1, 2013. The Department, therefore, complied fully with section 17b-10(b) of the Connecticut General Statutes.

Moreover, contrary to the representation in your letter, the Department received only one set of comments to the proposed regulation, and did not get any requests for a hearing. Accordingly, pursuant to section 4-168(a) of the Connecticut General Statutes, there was no reason for the Department to hold a hearing on these proposed regulations.

You point out that there is a typographical error in the Notice of Intent ("NOI"), i.e., the NOI cites to section 17b-260b, rather than section 17b-260a, of the Connecticut General Statutes as the statutory authority for the proposed regulations. Nevertheless, it is clear that the NOI is announcing the Department's intent to adopt regulations for the ABI waiver program, as confirmed by multiple references to the ABI waiver program in the opening paragraph of the NOI and in the Statement of Purpose. There is no possibility that, despite the incorrect citation, anyone reading this NOI would misunderstand its meaning. The Department provided sufficient notice to the public of its intention to adopt regulations concerning the ABI waiver program, and that the implementation date for the proposed regulation was April 1, 2013.

Finally, you asked for confirmation that "the specifics of the proposed regulations have not yet been developed" indicating that "the providers have not been notified of any such details and given a reasonable amount of time to comply." Providers have been duly notified of the regulatory requirements and have been given ample time to comply; the regulations were noticed over a year ago.

As noted in the Department's response to comments, there are some aspects of the proposed regulation that are still being developed. As also noted, once the Department has specified such details, it will notify providers and give them a reasonable amount of time to comply with any new requirements.

Sincerely,

Joseph A. Smiga
Staff Attorney, DSS

EXHIBIT 3

PROVIDER AGREEMENT

1. ALL OF THE STATEMENTS MADE BY ME ON THIS APPLICATION AND ALL INFORMATION CONTAINED IN MY SUPPORTING PROVIDER QUALIFICATION DOCUMENTATION IS TRUE AND CORRECT.
2. I ACKNOWLEDGE THAT I CAN PERFORM ALL STANDARDS AND DUTIES FOR THE SERVICES I AM APPLYING FOR, AS STATED IN THE PROVIDER MANUAL.
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12. I AM OVER 18 YEARS OF AGE.

TARIQ M. ABDULAZIZ
PROVIDER NAME (please print individual or agency name)

AUTHORIZED SIGNATURE (individual or agency rep) 01/15/04 DATE

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EXHIBIT 3

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12. I AM OVER 18 YEARS OF AGE.

TARIQ M. ABDULAZIZ
PROVIDER NAME (please print individual or agency name)

AUTHORIZED SIGNATURE (individual or agency rep.) 01/15/04 DATE

ALL PAPERWORK MUST BE SUBMITTED PRIOR TO ATTENDING THE TRAINING

GEORGE JEPSEN
ATTORNEY GENERAL

55 Elm Street
P.O Box 120
Hartford, CT 06141-0120

Office of the Attorney General
State of Connecticut

Tel: (860) 808-5210
Fax: (860) 808-5385

December 14, 2015

The Honorable J Paul Vance, Jr
Claims Commissioner
Office of the Claims Commissioner
165 Capitol Avenue
Hartford, CT 06106

RE: CLAIM OF TARIQ ABDULAZIZ, PH.D. AND NEUROSTRATEGIES, INC., FILE NO. 24260

Dear Commissioner Vance.

This letter is to inform you of the state's position regarding the above referenced claim.

Introduction

The claim was filed with the Office of the Claims Commissioner on August 25, 2015, but the claim was reportedly postmarked on August 21, 2015. The claimants apparently assert three claims.

First, the claimants allege that on or about August 22, 2014, claimants were sent correspondence advising them that "the rules of evaluation for reimbursement were unilaterally changed" which "in effect" allegedly "changed the provisions of this Provider's contract with the Department [of Social Services] and/or breached the existing contract..."

Second, claimants generally assert that "the Department knowingly and intentionally misled this Provider by informing the Provider that the federal requirements for the acquired brain injury ... waiver program had changed," which "knowing and intentional actions against this Provider have substantially affected its substantive and procedural due process rights ... including ... [by] referring this Provider's clinical practices for investigation by other agencies ... "

Finally, claimants allege that, "the Department ... unlawfully refused to supply this Provider with this provider's file. (See correspondence, August 2, 2015 attached)."

Claimants seek permission to sue the state for money damages in excess of $5,000.00, allegedly pursuant to Section 4 of C.G.S. § 4-147.

The Position of the State

The position of the State is that the Claims Commissioner lacks subject matter jurisdiction to entertain the claims. Alternatively, the claims are not "just claims" which in equity and justice the state should pay, provided that it has caused damage and received a benefit Conn Gen. Stat. §§ 4-160, 4-141 In addition, the claims do not "present [ ] an issue of law of fact under which the state, were it a private person, could be liable " Conn Gen. Stat. § 4-160

I. THE CLAIMS COMMISSIONER LACKS SUBJECT MATTER JURISDICTION

A. The Claims Commissioner does not have subject matter jurisdiction over the first two claims because administrative and judicial relief was otherwise available and was, in fact, sought by claimants by way of a Petition for Declaratory Ruling and by a subsequent judicial administrative appeal from the declaratory ruling to the Superior Court for the Judicial District of New Britain, Docket No. HHB-CV15-6029943-S. Accordingly, the Claims Commissioner lacks jurisdiction over these claims as a result of the limitations on jurisdiction provided by Conn. Gen. Stat. § 4-142.

B The Claims Commissioner lacks Subject Matter Jurisdiction over the third claim related to the denial of access to the claimants' file because relief is otherwise provided by law by way of an administrative hearing procedure before the Freedom of Information Commission followed by the opportunity for state court judicial review. See, Conn. Gen. Stat. §§ 1-206 and 4-183 Claimants did not pursue or exhaust their Freedom of Information Commission statutory administrative and judicial remedies. Accordingly, the Claims Commissioner lacks jurisdiction over this claim as a result of the limitations on jurisdiction provided by Conn. Gen. Stat. § 4-142.

C This Court lacks subject matter jurisdiction over the first two claims for the additional reason that the claims were not "presented under this chapter but within one year after it accrues." Conn. Gen. Stat. § 4-148(a). Claimants arbitrarily allege that the claim accrued when they received a letter from the Department, dated August 22, 2014, advising them that they would be held to the standards of the proposed ABI Waiver regulations for services provided after April 1, 2013.

However, assuming the existence of a valid claim, any such claim would have accrued months earlier, in March 2013, when the Department of Social Services issued its Law Journal notice indicating it would operate under its proposed ABI Waiver

regulations, including the documentation requirements of proposed regulation 17b-260a-16, pursuant to Conn. Gen. Stat. § 17b-10. At a minimum, claimants clearly knew or should have known that the Department's review of its records for the period after April 1, 2014, would be governed by proposed regulation 17b-260a-16 when the Department clearly advised claimants of that fact by letter dated May 20, 2014. Accordingly, any claim accrued prior to August 22, 2014, such that the Claims Commissioner lacks subject matter jurisdiction to entertain these claims which were not presented within the one year time period from the date the claims actually accrued. See, Conn. Gen. Stat. § 4-148.

II. ALTERNATIVELY, CLAIMANTS' CLAIMS ARE NOT "JUST CLAIMS" AND DO NOT PRESENT ISSUES OF LAW OR FACT UNDER WHICH THE STATE COULD BE LIABLE IF IT WERE A PRIVATE PERSON

A. Claimants' claims fail to state claims upon which relief can be granted.

B Alternatively claimants' first two claims are barred by the doctrines of res judicata/collateral estoppel inasmuch as essentially the same issues and factual circumstances were presented to the Department in claimant's Petition for Declaratory Ruling Claimant's Petition for a Declaratory Ruling specifically alleged that the document retention requirements in the proposed regulations "will require a detail of services and billing which has not been required before "in contrast to the requirements in claimant's Provider Agreement which more generally provides that, "I will maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver Participants." Petition for Declaratory Ruling, p. 5. The Department issued its declaratory ruling on Mary 28, 2015, which ruled, in pertinent part, that:

> Yes, section 17b-10(b) of the Connecticut General Statutes is applicable to the promulgation of regulations under the ABI Waiver Program. As stated above, section 17b-10(b) of the Connecticut General Statutes provides that the Department shall adopt as a regulation, in accordance with the provisions of chapter 54, any new policy necessary to conform to a requirement of an approved federal waiver application initiated in accordance with section 17b-8. See Exhibit F.
>
> The ABI Waiver Program operates under an approved federal waiver which was initiated in accordance with section 17b-8 of the Connecticut General Statutes. The ABI Waiver Regulations were promulgated as new policies necessary to

conform to the requirements of that waiver. Section 17b-10(b) of the Connecticut General Statutes, therefore, is applicable to regulations promulgated pursuant to the ABI Waiver

Pursuant to Conn. Gen. Stat. § 4-176(h), a declaratory ruling "shall have the same status and binding effect as an order issued in a contested case ..." Claimants appeal the declaratory ruling to the Superior Court pursuant to the provisions of Conn. Gen. Stat §§ 4-176(h) and 4-183, Neurostrategies, Inc and Abdulaziz v Department of Social Services, No HHB-CV15-6029943-S, which appeal was dismissed by the Court by Judgment of Dismissal dated November 25, 2015. Accordingly, the declaratory ruling that the Department is lawfully operating under its proposed regulations, including the record documentation requirements of proposed regulation 17b-260a-16, is binding on claimants and must be given effect under principles of administrative res judicata and/or collateral estoppel.

C. Contrary to the allegation in claimant's "second claim," the Department never represented "that the federal requirements for the acquired brain injury/traumatic brain injury waiver program had changed ..." Conn. Gen. Stat. § 17b-10(b) authorizes the Department to operate under proposed regulations while it is in the process of adopting same as UAPA regulations in either of two distinct situations: 1) either when "necessary to conform to a requirement of an approved waiver application," or 2) when "necessary to conform to a requirement of a federal or a joint state and federal program ... " Contrary to the assertion in claimants' second claim, the Department never represented that it was necessary to operate under its proposed ABI Waiver regulation in order to conform to changed federal statutory requirements, but has always indicated that it was operating under its proposed ABI waiver regulations in order to conform to the requirements of an approved federal waiver. See, the Department's August 22, 2014 letter (attached to claimants' claim) and the Department's declaratory ruling, quoted in pertinent part, supra).

D. Alternatively, claimants have not suffered harm because they have not demonstrated that the more specific requirements of proposed regulation 17b-260a-16 are any more stringent than what was already effectively required by the more general requirements of claimants' provider agreement, or that their records "documenting the extent of services provided" were adequate under the more general provider agreement requirements but inadequate under the more specific requirements of proposed regulation § 17b-260a-16.

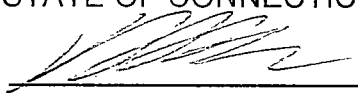
E. As Medicaid providers, claimants participate in a regulated industry that is subject to extensive state regulation. The Department is specifically authorized to adopt

regulations implementing the program by Conn. Gen. Stat. §§ 17b-3, 17b-10(b), 4-8, 4-168, 17b-260 and 17b-260a. Nothing in the Provider Agreement precludes the Department from amending or adopting regulations or from operating under proposed regulations pursuant to Conn. Gen Stat. § 17b-10(b). Accordingly, operating under proposed ABI Waiver regulations pursuant to the provisions of Conn Gen. Stat. § 17b-10 in no way constitutes a "breach of contract." The claimants are free to withdraw from the program if they are unwilling to abide by any new or amended regulation.

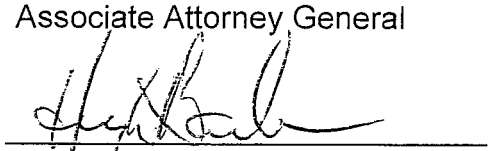
F. With respect to the third "failure to produce the provider file" claim, the Department lawfully and properly claimed exemptions from disclosure pursuant to the provisions of Conn. Gen. Stat. §§ 1-210(b)(13) exemption for "records of an investigation" and 4-276 (Attorney General investigation of possible false claims)

Respectfully submitted,

STATE OF CONNECTICUT

By: 

Kimberly P. Massicotte
Associate Attorney General



Hugh Barber
Assistant Attorney General

THE LAW OFFICES OF MICHAEL T. KOGUT

75 MARKET PLACE
SPRINGFIELD, MA 01103

TELEPHONE 413.348.2167
FACSIMILE 413.739-7168
MKOGUT@KOGUTLAW.COM

FILE # 24260

RECEIVED
AUG 25 2015
OFFICE OF CLAIMS COMMISSIONER
STATE OF CONNECTICUT

August 21, 2015

VIA PRIORITY MAIL
Mr. J. Paul Vance, Jr., Commissioner
Office of the Claims Commission
165 Capitol Avenue
Hartford, CT 06106

Re: Presentment of Claim/Requesting Permission To Sue Connecticut

Dear Commissioner Vance.:

Please acknowledge this correspondence as a presentment of claim for permission to bring a civil suit against the State of Connecticut on behalf of Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc., both of whom the undersigned represents.

The claimants, Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc. have a usual and customary business address of 23 Kate Way, Windsor Locks. CT 06090. As counsel for both claimants, I maitian a business address at 75 Market Place, Springfield, MA 01103.

The concise statement of claim, pursuant to C.G.S. § 4-147(2) is as follows:

On or about August 22, 2014, Claimants Tariq Abdulaziz, Ph.D., M.S., MBA the Connecticut Department of Social Services ("Department") were sent correspondence informing this Provider that the rules for evaluation and reimbursement were unilaterally changed. In effect, the Department either unilaterally changed the provisions of this Provider's contract with the Department and/or breached the existing contract with this Provider for which the Provider now seeks permission to sue for damages and financial harm, in excess of one hundred thousand ($100,000.00) dollars.

The unilateral change in terms of the Provider Agreement essentially amounted to a breach of contract for which this Provider seeks permission to sue for damages and financial harm to the professional business, including loss of case referrals and revenues.

AUG 25 2015
$50

The Department knowingly and intentionally misled this Provider by informing the Provider that the federal requirements for the acquired brain injury/traumatic brain injury waiver program had changed for this Provider specialty when in fact there were no such changes in the federal standards for this waiver program. All the knowing and intentional actions against this Provider have substantially affected its substantive and procedural due process rights, including but not limited to, on information and belief, referring this Provider's clinical practices for investigation by other agencies, clearly in violation of this Provider's state and federal constitutional rights.

In addition, the Department, by and through John McCormick, Director of Office of Quality Assurance, unlawfully refused to supply this Provider with this Provider's file. (See correspondence, August 2, 2015, attached.)

Pursuant to C.G.S. § 4-147, this Presentment on behalf of Tariq Abdulaziz, Ph.D., M.S., MBA and Neurostrategies, Inc. of 23 Kate Way, Windsor Locks. CT 06090 is specifically a request for permission to sue (Sec. 4), seeking in excess of five thousand ($5,000.00) dollars insofar as the claimant has suffered financial harm and damages well in excess of that amount to be proven before this Commission.

Also, pursuant to statute, the claimant's counsel has enclosed a check in the amount of fifty ($50.00) dollars, with petition for permission to sue in duplicate.

Thanking you for your attention to this presentment, on behalf of the Provider, I remain,

Very truly yours,

Michael T. Kogut

Cc: Tariq Abdulaziz, Ph.D., M.S., MBA

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE • HARTFORD, CONNECTICUT 06105

August 22, 2014

I. David Marder, Esq.
Marder & DeFelice Law Office, LLC
76 South Frontage Road
Vernon, CT 06066-5518

Re: NeuroStrategies, Inc. – Tariq Abdulaziz

Dear Attorney Marder,

The purpose of this letter is to respond to your correspondence to me, dated May 22, 2014 and August 6, 2014.

In your August 6, 2014 letter, you question social workers' requests for monthly reports for 2013. Such requests should not have been made.

Next, you want to know about the audit standards that apply to the Department's review of your client's records. It is not clear what you mean by this question. The Department conducted a records review in accordance with the Provider Agreement your client signed on January 15, 2004 and section 17b-260a-16(b) of the regulations, which states that, "[u]pon written request presented to the provider, the department...may be given immediate access to, and permitted to review and copy any and all records and documentation used to support claims billed to Medicaid." As mentioned in my letter to you, dated May 28, 2014, the purpose for this records review is to review the documentation that supports the services your client claimed to have provided, for which the Department paid.

By signing the Provider Agreement, your client has agreed to maintain records that fully disclose services and goods rendered and/or delivered to ABI Waiver participants. Your client will be held to that standard. Moreover, for services provided on or after April 1, 2013, your client will be held to the standards outlined in section 17b-260a-16(a) of the regulations. This section provides as follows:

> Providers are required to retain records to document services submitted for Medicaid reimbursement for at least five years from the date the service or item was provided. Documentation shall include the following:
>
> (1) Individual's name and the signature of the individual or their legal representative;
> (2) provider's name and signature;
> (3) dates of service;

(4) start time for each visit;
(5) end time for each visit; and
(6) a brief description of duties performed.

In your May 22, 2014 letter, you also ask for information about the adoption of the Department's ABI waiver regulations. These are new policies necessary to conform to the requirement of an approved federal waiver, and the statute is clear that the Department may operate under them until the time final regulations are effective. *See* Conn. Gen. Stat. § 17b-10(b). The Department published its Notice of its Intent to adopt the regulations on March 26, 2013, five days prior to the policy going into effect on April 1, 2013. The Department, therefore, complied fully with section 17b-10(b) of the Connecticut General Statutes.

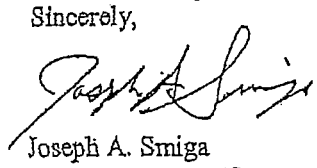
Moreover, contrary to the representation in your letter, the Department received only one set of comments to the proposed regulation, and did not get any requests for a hearing. Accordingly, pursuant to section 4-168(a) of the Connecticut General Statutes, there was no reason for the Department to hold a hearing on these proposed regulations.

You point out that there is a typographical error in the Notice of Intent ("NOI"), i.e., the NOI cites to section 17b-260b, rather than section 17b-260a, of the Connecticut General Statutes as the statutory authority for the proposed regulations. Nevertheless, it is clear that the NOI is announcing the Department's intent to adopt regulations for the ABI waiver program, as confirmed by multiple references to the ABI waiver program in the opening paragraph of the NOI and in the Statement of Purpose. There is no possibility that, despite the incorrect citation, anyone reading this NOI would misunderstand its meaning. The Department provided sufficient notice to the public of its intention to adopt regulations concerning the ABI waiver program, and that the implementation date for the proposed regulation was April 1, 2013.

Finally, you asked for confirmation that "the specifics of the proposed regulations have not yet been developed" indicating that "the providers have not been notified of any such details and given a reasonable amount of time to comply." Providers have been duly notified of the regulatory requirements and have been given ample time to comply; the regulations were noticed over a year ago.

As noted in the Department's response to comments, there are some aspects of the proposed regulation that are still being developed. As also noted, once the Department has specified such details, it will notify providers and give them a reasonable amount of time to comply with any new requirements.

Sincerely,



Joseph A. Smiga
Staff Attorney, DSS

Phone. 860-424-5760 Information: 1-800-462-0134 and TDD/TTY 1-800-842-4524 Fax: 860-424-5729
http://www.ct.gov/dss/olcrah

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EXHIBIT 3

PROVIDER AGREEMENT

1. ALL OF THE STATEMENTS MADE BY ME ON THIS APPLICATION AND ALL INFORMATION CONTAINED IN MY SUPPORTING PROVIDER QUALIFICATION DOCUMENTATION IS TRUE AND CORRECT.

2. I ACKNOWLEDGE THAT I CAN PERFORM ALL STANDARDS AND DUTIES FOR THE SERVICES I AM APPLYING FOR, AS STATED IN THE PROVIDER MANUAL.

3. I WILL IMMEDIATELY NOTIFY THE DEPARTMENT IF ANY INFORMATION PROVIDED BY ME ON THIS APPLICATION CHANGES.

4. I WILL MAINTAIN CURRENT STANDING WITH RESPECT TO ANY LICENSE AND/OR CERTIFICATION REQUIREMENTS ESTABLISHED BY THE DEPARTMENT FOR MY ABI PROVIDER TYPE AND SERVICE SPECIALTY.

5. I WILL IMMEDIATELY NOTIFY THE DEPARTMENT IF SUCH LICENSES AND/OR CERTIFICATIONS EXPIRE, ARE REVOKED, SUSPENDED OR OTHERWISE TERMINATED FOR ANY REASON.

6. I WILL PROVIDE ALL SERVICES IN ACCORDANCE WITH THE TERMS OF THE ABI WAIVER PARTICIPANT'S APPROVED SERVICE PLAN.

7. THE RATE PAID BY THE DEPARTMENT FOR THE PERFORMANCE OF ABI WAIVER SERVICES IS THE COMPLETE PAYMENT IN FULL FOR ALL SERVICE(S), GOODS OR PRODUCTS DELIVERED TO ELIGIBLE ABI WAIVER PARTICIPANTS.

8. EXCEPT FOR AUTHORIZED CO-PAYMENTS MADE BY ELIGIBLE WAIVER PARTICIPANTS, THE DEPARTMENT'S PAYMENTS TO ME FOR THE PERFORMANCE OF ABI SERVICES CONSTITUTE SOLE AND COMPLETE PAYMENT IN FULL.

9. I WILL MAINTAIN RECORDS THAT FULLY DISCLOSE SERVICES AND GOODS RENDERED AND/OR DELIVERED TO ABI WAIVER PARTICIPANTS. THESE RECORDS WILL BE MADE AVAILABLE TO AUTHORIZED REPRESENTATIVES OF THE DEPARTMENT UPON REQUEST.

10. I ACKNOWLEDGE THAT I MAY BE SUSPENDED OR TERMINATED FROM THE ABI PROVIDER REGISTRY IF I AM FOUND BY THE DEPARTMENT TO HAVE ENGAGED IN FRAUDULENT OR ABUSIVE PROGRAM SERVICES.

11. I AGREE TO NOT USE OR DISCLOSE PROTECTED HEALTH INFORMATION (PHI) OTHER THAN AS PERMITTED OR AS REQUIRED BY LAW AND TO USE APPROPRIATE SAFEGUARDS TO PREVENT IMPROPER USE OR DISCLOSURE OF PHI.

12. I AM OVER 18 YEARS OF AGE.

Tariq M. Abdulaziz
PROVIDER NAME (please print individual or agency name)

[signature] 01/15/04
AUTHORIZED SIGNATURE (individual or agency rep) DATE

ALL PAPERWORK MUST BE SUBMITTED PRIOR TO ATTENDING THE TRAINING

EXHIBIT 3

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12. I AM OVER 18 YEARS OF AGE.

TARIQ M. ABDULAZIZ
PROVIDER NAME (please print individual or agency name)

AUTHORIZED SIGNATURE (individual or agency rep.) 01/15/04 DATE

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Contact Us Phone (860 /13-5501 FAX (860) 713-7435 Email **Claims** Commissioner@ct gov Commissioner Office of the **Claims** Commissioner 165 Capitol

999 Asylum Ave # 204 Hartford CT 06105
(860) 566-2024

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Procedures for Filing a Claim - Claims Commissioner
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The procedure for filing a **claim** with the Commissioner of **Claims** is as follows (refer to Chapter 53 Section 4 141 et seq of the **Connecticut** General Statutes) 1

chapter 53* claims against the state - Connecticut General
https.//www cga **ct**.gov/2011/ ./chap053 h Connecticut General Assembly
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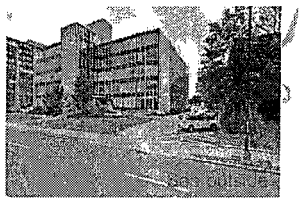
Claims Commissioner, Office of - Connecticut State Library
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[PDF] Claims Commissioner Decisions
www wwblaw com/docs/Nash%20CC%20Decisions pdf
Redeyelbgment **Commission** 158 Com 364 379 1969), and in maiditg a 4 of the **Connecticut** Consfimtion provides tha **Claims** against the state shall be

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2)

Date/Time: Sep. 25. 2015 9:26AM

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8/21/15

Claims Commission reports Claim was postmarked on 8/21/15 ∴ Timely

Has to 8/22



George Jepsen
ATTORNEY GENERAL

TELEFAX COMMUNICATION

Date: 9/25/2015

To: J. Paul Vance, Jr
Claims Commissioner

Fax: 860-713-7435

From: Hugh Barber
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Tel: (860) 808-5210
Fax: (860) 808-5385

Number of pages: 3 Pages (including cover)

Faxed by: Suzanne Dunnell

Comments: Appearance re File No. 24260

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George Jepsen
ATTORNEY GENERAL

TELEFAX COMMUNICATION

Date: 9/25/2015

To: J. Paul Vance, Jr.
Claims Commissioner

Fax: 860-713-7435

From: Hugh Barber
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
Tel: (860) 808-5210
Fax: (860) 808-5385

Number of pages: 3 Pages (including cover)

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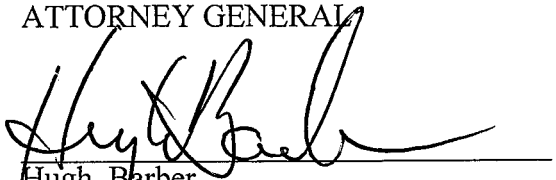
FILE NO. 24260	:	
	:	
TARIQ ABDULAZIZ	:	STATE OF CONNECTICUT
	:	
	:	OFFICE OF THE CLAIMS
v.	:	COMMISSIONER
	:	
STATE OF CONNECTICUT	:	
DEPARTMENT OF SOCIAL SERVICES	:	SEPTEMBER 25, 2015

APPEARANCE

Please enter the appearance of Assistant Attorney General Hugh Barber for the Respondent.

THE RESPONDENT
STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES

GEORGE JEPSEN
ATTORNEY GENERAL

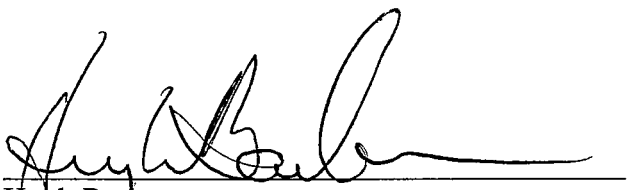
BY: 

Hugh Barber
Assistant Attorney General
Juris No. 085484
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5210
Fax: (860) 808-5385
hugh.barber@ct.gov

CERTIFICATION

I hereby certify that a copy of the foregoing Appearance was mailed, first class postage prepaid, this 25th day of September, 2015 to:

Michael T. Kogut
The Law Offices of Michael T. Kogut
75 Market Place
Springfield, MA 01103



Hugh Barber
Assistant Attorney General

Barber, Hugh

From: Barber, Hugh
Sent: Tuesday, November 17, 2015 4:31 PM
To: Smiga, Joseph A.
Cc: Hyman, Phyllis E.; McCormick, John F.
Subject: request for info--claims commission filing
Attachments: leter_201511171611 11 17 2015 16-00-58.221.pdf

In addition to appealing the declaratory ruling, Neurostrategies and "Tariq" have filed a claim with the Claims Commissioner asking for permission to sue. They pick a letter dated August 22, 2014 in the series of letters going back and forth between you and counsel for plaintiffs as the "cause" of their injuries. They apparently picked that letter because of the one year limitation period on claims against the State. (Their claim letter is dated August 21, 2015) I want to move to dismiss the claim as untimely, arguing that any "injury" would have occurred before August 22, 2014 either when the NOI was published in the CT Law Journal and/or when DSS first asked them to produce documentation of the provision of services.

Aside from the NOI< the first correspondence I have in the Declaratory Ruling file, is a May 22 letter from Attorney Marder to you. That letter refers to prior correspondence. Can you gather the rest of the correspondence that pre-dates May 22, including any exchanges of correspondence requesting the production of documents demonstrating the provision of services, presumably with John McCormick's group? Of course, I'll make a number of other arguments in opposition to the claim, but the lack of timeliness is the most straightforward basis for denying the application for permission to sue. Therefore, I need to gather the documentation documenting that the dispute arose prior to August 22, 2014.

Hugh Barber
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

Phone: 860.808.5210
Fax: 860.808.5385
Email: hugh.barber@ct.gov
URL: http://ct.gov/ag/

CONFIDENTIAL INFORMATION:

Barber, Hugh

From: Bullers, Michael R.
Sent: Wednesday, November 18, 2015 8:09 AM
To: Barber, Hugh
Subject: RE: claims commission question

Hi Hugh,

Hope all is well. Per Conn. Gen. Stat 4-147, the claim is deemed to be filed on the date that the notice of claim is postmarked. You can call Tara over at the Claims Commissioner and ask her for the postmarked date on the envelope which they normally keep.

As to your other question, since you are challenging the date of the claimed injury, I probably would not file a motion to dismiss, but rather the issue in the position statement, followed later by a motion for summary judgment. The reason that I would do it this way is because you may need to do some limited discovery to solidify your position that the claimed injury occurred much earlier than what is being alleged in the notice of claim.

Hope this is helpful.

Mike

From: Barber, Hugh
Sent: Tuesday, November 17, 2015 4:39 PM
To: Bullers, Michael R.
Subject: claims commission question

Mike,

I have not been asked not handle many Claims Commission matters over the years. I have a recent claim where the one year limitation period may bar the claim assuming that the one year period is measured from the date of filing and payment of the filing fee rather than from the date of mailing. Do you know of any authority that goes to the question of whether the "mailbox rule" is employed, or whether the date of filing controls?

In any event, I can argue that the claimed "injury" occurred prior to the date that they cite, so I will be raising timeliness issues even if the mailbox rule is employed. Are timeliness issues usually raised on a motion to dismiss or in the position statement opposing the claim? Can you provide me with examples of motions/ briefs/ruling on the one year rule? Any assistance you could provide would be greatly appreciated.

Hugh

Hugh Barber

Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

Phone: 860.808.5210
Fax: 860.808.5385
Email: hugh.barber@ct.gov
URL: http://ct.gov/ag/

CONFIDENTIAL INFORMATION:

Barber, Hugh

From: Barber, Hugh
Sent: Wednesday, September 30, 2015 4:19 PM
To: Bremby, Roderick L.; Parrella, Brenda M.; Hyman, Phyllis E.; Smiga, Joseph A.; Bruni, Kathy A. (DSS)
Subject: new claims commission filing
Attachments: commission_201509301556 09 30 2015 15-47-29.251.pdf; claim_201509301554 09 30 2015 15-44-49.664.pdf; pa_201509301624 09 30 2015 16-15-10.014.pdf

A participating provider of ABI Medicaid waiver services has filed a claim with the Claims Commission seeking authorization to sue the State for the alleged alteration of his provider agreement which he attributes to an August , 2014 letter from DSS. That letter was part of a series of letters between the provider and DSS. The claim may also be based upon other "facts" as outlined in the request to the Claims Commissioner. I have attached a copy of the claim (marked "commission") and of the August 2014 DSS letter (marked "claim").

I am somewhat familiar with some of the circumstances relating to this matter since I am handling his appeal from a declaratory ruling issued by DSS in which he challenges the force and effect of the proposed ABI waiver regulations and DSS' proposed audit regulations. The key issue in that declaratory ruling petition is how much data and what kind of data must be maintained by a provider to support claims for payment. I am also attaching a copy of an old provider agreement that is part of the administrative record on the declaratory ruling appeal, which may be the provider agreement that is referenced in this claim (marked "pa"). The provider agreement is more akin to an "enrollment agreement. It was issued by Allied and contains the bare minimum terms required by federal law, but does not contain the terms that are contained in typical DSS provider agreements, such as the right of both the provider and DSS to terminate the agreement under specified terms, including mere advance notice. The old agreement does contain an obligation to maintain records sufficient to document claims for payment—but the language is general and vague in comparison to the language in the proposed regulations which are much more specific. That MIGHT be the basis for his claim.

Notwithstanding that this provider is difficult, we have to take this claim seriously. Please assign this to DSS staff to do an appropriate investigation, recommendation and report as to whether the provider is submitting a "just claim" that should be paid by the state, and as to whether the State would be liable for this claim if it were a private party. That will necessarily require a determination of what "rights" the claimant had under a pre-existing provider agreement, whether those "rights" were altered in any way by the August 2014 letter (or other circumstances referenced in the claim) , if so, whether the Department was authorized to "alter" his pre-existing rights, and how the provider was harmed as a result (if at all). Attorneys Smiga and Hyman are familiar with some of these issues as a result of their handling of the declaratory ruling. I understand that a contractor, Allied, handled much of the administrative responsibilities of administering the ABI waiver program; however, I understand that Kathy Bruni likely will be knowledgeable about some of these issues.

Hugh Barber

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CONFIDENTIAL INFORMATION:

Full Case Detail

Matter Number: HE1521048

Matter Name: Tariq Abdulaziz, Ph. D., M.S., MBA v. State of Connecticut
Department: Health **Matter Type:** Claim
Status: OPEN **Date Opened:** 09/22/2015 **Date Closed:**

GENERAL DETAIL

Agency: Social Service, Dept. of
Court: Claims Commissioner Office
AG Role: Attorney for Forum Agency
Category: Contracts

Docket #: FILE NO. 24260 **CCSES Key:**
Presiding Officer:
Appeals ID:
Subcategory: Medicaid

Injury Date:
Location:
Injured Body Parts:

Injury Type:

Description: PROVIDER AGREEMENT CHANGES

Comments:

Accession #: **Location Number:** **Destroy:** **Box #:**

Under Seal:

AG STAFF

Staff Name	Primary
Barber, Hugh	Y

PARTIES

Type: Claimant Pro Se? N
Name: ABDULAZIZ, TARIQ
Company: NEUROSTRATEGIES, INC.
Address: 23 KATE WAY

WINDSOR LOCKS, CT 06090
:

Phone: **Fax:**
Email:
DOB:
SSN:
Relationship:

PARTIES COUNSEL

Party: ABDULAZIZ, TARIQ

Counsel: KOGUT, MICHAEL
Phone: 413-348-2167
Fax: 413-739-7168

LAW OFFICES OF MICHAEL T. KOGUT
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SPRINGFIELD, MA 01103

Juris #: **Fed Bar #:** **Firm Juris #:**

RELATED MATTERS

Matter Name: **Comments:**

DISPOSITION

For/Against: **Disp Date** **Disp Amt** **Disposition**

Comments:

ACTIVITIES

0
Activity Date:
Pleading#: 0
Pleader:
Court:
Comments:

Duration:
Ruling:
Attorney Name: ,

LMC Approval:
Ruling Date:

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF QUALITY ASSURANCE

John F. McCormick, CPA
Director

Telephone
(860) 424-5920
Facsimile
(860) 424-5900

August 2, 2015

RECEIVED
AUG 25 2015
OFFICE OF CLAIMS COMMISSIONER
STATE OF CONNECTICUT

Michael T. Kogut
The Law Offices of Michael T. Kogut
75 Market Place
Springfield, MA 01103

Re: Neurostrategies, Inc. / Tariq Abdulaziz

Dear Mr. Kogut:

The purpose of this letter is to respond to your communication to me, dated July 10, 2015, concerning the above-referenced provider (the "provider").

With regard to your request for the provider's file, the Department of Social Services (the "Department") did not conduct an audit, as you state in your letter. Rather, the Department conducted an on-site visit to review the client's records supporting claims paid under the Acquired Brain Injury Medicaid Waiver Program. This was done pursuant to the provider agreements that the provider signed on January 15, 2004 and October 23, 2014.

The Department's file concerning this record review is not public information, in accordance with sections 1-210(b) (13) and 4-276 of the Connecticut General Statutes. Accordingly, the Department will not be sending you the information in the provider's file.

Finally, contrary to the statement in your letter, the Department has not terminated any provider agreement with the provider.

Sincerely,

John F. McCormick, Director