

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Emanuel Umoren,

*Appellant,*

v.

Case No. 2012-REM-11-0249

Montgomery County Board of Commissioners,

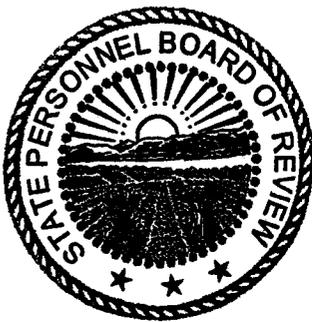
*Appellee.*

**ORDER**

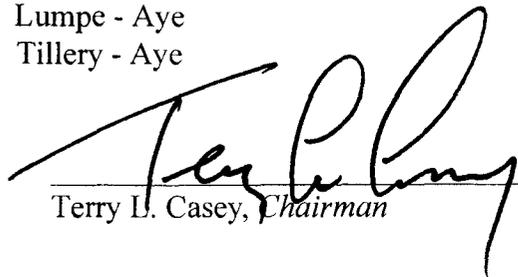
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the removal of the Appellant is **AFFIRMED**.



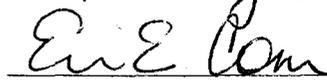
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
\_\_\_\_\_  
Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, February 13, 2014.

  
\_\_\_\_\_  
*Clerk*

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

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**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Richard E. Keefe,

Case No. 12-REM-11-0247

and

Emanuel Umoren,

Case No. 12-REM-11-0249

*Appellants*

v.

December 5, 2013

Montgomery County Board  
of Commissioners,

*Appellee*

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

The above-referenced causes came on due to Appellants' timely appeals of their removal from employment with Appellee. Appellants' removals arose from the same set of facts and a combined record hearing was held in on May 15, 2013. Appellants were present at record hearing and represented by Jeffrey M. Silverstein, attorney at law. Appellee was present at record hearing through its designee, Stillwater Center Administrator Michelle Pierce-Mobley, and was represented by Julie Droessler, Montgomery County Assistant Prosecuting Attorney.

The R.C. 124.34 Orders provided to Appellant cite as the basis for their removals:

"Failure to perform the fundamental duties of your position. Neglect of duty, inefficiency, malfeasance, misfeasance and nonfeasance in the performance of your job duties, or lack thereof."

Appellant Keefe was specifically alleged to have:

"... failed to oversee your department functions; manage and maintain reports and monitor accounts. You misrepresented the completion of the work to the agency director when asked and you did

not share any deficiencies with her. You failed to monitor and adequately supervisor an employee in your jurisdiction and he failed to review error reports and/or to bill clients resulting in lost revenue and the inability to collect on uncollected amounts. You authorized and approved contracts to a third party biller in violation of the County policy. We view these actions as blatant disregard of your responsibilities.”

Appellant Umoren was specifically alleged to have:

“... failed to monitor accounts, to review error reports and/or to bill clients resulting in lost revenue and the inability to collect on uncollected amounts. You claim to have reported some of these problems to your supervisor, however you failed to follow-through on your responsibilities as the primary auditor of these accounts. We view these actions as blatant disregard of your responsibilities.”

The parties stipulated to the Board’s jurisdiction to consider the appeals, as well as to Appellee’s observance of the Appellants’ due process rights and compliance with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in effectuating Appellants’ removals.

### **STATEMENT OF THE CASE**

Stephanie Echols testified that she is presently employed by Appellee as Human Resources Director and stated that she is responsible for oversight of all county human resources functions. She indicated that Stillwater Center (“Stillwater”) is a residential facility under the jurisdiction of Appellee that provides care for disabled individuals.

Ms. Echols recalled that she received a recommendation from Michelle Pierce-Mobley, the Director of Stillwater Center, that Appellant Richard Keefe, Stillwater’s Financial Manager, and Appellant Emanuel Umoren, Stillwater’s Accounting Supervisor, be removed from employment following an investigation into allegations of fiscal mismanagement. She stated that the investigation and a review of documents revealed that there were financial reports missing, billings that were not completed, and a significant amount of money that had not been collected for

services that had been provided to residents. The witness noted that although she was not personally involved in the investigation, she reviewed all of the documentation produced by the investigation, as well as Appellee's policies and the Appellants' personnel files, and discussed the findings with Director Pierce-Mobley, and with the county Office of Budget and Management ("OBM"). Ms. Echols testified that the ultimate responsibility for Stillwater finances falls within the purview of OBM and observed that OBM personnel were helpful in explaining the fiscal materials and verifying that there were billings that had not been collected.

Ms. Echols indicated that she ultimately recommended to the Montgomery County Board of Commissioners that Appellant Keefe and Appellant Umoren be removed from employment, and the Board approved her recommendation. She confirmed that no specific county policies were referenced in the R.C. 124.34 Orders of Removal provided to Appellants and that neither Appellant had a substantial prior disciplinary history.

Michelle Pierce-Mobley testified that she has held the position of Director of Stillwater Center since January 2011; prior to that time she held the position of Manager of Facilities and Human Resources at Stillwater. She noted that she had no oversight or involvement with Appellants' job duties prior to her appointment as Director, but after she assumed the Director's duties she had meetings with all of the staff who reported directly to her to clarify their responsibilities, practices and goals. The witness observed that she directly supervised Appellant Keefe and had regular meetings with him to review revenue and overtime reports, staffing reports, deficit reports and Medicaid reports. Director Pierce-Mobley indicated that she initially had no concerns regarding Appellant Keefe's performance.

The witness recalled that one of the first projects she was responsible for as Director was to prepare financial scenarios for an upcoming levy vote which would provide Stillwater with continued funding. She stated that the information gathered for the levy package focused only on revenue and accounts receivable, and one of the primary concerns was the potential need to lay off employees or reduce staff due to shortfalls in revenue. Ms. Pierce-Mobley testified that it took three or four months to prepare the levy package and over the course of the project she noticed that the financial information provided by Appellant Keefe appeared to have numerous errors; the witness observed that Appellant Keefe's information often did not reflect changes that had been requested over the course of the project. She confirmed that she rated Appellant Keefe as "does not meet" in the Accountability 2

area of his 2010-2011 performance review due to the inaccuracies in the information he provided during the levy review process as well as a problem with vendor blankets, and acknowledged that his overall rating was "meets expectations,"

The witness noted that in 2011 she was not aware of any billing issues for either Stillwater or the Adult Interim Care Home (AICH), which is an emergency shelter operated by Stillwater Center. She observed that neither Appellant Keefe nor Appellant Umoren ever indicated that there were problems with billing, or asked for assistance or training regarding billing. Director Pierce-Mobley explained that the AICH was originally operated by Montgomery County Developmental Disabilities Services (MCDDS), but was transferred to Stillwater in early 2009 so they could bill Medicaid for services provided. She observed that MCDDS remains a funding source for Stillwater and AICH and she interacts with them on a regular basis.

Director Pierce-Mobley recalled that in May 2012 Michael Proulx, MCDDS' financial director, asked to meet with her about potential fiscal problems he had identified. She testified that Mr. Proulx met with her, Appellant Keefe, and several other individuals on June 1, 2012, and provided them with information showing that AICH had failed to collect waiver money for more than 500 Medicaid days of service provided to clients from 2010 through 2012. The witness indicated that she had the impression from their discussion with Mr. Proulx that Appellant Keefe was not aware that there were problems or that they were significant in nature. Director Pierce-Mobley explained that unbilled accounts over a year old could not be recovered, and it was made clear in the meeting that aging accounts needed to be billed immediately before the recovery period expired. The witness recalled that Appellant Keefe assured her that all billing for AICH arrearage would be completed by July 2012, but in July he requested an additional sixty (60) days.

Director Pierce-Mobley testified that Appellant Keefe indicated in the June 1, 2012, meeting that quarterly billing audits, reconciling payments received to amounts billed, had been performed and stated that he would provide her with copies of the audits; Appellant Keefe later admitted that no audits had been conducted. She noted that she was not aware until that meeting that Stillwater contracted with a third-party billing service, Primary Solutions, to process their Medicaid billing. The witness observed that Appellant Keefe notified her in a June 12, 2012, memo that certain changes would be made to ensure better oversight of AICH billings.

Director Pierce-Mobley explained that if a patient's waiver account contained insufficient funds to cover amounts billed, Primary Solutions would generate a monthly error report that was returned to Stillwater for follow-up. The report was provided to Appellant Keefe, Appellant Umoren, and Billing Clerk Joyce Searcy, who reported to Appellant Umoren. Director Pierce-Mobley noted that the error report identified the account and the problem preventing billing, and Stillwater staff were responsible for resolving the problem so that Primary Solutions could resubmit a bill for the services provided. She observed that neither Appellant Keefe nor Appellant Umoren volunteered that they knew about the monthly error reports, although they confirmed it when she asked them directly.

Director Pierce-Mobley testified that if Mr. Proulx had not brought the billing problem to her attention she would have never known there were any issues. She noted that Appellant Keefe never brought any problems with Primary Solutions' performance to her attention in monthly meetings, and speculated that either he was not aware of any deficiencies or deliberately did not tell her about them. The witness observed that Ms. Searcy reported that she had fixed the errors she could and notified her supervisors about remaining problems; Appellant Keefe and Appellant Umoren did not deny that she had done so and conceded that they did not personally review the error reports.

Ms. Pierce-Mobley testified that although his performance evaluations indicated that AICH billing was one of his assigned tasks, Appellant Umoren claimed he did not review error reports or do anything associated with AICH because he did not know he was supposed to. She noted that she had refused to sign off on Appellant Umoren's 2010-11 performance review, which was conducted by prior Director Sue Curtis, and had not seen a more recent review. The witness confirmed that Appellant Keefe was Appellant Umoren's direct supervisor and observed that Appellant Keefe had commended Appellant Umoren in his 2010-11 performance review for effectively managing all accounting activities, including accounts receivable, and specifically mentioned Medicaid receipts for the AICH. She indicated that although Appellant Umoren's job description and classification specification stated that the primary function of the position is auditing, Appellant Umoren never audited or followed up on the billing problems identified by Primary Solutions.

Director Pierce-Mobley stated that once she became aware of the AICH billing problems, she believed that it was necessary to review billing on the Stillwater side of operations. She testified that she found similar problems with Stillwater billing, specifically that there appeared to be no auditing or reconciliation protocols for accounts receivable and funds actually collected.

The witness indicated that Stillwater provides short-term respite care to clients, and must be certified through Ohio Home Care in order to provide and be paid for such care. She testified that although she was under the impression that Stillwater was properly certified, Appellant Keefe had not completed the certification and the facility had not been reimbursed for approximately \$84,000 in services provided from 2010 through 2012. Director Pierce-Mobley recalled that Appellant Umoren confirmed that he was aware of the problem and had discussed it with Appellant Keefe, but neither Appellant Keefe nor Appellant Umoren told her or anyone else about the problem and Stillwater continued to provide services for which it was not being reimbursed.

Director Pierce-Mobley recalled that after she asked for audits of the respite care billing, Appellant Keefe attempted to enter into a contract with a third party vendor to handle billing for Stillwater respite care. She noted that although Appellant Keefe was responsible for managing contracts he did not have the authority to approve a contract without discussing the matter with her and obtaining prior authorization. The witness noted that the contract did not go forward.

Director Pierce-Mobley indicated that she also requested an accounting of outstanding patient accounts as part of her examination of potential Stillwater billing problems. She noted that the account of one Stillwater resident (resident "J.H.") was discovered to be approximately \$48,000 in arrears; Appellant Umoren claimed that he had no awareness of the issue and stated that Appellant Keefe had never instructed him to conduct audits of delinquent patient accounts. The witness testified that J.H.'s family had not been billed for care since 2003 and observed that she did not understand why no apparent attempt had been made to collect the amount due. Director Pierce-Mobley confirmed that neither Appellant Keefe nor Appellant Umoren had authority to waive the amount due or make financial arrangements with J.H.'s family. She stated that the resident's family is now being billed on a monthly basis, but the arrearage has not been recouped. The witness indicated that two other residents whose accounts were also identified as delinquent have remitted their balances due.

Director Pierce-Mobley testified that Appellant Keefe was responsible for oversight of the day programs contract with United Rehabilitation Services (URS). She indicated that when she reviewed the contract rate she discovered that it had been calculated incorrectly and Stillwater had been paying URS more for services rendered than it was receiving from the State of Ohio. The witness stated that there was no way to recoup the overpayment without renegotiating the contract, which was supposed to happen in the fall of 2012. She stated that Appellant Keefe maintained that he had calculated the rate correctly.

Director Pierce-Mobley testified that she asked Appellant Keefe questions when she saw things that did not make sense to her. She recalled that Appellant Keefe told her that the agency's declining revenue and cash flow problems were due to the client census, but after she began to ask very specific questions she discovered that the problems stemmed primarily from uncollected accounts receivable. The witness noted that since the investigation, accounts receivable in arrears have been added to monthly financial reports.

The witness noted that although Stillwater had been able to recover some of the revenues due from AICH, respite care billing and delinquent patient accounts, not all of it had been recouped. Director Pierce-Mobley stated that she recommended Appellants' removal because she felt that the problems discovered as a result of the investigation were significant. She recalled that there was a lot of finger-pointing between Appellant Keefe and Appellant Umoren, and she recalled that Ms. Searcy told her that Appellant Umoren said they all needed to stick together. The witness testified that both Appellant Keefe and Appellant Umoren were deficient in providing oversight of the AICH billing and reimbursement process, as well as respite care and patient accounts, and that Appellant Keefe failed to adequately monitor his staff

Tammy Lynn Wolfe testified that she is employed as a billing supervisor by Primary Solutions and has held that position since early 2012. She confirmed that Primary Solutions is a third-party biller for Medicaid and acknowledged that they had a contractual agreement with Stillwater Center in 2012 to provide Medicaid billing services.

The witness noted that there are several factors that can cause problems and errors in Medicaid billing and observed that Primary Solutions typically contacts their

client to ask them to make necessary changes or contact their service coordinator to address any identified problems. She stated that when errors occur because a patient waiver account (PAWS) has not yet been enrolled, Primary Solutions will retransmit the billing request. Ms. Wolfe indicated that Primary Solutions has no authority to request that funds be loaded into an eligible individual's PAWS account, so when an error occurs because there are not enough funds in an account, Primary Solutions requests that the client contact the service coordinator to resolve the matter before resubmitting a request for payment.

Ms. Wolfe stated that her primary contact at Stillwater for billing questions was Joyce Searcy. She confirmed that Primary Solutions provided a monthly error report to Ms. Searcy, Appellant Keefe, and Appellant Umoren, showing bills that could not be collected, and explained that the client retains the ultimate responsibility for correcting any billing problems. The witness observed that her staff provides information to let the client know what needs to take place to resolve the issue, and whether the client needs to do something or if Primary Solutions will attempt to rectify the problem by retransmitting the billing. Ms. Wolfe noted that once a bill has been unsuccessfully transmitted multiple times, Primary Solutions staff reconcile the billing and notify the client that the claim will no longer be retransmitted.

Faith Kelley testified that she is employed by the MCDDDS as a Waiver Manager. She explained that MCDDDS oversees and authorizes payment for individuals with Medicaid waivers and confirmed that she worked with Joyce Searcy at Stillwater to correct errors identified by Primary Solutions that prevented Stillwater from collecting Medicaid reimbursement funds. The witness noted that it was Stillwater's responsibility to notify her of any problems it was having, and she met frequently with Ms. Searcy to review the reports generated by Primary Solutions.

Ms. Kelley confirmed that she attended the June 2012 meeting with Director Pierce-Mobley, Mr. Proulx, and Appellant Keefe. She indicated that she became aware through their discussion that there were AICH billing problems other than those she was working on with Ms. Searcy. The witness observed that the errors she and Ms. Searcy worked on were caused by an individual's failure to be enrolled in PAWS, but the unpaid amounts identified in Mr. Proulx's report appeared to have been caused by either a lack of sufficient funds in an existing PAWS account or some other unspecified reason.

Ms. Kelley recalled when Stillwater took over the AICH billing in 2009 she had discussions with Appellant about whether to keep billing responsibilities in-house or contract with an outside vendor for billing services. The witness noted that she and her office staff were always available for questions.

Michael Proulx testified that he is employed by Appellee as the Assistant Superintendent for Fiscal Operations for Montgomery County Developmental Disabilities Services (MCDDS). He confirmed that he is familiar with the PAWS system, and explained that PAWS is a means by which the State of Ohio provides payment for services to individuals who qualify for Medicaid waivers. The witness stated that his role is to ensure that salary and benefits are paid for Stillwater's Director, who is a MCDDS employee; to give final approval for payment for MCDDS clients who receive services from AICH but are not PAWS eligible; and to sign off on payments made to cover services that are not otherwise covered.

Mr. Proulx noted that Appellant Keefe sent monthly reports to him detailing AICH census numbers and costs. He recalled that in late 2011 he began to review AICH waivers coming in and payments being made by to Stillwater by MCDDS. The witness stated that when he began looking at the information it appeared that AICH was not collecting the entire amount due for services that had been provided to its waiver-eligible clients. Mr. Proulx indicated that one of his staff members prepared a report showing by month MCDDS clients who were housed in AICH, eligible for waiver funds, but for whom payment had not yet been collected.

Mr. Proulx recalled that he met with Director Pierce-Mobley, a financial analyst, Appellant Keefe, and Faith Kelley on June 1, 2012, to review the information in the report and identify accounts that could still be collected. He noted that in some cases Stillwater was not able to collect payment for services rendered because the time to do so had expired. The witness noted that there was no discussion during the meeting with Appellant Keefe about his failure to recognize that there were uncollected funds.

Mr. Proulx confirmed that Appellant Keefe periodically requested an advance of funds from MCDDS in order to cover payroll costs. He noted that because the client census was relatively consistent from month to month, the funds received through Medicaid and other sources should also have been consistent; any significant variations in cash flow should have been a red flag. The witness observed that even though the agency contracted with a third-party billing service,

agency staff should have still been keeping track of its accounts receivables to make sure that it was collecting all of the money it was due; Mr. Proulx testified that he would anticipate that any service provider would follow that principle.

Appellant Richard Keefe testified that he has been employed at the Stillwater Center since 1999 and held the position of Financial Consultant at the time of his removal. He noted that his duties remained essentially the same throughout his employment and indicated that he was responsible for oversight of all financial operations and accounting functions. Appellant Keefe stated that he assumed responsibility for AICH billing in 2009 and confirmed that billing was outsourced to Primary Solutions.

Appellant Keefe stated that he believed he made Director Pierce-Mobley aware in the course of one of their monthly meetings that Stillwater contracted with Primary Solutions to perform AICH billing. He testified that he provided Director Pierce-Mobley with monthly financial reports for AICH and Stillwater showing monthly and year-to-date revenue and expenses, as well as projected revenue and expenses.

Appellant Keefe recalled that he first became aware in June 2012 of the arrears in AICH billing. He confirmed that he was ultimately responsible for overseeing Primary Solutions' performance, but stated that he did not have any personal expertise in the AICH billing process and did not have a grasp of how the overall system worked. Appellant Keefe acknowledged that Primary Solutions sent regular reports identifying payments made for prior periods billed, units billed, and transactions held as pending; he stated that he had never conducted an audit of AICH billing or followed up on the error reports received from Primary Solutions and never instructed Appellant Umoren to do so. He testified that he directly supervised Appellant Umoren, who was second-in-charge of the Fiscal Department, and noted that although he generally discussed the status of billing with Appellant Umoren, he did not review individual transactions with him. Appellant Keefe acknowledged that it was his responsibility and Appellant Umoren's responsibility to ensure that amounts billed by Stillwater were actually collected.

Appellant Keefe indicated that although it was not her primary job function, Ms. Searcy was the designated employee who communicated with MCDDDS regarding billing problems identified by Primary Solutions. He acknowledged that Ms. Searcy had made both him and Appellant Umoren aware of problems from time

to time, but that prior to June 2012 neither he nor Appellant Umoren contacted MCDDS regarding waiver funds. Appellant Keefe recalled in most cases he simply advised Ms. Searcy to inform the appropriate person at MCDDS of what was needed.

Appellant Keefe noted that Stillwater began to bill for respite care services in 2009 or 2010. He testified that after the June 2012 meeting with Mr. Proulx, he determined that it was necessary to contract with a third party vendor (TPS) for the purpose of respite care billing; Appellant Keefe indicated that TPS provided services that were different from those provided by Primary Solutions. He stated that he did not remember whether or not he discussed with Ms. Pierce-Mobley the need to enter into a third-party contract prior to doing so, but observed that he had the authority to approve expenditures under \$10,000.

Appellant Keefe acknowledged that he was aware of resident J.H.'s delinquent account as early as 2002 and admitted that he made no attempt to collect the amount due Stillwater for approximately ten years. He testified that J.H. still resides at the facility. Appellant Keefe stated that he did not recall specifically asking Appellant Umoren if he was billing for that account.

Appellant Keefe testified that he did not make Director Pierce-Mobley aware of any specific difficulties arising with regard to billing or cash flow, and stated that his monthly reports to the Director showed only payments that had been received. He noted that prior to September 2012 it was never brought to his attention that his performance with regard to Medicaid or other billing was deficient. Appellant Keefe testified that he correctly calculated the URS rate.

Appellant Emanuel Umoren testified that he began his employment with Appellee at Stillwater Center in 1990 and held the position of Accountant 3 for approximately five years prior to his termination. He noted that he supervised accounting clerks and in 2009 assumed responsibility for AICH billing; Appellant Umoren recalled that his supervisor, Appellant Keefe, told him that approximately five percent of his time would be allocated to assisting with AICH billing. He stated that his job duties changed over the course of his tenure and he was not aware that he was responsible for auditing duties.

Appellant Umoren explained that there was a backlog of billing when AICH was transferred to Stillwater and he was responsible for helping the agency get

caught up with the billing. He stated that he was authorized by the Director of Stillwater Center at the time to contract with a third party for billing services and, after meeting with MCDDDS staff, selected Primary Solutions as the third-party vendor for AICH billing. Appellant Umoren indicated that Primary Solutions was responsible for submitting billing to the State of Ohio, reconciling those billings, and providing Stillwater with a report of activities, showing billing accounts that were paid and those which were pending. He confirmed that he received a monthly error report from Primary Solutions showing those accounts with which it had encountered a problem. Appellant Umoren testified that Appellant Keefe instructed him to reconcile Primary Solutions' payment register with payments received and he did so; he assumed that items not paid would simply be resubmitted and never independently audited the AICH billing.

Appellant Umoren acknowledged that Ms. Searcy had come to him in the past with PAWS issues, but he did not recall ever calling MCDDDS to request that additional funds be transferred into waiver accounts. He stated that most of the problems Ms. Searcy brought to him involved an inability to obtain information from AICH staff.

Appellant Umoren confirmed that he was responsible for billing for respite care and for services provided by Stillwater Center. He acknowledged that he knew that Stillwater was not being properly reimbursed for respite care but did not inform Director Pierce-Mobley. Appellant Umoren indicated that he was aware that resident J.H.'s account was delinquent but did not bill the resident's family for services.

Appellant Umoren stated that he never saw his 2011 performance evaluation and believed that he was performing the job duties assigned to him. He testified that he was never counseled or criticized for failing to perform audits of Medicaid billing.

### **FINDINGS OF FACT**

Based on the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Stillwater Center ("Stillwater") is a residential facility under the jurisdiction of the Montgomery County Board of Commissions that provides care for disabled individuals. In 2012, an investigation was conducted into allegations of fiscal mismanagement at Stillwater. The investigation and a review of documents revealed that there were financial reports missing, billings that were not completed, and a significant amount of money had not been collected for services that had been provided to residents.

Appellant Keefe was employed by Stillwater as Financial Consultant. He was the head of Stillwater's financial department and was responsible for oversight of all financial operations and accounting functions for the facility, as well as ensuring compliance with licensing requirements and supervising staff. Although his overall 2010-2011 performance review rating was "meets," Appellant Keefe received a rating of "does not meet" in the Accountability 2 area of his review due to inaccuracies in financial information he provided during the 2011 levy review process as well as a problem with vendor blankets.

Appellant Umoren was employed by Stillwater as an Accountant III. He was second-in-charge of Stillwater's Financial Department and was responsible for maintaining the facility's accounting systems, performing auditing functions, assisting in the development of accounting procedures and supervising staff. Appellant Umoren's direct supervisor was Appellant Keefe. Appellant Umoren was responsible for billing for respite care and other resident services provided by Stillwater; Appellant Keefe specifically recognized Appellant Umoren in his 2010-11 performance review for effectively managing Stillwater's accounting activities, including accounts receivable and Medicaid receipts for AICH.

In late May and early June 2012, Director Pierce-Mobley was made aware of problems related to Stillwater's Medicaid billing by MCDDS Assistant Superintendent Michael Proulx. Mr. Proulx identified more than 500 Medicaid days of service provided to clients from 2010 through 2012 for which Stillwater had not been reimbursed. Accounts over one year old cannot be reimbursed; not all of the uncollected amounts identified were able to be recouped by Stillwater.

In 2012, Stillwater had contracted with a third-party billing service, Primary Solutions, to handle its Medicaid billing. Each month, Primary Solutions provided Appellant Keefe, Appellant Umoren, and Billing Clerk Joyce Searcy with an error report showing those accounts which could not be billed/collected and outlining the

problem to be resolved. Ms. Searcy worked with MCDDS staff to address some of the problems and notified Appellant Keefe and Appellant Umoren of issues she was unable to resolve. Neither Appellant Keefe nor Appellant Umoren personally reviewed the monthly error reports provided by Primary Solutions and neither ever reconciled the identified problem accounts with payments received to determine whether or not Stillwater was collecting funds for all of the services provided.

From 2010 to 2012, Stillwater provided approximately \$84,000 in respite care services for which it had not been reimbursed due to Appellant Keefe's failure to properly complete the facility's certification through Ohio Home Care. Both Appellant Keefe and Appellant Umoren were aware of the problem and knew that Stillwater was not being properly reimbursed, but neither notified Director Pierce-Mobley. No evidence was provided by either Appellant to show that they had taken any action to correct the problem prior to the Director's 2012 request for an audit of respite care billing; Appellant Keefe attempted at that time to enter into a contract with a third-party billing service, TPS, to handle Stillwater's respite care billing. Appellant Keefe did not seek Director Pierce-Mobley's approval before attempting to enter into the contract.

Appellant Keefe was aware that Stillwater resident J.H.'s account had not been billed since 2003 and was approximately \$48,000 in arrears. He failed to bill or direct subordinate staff to bill J.H.'s family for services for approximately ten years. Appellant Umoren was also aware that J.H.'s account was delinquent but took no action to recover money due to the facility.

Prior to June 2012, neither Appellant Keefe nor Appellant Umoren had ever indicated to Director Pierce-Mobley that there were problems related to billing for services rendered or collection of delinquent accounts. Neither Appellant Keefe nor Appellant Umoren ever requested assistance or training regarding billing. Appellant Keefe never made Director Pierce-Mobley aware of any problems with Primary Solutions' performance.

### **CONCLUSIONS OF LAW**

As in any disciplinary appeal before this Board, Appellee bears the burden of establishing by a preponderance of the evidence, certain facts. Appellee must prove that Appellant's due process rights were observed, that it substantially

complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in administering Appellant's discipline, and that Appellant committed one of the enumerated infractions listed in R.C. 124.34 and on the disciplinary order.

With regard to the infractions alleged, Appellee must prove for each infraction that Appellee had an established standard of conduct, that the standard was communicated to Appellant, that Appellant violated that standard of conduct, and that the discipline imposed upon Appellant was an appropriate response. In weighing the appropriateness of the discipline imposed upon Appellant, this Board will consider the seriousness of Appellant's infraction, Appellant's prior work record and/or disciplinary history, Appellant's employment tenure, and any evidence of mitigating circumstances or disparate treatment of similarly situated employees presented by Appellant.

Due process requires that a classified civil servant who is about to be disciplined receive oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to be heard prior to the imposition of discipline, coupled with post-disciplinary administrative procedures as provided by R.C. 124.34. *Seltzer v. Cuyahoga County Dept. of Human Services* (1987), 38 Ohio App.3d 121. The parties stipulated that Appellants' due process rights were observed and that Appellee substantially complied with the procedural requirements established by the Ohio Revised Code and Ohio Administrative Code in effectuating Appellants' removals.

Appellee cited as the reasons for both Appellants' removals "neglect of duty, inefficiency, malfeasance, misfeasance and nonfeasance in the performance of your job duties, or lack thereof." Testimony at record hearing focused largely on the Appellants' responsibilities in the areas of AICH billing, respite care billing, and billing of patient accounts. Appellee presented sufficient credible evidence to establish that both Appellants had significant responsibilities related to monitoring Appellee's accounts receivable, oversight of billing and supervising staff.

Both Appellants indicated that they were aware of problems preventing reimbursement for respite care services delivered over a two year period but did not bring the problems to the attention of Director Pierce-Mobley. Neither presented evidence to suggest that he had taken any steps to address the problems. Both Appellants admitted that they knew J.H.'s account was severely delinquent and had

been so for several years, but did not inform Director Pierce-Mobley of the problem. Appellant Keefe testified that he failed to bill J.H.'s family for approximately ten years. Both Appellants acknowledged that they had failed to personally review or reconcile AICH billing error reports received from Primary Solutions and never directed staff to reconcile or audit AICH payments.

The Financial Consultant position requires that an incumbent possess a Masters Degree in Accounting or Business Administration and the Accountant III position requires that an incumbent have a Bachelors degree in Accounting and at least two years experience. Appellee had a fair expectation that Appellants were familiar with the basic principles of accounting, including the concepts of assets, liabilities, revenue and expense, and that they were capable of generally exercising a degree of professional care and skill appropriate to their vocation and positions of employment. The evidence and testimony set forth in this matter do not demonstrate merely that Appellants made errors in computation or missed an occasional billing error; instead it reflects an on-going, pervasive, and disturbing failure to perform the inherent duties of their positions. Not only did Appellant Keefe and Appellant Umoren fail to monitor and account for Appellee's accounts receivable for AICH billing, respite care billing and patient account billing, they failed to accurately report Stillwater's actual fiscal condition to Director Pierce-Mobley.

Based upon a review of all of the information contained in the record, I find that the conduct of Appellant Keefe and of Appellant Umoren was sufficient to constitute a neglect of duty, misfeasance and nonfeasance in the performance of their respective job duties. I further find that the conduct of Appellant Keefe and of Appellant Umoren was so egregious, that their removal from employment was an appropriate disciplinary response on the part of Appellee.

Therefore, I respectfully **RECOMMEND** that the removal of Appellant Richard Keefe and the removal of Appellant Emanuel Umoren be **AFFIRMED**.

  
Jeannette E. Gunn  
Administrative Law Judge