

Arkansas
State Claims Commission
JUL 07 2016

RECEIVED

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Freeway Surgery Center, LLC

Claimant

vs.

State of Arkansas, Respondent

Dept. of Human Services

Do Not Write in These Spaces		
Claim No.	17-0010-00	
Date Filed	July 07, 2016	
	(Month)	(Day) (Year)
Amount of Claim \$	273,696.50	
Fund	DHS	
Breach of Contract, Unpaid Bills		

COMPLAINT

Freeway Surgery Center, LLC, the above named Claimant, of 5800 W. 10th Street, Suite 206, Little Rock, (Name) (Street or R.F.D. & No.) (City)
AR 72204 501-661-0910 County of Pulaski represented by Friday, Eldredge & Clark, LLP (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of 400 W. Capitol, Suite 2000, Little Rock, AR 72201 501-376-2011 501-376-2147 says: (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)
State agency involved: Arkansas Department of Human Services Amount sought: \$273,696.50
Month, day, year and place of incident or service: July 1, 2013 through June 30, 2015
Explanation: Please see attached.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
Yes ; when? periodically through claim period to whom? claims for reimbursement through Arkansas Medicaid Program (Yes or No) (Month) (Day) (Year) (Department)
and that the following action was taken thereon: partial payment
and that \$ 192,489.91 was paid thereon: (2) Has any third person or corporation an interest in this claim? No ; if so, state name and address
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: ; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true
Scott Schlesinger (Print Claimant/Representative Name) (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock AR

on this 5th day of July 2016
(Date) (Month) (Year)

(SEAL) ALLIE MILLS
Notary Public-Arkansas
Grant County
My Commission Expires 01-01-2025
Commission # 12402695

SF1- R7/99

My Commission Expires: 1 - 1 - 25
(Month) (Day) (Year)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

FREEWAY SURGERY CENTER, LLC

CLAIMANT

V. CLAIM NO. _____

STATE OF ARKANSAS

RESPONDENT

COMPLAINT

Comes now Claimant, Freeway Surgery Center, LLC, by and through its attorneys, Friday, Eldredge & Clark, LLP, and for its Complaint against Respondent, Arkansas Department of Human Services, a State Agency for the State of Arkansas, states the following:

PARTIES

1. Claimant, Freeway Surgery Center, LLC, is a domestic limited liability company, with its principal place of business being 5800 West 10th Street, Suite 206, Little Rock, Pulaski County, Arkansas 72204, and which provides ambulatory surgery and related services to patients, including patients participating in the Arkansas Medicaid program.

2. Respondent, Arkansas Department of Human Services ("DHS"), is a State Agency for the State of Arkansas. DHS operates the Arkansas Medicaid program.

JURISDICTION

3. Jurisdiction is proper before the Arkansas State Claims Commission pursuant to Ark. Code Ann. § 19-10-201, *et seq.*

FACTUAL OVERVIEW

4. Arkansas Medicaid exists for the primary purposes of facilitating access to and payment for medically necessary services to needy and low-income persons in the State of Arkansas.

5. In an effort to promote greater access to care for Medicaid recipients, and to incentivize ambulatory surgery centers, such as the Claimant, to provide ambulatory surgery services to Arkansas Medicaid recipients, the Arkansas General Assembly enacted Act 1352 of 2013 ("2013 Act"), which establishes a certain level of payment, also known as "reimbursement," from Arkansas Medicaid to ambulatory surgery center providers, in exchange for the provision of ambulatory surgery services to Medicaid recipients.

6. The 2013 Act became effective law on August 16, 2013 and was codified at Ark. Code Ann. § 20-77-129. Regardless of the effective date of the 2013 Act, DHS agreed to adjust its payments under the 2013 Act beginning July 1, 2013. Thus, the rates under the 2013 Act were effective beginning July 1, 2013.

7. The 2013 Act was an important step in facilitating the access of Arkansas Medicaid recipients to the services of ambulatory surgery centers, thereby providing greater access to care and providing additional surgery options to Arkansas Medicaid recipients.

8. The Claimant provided numerous ambulatory surgery services to Medicaid recipients believing that the Claimant would be reimbursed in accordance with the provisions of the 2013 Act.

9. The 2013 Act was effective until the Arkansas General Assembly enacted Act 1236 of 2015 ("2015 Act"), which significantly amends the 2013 Act and provides for revised reimbursement levels under the statute.

10. In the Emergency Clause to the 2015 Act, the General Assembly acknowledged that reimbursements under the 2013 Act could exceed the federal upper limits, requiring the excess cost to be funded entirely through state general revenues.

11. The 2015 Act became effective on the date it was approved by the Governor, April 7, 2015. Regardless of the effective date of the 2015 Act, DHS has confirmed that it will not apply the 2015 Act until July 1, 2015. Thus, the rates under the 2013 Act are effective through June 30, 2015. The Claimant has yet to realize full reimbursement under the 2015 Act because DHS has yet to apply the 2015 Act rates in full. However, upon information and belief, Claimant understands from recent email correspondence that the 2015 Act will be applied to claims on and after July 1, 2015.

12. The claims herein are all made under the 2013 Act through dates of service of June 30, 2015 because Claimant currently believes that the 2015 Act will be applied retroactively to July 1, 2015.

CLAIM

13. Between the time period of July 1, 2013 and June 30, 2015, the Claimant provided numerous ambulatory surgery services to Medicaid recipients ("Medicaid Services") which should have been reimbursed by Arkansas Medicaid to the Claimant, in accordance with the 2013 Act, Ark. Code Ann. § 20-77-129, in the aggregate amount of \$466,186.41 ("Proper Reimbursement Amount").

14. As of the date of this filing, the Claimant has been reimbursed an aggregate total of \$192,489.91 for claims filed with respect to the Medicaid Services ("Actual Reimbursement Amount").

15. DHS failed to reimburse Claimant in accordance with the 2013 Act. DHS has, therefore, failed to comply with and breached its obligations under the 2013 Act.

16. The Claimant hereby demands the difference between the Proper Reimbursement Amount and the Actual Reimbursement Amount, which difference is \$273,696.50.

17. An itemized outline of the damages sought by the Claimant is attached hereto as Exhibit A.

WHEREFORE, Claimant, Freeway Surgery Center, LLC, prays for Judgment against Respondent, Arkansas Department of Human Services, a State Agency for the State of Arkansas, in an amount not less than \$273,696.50, and for all other just and proper relief.

Respectfully submitted,

FRIDAY, ELDREDGE & CLARK, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
501-370-2011 - Telephone
501-376-2147 - Facsimile

*Attorneys for Claimant, Freeway Surgery Center,
LLC*

By: _____

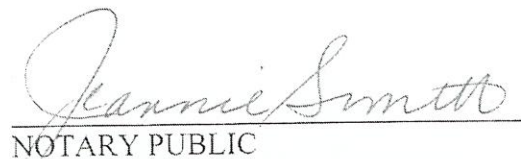


Timothy C. Ezell, #2000073

Phillip M. Brick, Jr., #2009116

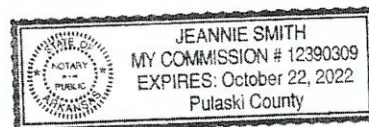
STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 6th day of July, 2016.


NOTARY PUBLIC

My Commission Expires:

10/22/2022



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MAY 25 2017

FREEWAY SURGERY CENTER, LLC

RECEIVED
CLAIMANT

V. CLAIM NO. 17-0010-CC

STATE OF ARKANSAS

RESPONDENT

AMENDED COMPLAINT

Comes now Claimant, Freeway Surgery Center, LLC, by and through its attorneys, Friday, Eldredge & Clark, LLP, and for its Amended Complaint against Respondent, Arkansas Department of Human Services, a State Agency for the State of Arkansas, states the following:

PARTIES

1. Claimant, Freeway Surgery Center, LLC, is a domestic limited liability company, with its principal place of business being 5800 West 10th Street, Suite 206, Little Rock, Pulaski County, Arkansas 72204, and which provides ambulatory surgery and related services to patients, including patients participating in the Arkansas Medicaid program.

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16. The Claimant hereby demands the difference between the Proper Reimbursement Amount and the Actual Reimbursement Amount, which difference is \$273,696.50.

17. An itemized outline of the damages sought by the Claimant is attached hereto as Exhibit A.

18. Claimant is entitled to its attorney's fees incurred in bringing this claim pursuant to Ark. Code Ann. § 16-22-308.

19. Claimant is further entitled to pre-judgment and post-judgment interest at the maximum rate allowed under Arkansas law.

WHEREFORE, Claimant, Freeway Surgery Center, LLC, prays for Judgment against Respondent, Arkansas Department of Human Services, a State Agency for the State of Arkansas, in an amount not less than \$273,696.50, plus attorney's fees and pre-judgment and post-judgment interest, and for all other just and proper relief.

Respectfully submitted,

FRIDAY, ELDREDGE & CLARK, LLP
400 West Capitol, Suite 2000
Little Rock, AR 72201-3522
501-370-2011 - Telephone
501-376-2147 - Facsimile

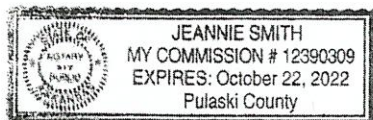
*Attorneys for Claimant, Freeway Surgery Center,
LLC*

By: 

Phillip M. Brick, Jr., #2009116
Timothy C. Ezell, #2000073

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 25th day of May,
2017.



My Commission Expires:

10/22/2022

Jeannie Smith

NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Phillip M. Brick, Jr., certify that a copy of the foregoing was served on the following counsel of record on this 25th day of May, 2017:

Nick R. Windle
Attorney at Law
P.O. Box 1437 – Slot S260
Little Rock, AR 72203-1437
Nicholas.windle@dhs.arkansas.gov



Phillip M. Brick, Jr.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

FREEWAY SURGERY CENTER

CLAIMANT

VS.

CLAIM NO. 17-0010-CC

DEPARTMENT OF HUMAN SERVICES

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the Joint Motion for Continuance, in which both parties seek additional time to hold a settlement conference. For good cause shown, the Claims Commission hereby GRANTS Claimant's motion, and the hearing is CONTINUED until June 15, 2017, at 9:00 a.m.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: April 17, 2017



COPY

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

FREEWAY SURGERY CENTER

CLAIMANT

v.

CLAIM NO. 17-0010-CC

DEPARTMENT OF HUMAN SERVICES

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the Motion for Continuance filed by claimant Freeway Surgery Center (the "Claimant"), in which Claimant seeks additional time in which to depose a witness.

Given the number of witnesses listed by both parties, and in the interest of efficiency, the Claims Commission would prefer for the parties to depose the witnesses and to prepare deposition summaries to be attached to the pre-hearing briefs.

To provide the parties time to schedule depositions, the Claims Commission hereby GRANTS Claimant's motion, and the hearing is CONTINUED until Friday, November 17, 2017, at 9:00 a.m.

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: July 10, 2017

 COPY

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

FREEWAY SURGERY CENTER, LLC

CLAIMANT

V.

CLAIM NO. 17-0010-CC

STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
HUMAN SERVICES/DIVISION OF
MEDICAL SERVICES

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the Agreed Motion to Dismiss (the "Motion") submitted by claimant Freeway Surgery Center, LLC (the "Claimant") and respondent State of Arkansas, Arkansas Department of Human Services/Division of Medical Services (the "Respondent"). Attached to the Motion is the Settlement Agreement signed by the parties.

Based upon a review of the pleadings, the Motion, and the Settlement Agreement, the Claims Commission hereby GRANTS the Motion, APPROVES the Settlement Agreement, DISMISSES this claim, and REFERS this claim to the General Assembly for review, approval, and placement on an appropriation bill pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: December 27, 2017

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).