

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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In the Matter of the Request of

**AMBULETTE P.R.N., INC.**  
Medicaid ID # 01123344

for a hearing pursuant to Part 519 of Title 18 of the  
Official Compilation of Codes, Rules and Regulations  
of the State of New York (NYCRR) to review a  
determination to recover Medicaid overpayments.

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**Decision On  
Motion**

**COPY**

**Audit #2012Z31-091T**

**Before:** Denise Lepicier  
Administrative Law Judge

**Parties:** New York State Office of the Medicaid Inspector General  
217 Broadway, 8<sup>th</sup> floor  
New York, New York 10007  
By: Ricja Rice, Esq.

Ambulette P.R.N., Inc.  
601 Brighton Beach Avenue, Suite 2  
Brooklyn, New York 11235-6473  
By: Michael Dobrushin, President

### JURISDICTION

The Department of Health ("Department") acts as the single state agency to supervise the administration of the Medicaid program ("Medicaid") in New York State. Public Health Law ("PHL") § 201(1)(v), Social Services Law ("SSL") § 363-a. Pursuant to PHL §§ 30, 31 and 32, the Office of the Medicaid Inspector General ("OMIG"), an independent office within the Department, has the authority to pursue administrative enforcement actions against any individual or entity that engages in fraud, abuse, or unacceptable practices in the Medicaid program, and to recover improperly expended Medicaid funds.

OMIG determined to seek restitution of payments made by Medicaid to Ambulette P.R.N., Inc. ("Ambulette"). (OMIG A, ex. 3)<sup>1</sup> Ambulette requested a hearing pursuant to SSL § 22 and the former Department of Social Services ("DSS") regulations at 18 NYCRR § 519.4 to review the determination. The issue on this motion is the timeliness of Ambulette's request for a hearing.

### FINDINGS OF FACT

1. At all times relevant to this proceeding, Ambulette was enrolled as a provider in the Medicaid program.
2. Ambulette's mailing address was 601 Brighton Beach Avenue, Brooklyn, New York 11235. (OMIG A, ex. 2 & 4)

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<sup>1</sup> Ambulette's e-mail, submitted in support of its motion to permit an appeal has been made part of the record and is marked as "Ambulette 1". OMIG's response on the motion has been made part of the record and is marked as "OMIG A." OMIG A itself contains exhibits which are referenced by an "ex." with the appropriate number.

3. By final audit report dated November 8, 2013, OMIG notified Ambulette that OMIG determined to seek restitution of Medicaid overpayments in the amount of \$84,247.48, with interest. (OMIG A, ex. 3)

4. The final audit report was mailed on November 8, 2013, and received at the mailing address for Ambulette on November 12, 2013. (OMIG A, ex. 3, 6 & 7)

5. The final audit report advised Ambulette that it had the right to challenge the determination by requesting a hearing within sixty (60) days of the date of final audit report. (OMIG A, ex. 3, p. 2)

6. By undated letter, received by OMIG on January 21, 2014, Ambulette requested a hearing to review the final audit report. (OMIG A, ex. 4) The letter was postmarked on January 18, 2014. (OMIG A, ex. 4)

7. There is no evidence the final audit report sent to Ambulette was returned to OMIG. (OMIG A, affirmation of Charlene Fleszar, paragraph 10)

8. OMIG never told anyone at Ambulette that additional time was granted to request a hearing. (OMIG A, affidavit of Pamela Fitzgerald, paragraphs 6-8, affidavit of Maria Granato, paragraphs 4-5, affirmation of Charlene Fleszar, paragraphs 11-19)

#### APPLICABLE LAW

A person is entitled to a hearing to have the Department's determination reviewed if the Department requires repayment of an overpayment. 18 NYCRR § 519.4. To request a hearing, any clear, written communication to the department by or on behalf of a person requesting review of a department's final determination is a request for a hearing

if made within 60 days of the date of the department's written determination. 18 NYCRR § 519.7(a).

### DISCUSSION

Ambulette, by its President, Michael Dobrushin, has made essentially two arguments with respect to this motion by OMIG to preclude a hearing in this matter. (Ambulette 1) The first argument Ambulette makes is that it never received the final audit report. More specifically, Mr. Dobrushin states that [REDACTED] who does not work for Ambulette, signed the return receipt and when he [REDACTED] became aware of his mistake, he returned the package to the postal delivery person. [REDACTED] signed for the final audit report on November 12, 2013. (OMIG A, ex. 6 & 7) The final audit report (notice of agency action) must be mailed to the "designated payment or correspondence address or last known address." 18 NYCRR § 519.5(b). Ambulette made no claim that the address to which the package was sent was not the appropriate address. Indeed, Mr. Dobrushin admits that [REDACTED] was a person at the same address. (Ambulette 1) Moreover, Ambulette had received the draft audit report at this address. (OMIG A, ex. 1 & 8)<sup>2</sup> Mr. Dobrushin simply argues that he did not receive the final audit report.

However, a letter properly mailed is presumed to have been received. "The burden then falls upon the addressee to present evidence sufficient to overcome the presumption and establish nonreceipt." Engel v. Lichterman, 95 A.D.2d 536, 539, 467 N.Y.S.2d 642, 644 (2<sup>nd</sup> Dept. 1983). Ambulette has stated that it did not receive the final audit report, but OMIG has presented the signed return receipt demonstrating delivery to

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<sup>2</sup> On January 2, 2013, an Ambulette employee contacted OMIG to obtain the password for the CD of the audit files sent with the draft audit report.

the appropriate address and the United States Postal Service online tracking documentation which does not support the claim of return to the delivery person. Further, the final audit report was never returned to OMIG. Ambulette has not overcome the presumption of receipt.

The second argument raised by Ambulette is more difficult to ascertain. Mr. Dobrushin seems to be asserting that an OMIG employee gave him additional time to request a hearing. His response to this motion states that Pamela Fitzgerald contacted him and that he explained that "our company still wanted to appeal the Audit and take it to a hearing." (Ambulette 1) Ms. Fitzgerald confirms some conversation about a hearing, but reports her conversation as occurring on January 14, 2014, after the time to request an appeal had run. She goes on to state in her affidavit that she advised Mr. Dobrushin to contact the legal department with his concerns about his hearing rights. (OMIG A, affidavit of Pamela Fitzgerald, paragraphs 5, 6 & 7) Mr. Dobrushin's account does not actually state that he was given more time to request a hearing.<sup>3</sup> The account is consistent with what Ms. Fitzgerald swears to in her affidavit, i.e., that she contacted Ambulette about a repayment agreement but never told Mr. Dobrushin that he could have additional time to request a hearing. (OMIG A, affidavit of Pamela Fitzgerald, paragraphs 5-8)<sup>4</sup>

Ambulette's final audit report (notice of agency action) was mailed on November 8, 2013. Sixty days from the date of this report was January 7, 2014. 18 NYCRR §

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<sup>3</sup> Ambulette (Michael Dobrushin) made this argument directly in its letter requesting a hearing, but apparently abandoned this direct argument on this motion.

<sup>4</sup> OMIG also argued that Mr. Dobrushin confused his request for a hearing for NYC Ambulette with the request for a hearing for the now defunct Ambulette P.R.N. (OMIG A, affirmation of Charlene Flezar, paragraphs 11-15, Ex. 10 & 11) In any event, this argument appears to have been abandoned by Ambulette on this motion.

519.7(a). Ambulette sent its request for a hearing on January 18, 2014.<sup>5</sup> Ambulette's request was too late.<sup>6</sup>

**DECISION:**

Ambulette P.R.N., Inc.'s request for a hearing concerning a final audit report issued by OMIG was not timely. Ambulette will not be granted a hearing. This decision is made by Denise Lepicier, who has been designated to make such decisions.

DATED:  
May 1, 2014  
New York, New York

  
Denise Lepicier  
Administrative Law Judge

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<sup>5</sup> Although not applicable to requests for a hearing, even if Ambulette were entitled to an additional five days from mailing, as is true with respect to the draft audit report when calculating the time within which to respond to the draft audit, Ambulette went beyond the time permitted. 18 NYCRR § 517.5(c).

<sup>6</sup> OMIG made arguments in its papers on this motion that the regulation governing the time within which to request a hearing was a statute of limitation. This ALJ rejects that argument. It is a regulation that governs in this matter and the law related to statutes of limitations is not necessarily pertinent in this case. 18 NYCRR § 519.7(a).