

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of :
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:
Caring Harts Transport, Inc., : **Decision**
Provider No.: 02934678 :
: **#2017z31-217k**
Appellant, :
:
from a determination by the NYS Office of the :
Medicaid Inspector General to recover Medicaid :
Program overpayments. :
:

Before: John Harris Terepka
Administrative Law Judge

Parties: NYS Office of the Medicaid Inspector General
584 Delaware Avenue
Buffalo, New York 14202
By: Nancy Bizub, Esq.

Caring Harts Transport, Inc.
Tricia Hart
P.O. Box 57
Strykersville, New York 14145
By: Barry Nelson Covert, Esq.
Lipsitz Greene Scime Cambria
42 Delaware Avenue, Suite 120
Buffalo, New York 14202

Caring Harts Transport, Inc. (the Appellant), operated by Tricia Hart, requested a hearing pursuant to Social Services Law 22 and regulations of the former Department of Social Services at 18 NYCRR 519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments. A notice of hearing was issued on August 29, 2018, scheduling a hearing for December 3, 2018.

The OMIG contends that there is no jurisdiction to review the determination because the hearing request was untimely. By letter dated October 15, 2018, the OMIG requested a decision on the timeliness issue. In support of its position, the OMIG submitted the following documents:

1. The Appellant's June 19, 2018 hearing request.
2. The OMIG's April 5, 2018 final audit report with proof of mailing by certified mail.
3. Postal service return receipt (green card) documenting receipt of the final audit report by the Appellant on April 9, 2018.

By letter dated November 2, 2018, the hearing officer advised the Appellant as follows:

I will address the OMIG's October 15, 2018 letter as a request for a decision without hearing pursuant to Department regulations at 18 NYCRR 519.23. The only issue that this decision will address is whether your hearing was timely requested and should proceed on December 3.

Pursuant to 18 NYCRR 519.23 you must forward... any information you wish me to consider in connection with this issue. Your response, along with any supporting papers, must be received by me on or before November 26, 2018.

On November 26, 2018, the Appellant submitted a letter arguing that it should be granted a hearing on the merits of the OMIG's audit determination.

The hearing was rescheduled to February 12, 2019, provisional upon the outcome of this decision.

Section 22(4)(a) of the Social Service Law provides, in pertinent part:

... any appeal pursuant to this section must be requested within sixty days after the date of the action or failure to act complained of.

Regulations specifically applicable to Medicaid Provider hearings state that a provider's request for a hearing must be made "within 60 days of the date of the department's written determination." 18 NYCRR 519.7(a). The issue whether the Appellant made a timely request for a hearing presents a question of fact to be resolved in this administrative proceeding. People ex rel. Walker v. N.Y. State Board of Parole, 98 A.D.2d 33, 469 N.Y.S.2d 780 (2nd Dept. 1983).

It is undisputed that the OMIG's written determination was dated April 5, 2018 and received by the Appellant on April 9, 2018. It is also undisputed that the Appellant did not request a hearing until June 19, 2018. The Appellant offers two arguments why its late hearing request should be excused:

First: Tricia Hart was assisting a [REDACTED] whose medical care required her to travel from [REDACTED] New York to [REDACTED] several times per month during [REDACTED] of 2018. This circumstance explains little, as the Appellant goes on to acknowledge that during that time Ms. Hart nevertheless "continued to operate her small business, Caring Harts Transportation... along with her [REDACTED] Tom Hart." If Tricia Hart was operating the business during this time, she was in a position to act upon receipt of the OMIG's final audit report. No excuse is offered for Tom Hart's failure to act if Tricia Hart was not able to do so. It is further noted that the Appellant also failed to respond or object to the OMIG's February 13, 2018 draft audit report issued pursuant to 18 NYCRR 517.5, although it was advised of its right to do so.

Second: Tricia Hart claims that although she “fully intended to timely submit her request for a hearing” she was “confused” and “received no guidance from the OMIG on how to file her request” until June 19. The April 5, 2018 final audit report received by the Appellant on April 9, 2018, stated in pertinent part:

Hearing Rights

The Provider has the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice... If the Provider wishes to request a hearing, the request must be submitted in writing within sixty (60) days of the date of this notice to:

General Counsel
New York State
Office of the Medicaid Inspector General
Office of Counsel
800 North Pearl Street
Albany, New York 12204

Questions regarding the request for a hearing should be directed to Office of Counsel, at (518) 408-5845... For a full list of hearing rights please see 18 NYCRR Part 519.

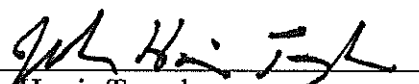
Tricia Hart’s claim of “confusion with respect to the procedure for requesting a hearing” is not reasonable in view of these clear and unambiguous instructions.

DECISION: The Department is without jurisdiction to grant Caring Harts Transport, Inc. a hearing to review the OMIG’s April 5, 2018 determination to recover Medicaid Program overpayments.

The hearing originally scheduled for December 3, 2018, and rescheduled to February 12, 2019, is cancelled and this administrative appeal is dismissed.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Rochester, New York
November 30, 2018


John Harris Terepka
Administrative Law Judge