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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

December 6, 2023

CERTIFIED MAIL/RETURN RECEIPT

Shelby Grynberg, Esq.
NYS Office of the Medicaid Inspector General
90 Church Street
New York, New York 10007



Kevin Porter, Esq.
Vigorito Barker Patterson Nichols & Porter, LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York 10595



RE: In the Matter of Dove Transport Service, LLP

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Request of

DOVE TRANSPORT SERVICE, LLP
Jean R. Daniel
Mohammed Raushan

Decision After Hearing
Audit #17-1541

COPY

APPELLANTS

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 and
sanction the Appellants.

Before: Kimberly A. O'Brien
Administrative Law Judge

Held at: WebEx Videoconference

Parties: New York State Office of the Medicaid Inspector General
90 Church Street
New York, New York 10007
By: Shelby Grynberg, Esq.
shelby.grynberg@omig.ny.gov

Jean R. Daniel, Appellant

[REDACTED]
[REDACTED]
By: George Joseph
[REDACTED]

Mohammed Raushan, Appellant

[REDACTED]
[REDACTED]
By: Kevin Porter, Esq.
Vigorito, Barker, Patterson, Nichols & Porter, LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York
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The Department of Health (Department) acts as the single state agency to supervise the administration of the medical assistance program (Medicaid or Medicaid Program) in New York State pursuant to Public Health Law (PHL) § 201(1)(v) and Social Services Law (SSL) § 363-a. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority pursuant to PHL §§ 30, 31 and 32, 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.

Appellants, Dove Transport Service, LLP, Jean R. Daniel and Mohammed Raushan, were enrolled as a fee for service provider of transportation/taxi services. The OMIG issued a determination to recoup Medicaid payments made to the Appellants and to exclude them from the Medicaid Program for a period of three years.

The Appellants requested a hearing.¹ The hearing was held on: April 5, May 10, June 20, and July 5, 2023. Shelby Grynberg, Esq., OMIG, presented exhibits 1-23, and called one witness, Russell Rizzo, Assistant Medicaid Inspector. George Joseph, Mr. Daniel's representative, presented "Daniel" exhibits 2, 3, 6, 12, 14, 15, 16, 19 and called witnesses, Niquette Daniel, Marjorie Joseph, and Mr. Daniel who testified on his own behalf. Kevin Porter, Esq., counsel for Mr. Raushan, presented "Raushan" exhibit B and called Mr. Raushan who testified on his own behalf. A transcript of the hearing was made, pages 1-528. The parties agreed to submit briefs in lieu of closing arguments. The parties submitted briefs on August 30, 2023 and the record closed.

¹ In the Spring of 2021, the ALJ held conferences with the parties. The first day of hearing was scheduled for August 19, 2021. [ALJ Exhibit (Ex.) 3.] Mr. Joseph was pursuing other litigation and advised the ALJ he was seeking a stay. The hearing was adjourned to September 28, 2021. [ALJ Ex. 1.] Mr. Raushan requested an adjournment to retain his own counsel which was granted. Mr. Joseph did not obtain a stay and the parties did not seek a new hearing date. On December 30, 2022, the ALJ advised the parties by email and then by a January 3, 2023 hearing notice that the first day of hearing would be held on April 5, 2023. [ALJ Ex.1 & 3.] The Appellants made numerous adjournment requests leading up to and on April 5. [ALJ Ex. 1; Tr. 6-14.] Mr. Raushan retained Mr. Porter after the first day of hearing, and he appeared at the second day of hearing, May 10, 2023.

APPLICABLE LAW

The New York State Medicaid Program issues Medicaid Management Information Systems (MMIS) provider manuals, which are available to all providers and include billing policies, procedures, codes, and instructions. Medicaid also issues a monthly Medicaid Update with additional information, policy, and instructions, www.emedny.org. By enrolling, providers agree to comply with these official directives, 18 NYCRR § 504.3(i). A provider owner/affiliate is defined as “any person having an overt... relationship with another such that either of them may directly or indirectly control the other or such that they are under common control or ownership,” and conduct may be imputed to another when the persons are affiliates and the “conduct was accomplished within the course of the duties of the person to be sanctioned and the other person knew or should have known of the conduct, or the conduct was effected within the knowledge or consent of the other,” 18 NYCRR §§ 504.1(d)(1), 515.3.

To receive payment for transportation services a Medicaid provider “must be lawfully authorized to provide transportation services on the date the services are rendered and must comply with all requirements under the local municipality concerning operation of a taxicab or livery service in that municipality and all requirements of the Department of Motor Vehicles,” 18 NYCRR § 505.10(e)(6)(iii). Brookhaven Town Code provides that “it shall be unlawful for any person to engage in a taxicab business in the Town of Brookhaven without first having secured a license from the Commissioner of Public Safety or his designee,” Brookhaven Town Code Article II, Chapter 67 *Taxicabs*. A taxicab business that is hired to provide transportation from a point within the Town of Brookhaven to a point outside the town, or from a point outside the town to a point within the town, or from a point outside the town and traveling through the town

to a point outside the town does not require a town license, Brookhaven Town Code Article II, 67-3.

As a condition of their enrollment in the Medicaid Program a provider agrees to submit claims on officially authorized claim forms in a manner specified by the Department and to ensure that the information provided in relation to any claim is true, accurate and complete, 18 NYCRR 504.3. "Computer generated documents prepared by the department or its fiscal agent to show the nature and amount of payments made under the program will be presumed in the absence of direct evidence to the contrary, to constitute an accurate itemization of the payments made to the provider," 18 NYCRR §519.18(f). Effective July 1, 2016, taxi/livery providers are required to include both the vehicle license plate number and driver's license plate number on each claim, New York State Medicaid Update, December 2015, Volume 31, Number 13. Providers must prepare and maintain contemporaneous records demonstrating their right to receive payment, and their records are subject to audit for six years, 18 NYCRR §§ 504.3, 517.3(b).

The Department has the authority to sanction a provider upon making a determination that it "has engaged in an unacceptable practice," and may among other things exclude the provider from the Medicaid program for a "reasonable period" and "require the repayment of overpayments determined to have been made as a result of an unacceptable practice," 18 NYCRR § 515.3. Unacceptable practice is conduct by a provider "which is contrary to the official rules and regulations of the department," 18 NYCRR § 515.3(a)(1). Overpayment includes any amount not authorized to be paid under the Medicaid Program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake, 18 NYCRR § 518.1(c).

If the Department proposes to sanction a provider it must notify the provider by sending a written notice of proposed agency action (NOPAA) stating the legal authority and reasons for the proposed action, "the nature and amount of any overpayment determined to have been made as a result of the unacceptable practices and the notice also must advise the person of the opportunity to submit documentation or written arguments objecting to the proposed action within 30 days of receipt of the notice," 18 NYCRR § 515.6 (a)(1). After the Department reviews the provider response to the NOPAA, it may issue a notice of agency action (NOAA), which must state reasons for the determination and the legal authority, the sanction and its effect, the effective date of the sanction, and the right to appeal the determination, 18 NYCRR § 515.6.

A provider is entitled to a hearing to review the Department's determination, 18 NYCRR § 519.4. At the hearing, a Department representative must present the audit file and summarize the case including a brief description of the facts, evidence, and reasons for the action, 18 NYCRR §§ 519.17(a) & 519.17(b)(3). The Appellant has the burden of showing that the Department's determination was incorrect and that all claims submitted and denied were due and payable under the program and of proving any mitigating factors affecting the severity of the sanction, 18 NYCRR § 519.18. The decision after hearing must be supported by substantial evidence, 18 NYCRR § 519.18(h).

ISSUES

Was OMIG's determination to exclude Appellants from the Medicaid Program for unacceptable practices for a period of three years, correct?

Was OMIG's determination to recover Medicaid payments to Appellants in the amount of \$160,441.53, correct?

FINDINGS OF FACT

1. On June 19, 2014, Jean R. Daniel and Mohammed Raushan, co-owners of Dove Transport Service, LLP (Dove or Appellants), enrolled in the Medicaid Program to provide transportation services under category "0603-Taxi" (taxi). Dove did not start billing Medicaid until July 1, 2015.[Exhibit (Ex.) 7, Ex. 12, Ex. 13, Ex. 19.]

2. On April 8, 2016, OMIG investigators went to Dove's office at [REDACTED], [REDACTED] (office or Mount Sinai location), located in Mr. Daniel's home, to conduct a credential verification review (CVR.) The OMIG investigators were granted entry, but Mr. Daniel was not at home. While on site, the investigators took pictures of the office space and contacted Mr. Daniel using the phone number Dove provided. During the call Mr. Daniel confirmed that the drivers employed by Dove and the vehicles Dove used to provide taxi services were not registered/licensed by the Town of Brookhaven. The investigators asked Mr. Daniel to provide trip rosters/trip tickets to substantiate Dove's billing (trip tickets or documentation) but nothing was provided. [Ex. 7 at page 97, 152-155, Ex. 17; Transcript (Tr.) 74-76.]

3. The Town of Brookhaven requires that all taxi services that provide transportation within the town obtain a license. On April 24, 2016, Mr. Daniel registered Dove with the Town of Brookhaven to provide taxi services within the town (local taxi license). [Ex. 1 at page 21-22, Ex.7 at page 156, Ex. 23 at page 755-760.]

4. On May 9, 2016, Mr. Raushan executed a "CERTIFICATION STATEMENT FOR PROVIDER BILLING MEDICAID" agreeing that the information Dove submitted on all its claims for payment would be true, accurate and complete. [Ex. 14.]

5. On June 1, 2016, and June 20, 2016, the OMIG made two separate written requests for documentation, and received nothing. [Ex. 7 at page 97, 152-155; Tr. 75-76.]

6. On December 10, 2018, a NOPAA was issued to Mr. Daniel, Mr. Raushan and Dove, at the addresses Appellants provided. The OMIG determined to recover restitution in the amount of \$132,751.47 for overpayments made between July 1, 2016 and May 13, 2017, for claims improperly submitted without required information, driver's license number and vehicle license plate number; and provide restitution in the amount of \$262,636.12, for overpayments made between July 1, 2015 and April 23, 2016 for operating a taxi service without the proper Town of Brookhaven licensure. The OMIG determined that Appellants engaged in unacceptable practices and exclude them from the Medicaid Program for a period of three years. [Ex.7.]

7. On January 9, 2019, Mr. Daniel submitted a response to the NOPAA. Among other things, Mr. Daniel asserted that the April 8, 2016 CVR did not occur, investigators were not given access to the office, and neither he nor Dove's employees spoke with them or told them Dove and its drivers and vehicles did not have a local taxi license. Mr. Daniel also asserted that the "partnership has been cancelled and no longer exists as of May of 2018." He stated "[w]e may need at least sixty (60) days" to provide "the necessary records." [Ex. 8.]

8. On February 7, 2019, Mr. Raushan's counsel, Kathleen Farrell of Farrell Fritz Attorneys, PC, Albany, New York, submitted a response to the NOPAA. Among other things it was asserted that Mr. Raushan should not be held "jointly and severally liable for overpayment" because Mr. Daniel was "principally responsible for conducting Dove's day-to-day operations and all trips were based out of the Mount Sinai location," which is where Mr. Daniel lives. It was also asserted that even if it is determined that Mr. Raushan is an "affiliate of Dove or Mr. Daniel" he cannot be held responsible because he was unaware that Mr. Daniel failed to obtain the appropriate license, maintain records and furnish required claims information. It was further asserted that the conduct for which the OMIG seeks to impose a sanction was not "within the

course of his duties.” “Mohammed (Mr. Raushan) collected transportation trip rosters” and used this information to obtain attestations for each trip and submit “eMedNY claims at the end of each day for the trips that Mohammed was told had occurred.” [Ex. 9.]

9. After considering the Appellants’ responses, the OMIG issued the January 17, 2020 NOAA. The OMIG’s determinations and findings remained unchanged. [Ex. 10.]

10. On March 9, 2020, Mr. Daniel requested a hearing. For the first time he alleged that he placed Dove’s “trip tickets” in a “black plastic bag” which was “sealed” to protect them from water damage, but the bag became water damaged and was thrown out by a “tenant.” He reasserted the “30 cited objections and defenses” contained in his response to the NOPAA. [Ex. 1.]

11. On March 10, 2020, Mr. Raushan’s counsel, David Ross of O’Connell and Aronowitz, Albany, New York, requested a hearing “to challenge the findings contained in the Notice of Agency Action (NOAA) dated January 17, 2020.” [Ex. 2.]

12. On March 11, 2020, Mr. Daniel made a submission to the OMIG self-disclosure unit alleging that there were mitigating circumstances for Dove failing to provide the requested contemporaneous documentation to support its right to payment. [Ex. 20.]

13. On August 24, 2020, the OMIG notified Dove that it determined that the submission to the self-disclosure unit failed to substantiate mitigating circumstances for Dove’s failure to comply with 18 NYCRR 504.3. The OMIG cited four factors that contributed to its determination including that the documentation provided about the roof repair of Dove’s office predated the loss of records claim by two years; OMIG verbally requested trip tickets from Dove during the April 2016 CVR, and subsequently made written requests in two separate letters to Dove; the OMIG issued the December 2018 NOPAA and Dove’s response did not make any

mention of the loss of records; and Dove first alleged the loss of records in March 2020, after the NOAA was issued. [Ex 21 at page 666; Tr. 74-75, 369.]

14. On April 2, 2021, Mr. Daniel designated George Joseph, who is not an attorney, as his representative. [Ex. 3.]

15. On or about June 2021, the OMIG reduced the number of disallowances and the amount of the overpayment for providing taxi services within the Town of Brookhaven without the proper licensure from \$262,636.12 to \$27,690.06. The reduction was due to a provision in the Brookhaven Town Code that exempts a provider of taxi services from requiring a town license when the transportation provided begins within the town and ends outside the town or begins outside the town and ends within the town. The total amount of the overpayment being sought at hearing is \$160,441.53, plus interest. [Ex. 10 at page 575-601, Ex. 11, Ex. 23 at page 757.]

16. On July 15, 2021, the OMIG held a prehearing conference with Mr. Joseph and Mr. Raushan, who at that time was not represented by counsel. [Ex. 6, Ex. 11.]

DISCUSSION

Russell Rizzo, Assistant Medicaid Inspector testified about the investigation, audit file, and the OMIG's determination to seek restitution for overpayments and exclude the Appellants from the Medicaid Program for three years. Dove is enrolled as a provider of taxi services to Medicaid recipients and is required to provide driver's license and vehicle plate information on each claim and have a proper local license to provide a taxi service within the Town of Brookhaven. [Tr. 74-77]. The investigation, which Mr. Rizzo supervised, revealed that Dove failed to include driver license and vehicle plate information on all claims it submitted for payment during the period July 1, 2016 through May 13, 2017. The investigation also revealed

that Dove did not have a local license to provide taxi service within the Town of Brookhaven until April 26, 2016. On April 8, 2016 investigators conducted a CVR that included visiting the Mount Sinai location, taking pictures of the office, and speaking to Mr. Daniel on the phone. During the CVR, the investigators asked Mr. Daniel whether Dove had a local taxi license, and the investigators requested that Mr. Daniel provide trip tickets to support Dove's claims, but the documentation was not provided. In addition to the verbal request for documentation made during the CVR, OMIG sent two letters to Dove requesting the documentation but it was never provided. [Tr. 74-77, 223-225.] Mr. Rizzo testified that a provider of taxi services "must prepare and maintain contemporaneous records, demonstrating its right to receive payment for a period of six years from the date of service," and have a local taxi license. [Tr. 64-66.] Mr. Rizzo testified that without a valid driver's license and vehicle plate information for each claim and a local license to provide taxi services the Medicaid Program has no way of knowing that the drivers and vehicles transporting the Medicaid recipients are properly insured, registered and licensed at the time the services are provided, and this impacts public safety and program integrity. [Tr. 75-76]. On cross-examination, Mr. Rizzo was asked about LogistiCare. He testified that LogistiCare is a third-party contractor that assigns trips to "Medicaid providers to pick up and drop off Medicaid recipients," it does not pay providers. [Tr. 227- 228.] A Medicaid provider must include driver license and vehicle plate information "upon submission of the claim when the trip is completed." [Tr. 221-222.] "EMedNY is the payer of all Medicaid claims." [Tr. 229.] On May 9, 2016, Mr. Raushaun executed an eMedNY certification statement certifying that all claims Dove submitted to eMedNY would include the proper documentation including driver and license plate information. [Tr. 229-232.]

Mr. Daniel testified that the April 8, 2016 CVR did not take place, and that neither he nor Dove's employees spoke with the investigators [Tr. 359.] Mr. Daniel conceded that the photos the investigators took were of Dove's office and offered no explanation for how the photos would have been obtained if the CVR had not taken place. He testified that it is his responsibility to be aware of and comply with Medicaid Program rules and regulations and those of the local municipality. [Tr. 348.] He did not dispute that he failed to obtain a local taxi license until April 24, 2016. Mr. Daniel claimed that he was unaware that the OMIG had requested documentation to substantiate Dove's claims until he received the January 17, 2020 NOAA. Mr. Daniel also claimed that at some point he placed the documentation in a plastic bag, but it was not until February 2020 that he asked his [REDACTED], Ms. Joseph, who lives with him and his [REDACTED] about the "labeled" plastic bag of documents and that he did not mention the loss of records to the OMIG until March 2020. [Tr. 369.] Ms. Joseph testified that in 2020 Mr. Daniel asked her about the "labeled" plastic bag and she told him "I had thrown away some bags, but I have no idea what they were." [Tr. 276.]

Mr. Raushan testified that he should not be held responsible for not having documentation to support Dove's claims because he had no control over Dove's office, which was located in Mr. Daniel's home, and he was not aware that Mr. Daniel did not obtain a local taxi license. Mr. Raushan testified that LogistiCare "was giving us the clients" and afterward he would "attest to each trip." [Tr. 465.] He claimed that to complete each attestation he provided the driver's license and license plate information to LogistiCare. [Tr. 466-468.] He also claimed that on several occasions he called a "customer help line" and talked with "the Department of Health" about "the billing process." [Tr. 471-473.] Mr. Raushan professed that "the Department" had the driver and license plate information for each trip because he provided it to

LogistiCare, and “I would not be able to bill Medicaid without this information.” [Tr. 469-470.] On cross-examination, Mr. Raushan acknowledged that he was required to follow the rules and directives of the Department and local municipal requirements. [Tr. 485-486, 489, 499-501.] Mr. Raushan also acknowledged that he executed an eMedNY certification statement on behalf of Dove, that on a daily basis he submitted claims for payment to the New York State Medicaid Program through the ePACES portal to eMedNY, not LogistiCare, and the claims were paid. [Tr. 484-485, 500-506.]

CONCLUSIONS

The evidence shows that Mr. Daniel and Mr. Raushan are co-owners of Dove and enrolled in the Medicaid Program as a provider of taxi services to Medicaid recipients. By being enrolled they agreed to comply with the Medicaid Program rules, regulations, directives and municipal laws.

Mr. Daniel’s assertions that the CVR did not take place, Dove did not receive two separate letters sent to it in June 2016 requesting documentation, and he first learned that the OMIG requested documentation when he received the January 2020 NOAA defy credulity. The evidence shows that OMIG investigators conducted the CVR and were granted access to the office, took pictures of the office, spoke with Mr. Daniel by phone, requested documentation and were told by him that Dove did not have a local taxi license. The record reflects that in addition to the investigators verbal request for documentation two letters were sent to Dove requesting documentation. Further, in Mr. Daniel’s January 9, 2019 response to the NOPAA he requests an additional 60 days to gather the documentation. Mr. Daniel does not dispute that Dove did not provide documentation to substantiate its claims and did not obtain a local taxi license until April 24, 2016. Finally, Mr. Daniel’s explanation and timeline about how and when

the documentation was lost simply does not add up and does not constitute a mitigating factor affecting the sanction.

Mr. Raushan's assertion that he was not involved in the day-to-day operation of Dove is disingenuous. He is a co-owner of Dove. He does not dispute that he was Dove's billing agent and on a daily basis he submitted claims to eMedNY to obtain payment, and that Dove received payment. He provided little explanation about how he obtained the driver license and plate information for each trip, how and where he stored it, and why he himself could not produce it for audit. Mr. Raushan gave no credible explanation for why if as he claims, he provided driver license and vehicle plate information for each trip to LogistiCare, he did not provide it in the claims he sent to eMedNY. The Appellants are responsible for maintaining and producing documentation to the Medicaid Program, not LogistiCare.

DECISION

At hearing, Appellants have the burden of showing that "the determination of the department was incorrect," 18 NYCRR § 519.18(d)(1). Pursuant to 18 NYCRR 504.3(a) and 540.7(a)(8), Dove was required to produce for audit contemporaneous documentation demonstrating its right to payment including trip tickets containing a valid driver license number and license plate number for each of the disallowed claims, and that it had the required local taxi license at the time taxi services were provided within the Town of Brookhaven. Dove failed to produce contemporaneous documentation for each of the disallowed claims and it did not obtain the required local taxi license until April 24, 2016. Dove also failed to produce credible evidence that there were mitigating factors affecting the sanction.

The OMIG's determination to recover overpayments from the Appellants in the amount of \$160,441.53, plus interest, and its determination Appellants engaged in unacceptable

practices, which warrants exclusion from the Medicaid Program for a period of three years, is affirmed. This decision is made by Kimberly A. O'Brien who has been designated to make such decisions.

DATED: December 5, 2023
Albany, New York

Kimberly A. O'Brien / cmg
Kimberly A. O'Brien
Administrative Law Judge