

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

---

In the Matter of the Request of

BRONX PARK REHABILITATION AND NURSING CENTER

Medicaid # 00309628

for a hearing pursuant to Title 18 of the Official  
Compilation of Codes, Rules and Regulations  
of the State of New York (18 NYCRR)

---

**DECISION**

Audit # 15-5027

Before: Matthew C. Hall  
Administrative Law Judge

Parties: New York State Office of the Medicaid Inspector General  
800 North Pearl Street  
Albany, New York 12204  
By: Jordan Aguirre, Esq.

Bronx Park Rehabilitation and Nursing Center  
3845 Carpenter Avenue  
Bronx, New York 10467  
By: Steven L. Freifeld

## **JURISDICTION**

Pursuant to New York State Public Health Law (PHL) § 201(1)(v) and New York State Social Services Law (SSL) § 363-a, the Department of Health (Department) acts as the single state agency to supervise the administration of the medical assistance program (Medicaid) in New York State. 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.

The OMIG made a retroactive negative adjustment to the rates paid by Medicaid to Bronx Park Rehabilitation and Nursing Center (Bronx Park) for the rate period July 1, 2014, through December 31, 2014, based on overpayments identified in the Minimum Data Set (MDS) Final Audit Report in Audit No. 15-5027 (Final Report). Bronx Park requested a hearing to challenge the Final Report pursuant to 18 NYCRR 519.7. The OMIG requested a ruling that Bronx Park is not entitled to a hearing because it did not make a timely hearing request.

## **PARTIES' SUBMISSIONS**

The OMIG submitted the following documents:

1. November 3, 2017, letter to the Department's Bureau of Adjudication  
Enclosures: Draft Audit Report  
Final Audit Report  
Copy of Certified Mail showing delivery date of Request for Hearing  
Bronx Park's Request for a Hearing
2. November 3, 2017, letter to the Department's Bureau of Adjudication

Bronx Park was given the opportunity but did not submit any documents to be considered.

### **FINDINGS OF FACT**

1. At all times relevant to this proceeding, Bronx Park was a skilled nursing facility enrolled as a provider in the Medicaid program. Bronx Park is located at 3845 Carpenter Avenue, Bronx, New York 10467.

2. The OMIG issued an MDS Draft Audit Report for Audit No. 15-5027 (Draft Report) dated November 16, 2016, and mailed it to the Administrator at Bronx Park's facility in Bronx, New York.

3. In the Draft Report, the OMIG advised Bronx Park they had 30 days from the receipt of the Draft Report, to submit additional documentation and written arguments in objection to the determination in the Draft Report.

4. Bronx Park did not submit any additional documentation or written arguments in response to the Draft Report.

5. The OMIG then issued a Final Audit Report for Audit No. 15-5027 (Final Report) dated May 5, 2017.

6. In the Final Report, the OMIG advised Bronx Park that they had 60 days from "date of this notice," to request an administrative hearing to challenge the action and determination in the Final Report.

7. Bronx Park submitted a hearing request dated July 4, 2017 to challenge the OMIG's findings related to Audit #15-5027. However, the hearing request was not mailed until July 6, 2017, and was not received by the OMIG until July 10, 2017.

8. On August 31, 2017, Bronx Park was granted its request for an administrative hearing, and a hearing date of November 30, 2017 was set. However, by letter dated November

3, 2017, the OMIG submitted a “Request for determination on Timeliness of a Hearing Request,” and the hearing was indefinitely adjourned.

### **ISSUE**

Is Bronx Park’s request for a hearing on the determinations in the Final Report timely?

### **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, “[a]ny 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**

The OMIG argues that Bronx Park’s request for a hearing is untimely because the Final Report was dated May 5, 2017, and was mailed to and received by Bronx Park. The OMIG contends that as of July 4, 2017, Bronx Park failed to submit a request for a hearing on Audit #15-5027. “It is the notice itself that commences the 60-day time period.” Stack v. Perales, 151 A.D.2d 903, 905, 542 N.Y.S.2d 876, 878 (1989). Even excluding the holiday, 61 days had elapsed from the date of the Final Report to the date that the hearing request was mailed.

The provisions of 18 NYCRR 519.7 provide clearly and simply that a provider may request an appeal by clear, written communication requesting a hearing within 60 days from the written determination by the OMIG. The sixty-day limit derives from the provisions on requesting hearings at New York Social Services Law § 22(4)(a). A statutory time limit for requesting a hearing is jurisdictional and may not be waived. Piasecki v. Blum, 78 A.D.2d 950, 437 N.Y.S.2d 520 (3<sup>rd</sup> Dept. 1980).

Bronx Park submitted no additional documentation or written arguments in response to the Draft Report. Nor did they offer any response to the OMIG's motion for this determination on timeliness.

### **DECISION**

The OMIG properly provided written notice of its final determination in Final Audit Report 15-5027 to Bronx Park. Bronx Park had 60 days to request a hearing. Bronx Park's time to request a hearing expired on July 4, 2017. Bronx Park mailed its request for a hearing on July 6, 2017. The time limit for requesting a hearing is jurisdictional and may not be waived. Bronx Park's request for a hearing pursuant to 18 NYCRR 519 is untimely and is denied.

Administrative Law Judge Matthew C. Hall renders this Decision pursuant to the designation by the Commissioner of Health of the State of New York to render final decisions in hearings involving Medicaid provider audits.

DATED: Albany, New York  
August 20, 2018

---

Matthew C. Hall  
Administrative Law Judge