

STATE OF NEW YORK: DEPARTMENT OF HEALTH

---

In the Matter of

PRO MED AMBULETTE SERVICE, INC.  
Provider # 01169295,  
Appellant,

**DECISION**  
# 2017Z31-192W

from a determination by the NYS Office of the  
Medicaid Inspector General (OMIG)  
to recover Medicaid Program overpayments.

---

Before: Jean T. Carney  
Administrative Law Judge

Held at: New York State Department of Health  
By video conference

Hearing Date: July 14, 2021

Parties: Office of the Medicaid Inspector General  
800 North Pearl Street  
Albany, New York 12204  
By: Kathleen Dix, Esq.  
kathleen.dix@omig.ny.gov

Pro Med Ambulette Service, Inc.  
8 Valerie Drive, Suite 1  
Chester, New York 10918  
By: Jose R. Espada  
Promed56@optonline.net

## JURISDICTION

Pursuant to Public Health Law (PHL) § 201(1)(v) and 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 to recover improperly expended Medicaid funds.

The OMIG determined to seek restitution of payments made under the Medicaid program to Pro Med Ambulette Service, Inc. (Appellant). The Appellant requested a hearing pursuant to 18 NYCRR § 519.4 to review that determination.

## APPLICABLE LAW

Medicaid Program participation is a voluntary, contractual relationship between the provider of services and the state. (Social Services Law § 365[a]; 18 NYCRR § 504.1; *Schaubman v Blum*, 49 NY2d 375 [1980]; *Lang v Berger*, 427 F.Supp. 2d 204 [S.D.N.Y. 1977]). Medicaid providers agree to comply with all program requirements as a prerequisite to payment and continued participation in the program. (18 NYCRR §§ 504, 515, 517, and 518). Based on these contractual obligations, the Medicaid Program employs a pay-first-audit-later system to ensure compliance, and enable prompt payment to providers. (18 NYCRR SS 504.3 and 540.7[a][8]). Medicaid providers are required to prepare, maintain, and furnish to the Department on request, contemporaneous records demonstrating their right to receive payment from the Medicaid Program. All information regarding claims for payment is subject to audit for six years. (18 NYCRR § 504.3).

In order for a transportation provider to receive reimbursement, ambulette drivers must be qualified under Article 19-A of the vehicle and Traffic Law on each date services are provided. (18 NYCRR § 505.10[e][6][ii]).

When the Department has determined that claims for medical services have been submitted for which payment should not have been made, it may require repayment of

the amount determined to have been overpaid. (18 NYCRR §§ 504.8 and 518.1[b]). An 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]).

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). At the hearing, the Appellants bear the burden of proving by substantial evidence that the OMIG's determination is incorrect, and that all denied claims are due and payable. (18 NYCRR §§ 519.18[d] and [h]); New York State Administrative Act (SAPA) § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture, or speculation, and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649 [1984]). The substantial evidence standard demands only that a given inference is reasonable and plausible, not necessarily the most probable, Ridge Road Fire District v. Schiano, 16 N.Y.3d 494 (2011).

### **HEARING RECORD**

The OMIG presented documents (OMIG Exhibits 1-12); and the testimony of Emily Amiccuci, OMIG's Manager of the System Match and Recovery Unit. The Appellant presented no evidence. A stenographic transcript of the proceedings was made.

### **ISSUE**

Was OMIG's determination to recover Medicaid Program overpayments for transportation claims for ambulette services with unqualified/disqualified driver's license for date of service correct?

## FACTS

Citations in parentheses refer to testimony (T) and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was rejected in favor of cited evidence.

1. The Appellant is an ambulette and transportation service operating in New York, and is enrolled as a provider in the New York State Medicaid Program. (Exhibits 1 and 4).

2. The OMIG conducted a desk audit of transportation claims made by the Appellant for ambulette services paid by Medicaid for the period from March 1, 2012 to December 31, 2015. (Exhibits 1 and 4).

3. The OMIG issued a Draft Audit Report on February 13, 2018, identifying \$44,694.93, including interest, in Medicaid Program overpayments for Finding #2, transportation claims for ambulette services with unqualified/disqualified driver license for date of service. The Draft Audit Report was sent certified mail, return receipt requested, and was delivered on February 28, 2018. The Draft Audit Report explains that any additional documentation and objections should be submitted within 30 days of receiving the report. (Exhibits 1 and 2).

4. On March 15, 2018, the Appellant's representative, Mr. Espada, contacted the auditor regarding the draft audit and was given instructions on how to access a digital copy of the report. Mr. Espada did not follow through with these instructions until April 15, 2018. (Exhibits 3 and 9).

5. The OMIG issued a Final Audit Report on April 2, 2018, seeking overpayments for claims submitted with unqualified/disqualified drivers in the amount of \$44,694.93, including interest. The Final Audit Report was sent certified mail, return receipt requested, and was delivered on April 6, 2018. (Exhibits 4 and 5).

6. Both audit reports were sent to the same street address in Chester, New York, with a zip code of 10518. The zip code for Chester is 10918. The Appellant did not dispute receiving either audit report. (Exhibits 2 and 6).

7. Driver license numbers must be provided on each claim submitted to Medicaid for payment. As part of this audit, driver license numbers were compared to data kept by the Department of Motor Vehicles to verify their qualifications on the dates of service in the claims. During the period covered by the audit, the Appellant submitted 597 transportation claims for ambulette services provided by unqualified/disqualified drivers. (Exhibit 4; T Amiccuci).

### **DISCUSSION**

The Appellant, through its representative Mr. Espada, declined to present any evidence at the hearing. Mr. Espada conducted cross examination of the OMIG's witness and made an unsworn, closing statement alleging that he was unable to respond to the draft audit report in a timely fashion because the OMIG sent it to the incorrect address. The OMIG sent both reports to the correct address, but with an incorrect zip code. The Appellant has not denied receiving both reports, and the evidence confirms that Mr. Espada had received the draft audit report by March 15, 2018, when he contacted the OMIG with questions about it.

The Appellant acknowledged that during the audit period he suffered from several severely impairing health issues that may have negatively impacted his ability to exercise adequate oversight. The Appellant also claimed that the repayment plan has been a hardship on his business, which ceased operating in 2020.

Regardless of when the draft audit report was received, the Appellant failed to present any evidence at the hearing contradicting the OMIG's determination denying 597 transportation claims for ambulette services provided by unqualified/disqualified drivers during the audit period of March 1, 2012 to December 31, 2015. Those audit findings are uncontroverted.


The Appellant failed to meet its burden of proving that the OMIG's determination to recover overpayments for transportation claims for ambulette services with unqualified/disqualified driver's license for specific dates of service was not correct.

**DECISION**

OMIG's April 2, 2018 determination to recover overpayments in the amount of \$44,694.93 is affirmed.

This decision is made 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: January 19, 2022  
Albany, New York

  
**JEAN T. CARNEY**  
**Administrative Law Judge**

---