

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of

Amida Care Inc.
Medicaid ID # 02191582

from a determination by the NYS Office of the
Medicaid Inspector General to recover Medicaid
Program overpayments

Decision After
Hearing

COPY

#14-2390

Before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007
February 18, 2015
Transcript received March 12, 2015

Parties: New York State Office of the Medicaid Inspector General
217 Broadway, 8th floor
New York, New York 10007
By: Steven Miller, Esq.

Mr. Doug Wirth, CEO
Amida Care Inc.
14 Penn Plaza, 2nd floor
New York, New York 10122
By: Esperanza Gabriel,
Director of Medicaid Compliance

JURISDICTION AND APPLICABLE LAW

The Department of Health (the Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. PHL 201(1)(v), 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 recover improperly expended Medicaid funds. The OMIG determined to seek restitution of payments made under the Medicaid Program to Amida Care, Inc. (the Appellant). The Appellant requested a hearing pursuant to Social Services Law 22 and the former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the determination.

A Medicaid Program 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 a Department audit reveals an overpayment, the Department may require repayment of the amount determined to have been overpaid. 18 NYCRR 504.8(a)(1), 518.1. The Appellant has the burden of showing that the determination of the Department was incorrect. 18 NYCRR 519.18(d).

SUMMARY OF FACTS

1. The Appellant contracted with the Department under the Department's Medicaid Managed Care (MMC) program to provide health care services for Medicaid recipients. (Transcript, page 8; Exhibit 7.)

2. Pursuant to Section 3.1 of its MMC Agreement with the Department, the Appellant was paid a monthly premium, or "capitation payment" for each enrollee as compensation for the services it provided to the enrollee. (Exhibit 7, page 25.)

3. Pursuant to Section 3.6 of its MMC Agreement with the Department:

The parties acknowledge and accept that the SDOH [the Department] has a right to recover premiums paid to the Contractor for MMC Enrollees listed on the monthly Roster who are later determined for the entire applicable payment month ... to have been incarcerated... (Exhibit 7, page 26.)

4. The OMIG reviewed MMC capitation payments made to the Appellant for the period January 1 through December 31, 2013, and identified thirteen enrollees who were [REDACTED] for at least one entire month for which a capitation payment was made. Seventeen capitation payments in the total amount of \$48,371.93 were made for months in which the thirteen enrollees were [REDACTED] for the entire month.

5. By final audit report dated October 14, 2014, the OMIG notified the Appellant that it had identified and determined to seek restitution of Medicaid Program overpayments in the amount of \$48,371.93. (Exhibit 3.)

6. The Appellant does not dispute the OMIG's findings that the thirteen enrollees were [REDACTED] during the entire months for which the seventeen MMC capitation payments in the amount of \$48,371.93 were made. (Transcript, pages 28, 55.)

ISSUE

Was the OMIG's determination to recover Medicaid Program overpayments in the amount of \$48,371.93 from Appellant Amida Care Inc. correct?

DISCUSSION

The Appellant is a managed care provider in the Medicaid Program. See SSL 364-j. (Transcript, pages 8-9, 23.) Under the terms of its Medicaid Managed Care

(MMC) agreement with the Department, the Appellant is paid in the form of a monthly premium, or "capitation payment" for each enrollee. (Exhibit 7, page 25.) The Appellant's agreement with the Department further provides, however, that the Department is entitled to recover capitation payments made for enrollees who are later determined to have been [REDACTED] for the entire payment month. (Exhibit 7, page 26.)

It is uncontroverted that capitation payments for the thirteen enrollees were made by the Medicaid Program in the amounts determined by the OMIG. (Exhibit 3, page 10.) The Department's records of Medicaid payments are entitled to a presumption of accuracy that the Appellant did not challenge. 18 NYCRR 519.18(f). It is also uncontroverted that in the seventeen instances identified in the audit report, the enrollee was [REDACTED] during the entire month for which a capitation payment was made. (Transcript, pages 28; 55.) Pursuant to Section 3.6 of the Appellant's MMC agreement, the Department is entitled to recover the capitation payments. (Exhibit 7, page 26.)

The Appellant accepts the Department's findings and determination to recover fourteen of the seventeen capitation payments identified in the audit report. It objects to the recovery of the remaining three capitation payments, in the total amount of \$11,345.03, on the grounds that it paid pharmacy claims for the enrollees during the months in question. (Exhibit 2.)

The Appellant claims it did not know the three enrollees were [REDACTED] when it paid for their prescriptions. (Transcript, pages 19-20, 40.) Appendix H(6)(a) of the Appellant's MMC Agreement with the Department appears to assign responsibility to the local department of social services (LDSS), in this case the New York City Human Resources Administration (HRA), to disenroll MMC enrollees when their eligibility

changes due to circumstances such as [REDACTED] and to notify contractors such as the Appellant. (Exhibit 7, pages 50-52; Transcript, pages 37-38, 71-72.) Appendix H(6)(a)(xi), however, also specifically provides:

Failure by the LDSS to notify the Contractor does not affect the right of the SDOH to recover the premium payment as authorized by Section 3.6 of this Agreement. (Exhibit 7, page 51.)

The Appellant also argues that it should be entitled to keep the capitation payments because it incurred expenditures for needed care for these three enrollees, in particular for [REDACTED] medications that were critical for the patients. (Transcript, pages 19, 58-59.) The Appellant's expenditures for the three enrollees were pharmacy claims in the amount of \$4,332.92. During those months, the Appellant received capitation payments for the three enrollees in the amount of \$11,345.03. (Exhibit 14.)

The Appellant's claim that by incurring these expenditures it ensured vital medications were dispensed to persons in need of them was not supported by any evidence. (Transcript, page 68.) The three enrollees were [REDACTED] at the time the prescriptions were allegedly filled. Their medical care was the responsibility of the [REDACTED] (Transcript, pages 32, 55-56.) The Appellant attempted to investigate the three pharmacy payments, but failed to obtain any evidence that the prescriptions for which it paid were actually filled or that the medications were actually provided to the [REDACTED] patients. (Transcript, pages 79-83; Exhibit 4.) An OMIG witness, auditor Amy DeRusso, speculated that the Appellant may have simply paid for previously authorized refills that were automatically billed by the pharmacies. (Transcript, pages 41-42.)

In any event, the question whether the patients actually received the medications is irrelevant to the question whether the Appellant is entitled to capitation payments. Pursuant to Appendix H(6)(a)(xiii) of the Appellant's MMC agreement "Contractor is at risk for covered services only to the date of [REDACTED]" (Exhibit 7, page 52.) The Appellant has cited no authority in law, regulation, Medicaid reimbursement policy and rules, or in its contract with the Department, for its argument that paying for medical care for [REDACTED] person after the date of [REDACTED] entitled it to a capitation payment for the month of the expenditure. The Appellant's contract with the Department explicitly provides, to the contrary, that the Department is entitled to recover capitation payments made for any enrollee later determined to have been [REDACTED]

The Appellant has failed to meet its burden of proving that the Department's determination to recover capitation payments made for [REDACTED] persons was incorrect.

DECISION: The OMIG's determination to recover Medicaid Program overpayments in the amount of \$48,371.93 is affirmed.

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

DATED: Rochester, New York
March 16, 2015

[REDACTED]
John Harris Terepka
Bureau of Adjudication