

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Request of

DTS, Inc.

Medicaid # 02769446

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 # 2017Z31-063V

Before: Matthew C. Hall
Administrative Law Judge

Parties: New York State Office of the Medicaid Inspector General
90 Church Street, 14th Floor
New York, New York 10007
By: Phillip Hoffman, Esq.

DTS, Inc.
P.O. Box 451
Yonkers, New York 10705-1914
By: Boris Flitsanov, Director of Operations

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 DTS, Inc. (DTS) for the rate period January 1, 2012 through December 31, 2015, based on overpayments for transportation services identified in the Final Audit Report in Audit No. 2017Z31-063V. DTS requested a hearing to challenge the Final Audit Report pursuant to 18 NYCRR 519.7. The OMIG requested a ruling that DTS is not entitled to a hearing because it did not make a timely hearing request.

PARTIES' SUBMISSIONS

The OMIG submitted the following documents:

1. October 5, 2018, letter to the Department's Bureau of Adjudication

Exhibits:

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| A: | DTS's Request for a Hearing |
| B: | Final Audit Report, issued July 16, 2018 |
| C: | Revised Final Audit Report, issued July 19, 2018 |
| D: | Certified Mail Slip/tracking results for July 16, 2018 FAR |
| E: | Certified Mail Slip/tracking results for July 19, 2018 FAR |
| F: | Certified Mail Slip/tracking results for unclaimed FAR |

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

FINDINGS OF FACT

1. At all times relevant to this proceeding, DTS was a transportation service enrolled as a provider in the Medicaid program. DTS is located in Yonkers, New York.
2. The OMIG issued a Final Audit Report for Audit No. # 2017Z31-063V (Final Report) dated July 16, 2018, and mailed it to the Director of Operations at DTS in Yonkers, New York. (Ex. B.)
3. The OMIG then issued a Revised Final Audit Report for Audit No. # 2017Z31-063V (Revised Final Report) dated July 19, 2018, and again, mailed it to the Director of Operations at DTS in Yonkers, New York. (Ex. C.)
4. The Revised Final Report rescinded the original Final Report. (Ex. C.)
5. In the Revised Final Report, the OMIG advised DTS that they had sixty (60) days from “date of this notice,” to request an administrative hearing to challenge the action and determination in the Final Report. (Ex. C.)
6. DTS submitted a hearing request dated September 27, 2018 to challenge the OMIG’s findings related to Audit # 2017Z31-063V, 70 days after the issuance and mailing of the Revised Final Report. (Ex. A.)
7. By letter dated October 5, 2018, the OMIG submitted a “Request for Determination on Timeliness of a Hearing Request.” No hearing has been scheduled pending the outcome of this determination.

ISSUE

Is DTS’s request for a hearing on the determinations in the Revised 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 DTS’s request for a hearing is untimely because the Revised Final Report was dated July 19, 2018, and was mailed to and received by DTS. The OMIG contends that as of September 17, 2018, DTS failed to submit a request for a hearing on Audit # 2017Z31-063V. “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). 70 days had elapsed from the date of the Revised Final Report to the date that the hearing request was mailed.

DTS argued that, due to “USPS’s horrible handling of this package,” DTS did not timely receive the “final determination of the OMIG,” and accordingly, was not afforded ample time to request a hearing on Audit # 2017Z31-063V. (Ex. A.) It is clear, however, that the original Final Report, to which DTS was referring, was “rescinded,” and superseded by the Revised Final Report. (Ex. C.) It is also clear that the Revised Final Report was dated July 19, 2018 and delivered to DTS on July 31, 2018. (Ex. C., E.) It is the date of the Revised Final Report that begins the 60-day limit.

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 (3rd Dept. 1980).

DTS did not 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 the Revised Final Report # 2017Z31-063V to DTS. DTS had 60 days to request a hearing. DTS's time to request a hearing expired on September 17, 2018. DTS mailed its request for a hearing on September 27, 2018. The time limit for requesting a hearing is jurisdictional and may not be waived. DTS'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
December 21, 2018

Matthew C. Hall
Administrative Law Judge

To: Philip Hoffman, Esq.
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