STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Request of **LIN-WIL Transportation, Inc.** Medicaid ID # 02196289 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	:	**Decision After Hearing** Audit #10-1469

Before: Denise Lepicier
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007

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

Lin-Wil Transportation, Inc.
519 Coolidge Avenue
Rockville Center, N.Y. 11570-3308
By: Robert Gershon, Esq.
142 Joralemon Street, Suite 5A
Brooklyn, New York 11201

Date of Hearing: April 25, 2013

JURISDICTION

The Department of Health (Department) acts as the single state agency to supervise the administration of the Medicaid program (Medicaid) in New York State. Public Health Law (PHL) § 201(1)(v), Social Services Law (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 pursue administrative enforcement actions against any entity, or individual, that engages in fraud, abuse, or unacceptable practices in the Medicaid program, and to recover improperly expended Medicaid funds.

OMIG determined to seek restitution of payments made by Medicaid to Lin-Wil Transportation, Inc. (Appellant). Appellant requested a hearing pursuant to SSL § 22 and the former Department of Social Services (DSS) regulations at 18 NYCRR § 519.4 to review the determination. (See Exhibit 4)

APPLICABLE LAW

Medicaid fee for service providers are reimbursed by Medicaid on the basis of the information they submit in support of their claims. The information provided in relation to any claim must be true, accurate and complete. Providers must maintain records demonstrating the right to receive payment for six years, and all claims for payment are subject to audit for six years. 18 NYCRR §§ 504.3(a)&(h), 517.3(b), 540.7(a)(8).

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(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 Appellant has the burden of showing that the determination of the Department was incorrect and that all claims submitted and denied were due and payable under the Medicaid program. 18 NYCRR § 519.18(d).

An extrapolation based upon an audit utilizing a statistical sampling method certified as valid will be presumed, in the absence of expert testimony and evidence to the contrary, to be an accurate determination of the total overpayments made. Appellant may submit expert testimony and evidence to the contrary, or an accounting of all claims paid, in rebuttal to the Department's proof. 18 NYCRR § 519.18(g).

The DSS regulations generally pertinent to this hearing decision are at: 18 NYCRR § 360-7 (payment for services), 18 NYCRR § 505 (medical care – in particular 18 NYCRR § 505.10 [transportation]), 18 NYCRR § 517 (provider audits), 18 NYCRR § 518 (recovery and withholding of payments or overpayments), 18 NYCRR § 519 (provider hearings) and 18 NYCRR § 540 (authorization of medical care - in particular 18 NYCRR § 540.6 [billing for medical assistance]).

The New York State Medicaid program issues Medicaid Management Information Systems (MMIS) provider manuals, which are available to all providers and include, among other things, billing policies, procedures, codes and instructions. www.emedny.org. Medicaid also issues a monthly Medicaid Update with additional information, policy and instructions. (Ex. 12 & 13) www.emedny.org. Providers are

obligated to comply with these official directives. 18 NYCRR § 504.3(i); Lock v. NYS Department of Social Services, 220 A.D.2d 825, 632 N.Y.S.2d 300 (3d Dept. 1995); PSSNY v. Pataki, 58 A.D.3d 924, 870 N.Y.S.2d 633 (3d Dept. 2009).

ISSUE

Was OMIG's determination to recover Medicaid overpayments from Appellant, Lin-Wil Transportation, Inc., correct? If so, what is the amount of the overpayment?

FINDINGS OF FACT

1. At all times relevant hereto, Appellant Lin-Wil Transportation, Inc., was enrolled as a provider (#02196289) in the New York State Medicaid program. (Ex. 8)

2. Appellant was paid by Medicaid during the period January 1, 2005 through December 31, 2008 for transportation services provided to persons who were eligible for coverage under Medicaid. (Exs. 3, 5, 13, 15 & A)

3. During the four year audit period, the Appellant submitted 3963 claims to Medicaid. (Ex. 3). Medicaid reviewed a random sample of 200 of these claims in its audit. (Ex. 3; T. 63-66)

4. By final audit report dated February 10, 2011, OMIG notified the Appellant that OMIG had identified and determined to seek restitution of Medicaid overpayments in the amount of $320,253. (Ex. 3)

5. OMIG's restitution claim is an extrapolation based upon a valid statistical sampling method in which the value of the disallowed claims found among the

sample of 200 claims was projected to the total of 3963 claims paid by Medicaid during the audit period. (Ex. 16)

6. At hearing, the OMIG withdrew the portion of the final audit which charged that "2. Provider Did Not Meet DOT/DMV/TLC Requirements," although OMIG added three of the claims from this group into another group of findings.[1] (T. 135-136, 140-144)

7. Also at hearing, the Appellant stipulated to the overpayments contained in the third, fourth, and fifth group of the "DETAILED FINDINGS."[2] (T. 136-139)

8. Remaining at issue for this hearing are two types of overpayments identified by OMIG and included in the first group of findings, i.e., "Missing/Inaccurate Information on Medicaid Claim."

9. In response to OMIG's allegation of "Missing/Inaccurate Information on Medicaid Claim" that "In 60 instances . . . the vehicle license plate number was inaccurate on the Medicaid claim," Appellant produced the surrender of the plates on the first ambulette used in the business, known as "Vehicle 1." (Ex. A, Attachment 1) The plate surrender document indicates the plates were surrendered on February 28, 2006. This first ambulette went out of service and was replaced by a second ambulette, which then became known as "Vehicle 1." The plate number for this ambulette was 37938LA. All the claims that were submitted with this vehicle license plate number after February 28, 2006, were submitted with the correct license plate number. As a result, 54 of the 60

[1] Claims numbered in the audit as 74, 112 and 193, were added to the fifth group of audit findings, i.e., "Driver Did Not Meet DOT/DMV/TLC Requirements" in the amount of $34.61 each, for a total of $103.83.

[2] The findings to which the Appellant stipulated were: "3. Claim for Transportation Services to Obtain Medical Care Could Not Be Corroborated;" "4. Missing/Incomplete Documentation;" and "5. Driver Did Not Meet DOT/DMV/TLC Requirements."

claims cited by OMIG were submitted with accurate information.[3] (T. 156-168, 191-194)

10. In response to OMIG's allegation of "Missing/Inaccurate Information on Medicaid Claim" that "In 22 instances . . . the driver's license number was inaccurate on the Medicaid claim," Appellant testified that claims were submitted via "ePACES."[4] When using a driver for the first time in this system, the Appellant typed in the driver's name and license number into the ePACES system. Thereafter, every time that driver's name was chosen from the list of names stored in the system, the application populated the license number in the claim without the provider seeing it. In this case, Appellant's owner typed in the driver's license number as [redacted] when the driver's actual license number was [redacted] (See Exhibit A, copy of the driver's license for the named driver in samples cited in footnote 6 as having the typographical error) After the initial input of the driver's license number, the Appellant was not asked to check the driver's license number ever again. (T. 169-172) The original typographical error was then repeated every time Appellant submitted a claim with this driver's name in the ePACES system.[5] This error occurred in 14 of the 22 samples charged as overpayments by the state.[6] (T. 168-172)

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[3] Samples numbered 13, 16, 19, 20, 21, 22, 26, 27, 29, 30, 36, 44, 46, 52, 53, 54, 62, 65, 81, 85, 93, 94, 96, 97, 98, 104, 107, 111, 114, 115, 122, 124, 126, 128, 130, 133, 135, 136, 138, 146, 151, 152, 156, 157, 162, 166, 167, 168, 172, 181, 188, 190, 196 and 199 were not inaccurate claims. Samples numbered 92, 99, 148, 169, 187 and 189 were not challenged by Appellant.

[4] The New York State Medicaid Program Transportation Billing Guidelines manual Version 2005 - 1 (at p. 7) states: "NYS Medicaid provides ePACES, a HIPAA-compliant web-based application that is customized for specific transactions, including the 837P. ePACES, which is provided free of charge, is ideal for providers with small to medium claim volume."

[5] This repetitive error can easily happen with the use of computers/programs/applications. For example, the certifications provided for the random sample by OMIG in this case refer to it being a sample of claims for pharmacy services provided. Clearly, this is not a pharmacy case. The certification was undoubtedly used for a pharmacy case and was simply modified for this case. The error was duplicated because OMIG corrected the first certification for the dates of the audit, but made no change to the type of services

11. In response to OMIG's allegation of "Missing/Inaccurate Information on Medicaid Claim" that "In 34 instances, the vehicle license plate number and the driver's license number were inaccurate on the Medicaid claim," one claim involved the driver whose license number was erroneously entered into ePACES *and* who also drove the replacement ambulette. (Sample # 28) This single sample will be excluded from the overpayments for the reasons set forth in fact findings 9 and 10, *supra*. (T. 168-172)

12. Except for the two types of errors in the audit samples discussed in factual findings 9, 10, and 11, *supra*, all OMIG's other claimed overpayments were unchallenged. (T. 136-139, 152-184, 192-194)

DISCUSSION

OMIG presented the audit file and summarized the case, as is required by 18 NYCRR § 519.17. OMIG presented documents (Exhibits 1-19) and the testimony of Molly Kommer, a principal of the Bonadio Group, a consulting and accounting firm hired by Nassau County to conduct this audit. The Appellant presented a large documentary exhibit (Exhibit A) and the testimony of Linda Griffin, the owner of Lin-Wil Transportation, Inc. (Ex. A)

Both witnesses were credible. The evidence, however, supported Ms. Griffin's testimony that because of the way ePACES worked, a single typographical error was repeated fifteen times in the audit sample without any action on her part after the initial

provided. Appellant let the certifications go into evidence unchallenged and made no argument that the random sample was flawed. The certifications clearly contain computer-type errors.

[6] Samples numbered 6, 14, 45, 49, 57, 64, 73, 95, 117, 134, 150, 160, 170 and 182 included this typographical error. Samples numbered 11, 12, 18, 63, 78, 125, 147 and 180 were unchallenged by the Appellant.

error.[7] It defies common sense to conclude otherwise. No motive was suggested for the Appellant to have entered another driver's license number with her driver's name. The claim accurately identified the driver and the entered driver's license number differed from her driver's number by only one digit. Appellant should not be penalized so severely for a single typographical error which was repeated as the result of the use of a computer application provided by the state.

Secondly, the evidence also supports Ms. Griffin's testimony that accurate information was provided with respect to the claim samples which involved use of an ambulette which was purchased to replace an older ambulette. She explained that she had identified the older ambulette as "Vehicle 1" and that, after she took the older ambulette out of service, she referred to the newer ambulette as "Vehicle 1" as the newer replaced the older. She also provided documentary evidence that the older ambulette was taken out of service. She challenges only the claim samples that were made after the older ambulette was taken out of service. Again, common sense compels the conclusion that the claim samples identified in this audit after the date that the first ambulette was taken out of service and which include the newer ambulette's license number were accurate claims.

There is no doubt that Appellant's record keeping practices need to be improved. Had the record keeping been more accurate, OMIG's audit would have resulted in a much smaller overpayment, and perhaps none at all. The Appellant still owes a

[7] Ms. Griffin's testimony concerning how ePACES worked was not rebutted by any testimony from OMIG, and, therefore, was accepted as accurate.

significant overpayment. The total sample overpayment for this audit is $7407.24.[8] The extrapolated overpayment for the universe of 3,963 claims is now $146,774.46.

DECISION:

OMIG's determination to recover Medicaid overpayments from Appellant is affirmed in part and reversed in part consistent with this decision. OMIG's determination is affirmed to the extent of an overpayment in the amount of $146,774.46. This decision is made by Denise Lepicier, who has been designated to make such decisions.

DATED:
July 16, 2013
New York, New York

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Denise Lepicier
Administrative Law Judge

[8] With respect to the first group of overpayments alleged by OMIG, i.e., those where there was "Missing/Inaccurate Information on Medicaid Claim," the sample overpayment amount is now $4399.86. As OMIG added three samples (samples numbered 74, 112 and 193) to the fifth category of overpayment, i.e., those where the "Driver Did Not Meet DOT/DMV/TLC Requirements," all in the amount of $34.61, the overpayment amount for the fifth group is now $969.08.