

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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In the Matter of the Request of

MURRAY FRYD, DDS

Medicaid # 00679841  
NPI # 1124231212

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

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**DECISION**

Audit # 18-6536

Before: Tina M. Champion  
Administrative Law Judge

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

Murray Fryd, DDS  
592 5th Avenue  
Brooklyn, New York 11215

## **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 finding of overpayment by Medicaid to Murray Fryd, DDS for the Medicaid Electronic Health Record (EHR) Incentive Program for the 2014 payment year as identified in the Final Audit Report in Audit Number 18-6536. Dr. Fryd requested a hearing to challenge the Final Audit Report pursuant to 18 NYCRR 519.7. The OMIG requested a determination that Dr. Fryd is not entitled to a hearing because he did not make a timely hearing request. A decision without a hearing may be requested by either party pursuant to 18 NYCRR 519.23. There is no unresolved material issue of fact necessary to determine whether Dr. Fryd's hearing request is timely.

## **PARTIES' SUBMISSIONS**

The OMIG submitted the following documents:

1. January 25, 2019, letter to the Department of Health's Bureau of Adjudication

Exhibits	A – Hearing Request by Dr. Fryd
	B – Final Audit Report
	C – Tracking information for Final Audit Report
	D – Email from the OMIG to Dr. Fryd

Dr. Fryd did not respond or submit any documents.

## **FINDINGS OF FACT**

1. At all times relevant to this proceeding, Dr. Fryd was enrolled as a provider in the Medicaid program. Dr. Fryd is located in Brooklyn, New York. (Ex. B.)
2. The OMIG issued a Final Audit Report in Audit Number 18-6536 on October 18, 2018, which set forth a final determination by the OMIG of a Medicaid overpayment to Dr. Fryd in the amount of \$21,250 for an EHR payment for payment year 2014. (Ex. B.)
3. The OMIG mailed the Final Audit Report to the Dr. Fryd via certified mail and electronic mail. (Exs. B and D.)
4. The certified mailing was delivered on October 20, 2018. (Ex. C.)
5. Dr. Fryd requested a hearing by way of an undated letter that was postmarked January 14, 2019, and received by the OMIG on January 18, 2019. (Ex. A.)

## **ISSUE**

Is Dr. Fryd's request for a hearing on the determination in the Final Audit 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 Dr. Fryd's request for a hearing is untimely. The OMIG provided written notice of its final determination to Dr. Fryd in the Final Audit Report that was issued on October 18, 2018, and delivered to Dr. Fryd's address by certified mail on October 20, 2018.

The provisions of 18 NYCRR 519.7 specify that a provider may request an appeal of a final determination by any clear, written communication to the department within 60 days of the date of the OMIG's determination. The OMIG also provided the same explicit instructions to Dr. Fryd in the Final Audit Report. Dr. Fryd stated in his hearing request that he had "been trying to contact" the OMIG and had "left several messages." He did not provide details of his stated attempts and his letter postmarked January 14, 2019, 88 days after the OMIG issued its final determination, was the first written communication to the department indicating a desire for a hearing.

Dr. Fryd did not provide any response to the OMIG's motion for a determination on timeliness.

### **DECISION**

The OMIG properly provided written notice of its final determination in Audit Number 18-6536 to Dr. Fryd. Dr. Fryd failed to request a hearing within the time prescribed by regulation. The time limit for a hearing is jurisdictional and may not be waived. Dr. Fryd's request for a hearing pursuant to 18 NYCRR Part 519 is untimely and is denied.

Administrative Law Judge Tina M. Champion 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: June 4, 2019  
Albany, New York

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Tina M. Champion  
Administrative Law Judge

TO: Philip Hoffman, Esq.  
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