

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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In the Matter of the Request of

WOODMERE REHABILITATION AND HEALTHCARE  
CENTER

**DECISION**

Provider # 01669772  
NPI # 1861495202

Audit # 18-9913

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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Before: James F. Horan  
Administrative Law Judge

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

Woodmere Rehabilitation and Healthcare Center (Provider)  
By: Richard T. Yarmel, Esq.  
Harter, Secrest & Emery  
1500 Bausch & Lomb Place  
Rochester, New York 14604-2711

On this request, the ALJ finds that the Provider filed a timely notice requesting a hearing through an email to an OMIG auditor.

## **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 the Provider for the Medicaid Rate Period January 1, 2014 to December 31, 2017 identified in the Final Audit Report in Audit Number 18-9913. The Provider requested a hearing to challenge the Final Audit Report pursuant to 18 NYCRR § 519.7. The OMIG now requests a determination that the Provider is not entitled to a hearing because the Provider failed to 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 factual issue in dispute necessary to determine whether the Provider filed a timely hearing request.

## **PARTIES' SUBMISSIONS**

The OMIG made two submissions with attachments. Exhibit 1 was an August 5, 2021 letter that appended the following attachments:

- A – Five Town Letter June 23, 2021,
- B – Final Audit Report April 21, 2021,
- C – United States Postal Service Tracking Sheet,
- D – Email Gloeckner to Benden June 10, 2021,
- E – Draft Audit Report November 19, 2020.

Exhibit 2 was an October 6, 2021 letter that appended three Attachments:

- F – Gloeckner Extension Reply.
- G – Change of Address Form,
- H – Change of Address Notification.

The Respondent made one submission. Exhibit A was a September 20, 2021 letter that appended 4 attachments:

- 1 – Benden to Gloeckner Email June 18, 2021,
- 2 – Periodic Census Report Woodmere September 17, 2021,
- 3 – Benden Letter June 23, 2021,
- 4 – Benden Response to Draft Audit Report January 14, 2021.

The record on the Request closed with the October 6, 2021 OMIG Submission.

### **FINDINGS OF FACT**

1. At all times relevant to this proceeding, the Provider was enrolled as a provider in the Medicaid Program [Exhibit 1, Attachment B].

2. The OMIG issued a Draft Audit Report in Audit Number 18-9913 on November 19, 2020, which the OMIG mailed to the Provider at its address for clinical and administrative services at 121 Franklin Place (Franklin Address) in Woodmere, New York [Exhibit 1, Attachment E].

3. By January 29, 2018, the Provider completed the transfer of its residents to a new location at 1050 Central Avenue, Woodmere, New York and closed for clinical or administrative services the Franklin Address [Exhibit A].

4. The Provider filed a timely response to the OMIG Draft Audit Report on January 14, 2021 and the cover email to the response bore the Central Address for the Provider Exhibit A, Attachment 4].

5. The OMIG issued a Final Audit Report in Audit Number 18-9913 on April 21, 2021, which the OMIG mailed to the Provider at the Franklin Address [Exhibit 1, Attachment B].

6. The Provider's Administrator, Joseph Benden, sent an email to OMIG Auditor Eric Gloeckner on June 18, 2021 stating that the Provider's accountant spoke to a senior OMIG auditor a week earlier who indicated that the Provider still had the option for a hearing [Exhibit A, Attachment 1].

7. The Benden email concluded "Can we please set a hearing date?" [Exhibit A, Attachment 1].

8. Mr. Benden sent a letter to "Whom It May Concern" on June 23, 2021 requesting a hearing and indicating the Final Audit Report went to the Provider's former location at the Franklin Address [Exhibit 1, Attachment A].

### **ISSUE**

Is the Provider'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].) Title 18 NYCRR § 517.7[b] states that the hearing may be requested by writing: New York State Department of Social Services, Bureau of Special Hearings, 40 North Pearl Street, Albany, New York 12243.

## **DISCUSSION**

The OMIG Exhibit 1 argued that the Provider made an untimely hearing request in the June 23, 2021 Bender letter, which was sixty-three days following the issuance of the Final Audit Report. The Provider responded that the Draft Audit Report went to the wrong address and that the June 18, 2021 Bender to Gloeckner email constituted a clear, written communication to the Department requesting a hearing. The OMIG replied that the Provider should have completed a change of address form. As to the June 18, 2021 email, the OMIG argued that Mr. Gloeckner was not a designated recipient of hearing requests and was not even located in the main OMIG Office. The Final Audit Report indicated that the hearing request must be sent to the OMIG General Counsel in Albany.

The ALJ finds that the June 18, 2021 email [Exhibit A, Attachment 1] was a timely hearing request in that it was sent less than sixty days from the issuance of the Final Audit Report. It was written and it was sent to the Department at an OMIG email address. The Email also constituted a clear, written request for a hearing that provided actual notice to the OMIG that the Provider was requesting a hearing. The OMIG argued that Mr. Gloeckner was not a designated recipient of service of hearing requests, but under § 517.9[b], neither is the OMIG General Counsel. The regulation requires a written communication to the department, which may be sent to the former Department of Social Services Address at North Pearl Street in Albany. The ALJ takes official

notice that the New York Legislature dissolved the Department of Social Services in 1997 [1997 Laws of New York Chapter 436] and transferred its audit and recoupment function to the OMIG nine years later [2006 Laws of New York Chapter 442]. The OMIG Submission on October 6, 2021 faulted the Provider for failing to file a change of address form with the OMIG at the time of the move to the Central Address. The OMIG itself has still failed to update its own change of address, in the regulation setting the rules for requesting a hearing, 24 years after the Legislature authorized the dissolution of the Department of Social Services.

### **DECISION**

The time limit for requesting a hearing is jurisdictional and may not be waived, Pasecki v. Blum, 78 A.D.2d 950, 437 N.Y.S.2d 520 (3<sup>rd</sup> Dept. 1980). The ALJ finds the June 18, 2021 request for hearing was timely. The hearing challenging the Final Audit Report may proceed.

Administrative Law Judge James F. Horan 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:       October 27, 2021  
              Menands, New York

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James F. Horan  
Administrative Law Judge

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