

The State of New York Department of Health

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IN THE MATTER OF THE REQUEST OF

**M.J. Trans. Corp.,**  
**Appellant**

**Decision**  
**Audit Number**  
2012Z31-093T

**Provider ID # 02214395**

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 (18 NYCRR) to review the Determination of the Office of the Medicaid Inspector General to recover \$26,862.59 in Medicaid Overpayments.

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Before: James F. Horan, Administrative Law Judge

Held at: New York State Department of Health  
90 Church Street  
New York, NY 10007  
October 29, 2014

Parties: Office of the Medicaid Inspector General  
Office of Counsel  
217 Broadway, 8<sup>th</sup> Floor  
New York, NY 10007  
BY: Tina Dolman, Esq.

M.J. Trans. Corp.  
1788 Stillwell Avenue  
Brooklyn, NY 11223-1009  
BY: Yuri Levitas, Owner, Pro Se

## Summary and Jurisdiction

In this matter pursuant to Title 18 NYCRR §519.4, the Office of the Medicaid Inspector General (OMIG) seeks to recover overpayments, following an audit, totaling \$26,862.59, with interest. The OMIG issued a Final Audit Report [Hearing Exhibit 4] alleging that the Appellant engaged in unacceptable practices under the Medicaid Program and received Medicaid overpayments by billing for transportation services without submitting valid driver's license numbers and valid vehicle registration numbers with the billings. After a hearing on the charges, the ALJ sustains the findings in the Final Audit Report and affirms the order that the Appellant repay \$26,862.59 in overpayments and interest.

## Background

Following the Notice of Agency Action, the Appellant requested the hearing that took place on October 29, 2014. The ALJ conducted the hearing pursuant to New York Social Services Law Articles 1 and 5 (McKinney Supp. 2015), New York Public Health Law (PHL) Article 1 (McKinney Supp. 2015), New York Administrative Procedure Act (SAPA) Articles 3-5 (McKinney 2015) and Title 18 NYCRR Parts 504, 515, 517 & 519.

At hearing, the OMIG offered twelve exhibits, which the ALJ received into evidence:

Exhibit 1	Draft Audit Report and Exhibits;
Exhibit 2	OMIG Audit Protocol;
Exhibit 3	DOH Medicaid Update November 2004 Vol. 19, Vol. 11;

- Exhibit 4 Provider's Response to Draft Audit Report;
- Exhibit 5 Final Audit Report with Exhibits;
- Exhibit 6 Audit Worksheets;
- Exhibit 7 Audit Notes;
- Exhibit 8 Hearing Request;
- Exhibit 9 Notice of Prehearing Conference;
- Exhibit 10 Notice of Hearing;
- Exhibit 11 Correspondence;
- Exhibit 12 Mailing Receipts.

The record from the hearing also included a transcript that a stenographic reporter prepared (pages 1-96). The OMIG presented one witness, OMIG Auditor Sandra Noonan. Mr. Levitas spoke for the Appellant, but did not testify. The Appellant called no witnesses and offered no documents into evidence.

Under SAPA § 306(2), all evidence, including records and documents in an agency's possession of which an agency wishes to avail itself, shall be offered and made a part of the record of a hearing. Under Title 18 NYCRR § 519.18(f), computer generated documents prepared by the Department or its fiscal agent to show the nature and amounts of payments made under the program will be presumed, in the absence of direct evidence to the contrary, to constitute an accurate itemization of the payments made to a provider. In addition to testimony and documents in evidence, and pursuant to SAPA § 306(4), an ALJ may take Official Notice of any matter for which Judicial Notice may be taken.

Under SAPA § 306(1), the burden of proof in a hearing falls on the party which initiated the proceeding. Title 18 NYCRR § 519.18(d) provides that the Appellant bears the burden to show a determination of the Department was incorrect and that all claims submitted were due and payable. Title 18 NYCRR 519.18(h) and SAPA § 306(1) provide that a decision after hearing must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to

support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3<sup>rd</sup> Dept. 1984). Substantial evidence demands only that a given inference is reasonable and plausible, not necessarily the most probable, Ridge Road Fire Dept. v. Schiano, 16 N.Y.3d 494 (2011).

### Findings of Fact

The ALJ made the following findings of fact (FF) after affording the parties an opportunity to be heard and after considering the evidence. The items in brackets that follow the findings represent documents in evidence [Ex], testimony from the record [T] and matters under Official Notice [ON] on which the ALJ relied in making the findings. In instances in which conflicting evidence appears in the record, the ALJ considered and rejected that other evidence.

- 1 The New York State Department of Health (Department) is the single state agency responsible for administering the Medicaid Program in New York State [ON SSL § 363-a, PHL § 201.1(v)].
- 2 The OMIG is an independent office within the Department with the responsibility for investigating, detecting and preventing Medicaid fraud, waste and abuse and for recouping improper Medicaid payments [ON PHL § 30].
- 3 An OMIG survey asked for data from 201 transportation providers, including the Appellant, pertaining to fee for service billings [T 25].

- 4 The Appellant ambulette service provides non-emergency transportation for Medicaid recipients, in a specialized vehicle with capacity for a wheelchair and stretcher [T 19-20].
- 5 After receiving the Appellant's data, the OMIG audited the Appellant's billings for the period from January 1, 2008 until December 31, 2011 [T 24-25].
- 6 Ambulette drivers must hold a special driver's license issued pursuant to the standards at New York Vehicle and Traffic Law Article 19A (McKinney Supp. 2015) [T 21].
- 7 The Medicaid Transportation Manual Policy Guidelines require Ambulette providers billing for services to provide the driver's license number for the individual driving the Ambulette and must provide the vehicle registration number for the vehicle that transports a Medicaid recipient [Ex. 1].
- 8 In billings during the audit period, the Appellant submitted some driver's license numbers that contained all zeroes [T 21; Ex. 1, pages 12-94].
- 9 These were invalid driver's license numbers because no New York driver's license contains a number with all zeroes [T 21].
- 10 The Appellant's billings also contained invalid vehicle registration numbers, which began with the capitol letter "T", followed by all zeroes, followed by the capitol letter "C" [T 22, Ex. 1, pages 7-11].
- 11 In response to the Draft Audit Report findings concerning the invalid driver's license and vehicle registration numbers, the Appellant submitted a letter from

Soft Pro Programming Corp. (SoftPro), which created the software that the Appellant used in submitting Medicaid billings [Ex. 4, pages III-IV].

12 SoftPro's letter indicated that the Appellant's staff made a mistake during data entry that resulted in the billings that contained the zeroes [Ex. 4, pages III-IV].

13 The OMIG disallowed claims that contained invalid driver's license and vehicle registration numbers [T 27].

#### Controlling Regulations and Statutes

Title 18 NYCRR § 518.1(c) defines overpayment as any amount not authorized to be paid under the Medicaid Program, whether paid as a result of improper claiming, unacceptable practices, fraud, abuse or mistake. Title 18 NYCRR § 504.3(h) states that a provider agrees to provide true, accurate and complete information in relation to any claim. Title 18 NYCRR §504.3(i) provides that by enrolling, a provider agrees to comply with the rules, regulations and official directives of the Department. Title 18 NYCRR § 519.4(a)(2) entitles a person to a hearing any time that an OMIG audit requires repayment or restitution of an overpayment.

## Conclusions and Discussions

The OMIG Draft Audit Report [Ex 1] sought overpayment recovery for billings the Appellant submitted, which contained invalid driver's license numbers and vehicle registration numbers. The Appellant then submitted the SoftPro letter [Ex 4] indicating that the Appellant's staff made a mistake during data entry that resulted in the billings that contained the zeroes. Title 18 NYCRR § 504.3(h) requires providers to submit true, accurate and complete billings. Title 18 NYCRR § 518.1(c) authorizes the OMIG to recover any overpayments that resulted from improper claiming or mistake.

The Draft Audit Report [Ex 1] identified the overpayment initially as \$76,129.04, but the Final Audit Report reduced that figure to \$26,862.59 [Ex 5]. That figure represented \$20,379.46 in overpayments for billings that lacked accurate driver's license numbers, \$5,244.00 in overpayments for billings that lacked accurate vehicle registration numbers and \$1,239.13 in interest. At hearing, Ms. Noonan testified that the adjustment in the overpayment amount resulted from an error because the Provider was allowed to adjust 761 claims [T 39-40]. Usually a provider may adjust claims within two years from submitting the claims, but only if there is no audit occurring. The Appellant was able to adjust claims in this case despite the audit. Ms. Noonan indicated that the OMIG has decided against seeking repayment on the 761 adjusted claims, even though the adjustments occurred by error, because the error was to the Appellant's benefit [T 41].

At hearing, the Appellant sought to repudiate the SoftPro letter and argued that the inaccurate billings could have resulted from an error by the OMIG. The Petitioner provided no evidence to support that claim. Mr. Levitas asked Ms. Noonan if the billing

errors could have resulted from the error by OMIG staff. Ms. Noonan responded that the OMIG sought payment data from 201 transportation providers. She speculated that if the billing “glitch” resulted from an OMIG error, claims from all 201 providers would have contained the same “glitch”. The ALJ finds the Appellant’s argument unconvincing. The ALJ concludes that the testimony by Ms. Noonan and the SoftPro letter proved that the Appellant submitted claims that contained errors.

The Appellant argued that repaying \$26,862.59 would constitute the “death penalty”. The ALJ finds that argument unconvincing as well. No one is shutting down the Appellant’s business or even excluding the Appellant from participation in the Medicaid Program. Further, although the Appellant received \$76,129.04 in overpayments, the OMIG is seeking to recover only \$26,862.59. The ALJ finds that the OMIG acted appropriately and within its authority in seeking \$26,862.59 in repayment.

The ALJ finds that the OMIG proved by substantial evidence that the Provider submitted claims for services that contained invalid driver’s license numbers and vehicle registration numbers.

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: January 27, 2015  
Menands, New York

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James F. Horan  
Administrative Law Judge

To:

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