

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of Request of

DECISION

RACHEL LIYUN SUN, DMD

Provider No.: 02815823
Case No.: 10-F-1479 Exclusion

Appellant,

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 the determination of the Department to Exclude her from the Medicaid Program for period of three years and to Recover \$24,945.00 in Medicaid overpayments.

Before: David A. Lenihan
Administrative Law Judge

Held at: New York State Department of Health
Bureau of Adjudication
150 Broadway, Riverview Center, Suite 510
Albany, New York 12204

Date: March 19, 2016

Parties: New York State Department of Health
Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

By: Steven Miller, Esq., Senior Attorney
NYS Office of the Medicaid Inspector General
800 North Pearl Street, 2nd Floor
Albany, NY 12204

Rachel Liyun Sun, DMD


By: David R. Ross, Esq.
O'Connell & Aronowitz
54 State Street
Albany, NY 12207

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 individual or entity that engages in fraud, abuse, or unacceptable practices in the Medicaid program, and to recover improperly expended Medicaid funds.

The OMIG determined to seek restitution of \$24,945.00 in Medicaid overpayments and to exclude the Appellant from the Medicaid program for a period of three years. The OMIG requested a determination that the Appellant is not entitled to a

hearing because she did not make a timely hearing request. The parties submitted documents and agreed to have this issue decided on papers.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the provider, Rachel Liyun Sun, DMD, was enrolled as a provider in the Medicaid program. (OMIG, Ex. 1 - This exhibit is in the form of a CD containing all the Agency documentation on the matter of Dr. Sun)
2. By a Notice of Agency Action (NOAA) dated July 30, 2015, the Office of the Medicaid Inspector General (OMIG) attempted to notify Doctor Sun that OMIG determined to exclude her from the Medicaid program and seek restitution of Medicaid overpayments in the amount of \$24,945.00. (OMIG, Ex. 1)
3. The above NOAA stated that Doctor Sun had 60 days from the date of the NOAA to request a hearing in writing. (OMIG, Ex. 1)
4. A hearing request dated October 14 was submitted to OMIG and was received on October 15, 2015, 75 days after the dated of the notice. (OMIG, Ex. 1)
5. Because OMIG did not receive the request for hearing with the prescribed 60 days, the request for hearing was denied. (OMIG, Ex. 1)
6. The Appellant had been in the [REDACTED] from [REDACTED], 2015 to [REDACTED] 2015 and from [REDACTED], 2015 to [REDACTED], 2015. (Appellant's Ex. A)

7. In the time the Appellant was in the United States, during the 60 day time frame, she did not return to any of the addresses listed in the Notice. (Appellant's Ex. A)

8. The Appellant returned to the United States at the end of September and received the Notice in this matter and, on October 14, 2015, through her attorney at the time, Margaret Surowka Rossi, Esq., requested a hearing in this matter. (Appellant's Ex. A)

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, any 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 sixty days of the date of the department's written determination. 18 NYCRR §519.7(a).

DISCUSSION

There is no dispute about the basic fact in this case. The Notice of Agency Action was dated July 30, 2015 and Doctor Sun requested a hearing on October 14, 2015, beyond the prescribed 60 days cited by the OMIG.

The regulation governing the request for a hearing to review a determination clearly states that the request must be made within sixty days of the date of the written determination. 18 NYCRR § 519.7(a). Since the determination was dated July 30, 2015, the OMIG has maintained that the time for requesting a review hearing ran out on September 30, 2015. The Appellant's request was dated October 14, 2015.

The Appellant's attorney has maintained that his client was in [REDACTED] for much of this time and when she was in the United States she did not check her mail in a timely fashion as she did not expect a letter from the OMIG as her last contact with this office was in 2012 when, by agreement, she severed her connection with Medicaid program.

It has previously been held that the request for a hearing to review a final audit report is jurisdictional and may not be waived. In the Matter of West Midtown Medical Group, Inc., decision on motion 11/19/2010, p. 4 (Horan, J.). See, Strack v. Perales, 151 A.D.2d 903, 542 N.Y.S.2d 876 (3d Dept. 1989) (time limit to request a fair hearing is jurisdictional).

It has been asserted by the OMIG that time is governed by regulations that have been authorized by the legislature. SSL §§ 20(3)(d), 34(3)(f) and 363-a(2). The present case, however, is not one of collateral estoppel and the above cases are not germane to the one at bar.

This case is about notice and the requirement that proper notice be given by the State. The time frame fixed by the Social Services law is 60 days and this has been held to run from the time of actual receipt of the notice. See *Matter of Kipp v. Blum*, 80 AD2d 557 and *Bates v. Blum*, 86 AD2d 563. Apparently, the Appellant did not receive

the notice until late September or early October and she immediately retained an attorney to file an appeal which was done by Attorney Rossi on October 14 and received by the OMIG on October 15, 2015. This places the request for appeal well within the 60 period prescribed by statute.

Accordingly, I find that the request for a hearing was timely and the Appellant should be granted a hearing.

DECISION

Doctor Rachel Liyun Sun's request for a hearing concerning a final audit report and exclusion issued by OMIG was timely. Doctor Sun will be granted a hearing. This decision is made by David Lenihan, who has been designated to make such decisions.

DATED:
March 30, 2016
Albany, New York

David Lenihan
Administrative Law Judge

To:

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