



**JURISDICTION**

The New York State Department of Health (the Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. Social Services Law (SSL) Section 363-a. Pursuant to Public Health Law Sections 30, 31 and 32, the New York State 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 a payment made under the Medicaid Electronic Health Records (EHR) Technology Incentive Program to Karen Watson, D.D.S. (Appellant). The Appellant requested a hearing pursuant to Social Services Law Section 22 and former Department of Social Services regulations at 18 New York Code of Rules and Regulations (NYCRR) 519.4 to review the determination.

**HEARING RECORD**

OMIG witnesses:	Staci McGowan, OMIG Audit Manager Salvatore Ingalls, OMIG Auditor
OMIG exhibits:	1-17
Appellant exhibits:	A, B, C
Appellant witnesses:	Karen Watson, D.D.S.

A transcript (T), pages 1-149, of the hearing was made and the transcripts were received on September 17, 2019.

**SUMMARY OF FACTS**

1. The Appellant is enrolled as a provider in the New York State Medicaid Program. On December 31, 2014, she applied for payment under the Medicaid EHR Technology Incentive Program for a first payment year of 2014. (Exhibits 1, 2).

2. The Appellant's attestation certified she would adopt a particular EHR system on the approved list of systems eligible for the EHR payment. (Exhibits 1, 2).

3. The Appellant's attestation certified that during the 90-day period October 1, 2013, through December 29, 2013, she had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Exhibit 2).

4. The Appellant received a first year EHR incentive payment for the year 2014 in the amount of \$21,250. (Exhibits 1, 3, 4; T 24)

5. By the draft audit report dated October 4, 2018, the OMIG notified the Appellant that it had determined to seek restitution of the Medicaid EHR incentive payment. (Exhibit 3). Pursuant to 18 NYCRR 517.5(b)&(c), the draft audit report advised the Appellant that she was entitled to object to the proposed determination and to submit responses to it. The Appellant submitted responses in October, November and December 2018. (Exhibit 15).

6. By the final audit report dated February 7, 2019, the OMIG notified the Appellant that its determination remained unchanged and that it continued to seek restitution of a Medicaid Program overpayment in the total amount of \$21,250. (Exhibit 4).

7. The OMIG determination was based upon its findings that the Appellant failed to demonstrate that during the year 2014 she had adopted, implemented or

upgraded certified EHR technology as defined in 42 Code of Federal Regulations (CFR) Part 495; and failed to demonstrate that during a representative 90-day period during the preceding calendar year she had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Exhibit 4).

8. The Appellant in the year 2014 did not adopt, implement or upgrade the EHR system specified on her attestation. (Exhibit 4; T 104-105 ). The Appellant failed to document that during a representative 90-day period during the preceding calendar year she had a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Exhibit 4).

#### **ISSUE**

Has Appellant met her burden of proving entitlement to an EHR incentive Program payment for the year 2014?

#### **APPLICABLE LAW**

Medicaid providers are required, as a condition of their enrollment in the program, to prepare, maintain and furnish to the Department upon request, contemporaneous records demonstrating their right to receive payment from the Medicaid Program and fully disclosing the nature and extent of the care, services and supplies they provide. The information provided in relation to any claim must be true, accurate and complete. The provider must also comply with the rules, regulations and official directives of the Department. All information regarding claims for payment is subject to audit for six years. (18 NYCRR 504.3(a),(h)&(i)).

When the Department has determined that claims for medical services have been submitted for which payment should not have been made, it may require repayment of

the amount determined to have been overpaid. (18 NYCRR 518.1(b)). 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)).

The EHR Technology Incentive Program was authorized by the American Reinvestment and Recovery Act of 2009 and implemented by Federal Regulations at 42 CFR Part 495. The program authorizes states to provide incentive payments for Medical Providers for adopting, implementing or upgrading certified EHR technology or for meaningful use of such technology. (42 CFR 495.300) (Exhibits 3, 4).

In order to be eligible for the incentive, a Medicaid eligible professional (EP) must "acquire, purchase or secure access to certified EHR technology." (42 CFR 495.302). A list of certified EHR technology products eligible for the incentive payment is available to providers. (Exhibits 3, 4; T 35-37). The first year of payment is intended to offset the costs associated with initial adoption, implementation or upgrade of the technology. (42 CFR 495.308). The maximum first year payment is \$21,250. (Exhibits 3, 4; T 24).

The Medicaid EP must also have, for each year for which the EP seeks an EHR incentive payment, a minimum of 30 percent patient volume attributable to individuals receiving Medicaid. (42 CFR 495.304(c)(1)). To calculate Medicaid patient volume the EP selects a representative 90-day period during the proceeding calendar year and divides

total Medicaid patient encounters by the total patient encounters in that period. (42 CFR 495.306(c)(1)). (T 51-54).

### **DISCUSSION**

The EHR Incentive Program is designed as an incentive to providers to adopt or upgrade to an electronic health records system (EHR) system. (Exhibits 3, 4; T 23-26). The Appellant applied for and received the first year of such an incentive payment for the year 2014. The purpose of the OMIG audit was to determine whether she had complied with two of its requirements: 1) that she adopt, implement or upgrade certified EHR technology in the payment year; and 2) that she have a patient volume in excess of 30 percent attributable to individuals receiving Medicaid. (Exhibits 1, 2, 3, 4; T 33-34).

Appellant failed to establish that a certified EHR system was in use by her for the audit year of 2014. (Exhibits, 3, 4; T 65-66). She claims a Mr. Chase installed an EHR system, but she did not provide the OMIG auditors with any credible documentation to show a properly certified and documented EHR system was in place in 2014. (T 112).

OMIG auditors afforded the Appellant multiple chances from July 2018 through January 2019 to provide documentation. The Appellant was specifically informed by the Auditors what documentation was necessary to satisfy her reporting requirements. (Exhibits 1, 17; T 105-110). Attempts were even made by the OMIG audit team to obtain directly from Mr. Chase the proper certification. (T 125-126).

The documentation provided to the OMIG by Appellant in response to the draft audit report did not constitute confirmation from Practice Fusion, the Appellant's purported EHR system provider, that she had a system place in 2014. ( Exhibit 10; T 88-

90). In addition, in the absence of any other evidence to corroborate or support it, the unsworn letter purportedly written by [REDACTED] and provided by Appellant at the hearing does not meet the standards of acceptable documentation per the OMIG audit standards and the applicable regulation. (18 NYCRR 504.3). (Exhibits A, 1, 3, 4, 8, 17; T 82-85,112).

The Appellant was also unable to document her Medicaid patient volume during the 90-day period she selected and reported on her application for the incentive payment. (Exhibit 2). The Appellant's application represented that her patient volume was based solely on her own billing. (Exhibit 2). However, her numbers were not supported by actual Medicaid billing for the time period reported. (T 93-96; T 114-117).

The Appellant has failed to meet her burden of proving entitlement to the EHR incentive payment received.

**DECISION**

OMIG's determination to recover overpayments based upon the findings of Audit #18-6548 is affirmed.

This decision is made by Sean D. O'Brien, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Albany, New York  
October 7, 2019

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SEAN D. O'BRIEN  
Administrative Law Judge

Karen Watson, D.D.S. #18-6548

TO:

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