

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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In the Matter of the Appeal of

**ALLCARE TRANSPORTATION INC.**

Provider (MMIS) # 0242933

From a determination by the NYS Office of the  
Medicaid Inspector General to recover Medicaid  
Program overpayments of \$4,675.92

**DECISION**

Audit # 2012Z31-052G

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Before: David A. Lenihan,  
Administrative Law Judge

Held at: New York State Department of Health  
150 Broadway, Suite 510  
Menands, New York 12204

The Hearing on this matter was held on April 12, 2016

Parties: New York State Office of the Medicaid  
Inspector General  
217 Broadway, 8<sup>th</sup> Floor  
New York, New York 10007

By: Joseph Alund, Esq., Senior Attorney

AllCare Transportation Inc.

No appearance

## **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 pursuant to Social Services Law § 363-a. The New York State Office of the Medicaid Inspector General (OMIG) is an independent office within the Department of Health, responsible for the Department's duties with respect to the recovery of improperly expended Medicaid funds pursuant to Public Health Law § 31.

The OMIG in this case issued a final audit report for AllCare Transportation, Inc., (the Appellant) in which the OMIG concluded that the Appellant had received Medicaid program overpayments totaling \$4,675.92.

The Appellant, by letter dated March 25, 2013, requested this hearing pursuant to Social Services Law § 22 and Department of Social Services regulations at 18 NYCRR 519.4 to review the Department's determination. After several adjournments, a hearing was scheduled in this matter for April 12, 2016. Although duly notified of the hearing, neither the Appellant nor any representative was present at the hearing.

## **BACKGROUND AND FINDINGS**

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found that:

1. AllCare Transportation Inc. (hereinafter "Appellant") was, at all times relevant hereto, a provider in the Medicaid program. The Appellant participated in the New York State Medical Assistance Program under Provider # 01242933. (Dept. Ex. 1)

2. Written notice of the hearing in conformity with the requirements of 18 NYCRR 519.10 was sent to the Appellant on January 12, 2016, scheduling this hearing to commence on April 12, 2016. As required under § 519.10(b), the hearing notice advised the parties of the manner and means by which adjournments may be requested and granted. (Dept. Ex. 1)

3. By notice of a draft report of findings, dated May 5<sup>th</sup>, 2013, the Department notified the Appellant that it had determined to seek restitution of \$4,675.92, inclusive of interest, of Medicaid program overpayments that it had identified. (Department Ex. 1)

4. The Appellant made no application to reschedule the April 12, 2016 hearing, and the hearing proceeded as scheduled on that date. The OMIG appeared by its representative to present the file and summarize the case, as required under 18 NYCRR 519.17(a). The Appellant did not appear at the hearing either in person or by a representative; therefore, the request for a hearing is deemed abandoned. 18 NYCRR 519.12(a).

## **APPLICABLE LAW**

### **REGULATIONS**

#### **18 NYCRR 58.4 Interest:**

(a) Interest may be collected upon any overpayments determined to have been made and will accrue at the rate and in the manner set forth in this section.

(b) Prior to the issuance of a notice of determination, interest will accrue at the current rate from the date of the overpayment.

(c) After the issuance of a notice of determination, interest will accrue at the current rate, plus two percentage points, or the maximum legal rate, whichever is lower.

(d) The current rate for purposes of this section is the annual rate of interest as fixed by the Department, in consultation with the State Comptroller or superintendent of the Banking Department, after taking into consideration private consumer rates of interest prevailing on the date that the Department became entitled to recovery of the overpayment. The rate may be revised quarterly by the Department.

(e) Interest may be waived in whole or in part when the department determines the imposition of interest would effect an unjust result, would unduly burden the provider or would substantially delay the prompt and efficient resolution of an outstanding audit or investigation. No interest will be imposed upon any inpatient facility established under Article 28 of the Public Health Law as a result of an audit of its costs for any period prior to the issuance of a notice of determination, nor for a period of at least 90 days after issuance of such notice.

**18 NYCRR 519.4** Right to a hearing:

(a) A person is entitled to a hearing to have the department's final determination reviewed if the department:

- (1) imposes a sanction; or
- (2) requires the repayment of an overpayment or restitution; or
- (3) seeks to impose a penalty pursuant to Part 516 of this Title.

(b) There is no right to a hearing when the department discontinues payment pursuant to the automatic termination or immediate sanction provisions of Part 504 or 515 of this

Title, authorizes a mass change, or denies an application for enrollment or reenrollment under Part 504 of this Title.

**18 NYCRR §519.8** Burden of proof:

d): The appellant has the burden of: (1) showing that the determination of the Department was incorrect and that all claims submitted and denied were due and payable under the program, or that all costs claimed were allowable;

**18 NYCRR § 519.12** Withdrawal or abandonment of a request for hearing provides at:

(a) A request for a hearing is abandoned if the hearing has not been rescheduled and the appellant does not appear at the hearing on the scheduled date.

### **ISSUE**

Did the Appellant abandon its request for a hearing in this matter?

### **ANALYSIS AND DISCUSSION**

The OMIG in this case issued a final audit report for AllCare Transportation, Inc., (the Appellant) in which the OMIG concluded that the Appellant had received Medicaid program overpayments. The Appellant requested this hearing pursuant to Social Services Law § 22 and Department of Social Services regulations at 18 NYCRR §519.4 to review the Department's determinations.

The Appellant was properly notified of the time and place of this hearing and did neither appear nor make a request for an adjournment. Accordingly, I find that the request by the Appellant for a hearing in this matter has been abandoned.

## **CONCLUSION**

The evidence adduced at the hearing in this case demonstrates that the Appellant has abandoned its request for a hearing.

## **DECISION**

The request for a hearing by Appellant AllCare Transportation, Inc. has been abandoned by the Appellant. The ALJ finds correct the decision by the OMIG to recover \$4,675.92 inclusive of applicable interest from the Appellant.

This decision is made by David A. Lenihan, who has been designated by the Commissioner of the New York State Department of Health to make such decisions.

DATED: Menands, New York  
April 15, 2016

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David A. Lenihan,  
Administrative Law Judge