

Mr. Terepka (1copy) Hard Copy
Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
Ms. Marks by Scan
BOA by scan
SAPA File



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 23, 2022

CERTIFIED MAIL/RETURN RECEIPT

John Alvarez, LNHA
Cortland Park Rehabilitation
& Nursing Center
193 Clinton Avenue
Cortland, New York 13045

Ricja Rice-Ghyll, Esq.
NYS Office of the Medicaid
Inspector General
800 North Pearl Street
Albany, New York 12204

RE: In the Matter of Cortland Park Rehabilitation and Nursing Center - Audit #13-4353

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure



**Department
of Health**

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 22, 2022

COPY

John Alvarez, LNHA
Cortland Park Rehabilitation & Nursing Center
193 Clinton Avenue
Cortland, New York 13045

Ricja Rice-Ghyll, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Re: MDS Final Audit Report dated July 21, 2016
Audit # 13-4353
18 NYCRR Part 519 administrative hearing request

Dear Mr. Alvarez and Ms. Rice-Ghyll:

This matter having only recently been brought to my attention, I have reviewed Mr. Alvarez' November 23, 2016 letter to the Bureau of Adjudication and Ms. Rice-Ghyll's December 1, 2016 letter with attached Exhibits 1-4, also addressed to the Bureau of Adjudication. Copies of those communications are attached to and included in this letter decision as Exhibits A and B.


Pursuant to 18 NYCRR 519.7, a request for a hearing must be made within sixty days of the date of the Department's written determination. The documents submitted by the OMIG establish that the final audit report #13-4353 was dated July 21, 2016, and that no suggestion of any intention to seek a hearing on that audit report was brought forward by Cortland Park until Mr. Alvarez sent an email to Ms. Rice-Ghyll on October 27, 2016.

The only timely hearing request Cortland Park made was for a different audit report, with a different audit number (#13-4354) and a different date of issuance (August 1, 2016). The audit number and date of the audit report

were both specifically referenced in that hearing request. That request was subsequently withdrawn.

The request for an 18 NYCRR Part 519 administrative hearing on audit #13-4353 is denied as not timely made.

This letter constitutes a final decision made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication

November 23, 2016

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

Re: Withdraw for hearing Audit #13-4354

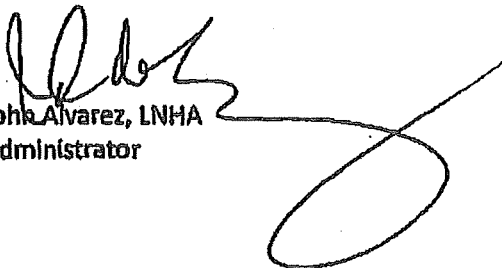
To Whom It May Concern:

This is to inform the Bureau of our decision to rescind our request for hearing Audit #13-4354. It was the intend to request for hearing Audit #13-4353 and was instructed by the NYS Office of the Medicaid Inspector General Office, Senior Attorney, to request consideration for hearing on Audit#13-4353 because under the law they are not authorized to extend the time period beyond 60 days.

The facility received two Audit notices within 10 days from each other and the reference numbers were similar. The facility request consideration for hearing Audit #13-4353 and withdraw our hearing request for Audit #13-4354 which is scheduled for December 1, 2016.

Your consideration of this matter would be greatly appreciated.

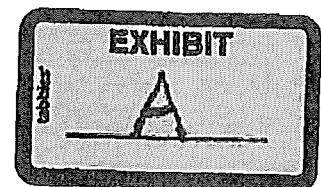
Sincerely,


John Alvarez, LNHA
Administrator

NYS DEPT OF HEALTH

NOV 25 2016

Division of Legal Affairs
Bureau of Adjudication



 **Cortland Park**
Rehabilitation & Nursing Center



Office of the
Medicaid Inspector
General

ANDREW M. CUOMO

Governor

DENNIS ROSEN

Medicaid Inspector General

December 1, 2016

John H. Terepka
Administrative Law Judge
NYS Department of Health
Bureau of Adjudication
150 Broadway - Suite 510
Albany, New York 12204

Re: Request for Determination on Timeliness of Hearing Request
Cortland Park Rehabilitation and Nursing Center
Audit #: 13-4353

Honorable John Terepka:

The above captioned provider, Cortland Park Rehabilitation and Nursing Center, requested a hearing dated August 18, 2016 to challenge OMIG's findings related to Audit #13-4354 (See Attachment #1). On October 27, 2016, Cortland Park requested to change the hearing request to Audit #13-4353. According to Mr. Alvarez, Cortland Park's Administrator, the request for a hearing for Audit # 13-4354 was made in error (See Attachment #2). On November 8, 2016, OMIG notified Cortland Park that it does not have the authority to change the hearing request because the time period to request a hearing on Audit #13-4353 had expired (See Attachment #3).

Pursuant to 18 NYCRR §519.7 the provider is given 60 days to request a hearing from the date of the department's written determination. Final Audit Report #13-4353 was dated July 21, 2016 (See Attachment #4). The OMIG contends that as of September 19, 2016, the provider's time to request a hearing on Audit #13-4353 expired and cannot be waived. Plasecki v. Blum, 433 N.Y.S.2d 520, 521-22 (3d Dep't 1979). Therefore, the October 27, 2016 request to change audit numbers is untimely.

OMIG requests a determination as to the timeliness of the Provider's October 27, 2016 hearing request.

Respectfully Submitted,

Ricja Rice-Ghyll
Senior Attorney
New York State Office of the Medicaid Inspector
General

cc: John Alvarez, Administrator

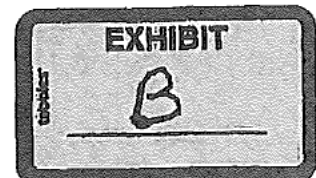


EXHIBIT 1

August 18, 2016

General Counsel
Office of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

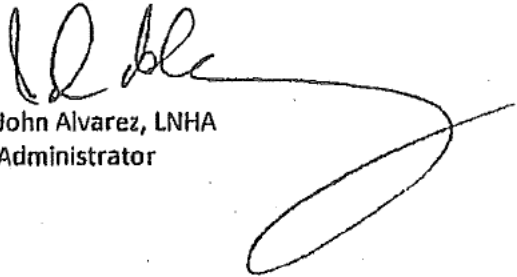
Re: MDS Final Audit Report
Audit #: 13-4354
Provider ID#: 00474319

Dear Office of Counsel:

We are in receipt of your letter dated August 1, 2016, in regards to a final audit report findings from OMIG Minimum Data Set audit of Cortland Park Rehabilitation & Nursing Center, 193 Clinton Ave., Cortland, NY 13045 for the census period ending July 25, 2012. We are requesting the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of the notice in accordance with 18 NYCRR 519.18(a).

If you have any questions concerning the request to please feel free to contact me.

Sincerely,



John Alvarez, LNHA
Administrator

NYS OMIG
Division of Counsel

AUG 22 2016

Albany

EXHIBIT 2

Rice, Ricja (OMIG)

From: John Alvarez <jalvarez@cortlandparkrehab.com>
Sent: Thursday, October 27, 2016 2:13 PM
To: Rice, Ricja (OMIG)
Subject: RE: Medicaid Cortland Park Rehab Nursing Center

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello Ms. Rice-Ghyll:

I received your letter and noticed a discrepancy concerning our request/right to challenge this action and determination. On July 21, 2016, we received Audit # 13-4353 and on August 1, 2016, we received another final audit report #13-4354. Both are within several hundred dollars of one another. I was instructed to request a hearing on Audit #13-4353 and not Audit #13-4354 which was in error.

Can we request a change in the pre-hearing to audit #13-4353 instead of #13-4354? I do apologize for the inconvenience and lack of understanding concerning our request dated August 18, 2016. To ensure that we are now clear, the request for challenge dated August 1, 2016, Audit #:13-4354 is rescinded. We request the hearing to be changed to Audit #13-4353.

We would greatly appreciate your consideration in this matter.

Sincerely,

John Alvarez, LNHA
Administrator
Cortland Park Rehabilitation and Nursing Center
193 Clinton Avenue
Cortland, NY 13045
(607) 756-9921, ext 3103
jalvarez@cortlandparkrehab.com

From: Rice, Ricja (OMIG) [mailto:Ricja.Rice@omig.ny.gov]
Sent: Tuesday, October 18, 2016 1:06 PM
To: John Alvarez
Subject: RE: Medicaid Cortland Park Rehab Nursing Center

Good Afternoon Mr. Alvarez,

The Prehearing Conference has been rescheduled to 1PM on November 1, 2016 at your request. I formal notice reflecting this change will be mailed to you. To ensure a productive meeting, I request that you provide any documents, identification of witnesses, or other information which would expedite the prehearing conference on or before Friday, October 28, 2016. Thank you.

Ricja Rice-Ghyll

EXHIBIT 3

NEW
YORK
STATE

Office of the
Medicaid Inspector
General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

November 8, 2016

Cortland Park Rehabilitation and Nursing Center
John Alvarez, LNHA
Administrator
193 Clinton Avenue
Cortland, NY 13045

Re: Request for hearing Audit #13-4354

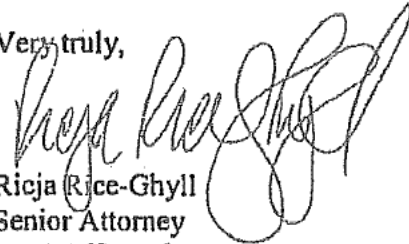
Dear Mr. Alvarez:

This letter is in response to your email dated October 27, 2016 requesting to change your hearing request from Audit #13-4354 to Audit #13-4353. Unfortunately, we do not have the authority to change your hearing request. Although we understand you made a hearing request for Audit #13-4354 in error, under the law we are not authorized to extend the time period to request a hearing beyond 60 days after the date of the final determination. The final audit report for Audit #13-4353 was dated July 21, 2016, therefore the time period to request a hearing in that matter expired September 19, 2016.

You stated that you did not want to proceed with hearing in Audit #13-4354. In that case, you may request a withdrawal of that audit by notifying the Department of Health, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204. Please copy me on your request to withdraw.

Should you have any questions regarding this communication or the findings determined in Audit #13-4353, please feel free to contact me at 518-408-5819.

Very truly,


Ricja Rice-Ghyll
Senior Attorney

NYS Office of the Medicaid Inspector General

EXHIBIT 4



Office of the
Medicaid Inspector
General

ANDREW M. CUOMO
Governor

DENNIS ROSEN
Medicaid Inspector General

July 21, 2016

Administrator
Cortland Park Rehabilitation and Nursing Center
193 Clinton Avenue
Cortland, New York 13045

Re: MDS Final Audit Report
Audit #: 13-4353
Provider ID#: 00474319

Dear Administrator:

This is the final audit report of findings with regard to the Office of the Medicaid Inspector General's (OMIG) Minimum Data Set (MDS) audit of Cortland Park Rehabilitation and Nursing Center for the census period ending January 25, 2012. In accordance with 18 NYCRR §517.6, this final audit report represents the OMIG's final determination on issues found during OMIG's review.

We received your response to our draft audit report dated September 14, 2015. Your comments have been considered (see Attachment D) and the findings in the final audit report remain identical to the draft audit report.

The Medicaid overpayment of \$12,509.94 was calculated using the number of Medicaid days paid for the rate period July 1, 2012 through December 31, 2012 and the change in the direct component of your Medicaid rate as calculated by the Department of Health's Bureau of Long Term Care Reimbursement (BLTCR). The calculation of this overpayment is detailed in Attachment A. BLTCR will adjust your Medicaid rates for the relevant rate period to reflect the change in the direct component. The findings explanation, regulatory references, and applicable adjustment can be found in the attachments following Attachment A.

You have the right to challenge this action and determination by requesting an administrative hearing within sixty (60) days of the date of this notice. In accordance with 18 NYCRR §519.18(a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon submission of objections to a draft audit or notice of proposed agency action." You may only request a hearing to challenge specific audit adjustments which you challenged in a response to the draft audit report.

If you wish to request a hearing, the request must be submitted in writing to:

General Counsel
Office of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Administrator
Page 2
July 21, 2016

Questions regarding the request for a hearing should be directed to the Office of Counsel, at (518) 408-5845.

Pursuant to 18 NYCRR §519.18, at the hearing you have the right to:

- (a) request the department to reschedule the hearing (adjournment);
- (b) be represented by an attorney, or other representative, or to represent himself/herself;
- (c) have an interpreter, at no charge, if the appellant does not speak English or is deaf and cannot afford one (the appellant must advise the department prior to the hearing if an interpreter will be needed);
- (d) produce witnesses and present written and/or oral evidence to explain why the action taken was wrong;
- (e) cross-examine witnesses of the department.

Should you have any questions regarding the above, please contact Colleen Quackenbush at (518) 474-9471 or through email at Colleen.Quackenbush@omig.ny.gov.

Sincerely,



Sharon Whitmore, Audit Manager
Division of Medicaid Audit
Office of the Medicaid Inspector General

SW/sc

Attachments:

- ATTACHMENT A - Calculation of Medicaid Overpayment**
- ATTACHMENT B - Detailed Findings by Sample Number**
- ATTACHMENT C - Detailed Findings by Disallowance**
- ATTACHMENT D - Analysis of Provider Response**

CERTIFIED MAIL #7014 0510 0000 4166 8171
RETURN RECEIPT REQUESTED

OFFICE OF THE MEDICAID INSPECTOR GENERAL
CORTLAND PARK REHABILITATION AND NURSING CENTER
AUDIT # 13-4353
CALCULATION OF AUDIT IMPACT

RATE TYPE	DECREASED IN DIRECT COMPONENT OF RATE*	MEDICAID DAYS	IMPACT
Part B Eligible/Part B D Eligible	\$0.83	15,063	\$12,502.29
Non-Medicare/Part D Eligible	\$0.85	9	\$7.65
Total			<u>\$12,509.94</u>

*Rounded to nearest 1/100th New York State Department of Health Bureau of Managed Long Term
Care Rate Setting / FFS

OFFICE OF THE MEDICAID INSPECTOR GENERAL
 CORTLAND PARK REHABILITATION AND NURSING CENTER
 AUDIT #13-4353
 FINDINGS BY SAMPLE NUMBER

Sample #	DOB	Name	ARD	Reported RUG	Derived RUG	Reported RUG Weight	Derived RUG Weight	DETAILED FINDINGS						
								DISALLOW BED MOBILITY SELF PERFORMANCE	DISALLOW TRANSFER SELF PERFORMANCE	DISALLOW TOILET USE SELF PERFORMANCE	DISALLOW TOILET USE SUPPORT PROVIDED	DISALLOW SPECIAL TREATMENTS PROCEDURES		
1			2011	RMB	RMB	1.22	1.22							
2			2011	CA2	CA2	0.84	0.84						1	
3			2012	PE1	PE1	0.79	0.79							
4			2011	SSA	SSA	1.03	1.03							
5			2011	RHB	RHB	1.27	1.27							
6			2012	PE1	PD1	0.79	0.72	1						
7			2012	RMA	RMA	1.17	1.17				1			
8			2012	BA1	BA1	0.47	0.47							
9			2011	IA2	IA2	0.65	0.65							
10			2012	PE1	PE1	0.79	0.79							
11			2011	PD1	PD1	0.72	0.72							
12			2012	RMB	RMB	1.22	1.22							
13			2012	PC2	PC2	0.67	0.67							
14			2011	PE1	PE1	0.79	0.79		1	1				
15			2012	SSA	CA1	1.03	0.77	1		1				
16			2011	PE2	PE2	0.80	0.80							
17			2012	CA1	CA1	0.77	0.77							
18			2011	SSA	SSA	1.03	1.03							
19			2012	PA2	PA2	0.48	0.48							

OFFICE OF THE MEDICAID INSPECTOR GENERAL
 CORTLAND PARK REHABILITATION AND NURSING CENTER
 AUDIT #13-4353
 FINDINGS BY SAMPLE NUMBER

Sample #	DOB	Name	ARD	Reported RUG	Derived RUG	Reported RUG Weight	Derived RUG Weight	DETAILED FINDINGS						
								DISALLOW BED MOBILITY SELF PERFORMANCE	DISALLOW TRANSFER SELF PERFORMANCE	DISALLOW TOILET USE SELF PERFORMANCE	DISALLOW TOILET USE SUPPORT PROVIDED	DISALLOW SPECIAL TREATMENTS, PROCEDURES		
20			2012	PE2	PE2	0.80	0.80							
21			2012	CC1	CC1	0.98	0.98							
22			2012	RMB	RMB	1.22	1.22							
23			2011	PB2	PB2	0.57	0.57							
24			2012	PD2	PA2	0.73	0.48	1		1				
TOTALS								<u>3</u>	<u>1</u>	<u>3</u>	<u>1</u>	<u>1</u>		

OFFICE OF THE MEDICAID INSPECTOR GENERAL
 CORTLAND PARK REHABILITATION AND NURSING CENTER
 AUDIT #13-4353
 MDS DETAILED FINDINGS

MDS FINDINGS

SAMPLE SELECTION

Functional Status-ADL Self-Performance and Support

If the provider is unable to produce the supporting documentation for the patient, the service will be disallowed and the Case Mix will be adjusted. A repayment schedule will be developed.

Documentation must indicate an assessment was done to evaluate the need for assistance with activities of daily living (ADL's), altered gait and balance, and decreased range of motion (ROM). MDS 3.0 manual guidelines will be followed when examining the medical records.

42 CFR §483.20 (b) (xvii)
 MDS Manual 3.0 G0100-0900

Bed Mobility Self-Performance

In 2 instances, documentation did not support resident required weight bearing assist three or more times. 6, 24

In 1 instance, documentation did not support resident required non weight bearing assist three or more times. 15

Transfer Self-Performance

In 1 instance, documentation did not support resident required total assist every time. 14

Toilet Use Self-Performance

In 1 instance, documentation did not support resident required total assist every time. 14

In 1 instance, documentation did not support resident required weight bearing assist three or more times. 24

In 1 instance, documentation did not support resident required non weight bearing assist three or more times. 15

Toilet Use Support Provided

In 1 instance, documentation did not support resident was a one person physical help at least once. 7

Special Treatments, Procedures, and Programs

If the provider is unable to produce the supporting documentation for the patient, the service will be disallowed and the Case Mix will be adjusted. A repayment schedule will be developed.

The intent of the items in this section is to identify any special treatments, procedures, and programs that the resident received during the specific time periods. MDS 3.0 manual guidelines will be followed when examining the medical records.

*42 CFR §483.20 (b) (xv)
MDS 3.0 Manual 00100-0300, 00600-0700*

In 1 instance, documentation did not support the number of days with MD exams during the look back period. 2

RUGS-II Classifications Overturned

In 3 instances, the RUG classifications were overturned. 6, 15, 24

10 NYCRR §86-2.10, Volume A-2

OFFICE OF THE MEDICAID INSPECTOR GENERAL
CORTLAND PARK REHABILITATION AND NURSING CENTER
AUDIT #13-4353
ANALYSIS OF PROVIDER RESPONSE

All OMIG disallowances were accepted by the Facility except for those shown below. The following details the disposition of the draft report disallowances after consideration of the Facility's draft audit report response comments.

Sample #6

Based on information and documentation provided by the facility, the following disallowance was not reversed and will be included in the Final Report:

Item #G0110A, ADL Self-Performance for Bed Mobility, is not supported by documentation.

Facility Comment: Facility submitted for review the resident's progress notes dated [REDACTED]/2012 through [REDACTED]/2012 and Point of Care ADL Category Report for the period [REDACTED]/2012 through [REDACTED]/2012. Also submitted were sections of the MDS Manual which pertain to the staff interview for ADL assessment.

OMIG Response: MDS Assessment Reference Date (ARD) is 01/18/12. The 7-day look back period is 1/12/12 – 1/18/12.

Facility claimed Level [REDACTED] for Bed Mobility self-performance but the Point of Care ADL Category Report during the 7-day look back period only supports Level [REDACTED]. Per the MDS Manual's *Rule of Three*, Level [REDACTED] may only be coded if weight bearing support was provided three or more times during the 7-day look back. The ADL Category Report documents weight bearing assistance [REDACTED] time on [REDACTED]/2012. The resident's progress notes did not contain documentation of resident's Bed Mobility self-performance status. There is no additional documentation to support that an interview was ever conducted with resident's caregivers and there are no results from any staff interview.

Disposition: The draft report finding is unchanged and will be included in the final report.

Sample #15

Based on information and documentation provided by the facility, the following disallowance was not reversed and will be included in the Final Report:

Items #G0110Aa, ADL Self-Performance for Bed Mobility, and G0110Ia, ADL Self-Performance for Toilet Use, are not supported by documentation.

Facility Comment: Facility submitted for review the resident's progress notes dated [REDACTED]/2011 through [REDACTED]/2012 and Point of Care ADL Category Report for the period [REDACTED]/2011 through [REDACTED]/2012. Also submitted was sections of the MDS Manual which pertain to the staff interview for ADL assessment.

OMIG Response: MDS Assessment Reference Date (ARD) is 1/5/12. The 7-day look back period is 12/30/11 – 1/5/12.

Facility claimed Level [REDACTED] for Bed Mobility self-performance. Point of Care ADL Category Report during the 7-day look back period supports Level [REDACTED]. Per the MDS Manual's *Rule of Three*, Level [REDACTED] may only be coded if non-weight bearing support was provided three or more times during the 7-day look back. The ADL Category Report documents assistance [REDACTED] times on [REDACTED]/2012 and [REDACTED] 12. The resident's progress notes did not contain documentation of resident's Bed Mobility self-performance status during the 7-day look back. The Facility also claimed Level [REDACTED] for Toilet Use self-performance. Point of Care ADL Category Report during the 7-day look back period supports Level [REDACTED]. Per the MDS Manual's *Rule of Three*, Level [REDACTED] may only be coded if non-weight bearing support was provided three or more times during the seven day look back. The ADL Category Report documents assistance [REDACTED] times on [REDACTED]/2012 and [REDACTED]/12. The resident's progress notes did not contain documentation of resident's Toilet Use self-performance status during the 7-day look back. There is no additional documentation to support that an interview was ever conducted with resident's caregivers and there are no results from any staff interview.

Disposition: The draft report finding is unchanged and will be included in the final report.