

Grandell Rehabilitation and Nursing Center (the Appellant) requested a hearing pursuant to Social Services Law § 22 and regulations of the former Department of Social Services at 18 NYCRR § 519.4 to appeal determinations (Project Numbers 15-5356 and 15-5357) by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments. A notice of hearing was issued on September 25, 2018, scheduling a hearing for February 26, 2019 to review the determinations.

The OMIG does not contest the timeliness of the Appellant's request for a hearing to review the Final Agency Action for Audit Number 15-5356. However, the OMIG contends that there is no jurisdiction to review the determination pertaining to audit number 15-5357 because the hearing request was untimely.

By letter dated October 3, 2018, the OMIG requested a decision on the timeliness issue. In support of its position, the OMIG submitted the following documents:

1. The Appellant's hearing request dated June 19, 2017 with Federal Express packing slip prepared on June 23, 2017.
2. Federal Express tracking information for the Appellant's June 23, 2017 mailing, showing that the request was sent on June 23, and that the OMIG received the request on June 26, 2017.
3. The OMIG's final audit report number 15-5357 dated and mailed April 21, 2017, with proof of mailing by certified mail and receipt by the Appellant on April 24, 2017.
4. Postal service return receipt (green card) signed by the Appellant.

By letter dated October 15, 2018, the hearing officer advised the Appellant as follows:

I will address the OMIG request as a request for a decision without a hearing pursuant to 18 NYCRR § 519.23. The only issue that this decision will address is whether a hearing was timely requested and should be scheduled.

Pursuant to 18 NYCRR § 519.23, you must forward any information that you believe is relevant to this issue to my attention... Your response to the OMIG's

request, along with any supporting papers, must be received by me on or before December 15, 2018.

Despite being afforded substantially more than the 30 working days prescribed by 18 NYCRR § 519.23 to respond to OMIG's request for a decision without a hearing, the Appellant did not respond.

Section 22(4)(a) of the Social Service Law provides, in pertinent part:

... any appeal pursuant to this section must be requested within sixty days after the date of the action or failure to act complained of.

Regulations specifically applicable to Medicaid Provider hearings state that a provider's request for a hearing must be made "within 60 days of the date of the department's written determination." 18 NYCRR § 519.7(a). The issue of whether the Appellant made a timely request for a hearing presents a question of fact to be resolved in this administrative proceeding. People ex rel. Walker v. N.Y. State Board of Parole, 98 A.D.2d 33, 469 N.Y.S.2d 780 (2nd Dept. 1983).

The final audit report for project number 15-5357, dated and mailed April 21, and received by the Appellant on April 24, 2017, stated in pertinent part:

The Provider has the right to challenge this action and determination by requesting an administrative hearing within 60 days of the date of this notice. If the Provider wishes 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, NY 12204

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

For a full list of hearing rights please see 18 NYCRR Part 519.

Department regulations and the explicit instructions in the audit report required the Appellant to request an administrative hearing within 60 days of the date of the audit report. There was no delay on the part of OMIG in transmitting the Final Audit Report, which was mailed on the date of issuance. Nor did a delay occur while the Final Audit Report was in transit. The 60-day period expired on Jun 20, 2017. Although the Appellant's hearing request was dated June 19, 2017, the Appellant did not mail the request to the OMIG until June 23, 2017, 63 days after the issuance of the Final Audit Report that the Appellant was seeking to contest. As such, the Appellant's June 23, 2017 request for an administrative hearing was not timely.

DECISION

The Department is without jurisdiction to grant Grandell Rehabilitation and Nursing Center a hearing to review the OMIG's April 21, 2017 determination regarding Project Number 15-5357 to recover Medicaid Program overpayments.

The hearing scheduled for February 26, 2019 will review only the Appellant's appeal of the OMIG's Final Audit Report for project number 15-5356.

Dated: December 19, 2018
New York, New York

Natalie J. Bordeaux
Administrative Law Judge