

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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In the Matter of the Appeal of :  
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**Granville Center for Rehabilitation and Nursing** : **Decision**  
Provider No.: 00308512 : :  
: **#18-6735**  
: :  
Appellant, : :  
: :  
from a determination by the NYS Office of the : :  
Medicaid Inspector General to recover Medicaid : :  
Program overpayments. : :  
: :

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**Before:** John Harris Terepka  
Administrative Law Judge

**Parties:** NYS Office of the Medicaid Inspector General  
800 North Pearl Street  
Albany, New York 12204  
**By:** Richard Chasney, Esq.  
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Granville Center for Rehabilitation and Nursing  
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Granville, New York 12832  
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By letter dated July 21, 2021, Granville Center for Rehabilitation and Nursing (the Appellant) requested a hearing pursuant to Social Services Law 22 and 18 NYCRR 519.4 to appeal an April 28, 2021 determination by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments.

By letter dated October 13, 2021, the OMIG requested a determination that the hearing request was untimely, and submitted the following documents:

1. The OMIG's April 28, 2021 final audit report with proof of mailing by certified mail. (Exhibit 1.)
2. Postal service return receipt (green card) documenting receipt of the final audit report by the Appellant on April 30, 2021. (Exhibit 2.)
3. Email correspondence between Appellant and OMIG auditors. (Exhibit 3.)
4. The Appellant's July 21, 2021 hearing request. (Exhibits 4, 5.)

The Appellant was invited to submit a response to the OMIG's October 13 request and did so by email dated October 19, 2021.

The issue 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 (2<sup>nd</sup> Dept. 1983). A hearing has not been scheduled, and this matter will be decided as a request for a decision without hearing pursuant to 18 NYCRR 519.23.

Section 22(4)(a) of the Social Services 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).

It is undisputed that the OMIG's written determination was dated April 28, 2021, received by the Appellant on April 30, 2021, and explicitly advised the Appellant it had 60 days to request a hearing. (Exhibits 1, 2.) It is also undisputed that the Appellant did not request a hearing until July 21, 2021, after recoupment of the overpayment began. (Exhibits 3, 4, 5.) The Appellant now asks for a hearing to review the merits of the OMIG's audit determination notwithstanding the untimely hearing request. (Exhibit A.)


The Appellant argues that its late hearing request should be excused because of "extenuating circumstances." (Exhibit A.) The alleged extenuating circumstances are that although the final audit report was delivered to the Appellant, care of its administrator, at the Appellant's address, the Appellant neglected to forward it to its business office or accountants for a response. (Exhibits A, 4, 5.)

The Appellant did not dispute the OMIG's evidence that the draft audit report issued pursuant to 18 NYCRR 517.5, to which the Appellant did respond, was sent to the facility administrator at the facility. (Exhibit 3.) It offered no evidence to show that it ever authorized or requested the OMIG to send the final audit report or a copy of it to any address other than the facility. No reasonable excuse has been offered why the Appellant ignored a final audit report delivered to it at that address by certified mail.

**DECISION:** Granville Center for Rehabilitation and Nursing is not entitled to a hearing to review the OMIG's April 28, 2021 determination to recover Medicaid Program overpayments.

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

DATED: Rochester, New York  
March 16, 2022

  
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John Harris Terepka  
Administrative Law Judge