

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of :
 :
 : **Decision**
 : **After**
 : **Hearing**
 :
 Dr. Carmen Arzola, :
 Provider No.: 01975002 :
 : **#18-7301**
 :
 Appellant, :
 :
 :
 from a determination by the NYS Office of the :
 Medicaid Inspector General to recover Medicaid :
 Program overpayments. :
 :
 :

Before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007
December 12, 2019
Transcript received December 27, 2019

Parties: NYS Office of the Medicaid Inspector General
217 Broadway, 8th floor
New York, New York 10007
By: Joseph Alund, Esq.

Dr. Carmen Arzola
1414 Metropolitan Avenue, Suite 7
Bronx, New York 10462

JURISDICTION

The Department of Health (the Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. 42 USC 1396a, Public Health Law (PHL) 201(1)(v), Social Services Law (SSL) 363-a. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions to recover improperly expended Medicaid funds. PHL 30, 31 and 32.

The OMIG determined to seek restitution of a payment made under the Medicaid Electronic Health Records (EHR) Technology Incentive Program to Dr. Carmen Arzola (the Appellant). The Appellant requested a hearing pursuant to SSL 22 and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the determination.

HEARING RECORD

OMIG witness:	Kelly McCarville, audit supervisor
OMIG exhibits:	Exhibits 1-11
Appellant witness:	Dr. Carmen Arzola
Appellant exhibits:	none
Hearing transcript:	Transcript, pages 1-130.

SUMMARY OF FACTS

1. The Appellant is a dentist and is enrolled as a provider in the New York State Medicaid Program. (Exhibit 3.) On May 23, 2014, she submitted an attestation in support of an application for payment under the Medicaid EHR Technology Incentive Program for a first payment year of 2014. (Exhibit 2.)

2. The Appellant's May 23, 2014 attestation certified that she was adopting a certified EHR system on the approved list of systems eligible for the EHR incentive

payment. The EHR product identified on the attestation was Practice Fusion EHR Version 3.0. (Exhibits 2, 9.)

3. The Appellant received a first year EHR incentive payment for the year 2014 in the amount of \$21,250.

4. By final audit report dated June 13, 2019, the OMIG determined to seek restitution of the Medicaid EHR incentive payment because the Appellant failed to demonstrate that during the year 2014 she adopted, implemented or upgraded certified EHR technology as defined in 42 CFR Part 495. (Exhibit 5.)

5. The Appellant did not adopt, implement or upgrade to the certified EHR technology specified on her attestation, nor was she a meaningful user of any other certified EHR system, in 2014.

ISSUE

Has the 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 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. 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 authorized states to provide incentive payments to Medicaid Providers for adopting, implementing or upgrading certified EHR technology, or for meaningful use of such technology. 42 CFR 495.300.

In order to be eligible for an EHR incentive payment, a Medicaid eligible professional (EP) must demonstrate that it has adopted, implemented or upgraded, or is a meaningful user of certified EHR technology. 42 CFR 495.314(a). 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 for Medicaid EPs is \$21,250, while subsequent year payments for meaningful use are significantly lower. 42 CFR 495.310. Certified EHR technology products eligible for the incentive payment have been identified by the Centers for Medicare and Medicaid Services (CMS) and that information is available to providers. (Transcript, pages 25-28, 83-85; Exhibit 9; www.cms.gov.)

DISCUSSION

The Appellant's attestation represented that in 2014 she adopted a certified EHR technology she identified as Practice Fusion. (Exhibits 2, 9.) While she apparently had some form of access to Practice Fusion products in 2014, she did not actually register for and adopt a certified Practice Fusion EHR system until May 7, 2015. (Exhibits 8, 10; Transcript, pages 39-42, 52, 95, 100.) She was also using another product in 2014, the

Easy Dental practice management software, but it was not a certified EHR technology. (Exhibit 8, Bates page 108; Transcript, pages 36, 47, 82.) As Ms. McCarville pointed out, a certified EHR system “is more than a practice management system that holds appointments, patient names, and data, and current medical issues.” (Transcript, page 38.) 45 CFR 170.102.

The Appellant said she thought she had the appropriate system in place but was clearly confused about which of the two systems, Practice Fusion or Easy Dental, was supposed to qualify her for the EHR incentive payment. (Transcript, pages 47-49, 91-93.) It appears that she may have been misled or received questionable guidance from an EHR consultant at www.executiveoneconsulting.com, who assisted in preparing her attestation and whose email address appears on the attestation in place of the Appellant’s. (Exhibit 2; Transcript, pages 86-87, 91-92, 101-103, 108-109, 122.) Practice Fusion may also have encouraged misunderstanding about eligibility for the incentive: It provided OMIG auditors with ambiguous confirmation letters about provider access to its EHR technology. (Transcript, pages 50, 53, 59-60, 70; Exhibit 8, Bates pages 145-47; Exhibit 10.)

The Appellant may have been confused or a victim of irresponsible salesmanship. It is the Appellant, however, who applied for and received a \$21,250 payment not authorized under the Medicaid Program. The OMIG is entitled to recover that overpayment from her. 18 NYCRR 518.1(b), 518.3(a).

DECISION: The OMIG's determination to recover an EHR Technology Incentive Program payment for the year 2014 is affirmed.

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

DATED: Rochester, New York
January 6, 2020



John Harris Terepka
Administrative Law Judge