



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

August 2, 2022

CERTIFIED MAIL/RETURN RECEIPT

Richard Chasney, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Harold N. Iselin, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207

RE: In the Matter of Catholic Managed LTCS MLTC

Dear Parties:

Enclosed please find the Decision on Request 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,

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: cmg
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

COPY

In the Matter of the Appeal of

Catholic Managed LTCS MLTC,
Provider No.: 03466800

Appellant,

from a determination by the NYS Office of the
Medicaid Inspector General to recover Medicaid
Program overpayments.

Decision

#16-3163

Before: John Harris Terepka
Administrative Law Judge

Application for decision without hearing
Record closed August 1, 2022

Parties: NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
By: Richard Chasney, Esq.
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Catholic Managed LTCS MLTC
205 Lexington Avenue, 3rd Floor
New York, New York 10016-6022
By: Harold N. Iselin, Esq.
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Catholic Managed LTCS MLTC (the Appellant) requested a hearing pursuant to Social Services Law 145-a and regulations of the former Department of Social Services at 18 NYCRR 519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments.

The OMIG contends that there is no jurisdiction to review the determination because the hearing request was untimely. By letter dated June 6, 2022, the OMIG requested a decision on the timeliness issue. In support of its position, the OMIG submitted the following exhibits:

1. The OMIG's January 27, 2022 final audit report.
2. Postal service return receipt (green card) documenting receipt of the final audit report by the Appellant on February 1, 2022.
3. Email correspondence between the OMIG and Appellant.
4. Correspondence from the Appellant to the OMIG dated February 15, 2022.
5. Email correspondence between the OMIG and Appellant.
6. Correspondence from the Appellant to the OMIG dated March 8, 2022.
7. Hearing request dated April 14, 2022.
8. Department of Health administrative hearing decision dated May 22, 2014.

By letter dated June 24, 2022, the Administrative Law Judge advised the Appellant as follows:

I will address the OMIG's June 6, 2022 letter as a request for a decision without hearing pursuant to Department regulations at 18 NYCRR 519.23. The only issue that this decision will address is whether the hearing was timely requested.

Pursuant to 18 NYCRR 519.23 you must forward to me... any information you wish me to consider in connection with this issue. Your response, along with any supporting papers, must be received by me on or before August 1, 2022...

You will thereafter receive a written decision whether an NYCRR Part 519 administrative hearing will be scheduled.

The Appellant failed to submit any evidence or argument in response to the OMIG's request for a determination that it is not entitled to a hearing to challenge the overpayment finding.

Section 145-a(2) of the Social Service Law provides, in pertinent part:

The provider's right to request a hearing shall not expire earlier than sixty days from the mailing of such notice of the provider's right to a hearing.

Department regulations 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 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 January 27, 2022 final audit report was received by the Appellant on February 1, 2022. (Exhibits 1, 2.) The instructions for requesting a hearing, provided in the final audit report in compliance with SSL 145-a and 18 NYCRR 517.6, were clear and unambiguous. The Appellant did not request a hearing until its counsel submitted a written request dated April 14, 2022. (Exhibit 7.)

The Appellant's February and March 2022 communications with the OMIG and auditors requesting an extension of time before the initiation of a recoupment of the overpayment (Exhibits 3, 4, 5) did not constitute or extend the time for submitting a hearing request. The question when or whether to initiate recovery of an overpayment before a hearing is requested or held is entirely unrelated to the requirements for submission of a hearing request to challenge the overpayment determination. West Midtown Management Group, 31 NY3d 533, 81 NYS3d 343 (2018.) The Appellant's own February 15, 2022 letter to the OMIG clearly indicated its awareness of the difference, stating:

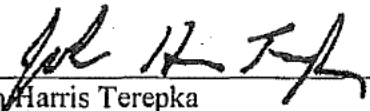
We respectfully request that you grant us an extension of twenty days from Wednesday, February 16, to March 8, 2022 in order to complete our review process of the final report, dated January 27, 2022 and consider our next steps, including whether to request a hearing. (Exhibit 4.)

A delay in the commencement of recovery was requested, but no hearing request was submitted until April 14, 2022. The hearing request was untimely.

DECISION: The Department is without jurisdiction to grant Catholic Managed LTCS MLTC a hearing to review the OMIG's January 27, 2022 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
August 2, 2022



John Harris Terepka
Administrative Law Judge