STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of	:	
	:	**Decision**
Eric Ploumis, D.M.D.,	:	**After**
Appellant,	:	**Hearing**
	:	
appealing a determination to recover Medicaid Program overpayments.	:	Audit # 14-5244
	:	

Before: Ann H. Gayle
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007

Hearing Date: June 8, 2015
Record Closed October 16, 2015

Parties: Office of the Medicaid Inspector General (OMIG)
217 Broadway, 8th Floor
New York, New York 10007
By: Robyn Henzel, Esq.
Senior Attorney

Eric Ploumis, D.M.D.
[redacted]
Pro Se

Provider Number: 01535120

Jurisdiction and Relevant Statutes and Regulations

The New York State Department of Health acts as the single state agency to supervise the administration of the Medical Assistance Program (Medicaid Program) in New York State. Social Services Law (SSL) §363-a. Pursuant to PHL Sections 30, 31 and 32, the New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department of Health, has the authority to pursue administrative enforcement actions against any individual or entity that engages in fraud, abuse or unacceptable practices in the Medicaid Program, and to recover improperly expended Medicaid funds. The Department determined to recover Medicaid Program overpayments from Eric Ploumis, D.M.D. (Appellant). The Appellant requested an appeal pursuant to SSL §22 and former Department of Social Services (DSS) regulations at 18 NYCRR §519.4 to review the overpayment determination.

DSS regulations most pertinent to this hearing decision are at 18 NYCRR Parts 504 (Duties of the Provider), 517 (Provider Audits), 518 (Recovery and Withholding of Payments or Overpayments), and 519 (Provider Hearings).

As a condition of their enrollment in the program Medicaid providers are required to maintain and furnish to the Department upon request contemporaneous documentation fully disclosing the nature and extent of the care, services and supplies they provide and demonstrating their right to receive payment from the Medicaid Program. All information regarding claims for payment submitted by a provider is subject to audit for a period of six years. 18 NYCRR §§504.3(a) and (g), 504.8, and 517.3.

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). An overpayment includes any amount not authorized to be paid under the Medicaid Program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake. 18 NYCRR §518.1(c).

Audit procedures include the issuance of a draft audit report, to which the provider is entitled to respond. Any objection to the draft audit report requires the provider to include a statement detailing the specific items of the draft report to which the provider objects and to provide any additional material or documentation that the provider wishes to be considered in support of the objections. 18 NYCRR §517.5(c). The Department must consider any response to the draft audit report before issuing a final audit report. 18 NYCRR §517.5 and 517.6. The provider is then entitled to a hearing to have the final determination reviewed if the Department requires the repayment of an overpayment. 18 NYCRR §519.4.

The burden of proof is on Appellant and the standard of proof is substantial evidence. §519.18(d) and (h).

Findings of Fact

An opportunity to be heard having been afforded the parties and the evidence having been considered, it is hereby found:

1. At all times relevant hereto, Appellant, whose office is located in Brooklyn, New York, was a dentist and enrolled as a provider in the New York State Medicaid Program. [Ex 1.]

2. The New York State Electronic Health Records Incentive Program pays Medicaid providers including individual dentists to adopt, implement, or upgrade their

electronic health record (EHR) systems. [American Recovery and Investment Act of 2009 (Public Law 111-5); 42 CFR 495; Ex 38; T 47-48, 70-71.]

3. The activities required to receive the incentive payment include adopting, implementing, or upgrading certified EHR systems. [42 CFR 495.302; 42 CFR 495.314; Ex 38; T 52, 76.]

4. Appellant signed and submitted an attestation for payment dated November 26, 2012 wherein he affirmed that the information he provided in the attestation was true, accurate, and complete. [Ex 1, p 5; T 49-50, 78, 105-106.]

5. In the attestation, Appellant represented that he would adopt the certified version of the "Open Dental" software system during the 2012 payment year. [Ex 1, p 4; Ex 26; T 53-55.]

6. Appellant did not adopt the certified version of the "Open Dental" software system during the 2012 payment year. [Ex 15; T 57, 64-65; 86-87, 95-96.]

7. Appellant was paid $21,250 by the Medicaid Program for his participation in the EHR Incentive Program. [Ex 2; T 97-98.]

8. A final audit report was issued to Appellant on February 19, 2015. The report advised Appellant that OMIG determined to disallow the EHR Incentive Payment made to Appellant for his "Failure to Adopt, Implement, or Upgrade to a Certified EHR System" [Ex. 20.]

ISSUE

Was the Department's determination to recover a Medicaid overpayment in the amount of $21,250 from Appellant correct?

DISCUSSION

OMIG presented the audit file and summarized the case at hearing. OMIG presented Exhibits 1-39 and two witnesses, Tyler Corcoran and Courtney Burt from the New York State Technology Enterprise Corporation (NYSTEC). Appellant, who is a dentist and an attorney, appeared in person and represented himself. Appellant was given the opportunity to testify in his own behalf, call witnesses, and offer documents but he declined, relying instead on his cross examination of OMIG's witnesses and his closing argument and closing brief. A transcript of the hearing was made. OMIG and Appellant each submitted a post-hearing brief.

The EHR Incentive Program provides incentive payments to Medicaid providers for the adoption, implementation, upgrade and subsequent meaningful use of certified EHR technology. OMIG contracts with NYSTEC to act as OMIG's agent to perform post payment audits of the Medicaid EHR incentive payments made to providers. OMIG is seeking restitution of Appellant's $21,250 EHR Incentive Payment for calendar year ending December 31, 2012 because that payment was made based on Appellant's November 26, 2012 attestation for payment for "adoption, implementation or upgrade" to a certified EHR system during that calendar year. By his own admission, Appellant did not adopt, implement or upgrade to a certified EHR system.

Appellant has consistently and repeatedly acknowledged that while the EHR technology he purchased provides meaningful use for his orthodontic practice, it is not a certified EHR system. Appellant claims that the certified system "Open Dental," that he agreed to purchase, would not provide meaningful use for his orthodontic practice. One of the requirements of the statute, however, is the adoption of a certified EHR system.

Appellant, in attesting in his application for an EHR incentive claim that he would meet all Medicaid EHR Incentive Program requirements, failed to meet the requirement of adopting a certified system despite attesting in his application that the software he was adopting was the certified EHR system "Open Dental." Attesting that he would adopt a certified system (which he did not adopt) resulted in Appellant receiving the $21,250 incentive to which he was not entitled. OMIG's determination to recoup that $21,250 overpayment is therefore affirmed.

CONCLUSION

It is Appellant's burden to prove that the audit is in error and that he was entitled to the Medicaid Program payment he received. Based on the foregoing, Appellant has failed to carry his burden of proof.

DECISION

OMIG's determination to recover overpayment in the amount of $21,250 is **affirmed**. This decision is made by Ann H. Gayle, Bureau of Adjudication, who has been designated to make such decisions.

DATED: New York, New York
December 28, 2015

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Ann H. Gayle
Administrative Law Judge

TO:

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217 Broadway, 8th Floor
New York, New York 10007

Eric Ploumis, D.M.D.
[redacted]