

State of New York : Department of Health

In the Matter of the Request of

Vijay Vasireddy
SBV Pharmacy Inc.
Medicaid ID # [REDACTED]
Appellant,

Decision After
Hearing

For a hearing pursuant to Part 519 of Title 18 of the Official
Compilation of Codes, Rules and Regulations of the State of
New York (18 NYCRR) to review the Determination of the
Department to recover \$9,662.57 in Medicaid overpayments.
Audit No. 2007Z12-358V

Before: James F. Horan, Administrative Law Judge

Held at: New York State Department of Health
Metropolitan Area Regional Office
90 Church Street
New York, NY 10007
May 17, 2011

Parties: Office of the Medicaid Inspector General
Office of Counsel
217 Broadway, 8th Floor
New York, NY 10007
BY: Ferlande Milord, Esq.

Vijay Vasireddy, Owner, Pro Se
SBV Pharmacy
217 East 106th Street
New York, NY 10029

Summary and Jurisdiction

SBV Pharmacy, by its owner, Vijay Vasireddy (Appellant) requested a hearing pursuant to Title 18 NYCRR §519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) seeking repayment from the Appellant for overpayments totaling \$9,662.57.29. The OMIG moved to obtain repayment following an audit pursuant to Title 18 §§ 504.3(e), 504.3(h), 504.3(i) & 518.1(c) on the grounds that the Appellant filled prescriptions by mistake or for medically unnecessary services for Medicaid recipients who were deceased at the time the Appellant filled the prescriptions. The Appellant argued that no overpayment occurred because the Appellant filled the prescriptions and provided the prescriptions to the regular representatives for the recipients. After a hearing in this matter and after reviewing the evidence and argument that the parties provided, the ALJ determines that the OMIG acted correctly in moving to recover overpayments.

Proceedings and Evidence

The ALJ conducted the hearing in this matter pursuant to New York Social Services Law Articles 1 and 5 (McKinney Supp. 2011), New York Public Health Law (PHL) Article 1 (McKinney Supp. 2011), New York Administrative Procedure Act (SAPA) Articles 3-5 (McKinney 2011) and Title 18 NYCRR Parts 504, 518 & 519. The OMIG presented one witness at the hearing: OMIG Associate Medical Facilities Auditor

Sandra Noonan [Hearing Transcript pages 15-49, 62-70]. The OMIG introduced thirteen documents into evidence that the ALJ received into the record:

- 1 Collection Notice,
- 2 Pharmacy Response,
- 3 Draft Audit Report,
- 4 Final Audit Report,
- 5 Pharmacy Request for Hearing,
- 6 Notice of Hearing,
- 7 Information relating to Recipient [REDACTED],
- 8 Information relating to Recipient [REDACTED],
- 9 Information relating to Recipient [REDACTED],
- 10 Information relating to Recipient [REDACTED],
- 11 Information relating to Recipient [REDACTED],
- 12 Information relating to Recipient [REDACTED],
- 13 Information relating to Recipient [REDACTED]

The Appellant conceded that Exhibits 2 and 5 came from the Appellant. Mr. Vasireddy testified as a witness for the Appellant [Transcript Pages 49-62]. The Appellant submitted four documents that the ALJ received into the record:

- A Pharmacy document relating to [REDACTED]
- B Pharmacy document relating to [REDACTED]
- C Pharmacy document relating to [REDACTED]
- D Signature Log.

The record also contained the hearing transcript, pages 1-80.

Under SAPA § 306(2), all evidence, including records and documents in an agency's possession of which an agency wishes to avail itself, shall be offered and made a part of the record of a hearing. Under Title 18 NYCRR § 519.18(f), computer generated documents prepared by the Department or its fiscal agent to show the nature and amounts of payments made under the program will be presumed, in the absence of direct evidence to the contrary, to constitute an accurate itemization of the payments made to a provider. In addition to testimony and documents in evidence, and pursuant to SAPA § 306(4), an ALJ may take Official Notice of any matter for which Judicial Notice may be taken.

Under SAPA § 306(1), the burden of proof in a hearing falls on the party which initiated the proceeding. Title 18 NYCRR § 519.18(d) provides that the Appellant bears the burden to show a determination of the Department was incorrect and that all claims submitted were due and payable. Title 18 NYCRR 519.18(h) and SAPA § 306(1) provide that a decision after hearing must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

Findings of Fact

The ALJ made the following findings of fact after affording the parties an opportunity to be heard and after considering the evidence. The items in brackets that follow the findings represent documents in evidence [Ex], testimony from the record [T] and matters under Official Notice [ON] on which the ALJ relied in making the findings. In instances in which conflicting evidence appears in the record, the ALJ considered and rejected that other evidence.

1. The Appellant Pharmacy is a participating pharmacy provider under the Medicaid Program, Provider ID # [REDACTED] [Ex 1; T 50].

2. The New York State Department of Health is the single state agency responsible for administering the Medicaid Program in New York State [ON SSL § 363-a, PHL § 201.1(v)].
3. The OMIG is an independent office within the Department with the responsibility for investigating, detecting and preventing Medicaid fraud, waste and abuse and for recouping improper Medicaid payments [ON PHL § 30].
4. The OMIG conducted an audit concerning the Appellant's billings to the Medicaid Program over the period October 1, 2001 through December 31, 2006 and determined that the Appellant billed the Program for pharmacy services that the Appellant provided to recipients after the recipients died [Ex 1].
5. The Appellant filled five prescriptions for medication for Recipient ■ on November 20, 2004, for which the Appellant billed Medicaid \$ 287.35 [Ex 1, Ex 7].
6. Recipient ■ died on October 30, 2004 [Ex 7; T 27].
7. The Appellant filled twelve prescriptions for medication for Recipient ■ on February 27, March 25 and April 19, 2004 for which the Appellant billed Medicaid \$ 4,611.40 [Ex 1, Ex 8].
8. Recipient ■ died on February 11, 2004 [Ex 8; T 31].
9. The Appellant filled prescriptions for medication for Recipient on for which the Appellant billed Medicaid \$ [Ex , Ex].
10. Recipient died on [Ex , Ex ; T].

11. The Appellant filled prescriptions for medication for Recipient on for which the Appellant billed Medicaid \$ [Ex , Ex].

12. Recipient died on [Ex , Ex ; T].

Issue

Did the Appellant receive \$ 9,662.57 in overpayments from the Medicaid Program and is the OMIG entitled to recover that sum from the Appellant?

Discussion and Conclusions

Title 18 NYCRR § 518.1(c) defines overpayment as any amount not authorized to be paid under the medical assistance program, whether paid as a result of improper claiming, unacceptable practices, fraud, abuse or mistake. Under Title 18 NYCRR §504.3(e), by enrolling in the Medicaid Program, a provider agrees to submit claims for payment only for services actually furnished and which are medically necessary or otherwise authorized. Title 18 NYCRR § 504.3(h) states that a provider agrees to provide true, accurate and complete information in relation to any claim. Title 18 NYCRR §504.3(i) provides that by enrolling, a provider agrees to comply with the rules, regulations and official directives of the Department. The DOH Medicaid Update for November 2003, Vol . 18, No. 11 and the DOH Medicaid Update for January 2004, Vol. 19, No. 1 both prohibit automatic prescription refills or orders for prescription drugs.

he parties agreed on many factual issues,

The ALJ accepts the Appellant's explanation that , but the ALJ concludes that the OMIG may recoup \$ in Medicaid overpayments from the Appellant because the prescriptions were not medically necessary and the prescriptions did not go to the intended recipients. Recipients and were dead on the dates the Appellant filled the prescriptions. Ms. Noonan testified that [T].

The Appellant asked repeatedly at hearing what the Appellant had done wrong and what the Appellant could do to avoid being in this situation in the future. This ALJ notes first that the OMIG made no accusation about wrongdoing against the Appellant. There was no request in this hearing to exclude the Appellant from Medicaid as there were in the *Kibria* and *Della Mura* cases and there were no professional disciplinary actions against the pharmacists involved. The OMIG sought repayment only. The Appellant filled the prescriptions at issue because the Appellant allows persons other than those named on a prescription, such as spouses or family members, to pick up prescriptions. If the Appellant stops allowing others to pick up prescriptions, it would avoid a situation such as this, but that change would also cause inconvenience for a great number of people who must count on help from others in picking up prescriptions. If the Appellant continues to allow people to pick up other people's prescriptions, the possibility will remain that the Appellant could fill other prescriptions for unnecessary services. Ms. Noonan testified that, in this case, if the Appellant provided information to the OMIG immediately after receiving the Audit Report, concerning the people who picked up the prescriptions at issue, the OMIG could have pursued such people for repayment rather than the Appellant [T 72]. The collection letters from the OMIG to the Appellant advised the Appellant to submit to the OMIG documentation supporting the

Appellant's position within 30 days from receiving the OMIG draft audit report [Ex 3]. The Appellant failed to provide any information in a timely manner and instead submitted documentation at the pre-hearing conference in the weeks just before the hearing [T 69, 79-83]. By that time the Audit Report in this matter was final.

Decision

The ALJ finds correct the decision by the OMIG to recover \$ from the Appellant.

Administrative Law Judge James F. Horan renders this decision pursuant to the designation by the Commissioner of Health of the State of New York to render final decisions in hearings involving Medicaid provider audits.

June, 2011
Troy, NY

James F. Horan
Administrative Law Judge