

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of	:	
	:	
New York Center for Rehabilitation and Nursing	:	Decision After Hearing
	:	
from a determination to recover Medicaid Program overpayments	:	Audit Number: 18-7329
	:	
	:	

Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Cisco WebEx Videoconference

Hearing Date: July 13, 2021

Parties: New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
By: Kathleen Dix, Esq.

New York Center for Rehabilitation and Nursing
2613 21st Street
Astoria, New York 11102
By: Nathan Brachfeld, Administrator

JURISDICTION

The New York State Department of Health (Department) acts as the single state agency to supervise the administration of the Medical Assistance (Medicaid) Program in New York. PHL § 201(1)(v); SSL § 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is authorized to investigate and pursue civil and administrative enforcement actions to recover improperly expended Medicaid funds. PHL §§ 31-32. The OMIG determined to recover Medicaid Program overpayments from New York Center for Rehabilitation and Nursing (Appellant) for the rate period January 1, 2013 through December 31, 2017. The Appellant requested a hearing pursuant to Department of Social Services (DSS) regulations at 18 NYCRR § 519.4 to review the OMIG's determination.

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was a residential health care facility (RHCF) in Astoria, Queens, licensed under Article 28 of the Public Health Law, and enrolled as a Medicaid provider. (Exhibits 1, 4, 6.)
2. The Appellant receives a daily rate for each Medicaid recipient occupying a bed in its facility. (Exhibits 1, 4, 6.)
3. Auditors from the OMIG reviewed the capital portion of the Appellant's Report of Residential Health Care Facility (RHCF-4) cost reports submitted annually for the 2011-2015 calendar years. The capital costs claimed in the RHCF-4 forms were used to determine the capital portion of the Appellant's daily rate from the Medicaid Program for the period January 1, 2013 through December 31, 2017. (Exhibits 1, 4, 6.)
4. On November 5, 2020, the OMIG issued a draft audit report to the Appellant which identified eight categories of disallowances for claimed property expenses and proposed to

recover an estimated Medicaid overpayment of \$1,487,584. The draft audit report advised the Appellant, pursuant to 18 NYCRR § 517.5, that it was entitled to submit objections to the proposed action, which objections were required to include any additional material or documentation that the Appellant wished to be considered. (Exhibit 4.)

5. On December 1, 2020, the Appellant submitted its objections to the draft audit report. (Exhibit 5.)

6. On April 1, 2021, the OMIG issued a final audit report, which advised the Appellant that it had adjusted its findings based upon the Appellant's objections and determined to reduce the overpayments \$1,443,430. (Exhibit 6.)

7. On April 20, 2021, the Appellant requested this hearing to review the findings set forth in the final audit report. (Exhibit 7.)

8. The parties having resolved all other findings in the final audit report, the only disallowances remaining for resolution in this hearing decision involve:

Property Expense Disallowance 5a: Moveable equipment rental disallowance for costs pertaining to an Automated Teller Machine (ATM) rental; and
Property Expense Disallowance 8: Investment income offsets of reported interest expenses for income received for antennae rentals. (Exhibit 7; T 12-13.)

ISSUE

Was the OMIG's determination to disallow rental costs incurred for an on-site ATM correct?

Was the OMIG's determination to offset the Appellant's interest expenses with rental income correct?

APPLICABLE LAW

Residential health care facilities (also referred to as nursing homes in other applicable state regulations) are eligible for payment of a Medicaid daily rate billable for resident beds

occupied by Medicaid recipients. 10 NYCRR § 86-2.10. The Department's Bureau of Long-Term Care Reimbursement sets rates for each residential health care facility by using the information that the facility submits annually in a cost report (form RHCF-4). 10 NYCRR § 86-2.2. A facility's basic rate is comprised of four separate and distinct cost components: (a) direct; (b) indirect; (c) noncomparable; and (d) capital. 10 NYCRR § 86-2.10(b)(1)(i). The capital component of the rate is facility-specific, and includes depreciation, interest on capital debt, and the costs of moveable equipment. 10 NYCRR §§ 86-2.10(a)(9)&(g), § 86-2.19, § 86-2.20, § 86-2.21 and § 86-2.22.

A facility's rate of payment is provisional and subject to audit. The Department may adjust a payment rate retroactively if an audit determines that such adjustment is warranted. SSL § 368-c; 10 NYCRR § 86-2.7; 18 NYCRR § 517.3. Upon completion of an audit, the Department may require the repayment of any amounts not authorized to be paid by the Medicaid Program. 18 NYCRR § 518.1.

A Medicaid provider is entitled to a hearing to review the OMIG's final determination to require repayment of any overpayment. 18 NYCRR § 519.4. The Appellant has the burden of establishing that the OMIG's determination was incorrect and that all costs claimed were allowable. 18 NYCRR § 519.18(d).

DISCUSSION

At the hearing, the OMIG presented the audit file and summarized the case, as required by 18 NYCRR § 519.17. In addition, the OMIG presented documents (Exhibits 1 – 17) and called one witness, Anthony Paolucci, Auditor 2. The Appellant presented one exhibit (Exhibit A) and called Administrator [REDACTED] as its sole witness.

Property Expense Disallowance 5a: Moveable equipment rental disallowance for costs pertaining to an ATM rental.

The OMIG disallowed the Appellant's reported ATM rental costs because this expense is not related to patient care. (Exhibits 4 and 6; T 37-38.) To be considered an allowable cost in determining reimbursement rates, costs shall be properly chargeable to necessary patient care. Except as otherwise provided in 10 NYCRR Subpart 86-2, allowable costs shall be determined by the application of the principles of reimbursement developed for determining payments under title XVIII of the Federal Social Security Act (Medicare) Program. 10 NYCRR § 86-2.17(a).

The Provider Reimbursement Manual (PRM-1) prepared by the Centers for Medicare and Medicaid Services (CMS) offers detailed explanations regarding provider payments under the Medicare Program. As an overall principle, PRM-1 advises that all payments to providers of services must be related to the care of beneficiaries. Examples of costs related to patient care include personnel costs, administrative costs, and costs of employee pension plans. PRM-1 § 2102.2

Costs are deemed unrelated to patient care, and therefore not reimbursable, when they are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Generally, these costs are not common and accepted occurrences in the field of the provider's activity.

The Appellant disagrees with the finding, arguing that the presence of an ATM on its premises has improved patient care. In its December 1, 2020 response to the findings set forth in the Draft Audit Report, the Appellant explained its position:

The facility does not receive any profits from its use of the ATM machine. The ATM rental was implemented to facilitate employees, including nurses and aides that provide direct patient care, in processing payroll checks. It is being utilized as an efficient, cost effective[,] time saving device that directly improves patient

care, and is actually a benefit to direct patient care. The facility should not be penalized for its innovative policies and modules that benefit patient care. By disallowing this expense, the State would, in effect, be discouraging use of innovative methods and their associated costs that are proven to enhance the care and well being [sic] of patients....

(Exhibit 5.)

At the hearing, the Appellant submitted an undated letter signed by Anita Hall, the Appellant's Director of Nursing, in which she explains that the ATM was installed to facilitate employees' check cashing and save time. Aside from the efficiency afforded by the ATM, Ms. Hall claims that the ATM "allows our nurses to remain focused on their patients, therefore maintaining qualitative and uninterrupted care, necessary for true patient rehabilitation."

(Exhibit A.)

The Appellant contended that the ATM helps the facility retain staff which, due to the nursing shortage, has proven very helpful in promoting "high quality care." (T 56-58.) Before the ATM was installed, staff members waited on lines to retrieve their money. (T 62.)

The Appellant's position required lengthy explanations to demonstrate what is, at best, a negligible and incidental impact upon patient care. The ATM is neither appropriate nor necessary to develop and maintain the operation of patient care facilities and activities. Patients at the facility have no medical use for an ATM, and staff members do not require the use of an ATM to perform their jobs. The Appellant is a nursing home, not a bank. While a bank may require an ATM to continue its core operations, a nursing home will continue to operate in the absence of an ATM. Similar to operating a gift shop on-site, which is explicitly cited by the PRM-1 as a non-reimbursable expense (PRM-1 § 2102.3), an ATM is neither a common nor an accepted function of a nursing home.

The Appellant's staff members' appreciation for an on-site ATM from which they can access money does not in any way demonstrate the ATM's benefit to patient care. The

Appellant's motivation in offering additional amenities on its premises to avoid employee lateness or even, as asserted, to attract and retain staff, does not justify receiving reimbursement from a government-run program designed to pay a nursing home for the cost of care rendered to Medicaid recipients. The Medicaid Program is not obligated to reimburse a nursing home for business decisions that have no direct relation to patient care. For these reasons, the OMIG's determination to disallow costs associated with the ATM rental is sustained.

Property Expense Disallowance 8: Investment income offsets.

The OMIG determined to reduce the Appellant's reported interest expenses by the amount of rental income that the Appellant received for use of its antennae pursuant to 10 NYCRR § 86-2.20(c).

Necessary interest on both current and capital indebtedness is an allowable cost for all residential health care facilities. 10 NYCRR § 86-2.20(a). Reported interest expenses shall be reduced by investment income, including rental income. 10 NYCRR § 86-2.20(c)(1).

The Appellant has offered two reasons for its disagreement with this disallowance. In its response to the draft audit report, the Appellant contended that the amounts received from its landlord were refunds of rent paid, not investment income. (Exhibit 5.) However, it provided no documentation to show that the money received constituted a return of excess rent. Instead, the Appellant's submitted cost reports for the period at issue characterize the disallowed amounts as "rental income," and the Appellant's general ledger recorded the Appellant's receipt of these funds for renting its antennae. (Exhibit 14.)

At the hearing, the Appellant argued that its monetary receipts from its landlord should not affect reimbursement because it cannot be defined as a particular category of income. (T 59.) Yet, as already noted, its own cost reports and supporting documentation assigned this income as

“rental income,” an accurate categorization for money the Appellant received in exchange for renting its property.

The Appellant has failed to establish that the OMIG’s determination to reduce the Appellant’s reported interest expense by the amount of rental income received for the cost reporting years 2011 through 2015 was not correct. As such, this disallowance is sustained.

DECISION

The OMIG’s determination to disallow rental costs incurred for an on-site ATM was correct and is affirmed.

The OMIG’s determination to offset the Appellant’s interest expenses with rental income was correct and is affirmed.

DATED: August 31, 2021
Menands, New York

_____/s/_____
Natalie J. Bordeaux
Administrative Law Judge