

STATE OF NEW YORK : DEPARTMENT OF HEALTH

In the Matter of the Appeal of

Scott R. Michel,
Evelyn Gerber,
NuTech Healthcare Management Ltd.
Medicaid ID # 01239830

Audit #09-4080

Pursuant to Part 519 of Title 18 of the Official Compilation of
Codes, Rules and Regulations of the State of New York

Before:

William J. Lynch
Administrative Law Judge

Held At:

NYS Department of Health
90 Church Street
New York, New York 10007
February 5, 2013

Parties:

NYS Office of the Medicaid Inspector General

By: Francis D. Ruddy, Esq.
Office of Counsel
217 Broadway, 8th floor
New York, New York 10007

NuTech Healthcare Management Ltd.
3180 Express Drive S.
Central Islip, New York 11749-5010

Scott R. Michel
3180 Express Drive S.
Central Islip, New York 11749-5010

Evelyn Gerber
By: Kevin P. Mulry, Esq.
Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, New York 11556-1320

JURISDICTION

Scott R. Michel, Evelyn Gerber and NuTech Healthcare Management Ltd. requested this hearing pursuant to Section 519.4 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") to appeal from a determination of the State of New York Office of the Medicaid Inspector General ("the OMIG") that NuTech Healthcare Management Ltd. had committed unacceptable practices under the Medical Assistance for Needy Persons Program ("Medicaid Program"), as defined in 18 NYCRR 515.2, and had received Medicaid overpayments, as defined in 18 NYCRR 518.1. As a result, the determination stated that the OMIG would impose the sanction of a Censure upon NuTech, Mr. Michel and Ms. Gerber; and would recover Medicaid overpayments in the amount of \$2,553,697 plus interest, jointly and severally, from NuTech, Mr. Michel and Ms. Gerber.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Administrative Law Judge in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. NuTech Healthcare Management Ltd. ("NuTech") is enrolled as a provider in the Medicaid program, with the Medicaid Management System provider number of 01239830 (Ex. 6).
2. The OMIG's determination is based on a review of NuTech's durable medical equipment records relating to Medicaid claims for services during the period of July 1, 2003 through December 31, 2008 (Ex. 6).
3. The OMIG's determination indicates that Scott R. Michel was an affiliate/owner of NuTech and had direct or indirect control of the operation (Ex. 6).

4. The OMIG's determination indicates that Evelyn Gerber was an affiliate/owner of NuTech and had direct or indirect control of the operation (Ex. 6). However, Ms. Gerber was no longer affiliated with NuTech after the period in or around 2001, having surrendered and relinquished all benefits, right, title and interest in that entity effective as of December 31, 2001 (Ex. 10).

5. The OMIG's determination was communicated to the Appellants by a final audit report (Audit 09-4080) dated March 14, 2011 (Ex. 4).

6. Appellants requested this hearing by letter dated April 18, 2011 (Ex. 5).

7. Written notice of the hearing in conformity with the requirements of 18 NYCRR 519.10 was sent to the Appellants on May 24, 2011, scheduling this hearing to commence on July 13, 2011. As required under § 519.10(b), the hearing notice advised the parties of the manner and means by which adjournments may be requested and granted (Ex. 8).

8. The OMIG issued a revised final audit report dated September 30, 2011, and the Appellants again requested an administrative hearing (Ex. 6, 7).

9. The hearing was postponed with the parties' consent until May 25, 2012, and then further adjourned with the parties' consent until February 5, 2013 (Ex. 11).

10. Appellant Evelyn Gerber provided evidence that she had not been affiliated with NuTech since 2001 and made an application to be dismissed as a party to Audit 09-4080. The OMIG acknowledged that it possessed no evidence that Ms. Gerber had been affiliated with NuTech since that date which was prior to the Medicaid claim review period and did not object to her application. Appellants NuTech and Scott R. Michel also did not object. Accordingly, Ms. Gerber's application was granted (Ex. 10; T. 4).

11. In January 2013, Appellants NuTech and Scott R. Michel discharged their attorney, Jerome T. Levy, Esq., of Duane Morris LLP. Mr. Levy indicated that NuTech had ceased business operations and

closed. He further confirmed that the Appellants had been informed of the time and location of the hearing of their appeal (Ex. 11, 13).

12. Appellants made no application to reschedule the February 5, 2013 hearing, and the hearing proceeded as scheduled on that date. The OMIG appeared by its representative to present the file and summarize the case, as required under 18 NYCRR 519.17(a). The Appellants NuTech and Scott R. Michel did not appear at the hearing either in person or by a representative. Therefore, their request for a hearing is deemed abandoned. 18 NYCRR 519.12(a).

DECISION:

The request for a hearing by Appellants NuTech Healthcare Management, Ltd., and Scott R. Michel has been abandoned by the Appellants. Appellant Evelyn Gerber's application to be dismissed as a party to Audit 09-4080 is granted.

This decision is made by William J. Lynch, who has been designated by the Commissioner of the New York State Department of Health to make such decisions.

Dated: April , 2013
Menands, New York

William J. Lynch, Esq.
Administrative Law Judge