

Mr. Terepka (1copy) Hard Copy
Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
Ms. Marks by Scan
BOA by scan
SAPA File



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

June 21, 2024

CERTIFIED MAIL/RETURN RECEIPT

Phillip Hoffman, Esq.
NYS – OMIG
40 N. Pearl Street
Albany, New York 12243

Steven Kwestel, President
Courtesy Transportation Services, Inc.
800 E. 92nd Street
Brooklyn, New York 11236

RE: In the Matter of Courtesy Transportation Services, Inc.

Dear Parties:

Enclosed please find the Decision After Hearing 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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of

Courtesy Transportation Services, Inc.
Provider No. 02800580

Appellant,

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

:
:
: **Decision**
:
: **After**
:
: **Hearing**
:
:
:
: Audit #
: 2017Z31-101k
:
:
:
:
:

Before: Matthew C. Hall
Administrative Law Judge

Held at: Via WebEx Video Conference

Dates: September 23, 2021
March 27, 2024

Parties: NYS Office of the Medicaid Inspector General
40 N. Pearl Street
Albany, New York 12243
By: Phillip Hoffman, Esq.

Courtesy Transportation Services
800 East 92nd Street
Brooklyn, New York 11236
By: Steven Kwestel

JURISDICTION

The New York State Department of Health (the Department) acts as a single state agency to supervise the administration of the Medicaid Program in New York. 42 USC 1396a, Public Health Law (PHL) 201(1)(v), Social Services Law (SSL) 363-a. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions to recover improperly expended Medicaid funds. PHL 30, 31 and 32.

The OMIG determined to seek restitution of overpayments by the Medicaid Program to Courtesy Transportation Services, Inc. (Appellant). The Appellant requested a hearing pursuant to Social Services Law § 145-a and former Department of Social Services (DSS) regulations at 18 NYCRR § 519.4 to review the determination.

HEARING RECORD

OMIG witnesses:	Christina Trimarchi, Management Specialist II, OMIG' Bureau of Business Intelligence Emily Amiccuci, Manager of System Match and Recovery Unit
OMIG exhibits:	1-14
Appellant witnesses:	Steven Kwestel, President
Appellant exhibits:	None

A transcript of the hearing was made. Transcript pages 1-203 (9/23/21), 1-50 (3/27/24.)

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was enrolled in the New York State Medicaid Program as a transportation provider with I.D. number 02800580. (Ex. 1.)

2. The Appellant's business was owned and operated by Steven Kwestel during an OMIG audit (#2017Z31-101K) of Medicaid claims for transportation services paid to the Appellant for payment dates of March 1, 2012, to December 31, 2015 (audit period). (ALJ I, Ex. 1, 2.)

3. The audit was part of the "System Match and Recovery Transportation Project." It is a desk audit that reviews all the claims submitted by a provider and extracted from the Medicaid Data Warehouse. (Ex. 1, 2.; T. Amiccuci.)

4. The OMIG issued a Draft Audit Report on February 13, 2018, in which it preliminarily identified \$518,428.36, inclusive of interest, in Medicaid overpayments. Pursuant to 18 NYCRR 517.5, the Draft Audit Report advised the Appellant that it could "submit additional documentation and written arguments in objection to this determination and proposed action within 30 days of receiving the Draft Audit Report. (Ex. 1.)

5. The audit report disallowed claims in four categories: 1) Transportation Billed Fee-for-Service During an Inpatient Stay; 2) Transportation Claims for Ambulette Services With Unqualified/Disqualified Driver License; 3) Transportation Claims for Ambulette Services With Incorrect/Missing Driver's License; and 4) Transportation Claims for Ambulette Services with Incorrect/Missing Vehicle License Plates. (Ex. 1, 2.)

Each of the four categories included in the Draft Audit Report preliminarily resulted in overpayments. (Ex. 1, 2.)

6. Steven Kwestel telephoned the OMIG on April 2, 2018, well beyond the 30-day period required to respond to the Draft Audit Report. He asked for and was denied an extension to allow him to respond to the Draft Audit Report. (Ex. 1.; T. Amiccuci.)

7. The OMIG issued a Final Audit Report on April 2, 2018, in which the \$518,428.36 overpayment identified in the Draft Audit Report was unchanged. Pursuant to 18 NYCRR 517.6, the Final Audit Report advised the Appellant of its right to appeal the audit findings. (Ex. 2.)

8. After the Final Report was issued, the OMIG reviewed the report and found several typos and mistakes. As a result, the overpayment amount was reduced from \$518,428.36 to \$178,317.64. (Ex. 12, T. Amiccuci.)

9. By letter dated May 30, 2018, the Appellant requested a hearing to review the OMIG's overpayment determination. (Ex. 3.)

ISSUE

Has the Appellant established that the OMIG's determination to recover overpayments in the amount of \$178,317.64 was not correct?

APPLICABLE LAW

Medicaid providers are subject to audit and claim review by the Department. 18 NYCRR 504.8(a). When the Department has determined that claims for medical services or supplies 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(c). Overpayments include any amount not authorized to be paid under the Medicaid Program, whether paid as a result of inaccurate or improper reporting, improper claiming, unacceptable practices, fraud, abuse or mistake. 18 NYCRR § 518.1(c).

The Appellant has the burden of showing that the OMIG's determination was incorrect and that all claims submitted and denied were due and payable under the program, or that all costs claimed were allowable. 18 NYCRR § 519.18(d)(1).

By enrolling in the Medicaid Program, a provider agrees, pursuant to 18 NYCRR § 504.3:

- (a) To prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years from the date of the care, services or supplies were furnished, and all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider and to furnish such records and information, upon request, to the...New York State Department of Health;

With respect to payment for transportation for medical care and services provided to Medicaid recipients, 18 NYCRR § 505.10(e)(6) states, in pertinent part:

In order to receive payment for services provided to a Medicaid recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(ii) Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements.

The New York State Medicaid Program issues Provider Manuals that are available to all providers and include policy guidelines, fee schedules, and billing guidelines. (Ex. 14.) The Department also issues Medicaid Updates, which are monthly publications with information relevant to providers. (Ex. 14.) Medicaid providers are obligated to comply with these official directives. 18 NYCRR 504.3(i).

Medicaid Update, Volume 19, Number 11, requires providers billing for ambulette services to include the driver license number of the individual driving the vehicle and the license plate number of the vehicle used to transport the Medicaid client on each claim. This Medicaid Update, which was issued in 2004, further advises that providers should “diligently update their billing systems to comply with this requirement.” (Ex. 14.)

Policy Guidelines set forth in the Provider Manual for Transportation applicable to the payment dates at issue in this audit also state:

On claims for which an ambulette vehicle was used, providers are required to include both:

- The driver license number of the individual driving the vehicle; and
- The license plate number of the vehicle used to transport the enrollee.

If a different driver and/or vehicle returns the enrollee from the medical appointment, the license number of the driver and vehicle used for the origination of the trip should be reported on the claim. (Ex. 14.)

DISCUSSION

The Final Audit Report made disallowances in four categories:

1. Transportation billed Fee-for-Service during an inpatient stay during audit period.
2. Transportation claims for ambulette services with unqualified/disqualified driver during audit period.
3. Transportation claims for ambulette services with incorrect/missing driver's license during audit period.
4. Transportation claims for ambulette services with incorrect/missing vehicle license plate number during audit period.

As a result of the findings, the OMIG determined that \$459,834.20 was inappropriately billed to Medicaid, resulting in Medicaid overpayments. When accrued interest of \$58,651.15 is added, the total amount due, in accordance with 18 NYCRR §§ 518.1 and 518.4, was \$518,428.36. (Ex. 2.)

The Appellant was given notice of the findings in a Draft Audit Report, duly delivered in compliance with 18 NYCRR § 517.5, the Appellant had the opportunity to respond and submit additional documents before a final determination was issued. The Appellant did not respond within the required 30 days.

Subsequent to the issuance of the Final Audit Report, and despite the Appellant's failure to timely request an extension to argue the findings in the Draft Audit Report, the

OMIG nonetheless reviewed the Final Audit Report and found extensive and significant typographical and numerical errors in the report. As a result, the overpayment amount was reduced from \$518,428.36 to \$178,317.64. (Ex. 12, T. Amiccuci.) The errors did not affect the substance of and the grounds for the disallowance categories.

Again, at the hearing, the Appellant had an opportunity to offer documentation showing entitlement to payment for the claims at issue. The Appellant failed to come forward with any contemporaneous documentation demonstrating entitlement to the payments.

At the hearing, pursuant to 18 NYCRR § 519.17(a), the Department produced two OMIG representatives to present the audit file and summarize the case. The OMIG's findings are set forth in the Draft and Final Audit Reports, along with four attachments per report. (Ex. 1, 2, plus attachments.)

Finding One

A review of claims for transportation services during the audit period showed that in numerous instances, Medicaid was inappropriately billed a transportation claim for services provided to a hospital patient. The admitting hospital is responsible for the reimbursement of the ambulance or other transportation service for the transport of the patient. (Ex. 2.; T. Trimarchi, Amiccuci.)

Department witness Emily Amiccuci testified that claims billed during inpatient stay should be billed to the facility and not to Medicaid. The cost of transportation is included in the facility's rate. (T. Amiccuci.)

Exhibit 2, attachment I provides a detailed account showing recipients who were provided with transportation by the Appellant. The Appellant charged Medicaid for these transportation services instead of the hospital or facility wherein the recipient received services.

As a result of this finding, OMIG determined that \$24,430.30 was inappropriately billed to Medicaid, resulting in Medicaid overpayments. (Ex. 2 (attachment I); T. Trimarchi.)

Finding Two

Transportation providers billing for ambulette services are required to include on their Medicaid claim the driver license number of the individual driving the vehicle.

A review of the transportation claims submitted for ambulette services during the audit period showed that in numerous instances, the driver's license was disqualified on the date of service. Medicaid will not provide reimbursement for any mode of transportation when the provider is out of compliance with applicable Medicaid regulations. (Ex. 2. ; T. Trimarchi, Amiccuci.)

Claims were identified where the driver's license number on the claim was matched against New York State Department of Motor Vehicles files and found to be disqualified for dates of service on the claim. (Ex. 2 (attachment II.); T. Trimarchi, Amiccuci.)

As a result of this finding, OMIG determined that \$435,220.90 was inappropriately billed to Medicaid, resulting in Medicaid overpayments. (Ex. 2 (attachment II.); T. Trimarchi; Amiccuci.)

Finding Three

Transportation providers billing for ambulette services are required to include on their Medicaid claim the driver license number of the individual driving the vehicle.

A review of the transportation claims submitted for ambulette services during the audit period showed that the driver's license number listed on the claim was incorrect or missing. (Ex. 2 (attachment III.) ; T. Trimarchi, Amiccuci.) The Appellant failed to submit any driver's license documentation demonstrating entitlement to payment of these claims.

Medicaid will not provide reimbursement for any mode of transportation when the provider is out of compliance with applicable Medicaid regulations. (T. Trimarchi; Amiccuci.)

As a result of this finding, OMIG determined that \$60.00 was inappropriately billed to Medicaid, resulting in Medicaid overpayments. (Ex. 2 (attachment III.); T. Trimarchi, Amiccuci.)

Finding Four

Transportation providers billing for ambulette services are required to include on their Medicaid claim the license plate number of the vehicle used to transport the Medicaid recipient.

A review of the transportation claims submitted for ambulette services during the audit period showed that several of the vehicle plate numbers listed on the claim were incorrect or missing. (Ex. 2 (attachment IV.) ; T. Trimarchi, Amiccuci.) The Appellant

failed to submit any vehicle plate documentation demonstrating entitlement to payment for these claims.

Medicaid will not provide reimbursement for any mode of transportation when the provider is out of compliance with applicable Medicaid regulations. (T. Trimarchi; Amiccuci.)

As a result of this finding, OMIG determined that \$66.00 was inappropriately billed to Medicaid, resulting in Medicaid overpayments. (Ex. 2 (attachment IV.); T. Trimarchi, Amiccuci.)

CONCLUSION

After interest was added to the findings, the adjusted overpayment was calculated to be \$28,430.30 for Finding One, \$490,160.17 for Finding Two, \$69.58 for Finding Three. Finding Four was omitted by the OMIG.

Thirty days after the issuance of the Draft Audit Report, the OMIG still had not been contacted by the Appellant, so the Final Audit Report was issued. Steven Kwestel, the President of Courtesy Transportation Services (the Appellant), contacted the OMIG on April 4, 2018, two days after the issuance of the Final Audit Report.

As stated above, after the issuance of the Final Audit Report, and despite the Appellant's failure to timely request an extension to argue the findings in the Draft Audit Report, the OMIG nonetheless reviewed the Final Audit Report and found several mistakes and typos. The bulk of the discrepancies found were contained in Finding two, (see attachment Ex. 12.) As a result, the overpayment amount was reduced from

\$518,428.36 to \$178,317.64. (Ex. 12, T. Amiccuci.) The findings of overpayments, as revised by these corrections to the amounts, are affirmed.

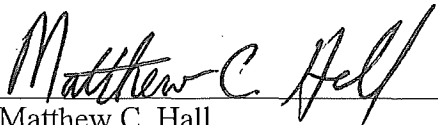
Mr. Kwestel testified on behalf of the Appellant. He provided no documentary evidence and no arguments against the specific allegations made by the OMIG. The crux of his testimony was to suggest that the commencement of the audit, years after the events covered by the audit, is unfair. He stated that such an audit is difficult to defend and “sets up the OMIG for a windfall.” (T. Kwestel.) This contention is without merit, as the audit was timely conducted in compliance with 18 NYCRR § 504.3 and Part 517.

The OMIG does not allege that any fraudulent activity occurred in the Appellant’s practice. This, however, does not excuse the Appellant’s need to comply with the provider requirements. The Appellant has failed to meet its burden to prove entitlement to payment for the disallowed claims.

DECISION

The OMIG’s determination to recover Medicaid Program overpayments from Courtesy Transportation Services, Inc., in the total amount of \$178,317.64 inclusive of interest is affirmed.

DATED: Albany, New York
June 20, 2024


Matthew C. Hall
Administrative Law Judge

Phillip Hoffman, Esq.
Associate Attorney
New York State Office of Medicaid Inspector General
40 N. Pearl Street
Albany, New York 12243

Steven Kwestel, President
Courtesy Transportation Services, Inc.
800 E. 92nd Street
Brooklyn, New York 11236