

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Request of

GOWANDA REHABILITATION AND NURSING CENTER

DECISION

Medicaid # 00575177

Audit # 15-4098

for a hearing pursuant to Title 18 of the Official
Compilation of Codes, Rules and Regulations
of the State of New York (18 NYCRR)

Before: Matthew C. Hall
Administrative Law Judge

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

Gowanda Rehabilitation and Nursing Center
100 Miller Street
Gowanda, New York 14070
By: Bhavna Ajwani

JURISDICTION

Pursuant to New York State Public Health Law (PHL) § 201(1)(v) and New York State Social Services Law (SSL) § 363-a, the Department of Health (Department) acts as the single state agency to supervise the administration of the medical assistance program (Medicaid) in New York State. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority pursuant to PHL §§ 30, 31 and 32, 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 OMIG made a retroactive negative adjustment to the rates paid by Medicaid to Gowanda Rehabilitation and Nursing Center (Gowanda) for the rate period January 1, 2015 through June 30, 2015, based on overpayments identified in the Minimum Data Set (MDS) Final Audit Report in Audit No. 15-4098. Gowanda requested a hearing to challenge the Final Report pursuant to 18 NYCRR 519.7. The OMIG requested a ruling that Gowanda is not entitled to a hearing because it did not make a timely hearing request.

PARTIES' SUBMISSIONS

The OMIG submitted the following documents:

1. November 16, 2017, letter to the Department's Bureau of Adjudication
Enclosures: Final Audit Report
Copy of Certified Mail showing delivery date of Request for Hearing
Gowanda's Request for a Hearing

Gowanda was given the opportunity but did not submit any documents to be considered.

FINDINGS OF FACT

1. At all times relevant to this proceeding, Gowanda was a skilled nursing facility enrolled as a provider in the Medicaid program. Gowanda is located at 100 Miller Street, Gowanda, New York 14070.
2. The OMIG issued an MDS Final Audit Report for Audit No. 15-4098 (Final Report) dated July 21, 2017, and mailed it to the Administrator at Gowanda's facility in Gowanda, New York.
3. In the Final Report, the OMIG advised Gowanda that they had 60 days from "date of this notice," to request an administrative hearing to challenge the action and determination in the Final Report.
4. Gowanda submitted a hearing request dated September 18, 2017 to challenge the OMIG's findings related to Audit #14-4901 (not Audit #15-4098). However, the hearing request was not mailed until October 24, 2017, and was not received by the OMIG until October 25, 2017.
5. By letter dated November 16, 2017, the OMIG submitted a "Request for determination on Timeliness of a Hearing Request." No hearing has been scheduled pending the outcome of this determination.

ISSUE

Is Gowanda's request for a hearing on the determinations in the Final Report timely?

APPLICABLE LAW

A person is entitled to a hearing to have the Department's determination reviewed if the Department requires repayment of an overpayment. (18 NYCRR 519.4.) To request a hearing, "[a]ny clear, written communication to the department by or on behalf of a person requesting review of a department's final determination is a request for a hearing if made within 60 days of the date of the department's written determination." (18 NYCRR 519.7[a].)

DISCUSSION

The OMIG argues that Gowanda's request for a hearing is untimely because the Final Report was dated July 21, 2017, and was mailed to and received by Gowanda. The OMIG contends that as of September 19, 2017, Gowanda failed to submit a request for a hearing on Audit #15-4098. "It is the notice itself that commences the 60-day time period." Stack v. Perales, 151 A.D.2d 903, 905, 542 N.Y.S.2d 876, 878 (1989). 95 days had elapsed from the date of the Final Report to the date that the hearing request was mailed.

The provisions of 18 NYCRR 519.7 provide clearly and simply that a provider may request an appeal by clear, written communication requesting a hearing within 60 days from the written determination by the OMIG. The sixty-day limit derives from the provisions on requesting hearings at New York Social Services Law § 22(4)(a). A statutory time limit for requesting a hearing is jurisdictional and may not be waived. Piasecki v. Blum, 78 A.D.2d 950, 437 N.Y.S.2d 520 (3rd Dept. 1980).

Gowanda did not offer any response to the OMIG's motion for this determination on timeliness.

DECISION

The OMIG properly provided written notice of its final determination in Final Audit Report 15-4098 to Gowanda. Gowanda had 60 days to request a hearing. Gowanda's time to request a hearing expired on September 19, 2017. Gowanda mailed its request for a hearing on October 24, 2017. The time limit for requesting a hearing is jurisdictional and may not be waived. Gowanda's request for a hearing pursuant to 18 NYCRR 519 is untimely and is denied.

Administrative Law Judge Matthew C. Hall 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.

DATED: Albany, New York
November 29, 2018

Matthew C. Hall
Administrative Law Judge

To: Jordan Aguire, Esq.
Office of Counsel
New York State Office of Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Bhavna Ajwani
Gowanda Rehabilitation and Nursing Center
100 Miller Street
Gowanda, New York 14070