

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of

**LAKE GROVE, DURHAM and MAPLE
VALLEY SCHOOLS,**
Provider (MMIS) # 00892773

From a determination by the NYS Office of the
Medicaid Inspector General to recover Medicaid
Program overpayments

DECISION

Audit # 07-1219

Before: David A. Lenihan,
Administrative Law Judge

Held at: New York State Department of Health
150 Broadway, Suite 510
Menands, New York 12204

The Hearing on this matter was held on January 29, 2014.

Parties: New York State Office of the Medicaid
Inspector General
584 Delaware Avenue
Buffalo, New York 14202

By: William L. Busler, Esq., Associate

LAKE GROVE, DURHAM and MAPLE
VALLEY SCHOOLS,
111 Moriches Road
Lake Grove, New York 11755

No appearance.

JURISDICTION

The New York State Department of Health (the Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York State pursuant to Social Services Law § 363-a. The New York State Office of the Medicaid Inspector General (OMIG) is an independent office within the Department of Health, responsible for the Department's duties with respect to the recovery of improperly expended Medicaid funds pursuant to Public Health Law § 31.

The OMIG in this case issued a final audit report for Lake Grove, Durham and Maple Valley Schools (the Appellant) in which the OMIG concluded that the Appellant had received Medicaid program overpayments totaling \$1,404,519.70.

The Appellant, by letter dated September 15, 2008, requested this hearing pursuant to Social Services Law § 22 and Department of Social Services regulations at 18 NYCRR 519.4 to review the Department's determination. After numerous changes in Counsel and subsequent adjournments, a hearing was scheduled in this matter for January 29, 2014. Although duly notified of the hearing, neither the Appellant nor any representative was present at the hearing.

BACKGROUND AND FINDINGS

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found that:

1. Lake Grove, Durham and Maple Valley Schools (hereinafter “Appellant”) was, at all times relevant hereto, a provider in the Medicaid program. The Appellant participated in the New York State Medical Assistance Program under Provider # 00892773. (Dept. Ex. 2)

2. Written notice of the hearing in conformity with the requirements of 18 NYCRR 519.10 was sent to the Appellant on December 31, 2013, scheduling this hearing to commence on January 29, 2014. 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 (Dept. Ex. 1).

3. By notice of a draft report of findings, dated August 29, 2008, the Department notified the Appellant that it had determined to seek restitution of \$1,404,519.70, inclusive of interest, of Medicaid program overpayments that it had identified. (Department Exhibit 2)

4. Subsequent to the hearing, but before the record was closed, the OMIG removed several findings in the Final Audit Report. After the removal of these findings, the revised Medicaid overpayment amount is \$1,187,584.57, plus applicable interest pursuant to 18 NYCRR 518.4. (Letter of Department’s Attorney, Mr. Busler, dated April 3, 2014.)

5. The Appellant made no application to reschedule the January 29, 2014 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 Appellant did not appear at the hearing either in person or by a

representative; therefore, the request for a hearing is deemed abandoned. 18 NYCRR 519.12(a).

APPLICABLE LAW

REGULATIONS

18 NYCRR 58.4 Interest:

(a) Interest may be collected upon any overpayments determined to have been made and will accrue at the rate and in the manner set forth in this section.

(b) Prior to the issuance of a notice of determination, interest will accrue at the current rate from the date of the overpayment.

(c) After the issuance of a notice of determination, interest will accrue at the current rate, plus two percentage points, or the maximum legal rate, whichever is lower.

(d) The current rate for purposes of this section is the annual rate of interest as fixed by the Department, in consultation with the State Comptroller or superintendent of the Banking Department, after taking into consideration private consumer rates of interest prevailing on the date that the Department became entitled to recovery of the overpayment. The rate may be revised quarterly by the Department.

(e) Interest may be waived in whole or in part when the department determines the imposition of interest would effect an unjust result, would unduly burden the provider or would substantially delay the prompt and efficient resolution of an outstanding audit or investigation. No interest will be imposed upon any inpatient facility established under Article 28 of the Public Health Law as a result of an audit of its costs for any period prior

to the issuance of a notice of determination, nor for a period of at least 90 days after issuance of such notice.

18 NYCRR 519.4 Right to a hearing:

(a) A person is entitled to a hearing to have the department's final determination reviewed if the department:

(1) imposes a sanction; or

(2) requires the repayment of an overpayment or restitution; or

(3) seeks to impose a penalty pursuant to Part 516 of this Title.

(b) There is no right to a hearing when the department discontinues payment pursuant to the automatic termination or immediate sanction provisions of Part 504 or 515 of this Title, authorizes a mass change, or denies an application for enrollment or reenrollment under Part 504 of this Title.

18 NYCRR § 519.8 Burden of proof:

d): The appellant has the burden of: (1) showing that the determination of the Department 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 § 519.12 Withdrawal or abandonment of a request for hearing provides at:

(a) A request for a hearing is abandoned if the hearing has not been rescheduled and the appellant does not appear at the hearing on the scheduled date.

ISSUE

Did the Appellant abandon its request for a hearing in this matter?

ANALYSIS AND DISCUSSION

The OMIG in this case issued a final audit report for Lake Grove, Durham and Maple Valley Schools (the Appellant) in which the OMIG concluded that the Appellant had received Medicaid program overpayments. The Appellant requested this hearing pursuant to Social Services Law § 22 and Department of Social Services regulations at 18 NYCRR 519.4 to review the Department's determinations.

The Appellant was properly notified of the time and place of this hearing and did neither appear nor make a request for an adjournment. Accordingly, I find that the request by the Appellant for a hearing in this matter has been abandoned.

CONCLUSION

The evidence adduced at the hearing in this case demonstrates that the Appellant has abandoned its request for a hearing.

DECISION

The request for a hearing by Appellant Lake Grove, Durham and Maple Valley Schools has been abandoned by the Appellant. The ALJ finds correct the decision by the OMIG to recover \$1,187,584.57 plus applicable interest from the Appellant.

This decision is made by David A. Lenihan, who has been designated by the Commissioner of the New York State Department of Health to make such decisions.

DATED: Menands, New York
April 30, 2014

David A. Lenihan,
Administrative Law Judge