

Madison York Assisted Living Community (Appellant) requested a hearing pursuant to Social Services Law § 22 and regulations of the former Department of Social Services at 18 NYCRR § 519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments based upon findings set forth in the October 10, 2018 Final Audit Report for Audit # 14-3479. A notice of hearing dated January 28, 2019, scheduled a hearing for February 15, 2019 to review the determination.¹

The audit reviewed a random sample of 100 claims selected from a total of 169,961 claims paid by the Medicaid Program from January 1, 2009 through December 31, 2011. The OMIG identified 34 errors among 33 claims and disallowed those 33 claims. Errors were identified in the following categories:

- (1) Missing Service Documentation: the OMIG disallowed 22 claims pertaining to 21 residents because the residents' records did not include documentation for services claimed for the date of service;
- (2) Missing/Invalid Signature on the Residents' Medical Evaluations: in 6 instances regarding 6 residents, the medical evaluation was signed using a physician's stamp, and in 1 instance, the medical evaluation was missing the physician's signature;
- (3) Failure to Complete the Medical Reassessment: in 4 instances regarding 4 residents, the reassessment was signed using a physician's stamp; and
- (4) Missing Nursing/Functional/Social Assessment: in 1 instance (Sample #43), the record did not include a nursing/functional/social assessment for the date of service.

By letter dated February 6, 2019, the Appellant requested a decision without a hearing seeking the reversal of what the Appellant referred to as "two categories of disallowances," specifically: (A) the disallowance of 10 claims based on a physician's stamped signature in patient medical records in Sample #s 1, 7, 17, 24, 36, 41, 43, 50, 77, and 81; and (B) the

¹ At the Appellant's request, the hearing was subsequently rescheduled for March 25, 2019 and April 4, 2019.

disallowance of 22 claims based on missing documentation caused by an unforeseen natural disaster, Super Storm Sandy. In support of its position, the Appellant submitted the following documents:

- A. Audit of Claims for Assisted Living Program Services Draft Audit Report for Audit Number 14-3479
- B. Affirmation of Bhaskar Yeturu, MD
- C. Division of Medicaid Audit Directive No. 23 issued June 24, 2010
- D. Documentation of the Appellant's flood-related losses sustained on October 29, 2012

The OMIG submitted its response to the Appellant's request for a decision without a hearing on April 4, 2019.² The Appellant then submitted a reply to the OMIG's response on April 16, 2019.

Either party may request that an appeal from an OMIG determination be decided without a hearing when no unresolved material issue of fact is involved in the case and the only questions presented are questions of the OMIG's application of the law or its regulations, whether the OMIG failed to perform a duty required by law or whether the OMIG's determination was arbitrary and capricious or an abuse of discretion as to any sanction imposed. A request for a decision without a hearing must be accompanied by sufficient information to permit a determination of whether any unresolved material issue of fact exists and should contain a full and clear statement of the issue and the party's position on the issue. 18 NYCRR § 519.23(a).

A. The Appellant's Use of a Physician's Stamp in Medical Records

The Appellant contends that the OMIG's determination to disallow 10 claims because the required documentation was signed using a physician's stamp is arbitrary, capricious, and in direct contravention of General Construction Law § 46, which defines a

² The OMIG was promptly advised on February 6, 2019 of its ability to respond to the Appellant's assertions within 30 working days (March 21, 2019,) which was subsequently extended to April 4, 2019 with the Appellant's consent.

signature as including “any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.”

In seeking review of this stated basis for payment disallowance, the Appellant has consolidated the OMIG’s categories entitled, “Missing/Invalid Signature on Medical Evaluation” and “Failure to Complete the Medical Reassessment,” to challenge 10 of the 11 disallowances in those two categories.

It is the Appellant’s position that the use of a stamp for a physician’s signature in patient medical records is permissible. The Appellant’s response to the Draft Audit Report included a May 30, 2018 affirmation by Dr. Bhaskar Yeturu, in which he attested to stamping the residents’ medical evaluations for Sample #s 1, 24, 36, 43, 50, and 77, and stamping the residents’ reassessments in Sample #s 7, 17, 41, and 81. Dr. Yeturu affirmed that he used a stamp bearing a replica of his signature to sign medical documents and that the stamp was always within his control.

In its April 4, 2019 reply brief, the OMIG agreed to withdraw the disallowances for Sample #s 1, 24, 36, 43, 50, and 77. However, an issue remains as to whether the OMIG’s disallowances pertaining to Sample #s 7, 17, 41, and 81 were correct. The OMIG did not explain its position on these four disallowances, and the Appellant did not provide copies of the reassessments deemed invalid. Furthermore, the Appellant did not expressly contest or accept the OMIG’s findings pertaining to Sample # 90, in which the OMIG determined to disallow payment for a medical evaluation that contained neither a physician’s signature nor a physician’s stamp. Consequently, it cannot be determined whether material issues of fact exist and these five disallowances cannot be decided without a hearing.

B. The OMIG's Disallowances for Missing Service Documentation

The Appellant also seeks reversal of the 22 disallowances set forth in the audit disallowance category entitled, "Missing Service Documentation." The Appellant contends that these disallowances contravene OMIG Audit Directive No. 23 (guidance for auditors regarding the unavailability of records due to the destruction of records by flood, fire or other unforeseen, unintentional event) because the documents for these 22 samples were destroyed by Superstorm Sandy, which impacted the New York City area in October 2012. Audit Directive No. 23 advises auditors to uncover the circumstances surrounding the destruction of records and even possibly terminate an audit where less than 50% of the sample items are available for review.

The Appellant asserts that the facility basement flooded due to Super Storm Sandy, causing the destruction of documentation stored therein for dates of service occurring within the years 2007, 2008, and the period of January 1 through June 30, 2009. The documentation alleged to have been destroyed includes service documentation sheets, staff schedules, supply requisition forms, medication assistance records, aide activity sheets, and toileting sheets. In support of these assertions, the Appellant provided documentation of equipment-related losses resulting from flooding. The Appellant claims that no unresolved issue of fact exists with respect to the missing documentation because Super Storm Sandy was an unforeseen event.

Neither the cited audit directive nor the proffered flood-related loss documentation lends support for the Appellant's assertions. The OMIG disallowed 22% of the total claims reviewed in the audit because of missing documentation, far less than the percentage of claims which the cited OMIG policy suggests may result in terminating an audit. The submitted information presupposes, but does not establish, that the documentation identified as missing actually existed and was destroyed when the facility basement flooded due to Super Storm Sandy. Fact-related

issues remain unresolved regarding these disallowances that cannot be decided without a hearing.

DECISION

1. A decision without a hearing cannot be rendered regarding the OMIG’s disallowances of Sample #s 7, 17, 41, and 81 in the audit category entitled, “Failure to Complete the Medical Reassessment.”
2. A decision without a hearing cannot be rendered regarding the OMIG’s disallowances of 22 claims in the audit category entitled, “Missing Service Documentation.”
3. A decision without a hearing cannot be rendered regarding the OMIG’s disallowances of Sample #90 in the audit category entitled, “Missing/Invalid Signature on Medical Evaluation,” and Sample #43 in the audit category entitled, “Missing/Nursing/Functional/Social Assessment.”
4. Pursuant to 18 NYCRR § 519.23(d), the parties are hereby advised that a hearing in accordance with 18 NYCRR Part 519 is necessary to resolve the dispute. The Appellant has the option of proceeding with the hearing or withdrawing the hearing request.
5. The hearing will commence on Thursday, June 27, 2019 at 10:30 am at the New York State Department of Health Metropolitan Regional Office located at 90 Church Street, New York, New York 10007.

Dated: April 22, 2019
New York, New York

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