

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of

**Rite Aid of New York, Inc./
Eckerd Store #10825**

Medicaid ID # [REDACTED]

from a determination to seek restitution of
Medicaid Program overpayments

#08 4287

Before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
90 Church Street
New York, New York 10007
June 14, 2012

Parties: New York State Office of the Medicaid Inspector General
217 Broadway, 5th Floor
New York, New York 10007
By: Daniel V. Coyne, Esq.

Ms. Kimberly Donovan
Third Party Audit Manager
Rite Aid
10189 Millers Road
Lyndonville, New York 14098
By: Kelly A. Moore, Esq.
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101 Park Avenue
New York, New York 10178

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. PHL 31. The OMIG determined to recover Medicaid Program overpayments from Rite Aid of New York, Inc./Eckerd Store #10825 (the Appellant). The Appellant requested a hearing pursuant to SSL 22 and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the overpayment determination.

The OMIG's determination was communicated to the Appellant by a final audit report (audit # 08-4287) dated August 13, 2009. Written notice of hearing in conformity with the requirements of 18 NYCRR 519.10 was sent to the Appellant on October 29, 2009, scheduling the hearing to commence on December 15, 2009.

The hearing was rescheduled upon the request and consent of both parties for various reasons to January 20, March 16, 17, 18, September 21, December 7, 2010; March 8, June 7, 8, 9, November 3, 2011; January 18, 19, 20, April 11, and June 14, 2012. Neither party appeared on June 14, 2012, nor did either party request that the hearing be rescheduled. The Appellant did not withdraw the hearing request nor did either party advise the Bureau of Adjudication that a settlement had been finalized.

The OMIG failed to provide a representative at the hearing to present the audit file and summarize the case. 18 NYCRR 519.17(a). The hearing was not rescheduled and the Appellant did not appear at the hearing on the scheduled date. 18 NYCRR 519.12(a). This administrative proceeding is dismissed. 18 NYCRR 519.11, 519.12, 519.17.

DATED: Rochester, New York
June 26, 2012

_____/s/_____
John Harris Terepka
Bureau of Adjudication