

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of the Appeal of	:	
	:	
Sarah Neuman Center for Healthcare and Rehabilitation,	:	Decision Without Hearing Pursuant to 18 NYCRR 519.23
Provider ID: #01266233(NF), #0195799 (ADHC*)	:	
	:	
from a determination by the NYS Office of the Medicaid Inspector General to recover Medicaid Program overpayments.	:	Audit #16-6651
	:	
	:	

Before: Ann H. Gayle
Administrative Law Judge (ALJ)

Forum: Submitted on papers
Record closed September 17, 2019

Parties: New York State Office of the Medicaid Inspector General
90 Church Street, 14th floor
New York, New York 10007
By: Mara Pandolfo, Esq.

Sarah Neuman Center for Healthcare and Rehabilitation
845 Palmer Avenue
Mamaroneck, New York 10543
By: Michael A. Berlin, Esq.
Jennifer M. Gomez, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207

* NF – Nursing Facility; ADHC – Adult Day Health Care

Jurisdiction and Statement of the Case

The New York State Department of Health (Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York State. 42 USC 1396a; PHL 201(1)(v); SSL 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is responsible for the Department's duties with respect to the prevention, detection and investigation of fraud and abuse in the Medicaid Program and the recovery of improperly expended Medicaid funds. PHL 31.

OMIG issued a Final Audit Report for Sarah Neuman Center for Healthcare and Rehabilitation (Sarah Neuman or Appellant) in which OMIG concluded that Appellant had received Medicaid Program overpayments. 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. Appellant subsequently requested that this appeal be decided without a hearing pursuant to 18 NYCRR 519.23.

The record consists of written submissions and other documents as follows:

- Appellant's July 16, 2019 request for decision without hearing (App brief); Affirmation of Michael A. Berlin; Exhibits A-E.
- OMIG's August 28, 2019 reply (OMIG brief); Exhibits 1-9.
- Appellant's September 16, 2019 response (App response).

DISCUSSION

In an April 2, 2019 email, Mr. Berlin wrote,

Judge Gayle, I just spoke with Ms. Pandolfo and we wanted to see if you have some time on Friday to have a short conversation about this matter... we would like to discuss the intention of Sarah Neuman to seek a decision without hearing pursuant to 18 NYCRR sec. 519.23, as

we see this as a pure legal dispute, without any significant factual disagreement.

A conference call was held on April 5, 2019. The ruling made on the April 5 conference call was memorialized immediately following the call as

Per our conference call of a few moments ago ... Appellant's request for a decision without hearing pursuant to 18 NYCRR sec. 519.23 was denied upon OMIG's opposition to this request on the grounds that OMIG believes there are factual issues to be determined at hearing.

A hearing was scheduled for August 7, 2019.

In a July 16, 2019 email, Mr. Berlin wrote,

“We are writing to revisit our prior request to obtain a decision without a hearing... As you are aware, during our prior conversation the Court ruled on the issue prior to receiving our intended submission of a motion and OMIG providing a formal response. In the interim, we have had the opportunity to review the audit file which has reinforced our view that there are no disputed material facts which would necessitate a hearing. It had been our hope that a settlement would avoid the necessity of this filing, but unfortunately none has been reached. To that end, consistent with Section 519.23, we are now formally filing our motion.

The August 7 hearing date was cancelled pending decision on the motion, and the parties submitted briefs and exhibits in support of their positions.

In this appeal, Appellant challenges two determinations:

First, OMIG disallowed the reimbursement for office rentals ...Second, OMIG disallowed interest paid for a line of credit... (App brief, page 1).

Those disallowances are identified in OMIG's Final Audit Report, Attachment E, as Disallowance 2 “Equipment Rental Expense Disallowance” in the amounts of \$66,685 for the NF and \$49,573 for the ADHC, and Disallowance 4 “Working Capital Interest Expense Disallowance” in the amounts of \$35,556 for the NF and \$35,556 for the ADHC. (OMIG brief, Exhibit 3)

During the pendency of the motion, Appellant's attorneys brought a similar motion before another ALJ in the Matter of The New Jewish Home, Manhattan (TNJH,M). The facts and issues in both matters are not materially different, and these two facilities, TNJH,M and Sarah Neuman, are under the same ownership. "Sarah Neuman ... is part of the Jewish Home facilities ... Effective January 1, 2009, Jewish Home established Jewish Home Lifecare, Corporate Services Inc. as its formal home office to provide administrative services across its various facilities." (App brief, page 3). Sarah Neuman and TNJH,M are two of Jewish Home's "various facilities."

On May 15, 2020, ALJ John Harris Terepka's Decision Without Hearing Pursuant to 18 NYCRR 519.23 in the Matter of TNJH,M was issued. The TNJH,M Decision is attached to this Decision as Appendix I. Judge Terepka wrote, at page 5, "The Appellant having failed to meet its burden of proving the OMIG audit determinations to disallow these reported costs were incorrect, audit disallowances 1 and 4 are affirmed." His Decision at page 16 reads, "The OMIG's audit report property expense disallowances 1 and 4 are affirmed."

Having found that the two matters are not materially different, I issue the following Decision.

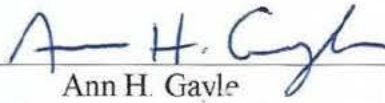
DECISION

Appellant's request for a decision without hearing pursuant to 18 NYCRR 519.23 is granted.

OMIG's audit report property expense disallowances 2 and 4 are correct and are affirmed.

This decision is made by Ann H. Gayle, Bureau of Adjudication, who has been designated to make such decisions

DATED: New York, New York
May 21, 2020


Ann H. Gayle
Administrative Law Judge

TO:

Michael A. Berlin, Esq.
Jennifer M. Gomez, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207

Mara Pandolfo, Esq.
Office of the Medicaid Inspector General
90 Church Street, 14th Floor
New York, New York 10007