

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Request of

DR. RONALD LOUIS BIONDO

Provider # 02015516
NPI # 1114189479

DECISION

Audit # 18-6153

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: James F. Horan
Administrative Law Judge

Parties: New York State Office of the Medicaid Inspector General (OMIG)
800 North Pearl Street
Albany, New York 12204
By: Michael J. Derevlany, Esq.

Dr. Ronald Louis Biondo (Provider) *Pro se*
30 East 40th Street, Suite 206
New York, New York 10016

On this request, the ALJ rules that the Provider failed to make a timely request for a hearing as required under the standards at Title 18 (Family Assistance) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) § 517.6(b)(4).

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 finding of overpayment by Medicaid to the Provider for the Medicaid Electronic Health Record (EHR) Incentive Program for the 2014 payment year as identified in the Final Audit Report in Audit Number 18-6153. The Provider requested a hearing to challenge the Final Audit Report pursuant to 18 NYCRR 519.7. The OMIG now requests a determination that the Provider is not entitled to a hearing because the Provider failed to make a timely hearing request. A decision without a hearing may be requested by either party pursuant to 18 NYCRR 519.23. There is no factual issue in dispute necessary to determine whether the Provider filed a timely hearing request.

PARTIES' SUBMISSIONS

The OMIG submitted Exhibit 1, a June 1, 2021 letter with two attachments: a) the November 12, 2020 Final Audit Report # 18-6153 and b) a May 7, 2021 letter to the OMIG General Counsel requesting a hearing. This ALJ contacted the parties by letter on June 3, 2021 and offered the Provider an opportunity to respond to the OMIG Request by June 30, 2021 [ALJ Exhibit A.] The Provider failed to respond by June 30, 2021 and has made no response since.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the Provider was enrolled as a provider in the Medicaid Program [Exhibit 1, Attachment a].
2. The OMIG issued a Final Audit Report in Audit Number 18-6153 on November 12, 2020, seeking to recover \$21,500.00 that the Provider received as an incentive from Medicaid to adopt an Electronic Health Record System [Exhibit 1, Attachment a].
3. The Final Audit Report also informed the Provider that he could request a hearing to challenge the Final Audit Report and directed the Provider to direct any questions about the hearing to the OMIG Office of Counsel [Exhibit 1, Attachment a].
4. The Provider sent the OMIG General Counsel a May 7, 2021 letter requesting a hearing [Exhibit 1, Attachment b].

ISSUE

Is the Provider's request for a hearing on the determination in the Final Audit 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 sent the Final Audit Report to the Provider on November 12, 2020, meaning that the Provider had until late February 2021 to request a hearing. The Provider mailed a request for hearing in early May 2021, well beyond the sixty-day statute of limitations for requesting a hearing. In the May 2021 letter, the Provider mentioned that his office had been closed for several weeks due to the pandemic. The ALJ then offered the Provider until June 30, 2021 to provide additional information [ALJ Exhibit A]. The ALJ directed the Provider to address specifically the time-period for the office closure. The Provider never responded.

DECISION

The OMIG properly provided written notice of its final determination in Audit Number 18-6153 to the Provider and the Provider failed to request a hearing within the time prescribed by regulation. The time limit for a hearing is jurisdictional and may not be waived, Pasecki v. Blum, 78 A.D.2d 950, 437 N.Y.S.2d 520 (3rd Dept. 1980). The ALJ denies the request for hearing as untimely.

Administrative Law Judge James F. Horan 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: October 22, 2021
 Menands, New York

James F. Horan
Administrative Law Judge

TO:

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