

In the Matter of the Request of

Multiple Billing Services, Inc.  
d/b/a MBS Transport  
Medicaid ID #: [REDACTED], Audit # 07-F-3357

Decision After  
Hearing

Alona Dantzler, Individually Audit # 08-F- 3641  
Lindsey Dantzler, Individually Audit # 08-F-3642  
Richard Villanova, Individually Audit # 08-F-3643  
Renee Villanova, Individually Audit # 08-F-3644  
Michael Villanova, Individually Audit # 08-F-3645  
One Ring Ambulette Service Corp. Audit # 08-F-3648

For a hearing pursuant to Part 519 of Title 18 of the Official  
Compilation of Codes, Rules and Regulations of the State of  
New York (18 NYCRR) to review the Determination of the  
Office of the Medicaid Inspector General to exclude them from  
The Medicaid Program and to recover \$851,601.55 in Medicaid  
Overpayments from them, jointly and severally, together with  
Interest, for the period January 1, 2005 through June 26, 2008

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Before: James F. Horan, Administrative Law Judge

Held at: New York State Department of Health  
Metropolitan Area Regional Office  
90 Church Street  
New York, NY 10007  
August 10 & October 7, 2011

Parties: Office of the Medicaid Inspector General (OMIG)  
Office of Counsel  
217 Broadway, 8<sup>th</sup> Floor  
New York, NY 10007  
BY: Ferlande Milord, Esq.

Richard Villanova, Renee Villanova, Michael Villanova  
BY: Michael G. Santangelo, Esq.  
75 South Broadway, Suite 4-54195  
White Plains, NY 10601

Alona and Lindsay Dantzler, Pro Se

## Summary and Jurisdiction

Alona and Lindsay Dantzler and Michael, Rene and Richard Villanova requested a hearing pursuant to Title 18 NYCRR §519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) seeking repayment from the three Villanovas for overpayments totaling \$851,601.55 and seeking exclusion from the Medicaid Program for various periods for the three Villanovas and both Dantzlors, as affiliates of MBS Transport. The OMIG moved to obtain repayment and exclusions following audits pursuant to Title 18 §§ 504.1, 515.3, 515.9, 518.3 & 518.6 on the grounds that MBS Transport billed and received payment for transportation services between 2005 and 2008 which MBS Transport furnished using drivers and/or vehicles unqualified to transport Medicaid recipients. The Dantzlors argued that they transferred ownership of MBS Transport prior 2005. Richard and Rene Villanova argued that no evidence connected them to MBS Transport. Michael Villanova argued that MBS Transport provided all transportation services for which MBS Transport submitted bills to the Medicaid Program. After a hearing in this matter and after reviewing the evidence and argument that the parties provided, the ALJ determines that the OMIG acted correctly in moving to recover overpayments from MBS Transport and Michael Villanova and in moving to exclude Michael Villanova, MBS Transport, Alona Dantzler and Lindsay Dantzler from participation in the Medicaid Program. The ALJ determines further that the evidence failed to establish Rene Villanova and Michael Villanova as affiliates of MBS Transport and the ALJ overturns the determination to exclude and recover overpayments against Rene and Richard Villanova.

## Proceedings and Evidence

The ALJ conducted the hearing in this matter pursuant to New York Social Services Law Articles 1 and 5 (McKinney Supp. 2012), New York Public Health Law (PHL) Article 1 (McKinney Supp. 2012), New York Administrative Procedure Act (SAPA) Articles 3-5 (McKinney 2012) and Title 18 NYCRR Parts 504, 505, 515 & 518. The OMIG presented as hearing witnesses two OMIG Investigators: Anne Marie Breen [Hearing Transcript pages 24-104] and William Frawley [Hearing Transcript pages 106-189]. Mr. Lindsay Dantzler testified for the Dantzlors [Hearing Transcript pages 202-229]. No witnesses testified for the Villanovas. The OMIG introduced nineteen documents into evidence that the ALJ received into the record:

- 1 Notice of Proposed Agency Action;
- 2 Extension Request;
- 3 Letter Granting Extension;
- 4 Dantzler Letter and Attachments;
- 5 Acknowledgement Letter;
- 6 Notice of Action;
- 7 Hearing Request;
- 8 Notice of Hearing;
- 9 Notice of Appearance by Michael Santangelo, Esq. for Michael and Renee Villanova;
- 10 Notice of Appearance by Michael Santangelo, Esq. for Richard Villanova;
- 11 Michael Villanova Interview;
- 12 Dantzlors Interview 8/9/08;
- 13 Lindsay Dantzler Interview 9/17/08;
- 14 Stock Purchase Agreement;
- 15 Investigator Memorandum;
- 16 Disallowance List;
- 17 Disallowance by Driver;
- 18 Subpoenaed Records;
- 19 Dantzler Letter.

The Dantzlors submitted 3 documents into the hearing record:

- A Binder Agreement;
- B Contract of Sale of Stock;
- C Accountant's Letter.

The Villanovas submitted no documents into the record. The Dantzlars submitted a post-hearing letter by electronic mail on November 2, 2011. The OMIG submitted a post-hearing brief on November 7, 2011. The Villanovas submitted a post-hearing brief on November 18, 2011. The record also contained the two-volume hearing transcript, pages 1-235.

Under SAPA § 306(2), all evidence, including records and documents in an agency's possession of which an agency wishes to avail itself, shall be offered and made a part of the record of a hearing. Under Title 18 NYCRR § 519.18(f), computer generated documents prepared by the Department or its fiscal agent to show the nature and amounts of payments made under the program will be presumed, in the absence of direct evidence to the contrary, to constitute an accurate itemization of the payments made to a provider. In addition to testimony and documents in evidence, and pursuant to SAPA § 306(4), an ALJ may take Official Notice of any matter for which Judicial Notice may be taken.

Under SAPA § 306(1), the burden of proof in a hearing falls on the party which initiated the proceeding. Title 18 NYCRR § 519.18(d) provides that the Appellant bears the burden to show a determination of the Department was incorrect and that all claims submitted were due and payable. Title 18 NYCRR 519.18(h) and SAPA § 306(1) provide that a decision after hearing must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v.

\_\_\_\_\_ 101 A.D.2d 651, 475 N.Y.S.2d 562 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

### Findings of Fact

The ALJ made the following findings of fact (FF) after affording the parties an opportunity to be heard and after considering the evidence. The items in brackets that follow the findings represent documents in evidence [Ex], testimony from the record [T] and matters under Official Notice [ON] on which the ALJ relied in making the findings. In instances in which conflicting evidence appears in the record, the ALJ considered and rejected that other evidence.

1. The Appellant MBS Transport participated as a provider of transportation services under the Medicaid Program, Provider ID # [REDACTED] [Ex 1].
2. The New York State Department of Health is the single state agency responsible for administering the Medicaid Program in New York State [ON SSL § 363-a, PHL § 201.1(v)].
3. The OMIG is an independent office within the Department with the responsibility for investigating, detecting and preventing Medicaid fraud, waste and abuse and for recouping improper Medicaid payments [ON PHL § 30].
4. The OMIG conducted an audit concerning the billings by the Appellant MBS Transport to the Medicaid Program over the period January 1,

2005 through June 21, 2008 and determined that the Appellant MBS Transport billed the Program for \$851,601.55 in transportation services that the Appellant MBS provided through 15 drivers without proper qualifications to provide the services and/or in vehicles without appropriate license plates [Ex. 6].

5. The Appellants Lindsay Dantzler and Alona Dantzler owned all shares in the Appellant MBS and operated MBS as an ambulette service providing services under the Medicaid Program prior to the audit period [Ex. 4, T 203-204].
6. The Appellants Lindsay Dantzler and Alona Dantzler agreed to sell their shares in the Appellant MBS Transport, along with licenses, permits and the Medicaid Provider number for the Appellant MBS to the Appellant Michael Villanova and One Ring Ambulette in 2004 [Ex. 4, T 203].
7. Lindsay Dantzler, on behalf of MBS, and Michael Villanova, on behalf of One Ring Ambulette, signed a Binder Agreement on September 1, 2004 [Ex. 4].
8. The Binder Agreement included the financial terms of the sale and purchase of the Appellant MBS and contained the provision requiring the buyer to place a \$5000.00 deposit in the hands of the seller's Attorney, Ewan D. Anderson, Esq. [Ex. 4].

9. The Binder Agreement also provided the remainder of the \$200,000.00 purchase price would be payable by certified check, bank check or money order, payable to Lindsay Dantzler and Alona Dantzler [Ex. 4].
10. The Appellant Michael Villanova signed a \$5000.00 check to Ewan D. Anderson, from a checking account for One Ring Ambulette, on September 10, 2004 and the memo on the check referenced MBS Inc. [Ex. 4].
11. The Appellants Lindsay Dantzler and Alona Dantler signed the Agreement to sell the shares in the Appellant MBS on or about December 8, 2004 [Ex. 4].
12. Neither the Appellant Lindsay Dantzler nor the Appellant Alona Dantzler informed the Medicaid Program about the sale of the Appellant MBS, a provider in the Medicaid Program [T 174, 205].
13. During the audit period, the Medicaid Program made payments on the billings from the Appellant MBS Transport to that Appellant's HSBC bank account # [REDACTED] [Ex 18].
14. During the audit period, the Appellant Michael Villanova signed the checks making disbursements from HSBC bank account # [REDACTED] [Ex. 18].
15. Those checks included disbursements to the Appellant Lindsay Dantzler [Ex. 18].
16. The Appellant MBS Transport billed the Medicaid Program for transportation services provided by the following 15 drivers: Manuel

Hernandez, Ramon Ortiz, Marvin Williams, Eligio Hernandez, Carlos Gomez, Cynthia Westbrook, William Hughes, Jr., William Sutton, Marlon Sands, Joseph Simons, Peter J. Cavanaugh, Marco Tapia, Thomas Orta, John DeJesus and Norman Thomas [Ex. 17 Schedules I-XV].

17. During various times in the audit period, each of the 15 drivers named in FF 16 were unqualified to drive ambulettes to provide services under the Medicaid Program, because the New York State Department of Motor Vehicles classified the drivers as disqualified, inactive or without certification under New York Vehicle and Traffic Law (VTL) Article 19-A (McKinney 2012) [Ex. 17 Schedules I-XV].
18. The Appellant MBS Transport submitted billings to the Medicaid Program that lacked drivers' license numbers and/or vehicle license plate numbers for services the Appellant MBS claimed to have provided on dates between January 25, 2008 and June 26, 2008 [Ex. 17 Schedule XVI].

#### Issues

1. Did the Appellants MBS Transport, Michael Villanova, Renee Villanova and Richard Villanova receive \$851,601.55 in overpayments from the Medicaid Program and is the OMIG entitled to recover that sum from the Appellants?



2. Is the OMIG entitled to disqualify the Appellants MBS Transport, Michael Villanova, Renee Villanova, Richard Villanova, Alona Dantzler and Lindsay Dantzler from participation in the Medicaid Program for engaging in unacceptable practices.

### Discussion and Conclusions

Title 18 NYCRR § 518.1(c) defines overpayment as any amount not authorized to be paid under the medical assistance program, whether paid as a result of improper claiming, unacceptable practices, fraud, abuse or mistake. Under Title 18 NYCRR §504.3(e), by enrolling in the Medicaid Program, a provider agrees to submit claims for payment only for services actually furnished and which are medically necessary or otherwise authorized. Title 18 NYCRR § 504.3(h) states that a provider agrees to provide true, accurate and complete information in relation to any claim. Title 18 NYCRR §504.3(i) provides that by enrolling, a provider agrees to comply with the rules, regulations and official directives of the Department.

The regulations on the provision of ambulette services at Title 18 NYCRR § 505.10(e)(6) require that an ambulette service must be authorized by the New York State Department of Transportation and that drivers for the ambulette service must satisfy the requirements for bus drivers that appear at VTL Article 19-A. The provisions at VTL Article 19-A require regular medical examinations and skills tests on drivers and require motor carriers to review the drivers' driving records. The provisions at VTL § 509-c also set the general standards for disqualifying bus drivers. Under Title 18 NYCRR § 504.1(c)

if a license, registration or certification is required to provide services, an applicant for enrollment as a Medicaid provider must hold the proper and currently valid license, registration or certification to be eligible to furnish the service. The New York State Medicaid Program Transportation Manual Policy Guidelines require providers billing for ambulette services must include the driver's license number for the individual driver on the bill and the license plate number for the vehicle used to transport the Medicaid recipient who received the services on the bill.

The ALJ concludes that all the Appellants received legally sufficient notice concerning the issues in the hearing and that all the Appellants received the opportunity to present a defense to the actions to disqualify and /or to recoup payment.

**The Appellants Lindsay Dantzler and Alona Dantzler:** The OMIG sought to exclude each of the Dantzlors from participation in the Medicaid Program for one year for failing to advise the Medicaid Program concerning change in the ownership of the participating provider and Appellant MBS. Lindsay Dantzler admitted to failing to advise Medicaid about the change [T 205] and Alona Dantzler failed to provide any evidence during the audit or at hearing to indicate that Ms. Dantzler provided such information. The ALJ finds the one year exclusion amounts to the proper penalty for the failure to advise Medicaid concerning the change. The ALJ agrees with the OMIG that no evidence indicated that the Dantzlors benefitted financially from the billings during the audit period, so no reason existed to recoup payment from the Dantzlors or to impose a longer exclusion.

**The Appellant MBS:** OMIG seeks to exclude MBS from participation in the Medicaid Program for 2 years and to recover \$815,601.55 in overpayments. The ALJ

concludes that OMIG established by substantial evidence that MBS engaged in unacceptable practices as a Medicaid provider in providing ambulette services by drivers who lacked the necessary qualifications under VTL Article 19-A. The documents, in evidence as Ex. 16, contain 15 Schedules that relate to each of the 15 drivers at issue in this case and in FF 16 and 17. For example, Ex. 16 Schedule II contains documentation from DMV indicating that DMV classified driver Ramon Ortiz as inactive under VTL Article 19-A from August 4, 2005 to March 7, 2007. The documents in Ex. 16 Schedule IX indicated that DMV showed no 19-A certification for the driver Marlon Sands for the period January 10, 2005 to May 4, 2005. Schedules I to XV in Ex. 17 contain information on each billing that MBS submitted for the 15 drivers at issue during the audit period. For example, Exhibit 17 Schedule IX shows that MBS submitted 1230 billings to Medicaid for ambulette services that Marlon Sands provided during the period that DMV showed no 19-A certification for Mr. Sands. In addition, Ex. 16 and Ex. 17 each contain a Schedule XVI that shows that MBS submitted 746 billings to Medicaid between January 25, 2008 and June 26, 2008 with no driver license number and/or vehicle plate number. The failure to provide that information on the 746 billings left the Medicaid Program unable to verify that MBS provided services under proper licensure, registration or certification.

The ALJ concludes that OMIG acted appropriately in seeking to recoup \$851,601.11 in overpayments from the Appellant MBS. The ALJ concludes further that the OMIG acted appropriately in excluding the Appellant MBS from participation in the Medicaid Program for two years for engaging in the unacceptable practices of billing for ambulette services by drivers without proper qualifications and by omitting information

from other billings to show appropriate certification, licensure or registration for drivers and vehicles involved in providing ambulance services under the Medicaid Program.

**The Appellants Renee Villanova and Richard Villanova:** The OMIG alleged that Renee and Richard Villanova were affiliates (or persons with overt, covert or conspiratorial control) of MBS Transport under the definition at Title 18 NYCRR 504.1. The OMIG moved to exclude both Richard and Renee Villanova from participation in the Medicaid Program and to recover \$851,601.11 from Richard and Renee Villanova as affiliates of a Medicaid provider that engaged in unacceptable practices and that received Medicaid overpayments. The ALJ dismisses the recoupment and exclusion actions against both Renee Villanova and Richard Villanova because the OMIG has failed to provide credible proof that either Richard Villanova or Renee Villanova exercised control over MBS during the audit period.

Investigator Frawley testified that no documents in evidence showed that Renee Villanova exercised control over MBS Transport and that no documentation listed Richard Villanova as a corporate officer for MBS [T 186-187]. Investigator Frawley claimed to have a corporate document listing Renee Villanova as a corporate officer of MBS, but Mr. Frawley conceded that this document was not in evidence at the hearing. Mr. Frawley also claimed that a check in evidence, from the HSBC account for MBS Transport, bore the signature of Richard Villanova [T 165]. The ALJ reviewed the checks in evidence in Ex. 16 and the ALJ found that Michael Villanova signed all the checks. Investigator Frawley conceded at the hearing that there was no signature card for the HSBC account in evidence [T 165], so there was no evidence that Richard Villanova was authorized to sign checks on behalf of MBS. Investigator Breen testified that she was

aware of no information in the record that would connect Renee or Richard Villanova to the operation of MBS Transport [T 71, 74, 76, 93]. Mr. Dantzler testified that he had no knowledge about any involvement by Renee Villanova in the day to day operations of MBS during the audit period [T 222] and Mr. Dantzler indicated on the record that he never met Richard Villanova until the first hearing day.

Three copies of the Agreement for the sale of MBS appear in the record, one in OMIG Ex. 4, another as OMIG Ex. 14 and the third copy as Appellant Ex. B. The copy in Ex. 4 and Ex. 14 contains a line for Renee Villanova to sign as president of One Ring Ambulette, but contains no signature. The copy in Ex. B bears a signature by Renee Villanova, but the printed line identifying Renee Villanova as President of One Ring Ambulette is crossed out. The ALJ can draw no conclusion from these differing copies of the same agreement as to whether these documents proved that Renee Villanova exercised control over MBS during the audit period. The OMIG post-hearing brief at page 11 claimed that Michael Villanova wrote checks to Renee Morella from the MBS account at HSBC Bank. The Brief claimed that Renee Morella was now Renee Villanova, but the brief failed to cite to any evidence in the record to establish that Renee Morella was now Renee Villanova, such as a marriage license or testimony by Ms. Villanova about any former names she used.

The ALJ concludes that the record lacks substantial evidence to demonstrate that either Richard Villanova or Renee Villanova exert control over MBS Transport during the audit period.

**The Appellant Michael Villanova:** The OMIG identified the Appellant Michael Villanova as an affiliate of the Appellant MBS and the OMIG sought both to exclude

Michael Villanova from the Medicaid Program for two years and to recover from Michael Villanova \$851,601.11 in overpayments that went to MBS Transport. The Villanova Post-Hearing brief conceded that documentary evidence at the hearing showed that drivers and/or vehicles were ineligible to provide Medicaid reimbursable transportation services, but the brief argued that services were provided and that MBS paid the drivers for the services. The brief requested a reduction in or the elimination of any overpayment obligation for Michael Villanova.

The ALJ affirms the finding that the Appellant Michael Villanova exerted overt control over the Appellant MBS and that Michael Villanova functioned as an affiliate of the Medicaid Provider. The bank records in evidence as Ex. 18, the sale agreements in evidence at Ex. 4, Ex. 18 and Ex. B and the testimony by Lindsay Dantzler all established that Michael Villanova operated MBS after the purchase from the Dantzlors in 2004. The ALJ affirms the determination by the OMIG to exclude Michael Villanova from the Medicaid Program for two years and to recover \$851,601.11 in Medicaid overpayments from Michael Villanova. As the person operating MBS during the audit period, Michael Villanova bore responsibility for the decisions to use ineligible drivers to provide Medicaid services and to submit billings to Medicaid that omitted driver license number and vehicle plate numbers. As the person controlling the MBS bank account that received the payments from Medicaid, Michael Villanova benefited from engaging in unacceptable practices under the Medicaid regulations. Under Title 18 NYCRR § 518.1, the Medicaid Program may recover overpayments for unacceptable practices, such as using ineligible drivers, and for submitting improper claims. Nothing in Title 18 requires

the OMIG to demonstrate that there was a failure to provide services or a failure to pay the ineligible drivers in order for OMIG to recover the overpayments in this case.

### Decision

The ALJ finds correct the decision by the OMIG to recover \$ 851,601.55 in overpayments from the Appellant MBS Transport and the Appellant Michael Villanova. The ALJ also finds correct the decision by the OMIG to exclude the Appellants Michael Villanova and MBS Transport from the Medicaid Program for two years and to exclude the Appellants Lindsay Dantzler and Alona Dantzler from the Medicaid Program for two years. The ALJ overturns the decision by the OMIG to seek exclusion or recovery against the Appellants Richard Villanova and Renee Villanova.

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.

May 21, 2012  
Troy, NY

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James F. Horan  
Administrative Law Judge