

cc: Ms. Daniels Rivera by Scan  
Ms. Mailloux by Scan  
Ms. Bordeaux by Scan  
Ms. Marks by Scan  
BOA by scan  
SAPA File



# Department of Health

KATHY HOCHUL  
Governor

JAMES V. McDONALD, MD, MPH  
Commissioner

JOHANNE E. MORNE, MS  
Executive Deputy Commissioner

June 16, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

Jeffrey Shalke, Esq.  
NYS OMIG  
295 Main Street Suite 753  
Buffalo, New York 14203

Autumn View Health Care Facility, LLC  
4650 Southwestern Boulevard  
Hamburg, New York 14075

Garden Gate Health Care Facility, LLC  
2365 Union Road  
Cheektowaga, New York 14227

Dionne Wheatley, Esq.  
NYS OMIG  
800 North Pearl Street  
Albany, New York 12204

David B. Morgen, Esq.  
Hinman Straub, P.C.  
121 State Street  
Albany, New York 12207

**RE: In the Matters of Autumn View Health Care Facility, LLC and  
Garden Gate Health Care Facility, LLC**

Dear Parties:

Enclosed please find the Decision Without Hearing in the above referenced matters.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB:nm  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of :  
:  
**Autumn View Health Care Facility, LLC** :  
Provider #00764181 :  
**Garden Gate Health Care Facility, LLC** :  
Provider #00475232 :  
:  
from determinations to recover Medicaid Program :  
overpayments. :  
:

**Decision without  
hearing pursuant to  
18 NYCRR 519.23**

#21-2103  
#21-2261

Before: John Harris Terepka  
Administrative Law Judge

Held: Submitted on papers  
Record closed June 6, 2025

Parties: New York State Office of the Medicaid Inspector General  
By: Dionne Wheatley, Esq.

800 North Pearl Street  
Albany, New York 12204  
[dionne.wheatley@omig.ny.gov](mailto:dionne.wheatley@omig.ny.gov)

Jeffrey Shalke, Esq.  
295 Main Street Suite 753  
Buffalo, New York 14203  
[jeffrey.shalke@omig.ny.gov](mailto:jeffrey.shalke@omig.ny.gov)

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Hinman Straub, P.C.  
121 State Street  
Albany, New York 12207  
[dmorgen@hinmanstraub.com](mailto:dmorgen@hinmanstraub.com)

### **JURISDICTION**

The Department of Health acts as the single state agency to supervise the administration of the Medicaid Program in New York State. PHL 201(1)(v); SSL 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to recover improperly expended Medicaid funds. PHL 30, 31, 32. The OMIG issued final audit reports for Autumn View and Garden Gate Health Care Facilities (the Appellants) in which the OMIG determined to seek restitution of Medicaid Program overpayments. The Appellants requested hearings pursuant to SSL 145-a and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the overpayment determinations. Hearings were scheduled for April 24 (Garden Gate) and April 25 (Autumn View), 2025.

On April 24 and 25, 2025, the Appellants submitted requests for decisions without hearing pursuant to 18 NYCRR 519.23. The Appellants share common ownership, and by letter dated May 15, 2025, the parties mutually agreed and requested that the hearings be consolidated. The OMIG submitted its response to the 18 NYCRR 519.23 requests on June 6, 2025.

With their requests for a decision without hearing, the Appellants submitted the OMIG's draft audit reports, Appellant responses thereto, and the final audit reports as their Exhibits 1-3; facility floor plans as Exhibit 4; and an affidavit of Thomas P. Dobiesz dated April 22, 2025. The Appellants also submitted the hearing decisions, transcripts, and exhibits from previously held and decided audit hearings of two other facilities under common ownership with the Appellants: North Gate Health Care Facility, LLC (#21-4541, hearing decision issued March 12, 2025, ALJ Kathleen Dix); and Harris Hill

Nursing Facility, LLC (#22-2476, hearing decision issued March 21, 2025, ALJ Kathleen Dix). The OMIG submitted Exhibits A-C with its response.

### **SUMMARY OF FACTS**

1. Autumn View Health Care Facility, LLC is a 230-bed residential health care facility (RHCF), or nursing home, in Hamburg, New York. Garden Gate Health Care Facility, LLC is a 184-bed RHCF in Cheektowaga, New York. They are licensed under PHL Article 28 and enrolled as providers in the Medicaid Program.

2. Auditors from the OMIG reviewed the capital portion of the Appellants' Residential Health Care Facility cost reports (RHCF-4) for the period January 1, 2014 through December 31, 2017. The reported costs were the basis for the capital component of the Appellants' January 1, 2016 through December 31, 2019 Medicaid reimbursement rates. (Exhibit 1.)

3. By final audit report dated August 14, 2023, the OMIG identified property disallowances and advised Autumn View of its determination to recover Medicaid Program overpayments in the amount of \$244,889. By final audit report dated November 6, 2023, the OMIG advised Garden Gate of its determination to recover overpayments in the amount of \$322,185. (Exhibit 3.)

4. In this appeal, the Appellants challenge six audit report findings that resulted in property cost disallowances:

1. Capitalization of employee wages disallowed. (Audit disallowance 3.)
2. Disallowance of return of equity and real estate taxes for home office and training center. (Audit disallowances 2, 3 and 4b.)
3. Disallowance of business interruption insurance as a property cost. (Audit disallowance 1a.)
4. Disallowance of real estate taxes for leased parking lots. (Audit disallowance 4b.)

5. Disallowance of water and sewer charges as a property cost. (Audit disallowance 4a.)
6. Disallowance of snow removal and other storm related costs as a property cost. (Audit disallowance 3.)

### ISSUE

Have the Appellants established that the OMIG's audit report property cost disallowances are not correct?

### APPLICABLE LAW

A residential health care facility can receive reimbursement from the Medicaid Program for costs that are properly chargeable to necessary patient care. 10 NYCRR 86-2.17. As a general rule, these kinds of costs are reimbursable if they are actually incurred and the amount is reasonable. Allowable costs shall not include expenses or portions of expenses reported by individual residential health care facilities which are determined by the commissioner not to be reasonably related to the efficient production of service because of either the nature or amount of the particular item. 10 NYCRR 86-2.17(d).

The facility is reimbursed by means of a per diem rate established by the Department in a rate setting computation that reflects costs reported by the facility. PHL 2808; 10 NYCRR 86-2.10. Allowable costs include operating expenses such as employee wages and benefits for administration and patient care, supplies, maintenance and utility costs. 10 NYCRR 86-2.10(a)(7). They can also include property costs such as depreciation, leases and rentals, insurance and necessary interest on current and capital indebtedness. 10 NYCRR 86-2.10(a)(9), 86-2.19, 86-2.20, 86-2.21. Operating and property costs are separately reported and reimbursed as separate components of the facility's rate. 10 NYCRR 86-2.10(a)(7), (b)&(g).

The facility's rate is provisional and its cost reports are subject to audit. 18 NYCRR 517.3(a). The facility is required to prepare and to maintain contemporaneous records demonstrating its right to receive payment; to keep all records necessary to disclose the nature and extent of services furnished; and to furnish records to the Department upon request. 18 NYCRR 504.3(a).

If an audit identifies an inaccurately reported cost the Department can retroactively adjust the facility's rate. SSL 368-c; 10 NYCRR 86-2.7; 18 NYCRR 517.3(a). The Department may then require the repayment of any amounts not authorized to be paid under the Medicaid Program. 18 NYCRR 504.8, 518.1. If the Department determines to recover an overpayment, the facility has the right to an administrative hearing at which the facility has the burden of showing that the determination of the Department was incorrect and that all costs claimed were allowable. 18 NYCRR 519.18(d)(1).

DSS regulations pertinent to this hearing are found at 18 NYCRR Parts 517, 518 and 519, and address the audit, overpayment and hearing aspects of this case. Also pertinent are DOH regulations at 10 NYCRR Part 86-2 (reporting and rate certifications for RHCs). Unless otherwise provided in Part 86-2 or in accordance with specific determination by the commissioner, allowable costs are determined by the application of the principles of reimbursement developed for determining payments under the Medicare Program. 10 NYCRR 86-2.17(a). These are primarily found at 42 CFR Chapter IV, and in the Medicare Provider Reimbursement Manual (PRM-1).

### DISCUSSION

The Appellants dispute all or part of disallowances 1-4 in the final audit reports. The disallowances are identical for both facilities except for the dollar amounts disallowed. Audit report disallowances 5-8 are not disputed.

In their applications for a decision without hearing, the Appellants submitted and rely upon the hearing records in two previous audit hearings, North Gate and Harris Hill, to establish the relevant facts and issues for five of the six audit findings they challenge:

[Autumn View and Garden Gate are] related by common ownership other [sic] nursing homes, including [North Gate and Harris Hill]. OMIG audited the capital rates for these facilities for similar rate years... The matters concerned the same factual and legal issues, except snow removal. In the interests of judicial economy, this matter is being submitted for a decision without a hearing based upon the testimony and evidence from the North Gate and Harris Hill proceedings, with additional information concerning the snow removal disallowance. (Appellant submissions, page 3.)

The Appellants themselves, then, rely entirely upon the North Gate and Harris Hill hearing records and offered no evidence to distinguish any pertinent facts in these audits from them. The hearing decision in North Gate addressed and decided four of the audit determinations challenged by the Appellants. Harris Hill addressed and decided a fifth.

As was discussed in the prior hearing decisions, the Appellants 1) capitalized employee wages, which are an operating cost; 2) reported real property costs associated with offsite buildings that they failed to document had been approved by the Department for inclusion in their capital reimbursement; 3) reported the cost of business interruption insurance as a property rather than operating cost; 4) reported real estate taxes in connection with parking lot leases that were not reimbursable as a capital cost; and 5) reported water and sewer charges, which are operating costs, as property costs.



1. The Appellants capitalized employee wages, which are an operating cost. The wages in question were for employees of The McGuire Group, a related party under common ownership with the Appellants, not an outside contractor. As was pointed out in the North Gate decision:

The issue is not whether [generally accepted accounting principles] allow wages to be capitalized. The issue is whether salaries or wages can be classified as a capitalized expense for purposes of Medicaid reimbursement. (North Gate at 15.)

OMIG's reliance on its Accounting and Reporting Manual, which permits capitalization of payments to outside contractors for capital projects, but not of payments to employees, was a reasonable application of the pertinent Medicaid reimbursement regulations.

2. The McGuire Group maintained a home office and a leased training center in separate locations. The home office and training center were used by the Appellants and by other nursing homes in The McGuire Group for administrative and staff training purposes. The Appellants claimed property costs for the offsite home office and training center properties. As was discussed in North Gate, the Appellants failed to establish and document that these offsite properties had been approved by the Department for inclusion in their capital reimbursement.

The Appellants themselves, in their responses to the draft audit reports, acknowledged that the home office had not been approved by the Department:

Notwithstanding the foregoing, in the event OMIG continues to disallow these costs, the resulting rate will remain subject to further adjustment in the event DOH approval for the McGuire Office is obtained. (Appellant Exhibit 2, page 21.)

The final audit reports then confirmed, after OMIG review of the Appellants' responses:

Per the Bureau of Nursing Home and Long Term Care Rate Setting (BNHLTCRS), the provider's original Certificate of Need (CON) included office space that was allocated within the nursing facility; therefore, the relocation of the

administrative offices outside of the nursing facility without approval from BNHLTCRS is not an allowable cost. (Appellant Exhibit 3, Autumn View page 113, Garden Gate page 117.)

The Appellants suggest (submission, page 22) that as proprietary rather than not-for-profit facilities they were somehow not required to obtain Department approval for the offsite properties to be reimbursed in the capital component of their rates. The pertinent regulation for capital reimbursement of proprietary facilities is replete with provisions requiring commissioner approval for capital costs. 10 NYCRR 86-2.21(a)&(e). The offsite home office and offsite training center are additions to the Appellants' nursing home plants and so are capital improvements within the meaning of 10 NYCRR 86-2.21(a)(9), which require Department approval to be included in capital reimbursement.

The Appellants were unable to document that the offsite home office or training center were approved for capital reimbursement as distinguished from reimbursement received in the Appellants' operating rates for administrative and patient care activities that may have been performed at those locations.

3. The Appellants reported the cost of business interruption insurance as a property rather than operating cost. As was discussed in the North Gate decision, the Appellants failed to show their business interruption insurance or any part of it was for the purpose of replacement of depreciable assets. PRM 2806.2.

4. As was also discussed in North Gate, the Appellants reported real estate taxes for leased parking lots that were not reimbursable as a capital cost. 10 NYCRR 86-2.21(f)(3). The Appellants did not incur or pay these taxes. They paid rent to the owner of the property, who was responsible for and paid the taxes.

5. As was discussed in Harris Hill, the Appellants reported water and sewer usage charges, which are operating costs and not taxes, as property costs.

The Appellants have offered nothing to distinguish the facts and audit findings in this proceeding from the facts and findings in North Gate and Harris Hill and offer no persuasive reason why a different result should be reached. For the reasons set forth in the North Gate and Harris Hill decisions, the five challenged findings are also affirmed herein.

The sixth audit finding challenged by the Appellants and not addressed in North Gate or Harris Hill, was the disallowance of “snow removal and other storm related costs” (Dobiesz affidavit, point 13) as capital costs. The OMIG correctly determined that these were operating costs and not properly reimbursable in the capital component of the rate.

The Appellants’ assertions “Autumn View and Garden Gate did not report to, nor did they seek reimbursement from, the Medicaid program for the snow removal or resident relocation costs” (Dobiesz affidavit, point 18), and that they “never reported these costs to the Medicaid Program, and received no payment for these costs as part of [their] capital rate” (Appellant submission, pages 32-33), are disingenuous. The snow removal and other costs were paid for out of a property insurance claim for roof damage. As the OMIG’s final audit reports pointed out, this is precisely why the disallowances are correct because the Appellants’ cost reporting was, in effect, an attempt to shift costs from the operating to the capital component of the rate:

[T]he insurance proceeds received in relation to the damaged roof, totaling \$176,112, should have been used to offset the cost of the new roof and any miscellaneous repairs. However, the insurance proceeds were first used to reimburse snow removal and staff costs, totaling \$78,191, which are considered

operating expenses. By doing this, the Provider lowered the insurance proceeds offset to the calendar year 2016 real property additions by \$78,191. (Exhibit 3, Autumn View Final Audit Report attachment F.)

[T]he insurance proceeds received in relation to the damaged roof, totaling \$372,035, should have been used to offset the cost of the new roof and any miscellaneous repairs. However, the insurance proceeds were first used to reimburse snow removal costs, relocation costs, staff incidental costs, and miscellaneous costs, totaling \$235,497, which are considered operating expenses. By doing this, the Provider lowered the insurance proceeds offset to the calendar year 2016 real property additions by \$235,497. (Exhibit 3, Garden Gate Final Audit Report attachment F.)

The Appellants' assertion "OMIG's justification for disallowing these never-billed amounts was that the charges should not have been reimbursed by the property insurance" (Appellant submission, page 2) is not accurate. The justification is that the proceeds of property insurance were applied to operating instead of property costs, thereby artificially increasing the net reported property costs.

The Appellants' cost reports in effect shifted the cost of "snow removal and other storm related costs" from operating to property costs. As was pointed out in the Harris Hill hearing decision with regard to water and sewer charges, reclassifying a cost from operating to property does not result in the same reimbursement either way. The OMIG's disallowances were correct.


The Appellants' requests for a decision without hearing and the OMIG's response evidence no unresolved material issue of fact and the Appellants' requests are accordingly granted. The final audit report findings are affirmed.

**DECISION:**

The OMIG's audit report property expense disallowances are affirmed.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Rochester, New York  
June 13, 2025

  
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John Harris Terepka  
Bureau of Adjudication