

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

March 12, 2025

CERTIFIED MAIL/RETURN RECEIPT

Thomas Smith, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

North Gate Health Care Facility, LLC
7264 Nash Road
North Tonawanda, New York 14120

David B. Morgen, Esq.
Hinman Straub
121 State Street
Albany, New York 12207-1693

RE: In the Matter of North Gate Health Care Facility, LLC

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

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,

A handwritten signature in black ink that reads "Natalie J. Bordeaux". The signature is written in a cursive, flowing style.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Appeal of

North Gate Health Care Facility, LLC
Medicaid Provider #00688546

from a determination to recover Medicaid
Program overpayments.

COPY

**DECISION
AFTER
HEARING**

Audit No. 21-4541

Before: Kathleen Dix
Administrative Law Judge

Hearing date: July 30, 2024
By WebEx Videoconference
Record closed October 11, 2024

Parties: NYS Office of the Medicaid Inspector General
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Albany, New York 12204
By: Thomas Smith, Esq.
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JURISDICTION

The New York State Department of Health (the Department) acts as the single state agency to supervise the administration of the Medical Assistance (Medicaid) Program in New York State. 42 USC 1396a; Public Health Law (PHL) § 201(l)(v); Social Services Law (SSL) § 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is authorized to investigate and pursue civil and administrative enforcement actions to recover improperly expended Medicaid funds. PHL §§ 31-32.

The OMIG determined to recover Medicaid Program overpayments from North Gate Health Care Facility, LLC (the Appellant) for the rate period January 1, 2016 through December 31, 2020. The Appellant requested this hearing pursuant to SSL § 145-a and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the overpayment determination.

HEARING RECORD

OMIG Witnesses:	Anthony Paolucci, Auditor 3 (Medicaid)
OMIG Exhibits:	OMIG 2-7, 12, 15, 17, 19, 20
Appellant Witnesses:	[REDACTED], former president of The McGuire Group Ralph Rosso, CFO of The McGuire Group [REDACTED], CPA, Freed Maxick, CPAs
Appellant Exhibits:	App 1-11

A transcript of the hearing was made. (Transcript [Tr.] pages 1-211.) The record closed on October 11, 2024. Each party submitted two post-hearing briefs.

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was a proprietary residential health care facility (RHCF), or nursing home, in North Tonawanda, New York, licensed under PHL Article 28 and enrolled as a provider in the Medicaid Program. (Exhibits *OMIG 3, OMIG 4*; Tr. 6, 19.)
2. The Appellant receives a daily rate for each Medicaid recipient occupying a bed in its facility. (Exhibits *OMIG 3, OMIG 4*; Tr. 8, 17, 46-47.)
3. In August 2021, the OMIG commenced an audit of the capital portion of the Appellant's RHCF cost reports for each of the calendar years 2014 through 2018. These cost reports (form RHCF-4) are the basis for the capital portion of the daily rate from the Medicaid Program for the period January 1, 2016 through December 31, 2020. (Exhibits *OMIG 3, OMIG 4*; Tr. 18-20; OMIG's brief, page 4, Appellant's brief, page 2.)
4. On January 30, 2023, the OMIG issued a draft audit report (DAR) which identified eight categories of disallowances for claimed property expenses and proposed to recover an estimated Medicaid overpayment of \$263,714. The DAR advised the Appellant, pursuant to 18 NYCRR 517.5, that it was entitled to submit objections to the proposed action, which objections were required to include any additional material or documentation that the Appellant wished to be considered. (Exhibit *OMIG 3*; Tr. 24-25.)
5. On May 1, 2023, the Appellant submitted its objections to the DAR. (Exhibit *OMIG 4*; Tr. 26-27.)
6. On November 6, 2023, the OMIG issued a final audit report (FAR) which advised the Appellant that upon review of its response to the DAR, it had reduced the overpayment to \$247,555. (Exhibit *OMIG 5*; Tr. 28-29.)

7. By letter dated November 20, 2023, the Appellant requested this hearing to review the determination and findings set forth in the FAR. (Exhibit *OMIG* 6.)

8. The parties having resolved all other findings in the FAR, the only audit determinations remaining for resolution in this hearing decision are:

Property Expense Disallowance 1(a) & (b): Insurance premiums for business/income interruption insurance and for property insurance for related company buildings.

Property Expense Disallowance 2: Rental expenses pertaining to parking lots and related company training center, and losses on the disposal of luxury vehicles.

Property Expense Disallowance 3: Return of equity for relocation of functions outside of the nursing facility.

Property Expense Disallowance 4(b): Real estate taxes pertaining to parking lots and related company buildings.

(Tr. 62; OMIG's brief, page 5.)

ISSUES

Was the OMIG's determination to disallow premiums for business income/interruption insurance and for property insurance for related company buildings as a capital expense correct?

Was the OMIG's determination to disallow return of equity for related company buildings used for administrative functions of the nursing facility as a capital expense correct?

Was the OMIG's determination to disallow rental expenses and real estate taxes pertaining to a leased parking lot and related company buildings, and losses on the disposal of luxury vehicles, as a capital expense correct?

APPLICABLE LAW

Residential health care facilities (also referred to as nursing homes in other applicable state regulations) are eligible for reimbursement by payment of a Medicaid daily rate billable for resident beds occupied by Medicaid recipients. 10 NYCRR 86-2.10. The per diem rate is established by the Department's Bureau of Nursing Home and Long-Term Care Rate Setting in a computation that reflects costs reported by the facility annually in a cost report (form RHCF-4). 10 NYCRR 86-2.2. "The completion of the financial and statistical report forms shall be in accordance with generally accepted accounting principles (GAAP) as applied to the [RHCF] unless the reporting instructions authorized specific variation in such principles." 10 NYCRR 86-2.4. See, PHL § 2808.

A facility's basic rate is comprised of four separate and distinct cost components: (a) direct; (b) indirect; (c) noncomparable, and (d) capital. 10 NYCRR 86-2.10(b)(1)(ii). Operating costs are comprised of the direct, indirect and noncomparable components and include expenses such as employee wages and benefits for administration and patient care, supplies, maintenance and utilities. 10 NYCRR 86-2.10(a)(7). The capital component of the rate is facility-specific, and includes depreciation, leases and rentals, interest on capital debt, and the costs of major moveable equipment. 10 NYCRR§ 86-2.10(a)(9)&(g), § 86-2.19, § 86-2.20, § 86-2.21 and § 86-2.22. Operating and capital (property) costs are reimbursed in separate components of the facility's rate. 10 NYCRR 86-2.10(a)(7),(b)&(g).

An RHCF 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. Except as otherwise provided in 10 NYCRR Subpart 86-2, allowable costs shall be determined by the application of the principles of reimbursement developed for determining payments under title XVIII of the Federal Social Security Act (Medicare) Program. 10 NYCRR 86-2.17(a). The Provider Reimbursement Manual (PRM-1) prepared by the Centers for Medicare and Medicaid Services (CMS) offers detailed explanations regarding provider costs deemed allowable under the Medicare Program. Additionally, in preparing and submitting its uniform reports, all nursing homes in New York State are required to adopt the policies, methodologies and practices contained in the *New York State Residential Health Care Facility Accounting and Reporting Manual* (RHCF ARM).

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).

A facility's rate of payment is provisional and subject to audit. 10 NYCRR 86-2.7. The Department may adjust a payment rate retroactively if an audit determines that costs were inaccurately or improperly reported or are otherwise not includible in the Medicaid rate. SSL § 368-c; 10 NYCRR 86-2.7; 18 NYCRR 517.3. Upon completion of an audit, the Department may require the repayment of any amounts not authorized to be paid by the Medicaid Program. 18 NYCRR 518.1.

If the Department determines to recover an overpayment, the facility has the right to an administrative hearing. 18 NYCRR 519.4. At the hearing, 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.

DISCUSSION

The OMIG presented the audit file and summarized the case, as required by 18 NYCRR 519.17. The Appellant is contesting disallowances in four categories of expenditures included in its 2014-2018 cost reports as property expenses.

Business Income/Interruption Insurance – Disallowance 1(a).

Included in the Appellant's 2014, 2015, and 2017 cost reports was the cost of an "add-on" to its property insurance for business interruption, such that in the event the income of the Appellant was interrupted due to the suspension of operation due to physical loss or damage of property, the carrier would pay benefits to the Appellant in lieu of its lost income. The OMIG disallowed the cost of the business income/interruption insurance from the Appellant's capital related costs finding that the insurance did not relate to the loss or damage to the Appellant's physical property. The OMIG's position is that it is allowable as an operating expense (Tr. 31-35, 90-91; Exhibit *OMIG 12*, bates page 194; Exhibit *App. 6*, bates page NG220; CMS Pub 15-1 Chapter 21, § 2161(A)(3) and Chapter § 28, § 2806.2(d);

<https://www.cms.gov/regulations-and-guidance/guidance/manuals/paper-based-manuals-items/cms021929>.)

The Appellant disagrees and contends that its business income/interruption insurance premiums are reimbursable capital costs. The Appellant argues that while operating expenses would "naturally decrease" when operations are interrupted, the

capital costs do not fluctuate based upon patient volume and it will still be obligated to pay ordinary capital expenses if its business is interrupted due to building damage. Consequently, the “business [income/]interruption insurance benefits [would] primarily [be] used for capital expenses.” (Appellant’s brief, pages 20-22; Appellant’s reply brief, page 2; Tr. 149, 158; PRM-1 §§ 2161 and 2806.2.)

While the Appellant is correct that the PRM-1 permits reimbursement for business income (interruption) insurance, (PRM-1 § 2161(A)(3)), as explained in PRM-1 § 2806.1(F), if an insurance policy provides protection to pay capital-related costs in the case of business interruption, only that portion of the premium(s) to pay capital related costs is includable in capital-related costs. Insurance to provide protection “other than for the replacement of depreciable assets or to pay capital-related costs in the case of business interruption” is excluded from capital related costs and may only be considered for reimbursement in the operating component of the rate. PRM-1 § 2806.2(d); See, Matter of Sprain Brook Manor Rehab, LLC, Audit Number: 17-5242, April 5, 2022 (ALJ Bordeaux).

The Appellant contends that this case is distinguishable from Sprain Brook, *supra*, because in Sprain Brook, the ALJ found that there was no supporting documentation for the presumption that pay-outs from the Appellant’s policy would be used to pay capital-related costs in the event of business interruption, but that here we have the testimony of Ralph Rosso, CFO of TMG, that the revenue from this insurance would cover the Appellant’s normal capital and operating expenses. (Appellant’s reply brief, page 2.)

The Appellant offered no documentation to show that the Appellant’s business income insurance has a specific provision for reimbursement of capital-related costs, or

that it limits the Appellant's use of insurance proceeds for capital-related costs. In fact, Mr. Rosso testified that the proceeds would be used for operational expenses. Despite the Appellant's contention that its operational costs would decrease if there was physical damage to its facility, there is no way to accurately divide business interruption insurance premiums between operational and capital losses because the amount and category of any loss sustained is unpredictable.

The Appellant's position is incompatible with the reimbursement principles set forth in the PRM-1. As such, the OMIG's determination to disallow the Appellant's business income/interruption insurance premiums as a property cost is sustained.

Related Company Real Property Costs - Disallowances 1(b), 2, 3 and 4(b).

- Offsite Property Building Improvement Expenses/Return of Equity
 - *Previous Audit*

The Appellant contends at the outset that the "OMIG is seeking in this audit to disallow capital reimbursement amounts it previously audited and allowed" because the OMIG "allowed" home office and training center return of equity costs in Audit # 16-3159 for rate years 2012 through 2016, and that disallowing those costs in this audit "exceeds the scope" of the audit letter. (Appellant's brief, pages 18, 19.) The scope of the present audit, as set forth in the audit letter, is "the capital portion" of the Appellant's 2016-2020 Medicaid rates, the rate component which includes return of equity costs.

The OMIG performed a previous capital audit of the Appellant, Audit # 16-3159, for rate years 2012 through 2016, which included the rate year 2015 and the 2013 cost report¹. The Appellant's 2013 cost report included expenses related to The McGuire

¹ The real property historical costs, *i.e.*, cost year 2013, were used to calculate the return of equity costs in this audit, # 21-4541.

Group (TMG) / home office and training center. (Tr. 72-74, 87; Exhibit *APP 11*.) The OMIG did not adjust the return of equity costs in Audit # 16-3159 due to the then pending rate appeals. (Tr. 74 -75, 87; Appellant's brief, pages 18-19.)

The Appellant argues that if its 2013 rate appeal had been granted, its capital reimbursement rate would not have decreased, and as such, the then pending rate appeals should not be a justification for treating the rate years in this audit differently than in Audit # 16-3169. (Appellant's brief, pages 19-20.)² The Appellant contends that the vast majority of the return of equity disallowance in this audit is a second review of final previously audited rates. (Appellant's brief, pages 19-20.)

The equity costs in the prior audit cannot be considered "allowed" as they were not audited, and consequently this audit is not a second review of final audited rates. Until such time as it is audited by OMIG, a rate is provisional. 10 NYCRR 86-2.7 The Appellant's return of equity costs for the rate period 2016-2020, were, at the time of this audit, provisional, and the OMIG was fully within its authority to audit the return of equity costs on the Appellant's 2012-2016 cost reports for this audit, # 21-4541.

○ *Current Audit*

During the relevant time period, the Appellant operated its nursing home out of a building at 7264 Nash Road, in North Tonawanda, New York 14120. The Appellant's facility was constructed in the early 1980s and is currently a 200-bed facility. The building houses certain administrative offices, *e.g.*, for the administrator, an admissions coordinator, the director and assistant director of nursing, a social worker and an MDS

² The Appellant attached a copy of its 2013 rate appeal to its brief as Attachment 2. This document was not presented at the hearing and/or offered as an exhibit. The Parties may not offer new documents with their post hearing submissions. Attachment 2 to the Provider's brief was not considered in making this decision, nor will it be made part of the hearing record.

nurse, and contains space for such other administrative functions including a business office, personnel and staffing offices, an education office, a conference room for care planning meetings, and a space to conduct “morning report”. “[T]he “majority of the [Appellant’s] business office work” and many of its administrative functions, including training, admissions, staffing and transportation, were provided by or conducted out of a building separate and apart from the Appellant’s nursing facility (the “home office”) which was owned and maintained by TMG, a related entity to the Appellant due to its common ownership. (Tr. 96, 101-111, 142.) The Appellant’s original Certificate of Need (CON) included office space that was allocated within the nursing home facility. (Exhibit *OMIG* 5, bates page 181; see, Exhibit *App* 1.)

The Appellant included related company capital expenses in its historical costs for the cost year 2013 and related company building improvement costs in its 2014-2018 cost reports. The OMIG disallowed these expenses because the Appellant was unable to provide documentation to demonstrate the relationship to patient care, and was unable to document notification to, or approval from, the Department “for relocation of the administrative offices outside of the facility” and of reported related company real property costs. (Exhibit *OMIG* 5, bates page 170.)

Mr. Paolucci testified that in order for the Appellant to claim property costs for offsite offices on its cost reports, changes in the physical facility or any change in services, the Appellant would need approval from the Commissioner or the Department of Health, and that absent such approval, additions to the Appellant’s real property / capital expenses are not allowable. (Exhibit *OMIG* 5, bates pages 170, 181; Exhibit *OMIG* 17, bates page 371; Tr. 35-36, 38-41, 44, 45, 48; 10 NYCRR 86-2.17(a)); see also, Matter of

The New Jewish Home, Manhattan, Audit # 17-6148 (May 11, 2020, ALJ Terepka), 10 NYCRR 86-2.17(d) and 401.3.

Citing The New Jewish Home, *supra*, the Appellant asserts that it did not need a CON to relocate administrative services, and that “ ‘the Department must review and approve reimbursement for offsite property not already recognized in the CON.’ ” However, the Appellant also argues that it did not “relocate” anything to the home offices and thus did not need prior approval for construction of the home office and training center. (Appellant’s brief, page 17; Appellant’s Reply brief, page 3.)

The Appellant contends that the capital costs of the home office and training center were disclosed to Department on North Gate’s cost reports as related party transactions, that these costs were previously allowed by both the Department and OMIG, and that they are “plainly” related to patient care. The Appellant argues that 10 NYCRR 86-2.17(d) does not apply because the OMIG did not take the position that the home office and training center costs were unreasonable nor is there a Department determination that any of the specific expenses reported by the Appellant were unreasonable. The Appellant further contends that pursuant to 10 NYCRR 86-2.21(e)(4) they are entitled to a return of equity payment, and that PHL § 2808(2-b)(a)(iv) requires that property taxes be included therein. (Appellant’s brief, pages 8, 13-15 (*citations omitted*).)

The Appellant correctly points out that the decision in The New Jewish Home, *supra*, did state that a CON was not needed to relocate administrative services offsite, but that decision held that the OMIG’s determination that the Appellant was required to seek *approval* for reimbursement of property costs attributable to offsite space that were not already recognized in its CON was correctly based on “10 NYCRR 86-2.17(a)&(d),

86-2.19(t) and regulations regarding allowable property costs and revisions in certified rates”. The New Jewish Home, *supra*, at pages 8, 11; (*emphasis added*).

Whether the administrative and training services were “relocated” or were original to the offsite location does not change the analysis. The issue is not whether the Appellant was entitled to move or have some administrative functions offsite. The question is whether, absent Department approval, the Appellant is entitled to add the property costs for the offsite properties, not already recognized in its CON, to its cost reports and then be reimbursed for these additional property costs in its capital rate. (Tr. 38, 40-41, 191; 10 NYCRR 86-2.17(d).)

It is not. Allowable costs shall not include expenses determined by the commissioner not to be reasonably related to the efficient production of service. 10 NYCRR 86-2.17(d). The Appellant’s assertion that including the offsite property costs on its cost reports and the Department having included the same in its calculation of the rate is akin to approval of these costs from the Department is contrary to the entire reimbursement and audit process. As already stated, the rate calculated by the Department, on the basis of the costs reported by the provider, is a provisional rate until an audit is performed and completed. 10 NYCRR 517.3(a)(1). Therefore, submission of costs on a cost report cannot reasonably be deemed to document notification to, and approval from, the Department for the additional property costs incurred for “relocation of functions outside of the nursing facility”. As noted above, these added capital costs were not previously allowed by OMIG in the prior audit. The OMIG’s determination here to disallow return of equity expenses associated with offsite related company property as not determined by the commissioner to be reasonably related to the efficient production

of service, was correct and is affirmed. 10 NYCRR 86-2.17(D). See, The New Jewish Home, supra.

- Capitalized Labor Costs

TMG had employees, including skilled tradesman, who participated in capital improvement projects at facilities owned by TMG. These employees kept a timesheet which captured how much time, if any, they spent involved in a capital project at a particular facility. The Appellant capitalized the labor costs for wages paid to employees of TMG who performed such work for its facility. (Tr. 116-117, 121-122, 124, 133-135.)

The OMIG disallowed these capitalized wages finding that wages should have been expensed as operating costs in accordance with GAAP and the guidelines and definitions included in the RHCF ARM. Mr. Paolucci testified that if the work was performed for an allowable expense by an outside vendor, it would have been an allowable capital cost, but because it was performed by a related company's employees, the cost was an operating, not a capital, cost. (Exhibits OMIG 5, bates page 171; OMIG 15, bates pages 206, *et. seq.*; OMIG 20, bates page 401; Tr. 51-54, 83; OMIG's brief, pages 12-13.)

The Appellant contends that OMIG erred in disallowing its reported capitalized wages, absent a specific Department regulation or decision to the contrary. The Appellant, relying on regulations and the PRM-1, asserts that capital related costs of related organizations may be included in the Appellant's capital costs. (Appellant's brief, page 10 (*citations omitted*).) The Appellant explains that the wages and benefits in question were paid to TMG's employees for capital projects and were treated the same as if paid to an outside vendor performing similar work. (Appellant's brief, page 3

(*citations omitted*.) The Appellant also contends that it was required to capitalize significant “alterations and renovations” and the RHCF ARM does not limit the capitalized costs to materials and exclude associated labor costs. (Appellant’s brief, pages 3, 10 (*citations omitted*); Appellant’s reply brief, page 5.)

The Appellant relies upon the testimony of [REDACTED] CPA, who testified that 10 NYCRR 86-2.4 requires that nursing homes comply with GAAP, that pursuant to ASC 30-10-20, a capital cost may include labor, and thus, not capitalizing labor which is used to construct capital assets would be a departure from GAAP. [REDACTED] testified that he reviewed the regulations, the PRM-1, the RHCF ARM, and the underlying OMIG audit workpapers and found nothing that specifically states or explains the basis of OMIG’s disallowance of capitalized labor costs. (Tr. 173-176, 178-183; *see*, <https://asc.fasb.org>.)

The issue in this case is not whether GAPP allows wages to be capitalized. The issue is whether salaries or wages can be classified as a capitalized expense for purposes of Medicaid reimbursement. 10 NYCRR 86-2.4 states “[t]he completion of the financial and statistical report forms shall be in accordance with [GAAP] as applied to the [RHCF] *unless the reporting instructions authorized specific variation in such principles.* (*Emphasis added.*) A variation is authorized by the RHCF ARM in its Section 2401(E) wherein it states: “[s]alaries and wages are defined as (1) *all remuneration, payable in cash, for services performed by an employee for the nursing home, . . .* [r]eimbursement of independent contractors such as private duty nurses should be excluded.” (RHCF ARM, E. Natural Classification of Expenses, page 2401, (*emphasis added*); Exhibit OMIG 15, bates page 206; OMIG’s brief, pages 12-13.) The RHCF ARM carves out independent contractors from the salary and wages classification. The employees of TMG are not

independent contractors. That is clearly established by the testimony in this record. OMIG's determination that all salary and wages including those of a related company should be reimbursed as an operating expense as indirect costs, and not classified as a property cost, is correct and is affirmed. (See, Tr. 207.)

- Leases

The Appellant entered into lease agreements for a training center and parking lot in 2013 and 2014, respectively. The OMIG disallowed expenses associated with these leased properties (property insurance, real estate taxes and lease payments) as not related to patient care and pursuant to 10 NYCRR 86-2.21(f)(3) which states "[t]he capital cost component shall not be affected by any sale, lease or transfer occurring after March 10, 1975." (Exhibit OMIG 4, bates page 38, OMIG 5, bates page 181; Tr. 43-44, 61, 96, 112-113.)

The Appellant contends that OMIG's disallowance of expenses associated with these leased properties is arbitrary and capricious. The Appellant asserts that it required a larger administrative space than is available in the facility, that the efficiencies of using the home office produced savings for the Medicaid program by keeping "its administrative space within a small footprint" and freeing up space for enhancements to resident care. (Appellant's brief, page 18, *(citations omitted)*.)

With regard to real estate taxes in particular, the Appellant argues that they should be included in its capital costs pursuant to PHL § 2808(2-b)(a)(iv) as it is undisputed that the Appellant had to pay real estate taxes on the parking lot "pursuant to an arm's length lease with an unrelated party" and that these costs are necessary for patient care, *i.e.*, additional parking was needed when the hospice unit was installed to accommodate

additional visitation and staff. (Appellant's brief, page 22, *(citations omitted)*.) The Appellant also argues that real estate taxes are not mentioned in 10 NYCRR 86-2.21, but instead, reference to "taxes" appears in 10 NYCRR 86-2.10(f)(3), which provides for reimbursement of reported "cost of utilities and real estate and occupancy taxes". (Appellant's reply brief, page 7.)

The plain language of 10 NYCRR 86-2.21(f)(3) is clear. Reimbursement for expenses related to leased property is not reimbursable in a facility's Medicaid rate. Notwithstanding other provisions of regulation or statute which allow inclusion of particular expenses in a facility's Medicaid rate, *e.g.*, real estate taxes, the issue here is whether any expenses associated with *leased* property can be included as an expense for Medicaid Program reimbursement. OMIG has determined that leased property expenses cannot be so included and its interpretation of 10 NYCRR 86-2.21(f)(3) "[is] not irrational, arbitrary, capricious or contrary to law". *Matter of Concourse Rehabilitation and Nursing Ctr., Inc. v Zucker*, 217 AD3d 1189 (2023) at page 3 *(citations omitted)*. Thus, OMIG's determination to disallow expenses associated with leased properties is correct and is affirmed.

DECISION

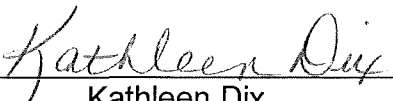
The OMIG's determination to disallow premiums for business income/interruption insurance and for property insurance for related company buildings as a capital expense (disallowances 1(a) & (b)) was correct and is affirmed.

The OMIG's determination to disallow return of equity for related company buildings used for administrative functions of the nursing facility as a capital expense (disallowance 3) was correct and is affirmed.

The OMIG's determination to disallow rental expenses and real estate taxes pertaining to a leased parking lot and related company buildings as a capital expense (disallowances 2 and 4(b)) was correct and is affirmed.

This decision is made by Kathleen Dix, Bureau of Adjudication, who has been designated to make such decisions.

DATED: Menands, New York
March 12, 2025


Kathleen Dix
Administrative Law Judge

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