

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 13, 2025

CERTIFIED MAIL/RETURN RECEIPT

Elliot E. Smeltzer, Esq.
New York State Office of the Medicaid
Inspector General
800 North Pearl Street
Albany, New York 12204

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

RE: In the Matter of Seneca Health Care Center, 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 cursive script that reads "Natalie J. Bordeaux".

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of	:	
	:	
Seneca Health Care Center, LLC	:	Decision without a
Medicaid Provider #00475365,	:	hearing pursuant to
	:	18 NYCRR 519.23
	:	
from a determination to recover Medicaid Program	:	Audit No. 20-1850
overpayments.	:	
	:	

Before: Jeanne T. Arnold
Administrative Law Judge

Parties: New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204
By: Elliot E. Smeltzer, Esq.

Seneca Health Care Center, LLC
2987 Seneca Street
West Seneca, New York 14224
By: David B. Morgen, Esq.
Hinman Straub PC
121 State Street
Albany, New York 12207

JURISDICTION

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. Public Health Law (PHL) § 201(1)(v); Social Services Law (SSL) § 363-a. The New York State Office of the Medicaid Inspector General (OMIG) is an independent office within the Department, responsible for the Department's duties with respect to the recovery of improperly expended Medicaid funds. PHL § 31.

The OMIG issued a final audit report for Seneca Health Care Center, LLC (Appellant) which concluded that the Appellant had received Medicaid Program

overpayments. 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. A hearing was scheduled for March 5, 2025.

On March 5, 2025, the Appellant requested a decision without hearing pursuant to 18 NYCRR 519.23. The OMIG submitted its response to the request on April 16, 2025. With its request, the Appellant submitted Exhibits 1-7 as well as the complete hearing records from Medicaid appeals of two related nursing home facilities, North Gate Health Care Facility LLC (North Gate) and Harris Hill Nursing Facility LLC (Harris Hill). The OMIG submitted Exhibits 1-17 with its response.

SUMMARY OF FACTS

1. The Appellant is a proprietary 160-bed residential health care facility, or nursing home, located at 2987 Seneca Street in West Seneca, New York and is enrolled as a provider in the Medicaid Program. (OMIG Exhibit 3 p 22.)

2. The Appellant, along with other nursing homes including North Gate and Harris Hill, is affiliated with The McGuire Group (TMG). (T North Gate pp 107-109; Appellant Br p 2; OMIG Br p 2.) There is a “common ownership between the corporate (TMG) and the (nursing home) facilities.” (T North Gate p 142.)

3. TMG has a central office or “home office,” where administrative functions of its related nursing homes are performed (T North Gate pp 101-106), and a training center for nursing home staff activities (T North Gate pp 108-110), both located on Delaware Avenue in Buffalo. The costs of maintaining these buildings are allocated between its related nursing homes. (T North Gate p 111.)

4. In January 2020, the OMIG commenced an audit of the Appellant's reported costs which were the basis for the capital component of its Medicaid reimbursement rate for the period January 1, 2016 through December 31, 2018 (Audit No. 20-1850). The costs at issue were reported by the Appellant as capital costs in its Report of Residential Health Care Facility (form RHCF-4) for each of the calendar years January 1, 2014 through December 31, 2016. (OMIG Exhibit 1.)

5. On January 30, 2023, OMIG issued a draft audit report (DAR) finding an estimated Medicaid overpayment of \$474,739, by determining to disallow certain capital costs claimed by the Appellant in its RHCF-4 forms. (OMIG Exhibit 2.) The Appellant responded to the DAR, outlining its disagreements with certain of the OMIG disallowances. (OMIG Exhibit 3.)

6. On November 14, 2023, after review of the Appellant's response to the DAR, the OMIG issued a final audit report (FAR) that identified several disallowances of reported property costs. The OMIG advised the Appellant that these findings had resulted in a determination to recover Medicaid Program overpayments in the amount of \$460,162. (OMIG Exhibit 4.) By letter dated December 6, 2023, the Appellant requested this hearing to review the determination. (OMIG Exhibit 5.)

7. The parties agreed that the issues remaining on appeal include FAR disallowance findings 1-4 and, specifically, the OMIG's disallowances of: (1) TMG employee labor costs (disallowance 3); (2) return of equity and real estate taxes for TMG home office and training center (disallowances 2, 3, 4[b]); (3) return of equity and real estate taxes for a leased parking lot (disallowances 2, 4[c]); (4) premium costs for business

interruption insurance (disallowance 1); and (5) payments for certain sewer/water usage (disallowance 4[a]). (Appellant Br pp 1-2; OMIG Br pp 5-12.)

8. At or around the same time, OMIG also audited the North Gate and Harris Hill facilities. Similar disallowances, made for the same reasons, were already addressed in audits and appeals by North Gate (Audit No. 21-4541), including issues 1-4; and Harris Hill (Audit No. 22-2476), issue 5. The parties agreed that there were no issues of fact concerning the disallowances here and wished to rely on the appeal records of those audits. (Appellant Br pp 2-3; OMIG Br p 2.)

9. The appeals of Audit Nos. 21-4541 and 22-2476 have since been determined. *Matter of North Gate Health Care Facility, LLC*, Audit No. 21-4541, Decision after Hearing (decided March 12, 2025) (OMIG Exhibit 16); *Matter of Harris Hill Nursing Facility, LLC*, Audit No. 22-2476, Decision After Hearing (decided March 21, 2025) (OMIG Exhibit 17).

ISSUE

Has the Appellant established that the OMIG's final audit report disallowing certain property costs was incorrect?

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. Reimbursable costs include operating expenses (10 NYCRR 86-2.10[a][7]) and capital costs (10 NYCRR 86-2.10[a][9], 86-2.19, 86-2.20, 86-2.21).

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. Operating and capital costs are reimbursed in separate components of the facility's rate. 10 NYCRR 86-2.10(a)(7)(b)(g). At issue here are the reported capital costs.

A facility's rate is provisional and subject to audit. If an audit identifies errors in reported costs, the Department can retroactively adjust the facility's rate. SSL § 368-c; 10 NYCRR 86-2.7; 18 NYCRR 517.3. The Department may then require the repayment of any amounts not authorized to be paid under 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). Either party may request that an appeal from a department determination be decided without a hearing. Such request will be granted when it is determined that no unresolved material issue of fact is involved in the case and that the only questions presented are questions of the department's application of the law or its regulations, whether the department failed to perform a duty required by law or whether the department's determination was arbitrary and capricious or an abuse of discretion as to the sanction imposed. 18 NYCRR 519.23(a).

DISCUSSION

The Appellant disputes the OMIG's disallowance, on audit, of the following items it reported on its 2014, 2015, and 2016 RHCF-4 property cost reports: (1) TMG employee labor costs; (2) return of equity and real estate taxes for TMG home office and training center; (3) return of equity and real estate taxes for a leased parking lot; (4) premium costs for business interruption insurance; and (5) payments for certain sewer/water usage. The

Appellant requested that its appeal be decided without a hearing, as the matters “concern[] the same factual and legal issues” as the North Gate and Harris Hill hearings. (Appellant Br, p 2.)

In its North Gate audit no. 21-4541, the OMIG disallowed expenses including (1) TMG employee labor costs (disallowance 3); (2) return of equity and real estate taxes for TMG home office and training center (disallowances 2, 3 and 4b); (3) return of equity and real estate taxes for a leased parking lot (disallowances 2 and 4c); and (4) premium costs for business interruption insurance (disallowance 1), all claimed by related facility North Gate as property expenses in its cost reports for each of the calendar years 2014-2018. North Gate appealed and the OMIG’s findings were sustained, in total, and its final audit report was affirmed. *Matter of North Gate Health Care Facility, LLC.*, Audit No. 21-4541, Decision after Hearing (March 12, 2025). (OMIG Exhibit 16.) The Appellant did not choose to distinguish any of the pertinent facts and audit findings in North Gate from the facts and issues in this audit. Indeed, its application for this decision without hearing, pursuant to 18 NYCRR 519.23, relies on the assertion that the facts and issues are the same in both audits and appeals. (Appellant Br, p 2.) Therefore, the OMIG’s findings herein likewise are affirmed. *Matter of North Gate, supra*. The Appellant did not meet its burden to prove that the OMIG’s findings were incorrect.

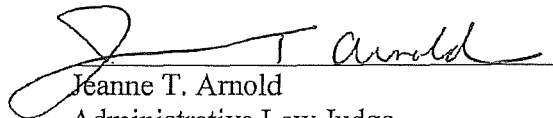
In its Harris Hill audit no. 22-2476, the OMIG disallowed an expense for payments made on a tax bill which included certain sewer/water usage charges reported by Harris Hill as a property expense, instead finding it an operating expense (disallowance 4a). Harris Hill appealed and OMIG’s disallowance was affirmed. *Matter of Harris Hill Nursing Facility, LLC*, Audit No. 22-2476, Decision After Hearing (March 21, 2025). (OMIG

Exhibit 17.) The Appellant did not choose to distinguish any of the pertinent facts and the audit finding in Harris Hill from the facts and issue here. Indeed, its application for this decision without hearing, pursuant to 18 NYCRR 519.23, relies on the assertion that the facts and issue are the same in both audits and appeals. (Appellant Br, p 2.) Therefore, the OMIG's finding herein is affirmed. *Matter of Harris Hill, supra*. The Appellant did not meet its burden to prove that the finding was incorrect.

DECISION

The OMIG's final audit report disallowing certain property costs is affirmed.

DATED: Rochester, New York
 June 12, 2025


Jeanne T. Arnold
Administrative Law Judge

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