

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

In the Matter of the Appeal of	:	
	:	
<b>Wingate of Ulster d/b/a Taconic</b>	:	<b>Decision After</b>
<b>Rehabilitation and Nursing at Ulster</b>	:	<b>Hearing</b>
Provider #01739142	:	
	:	
from a determination to recover Medicaid Program	:	
overpayments.	:	#21-3488
	:	

Before: John Harris Terepka  
Administrative Law Judge

Held: November 26, 2024  
By videoconference  
Record closed February 17, 2025

Parties: New York State Office of the Medicaid Inspector General  
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### **JURISDICTION**

The New York State Department of Health acts as the single state agency to supervise the administration of the Medicaid Program in New York State. 42 USC 1396a; PHL 201(1)(v); SSL 363-a. The New York State Office of the Medicaid Inspector General (OMIG), an independent office within the Department, is responsible for the Department's duties with respect to the prevention, detection and investigation of fraud and abuse in the Medicaid Program and the recovery of improperly expended Medicaid funds. PHL 31.

The OMIG issued a final audit report for Wingate of Ulster d/b/a Taconic Rehabilitation and Nursing at Ulster (the Appellant) in which the OMIG concluded that the Appellant had received Medicaid Program overpayments. The Appellant requested a 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: Sheroldeen Masters, OMIG audit supervisor  
OMIG exhibits: A-N  
Appellant witnesses: [REDACTED] consultant  
[REDACTED], Appellant's receiver  
Appellant exhibits: 12-16, 19, 22, 43, 44, 48, 49

A transcript of the hearing was made. (Transcript, pages 1-184.) The parties each submitted two post hearing briefs and the record closed on February 17, 2025.

### **SUMMARY OF FACTS**

1. The Appellant is a 120-bed proprietary residential health care facility (RHCF), or nursing home, in Highland, New York. It is licensed under PHL Article 28 and enrolled as a provider in the Medicaid Program.

2. Auditors from the OMIG reviewed the capital portion of the Appellant's Residential Health Care Facility cost reports (RHCF-4) for the period January 1, 2014 through December 31, 2018. These reported costs were the basis for the capital portion of the Appellant's January 1, 2016 through December 31, 2020 Medicaid reimbursement rates. (Exhibit A.)

3. The OMIG issued a draft audit report dated May 2, 2023 that identified several property expense disallowances and advised the Appellant of its determination to recover Medicaid Program overpayments in the amount of \$1,030,104. (Exhibit C.)

Property expense disallowance 1 stated:

**1. Mortgage Expense and Return of Equity Adjustments**

Providers receiving payments on the basis of reimbursable costs are required to provide adequate cost data based on financial and statistical records that can be verified on audit. Cost data must be current, accurate, and in sufficient detail. Since the Provider was unable to provide sufficient documentation to substantiate the reported expenses related to debt incurred by the landlord, mortgage interest and mortgage amortization expenses were disallowed. Accordingly, the return of real property equity was adjusted to reflect the change in the mortgage and accumulated reimbursement. Additionally, historical cost was adjusted to eliminate costs not supported by documentation and operating costs. These revisions resulted in adjustments to the return of real property equity.

4. On July 31, 2023 the Appellant submitted a response to the draft audit report, objecting to the mortgage expense and return of equity adjustments. (Exhibit D.)

5. On August 7, 2023, upon reviewing the Appellant's response, the OMIG requested additional information to verify and document mortgage payments to MLD Financial Capital Corporation. (Exhibit E.)

6. On August 15, 2023 the Appellant provided additional documentation, including the statement:



... the current property owner (CCP Ulster 1743 LLC) and the mortgagor (MLD Financial Capital Corporation), are affiliated entities... because the mortgagor and mortgagee were affiliates, there was no necessity for the mortgagor to write checks or maintain a separate bank account. Payments on the underlying loan were made via intercompany adjustments. (Exhibit F.)

7. By final audit report dated November 14, 2023, the OMIG advised the Appellant of its determination to recover Medicaid Program overpayments in the amount of \$1,025,676. (Exhibit G.) An addendum reflecting the OMIG's consideration of the response to the draft audit report stated:

The Provider submitted a copy of the 2011 mortgage agreement with their response to the draft report on August 15, 2023... The Provider's response indicates that both the mortgagor and the mortgagee were affiliates... the payments made to an affiliated entity via intercompany adjustments are not allowable. According to 10 NYCRR Section 86-2.20(b) and PRM-1 Section 218, interest expense that is paid to a lender related through control, ownership, affiliation, or personal relationship to the borrower is not allowable, except in instances where prior approval of the Commissioner of Health has been obtained. The Provider did not submit any evidence of their disclosure and notification to the Department of Health (DOH), or approval from the Department of Health, to obtain a loan from an affiliated entity. Therefore, the disallowances to Mortgage Interest and Mortgage Amortization remain unchanged. (Exhibit G, page 271.)

The final audit report did make a minor adjustment to the return of equity based upon submitted documentation of building improvements, which accounts for the \$4,428 difference between the draft and final overpayment figures. (Exhibit G, page 272.)

### **ISSUE**

Has the Appellant established that the OMIG's audit report property expense disallowance 1 is not correct?

### **APPLICABLE LAW**

Medicaid providers are required, as a condition of their voluntary enrollment in the program, to prepare and to maintain contemporaneous records demonstrating their right to receive payment from the Medicaid Program and fully disclosing the nature and



extent of the care, services and supplies they provide; and to furnish such records, upon request, to the Department. All fiscal and statistical records and reports of providers which are used for the purpose of establishing rates of payment and all underlying records and documentation which formed the basis for such records and reports are subject to audit. 18 NYCRR 504.3(a)&(h), 504.8, 517.3(a), 540.7(a)(8).

An RHCF can receive reimbursement from the Medicaid Program for costs that are properly chargeable to necessary patient care. 10 NYCRR 86-2.17. Allowable costs can include a component for capital costs such as, in this case, depreciation, leases and rentals, and necessary interest on current and capital indebtedness. 10 NYCRR 86-2.10(a)(9), 86-2.20(a). Allowable costs shall not include the interest paid to a lender related through control, ownership, affiliation or personal relationship to the borrower, except in instances where the prior approval of the Commissioner of Health has been obtained. 10 NYCRR 86-2.17(l).

The facility is reimbursed by means of a per diem rate set by the Department on the basis of costs reported by the facility. 10 NYCRR 86-2.10. A facility's rate is provisional and the costs it reports are subject to audit. If an audit identifies an improperly or inaccurately reported cost, the Department can retroactively adjust the rate. SSL 368-c; 10 NYCRR 86-2.7; 18 NYCRR 517.3(a). The Department may then require the repayment of any resulting overpayment. 18 NYCRR 504.8, 518.1. An overpayment includes any amount not authorized to be paid under the Medicaid Program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake. 18 NYCRR 518.1(c). 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 Department of Health (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).

Regarding interest expense for all residential health care facilities, DOH regulations at 10 NYCRR 86-2.20(b) provide:

(b) To be considered as an allowable cost, debt generating interest shall be incurred to satisfy a financial need, and interest expense shall be at a rate not in excess of what a prudent borrower would have had to pay in the money market at the time the loan was made. Also, the interest shall be paid to a lender not related through control, ownership, affiliation or personal relationship to the borrower, except in instances where the prior approval of the Commissioner of Health has been obtained.

### **DISCUSSION**

Because this was an audit of the nursing facility and a ventilator unit, which received separately calculated rates, the audit report allocated the disallowances between those programs. (Transcript, page 62.) The allocation of costs between the programs is not at issue and need not be addressed in this decision. One disallowance category

remains in dispute, Adjustment 1 relating to the mortgage and return of equity adjustments. (Transcript, pages 27-28.)

The draft audit report finding was made on the grounds that the Appellant failed to produce documentation to substantiate its reported mortgage costs. In response to the draft audit finding the Appellant explained that it was leasing the building and the mortgage data was in the possession of the landlord mortgagor. (Exhibit D.) It blamed the current building owner, Sabra Health Care REIT, Inc. a large Real Estate Investment Trust (REIT) that owns over 250 nursing home facilities, whose “sheer portfolio volume hinders quick communication and responsiveness.” (Exhibit D, page 35.) The Appellant produced a summary list of monthly amounts it claimed had been allocated to the mortgage. (Exhibit D, pages 220-224.) The auditors rejected this as documentation of payment because it was just a list of claimed amounts with no documentation of either bills or proof of payment. It advised the Appellant that additional information was needed to support the reported costs. (Transcript, pages 29-31; Exhibit E.)

The Appellant argues it was not required to provide documentation of the mortgage, dates and amounts or proof of payments, and that the OMIG was not entitled to request cancelled checks and bank statements as proof of payment. (Appellant brief, pages 1, 11-13; Transcript, page 13-14.) Providers are required to prepare and maintain proof that reported costs were allowable and actually incurred and must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors. 18 NYCRR 504.3(a); PRM-1 2300, 2304. The OMIG’s request that the Appellant provide documentation to substantiate and verify its reported costs was entirely appropriate, as became even more clear from the Appellant’s subsequent disclosures about those costs.



In its response to the OMIG request, the Appellant explained that its documentation of the reported mortgage costs was not in the form of payments and mortgage statements because of the relationship between its landlord, the owner and mortgagor of the building, and the mortgage lender. The Appellant began leasing the building from Nationwide Health (NHP) in 2006. (Appellant brief, page 5; Exhibit 22, page 197.) In 2011 NHP, the owner, mortgaged it to MLD Financial. The property and mortgagee both subsequently changed hands, but always with the result that the property owner and the mortgagee, MLD, remained affiliated while the Appellant nursing home leased the building from the owner, which is currently CCP Ulster, a subsidiary of Sabra Health Care REIT. (Exhibit F, pages 228-29; Transcript, pages 43-48.) According to the Appellant, because the mortgagor and mortgagee were “affiliated entities” there was no need to document the mortgage payments with “formal monthly statements.” (Exhibit F, page 229.) Instead, “each of the properties paid their mortgage through a what they call an intercompany – intercompany loan.” (Transcript, page 124.)

The Appellant’s explanation in response to the draft audit report for failing to maintain and produce documentation of its reported mortgage costs gave rise to a new issue: The mortgage it was relying on for reimbursement was between related parties. Prior approval for Medicaid reimbursement of interest payments when the borrower and lender are affiliates is required under 10 NYCRR 86-2.17(l) and 86-2.20(b). Upon review of the Appellant’s responses to the draft audit report, the OMIG’s final audit report consequently added as a reason for its audit finding, that loan payments between related parties are not allowable in the absence of prior approval from the Department,

which had not been obtained. The OMIG auditors instead allowed an increase in return of equity on the building cost. (Transcript, pages 30, 101; Exhibit G, attachment G.)

The Appellant argues that it is significant that it was not related to either the borrower or the lender. It first invokes the title to PRM-1 Section 218 to claim: “The PRM concerns loans involving parties related to the *provider* by common ownership or control” (Appellant brief, page 17, *emphasis in original*); and “The PRM-1 section cited by OMIG concerns with whether the lender is related to the nursing home operator (i.e., Wingate), rather than the borrower (the landlord)” (Appellant reply brief, page 7). It then immediately goes on to dismiss the relevance of the PRM-1 to this case by asserting 10 NYCRR 86-2.17(a) provides “the PRM cannot serve as a basis for OMIG to disallow what a State regulation allows,” and pointing out that Part 86-2 allows for the reimbursement of mortgage interest “when approved by DOH.” (Appellant brief, page 17.) 10 NYCRR 86-2.17(a) actually states that the PRM-1 applies “except as otherwise provided” in 10 NYCRR Part 86-2, and the pertinent provisions about approval in Part 86-2 are explicit and unambiguous:

Allowable costs shall not include the interest paid to a lender related through control, ownership, affiliation or personal relationship to the borrower, except in instances where the prior approval of the Commissioner of Health has been obtained. 10 NYCRR 86-2.17(l).

Also, the interest shall be paid to a lender not related through control, ownership, affiliation or personal relationship to the borrower, except in instances where the prior approval of the Commissioner of Health has been obtained. 10 NYCRR 86-2.20(b).

The actual text of PRM-1 Section 218, furthermore and in any event, is also entirely consistent with the language of these state regulations in providing:

One of the elements required for interest to be "proper" is that the interest be paid to a lender not related through control, ownership, or personal relationship to the borrowing organization. PRM-1 Section 218.

The significant issue for this audit adjustment is not whether the Appellant was related to either the lender or borrower, but whether the lender and borrower were related to each other and if so, whether prior Department approval for reimbursement of the debt between them had been obtained.

The Appellant admits that the mortgagor/borrower and mortgagee/lender have always been affiliates. Its cost reports, however, had specifically answered "no" to the question: "Was there any Interest Expense incurred to a lender related through control ownership, affiliation or personal relationship to the borrower?" (Exhibit H, pages 274, 277, 280, 283, 286, 289, 292; Transcript, pages 38-41.) The Appellant claims the Department was nevertheless aware of the relationship between the borrower and lender and approved reimbursement to the Appellant for the debt between them. The Appellant failed to meet its burden of proving that the relationship between borrower and lender in the 2011 mortgage was either disclosed to or approved by the Department.

The Appellant's own consultant witness testified "I don't understand all their accounting." (Transcript, page 131.) He pointed out that while the Appellant reported rent and no mortgage expense on schedule 9 of its cost reports (Transcript, page 134; Exhibit 43, page 793), on schedule 17 of those same reports, in what he called "the nuance here, and again, it's – I maybe should have said at the beginning, it's a rather unusual transaction," it reported the costs of the mortgage between the landlord and its lender as its own mortgage costs. (Transcript, pages 135-136; Exhibit 43, page 815.)



What the Appellant's consultant called a "nuance" is that its cost reports were accurately reporting that it paid rent because it leased the property, but were also reporting that same cost elsewhere on the cost reports as the payment of interest and principle on a mortgage in order to get reimbursement for it. According to the Appellant's consultant, this was an appropriate means of letting the Department know how much to reimburse for this mortgage between related parties, neither of which was the Appellant: "It's the only place in the cost report to communicate that to rate setting." (Transcript, pages 136-138, 155.)

This explains nothing that is in any way in dispute. It only confirms that the Appellant was reporting and seeking reimbursement on its cost reports for an intercompany loan to which it was not a party but in which the borrower and lender were related parties. (Transcript, pages 129-132.) The issue is whether the Department was advised of and gave prior approval to reimbursement of this intercompany loan. The Appellant's consultant simply assumed, without explaining how he knew this or what evidence substantiates it, that the intercompany loan "had been approved for reimbursement" (Transcript, page 136) and that "of course DOH knows because they approved it" (Transcript, page 140).

The Appellant claims that the interest and amortization on the new mortgage which its current receiver described as "completely engineered, as a facilitation" (Transcript, page 172) were approved for reimbursement purposes in a rate appeal it submitted to the Department on March 31, 2011. (Exhibit D, pages 39-42; Exhibit 13; Appellant brief, page 8; reply brief, pages 7-9.) The Appellant claims that because the 2011 rate appeal was approved, "the judgment of the DOH rate setters to approve

Wingate for mortgage interest and principal amortization cannot be overturned on audit.” (Appellant brief, page 15.) If the rate appeal was granted on the basis of a misrepresentation or mistake of fact, however, that determination may be corrected on audit. Where a facility’s reimbursement rates were based upon the submission of false information, the Department may retroactively adjust the rates and recoup overpayments. Westledge Nursing Home V. Axelrod, 68 N.Y.2d 862, 508 N.Y.S.2d 414 (1986).

The Appellant’s consultant witness, [REDACTED] was not involved with the Appellant during the period under review, and was engaged “to try to understand the issues” only after the draft audit report was issued. (Transcript, pages 120-121.) His understanding of the matter came “as I continued to go back and understand this transaction, again, particularly when it wasn’t a client... we again went back and I tried to understand again, why would this transaction have, you know, taken place? And it was very clear to me why that happened.” (Transcript, page 144.)

The Appellant’s story is that in 2011, PHL 2808 was amended in a manner that would reduce the reimbursement for return on and of equity that it had been receiving since 2006. This prompted an arrangement in which the Appellant’s landlord REIT, in the Appellant’s words, “created a refinanced mortgage by loaning money to itself.” (Transcript, page 12.) According to [REDACTED], the purpose of this transaction was to secure reimbursement to the Appellant for a mortgage to which it was not a party in order to make up for the lower reimbursement it would otherwise receive because of the 2011 change in PHL 2808. (Transcript, pages 144-148.)

The Appellant maintains the Department was always complicit in this transaction. It claims: “The ‘tenor’ of the communication makes clear that DOH and Wingate were

‘trying to’ use ‘this new mortgage to ... simulate the return on and return of equity’ amounts that Wingate had received before the statutory change.” (Appellant brief, pages 4-7.) According to the Appellant’s current receiver [REDACTED] who did not become involved with the Appellant until 2022, the 2011 rate appeal shows “the department’s assistance, and collaboration, in order to facilitate rehabilitation of their, of their reimbursement... All of these things were just being engineered in conjunction with the Department to make it allowable to be reimbursed.” (Transcript, pages 166-168.)

It is certainly clear, as was understood by [REDACTED] and [REDACTED], that the purpose of the “completely engineered” 2011 mortgage was to enhance the Appellant’s capital reimbursement. It is not at all clear that the Department was knowingly collaborating with the Appellant in order to accomplish this. If the Department was knowingly collaborating, the 2011 rate appeal could and should have accurately stated that Wingate sought approval and recognition of reimbursement in its Medicaid rate of a mortgage debt in which its unrelated landlord was “loaning money to itself.” The Department could then have decided whether to approve it. Instead, the rate appeal misleadingly represented to the Department that “Wingate at Ulster has refinanced the sale/leaseback transaction on April 1, 2011 by mortgaging the property with a conventional mortgage.” (Exhibit 13, page 154.)

The Appellant points out that until 2006 it did receive reimbursement for interest and amortization on a HUD mortgage its related party owner had given on the property. The Appellant claims the 2011 mortgage at issue: “would ‘essentially’ mirror ‘the formerly recognized debt,’ and “resumed the previous mortgage that was reimbursable.” (Exhibits 12, 49, I; Appellant brief, pages 4-6, 15.) The March 28, 2011 letter it included



by reference in its rate appeal explicitly represented: “Thus, we are essentially reinstating the formerly recognized debt.” (Exhibit 12, page 139.) Essential differences the Appellant ignored then and ignores now, are that its 2011 rate appeal was not in fact about a reinstatement of the formerly recognized debt. It was about an entirely new debt between different parties whose relationship to each other and the Appellant was entirely different than existed for the “formerly recognized debt.”

The “formerly recognized” pre-2006 debt was, as the Appellant stated in its rate appeal, “its HUD mortgage.” (Exhibit D, page 41.) That mortgage had been given by the property owner Continental Healthcare, an entity related to Wingate by common ownership or control, and had been approved for reimbursement by the Department. (Appellant brief, page 4.) The Appellant did not claim and offered no evidence that the lender in the pre-2006 HUD mortgage was related to either Wingate or Continental. (Appellant brief, page 4.)

After entering into a “sale leaseback” transaction with Nationwide (NHP) in 2006, the Appellant was no longer the property owner or an affiliate of the owner, and so was no longer a party to a mortgage. That was why the Department did not recognize the sale leaseback transaction for continued reimbursement of interest and amortization and instead began providing return of and on equity in the Appellant’s capital rate. (Appellant brief, page 5; Exhibit 22, page 197.)

When the Appellant sought approval of reimbursement for mortgage interest and amortization in its 2011 rate appeal, it was still not the property owner or affiliate of the owner or a party to the new mortgage. It sought reimbursement for what it calls a “completely engineered” (Transcript, page 172) new conventional mortgage loan in

which the actual owner, who was unrelated to the Appellant, was as the Appellant said, “loaning money to itself.” (Transcript, page 12.) That the new 2011 conventional mortgage was between related parties was not disclosed or given prior approval.

The Appellant’s argument that “the regulation requires DOH’s ‘prior approval’ before ‘interest’ is ‘paid to a lender’, not before the effective date of the mortgage” (Appellant reply brief, pages 4-5) does not address any issue relevant to this disallowance. The relevant issue is not when either the loan was made or the rate appeal submitted, but whether the rate appeal on which the Appellant relies for its claimed Commissioner’s approval disclosed that the loan for which the reimbursement approval was sought was between related parties.

Communications with Department rate setting staff that the Appellant relies on do not establish Department awareness of much less prior approval for reimbursement of a debt between affiliates. (Exhibits 12, 14-16, 19; Appellant brief, pages 14-15.) The Appellant claims: “After receiving the rate appeal, DOH asked Wingate a series of questions about the mortgage interest rate that are only asked when a transaction is not ‘with a third party’,” and that this means “DOH plainly knew” the lender and landlord were affiliates. (Appellant reply brief, pages 3-4.) There is nothing unusual about DOH inquiring about the terms of any mortgage for which approval is sought. The same regulation that requires prior approval for reimbursement of a debt between related parties also separately provides:

To be considered as an allowable cost, debt generating interest shall be at a rate not in excess of what a prudent borrower would had to pay in the money market at the time the loan was made. 10 NYCRR 86-2.20(b).

Notably missing from the rate appeal documents submitted by the Appellant is any mention of the relationship between the true borrower and lender, neither of which was the Appellant, or any suggestion that the Department was aware of it. Instead, the rate appeal misleadingly represented that “Wingate at Ulster has refinanced the sale/leaseback transaction on April 1, 2011 by mortgaging the property with a conventional mortgage.” (Exhibit 13, page 154.) As Wingate at Ulster did not own the property it was not “mortgaging” anything. NHP, the unrelated property owner, was simply “loaning money to itself.” (Transcript, page 12.) There is no mention in the appeal documents or correspondence with Department rate setting staff the Appellant claims approved this cost that the Appellant disclosed the true borrower and lender on this mortgage were affiliates or that the Department granted prior approval to this relationship. (Exhibits 12-16, 19.)

The Appellant claims that a March 28, 2011 letter to the Department discloses the relationship between the borrower and lender in the 2011 mortgage. (Appellant reply brief, pages 7-8.) This letter, like the rate appeal itself, discusses the relationship between the Appellant and NHP in the 2006 “sale and leaseback” transaction between them, but does not even mention the relationship between NHP and MLD, who are the borrower and lender in the 2011 mortgage. (Exhibit 12, pages 139-140.) The letter even, as the Appellant itself repeatedly points out (Appellant brief, page 14; reply brief, page 7), refers to Nationwide (NHP) as the “lender” when it was in fact the borrower. This misrepresentation simply reinforces the misrepresentation on the rate appeal itself that “Wingate at Ulster has refinanced the sale/leaseback transaction on April 1, 2011 by mortgaging the property.” (Exhibit 13, page 154.) There is no mention of MLD’s



relationship with NHP anywhere in the documents the Appellant presented about the 2011 rate appeal, much less a disclosure that the mortgage between NHP and MLD amounted to “loaning money to itself.” (Transcript, page 12.)

The Appellant’s assertions that the affiliation between mortgagor NHP and mortgagee MLD was known to and approved by the Department in the 2011 rate appeal rely entirely on inferences it asks to be drawn from hints such as the signatures on a letter dated over seven months after the rate appeal was submitted and four months after it had been granted. (Appellant reply brief, page 2; Exhibit D, page 42; Transcript, page 93.) Missing, however, is any clear, direct or explicit representation to the Department that the Appellant sought reimbursement for a loan between affiliates, or any clear, direct or explicit acknowledgement by the Department that it was aware of and was approving reimbursement for such a loan. To the contrary, the very rate appeal on which the Appellant relies gave clearly misleading information. The Appellant has, therefore, failed to meet its burden of proof.


The debt for which the Appellant seeks reimbursement was inaccurately reported on the cost reports as not being between related parties, and inaccurately represented on the 2011 rate appeal because the Appellant was not the borrower and the true parties to the loan were related. The Appellant’s representation on the 2011 rate appeal that “Wingate at Ulster has refinanced the sale/leaseback transaction on April 1, 2011 by mortgaging the property with a conventional mortgage” (Exhibit 13, page 154) was false. What was not disclosed and so could not have received prior approval was that the real borrower and lender were affiliates. The Appellant has failed to meet its burden of proving the OMIG’s audit adjustment is incorrect.

**DECISION:**

The OMIG's audit report property expense disallowance 1 is affirmed.

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

DATED: Rochester, New York  
March 4, 2025

  
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John Harris Terepka  
Bureau of Adjudication