cc: Ms. Daniels Rivera by Scan
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NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

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Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

December 1, 2025

CERTIFIED MAIL/RETURN RECEIPT

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RE: In the Matter of Amber Court of Brooklyn ALP

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,

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 **Amber Court of Brooklyn ALP,** Provider No. 01452079, Appellant, from a determination by the NYS Office of the Medicaid Inspector General to recover Medicaid Program overpayments.	**DECISION PURSUANT TO 18 NYCRR § 519.23** Audit # 24-4935

Administrative Law Judge: Natalie J. Bordeaux

Parties:

New York State Office of the Medicaid Inspector General
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New York, New York 10007
By: Timothy Osho, Esq.

Amber Court of Brooklyn ALP
By: Jennie Shufelt, Esq.
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BACKGROUND

Amber Court of Brooklyn ALP (Appellant) requested a hearing pursuant to Social Services Law (SSL) § 145-a and former Department of Social Services regulations at 18 NYCRR § 519.4 to appeal a determination by the Office of the Medicaid Inspector General (OMIG) to recover Medicaid Program overpayments. The determination was set forth in a January 30, 2025 final audit report.

The audit reviewed 81 Health Care and Mental Hygiene Worker Bonus (also referred to as the Health Care Worker Bonus or HWB) claims paid to the Appellant from October 1, 2021 through March 31, 2024, totaling $115,500. The OMIG audit identified $44,674.75 in overpayments, stemming from two categories of findings: Bonus Incorrectly Paid to an Ineligible Employee (Category 1); and Incorrect Amount of Worker Bonus Paid to Employee (Category 2). By letter dated February 10, 2025, the Appellant requested a hearing to contest the overpayment determination. A hearing was originally scheduled for July 10, 2025, but was adjourned at the Appellant's request, and then rescheduled for September 17, 2025.

On September 9, 2025, the Appellant submitted a request for a decision without a hearing only with respect to Disallowance Category 1 and enclosed Exhibits A-L. The Appellant does not challenge the disallowances in Category 2. The OMIG submitted a brief in response to the Appellant's request on October 9, 2025 and enclosed Exhibits 1, 2, 3a, 3b, and 4. The Appellant replied to the OMIG's brief on October 22, 2025, and the OMIG responded to the Appellant's reply brief on November 6, 2025, at which point the record was closed.

Either party may request that an appeal from an OMIG determination be decided without a hearing when no unresolved material issue of fact is involved in the case and the only questions presented are questions of the OMIG's application of the law or its regulations. A request for a decision without a hearing must be accompanied by sufficient information to permit a determination of whether any unresolved material issue of fact exists and should contain a full and clear statement of the issue and the party's position on the issue. 18 NYCRR § 519.23(a).

ISSUE

Was the OMIG's determination to recover overpayments from the Appellant for HWB payments made to ineligible employees correct?

APPLICABLE LAW

The Department of Health (Department) is the single state agency for the administration of the Medicaid Program in New York State. Public Health Law (PHL) § 201(1)(v); SSL § 363-a. The OMIG is an independent office within the Department with the authority to review and audit contracts, cost reports, claims, bills and all other expenditures of medical assistance (Medicaid) program funds to determine compliance with and take such actions as are authorized by federal or state laws and regulations. In addition, the OMIG is authorized to recover improperly expended Medicaid funds via civil and administrative enforcement actions against any individual or entity who engages in improper acts perpetrated within the Medicaid Program. PHL §§ 30-32.

The Healthcare Worker Bonus (HWB) Program was implemented to pay bonuses to certain front line healthcare workers who were continuously employed by an employer for six-month periods ("vesting periods") between October 1, 2021 and March 31, 2024. SSL § 367-w(2)(d). For purposes of the HWB Program, an "employee" means certain front-line healthcare and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, without regard to whether the person works full-time, part-time, on a salaried, hourly, or temporary basis, or as an independent contractor, that received an annualized base salary of $125,000, to include, in relevant part: orderlies, medical assistants, clinical coordinators, all other health care support workers, other clinical staff/assistants and such titles as determined by the commissioner and approved by the direct of the budget. SSL §§ 367-w(2)(a)(i)-(iii).

Other than the Mental Hygiene job titles identified in SSL § 367-w(2)(a)(ii), which are inapplicable to this decision, the Department pulled eligible job titles from the Bureau of Labor

Statistics. In its frequently asked questions (FAQs) regarding the HWB, the Department referred those seeking definitions for each job title eligible for the HWB to O*Net Online (onetonline.org) for additional information. NYS HWB Program FAQs last updated February 12, 2025, available at: https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faq.htm

In addition to the employee eligibility criteria set forth in SSL § 367-w(2)(a), frontline healthcare workers must be employed by a provider that is enrolled in the Medicaid Program or that has a provider agreement to bill for services provided or arranged through a Medicaid Managed Care Program, including providers and facilities licensed under PHL article 28 and 36. SSL § 367-w(2)(b)(ii).

The Department developed forms and procedures to identify the number of hours employees worked and to reimburse employers for HWB bonuses paid. Employers were required to determine employee eligibility for the HWB before paying bonuses and seeking reimbursement from the Department and maintain and make available upon request all records, data and information relied upon in determining that an employee was eligible for the HWB. SSL § 367-w(3(c). Employers were required to track the number of hours employees worked during each vesting period and submit reimbursement claims for HWB payments to the Department. SSL § 367-w(3)(b)(i). The HWB claim submission process also required qualified employers to electronically sign an attestation confirming that the employer determined each employee included in the claiming process is eligible for the bonus. https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/docs/employer_attestation.pdf.

Employers shall maintain contemporaneous records for all tracking and claims related information and documents required to substantiate claims submitted for HWB payments for a period of no less than six years and shall furnish records and information, on request, to the OMIG. SSL § 367-w(3)(d). The OMIG is tasked, in coordination with the Commissioner of Health, with conducting audits, investigations and reviews of employers required to submit claims for the HWB. Inappropriately paid HWB claims constitute overpayments pursuant to 18 NYCRR §§ 518.1(b)-(c). SSL § 367-w(5).

The Appellant has the burden of showing that the OMIG's determination was incorrect and that all claims submitted were due and payable. 18 NYCRR § 519.18(d)(1).

DISCUSSION

The Appellant deems a decision without a hearing appropriate in this matter because "[t]he facts at issue in this hearing are largely undisputed, and those that are disputed are not relevant to determining the present administrative appeal." (Appellant's September 9, 2025 submission, p. 11.) The OMIG does not object to the request for resolution on papers. (OMIG's October 9, 2025 submission, pp. 4-5.)

As previously stated, the Appellant is not contesting the findings in Disallowance Category 2. This hearing decision disposes of all issues in the challenged audit.

Procedural Argument

The Appellant argues that the OMIG is precluded from raising legal arguments not relied upon in the draft or final audit reports. Those "new" arguments are the explanations which the OMIG provided in its October 9, 2025 reply to the Appellant's request for this decision without a hearing. The Appellant's assertion suggests it was unaware of the bases for the disallowances at issue. (Appellant's October 22, 2025 reply brief, pp. 6, 8.) Aside from this argument being

incredible on its face, the Appellant's contention distorts both applicable procedural requirements and the limits of what arguments may be raised at a hearing or, in this case, in a decision without a hearing.

The OMIG is required to present the audit file and summarize the case. 18 NYCRR § 519.17(a). The Appellant, having submitted this application for a decision without a hearing, has waived such a presentation, and does not allege it has been denied any right to examine the audit file at a prehearing conference (18 NYCRR § 519.13) or any OMIG failure to otherwise provide access to the audit file. Both the draft and final reports identified the samples being disallowed, the basis for the proposed action, and the legal authority, as required by 18 NYCRR § 517.5(a) and §517.6(b). The Appellant possessed sufficient information upon which to submit a very detailed response to the draft audit report and a detailed request for a decision without a hearing. Any information which the Appellant now (i.e., in its October 22, 2025 reply brief to the OMIG's reply to its request for this decision without a hearing) claims to have been a surprise was previously available to and should have been known by the Appellant as the purveyor of the information the OMIG reviewed. The OMIG's responses to the Appellant's request for a decision without a hearing are all based upon the Appellant's own information.

The OMIG rejected the Appellant's job descriptions and proffered alternate O*Net job titles. The Appellant was not disadvantaged or blindsided by the OMIG's explanations in response to its request for a decision without a hearing. Its insistence that the OMIG's alleged failure to advise the Appellant of all reasons for its determination precludes the OMIG from "now assert[ing] new legal bases and authority try to avoid the consequences of its decision" (Appellant's October 9, 2025 reply brief, p. 6) is therefore rejected.

Disallowance Category 1, Reviewed by Subcategory

Disallowance Category 1 in the final audit report disallowed 28 HWB reimbursement claims pertaining to 15 employees because the OMIG determined that the HWB was paid to ineligible employees. Within this category, the OMIG provided three explanations for its decision that employees were ineligible, each of which will be reviewed separately.

Job Titles Do Not Meet Eligibility Criteria

For sample numbers 20, 35, 36, 57-59, 66, 67, 76 and 77, the final audit report explains that job titles Escort, ALP Administrative Assistant, Medication Supervisor, Record Clerk and Associate Administrator, do not meet HWB eligibility criteria because those roles do not provide hands-on assistance with health services or care services. In other words, those roles are not front-line healthcare practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, a requirement for the HWB. SSL § 367-w(2)(a).

The attested titles for staff members in these 10 disallowed claims are not patient-facing care roles. The Appellant now argues that any employee eligibility requirement for patient-facing care is irrelevant because the Department already expanded eligibility to many support staff titles that do not provide direct patient care. (Appellant's September 9, 2025 submission, p. 10; Appellant's October 22, 2025 reply brief, pp. 3-5.) Although the OMIG correctly asserts that the Appellant did not explicitly raise this argument in its response to the draft audit report (OMIG's October 9, 2025 submission, p. 10), the Appellant's argument, like the OMIG's explanations in response to the Appellant's request for a decision without a hearing, is inherent in the findings set forth in both the draft and final audit reports. As such, it will be considered here.

The expanded eligibility for the HWB was not boundless. In addition to explaining that "all other health care support workers" must provide patient-facing care within a patient care unit of a hospital or other institutional medical setting in support of treating and caring for patients, the FAQs specifically identify staff in those settings who would qualify as "other health care support workers." Escorts, administrative assistants, medication supervisors, record clerks, and associate administrators are not on this list, nor do those roles qualify within the description of "all other healthcare workers."

The Appellant concedes that the employees in these disallowed claims were not direct care staff, but argues that such limitation "has no application" to the Appellant as an Article 46-B assisted living program since, with the inclusion of "all other health care support workers" in the definition of eligible employee in SSL § 367-w(2)(a), workers are eligible if they "support the provision of health care services to patients in front-line settings for these titles." (Appellant's September 9, 2025 submission, p. 10.) Expressed in this way, any employee of an ALP qualifies, which is clearly not the intent of the HWB program.

The FAQs explain that the term "all other health care support workers" refers to workers that support the provision of health care services to patients in front-line settings and explains that such workers must provide patient-facing care within a patient care unit of a hospital or other institutional medical setting in support of treating and caring for patients.

In the Appellant's response to the draft audit report, the Appellant argued that the employee job titles attested to in its HWB reimbursement claims for these 10 sample numbers (20, 35, 36, 57-59, 66, 67, 76, and 77) were not necessarily dispositive, despite acknowledging that it had selected the job titles "it believed best matched" the Appellant's own job titles for those employees when submitting the HWB claims. Rather than justifying its original job title

selections in its response to the draft audit report, the Appellant instead sought consideration of yet other eligible job titles based on the employees' duties.

In support of this new approach, the Appellant offered the OMIG job descriptions that were not signed by any employee. Despite the Appellant's failure to demonstrate the contemporaneity of its supporting documentation, the OMIG reviewed the job descriptions, and compared the alternate titles proposed by the Appellant in its draft audit response with the descriptions of the alternate proposed titles made available by the Bureau of Labor Statistics. (OMIG's October 9, 2025 submission, pp. 7-10.) After its detailed review, the OMIG determined that the Appellant's suggested alternate HWB-eligible employee titles were inaccurate and that the employees did not qualify for the HWB.

Sample 20 was disallowed after the OMIG auditors determined that the actual role of the employee and job requirements (Escort) receiving the disallowed bonus did not meet the requirements of a Service Worker, the title to which the Appellant attested when submitting the HWB reimbursement claim. The Appellant then suggested in its response to the draft audit report that the employee could also qualify for the HWB as an Orderly, based on the O*Net database job description for that title. (Exhibit C.)

Orderlies, as described in O*Net, provide in-house care and engage in assisting patients with activities of daily living (ADLs). In comparing the job requirements provided by the Appellant and the O*Net description of an Orderly, the OMIG determined that an Escort, as the role is defined by the Appellant, is not analogous to the O*Net Orderly title, because the role does not provide hands-on care or assist patients with ADLs. Instead, an Escort employed by the Appellant is primarily tasked with transporting patients and coordinating patient transport but does not clean and sanitize medical equipment, patient rooms, bathrooms, examination rooms, or

other patient areas. (OMIG's October 9, 2025 submission, pp. 7-8.) Nor is the Escort required to change soiled linens; collect and transport hazardous or infection waste; collect soiled linen or trash; turn and reposition bedbound patients; provide ADL assistance; or any other hands-on care task cited in the O*Net. To the extent that an Escort is in contact with a patient, the nature of such contact does not satisfy HWB requirements.

Samples 35 and 36 involved HWB claims for an employee with an internal job title of ALP Administrative Assistant, but for whom the Appellant claimed (for HWB purposes) a title of Clinical Coordinator. After receiving the draft audit report, the Appellant asserted that the employee's job responsibilities could instead qualify under the HWB-eligible role of Unit Clerk, a term which includes both Medical Secretaries and Administrative Assistants in O*Net.

On reviewing the Appellant's detailed job description for ALP Administrative Assistant and comparing that description with a Unit Clerk, the OMIG determined that the job responsibilities were not similar. O*Net explains that Medical Secretaries and Administrative Assistants perform secretarial duties using specific knowledge of medical terminology and hospital, clinic, or laboratory procedures such as billing and updating medical charts. The Appellant's job description for ALP Administrative Assistant is primarily focused on hiring and managing Home Health Aides, and, secondarily, coordinating resident transport for appointments and emergencies. This role neither requires nor utilizes knowledge of medical terminology, and hospital, clinic or laboratory procedures for billing and updating medical charts.

Samples 57, 58, 66, and 67 were disallowed because the OMIG determined that the HWB claimed role of Clinical Coordinator was inaccurate. Although the individuals identified in the claims were officially employed with the internal title of Medication Supervisor, the Appellant

subsequently suggested in its draft audit response that the employees would qualify for the HWB as a Medical Assistant.

The Appellant's job description for the Medication Supervisor role fails to demonstrate the provision of hands-on care. The alternate proposed HWB-eligible role of Medical Assistant requires the performance of clinical duties under the direction of a physician (e.g., taking and recording vital signs and medical histories, preparing patients for examination, drawing blood, and administering medications under a physician's direction), as well as certain administrative functions (e.g., scheduling appointments, maintaining medical records, and billing and coding for billing purposes). The Appellant failed to meet its burden of establishing that the actual work performed by the employees identified in samples 57, 58, 66, and 67 satisfies the requirements of the alternate proposed title.

Sample 59 involved an employee with an internal job title of Records Clerk. After the Appellant's attested HWB-eligible title of Unit Receptionist was rejected by the OMIG auditors, the Appellant proposed the employee's HWB eligibility as a Unit Clerk under the O*Net titles of Medical Secretaries and Administrative Assistants. The Appellant's submitted job description for its Records Clerk position states that the role's main responsibilities involve ensuring completeness of resident records but without requiring or using any specialized knowledge. In August 2022, the Department explicitly advised the public that medical records employees and employees at access call centers are not eligible for the HWB. (OMIG Exhibit 3a, p. 55.) The Appellant failed to establish that the employee identified in sample 59 provided or supported the provision of health-care services to patients.

Samples 76 and 77 pertained to an employee with an internal title of Associate Administrator/Administrator, but for whom the Appellant attested HWB eligibility as an

Assistant Site Director. When the attested job title was deemed ineligible for the HWB, the Appellant proposed the employee's eligibility under the O*Net title of Program Director (Medical and Health Services Manager.)

Neither the title of Director nor title of Administrator constitute an HWB-eligible employee. The proposed title of Program Director (Medical and Health Services Manager) is not identified as an HWB-eligible title, either. The O*Net description of a Medical and Health Services Manager makes no mention of interacting with patients at all, let alone providing patient-facing care. Samples 76 and 77 were properly disallowed.

The Appellant attested to the accuracy of its HWB reimbursement claims and agreed to maintain contemporaneous documentation to demonstrate employee eligibility. However, its documentation fails to establish the eligibility of the employees to whom the Appellant paid the HWB and for whom it then obtained reimbursement from the Department.

Personal Care Aide (PCA) as Ineligible Worker Title

The OMIG determined that the title "PCA" is ineligible for the HWB due to the job title, job description and hourly rate. Consequently, it determined to disallow sample numbers 9, 10, 17, 18, 29, 30, 53, 54, 78 and 79.

The Appellant contends that "there is no broad prohibition in SSL § 367-w against paying the [HWB] to employees that provide personal care services." (Appellant's September 9, 2025 submission, pp. 6-7.) However, as already discussed above, eligible worker titles are indeed limited by SSL § 367-w and the Department's FAQs list of "all other health care support workers."

Personal care aides and home health aides (collectively, PCAs) are not identified in the statutory definition of "employee" for purposes of the HWB, nor are these titles listed in the FAQs as HWB-qualifying "all other health care support workers".

The FAQs identify qualified employees and worker titles and note explicitly that:

> Homecare aides are not an eligible title for the [HWB] as they will be eligible for increased minimum wage payments pursuant to PHL 3614-f. As such, employees of Article 36 entities that fall under such titles (e.g., home health [a]ide, [p]ersonal [c]are assistant, home maker, etc.) are not eligible for the Bonus.

The Appellant's argument that the PCAs identified in the disallowed claims were incorrectly deemed ineligible because these PCAs have not received increased minimum wage payments pursuant to PHL § 3614-f is rejected (Appellant's September 9, 2025 submission, pp. 6-8) as the pertinent issue under the FAQs is that such aides are eligible for, not that they receive, increased wages in another form.

The Appellant operates an Assisted Living Program (ALP), a program which provides Medicaid residents with the services of an adult care facility, licensed under Article 46-B of the Public Health Law, and the services of a licensed home care services agency (LHCSA), Amber Court at Home, operated by Aljud Licensed Home Care Services, LLC ("Aljud") and licensed under Article 36 of the Public Health Law. (Appellant's September 9, 2025 submission, p. 2.) Since sample numbers 9, 10, 17, 18, 29, 30, 53, 54, 78 and 79 involved employees of the ALP rather than its related LHCSA, the Appellant argues that the exclusion of PCAs from HWB eligibility is inapplicable to its own PCAs. (Appellant's September 9, 2025 submission, pp. 6-8.) The Appellant provided the OMIG with a job description for PCA, but only for PCAs employed by the LHCSA, while simultaneously arguing that the PCAs at issue were employed by the ALP and should therefore qualify for the HWB. (Exhibit C.)

The Appellant asserted that the OMIG's brief did not "address the limited nature" of the exclusion, suggesting that only PCAs employed by Article 36 employers are excluded. (Appellant's October 22, 2025 reply brief, pp. 2-3.) It is the Appellant who bears the burden of proving that the OMIG's determination was incorrect. See 18 NYCRR §519.18(d)(1). The Appellant has incorrectly posited that only PCAs employed by Article 36 entities were ineligible for the HWB, based on a portion of one sentence in the FAQ cited above, but has not pointed to any information specifically supporting its position that PCAs with other employers were eligible for the HWB.

The Department's additional explanation in the FAQs for excluding PCAs from HWB eligibility does not support the Appellant's attempt to obtain HWB reimbursement for PCAs. The fact remains that the Department deemed the PCA job title ineligible for the HWB, as it did not include this title in SSL § 367-w or in its FAQs explanation of "all other health care support workers."

The Appellant also contends that, "the mere fact that an employee provided personal care services does not exclude the employee from eligibility" for the HWB. (Appellant's October 22, 2025 reply brief, p. 2.) The OMIG correctly disallowed HWB claims for employees assigned the PCA title because the title was ineligible for the bonus. Moreover, as will be discussed below, the disallowances involving employees whose job titles did not match the department code of Personal Care but were fulfilling the role of PCA, was also correct.

The OMIG's determination to disallow sample numbers 9, 10, 17, 18, 29, 30, 53, 54, 78 and 79 because the employees, as PCAs, were ineligible for the HWB is upheld.

Employee Job Titles Did Not Correspondent to Department Code PC (Personal Care)

The OMIG disallowed sample numbers 15, 16, 37, 38, 55, 56, 68 and 69 because the employee job titles attested to in HWB reimbursement claims were inconsistent with the Appellant's internal billing department code "PC" shown on the employees' earning history. The Appellant did not provide any contemporaneous documentation made in the ordinary course of business to establish each employee's job title and earnings.

Regarding samples 37 and 38, the Appellant argued that, although it claimed the title of "Clinical Coordinator" in its HWB reimbursement submissions, the employee's "actual" job title is ALP Administrative Assistant which, on review of the job duties, appears to the Appellant as a job that could have also been classified as a Unit Clerk and thus, HWB-eligible. (Exhibit C.)

For reasons already discussed above regarding samples 35 and 36, the Appellant's stated responsibilities for an ALP Administrative Assistant were not similar to those of a Unit Clerk with a reported job title of Medical Secretary and Administrative Assistant. The role of an ALP Administrative Assistant neither requires nor utilizes any specialized medical knowledge and is not synonymous with a Unit Clerk. Moreover, an ALP Administrative Assistant neither provides nor supports the provision of hands-on care.

The worker titles claimed for HWB reimbursement in samples 15, 16, 55, 56, 68 and 69 were "either 'Support Services Worker' or 'Service Worker'," even though the Appellant conceded "their actual Amber Court title is 'Food Service Assistant'," a title the Appellant allegedly used internally, and which it deems akin to a "Dietary Aide," an HWB-eligible worker title. (Exhibit C.)

The Appellant argued in its response to the draft audit report that, since none of these employees were employed by Aljud through Amber Care at Home (the LHCSA), the internal

department code through which its employees were paid does not preclude the employees' eligibility for the HWB. Furthermore, the Appellant contended that the job titles to which it attested did not involve the duties of a PCA and that the employees' job duties qualified them under HWB-eligible worker titles. (Exhibit C.)

The OMIG auditors reviewing the Appellant's records found that employees with titles of "Food Service Assistant" or "Kitchen Aide" were claimed as "Dietary Workers" in the Appellant's HWB submissions and paid, per the Appellant's own records, under the internal department code "DIET" (see, e.g., Exhibit 4, pp. 341, 346 – referencing samples 27 and 28 which were not disallowed) whereas employees with the title of "PCA" were paid under the Department code "PC."

The employees identified in samples 15, 16, 55, 56, 68 and 69 were paid under the "PC" Department code but were assigned the Appellant's Food Service Assistant job title and were claimed for the HWB as Support Services Workers. The employee identified in samples 68 and 69 is also listed under the PCA/Home Health Aide registry. (Exhibit 4, pp. 371-72.)

PCAs provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs). PHL § 3602(5) and § 3614-c(1)(d); 18 NYCRR § 505.14. The Appellant tacitly admitted in its reply brief (pages 2, 3) that an individual assigned a title of a Food Service Assistant or Kitchen Aide but who allegedly provided personal care services still served as, and remained in fact, a Food Service Assistant, a Kitchen Aide, or Dietary Worker (the title claimed in HWB submissions.) The Appellant's assertion that a Food Service Assistant, Kitchen Aide, or Dietary Worker provides personal care services but is not a PCA is an implausible distortion of these employees' job descriptions that the Appellant's submitted documents fail to corroborate. The Appellant's job description for "Food Service Assistant"

makes no mention of personal care services and, interestingly, was created for "Amber Court Communities," rather than specifically for the Appellant. The scant documentation the Appellant submitted to the OMIG fails to substantiate its HWB claims. The OMIG's determination that the employees identified in samples 15, 16, 37, 38, 55, 56, 68 and 69 were ineligible for the HWB is affirmed.

Conclusion

The Appellant was obligated to create and maintain contemporaneous documentation to support its claims. The Appellant's contemporaneous earnings and pay history documentation were more consistent than the Appellant's newly-created documentation and arguments challenging the audit findings. The OMIG nevertheless reviewed all submitted information (newly-created and contemporaneous) to reconcile the Appellant's assertions with the OMIG's findings. After doing so, the OMIG still determined that the only reliable documentation produced by the Appellant was the contemporaneous documentation created in the ordinary course of business and which the Appellant was required, for purposes of any OMIG audit (including HWB claims) to maintain and provide to justify its entitlement to payments from the Medicaid Program.

When submitting HWB reimbursement claims to the Department, the Appellant enclosed attestations regarding the accuracy of its submissions. Yet, in its response to the draft audit report, and again in its request for a decision without a hearing, the Appellant ignored those attestations and instead sought room to maneuver regarding its own legal requirements by alleging that its own attestations were not accurate and that staff members could instead qualify for the HWB under other titles. Its submitted documentation does nothing to substantiate that contention. Job descriptions created specifically for the Appellant's operations which were

undated or revised after the claim periods at issue here and not signed by any employee who the Appellant, post-audit, argued had very similar duties to HWB-eligible titles, are not probative.

The Appellant offered no good evidence or reason to overlook the Appellant's incorrect submissions for government funds. The Appellant claimed titles which were ineligible for the HWB. The Appellant's arguments, even if accepted, only bolster the OMIG's determination, made after reviewing the Appellant's supporting documentation, that the employees identified in this audit were ineligible for the HWB. The Appellant has failed to establish that the OMIG's determination was incorrect.

DECISION

The OMIG's determination to recover overpayments from the Appellant for HWB payments made to ineligible employees was correct and is affirmed. The OMIG's audit findings are affirmed in their entirety.

Dated: December 1, 2025
Menands, New York

Natalie J. Bordeaux
Administrative Law Judge

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