

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Champion by Scan
Mr. Cohen 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

August 27, 2026

CERTIFIED MAIL/RETURN RECEIPT

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

GRNC Operating LLC D/B/A Ghent
Rehabilitation and Nursing Center
1 Whittier Way
Ghent, New York 12075

John F. Darling
Bond Schoeneck & King
350 Linden Oaks
Third Floor
Rochester, New York 14625

**RE: In the Matter of GRNC Operating LLC
d/b/a Ghent Rehabilitation and Nursing Center**

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,

Tina M. Champion
Interim Chief Administrative Law Judge
Bureau of Adjudication

TMC:nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Appeal of

GRNC Operating LLC D/B/A
Ghent Rehabilitation and Nursing Center
Medicaid Provider #01365168

from a determination to recover Medicaid
Program overpayments.

COPY

DECISION

Audit No. 25-4106

Before: Kathleen Dix
Administrative Law Judge

Hearing date: April 22, 2026
Via WebEx Videoconference

Parties: NYS Office of the Medicaid Inspector General
800 North Pearl Street
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By: Elliot E. Smeltzer, Esq.
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GRNC Operating LLC D/B/A
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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(1)(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 GRNC Operating LLC D/B/A Ghent Rehabilitation and Nursing Center (Appellant). 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. (Exhibit 4.)

HEARING RECORD

OMIG Witness: Latisha Loncke, Auditor II
OMIG Exhibits: 1-3, 5, 6, 8, 10-12
Appellant Witnesses: Xyer Woodard, Administrator
Lisa Kaplewicz, Corporate Director of Clinical Services,
Personal Health Care
Appellant Exhibit: A

The hearing was held via WebEx videoconference. A transcript of the hearing was made. (Transcript [Tr.] pages 1-88.)

SUMMARY OF FACTS

The OMIG conducted a desk audit of terminated services in the Appellant's Medicaid rate for the period January 1, 2018 through December 31, 2023. (Tr. 15, 45; Exhibits 1, 3.) The OMIG issued a draft audit report dated July 21, 2025 which identified an overpayment to the Appellant in the amount of \$2,361,197. Pursuant to 18 NYCRR 517.5, the draft audit report

offered the Appellant an opportunity to submit arguments and documents in response to the proposed audit findings. (Exhibit 1.) A final audit report was issued on October 21, 2025 and contained the statement: “The Provider did not respond to the Draft Audit Report.” As a result, the overpayment listed in the final audit report remained at \$2,361,197. (Exhibit 3, bates page 007.)

ISSUE

Was the Appellant afforded the opportunity, pursuant to 18 NYCRR 517.5 and 517.6, to submit objections to a draft audit report and have them considered by the OMIG before the issuance of a final audit report?

DISCUSSION

“[D]ue process is a flexible constitutional concept calling for such procedural protections as a particular situation may demand.” *LaRossa, Axenfeld & Mitchell v Abrams*, 62 N.Y.2d 583, 588 (1984) (citations omitted). It is well settled that the procedural processes set forth in the regulatory and statutory authority to audit Medicaid providers affords “all the process that . . . [is] due”. *See, Medicon Diagnostic Laboratories, Inc. v. Perales*, 74 N.Y.2d 539, 544 (1989); *see also, Daniel v. NYS Department of Health, et. al.*, No. 21-CV-4097, 2022 WL 21781460, at p. 11 (EDNY August 24, 2022). Thus, whether a due process violation was had in this case depends on whether the OMIG followed its own regulatory audit process.

The audit process includes a draft audit report which must advise the provider of the basis and legal authority for the proposed action, contain a clear statement of the action to be taken, and afford the provider an opportunity to respond to the proposed action. 18 NYCRR 517.5(a)&(b). The draft audit report “must be mailed to the provider’s designated payment address or correspondence address or last known address . . .” and “must afford the provider the

opportunity to object to the proposed action within 30 days of receipt” of the draft audit report. 18 NYCRR 517.5(b)&(c). Before the Department issues a final audit report, it must consider the objections, any supporting documents and materials submitted, the draft audit report, and any additional material which may become available. 18 NYCRR 517.6(a).

The draft audit report herein advised the Appellant of its time to respond and advised it that “receipt of [the draft audit report] is presumed to be five (5) days after the date of this Draft Audit Report.” (Exhibit 1, bates page 001.) The Appellant contends that the presumption should not apply because it did not receive the draft audit report, which was dated July 21, 2025, until September 24, 2025 (more than 35 days after the date thereon.)

On October 10 and 13, 2025 the Appellant reached out to the OMIG by phone and email and in a phone call with the OMIG on October 16, 2025 advised the OMIG of its untimely receipt of the draft audit report. The Appellant requested an extension of time to respond to the draft audit report, which request was denied. (Exhibit 11.) By letter dated October 22, 2025, and prior to the Appellant’s receipt of the final audit report, its attorney again requested that the issuance of final audit report be held in abeyance and that the Appellant be allowed an opportunity to submit a response to the draft. Enclosed with the attorney’s letter were two statements from employees of the Appellant that the Appellant did not receive the draft audit report before September 24. (Exhibit A.) Thereafter, by letter dated October 24, 2025, the Appellant submitted a response to the draft audit report. (T. page 22.) The OMIG does not dispute the Appellant’s account of these efforts to submit a response to the draft audit report.

The OMIG’s witness, Latisha Loncke, Auditor II, testified that she prepared the draft audit report for this audit but she did not mail out the draft audit report personally, rather it was mailed by the OMIG’s administrative assistants. (Tr. pages 18, 46-47.) She could not state

whether the OMIG had an affidavit of service by mail for the mailing of the draft audit report as she did not know what an affidavit of service was. (Tr. page 47.) The OMIG did not produce any affidavit of service by mail.

Auditor Loncke then testified that the draft audit report was sent to the Appellant by certified mail, return receipt requested, “[t]o 1 Whittier Way, in New York” and that the proof of service was the certified mail number printed on the draft audit report itself. (Tr. pages 19, 47.) The draft audit report bore the notation “Certified Mail Number: 9589 0710 5270 0108 7757 77”. (Exhibit 1.) The OMIG did not, however, produce a return receipt for any certified mailing of the draft audit report.

Auditor Loncke also testified that to confirm the Appellant’s receipt of the draft audit report, she checked “the tracking” and identified Exhibit 2 as a screenshot of a United States Postal Service (USPS) tracking record bearing number 9589071052700108775777. (Tr. Page 21.) Exhibit 2 bears the notation “[y]our item was delivered to an individual at the address at 11:31 am on July 24, 2025 in GHENT, NY 12075.” (Exhibit 2, bates page 002.) Auditor Loncke admitted that the USPS tracking receipt did not note the actual address to which the draft audit report was delivered and that she had no personal knowledge of where the draft audit report was delivered. (Tr. 47-48.) She stated that the OMIG did not receive back a signed return receipt (aka “green card”) from the addressee acknowledging delivery. (Tr. page 48.)

Auditor Loncke testified that at the time of the issuance of the final audit report on October 21, the Appellant had not responded to the draft audit report. She admitted, however, that she had received emails and phone calls from the Appellant on October 10, 13, and 14, 2025, and spoke with the Appellant on October 16, 2025 and that she was advised by the Appellant that it had not timely received the draft audit report. She confirmed that the Appellant did request

an extension of time to respond to it, and that the Appellant also requested that the OMIG delay in issuing the final audit report until the Appellant submitted its response.

At the time of these communications with the Appellant, the final audit report, although it had been prepared, had not yet been issued. Nevertheless, the OMIG did not grant the Appellant's requests. (Tr. pages 21, 48-52.) The OMIG takes the position that it had properly served the draft audit report and having not received any response from the Appellant within the allotted time to do so, it was within its regulatory procedures to advance the process to the issuance of a final audit report.

Pursuant to CPLR § 2103, service by mail is complete upon mailing, and five days will be added to any prescribed time measured by the date of service when service is by mail. CPLR § 2103(b)(2). It is well settled that proof of mailing will give rise to a presumption of receipt. *See, JPMorgan Chase Bank, National Association v. Bonilla*, 227 A.D.3d 788 (2024); *Badio v. Liberty Mutual Insurance Company*, 12 A.D.3d 229 (2004); *Tracy v. William Penn Life Insurance Company of New York*, 234 A.D.2d 745 (1996). The Department's own Medicaid provider audit regulations at 18 NYCRR 517.5(c) reiterate this presumption.

However, to enjoy any presumption that a draft audit report was timely received by the Appellant, the OMIG must first prove mailing of the same. Proof of mailing "can be established with proof of the actual mailings, such as affidavits of mailing or domestic return receipt with attendant signatures, or proof of a standard office mailing procedure designed to ensure that the items are properly addressed and mailed, sworn to by someone with personal knowledge of the procedure". *JPMorgan Chase Bank, National Association v. Bonilla, supra*.

The OMIG did not proffer any affidavit of mailing or signed return receipt, or proof of mailing procedures, nor the testimony of anyone with personal knowledge of such procedure, to

support a presumption that the draft audit report was actually mailed to the Appellant. Nor did the OMIG prove the mailing of the draft audit report by production of a USPS mail receipt or payment receipt showing the mailing address of the addressee, indicating the date mailed or postage paid. *See, Citibank, N.A. v. Conti-Scheurer*, 172 A.D.3d 17 (2019).

One New York court has held that where an item is sent via certified mail requiring a signed return receipt by the addressee, “the presumption of receipt which attaches to first class mail is inapplicable, because the mailing cannot be received until the addressee signs for it.” *State v International Fidelity Insurance Company*, 181 Misc. 595, 600 (1999), *citing, Metropolitan Life Ins. Co. v. Young*, 157 Misc.2d 452, 454, 596 N.Y.S.2d 653, noting “[t]he certified mail distinction has blanket support in several Federal Circuits” (*see e.g. Moya v. U.S.*, 35 F.3d 501 (10th Cir.1994) [holding that while the law presumes delivery of a properly addressed piece of mail, no such presumption exists for certified mail where the return receipt is not received by the sender.] While the OMIG did produce the USPS tracking receipt (Exhibit 11) bearing the certified mail number listed on the draft audit report, that receipt failed to specify the actual delivery address, and the OMIG readily admitted that it did not receive a signed return receipt (green card) back from the mailing of the draft audit report.

The provider’s objections to the draft audit report must be mailed by the provider within 30 days of receipt of the report which will be presumed in the absence of evidence to the contrary to be five days after the date on the draft report. 18 NYCRR 517.5(c). The Appellant’s evidence has overcome the presumption that the draft audit report was received five days after July 21, 2025.

The Appellant submitted an attestation from Xyer Woodard, its administrator, that he received / became aware of the draft audit report on September 24, 2025. (Exhibit A.) Though

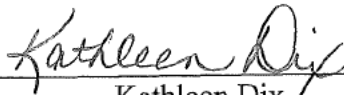
the OMIG believed it had properly served the draft audit report, having been advised of the Appellant's denial of timely receipt of the draft audit report and request for an opportunity to respond to it, and in the absence of proof of delivery, *i.e.*, a signed "green card", the OMIG was on notice that there was a problem with effective service of the draft audit report upon the Appellant. Despite being on such notice, the OMIG chose to issue the final audit report in violation of its own regulations at 18 NYCRR 517.5(c) and 517.6(a) that entitle providers to an opportunity to respond to a draft report.

DECISION

The final audit report dated October 21, 2025 in Audit number 25-4106 is hereby rescinded, and deemed null and void. Audit number 25-4106 is reopened and remanded back to the OMIG to allow the Appellant 30 days from the date of this decision, plus an additional 5 days for its mailing pursuant to CPLR § 2103(b)(2), to submit anew a response to the draft audit report issued on July 21, 2025 pursuant to 18 NYCRR 517.5(b). The OMIG shall consider, as required by 18 NYCRR 517.6(a), the Appellant's response to the draft audit report and address the same before issuing any final audit report.

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

DATED: Menands, New York
August 26, 2026


Kathleen Dix
Administrative Law Judge

To: Elliot E. Smeltzer, Esq.
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