

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of the Appeal of	:	
	:	
REM Transportation, Inc.	:	Decision After
Medicaid ID #02407138	:	Hearing
	:	
from a determination by the NYS Office of the	:	
Medicaid Inspector General to recover Medicaid	:	
Program overpayments.	:	#24-6823
	:	

Before: John Harris Terepka
Administrative Law Judge

Held: July 8, 2026
By videoconference
Transcript received July 21, 2026

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

The Department of Health acts as the single state agency to supervise the administration of the Medicaid Program in New York State. 42 USC 1396a; Public Health Law (PHL) 201(1)(v); Social Services Law (SSL) 363-a. The Office of the Medicaid Inspector General (OMIG), an independent office within the Department, has the authority to pursue administrative enforcement actions against any individual or entity to recover improperly expended Medicaid funds. PHL 30, 31 and 32.

The OMIG determined to seek restitution of payments made under the Medicaid Program to REM Transportation, Inc. (the Appellant). The Appellant requested a hearing pursuant to SSL 145-a and New York State regulations at 18 NYCRR 519.4 to review the determination. Regulations most pertinent to this hearing are at 18 NYCRR Parts 517 (provider audits) and 519 (provider hearings).

HEARING RECORD

OMIG witnesses: Henry Minckler, auditor
OMIG exhibits: 1-8, 10-14
Appellant witnesses: Edward Rozenthal, owner
[REDACTED], driver

A transcript of the hearing was made. (Transcript, pages 1-87.)

SUMMARY OF FACTS

1. Appellant REM Transportation, Inc. is enrolled as a provider in the New York State Medicaid Program. Its employees provide Medicaid reimbursable transportation for Medicaid recipients by wheelchair accessible ambulette. (Transcript, pages 63, 78.)

2. By notice dated October 17, 2024, the OMIG initiated a review of the Appellant's records supporting its SSL 367-w Health Care and Mental Hygiene Worker

Bonus (HWB) claims paid for the period October 1, 2021 through March 31, 2024. (Exhibit 2.) The Appellant was paid \$23,500 for eighteen HWB claims it submitted to the Medicaid Program for fifteen employees. (Exhibit 1.)

3. The OMIG issued a draft audit report dated April 10, 2025, which preliminarily determined to seek restitution of Medicaid Program overpayments in the amount of \$18,300.50. The draft audit report made audit findings in two categories, with twelve claims disallowed in the category “bonus incorrectly paid to an ineligible employee” and seven claims reduced in the category “incorrect amount of worker bonus paid to employee.” (Exhibit 4.)

4. The draft audit report afforded the Appellant the opportunity to submit documents and written arguments in response to the proposed action. The Appellant responded to the draft audit report on April 23 and June 25, 2025. (Exhibit 5.)

5. On July 17, 2025, the OMIG issued a revised draft audit report which determined to seek restitution in the amount of \$25,297.75. (Exhibit 6.) The revised draft audit report added a third audit finding category, “bonus incorrectly paid to an ineligible employer” which disallowed all eighteen HWB claims under review.

6. The Appellant did not submit objections to the revised draft audit report. (Exhibit 7.)

7. By final audit report dated January 22, 2026, to which was attached details of its specific findings, the OMIG determined to seek restitution in the amount of \$25,297.75 for all eighteen HWB claims. (Exhibit 8.) This restitution amount included the Federal Insurance Contributions Act (FICA) tax included in each bonus payment. (Transcript, page 28.)

ISSUE

Was the OMIG's determination to recover HWB payments from the Appellant correct? If so, what is the amount of the overpayment?

APPLICABLE LAW

Medicaid providers are required, as a condition of their enrollment in the program, to prepare and to maintain contemporaneous records demonstrating their right to receive payment from the Medicaid Program and to furnish such records, upon request, to the Department. 18 NYCRR 504.3(a)&(h), 504.8, 517.3(b), 540.7(a)(8). When the Department has determined that claims have been submitted for which payment should not have been made, it may require repayment of the amount determined to have been overpaid. 18 NYCRR 518.1(b). Medicaid providers claiming and receiving HWB payments are subject to these requirements. SSL 367-w(3)(d)&(5)(a).

A person is entitled to a hearing to have the Department's determination reviewed if the Department requires repayment of an overpayment. 18 NYCRR 519.4. At the hearing, the Appellant has the burden of showing that the determination of the Department was incorrect and that all claims submitted and denied were due and payable under the Medicaid Program. 18 NYCRR 519.18(d).

Social Services Law 367-w was enacted in 2022 to codify the HWB program, the purpose of which was to recruit, retain, and reward health care workers by awarding financial bonuses for certain essential front line health care and mental hygiene workers. The statute defined "employer" and "employee" for the purposes of eligibility for Medicaid reimbursement for employee bonuses during a series of six-month "vesting periods" between October 1, 2021 and March 31, 2024. SSL 367-w(2)(d).

An employer seeking Medicaid reimbursement for HWB program bonuses was

responsible for determining whether employees were eligible for bonuses and for maintaining all records, data and information it relied on in deciding whether employees were eligible. SSL 367-w(3)(c). Qualified employers were required to apply for bonuses for their eligible employees and were subject to Medicaid Program penalties up to and including exclusion from the Medicaid Program for failure to do so. SSL 367-w(5).

In order to administer the HWB program, the Department established an HWB website¹ and an online portal providing guidance to providers. It also issued “Frequently Asked Questions” (FAQs) explaining program policy. (Exhibit 10.)

DISCUSSION

REM Transportation is a commercial transportation provider whose ambulettes are registered and inspected by the Department of Transportation (DOT). (Transcript, page 78.) It is enrolled in the Medicaid Program and provides nonemergency transportation services that are authorized for Medicaid Program recipients pursuant to 18 NYCRR 505.10.

The final audit report determined the Appellant ineligible for all eighteen HWB bonuses it received and paid to employees. Audit findings were in three categories:

1. Bonus incorrectly paid to an ineligible employer. Eighteen claims.

At the hearing the OMIG withdrew all eighteen disallowances in this category. (Transcript, pages 8, 12.)

2. Bonus incorrectly paid to an ineligible employee. Twelve claims.

Employers were responsible for determining employee eligibility for the HWB. SSL 367-w(3)(c). The OMIG determined that the Appellant claimed twelve bonuses for

¹ https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/

employees who were ineligible for them because they did not qualify as “employees” within the definition of SSL 367-w(2)(a).

The OMIG allowed in this category the five claims submitted for three Appellant employees whose job titles were “manager” and “unit clerk.” The OMIG disallowed the twelve claims for the Appellant’s ambulette drivers on the grounds that “driver” was not an eligible employee title. (Exhibit 8, attachment C; Exhibit 11.)

The SSL 367-w(2)(a) definition of “employee” includes a list of job titles at (2)(a)(ii), but also, at (2)(a)(i), includes a list of more general health care service functions, including “all other health care support workers.” The OMIG limited eligibility to specific titles listed at SSL 367-w(2)(a)(ii) and in the Department’s guidance without considering the more general categories listed at SSL 367-w(2)(a)(i) and in that same guidance.

The “all other health care support workers” category listed at SSL 367-w(2)(a)(i) was acknowledged and discussed in the FAQs. According to that guidance:

“All Other Health Care Support Workers” refers to workers that support the provision of health care services to patients in front-line settings for these titles. Such workers must provide patient facing care provided within a patient care unit of a hospital or other institutional medical setting in support of treating and caring for patients. (Exhibit 10.)

The FAQs then went on to provide a list of job titles that included, as approved “titles” for “all other health care support workers,” the titles “service worker” and “support services worker.” (Exhibit 10.)

The Appellant concluded that its drivers, by delivering wheelchair bound persons into and out of health care facilities, qualified under this statutory category because they met both the statutory and the FAQ descriptions, and because the FAQs included both

“service worker” and “support services worker” as approved among the “Eligible Worker Titles” included under “All Other Health Care Support Workers.” (Exhibit 10; HWB program website.) The OMIG now ignores these titles and categories, deeming them inapplicable because the Appellant also used the term “driver” in correspondence with the auditors. (Exhibit 3.) OMIG auditor Minkler testified that because the OMIG did not receive adequate driver job descriptions to review “[t]he only basis we could use is the job title which was provided.” (Transcript, page 31.)

The Appellant’s drivers transport and assist Medicaid recipients into and out of health care facilities using ambulettes equipped with a wheelchair lift and space for wheelchairs. (Transcript, page 60-61, 63, 70.) The New York State Medicaid Transportation Provider Policy Manual describes the service provided by ambulette drivers in transporting wheelchair bound persons:

Ambulette or paratransit vehicle means a special-purpose vehicle, designed and equipped to provide nonemergency transport, that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals. (Section 1, page 4 of 52.)

...

Personal assistance by the staff of the transportation company is required by the Medicaid program and consists of the rendering of physical assistance to the ambulatory and non-ambulatory (wheelchair-bound) Medicaid enrollees. (Section 3.2, page 45 of 52.)

...

Personal Assistance means the provision of physical assistance by a provider of transportation services to a Medicaid enrollee for the purpose of assuring safe access to and from the enrollee’s place of residence, the transportation provider’s vehicle, and the Medicaid-covered health service provider’s place of business. Personal assistance is the rendering of physical assistance to the enrollee to enable walking, climbing or descending stairs, ramps, curbs, or other obstacles; opening or closing doors; accessing a vehicle; and the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the enrollee. In providing personal assistance, the provider or the provider’s employee will physically assist the enrollee which shall include touching, or, if the enrollee prefers not to be touched, guiding the enrollee in such close proximity that the provider of services will be able to prevent any potential

injury due to a sudden loss of steadiness or balance. An enrollee who can walk to and from a vehicle to their home and place of medical services without such assistance is deemed not to require personal assistance. (Transportation Provider Policy Manual Section 1, page 7 of 52.)

The OMIG's final audit report stated that "Transportation drivers are not an eligible job title unless they are considered a Paramedic, EMT, or Certified first responder." (Exhibit 8, bates page 56; Transcript, pages 29-30.) The Appellant's drivers are not certified for ambulance or EMT service and are not certified or trained to provide medical care to the persons they transport. However, many of the eligible employee job titles listed in the FAQs (Exhibit 10), such as building service worker, custodian, floor maintenance worker, sanitation worker, security guard or peace officer, also do not require certification or training in medical care.

Just what the statute and FAQs consider to be "front-line," "patient facing care" is not obvious from the job titles specifically listed as eligible. SSL 367-w(2)(a) defines "employee" to mean "certain front line health care and mental hygiene practitioners, technicians, assistants and aides that provide hands on health care services." The statute, the Department's FAQs, and the HWB website then go on to list approximately one hundred eligible worker titles, many of which have far less to do with hands on patient facing care than the work of ambulette drivers in transporting wheelchair bound persons into and out of medical facilities and providing personal assistance, as is required for Medicaid reimbursement, while doing so. (Exhibit 10; Medicaid Transportation Provider Policy Manual, Section 3.2.)

The statute lists nearly fifty functional categories including "all other health care support workers" at SSL 367-w(2)(a)(i), and then separately lists nearly fifty more specific job titles including "other direct care staff" at SSL 367-w(2)(a)(ii), without

explaining the distinction. The FAQs then go on to add another forty-five very specific job titles included in the category “all other health care support workers,” such as admitting clerk (listed twice), front desk clerk, ward clerk (listed three times), food prep/service worker (listed twice), unit secretary, building attendant, building service worker, custodian, floor maintenance worker (listed twice), maintenance/physical plant worker (listed twice), sanitation worker, security guard, and peace officer, but then also include “service worker” and “support services worker” among these “titles.” (Exhibit 10.) It is noted that the FAQs also state: “These titles are included... Security Guards,” and then on the next page go on to provide: “Employees in titles such as... Security are not eligible.” (Exhibit 10.)

“All Other Health Care Support Workers” is how the Appellant listed its drivers in its HWB claim submissions. This statutorily recognized category is entirely consistent with “service worker,” “support services worker” and “other direct care staff,” all of which are also listed as “job titles” in the statute and FAQs, and with the description in the Medicaid Provider Policy Manual.

The statute and the FAQs both explicitly state that their lists “include,” not that they “are limited to” the listed items. NYC Health & Hospitals, with which the Appellant was a transportation contractor, imposed detailed and specific vaccination, masking, separation of patients and vehicle cleaning requirements on its transportation providers. (Exhibits 5, 13; Transcript, page 69.) It is difficult to understand how a reasonable application of the statutory term “all other health care support workers” can allow the Department to specify in its FAQs that this category includes front desk clerks, unit secretaries, building attendants, building service workers, custodians, floor maintenance,

physical plant and sanitation workers, security guards and peace officers as “other health care support workers” providing “front-line,” “hands-on” “patient-facing” care, yet excludes ambulette drivers who transport wheelchair bound patients into and out of medical facilities, giving significant personal assistance involving direct physical contact. (Transcript, pages 69-70.)

It is ironic that the OMIG’s application of the statute causes it to approve this transportation provider’s “manager” and “unit clerk” for HWB bonuses, while denying such bonuses to the drivers who were actually engaged in this transportation provider’s “hands-on” “patient-facing” service of transporting the patients on the grounds that:

The appellant did not provide contemporaneous records or job descriptions to show that its employees provided hands-on health or care services. (Transcript, page 9.)

The OMIG’s argument for distinguishing this case from a previous administrative hearing decision issued by the Department that reversed HWB disallowances for ambulette drivers, is that in this case the Appellant “did not submit a substantial documentation to substantiate their claims.” (Transcript, pages 83-84.) The drivers in both cases were ambulette drivers, providing personal care services specifically described in the Medicaid Transportation Provider Policy Manual and required to be provided in order to qualify for Medicaid reimbursement. The OMIG did not explain just how much and what further kind of job description and documentation was necessary to count as “substantial.”

The OMIG’s demand that the Appellant somehow have produced just the right sort of documentation with the right language to satisfy it, when it had ample reason to

know what these ambulette driver's duties were, is unreasonable. As Appellant owner Rozenthal pointed out:

I don't really know how to prove that when you're doing hand-to-hand or such as job, how to prove it because that was an face-to-face (*sic*). I don't know. Video, maybe. I didn't have video camera in my cars at the time. (Transcript, page 13.)

I don't know how else to prove it. (Transcript, pages 70-71.)

SSL 367-w and Department-issued guidance on that statute both explicitly advised providers that submitting HWB claims for eligible employees was mandatory for qualified employers and that failure to do so was subject to penalties and sanctions:

If a qualified employer fails to identify, claim, or pay a bonus to an eligible employee they are subject to sanction, up to and including exclusion from the Medicaid program, and may be subject to penalty. See SOS 367-w(5). (Exhibit 10, FAQs.)

The Appellant was faced with the dilemma, in unclear cases, whether to apply and risk having to pay back bonuses that SSL 367-w(5)(d) prohibited it from recovering from the recipient employee, or not to apply and risk penalties and sanctions including exclusion from the Medicaid Program. Ambulette drivers present such an unclear case, and it is unreasonable for the OMIG to penalize this provider for that lack of clarity in SSL 367-w and in the Department's own guidance.

The audit findings in this category are reversed.

3. Incorrect amount of worker bonus paid to employee. Seven claims.

Bonuses for each six-month vesting period varied in amount (\$500, \$1,000 or \$1,500) depending upon the average hours per week worked by the employee during the period. SSL 367-w(4). Employers were required to track the number of hours employees worked during each vesting period. SSL 367-w(3)(b)(i)&(ii).

The reported employee hours in the vesting periods for bonus numbers 2, 8, 10, 11 & 13 did not average at least the 35 hours required for the \$1,500 bonuses claimed, and the reported employee hours for bonus numbers 6 & 18 did not average at least the 30 hours required for the \$1,000 bonuses claimed. (Exhibits 11, 12.) The Appellant did not challenge the OMIG's determinations regarding the hours reported for these employees. (Transcript, page 42.) The allowable bonus for claims 2, 6, 11, 13 and 18 is \$500 less than was paid. The allowable bonus for claims 8 and 10 is \$1,500 less. SSL 367-w(4)(a). A total disallowance for these seven claims in the amount of \$5,500, plus the FICA, is affirmed in this category.

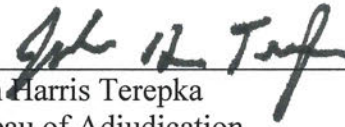
DECISION: The eighteen disallowances in finding category 1, bonus incorrectly paid to an ineligible employer, have been withdrawn by the OMIG.

The twelve disallowances in finding category 2, bonus incorrectly paid to an ineligible employee, are reversed.

The seven audit disallowances in finding category 3, incorrect amount of worker bonus, are affirmed.

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

DATED: Rochester, New York
July 27, 2026



John Harris Terepka
Bureau of Adjudication