

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
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SAPA File



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

September 26, 2025

CERTIFIED MAIL/RETURN RECEIPT

Enoch Kun, Esq.
NYS Office of the Medicaid Inspector General
800 North Pearl Street
Albany, New York 12204

Kimberly M. Wells, Esq.
40 Dix Avenue, Suite G
Glens Falls, New York 12801

Christine Cerro, Executive Director
Support-Link, Inc. NHTD
383 Bay Road
Queensbury, New York 12804

RE: In the Matter of Supprt-Link, Inc.

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

A handwritten signature in cursive script that reads "Natalie J. Bordeaux".

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of the Appeal of

Support-Link, Inc. NHTD
Medicaid Provider #02969919

from a determination to recover Medicaid
Program overpayments.

**DECISION
AFTER
HEARING**

Audit No. 24-4916

Before: Kathleen Dix
Administrative Law Judge

Hearing date: August 18, 2025
By WebEx Videoconference
Record closed September 22, 2025

Parties: NYS Office of the Medicaid Inspector General
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By: Enoch Kun, Esq.
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Support-Link, Inc. NHTD
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JURISDICTION

The New York State Department of Health (Department) acts as the single state agency to supervise the administration of the Medicaid Assistance (Medicaid) Program in New York State. 42 USC 1396a; Public Health Law (PHL) § 201(1)(v); Social Services Law (SOS) § 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 Support-Link, Inc. NHTD (Appellant) for the rate period October 1, 2021 through March 31, 2024. The Appellant requested this hearing pursuant to SOS § 145-a and former Department of Social Services (DSS) regulations at 18 NYCRR 519.4 to review the overpayment determination.

HEARING RECORD

OMIG Witnesses:	Damian Myron, Audit Manager, OMIG
OMIG Exhibits:	OMIG 1 - OMIG 5
Appellant Witnesses:	Christine Cerro
Appellant Exhibits:	Appellant 1 – Appellant 3

A transcript of the hearing was made. (Transcript [T.] pages 1-44.) The record closed on September 22, 2025. The OMIG submitted one post-hearing brief.

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was a provider enrolled in the Nursing Home Transition and Diversion (NHTD) 1915(c) Medicaid waiver program¹, with offices located on Bay Road in Queensbury, New York. (Tr. 27.)

2. In July 2024, the OMIG commenced an audit of Social Services Law (SOS) § 367-w Health Care and Mental Hygiene Worker Bonus (HCMHWPB) claims paid to the Appellant from October 1, 2021, through March 31, 2024. (Exhibit OMIG 1.)

3. On December 5, 2024, the OMIG issued a draft audit report (DAR) which identified two categories of error, *i.e.*, 1. Bonus Incorrectly paid to an Ineligible Employee, and 2. Incorrect Amount of Worker Bonus Paid to Employee. The OMIG sought to recover a Medicaid overpayment of \$4,306.

4. The DAR advised the Appellant, pursuant to 18 NYCRR 517.5, that it was entitled to submit objections to the proposed action, which objections were required to include any additional material or documentation that the Appellant wished to be considered. (Exhibit OMIG 2.) The Appellant submitted objections to the DAR. (Exhibit OMIG 3a, 3b, 3c, and 3d.)

5. On March 6, 2025, the OMIG issued a final audit report (FAR) which advised the Appellant that upon review of its objections in response to the DAR, the category 2 errors were removed but the category 1 errors remained the same. The overpayment was reduced to \$3,229.50 for two errors in category 1. (Exhibit OMIG 4.)

¹ The NHTD waiver program is a home and community-based program that helps New York's Medicaid-eligible seniors and people with physical disabilities receive comprehensive services they need while they live in a community-based setting, rather than in a nursing home, congregate care setting, or other institution. In 1981, Congress authorized the waiver of certain federal requirements to allow a state to provide home and community-based services (other than room and board) to individuals who would otherwise require institutional, or nursing facility care reimbursed by Medicaid. This waiver allows states to provide services not usually offered by the Medicaid program, as long as these services prevent the person from being institutionalized. The NHTD waiver is authorized under section 1915(c) of the Social Security Act. New York requested and received approval from the Centers for Medicare and Medicaid Services (CMS) to provide NHTD waiver services in 2007. https://www.health.ny.gov/facilities/long_term_care/nhtd/

6. By letter dated April 10, 2025, the Appellant requested this hearing to review the determination and findings set forth in the FAR. (Exhibit OMIG 5.)

ISSUE

Was the OMIG's determination that the HCMHWB was paid to an ineligible employee on two occasions correct?

APPLICABLE LAW

Social Services Law § 367-w was enacted in order to recruit, retain, and reward health care and mental hygiene workers and to make available during the 2023 fiscal year, financial bonuses for certain front line health care and mental hygiene workers. The statute lists employees by title and function who are eligible for bonuses during a series of six-month "vesting periods" between October 1, 2021 and March 31, 2024. SOS § 367-w(1) & (2).

Social Services Law § 367-w(2)(a) defines "Employee" as:

certain front line health care 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 one hundred twenty-five thousand dollars or less, to include: *[job titles listed in 367-w(2)(a)(i) & (ii)]*.

Payment is made pursuant to SOS § 367-w(4), based on the number of hours worked during the vesting period with a cap at \$3,000 per employee.

Bonuses paid under SOS § 367-w are subject to audit and inappropriately paid bonuses constitute overpayments which may be recovered in the same manner as overpayments under the Medicaid Program. SOS § 367-w(5). Upon completion of an audit, the Department may require the repayment of any amounts not authorized to be

paid by the Medicaid Program. 18 NYCRR 518.1.

If the Department determines to recover an overpayment, a Medicaid Provider has the right to an administrative hearing. 18 NYCRR 519.4. At the hearing, the provider 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 program. 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.

DISCUSSION

At the hearing, the OMIG presented the audit file and summarized the case, as required by 18 NYCRR 519.17. The Appellant is contesting the two disallowances in the final audit report category 1 made on the grounds that the employee to whom bonuses were paid was ineligible to receive them. The bonuses paid equaled \$3,000. The OMIG is seeking to recover the bonus amounts plus an additional 7.65% for Federal Insurance Contributions Act (FICA) taxes, in the sum of \$229.50.

The OMIG contends that in these two instances a bonus was incorrectly paid to the Appellant's executive director, who was in a role most closely aligned with Administrator or CEO and was not eligible for the worker bonus. (OMIG Exhibit 4; T. 16.) SOS § 367-w(2)(a) sets forth a list of titles/roles which are included in the definition of employee for purposes of the worker bonus. While the list is not exhaustive, nor does it identify any titles/roles that are specifically excluded, the OMIG contends that the Appellant did not submit sufficient documentation to establish that the executive director was "forward-facing staff" (T. 10) providing "hands on health care services to individuals."

SOS 367-w(2)(a).

Damian Myron, the OMIG Audit Manager, explained that in the DAR there were two findings; Finding No. 1 for bonuses incorrectly paid to an ineligible employee and Finding No. 2 for the incorrect amount of bonus paid to two employees. (T. 16-17.) For finding number 2, Mr. Myron testified that during the initial review, documentation submitted by the Appellant did not show enough “patient-facing”, *i.e.*, direct patient care, hours for the amount of bonuses that those employees had received, however, subsequent to the DAR the Appellant submitted copies of electronic timecards which showed that the employees met the number of “patient-facing” hours needed to qualify for the bonuses that they had received. (T. 17-18.) Finding number 2 was removed and not contained in the FAR. (Exhibit OMIG 4.)

Mr. Myron further testified, however, that while the Appellant responded to finding number 1 with an explanation that the executive director also carried a caseload of NHTD and Traumatic Brain Injury (TBI) participants and also brokered cases for the Office of People with Developmental Disabilities (OPWDD), no documentation was submitted to verify that information, and therefore finding number 1 remained in the FAR. (T. 18-19.) Mr. Myron stated that in order for the executive director to qualify for a bonus the Appellant would need to show that she reached the same level of patient care hours as did the other employees who submitted for the bonus. (T. 23.) Mr. Myron acknowledged that the OMIG received documentation supporting that Ms. Cerro worked 40 hours per week during the two vesting periods, but the summation of the average hours worked did not delineate hours between patient care work and executive work. (T. 24.)

Christine M. Cerro, the employee for whom the worker bonuses were disallowed

in category number 1, testified for the Appellant. Ms. Cerro testified that she is the executive director for the Appellant but that she also carries a caseload for service coordination for the NHTD and the TBI waiver programs², has one person for whom she does independent living skills training, and carries three support broker cases for OPWDD. Ms. Cerro stated that she had a “forward-facing” role from April 2022 through March 2023, and that she carried at least half of the case load that other service coordinators carried in addition to her OPWDD cases and her role as executive director. (T. 27-28.) Ms. Cerro testified that during that time she engaged in patient care with clients on a basis of at least 35 hours per week. (T. 34-35.) She estimated that each patient for whom service coordinator services are rendered consumes approximately 2 hours per week of their time. (T. 39.)

At the hearing the Appellant submitted unsigned monthly billing sheets for Ms. Cerro for various months in 2021, 2022, 2023 and 2024, along with unsigned monthly case lists for the period October 2021 through March 2024. (T 32-33; Appellant Exhibits 1 & 3.) Ms. Cerro testified that the monthly billing sheets were an accurate depiction of her clients and hours she was servicing for the time periods listed thereon, however she then went on to claim they did not capture additional service coordination work that she may have been doing during that time period such as intakes or covering for other service coordinators who were on vacation. (T. 27-31.) This testimony fails to meet the Appellant’s burden of documenting entitlement to payment for the bonuses to Ms. Cerro.

The specific hours of alleged hands on care provided by Ms. Cerro are not documented and are by her own account fewer than the average of 35 hours per week

² The New York State Department of Health (DOH) Traumatic Brain Injury (TBI) waiver program provides services to persons with a TBI. The purpose of the program is to help persons with a TBI live in the community setting of their choice. Medicaid funds the program. <https://www.health.ny.gov/publications/1111.pdf>

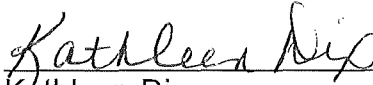
during the vesting periods necessary to qualify for the worker bonuses of \$1,500 which she received under SOS 367-w(4)(iii). The number of clients per month for whom Ms. Cerro claimed she performed patient care during the vesting periods ranged from 7 to 17. Even in the weeks/months with her highest client load of 17, according to her own account of 2 hours per week per patient, Ms. Cerro would have performed only 34 hours of patient care per week, not the 35 hours per week that she testified to. Ms. Cerro's bare claim to have provided additional, undocumented hands on care during the periods in question does not meet the Appellant's burden of proof and its obligation to prepare and to maintain contemporaneous records demonstrating its right to payment of claims for the bonuses to Ms. Cerro during the vesting periods. 18 NYCRR 504.3(a).

DECISION

The OMIG's determination that the HCMHWPB was paid to an ineligible employee on two occasions is correct and is affirmed.

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

DATED: Menands, New York
September 26, 2025


Kathleen Dix
Administrative Law Judge

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