

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
 WOO YOON)
 dba Quyana Cab)
 _____) OAH No. 12-0264-MDA

DECISION ON SUMMARY ADJUDICATION

I. Introduction

The Department of Health and Social Services, through an agent, conducted an audit of payments Medicaid payment to Quyana Cab and determined, based on statistical sampling, that it had overpaid Quyana in an amount exceeding \$49,873.46.

Quyana filed a request for a hearing, and the Department filed a motion for summary adjudication.

Because Quyana does not dispute the amount of the alleged overpayment, the Department’s motion is granted.

II. Facts¹

Woo Yoon, dba Quyana Cab (Quyana) enrolled as an authorized provider of Medicaid transportation services in 2006.² Quyana provides transportation services in the form of taxi rides to Medicaid recipients in Bethel. Typically, residents of outlying villages fly into Bethel for scheduled medical treatment and are provided a taxi ride to and from the airport.

Non-emergency transportation services must be pre-authorized to be compensable.³ The patient’s medical care provider is responsible for obtaining prior authorization for medically necessary travel.⁴ The medical care provider obtains authorization by submitting a Transportation Authorization and Invoice Form (AK-04) to the claims administrator.⁵ The medical care provider completes much of the form, including fields stating the origin and

¹ The facts as stated are based on the evidence in the record, taking all reasonable inferences from that evidence in favor of Quyana.

² Ex. C. A “provider” is a person or entity that “provides...medical assistance to a recipient of Medicaid.” 7 AAC 160.990(b)(59). A provider of transportation services may enroll as a provider. *See* 7 AAC 120.400(a), - .490(7). Transportation services may be paid for if “provided to assist the recipient in receiving medically necessary services.” 7 AAC 120.405(a). “Medical assistance” in 7 AAC 160.990(b)(59) includes transportation services “provided to assist the recipient in receiving medically necessary services.” Thus, a provider of transportation services is a provider within the meaning of 7 AAC 160.990(b)(59).

³ 7 AAC 120.410(a).

⁴ 7 AAC 120.410(b).

⁵ *See* R. 160, 164.

destination of the trip, dates, whether it is a round trip or one way, and the names of the patient and the escort (if any).⁶ The claims administrator reviews the information submitted and informs the medical care provider of the number of units of a particular transportation service that is authorized, and the medical care provider enters that information on the form.⁷ For taxi rides, a one-way taxi ride is a unit.⁸ Medical care providers are instructed to submit a separate AK-04 for each taxi ride (which may include the patient and an escort).⁹ Thus, for the typical round trip into Bethel and back to a village for a patient and escort, taxi transportation services should be authorized in two separate AK-04 forms, each of which lists one unit of taxi services for each traveler (the patient and the escort). The medical provider should give the patient two AK-04 forms for taxi services, and the patient should present one to the taxi services provider at the time transportation is provided from the airport to the medical provider's location, and the other at the time of transportation back to the airport.¹⁰ The taxi provider completes the AK-04 forms after providing the transportation services and submits them to the claims administrator for payment.¹¹

The AK-04 form includes separate sections for the patient and the escort. The taxi provider is instructed to enter the total dollar amount charged for services to each passenger (patient and escort) separately, in two fields labeled Charges (one field in the patient section and the other in the escort section),¹² and to enter the total dollar amount of charges (the sum of the amounts listed in the two fields labeled Charges) in the field for Total Document Charges.¹³ The taxi provider is then instructed to subtract any amount paid (such as by insurance) from the Total Document Charge, and enter the amount claimed as due from Medicaid in the field for Total Amount Due.¹⁴

In 2008, Medicaid transportation service providers in the Bethel area were entitled to reimbursement in the amount of \$7.00 for each taxi ride provided to a patient or a patient escort.¹⁵ Thus, the typical round trip for a patient with an escort would result in total charges of

⁶ R. 165

⁷ R. 166-167.

⁸ R. 166, 283.

⁹ R. 164.

¹⁰ See R. 155.

¹¹ See R.167-168.

¹² R. 167.

¹³ R. 168.

¹⁴ R. 168.

¹⁵ Medicaid reimbursement was authorized in the amount of the billed charges.

http://manuals.medicaidalaska.com/docs/dnld/AK_Fees_transportation_2008.pdf (accessed February 25, 2014). See 7 AAC 160.900(e)(13) (adopting Transportation/Accommodation Fee Schedule, Table I-3, revised as of May,

\$28 for taxi rides, shown on two separate AK-04 forms, each showing a charge of \$7 for each of two passengers (patient and escort) for a total charge (and amount due) of \$14. During the calendar year 2008, Qu yana regularly completed the AK-04 forms for trips involving a patient and an escort incorrectly. Rather than entering a charge of \$7 apiece for the patient and the escort, Qu yana entered a charge of \$14 apiece. However, Qu yana correctly entered total charges and a total amount due of \$14, rather than the sum of the listed charges for the two passengers.

When the AK-04 form for such a trip was submitted to the claims administrator for payment, the difference between the listed charges (\$14 for each of two passengers, for a total of \$28) and the total charges and amount due (\$14) was identified, and, by operation of a computerized program, payment was made in the amount of the listed charges (\$28), rather than in the amount shown as the total charges and amount due (\$14).¹⁶ Remittance advices generated by the claims administrator and regularly provided to Qu yana included a note specifically stating that the sum of the charges was different than the total charges claimed as due, and showed that payment had been made in the amount of the listed charges (\$28) rather than in the amount shown as total charges and amount due (\$14).¹⁷

Qu yana submitted 10,194 claims for transportation services provided during the 2008 calendar year (approximately 27 taxi rides for each day of the calendar year), and was paid a total of \$157,587.97 for those services. On behalf of the Department, Myers and Stauffer LLC audited a random sample of 86 claims submitted for those services, on which a total of \$1,414.00 had been paid. Qu yana did not retain supporting documentation regarding those claims. However, Myers and Stauffer obtained the invoices for the services from the Department's archives and conducted its audit based on those invoices. 36 of the claims reviewed in the audit were for payment for both a patient and an escort.¹⁸ On all of those claims, Qu yana, as described above, was paid \$28 rather than the \$14 that was due (and which Qu yana had claimed). The total amount of the overpayment on those 36 claims was \$504 (36 x \$14 = \$504), equivalent to

2008). \$7 per person, per ride, was the maximum allowable taxi charge in Bethel by municipal ordinance. *See* Exhibit D.

¹⁶ *See* Ex. A; Ex. B, pp. 2-6; Ex. B, p. 7 (“TOTAL DOC CHARGES NOT EQUAL SUM OF CHARGES – REPLACED BY SYSTEM”).

¹⁷ *Id.*

¹⁸ Eight claims were submitted for an escorted patient over age two and under age five. R.64, 93, 96, 98, 107, 129, 137, 138. It appears that Qu yana's practice was not to charge for taxi services to children in that age group. Had Qu yana charged for those services, the charges would have been compensable. *See* R. 148 (“Transportation is not reimbursed for recipients under 2 years of age.”).

an average overpayment of \$5.86 for the 86 claims audited ($\$504 \div 86 = \5.86).¹⁹ Extrapolating the error rate and sample size to the total number and amount of claims paid, Meyers and Stauffer estimated the likely total overpayment as in excess of \$49,873.46.²⁰

III. Analysis

A. Audit and Appeal Process

The Department is required by law to conduct audits of Medicaid providers and, within 90 days of the receipt of an audit report, to “begin administrative procedures to recoup overpayments identified in the audits.”²¹ The auditor reviews the provider’s compliance with applicable law and the provider’s Medicaid agreement,²² and issues a final audit report with findings and identifying any overpayments.²³ If the final audit report finds that the provider has not complied with applicable law or its Medicaid agreement, the department will take appropriate action.²⁴

A provider may appeal the audit findings and determination of overpayment.²⁵ The Department’s regulations do not require that the appeal be in the form of an evidentiary hearing; they require review by the commissioner of materials submitted by the auditor and the provider.²⁶ The commissioner then makes a decision as to the appropriate action, taking into consideration the provider’s error rate, history of similar audits, prior noncompliance, submission of false, fraudulent or incomplete information, and any health or safety risk to recipients.²⁷

In this case, the Department informed Quyana that if it filed an appeal, Quyana would be granted an evidentiary hearing (*i.e.*, introduction of evidence, cross-examination of witnesses, legal argument) conducted by an administrative law judge of the Office of Administrative Hearings.²⁸ Quyana was informed that following the hearing, the administrative law judge

¹⁹ R. 35.

²⁰ R. 11.

²¹ AS 47.05.200(a), (b).

²² 7 AAC 16.0100(b).

²³ 7 AAC 160.130(g).

²⁴ 7 AAC 160.130(h)(1)-(4).

²⁵ 7 AAC 160.130(a).

²⁶ See 7 AAC 160.130(b), (c).

²⁷ 7 AAC 160.130(c)(1)-(5).

²⁸ R. 3-4. Quyana was informed of the opportunity for an evidentiary hearing in the Department’s July 5, 2012 letter notifying it of the final audit results. R. 3-4. Having offered this sort of hearing, it would be an abuse of discretion to unduly limit Quyana’s appeal to a review of the agency record. See Hidden Heights Assisted Living, Inc. v. State, Department of Health and Social Services, 222 P.3d 258, 269 (Alaska 2009).

would submit a recommendation to the Commissioner of Health and Social Services.²⁹ Quyana requested such a hearing, and the matter was referred to the Office of Administrative Hearings.³⁰

B. Audit Findings

1. *Compliance With Law and Provider Agreement*

Meyers and Stauffer found that Quyana had failed to comply with applicable law and its provider agreement, because Quyana had not retained copies of supporting documentation for the claims submitted, namely, Quyana's copy of the AK-04 form, or any other invoice.³¹

2. *Overpayment*

Meyers and Stauffer obtained archived copies of the AK-04 forms from the Department. Thus, the absence of Quyana's documentation made no difference in determining whether an overpayment had occurred. Applying a statistically valid methodology, Meyers and Stauffer found that Quyana had been overpaid at least \$49,873.16.³² Quyana does not dispute the audit's finding as to the amount of the overpayment.

C. Relevant Considerations

In reaching a decision in an appeal under 7 AAC 160.130, the Commissioner considers:

- (1) the provider's error rate in the audit;
- (2) whether the provider has a prior history of similar audit findings and whether the previous findings were corrected;
- (3) whether the provider received notice of noncompliance previously and whether the provider received training regarding the noncompliance;
- (4) whether the provider submitted false or fraudulent information, or omitted material information, on the Medicaid claims to the department; [and]
- (5) whether the findings of the audit indicate that the provider poses a health or safety risk to recipients.^[33]

1. *Provider's Error Rate*

In the sample reviewed by the auditor, all of the claims submitted that included a claim for payment for escort travel were in error. Of the 86 claims reviewed, 36 included a claim for escort travel. The error rate is 42% ($36 \div 86 = .4186$).

2. *Prior Audits*

There is no evidence that Quyana had ever previously been audited.

²⁹ R. 4.
³⁰ R. 1.
³¹ R. 9-10.
³² R. 11.
³³ 7 AAC 160.130(c)(1)-(5).

3. *Prior Notice of Noncompliance, Training*

There is no evidence that Quyana was ever formally notified that its claims for payment for escort travel were not correctly completed. However, both Quyana and the Department were made aware, through remittance advices, that the listed charges were inconsistent with the amount shown as due. The Department provided no training to Quyana to correct these errors.

4. *False, Fraudulent, or Omitted Material Information*

The claims submitted by Quyana were not fraudulent and did not omit any material information. The amounts shown as charges for the patient and the escort were incorrect, and in that sense were false. However, the amounts shown as due were true and correct.

5. *Health or Safety Risk*

Quyana does not provide medical care and nothing in the audit suggests that it poses a health or safety risk to recipients.

D. Recommendation

In an appeal under 7 AAC 160.130, the Commissioner decides which action to take of those available under 7 AAC 160.110(h). In this case, the only action the Department proposes to take is to recoup the overpayments. Quyana argues that recoupment should be waived in part because, in Quyana's view, the Department shares responsibility for the overpayments made to it, in that the Department should have been equally aware of the fact that payments were regularly being made in the amount listed, rather than in the amount claimed as due. Quyana argues that since it never actually claimed the amount the Department paid, and it was the Department's decision to make payment in the listed amounts rather than in the amount claimed, the overpayments are as much attributable to the Department as to Quyana.

AS 47.05.200(b) requires the initiation of administrative procedures for recoupment, and 7 AAC 160.110(h) provides that if the audit findings show non-compliance with law or the provider agreement, the Department will take one or more of the listed actions, of which recoupment is the only one applicable in this case.³⁴ Under federal law, the Department must refund to the federal government the federal share of the overpayment.³⁵ Absent any requirement that recoupment include interest, Quyana would retain a portion of the benefit of the

³⁴ The other actions are sanctions, other administrative or civil actions, or referral to another agency. See 7 AAC 160.110(h)(2)-(4). Those actions might be appropriate in the event of fraud, criminal conduct, licensing violations (e.g., substandard medical care or record keeping), or other circumstances not present in this case.

³⁵ See also 42 C.F.R. §433.316(b).

overpayment, and the Department has discretion to limit the amount recouped in each payment so as to avoid economic harm to Quayana.³⁶

IV. Conclusion

The audit correctly estimated the amount of overpayment. The Department's determination to recoup the overpayment is sustained.

DATED August 28, 2014.

Signed

Andrew M. Hemenway
Administrative Law Judge

Adoption

I hereby adopt this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date this decision is distributed to you.

DATED this 8th day of October, 2014.

By: *Signed*

William J. Streuer
Commissioner of Health and Social Services

[This document has been modified to conform to the technical standards for publication.]

³⁶ Cf. 7 AAC 105.260(b). While this regulation does not govern recoupment under 7 AAC 160.110(h)(1), it is inapplicable, it is consistent with the existence of equivalent administrative discretion in recoupment under 7 AAC 160.110(h)(1).