Matter of Exclusive Ambulette Serv., Inc. v New York State Dept. of Health
2016 NY Slip Op 30738(U)
March 29, 2016
Supreme Court, Queens County
Docket Number: 11209/15
Judge: Darrell L. Gavrin
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

MEMORANDUM

SUPREME COURT: QUEENS COUNTY
IA PART 27

In the Matter of the Application of
EXCLUSIVE AMBULETTE SERVICE, INC.,

Plaintiff/Petitioner,

For a Judgment Pursuant to Article 78 of the
N.Y. Civil Practice Law & Rules,

- against -

NEW YORK STATE DEPARTMENT OF HEALTH, STATE OF NEW YORK OFFICE OF THE MEDICAID INSPECTOR GENERAL and DENNIS ROSEN, NEW YORK STATE MEDICAID INSPECTOR GENERAL,

Defendants/Respondents.

INDEX NO. 11209/15

MOTION DATE Dec. 2, 2015

MOTION CAL. NO. 60

MOTION SEQUENCE NO. 1

In this hybrid Article 78 proceeding petitioner, Exclusive Ambulette Service Inc. (Exclusive), seek a judgment vacating and annulling respondents determination that petitioner engaged in prohibited subcontracting, as set forth in a pre-payment review letter dated May 13, 2015; requiring respondents to identify the specific reasons for denying any claim; and directing respondents to pay petitioner for all claims it submitted which were summarily and improperly denied by respondent State of New York Office of the Medicaid Inspector General (OMIG).

The New York State Medical Assistance (Medicaid) program is required to assure non-emergency transportation for Medicaid beneficiaries to and from medical services (42 CFR § 431.53). Some Medicaid beneficiaries may receive authorization for transportation by ambulette service where such service is the most medically appropriate and cost-effective level of transportation to and from medical services, or day treatment programs (18 NYCRR § 505.10 [d] and [e]). The Medicaid program furnishes these transportation services to eligible Medicaid recipients through enrolled providers. As of October 1, 1996, responsibility for administering New York State's Medicaid program shifted from the Department of Social Services (DSS) to respondent, Department of Health (DOH) and DSS's rules and regulations continued in full force and effect as DOH's rules and regulations (*Blossom View Nursing Home v Novello,* 4 NY3d 581, 591-592 [2005], *citing* L 1996 ch 474, § 242). DOH became responsible for the Medicaid audit function on April 1, 1997 (*Id.* at 592, *citing* L 1997. ch 436, part B, § 122 [a], [e]), and respondent OMIG was created as an independent office within DOH, effective July 26,

2006 (L 2006, ch 442, § 1). Respondent, Dennis Rosen, is the Medicaid Inspector General. The OMIG is authorized to audit and review Medicaid providers (18 NYCRR § 504.8).

Petitioner, Exclusive, is a transportation service provider enrolled in the Medicaid program. On January 16, 2015, Exclusive was selected for pre-payment review, by the DOH/OMIG, pursuant to 18 NYCRR § 504.8 (c). The OMIG notified Exclusive of said pre-payment review in a letter dated February 10, 2015, provided a list of recipients and the dates of services, and requested that certain documentation be submitted to the OMIG. Exclusive was informed that while these claims were pending, they should not be resubmitted for payment. Once petitioner was selected for pre-payment review, its ambulette claims with dates of service between January 12, 2015 and January 27, 2015, were "pended," payment of these claims would be withheld until said review was completed.

The OMIG received Exclusive's response on April 9, 2015; included in its documents was a vehicle leasing agreement between Exclusive and Rivlab Transportation Corp. (Rivlab) and Rivlab's vehicle registration certificates. Rona Caswell-Reagan, a Management Specialist in a division of the OMIG, states in her affidavit, that prior to the issuance of a pre-payment review letter dated May 13, 2015, she had a telephone conversation with Exclusive's counsel, Margaret Surowka-Rossi, on April 28, 2015. Ms. Caswell-Regan stated that she informed Ms. Surowka-Rossi that OMIG would be denying claims for payment for transports performed with Rivlab owned vehicles, as well as claims for ambulette services where buses were used to provide transportation services, and stated OMIG's reasons for the denials.

Ms. Surowka-Rossi, in an e-mail, dated April 28, 2015, requested that Ms. Caswell-Reagan provide a reference in the manual or guidelines upon which she was relying "to state that if a vehicle is registered to another company, the provider cannot lease it?". She further stated that: "In addition, you pointed out that these are larger vehicles. Yes, they are as they are for Day Treatment transportation. The Manual specifically notes that they are unique in that it involves groups of individuals: Day Treatment Transportation Day treatment/day programs transportation is unique in that this transportation can be provided by an ambulance, ambulette or livery provider. The difference is that a typical transport involves a group of individuals traveling to and from the same day site, at the same time, on a daily or regular basis. The economies of this group ride transport are reflected in a different reimbursement amount than that reimbursed for an episodic medical appointment. Providers of transportation to day program must adhere to the same requirements for their specific provider category."

Ms. Caswell-Regan, responded the same day in an e-mail, and provided the reference in the transportation manual as: "Subcontracting or leasing with a transportation vendor who is not currently enrolled as a Medicaid provider, or has been excluded from participation in the Medicaid Program, is not allowed. To verify that a provider is enrolled in the Medicaid Program, please submit a request to the Department via email (MedTrans@ health.ny.gov)." She further stated that "these claims were billed with procedure code A0130 (ambulette). An ambulette is a specially equipped vehicle to transport the disabled."

Ms. Surowka-Rossi responded in an e-mail dated May 6, 2015, stating that "[t]he section

you quote applies in the situation where a provider is **sub-contracting transportation,** that is not the case here. The sentence is lifting [sic] entirely out context. In fact, the first sentence in that section specifically states "[g]enerally ambulette providers are to deliver transportation services in vehicles owned or leased by the provider, using driver employed by the provider." This is exactly what Exclusive does." The two sentences in the manual go on to describe sub-contracting transports describe the allowable short-term versus unacceptable long-term sub-contracting of transports [sic]. Exclusive does NOT subcontract transports. Its drivers are employed by Exclusive, and Exclusive schedules and dispatches all its transports with all its own drivers. As such, the sentence you quote is taken out of context and simply not applicable." Ms. Surowka-Rossi also set forth a hypothetical scenario presented by the Department of Health in 2009, which she stated supported petitioner's position.

Ms. Caswell-Reagan, in an e-mail dated May 6, 2015, repeated the quote from the manual relied upon by OMIG, and stated that unlike the Department of Health scenario, Rivlab was not an enrolled provider. Ms. Surowka-Rossi, in a reply the same date, asserted that Exclusive has a Medicaid number and therefore was in the same position as the hypothetical company, and that this is not the sub-contracting of transports. Ms. Caswell-Reagan in an e-mail of the same date, stated that she was aware that the petitioner was leasing the vehicles and requested that Ms. Surowka-Rossi address her concerns in a letter.

The OMIG completed its pre-payment review, and in a letter dated May 13, 2015, informed Exclusive that it had identified the following "areas of concern which need your attention":

"According to the transportation provider manual, "Sub-contracting or **leasing** with a transportation vendor who is not currently enrolled as a Medicaid provider, or has been excluded from participation in the Medicaid Program, **is not allowed**. To verify that a provider is enrolled in the Medicaid Program, please submit a request to the Department via email (MedTrans@ health.ny.gov)."

"• 142 of 198 claims were billed with vehicles that are leased to Rivlab Transportation Corp. and this company is not currently enrolled as a Medicaid provider. These claims were denied and cannot be re-billed".

"According to the transportation provider manual, "For each leg of the trip, verification should be completed at the time of the trip and must include, at a minimum:

• The Medicaid enrollee's name and Medicaid identification number;
• The date of the transport;
• Both the origin of the trip and the time of the pickup;
• Both the destination of the trip and the time of the dropoff;
• The vehicle license plate number; and
• The full printed name of the driver providing the transportation.

"•19 of 948 claims were billed with a vehicle license plate and driver's license number that did

not match the documentation. These claims were denied but can be re-billed with the vehicle license plate and driver's license number on documentation provided.

"• 17 of 948 claims had documentation that had the same pick up and drop off times with the same driver and vehicle but different addresses for one leg of the trip. These claims were denied but can be re-billed **with one** unit only.

"• One of 948 claims had the same pick up and drop off addresses for both legs of the trip. This claim was denied and cannot be re-billed.

"According to the transportation provider manual, "Only lawfully authorized ambulette services may receive reimbursement for the provision of ambulette transportation. Ambulettes must be in compliance with all New York State Department of Transportation (NYSDOT) licensure, inspection and operational requirements, including those identified at Title 17 NYCRR § 720.3(A)."

" • Eight of 948 claims were billed as ambulette claims but were not transported in an ambulette. These claims were denied and cannot be re-billed.

" • 49 of 948 claims were billed as an ambulette claim but were not transported in an ambulette for one leg of the trip. These claims were denied but can be re-billed with **one unit** only. "Please note: a provider should ensure the Medicaid enrolled name or doing business as (DBA) name of the provider on all Medicaid enrollment forms must exactly match the business name on all business licenses, permits and documents, not excluding or limited to vehicle registration documents. Also, if you are currently using vehicles that are registered to a subcontractor that is not participating with the Medicaid Program, you will need to discontinue using that company. If the vehicles are owned by your organization, you must have the vehicles registered to your organization by the NYS DMV. Future claims may be denied if they are not in compliance with this policy. Attached please find the list of claims denied, and any further option to re-bill." Said list only set forth the recipient's identification number, date of service, the action (deny, or deny can re-bill) and whether the claim could be re-billed (no, yes, or yes-one unit). Said letter also set forth Exclusive's obligations to report, return and explain overpayments to the OMIG.

After a series of email exchanges with Ms. Caswell-Reagan, Ms. Surowka-Rossi, in a letter dated June 17, 2015, addressed to OMIG's general counsel, asserted that she had repeatedly requested and had been denied specific information relating to the findings in the May 13, 2015 letter; that the claims listed failed to identify which specific findings was determined by OMIG for each specific claim, and that without said information, Exclusive could not properly review the claims and properly re-bill those claims that OMIG had identified as re-billable.

Counsel also raised due process objections pertaining to the review process, the findings and the failure to specify the claims that could be re-billed in an intelligible manner. She further stated that OMIG had incorrectly stated that Exclusive leased vehicles to Rivlab, who is not an enrolled Medicaid provider, that in fact the vehicles are owned by Rivlab and leased to

Exclusive; that although Rivlab is admittedly not an enrolled Medicaid provider, this is not a subcontracting situation; that Exclusive is an enrolled Medicaid provider and employs all the drivers; that Exclusive has secured all the vehicles and maintains and operates them on a daily basis in the name of Exclusive; and that the DOH had specifically permitted ambulette providers to deliver transportation services in vehicles owned and leased by the provider, using drivers employed by the provider. Counsel requested that the information sought be provided and that OMIG allow for an appeal of the claimed erroneous findings.

Ms. Surowka-Rossi, in a letter, dated June 30, 2015, addressed to OMIG's general counsel, again requested that she be given specific information so that Exclusive could "identify the purported issues and challenge or otherwise respond to the findings." In addition, counsel stated that numerous claims unrelated to the pre-payment review had been denied, using a "B7" code, without stating a reason for the specific denial.

Counsel for OMIG, in a letter dated July 10, 2015, responded to Ms. Surowka-Rossi's letters, and provided a spreadsheet that specified OMIG's finding for each specific claim. Counsel further stated that there was no formal appeal process for pre-payment review findings set forth in the provisions of 18 NYCRR 518.5, and stated that if Exclusive wanted to challenge the agency's final action, it could do so in an Article 78 proceeding. With respect to the claims that were denied with a "B7" code, it was requested that the specific claim numbers be provided.

Ms. Surowka-Rossi, in response, contacted OMIG and requested a meeting to discuss the denied claims and the reasons for said denials. In an e-mail dated July 22, 2015, OMIG informed Exclusive's counsel that a meeting would not be possible. In a separate e-mail dated July 22, 2015, OMIG's counsel responded to Ms. Surowka-Rossi, stating that there were no new findings in the information that was sent to her; that with respect to continuing denials, Ms. Surowka-Rossi needed to supply the particular claim numbers; that after a pre-payment review if a problem is discovered, future claims will be checked to see if the error has been corrected and if not, the claims will not be approved.

In a letter, dated July 22, 2015, Ms. Surowka-Rossi sent OMIG a password protected disk with the claim information pertaining to the "B7" denials. OMIG received said disk on July 28, 2015, and on August 4, 2015. OMIG's counsel sent Ms. Surowka-Rossi a password protected link to a spreadsheet containing said claims and the reasons for the denials. OMIG's counsel also sent an e-mail on August 4, 2015, informing Ms. Surowka-Rossi that once she reviewed the information, Ms. Caswell-Reagan would "walk her through" the denials. Counsel also provided Ms. Caswell-Reagan's telephone number. Ms. Surowka-Rossi, in an email response, only acknowledged that she had been out of the office.

In this hybrid Article 78 proceeding, petitioner alleges in its verified petition, that it entered into a three-year lease agreement with Rivlab, whereby it leases vehicles from Rivlab; that said agreement is self-renewing and has not been terminated; that the vehicles owned by Rivlab are typically large vehicles with the potential to accommodate in excess of 15

passengers; that these vehicles are operated by Exclusive employees[1];that pursuant to the lease agreement Rivlab is obligated to maintain and repair the vehicles, pay for fuel costs, insure the vehicles, and provide space to store them when not in use.

Petitioner alleges that respondents, in the pre-payment review letter of May 13, 2015, denied 236 of 948 claims; that respondents stated that 151 claims could not be re-billed; that 142 claims were denied because they were billed with "vehicles that are leased to 'Rivlab Transportation Corp.' and this company is not currently enrolled as a Medicaid provider"; that with respect to said 142 denials, the pre-payment review letter quoted a portion of the transportation provider manual concerning a prohibition on ambulette companies engaging in short-term sub-contracting with a transportation provider; that Exclusive is not engaging in such sub-contracting, and therefore that provision is inapplicable here; and that with respect to other claims denied in the letter, it is not clear which specific finding correlated to a specific claim.

Petitioner alleges that OMIG's failure to provide a clear basis for denying the claims deprived Exclusive of a meaningful opportunity to review and re-bill the denied claims, and thus constituted denial of due process. Petitioner alleges that its counsel sent letters to the OMIG dated June 17, 2015 and June 30, 2015, with respect to the May 13, 2015 letter; that the June 30, 2015 letter also noted that other claims that were not part of the pre-payment letter, were denied under code "B7," without explanation; that OMIG's initial response was terse and unsatisfactory; that OMIG responded in a letter dated July 10, 2015, and requested that petitioner provide specific claim numbers with respect to the B7 denials; that petitioner's counsel requested a meeting with OMIG to discuss the denials and the reasons for the denials; that OMIG informed counsel on July 22, 2015, that a meeting was not possible; and that since July 22, 2015, OMIG has not communicated with Exclusive to inform it of the reasons for the denied claims.

Petitioner alleges that to date OMIG has denied 3,291 claims without explanation and that the claims represent services performed by Exclusive in the amount of $219,315.98. Petitioner alleges that since June 11, 2015, Exclusive has not performed or billed a single trip in a Rivlab vehicle, and that OMIG has continued to deny claims without explanation, applying either the "B7" code, or writing the word "Bus" next to the claim. It is alleged that respondents' cursory review of these claims deprived it of any opportunity to respond to OMIG with an explanation as to why the claims are proper. Petitioner alleged that it billed OMIG for the same trip, with the same driver and same vehicle, and that the claims have been approved on some occasions and denied on others, and that these arbitrary denial of claims has left Exclusive "in the dark" as to what OMIG contends is incorrect with respect to these claims.

Petitioner in its first cause of action seeks a judgment "annulling" respondents' May 13, 2015 determination, and an order directing respondents to comply with their regulatory obligation to identify the specific reasons for denying any claim, and directing respondents to

---

[1]Mr. Edelman states that although the lease agreement provided for Rivlab drivers, Exclusive has used its own employee drivers since December 2008.

pay petitioner for all claims that were submitted and were summarily and improperly denied by OMIG.

The second cause of action alleges that petitioner has a property interest in the money paid for services it performed while a qualified provider in the Medicaid program; that respondents' summary denial of petitioner's claims deprived it of its due process right to respond to any allegations of improprieties in the claims submitted; that the May 13, 2015 letter determination constituted a denial of petitioner's property interest, in violation of 42 USC § 1983, the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 7 (a) of the State Constitution. Petitioner thus asserts that respondents' determination is arbitrary and capricious, and that it is entitled to damages in the form of costs and attorney's fees, pursuant to 42 USC §1988.

Petitioner's third cause of action against the DOH for breach of contract, seeks to recover as damages the amount of the denied claims for services it actually rendered.

Respondents in their verified answer, assert that their actions were taken in accordance with all applicable statutes, rules and regulations, and the Federal and State Constitutions; and that their actions were wholly within their power, authority, jurisdiction and discretion, and were neither arbitrary nor capricious, nor an abuse of discretion, nor an error of law, nor in excess of their authority or jurisdiction. With respect to the 142 claims that were denied because the billed services were provided in vehicles leased from Rivlab, respondents assert that the DOH Transportation Manual-Policy Guidelines clearly states that "subcontracting or leasing with a transportation vendor who is not currently enrolled as a Medicaid provider ...is not allowed," and asserts that although this provision appears under the heading of subcontracting, the wording of the heading does not constrict the unambiguous language of the text in said sub-section that provides guidance both on sub-contracting and on leasing. Respondents also assert that petitioner billed for ambulette services, but according to its own DMV registration did not use ambulette vehicles; and that other claims were denied because the information corresponding to those claims was facially inaccurate.

To the extent that petitioner has submitted a letter and a supplemental affirmation, dated January 20, 2016, along with a DOH Medicaid Update, dated December 2015, after the parties' papers were fully submitted, this is in effect an improper sur-reply and those documents will not be considered (*see* CPLR 2214; *Jannetti v Whelan*, 131 AD3d 1209, 1210 [2d Dept 2015]; *Graffeo v Paciello*, 46 AD3d 613, 615 [2d Dept 2007]; *Flores v Stankiewicz*, 35 AD3d 804, 805 [2d Dept 2006]).

Judicial review of administrative determinations that were not made after a quasi-judicial hearing is limited to whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (*see* CPLR 7803[3]; *Matter of Sasso v Osgood,* 86 NY2d 374, 384 [1995]; *Matter of Riverside Tenants Assn. v New York State Div. of Hous. & Community Renewal*, 133 AD3d 764, 766-767 [2d Dept 2015]; *Matter of London Leasing Ltd. Partnership v Division of Hous. & Community Renewal*, 98 AD3d 668, 670 [2d Dept 2012]). In such a proceeding, courts "examine whether the action

taken by the agency has a rational basis," and will overturn that action only "where it is 'taken without sound basis in reason' or 'regard to the facts' " (*Matter of Wooley v New York State Dept. of Correctional Servs*., 15 NY3d 275, 280 [2010], *quoting Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]), or where it is "arbitrary and capricious" (*Matter of Deerpark Farms, LLC v Agricultural & Farmland Protection Bd. of Orange County*, 70 AD3d 1037, 1038 [2d Dept 2010]). An agency's interpretation of its own regulation is entitled to deference unless it is unreasonable or irrational (*see Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Visiting Nurse Serv. of N.Y. Home Care v New York State Dept. of Health*, 5 NY3d 499 [2005]; *Matter of In Defense of Animals v Vassar Coll.*, 121 AD3d 991, 993 [2d Dept 2014]).

Medicaid payments are authorized only when providers and their services are in compliance with all applicable statutes, rules and regulations (*A.R.E.B.A. Casriel Inc. v Novello*, 298 AD2d 134, 135 [1st Dept 2002], *citing* Social Services Law (SSL) § 365-a [2][n] and 18 NYCRR 504.3). The DOH, "upon pre-payment review, may deny claims, adjust claims to eliminate non-compensable items or to reflect established rates or fees, correct obvious or mathematical errors, *pended claims for further audit or review*, or approve the claim for payment, subject to post-payment audit and verification" (18 NYCRR §504.8 [c][emphasis added). Claims can be pended for 90 days, provided a notice of withholding is sent within five days, and pending cannot continue beyond 90 days unless a written draft audit report or notice of proposed agency action is sent to the provider (*Matter of Ostrow v Bane*, 213 AD2d 651[2d Dept 1995] [time constraints of 18 NYCRR Part 518 apply to both withheld and pended claims]; 18 NYCRR § 518.7). The time constraints contained in 18 NYCRR § 518.7 safeguard due process rights of private Medicaid providers (*see Matter of Medicon Diagnostic Laboratories, Inc. v Perales*, 74 NY2d 539, 546-547 [1989]).

Pursuant to 18 NYCRR § 518.1 (c), an "overpayment" is defined as "any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake" (18 NYCRR 518.1 [c]). "[W]hen a determination is made that an overpayment has been made, any person from whom recovery is sought is entitled to a notice of the overpayment and an opportunity to be heard" (18 NYCRR 518.5 [a]), unless "the department or its fiscal agent adjusts or denies a claim prior to payment or withholds payment pursuant to a notice of withholding" (18 NYCRR § 518.5 [b]). Therefore, with respect to the pre-payment review of Exclusive's ambulette claims with dates of service between January 12, 2015 and January 27, 2015, petitioner was not entitled to a hearing. As OMIG's determination is subject to judicial review within the Article 78 proceeding, there has been no violation of due process.

This court further finds that the May 13, 2015 letter failed to detail with specificity the reason each claim was denied, and thus failed to inform Exclusive of the reasons for each denial, as well as the basis for re-submitting various claims. As respondent OMIG provided petitioner with a detailed spread sheet, that was sufficient to enable it to determine the reasons for the denials and documentation needed to re-bill certain claims, the court finds that the petitioner was not denied any procedural or substantive rights. However, as to all future claims, due process requires that respondent, in the future, provide Medicaid transportation service

enrollees with full and proper notice of the specific reason for the denial of any claim, in the first instance.

The OMIG, in its May 13, 2015 letter determination, incorrectly stated that Exclusive leased vehicles *to* Rivlab. Rather, the documentary evidence submitted to OMIG, and to this court, establishes that Exclusive leased the vehicles in question *from* Rivlab. However, it is undisputed that Rivlab is not enrolled as a Medicaid transportation service provider.

Petitioner in its memorandum of law, quotes from a portion of the transportation manual cited by OMIG, but has not submitted a copy of said manual. Respondents, however, do not dispute that in December 2008, the DOH issued a Medicaid update, informing enrolled transportation providers that "[g]enerally, ambulette providers are to deliver transportation services in vehicles owned or leased by the provider, using drivers employed by the provider"; that short term subcontracting was permitted, where " [d]ue to mechanical breakdowns or other acute circumstances, transportation providers face times when the number of available vehicles does not meet the need for services" that "[e]ffective January 1, 2009, this arrangement is only allowed when using another Medicaid enrolled provider. Subcontracting or leasing with a transportation vendor who is not enrolled, or has been excluded from participation from the Medicaid Program, is not allowed." The DOH specifically stated that such a long term reassignment of trip to another transportation vendor, is unacceptable, as "such a long term arrangement has the potential of bypassing significant safety and financial controls that are fundamental to the integrity of the Medicaid transportation program."

Although the prohibition on leasing vehicles from non-Medicaid enrolled entities is set forth within a provision for short-term sub-contracting, petitioner has not established that the applicable regulations or policy guidelines otherwise permit it to lease vehicles from a non-Medicaid transportation services provider. Exclusive, in support of the petition, has submitted an affidavit from its vice president, Michael Edelman, and an ambulette questionnaire from the New York Medicaid Inspector General, which he executed on February 12, 2009. Question 8 of said questionnaire reads as follows: "Are you aware that the use and services of any vehicles and/or drivers leased from another transportation company must be leased from a transportation company that is enrolled as a provider in the Medicaid program? Mr. Edelman, in response circled "Yes," and in response to the question "If yes, when did you become aware of this required?", he wrote December 2008.

The evidence submitted thus establishes that prior to January 2015, Exclusive was well aware that the leasing vehicles from a non-Medicaid enrolled transportation provider was contrary to the DOH's policy. Therefore, this court finds that OMIG's determination to deny payment for transportation services provided by vehicles leased from Rivlab is neither arbitrary nor capricious, nor an abuse of discretion and is not contrary to law.

With respect to Rivlab vehicles which were registered with the DMV as buses, petitioner has not established that it provided ambulette services, as defined in the applicable regulations, in connection with the transportation services associated with these vehicles. In addition, petitioner does not assert that the billing rate for ambulette services and the billing rate

for large passenger vehicles used for day transportation are identical. This court therefore, finds that OMIG's determination to deny these claims for ambulette services is neither arbitrary nor capricious, nor an abuse of discretion, and is not contrary to law.

With respect to claims that were submitted by Exclusive after it discontinued using Rivlab vehicles on June 11, 2015, and were allegedly disapproved under the code "B7"or Bus, respondent OMIG provided a password protected link to a spreadsheet containing said claims and the reasons for the denials, and offered to discuss them with Exclusive. There is no evidence that Exclusive responded to said offer. As OMIG's pre-payment review and determination of May 13, 2015, only included ambulette claims with dates of service between January 12, 2015 and January 27, 2015, any claims submitted after that date were not included in the May 13, 2105 determination. Further, Exclusive has not established said claims, which were denied after June 11, 2015, were not subject to administrative review. Exclusive's claims regarding ambulette services performed after the issuance of the May 13, 2015 letter determination, therefore are not properly before the court, and are not subject to judicial review at this time. Petitioner's claims pertaining to the State Administrative Procedure Act, therefore, need not be considered at this time.

Finally, petitioner's claim that respondents treated its claims in an inconsistent manner, is without merit. Petitioner was clearly informed that the claims that were subject to the pre-payment review would be "pended," i.e. payment would be withheld until the review was concluded. However, said pre-payment review did not cause payments of claims with service dates after January 27, 2015, to be withheld. Therefore, until the pre-payment review was concluded on May 13, 2015, Exclusive received payment for transportation services that it provided after January 27, 2015. Payment of claims in this manner was neither arbitrary nor capricious, nor an abuse of discretion, and was not contrary to law.

In view of the foregoing, petitioner's request to annul respondents' determination of May 13, 2015, to require respondents to pay all of the denied claims, and to require respondents to further identify their reasons for denying the claims, is denied, and the petition is dismissed as to the Article 78 claims.

DATED: March 29, 2016

DARRELL L. GAVRIN, J.S.C.