STATE OF NEW YORK

SUPREME COURT COUNTY OF ST. LAWRENCE

In the Matter of

COUNTY OF ST. LAWRENCE Index No. 2009-131200

Petitioner,

- against - **DECISION**

RICHARD F. DAINES, as Commissioner of the New York State Department of Health and THE NEW YORK STATE DEPARTMENT OF HEALTH, IAS #44-1-2009-0452

Respondents.

Appearances: Whiteman, Osterman & Hanna, LLP (Christopher E. Buckey, Esq., and Giovanna A. D'Orazio, Esq., of counsel), attorneys for Petitioner; Andrew M. Cuomo, Attorney General (Deanna R. Nelson, Assistant Attorney General, of counsel), for Respondent.

DEMAREST, J. This is a special proceeding pursuant to CPLR Article 78 seeking the following relief:

1. A judgment/order nullifying and invalidating the determinations of the Respondent dated March 18, April 9 and April 13, 2009, which denied Petitioner's claims for reimbursement for Medical Assistance costs incurred;

2. A judgment/order compelling and directing the Respondent to forthwith examine and otherwise allow Petitioner's claims for reimbursement and directing the payment of $773,728.88, plus interest;

3. A judgment/order compelling Respondent to examine and determine any subsequent claims in accordance with appropriate procedures; and,

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4. Assessing appropriate sanctions for Respondent's alleged frivolous defenses and bad faith. [1]

Social Services Law §368-a requires the State to reimburse the County for payments requested and received by the State from the County prior to 2006 for medical assistance provided to certain mentally disabled recipients. These so-called "overburden" costs reflected the reality that moving patients from State facilities into the community necessarily increases costs of care to the County.

Counties share a percentage of the cost of medical care with the State and Federal governments. The State pays individual medical providers and then bills the County for its share. In order to thereafter recoup money paid for the designated recipients, the County must seek a refund of that portion of money paid to the State which the State was mandated to cover.

On January 1, 2006, the process was revised so as to provide a "cap" on the amount that a county would have to spend to meet its Medicaid burden. This new

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[1] The following papers were considered in rendering this decision:
a. Notice of Petition, dated July 6, 2009.
b. Petition, with attachments, verified June 26, 2009.
c. Verified Answer and Return, dated December 7, 2009.
d. Reply Affidavit, with attachments, of Christopher E. Buckey, Esq., dated December 17, 2009.
e. Affirmation, with attachments, of Nancy Rose Stormer, Esq. dated December 14, 2009.
f. Petitioner's Reply Memorandum of Law, dated December 17, 2009.
g. Respondent's Post-Argument Memorandum of Law, dated January 13, 2010.
h. Letter dated January 19, 2010, from Christopher E. Buckey, Esq.
i. Letter dated March 5, 2010, from Christopher E. Buckey, Esq.
j. Letter dated March 12, 2010, with attachment, from Deanna R. Nelson, AAG.
k. Letter dated March 12, 2010, from Christopher E. Buckey, Esq.

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process eliminated the need to seek reimbursement for any sums paid after the effective date of the new legislation.

St. Lawrence and other counties began a process of reviewing payments made in the years before 2006 and made claim against the State for payment. Respondents denied these claims, claiming the 2006 Medicaid cap legislation abrogated its obligation to pay. This argument has been rejected by the Fourth Department, which held the Medicaid Cap Statute was not retroactive. Matter of County of Herkimer v. Daines, 60 A.D.3d 1456 (4th Dep't 2009), lv. den, 63 A.D. 3d 1672 (4th Dep't 2009), lv. den., 13 N.Y. 2d 707 (2009); Matter of County of Niagara v. Daines, 60 A.D.3d 1460 (4th Dep't 2009), lv. den. 63 A.D. 3d 1672 (4th Dep't 2009), lv. den. 13 N.Y. 3d 708 (2009).

Respondents acknowledge this argument has been rejected in the Fourth Department, but urges this Court to rule otherwise, in an attempt to obtain a contrary ruling in the Third Department, thus providing an appeal of right to the Court of Appeals. With no precedent in the Court of Appeals or the Third Department, this Court is bound by the precedent of the Fourth Department. In re Patrick BB, 284 A.D. 2d 636 (3d Dep't 2001); Mountain View Coach Lines, Inc. v. Storms, 102 A.D. 2d 663 (2d Dep't 1984), see People v. Turner, 5 N.Y. 3d 476 (2005).

Following its loss in the Fourth Department, the Department of Health issued a supplementary letter denying St. Lawrence County's claims on the basis that they were time-barred by 18 NYCRR 601.3. Although there is no basis for issuing such a supplementary denial, the merits of the Respondents' position will be addressed.

Section 601.3(c) provides:

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> "Except as otherwise provided within the requirements for any particular activity, expenditures made by a social services district may not be reimbursed, if such costs are related to expenditures, services, supplies or other costs incurred on behalf of a recipient or an individual more than 12 months prior to the month in which the claim for reimbursement is made, unless such costs are specifically approved by the department."

Petitioner argues this regulation does not apply since the claims being made are not for expenses incurred by the County on behalf of a recipient. What is being sought is a refund of moneys paid by the County to the State for expenses incurred by the State. This method of recoupment was ". . . otherwise provided within the requirements for any particular activity. . . ." The 'overburden' scheme specifically permits counties to audit its records and seek reimbursement and provides specific time limits for the State to respond. 18 NYCRR 601.4.

Section 601.3(c) provides a specific time limit so that the State would not be burdened with verifying expenses paid by a county to any number of different vendors after more than a year has elapsed.

Finally, this Court must not condone the egregious conduct of the Respondents in opposing the legitimate claims of the County. Every court that has considered the argument that the Medicaid Cap Statute must be applied retroactively has soundly rejected it. To require the County to further litigate in order to collect what it is rightfully due wastes not only the Court's time, but also that of attorneys representing both sides, all of whom are ultimately being paid by the taxpayers.

The newly pleaded "defense" in this case was obviously an afterthought and designed more to delay than to present a novel, colorable argument. Nor does the

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claim that this proceeding was defended in hope of obtaining an inconsistent Appellate Division decision make the Respondents' position any less frivolous. If the State was so convinced the Fourth Department was in error, despite the rejections of its applications to appeal by the Court of Appeals, it could have brought its own declaratory judgment actions in one or all of the other Departments.

Pursuant to 22 NYCRR 130-1.1, I find Respondents' litigation conduct was frivolous and it shall pay Petitioner's attorneys fees incurred in this proceeding. Petitioner's counsel is directed to serve and file a redacted affidavit of services rendered and fees charged within 30 days. Respondents shall file responding papers within 20 days thereafter. If necessary, a hearing will be convened to determine the amount of attorneys fees to be awarded.

The Petition is granted, with costs. Submit judgment.

SO ORDERED

DATED: April 1, 2010, at Chambers, Canton, New York.

DAVID DEMAREST, J.S.C.

ENTER:

{Decision and moving papers filed}

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