Good Samaritan Hosp. Med. Ctr. Inc. v New York State Dept. of Health

2016 NY Slip Op 30382(U)

February 25, 2016

Supreme Court, County of Suffolk

Docket Number: 2011-32813

Judge: Jeffrey Arlen Spinner

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This opinion is uncorrected and not selected for official publication.

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Supreme Court of the State of New York
IAS Part XXI - County of Suffolk

PRESENT:

HON. JEFFREY ARLEN SPINNER
Justice of the Supreme Court

GOOD SAMARITAN HOSPITAL MEDICAL CENTER, INC, as Operator of the **GOOD SAMARITAN NURSING HOME, GOOD SAMARITAN NURSING HOME, OUR LADY OF CONSOLATION GERIATRIC CARE CENTER, ST CATHERINE OF SIENA MEDICAL CENTER,** as Operator of **ST CATHERINE OF SIENA NURSING HOME** and **ST. CATHERINE OF SIENA NURSING HOME,**

Petitioners,

For an Order Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, NIRAV R SHAH, MD, MPH, as Commissioner of the New York State Department of Health, and **ROBERT L. MEGNA,** as Director of the Budget of the State of New York,

Respondents.

DECISION & ORDER

INDEX NO: 2011-32813

MTN SEQ NO: 002 - CASEDISP
ORIG MTN DATE: 10/03/14

FINAL MTN DATE: 12/22/15

UPON the following papers read on this application:
1. Petitioners' Motion for Renewal and Reargument [002];
it is,

ORDERED, that the application of Petitioner is hereby denied in all respects.

After a thorough and comprehensive review of the submission herein, all the facts set forth in the original papers and in these instant submissions for renewal and reargument, and after comprehensive review of all the laws cited in all submissions and the prior Order of this Court, this Court has come to the following determination:

Petitioner moves this Court for an Order, pursuant to CPLR 2221(d) and (e), and such other provisions of as may be deemed applicable:

1. Granting leave to reargue that portion of the Court's July 23, 2014 Order which allegedly overlooked and failed to address the controlling authority, on principles of *stare decisis* and uniform precedent from the Appellate Division, Second Department and other appellate courts in New

York, of the *Kateri Residence Novello* holding, as well as other arguments overlooked by the Court;

2. Granting leave to renew that part of the Court's prior Order, dated July 23, 2014, as determined that the Medicaid reimbursement provisions at issue would afford petitioners duplicative payment in the event the relief sought in underlying proceeding (and the relief granted by every other court to have considered the issue) were granted to petitioners

3. Upon such renewal and reargument, vacating this Court's July 23, 2014 Order and granting in all respects sought in the Petition of GOOD SAMARITAN HOSPITAL.

As to that portion of Defendant's application regarding renewal it is well settled that an application to renew must be based on additional material facts which were in existence at the time the prior motion was made, but were not then known to the party moving for leave to renew; and that said party must offer a valid excuse for not supplying such additional material facts. Such a request should be rejected where the moving party fails to offer the requisite reasonable excuse. (*See,* ***Cuccia v City of New York***, 306 AD2d 2 [1 Dpt 2003] *citing* CPLR 2221(3); ***Elson v Defren***, 283 AD2d 109 [1 Dpt 2001]; ***Tishman Const Corp v City of New York***, 280 AD2d 374 [1 Dpt 2001]; ***Linden v Moskowitz***, 294 AD2d 114 [1 Dpt 2002]; ***Chelsea Piers Management v Forest Electric Corp***, 281 AD2d 252 [1 Dpt 2001]; ***Matter of Creole Enterprises v Giuliani***, 240 AD2d 279 [1 Dpt 1997]). Further, in order to succeed, the moving party must demonstrate that new facts not offered on the prior motion would change the previous determination rendered (*See,* ***Greene v NYCHA***, 283 AD2d 458 [2 Dpt 2001]). This court finds that no new facts were offered, and the new arguments offered as new facts would not have resulted in a different decision in the within matter. Therefore, leave to renew must be denied.

As to that portion of Defendant's application regarding reargument, it is well settled that such a motion is addressed to the discretion of the Court, affording the moving party an opportunity to demonstrate that the Court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law, and not to afford an opportunity to argue once more the same questions previously decided (*See,* ***Foley v Riche***, 68 AD2d 558 [1 Dpt 1979]). Defendant failed to demonstrate that the Court overlooked or misapprehended relevant facts or misapplied any controlling principal of law, in reaching its determination (*See,* ***Saccomagno v City of New York***, 29 AD3d 379, 814 NYS2d 880 [2 Dept 2006]; ***McGill v Goldman***, 261 AD2d 593, 691 NYS2d 75 [2 Dept 1999]; ***City of New York v Times' Up Inc***, 11 Misc3d 1052, 2006 WL 346491*3 [SupCt, New York Co, 2006], *citing,* ***Sports Channel Am Assocs v Nat'l Hockey League***, 186 AD2d 417 [1 Dpt 1992]; ***Rosa Hair Sylist Inc v Jaber Food Corp***, 218 AD2d 793 [2 Dpt 1995]). The Court found nothing to support Defendant's request for relief herein, and stands fully by its prior decision. Therefore, leave to reargue must be denied.

STATEMENT OF FACTS

The Court takes the opportunity to briefly restate the facts, derived from the original Statement of Facts in the prior Order herein.

Petitioners, three nursing homes, are all part of Catholic Health Services of Long Island, containing 790 beds, providing nursing home and health services to residents of Suffolk County, New York (NY), and reimbursed by Medicaid for medical care provided to eligible patients unable to afford it, including

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nursing home care. A joint federal-state program, pursuant to Title XIX, Social Security Act (SSA) (42 USC § 1396 *et seq*), the Federal Government (US) covers 50%, with state and local governments covering the remainder.

New York operates its own Medicaid program, setting guidelines for eligibility and services in compliance with US statutes, regulations and rules. New York establishes a rate in Public Health Law (PHL) § 2807, expressly to implement a Medicaid reimbursement system in compliance with 42 USC § 1396 *et seq*. In 1969 the NYS Legislature (Legislature), responding to skyrocketing medical costs, alarmingly consuming taxes, enacted the Hospital Cost Control Law (*see* L 1969, ch 957).amending PHL § 2807.

This altered the criteria for establishing reimbursement rates, from rates "reasonably related to the cost of providing such service" (PHL former § 2807[3], as amended by L 1965, ch 795,§ 1), to rates "reasonably related to the cost of efficient production of service" (PHL former § 2807[3], as amended by L 1969, ch 957, § 4; *see:* ***People v Woman's Christian Assn of Jamestown***, 56 AD2d 101, 103 [1977]). The Legislature expressly stated "it is essential that an effects cost control program be established will both enable and motivate hospitals to control their spiraling costs" (L 1969, ch 957, § 2; *see:* ***People v Woman's Christian Assn of Jamestown***, 44 NY2d 466, 471 [1978]). The Legislature again amended PHL § 2807(3) in 1982 (L 1982, ch 536, § 3), and currently requires the Commissioner of Health to establish reimbursement rates that are "reasonable and adequate to meet the cost which must be incurred by efficiently and economically operated facilities" (PHL § 2807[3]).

The Health Commissioner developed and implemented the Resource Utilization Group-II case mix reimbursing mythology, effective 1986 (*see*: 10 NYCRR subpart 86–2; ***Matter of Blossomview Nursing Home v Novello***, 4 NY3d 581, [2005]), The Court of Appeals, noted this reimbursement methodology represented "a key cost containment device that encourages facilities to economize," replacing prior methodology which, inconsistent with the purpose of PHL § 2807(3), "saddled taxpayers with ever-increasing expenditures without creating any incentives for efficiency" (*see:* ***Matter of Nazareth Home of the Franciscan Sisters v Novello***, 7 NY3d 538, 544, [2006]).

Indeed, PHL § 2807(3) "does not require rates to cover every [provider's] actual costs. Rates are 'reasonable and adequate' so long as they reimburse the necessary cost (i.e., the 'costs which must be incurred') of 'efficiently and economically operated facilities'" (*id.* Quoting PHL § 2807[3]). It is unmistakably clear that the Legislator's express intent in passing PHL § 2807(3) was to control the spiraling cost of Medicaid services consuming taxpayer dollars at a burgeoning mind-boggling rate.

A New York State agency, Respondent DOH, is vested with authority, pursuant to PHL Article 28, to establish Medicaid reimbursement rates for nursing homes using the Resource Utilization Group-II ("RUG-II") case mix reimbursement methodology (*see*: 10 NYCRR subpart 86–2; ***Blossomview v Novello***, *supra*. Simply put, a nursing home's *per diem* reimbursement rate, the daily rate at which a facility can bill Medicaid for eligible resident, reflects a facility's allowable costs, divided by the number of "patient days". Allowable costs in a base year are adjusted to reflect patient conditions and care needs, as well as regional differences in wages and fringe benefits, and are then trended forward to account for the effects of inflation allowable costs in a base year.

The Health Commissioner adopted this rate-setting methodology in order to encourage nursing homes

to contain costs, and operate efficiently and economically, in line with their reimbursement rates. Rates are set in advance of the rate year, and are subject to maximum (ceiling) and minimum (base) amount derived from statewide averages parentheses (*see:* ***Matter of Consolation Nursing Home v Commissioner of NY State Dept of Health***, 85 NY2d 326 [1995]).

In 2006, the Legislature added a new subdivision, (2-b), to PHL § 2808, providing for updating the base year for operating cost, beginning in 2007 (see L 2006, ch 109, part C, § 47). This mandated full implementation by 2009, preceded by a two-year phase-in period, and called for a 2002 base year. Further, PHL § (2-b)(f) specified updating thereafter no later than the 2012 rate, using a base year no earlier than three years prior to the initial rate year, and for subsequent updating at least every six years, again using a three-year, or more recent, base year. This amendment, referred to as the Rebasing Law, constituted a significant change to Medicaid rate setting for nursing homes.

Herein, the source of controversy revolves around Medicaid rate-setting practices utilized by DOH to reimburse Petitioners, subsequent to introduction of the Rebasing Law, specifically the distinction between Medicaid *per diem* reimbursement rate for 'reserved bed patient days' and 'patient days' has resulted in the filing of the instant Petition. The controlling regulation, 10 NYCRR 86–2.8(d), states simply that 'reserved bed patient days' shall be computed separately from 'patient days'.

'Reserved bed patient day' is defined as "the unit of measure denoting an overnight stay away from the residential healthcare facility for which the patient, or patient's third-party payor, provides *per diem* reimbursement when the patient's absent is due to hospitalization or therapeutic leave" 10 NYCRR 86-2.8(d). 'Patient day' is defined as "the unit of measure denoting lodging provided and services rendered to one patient between the census-taking hour on two successive days" 10 NYCRR 86-2.8(a).

On June 20, 2011, DOH sent Petitioners a Dear Administrator Letter ("DAL"), with an updated determination of Medicaid *per diem* reimbursement rates Petitioners would receive beginning April 1, 2009. The rate sheets included all 'reserved bed patient days' within the number of 'patient days' used to calculate *per diem* reimbursement. The update reflected a facility's allowable costs, divided by the number of 'patient days' and 'reserved patient days', resulting in DOH effectively closing a loophole Petitioners improperly used to increase *per diem* reimbursement rates Medicaid paid them. While it affords Petitioners continued full compensation for all 'reserved bed patient day', it precludes them from artificially increasing the *per diem* rate DOH pays by also simultaneously reimbursing them for that bed as a 'patient day', as well.

The update DOH sent to Petitioners foreclosed a technicality that Petitioners had exploited so as to obtain unjust, unreasonable and excessive compensation, at the expense of the United States, New York and Suffolk County Governments and Medicaid, and even more importantly, ultimately at the expense of hard-working taxpayers, in clear violation of established public policy.

STANDARD OF REVIEW

It is well settled that, in reviewing administrative action, a Court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether the determination is arbitrary and capricious (*see:* ***Pell v Bd of Ed of Union Free Sch Dist No 1 of Towns of Scarsdale and Mamaroneck, Westchester Cnty,***

34 NY2d 222, 231, 232 [1974]). Deference to the judgment of the agency, when supported by the record, is particularly appropriate when the matter under review involves a factual evaluation in the area of the agency's expertise (*see:* ***Kurcsics v Merchants Mut Ins Co***, 49 NY2d 451, 459 [1980]; ***Warder v Bd of Regents of Univ of State of NY***, 53 NY2d 186, 194 [1981]).

DOH is entitled to a "high degree of judicial deference, especially when … act[ing] in the area of its particular expertise," and thus Petitioners bear the "heavy burden of showing" that DOH's rate-setting methodology "is unreasonable and unsupported by any evidence" (*see:* ***Consolation Nursing Home Inc v Comm't of New York State Dep't of Health***, 85 NY2d 326, 331, 332 [1995]).

For all the reasons stated herein above and in the totality of the papers submitted herein, it is, therefore,

ORDERED, that the application of Petitioner to renew and reargue this matter is hereby denied in all respect, as Petitioners failed to meet the legal standards requisite for the granting of such an application.

The foregoing constitutes the Decision and Order of the Court.

Dated: Riverhead, New York
February 25, 2016

HON. JEFFREY ARLEN SPINNER, JSC

✓ FINAL DISPOSITION	NON-FINAL DISPOSITION
✓ SCAN	DO NOT SCAN