Matter of People Care Inc. v City of New York Human Resources Admin.
2018 NY Slip Op 33839(U)
February 5, 2018
Supreme Court, New York County
Docket Number: 109193/2009
Judge: Eileen A. Rakower

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of:

PEOPLE CARE INCORPORATED d/b/a ASSISTED CARE,

Petitioner,

Index No.
109193/2009

DECISION and ORDER

- against -

THE CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION, DEPARTMENT OF SOCIAL SERVICES; and ROBERT DOAR, in his official capacity as Administrator of the City of New York Human Resources Administration and Commissioner of Social Services

Respondents.

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HON. EILEEN A. RAKOWER, J.S.C.

People Care Incorporated d/b/a Assisted Care ("People Care") commenced this Article 78 proceeding on June 25, 2009 against The City of New York Human Resources Administration ("HRA") and Robert Doar [1] in his capacity as Administrator of HRA and Commissioner of Social Services (collectively "Respondents"). The Respondents interposed their Answer on July 13, 2017. People Care petitions this Court for an order annulling and vacating a final Appeal Determination rendered by HRA on March 11, 2009 (the "March 11, 2009 Appeal Determination"). At issue is whether HRA is authorized to audit and recoup funds, in the amount of $6,998,432, awarded to People Care by the Department of Health ("DOH"), under a program to promote recruitment and retention of personal care workers.

[1] Robert Doar is the former Administrator of HRA and Commissioner of Social Services. (Memorandum of People Care at 9)

B. Background and Factual Allegations

Providing personal care services to patients in New York City is Petitioner People Care, a home care services agency[2] under contract with HRA. On or about April 18, 2007, HRA conducted a closeout analysis of its audits of People Care. HRA had audited and demanded recoupment of funds awarded pursuant to the Health Care Reform Act ("HCRA"). People Care appealed on May 10, 2007 arguing that HRA lacked the authority to audit and recoup funds awarded under HCRA. HRA did not act on this appeal but rendered a new closeout analysis on October 20, 2008. HRA demanded that People Care repay HRA $6,998,432 in funds awarded to People Care by DOH under HCRA. On November 13, 2008, People Care appealed this closeout analysis. People Care argued that HRA could not audit and recoup these HCRA funds because HCRA funds are not considered when calculating the Medicaid reimbursement rate under HRA's Alternative Rate Methodology [3] ("ARM"). People Care also argued that HRA's demand was arbitrarily based on People Care's failure to expend the funds in the fiscal year received. In addition, People Care argued that the authority to audit HCRA funds was vested by statute in DOH and expressly reserved thereto in the City-State Memorandum of Understanding.

HRA addressed these contentions *inter alia* in the March 11, 2009 Appeal Determination. (Respondent's exhibit H) HRA found that HCRA funds are part of the Rate calculated by the ARM. (Respondent's exhibit H) HRA reasoned as follows. (Respondent's exhibit H) Because the Memorandum of Understanding provides that HCRA funds may be allocated to direct labor or indirect labor, and the direct and indirect labor costs are part of the rate, the HCRA funds are part of the rate. (Respondent's exhibit H) HRA conceded that there is no specific provision in the Public Health Law Section 2807-v[i][bb] that specifically states that the HCRA funds are to be expended by the provider within the calendar year received or within the New York City fiscal year received. (Respondent's exhibit H) However, HRA

[2] Home care services agency, as defined in Public Health Law § 3602 (2), means "an organization primarily engaged in arranging and/or providing directly or through contract arrangement one or more of the following: Nursing services, home health aide services, and other therapeutic and related services which may include, but shall not be limited to, physical, speech and occupational therapy, nutritional services, medical social services, personal care services, homemaker services, and housekeeper or chore services, which may be of a preventive, therapeutic, rehabilitative, health guidance, and/or supportive nature to persons at home."

[3] Generally, a cost-based methodology is used to calculate Medicaid reimbursement rates. However, in certain circumstances, a social services district may apply for permission to calculate Medicaid reimbursement rates pursuant to an "Alternative Rate Methodology" (ARM). (18 NYCRR § 505.14)

noted that DOH's position is that HCRA funds are Medicaid revenues and if they are not expended in the fiscal year received, those funds must be returned to HRA. (Respondent's exhibit H) HRA also determined that it had the authority to recoup HCRA funds because it has all the power of a Social Services District needed to administer public assistance. (Respondent's exhibit H) These powers include monitoring and recovering any unspent funding for the programs HRA administers. (Respondent's exhibit H)

C. Procedural History

People Care initiated this Article 78 proceeding on or about June 25, 2009 seeking a judgment annulling the March 11, 2009 Appeal Determination. People Care also moved to annul, vacate, and render null and void the October 20, 2008, audit, close-out and recovery analysis insofar as it demanded recoupment from People Care of $6,998,432 awarded under HCRA. Lastly, People Care sought to enjoin HRA and any agency acting on behalf of HRA from recouping any funds demanded in the audit, close-out, and recovery analysis or March 11, 2009 Appeal Determination. HRA cross-moved *inter alia* to dismiss the petition on the grounds that People Care was obligated to utilize the mechanism for the resolution of disputes contained in the underlying contracts (the "Contract") between People Care and HRA. People Care asserted that it was not required to pursue the Contract's dispute resolution procedures because People Care challenged the March 11, 2009 Appeal Determination on the grounds that HRA's audit and demand were beyond HRA's grant of power.

On December 21, 2009, this Court issued a decision and order granting HRA's cross-motion, denying the petition, and dismissing the proceeding. People Care appealed. In *People Care Inc. v City of New York Human Resources Admin.*, (89 AD3d 515 [1st Dept 2011]), the First Department of the Appellate Division reinstated the petition. The First Department noted that HRA had not answered the petition nor filed the transcript of proceedings. (*id.* at 516) Consequently, the First Department remanded "to develop the record, both as to whether HRA is authorized to recoup the funds and whether petitioner was excused from exhausting the contractual procedures." (*People Care Inc*, 89 AD3d at 516). The First Department noted that "neither . . . [Public Health Law § 2807-v(1)(bb)(iii)] nor the memorandum of understanding between the New York State Department of Health (DOH) and HRA delegates th[e] power [to recoup funds] to HRA." (*id.*) However, the First Department also stated that "it may be well within DOH's power to delegate

auditing responsibilities to another agency such as HRA." (*id.*) Additionally, the First Department noted that a party "may be relieved of the requirements to exhaust administrative remedies when 'an agency's action is challenged as . . . wholly beyond it grant of power." (*id.*) In such cases, the court may, in its discretion, rely on this exception where "the petitioner demonstrates that [the] challenge has substance." (*id.*) Lastly, the First Department noted that reversal was "sought solely on the basis of HRA's lack of power." (*id.*)

Presently before the Court is the reinstated petition. On remand, this Court must decide whether HRA is authorized to audit and recoup HCRA funds. This Court must also determine whether People Care was excused from exhausting the contractual procedures. Oral argument was heard on January 26, 2018.

D. Contentions

HRA contends *inter alia* that it is authorized to recoup HCRA funds pursuant to 18 NYCRR 504.1 (d)(6) because this regulation defines "Department" as "the State Department of Social Services, *or a local social services department* where enrollment of specified provider types has been delegated to or retained by such local district." (18 NYCRR 504.1 [d][6]) HRA also asserts that its practice of recouping HCRA funds not spent within the fiscal year is rationally based. HRA notes that it conducts audits of providers on an annual basis like most City agencies. Lastly, HRA contends that it is authorized to audit and recoup HCRA funds pursuant to the Contract it entered with People Care.

People Care argues *inter alia* that DOH expressly reserved jurisdiction over audits and recoupment of HCRA funds when it entered into a Memorandum of Understanding ("MOU") with HRA. People Care also contends that the definition of "Department" to be used in the regulations is "the State Department of Social Services." (18 NYCRR § 515.1 [b][5]) People Care asserts that even if HRA's definition of "Department" applies, it does not include HRA, because enrollment of providers is not delegated to or retained by HRA. People Care asserts that there is no statutory provision that authorizes recoupment of HCRA funds based on when those funds were expended by a provider. Rather, the State may recoup those funds only if the funds were expended for an unauthorized purpose. People Care

additionally argues that HRA is without contractual authority to audit and recoup HCRA funds pursuant to the Contract it entered with People Care.

E. MOU

On October 15, 2002, DOH on behalf of New York State entered into the MOU with HRA acting on behalf of the City of New York. The MOU provides in pertinent part,

> "WHEREAS, Chapter 474 of the Laws of 1996 amended Title 11 of Article 5 of the Social Services Law to designate [DOH] as the single state agency having responsibility for the administration of the Medical Assistance Program ("Medicaid") under Title XIX of the Social Security Act; and
>
> WHEREAS, PHL § 2807v(1)(bb) provide for Medicaid rate adjustments for the period April 1, 2002 through December 31, 2005 for personal care services providers in local social service districts which include a city with a population of over one million persons for the purpose of supporting the recruitment and retention of non-supervisory personal care services workers; and . . .
>
> WHEREAS, PHL § 2807-v(1)(bb) further provides that such Medicaid rate adjustments shall be computed and distributed in accordance with a memorandum of understanding entered into between [DOH] and social service districts which are eligible to receive rate adjustments pursuant to PHL § 2807-v(1)(bb); and
>
> WHEREAS, PHL § 2807-v(1)(bb) further provides that [DOH], may audit each provider receiving such a rate adjustment to ensure compliance with the provisions of said statute; and . . .
>
> The parties acknowledge that this Agreement constitutes the entire understanding reached between the parties and that there are no other agreements between the parties that would affect

or interfere with the parties full compliance with the terms of this [MOU]."

(HRA's exhibit C at 1-3)

F. Standards

I. Article 78

"Article 78 proceedings exist for the relief of parties personally aggrieved by governmental action." (*Dunne v Harnett*, 399 NYS 2d 562, 563 [Sup Ct, NY County 1977].) If an Article 78 proceeding is brought "to review a determination," the court's "judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent." (CPLR 7806) However, judicial review is limited to questions expressly identified by CPLR 7803. (*Featherstone v Franco*, 95 NY2d 550, 554 [2000].)

One such question is "whether the body or officer proceeded . . . without or in excess of jurisdiction" (CPLR 7803 [1]) "Generally, 'before a court can determine whether an agency acted reasonably in taking a particular action it must find that the agency had authority to act in the first instance.'" (*City of New York v Wing*, 94 NY2d 466, 475 [2000].) "An administrative agency . . . derives its authority from the express dictates of the legislative body that creates it . . . It may not act . . . in contravention of its enabling statute or charter." (*Greater New York taxi Ass'n v New York city Taxi and Limousine Com'n*, 121 AD3d 21, 28 [1st Dept 2014].) Indeed, "an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation. (*Vink v New York State Div. of Housing and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001].) "Ultimately, the key to determining whether an agency has exceeded the scope of its authority is not in examining other cases, but in examining the enabling legislation." (*Greater New York taxi Ass'n v New York city Taxi and Limousine Com'n*, 121 AD3d at 31) When the agency does not act in excess of its jurisdiction, the court must confirm the administrative determination. (*see Gramercy North Associates v Biderman*, 169 AD2d 345, 349 [1st Dept 1991].)

II. Principles of Statutory Interpretation

"The governing rule of statutory construction is that courts are obliged to interpret a statute to effectuate the intent of the Legislature, and when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used." (*People v Smith*, 139 AD3d 131, 134-135 [1st Dept 2016].) The text of a statute is the 'clearest indicator' of such legislative intent. (*Avella v City of New York*, 29 NY3d 425, 434 [2017].) Additionally, "it is an accepted rule that all parts of a statute are intended to be given effect and that a statutory construction which renders one part meaningless should be avoided." (*id.*) Similarly, "a statute . . . must be construed as a whole and . . . its various sections must be considered together and with reference to each other" (*id.*)

"The word 'and' indicates a legislative intent that phrases are to be considered cumulatively and not in the alternative." (97 NY Jur Statutes § 136) A general rule of statutory construction is that "the words 'or' and 'and' in a statute may be construed as interchangeable when necessary to effectuate legislative intent" (see McKinney's Cons Laws of NY, Book 1, Statutes, § 365). It is a rule of statutory construction that in the event of an apparent conflict between parts of a statutory scheme, specific overrides general, and a word's broad meaning may be restricted by other parts of the statute to which it relates. (97 NY Jur Statutes § 137)

When the court is "faced with the interpretation of statutes and pure questions of law . . . no deference is accorded to the agency's determination." (*Madison-Oneida Bd. Of Co-op. Educational Services v Mills*, 4 NY3d 51, 58 [2004].) "[C]ourts must harmonize the various provisions of related statutes and construe them in a way that renders them internally compatible." (*Corrigan v New York State Office of Children and Family Services*, 28 NY3d 636, 643 [2017].) Accordingly, "if the agency's determination . . . constitutes a clearly erroneous interpretation of the law or the facts, it will be annulled . . ." (*American Tel. & Tel Co. v State Tax Com'n*, 61 NY2d 393, 400 [1984].)

However "[a]n agency's interpretation of its regulations must be upheld unless the determination is "irrational and unreasonable." (*Marzec v DeBuono*, 95 NY2d 262, 266 [2000].)

III. Exhaustion of Remedies

"The doctrine of exhaustion of administrative remedies applies 'to contractual provisions which provide for dispute resolution procedures as a condition precedent to any action or proceeding in the courts.'" (*Matter of People Care Inc v City of N.Y. Human Resources Admin.*, 89 AD3d 515, 516 [1st Dept 2011].) "Those who wish to challenge agency determinations under article 78 may not do so until they have exhausted their administrative remedies." (*Walton v New York State Dept. of Correctional Services*, 8 NY3d 186, 195 [2007].) "However, exhaustion of administrative remedies is not required where an agency's action is challenged as beyond its grant of power." (*Lehigh Portland Cement Co. v New York State Dept. of Environmental Conservation*, 87 NY2d 136, 140 [1995].) "Where the petitioner demonstrates that such a challenge has substance, the court has the discretion to rely on this exception to the exhaustion requirement." (*Matter of People Care Inc*, 89 AD3d at 516) "Exhaustion is also not required where only an issue of law is involved, or where the issue involved 'is purely the construction of the relevant statutory and regulatory framework." (*Coleman v Daines*, 79 AD3d 554, 560 [1st Dept 2010].)

IV. Principles of Contract

"It is black-letter law that a contract entered into in violation of a statute is an unlawful undertaking." (*Scotto v Mei*, 219 AD2d 181, 183 [1st Dept 1996].) Such a contract cannot be validated by the good faith of the parties. (*Construction Contractors Ass'n of Hudson Valley, Inc, v Board of Trustees, Orange County Community College* 192 AD2d 265 [2d Dept 1993].)

G. Discussion

I. Exhaustion of Remedies

Preliminarily, People Care was not required to exhaust administrative remedies under the Contract because People Care is challenging HRA's authority to audit and recoup HCRA funds as wholly beyond HRA's grant of power. (*Lehigh Portland Cement Co. v New York State Dept. of Environmental Conservation*, 87 NY2d 136, 140 [1995].) Additionally, exhaustion of administrative remedies is not required because in this Article 78 proceeding, there are only issues of law involved. (*Coleman v Daines*, 79 AD3d 554, 560 [1st Dept 2010].) Indeed, the issue involved

here 'is purely the construction of the relevant statutory and regulatory framework" because this Court must decide whether HRA, a social services district, is authorized to audit and recoup HCRA funds under New York State's Social Services Law. (*id.*) Furthermore, People Care has demonstrated that its challenge has substance and therefore this Court "has the discretion to rely on the exception to the exhaustion rule", in accordance with the standard set forth by the First Department. (*Matter of People Care Inc*, 89 AD3d at 516.)

II. Article 78

Before this Court can determine whether HRA acted reasonably in auditing and demanding recoupment of HCRA funds, the Court must find that HRA had authority to act in the first instance. (*City of New York v Wing*, 94 NY2d 466, 475 [2000].) HRA "derives its authority from the express dictates of the legislative body that creates it," the Social Services Law. (*Greater New York taxi Ass'n v New York city Taxi and Limousine Com'n*, 121 AD3d 21, 28 [1st Dept 2014].) Accordingly, HRA "may not act . . . in contravention of [the Social Services Law,] its enabling statute." (*id.*) To the extent that the New York City Charter creates the Department of Social Services, it provides that the Commissioner "shall have the powers and perform the duties of a commissioner of social services under the social services law." (New York City Charter § 603) "[T]he key to determining whether [HRA] has exceeded the scope of its authority is . . . in examining the enabling legislation." (*Greater New York taxi Ass'n v New York city Taxi and Limousine Com'n*, 121 AD3d 21, 31 [1st Dept 2014].) Therefore, the Court must scrutinize the Social Services Law.

III. Statutory Analysis

The Court begins its analysis with Public Health Law § 2807-v(1)(bb)(iii), the provision at issue here. The Court is obliged to interpret this provision to effectuate the intent of the Legislature. (*People v Smith*, 139 AD3d 131, 134-135 [1st Dept 2016].) Accordingly, the text of Public Health Law § 2807-v(1)(bb)(iii) is the clearest indicator of such legislative intent. (*Avella v City of New York*, 29 NY3d 425, 434 [2017].) Should the statutory language of Public Health Law § 2807-v(1)(bb)(iii) be clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used. (*People v Smith*, 139 AD3d 131, 134-135 [1st Dept 2016].) Here, the statutory language in Public Health Law § 2807-v(1)(bb)(iii) provides,

> "Personal care service providers which have their rates adjusted pursuant to this paragraph shall use such funds for the purpose of recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility only and are prohibited from using such funds for any other purpose. Each such personal care services provider shall submit, at a time and in a manner to be determined by the commissioner, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility. *The commissioner is authorized to audit each such provider to ensure compliance with the written certification required by this subdivision and shall recoup any funds* determined to have been used for purposes other than recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility. Such recoupment shall be in addition to any other penalties provided by law."

Because the text is clear and unambiguous in that the "commissioner" is authorized to audit and recoup, the Court shall construe the provision in accordance with its plain meaning. "Commissioner", as set forth by the Legislature in §2 of the Public Health Law, means "commissioner of health of the state of New York." Thus, auditing and recouping HCRA funds are the province of the commissioner of health.

The Court's analysis, however, is not concluded because "a statute . . . must be construed as a whole and . . . its various sections must be considered together and with reference to each other." (*Avella v City of New York*, 29 NY3d 425, 434 [2017].) To this end, the First Department noted that "neither . . . [Public Health Law § 2807-v(1)(bb)(iii)] nor the memorandum of understanding between the New York State

Department of Health (DOH) and HRA delegates th[e] power [to recoup funds] to HRA." (*People Care Inc*, 89 AD3d at 516). However, "it may be well within DOH's power to delegate auditing responsibilities to another agency such as HRA." (*id.*) Accordingly, the Court reviews two other sections relevant to this analysis: Social Services Law §§ 364-a(1) and 368-c.

Social Services Law § 364-a(1) provides in pertinent part,

> "There shall be such cooperative arrangements, between and among the department of health and other state departments and agencies as shall be necessary to assure that the purposes and objectives of this title will be effectively accomplished. *The commissioner of the department of health shall have the authority to delegate responsibility under this title to other state departments and agencies and to enter into memoranda of understanding as may be necessary* to carry out the provisions of this title."

This statute empowers the commissioner of the department of health to delegate responsibility under Title 11 to other state departments and agencies and to enter memoranda of understanding to effectuate Title 11. Public Health Law § 2807-v(1)(bb)(iii) is not under Title 11 of the Social Services Law. However, in light of the First Department's decision, this Court will consider Public Health Law § 2807-v(1)(bb)(iii) together with Social Services Law § 364-a(1). The resulting interpretation provides that the commissioner of the department of health is authorized to delegate auditing and recouping powers to other state departments and agencies. (*Avella v City of New York*, 29 NY3d 425, 434 [2017].) The commissioner of the department of health may enter into memoranda of understanding to carry out his auditing and recouping responsibilities.

The Court must discern how the word "and" operates in the provision, "The commissioner of the department of health shall have the authority to delegate responsibility under this title to other state departments and agencies *and* to enter into memoranda of understanding as may be necessary . . ." (Social Services Law § 364-a[1]) Because the word "and" generally indicates a legislative intent that phrases are to be considered cumulatively and not in the alternative (97 NY Jur Statutes §

136), the phrases "delegate responsibility" and "enter into memoranda of understanding" must be considered cumulatively. Therefore, the commissioner of the department of health may delegate responsibility but also enter memoranda of understanding. As opposed to delegating responsibility *or* entering into memoranda of understanding.

Here, the MOU entered between DOH and HRA does not contain any clauses delegating the commissioner of health's authority to audit or recoup HCRA funds to HRA. (HRA's exhibit C) Indeed, "The parties acknowledge that this Agreement constitutes the entire understanding reached between the parties and that there are no other agreements between the parties that would affect or interfere with the parties full compliance with the terms of this [MOU]." (HRA's exhibit C at 2) Because the MOU indicates that it contains the extent of agreements between DOH and HRA, HRA was not delegated DOH's auditing or recouping power.

Lastly, Social Services Law § 368-c(1) provides that, "The commissioner may conduct, or have conducted, an audit of financial and statistical reports used for the purpose of establishing rates of payment or fees made in accordance with the medical assistance program." "To allow for the recomputation of affected fees or rates of payment, the commissioner shall, as appropriate, supply audit findings to the governmental agency or corporation organized and operating in accordance with article forty-three of the insurance law responsible for the promulgation of fees or rates of reimbursement." (Social Services Law §368-c [3]) Furthermore, "The commissioner shall enter into interagency agreements, subject to the approval of the director of the budget, to delineate the respective responsibilities of the department and other governmental agencies with respect to this section." (Social Services Law §368-c [4])

Here, "commissioner" means the commissioner of health. The commissioner of health may audit providers under Public Health Law § 2807-v(1)(bb)(iii). Under Social Services Law § 368-c(1) he "may conduct, or have conducted, an audit of financial and statistical reports used for the purpose of establishing rates of payment or fees made in accordance with the medical assistance program." Although Social Services Law § 364-a(1) provides that "the commissioner of the department of health shall have the authority to delegate responsibility under this title to other state departments and agencies and to enter into memoranda, Social Services Law § 368-c(1) specifically mandates that for purposes of Social Services Law § 368-c(1), "The

commissioner shall enter into interagency agreements, subject to the approval of the director of the budget, to delineate the respective responsibilities of the department and other governmental agencies." (Social Services Law §368-c [4]) Were the Court to consider these provisions together, the broader language of Social Services Law § 364-a(1) must yield to the specific requirements of Social Services Law §368-c [4]) because "[i]t is a rule of statutory construction that in the event of an apparent conflict between parts of a statutory scheme, specific overrides general." (97 NY Jur Statutes § 137) Stated simply, to have an audit conducted, the commissioner must enter into an interagency agreement. Here, HRA has not produced any such interagency agreement other than the MOU. To the extent that the MOU might serve as the statutory "interagency agreement," it states, "WHEREAS, PHL § 2807-v(1)(bb) further provides that [DOH], may audit each provider receiving such a rate adjustment to ensure compliance with the provisions of said statute." Therefore, it appears that the DOH acknowledges its ability to audit providers but does not contract that power to HRA. Therefore, HRA does not have the authority to audit HCRA funds under Public Health Law § 2807-v(1)(bb)(iii).

Nevertheless, even if this Court were to interpret "*and*", as it operates in, Social Services Law § 364-a(1), to mean "or", the result would be the same. (97 NY Jur Statutes § 137) This interpretation would provide the commissioner of health with the options to delegate power by regulation or by contracting through memoranda of understanding. In this scenario, the MOU analysis remains the same and therefore HRA is not delegated auditing or recouping authority thereunder. However, the MOU is not dispositive because the Court must also examine the regulations promulgated by DOH.

IV. Regulatory Analysis: Meaning of "Overpayment"

18 NYCRR 518.1(c) provides that "an overpayment *includes* any amount not authorized to be paid under the *medical assistance program*, whether paid as the result of inaccurate or improper costs reporting, improper claiming, unacceptable practices, fraud, abuse or mistake." The use of the word "includes" indicates that 18 NYCRR 518.1(c) is not an exhaustive list. Overpayment means any amount not authorized to be paid under the medical assistance program. *Medical assistance program* means the program of medical assistance for needy persons provided for in title 11 of article 5 of the Social Services Law. (18 NYCRR 504.1) Public Health Law § 2807-v(1)(bb)(iii) is not under Title 11, Article 5 of the Social Services Law.

Therefore, funds paid for purposes other than recruitment and retention cannot constitute an overpayment under 18 NYCRR 518.1 (c).

V. Regulatory Analysis: Meaning of "Department"

Nevertheless, 18 NYCRR 518.1 (d), provides that "Recovery of overpayments may be made in connection with an audit, review or investigation under Part 515 or 517 of this Title, or in connection with other reviews or audits by authorized local, State or Federal agencies available to the department." "The Department may, upon notice to the provider and not sooner than 20 days after issuance of the final audit report or notice of agency action, commence recoupment of overpayments." (18 NYCRR 518.8 [a])

To discern the meaning of the word "department," the Court examines 18 NYCRR 518.2 entitled "Definitions." 18 NYCRR 518.2 provides that, "The definitions in Parts 515 and 517 of this Title apply to this Part." Hence the Court examines Parts 515 and 517 of Title 18.

Part 517 is entitled "Provider Audits" and section 517.2 sets out "Definitions." (18 NYCRR 517.2) Part 517's definitions section provides, "The terms defined in Part 515 of this Title have the same meanings in this Part . . ." (18 NYCRR 517.2)

The Court proceeds to Part 515 entitled "Provider Sanctions." Section 515.1 provides Part 515's "Scope and definitions." (18 NYCRR 515.1) Specifically, 18 NYCRR 515.1 (b)(5) states, "The terms defined in Part 504 of this Title have the same meanings for purposes of this Part. In addition, for purposes of this Part, the following terms have the following meanings: *Department* means the State Department of Social Services."

Part 504, section 504.1(d), provides that,

> "The following definitions shall apply to this Part unless the context requires otherwise:
>
> (6) *Department* means the State Department of Social Services, or a local social services department where Enrollment of specified provider types has been

> delegated to or retained by such local district (e.g., in the case of certain transportation providers) . . .
>
> (18 NYCRR 504.1[d][6])

With respect to Part 515, Department could mean the "State Department of Social Services" (18 NYCRR 515.1 [b][5]) or "the State Department of Social Services, or a local social services department where Enrollment of specified provider types has been delegated to or retained by such local district." Unlike statutes however where the Court need not defer to an agencies interpretation (*Madison-Oneida Bd. Of Co-op. Educational Services v Mills*, 4 NY3d 51, 58 [2004]), an agency's "interpretation of its regulations must be upheld unless the determination is 'irrational and unreasonable.'" (*Marzec v DeBuono*, 95 NY2d 262, 266 [2000].)

The Court acknowledges People Care's argument that "Department" should mean the more limited "State Department of Social Services" because Part 515 specifically defines Department, "for purposes of this Part", to mean "State Department of Social Services." Indeed, principles of construction generally promote interpretations that "give effect to every part thereof and leave each part some office to perform." (McKinney's Cons Laws of NY, Book 1, Statutes § 231) However, Part 515 also explicitly states that "The *terms defined in Part 504* have the *same meanings for purposes of this Part*." (18 NYCRR 515.1 [b][5]) Part 515 then states, "*In addition*, for purposes of this Part . . . *Department* means the State Department of Social Services." In essence, the plain language of the regulation incorporates the broader definition of Department from Part 504, and then notes that the following definitions are provided "*in addition*."

The Court need not decide the meaning of "Department" because either interpretation yields the same result. Assuming *arguendo* that HRA is correct, "Department" means the State Department of Social Services, or a local social services department where enrollment of specified provider types has been delegated to or retained by such local district." This definition of Department then applies to Part 517 and 518, specifically 18 NYCRR 518.6. Under this definition, Department can mean a local social services department. But only one "where enrollment of specified provider types has been delegated to or retained by such local district."

"Enrollment" means the process by which an applicant contracts with the department to participate in the medical assistance program as a provider of medical care, services or supplies. (18 NYCRR 504.1[d][7]) Medical assistance program means the program of medical assistance for needy persons provided for in title 11 of article 5 of the Social Services Law. (18 NYCRR 504.1[d][13])

Provider "is any person who has enrolled under the medical assistance program to furnish medical care, services or supplies; or to arrange for the furnishing of such care, services or supplies; or to submit claims for such care, services or supplies for or on behalf of another person . . ." (18 NYCRR 504.1[d][19]) The term "person" includes "natural persons, corporations, partnerships, associations, clinics, groups and other entities." (18 NYCRR 504.1[d][17])

Again, Public Health Law § 2807-v(1)(bb)(iii) is not under title 11 of article 5 of the Social Services Law. Furthermore, HRA does not produce any evidence addressing whether enrollment of specified provider types has been delegated to or retained by HRA. HRA does not cite any regulation or produce any document. Accordingly, HRA does not fall within the definition of "Department" that it advocates for with respect to 18 NYCRR 518.8 [a]. Stated simply, the regulation providing that "The Department may . . . commence recoupment of overpayments" cannot embrace HRA with respect to the recoupment of HCRA funds.

Accordingly, the Court does not find that the regulations delegate to HRA the power to recoup HCRA funds.

VI. The Contract

Whether the contract permits HRA to audit and recoup HCRA funds is moot.[4] Any provisions empowering HRA to audit and recoup People Care's HCRA funds would contravene Public Health Law § 2807-v(1)(bb)(iii) and constitute an unlawful undertaking. (*Scotto v Mei*, 219 AD2d 181, 183 [1st Dept 1996].) This is true even assuming HRA's good faith in contracting with People Care. (*Construction Contractors Ass'n of Hudson Valley, Inc, v Board of Trustees, Orange County Community College* 192 AD2d 265 [2d Dept 1993].) With respect to the auditing and recoupment of HCRA funds, HRA "cannot assume additional powers not

[4]Whether HRA's demand for HCRA funds not spent within the fiscal year is *ultra vires* is also moot because HRA is without authority to audit providers and recoup HCRA funds.

contained in the enabling legislation." (*Vink v New York State Div. of Housing and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001].) Accordingly, the Court finds that DOH did not authorize HRA to audit or recoup HCRA funds under the regulations or the memoranda of understanding.

Wherefore, it is hereby,

ORDERED that People Care's Article 78 proceeding for an Order that annuls, vacates, and renders null and void the October 20, 2008, audit, close-out and recovery analysis insofar as it demanded recoupment from People Care of $6,9998,432 awarded under HCRA is granted; and it is further

ORDERED that Respondent the City of New York Human Resources Administration, Department of Social Services is enjoined from recouping any HCRA funds awarded to People Care demanded in the audit, close-out, and recovery analysis or March 11, 2009 Appeal Determination is granted; and it is further

ORDERED that Respondent the City of New York Human Resources Administration, Department of Social Services' cross-motion to dismiss the petition is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: February 5, 2018

Eileen A. Rakower, J.S.C.