

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1040

CA 09-00219

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, CARNI, AND GREEN, JJ.

IN THE MATTER OF ST. ANN'S HOME FOR THE AGED,
ET AL., PETITIONERS-RESPONDENTS-APPELLANTS,

V

MEMORANDUM AND ORDER

RICHARD F. DAINES, M.D., COMMISSIONER OF HEALTH,
STATE OF NEW YORK,
RESPONDENT-APPELLANT-RESPONDENT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENT-APPELLANT-RESPONDENT.

HARTER SECREST & EMERY LLP, ROCHESTER (THOMAS G. SMITH OF COUNSEL),
FOR PETITIONERS-RESPONDENTS-APPELLANTS.

Appeal and cross appeal from a judgment of the Supreme Court,
Monroe County (Harold L. Galloway, J.), entered October 29, 2008 in
consolidated proceedings pursuant to CPLR article 78. The judgment,
among other things, granted in part the petitions.

It is hereby ORDERED that the judgment so appealed from is
unanimously reversed on the law without costs, the motion is granted
in its entirety and the petitions are dismissed in their entirety.

Memorandum: Respondent appeals from a judgment determining that
the methodology used by the New York State Department of Health (DOH)
to calculate the Medicare Part D carve-out in its Medicaid
reimbursement rates to petitioners prior to September 1, 2007 was
arbitrary and lacked a rational basis. Supreme Court previously had
granted respondent's motion to dismiss the petitions as time-barred
with the exception of those petitioners "who filed administrative rate
appeals on or before March 15, 2006 or March 15, 2007." We conclude
that the petitions must be dismissed in their entirety as time-barred.
All petitioners, including those who did not file administrative
appeals, merely challenged the methodology used by DOH in determining
Medicaid reimbursement rates. They did not allege that DOH made
computational errors or errors in the submission of fiscal or
statistical information (see 10 NYCRR 86-2.13 [a]; 86-2.14 [a] [3]).
Thus, their challenges were not subject to administrative rate appeals
(see *Matter of Pinegrove Manor II, LLC v Daines*, 60 AD3d 767, 768).
"If the issue is not appealable administratively, the time to commence
a proceeding pursuant to CPLR article 78 [to review such an issue]
begins to run upon receipt of the initial rate computation sheet,
which is DOH's final determination" (*id.*; see *Matter of Westmount*

Health Facility v Commissioner of N.Y. State Dept. of Health, 205 AD2d 991, 993).

The filing of administrative rate appeals by the remaining petitioners whose petitions were not previously dismissed therefore did not toll the statute of limitations (see *Pinegrove Manor II, LLC*, 60 AD3d at 768), and the court thus erred in denying respondent's motion to dismiss the petitions with respect to all petitioners. The petitioners whose petitions previously were dismissed were notified of their reimbursement rates for the 2006 and 2007 fiscal years on October 31, 2005 and October 31, 2006, but their petitions were not filed until after September 1, 2007. The petitioners who filed administrative appeals received notice of their 2006 and 2007 reimbursement rates in November 2005 and November 2006, and their petitions were not filed until October and November of 2007. Thus, all petitions were filed well beyond the four-month statute of limitations (see CPLR 217; *Pinegrove Manor II, LLC*, 60 AD3d at 768).

Entered: November 13, 2009

Patricia L. Morgan
Clerk of the Court