

**Matter of Sprain Brook Manor Nursing Home, LLC v
New York State Dept. of Health**

2010 NY Slip Op 33413(U)

December 14, 2010

Supreme Court, Albany County

Docket Number: 4972-10

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

SPRAIN BROOK MANOR NURSING HOME, LLC,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION and ORDER
INDEX NO. 4972-10
RJI NO. 01-10-ST1726

-against-

NEW YORK STATE DEPARTMENT OF HEALTH;
RICHARD F. DAINES, M.D., as Commissioner of
the New York State Department of Health; and
JOHN E. ULBERG, JR. As Director, Division of Health
Care Financing, New York State Department of Health;

Respondents.

Supreme Court Albany County All Purpose Term, November 17, 2010
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioner commenced this CPLR Article 78 proceeding to challenge Respondents' denial of its request to reconsider and recalculate the Health Facilities Cash Assessment Program

(hereinafter “HFCAP”) recoupment Respondents imposed on Petitioner. (Public Health Law §2807-d). Respondents answered and set forth three objections in point of law. Petitioner replied.¹ Because Respondents demonstrated that this proceeding was untimely commenced, by one of its objections in point of law, the petition is dismissed.

As is applicable here, “[a] CPLR article 78 proceeding must be commenced within four months after the challenged determination has become final and binding” on the Petitioner. (Town of Olive v. City of New York, 63 AD3d 1416 [3d Dept. 2009]; CPLR §217[1]). “When reconsideration of a determination is granted as a matter of discretion, the nature of the reconsideration determines whether the time to commence a review is extended... The statute of limitations runs from the initial determination unless the agency conducts a fresh and complete examination of the matter based on newly presented evidence.” (Finger Lakes Racing Ass'n, Inc. v. State of New York Racing and Wagering Board, 34 AD3d 895 [3d Dept. 2006], lv. denied 8 NY3d 810 [2007], quoting Matter of Corbisiero v. New York State Tax Commn., 82 AD2d 990 [3d Dept. 1981], affd. 56 NY2d 680 [1982] and Matter of Quantum Health Resources v. DeBuono, 273 AD2d 730 [3d Dept. 2000], lv. dismissed 95 NY2d 927 [2000][internal citations and quotation marks omitted]). “[T]he party asserting the statute of limitations defense, bears the burden of proof on this issue.” (Elia v. Highland Cent. School Dist., 909 NYS2d 836 [3d Dept. 2010]; Carriero v. Town Bd. of Town of Stillwater, 41 AD3d 1011 [3d Dept. 2007]).

On this record, Respondents demonstrated their entitlement to dismissal due to the statute of limitation’s expiration.

¹ Although Petitioner’s reply, dated October 20, 2010, and amended reply, dated October 22, 2010, were not filed in accord with the parties’ stipulated briefing schedule, in an exercise of discretion and pursuant to CPLR §2004, such replies will be considered herein.

Petitioner operates a nursing home in Scarsdale, New York. A varying proportion of Petitioner's patients receive Medicaid assistance, which in turn requires Petitioner to file reports and pay assessments pursuant to the HFCAP. (Public Health Law §2807-d). Petitioner admittedly failed to file any reports or pay the requisite monthly assessment between June 2003 and December 2006. Due to such failure, Respondents estimated Petitioner's monthly charge and began recouping, in or about September 2006, such amounts from its Medicaid payments.

By letter dated April 20, 2009, Petitioner informed Respondents of its overpayment due to the estimates imposed, and sought a recalculation of its entire HFCAP liability from 2003 through 2006. By letter dated June 4, 2009, "[a]fter reviewing the information submitted," Respondents unequivocally rejected Petitioner's recalculation request. Respondents stated that Petitioner's liability "was no longer subject to revision," citing Public Health Law §2807-d's 2008 amendment. (L. 2008, ch. 58). The letter invited neither a response nor additional submissions, only directing inquiries to a specified individual. With this letter Respondents' adverse determination was final and binding on Petitioner. As Petitioner commenced this proceeding well after four months from Respondents' June 4, 2009 denial, it must be dismissed as untimely unless Petitioner's time to commence has been extended.

Continuing its denial, by e-mail dated October 16, 2009, Respondents again rejected Petitioner's recalculation request. This rejection specifically referenced and included a copy of their April 20, 2009 letter. Respondents again cited the 2008 amendment (L. 2008, ch. 58) as their justification for rejecting Petitioner's request. As this determination also falls well outside of the four month limitations period, it provides no basis for Petitioner to commence this proceeding in a timely manner.

By letter dated January 4, 2010, in “response to [Respondents’] e-mail on October 16, 2009,” Petitioner specifically requested Respondents to “reconsider [their] position.” Petitioner explained in detail why it believed Respondents’ interpretation of Public Health Law §2807-d’s 2008 amendment was erroneous. Then, by letter dated February 2, 2010, Petitioner reargued its position that Respondents were misapplying Public Health Law §2807-d’s 2008 amendment. Neither of these letters provided any new material evidence Respondents did not already have.

On February 9, 2010, Respondents restated their denial. Respondents did not vary from their initial June 4, 2009 position or their October 16, 2009 e-mail. At all times herein, beginning on June 4, 2009, Respondents have denied Petitioner’s recalculation request based upon their interpretation of Public Health Law §2807-d’s 2008 amendment.


The nature of the Respondents’ February 9, 2010 denial constitutes a mere reconsideration, which did not extend Petitioner’s time to commence this proceeding. Again, Respondents’ February 9, 2010 denial was a restatement of their initial denial, and they considered no new material evidence. There was simply no “fresh and complete examination of the matter based upon newly presented evidence.” (Boston Culinary Group, Inc. v. New York State Olympic Regional Development Authority, 18 AD3d 1103, 1104 [3d Dept. 2005], quoting Quantum Health Resources v. De Buono, supra). Moreover, Petitioner’s January 4, 2010 letter sought only “reconsideration” and its February 4, 2010 letter merely reargued its earlier position. As “the mere reconsideration of an otherwise final agency determination will not extend the period of limitations within which to seek review of the determination” this petition was untimely commenced. (Chase v. Board of Educ. of Roxbury Cent. School Dist., 188 AD2d 192 [3d Dept. 1993]; Matter of Cabrini Med. Ctr. v Axelrod, 107 AD2d 965 [3d Dept. 1985]).

Accordingly, the petition is dismissed. The parties' remaining contentions have been examined and, in light of the above, are found to be moot or lacking in merit.

This Decision and Order is being returned to the attorneys for Respondents. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: December 14, 2010
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated June 7, 2010, Petition, dated June 4, 2010, with attached Exhibits 1-4.
2. Answer, dated September 22, 2010, Affidavit of Roland, J. Guliz, dated September 22, 2010, with attached Exhibits A-J.
3. Reply of John Becker, dated October 20, 2010, with attached Exhibits 1-4.
4. Amended Reply of John Becker, dated October 22, 2010, with attached Exhibits 1-5.
5. Letter of Shoshanah Bewlay, dated November 15, 2010, with enclosure.