

<b>Matter of County of St. Lawrence v Daines</b>
2011 NY Slip Op 34240(U)
June 29, 2011
Supreme Court, St. Lawrence County
Docket Number: 134779
Judge: David R. Demarest
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ST. LAWRENCE

In the Matter of

COUNTY OF ST. LAWRENCE,

Index No. 134779

Petitioner,

DECISION  
&  
ORDER

For a Judgment Under Article 78 of the New York  
Civil Practice Law and Rules

- against -

RICHARD F. DAINES, as Commissioner of the New  
York State Department of Health and THE NEW YORK  
STATE DEPARTMENT OF HEALTH,

IAS #44-1-2010-0716

Respondents.

Appearances: Whiteman, Osterman & Hanna, LLP (Christopher E. Buckey, Esq.,  
of counsel), attorneys for Petitioner; Attorney General of the State of New York (C.  
Harris Dague, Esq., Assistant Attorney General), for Respondents.

DEMAREST, J.

The Court is presented with yet another special proceeding seeking reimbursements of overburden payments notwithstanding the 2005 Medicaid cap legislation and its 2010 Amendment. For a full recitation of the Medicaid claims process and procedure, the reader is referred to this Court's prior Decision in County of St. Lawrence v. Richard Daines, et. al., Index No. 2009-131200 (Supreme Court, St. Lawrence County, May 3, 2010), modified 81 A.D.3d 212 (1/27/2011). Respondent opposes the relief citing, yet again, the Medicaid cap legislation as well as 18 NYCRR 601.3 as a statute of limitations, and now cites the 2010 Amendment as a bar to paying the overburden payments. The Third Department's January 27, 2011,

---

affirmance of this Court's prior Decision deems Respondents' first two defenses -- Medicaid cap legislation and 18 NYCRR 601.3 -- to be without merit. For this reason, the Court need only examine Respondents' remaining defense, premised upon the 2010 Amendment to the Medicaid cap legislation.

In support of Respondents' argument that the Amendment was intended to cause the Medicaid cap legislation to be applied retroactively, they point to its language and present the affidavit of Gregor N. Macmillan, sworn to July 23, 2010. The specific language Respondents rely upon is:

"the state/local social services district relative percentages of the non-federal share of medical assistance expenditures incurred prior to January 1, 2006, shall not be subject to adjustment on and after July 1, 2006."

Respondents assail Petitioner's characterization of this statute as one which clarifies how the 2005 Medicaid cap base year is calculated. Instead, they claim, the language bars payment of Petitioner's claims in their entirety. They argue this is supported by the State's and County's equal sharing (50% each) of the non-federal share of overburden payment, resulting in a 100% (State) and 0% (County) adjustment. Moreover, the Macmillan affidavit avers the statute's purpose was to address certain trial court and appellate division court decisions misinterpreting the purpose and intent of the Medicaid cap legislation by directing reimbursement of overburden expenditures incurred before January 1, 2006, for which reimbursement claims were submitted by Counties after that date.

Petitioner argues that the 1982 overburden statute (Social Services Law §368-a) is a pure reimbursement statute, not an "adjustment" of the "non-federal share."

---

Since the Medicaid cap legislation does not address the State's liability for wrongfully incurred pre-2006 overburden expenditures, Petitioner opines that the overburden statute and applicable regulations -- never having been repealed -- establish the appropriate reimbursement framework for pre-2006 overburden expenditures. The 2010 Amendment to the Medicaid cap legislation permits the State to recover from the Counties any Medicaid funds previously paid to the State if a federal agency disallows claims submitted by the State or a federal agency recovers Medicaid funds previously paid to the State. With regard to this 'clawback', it is Petitioner's position that the statutory language in the 2010 Amendment addressing the adjustment of non-federal shares operates to prohibit adjustment of relative shares of the non-federal expenditures after July 1, 2006, foreclosing Counties from seeking a reduction of the base year calculation for their respective caps.

Repudiation of previously existing debts owed by the State to the Counties is not mentioned within the statute. Similarly, Respondents can point to no legislative history to support their position with respect to the statute's purposes: overrule prior courts' contrary rulings; modify the effect(s) of the Medicaid cap legislation; and, relieve State of its debt for previously-incurred expenditures. Clear and unambiguous statutes are to be afforded their plain meaning. The proffer of an after-the-fact explanatory affidavit of the statute's purported drafter does not constitute legislative history and is without effect.

Notably, neither the 2010 Amendment nor its legislative history mentions the term "overburden" or overburden reimbursement or any of the decisions rejecting Respondents' efforts to apply the Medicaid cap legislation retroactively. The Court

---

must assume this omission was purposeful, and may not substitute its judgment for that of the Legislature lest it impermissibly engage in legislative functions. See McKinney's Cons. Laws of NY, Book 1, Statutes, §§73,74. Nor is there any evidence the Amendment was to be applied to cut off existing reimbursement claims. (See, affidavits of former State Senator Raymond Meier and Senator James Seward submitted by Petitioner).

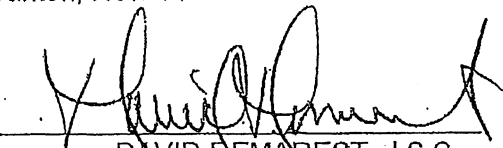
Consistent with this is the fact that New York Social Services Law §368-a -- establishing Counties' rights to reimbursement -- has not been expressly or impliedly repealed. Regardless, in the instance of repeal, New York General Construction Law §93 provides protections to Petitioner respecting its reimbursement rights. Whereas the Medicaid cap legislation applies to expenditures from and after January 1, 2006, Social Services Law §368-a applies to expenditures pre-dating January 1, 2006. Superimposing the 2010 Amendment merely results in the State's ability to recoup from Counties certain amounts disallowed by the federal government. Referred to as a "claw-back provision", it also prohibits corresponding adjustments to effectuate a reduction of the base year calculation for their respective caps. Instead of doing violence to one another, these provisions can be read and applied harmoniously. Petitioner's relief is granted with respect to its claims for reimbursement. Respondents are directed to make payment in the amount of \$141,932.55, together with interest.

The Court is mindful of the Third Department's January 27, 2011, Opinion and Order in a separate proceeding (St. Lawrence Index # CV2009-131200) finding this Court abused its discretion in awarding sanctions [22 NYCRR 130-1.1(c)(1). Specifically, it held that respondents' arguments were not "completely without merit in

law" since this Court was not bound by the Fourth Department's determination on the Medicaid cap retroactivity issue. While the 2010 Amendment is interposed as a new defense by Respondents -- together with the now-settled, rejected retroactivity and timeliness defenses -- Petitioner seeks live testimony from Respondents' agents on the issues of repudiation of overburden debt and the pursuit of protracted litigation. Scheduling a sanctions hearing prior to any appeal of this Decision would ignore the Third Department's circumspect treatment of Respondents' previously-interposed defenses and would fail to accord due deference to each party's desire to protect the public fisc it is charged with overseeing. While there is no denying that Petitioner has incurred substantial attorneys' fees to preserve its entitlement to monies due it from the State, Petitioner opted to litigate the matter. Absent finding the imposition of the 2010 Amendment constitutes the frivolous interposition of a legal defense without any basis in law and/or fact, the Court will not schedule a sanctions hearing.

**SO ORDERED**

DATED: June 29, 2011, at Chambers, Canton, New York.



DAVID DEMAREST, J.S.C.

ENTER:

{Decision & Order, and moving papers filed}