

**Personal-Touch Home Care of N. Y., Inc. v City of
New York Human Resources Admin.**

2020 NY Slip Op 32683(U)

August 17, 2020

Supreme Court, New York County

Docket Number: 151430/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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INDEX NO. 151430/2020

PERSONAL-TOUCH HOME CARE OF N. Y., INC. F/K/A
PERSONAL-TOUCH HOME CARE, INC. A/K/A PERSONAL
TOUCH HOME CARE, INC.,

MOTION DATE 9/4/2020

MOTION SEQ. NO. 001

Plaintiff,

- v -

CITY OF NEW YORK HUMAN RESOURCES
ADMINISTRATION, CITY OF NEW YORK OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS CONTRACT
DISPUTE RESOLUTION BOARD

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 21, 26, 27, 28,
29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

ORDERED that the petition for relief, pursuant to CPLR Article 78, of Petitioner Personal
Touch Home Care of N.Y., Inc. (Motion Seq. 001) is denied and the petition is dismissed; and it
is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the counsel for respondent New York City Human Resources
Administration shall serve a copy of this Order with Notice of Entry within twenty (20) days of
entry on counsel for all parties.

CASE DISPOSED

MEMORANDUM DECISION

In this Article 78 proceeding, Petitioner Personal Touch Home Care of N.Y., Inc. seeks to annul the Memorandum Decision (OATH Index No. 2338/19) dated October 11, 2019 (the Decision) issued by Respondent Office of Administrative Trials and Hearings Contract Dispute Resolution Board (the CDRB). For the following reasons, the petition is denied and this proceeding is dismissed.

BACKGROUND FACTS

Petitioner is a provider of home health services in New York City (NYSCEF doc No. 16, p. 2). It entered into contracts (the Contracts) with Respondent New York City's Human Resources Administration (the HRA) for the purpose of providing home care services through New York State's Medical Assistance Program (Medicaid) in the boroughs of Brooklyn and the Bronx (NYSCEF doc No. 3). Under the Contracts, Petitioner was required to have workers' compensation coverage for its home attendants providing services under the Contracts (*Id.*; NYSCEF doc No. 16, p. 3).

In 2000, Petitioner switched from using traditional workers' compensation insurance to a "self-insurance trust" (the Trust) (NYSCEF doc No. 2, p. 2). The premiums for the Trust were less costly than the premiums for traditional insurance (NYSCEF doc No. 16, p. 4; NYSCEF doc No. 35, p. 7). In 2009, the State of New York's Workers' Compensation Board (the WCB) determined that the Trust was in a significant deficit position, so it took over the Trust and levied retroactive assessments (the Assessments) against its participants, including Petitioner (NYSCEF doc No. 16, pp. 4-5; NYSCEF doc No. 35, p. 7). Petitioner then requested to the HRA that it be allowed to offset unspent Medicaid funds against the Assessments by treating the Assessments as "allowable costs" under the Contracts. For several years, the parties engaged in a discussion on whether

Petitioner's request could be granted. In the meantime, in 2013, the HRA conducted an audit of Petitioner's expenditures for the fiscal year of 2007. The audit showed that Petitioner owed the HRA a total of \$1,605,649.10 in unspent funds, including the funds that Petitioner sought to use to pay the Assessments.

In 2014, as part of the continuing discussions between the HRA and Petitioner, the HRA sought guidance from the New York State Department of Health (the SDOH). In the SDOH's letter dated February 28, 2015 (the SDOH Letter), the agency set forth its position that the Assessments could not be considered "allowable costs" given that the Medicaid regulations require prospective, rather than retroactive, budgeting methodology and that the Assessments were not "reasonably related" to the efficient provision of personal care services (NYSCEF doc No. 5). On the basis of this letter, the HRA requested payment of the outstanding amounts due from Petitioner as set forth in the 2013 audit, including the funds that Petitioner sought to use to offset the Assessments.

Notice of Dispute

In view of these developments, Petitioner submitted a notice of dispute on November 12, 2015 to which the HRA responded, denying Petitioner's claim on September 9, 2016 (NYSCEF doc Nos. 7 and 8). Petitioner then filed a notice of claim with the City Comptroller on October 16, 2016 which was denied on February 3, 2017 (NYSCEF doc Nos. 8 and 9).

On March 3, 2017, Petitioner filed a petition with the CDRB but the CDRB dismissed the petition on grounds of timeliness (NYSCEF doc Nos. 11 and 12). In an Article 78 proceeding filed by Petitioner, this Court (J. Eileen A. Rakower) reversed the dismissal and remanded the case back to the CDRB (see *Personal Touch Home Care v City of New York Human Resources Administration et. al.* [Index No. 154284/2018]).

The Challenged Decision

Pursuant to Judge Rakower's decision, the CDRB convened a new panel for the rehearing of the matter on remand. On September 20, 2019, the parties appeared before the new panel and the case was argued for the second time.

On October 11, 2019, the CDRB issued the challenged Decision which denied and dismissed the case. In said decision, the CDRB cited two "major impediments" to Petitioner's position that the Assessment was "allowable." *First*, the CDRB reasoned that Petitioner's claim rested in large part, not upon the Contracts with the HRA, but upon alleged past practices on retroactive approval of costs. However, the CDRB noted that the parties presented conflicting assertions on these past practices and the CDRB has no authority to resolve claims resting upon disputed issues of fact (NYSCEF doc No. 2, p. 4). *Second*, the CDRB found that Petitioner's claim was foreclosed by the SDOH's determination which was based on the SDOH's own regulations (*Id.*, pp. 5-6).

Petitioner then commenced this present Article 78 action against the HRA and the CDRB, seeking to annul the Decision for allegedly being irrational, arbitrary, capricious and affected by multiple errors.

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [Ct App 1974]; *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 [1st Dept 1996]). A determination is only deemed arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts" (See *Century Operating Corp. v Popolizio*, 60 NY2d 483 [Ct

App 1983], citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231). However, if there is a rational basis for the administrative determination, there can be no judicial interference (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232). It is also well settled that "[t]he interpretations of [a] respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational" (*Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251 [1st Dept 1994], citing *Matter of Salvati v Eimicke*, 72 NY2d 784 [Ct App 1988]).

Here, Petitioner argues that the CDRB acted arbitrarily, capriciously and erroneously when it found that the Assessments were not "allowable" costs or expenses. The HRA counters that the Decision has a rational basis under Petitioner's Contracts and the Medicaid regulations.

Petitioner argues that the Assessments are "allowable costs" because they fall within the definition of "Allowable Payments" under the Contracts which neither expressly or impliedly disallow expenses based on the timing of when they were incurred (NYSCEF doc No. 16, p. 9). Petitioner also contends that the definition of "Allowable Costs" under the Medicaid regulations is broad and does not differentiate between prospective or retroactive payment of workers' compensation coverage (*Id.*, pp. 11-13), and that, in any case, the SDOH Letter is not binding on the HRA (*Id.*, pp. 13-18).

The HRA contends that the CDRB rationally held that the SDOH's interpretation of its own regulations constituted final and binding authority on the question of whether the Assessment was an "allowable" cost under the Medicaid regulations; and that the CDRB's independent holding

that the HRA was bound by the SDOH's interpretation is rational as Petitioner's Contracts specified that payments to Petitioner were subject to the SDOH's approval (NYSCEF doc No. 35).

After considering the parties' arguments, the Court finds that the CDRB had a rational basis for its findings.

First, it was reasonable for the CDRB to rely on the SDOH's determination. As set forth in the challenged Decision, the SDOH is the entity in charge of administering the Medicaid program by distributing federal funds to local governments (*see* NYSCEF doc No. 2, *citing* Pub. Health Law § 201(1)(v), Soc. Serv. Law §§ 2(1), 2(6), 17, 20, 34, 65(3), 363-a(1) and NY Const. Art. XVII, § 1). Thus, the SDOH has the authority to promulgate, implement and interpret regulations relating to the Medicaid program (*Id.*). Petitioner does not dispute the SDOH's statutory authority but argues that the HRA has a "stand-alone duty to make decisions based on reason and sound basis in the facts and the law". The Court rejects this argument. As explained by the Second Department in *Weinberg v Perales* (121 AD2d 729 [2d Dept 1986]), "federal statutory law requires that the medical assistance program be administered by a single State agency [which is the SDOH for the state of New York], and the applicable Federal regulations provide that a local agency [such as the HRA] must not have authority to review, change or disapprove the decision of the single State agency" (citations omitted).

In support of its position that the SDOH Letter is not binding authority, Petitioner cites to the case of *Matter of People Care Inc. v City of New York Human Resources Admin.* (175 Ad3d 134 [1st Dept 2019]) for the First Department's holding that "the Veino letter and the Ulberg affidavit, are merely statements of opinion and are not binding upon DOH" to support its argument that the SDOH Letter here is not a binding authority. The Court finds Petitioner's citation to be out of context. The First Department made this holding in the context of discussing what was

needed for the SDOH to properly delegate its auditing responsibilities to the HRA, and found that the letters were not sufficient as the regulations expressly required the SDOH to enter into an "interagency agreement[. . . delineat[ing] the respective responsibilities of [DOH] and other governmental agencies." Moreover, *People Care Inc.* involves the "Health Care Reform Act" funds which the First Department specifically differentiated from the general Medicaid funds at issue here. Thus, *People Care Inc.* is simply inapposite.

Second, having established the SDOH's binding authority to interpret Medicaid regulations, the Court finds that the analysis of the SDOH, which was adopted by the CDRB, has a rational basis in fact and law. As cited in the challenged Decision, the SDOH based its determination on 18 NYCRR § 505.14(h)(7)(ii)(3)(iv) which provides that:

"(iv) Allowable costs do not include the following: (A) amounts in excess of reasonable or maximum costs authorized under title XVIII of the federal Social Security Act or in excess of customary charges to the general public. This provision does not apply to services furnished by public providers free of charge or at a nominal fee; (B) expenses or portions of expenses reported by providers **that the department determines are not reasonably related** to the efficient provision of personal care services because of either the nature or the amount of the particular item" (emphasis added).

Here, the SDOH determined that the Assessments were not reasonably related to the efficient provision of personal care services as they were a consequence of Petitioner's business decision to self-insure, which later exposed Petitioner to retroactive obligations to the WCB (NYSCEF doc No. 5). Petitioner draws the attention of the Court to the Federal Reimbursement Manual and the HRA Revised Audit Guide which, when read together, supposedly provide that costs incurred for the Trust can be considered as allowable expenses if they reflect decisions of prudent management. (NYSCEF doc No. 16, pp. 12-13). Petitioner claims that since the HRA did not object to the Trust, the HRA cannot now criticize Petitioner's decision to self-insure and say that the Assessments are "not reasonably related" to Petitioner's services. The Court finds this

argument unconvincing. As noted in the Decision, Petitioner's insurance switch was neither objected to nor approved by the HRA, and regardless, Medicaid regulations vest the authority to determine which expenses are "reasonably related" to personal care services with the SDOH, not the HRA.

Third, the Court finds that the CDRB's independent interpretation of Petitioner's Contracts was rational. The CDRB correctly held that "Allowable Payments" under Part 1, Art. 1.4 of the Contracts, similar to the Medicaid regulations, refer to expenditures that are "reasonable and necessary." The definition provides that:

"Allowable payments shall mean those expenditures for labor, services, and equipment made by the Contractor which are determined by the Department to be in accordance with this Agreement and the Contractor's approved budget and which are **reasonable and necessary** to the Contractor's proper discharge of its obligations hereunder." (emphasis added)

(NYSCEF doc No. 3, Article 1.4, pp. 3, 77)

Based on the above language, the CDRB was correct to reject Petitioner's contention that its Contracts provide for a more generous interpretation of allowable costs than the SDOH interpretation of the Medicaid regulations.

Petitioner's citation of other provisions in the Contracts does not change the conclusion reached by the Court. Article 4.2(E) allows Petitioner to transfer expenditures from one budget line to another. Even if the Court accepts Petitioner's interpretation that this provision allows it "to offset allowable expenses against unspent Medicaid funds," the end result will not change as the Assessments are outside the scope of "allowable" expenses in the first place. The same is true with Articles 4.2(A) and (B) which set out limitations on the use of funds. Even were the Court to accept Petitioner's contention that the HRA's authority under Article 3.2(A) to determine what expenses should be deemed allowable should be read in context with these provisions, the outcome remains

the same. While Article 4.2(A) enumerates the specific instances when funds cannot be used, Article 1.4 sets out the general principle that expenditures that are not “reasonable and necessary” cannot be considered as “Allowable Payments.” Both these provisions should therefore guide the determination of what costs and expenses are allowable under the Contracts. Finally, the Contracts provide that payments made to Petitioner shall be subject to the approval of the SDOH (Article 3.1 (C)(ii)). Petitioner also posits that the Court should look to the “historical course of dealing” among the parties to determine whether expenses can be paid retroactively, but the Medicaid regulations and the provisions of the Contracts make it unambiguously clear that the Assessments are not allowable in any event.

Thus, Petitioner is contractually bound by the SDOH’s determination of what constitutes an “Allowable Payment,” and the Decision reached by the CDRB is not arbitrary, capricious, or erroneous in law.

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the petition for relief, pursuant to CPLR Article 78, of Petitioner Personal Touch Home Care of N.Y., Inc. (Motion Seq. 001) is denied and the petition is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the counsel for respondent New York City Human Resources Administration shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.

8/17/2020
DATE


HON. CAROL R. EDMED J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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