

**Beth Israel Med. Ctr. v New York State Off. of
Medicaid Inspector Gen.**

2021 NY Slip Op 31348(U)

April 21, 2021

Supreme Court, New York County

Docket Number: 158412/2020

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

-----X

BETH ISRAEL MEDICAL CENTER
Plaintiff,

- v -

NEW YORK STATE OFFICE OF MEDICAID INSPECTOR
GENERAL,

Defendant.

-----X

INDEX NO. 158412/2020
MOTION DATE 10/09/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 25, 26, 27, 28, 29, 30, 63, 66, 67

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

Upon the foregoing documents, it is

ORDERED that, pursuant to CPLR 7804 (g), the application by petitioner Beth Israel Medical Center seeking to vacate and annul a determination by respondents (motion sequence number 001) is respectfully transferred to the Appellate Division, First Department, for disposition pursuant to said subsection. This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law, is, on the entire record, supported by substantial evidence (CPLR 7803 [4]); and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B), who is directed to transfer the file to the Appellate Division, First Department; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the " E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)].

Petitioner Beth Israel Medical Center (Beth Israel) seeks a judgment to vacate a decision by the respondent New York State Department of Health (DOH), which upheld a previous order by the co-respondent New York State Office of Medicaid Inspector General (OMIG), as arbitrary and capricious (motion sequence number 001). However, because this proceeding involves the question of whether that decision was supported by “substantial evidence, the court transfers the instant petition to the Appellate Division, First Department, pursuant to CPLR 7804 (g).

FACTS

Beth Israel is a hospital and health care center located at 150 East 42nd Street in the County, City and State of New York. *See* amended verified petition, ¶ 14. Among the other health care services that it provides, Beth Israel operates an Opioid Treatment Program (OTP). *Id.*, ¶¶ 2, 21. The OMIG is an investigatory office located in the DOH with state-wide authority to enforce compliance with the rules of the Medicaid program. *Id.*, ¶¶ 15-20.

On December 20, 2017, the OMIG notified Beth Israel that it would be conducting an audit of Beth Israel’s Medicaid billings for the period of January 2014 through December 2016. *See* verified answer, ¶ 77; exhibit 1. The subsequent audit involved two days of interviews by the OMIG’s auditor of Beth Israel employees, the generation of a proposed report, subsequent correspondence and the exchange of documents, and the generation of the auditor’s final report on November 7, 2018 (the final report). *Id.*, ¶¶ 78-84; exhibits 2-7. The final report of the audit used a statistical calculation method to determine that Beth Israel had collected \$7,745,764.00 in Medicaid overpayments for the period in question, and directed Beth Israel to make restitution of that amount. *Id.*, ¶ 85; exhibit 7. On November 15, 2018, Beth Israel served a request for the DOH to conduct a hearing to review the final report pursuant to 18 NYCRR § 519.7. *Id.*, ¶¶ 86-87; exhibits 8, 9. The DOH’s administrative law judge (ALJ) held the subsequent hearing over

three days in 2019, during which both parties presented documentary evidence, the OMIG called its auditor as a witness, and Beth Israel called seven of its employees as witnesses. *Id.*, ¶¶ 87-90, exhibits 1-15; amended verified petition, ¶¶ 51-54, exhibits A-G. The parties also thereafter submitted post-hearing briefs. *Id.* On April 24, 2020, the ALJ issued a decision affirming the OMIG's final report (the DOH decision). *Id.*, ¶ 91, exhibit 23; amended verified petition, ¶ 54, exhibit M.

Beth Israel originally commenced this Article 78 proceeding against the OMIG on October 19, 2020. *See* verified petition. The parties thereafter executed a stipulation on November 30, 2020 to add the DOH as a respondent, which the court so-ordered. Respondents then submitted a joint answer on December 11, 2020 which requested that this proceeding be transferred to the Appellate Division, First Department, because it raises a question of “substantial evidence” pursuant to CPLR 7804 (g). *See* verified answer. Beth Israel thereafter filed reply papers on December 23, 2020, and this matter is now fully submitted (motion sequence number 001).

DISCUSSION

A trial court's usual role in an Article 78 proceeding is to determine whether, upon the facts before an administrative agency, a challenged agency 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 (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 Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (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.

Nevertheless, if an Article 78 petition challenges “a determination made as a result of a hearing held, and at which evidence was taken,” on the ground that that determination was not supported by “substantial evidence,” CPLR 7804 (g) mandates that the trial court transfer the petition to the appropriate Appellate Division to be reviewed under that standard. CPLR 7804 (g) also provides that “the court shall first dispose of such other objections as could terminate the proceeding,” and only if the determination of those objections does not dispose of the matter shall the court shall make the transfer order. Here, the court finds that transfer to the Appellate Division, First Department is appropriate.

First, it is clear that the DOH decision was rendered after “a hearing held, and at which evidence was taken.” CPLR 7804 (g). The amended petition specifically recites that the DOH’s ALJ “received evidence and heard testimony on April 8 and 29, June 3, and September 23, 2019.” *See* amended verified petition, ¶ 52. Respondents’ answer makes it clear that that evidence included the testimony of a total of seven witness, a quantity of documents and the parties’ post-hearing submissions. *See* verified answer, ¶¶ 87-90; exhibits 1-15. The court notes that Beth Israel did not mention the phrase “substantial evidence” in its verified petition, but instead argued that the DOH decision should be vacated and reversed pursuant to the “arbitrary and capricious” standard. *See* verified petition, ¶¶ 155-163. However, respondents correctly cite a quantity of First Department precedent holding that Article 78 petitions should be transferred where “[t]he issue of substantial evidence, although not specifically stated, was clearly raised in

the . . . petition.” See e.g., *Matter of Horne v New York City Hous. Auth.*, 113 AD3d 575, 575 (1st Dept 2014), quoting *Matter of Verdell v Lincoln Amsterdam House, Inc.*, 27 AD3d 388, 390 (1st Dept 2006). Here, the majority of the arguments in the petition and Beth Israel’s accompanying memorandum of law contend that the ALJ erred in her assessment of the five classes of disallowed Medicaid claims which she reviewed in the DOH decision. See verified petition, ¶¶ 55-154; petitioner’s mem of law at 7-8, 16-27. These arguments clearly amount to an assertion that the ALJ’s decision to uphold the OMIG’s audit was not supported by substantial evidence. Beth Israel’s remaining argument is that “[the] OMIG’s audit methodology was improper.” See petitioner’s mem of law at 9-15. However, as respondents point out, this argument clearly fails because 18 NYCRR § 504.3 (i) requires OTP providers such as Beth Israel “to comply with the rules, regulations and official directives of the [DOH],” and 18 NYCRR § 517.6 (b) (5) provides that a request for a DOH hearing on an OMIG audit “may not address issues regarding the methodology used to determine the rate or any issue that was raised or could have been raised at a proceeding to appeal a rate determination but shall be limited to those issues relating to determinations contained in the final audit report.” Thus, the governing DOH regulations which Beth Israel agreed to be bound by preclude Beth Israel’s “methodology” argument. In any case, “it is also well settled that an agency’s interpretation of the statutes and regulations it is responsible for administering is entitled to great deference, and must be upheld if reasonable.” *Matter of Partnership 92 LP & Bldg. Mgt. Co. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 (1st Dept 2007), *affd’* 11 NY3d 859 (2008), citing *New York City Campaign Fin. Bd. v Ortiz*, 38 AD3d 75, 80-81 (1st Dept 2006). Therefore, the court concludes that, despite not using the term, the only viable arguments in the instant Article 78 petition plainly assert that the DOH decision was not supported by “substantial evidence.”

Second, the court finds that the instant petition does not contain any “other objections [such] as could terminate the proceeding.” CPLR 7804 (g) states that such objections may “include[e] but [are] not limited to lack of jurisdiction, statute of limitations and res judicata.” Here, Beth Israel does not assert any such arguments in its petition or its reply papers. Review of those documents shows that Beth Israel’s only objections to the DOH order regard the evidentiary sufficiency and the methodology used in connection with the factual findings therein. Therefore, the court concludes that there are no “other objections” present which “could terminate the proceeding.”

Finally, the court notes that the First Department routinely reviews challenges to DOH decisions that review OMIG Medicaid audits. *See e.g., Matter of Reliance Ambulette, Inc. v Rosen*, 181 AD3d 533 (1st Dept 2020). This case is an appropriate candidate for such review.

As a result of the foregoing, the court concludes that it would be improper to review Beth Israel’s Article 78 petition under the “arbitrary and capricious” standard. Accordingly, the court instead finds that the instant matter should be transferred to the Appellate Division, First Department, pursuant to CPLR 7804 (g) for review under the “substantial evidence” standard.

DECISION

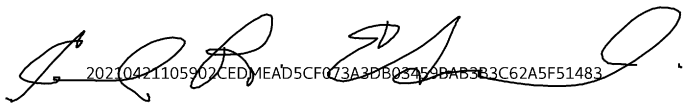
ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that, pursuant to CPLR 7804 (g), the application by petitioner Beth Israel Medical Center seeking to vacate and annul a determination by respondents (motion sequence number 001) is respectfully transferred to the Appellate Division, First Department, for disposition pursuant to said subsection. This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to

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4/21/2021
DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
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CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE