STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

Consumer Directed Personal Assistance Association of New York State, Inc., Bengal Home Care, Inc., Home Choice, LLC, Long Island Center for Independent Living, Inc., Marton Care, Rockland Independent Living Center, Inc. d/b/a BRIDGES, and Southern Tier Independence Center,

Plaintiffs/Petitioners,

DECISION AND ORDER
Index No. 907019-24

-against-

JAMES V. McDONALD, M.D., in his capacity as the Commissioner of the New York State Department of Health, and the NEW YORK STATE DEPARTMENT OF HEALTH,

Defendant/Respondent,

(Supreme Court, Albany County, Article 78 Term)

APPEARANCES: Hermes A. Fernandez, Esq.
Roger A, Bearden, Esq.
Bond, Schoeneck & Kind, LLC
Attorneys for Plaintiff/Petitioners

Jorge A. Rodriguez, Esq., Assistant Attorney General
Office of the New York State Attorney General
Attorneys for Defendant/Respondent
The Capitol
Albany, New York 12224-0341

HON. AMY E. JOYCE, Acting Justice:

Petitioner Consumer Directed Personal Assistance Association of New York State (CDPAANYS) is a not-for-profit organization that supports the interests of entities that perform Fiscal Intermediary (FI) services to individuals that participate in the Consumer Directed Personal Assistance Program (CDPAP). The remaining petitioners are members of CDPAANYS that provide FI services. Respondent New York State Department of Health (DOH) is the State agency that administers New York State's Medicaid program. Petitioners commenced this hybrid CPLR article 78/declaratory judgment action after DOH

announced a change to the way that Medicaid Managed Care Organizations (MMCOs) would be required to submit claims for administrative expenses incurred by FIs that subcontract with MMCOs.

DOH is responsible for establishing a statewide managed care program to provide services to Medicaid recipients (see Social Services Law § 364-j [2] [a]). Most Medicaid recipients are required to enroll in a Medicaid Managed Care Organization (MMCO) (Social Services Law § 364-j [3] [a]; 18 NYCRR § 360-10.4; 18 NYCRR § 360-10.4). CDPAP is a program that is intended to "permit chronically and/or physically disabled individuals receiving home care services . . . greater flexibility and freedom of choice in obtaining such services" (Social Services Law § 365-f [1]; 18 NYCRR § 505.28 [a]). Any eligible Medicaid recipient who receives home care can apply to participate in CDPAP (Social Services Law § 365-f [2]; 18 NYCRR § 505.28 [c]). Individuals who choose CDPAP, or "consumers" (18 NYCRR § 505.28 [a] [2]) must recruit, hire, and supervise their "consumer directed personal assistant(s)" to assist them (18 NYCRR § 505.28 (a)(3)). FI services are certain services performed for consumers to assist with their obligations as employers of personal assistants, including processing income taxes, wages, and benefits, maintaining personnel records and ensuring compliance with CDPAP regulations (Social Services Law § 365-f [4-a] [ii]). FI administrative costs are "the allowable costs incurred by a fiscal intermediary for performance of [the statutorily defined] fiscal intermediary services" (18 NYCRR § 505.28)

FIs contract with either MMCOs or local social services districts to provide FI services (18 NYCRR § 505.28 [j] [vii]). FIs that contract with local social services districts are paid a flat rate for administrative costs pursuant to a three-tiered "per consumer per month basis" based on the number of direct care hours authorized for the consumer (18 NYCRR § 505.28 [k] [3]). The regulation provides that it was not intended to "impact wages or wage related requirements for consumer directed personal

assistants nor impact the ability of MMCOs to reimburse FIs for FI administrative costs pursuant to their provider contracts" (18 NYCRR 505.28 [k] [3]).

In May 2024, DOH announced that the three-tiered reimbursement rate for administrative costs would apply to MMCPs, that is, that "FI administrative payments will move to a non-risk distribution methodology for managed care entities", effective August 1, 2024. Prior to this change, FIs that provided services pursuant to a subcontract with a MMCP billed the MMCP directly for both direct care and administrative service hours. Petitioners commenced this hybrid CPLR article 78 proceeding and action for a declaratory judgment to challenge this announcement and subsequent implementation of the reimbursement methodology.

Petitioners claim first that the change to the three-tiered MMC administrate rate methodology is a rule that was adopted in violation of the rulemaking procedure set forth in the State Administrative Procedure Act (SAPA) and New York State Constitution. In relevant part, SAPA defines a rule as "the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes a fee charged by or paid to any agency or the procedure or practice requirements of any agency, including the amendment, suspension or repeat thereof and (ii) the amendment, suspension, repeal, approval, or prescription for the future of rates, wages, security authorizations, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services or allowances therefore or of valuations, cost or accounting, or practices bearing on any of the foregoing whether of general or particular applicability" (State Administrative Procedure Act § 102 [2][a]; see NY Const, art IV, section 8). An agency "rule" may not be promulgated unless there is compliance with the rule making procedures set forth in the State Constitution and SAPA (see State Administrative Procedure Act § 202). Specifically, "[n]o rule or regulation made by any state department . . . , except such as relates to the

organization or internal management of a state department . . . shall be effective until it is filed in the office of the department of state" (NY Const, art IV, section 8; see State Administrative Procedure Act § 202).

A rule "is a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers" (Matter of Suffolk Regional Off-Track Betting Corp. v New York State Racing and Wagering Board, 11 NY3d 559, 572 [2008] [internal quotation marks and citation omitted]; see Matter of Evercare Choice, Inc. v Zucker, 218 AD3d 882, 885 [2023]). The definition "embraces any kind of legislative or quasi-legislative norm or prescription which establishes a pattern or course of conduct for the future (People v Cull, 10 NY2d 123, 127 [1961]).

Respondents contend that the three-tiered reimbursement methodology was properly adopted and implemented pursuant to the model contract between DOH and the MMCPs. More specifically, DOH argues that the methodology was a discretionary action undertaken as a party to the contract, and thus, not rulemaking. In support of this, DOH cites Alca Industries v Delaney (92 NY2d 775 [1999]). In Alco, the issue presented was whether bid withdrawal criteria included within a bid advertisement for a specific project was a "rule" pursuant to SAPA and the New York State Constitution. Reversing the Appellate Division's finding that the bid specification was a rule, the Court of Appeals distinguished "ad hoc decision making based on individual facts and circumstances, and rulemaking, meaning any kind of legislative or quasi-legislative norm or prescription which establishes a pattern or course of conduct for the future" (id. at 778 [internal quotation and citation omitted]). The Court of Appeals reasoned that the bid specification was a rule because the criteria in the contract was not "general[ly] applicabl[e]" to all contract bidding. Rather, the agency exercised its discretion to select it for the specific project that was

advertised and the contractor agreed to the criteria when it submitted its bid (id. at 779). It could not be said, therefore that there was an agency policy that was "completely conclusive of the rights and remedies of the affected party" (id.). In contrast, where an agency implements a bid specification that is applicable to all contracts and contractors "without reference to their individual facts or circumstances" is a "rigid quasi-legislative norm" that requires compliance with SAPA rulemaking procedures (J.D. Posillico, Inc. v DOT, 160 AD2d 1113, 1114 [1990]; see Alco Industries v Delaney, 92 NY2d at 779).

Here, the model contract between the MMCPs and DOH provides that MMCPs are required to "comply with all applicable guidance contained within the Medicaid update publication issued by [DOH]" (Document 62, § 37). In this Court's view, respondent's claim that the three-tiered reimbursement methodology was properly adopted and implemented pursuant to the model contract between DOH and the MMCPs and not a rule is belied by the terms of the Update and the Model Contract. The Update and announcements that followed explicitly directed that FIs would be required to bill the MMCPs pursuant to the three-tier methodology and directed MMCPs to pay FIs pursuant to the three-tier schedule. In doing so, DOH was not exercising its discretion but instead adopted a "rigid quasi-legislative norm" by imposing a non-negotiable contractual term on all FIs contracting with MMCPs. Respondents have not demonstrated that any exception to the State Administrative Procedure Act applies. The Court thus finds that the Update effective August 1, 2024 required compliance with SAPA. It follows that the determination to issue and implement the Update was contrary to law and lawful procedure, and was arbitrary, capricious, and an abuse of discretion. Accordingly, based on the foregoing it is

ORDERED that respondent's motion to dismiss is denied; and it is further

ORDERED that the petition is granted and it is further

DECLARED that the Update effective August 1, 2024 with regard to the three-tiered

reimbursement rate is null and void.

SO ORDERED.

This shall constitute the Decision, Order and Judgment of the Court. This Decision, Order and Judgment will be forwarded to the Albany County Clerk by the Court. A copy of the Decision, Order and Judgment is being forwarded to all counsel of record. The signing of this Decision, Order and Judgment and delivery of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel for the respondent is not relieved from the applicable 3 provisions of that rule with respect to filing, entry, and notice of entry of the Decision, Order and Judgment. As this is an E-FILED case, there are no original papers considered for the Court to transmit to the County Clerk.

Dated: Albany, New York
March 19, 2025

Hon. Amy E. Joyce
Acting Justice of the Supreme Court

Papers Considered: NYSEF Doc. 1-21; 23-51; 58-65; 67-72; 87-92; 94

03/20/2025