

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 08-01547

PRESENT: SCUDDER, P.J., HURLBUTT, CENTRA, GREEN, AND GORSKI, JJ.

IN THE MATTER OF ELDERWOOD HEALTH CARE CENTER
AT LINWOOD, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

ANTONIA C. NOVELLO, M.D., COMMISSIONER OF
HEALTH, STATE OF NEW YORK, RESPONDENT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENT-APPELLANT.

HARTER SECREST & EMERY LLP, ROCHESTER (THOMAS G. SMITH OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court,
Erie County (Rose H. Sconiers, J.), entered October 15, 2007 in a
proceeding pursuant to CPLR article 78. The judgment granted the
petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously reversed on the law without costs and the petition is
dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking, inter alia, to annul the determination of the Administrative
Law Judge (ALJ) that respondent properly reclassified the salary and
benefit costs of nurse aide trainees as skilled nursing facility costs
(see 10 NYCRR 455.37), rather than as nursing administration costs
(see 10 NYCRR 455.13), as reported by petitioner. We conclude that
Supreme Court erred in granting the petition. Resolution of the issue
whether the salary and benefit costs of nurse aide trainees are
properly reclassified as skilled nursing costs as opposed to nursing
administration costs depends on the interpretation of the regulations
of New York State's Department of Health (agency), and it is well
settled that "the interpretation given to a regulation by the agency
which promulgated it and is responsible for its administration is
entitled to deference if that interpretation is not irrational or
unreasonable" (*Matter of Gaines v New York State Div. of Hous. &
Community Renewal*, 90 NY2d 545, 548-549; see *Matter of IG Second
Generation Partners L.P. v New York State Div. of Hous. & Community
Renewal, Off. of Rent Admin.*, 10 NY3d 474, 481; *Matter of 427 W. 51st
St. Owners Corp. v Division of Hous. & Community Renewal*, 3 NY3d 337,
342). Here, it was neither irrational nor unreasonable for the agency
to determine that the salary and benefit costs of nurse aide trainees

were part of the expenses associated with "providing skilled nursing care to patients" (10 NYCRR 455.37), rather than the expenses associated with "the overall administration and supervision of all nursing services" (10 NYCRR 455.13). We thus conclude that the ALJ properly deferred to the agency's interpretation of the regulations in question.

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court