

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

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TP 08-01974

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

IN THE MATTER OF FAIRPORT BAPTIST HOMES,
PETITIONER,

V

MEMORANDUM AND ORDER

RICHARD F. DAINES, M.D., COMMISSIONER OF HEALTH,
STATE OF NEW YORK, RESPONDENT.

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

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (KATHLEEN M. TREASURE OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Monroe County [Harold L. Galloway, J.], entered March 28, 2008) to annul a determination of respondent. The determination found that respondent properly reclassified certain salary costs as skilled nursing facility costs.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 78 seeking to annul the determination that respondent properly reclassified the salary costs of household resident assistants (HRAs) as skilled nursing facility costs (see 10 NYCRR 455.37), rather than as activities costs (see 10 NYCRR 455.14), as reported by petitioner. Contrary to petitioner's contention, the determination is supported by a rational basis and is not unreasonable. Indeed, 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 generally *Matter of Blossom View Nursing Home v Novello*, 4 NY3d 581, 594-595). Here, the record establishes that many duties of the HRAs expressly fall within the category of "expenses associated with providing skilled nursing care" (10 NYCRR 455.37). We reject petitioner's further contention that the reclassification by respondent violated the State Administrative Procedure Act. Contrary to petitioner's contention, respondent did not thereby adopt a new rule. Rather, we agree with respondent that he merely applied the

existing regulations to the duties performed by the HRAs in reclassifying their salary costs.

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court