

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Pilgrim Rehabilitation and Skilled
Nursing Center,**
Petitioner,

Nos. RS-00-493, RS-01-345, RS-02-351

Dated: August 13, 2024

v.

**Executive Office of Health and Human
Services,**
Respondent.

Appearances:

For Petitioner: Jason B. Curtin, Esq.

For Respondent: Michael A. Capuano, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

An audit disallowed the petitioner nursing facility's claimed costs for "indirect" therapy services in 2000-2002. For the same reasons described in a recent decision involving a related entity, the petitioner is entitled to a reversal of the disallowances and to a resulting adjustment of its rates of payment for healthcare services.

DECISION

Petitioner Pilgrim Rehabilitation and Skilled Nursing Center appeals from rates of payment for healthcare services established by a predecessor to the Executive Office of Health and Human Services (EOHHS). The appeals were consolidated and submitted on the papers. I admit into evidence exhibits marked 1-4.

Background

Pilgrim is a skilled nursing facility. Its rates of payment for healthcare services are established by EOHHS under G.L. c. 118E, § 13C, predecessor statutes, and annual regulations. EOHHS derived Pilgrim's rates for 2000, 2001, and the first half of 2002 from Pilgrim's report of its costs in 1998.

The 1998 report listed costs for both “direct” and “indirect” therapy services. These categories of services were defined by applicable regulations. To substantiate its direct therapy costs, Pilgrim compiled and retained therapy “logs.” To substantiate its indirect therapy costs, Pilgrim collected and retained various other types of documents.

In 2003, a private firm audited the 1998 cost report on EOHHS’s behalf. The auditors recommended a disallowance of Pilgrim’s indirect therapy costs, reasoning that those costs should have been supported by “indirect logs.” EOHHS adopted the auditors’ recommendation. These timely appeals followed.

Discussion

The appeals became active in recent months. The parties’ submissions identified the following issues: (a) whether EOHHS’s interpretation of the governing regulations—as requiring indirect therapy costs to be substantiated by indirect therapy logs—is challengeable on appeal to DALA; (b) if so, whether that interpretation is correct; and (c) whether the appeals are subject to dismissal based on failure to prosecute.

The same issues were addressed in a set of consolidated appeals involving one of Pilgrim’s sister entities. See *Linda Manor Extended Care v. EOHHS*, No. RS-00-490, 2024 WL 3326227 (DALA June 5, 2024). *Linda Manor* concluded that: (a) challenges to EOHHS’s interpretations of applicable regulations are within the scope of DALA’s appellate jurisdiction; (b) the applicable regulations allowed facilities to substantiate indirect therapy costs with documents other than indirect therapy logs; and (c) the histories of the appeals did not warrant dismissal for failure to prosecute. The parties report that EOHHS has appealed *Linda Manor* to the Superior Court.

The parties agree that the circumstances of Pilgrim’s appeals are not materially different from the circumstances addressed in *Linda Manor*. They agree on the exact sum owed to

Pilgrim under *Linda Manor*'s analysis, i.e., \$165,680. They agree further that a concise decision extending *Linda Manor*'s conclusions to these appeals is a fair and efficient alternative to an evidentiary hearing, additional written submissions, and/or a more detailed decision.

Conclusion and Order

These appeals are governed by the analysis stated in *Linda Manor*. Accordingly, the disputed cost disallowances are REVERSED. The resulting sum owed to Pilgrim, as calculated by the parties, is \$165,680. Any appeal from this decision must be brought in the Superior Court within thirty days. *See* G.L. c. 30A, § 14.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate