

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Pope Nursing Home,
Petitioner,

Nos. RS-00-444, RS-00-690, RS-00-691,
RS-00-692, RS-00-693, RS-00-779, RS-00-901

v.

Dated: March 6, 2024

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

Appearance for Petitioner:

John T. McKenna
Jonathan Langfield

Appearance for Respondent:

Michael Capuano, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

For the same reasons described in a recent decision involving a related entity, the petitioner nursing facility is entitled to certain adjustments to its reimbursement rates for the years 1994-2000.

DECISION

These are appeals from rates of payment established by the Executive Office of Health and Human Services and predecessor agencies. The appeals were consolidated and submitted on the papers. I admit into evidence exhibits marked 1-7 and 1-2.

Background

Along with a number of other nursing facilities, petitioner Pope Nursing Home is a subsidiary of Rehabilitation Associates, Inc. (RAI). The various RAI facilities underwent an EOHHS audit in 1998. The audit resulted in revisions to the facilities' reimbursement rates for the years 1994-2000. These and other appeals followed.

Various appeals from EOHHS-established rates became active in recent years. The appeals of three other RAI subsidiaries were decided in the consolidated decision *Bridgewater Nursing Home v. EOHHS*, No. RS-00-668, 2023 WL 7018553 (DALA Oct. 19, 2023).

In late 2023, Pope and EOHHS filed prehearing memoranda and exhibits. EOHHS observed in its memorandum that the issues presented here echo the issues decided in *Bridgewater*.

A January 2024 order invited the parties to identify any material differences between the circumstances of *Bridgewater* and those of Pope's appeals. The parties did not endeavor to identify any such differences. The same order invited the parties to compute the amounts that Pope would be owed from EOHHS under *Bridgewater's* analysis. Pope filed a spreadsheet-based analysis, which EOHHS did not dispute.

In early February 2024, EOHHS filed an update stating that: "EOHHS is still awaiting authority to resolve the remaining [RAI] facilities' appeals (of which Pope is one) reflecting the values proposed by the petitioner that align with the *Bridgewater* decision." EOHHS promised to provide another update promptly upon obtaining the requisite settlement authority. It has filed nothing further to date.

Discussion

EOHHS is responsible for setting rates of payment to nursing facilities for healthcare services. G.L. c. 118E, § 13C. EOHHS's process for establishing such rates relies on the facilities' reports of their costs in certain "base" years. § 13D.

The issues in dispute relate to Pope's cost reports for the base years 1992 and 1993. *Bridgewater* addressed these issues in reverse chronological order. A brief recap of its analysis follows.

By the time of the 1998 audit, the various RAI facilities no longer possessed documents substantiating certain items claimed in their 1993 cost reports. EOHHS disallowed those items. *Bridgewater* concluded that these disallowances were erroneous, because the facilities had complied with the applicable record-retention requirements. *See* 114.2 C.M.R. § 5.03(1) (1993-1994) (requiring substantiating records to be retained for “at least three years following the submission of [the] reports or until the final resolution of any appeal involving a rate for the period covered in the report, whichever occurs later”).

With respect to the 1992 cost reports, the dispute focuses on the costs that the RAI facilities incurred as salaries to facility administrators. Each facility reported such salaries on a cost report attachment captioned “schedule 27.” Each schedule 27 named an administrator, disclosed the administrator’s salary, and commented that the administrator served multiple facilities. During the 1998 audit, EOHHS decided that each facility would be viewed as having paid only a portion of the salary disclosed on its schedule 27. EOHHS declined to view each facility as also having paid salary amounts to senior RAI executives. On this point, *Bridgewater* discerned no reversible error. *See* G.L. c. 118E, § 13E; 114.2 C.M.R. § 5.08(3)(a) (1994).

As indicated earlier, the parties have identified no material difference between the circumstances addressed in *Bridgewater* and those presented here. They have offered no reason to revise *Bridgewater*’s analysis. And EOHHS has not disputed Pope’s computation of the amounts owed to Pope under that analysis.

Conclusion and Order

Pope’s rates of payment for the pertinent years are AFFIRMED in part and REVERSED in part in accordance with the foregoing discussion. The sums owed to Pope shall be as stated in its spreadsheet analysis dated January 26, 2024. Any appeal from this decision must be brought in the Superior Court within thirty days.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate