

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1553-07T2

ESTATE OF ROSA M. MENDOZA,

Petitioner-Appellant,

v.

TRENTON PSYCHIATRIC HOSPITAL,

Respondent,

and

DEPARTMENT OF HUMAN SERVICES,  
DIVISION OF MENTAL HEALTH  
SERVICES,

Respondent-Respondent.

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Submitted May 4, 2010 - Decided July 20, 2010

Before Judges Fuentes and Simonelli.

On appeal from a Final Decision of the  
Department of Human Services, Division of  
Mental Health.

Otto Marcano, attorney for appellant.

Paula T. Dow, Attorney General, attorney for  
respondent (Melissa H. Raksa, Assistant  
Attorney General, of counsel; Gene  
Rosenblum, Deputy Attorney General, on the  
brief).

PER CURIAM

Plaintiff Estate of Rosa M. Mendoza (Estate) appeals from the October 17, 2007 final decision of the Commissioner of respondent Department of Human Services (DHS) approving the recommendation of the Compromise Panel to reject the Estate's compromise offer of \$30,000 to settle an \$83,357.60 debt owed to the State of New Jersey for services rendered to the decedent Rosa M. Mendoza (Mendoza) at respondent Trenton Psychiatric Hospital (TPH). We affirm.

On February 9, 1999, Mendoza, a native of Mexico, sustained a traumatic brain injury as a result of a motor vehicle accident in New Brunswick. She developed dementia as a result of that injury. On June 7, 1999, the court ordered her temporary involuntary commitment to the Carrier Foundation pursuant to N.J.S.A. 30:4-27.10, where she stayed until the exhaustion of personal injury protection automobile insurance benefits.

On August 18, 1999, Mendoza was transferred to TPH pursuant to court order. On September 22, 1999, the court placed Mendoza on conditional extension pending placement (CEPP) pursuant to Rule 4:7-7(h)(2) due to the unavailability of an appropriate placement after discharge. On September 23, 1999, the court ordered the State to pay for the cost of Mendoza's maintenance at TPH based on the County adjuster's certification of her inability to pay at the time; however, Mendoza remained

personally liable for the full cost of her maintenance pursuant to N.J.S.A. 30:4-66.

On January 19, 2000, the court ordered Mendoza's discharge to Mexico and continued her on CEPP until that time. Due to difficulties arranging Mendoza's aftercare in Mexico, repatriation took seven and one-half months. During Mendoza's stay at TPH, her attorney, and sister who lived in Atlantic City, visited her.

Mendoza was discharged on April 6, 2000, and returned to Mexico. On June 26, 2000, TPH sent her a bill for \$83,357.60 for the cost of her maintenance there (the bill). The amount of the bill became a lien against Mendoza pursuant to N.J.S.A. 30:4-80.1.

Mendoza died on March 18, 2002. Over two years later, on May 13, 2004, Mendoza's attorney, who now represented the Estate, requested that TPH compromise the lien to \$30,000. On May 19, 2004, Jim Wolfe, chairperson of DHS's Compromise Panel, advised the attorney that the "purpose of the compromise procedure is to mitigate against the possible harmful or counterproductive effects of Departmental actions . . . against clients and former clients[,]" and that since Mendoza "is deceased and there are no financial dependents," a compromise would be "in direct conflict with the policies and standards" of

the Department. Wolfe also advised that the Estate remained liable for the lien pursuant to N.J.S.A. 30:4-74, and that DHS expected the Estate to pay it.

DHS received no further communication from the Estate or its attorney until after a 2005 amendment to N.J.S.A. 30:4-80.1, which extinguished all liens filed prior thereto against a person treated at a psychiatric facility. On April 28, 2006, the Estate's attorney asked DHS to extinguish and discharge the lien pursuant to the amended statute. DHS discharged the judgment TPH had filed with the Superior Court; however, it advised the attorney that "unpaid balances on institutional accounts remain due[,]" and that the Estate must pay it pursuant to N.J.S.A. 3B:22-2.

On January 19, 2007, DHS advised the Estate's attorney that although the lien was discharged, the Estate remained liable for the bill pursuant to Administrative Order 5:06 (AO 5:06),<sup>1</sup> and that the Estate could submit a compromise request, which must include "an accounting of the [E]state's assets and liabilities[,]" and should include any other information bearing on the compromise decision factors outlined in AO 5:06,

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<sup>1</sup> AO 5:06 sets forth the policy and procedures for initiating and resolving compromise requests.

particularly, evidence of any surviving minor or disabled dependents.

The Estate's attorney responded with unsubstantiated claims that Mendoza had disabled and elderly dependents, that she regularly sent economic assistance to her parents and disabled sister in Mexico, and that her parents had incurred considerable expenses for her care upon her return to Mexico. He also submitted affidavits from persons other than Mendoza's parents or sister containing statements about these family members' alleged disabilities and dependence on Mendoza. The attorney did not provide an accounting of the Estate's assets and liabilities, or mention a pending personal injury action Mendoza had filed in connection with the motor vehicle accident. Also, for the first time, the attorney mentioned that he believed that TPH's billing "was at best skewed due to the lack of care [Mendoza] received at [TPH], due in part to the lack, at the time, of Spanish-speaking personnel and therapists." However, he did not challenge the amount of the bill.

The Estate failed to disclose its assets and liabilities. As a result, DHS conducted an investigation and discovered that the Estate had obtained an approximately \$275,000 settlement of Mendoza's personal injury action. DHS subsequently learned that, except for the bill amount, which had been placed in

escrow, the settlement proceeds had already been distributed to Mendoza's heirs.

On April 10, 2007, DHS advised the Estate's attorney of the result of its investigation and requested an accounting of the Estate's assets, liabilities and distribution of assets, and a copy of the Inheritance Tax Report. In response, the attorney only provided a statement reflecting the distribution of the settlement proceeds. He claimed that several family members had made claims to the settlement proceeds, and that Mendoza's parents and sister each received only \$12,264.40.

Wolfe recommended that the Compromise Panel reject the Estate's compromise request because it failed to disclose the settlement, provided conclusory and unsubstantiated evidence that Mendoza provided support to her parents and sister, and failed, despite repeated requests, to provide an accounting of the Estate's assets and liabilities. The Compromise Panel advised the Commissioner of its recommendation to reject the compromise request based on "[t]he scope and amount of statutory liability of [Mendoza] for the cost of care and maintenance" and because "[a] person other than [Mendoza] or her dependent will receive the benefit of the compromise." The Commissioner approved the recommendation.

Wolfe advised the Estate's attorney of the Commissioner's approval of the Compromise Panel's recommendation to reject the compromise request, and demanded payment of the bill within fourteen days. No payment was made. On August 9, 2007, the Office of the Attorney General demanded payment within fifteen days and advised the Estate's attorney that the Estate remained liable for the bill pursuant to N.J.S.A. 30:4-60(c)(1) and N.J.S.A. 30:4-74.

For the first time on September 24, 2007, the Estate's attorney contested the amount of the bill, raising seven points of contention, including that Mendoza received inadequate care, the discharge of the lien extinguished the Estate's liability for the bill, and Mendoza was wrongfully discharged. He renewed the Estate's compromise request.

The Compromise Panel reconsidered the compromise request and recommended that the Commissioner reject it "[b]ecause hospital records contradict the attorney's new allegations [of inadequate care] and the deceased patient cannot benefit from the funds at issue[.]" The Commissioner approved the recommendation.

On October 17, 2007, Wolfe issued a detailed final decision addressing each of the Estate's seven points of contention. Wolfe also advised the Estate's attorney that the Compromise

Panel recommended the rejection of the reconsideration request because "Mendoza is deceased and as such has no present needs[;]" she "does not have any legally responsible relatives statutorily . . . . responsible for [her] cost of care and maintenance[;]" she does not "have any . . . . dependents as her parents and sister live independently and her children are all adults living independently[;]" neither she nor her actual dependents would be receiving the benefit; and "there would be no other opportunity to recover the amounts that the State taxpayers had expended for [her] institutional care." Wolfe also advised that the Commissioner had approved the Compromise Panel's recommendation and that the Estate owed the entire amount of the bill pursuant to N.J.S.A. 3B:22-2 and N.J.S.A. 30:4-66. This appeal followed.

Our role in reviewing the decision of an administrative agency is limited. Circus Liquors, Inc. v. Middletown Twp., 199 N.J. 1, 9 (2009); In re Taylor, 158 N.J. 644, 656 (1999). We will not disturb the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that is, (1) "the agency's action violates expressed or implied legislative policies[;]" (2) "the record [does not] contain[] substantial evidence to support the findings on which the agency based its action[;]" and (3) "in

applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." Circus Liquors, supra, 199 N.J. at 10 (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)); see also In re Musick, 143 N.J. 206, 216 (1996).

Decisions of administrative agencies carry with them a presumption of reasonableness. Newark v. Natural Resource Council, 82 N.J. 530, 539, cert. denied, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980). We may not reverse an agency's determination "even if [we] may have reached a different result had [we] been the initial decision maker." Circus Liquors, supra, 199 N.J. at 10. Stated otherwise, we "may not simply 'substitute [our] own judgment for the agency's.'" Ibid. (quoting In re Carter, 191 N.J. 474, 483 (2007)).

Nonetheless, "although the determination of an administrative agency is entitled to deference, our appellate obligation requires more than a perfunctory review." Blackwell v. Dep't. of Corr., 348 N.J. Super. 117, 123 (App. Div. 2002). Accordingly, our function is not to merely rubberstamp an agency's decision; rather, our function is "to engage in 'a careful and principled consideration of the agency record and

findings.'" [Williams v. Dept. of Corr., 330 N.J. Super. 197, 204 (App. Div. 2000)] (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

The Estate contends that DHS cannot enforce collection of the debt against Mendoza's father, mother and sister, and cannot use Mendoza's current ability to pay to calculate the Estate's financial liability. We disagree.

At all times until her death, Mendoza was personally liable for the bill notwithstanding the discharge of the lien.

A person with mental illness who is 18 years of age or older and is being treated in a psychiatric facility . . . shall be liable for the full cost of his treatment, maintenance and all necessary and related expenses of the person's hospitalization until he is determined to be ineligible for or has exhausted any third party insurance benefits or medical assistance program that will pay an amount toward the facility's bill. . . .

[N.J.S.A. 30:4-60(c)(1).]<sup>2</sup>

The Estate became liable for the entire bill after Mendoza's death.

A patient's estate . . . shall be liable for institutional or functional services support from the time of the patient's admission or commitment whether he was admitted or committed as a paying or nonpaying patient and irrespective of change of status after admission or commitment.

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<sup>2</sup> See also AO 5:06(I).

[N.J.S.A. 30:4-74 (emphasis added).]

See also State v. LaVien, 44 N.J. 323, 325-26 (1965), where our Supreme Court held that the estate of an insane patient, who was originally admitted to a psychiatric hospital as an indigent, was liable for the costs of his care once the estate grew to an amount larger than the cost of his hospitalization bill. The patient's liability was retroactive and prospective, i.e., the estate not only had to pay for the cost of commitment going forward, it also had to pay for the period of time the patient was indigent. Ibid. Accordingly, DHS can enforce collection of the bill against the Estate, and can use the settlement proceeds to calculate the Estate's financial liability.

The Estate also contends that the evidence does not support the Compromise Panel's finding that Mendoza had no disabled or elderly dependents. Not so.

N.J.S.A. 30:4-60 provides a mechanism for former patients or their estates to seek a compromise of the amount charged to the patient. Pursuant to this statute, the Commissioner

shall act on any request by a person with mental illness who is 18 years of age or older, or the parent of a person with mental illness under the age of 18, to compromise for settlement of the obligation established pursuant to this section. With respect to the request, the commissioner shall allow the person or parent to retain adequate funds to:

. . . .

(c) support any minor, disabled, elderly or other dependent[.]

[N.J.S.A. 30:4-60(c)(6).]<sup>3</sup>

Although this statute requires the Commissioner to act on a compromise request, the Commissioner's ultimate decision to compromise and settle is discretionary. N.J.S.A. 30:4-77.

We are satisfied no abuse of discretion occurred here. The Estate failed to establish entitlement to a compromise pursuant to either the applicable criteria here, i.e., the support of a disabled or elderly dependent, N.J.S.A. 30:4-60(6)(c), or any other criteria in the statute. The Estate provided no accounting of its assets and liabilities, and no competent proof that Mendoza's parents and sister, who lived separate from her in Mexico, are disabled, relied on her for support, or incurred expenses for her care. The affidavits the Estate submitted prove nothing. They are not based on the affiant's personal knowledge, Rule 1:6-6, and lack the specificity required to provide a rational basis to compromise the debt to \$30,000.

Absent proof of entitlement to a compromise, no compromise was compelled. The Commissioner's rejecting of both of the

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<sup>3</sup> See also AO 5:06(IV)(C)(2a.4).

Estate's compromise request was a proper exercise of discretion and was not arbitrary, capricious or unreasonable.

The Estate's remaining contentions that a judicial hearing is required to assess Mendoza's legal settlement status and financial liability to TPH, and that the bill should be compromised because Mendoza received substandard care, lack sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E). However, we make the following comments.

The Estate provided no proof that TPH provided substandard care to Mendoza. Neither the Estate's attorney nor her sister, who allegedly witnessed such care, provided an affidavit attesting to their observations; the attorney never advised the court of this situation prior to Mendoza's discharge; and the attorney did not raise this issue until after the rejection of the first compromise request.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION