

**LINCOLN PARK NURSING AND  
CONVALESCENT CENTER,  
INTERMEDIATE CARE CENTER,  
ANDOVER NURSING AND CONVALESCENT HOME,  
AND INTERMEDIATE CARE CENTER,**  
Petitioners,  
v.  
**DIVISION OF MEDICAL ASSISTANCE  
AND HEALTH SERVICES,**  
Respondent.

Initial Decision: July 7, 1982

Final Decision: August 19, 1982

Approved for Publication by the Division of Medical Assistance  
and Health Services: May 6, 1985

**SYNOPSIS**

Petitioners sought a utility add-on adjustment under *N.J.A.C.* 10:63-3, *et seq.* for utility expenses allegedly incurred by petitioners in fiscal year 1980-81.

The administrative law judge assigned to the case noted that petitioners argued that the increasing fuel costs in the years under discussion continued an "unusual situation" which, under *N.J.A.C.* 10:63-3.20, would allow for a change in the components of the rate setting guidelines applied to petitioner. The judge found that petitioners had demonstrated that they are cost efficient in regard to energy expenses, but that their actual utility cost for 1980-81 exceeded the utility reimbursement due them. The judge rejected the argument that this was an unusual situation, however, since the rate of inflation is factored into the rate setting guidelines and all institutions were similarly affected during that time period. The rate setting system had been established to provide for reasonable rates, and no showing had been made that the system had functioned otherwise. Accordingly, the judge concluded that the sought after adjustment should be denied.

Upon review this decision was adopted by the Director of the Division of Medical Assistance and Health Services.

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**David A. Biederman**, Esq. for the petitioners

**Robert J. Haney**, Deputy Attorney General, (Irwin I. Kimmelman, Attorney General of New Jersey, attorney), for respondent

### Initial Decision

#### GEIGER, ALJ:

All four related petitioners, Lincoln Park Nursing (LPNC), and Lincoln Park Intermediate Care Center (LPICC), Andover Nursing and Convalescent Home (ANC), and Andover Intermediate Care Center (AICC) appeal the refusal of the Division of Medical Assistance and Health Services to provide a utility add-on adjustment under *N.J.A.C.* 10:83-3 *et seq.* for utility expenses allegedly incurred by facilities in fiscal year 1980-81.

The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Both parties attempted to resolve the matter administratively, but were unable to do so. The hearing was held over two days, March 30 and 31, 1982. Briefs were due May 3, 1982, and responses from each party were completed and received by June 2, 1982.

It was stipulated that the issue was the same for all four corporations. During the period 1980/1981, utility rates increased greatly at the four petitioning nursing facilities. The facilities sought relief by requesting a utility "add-on" to already established rates so that the actual utility expenses would be covered. Although the initial recommendation by an analyst from the Department of Health was that there be a utility cost pass-through for one of the institutions (AICC), the recommendation was rejected by the Division of Medical Assistance and Health Services and similar adjustments for the other three facilities were also rejected.

The petitioners argue in the first place that the Department of Health "CARE Guidelines" as well as other regulations have not been properly applied in this case.

The administrative law judge notes that "CARE" is an acronym standing for Cost Accounting and Rate Evaluation, which is the New Jersey Nursing Home Rate Setting System. CARE was developed jointly by the State Department of Human Services and the State Department of Health. The guidelines went into effect commencing with the fiscal year ending November 30, 1977. CARE was designed to comply with Federal requirements for a "reasonable cost-related" formula, to provide sufficient reimbursement to assure adequate levels of patient care, and to end opportunities for excessive property-cost reimbursement. A fourth goal, namely, to provide sufficient incentive to attract long term care facility investment, thereby reducing reported Medicaid bed shortage, has been obviated since care of Medicaid

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patients in nursing homes has become mandatory. The complete outline of CARE is found in *N.J.A.C.* 10:63.3 Subchapter 3. There are six “rate components” and it is one of these components that the petitioners have targeted with their appeal. *N.J.A.C.* 10:63-3.20, “Appeals Process,” reads:

Where LTCF (Long Term Care Facility) believes that, owing to an unusual situation, the application of these guidelines results in an inequity, the home may appeal the rate component(s) affected by the unusual situation(s).

The administrative law judge notes that the entire subchapter 3, expanded and illustrated in the CARE manual and in guidebooks provided individual nursing homes, requires accounting skills to be completely understandable. However, the stated goals of the CARE system enable persons lacking accounting skills to understand what effects are envisioned by the plan.

The petitioners argue that CARE has not been properly applied in this case. The attorney for petitioners cites *Massachusetts General Hospital v. Sergeant*, 397 *F. Supp.* 1056 (D.C. Mass. 1975) and *Connecticut State Department of Public Works v. Department of H. E. & W.*, 448 *F.2d* 207(C.A. Conn. 1971), which cases contain sentences implying that Congress intended Medicaid to pay in full or to pay approximately the actual cost of service provided. Furthermore, he cites 42 *U.S.C.* §1396(a)(13)(e), “. . . for payment of the skilled nursing facility and intermediate care facility services provided on a ‘reasonable cost related basis’. . . .” He argues that if the State will not repay the real cost of providing services, the nursing homes will be forced to make non-Medicaid patients absorb some of the cost of the Medicaid patients’ care.

The attorney for the Division of Medical Assistance and Health Services answers this argument by stating that in the first place the Medicaid reimbursement system was to benefit recipients, not providers, and that Medicaid is a program with limited funds. Consequently, it is necessary for those funds to be used in the most economical manner possible and that the states operating within Federal guidelines make the necessary economic determinations. Respondent’s attorney, along with one of his witnesses, perceives the issue as a direct attack by the petitioners upon the CARE system. Respondent’s attorney argues that under prospective rate setting, such as the CARE system, a nursing home rate is set initially and facilities are expected to keep their costs within the limits of that rate. If retroactive adjustments were permitted to pay all the actual costs, there would be no control of inflation of healthcare costs. He cites the example from

41 *Fed. Reg.* 27300, (1976), wherein the Department of Health, Education and Welfare discontinued the use of a Medicare ceiling in the case of states with prospective rate setting systems (such as CARE), since it was believed that the inherent cost containment potential of such limits negated the need for additional ceilings. Thus he concludes that CARE was formulated as a reasonable cost reimbursement consistent with Federal policy and that it would provide incentives to efficiency but not meet every cost of nursing home administration.

The administrative law judge observes that the CARE system in New Jersey, in order to be *implemented*, first had to be *approved* by the Federal government through the presently titled Department of Health Education and Welfare.

The petitioners argue that the spiraling fuel costs of fiscal year 80-81 were the "unusual situation" criteria mentioned in *N.J.A.C.* 10:63-3.20. In the face of this, the respondent showed evidence that at least 22 nursing homes experienced an increase of over 50 percent in utility costs for the periods fiscal year 79-80, two of them showing increases of over 80 percent. Furthermore, it is general knowledge, if not direct experience, that utility bills soared all over the United States during 1980. Consequently, petitioners, according to the respondent, cannot argue that theirs was an unusual situation.

The petitioners cite their position on the State's own median list as showing that they are among the most cost-efficient providers by showing two utility cost-per-bed studies, one dated June 9, 1979, and the other dated June 9, 1980. Both LPICC and AICC stand close to the bottom on both reports and LPNC and ANC are well below the median. It cannot be denied that the petitioning nursing homes are cost-efficient in their use of utilities.

Petitioners' attorney raised a question at the hearing and in a response, dated May 18, 1982, to the brief filed by the respondent. The issue raised is that the State "rewards" extravagant providers by permitting them increases in their base-period rates. The deputy attorney general counters that argument by saying that there are many reasons why adjustments are permitted certain providers, but that the cases are irrelevant. The petitioning nursing homes are asking for a pass-through which would override the CARE system, whereas other nursing homes have had an adjustment in base-period costs which permits prospective rates to be set and budgets to be arranged in advance which will not be retroactively adjusted. The deputy attorney general argues that this encourages cost containment since facilities are expected to live within the prospectively set rate. The deputy

attorney general again observes that utility expenses are just one segment of the CARE system. He argues that it is improper to attack the CARE system through one small area since the inflation factor provided to nursing homes allows for increases in costs over all sectors through its reliance upon the consumer price index and the index of wages in manufacturing industries in New Jersey. It is expected that overall inflationary trends are intended to be covered by those indices.

A sub-issue was raised at the hearing and in the briefs regarding "Schedule 'C' adjustment." This adjustment is labeled in the care manual "legal and management changes." The form specifically is not to be used for price increases in goods and services purchased. The deputy attorney general points out that the filing of a Schedule C adjustment is usually reserved for changes which are expected to affect the following year's rates.

Based upon the foregoing, I FIND:

1. Petitioning nursing homes have demonstrated that they are cost-efficient in regard to energy expenses, but that their actual cost for fiscal year 1980-81 exceeded the utility reimbursement due them under the CARE System.
2. Petitioners are seeking a "pass-through" by which the DMAHS will permit payment of their actual utility costs for fiscal year 80-81.
3. Petitioners argue that their situation during fiscal year 80-81 was an "unusual" one, such as described in *N.J.A.C.* 10:63-3.20(a). Therefore, the Department of Health and Division of Medical Assistance and Health Services have the authority to make adjustments.

The rate of inflation is factored into the CARE program. Therefore, the argument that petitioners' situation was an unusual one must be rejected since all nursing homes, and indeed all institutions and private homes having to purchase energy during fiscal year 80-81, were similarly affected.

4. The entire CARE manual, as set forth in *N.J.A.C.* 10:63, subchapter III, is dotted with the word "reasonableness," but it must be first recognized that the system was put into effect for cost containment. Inflation itself is "unreasonable" inasmuch as money saved for a certain purpose one year loses its value because of inflation the following year. New Jersey State Medicaid is constantly faced with difficult choices in allocating funds throughout its many programs. The respondent, together with the Department of Health, evolved the

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CARE system to be as "reasonable" as possible in meeting federal guidelines. By approving this system in the State of New Jersey, the federal government itself must be said to have approved its "reasonableness."

Based upon the facts adduced at the hearing and pursuant to the agency policies above cited, I **CONCLUDE** that the Division of Medical Assistance and Health Services was correct in holding to the guidelines of the CARE program and denying the pass-through for fuel cost for fiscal year 1980-81 to the four petitioning nursing homes. Therefore, the agency action is **AFFIRMED**.

**FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF  
MEDICAL ASSISTANCE AND HEALTH SERVICES,  
THOMAS M. RUSSO:**

The Director, Division of Medical Assistance and Health Services, has reviewed and considered the entire record in this matter, including the initial decision of the Honorable Maria J. Geiger, and the exceptions thereto filed on behalf of the petitioners by David A. Biederman, Esquire.

The Director notes that no exceptions were filed on behalf of the respondent.

Based upon his full review of the record, the Director affirms the decision of the administrative law judge and hereby adopts the findings and conclusions of the administrative law judge in their entirety and incorporates the same herein by reference.

The Director further finds that although the petitioners' exceptions were thorough and well-written, they do not warrant modifying the judge's recommended decision in order to grant them the requested relief.

Furthermore, the Director notes that the judge properly interpreted and applied the CARE Guidelines and Manual.

**THEREFORE**, it is on this 19 day of August, 1982

**ORDERED:**

That the petitioners' request for a utility expense adjustment for fiscal year 1980-81 is hereby **DENIED**.

**You must check the New Jersey Citation Tracker in  
the companion looseleaf volume to determine the  
history of this case in the New Jersey Courts.**