



THE NYC DEPARTMENT OF SOCIAL SERVICES DOES NOT HAVE THE AUTHORITY TO RECOVER MEDICAID OVERPAYMENTS FROM PERSONAL CARE SERVICE PROVIDERS (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Kahn, over a two-justice dissent, determined that The City of New York Human Resources Administration Department of Social Services (HRA) does not have the authority to audit and recover overpayments of funds provided pursuant to the Health Care Reform Act (HCRA) from personal care service providers such as petitioner People Care Incorporated d/b/a Assisted Care:

The determinative issue on this appeal is not whether the HCRA funds were denominated as “Medicaid rates of payment” or “Medicaid rate adjustments” in the statute and the MOU [memorandum of understanding]. Rather, the issue presented here is whether, under the terms of the 2001 contract, Public Health Law § 2807-v(1)(bb)(i) and the MOU superseded the provisions of that contract as to the auditing and recoupment of HCRA funds. * * *

... [N]either Public Health Law § 2807-v(1)(bb), as the governing statute, nor the MOU between DOH [NYS Department of Health] and HRA, entered into pursuant to that statute, contains any language delegating DOH’s auditing and recoupment authority to HRA or any other agency. [Matter of People Care Inc. v City of New York Human Resources Admin., 2019 NY Slip Op 05756, First Dep 7-23-19](#)