FUNDS FOR PERSONAL CARE SERVICES ARE MEDICAID FUNDS SUBJECT TO THE AUDIT AND RECOUPMENT AUTHORITY OF THE CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION; APPELLATE DIVISION REVERSED (CT APP)..

The Court of Appeals, reversing the Appellate Division, determined funds paid for personal care were Medicaid funds which were subject to the audit and recoupment authority of the City of New York Human Resources Administration (HRA). The facts are explained in the Appellate Division decision:

> For the reasons stated in the dissenting opinion below (Matter of People Care Inc. v City of New York, 175 AD3d 134, 147-152 [1st Dept 2020] [Richter, J.P., dissenting]), we conclude that the funds for personal care services paid to petitioner People Care, Inc. under the Health Care Reform Act (Public Health Law §§ 2807-v [1] [bb] [i], [iii]) are Medicaid funds subject to the audit and recoupment authority of the City of New York Human Resources Administration (HRA) in accordance with the parties' 2001 contract. Matter of People Care Inc. v City of N.Y. Human Resources Admin., 2021 NY Slip Op 01834, CtApp 3-25-21

CLASS CERTIFICATION FOR PERSONS DENIED PUBLIC ASSISTANCE BASED ON THE FAIR MARKET VALUE (FMV) OF THEIR VEHICLES WAS PROPER; THE OPT-IN PROCEDURE SHOULD BE USED TO IDENTIFY CLASS MEMBERS (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Lynch, determined the opt-in procedure should be used to identify members of the class who were denied public assistance based upon the fair market value (FMV) of their cars. The class certification by Supreme Court was found proper:

> In our prior decision regarding this matter, we affirmed so much of Supreme Court's judgment as annulled a determination of the Office of Temporary and Disability Assistance (hereinafter OTDA) denying petitioner's application for public assistance ... . We agreed with Supreme Court that the methodology that OTDA was using to calculate whether an applicant had available resources from an automobile — which focused on the fair market value (hereinafter FMV) of the applicant's vehicle in excess of the statutory exemption (see Social Services Law § 131-n [e]) regardless of whether the applicant had any equity interest therein — was "irrational and unreasonable" ... . * * *
>
> ... [T]he opt-in approach would prove more efficient ... . In those instances where the opt-in notice is returned as undeliverable, OTDA should then be required to conduct a manual file review. Matter of Stewart v Roberts, 2021 NY Slip Op 01105, Third Dept 2-18-21

SOCIAL SERVICES LAW ARTICLE 11 DOES NOT CREATE A PRIVATE RIGHT OF ACTION FOR THE INAPPROPRIATE USE OF PHYSICAL RESTRAINTS (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Leventhal, determined the Social Services Law did not create a private right of action for the inappropriate use of physical restraints. The complaint alleged infant plaintiff, a person with special needs, was injured by the hospital defendants:

> [The] causes of action alleged assault, battery, false imprisonment, negligent hiring, supervision, and retention, violation of a section of Social Services Law article 11, violation of Civil Rights Law § 79-n, and negligence. The two causes of action alleging violation of Social Services Law article 11 were the fifth and sixth causes of action. In these causes of action, the plaintiffs alleged that the defendants committed physical abuse and deliberate inappropriate use of physical restraints as defined in Social Services Law § 493(4)(b). * * *
>
> A legislative intent to create a private right of action for alleged violation of article 11 of the Social Services Law is not fairly implied in these statutory provisions and their legislative history. Finding such a private right of action would be inconsistent with the legislative scheme. The Protection of People with Special Needs Act, generally, and article 11 of the Social Services Law, specifically, "already contain[ ] substantial enforcement mechanisms"... . These mechanisms in the Act include the creation of the Justice Center, the "central agency responsible for managing and overseeing the incident reporting system, and for imposing or delegating corrective action" ... . These mechanisms in article 11 include the maintenance of a statewide vulnerable persons' central register to accept, investigate, and respond to allegations of abuse or neglect; the delineation of possible findings and consequences in connection with an investigation of abuse or neglect allegations, along with procedures for amending and appealing substantiated

Copyright © 2019 New York Appellate Digest.

abuse or neglect reports; and the maintenance of a register of subjects found to have a substantiated category one abuse or neglect case. The substantial enforcement mechanisms "indicat[e] that the legislature considered how best to effectuate its intent and provided the avenues for relief it deemed warranted" … . Joseph v Nyack Hosp., 2020 NY Slip Op 07042, Second Dept 11-25-20

HUMAN RESOURCES ADMINISTRATION SECURITY DEPOSIT VOUCHERS MUST BE ACCEPTED IN LIEU OF CASH DEPOSITS; TO REFUSE TO ACCEPT THE VOUCHERS VIOLATES THE NYC HUMAN RIGHTS LAW; THE VOUCHER PROGRAM DOES NOT VIOLATE THE SOCIAL SERVICES LAW OR THE URSTADT LAW (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Webber, determined plaintiff Estates, a leasing agent for multi-family apartment buildings in New York City, must accept a Human Resources Administration (HRA) security deposit voucher for an apartment. When the potential tenant, Walters, applied for an apartment, plaintiff's employee told her the security deposit must be cash:

> We find that the court correctly concluded that HRA's security deposit vouchers are a "lawful source of income" under the City HRL [Human Rights Law] (Administrative Code § 8-102) and are therefore included in the HRL's prohibition against discrimination by a landlord against a prospective tenant because of "any lawful source of income" (Administrative Code § 8-107[5][a][1]). "The term lawful source of income' includes income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers" … .
>
> Administrative Code § 8-107(5) prohibits a landlord from refusing to accept a Section 8 voucher from an existing tenant or refusing a lease to a prospective tenant who seeks to pay rent with a Section 8 voucher … . …
>
> Supreme Court correctly found that HRA's security deposit voucher program does not violate Social Services Law § 143-c. * * *
>
> Finally, we find that the voucher program does not violate the Urstadt Law (McKinney's Uncons Laws of NY § 8605). "The Urstadt Law was intended to check City attempts, whether by local law or regulation, to expand the set of buildings subject to rent control or stabilization'" … . Here, a landlord's acceptance of such security deposit vouchers "will have no impact in expanding the buildings subject to the rent stabilization law or expanding regulation under the rent laws" … . Estates NY Real Estate Servs. LLC v City of New York, 2020 NY Slip Op 03093, First Dept 5-28-20

ALLEGATION THAT PETITIONER FAILED TO REPORT AN INCIDENT OF SUSPECTED ABUSE BY ANOTHER EMPLOYEE OF THE NYS OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WAS SUBSTANTIATED DESPITE THE FAILURE TO SUBSTANTIATE THE ALLEGATION OF ABUSE BY THE OTHER EMPLOYEE (THIRD DEPT).

The Third Department determined the NYS Office for People with Developmental Disabilities's (OPWDD's) finding that petitioner's failure to report an incident of suspected abuse by another employee was substantiated was supported by the evidence, despite the fact that allegation of abuse by the other employee was not substantiated:

> The evidence at the hearing established that the service recipient reported to petitioner every time the other employee was "rude" to him over the course of six months, and petitioner did not act on this information. By petitioner's own testimony, she saw the other employee shout at and belittle the service recipient, yet she reported nothing. Although petitioner disputed the characterizations of her statements at the meeting or that she thought the other employee was abusive, and offered many reasons as to why she did not act on her observations, respondent was free to make credibility determinations and credit contrary testimony, as "it is the responsibility of [respondent] to weigh the evidence and choose from among competing inferences therefrom" … .
>
> We reject petitioner's contention that obstruction of reporting cannot be substantiated against her since the underlying allegations of abuse against the other employee were not substantiated. Pursuant to statute, reportable incidents must be reported when they are "suspected," rather than confirmed … . Matter of Taylor v Justice Ctr. for the Protection of People with Special Needs, 2020 NY Slip Op 02299, Third Dept 4-16-20

Copyright © 2019 New York Appellate Digest.

SERVICES PROVIDED TO A DISABLED MAN BY THE NYS OFFICE OF PEOPLE WITH DEVELOPMENTAL DISABILITIES COULD NOT BE CURTAILED BECAUSE OF A LACK OF FUNDS (THIRD DEPT).

The Third Department determined the NYS Office for People with Developmental Disabilities (OPWDD) was properly prohibited from curtailing services to and disabled man, M,D., because of a lack of funds:

> Even if the catch-all of "any other relevant considerations advanced by the parties" (OPWDD Policy and Procedures, Topic No. CP-10 [Rev (Feb. 1995)], at 4, ¶ 10) includes a provider agency's financial difficulties connected to the provision of services to an individual, the Hearing Officer noted that petitioner "may well have valid fiscal concerns," but concluded that it would not be proper or in M.D.'s best interest to discharge him on the basis of a lack of funding. We acknowledge the conundrum raised by petitioner — that providers face a difficulty in providing excellent services to a population with special needs but with no avenue of relief to help them financially when those services are more expensive than expected or than the maximum allowed under the HCBS [Home Community Based Services] waiver program. While we applaud providers such as petitioner for striving to provide excellent services to an underserved population, and are cognizant of their frustration when they deem the funding available for such services to be inadequate, the remedy must be for the service providers to apply to or lobby the relevant agencies, the Legislature or the Governor to provide more funding; the answer cannot be that administrative agencies or courts should allow service providers to simply discharge individuals with developmental disabilities from their services whenever the providers deem them too expensive. Based on consideration of the relevant factors, substantial evidence supports the Commissioner's determination that it was not reasonable to allow petitioner to discharge M.D. from its program. Matter of Community, Work, & Independence, Inc. v New York State Off. for People with Dev. Disabilities, 2020 NY Slip Op 02301, Third Dept 4-16-20

FAMILY COURT SHOULD NOT HAVE, SUA SPONTE, TERMINATED MOTHER'S PARENTAL RIGHTS ON MENTAL-ILLNESS GROUNDS IN THE ABSENCE OF THE STATUTORILY-REQUIRED PSYCHOLOGICAL EVALUATION (THIRD DEPT).

The Third Department, reversing Family Court, determined Family Court should not have terminated mother's parental right on mental-illness grounds without the results of the statutorily-required examination. The psychologist appointed to evaluate mother (Horenstein) did not do so and rendered his opinion based upon a review of records of her hospitalization:

> Pursuant to Social Services Law § 384-b (6) (e), the court is required to order the parent, alleged to be mentally ill, to be examined by a qualified psychiatrist or psychologist and shall take testimony from the appointed expert … . Significantly, paragraph (c) of subdivision 6 prohibits a determination as to the legal sufficiency of the proof until such testimony is taken … . An exception exists "[i]f the parent refuses to submit to such court-ordered examination, or if the parent renders himself [or herself] unavailable . . . by departing from the state or by concealing himself [or herself] therein" … . In such instance, "the appointed psychologist or psychiatrist, upon the basis of other available information, . . . may testify without an examination of such parent, provided that such other information affords a reasonable basis for his [or her] opinion" … . * * *
>
> … [W]e conclude that Family Court erred in proceeding with the termination of respondent's parental rights without the statutorily-required examination. Horenstein pointed out that there was no basis to find that respondent refused to be evaluated. Nor did respondent make herself unavailable "by departing from the state or by concealing [herself] therein" … . To the contrary, her placement in CDPC was involuntary and, despite her release by December 1, 2017, no further attempt was made to schedule an evaluation. Because the statutory exception does not apply, Family Court lacked authority to determine the legal sufficiency of the proof without a contemporaneous evaluation … . Even though respondent raised no objection at the hearing, this statutory mandate requires that we remit the matter to Family Court for a new hearing and determination … . Matter of Rahsaan I. (Simone J.), 2020 NY Slip Op 01212, Third Dept 2-20-20

ALTHOUGH TWO OF MOTHER'S FIVE CHILDREN, AS FULL-TIME COLLEGE STUDENTS, WERE INELIGIBLE FOR THE SNAP (FOOD STAMP) PROGRAM, THE ENTIRE AMOUNT

Copyright © 2019 New York Appellate Digest.

OF FATHER'S CHILD SUPPORT PAYMENTS MUST BE CONSIDERED AS HOUSEHOLD INCOME, RENDERING THE FAMILY INELIGIBLE FOR THE SNAP PROGRAM (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, determined that the child support payments made by father constituted income to mother (Ms. Leggio), not to the children. Therefore, although two of the children are full-time college students and ineligible for the SNAP (food stamp) program, the full amount of the child support must be considered in determining the family's eligibility for the SNAP program. Applying the full amount of the child support to the mother's income rendered the family ineligible:

> … [I]f Ms. Leggio's two eldest children are the owners of their pro rata shares of the child support she receives, the household would be eligible for SNAP benefits … . Conversely, if child support funds are considered income of the custodial parent who received them (here, Ms. Leggio) they are household income not subject to any exclusion, and Ms. Leggio's household's income would be too high to receive SNAP benefits. Although the consequences of allocating the income are clear, the threshold question, whether child support is income of the recipient-parent or of the beneficiary-child for purposes of determining eligibility for SNAP benefits, is unresolved by any federal or state statute or regulation or decision of this Court.
>
> We conclude that OTDA's [Office of Temporary and Disability Assistance's] interpretation of the federal statutes it administers was not irrational and is entitled to deference and thus, for the purposes of SNAP, child support directly received by a parent is household income, even if it is used for the benefit of an ineligible college student living at home. Matter of Leggio v Devine, 2020 NY Slip Op 00999, Ct App 2-13-20

AMENDMENT TO SOCIAL SERVICES LAW EXTENDING SUBSIDIES FOR CHILDREN CARED FOR BY A GUARDIAN UNTIL AGE 21 SHOULD HAVE BEEN APPLIED RETROACTIVELY; THE MATTER IS APPEALABLE AS OF RIGHT (FIRST DEPT).

The First Department, reversing Family Court, determined the amendment to Social Services Law 458-b allowing monthly subsidies for children cared for by guardians to be extended to age 21 (from 18) should be applied retroactively. The matter was deemed appealable as of right:

> … [T]he order is appealable as of right, because it is an order of disposition that terminates the children's guardianship placement once the children reach the age of 18 and terminates the proceeding itself … . In any event, this Court can deem a notice of appeal from the denial of the motion a request for permission to appeal and we would grant that request … . …
>
> A review of the legislative history supports the conclusion that the amended statute is remedial in nature. … [W]e can discern from the legislative history that the intent was to remove the disparity created between foster/adoptive parents and guardians since foster/adoptive parents are able to obtain subsidies notwithstanding the age of the child at the time of fostering or adoption.
>
> The mere fact that the amended statute is remedial in nature is not determinative as to whether it should be applied retroactively … . … [A] remedial amendment will only be applied retroactively if it does not impair vested rights … .
>
> … [T]he amendment does not create a new entitlement; rather it expands "existing benefits to a class of persons arbitrarily denied those benefits by the original legislation" … . There is no dispute that had the children been adopted by the grandmother and remained with her under the auspices of foster care, or had the grandmother proceeded with guardianship after they turned 16, they would have been entitled to subsidies until the children turned 21. Matter of Jaquan L. (Pearl L.), 2020 NY Slip Op 00213, First Dept 1-9-20

REFUSING SECTION 8 VOUCHERS AS RENT PAYMENT VIOLATES THE WEST SENECA FAIR HOUSING CODE (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, reinstated a permanent injunction prohibiting the landlord from refusing "Section 8" vouchers for rent, The refusal violated the West Seneca Fair Housing Code (WSFHC) which prohibits discrimination based upon a person's source of income:

> WSFHC § 71-3 (A) provides that "[i]t shall be unlawful . . . [t]o refuse to sell or rent or refuse to negotiate for the sale or deny a dwelling to any person because of race, color, religion, sex, age, marital status, handicap, national origin, source of income or because the person has a child or children" (emphasis added). Remedial legislation such as WSFHC § 71-3 (A) " should be liberally

Copyright © 2019 New York Appellate Digest.

construed to carry out the reforms intended and to promote justice' " ... . " A liberal construction . . . is one [that] is in the interest of those whose rights are to be protected, and if a case is within the beneficial intention of a remedial act it is deemed within the statute [or ordinance], though actually it is not within the letter of the law' " ... .

We conclude ... that Section 8 vouchers constitute a "source of income" under WSFHC § 71-3 (A). Such vouchers are plainly a recurrent benefit, measured in terms of money, that constitute financial gain to the recipient. Although the term "source of income" is undefined in the WSFHC, similar ordinances enacted in other local codes have expressly included Section 8 vouchers as a source of income ... , which suggests that such vouchers are a "source of income" under the broad language of the WSFHC. People v Ivybrooke Equity Enters., LLC, 2019 NY Slip Op 06299, Fourth Dept 8-22-19

Copyright © 2019 New York Appellate Digest.