SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0886-21

MORRIS VIEW HEALTH CARE CENTER,

Petitioner-Appellant,

v.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING SERVICES,

Respondent-Respondent,

———————————————————

Submitted May 16, 2023 – Decided June 29, 2023

Before Judges Messano, Gummer and Perez Friscia.

On appeal from the New Jersey Department of Human Services, Division of Aging Services.

Inglesino, Webster, Wyciskala & Taylor, LLC, attorneys for appellant Morris County (Lisa D. Taylor and Joseph M. Franck, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Mark D. McNally and Jacqueline

R. D'Alessandro, Deputy Attorneys General, on the brief).

PER CURIAM

Morris County (the County) appeals from an October 15, 2021 final agency decision of the director of the Division of Aging Services (DAS) of the New Jersey Department of Human Services (DHS), adopting the December 15, 2020 decision of an administrative law judge (ALJ), granting DAS's motion for a summary decision and dismissing the County's case.[1] Because the director acted arbitrarily and capriciously by applying a statute of limitation expressly covering nursing facilities to the County and by granting respondent's premature summary-decision motion, we reverse and remand the case to DHS for proceedings consistent with this opinion.

I.

"Medicaid is a joint federal-state program . . . established by Title XIX of the Social Security Act to provide medical assistance on behalf of certain categories of persons whose income and resources are insufficient to meet the

[1] According to Morris County, it was "improperly transferred" as Morris View Healthcare Center (Morris View). The record is not clear as to how or why a case that was captioned "Morris County v. State of New Jersey, Department of Human Services" at its inception and when it was transferred to DHS became "Morris View Health Care Center v. Department of Human Services, Division of Aging Services" in the ALJ's and director's decisions.

costs of necessary medical services." In re Hosps.' Petitions for Adjustment of Rates for Reimbursement of Inpatient Servs. to Medicaid Beneficiaries, 383 N.J. Super. 219, 227 (App. Div. 2006) (citing 42 U.S.C. § 1396, §§ 1396a to 1396v). It is administered federally by the United States Department of Health and Human Services and in New Jersey by the Division of Medical Assistance and Health Services (DMAHS) of DHS. Id. at 227-28 (citing 42 U.S.C. § 1396a(a)(5); N.J.S.A. 30:4D-4, -5, and -7). "Medical assistance is made in the form of payments to participating health care providers on behalf of [Medicaid] recipients rather than in the form of direct cash payments" to recipients. In re Medicaid Long Term Care Servs. Bulletin 84-2, 212 N.J. Super. 48, 52 (App. Div. 1986) (citing N.J.S.A. 30:4D-3(g)).

Medicaid is "jointly funded by the state and federal governments . . . ." Stratford Nursing & Convalescent Ctr., Inc. v. Kilstein, 802 F. Supp. 1158, 1160 (D.N.J. 1991). "States have broad discretion under federal statutes to adopt their own standards for determining the extent of medical assistance to be provided . . . ." Ibid. Participating states, however, "must adopt 'reasonable standards . . . for determining . . . the extent of medical assistance . . . [that is] consistent with the objectives of the Medicaid program.'" D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 355 (App. Div. 2020) (quoting L.M. v.

Div. of Med. Assistance & Health Servs., 140 N.J. 480, 484 (1995) (internal quotation marks omitted)). Participating states must also "submit for federal approval a Medicaid State Plan that, among other things, describes the methods and standards for reimbursement of providers of Medicaid services." In re Hosps.' Petitions, 383 N.J. Super. at 228 (citing 42 U.S.C. §§ 1396, 1396a(a)(13); N.J.S.A. 30:4D-7(a)).

A "[n]ursing facility" is "an institution . . . certified by the New Jersey State Department of Health and Senior Services for participation in [the Medicaid program] and primarily engaged in providing health-related care and services on a [twenty-four]-hour basis to Medicaid beneficiaries . . . ." N.J.A.C. 8:85-1.2. "DMAHS provides institutional level Medicaid benefits to individuals residing in nursing homes . . . ." In re Est. of Brown, 448 N.J. Super. 256, 257 (App. Div. 2017). DMAHS was originally responsible for managing the State's Medicaid nursing facility reimbursement program. 42 N.J.R. 1793(a) (Apr. 18, 2011). Pursuant to Reorganization Plan No. 001-1996 (July 6, 1996), that responsibility was transferred to what was then called the Department of Health and Senior Services. Ibid. In 2012, State oversight of the setting of Medicaid rates was transferred to DAS. N.J.S.A. 30:1A-14.

After 1977, DMAHS used a regulatory framework known as the "Cost Accounting and Rate Evaluation" (CARE) guidelines to establish prospective rates for the reimbursement of qualified health-care services provided to Medicaid-eligible residents of nursing facilities. See Bergen Pines Cnty. Hosp. v. N.J. Dep't of Human Servs., 96 N.J. 456, 462 (1984); In re Medicaid, 212 N.J. Super. at 51, 54; Stratford Nursing, 802 F. Supp. at 1161; see also N.J.A.C. 8:85-1.1, 8:85-3.1 to 4.3. Under the CARE guidelines, "reimbursement rates [were] determined by applying the lower of historical [or actual] costs or screened rates." Bergen Pines, 96 N.J. at 466; see also In re Medicaid, 212 N.J. Super. at 52. "Screened costs" were based on the "median expenses for all [nursing facilities] falling within a class or group." Bergen Pines, 96 N.J. at 467; see also In re Medicaid, 212 N.J. Super. at 52 (noting the use of a "statistically 'reasonable' rate based upon a method of peer comparison within discrete categories"). In 2010, DAS replaced that "PEER Grouping" methodology with a case-mix rate-setting methodology. N.J.A.C. 8:85-3.16; 43 N.J.R. 961(c) (Apr. 18, 2011).

A.

On November 8, 2018, the County filed a complaint against DHS in the Superior Court of New Jersey, Law Division, Morris County. According to the

County, it provided "social services . . . , including . . . psychiatric services," to its residents until the end of 2017, through its operation of Morris View, which it described as "a skilled nursing facility." The County contended its services were "funded through Medicaid monies received from the State and taxes assessed by the County on taxpayers" and that as a political subdivision of the State, it had contributed to "[t]he non-[f]ederal share of Medicaid expenditures . . . pursuant to the State's approved Medicaid plan." The County alleged DHS had violated the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115 (2009). Relevant to this appeal, the County also alleged it was entitled to over $20,000,000 in "Enhanced Peer Group monies . . . from 2007 through 2017" based on the State's alleged misapplication of 2004 and 2006 amendments to New Jersey's Medicaid State Plan and N.J.S.A. 30:4D-7(t)(1), which the parties refer to as the PEER Grouping Statute.

According to the County, prior to the 2004 and 2006 State Plan amendments, which were part of an "Enhanced PEER Grouping Initiative," "the State imposed so-called reasonable cost limitations known as 'screens' on the per diem payment rates to county nursing facilities and claimed the lower, 'screened' rates to the Federal government." The County asserted that "[t]he purpose of the State Plan [a]mendments was to change the Medicaid

reimbursement methodology for county nursing facilities" from a prospective system "to a retrospective reimbursement system that recognized total actual (unscreened) costs . . . ." The County accused the State of wrongfully "employ[ing] two different rate setting methodologies" after the amendments went into effect: using one methodology, the State reported Morris View's actual, unscreened costs to the federal government as reimbursable costs to receive enhanced federal funding for Medicaid, and using the other methodology, the State reimbursed the County based on Morris View's reduced, screened costs. In sum, the County alleged, "[e]ssentially, the State claimed costs to the Federal government which it was not actually paying to the County."

Based on those PEER Grouping allegations, the County pleaded causes of actions demanding the State pay "the account" of PEER Grouping monies; asserting its entitlement to "recapture" those funds; accusing the State of converting those funds; and seeking a declaratory judgment as to its right to those funds.

On December 18, 2018, DHS moved to change the venue to Mercer County and to dismiss the case. The assignment judge of the Morris Vicinage granted the venue motion but did not rule on the dismissal motion.

A Mercer County judge subsequently heard argument on the motion to dismiss. Respondent's counsel had argued the case should be dismissed because the County did not have a private right of action and respondent had sovereign immunity. He did not argue the County's claims were barred by a statute of limitations or that they otherwise were not substantively legally viable. The motion judge questioned the "essence of the cause of action" asserted by the County and whether administrative remedies were available on each of the County's claims. Respondent's counsel repeatedly contended a transfer of the County's claims to the "[c]ommissioner" for review or a referral to the Office of Administrative Law (OAL) would "be the appropriate remedy." The judge directed the County to amend the complaint and both parties to submit additional briefing.

In the amended complaint, the County contended it "contributes to the State's share of Medicaid expenditures pursuant to the State's approved Medicaid plan." Regarding the PEER Grouping claims, the County alleged "the State was reporting to the [f]ederal [g]overnment that it was paying the County based upon the actual, 'unscreened' costs," which resulted in an increase in the federal government's Medicaid contribution, "but was in actuality still paying the County based upon the artificially reduced 'screened' costs . . . ." According

to the County, the State's "inaccurate filings" resulted in "not only reduced payment to the County but also inappropriately forced the County to contribute more money than it should have and imposed additional cost sharing requirements on the County." The County contends it did not learn about "the excess contributions and diversions" until sometime on or about August 8, 2018.

The County also added causes of action asserting breaches of contract and of the implied covenant of good faith and fair dealing. Specifically, the County alleged the State had breached the State's and County's Medicaid Provider Agreement and its related implied covenant "by failing to properly remit payment to the County and for compelling the County to make excess contributions . . . ."

In another argument before the judge, respondent's counsel asserted the County's case was "a rate case" and contended nursing facilities receive a letter every year advising the facility "what [it's] rate is going to be." He argued "if the County wanted more money and believed . . . that the . . . PEER Grouping issue was in play, they could have filed an appeal with the [a]gency within twenty days as the [s]tatute requires." Presumably, counsel meant the sixty-day period in N.J.A.C. 8:85-3.17, which sets the appeals process to be followed by nursing facilities after receipt of a rate notification. The County's counsel

contended "this is not . . . a rate case" and asserted "there's never been any notice."

After hearing argument again, the judge rendered her decision. Due to "the complexity of Medicaid" and DHS's expertise, because the case involved "County shares and State shares that are determined based upon some complex system that's beyond the four corners of this [c]omplaint," and because she viewed the County's contract and tort claims as "an attempt to shoehorn" claims about "the State's administration of the Medicaid Program . . . into common-law causes of action," the judge found a contract or conversion action was not "the appropriate way" to adjudicate the County's claim; "rather, . . . it's to go through the [a]gency and require the [a]gency . . . to provide . . . the avenue for relief that is represented . . . ." Believing "there just has to be the application of [a]gency expertise here" and that the case "crie[d] out for administrative remedy," the judge concluded "the appropriate thing to do . . . is a transfer to the [a]gency" with a direction that it "provide . . . a decision or an analysis . . . to the County that explains the basis for the amount of money that [it] got."

The judge also addressed respondent's contention that the County's claim was a mere rate case:

> But, it's certainly analogous in some ways to a rate case. Because . . . it's how the State is applying the State Plan . . . to calculate the County contribution.
>
> And, so, is it technically a rate case? . . . [I]t may technically not be a rate case, because a rate case . . . goes into what the costs are, and, . . . I guess you come up with a per diem amount.
>
> And that's not what . . . the claim of the County appears to be here. But the County is saying, when you changed your Plan Amendment and you looked [over] these screens and these caps, you were getting more money from the federal government and you didn't pass it along to us.
>
> . . . .
>
> Here, the County . . . is saying we're entitled to more money because of, the State Plan, and what – the money you're getting from the federal government went up when the State Plan Amendment was approved, but you didn't pass it along to us.
>
> And, again, how the State figures out what the County is entitle[d] to, to me, is something that needs to be done in the first instance . . . by the agency.

The judge acknowledged "the statute of limitations issue" but questioned whether the twenty-day period referenced by respondent's counsel would apply "if it's not really a rate case . . . ."

The judge issued an order transferring the County's claims to the Commissioner of DHS "for administrative review"; retaining jurisdiction "to

ensure that a viable administrative mechanism exists to address" the County's claims; and directing DHS to "review the substance of [the County's] claims in terms of the additional moneys that [the County] alleges is due to it by the State" and to provide "either an explanation of its rulings regarding the moneys claimed by the County, or a description of the administrative process [DHS] will follow in reviewing the County's claims . . . ." The judge scheduled a case management conference, giving the County an opportunity to raise concerns about "the viability of administrative remedies" proposed by DHS and to request restoration of the counts of the amended complaint.

In a November 7, 2019 letter, respondent's counsel proposed transferring the County's Peer Grouping claims to the OAL "as a 'contested case' for a fair hearing." Counsel repeated his prior contention that the County's claim was only a rate issue:

> DHS considers the PEER Grouping issue to be a Medicaid reimbursement rate issue in that methodology applied was allegedly not in compliance with State law. The County seeks to challenge its Medicaid reimbursement rate because DHS used an Enhanced PEER Grouping methodology/process by which similarly situated nursing facilities' rates are set. Medicaid reimbursement rates for nursing facilities are announced each State fiscal year, and facilities have sixty (60) days to challenge its Medicaid reimbursement rate for the upcoming State fiscal year . . . . However, recognizing the [c]ourt's order that an

> administrative review be afforded . . . , DHS will transmit this matter as a contested case to the OAL limited to a challenge of its rate based on Enhanced PEER Grouping and alleged violations of N.J.S.A. 30:4D-7(t)(1) and State Plan [a]mendments. DHS expressly does not waive its right to move before the OAL to dismiss that challenge to the rate as time-barred.

In a responding letter, the County's counsel objected to the procedure proposed by respondent's counsel and asked the judge to restore the County's PEER Grouping claims. Counsel again argued against respondent's counsel's "attempts to couch the County's PEER Group Claim as a 'reimbursement rate issue.'"

> The County is not claiming that its rates of reimbursement are improper. Rather, the County is claiming that it has been forced to make excess monetary contributions to [respondent]. The OAL is generally reserved for providers who have complaints relative to their rates of reimbursement or the claims payment process. This is not the case here. The PEER Grouping statute at issue pertains to the "[C]ounty's financial participation in the reimbursement system" which is jointly funded by the State of New Jersey and its political subdivisions. N.J.S.A. 30:4D-7(t)(1). Stated simply, the issue is that [respondent] has caused the County to over contribute to the cost to run the Medicaid Program and not that the County's per diem rates are improper. In fact, [respondent] claims that the PEER Grouping issue will be transferred to the OAL and be "limited to a challenge of its rate" but does not then identify the rate that would be the subject of the OAL proceeding – because there is none and there is no

> rate to challenge. This is simply a matter of the excess contributions made by the County. There is no authority cited by [respondent] that would provide for the OAL adjudicating a claim that [respondent] converted money due and owing to the County.

The County's counsel also contended respondent's proposal was "clearly in bad faith" because "[d]efendant continues to stonewall the County from accessing material information and government records relative to these claims."

Respondent's counsel replied, maintaining his argument that the County's case was a rate case: "essentially, [the County] argues that its per diem Medicaid rate was too low and if it was at the higher rate, it would not have had to make excess payments to the facility."

After hearing argument during a subsequent case management conference, the judge was not dissuaded from her initial inclination to transfer the case. The judge expressed her understanding that the parties would have an opportunity to conduct discovery regarding the County's PEER Grouping claims in the OAL and concluded that because those claims were "sufficiently analogous to a rate appeal," referral to the OAL was an appropriate "administrative remedy where . . . they can seek discovery." She subsequently issued an order reaffirming the transfer of the complaint and divesting the court of jurisdiction. The judge did not limit the transfer of the County's PEER Grouping claims "to a challenge of

its rate based on Enhanced PEER Grouping and alleged violations of N.J.S.A. 30:4D-7(t)(1) and State Plan [a]mendments," as respondent's counsel had proposed in his November 7, 2019 letter.

B.

In a December 20, 2019 letter, a legal specialist for DHS advised the County's counsel that DHS would transmit the County's "PEER Grouping claims raised in the complaint in compliance with the orders and decisions" of the Mercer County judge. In a January 23, 2020 response letter, the County's counsel detailed the County's "grounds for appeal" regarding its PEER Grouping claims and requested an administrative hearing before the OAL. DHS's legal specialist transferred the County's PEER Grouping claims to the OAL on January 28, 2020. Instead of following the caption of the pleadings and transfer order of the Superior Court judge, the legal specialist in his letter and the transfer form identified respondent as "NJ Department of Human Services, Division of Aging Services" and advised the OAL that the case was being transferred from "NJ Department of Human Services Division of Aging Services."

During a February 26, 2020 status conference, the ALJ assigned to the case asked respondent's counsel to advise her about respondent's substantive positions regarding the County's claims. In a March 17, 2020 letter, respondent's

counsel declined to do so, stating "it would be premature for [respondent] to discuss its substantive positions regarding [the County's] claims because the parties have not yet engaged in discovery."

Despite that assertion, before the parties had conducted any discovery, respondent moved for summary decision on August 18, 2020, on statute-of-limitations and other substantive grounds. In its notice of motion, respondent did not use the actual caption of the case but instead used the caption provided by DHS's legal specialist: "Morris County v. Department of Human Services, Division of Aging Services."

In opposition to the motion, the County submitted the certification of its counsel, who testified based on her personal knowledge: (1) the County first learned respondent had been "receiving excess contributions and diverting reimbursement from the County relative to PEER Grouping" while it was preparing for a separate litigation regarding ARRA in early August 2018; and (2) respondent "had never sent any notices to the County relative to the County's contributions and reimbursement pursuant to PEER Grouping or that the County was being underpaid" or "any notice regarding any appeal rights concerning the County's contributions and reimbursement relative to PEER Grouping."

In reply, respondent submitted its counsel's certification. Attached to that certification were letters sent to the "Administrator" of Morris View from the Department of Health and Senior Services or DHS in 2007 through 2009, 2010 through 2012, and 2014 through 2017. The letters contained information regarding Morris View's Medicaid rates. Counsel also attached a July 22, 2016 letter to DHS from counsel for Morris View, the same counsel representing the County in this matter, regarding an acuity audit that purportedly impacted Morris View's prior Medicaid rates and public notices regarding the 2004 amendments to the State Medicaid Plan.

In a December 15, 2020 decision, the ALJ granted respondent's summary-decision motion. Even though every caption sent to her identified "Morris County" as the plaintiff or petitioner, the ALJ identified "Morris View Health Care Center" as the petitioner in the caption of her opinion. The ALJ did not explain why she unilaterally changed petitioner's name.

The ALJ concluded the County's claims, which she described as "NF reimbursement claims" and "rate reimbursement issues," were time-barred pursuant to N.J.A.C. 8:85-3.17(a)(1)(i). That regulation requires a nursing facility to file an appeal within sixty days of "the receipt of notification of the rate by the facility." The ALJ rejected the County's argument about the

inappropriateness of a summary decision, describing the County's argument as, "no discovery occurred, and issues remain[ed] as to what funding the County contributed to the Medicaid program, how much reimbursement the County received, and how much federal funding the State received, or what calculations determined [those figures]." The ALJ found:

> [D]iscovery of facts known to the County would not be a basis for creating a disputed material fact defeating summary decision. Indeed, the County would know its yearly Medicaid contributions, reimbursement for Medicaid patients, and its costs in running Morris View. Further, the County's 2016 acuity audit appeal noted the amount of federal Medicaid funding received by the State in 2006 that it "kept" from the County, suggesting the availability of such information. Also, yearly notices to Morris View delineate the manner of NF rate calculation or advise of the NF per diem amount appropriated by the Legislature.

The ALJ also rejected the County's assertion that the timeline set forth in N.J.A.C. 8:85-3.17(a)(1)(i) did not apply to the claims it had brought in its capacity as a political subdivision of the State. The ALJ found "not credible" the County's assertions regarding when it had learned respondent allegedly had improperly received excess contributions and diverted reimbursement from the County in connection with its PEER Grouping claims.

The ALJ granted respondent's motion not only on statute-of-limitations grounds but also on other substantive grounds and concluded the County had

not demonstrated "that the NF rate-setting methodology was unreasonable or its entitlement to additional reimbursement . . . ." The ALJ declined to consider the County's "contract, tort, and constitutional claims," concluding the OAL did not have jurisdiction over those claims "due to their subject matter, the relief requested, and because DHS, DAS did not transmit these claims."

In an October 15, 2021 final agency decision, DAS's director accepted the ALJ's decision in its entirety and granted respondent's summary-decision motion.

C.

On appeal, the County argues the final agency decision was arbitrary, capricious, and unreasonable in that the director incorrectly applied nursing-facility regulations to the County; misapplied the statute-of-limitations defense by relying on per-diem rate notices and treating the County and Morris View as if they were the same entity; misapplied the summary-decision standard by mischaracterizing the County's claims and prematurely dismissing them without giving the County a fair opportunity to prove them; and incorrectly treated the County's claims as a rate appeal and dismissed for lack of jurisdiction claims the Superior Court had transferred to the DHS. The County also questions why its

case was transferred to DAS when the Superior Court judge ordered it to be transferred to DHS.

We agree the director erred in her application of a nursing-facility statute of limitations to the County and in granting the premature summary-decision motion. We are also troubled by the transfer of the case to DAS, in contravention of the Superior Court judge's transfer orders. Accordingly, we reverse and remand the case to DHS for proceedings consistent with this opinion.

II.

"Our role in reviewing an agency decision 'is limited in scope.'" D.C., 464 N.J. Super. at 352 (quoting Barone v. Dep't of Human Servs., Div. of Med. Assistance & Health Servs., 210 N.J. Super. 276, 284 (App. Div. 1986)). We determine whether the entity challenging an agency decision has proven the decision was arbitrary, capricious, or unreasonable. Parsells v. Bd. of Educ., ___ N.J. ___, ___ (2023) (slip op. at 20). In making that determination, we consider:

> (1) whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and (4) whether 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.
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> [D.C., 464 N.J. Super. at 352-53 (quoting A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 339 (App. Div. 2009)).]

We are not "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Id. at 353 (quoting R.S. v. Div. of Med. Assistance & Health Servs., 434 N.J. Super. 250, 261 (2014)). And "[w]e do not . . . simply rubber stamp the agency's decision." Ibid. (quoting Paff v. N.J. Dep't of Labor, 392 N.J. Super. 334, 340 (App. Div. 2007)).

The standard for summary-decision motions under N.J.A.C. 1.1-12.5 is "substantially the same as that governing a motion under Rule 4:46-2 for summary judgment in civil litigation." L.A. v. Bd. of Educ. of City of Trenton, 221 N.J. 192, 203 (2015) (quoting Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121-22 (App. Div. 1995)). We review de novo the grant of summary judgment, applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Ibid. (quoting R. 4:46-2(c)).

"To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "The slightest doubt as to an issue of material fact must be reserved for the factfinder, and precludes a grant of judgment as a matter of law." Akhtar v. JDN Props. at Florham Park, LLC, 439 N.J. Super. 391, 399 (App. Div. 2015) (citation omitted). Furthermore, "[a]ny issues of credibility must be left to the finder of fact . . . even where [the] testimony is uncontradicted." Ibid. "Summary judgment should be granted . . . 'after adequate time for discovery . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman, 242 N.J. at 472 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). "The 'trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Town of Kearny v. Brandt, 214 N.J. 76, 92 (2013)

(quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Generally, summary judgment is premature when the opposing party has not yet had an opportunity to conduct discovery and develop facts on which it intends to base its claims. Friedman, 242 N.J. at 472 (cautioning against granting summary judgment when discovery is incomplete and "critical facts are peculiarly within the moving party's knowledge" (quoting James v. Bessemer Processing Co., 155 N.J. 279, 311 (1998))); see also Wellington v. Est. of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003) (finding "[g]enerally, summary judgment is inappropriate prior to the completion of discovery"). A summary-judgment motion is not premature merely because discovery has not been completed, unless the plaintiff is able to "show 'with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action.'" Friedman, 242 N.J. at 472 at 472-73 (quoting Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015)).

In granting respondent's summary-decision motion, the ALJ and the director first addressed respondent's statute-of-limitations argument and held the County's claims were time-barred under N.J.A.C. 8:85-3.17(a)(1)(i). That finding was based in part on the ALJ's determination that the County's assertion

about when it learned about the basis of its claims was not "credible." That credibility finding was not an appropriate basis for granting a summary-decision motion.

The statute-of-limitations decision was also based on the ALJ's and director's assumption that a regulation expressly directed to a nursing facility automatically applies to the County. N.J.A.C. 8:85-3.17 sets forth the appeal process for a nursing facility:

> (a) When an NF believes that, owing to an unusual situation, the application of these rules results in an inequity (except for the application of N.J.A.C. 8:85-3.2(f)), two levels of appeals are available: a level I appeal heard by representatives of the Department; and a Level II appeal heard before an administrative law judge.
>
> > 1. A request for a Level I appeal should be submitted in writing to the Department of Health and Senior Services, Nursing Facility Rate Setting and Reimbursement, PO Box 715, Trenton, NJ, 08625-0715.
> >
> > > i. Requests for Level I appeals shall be submitted in writing within [sixty] days of the receipt of notification of the rate by the facility . . . .
> >
> > > . . . .
> >
> > 2. If the NF is not satisfied with the results of the Level I appeal, the NF may request a hearing before an administrative law judge.

> No issues other than the specific issues identified in the original Level I appeal shall be heard at the Level II hearing . . . .

N.J.A.C. 8:85-1.2 defines "Nursing facility (NF)" as

> an institution (or distinct part of an institution) certified by the New Jersey State Department of Health and Senior Services for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24-hour basis to Medicaid beneficiaries (children and adults) who, due to medical disorders, developmental disabilities and/or related cognitive impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for care and treatment of mental diseases which require continuous 24-hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

When interpreting a regulation, we follow "the principles of statutory interpretation." In re Amends. & New Reguls. at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 133 (App. Div. 2007). Just as when we interpret a statute, our goal when we interpret a regulation is to determine the intent behind its creation. See DiProspero v. Penn, 183 N.J. 477, 492 (2005). To achieve that goal, we "start with the words" of the regulation, Simadiris v. Paterson Pub. Sch. Dist., 466 N.J. Super. 40, 45 (App. Div. 2021), and give them "their ordinary meaning and significance," DiProspero, 183 N.J. at 492. "If [the regulation's] plain language

is clear, we apply that plain meaning and end our inquiry." Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019).

By its express language, N.J.A.C. 8:85-3.17(a)(1)(i) applies to nursing facilities. It is devoid of any reference to the owners or operators of nursing facilities or the governmental entities that may be involved in the management of the nursing facilities. N.J.A.C. 8:85-1.2 does not include in its definition of a nursing facility the owner, operator, or governmental entity involved in the management of the facility. The plain language of the regulation does not include the County.

We recognize that under certain circumstances one entity can be bound by the actions or inactions of another entity if it is an alter ego of that entity. See Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199-200 (App. Div. 2006) (discussing the "fact-specific inquiry" a court must conduct in determining whether a subsidiary is an alter ego of the parent corporation such that the "'fundamental principle that a corporation is a separate entity from its principal'" should be set aside and the corporate veil should be pierced (quoting Tung v. Briant Park Homes, Inc., 287 N.J. Super. 232, 240 (App. Div. 1996))). That tenet applies to governmental entities. See, e.g., Browning-Ferris Indus. v. Passaic, 116 N.J. 83, 89 (1989) (Court finds that when a municipal utilities

authority is created, it becomes the "alter ego" of the municipality with the power to act in the municipality's place concerning certain matters); Fuchilla v. Layman, 109 N.J. 319, 325-30 (1988) (Court considers nine factors in determining whether a university is an alter ego of the State for Eleventh Amendment purposes); N.J. Turnpike Auth. v. Parsons, 3 N.J. 235, 243-44 (1949) (Court considers whether the Turnpike Authority is an "independent corporate entity" or an "alter ego of the State").

Neither the ALJ nor the director engaged in a fact-specific inquiry analyzing Morris View and the nature of its relationship with the County to determine whether treating them as if they were the same entity for purposes of application of the statute of limitations in N.J.A.C. 8:85-3.17 would be appropriate and fair. And the record does not contain sufficient information for us to make that determination. By not engaging in that analysis or making that determination, the director acted arbitrarily and capriciously in applying N.J.A.C. 8:85-3.17's sixty-day period to the County and in concluding the County's claims were time-barred.

The director's decision did not end with the erroneous statute-of-limitations finding. The director also considered and granted the motion based on respondent's other substantive arguments. However, respondent's summary-

decision motion was premature, and the director erred in granting it, thereby wrongfully depriving the County of any opportunity to conduct discovery.

The Superior Court judge who transferred the case to DHS clearly and expressly did so based on her understanding the parties would have an opportunity to conduct discovery regarding the County's PEER Grouping claims in the OAL. Respondent's counsel recognized the need for discovery on substantive issues when he declined to respond to the ALJ's request to advise her about respondent's substantive positions regarding the County's claims, stating "it would be premature for [respondent] to discuss its substantive positions regarding [the County's] claims because the parties have not yet engaged in discovery." Moreover, the County has identified information that is particularly within respondent's knowledge and thereby established its right to discovery.

The County bases its PEER Grouping claims on paragraph (t)(1) of N.J.S.A. 30:4D-7. That statute authorizes the commissioner of DHS "to issue, or cause to be issued through [DMAHS], all necessary rules . . . , and to do . . . all other acts and things necessary to secure for the State of New Jersey the maximum federal participation that is available with respect to a program of medical assistance," including:

> t. To provide for the reimbursement of State and county-administered skilled nursing and intermediate care facilities through the use of a governmental peer grouping system, subject to federal approval and the availability of federal reimbursement.
>
> > (1) In establishing a governmental peer grouping system, the State's financial participation is limited to an amount equal to the nonfederal share of the reimbursement which would be due each facility if the governmental peer grouping system was not established, and each county's financial participation in this reimbursement system is equal to the nonfederal share of the increase in reimbursement for its facility or facilities which results from the establishment of the governmental peer grouping system.

Subparagraph (2) imposes on the commissioner an annual obligation to provide an estimate of and certification about the federal reimbursement a county may receive to the director of the Division of Local Government Services (DLGS) in the Department of Community Affairs. It also imposes an obligation on the DLGS director to provide a certification regarding the federal reimbursement to the chief financial officer of each county.

> > (2) On or before December 1 of each year, the commissioner shall estimate and certify to the Director of the Division of Local Government Services in the Department of Community Affairs the amount of increased federal reimbursement a county

> may receive under the governmental peer grouping system. On or before December 15 of each year, the Director of the Division of Local Government Services shall certify the increased federal reimbursement to the chief financial officer of each county. If the amount of increased federal reimbursement to a county exceeds or is less than the amount certified, the certification for the next year shall account for the actual amount of federal reimbursement that the county received during the prior calendar year.

The County asserts it did not receive copies of either certification. Respondent does not dispute that assertion nor provide an explanation as to why the County did not receive them. The County is entitled to discovery on that issue and other issues regarding its PEER Grouping claims, especially when respondent asserts it complied with all applicable statutes and regulations.[2] By granting respondent's premature summary-decision motion, the director erred and acted arbitrarily and capriciously.

Finally, we conclude the director erred in finding that "[o]nly the issue of Medicaid funding was brought before the ALJ" and "[n]o other claims were transmitted to the OAL for resolution." In fact, based in part on respondent's

[2] In highlighting this one issue to demonstrate the prematurity of respondent's summary-decision motion, we do not mean to imply discovery should be limited to this issue.

counsel's repeated assertions that the County's PEER Grouping claims should be transferred to DHS for submission to the OAL, the Superior Court judge ordered the transfer of the entirety of the County's PEER Grouping claims to DHS. In his December 20, 2019 letter, DHS's legal specialist advised the County's counsel that "[t]he Department will transmit Enhanced PEER Grouping claims raised in the complaint in compliance with the orders and decisions" of the Superior Court judge. Accordingly, all of the County's PEER Grouping claims were, or should have been, submitted by DHS to the OAL in accordance with DHS's repeated representations it would do so and in compliance with the orders transferring the case to DHS.

Given our reversal of the director's decision based on the erroneous application of the statute of limitations and premature status of respondent's motion, we remand the case to DHS for proceedings consistent with this opinion. In doing so, we urge the commissioner to give careful and appropriate consideration to whether the case should be assigned to a particular division of DHS and, if so, which division. The Superior Court judge issued orders expressly transferring the case to DHS and the commissioner of DHS, making no mention of DAS. The record does not contain any order or directive from the commissioner assigning the case to DAS. The only designation of DAS as

the assigned agency appears in the transfer form completed by DHS's legal specialist. The statute on which the County relies, N.J.S.A. 30:4D-7, empowers the commissioner "to issue, or to cause to be issued through [DMAHS], all necessary rules and regulations . . . ." The statute makes no mention of DAS.

In sum, we reverse the final agency decision and remand the case in its entirety to DHS. DHS may then transfer the case in its entirety to the OAL as a contested case where the parties can then engage in discovery.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.