

1988

Vali Convalescent and Care Institutions, a Utah corporation v. Utah Department of Health, Division of Health Care Financing : Opening Brief of Appellant

Utah Court of Appeals

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Honorable Michael R. Murphy,
Presiding

* * * * *

OPENING BRIEF OF APPELLANT VALI CONVALESCENT AND CARE INSTITUTIONS

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FILED

REF ID: A61020

IN THE UTAH COURT OF APPEALS

* * * * *

VALI CONVALESCENT AND)	
CARE INSTITUTIONS, a Utah)	
corporation,	)	Case No. 880434-CA
)	
Petitioner/Appellant,	)	Appeal from the Judgment
	)	of the Third Judicial
vs.	)	District Court of Salt Lake
	)	County, State of Utah
UTAH DEPARTMENT OF HEALTH,)	
DIVISION OF HEALTH CARE	)	Honorable Michael R. Murphy,
FINANCING,	)	Presiding
)	
Respondent.)	

* * * * *

OPENING BRIEF OF APPELLANT VALI
CONVALESCENT AND CARE INSTITUTIONS

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JURISDICTION AND NATURE OF THE PROCEEDINGS

This an appeal from the final order of the Third Judicial District Court, Salt Lake County, the Honorable Michael R. Murphy, granting respondent's motion to dismiss petitioner's appeal and affirming the final determination of the Executive Director of the Department of Health. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(a), since this is an appeal from a district court review of an adjudicative proceeding before a state agency.

ISSUES PRESENTED

1. Is interest awardable under Utah Code Ann. § 15-1-1 where the principal sum due by contract is resolved by the parties without entry of a formal judgment?

2. Is petitioner entitled to interest under the Utah Prompt Payment Act (Utah Code Ann. §§ 15-6-1, et seq.), under the facts of this case?

STATEMENT OF THE CASE

At the times relevant to this appeal, VALI CONVALESCENT & CARE INSTITUTIONS ("VALI") was the owner and operator of nursing homes that provided nursing home services to Medicaid recipients within the State of Utah. Respondent Utah Department of Health, Division of Health Care Financing ("DOH") is a department of Utah state government and is charged with the duty of making

determinations of payments to be made to Medicaid providers for nursing home services provided to Medicaid recipients.

In January of 1980, VALI submitted certain Facility Cost Profiles ("FCP's") to DOH for reimbursement of funds expended in providing care to Medicaid recipients. Subsequent to the filing of these FCP's, and at the request of DOH, the Bureau of Medicaid Fraud undertook a criminal investigation of VALI based upon alleged fraud committed in the FCP's. Partial payment for services rendered was made to VALI during the pendency of that investigation. In April of 1982, the Bureau of Medicaid Fraud terminated its investigation of VALI with no criminal charges being filed or any sanctions being imposed.

Pursuant to the provisions of DOH's administrative hearing procedures for Medicaid recipients and providers, an exit conference and informal hearings were held in 1984, which were intended to make determinations of what funds were due to VALI on the basis of the FCP's. VALI did not raise the issue of its entitlement to interest on the funds due during these conferences and formal hearings, as it intended to raise that issue at a formal hearing before an Administrative Law Judge. As a result of the informal hearings and conferences, a determination was made that VALI was entitled to the principal sum of \$272,362.03. It was agreed between VALI and DOH that this amount covered only the items that were raised at the conferences and informal hearings. It was further specifically agreed between VALI and DOH that the

issue of interest had neither been raised nor discussed at the conferences and informal hearings.

A formal hearing was held on July 23, 1985 before David L. Stott, Administrative Law Judge. The sole issue for determination was whether VALI had settled or compromised its claim for interest. Following this hearing, the ALJ issued his decision, finding that VALI was entitled to interest, and stating: "Respondent should pay the claimant interest and ought to do so without further delays."

On or about April 18, 1986, the Executive Director of the Department of Health issued a decision that adopted the ALJ's factual findings but set aside his legal conclusions, denying that VALI was entitled to interest on its claim. On or about May 13, 1986, VALI filed a petition in the Third Judicial District Court of Salt Lake County, appealing the decision of the Executive Director. On or about July 29, 1986, respondent filed a motion seeking to affirm the final determination of the Executive Director and to dismiss VALI's petition. Following numerous briefings and one hearing before the court on December 4, 1987, Judge Murphy issued a Memorandum Decision, dated February 11, 1988, in which he resolved the majority of the issues existing between the parties.

With respect to VALI's claims, the court found that VALI was not entitled to interest on the principal contractual obligation under either the Utah Procurement Code (Utah Code Ann.

§§ 63-56-1, et seq.), or the Utah Prompt Payment Act (Utah Code Ann. §§ 15-6-1, et seq.). With respect to respondent's defenses, the court found that the federal nature of the Medicaid program did not absolve DOH's responsibilities imposed by Utah law, that the inapplicability of the procurement code did not preempt the applicability of general principles of "pre-judgment interest" under Utah law, and that VALI was not precluded from seeking interest by either accord and satisfaction or waiver. Judge Murphy specified in his Memorandum Decision that a single issue remained, which was framed in that decision as "whether the principle of pre-judgment interest is applicable when there has been a resolution which avoids formal litigation."

Both parties provided additional briefs to the court on that issue, and the court rendered its decision by Minute Entry on May 11, 1988, granting respondent's Motion to Dismiss and affirming the determination of the Executive Director of the Department of Health. Final judgment was entered on June 7, 1988, and VALI filed a Notice of Appeal from that decision on July 6, 1988. Respondent filed its own Notice of Appeal on July 22, 1988.

STATEMENT OF FACTS

1. At all relevant times, VALI owned and operated nursing homes which provided services to State Medicaid recipients for the period January 1, 1978 through June 30, 1979. In

1978, VALI entered into an agreement with the Utah State Department of Social Services for each of four VALI centers to provide nursing home care to State recipients. Section A-2 of the contract provides that the State will:

Process payments to the provider within a reasonable time, after receipt of an itemized form 271-A for services rendered the previous month. Payment shall be made in accordance with the allowable costs reimbursement manual for nursing facilities, and shall not exceed amounts paid by the general public for such services. All payments subject to reasonable cost audit and adjustment. (Emphasis added).

As can be seen, the contract does not set forth specific services or specific prices. Instead, it was agreed that the provider would submit itemized statements, with fees for services, based on the allowable cost reimbursement manual and subject to the State audit process. Utah State Dept. of Social Services Nursing Facility Provider Agreement.

2. In January, 1980, VALI submitted Facility Cost Profiles ("FCP's") to the DOH that specified the services provided by VALI for the period January 1, 1978 through June 30, 1979 and the fees for those services. (Stipulation of Facts ¶ 1; Findings and Conclusions of Administrative Law Judge ¶ 1, p. 3).¹

¹ A Stipulation of Facts was executed by the parties hereto in connection with the hearing before the Administrative Law Judge. A copy of said Stipulation (hereinafter cited as "Stip.") is attached hereto as Exhibit "A." Similarly, the findings and conclusions of the Administrative Law Judge (hereinafter "ALJ Findings") are attached hereto as Exhibit "B."

3. Under normal circumstances state audits would have been completed, conferences and hearings would have been arranged, and payment made to VALI by July 1, 1980. Memorandum in Opposition to Respondent's Motion to Dismiss Petition, p. 3.²

4. Rather than beginning this process, however, the state forwarded the FCP's to the Bureau of Medicaid Fraud and, in the Fall of 1980, the Bureau initiated an investigation that lasted approximately two and a half years. At the conclusion of the investigation, in April, 1982, the Bureau stated that there was no evidence to support any charges that VALI had filed false or inaccurate FCP's. VALI's claim for payment was reinstated. (Stip. ¶ 2; ALJ Findings ¶ 1, p.3).

5. During the investigation by the Bureau of Medicaid Fraud, virtually every business document VALI possessed was seized by search warrant. At the conclusion of the investigation, only part of VALI's business records were returned, and those that were returned were in such disarray as to be virtually worthless without a major effort at reconstruction by VALI. (Memorandum Decision, p. 2).

6. During the period from April, 1982, when the Bureau issued its decision, through March, 1985, the State

² This fact was set forth in VALI's Memorandum opposing the DOH's Motion to Dismiss its petition in the trial court without record citation, but also without objection by the DOH.

conducted a series of informal hearings and conferences as part of its cost audit process. The issue of interest on the principal sum found to be due and owing by the DHCF was not addressed at the conferences and informal hearings. (Stip. ¶ 12; ALJ Findings ¶¶ 1, 3, pp. 4, 5).

7. The DOH issued a decision on March 18, 1985 after an informal hearing, which stated, in part:

Both parties reserve the right to raise any of the issues discussed in this hearing or any related issues not necessarily discussed at the informal hearing level if the conflict cannot be resolved at the administrative review level.

(Stip. ¶¶ 11, 13 and Ex. H thereto).

8. A supplemental decision, evidenced by a DOH letter dated March 25, 1985, contained the same reservation of rights as noted above. (Stip. ¶ 14 and Exs. I and J thereto).

9. During the exit conferences and informal hearings, VALI intentionally did not raise the issue of whether DOH should pay interest on amounts found due and owing. VALI intended to raise the interest issue at a formal hearing before an Administrative Law Judge. (ALJ Findings ¶¶ 1-3, pp. 3-5).

10. A determination was made that VALI was entitled to the principal sum of \$272,362.03, as a result of the informal hearings and conferences. (Stip. ¶ 17 and Ex. N thereto).

11. At approximately the same time, the State submitted a proposed mutual release to VALI that would have released

the State from any claim that VALI might have for interest. (Stip. ¶ 18 and Ex. N thereto). VALI refused to execute such a release. (Transcript, pp. 75, 78).

12. A meeting was held at the DHCF offices on May 13, 1985. Participants included the DHCF acting director, an informal hearing officer, an audit manager, a State Assistant Attorney General, the owner of VALI and counsel for VALI. (Stip. ¶ 20). At that meeting, VALI informed the DHCF that the issue of interest had not been settled by the informal hearings. All parties agreed that the question of interest was never raised nor argued as an identifiable issue during the informal hearings. (Stip. ¶ 21).

13. On or about May 16, 1985, VALI cashed a state warrant in the amount of \$272,362.03. (Stip. ¶ 24). A letter accompanying the warrant stated that the sum represented "full settlement of all claims and demands arising from informal hearings conducted . . . on February 28, 1985 and March 20, 1985." (Stip. ¶ 23 and Ex. R thereto.)

14. Subsequently, VALI made a timely request for a formal hearing, at which the single issue would be whether VALI was entitled to interest on the principal sum paid. (Stip. ¶ 25).

15. After evidence was received at the formal hearing, the Administrative Law Judge found in favor of VALI and stated in his written opinion:

There is nothing complex or mysterious about it. Respondent should pay the claimant interest and ought to do so without further delays.

(ALJ Findings, p. 7).

16. The Executive Director of the Department of Health, without having heard the evidence, overturned that decision and denied VALI any interest on the sum of money previously paid. DOH "Final Determination," dated April 18, 1986.

SUMMARY OF ARGUMENTS

Under the common law of the State of Utah, a creditor is entitled to interest "on debts overdue." Utah Code Annotated § 15-1-1 establishes the rate of interest applicable for the "forebearance of money." Nothing in either the statute or the common law would limit recovery of such interest only to situations in which the principal amount has been awarded pursuant to a formal judgment. In fact, such a limitation would be contrary to the well established principle that "settlements are favored in the law." Since DOH retained money that was owed to VALI, it must pay interest on the amount so retained, despite the fact that the principal was paid in settlement. In any event, VALI is entitled to interest under the Utah Prompt Payment Act, which requires state agencies to pay obligations owing on contracts within 60 days of their receipt of an invoice. DOH claims that the Prompt Payment Act is inapplicable to this case because the delay resulted from a "dispute." In fact, as the ALJ found,

there was no real dispute in this case, and DOH should be required to pay interest. Moreover, interpretation of the Prompt Payment Act dispute provision in the manner suggested by DOH would effectively nullify the entire Act, since state agencies could avoid the Act's effect in every instance by simply disputing legitimate claimed charges.

ARGUMENT

- I. UNDER UTAH CODE ANN. § 15-1-1 AND THE COMMON LAW OF UTAH, VALI IS ENTITLED TO RECOVER INTEREST ON AMOUNTS PAST DUE.

VALI's claim of entitlement to interest on the principal sum paid by DOH in this case is founded on both statute and Utah common law. In Utah, the statutory rate of interest, as of the dates of the parties' contracts, was as follows:

The legal rate of interest for the loan or forbearance of any money, goods or things in action shall be six per cent per annum. But nothing herein contained shall be so construed as to in any way affect any penalty or interest charge, which by law applies to delinquent or other taxes or to any contract or obligations made before the 14th day of May, 1907.

Utah Code Ann. § 15-1-1 (1953).³ This provision establishes the legal rate of interest applicable to payments required by contracts that do not themselves specify an applicable rate. In reliance upon § 15-1-1, the Utah Supreme Court has held that, "In contract cases, certainly, interest on amounts found to be due in judicial proceedings is recovery to which the creditor is entitled as a matter of law." Lignell v. Berg, 593 P.2d 800, 809 (Utah 1979). See also, SCM Land Company v. Watkins & Faber, 732 P.2d 105 (Utah 1986).

Thus, VALI has a statutory right to recover interest on the principal sums paid to it by DOH under the terms of the parties' contracts. Even in the absence of a statute, however, purely equitable principles would mandate the same result. For example, in Holmes v. Kewanee Oil Company, 233 Kan. 544, 664 P.2d 1335, 1343 (1983), cert. denied, 474 U.S. 953 (1985), the Supreme Court of Kansas stated that, "Where a party retains and makes actual use of money belonging to another, however, equitable principles require it to pay interest on the monies so retained and used." The Supreme Court of Utah in Jack B. Parson Construction Co. v. State, 552 P.2d 107 (Utah 1976), while not specifying the basis for its decision in that case, awarded interest against

³ The rate of interest provided by Section 15-1-1 was changed by the legislature to 8 percent in 1981, and to 10 percent in 1985. VALI contends that the interest to which it is entitled during the relevant time periods should be measured at the legal rates then in effect.

the State of Utah on a contractual obligation, and is consistent with both the statute and the equitable principle described in Holmes.

In any event, it has long been the case, under Utah common law, that interest is allowable "on debts overdue." In 1890, well before § 15-1-1 had been enacted, the Utah Supreme Court stated as follows:

At common law, no interest was allowed on debts overdue, unless there was an express or implied contract to pay interest.

* * *

This rule of the common law does not obtain in America, and interest is allowed on debts overdue even if there is no statute providing for interest. And the question has been settled in this territory in favor of the allowance of interest on debts overdue.

Wasatch Mineral Company v. Crescent Mineral Company, 24 P. 586, 587 (Utah 1890) (citations omitted).

There remains for discussion, however, the lower court's concern that "pre-judgment interest" may not be available where the parties have resolved the payment of principal without entry of a judgment. This concern was based, in large part, upon references to "pre-judgment interest" contained in Jack B. Parson, supra, and indeed, in many other interest cases as well. Such references are misleading to the extent that they imply that interest on obligations is only available where a judgment has been rendered. They are simply terms of convenience, used to

refer to the time period during which the interest runs--from the date payment is due to the date of judgment. At that point, the principal and interest is either paid, thereby ending the interest obligation, or the interest is added to the principal to form the total judgment amount, to which the judgment rate of interest is then applicable.

A more accurate term would perhaps be "prepayment" or "pre-resolution" interest, since it is only the act of payment of principal which is significant, as the payment of principal stops the running of interest at the "legal rate." The only significance of entry of a judgment is that the party to be paid obtains the additional benefit of "judgment interest," which is, in effect, compound interest. However, nothing in § 15-1-1 in any way limits its applicability to situations in which a judgment for principal is entered, nor do the cases applying equitable principles in any way suggest that entitlement to interest is dependent upon the entry of a judgment. In fact, only judgment interest (Utah Code Ann. § 15-1-4) is expressly made dependent upon the existence of a judgment.⁴ The absence of such a limitation in § 15-1-1 creates an inference that none exists.

⁴ Section 15-1-4 specifically provides for interest to be paid on "judgments," which interest runs from the date of judgment until the obligation has been paid. In contrast, § 15-1-1, upon

Footnote continued on next page.

Logic alone would also dictate that petitioner's entitlement to interest in this case should not depend upon the existence or nonexistence of a judgment for principal. Interest is payable for the forbearance of money, which exists whenever the principal obligation is not timely paid, whether it is ultimately reduced to judgment or is paid pursuant to a settlement by mutual agreement. The only issue is the time at which the running of interest ceases. Where the principal is paid prior to entry of a judgment, such as by virtue of a settlement, the forbearance is necessarily shortened, and the interest payable is consequently less. However, the entitlement to interest does not change.

In the relatively few cases that have considered claims for interest subsequent to payment of principal, the issue has invariably been whether the party seeking payment waived its entitlement to interest by acceptance of principal, rather than whether entitlement to interest is dependent upon the entry of a judgment. One such case, United States v. Consolidated Edison Company of New York, Inc., 590 F.Supp. 266 (S.D.N.Y. 1984),

Footnote continued from previous page.

which petitioner relies, makes no reference whatsoever to the existence of a judgment, and the interest provided therein runs from the date on which the obligation of payment was due, until either payment is made, at which point the interest obligation ceases, or judgment is entered, at which point, § 15-1-4 becomes applicable.

contains a discussion of this issue which is equally applicable to the facts of the present case. In that case, the United States Postal Service ("USPS"), had been overcharged for its electricity by Con Ed for a period of approximately five years. After the error was discovered, Con Ed tendered USPS a check in the amount of the overcharge, but refused its demand for interest on that amount. USPS negotiated the check, with an endorsement that read, "Negotiation of this check is not to be construed as a waiver of U.S. Postal Service's claim for interest payments," and additionally, sent Con Ed a letter notifying it that the payment had been accepted under protest.

USPS subsequently instituted a lawsuit for recovery of interest on the overpayment, at the legal rate as provided by statute. In finding that the acceptance by USPS of principal did not preclude it from seeking interest in a subsequent lawsuit, the Court relied upon Girard Trust Company v. United States, 270 U.S. 163, 168 (1926), which contains the following language:

In this case, there is statutory provision for it [interest], and it is analogous to a suit in debt or covenant in which the contract specifically provides for payment of interest on the principal debt. In such cases, the authorities all hold that the acceptance of the payment of the principal debt does not preclude a further suit for the interest unpaid. And the same rule obtains where the obligation is one that by statute bears interest.

The Con Ed court additionally noted that USPS would have been entitled to interest if it had sued for the principal amount,

since New York provides by statute for the recovery of interest "upon a sum awarded because of a breach of performance of contract." N.Y.Civ.Prac.Law § 5001 (McKinney 1963) (emphasis added). Under these circumstances, the court held that USPS was entitled to recover interest on the principal sum, although it had been paid voluntarily, stating:

Indeed, common sense dictates that result. Con Ed, the party at fault for the error in billing, should not be allowed to avoid the plaintiff's claim for accrued interest, which the plaintiff specifically reserved by both its endorsement of the check and its letter acknowledging receipt of the check, by putting plaintiff to the Hobson's choice of accepting the refund without interest, or waiting months, or more likely years, to recover the principal plus interest in a lawsuit. In this case, the litigants are giants--the United States Postal Service and a large public utility. In another case, however, it may be an average consumer of modest means, who under the defendant's theory could be forced to forego the right to interest in order to receive a prompt refund of an overcharge admittedly due him or her.

590 F.Supp. at 270 (emphasis added).

Common sense compels the same result in the present case. DOH should not be allowed to avoid paying interest to which VALI is legitimately entitled, by the mere fact that the parties ultimately agreed to the payment of principal (some seven years after petitioner had rendered the services upon which its claims were based), rather than refusing to agree and taking the entirety of the issues to final judgment. It is well settled in the State of Utah that, "The law generally encourages

settlements," Alvin G. Rhodes Pump Sales v. Industrial Commission, 681 P.2d 1244, 1248 (Utah 1984), and that, "The law has no interest in compelling all disputes to be resolved by litigation." Utah Department of Administrative Services v. Public Service Commission, 658 P.2d 601, 613 (Utah 1983). The reason that, "Settlements are favored in the law, and should be encouraged, [is] because of the obvious benefits accruing not only to the parties, but also to the judicial system. Tracy-Collins Bank & Trust Company v. Travelstead, 529 P.2d 605, 607 (Utah 1979). The lower court's ruling denying VALI interest in this case, on the ground that it settled the issue of principal with DOH rather than taking the entire matter through litigation to a final judgment, flies in the face of this well settled precedent, and unfairly denies VALI the interest to which it is legally entitled.

II. THE UTAH PROMPT PAYMENT ACT (UTAH CODE ANN. §§ 15-6-1, et seq.) IS APPLICABLE TO VALI'S CLAIM AGAINST THE DOH.

The Utah Prompt Payment Act (§§ 15-6-1, et seq.) applies to all state agencies and requires them to pay for services rendered pursuant to contracts within 60 days following their receipt of an invoice. Utah Code Ann. § 15-6-2. The Act further provides for payment of interest on amounts overdue, as follows:

(1) Interest shall accrue and be charged on payments overdue under

Section 15-6-2 at the rate of 15.5% per annum beginning on the day after payment is due, if the payment due date is specified by contract, or on the 61st day after receipt of the invoice, if no payment date is specified by contract. Interest ceases to accrue on the date payment is made.

(2) Any interest which remains unpaid at the end of any 60-day period or which remains unpaid at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest.

Under § 15-6-3, DHCF is required to pay interest on overdue obligations. Here DHCF contends it has no interest obligation under the Act because, under § 15-6-4, if the agency's failure to timely pay interest is the result of a "dispute" between the agency and the business over the amount due, the interest provision is not applicable. The State misplaces its reliance on the dispute provision. Here the amount constituting the principal sum resulted, not from a dispute between the parties, but from the State audit process which always occurs under the State Medicaid program.

The DOH's only evidence on this issue was the simple assertion by it that it "contested" VALI's claim. Indeed, the DOH was responsible for an investigation that was terminated without any finding of bad conduct on VALI's part, but which did seriously hamper VALI's efforts to provide detailed evidence of its claims, as it was required to do by its contract. What the DOH did was to take advantage of the burden that it had caused to

be placed on VALI in significantly delaying payment. The only tribunal in which the evidence has been heard found that there was no legitimate dispute, and that ruling should be given effect.

Moreover, by the terms of the parties' own contract, "all payments [are] subject to reasonable cost audit and adjustment." This cost audit and adjustment procedure was precisely the procedure in which the parties engaged and that resulted in the ultimate "settlement" of VALI's claim. Under DOH's theory, this procedure automatically constitutes a "dispute," and § 15-6-3 has been overridden by the terms of the contract, drafted by DOH, under which VALI's claim arises. Such an interpretation is clearly unreasonable, as has already been determined by the ALJ.

In this case, the informal hearings and conferences were held to explain and document VALI's claim, not to provide a forum for an adversarial dispute. The original contract did not list prices or services -- the understanding of the parties was that VALI would submit its claims, noting prices and services, to be followed by an audit. Within a reasonable time the State would make payment to VALI.

Thus, the purpose of the audit process is not to resolve a dispute but to check fees and services as against the cost reimbursement manual. The State's position that VALI and the State had a dispute is untenable. An interpretation of the

Prompt Payment Act's "dispute" provision such as the State suggests would mean that the State can take five to seven years to "audit" a claim but not be responsible for interest on the amount ultimately found due.

Application of the Prompt Payment Act's dispute provision to bar interest on the principal paid to VALI in this case would be unfair and contrary to a reasonable statutory interpretation. VALI's claim for interest unquestionably falls within the Prompt Payment Act and the lower court's ruling granting DOH's motion to dismiss should be reversed.

CONCLUSION

VALI is entitled to interest on the amounts unpaid by the DOH under both the common and statutory law of the State of Utah. VALI was unjustifiably denied the use of money to which it was entitled, for a period of several years, and both common law and statutory principles require DOH to pay VALI for the use of its money during that time. Therefore, the lower court's judgment denying VALI recovery of interest in this case should be reversed.

DATED this 29th day of December, 1988.

A handwritten signature in dark ink, appearing to read "Julia C. Attwood". The signature is fluid and cursive, with the first name "Julia" being more prominent.

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Telephone: (801) 532-1234

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, four true and correct copies of the foregoing OPENING BRIEF OF APPELLANT VALI CONVALESCENT AND CARE INSTITUTIONS to the following on this 29th day of December, 1988:

Brian L. Farr
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

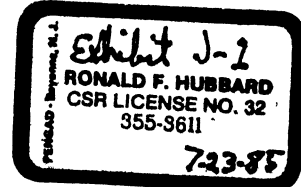
Julie C. Cuthwood

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EXHIBITS

Tab A

SPENCER E. AUSTIN (A0150)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Plaintiff
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P.O. Box 11898
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IN THE UTAH DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FINANCING

* * * * *

VALI CONVALESCENT and)	
CARE INSTITUTIONS	)	STIPULATION OF FACTS
)	
Plaintiff,)	
)	
vs.)	
	)	Civil No. _____
UTAH DEPARTMENT OF HEALTH,)	
DIVISION OF HEALTH CARE)	
FINANCING)	
)	
Defendant.)	

* * * * *

The above-entitled matter is presently scheduled for formal hearing before the Honorable David Stott, Administrative Law Judge, on the 23rd day of July, 1985 at the hour of 9:00 a.m. In an effort to simplify the formal hearing, the parties hereby stipulate to the following facts:

1. The claimant filed Facility Cost Profiles ("FCP's") for the time period January 1, 1978 through June 30, 1978 and July 1, 1978 through June 30, 1979, with the Depart-

ment of Health, Division of Health Care Financing ("DHCF") for funds expended as a Medicaid provider for nursing home services. These FCP's's were filed in approximately January, 1980.

2. The DHCF did not complete its adjustment of these FCP's's in 1980 due to an investigation that was being conducted by the Bureau of Medicaid Fraud. That investigation was concluded on April 22, 1982 without the filing of any criminal charges. The decision not to file charges is attached hereto as Exhibit A.

3. Exit conferences were conducted regarding these FCP's's by the Division of Health Care Financing. The claimant was not satisfied with the results of the exit conferences and requested an informal hearing pursuant to the provisions of the Administrative Hearing Procedures for Medicaid Recipients and Providers.

4. An informal hearing was held on October 25, 1984, wherein a request was made of the DHCF to compute a total figure relating to the audit in question.

5. The DHCF sent a letter to claimant on December 7, 1984. That letter is attached hereto as Exhibit B.

6. The Claimant sent a letter to the DHCF on December 26, 1984. That letter is attached hereto as Exhibit C.

7. The DHCF sent a letter to the claimant on February 15, 1985. That letter is attached hereto as Exhibit D.

8. The claimant sent a letter to the DHCF on February 15, 1985. That letter is attached hereto as Exhibit E.

9. The DHCF sent a letter to claimant on February 19, 1985. That letter is attached hereto as Exhibit F.

10. Spencer E. Austin, counsel for claimant, sent a letter to Suzanne Dandoy, M.D., Director of the Department of Health. That letter is attached hereto as Exhibit G.

11. The informal hearing was held on February 28, 1985 before Steven Gatzmeier, a DHCF hearing officer.

12. The issue of interest on any sums found due and owing by the DHCF was not addressed in any manner in the informal hearing.

13. The decision of the informal hearing officer was issued on March 18, 1985 and is attached hereto as Exhibit H.

14. Two supplements to the decision of the informal hearing officer were issued on March 25, 1985 and March 27, 1985 and are attached hereto as Exhibits I and J.

15. The claimant sent a letter to the informal hearing officer dated March 22, 1985. That letter is attached hereto as Exhibit K.

16. The claimant sent a letter to the DHCF on April 1, 1985. That letter is attached hereto as Exhibit L.

17. The DHCF sent a letter to the claimant on April 3, 1985. That letter is attached hereto as Exhibit M.

18. On or about April 4, 1985, counsel for the DHCF hand delivered a proposed Mutual Release to counsel for the claimant. That document is attached hereto as Exhibit N.

19. The claimant sent a letter to the informal hearing officer dated April 5, 1985. That letter is attached hereto as Exhibit O.

20. There was a meeting held at the office of the DHCF on May 13, 1985. In attendance were the following:

- A. Glen Blonquist - Acting Director of the Division of Health Care Financing
- B. Steven Gatzmeier - Informal Hearing Officer
- C. Dennis Pettey - Audit Manager
- D. Clark C. Graves - Assistant Attorney General
- E. Richard A. Brown - Owner of Vali Convalescent and Care institutions
- F. James B. Lee - Counsel for Claimant
- G. Spencer E. Austin - Counsel for Claimant

21. At the meeting made reference to in paragraph 20 above, the DHCF was informed by the claimant that, in his opinion, the issue of interest had not been settled by the informal hearing. The claimant was informed by representatives

of the DHCF that, in their opinion, the question of interest was settled by the informal hearing.

All parties agreed that the question of interest was never raised nor argued as an identifiable issue during the informal hearing.

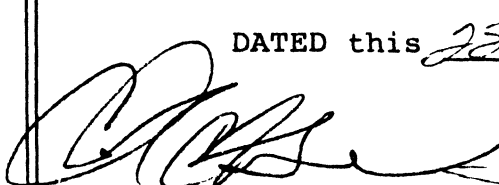
22. On or about May 14, 1985, the document attached hereto as Exhibit P was transmitted from counsel for the DHCF to counsel for the claimant.

23. The Claimant received a check for the sum of \$274,223.17 on May 16, 1985 with an accompanying letter signed by Steven Gatzmeier. That check and the accompanying letter are attached hereto as Exhibits Q and R.

24. On or about May 16, 1985, the claimant cashed the State Warrant attached hereto as Exhibit Q.

25. A timely request for a Formal Hearing was made on May 21, 1985 pursuant to the provisions of the Administrative Hearing Procedures for Medicaid Recipients and Providers and was limited to the sole issue of whether interest is due and owing on the sum paid to the Claimant.

DATED this 23rd day of July, 1985.


CLARK C. GRAVES

Assistant Attorney
General


SPENCER E. AUSTIN

of and for
PARSONS, BEHLE & LATIMER
Attorneys for Claimant

Tab B

IN THE UTAH DEPARTMENT OF HEALTH
DIVISION OF HEALTH CARE FINANCING

VALI CONVALESCENT and CARE)	
INSTITUTIONS,)	
)	
Claimant,	)	FINDINGS AND CONCLUSIONS
	)	OF ADMINISTRATIVE LAW JUDGE
vs.)	
	)	CASE NO.
)	
UTAH DEPARTMENT OF HEALTH,)	
DIVISION OF HEALTH CARE)	
FINANCING)	
)	
Respondent.)	

The above-entitled matter came on for formal hearing the 23rd day of July, 1985 at the hour of 9:00 A.M. before David L. Stott, Administrative Law Judge ("ALJ"). Claimant was represented by Mr. Spencer Austin and Respondent by Mr. Clark Graves. It is the designated responsibility of the ALJ to hear Claimant's claim, Respondent's response and, thereupon, to make findings of fact, conclusions of law and recommendations for the consideration of the Executive Director of the Department of Health, who makes the ultimate disposition of the matter for the Department.

At the outset of the hearing, Claimant's counsel raised a question about the fairness of the proceeding. He noted that the Respondent and the decision-maker in this case are one and the same, to wit: the Department of Health. The ALJ would only comment that the identity of Respondent and ultimate decision-maker will not affect the ALJ's independence and his determination of the merits of

Claimant's claim. Furthermore, the ALJ anticipates that the Executive Director, being a non-lawyer, would rely heavily upon the ALJ's independent findings and conclusions in making his or her decision. Finally, the ALJ would note that Complainant has available to it full appeal rights through the judicial system following exhaustion of its administrative opportunities.

At the hearing, a briefing schedule was established, subsequently extended and briefs were ultimately submitted by the parties. A second brief was submitted by Respondent. Mr. Graves of the Attorney General's Office determined to submit an affidavit setting forth facts related to the matter and, thereupon, withdrew as counsel for Respondent and was replaced by Mr. William C. Quigley.

The sole issue presented to the ALJ, as stipulated by the parties, is whether or not the Claimant, Vali Convalescent and Care Institutions ("Vali"), has settled and compromised its claim for interest in connection with payments made by Respondent to Vali for health care services.

Respondent takes the position that the parties effected a settlement of all issues including interest not later than April 5, 1985, and that in any event the interest issue was lost to Claimant thereafter when Claimant cashed the State's warrant for the amount of principal agreed upon, because claims of interest, regardless of their merit, are lost once the principal amount has been settled and

paid. Claimant, obviously, takes a different view of the matter. Claimant argues that it at no time concluded the question nor conceded the issue of interest and is still fully entitled to reasonable interest on the principal amount paid to it; the ALJ agrees with Claimant.

The facts of the case were stipulated by the parties and are adopted by the ALJ. Said facts are contained in the Stipulation of Facts, which is a part of this record and does not need restatement here.

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

1. The Facility Cost Profiles ("FCP's") submitted by Claimant to the Respondent in January, 1980 relate to services performed as far back as January, 1978. Claimant received payment of principal sums for his services in May, 1985 and, thus, waited more than seven years for payment of some services. The delay came about in part because of a two-year, three-month investigation of Claimant's FCP's by the Bureau of Medicaid Fraud--apparently at the request of Respondent. The Bureau concluded ultimately that it could not make a case against Claimant. Thereafter, Claimant was forced to reconstruct documentation, which had been damaged or lost in the aforesaid investigation, which delayed the matter further. Finally, in 1984 an exit conference and an informal hearing took place to

establish the amounts owed Claimant. Thereafter, however, there were still disputes about the amounts due Claimant and, therefore, additional informal hearings were held. Although Claimant clearly stated its claim for interest prior to the informal hearings, it did not raise the claim during the informal hearings, determining, apparently, to get resolved the matter of principal before pursuing the interest claim. It wasn't until April 5, 1985, that Claimant could and did accord by letter with Respondent's offer of principal (subsequent payment of which included an amount of interest for the period April 5, 1985 to date of payment by warrant).

2. I conclude that Claimant at no time considered that the matter of interest had been settled or compromised. By his letter of April 5, 1985, he agreed to accept \$272,362.03 as the principal amount due him for health care services rendered. It was Claimant's apparent intent to get from Respondent the principal amount for which it had waited some seven years before taking up the matter of interest, which it had reason to believe would be disputed by Respondent. It appears that the Respondent attempted on at least one occasion to draw from Claimant a concession of the interest issue in Respondent's favor prior to payment of the principal. However, Claimant's response was at most ambiguous and a reflection of its apprehension that any firm assertions regarding interest would have further delayed payment of principal. Respondent had the use of Claimant's money for seven years and every equity which appears here would suggest that Respondent ought to pay Claimant compensation for

the use of its money. It appears that Respondent has chosen to focus solely on whether or not it can be compelled as a matter of law to pay interest on Claimant's money and ignore the demands of equity. The reason for that attitude is, unfortunately, not clear from this record.

3. It is certainly true that the parties arrived at a settlement of the amount of principal to be paid Claimant on April 5, 1985; Claimant could not now claim additional amounts of principal having raised all pertinent issues of principal at the informal hearings and having accepted the proffered amount of principal by its letter of April 5, 1985. Respondent is entitled to rely on the settlement of principal. Interest, however, is a different matter. The issue of interest was not raised at the informal hearings because Claimant apparently intended to deal with the issues of principal and interest separately and in order. Having resolved the issue of principal, it then--consistent with its position--rejected the release document prepared by the Respondent, because the release included a waiver of interest. Thereafter, Claimant met with Respondent and manifest plainly that it wanted interest on the principal. Its meeting with Respondent was prior to the delivery of the warrant for the amount of principal. Respondent did not restrict endorsement on the warrant but allowed Claimant to cash the warrant on May 16, 1985 knowing full well that Claimant expected payment of interest on the principal sum.

4. As previously stated, Respondent has apparently determined to ignore the equities in this case; however, I do not believe that the law supports Respondent's position either. Cox Construction Company, Inc. v. State Road Commission, 583 P.2d 85 (Utah 1978), cited by Respondent as authority for the proposition that Claimant's interest claim cannot now be allowed, is distinguishable from this case. In Cox the Court recites the general principal that where interest is payable merely as damages for nonpayment of money when due, acceptance of the principal amount bars any claim for interest, save, of course, where claimant has clearly preserved the issue of interest. In Cox the stipulations between the parties were completely silent on the subject of interest such that it appeared that the claimant in that case had decided to ask for interest as an afterthought. In this case the Respondent knew or should have known that Claimant was not stipulating to the release of interest claims. In this case Claimant made express claim for the interest prior to taking and cashing the warrant and made it plainly known that it was preserving the issue of interest for further determination.

5. Beyond that, however, the Utah Procurement Code, Utah Code Ann. Section 63-56-1, et seq., effective July 1, 1980, appears to establish Claimant's claim:

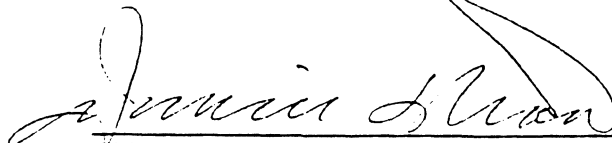
Interest on amounts ultimately determined to be due to a contractor or the state shall be payable at the rate applicable to judgments

from the date the claim arose through the date of decision or judgment, whichever is later (emphasis added).

This particular statutory passage--the interpretation of which cannot apparently be based on case law--appears to establish in Claimant an entitlement to interest on his claim for principal from the time the claim arose through the date of decision.

Here the Claimant was a contractor with the state. He was owed a substantial sum of money for seven years, the delay in payment being caused primarily by the actions of the state. Interest could not be applied until the amount of principal was established. Once the state had finally satisfied itself concerning the amount of principal owed to Claimant, Claimant was entitled to interest. The statute indicates that the rate of interest to be applied to the principal amount is that which is applicable to judgments. There is nothing complex or mysterious about it. Respondent should pay the Claimant interest and ought to do so without further delays.

ADMINISTRATIVE LAW JUDGE:

A handwritten signature in cursive script, appearing to read "David L. Stott", is written over a horizontal line.

DAVID L. STOTT