

## III. Panel Nixes \$1M Assessment Cut For Senior Care Facility

By **Paul Williams**

Law360 (August 18, 2020, 8:02 PM EDT) -- An Illinois tax board erred in slashing a senior care facility's property tax assessment by nearly \$1 million, a state appeals court ruled, finding certain rental income from residents who were ineligible for Medicaid wasn't factored into the valuation.

A three-judge panel on Monday sided with Manteno Community Unit School District No. 5 in holding that the Illinois Property Tax Appeal Board used a flawed income capitalization approach method in reducing the Heritage Woods of Manteno's 2013 tax assessment to \$714,000 from nearly \$1.69 million.

The court found that the owner of Heritage Woods, DSI Manteno Owner LLC, understated the facility's real estate income and charged some private-pay residents higher rates, based on the size of their rooms, for the same services that residents eligible for Medicaid received.

According to the opinion, the record indicated that approximately 45% to 50% of the Heritage Woods residents were private-pay individuals who paid higher prices for the same services. The higher fees that should have constituted rental income were incorrectly excluded from the board's decision that lowered the tax assessment of the property because DSI counted those charges as service income, the court said.

Judge Vicki Wright said in the court's opinion that while the appraisal may have reflected DSI's bookkeeping practices, it didn't "truly reflect the income-earning capacity of the property," as required by state precedent.

DSI argued that it was required to charge all its residents the state Department of Healthcare and Family Services' fixed rates for Medicaid recipients. The court, however, said there was no mandate for DSI to apply the same rates for Medicaid recipients to private-pay residents, and that a **state regulation** explicitly allows certain supportive living facilities to charge private-pay patients more than those who are Medicaid eligible.

The court acknowledged that other board decisions have used the actual rents mandated by the department to assess other properties, but said the evidence in the instant case showed that DSI received more in rental income for than its books showed.

"Since DSI elected to present inaccurate evidence of the actual rental income being paid by private-pay residents, under the guise of service income, the [board's] decision was not based on an accurate measure of rental income flowing from Heritage Woods's

residents to DSI," the court said.

And while the department's fixed rates for Medicaid eligible residents established a maximum rate DSI could charge, the court said there was no restriction on the minimum amount that the facility could charge private-pay residents. The court cautioned that leaving the board's decision in place could permit DSI to lower its rents across the board just to achieve a lower assessment.

"If the [board's] decision were to stand, nothing would prevent DSI from further reducing its actual rents charged to all residents, thereby allowing DSI's bookkeeping to indicate fair cash value," the court said.

Additionally, the court said an appraiser the facility hired who testified to the board wrongly accepted DSI's assertion that the facility could only hold 87 occupants, saying the record showed that one-bedroom apartments were certified for double occupancy and the facility could hold 137 residents.

School District counsel Scott L. Ginsburg of Robbins Schwartz Nicholas Lifton & Taylor Ltd. told Law360 on Tuesday that he was pleased with the decision because the court didn't allow DSI's bookkeeping to dictate the property's assessment.

DSI was "using an accounting method to, in our opinion, reduce the rent they were actually charging and allocating a significant portion of the rent to services," Ginsburg said.

Ginsburg said the ruling should provide clarity around the **statute** that requires supportive living facilities, which are assisted living facilities that also provide services through Medicaid funding, to be assessed using the income capitalization approach.

The court made clear that the statute should be interpreted to provide for a market-based income approach rather than an income approach based on a company's accounting practices, Ginsburg said, adding that the court ordered the decision to be published.

Counsel for DSI declined to comment Tuesday.

A representative for the Illinois Attorney General's Office, which represented the board, did not respond to a request for comment Tuesday.

Judges Vicki Wright, Tom M. Lytton and Robert L. Carter sat on the panel for the court.

Manteno Community Unit School District No. 5 is represented by Scott L. Ginsburg and Jessica L. Knox of Robbins Schwartz Nicholas Lifton & Taylor Ltd.

DSI Manteno Owner LLC is represented by Thom Moss of Bickes Wilson & Moss.

The Illinois Property Tax Appeal Board is represented by Jane Elinor Notz and Carl J. Elitz of the Illinois Attorney General's Office.

The case is Manteno Community Unit School District No. 5 v. Illinois Property Tax Appeal Board et al., case number 180384, in the Appellate Court of Illinois, Third District.

--Editing by Joyce Laskowski.

