

BOARD OF REVIEW

Champaign County
Illinois

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NOTES ON EXEMPT APPLICATIONS

Parcel # 46-21-07-336-001
Parcel # 46-21-07-336-002
Parcel # 46-21-07-336-003
Parcel # 46-21-07-337-006
Parcel # 46-21-07-338-006
Parcel # 91-21-07-403-001
Parcel # 91-21-07-403-002
Parcel # 91-21-07-403-003
Parcel # 91-21-07-403-004
Parcel # 91-21-07-403-005
Parcel # 91-21-07-403-006
Parcel # 91-21-07-403-007
Parcel # 91-21-07-403-008
Parcel # 91-21-07-403-009
Parcel # 91-21-07-404-001
Parcel # 91-21-07-404-002
Parcel # 91-21-07-404-003
Parcel # 91-21-07-404-004
Parcel # 91-21-07-404-005
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Parcel # 91-21-07-404-007
Parcel # 91-21-07-404-008
Parcel # 91-21-07-404-009
Parcel # 91-21-07-404-010
Parcel # 91-21-07-407-001
Parcel # 91-21-07-407-002
Parcel # 91-21-07-407-003
Parcel # 91-21-07-407-004
Parcel # 91-21-07-408-001
Parcel # 91-21-07-408-002
Parcel # 91-21-07-408-003
Parcel # 91-21-07-408-004
Parcel # 91-21-07-408-005
Parcel # 91-21-07-408-006
Parcel # 91-21-07-408-007

Parcel # 91-21-07-408-008
Parcel # 91-21-07-408-009
Parcel # 91-21-07-408-010
Parcel # 91-21-07-408-011
Parcel # 91-21-07-408-012
Parcel # 91-21-07-409-018
Parcel # 91-21-07-409-019
Parcel # 91-21-07-409-023

Introduction

The Champaign County Board of Review recommends that the Illinois Department of Revenue deny exempt status on the above referenced parcels. Our recommendation is based on:

1. The fact that much of the area inside of the hospital is used by outside, for-profit entities.
2. The Illinois Property Tax Code
3. Existing Illinois case law
4. The Community Benefits Report provided by the applicant
5. The Provena Hospitals and Subsidiary Consolidated Financial Statements
6. Provena Covenant Medical Center's "Agreement for Payment" and policies surrounding this issue
7. Transfers of monies from Provena's non-profit entities/affiliates to the parent corporation, Provena Health and then Provena Health made transfers of monies to Provena Ventures, a for-profit affiliate.
8. The fact that the Board of Review requested additional information but much of that requested information was incomplete or not furnished.
9. Prior Illinois Department of Revenue Administrative Review decisions.

Hospital Areas Used By For-Profit Entities

Provena Covenant Medical Center allows outside, for-profit entities to use the facilities to generate personal and/or corporate profit.

There are multiple outside physicians' groups and service providers who use the hospital to serve patients. These physicians' groups are for-profit entities that practice in the hospital and then bill patients for work done in what is claimed as a tax-exempt property. Some of those physicians' groups that are using this property to derive a profit are as follows:

1. Currently Emergency Room doctors are provided thru an outside group, Excel, LLD. This company bills independently of hospital. Profit for individuals is being derived from the ER space in this hospital. **Provena has not provided the lease or contract with Excell, LLD. as requested.**
2. An outside group who bills independently of the hospital provides neonatology and pediatric doctors. Midwest NeoPed Associates is listed as a for-profit corporation. Profit for individuals is being derived from the Neonatology and the Pediatric unit. **Provena**

has not provided the lease or contract with Midwest NeoPed Associates as requested.

3. Cardiac Surgery Associates, SC provides cardiac, thoracic and peripheral vascular surgery. Profit for individuals is being derived from cardiac surgery done on these premises. **Provena has not provided the lease or contract with Cardiac Surgery Associates, SC as requested.**

4. All internal pharmacy management is provided by Cardinal Health, (traded on the New York Stock Exchange as CAH.) They are a for-profit entity. They generate profit from use of the Provena facilities. **Provena has not provided the lease or contract with Cardinal Health as requested.**

5. MedCenter Labs provides lab testing and diagnostic imaging for Provena. They are currently listed on Provena's IRS 990 Form (See Exhibit A) as the second largest of Provena's five largest vendors. In 2002 they were deriving profit from the use of the Provena facilities. **Provena has not provided the lease or contract with MedCenter Labs as requested.** (The Board of Review was recently informed that Provena Health recently purchased MedCenter Labs and it is now a subsidiary of Provena Health.)

6. RehabCare Group, Inc. provides staff for medical rehabilitation, skilled nursing and therapy operations at more than 100 acute care hospitals (including the subject), as well as outpatient therapy programs and skilled nursing units. They are listed as the third largest of Provena's vendors in the most recent IRS 990 Form (See Exhibit A). However, in spite of being the third largest vendor, Provena has informed the Board of Review that RehabCare Group, Inc. provides only one management person to Provena. **Provena has not provided the lease or contract with RehabCare Group, Inc. as requested.**

7. Sodexho Marriot (formerly Marriot Management Services) provides food service in the hospital. They provide services directly to patients, hospital staff and visitors. They are deriving a profit from the use of the space they occupy in the hospital. Again, Provena has informed the Board of Review that Sodexho Marriot provides only one management person to Provena. **Provena has not provided the lease or contract with Sodexho Marriot as requested.**

8. Neural-Surgeons and Cardiac Surgeons functions within Provena in the same manner as the above referenced Emergency Room doctors. **No contracts or leases were provided.**

To determine charitable use, the Board of Review requested copies of all contracts and leases with any outside service providers. However ***Provena's agent stated that there were no contracts or leases with any of the previously listed service providers.*** At a later meeting the Board of Review was told that *if* contracts or leases did exist, Provena was reluctant to provide copies to the Board of Review.

Under section 15-15 of the Illinois Property Tax Code heading "Obligation to file copies of leases or agreements" it states: "*If any property listed as exempt by the chief county assessing officer is leased, loaned or made available for profit, the title-holder or the*

owner of the beneficial interest SHALL file with the assessment officer a copy of all such leases or agreements and a complete description of the premises, so the chief county assessment officer can ascertain the exact size and location of the premises, in order to create a tax parcel. Failure to file such leases, agreements or descriptions shall, in the discretion of the chief county assessment officer, constitute cause to terminate the exemption, not withstanding any other provision of this Code.”

The Board of Review met with Provena officials. The Board of Review was assured that square footage use for each of the above referenced entities would be forthcoming. To date no such figures have been provided.

Lease information was, however, provided for five entities, accounting for 21,034 sq. ft. of area in the hospital (See Exhibit B).

In the absence of any agreements that would indicate that the outside care/service providers are, in fact, functioning in some charitable manner, we can only conclude that The Provena Covenant Medical Center has not adequately met the burden of proof that the hospital and supporting properties are IN FACT used in charitable pursuits.

Illinois Property tax code states that the ownership and the use of facilities must be charitable. While it appears that the ownership is granted a designation of an IRS 501 (C) (3) status, it appears that the hospital and its supporting properties are used to obtain a profit for one entity, or another, and should not be deemed “charitable”.

Illinois Property Tax Code

Section 15-65 of the Illinois Property Tax Code states that a property is exempt when “actually and *exclusively* used for charitable or beneficent purposes”. The Board of Review does not believe this to be the case.

Illinois Case Law

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968):

To qualify for the charitable exemption from taxation, use of property must satisfy the criteria set out in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968):

1. The use was for the benefit of an indefinite number of persons, persuading them to educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. The charitable institution must have no capital, capital stock or shareholders, earns no profits or dividends.
3. The institution must dispense charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

4. The institution had the burden of proving that its property actually and factually is so used and
5. The term “exclusively used” means the primary purpose for which property is used and not by any secondary or incidental purpose.

The Provena Hospitals and Subsidiary Consolidated Financial Statements (See Exhibit C) shows “Total assets” less “Total liabilities” results in a line item of “Total net assets” to be \$327,068,000 as of December 31, 2001. The Board of Review believes that this renders the applicant to be ineligible under criterion two.

The Board of Review believes that Provena’s Charity Care program is not available to all who need it, as is evidenced by the number of patients sued by Provena Covenant Medical Center. Also, the number of collections and suits filed by Provena necessities two collection agency(s). (See Exhibit D)

Conversations with Land of Lincoln Legal Assistance Foundation have yielded the information that they, or local attorneys participating in the pro bono program administered by Land of Lincoln Legal Assistance Foundation, have represented community members in collections proceedings brought by Provena Covenant Medical Center and/or its agents. Land of Lincoln’s federally mandated guidelines (guidelines established by the Legal Services Corporation) require that all of those clients be at or below “poverty level” to receive representation. The Board of Review believes that this renders the applicant to be ineligible under criterion three.

The applicant’s Exempt Applications and Provena Covenant Medical Center’s Community Benefits Report (See Exhibit E) does not make it clear that the various properties are actually and factually used for the provision of charity care. The Board of Review believes that this renders Provena Covenant Medical Center to be ineligible under criterion four.

The Provena Covenant Medical Center 2001 Charity Care Patients (See Exhibit F) shows a list of “approved” and “non-approved” charity care patients. From the document submitted by the applicant it is impossible to ascertain what the percent of patients who received charity care are as compared to total patient count OR the dollar amount of charity care dispensed compared to total patient revenue generated. Regardless, this would indicate that the use of the property was not used “exclusively” for the provision of charity care. The Board of Review believes that this renders The Provena Covenant Medical Center to be ineligible under criterion five.

1st District Appellant Court ruling Alivio Medical Center v. Illinois Dept of Revenue (Fourth Division case # 1-97-3456)

In 1st District Appellant Court ruling Alivio Medical Center -v- Illinois Dept of Revenue (Fourth Division case # 1-97-3456 presiding Justice South wrote: “...writing off a bad debt is not tantamount to providing charity. These were amounts which Alivio was unable to collect, not charity.”

This ruling from the Appellate Court on Alivio Medical Center v. Illinois Dept of Revenue is significant to the subject tax exempt applications because it clearly states that bad debt is not considered a “Community Benefit.” The Provena Covenant Medical Center Community Benefit Report, FY '01 clearly includes bad debt, or “uncompensated care” as a line item as a component of its community benefit.

Additionally, the Alivio case discusses what defines a non-profit hospital and provides several tests for the determination of non-profit status.

Alivio Medical Center filed a real estate tax exemption complaint with the Board of Appeals of Cook County and an application for property tax exemption for the year 1993 with the Illinois Department of Revenue, which denied the application. Alivio requested a formal hearing, which was held before an Administrative Law Judge. After the hearing, the Department of Revenue issued a denial. Alivio then filed a complaint for administrative review in the circuit court of Cook County, which affirmed the Department of Revenue’s decision.

“The circuit court affirmed the Department’s decision, holding that Alivio failed to prove it “primarily” used its property for charitable purposes. The court specifically looked to Alivio’s bylaws and determined that Alivio’s policy of writing off bad debts was not the same as “dispensing charity.” The court also noted that there was no evidence the public was aware of any charitable care.”

The circuit court further affirmed that, “to qualify for charitable exemption from taxation, use of the property must satisfy the criteria set out in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E.2d 537 (1968)”

Morton Temple Association, Inc. v. Dept of Revenue, 158 Ill. App. 3d 794, 796, 511 N.E. 2d 892, 894 (1987)

In this case the Appellate Court of Illinois, Third District an organization’s charitable status.

“Incidental acts of charity by an organization will not be enough to establish that organization as charitable. The use of its property must be exclusively for charitable purposes.”

It is impossible to determine the percentage of charity care patients compared to all patients served or a percentage of dollars spent on charity care compared to total patient revenue generated. For that reason the Board of Review does not believe that Provena Covenant Medical Center has met that burden of proof.

The 2001 Community Benefit Report

As stated previously, in the 1st District Appellant Court ruling Alivio Medical Center -v- Illinois Dept of Revenue (Fourth Division case # 1-97-3456) presiding Justice South

wrote: “...writing off a bad debt is **not** tantamount to providing charity. These were amounts which Alivio was unable to collect, not charity.”

In the 2001 Community Benefit Report (See Exhibit E) much of what is included appears to be “bad debt” or “unreimbursed” funds.

The first line of this report is a line item for “Charity Care Provided” for \$1,724,708. It is unclear if this figure is for the entire Provena holdings or for the parcels in Champaign County that are the subject of these exempt applications. Also, please refer to the Provena Covenant Medical Center Policies and Procedures (See Exhibit G). The subject of this exhibit is “Charity Fund: Authorizing Charity Fund”. On Page 2, it states, “Staff must log all disbursements from the fund in the Social Work Logs.” That log of disbursements has not been provided.

The “TOTAL CHARITY CARE PROVIDED” in the 2001 Community Benefit Report (See Exhibit E) includes a “5% cost adjustment factor to reflect required profit...” The Board of Review believes it is inappropriate and contrary to conventional methods of “community benefit” reporting to include such a factor.

Also included in the 2001 Community Benefit Report is 5528.5 hours of volunteer activity. The individual volunteers are Provena employees but the hours that were volunteered were volunteered by those individual employees, not by Provena Covenant Medical Center. Those hours were volunteered during their personal time, not while they were “on the clock” or “on the job”. Though these volunteer activities should be acknowledged and appreciated by the entire community, in no way should Provena claim or accept any credit for those volunteer hours.

Consolidated Financial Statements

The Consolidated Financial Statements provided by the applicant are for the entire holdings of the Provena organization, encompassing several hospitals, affiliates and subsidiaries, not just the parcels seeking exempt status. These statements include properties that fall outside Champaign County, and as such, provide no useable information about the income generated by the subject properties.

Provena Covenant Medical Center’s “Agreement for Payment”

Please refer to Provena Covenant Medical Center Covenant Care application (See Exhibit H, Page 4). The patient is provided with very few options. The patient can agree to pay in full at the time of discharge, pay with insurance, pay Provena Covenant Medical Center 10% of the total balance on a monthly basis or agree to get a loan through a lending company and then repay the lending company, with interest.

Capstone Bank, N.A. from Kankakee, Illinois is the lending company that Provena Covenant Medical Center patients are steered to. Capstone Bank’s Customer Financing Plans Application (See Exhibit I) and Capstone Bank’s Customer Financing Agreement and Disclosure document (See Exhibit J) are enclosed.

When a patient uses Capstone's financing plan, the patient agrees to pay a minimum of \$40 per month and finance charges of 12.9% interest on their outstanding balance (See Exhibit I). When a "credit line" is established by the patient, funds borrowed against that credit line are subject to "APPROVAL BY PROVENA HOSPITALS..." and can ONLY be used to pay Provena (See Exhibit J, Page 2).

Under federal statute it is unlawful to charge Medicare patients interest on their Medicare-related health care bills. By encouraging patients (including Medicare patients) to obtain loans from Capstone Bank, Provena is, in effect, encouraging Medicare patients to incur those same finance charges on Medicare related bills, only payable to a different entity.

Fund Transfers from non-profit Provena affiliates to for-profit Provena affiliates

Please note the highlighted portions of Exhibit K. It appears Provena Health (a non-profit) transferred at least \$1,950,000 to PersonalCare (a for-profit).

Though data is not available for more recent years, the Board of Review has learned that in 1998 and 1999, Provena Hospitals (non-profit) and Provena Senior Services (non-profit) transferred at total of \$159.7 Million to the parent corporation, Provena Health. Provena Health, in turn, transferred \$23.1 Million to Provena Ventures (for-profit affiliate). A financial analysis, entitled "Financial Analysis of the Carle Foundation and Provena Hospitals" (dated September 12, 2000) was conducted by Dr. Nancy Kane and Paul Giaudrone. Dr. Kane is a Professor of Management in the Department of Health Policy and Management at the Harvard School of Public Health. Mr. Paul Giaudrone was a masters student under the supervision of Dr. Kane.

The Board of Review believes these monetary transfers raise serious questions regarding the non-profit status of the Provena Hospitals and Provena Senior Services.

Non-Profit Status of Provena Health

In December of 2002 it was announced that Provena Health would sell PersonalCare, it's managed care insurance plan. That sale would yield \$18 million in cash. (See Exhibit L) Where that money goes/went seems to be a critical issue as to the non-profit status of Provena Health.

Request For Additional Information

The Board of Review's recommendation for denial is also based upon the fact that the Board of Review requested additional information (See Exhibit M). Much of that requested information was incomplete or not furnished.

The Board of Review requested further information on "bad debt". Please refer to Exhibit N. This "document" is what the Board of Review was provided with.

Prior IDOR Administrative Review Decisions

Please refer to Provena Senior Services v. Illinois Department of Revenue No: 99-PT-0022 (98-45-0019) with Alan I. Marcus as Administrative Law Judge. (Exhibit O, Page 8) In that decision Judge Marcus writes:

“It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Norland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).”

Please refer to Riverside Medical Center v. Illinois Department of Revenue No: 99-PT-0035 (98-46-0047, -0049, -0052, & -0056) with Alan I. Marcus as Administrative Law Judge. (Exhibit P) In that decision Judge Marcus writes on Page 5:

*“Applicant did not submit any financial statements establishing income and expenses for the three **individual** clinics.”*

Only corporate financial records were provided. That is also the situation in the applications now under consideration.

On Page 6 the Administrative Law Judge writes:

“Persons who require such assistance are not told of its availability at the time of service. Nor does applicant advertise the availability of its “charity care.”

“Applicant does not conduct any type of pre-service screening to determine if a person is eligible for “charity” care. It does, however, require that its employees make collection efforts at the time of service.”

“Applicant also makes collection efforts by sending out bill at regularly scheduled intervals. None of the information contained within the bills applicant sends out advises those who are unable to pay that “charity care” is available.”

This issue is further addressed on Page 9.

“Among other things, these advertisements described the available services and set forth appellant’s hours. They also advised that care was available without appointment and that services were provided on a low-cost basis when compared to other facilities. However, the advertisements did not mention that free care was available to those unable to pay.

The court viewed this omission as a failure of proof because it raised doubts as to whether members of the general public in fact knew free care was available at the facility. Highland Park Hospital at 280. Here, it is all but factually impossible for

members of the general public to know that applicant offers “charity care” because applicant does not advertise the availability thereof.”

The Board of Review believes these are the same circumstances that exist regarding the applications now under consideration.

On Page 7, Judge Marcus quotes 35 **ILCS** 200/15-65(a). He writes:

“...that such property is ‘actually and exclusively used for charitable purposes and **not leased** or otherwise used with a view to profit’.”

This is precisely on point with regard to the applications now under consideration.

Conclusions

The Champaign County Board of Review does not believe the applicant has met the “burden of proof” with “clear and convincing evidence” that they are charitable and/or non-profit under the Illinois Property Tax Code.

The most compelling reason for arriving at this conclusion are the rulings previously handed down in prior IDOR Administrative Hearing, which are very much on point with the applications under consideration.

Further, Section 15-15 of the Illinois Property Tax Code sets out specific requirements that must be met and documentation that must be provided by the applicant to qualify as a tax exempt entity. This has not been done.

For all of the above stated reasons the Board of Review recommends that exempt status be denied.

Comment

It is relevant to point out that presently all parcels owned by Provena Covenant Medical Center or by any other Provena entity and/or affiliate are presently being assessed and none of those parcels presently enjoy exempt status.

LIST OF EXHIBITS

Exhibit A--Provena's IRS Form 990

Exhibit B--Lease information

Exhibit C--The Provena Hospitals and Subsidiary Consolidated Financial Statements

Exhibit D--Collections and suits filed by Provena and two collection agencies.

Exhibit E--Provena Covenant Medical Center Community Benefits Report

Exhibit F--The Provena Covenant Medical Center 2001 Charity Care Patients

Exhibit G--Provena Covenant Medical Center Policies and Procedures

Exhibit H--Provena Covenant Medical Center Covenant Care Application

Exhibit I--Capstone Bank's Customer Financing Plans Application

Exhibit J--Capstone Bank's Customer Financing Agreement and Disclosure

Exhibit K--State Journal-Register article.

Exhibit L--New-Gazette article

Exhibit M--Additional information requested by the Board of Review

Exhibit N--2001 Bad Debt Account information

Exhibit O--IDOR Administrative Review Decision of Provena Senior Services v. Illinois
Department of Revenue

Exhibit P--IDOR Administrative Review Decision of Riverside Medical Center v. Illinois
Department of Revenue

