

The Deputy Commissioner of the New Jersey Department of Human Services, Division of Aging Services ("Division") has reviewed the record in this matter consisting of the Initial Decision of the Honorable Leland S. McGee, A.L.J. ("ALJ") and the documents in evidence presented to the Office of Administrative Law ("OAL"). The Division has also reviewed the Exceptions submitted by Deputy Attorney General Michael J. Kennedy, attorney for the Respondent, Division, and the Reply to Exceptions submitted by Brian Rath, Esq., attorney for the Petitioners, Stratford Manor Care and Rehabilitation Center, Canterbury at Cedar Grove, and Laurel Manor Healthcare and Rehabilitation Center, and the documents in evidence presented to the OAL.

Based upon a full review of the record, the exceptions filed by the Respondent and the response filed by the Petitioners, the Deputy Commissioner hereby ADOPTS in part and REJECTS in part the findings and conclusions of the Administrative Law Judge. The Deputy Commissioner hereby denies Petitioners' motion for summary decision and grants Respondent's cross-motion for summary decision.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The petitioners are Medicaid-certified nursing facilities. This matter involves the petitioners' challenge to the auditing of their 2006 cost reports pursuant to N.J.A.C. 8:85-4.1. The Petitioners claim that the Division may not audit their 2006 cost reports because audits were not initiated within three years of the filing of the cost reports, which is required by N.J.A.C. 8:85-4.1. The petitioners also assert that the Division did not have "good cause" to extend the three-year time period.

The Division adopts and incorporates by reference the procedural history and statement of facts set forth by the ALJ in the Initial Decision below. On July 10, 2014, the ALJ issued an Initial Decision granting petitioners' motion for summary decision and denying respondent's cross-motion for summary decision. The record in this matter closed on May 8, 2014; therefore, the forty-five day period to issue the initial decision expired on June 23, 2014. On July 15, 2014, the Division agreed to a request by the Office of Administrative Law to extend the period to issue the initial decision nunc pro tunc. On July 16, 2014, the Division granted respondent's request for an extension of time to file exceptions until August 15, 2014. By order dated August 13, 2014, and pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, Laura Sanders, Acting Director of the Office of Administrative Law and Chief Administrative Law Judge, agreed to extend the date for filing the Final Agency Decision in this matter to October 10, 2014. The respondent filed exceptions to the Initial Decision on August 15, 2014. Petitioners filed their reply to respondent's exceptions on August 20, 2014.

In addition to the statement of facts set forth by the ALJ, I wish to set forth in detail certain facts that were part of the record before the ALJ. The Division's decision to re-start acuity audits of nursing home cost reports in 2009 was made because of the audit of nursing facility acuity reporting conducted by the Office of the State Auditor from July 1, 2007 through December 31, 2008. (Respondent's certification of Devon Graf, exhibits A and B). Additional nursing services, referred to as acuities, are provided when nursing facility patients require trachea tubes, intravenous therapy, and tube feeding or additional care due to head trauma or respiratory condition. (Respondent's certification of Devon Graf at ¶4; N.J.A.C. 8:85-2.2). Each reported acuity increases the

number of reimbursable nursing hours which, in turn, increases a nursing facility's reimbursable limit for nursing care. (Respondent's certification of Devon Graf at ¶4).

The State Auditor's report found that the Department of Health and Senior Services' (DHSS) nursing staff had conducted nursing facility acuity audits through 2005, but had not performed acuity audits since then because of a vacancy in nursing staff. Id. at Exhibit A. The former director of Nursing Facility Rate Setting and Reimbursement stated in his certification that "in 2005, the staff member designated by the Department to perform the clinical acuity audits retired. Due to budgetary constraints and staffing priorities, the Department was unable to designate staff to conduct acuity audits after 2005." Id. at ¶6. Of the eight acuity audits that the DHSS had conducted in fiscal year 2005, the State Auditor noted that four of these audits identified overpayments totaling \$424,000 for an average of \$53,000 per audit. Id. at Exhibit A. The State Auditor performed two acuity tests at 11 nursing facilities. The first test consisted of reviewing the support for all acuities for one month. The second test involved selecting individuals that had started and then completed the acuity treatment during a subsequent month. The State Auditor found a seven percent error rate on the first test and a 26 percent error rate on the second test. The State Auditor had the DHSS rate setting unit perform a recalculation on the two nursing homes with the largest error rates using its sample results, which resulted in overpayments of \$114,000 and \$48,000. Ibid. The State Auditor recommended that the DHSS Division of Senior Benefits and Utilization management "resume the acuity audits since it is likely they will result in significant recoveries." Ibid. The State Auditor also recommended that the DHSS "seek the professional staffing necessary to perform acuity audits." Ibid.

On June 12, 2009, the petitioners were notified in writing by the DHSS of the State Auditor's findings and that the petitioners' 2005 and/or 2006 cost reports would be audited by the DHSS' contracted auditor, Myers and Stauffer. The letter noted that the "[a]udit findings revealed deficiencies that resulted in an obligation by the DHSS to reinstitute its clinical acuity audit of additional nursing services reported by New Jersey nursing facility providers on cost reports." Id. at ¶ 11, Exhibit B. The letter notified the petitioners that they would be contacted by Myers and Stauffer with regard to the scheduling of the audit and the documentation they must provide. Ibid.

The initial round of audits of the 2006 cost reports included 150 acuity audits of 117 nursing facilities that had reported significantly higher acuities than the average. Id. at ¶¶ 9-10. The procedure for the acuity audits consisted of the facilities sending in a resident roster with the reported acuities for the period of the cost report, and the facilities were instructed to note the differences between the acuities reported on the resident roster and the cost report. Id. at ¶ 13. Three of the 117 facilities failed to respond to the audit requests. Of the remaining 114 facilities, Myers and Stauffer informed the Division that 81 facilities (71.1%) had more than 10% over-reporting of their acuities; 60 facilities (52.7%) had more than 20% over-reporting of their acuities; and 45 facilities (39.5%) had more than 30% over-reporting of their acuities. Id. at ¶ 15. Although not every instance of over-reporting results in over-payment, the initial audits demonstrated that 52 nursing facilities had overpayments ranging between \$6,400 and \$566,000. Ibid. This worked out to an average of nearly \$131,000 per facility, with overpayments totaling approximately \$6.8 million. Ibid.

Although some of the preliminary results of the first round of audits were received by the end of 2009, the final results of the first round of audits were not received by the Division until April 2010. Id. at ¶ 14. Based on the initial round of audits of the 2006 cost reports, the Division decided it was necessary to conduct a second round of audits; therefore, the Division selected an additional list of 125 facilities to be audited and transmitted this list to Myers and Stauffer on April 23, 2010. Id. at ¶ 16.

On April 28, 2010, the petitioners were notified in writing by Myers & Stauffer of the second round of audits of their 2006 cost reports and that they would receive instructional information at a later date. Ibid.; Respondent's certification of Patrice Padula at ¶¶ 4-7, with exhibits. On June 28, 2010, Myers & Stauffer sent written notice to the petitioners that the audits would begin with a series of teleconferences in July 2010, and the petitioners were instructed regarding additional information to be provided for the audits. (Petitioners' Reply to Exceptions, exhibits A, B and C). The petitioners responded in writing to Myers & Stauffer that the audits were not timely because the audits had not been initiated within three years of the due date of the cost report or the date it is filed, whichever is later, as required by N.J.A.C. 8:85-4.1(a). The petitioners requested Myers & Stauffer to withdraw the audit requests. Id. at Exhibits D, E and F.

The DHSS responded in writing to the petitioners on August 23, 2010. The DHSS stated that the audits had been initiated on a timely basis because the 2006 cost reports had been filed on May 31, 2007. (Petitioners' Brief for summary disposition at exhibits J, K and L). In addition, DHSS stated that it had good cause to waive the three-year limitation for the following reasons:

As demonstrated by the first round of audits that were initiated in 2009, the Department has determined that widespread misreporting of acuities has taken place in the 2006 cost report. Such misreporting is considered fraudulent activity by this Department. For those audits, over 70 percent of the facilities showed more than minor discrepancies in the number of acuities reported when compared with those documented by the facilities during audit. Your facility's reporting of acuities is similar to those that had more than minor discrepancies in the 2009 audits. Therefore, the Department has determined that this level of documented misreporting is good cause place (sic) requiring an audit to ensure the integrity of the Medicaid program.

[bid.]

SUMMARY OF FILED EXCEPTIONS AND REPLY

In the Exceptions filed by the Respondents, Mr. Kennedy claims that the ALJ erroneously found that the April 28, 2010 letters from Myers and Stauffer to the Petitioners did not initiate the audit process according to the requirements of N.J.A.C. 8:85-4.1(a). (Respondent's exceptions at 8). Mr. Kennedy notes that N.J.A.C. 8:85-4.1(a) provides no specific instruction as to what will initiate an audit; the regulation merely states that the "on-site" audit shall be initiated within three years of the due date of the facility's cost report. (Respondent's exceptions at 9). Mr. Kennedy states that "this language is not helpful here, since the record amply demonstrates that acuity audits are, and have always been, a paper exchange between the NF and the auditor." Ibid. Mr. Kennedy suggests that a practical reading of the regulation is required. Ibid. Since the acuity audits are not conducted on-site, and merely consist of an exchange of papers, the April 28, 2010 letter from Myers and Stauffer to the petitioners must be accepted as adequate notice that the acuity audit had begun. Id. at 10.

Mr. Kennedy also states that the ALJ erroneously found that the Division failed to demonstrate "good cause" to extend the three-year time frame to initiate the acuity audits. Ibid. The Division determined that the results of the first round of audits indicated that there were "pervasive over-reporting tendencies throughout the nursing facility industry" that constituted good cause to conduct other acuity audits even if the statute of limitations had run. Id. at 11. The findings of the New Jersey State Auditor and the first round of clinical acuity audits demonstrate that widespread over-reporting of acuties pervaded the industry; therefore, given the Division's responsibility for maintaining the integrity of the State's Medicaid program, the findings are good cause to extend the three-year deadline. Id. at 11-12.

In spite of the findings of the New Jersey State Auditor and the first round of clinical acuity audits, Mr. Kennedy states that the ALJ opined that:

Respondent does not offer any "objective" number for determining what constitutes a "pervasive practice" within the industry. There is no data comparing the audit findings of the first round with industry standards in the tri-state area, the southeast region or nationally. There is no data comparing the first round of audits with similar audits conducted over a different time period. In other words, it is not evident that this "overpayment" is not an aberration and therefore not necessarily "pervasive."

[Initial Decision at 8; Respondent's exceptions at 12.]

Mr. Kennedy argues that the ALJ had no legal grounds for holding that the State Auditor's findings and the first round of acuity audits were not sufficient evidence to show that the overpayment to the facilities was not an aberration and therefore not necessarily pervasive. (Respondent's exceptions at 12). Mr. Kennedy states that:

It was not necessary for the Division to establish that the over-reporting of acuities was not a mere aberration before instituting the audits. Furthermore, the notion that a comparison to reporting of acuities outside the State to determine what constitutes pervasive over reporting of acuities is without any legal support and must be rejected.

[Id. at 12-13.]

Mr. Kennedy also states that the ALJ erred by limiting the definition of the term “good cause” despite acknowledging that it was not limited by the regulation itself. Id. at 13. Although the ALJ noted that the list of examples of good cause in N.J.A.C. 8:85-4.1(b) is not exhaustive, Mr. Kennedy states that the ALJ erroneously held that good cause should be limited to actions taken by an individual nursing facility or other circumstances that prevented the Division from initiating the audit within the three-year period because the examples of good cause listed in the regulation are limited to these situations. Ibid. Mr. Kennedy notes that in analogous interpretation situations courts have held that “terms like ‘include’ are words of enlargement and not of limitation and that examples specified thereafter are merely illustrative. This is especially so here where the word ‘including is followed by the phrase ‘but not limited to.’” Jackson v. Concord Co., 54 N.J. 113, 127 (1969) (internal citations omitted); Respondent’s exceptions at 13-14.

For all these reasons Mr. Kennedy argues that:

it is not necessary for the Division to establish that the “good cause” required to waive the time frame to start the audits was created through the actions of the petitioners. The Division’s mission is to “ensure the provision of quality, cost-prudent health care services available to New Jersey Medicaid children and adults in a nursing facility (NF).” See N.J.A.C. 8:85-1.12. The policy behind the regulation requires that the Department act in [a] cost-prudent manner

and it cannot ignore the instructions and results of the New Jersey State Auditor and the first round of 2006 cost report audits. The documented widespread over reporting of acuities was good cause for the Division to waive the three year timeframe to initiate the audit.

[Respondent's exceptions at 14.]

In reply to respondent's exceptions, Mr. Rath argues that the ALJ correctly held that the Petitioners' 2006 cost reports should be excluded from audit because the Division did not initiate the audits "within the time explicitly required by the regulation and it did not have good cause for any extension of such time." (Petitioners' reply to exceptions at 3). Mr. Rath states that the regulations provide that the cost reports may only be audited within three years of the due date of the cost report or the date it is filed, whichever is later, and that this requirement may only be satisfied "if the on-site audit of the NF is initiated within the three-year period and completed within a reasonable time thereafter." N.J.A.C. 8:85-4.1(a); Petitioners' Reply to Exceptions at 4. Mr. Rath states that "[t]he language is clear; an audit is not initiated until the on-site audit is begun. There is no dispute that no onsite audit was begun within the three year time limit." (Petitioners' Reply to Exceptions at 5).

Mr. Rath argues that the notice to the facilities dated April 28, 2010 fails to initiate the acuity audit of each facility:

These letters by their very terms "initiate" nothing, since they are written primarily as a historical narrative explaining that the New Jersey State Auditor completed an audit of the Department and that as a result of certain findings Myers and Stauffer LLC was conducting clinical audits on nursing facility residents. Indeed, nowhere in the form letter is there any reference to the recipient as being the target of an audit either presently or in the future; there is no mention that the [sic] either of the facilities will be audited. The letter is

merely a narrative of what has occurred in very general terms. Thus, the April 28, 2010 letters from the accountants, and not the Department, cannot be construed as the "initiation" of an audit on any individual facility.

[Id. at 5-6.]

Mr. Rath also notes that the Division has admitted that clinical acuity audits are conducted through the review of documents provided to Myers and Stauffer, and that audits are only commenced when Myers and Stauffer instructs nursing facilities to send in a resident roster with the reported acuities for the period of the subject cost report. No such instruction was made in the April 28, 2010 letters. (Petitioners' Reply to Exceptions at 6; Certification of Devon Graf at ¶¶ 18; Respondent's Exceptions at 5). Mr. Rath states that the Petitioners did not receive a request for information from the Division's auditors until July 28, 2010; and, as such, the Division failed to initiate each acuity audit within the three-year time limitation that ended on May 31, 2010. (Petitioners' Reply to Exceptions at 7).

Mr. Rath also argues that the Division did not have good cause to waive the three-year time limitation for initiating audits of the 2006 cost reports. Id. at 8. Mr. Rath states that "over-reporting tendencies throughout the nursing facility industry" is a generalization that cannot support a proper basis for a waiver of the three-year limitation. Ibid. Mr. Rath states that the respondent offered no actual evidence to support the conclusion that over-reporting of acuities was pervasive in the first round of audits, and he agrees with the ALJ's finding that the Division offered no standard for how far back in time a facility may be penalized for overpayments. Ibid. Mr. Rath states that:

In essence, the Department argues that “good cause” to waive the three-year requirement is whatever the Department says it is and the Department should not be required to justify its determination of good cause or define any limits to its authority that arises out of such determination. Such an argument makes the three-year time limit meaningless, is the very definition of arbitrary, capricious and unreasonable and cannot prevail.

[ibid.]

Mr. Rath argues that the ALJ was correct in finding that “good cause” was only present where there was a reasonable delay in initiating the audit, and that the examples listed in the regulation, although not exhaustive, each involved a delay caused by a facility or another third party outside of the control of the Division. None of the examples of “good cause” permit a waiver in the case of a delay caused solely by the Division itself. Id. at 11. Mr. Rath states that all of the delays in this case were caused by the Division’s actions, and that the Division cannot support good cause through allegations not related specifically to the petitioners. Id. at 11-12.

Lastly, Mr. Rath argues that the Division did not comply with N.J.A.C. 8:85-4.1 because it did not provide the petitioners with notice of its intention to waive the three-year limitation and the right to a hearing. Id. at 12.

DECISION AND ANALYSIS

The Division may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not related to issues of credibility of lay witnesses, but shall clearly state the reasons for doing so. N.J.A.C. 1:1-18.6(b). A final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at the hearing and

interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification. N.J.A.C. 1:1-18.6(b).

The rule that is the subject of this appeal reads as follows:

(a) Any cost report submitted by a Medicaid participating nursing facility (NF) which is selected for audit on or after February 7, 1983 may be audited within three years of the due date of the cost report or the date it is filed, whichever is later. This requirement shall be satisfied if the on-site audit of the NF is initiated within the three-year period and completed within a reasonable time thereafter. If a NF audit is not initiated within this time limit, the appropriate cost report or cost reports shall be excluded from the audit, subject to the conditions set forth in the balance of this subsection and the waiver provisions set forth in (b) below. Exclusion is subject to the following conditions:

1. Failure to initiate a timely audit shall not preclude the Department from collecting overpayments, interest or other penalties if the overpayments are identified by an agency other than the Department.
2. When a timely audit is conducted and additional overpayments are discovered by another agency, the Department shall not be precluded from collecting such overpayments together with any applicable interest or other penalties.

(b) The Department shall not be precluded from waiving the three-year limitation for good cause, and good cause shall include, but not be limited to, the following circumstances:

1. The overpayments involved in the audit were generated as a result of fraudulent activity by the NF or NF-related party, whether or not that fraudulent activity has been the subject of a criminal investigation and/or prosecution;
2. The NF, its agents or employees have failed to cooperate in the initiation or conduct of the audit;
3. The Department could not have reasonably discovered by audit any evidence of the overpayment within the three-year period;
4. The audit could not be initiated within the three-year period because of delay or cessation of the audit resulting from a request by a law enforcement agency or an administrative agency with jurisdiction over the facility.
 - i. This provision shall not apply if the NF's records are available and no request for delay or cessation of the audit has been made by any of these agencies.

(c) Notice must be given to the NF when the three year requirement is waived together with the reasons for such action. The NF may request a hearing on any waiver by the Department to the extent authorized by applicable statutes, rules and regulations.

[N.J.A.C. 8:85-4.1.]

With respect to the Exceptions filed by the respondents and the reply to the Exceptions filed by the petitioners, I agree with the Respondent's Exception that there was good cause to waive the three-year time limitation for auditing petitioners' cost reports, but I disagree with Respondent's exception that the audits were initiated within the three-year time period, and I agree with the ALJ's conclusions that the audits were not initiated within three years of the filing of the 2006 cost reports.

The record clearly demonstrates that not all of the Division's audits are initiated on-site, including the acuity audits in question in this appeal. The acuity audits are conducted through the review of paper work provided by the nursing facility to the Division's auditor at the auditor's office outside the State. However, the literal requirement of N.J.A.C. 8:85-4.1(a) was not fulfilled because the "on-site audit of the NF" was not "initiated within the three-year period" Respondent suggests that the regulation must be read in a manner that makes sense when read in the context of the regulation as a whole. A regulation should be construed in "a manner that makes sense when read in the context of the entire regulation." Medford Convalescent and Nursing Ctr. v. Div. of Med. Assistance and Health Servs., 218 N.J. Super. 1, 5 (App. Div. 1985) (citations omitted). If audit practice has evolved to the point that acuity audits may be conducted efficiently and economically through the submission and off-site review of paperwork, it may not make sense to hold the Division to the letter of an out-dated

regulation. The Division is instructed to propose amendments in accordance with the Administrative Procedure Act to update this regulation. However, I agree with petitioner's argument that fairness requires a facility be given something more than a notice within the three-year time frame that an audit will be conducted and that they will be contacted by an auditor. At a minimum, I agree with petitioner that compliance with N.J.A.C. 8:85-4.1 requires that a facility be notified in writing within the three-year time frame that the facility is being audited and that the facility shall submit the required documentation for the off-site audit by a specific date. The three-year time frame in this case was not met because the notices requiring submission of the necessary documentation and setting forth an audit schedule were not sent to the petitioners until June 28, 2010, which was over three years after the cost reports were submitted on March 31, 2007.

I agree with the respondent that "good cause" exists to waive the requirement of N.J.A.C. 8:85-4.1 that an audit be initiated within three years of the filing of a cost report. The findings of the State Auditor's report and the first round of acuity audits revealed pervasive over-reporting tendencies throughout the nursing facility industry. These findings implicate the duty of the Division to ensure the provision of quality, cost-prudent health care services available to New Jersey Medicaid Children and adults in a nursing facility, and the duty to monitor the utilization of and payment for nursing facility care under the Medicaid program. See N.J.A.C. 8:85-1.1 and 1.12. I disagree with the ALJ's conclusion that the results of the State Auditor's report and the first round of acuity audits were insufficiently objective and/or did not contain sufficient data to demonstrate the pervasiveness of the over-reporting in the nursing facility industry. The

ALJ noted that there was no data comparing the audit findings of the first round with industry standards in the tri-state area, the northeast region or nationally, and that there was no data comparing the first round of audits with similar audits conducted over a different time period. Neither N.J.A.C. 8:85-4.1 or any other authority cited to in the Initial Decision require this level of empirical evidence to demonstrate “good cause.”

I also disagree with the ALJ’s conclusion that N.J.A.C. 8:85-4.1 allows the Division to show “good cause” only by demonstrating that an action by the petitioners prevented the Division from initiating the audit or other circumstances that prevented the Division from initiating the audit. The circumstances listed in N.J.A.C. 8:85-4.1(b) under which “good cause” may be found include fraud by the nursing facility, lack of cooperation by the nursing facility, reasonable cause for the Division failing to discover the over-payment within the three-year period, and delays caused by requests by law enforcement and administrative agencies. However, the rule also clearly states that “good cause shall include, but not be limited to” the circumstances listed in the rule. Id. As noted by Mr. Kennedy, in an analogous situation the New Jersey Supreme Court has held that “terms like ‘include’ are words of enlargement and not of limitation and that examples specified thereafter are merely illustrative. This is especially so here where the word ‘including is followed by the phrase ‘but not limited to.’” Jackson, supra, 54 N.J. at 127 (internal citations omitted). Therefore, for the purposes of N.J.A.C. 8:85-4.1(b), “good cause” was not intended to be limited to only those circumstances set forth in the rule.

An agency’s interpretation of its own regulation is entitled to be accepted as against a competing view so long as it does not contravene the reasonably intended

scope of the regulation or otherwise result in arbitrary, capricious or unreasonable action. See Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986), aff'd, 107 N.J. 355 (1987). I find that it was not arbitrary, capricious or unreasonable for the Division to rely on the findings of the State Auditor's Report and the first round of acuity audits as "good cause" for extending the three-year time period for auditing the Petitioners' 2006 cost reports.

Petitioners also argue that the Division did not comply with N.J.A.C. 8:85-4.1(c) because it did not provide the petitioners with adequate notice that the three-year time limit was being waived and the reasons for the waiver. The Petitioners argue that the August 23, 2010 letters to the petitioners notifying them of the reasons for the waiver and the right to a hearing do not satisfy the requirements of procedural due process because they were sent nearly five months after the Division claims to have initiated the untimely audits. Although the August 23, 2010 letters were sent after the Division attempted to initiate audits of the petitioners' 2006 cost reports, I find that any procedural defect was cured because the letters notified the petitioners of the waiver of the time limit, the reasons for the waiver, and the petitioners were offered a hearing. Indeed, the petitioners received a hearing to contest the waiver of the time limit before the ALJ below. A deprivation of procedural due process may be cured by the provision of notice and a hearing that comply with due process. See Nicoletta v. North Jersey District Water Supply Commission, 77 N.J. 145, 167-171 (1978).

Based upon a full review of the record, I hereby ADOPT the exception filed by the Respondent that there was good cause to waive the three-year limitation for auditing Petitioners' 2006 cost reports, and reject the findings as noted above and the

conclusions of the Administrative Law Judge that good cause did not exist. However, I note that the cost reports in question were filed over seven years ago and that this appeal has been pending in the Office of Administrative Law since April 2011. For these reasons, I direct the Division to not proceed with the audits of the petitioners' 2006 cost reports.

Parties have the right to appeal this Final Order within 45 days to the New Jersey Superior Court, Appellate Division, Richard J. Hughes Justice Complex, PO Box 006, Trenton, New Jersey 08625-0006.

THEREFORE, it is on this 8th day of September, 2014,

ORDERED:

That the Initial Decision of the Administrative Law Judge is hereby **adopted in part and reversed in part; and respondent's cross-motion for summary decision s granted.**

FURTHER ORDERED:

That any action required by this decision be promptly implemented by appropriate Division staff.

Lowell Arye

Lowell Arye

Deputy Commissioner

September 8, 2014

Date