STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Porter Hills Presbyterian Village, Inc.,
Petitioner,

v

MTT Docket No. 416076

Township of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(2)

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Porter Hills Presbyterian Village, Inc., filed its Petition in the above-captioned case on May 26, 2011. Petitioner is appealing the denial of a charitable exemption for a portion of the subject property (Parcel No. 41-14-36-451-030) under MCL 211.7o for the 2011, 2012, and 2013 tax years.

Petitioner subsequently filed a Motion for Summary Disposition ("Motion") and Brief in Support ("Brief") on June 24, 2013. Attached to Petitioner's Motion and Brief were 16 exhibits, including the Affidavit of Reed VanderSlik, the Chief Operating Officer of Petitioner and Director of Porter Hills Home Health Care West, Inc. ("HHCW") and Porter Hills Home Health Care East, Inc. ("HHCE").

Respondent filed a Response to Petitioner's Motion on July 12, 2013. Attached to Respondent's Response were 12 exhibits.

PETITIONER'S CONTENTIONS

Petitioner contends that the portion of the subject property that it leases to HHCW and HHCE (i.e., the lower level) is entitled to an exemption from ad valorem taxation under MCL 211.7o(3). In support of its contentions, Petitioner states that it is a Michigan non-profit charitable corporation and acquired the subject property, located at 4450 Cascade Road SE, Grand Rapids, Michigan 49546 on August 24, 2003. Petitioner states that it occupies a portion of the subject property, which it uses for its offices, and has been partially exempt from ad valorem taxation with respect to said portion since the 2004 tax year because it is a "Home for the Aged" and "Skilled Nursing Center", as defined in MCL 211.7o(8).

Petitioner contends that it has leased the lower level of the subject property to HHCW and HHCE, both Michigan nonprofit corporations that are wholly owned by Petitioner, pursuant to an oral lease, in exchange for rent, during the tax years at issue.[1] Petitioner states that HHCW and HHCE are exempt from federal

[1] Petitioner clarifies in its Brief:

> [HHCW] and [HHCE] were all operated under the name and entity of [HHCW] thru receipt of the 501(c)(3) approval from the IRS dated October 21, 2012 for [HHCE] and then the Home Health Care functions were retained in [HHCW] and

income tax under §501(c)(3) of the Internal Revenue Code ("IRC"). Petitioner contends that HHCW and HHCE use the subject property for administrative offices (i.e., to schedule appointments, pay bills, process reimbursement requests, etc.). Petitioner states that HHCW and HHCE "do not pay any of [their] officers, directors, employees or any persons or entities contacting them any more than reasonable compensation for services rendered[,] . . . charge more than what is needed to cover the entire cost of the delivery of the services[,] . . . [and provide services] to the public 24 hours a day 365 days a year." Petitioner's Brief, p 4. Petitioner states that all of HHCW's and HHCE's services are provided by their employees at the client's home, and "[s]ervices of [HHCW] are usually covered to some extent by insurance, private or Medicare, and the services of [HHCE] are generally not covered by insurance and are private pay." *Id.* Petitioner contends that HHCW and HHCE "accept those persons referred to them and provide the Home Health services and Private Duty nurse services to those clients on a non[-]discriminatory basis as to race, religion, creed, national heritage or the ability to pay." Petitioner's Brief, p 5. Petitioner states that "[i]f the client does not have insurance or is not financially able to pay, those services are provided to the referred client on a pro bono basis at no cost and the client[']s word is taken as

---

the Private Duty Nurse functions and the sunshine transportation were operated thru [HHCE]. Petitioner's Brief, p 3.

truth when the client says that they cannot pay and they are provided the services at no cost." *Id.*

In that regard, Petitioner contends that HHCW and HHCE engage in the following "direct and indirect charitable activity":

A. In home Flu shots for persons that can't come to the provider that is not reimbursed or paid for at an annual cost of between $539 and $1,925 over the last 3 years.

B. Provides Telehealth Monitoring for certain home health patients so their vital signs may be transmitted to the [HHCW] more often than the scheduled visits. This cost is not covered by any insurance and is provided to the client at no cost. The additional annual cost provided to clients is between $100,697 and $146,928 over the last 3 years.

C. Provides free monitoring program for persons likely to be susceptible to falling that is not reimbursed or paid for at an annual cost of between $5,440 and $7,500 over the last 3 years.

D. Provide Pro bono services for persons who say they cannot pay and don't have insurance that is not reimbursed or paid for at an annual cost of between $1,205 and $3,770 over the last 3 years. This covers between 5 and 8 persons each year over the last 3 years.

E. Provide personal care waivers for private duty services of low income persons administered thru the Michigan Area Agency on Aging that is not reimbursed or paid for at an annual reduction in revenue from the State of Michigan for the services over normal charges of between $57,771 and $80,426 over the last 3 years. This covers between 67 and 90 persons each year over the last 3 years. [HHCW] now [HHCE] knew at the time it agreed to take these low income persons as clients that they would be losing money on this care but felt it was important as part of their Mission to provide Home Health services to the public and not just those person[s] with insurance or the means to pay themselves.

F. Provided the Heron Manor project for affordable assisted living residents totaling a maximum of 57 residents for services. They provided necessary staff at a greater cost than was reimbursed to the tune of $100,000 in year ending June 30, 2010, $85,000 for year ending June 30, 2011 and $591 for year ending June 30, 2012.

G. Provided social work assistance answering questions on insurance and resources for aging medical topics that is not reimbursed or paid for at an annual cost of between $500 and $886 over the last 3 years. Petitioner's Brief, pp 6-7.

Petitioner contends that HHCW and HHCE provided charitable services, in total, in the amount of $312,639 for the tax year ending June 30, 2011, $217,040 for the tax year ending June 30, 2012, and $170,189 through May 31, 2013. See Petitioner's Brief, p 18.

With regard to profits and losses, Petitioner contends:

> Any losses are covered directly or indirectly by the operations and assets of Porter Hills thru direct funding or thru line of credit loans guaranteed by Porter Hills that otherwise would not be obtainable by [HHCW] and [HHCE]. Any profits made are either repaid to cover loans for previous losses, cover the losses of the other . . . 2 entities, [HHCW] and [HHCE], held in reserve for future reimbursement cuts for services, used to expand the charitable nature of the home health services of [HHCW] and [HHCE] or repaid to Porter Hills to cover any previously provided funds. Petitioner's Brief, pp 7-8.

With that, Petitioner contends that, since it owns the subject property, if it occupied the entire property, it would be entitled to a 100% exemption under MCL 211.7o(1). However, since HHCW and HHCE occupy a portion of the subject property and since HHCW and HHCE are nonprofit charitable institutions,

Petitioner contends that the lower level also qualifies for exemption pursuant to MCL 211.7o(3).

Petitioner relies on *Christian Reformed Church in North America v Grand Rapids*, MTT Docket No. 26982 (December 14, 1979), affirmed by the Court of Appeals, see 104 Mich App 10; 303 NW2d 913 (1981), and *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), to further support its contentions.

RESPONDENT'S CONTENTIONS

Respondent contends that the lower level of the subject property is not entitled to a charitable exemption and therefore requests summary disposition in its favor under MCR 2.116(I)(2). To support its contentions, Respondent states that *Wexford Medical Group*, *supra*, "does not create a bright-line rule that each and every nonprofit health care provider that absorbs the cost of some care to indigent patients and accepts Medicare is exempt from real property taxation as a charitable institution." Respondent's Response, p 1. Rather, Respondent suggests that the Tribunal must determine whether "the health care institution[s] at issue [are] charitable in [their] essence, or [are] the health care institution[s] at issue simply . . . nonprofit[s] that perform[] charitable work incidental to [their] purpose," which Respondent contends is "the latter" in this case. *Id*.

In that regard, Respondent contends that HHCW's and HHCE's primary purpose is to provide skilled nursing and home health care services, which Respondent contends is "a niche in the health care market because it is a less expensive alternative to a nursing home." Respondent's Response, pp 2-3. Because of this, Respondent contends that "most of the care provided by [HHCW and HHCE] is covered 100% by Medicare or insurance, such that [the] home health services are not charitable." Respondent's Response, p 3. [Emphasis removed.] Respondent further states that "Petitioner does not contend, and has not provided proof that [HHCW and HHCE] pay their employees less or offer their services for less than other home health care providers in the market," and their "financial statements verify that they are not functioning as charities." Respondent's Response, pp 3-4. Respondent argues that although HHCW and HHCE "operated at a $421,919.00 loss on paper, $656,997.00 of expenses are attributable to 'start[-]up costs,' not charity[, which] . . . are no different than the typical start-up costs associated with any for[-]profit business." Respondent's Response, p 4. With that, Respondent contends that if you subtracted the start-up costs, HHCW and HHCE "operated at a profit for the 2010 fiscal year." *Id*. Respondent makes a similar argument with respect to the next tax year, arguing that any losses "appear[] attributable to the rising cost of services, employee benefits, and management, not to charitable purposes, and are the same types of expenses faced by for[-]profit

health care institutions." *Id*. With respect to the tax year ending June 30, 2012, Respondent contends that "the loss only occurred on paper because it transferred $353,366.00 to an affiliate, which is no different than a for[-]profit business that transfers revenue to its affiliate, and such a transfer does not fulfill charitable purposes." Respondent's Response, p 5. And with respect to the tax year ending May 31, 2013, Respondent contends that the income statement for HHCW shows "a one year net income increase of $757,857.00." *Id*.

While Respondent commends HHCW and HHCE for their "laudable charitable services," Respondent nevertheless contends that such services are "minimal." Respondent's Response, p 6. For example, Respondent states that while HHCW and HHCE "provided limited free home care to seven indigent persons [ ] during fiscal year 2011 . . . and to five indigent persons in fiscal year 2012[,] . . . [t]his . . . was . . . because these persons were not covered by insurance and were too young for Medicare." *Id*. Further, Respondent argues that although HHCW and HHCE "did not additionally charge 77 of their clients to drive to their homes and administer flu shots in 2012[,] . . . the flu shots themselves are covered by insurance." *Id*. Respondent acknowledges that HHCW provides monitoring equipment "at no additional charge" for "a very limited and discrete number of clients," that HHCE "charges less than its normal rate for nurses and does not charge transportation costs for persons who qualify for a program administered

through the State of Michigan Area Agency on Aging," and that HHCE "also temporarily provided nurses below cost to assist in helping a State of Michigan pilot program get 'off and running," but claims that "[t]he fees charged for the nurses apparently substantially increased each year during the temporary assistance period . . . , and there is no evidence that the State pays discounted rates now that the program is 'off and running.'" Respondent's Response, pp 6-7.

Respondent further contends that the fact that HHCW and HHCE are classified as 501(c)(3) nonprofit corporations "is not dispositive . . . ;" HHCW's and HHCE's Articles of Incorporation "do not state that they are organized chiefly for a charitable purpose;" "the fact that [HHCW and HHCE] provide limited equipment at no additional charge . . . ensures that [HHCW] and [HHCE do] not lose clients, and provides a business advantage to other home care providers who do not offer such equipment," relying on *Healthlink Medical Transportation Services, Inc v City of Taylor*, 15 MTTR 129 (Docket No. 275821, July 1, 2003); other charitable services provided by HHCW and HHCE were "temporary, *de minimis*, or not even charitable;" "offering a discount on a normal rate does not equate to charity;" "the temporary nature of the nurse lending does not contribute to meeting the requirement that [HHCW and HHCE] constitute charities;" and HHCW's and HHCE's activities, "taken as a whole, do not constitute a charitable gift." Respondent's Response, pp 11-15 [Emphasis included.] In summary,

Respondent contends that "the presented evidence shows that [HHCW and HHCE] are indistinguishable from a for[-]profit home health care facility with minimal write-offs for bad debt that Petitioner instead characterizes as losses attributable to their 'charitable' nature." Respondent's Response, p 16.

With that, Respondent contends that Petitioner has failed to meet its burden that HHCW and HHCE are nonprofit charitable institutions, as Respondent argues that HHCW and HHCE have failed to meet several factors in *Wexford Medical Group*, *supra*, and therefore, maintains that the lower level of the subject property is not entitled to a charitable exemption from ad valorem taxation under MCL 211.7o(3).

APPLICABLE LAW

Petitioner failed to specify the grounds on which its Motion for Summary Disposition is based, in contravention to MCR 2.116(C). Nevertheless, the Tribunal will postulate, based on the arguments presented in Petitioner's Motion and Brief, in conjunction with Respondent's Response, that Petitioner is seeking summary disposition pursuant to MCR 2.116(C)(10) and will therefore analyze the Motion as such.

In *Occidental Dev LLC v Van Buren Twp*, Docket No. 292745 (March 4, 2004), p 9, the Tribunal stated "[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues

regarding which the moving party asserts there is no genuine issue of material fact." Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. See *Arbelius v Poletti,* 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the nonmoving party under MCR 2.116(C)(10). See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. See

McCart v J Walter Thompson USA, Inc, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

A petitioner must establish its entitlement to exemption by a preponderance of the evidence, see *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002), and "tax-exemption statutes are strictly construed in favor of the taxing unit." *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003).

MCL 211.7o(3) states:

> Real or personal property owned by a nonprofit charitable institution . . . that is leased, loaned, or otherwise made available to another nonprofit charitable institution . . . that is occupied by that nonprofit charitable institution . . . solely for the purposes for which that nonprofit charitable institution . . . was organized or established and that would be exempt from taxes collected under this act if the real or personal property were occupied by the lessor nonprofit charitable institution . . . solely for the purposes for which the lessor charitable nonprofit institution was organized . . . is exempt from the collection of taxes under this act.

As stated by the Court of Appeals in *McLaren Regional Medical Ctr v Owosso*, 275 Mich App 401, 409-410; 738 NW2d 777 (2007):

> The plain language of MCL 211.7o(3) conditions exemption on ownership of the property by a "charitable institution" and occupancy

> of the property by another "charitable institution" "solely for the purposes for which that nonprofit charitable institution [. . .] was organized or established." And, echoing § 7 *o*(1), § 7 *o*(3) also imposes the condition that the property would be exempt if occupied by its owner "solely for the purposes for which the lessor charitable nonprofit institution . . . was organized." Consequently, the exemption in MCL 211.7o(3) does not apply unless (1) . . . the owner of [the subject property] meets the definition of a " nonprofit charitable institution"; (2) . . . the occupant, also meets that definition; (3) [the occupant's] occupancy of the property was solely for the purposes for which it was organized or established, and (4) the property would be exempt if [the owner of the subject property] occupied it itself solely for the purposes for which [the owner] was organized or established.

Thus, pursuant to MCL 211.7o(3), the Tribunal's must first determine whether Petitioner, HHCW, and HHCE are charitable institutions.[2]

In determining whether an institution is a "charitable institution" for purposes of MCL 211.7o, since the same is not defined within that section or within the General Property Tax Act ("GPTA"), 1893 PA 206, the Michigan Supreme Court, in *Wexford Medical Group, supra* at 215, looked to the following factors as guidance:

> (1) A "charitable institution" must be a nonprofit institution.
>
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
>
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to

[2] Although Respondent states that it "does not dispute Petitioner's claim that it is a charitable institution, and the portion of the subject property occupied by Petitioner is, therefore, not at issue," the Tribunal will still analyze whether Petitioner is a charitable institution, as required my MCL 211.7o(3). Respondent's Response, p 9.

> serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
>
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
>
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
>
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Petitioner contends that HHCW and HHCE meet the definition of a charitable institution. Respondent contends that HHCW and HHCE do not meet the second and sixth factors in *Wexford Medical Group*, *supra*, and also calls into question HHCW's and HHCE's ability to satisfy the fifth factor.

As evidenced by Exhibits E, F, and H, attached to Petitioner's Motion and Brief, Petitioner, HHCW, and HHCE, were incorporated as Michigan nonprofit corporations under the Michigan General Corporation Act, 1931 Act 327, or the Nonprofit Corporation Act, 1982 PA 162.[3] As such, the Tribunal finds that all three

[3] The Nonprofit Corporation Act was not in effect until January 1, 1983. As such, any nonprofit corporation formed prior to this Act was formed under the Michigan General Corporation Act, which became effective on September 18, 1931.

entities are nonprofit institutions and therefore satisfy the first factor in *Wexford Medical Group*.

The next factor states that "[a] 'charitable institution' is one that is organized chiefly, if not solely, for charity." *Wexford Medical Group, supra*.

In *Retirement Homes v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), the Michigan Supreme Court established the following definition of "charity":

> "[C]harity * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." [Emphasis removed.]

To determine whether an organization is charitable, Petitioner must prove by a preponderance of the evidence that it is a "charitable institution." In this regard, the Michigan Supreme Court has concluded that an institution's activities as a whole must be examined. See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985).

According to Petitioner's Articles of Incorporation, Petitioner's purpose is to "operate a home or homes for older people and to carry on any other type of Christian or philanthropic activity not inconsistent with the organization and operation of a home for older people as aforesaid." (P-E, p 1) In addition to this

specific purpose, Petitioner's Articles also include the standard language required by the Internal Revenue Service ("IRS") in order to qualify for a tax exemption as a charitable organization under Section 501(c)(3) of the IRC. However, Petitioner's "exemption from Michigan ad valorem tax is not determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act . . . ." *American Concrete Institute v Michigan State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968). Although operating a home for older people could or could not be charitable in nature, as defined in *Retirement Homes, supra*, the Tribunal finds that this purpose, coupled with Petitioner's purpose "to carry on any other type of Christian or philanthropic activity not inconsistent with the organization and operation of a home for older people as aforesaid," in conjunction with the purpose to operate "exclusively for religious, charitable or educational purposes . . . ," satisfies the requirement that Petitioner is organized chiefly, if not solely, for charity. (P-E, p 1)

As stated by HHCW's and HHCE's Articles of Incorporation, both entities were formed "[t]o provide intermittent or part time skilled nursing and other home health services . . . ." (P-F, p 1; P-H, p 1) Both Articles also include standard language in order for HHCW and HHCE to qualify for a tax exemption under Section 501(c)(3) of the IRC, but as stated above, such classification is immaterial

as to whether an entity qualifies for exemption from ad valorem taxation in Michigan under the GPTA.

Although the Court of Appeals has stated that "gifts of medical services . . . meet the definition of 'charity' . . . ," *McLaren Regional Medical Ctr, supra* at 411, and although HHCW and HHCE were formed to provide medical services (i.e., part-time skilled nursing and home health services), the Tribunal must determine whether these entities satisfy the gift element.

While Petitioner's Articles state that Petitioner was formed "exclusively for religious, charitable or educational purposes . . . ," HHCW's and HHCE's Articles do not include similar language. Rather, HHCW's and HHCE's Articles, in addition to their specific purpose, merely provide that each entity will only engage in any activities that are in compliance with and not forbidden by Section 501(c)(3) of the IRC.[4]

As stated by the Michigan Supreme Court, a central question to examine is "whether an institution could be considered a 'charitable' one, rather than whether the institution offers charity or performs charitable work. So it is the overall nature of the institution, as opposed to its specific activities, that should be evaluated." *Wexford Medical Group, supra* at 212-213. In that regard, although HHCW and

[4] The Tribunal notes that HHCW's and HHCE's Bylaws also do not show that either entity is formed for charitable purposes (i.e., to provide a gift), as both entities' Bylaws state that "[t]he purposes and objectives of the Corporation are stated in the Articles of Incorporation." (P-G, p 1; P-I, p 1)

HHCE offer charity for certain services that are not covered by insurance or are unpaid by indigent patients, the overall nature of HHCW and HHCE is not charitable in nature, as evidenced by the lack of such language in their respective Articles of Incorporation. Furthermore, "'[a] corporation does not qualify for a tax exemption merely because it is structured to be nonprofit and in fact makes no profit' . . . ." *Wexford Medical Group, supra* at 210. As such, although Petitioner references HHCW's and HHCE's losses during the tax years at issue to support its contentions that those entities are charitable institutions, the Tribunal is not likewise convinced that the same supports such a finding.

As a result, although the Tribunal finds that Petitioner is organized chiefly, if not solely, for charity, the Tribunal does not make the same finding with respect to HHCW and HHCE.

At this juncture, although the Tribunal has found that HHCW and HHCE are not charitable institutions, as they have failed to satisfy the second factor in *Wexford Medical Group, supra*, and therefore the second element in MCL 211.7o(3), the Tribunal will still analyze the remaining factors under *Wexford Medical Group* with respect to Petitioner, HHCW, and HHCE.

The third factor states that a charitable institution cannot discriminate "who, among the group it purports to serve, deserves the services." *Wexford Medical Group, supra*.

Although Petitioner contends that it would satisfy the requirements in MCL 211.7o(1) if it occupied the entire subject property, but also contends that it, HHCW, and HHCE satisfy the requirements set forth under MCL 211.7o(3) to also warrant a charitable exemption for the lower level of the subject property, Petitioner has failed to provide any evidence that it does not offer its charity on a discriminatory basis. More specifically, although Respondent has indicated that it does not dispute the charitable exemption that the subject property has with respect to the portion that is occupied by Petitioner, and although Petitioner provided evidence with regard to each *Wexford Medical Group* factor relative to HHCW and HHCE, the Tribunal finds that the record is devoid of any evidence with regard to whether Petitioner, itself, discriminates or not, and as stated above, it is Petitioner's burden to prove, by a preponderance of the evidence, that it is entitled to an exemption. As a result, the Tribunal finds that Petitioner has failed to satisfy this nondiscrimination element.

Petitioner contends that HHCW and HHCE "accept those persons referred to them and provide the Home Health services and Private Duty nurse services to those clients on a non[-]discriminatory basis as to race, religion, creed, national heritage or the ability to pay," Petitioner's Brief, p 5. Petitioner's contention is substantiated by the Affidavit of Mr. VanderSlik, and Respondent has not indicated that it has any dispute with respect to this contention or provided any proof to show

otherwise. As such, the Tribunal finds that Petitioner has satisfied that HHCW and HHCE meet this nondiscrimination element.

With regard to the fourth factor in *Wexford Medical Group, supra*, Petitioner was incorporated to "operate a home or homes for older people and to carry on any other type of Christian or philanthropic activity not inconsistent with the organization and operation of a home for older people as aforesaid" (P-E, p 1), and Respondent raises no issue with respect to Petitioner and this factor. As a result, the Tribunal finds that Petitioner's purpose assists people to establish themselves for life, therefore satisfying the fourth *Wexford Medical Group* factor.

Both HHCW and HHCE were incorporated to provide medical services (i.e., part-time skilled nursing and home health services), which relieve people's bodies from disease, suffering, or constraint, and Respondent does not dispute this fact. As such, the Tribunal finds that HHCW and HHCE have satisfied this factor.

The fifth factor in *Wexford Medical Group, supra* at 215, states that "[a] 'charitable institution' can charge for its services as long as the charges are not more than what is needed for its successful maintenance."

Petitioner provided no evidence with respect to its own charges. As such, the Tribunal finds that Petitioner has failed to prove that it meets this factor.

With regard to HHCW and HHCE, Petitioner contends that HHCW and HHCE "do not charge more than is required to cover the entire cost of their

services." Petitioner's Brief, p 14. Petitioner supplements this contention with the Affidavit of Mr. VanderSlik and income statements for Porter Hills Home Care for the tax years at issue. See P-K, P-L, P-M, and P-N. Petitioner further contends that both entities have been "operating at a[n] annual loss which is covered by their parent organization Porter Hills." Petitioner's Brief, p 14.

Respondent, on the other hand, contends that HHCW and HHCE have actually generated a profit during the tax years at issue and the purported losses are merely losses on paper. In that regard, Respondent contends that "[t]here is no indication that [HHCW and HHCE] charge[] less than other home care providers in the marketplace or that [their] losses are actually due to charitable activities," and "the presented evidence shows that [HHCW and HHCE] are indistinguishable from a for[-]profit home health care facility with minimal write-offs for bad debt that Petitioner instead characterizes as losses attributable to their 'charitable' nature." Respondent's Response, pp 15, 16.

Although there is disagreement between the parties as to whether HHCW and HHCE operated at a loss for the tax years at issue, even if HHCW and HHCE did recognize a profit, Mr. VanderSlik stated, in his Affidavit, that any profits are used to repay loans to cover previous losses, cover current losses for HHCW and HHCE, held in reserve for future reimbursement, or used to expand the charitable

nature of HHCW and HHCE. Further, HHCW's and HHCE's Articles of Incorporation state:

> No part of the net earnings of the organization shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except that the organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. (P- F, p 3; P-H, p 3)

The Tribunal therefore finds that, based on the above statement in HHCW's and HHCE's Articles of Incorporation, coupled with Mr. VanderSlik's statements in his Affidavit and Petitioner's Exhibits K, L, M, and N, Petitioner has satisfactorily shown that HHCW and HHCE do not charge more than what is needed for their successful maintenance.

The last factor in *Wexford Medical Group, supra* at 215, states that "[a] 'charitable institution' need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a 'charitable institution' regardless of how much money it devotes to charitable activities in a particular year." As discussed above, relative to the second factor in Wexford Medical Group, the Tribunal finds that the *overall* nature of HHCW and HHCE is not charitable, even though the Tribunal extols the charitable work that these entities offer or perform. As such, the Tribunal finds that HHCW and HHCE do not satisfy this factor.

In that regard, because the Tribunal finds that Petitioner, HHCW, and HHCE have failed to satisfy all six *Wexford Medical Group* factors to show that the same are charitable institutions, the Tribunal finds it unnecessary to analyze the third and fourth elements under MCL 211.7o(3), as delineated by the Court of Appeals in *McLaren Regional Medical Ctr, supra* at 409-410.

As such, the Tribunal finds that denying Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) and granting summary disposition in favor of Respondent under MCR 2.116(I)(2) is appropriate. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that summary disposition in favor of Respondent under MCR 2.116(I)(2) is GRANTED.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

By: Victoria L. Enyart

Entered: August 06, 2013