

PT 17-02  
Tax Type: Property Tax  
Tax Issue: Charitable Ownership/Use

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**MIDWEST PALLIATIVE AND  
HOSPICE CARE CENTER**

**APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Docket No: 14-PT-036  
Real Estate Tax Exemption**

**For 2013 Tax Year**

**P.I.N. 04-22-405-009-0000  
Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Michael J. Wynne and Ms. Jennifer Waryjas, Reed Smith, LLP, on behalf of Midwest Palliative and Hospice Care Center; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether property, identified by Cook County Parcel Index Number 04-22-405-009-0000, known as the Marshak Family Hospice Pavilion, should be exempt from 2013 real estate taxes under section 15-65 of the Property Tax Code which exempts property actually and exclusively used for “charitable purposes” and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65. Cook County P.I.N. 04-22-405-009-0000 contains two buildings: the “Care Center” and the Marshak Family Hospice Pavilion (hereinafter the “Pavilion”). The Department of Revenue (hereinafter the “Department”) previously agreed, in a “Settlement Agreement” dated June 26, 2014, that 91.9% of the Care Center and 91.9% of the parking area surrounding the Care Center were exempt and, accordingly,

exemption of the Care Center is not at issue in this proceeding. Dept. Ex. No. 3. The Care Center and the Pavilion are owned by the same entity (Midwest Palliative and Hospice Care Center, hereinafter “Midwest”) and Midwest and the Department stipulated that the “Pavilion and the underlying land are owned by a charitable organization.” Tr. pp. 12-14; Stipulation for Facility Exemption, No. 1. Accordingly, ownership of the Pavilion by a charitable organization, as required by 35 ILCS 200/15-65, is also not at issue in this proceeding. The only issue is whether the Pavilion was used for charitable purposes in 2013 as required by 35 ILCS 200/15-65.<sup>1</sup>

A formal administrative hearing was held in this matter on September 13, 2016 with the following testifying for Midwest: Mr. Michael Murray, South Regional Director for Journey Care; Ms. Anne Rossiter, Senior Director of Philanthropy at Midwest; Dr. Alan Smookler, Senior Medical Director at Midwest; and Ms. Malin Maleegrai, inpatient hospice social worker at Midwest. Following a careful review of the testimony and evidence, and Midwest’s Post Hearing Brief, the Department’s Response to Midwest’s Post Hearing Brief and Midwest’s Reply to the Department’s Response, it is recommended that the Department’s determination denying the exemption for the Marshak Pavilion for the 2013 assessment year be affirmed.

---

<sup>1</sup> Midwest argues in its “Post Hearing Brief” that the Marshak Pavilion must be considered in exempt use because it fulfills the charitable purposes carried out by the Care Center (which is 91.9% exempt) on the same parcel and is “reasonably necessary” for the Care Center’s mission. A comparable argument was advanced in Northwestern Memorial Hospital v. Johnson, 141 Ill. App. 3d 309 (1<sup>st</sup> Dist. 1986) where the Appellate Court found that a parking lot constructed in a densely populated area for use by hospital employees was “reasonably necessary” for the efficient administration of the hospital (which was already exempt). As the Department correctly points out in its “Response to Applicant’s Post Hearing Brief,” there is no Illinois case where a court allowed a facility such as Midwest, providing services to fee-paying patients on an in-patient basis, to piggyback on an exemption granted to another property by using the “reasonably necessary” test. Furthermore, I was not aware that Midwest was arguing that the Marshak Pavilion was reasonably necessary to fulfill the Care Center’s mission until I read their Post Hearing Brief. There was little evidence at the hearing as to what activities occur in the Care Center and there was even less evidence offered as to how the activities in the Marshak Pavilion are reasonably necessary to fulfill the Care Center’s mission. I was not a party to the Department’s “Settlement Agreement” which exempted 91.9% of the Care Center and, accordingly, I am not familiar with the activities that occur in the Care Center. Midwest’s argument on this issue in its Post Hearing Brief, without full development at an evidentiary hearing, is insufficient for me to determine that the Marshak Pavilion should be exempt from property taxes in 2013 for being reasonably necessary to the Care Center’s mission.

## **FINDINGS OF FACT:<sup>2</sup>**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the Pavilion was not in exempt use in tax year 2013. Tr. pp. 22-23; Dept. Ex. No. 1.
2. Midwest is located at 2050 Claire Court in Glenview, Illinois. Midwest is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. Midwest was incorporated under the Illinois "General Not for Profit Corporation Act" as "Hospice of the North Shore" in August, 1978. Midwest is exempt from Illinois Retailers' Occupation Tax as of February 4, 2011. App. Ex. Nos. 3, 5, 11 and 12.
3. Midwest has a "service area" for patients that extends from the Wisconsin border to the "lower part of the city." Tr. pp. 71-73.
4. The Marshak Pavilion opened in August of 2012. The first floor of the Pavilion has a sitting/reception area, a "spiritual center," also known as a chapel or meditation room which is open to the public, a flower room and two meeting rooms known as the "Garden View Family Counseling Center" and "Garden View Education Center." The second floor has a laundry, bathroom, vending machines, a sitting area, an unfinished space and a kitchen where meals are prepared. The third floor of the Pavilion has 16 private rooms for hospice patients, where their families may visit. Ambulatory hospice patients may also visit with their families in other areas on the third floor. The third floor also has a reception area, a family area with a fireplace, an area for children, a dining room for families, a family conference room, public bathrooms and showers, a patient's spa, nurse's station and a conference space for the staff. If families

---

<sup>2</sup> Midwest submitted "Suggested Findings of Fact" with its Post Hearing Brief. I did not request suggested findings of fact from either Midwest or the Department and I have not considered Midwest's suggested findings of fact in writing this Recommendation.

are visiting from out of town, they can sleep in the patient's room. Tr. pp. 68-69, 71, 74-80, 91, 93, 159; App. Ex. No. 10.

5. The property also has a "healing garden," used by ambulatory patients and families which may help them attain a sense of peace and tranquility. The garden has a path that leads to a platform over the Chicago River. The garden has three public entrances so that surrounding communities can access the space. Tr. pp. 94-96; App. Ex. No. 17.
6. Midwest's Bylaws state that its purposes are to provide hospice care palliative services for the benefit of hospice patients and their families, with the goal of caring for the patient and family as a unit, to create and foster a climate of openness and communication with respect to death and dying and to advance the concept of hospice care for dying persons and their families, to provide bereavement support services for the benefit of persons who are in grief, to provide home care palliative services for the purpose of making available optimal symptom control to patients having life-threatening illness or an advancing state of chronic debilitating condition. There is no provision in Midwest's Bylaws for a waiver or reduction of any fees for services based on an individual's ability to pay. App. Ex. No. 6.
7. Palliative care may begin earlier than hospice care. Palliative care considers the goals of the patient and what matters to them as their disease progresses. Palliative care also includes symptom management and control. Patients in palliative care may still be seeking aggressive treatment such as chemotherapy. Palliative care reduces the severity of a disease or slows its progress. Palliative care is offered to persons of all ages, and their diagnosis need not be terminal. Hospice care starts when a person has a prognosis of living six months or less according to Medicare regulatory guidelines. Patients may receive palliative care and hospice care either at home or in the Pavilion. Tr. pp. 31-34, 64-67; App. Ex. No. 24.

8. When patients and/or their families inquire about Midwest's services, they may be given a "Patient and Family Hospice Manual," (the "Manual") with chapters, *inter alia*, on the care program, care resources, paying for care and ways to contribute to Midwest. According to the Manual, there are three levels of hospice care. Care may be "routine," with services provided at the patient's home or in a long-term care facility. Care may be "respite," which is short term inpatient care to relieve the family/primary caregiver. Care may be for "crisis management," also known as "continuous home care," where nursing care is given at home until a crisis has passed. Patients may fluctuate between different levels of care. The fourth level of care is general inpatient hospice care in which there is 24 hour medical care supervised by a nurse. The patient's care team, consisting of the patient and family, nurse, physician, social worker and chaplain would make the determination to admit a patient to the Pavilion for this level of care. Tr. pp. 37-40, 41-46, 144-145; Applicant's Ex. No. 3.
9. The Manual states that when symptoms cannot safely and effectively be controlled in a setting other than a hospital, [Midwest] can offer the option of 24 hour inpatient hospice care in the Pavilion. "You will receive specialized, hospital-level care in a safe, homelike environment." "All rooms are private, and most are equipped with daybeds for family members who want to stay overnight. There are no limitations on visiting hours, and children as well as pets are invited to visit. Patients and their families can utilize the lounge, kitchen, library and chapel. [Our Pavilion is] staffed around-the-clock by our own trained hospice nurses as well as other hospice professionals and volunteers." Tr. pp. 50-52; Applicant's Ex. No. 3.
10. Midwest's corporate policy on "Admission Criteria: Hospice" contains the following guidelines for admission to the Hospice Care Program: Services will be provided within the service areas of Midwest. The patient/family unit has expressed a desire and need for

Midwest's services and is prepared to sign the necessary forms. The patient has a terminal illness as certified by an attending physician. The patient/family agrees to abide by Midwest's care plan. App. Ex. No. 20.

11. Patients may be referred to Midwest by their physicians or by word-of-mouth. When Midwest takes referral information, they ask questions about the patient's ability to pay for their services. Referred patients may "fill out a form so that we can make sure that we're not just providing services for people who really do have the ability to pay and just don't want to pay." Tr. pp. 33-34, 46.

12. The chapter in the Manual on paying for care advises that Medicare, Medicaid and many private insurers have a hospice benefit that covers the services of hospice staff, medications, supplies and equipment. "If your insurance company does not completely cover your care, we will work with you to develop a payment plan or find appropriate ways to obtain reimbursement for necessary services, prescriptions or equipment." "If you do not have insurance or the ability to pay for services, [Midwest] will waive or reduce fees. We want to ensure access to services for anyone who needs hospice care." All patients at Midwest receive the same level of care regardless of the source of payment. Midwest's care for patients is not affected by how the patient pays for the services. Tr. pp. 47-48, 50, 55, 58-60, 125; Applicant's Ex. Nos. 3 and 20.

13. Midwest asks patients to fill out an "Application for Financial Assistance" if they do not have a funding source for their care or if they are underfunded. The Application requests information on assets, income, special needs and special circumstances. Tr. pp. 61-63; Applicant's Ex. No. 4.

14. The corporate policy on “Admission Criteria: Hospice” states as follows: The Hospice Care Program services are not to be refused to anyone because of race, color, national ancestry, religion, age, handicapping condition, gender, gender identity, sexual orientation, lack of advanced directives, source of payment, or other characteristics protected by law. “Patients meeting the admission criteria will be admitted to the Hospice Care Program without regard to their ability to pay or the availability of adequate governmental or other third party reimbursement.” App. Ex. No. 20.
15. Midwest offers a bereavement program for families. A social worker may make a referral for bereavement, with some people being referred within five days of death of their loved ones and some people being referred three to four weeks later. Bereavement begins with a one-on-one meeting with the bereavement counselor. There are support groups for spousal loss, parents who have lost children, children who have lost parents and for “general loss.” “Camp Care” provides grieving children and teens with a supportive camp experience that teaches long-lasting coping skills. Some counseling may be covered by the Medicare hospice benefit. Bereavement counseling may take place in the Care Center or in rooms in the first floor of the Pavilion. Midwest’s “Corporate Policy” on bereavement states that Midwest “is committed to supporting these programs as much as possible by securing funds from charitable donations.” Tr. pp. 156-157; App. Ex. No. 20.
16. Midwest’s “Consolidated Statement of Operations” as of December 31, 2013, shows “Total Operating Revenue” of \$32.7 million, of which \$30.6 million (94%) is from “Net Patient Service Revenue” and \$1.4 million (.4%) is from “Contributions” and “Special Events” (netted against “Special Events” expenses). In 2013, Midwest had a “Change in Unrestricted Net Assets from Operations” of \$859,228. App. Ex. No. 13.

17. Revenue from Medicare and Medicaid programs accounted for approximately 88% of Midwest's "Net Patient Service Revenue." App. Ex. No. 13.
18. The Notes to Midwest's Audited Financial Statements for December 31, 2013 state that Midwest provides care to patients who meet the admission criteria without regard to their ability to pay or the availability of adequate governmental or other third-party reimbursement. Because Midwest does not pursue collection of amounts determined to qualify as charity care, it is not reported as revenue. The cost of charity care provided was \$157,000 for year-end December 31, 2013. This cost estimate was based upon the organization-wide cost to charge ratio. Midwest had received restricted donations for charity care of \$66,520 in 2013. "In addition to charity care, [Midwest] provides care for which it is not fully compensated and provides services that are non-reimbursable. These areas include subsidized health services, community grief support for adults and children, music therapy, community and professional education and services that are sensitive to specific cultural and faith traditions." App. Ex. Nos. 3 and 13.
19. Midwest's "2013 Community Benefit Report" states that Midwest provided financial assistance to a total of 52 patients in 2013: 37 hospice patients and 15 palliative care patients. App. Ex. Nos. 3 and 17.
20. Midwest budgets an allowance for charitable and subsidized care each year. "However, the budget is not a limitation on the discretion of [Midwest] to grant or deny charitable care." There was no testimony or documentary evidence as to the budgeted amount for charity care in 2013. App. Ex. No. 20.

21. Four letters addressed to patients, all dated in the year 2013, show that three patients had care center fees “waived based on the financial information you have provided” and one patient was “approved at a 93% discount rate for all open invoices to you.” App. Ex. No. 22.
22. Midwest’s “2013 Community Benefit Report” states that Midwest uses “music therapy” which help patients relax, express their feelings and recall significant experiences from their life. Midwest also uses “music thanatology” in which thanatologists use harp and voice to address physical, emotional and spiritual suffering at the end of life. Thanatologists vary the tempo and tone of the music to respond to changes occurring in a patient in the final hours of life. App. Ex. No. 17.
23. Midwest’s “2013 Community Benefit Report” states that Midwest’s “Fellowship Program,” in collaboration with Northwestern Memorial Hospital, has trained 3 fellows in the 2012-2013 academic year and 2 fellows in the 2013-2014 academic year. Midwest has served as a “rotation site” where the fellows are trained in hospice and palliative care by Midwest’s physicians. Midwest’s inpatient hospice experience is an elective in Northwestern Memorial Hospital’s medical curriculum. “This Program is in furtherance of Midwest’s mission to promote and develop the practice of palliative and hospice care and provide education for palliative and hospice care physicians.” App. Ex. Nos. 17 and 24.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Midwest has not demonstrated, by the presentation of testimony or through exhibits and argument, sufficient evidence to warrant an exemption of the Marshak Pavilion from 2013 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) \*\*\*
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for exemption, the applicant provides affirmative evidence that the home or facility is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor and

either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended.<sup>3</sup>  
35 ILCS 200/15-65.

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. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> 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 (4<sup>th</sup> Dist. 1994). In this case, Midwest had the burden of proving, by clear and convincing evidence, that it used the Marshak Pavilion for charitable purposes.

At the evidentiary hearing, Midwest took the position that the applicable statutory subsection was 735 ILCS 200/15-65(a), "institutions of public charity," and proceeded to apply the guidelines articulated in Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter "Korzen"). In Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 287 (2004), the Illinois Supreme Court emphasized that charitable use is a constitutional requirement for exemption. The Court stated that an "applicant for a charitable use property tax

---

<sup>3</sup> Midwest is a non-profit organization under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 5. There is no provision in Midwest's Bylaws for waiver or reduction of fees for Midwest's services. App. Ex. No. 6. There was no testimony or evidence at the hearing that the facility was "qualified, built or financed under Section 202 of the National Housing Act." Midwest has not presented any evidence or arguments supporting exemption under 735 ILCS 200/15-65(c). I conclude, therefore, that the Marshak Pavilion does not satisfy the statutory requirements of (c)(i) or (c)(ii) in 735 ILCS 200/15-65(c).

exemption must comply unequivocally with the constitutional requirement of exclusive charitable use.”

In Korzen, the Court articulated the criteria and guidelines for resolving the constitutional question of exclusive charitable use of property. These guidelines are (1) the organization’s funds are derived mainly from private and public charity; the funds are held in trust for the objects and purposes expressed in the charter; the organization does not provide gain or profit to any person connected with it; (2) the organization has no capital, capital stock or shareholders and earns no profit or dividends; (3) the benefits derived are for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government; (4) the charity is dispensed to all who need and apply for it; (5) the organization 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; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen at 156-157.

The above factors are guidelines for assessing whether property is exempt from taxation but are not definitive requirements. DuPage County Board of Review v. Joint Comm’s on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

Midwest’s Bylaws state that its purposes are to provide hospice care palliative services for the benefit of hospice patients and their families, with the goal of caring for the patient and family as a unit, to create and foster a climate of openness and communication with respect to death and dying and to advance the concept of hospice care for dying persons and their families, to provide

bereavement support services for the benefit of persons who are in grief, to provide home care palliative services for the purpose of making available optimal symptom control to patients having life-threatening illness or an advancing state of chronic debilitating condition. App. Ex. No. 6.

In the instant case, Midwest is seeking exemption for the Marshak Pavilion, which opened in August of 2012. The first floor of the Pavilion has a sitting/reception area, a “spiritual center,” also known as a chapel or meditation room which is open to the public, a flower room and two meeting rooms known as the “Garden View Family Counseling Center” and “Garden View Education Center.” The second floor has a laundry, bathroom, vending machines, a sitting area, an unfinished space and a kitchen where meals are prepared. The third floor of the Pavilion has 16 private rooms for hospice patients, where their families may visit. Ambulatory hospice patients may also visit with their families in other areas on the third floor. The third floor also has a reception area, a family area with a fireplace, an area for children, a dining room for families, a family conference room, public bathrooms and showers, a patient’s spa, nurse’s station and a conference space for the staff. If families are visiting from out of town, they can sleep in the patient’s room. Tr. pp. 68-69, 71, 74-80, 91, 93, 159; App. Ex. No. 10.

The property has a “healing garden,” used by ambulatory patients and families which may help them attain a sense of peace and tranquility. The garden has a path that leads to a platform over the Chicago River. The garden has three public entrances so that surrounding communities can access the space. Tr. pp. 94-96; App. Ex. No. 17.

**Guideline 1: Funds are derived mainly from public and private charity; the funds are held in trust for the objects and purposes expressed in the charter; the organization does not provide gain or profit to any person connected with it.**

Midwest does not meet this guideline. Midwest's "Consolidated Statement of Operations" as of December 31, 2013, shows "Total Operating Revenue" of \$32.7 million, of which \$30.6 million (94%) is from "Net Patient Service Revenue" and \$1.4 million (.4%) is from "Contributions" and "Special Events" (netted against "Special Events" expenses). App. Ex. No. 13. Revenue from Medicare and Medicaid programs accounted for approximately 88% of Midwest's "Net Patient Service Revenue." App. Ex. No. 13.

As the financial data indicates, Midwest receives the great majority of its funding from Medicare or Medicaid and insurance reimbursement for providing palliative and hospice care. In fact, Midwest received 94% of its revenue from billing for services. In Riverside Medical Ctr. v. Dept. of Revenue, 324 Ill. App. 3d 603 (3<sup>rd</sup> Dist. 2003), the court noted that 97% of Riverside's net revenue of \$10 million came from patient billing. According to the court, "this level of revenue is not consistent with the provision of charity." *Id.* at 608. Similarly, in Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), Alivio argued that 59% of its revenue was from patient fees and 25% was derived from charitable contributions. The court found that Alivio was not a charitable institution.

As the above cases indicate, the exchange of services for payment, at the level enjoyed by Midwest, is not a "use" of property that has been recognized by Illinois courts as "charitable." Charity is an act of kindness or benevolence. "There is nothing particularly kind or benevolent about selling somebody something." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4<sup>th</sup> Dist. 2008), aff'd, 236 Ill. 2d 368 (2010).<sup>4</sup> The fact that 94% of Midwest's revenue comes from providing a paid-for service forces me to conclude that the primary use of the Marshak Pavilion is not charitable, as 35 ILCS 200/15-65 requires. The primary

---

<sup>4</sup> In this Recommendation, the Provena Appellate Court case will be cited as "Provena (1)" and the Provena Supreme Court case will be cited as "Provena (2)."

use of the Marshak Pavilion is the exchange of medical services for payment by Medicare, Medicaid or insurance reimbursement. The revenue figures clearly indicate that Midwest is primarily operating a hospice business, not a charity that provides hospice care.

Furthermore, Illinois courts have recognized that an otherwise charitable organization does not lose its exemption by reason of the fact that those patients received by it who are able to pay are required to do so as long as all the money received by it is devoted to the general purposes of the charity, and no portion of the money received by it is permitted to inure to the benefit of any private individual engaged in managing the charity. Sisters of St. Francis v. Board of Review, 231 Ill. 317 (1907). To this end, it is reasonable to conclude that an exclusively charitable organization holds funds in trust and exercises its expertise and experience to apply the funds to an identifiable charitable need.

However, I am unable to conclude that the revenue received by Midwest is devoted to the general purposes of a charity or that it does not inure to the benefit of any private individual engaged in managing it. In 2013, Midwest had a positive “Change in Unrestricted Net Assets from Operations” of \$859,228. The cost of charity care provided in 2013 was \$157,000, or 18% of its Unrestricted Net Assets from Operations.<sup>5</sup> App. Ex. No. 13. Clearly, Midwest is not devoting a substantial portion of its operating income to an identifiable charitable need.

Additionally, there was no testimony at the evidentiary hearing as to salaries paid to any employees of Midwest. Mr. Murray, Ms. Rossiter, Dr. Smookler and Ms. Maleegrai were never asked what their salaries were. Midwest’s Consolidated Financial Statements for December 31, 2013 show that “Salaries and Employee Benefits” were \$22.3 million. App. Ex. No. 13. There was no testimony as to how many employees Midwest had. There was no testimony regarding the

---

<sup>5</sup> I will argue in a later section of this Recommendation that Midwest’s cost of charity care at \$157,000 may be overstated.

level or grade or salary range of the employees. There was no documentary evidence presented as to how Midwest's salaries compared to similar organizations or whether the executive and professional people employed by Midwest are paid salaries comparable to similar positions in the not-for-profit sector or whether they receive bonuses.<sup>6</sup>

“The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable.” Yates v. Board of Review, 312 Ill. 367 (1924). “The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.” 86 Ill. Admin. Code §130.2005(h). In this case, no evidence was presented at the hearing showing that Midwest's salaries were “reasonable.” The absence of evidence in the record regarding reasonable salaries weighs in favor of taxation because the Applicant, in this case Midwest, has the burden of proof. Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 235 (1<sup>st</sup> Dist. 2002). Because there was no testimony regarding Midwest's salary structure, I am unable to conclude that Midwest's revenue does not inure to the benefit of its employees. In summary, I am unable to conclude that Midwest uses the Marshak Pavilion in a manner consistent with Guideline 1.

**Guideline 2: The organization has no capital, capital stock or shareholders and earns no profits or dividends.**

Midwest is exempt from income tax under section 501(c)(3) of the Internal Revenue Code. Midwest was incorporated under the Illinois “General Not For Profit Corporation Act” as “Hospice of the North Shore” in August, 1978. App. Ex. Nos. 3, 5 and 12. Midwest does not have

---

<sup>6</sup> Midwest's Consolidated Financial Statements for December 31, 2013 state in Note 14, entitled “Retirement Plans,” that in 2006, Midwest entered into a long-term consulting agreement with a former executive. The agreement provides annual payments of \$85,000/year, paid through December 31, 2016. “This individual shall be available to provide services to [Midwest] as provided in the agreement.” App. Ex. No. 13. There is no testimony in the record on this yearly payment. The “agreement” was not offered into evidence.

shareholders and does not pay dividends. I conclude that Midwest uses the Marshak Pavilion in a manner consistent with Guideline 2.<sup>7</sup>

**Guideline 3: The benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens of government].**

The evidence admitted at the hearing does not allow me to conclude that the benefits derived from Midwest are for an indefinite number of persons or that Midwest's operations reduce the burdens of government. The evidence shows conclusively that the benefits derived from Midwest, providing palliative and hospice care services, are derived by patients with the means to pay for the services. Midwest's Consolidated Statement of Operations as of December 31, 2013, shows Total Operating Revenue of \$32.7 million, of which \$30.6 million (94%) is from "Net Patient Service Revenue." App. Ex. No. 13. Because of the high level of revenue being earned from patient care, I must conclude that Midwest's primary purpose and the primary use of the Marshak Pavilion is to provide hospice care to patients who are able to pay for it, either individually, or through Medicare, Medicaid or private insurance. In 2013, Midwest provided charitable care to 52 patients: 37 hospice patients and 15 palliative patients. App. Ex. No. 3. The charitable care to 52 patients is 2% of all of Midwest's patients, 28% of Midwest's 470 hospice patients and less than 1% of Midwest's 1,977 palliative care patients. App. Ex. No. 17. If Midwest is benefiting an "indefinite number" of hospice and palliative care patients, these patients are paying customers.

The second part of the Korzen guideline requires an analysis of whether Midwest's services lessen the burdens of government. "The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a

---

<sup>7</sup> The Department also agreed in its Response to Applicant's Post Hearing Brief that Midwest satisfied this Korzen guideline.

consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens.” School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). It is a *sine qua non* of charitable status that those seeking a charitable exemption are able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions. Provena (2) at 395. There is no credible evidence in the record of this case showing that Midwest’s operations at the Marshak Pavilion reduce any burden on government.

In 2013, revenue from Medicare and Medicaid programs accounted for 88%, or approximately \$26.9 million, of Midwest’s “Net Patient Service Revenue.” App. Ex. No. 13. As this figure indicates, fully 88% of Midwest’s revenue was paid for by government insurance plans. It would be unreasonable to conclude that Midwest relieves a burden on government when 88% of its patients’ accounts receivable were, in fact, paid for by the government. In Provena, the Illinois Supreme Court noted that services extended for value received do not relieve the State of a burden. Provena (2) at 396-397. The hospice and palliative services offered by Midwest are extended “for value received,” with this value mostly paid by the government, through Medicare and Medicaid, or to a lesser extent by insurance companies or the patients or their families. Services extended for value received, including those services paid for by the government, are not relieving the State of a burden.

I am unable to conclude from the record of this case that the benefits derived from Midwest are for an indefinite number of persons, other than paying customers, or that these benefits reduce a burden on Illinois government. Accordingly, I am unable to conclude that Midwest uses the Marshak Pavilion in a manner consistent with Guideline 3.

**Guideline 4: Charity is dispensed to all who need and apply for it.**

Before determining whether charity was dispensed to all who needed and applied for it at Midwest in 2013, it is necessary to look at what charity was actually dispensed on the subject property.

**Medicare and Medicaid:** There was considerable testimony at the hearing about the unreimbursed costs of Medicare and Medicaid. According to Dr. Smookler, Medicare pays Midwest a per diem for patient care. The costs of care may be more than the per diem. The per diem covers only what Medicare considers “medical care.” Anything that is not considered medical care is not covered by the per diem. Patients are not billed for any amount beyond the Medicare per diem. Tr. pp. 132-133. According to Midwest’s Consolidated Financial Statements for 2013, Midwest provides care that is not “fully compensated and provides services that are non-reimbursable.” Midwest’s 2013 Community Benefit Report states that although Medicare and most insurance companies reimburse Midwest for the intensive level of care provided by Midwest, “the actual care of providing this special care exceeds the reimbursement.” As a result, Midwest “subsidizes the cost of care for each patient in the hospice residence through philanthropic contributions.” App. Ex. No. 17. Midwest is clearly suggesting here that the uncompensated and non-reimbursed costs from Medicare and Medicaid represent charity.

There is a well-developed body of case law in Illinois with regard to whether the unreimbursed costs of Medicare and Medicaid are “charity.” Illinois courts have consistently rejected the argument that unreimbursed costs of Medicare and Medicaid constitute charitable care. In Riverside Medical Ctr. v. Dept. of Revenue, 342 Ill. App. 3d 603 (3<sup>rd</sup> Dist. 2003), Riverside argued that the institution’s charity care also included “discounted care to patients through Medicare, Medicaid and private insurance.” The court stated that it was “unpersuaded” by Riverside’s arguments that the unreimbursed amounts constituted charitable care. The court was

“confident that these discounts are not charitable and do not warrant a finding in favor of Riverside.” *Id.* at 610. A similar argument was advanced in Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where Alivio argued, *inter alia*, that 78% of its patient fees came from Medicaid reimbursement and 2% came from Medicare reimbursement. The court found that Alivio was not a charitable organization and its use of the property was not charitable.

More recently, Provena Hospital argued before the Illinois Supreme Court that its shortfall from treatment of Medicare and Medicaid patients should be considered charitable expenditures because the payments it received for treating such patients did not cover the full cost of care. The Supreme Court noted that participation in Medicare and Medicaid is not mandatory and stated the following: “While it is consistent with Provena Hospitals’ mission, it also serves the organization’s financial interests.” “In exchange for agreeing to accept less than its ‘established’ rate, the corporation receives a reliable stream of revenue and is able to generate income from hospital resources that might otherwise be underutilized.” “Participation in the programs also enables the institution to qualify for favorable treatment under federal tax law, which is governed by different standards.” Provena (2) at 401-402.

The Illinois Supreme Court observed further that it would be “anomalous” to characterize services provided to Medicare and Medicaid patients as charity. Charity is, by definition, a type of gift and must be gratuitous. “Hospitals do not serve Medicare and Medicaid patients gratuitously. They are paid to do so.” Provena (2) at 402. “For a gift (and, therefore, charity) to occur, something of value must be given for free.” Provena (1) at 751. In serving Medicare and Medicaid patients, Midwest is not giving something of value for free. Based on the established case law in

Illinois, I am unable to conclude that Midwest's unreimbursed costs for Medicare and Medicaid constitute charity.

**Community Benefits:** Midwest's 2013 Community Benefit Report states that Midwest uses "music therapy" which helps patients relax, express their feelings and recall significant experiences from their life. Midwest also uses "music thanatology" in which thanatologists use harp and voice to address physical, emotional and spiritual suffering at the end of life. Thanatologists vary the tempo and tone of the music to respond to changes occurring in a patient in the final hours of life. App. Ex. No. 17. The 2013 Community Benefit Report also states that Midwest's "Fellowship Program," in collaboration with Northwestern Memorial Hospital, has trained 3 fellows in the 2012-2013 academic year and 2 fellows in the 2013-2014 academic year. Midwest has served as a "rotation site" where the fellows are trained by Midwest's physicians and teams on hospice and palliative care. Midwest's inpatient hospice experience is an elective in Northwestern Memorial Hospital's curriculum. "This Program is in furtherance of Midwest's mission to promote and develop the practice of palliative and hospice care and provide education for palliative and hospice care physicians." The 2013 Community Benefit Report also discusses Midwest's "Jewish Care Services" which provide [a] wide spectrum of specialized and uncompensated support and resources for Chicago's large Jewish community. App. Ex. Nos. 17 and 24.

Midwest also offers a bereavement program for families. A social worker may make a referral for bereavement, with some people being referred within five days of the death of their loved ones and some people being referred three to four weeks later. Bereavement starts with a one-on-one meeting with a bereavement counselor. There are support groups for spousal loss, parents who have lost children, children who have lost parents and for "general loss." "Camp

Care” provides grieving children and teens with a supportive camp experience that teaches long-lasting coping skills. Some bereavement counseling may be covered by Medicare’s hospice benefit. Bereavement counseling may take place in the Care Center or in rooms in the first floor of the Marshak Pavilion. Midwest’s “Corporate Policy” on bereavement states that Midwest is committed to supporting these programs as much as possible by securing funds from charitable donations. Tr. pp. 156-157; App. Ex. No. 20.

The Illinois Supreme Court has never recognized community-based benefits, which encompasses the activities described above, as charitable acts sufficient to justify a property tax exemption. Although these activities unquestionably benefit the community, community benefit is not the test for property tax exemption in Illinois. The donations tell us little about the nature of Midwest.<sup>8</sup> Community benefits often benefit the organization more than the community. Many of the community benefit activities can be viewed as generating business for Midwest by acquainting prospective patients and their families with their services. As the Supreme Court noted, while considering the question of whether “free health screenings, wellness classes and classes on handling grief” were charitable endeavors, “private for-profit companies frequently offer comparable services as a benefit for employees and customers and a means of generating publicity and goodwill for the organization.” Provena (2) at 404. Midwest’s election to participate in these programs must be viewed as intelligent business decisions, rather than as the provision of charity, and Midwest’s participation does not indicate charitable use of the Marshak Pavilion.

**Charity Care:** Midwest’s Notes to its Consolidated Financial Statements for December 31, 2013 state that Midwest provides care to patients who meet the admission criteria without

---

<sup>8</sup> This is illustrated by the fact that Midwest’s “Corporate Policy” on bereavement states that Midwest is committed to supporting this program as much as possible by securing funds from charitable donations. It may look like Midwest is providing this charity but the funds appear to be coming “as much as possible” from other donors.

regard to their ability to pay or the availability of adequate governmental or other third-party reimbursement. Because Midwest does not pursue collection of amounts determined to qualify as charity care, they are not reported as revenue. The cost of charity care provided was \$157,000 for year-ended December 31, 2013. The Notes state that the \$157,000 cost estimate “was based upon the organization-wide cost to charge ratio.” There was no testimony on this in the record and there is no explanation for how the cost to charge ratio was computed. Midwest has not provided supporting documentation for the \$157,000, nor has it given any indication of the dollar amounts provided to each patient. The Notes also state that Midwest had received restricted donations for charity care of \$66,520 in 2013. Midwest’s 2013 Community Benefit Report states that Midwest provided financial assistance to a total of 52 patients in 2013: 37 hospice patients and 15 palliative care patients. The Community Benefit Report also states that 815 families made “family informational visits where patient did not come on service.” App. Ex. Nos. 3, 13 and 17. There was no testimony as to whether these 815 families were looking for hospice care or palliative care. There was no testimony or supporting documentation as to why 815 families visited Midwest and did not come on service.<sup>9</sup> An explanation for the 815 families is essential for determining whether charity was dispensed to all who needed and applied for it.

It must be noted here that there was no testimony at the hearing regarding either the number of patients provided charity or the dollar amount of Midwest’s charitable expenditures in 2013. This may have been a strategic decision on Midwest’s part but what I am left with in writing this Recommendation is simply the documentary evidence that Midwest provided charity care to 52 patients for \$157,000. Many questions are left unanswered.

---

<sup>9</sup> I make this statement while recognizing that Midwest only has 16 beds available for hospice care in the Pavilion at any time. Tr. p. 71.

For example, the Note to the Financial Statements, entitled “Charity Care and Community Benefits” states that Midwest had \$66,520 in “restricted donations” in 2013. Ms. Rossiter testified that she raises money from donors for “indigent care,” meaning “people who come to us who don’t qualify for Medicare, don’t qualify for Medicaid, have no private insurance.” Tr. p. 91. It is unclear if the \$157,000 that Midwest provided in charity care in 2013 included the \$66,520 in restricted donations which was donated from others. If it did, then Midwest’s actual expenditure for charity care was \$90,480 (\$157,000 less the \$66,520 that others had donated) in 2013. There was no testimony on this at the hearing.

Additionally, there was no testimony at the hearing as to the breakdown of the \$157,000 expenditure between hospice care and palliative care. This breakdown is extremely important because palliative care is provided in patient’s homes. Charitable expenditures for palliative care in patient’s homes do not show charitable use of the Marshak Pavilion which is the issue to be decided in this case. Midwest has not provided any supporting documentation for the \$157,000 in charitable assistance or how this “charity” was provided. Furthermore, there was no breakdown of the amount of charity care applied to individual patients in 2013. By failing to provide evidence of patients who actually received charitable care in 2013 and the amount of charity given to each patient, Midwest has failed to show that charity was provided to all who needed and applied for it.

Four letters addressed to patients, all dated in the year 2013, show that three patients had care center fees “waived based on the financial information you have provided” and one patient was “approved at a 93% discount rate for all open invoices to you.” App. Ex. No. 22. It is impossible to tell from the letters whether the waivers were for the 2013 exemption year and whether the charitable care was provided in the Marshak Pavilion. There was no testimony at the hearing as to why only 4 letters to patients were provided when Midwest provided care to a total

of 52 patients in 2013. There was no testimony regarding the significance of these 4 letters and why the other 48 letters were not included in the documentary evidence.

In 2013, Midwest's charitable expenditures, possibly overstated at \$157,000 as described above, represent less than 1% of its "net patient service revenue" of \$30.6 million. Midwest provided charity care to 37 of its 470 hospice patients, representing 8% of total hospice patients. As stated above, there is no testimony in the record as to the dollar amount of charity care provided specifically to hospice patients. "To be charitable, an institution must give liberally." Provena (1) at 750. The evidentiary deficiencies in the record do not allow me to conclude that Midwest has given "liberally." The Property Tax Code allows exemptions for charitable use of property when the property is "exclusively" used for charitable purposes and not used with a view to profit. 35 ILCS 200/15-65. The disparity between the dollar amount of Midwest's charity care and its "net patient service revenue" is so extreme that it would not be reasonable to conclude that the primary use of this property is to provide charity, as is required by 35 ILCS 200/15-65. With very limited exceptions, the primary use of the Marshak Pavilion in 2013 was the provision of hospice care to patients who can afford it or have the means to pay for it through insurance or Medicare and Medicaid. The charity care amount, representing less than 1% of the "net patient service revenue," falls far short of meeting the primary purpose standard.

The evidentiary deficiencies (i.e. how the \$157,000 charitable expenditure was calculated and how the cost to charge ratio was computed, whether the restricted donations of \$66,520 were included in the \$157,000 charitable expenditures, an explanation for the 815 families who visited Midwest and did not come on for service, the dollar amount of charity care provided specifically to hospice patients vs. palliative care patients, and why only 4 letters to patients were included in evidence when 52 patients were supposedly provided charity care) do not allow me to conclude

that Midwest dispensed charity to all who needed and applied for it. The Korzen criteria that a charitable organization dispense charity to all who need and apply for it is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. The record of this case does not show that Midwest uses the Marshak Pavilion in a manner consistent with Guideline 4.

**Guideline 5: The organization 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.**

Midwest’s corporate policy on “Admission Criteria: Hospice” states as follows: The Hospice Care Program services are not to be refused to anyone because of race, color, national ancestry, religion, age, handicapping condition, gender, gender identity, sexual orientation, lack of advanced directives, source of payment, or other characteristics protected by law. “Patients meeting the admission criteria will be admitted to the Hospice Care Program without regard to their ability to pay or the availability of adequate governmental or other third party reimbursement.” App. Ex. No. 20.

When patients and/or their families inquire about Midwest’s services, they are given a “Patient and Family Hospice Manual,” (the “Manual”) with chapters on the care program, paying for care, ways to contribute to Midwest and other considerations. The chapter in the Manual on paying for care advises that Medicare, Medicaid and many private insurers have a hospice benefit that covers the services of hospice staff, medications, supplies and equipment. “If your insurance company does not completely cover your care, we will work with you to develop a payment plan or find appropriate ways to obtain reimbursement for necessary services, prescriptions or equipment.” “If you do not have insurance or the ability to pay for services, [Midwest] will waive or reduce fees. We want to ensure access to services for anyone who needs hospice care.” There

was testimony that all patients at Midwest receive the same level of care regardless of the source of payment and that Midwest's care for patients is not affected by how the patient pays for the services. Tr. pp. 47-48, 50, 55, 58-60, 125; Applicant's Ex. Nos. 3 and 20.

At first glance, it appears from the above that Midwest has not placed obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. But similar to the discussion in Guideline 4, above, many questions are left unanswered. Mr. Murray testified that the Manual "is given to patients who were admitted, and we also have given it to people who are just inquiring about what do the services look like." Tr. pp. 36-37. But there was no testimony that patients or their families, who are looking in advance for hospice services but have not yet visited Midwest, would know that charitable care is available. I am unable to conclude that Midwest's charitable policy is widely disseminated. There was no testimony that Midwest's website in 2013 advertised that charitable care was available. There was no testimony as to whether Midwest advertises its services in doctor's offices with pamphlets and whether the pamphlets state that charitable care is available.<sup>10</sup> Mr. Murray testified that he discusses Midwest's services at the "public guardian's office," "other organizations," and "long-term care facilities and hospital settings." Tr. pp. 32-33. But there was no testimony as to whether he advertises that charitable care is available from Midwest when he visits these facilities.

Midwest's 2013 Community Benefit Report states that Midwest has "taken on a broader role of informing the public-at-large about hospice care and the Medicare benefit." To that end, Midwest "purchases and/or publishes materials to help families understand and engage in advance care planning..." "Twice a year, nearly 40,000 households receive this information..." Some of the published materials are in Spanish, Polish and Russian. App. Ex. No. 17. But there was no

---

<sup>10</sup> Midwest's 2013 Community Benefit Report states that Midwest publishes "Hospice and Palliative Care Information Pamphlets." App. Ex. No. 17. These pamphlets were not admitted into evidence.

testimony or documentary evidence that any of these published materials advertised that charitable care was available from Midwest. None of the published material was offered into evidence. So whereas the record indicates that once a patient or their family walks in the doors at Midwest, they may find out about charitable care from the Manual, I am not confident that a patient or family, looking for hospice care for the future, would know that charitable care was available from Midwest. This is an obstacle in the way of those seeking Midwest's charity.

This obstacle becomes more problematic when you consider Midwest's service area. Midwest's "Admission Criteria: Hospice" contains a "guideline" for admission to the hospice care program that states that services will be provided within the service areas of Midwest. App. Ex. No. 20. Midwest's "service area" extends from the Wisconsin border, to "the lower part of the City." Mr. Murray testified that the area we serviced at the time [of the exemption] was quite large, and any of the patients could go [to Midwest]. Tr. pp. 71-72. This area is, in fact, quite large. Assuming that the "lower part of the City" means the lower part of Chicago, I must note the obvious, that the area encompasses many poor people and these poor people might be in need of charitable care for hospice services.

Midwest provided charitable care to 37 of its 470 hospice patients in 2013. App. Ex. Nos. 13 and 17. Midwest provided this care within its designated service area. It is safe to assume that there are many people located in Midwest's service area who are ineligible for either Medicare or Medicaid, too young for Medicare benefits or earning too much for Medicaid benefits or are not covered by private insurance plans but who are in need of hospice services. Mr. Murray was asked on cross-examination what type of patients would not be covered by Medicare and Medicaid. He replied that undocumented immigrants are not covered and also people that have run out of funds

but have not applied for Medicare and Medicaid, which can take 6 months “to get into place.” “You may be dead by the time you get it for disability.” Tr. pp. 69-70.

Midwest would have me conclude here that in this “quite large” service area in 2013, with 40,000 households receiving information from Midwest twice a year, only 37 patients requested and received charitable hospice care from Midwest. Surely the service area included more than 37 undocumented immigrants or uninsured patients under age 65 ineligible for Medicare or patients earning too much for Medicaid or patients not covered by any private insurance who needed charitable hospice care. The minimal amount of charitable hospice care dispensed by Midwest on the subject property cannot be rationalized on the grounds that the service area’s residents did not require this care in 2013. The only plausible explanation for the fact that Midwest provided charitable care to so few hospice patients in such a large service area in 2013 is that those patients needing charitable hospice care did not know that charitable care was available at Midwest. Since there is no documentary evidence showing otherwise, I must conclude, as discussed above, that Midwest’s website, the pamphlets and publications advertising Midwest’s services and Mr. Murray’s discussion of Midwest’s services with various organizations do not disclose that Midwest will provide hospice care without the patient having Medicare, Medicaid or an insurance plan. This is an obstacle in the way of those seeking Midwest’s charity.

Midwest’s corporate policy on “Charitable and Subsidized Care” states that Midwest budgets an allowance for charitable and subsidized care each year. “However, the budget is not a limitation on the discretion of [Midwest] to grant or deny charitable care.” App. Ex. No. 20. There was no testimony as to the budgeted amount for 2013 or how a budgeted amount is determined. There was no testimony at the hearing as to whether the budgeted amount of charitable care is a percentage of budgeted revenue or whether it is based on the occupancy or vacancy rates in the

hospice unit. There was no testimony as to the standard or benchmark that Midwest used in budgeting for charitable care. Without a standard or benchmark, I cannot determine whether the \$157,000 in charitable care given by Midwest in 2013 truly represents “charity.” “... [T]he Korzen factor that charity be dispensed ‘to all who need it’ is not limited to the past but also requires an assessment of future policy.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995). There is no evidence in the record as to how the budget for charity was determined by Midwest. Therefore, whether Midwest will provide a sustainable level of charitable assistance in the future, even while it enjoys the benefits of the property tax exemption it is requesting here, is pure speculation.

In Sisters of Third Order of St. Francis v. Board of Review of Peoria County, 231 Ill. 317 (1907), the Court found that a charitable purpose may be recognized, in spite of a great disparity between the number of charity patients and those who pay for care “so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such person making application to or obtaining admission to the hospital.” *Id.* at 322. Midwest has a huge disparity between the number of paying hospice patients and the number of charitable hospice patients. I must conclude that the reason for the disparity between paying hospice patients and charitable hospice patients is Midwest’s failure to make known to the general public in their service area that charitable hospice care is available.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services

are never made aware that free care may be available to those who need it.” *Id.* at 281. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. The fact that so few people received charitable hospice assistance in 2013 certainly indicates that the availability of charitable assistance is not being advertised to the general public, and this is an obstacle in the way of those needing Midwest’s assistance.

A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). The Korzen criteria that a charitable organization place no obstacles in the way of those needing assistance is “more than a guideline.” It is an “essential criteria” and it “goes to the heart of what it means to be a charitable institution.” Provena (1) at 750. The record of this case does not show that Midwest uses the Marshak Pavilion in a manner consistent with Guideline 5.

**Guideline 6: Exclusive (primary) use of the property is for charitable purposes.**

35 ILCS 200/15-65 of the Property Tax Code requires that the subject property be “exclusively” used for charitable purposes. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987).

In 2013, Midwest satisfied only one of the five Korzen guidelines discussed above. In 2013, Midwest provided \$157,000 in charitable care, representing less than 1% of its “net patient service revenue” of \$30.6 million. This fact establishes that Midwest’s charity on the subject property represents an incidental act of beneficence that is legally insufficient to establish that Midwest

“exclusively” uses the Marshak Pavilion for charitable purposes. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). It is clear from the record in this case that Midwest’s primary purpose is providing hospice and palliative care to patients who can pay for the care or who have insurance or access to government sources for payment.

For these reasons, it is recommended that the Department’s determination which denied the Marshak Pavilion an exemption from 2013 property taxes should be affirmed and the Marshak Pavilion, located on Cook County Parcel Index Number, 04-22-405-009-0000 should not be exempt from 2013 real estate taxes. <sup>11</sup>

ENTER:

May 9, 2017

Kenneth J. Galvin  
Administrative Law Judge

---

<sup>11</sup> The Department and Midwest entered into a “Stipulation for Facility Exemption” dated September 1, 2016. This Stipulation noted that “numerous hospitals in Illinois received an exemption from property tax for [the] charitable care as authorized by Article IX, Section 6 of the Illinois Constitution, and implemented by 35 ILCS 200/15-86.” “The Applicant and the Department stipulate that certain such hospitals provided in-patient palliative care on the premises granted exemption.” “With regard to hospitals granted exemption under Article IX, Section 6 of the Illinois Constitution that provide palliative care, it is [Midwest’s] contention that [Midwest] is making a charitable use of the property in the same manner as the hospitals providing palliative care.” Midwest Ex. No. 1. Midwest is arguing that the Department of Revenue “has a constitutional *obligation* (Midwest’s emphasis) to uniformly treat the Marshak Pavilion and the exempted hospitals that make similar and exempt use of the property.” Midwest’s “Reply to Department’s Post-Hearing Brief,” (page 4-5). Section 200/15-86 is titled “Exemptions related to access to hospitals and health care services by low-income and underserved individuals.” Midwest did not apply for exemption under Section 15-86 because it is not a hospital, as defined in 35 ILCS 200/15-86(b)(1). Midwest is a hospice. It applied for exemption under Section 200/15-65, entitled “Charitable purposes,” which requires, *inter alia*, charitable use of the subject property. Charitable use is determined by an analysis of the Korzen factors, as discussed above. The “uniformity” which Midwest is requesting here would require a legislative change in the exemption statutes which would allow the Department to exempt an activity, such as palliative and hospice care, under Section 200/15-65 even when the Korzen factors are not met and charitable use is not proven, simply because the activity was found to be exempt under 35 ILCS 200/15-86 which, as of the date of this Recommendation, does not require an analysis of the Korzen factors.