

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Albright Care Services, Formerly  
United Methodist Homes of  
Lewisburg Corporation and  
United Methodist Continuing  
Care Services

v.

Union County Board of Assessment  
and Union County and Lewisburg  
Area School District and Kelly  
Township

Appeal of: Union County Board  
of Assessment and Union County

Albright Care Services, Formerly  
United Methodist Homes of  
Lewisburg Corporation and United  
Methodist Continuing Care Services

v.

Union County Board of Assessment  
Association, and Union County and  
Lewisburg Area School District and  
Kelly Township

Appeal of: Lewisburg Area School  
District

No. 2094 C.D. 2012

No. 2100 C.D. 2012

Argued: December 9, 2013

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: January 29, 2014**

Union County (County), Lewisburg Area School District (District), and Kelly Township (Township) (collectively, Taxing Authorities) appeal from the October 15, 2012 Order of the Court of Common Pleas of the 17th Judicial District (Union County Branch) (trial court) that reversed the decision of the Union County Board of Assessment (Board) and held that Albright Care Services<sup>1</sup> (Albright) was an Institution of Purely Public Charity (IPPC) entitled to an exemption from real estate taxes.

## I. Overview

This matter involves Albright, which operates a continuing care retirement community (CCRC) in the County, and its request for a real estate tax exemption. The Board concluded that none of Albright's properties were entitled to tax exemption, but the trial court reversed on appeal. We are now asked to consider, on appeal, whether: (1) the trial court properly found that Albright is an IPPC; and (2) which, if any, of Albright's tax parcels located in the County is exempt from real estate taxes.

We begin by setting forth some basic principles that guide our consideration of appeals that involve charitable real estate tax exemptions in Pennsylvania. Article VIII, Section 2(a)(v) of the Pennsylvania Constitution states that “[t]he General Assembly may by law exempt from taxation: . . . Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the

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<sup>1</sup> Albright formerly operated as the United Methodist Homes of Lewisburg Corporation and United Methodist Continuing Care Services.

purposes of the institution” is exempt. Pa. Const. art. VIII, § 2(a)(v). An “institution of purely public charity”:

- (a) Advances a charitable purpose;
- (b) Donates or renders gratuitously a substantial portion of its services;
- (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- (d) Relieves the government of some of its burden; and
- (e) Operates entirely free from private profit motive.

Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 22, 487 A.2d 1306, 1317 (1985) (HUP). The HUP test is the “test for determining whether an entity qualifies as an ‘institution of purely public charity’ under the Pennsylvania Constitution.” Alliance Home of Carlisle, PA v. Board of Assessment Appeals, 591 Pa. 436, 453, 919 A.2d 206, 216 (2007). “An institution seeking a real estate tax exemption bears a heavy burden.” Menno Haven, Inc. v. Franklin County Board of Assessment and Revision of Taxes, 919 A.2d 333, 335 (Pa. Cmwlth. 2007).

In determining whether an institution is eligible for a real estate tax exemption for any particular property owned by that institution, there are two requirements that the institution must establish. Initially, the institution must establish that it is an IPPC under Article VIII, Section 2(a)(v) of the Pennsylvania

Constitution and the Institutions of Purely Public Charity Act<sup>2</sup> (Act 55). To do this, the institution must first satisfy the constitutional standards set forth in HUP, and then those established by Act 55.<sup>3</sup> Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals, 615 Pa. 463, 473, 44 A.3d 3, 9 (2012). Act 55's requirements track those set forth in the HUP test and are frequently referred to as the "quantitative" elements for determining whether an institution qualifies as an IPPC. In re Appeal of Dunwoody Village, 52 A.3d 408, 413 n.4 (Pa. Cmwlth. 2012). Section 5 of Act 55, 10 P.S. § 375, sets forth the "[c]riteria for institutions of purely public charity" and provides that an institution that meets the five criteria contained therein "shall be considered to be founded, endowed and maintained by public or private charity." 10 P.S. § 375(a). Once a taxpayer has met both the HUP and Act 55 tests, it is considered an IPPC. Id.

However, an IPPC is not "entitled, by virtue of that status alone, to a presumption that **all** parcels, or contiguous parcels, of real estate it owns qualif[ies] for the charitable exemption." Alliance Home, 591 Pa. at 467, 919 A.2d at 225 (emphasis added). Rather, to obtain an exemption from real estate taxes, the IPPC bears the burden of proving that the property for which it seeks the tax exemption "is actually and regularly used for the purposes of the institution" or is used "to advance the charitable purpose of the institution."<sup>4</sup> Id. at 468, 919 A.2d at 225 (quoting Pa. Const. art. VIII, § 2(a)(v); Section 5(h) of Act 55, 10 P.S. § 375(h)).

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<sup>2</sup> Act of November 26, 1997, P.L. 508, 10 P.S. §§ 371–385.

<sup>3</sup> The relevant standards are discussed in greater detail *infra*.

<sup>4</sup> Once the taxpayer establishes that it is an IPPC, it is not required to demonstrate that the activity on a particular parcel *independently* satisfies the HUP and Act 55 tests. Alliance Home, (Continued...)

In this matter, the trial court resolved the first part of this inquiry by concluding that Albright is an IPPC, but it did not directly address the second part, whether Albright’s individual tax parcels<sup>5</sup> were “actually and regularly used for the purposes of the institution” or used to “advance the charitable purpose of the institution.” Id. For the following reasons, we affirm the trial court’s determination that Albright is an IPPC, but conclude that it is necessary to remand the matter for the trial court to determine the real estate tax exemption status for several of Albright’s tax parcels.

## II. Factual Background

The trial court found the following facts. Albright is a non-profit corporation that is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and from the Pennsylvania sales and use tax. (Trial Ct. Op., Findings of Fact (FOF) ¶¶ 1, 29-30.) Albright owns and operates two licensed CCRCs: RiverWoods, located in the County, and Normandie Ridge, located in York County. (FOF ¶¶ 8-9.) CCRCs provide a continuum of care for their residents that include independent living facilities, assisted living/personal care facilities, and a skilled nursing facility. (FOF ¶ 10.) RiverWoods consists of a 226-bed nursing home, a transitional living facility with recuperation units, a 71-unit apartment building, a 64-unit apartment building, and 56 cottages. (FOF ¶¶ 11-13.) Both the apartments and cottages are independent

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591 Pa. at 465, 919 A.2d at 224. However, neither the Pennsylvania Constitution nor Act 55 “place[s] the burden on the taxing authority to prove that a parcel is not exempt”; rather, the burden is squarely placed on the taxpayer. Id. at 467, 919 A.2d at 225.

<sup>5</sup> The record indicates that Albright’s property in the County consists of five separate tax parcels. (Amended Appeal from Decision by the Board at 2.)

living options but can, if necessary, provide some support services. (FOF ¶ 12.) Albright also operates a nursing home at Normandie Ridge, and both of Albright's nursing homes participate in the Medicare and Medicaid programs. (FOF ¶¶ 14, 40.) Albright also operates the following programs: (1) a Meals on Wheels (MOW) program in the Lewisburg and Milton areas of the County, which is entirely a benevolent program, (FOF ¶¶ 15, 63); (2) a museum (Slifer House Museum) that is located in the County and open for visitors and community events, (FOF ¶ 16); (3) a LIFE program in Lancaster, Lycoming, Clinton, and Lebanon counties that assists individuals, who want to remain at home but would otherwise be candidates for nursing homes and eligible for medical assistance, whose expenses exceeds their revenues, (FOF ¶¶ 21, 60); and (4) a Section 8, Department of Housing and Urban Development rental program for senior citizens and the disabled in Northumberland County, known as Warrior Run Manor, which Albright subsidizes, (FOF ¶¶ 22, 34, 64, 132).

Albright owns property in the County identified as: Tax Parcel 006-046-001.00000, on which RiverWoods' apartments are located; Tax Parcel 006-046-001.L0000, on which a family health center is located;<sup>6</sup> Tax Parcel 006-046-001.LL000, on which the Slifer House Museum is located; Tax Parcel 006-046-001.LLL00, on which the RiverWoods skilled nursing facility and assisted living facilities are located; and Tax Parcels 006-051-001.00000, 006-051-002.00000, and 006-051-006.00000, which are referred to as the "flood plain properties." (Amended Appeal from Decision by the Board at 2.) Albright's nursing facilities

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<sup>6</sup> Albright does not contend that this parcel qualifies for a real estate tax exemption. (Amended Appeal from Decision by the Board at 3.)

and assisted living facilities were exempt from real estate taxes until 2008, when the County revoked their tax exempt status as part of its denial of Albright's request for tax exemption for the parcel on which the RiverWoods independent living facilities are located. (FOF ¶¶ 18, 31.) Albright filed a timely appeal of the revocation of its tax exempt status in April 2008 and, although its appeal was for the 2008 tax year, all parties agreed that there have not been any substantial changes in operations that would affect tax years 2009-2011. (FOF ¶¶ 2, 19.) The trial court held a trial on Albright's appeal in 2012.

At trial, Albright presented evidence regarding, *inter alia*, its religious and charitable background, operations, and activities. Albright's mission is to provide a continuum of care for elderly persons who cannot afford to pay the full costs for their care. (FOF ¶ 23.) Notwithstanding this purpose, Albright's independent living program has entry fees that range from \$50,000.00 to approximately \$700,000.00, which Albright has waived and/or reduced on occasion. (FOF ¶¶ 43-44.) No portion of this entrance fee is set aside to pay for future healthcare of that particular resident or any resident generally. (FOF ¶ 82.) Albright also has financial criteria for those entering its personal care facilities, which requires that applicants have sufficient assets to pay for three years of care. (FOF ¶ 85.) A high proportion of Albright's nursing home patients come from outside the CCRC, including referrals from hospitals. (FOF ¶ 38.) For example, in 2010, 13 of the 121 admissions to the Normandie Ridge nursing home facility were internal, and 17 out of 391 admissions to the RiverWoods nursing home were internal admissions. (FOF ¶ 126.) Although the contract for independent living provides that those residents receive priority in moving through the continuum of care, in

practice, Albright has an open admissions policy for its nursing home facilities. (FOF ¶¶ 48, 140.)

Albright presented the testimony and reports of its certified public accountant (CPA) (Albright Accountant), who testified about, among other things, Albright's financial shortfalls and the percentage of Albright residents whose care is partially funded by Medicaid, which does not cover the costs of providing care to the residents, and is subsidized by Albright. (FOF ¶¶ 59-60, 96-112, 118-43.) Albright Accountant's testimony established that, using generally accepted accounting principles (GAAP), Albright provided sufficient uncompensated goods and services through its various entities to satisfy both the HUP test and the standards set forth in Act 55. (FOF ¶¶ 95-102, 143.) Albright Accountant did not use Medicare revenue against total costs and did not differentiate between Medicaid and non-Medicaid patients; rather, he used the total cost divided by the total days of nursing home care to determine the average cost of care. (FOF ¶ 142.) Taxing Authorities also offered an expert (TA Expert) in support of their position that Albright was not an IPPC. (FOF ¶ 145.) TA Expert is not a CPA, but is familiar with Medicare and Medicaid cost reports, which do not comply with GAAP. (FOF ¶¶ 148-49.) According to TA Expert, who took certain deductions or adjustments regarding Albright's financial statements, Albright actually makes a profit off its Medicaid residents and would not qualify as an IPPC. (FOF ¶¶ 151-56.) Albright Accountant stated that the adjustments TA Expert made in his report were not in accordance with GAAP. (FOF ¶ 161.) The trial court accepted

Albright Accountant’s testimony as more credible and persuasive than TA Expert’s testimony.<sup>7</sup> (FOF ¶¶ 157, 161-63; Trial Ct. Op. at 33-34.)

### **III. Trial Court Opinion**

The trial court first concluded that, in determining whether Albright was an IPPC, it would examine Albright’s corporate operations as a whole, not just those located in the County, citing Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals, 552 Pa. 212, 714 A.2d 397 (1998) (Unionville-Chadds Ford School District II), and Chartiers Valley School District v. Board of Property Assessment Appeals, Review and Registry, 794 A.2d 981 (Pa. Cmwlth. 2002). The trial court noted that, even if it found Albright to be an IPPC, “a taxing body can do a parcel by parcel review of an institution[] to determine whether or not a given parcel of land is used to advance the charitable purpose of the organization.” (Trial Ct. Op. at 23.)

In relevant part, the trial court held, relying on St. Margaret Seneca Place v. Board of Property Assessment, 536 Pa. 478, 640 A.2d 380 (1994), that, under the totality of the circumstances, Albright donates or gratuitously provides a substantial portion of its services under HUP. The trial court cited, in support, evidence that Albright’s nursing homes have an average of 55% of their residents on Medicaid and that Albright provides free and reduced services through its MOW and LIFE programs. (Trial Ct. Op. at 25.) The trial court also concluded that, applying an average of the five most recent years and GAAP, Albright met

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<sup>7</sup> Taxing Authorities attempted to bolster TA Expert’s testimony by offering the testimony of a CPA; however, the trial court noted that this CPA had never worked with a CCRC or with cost reports. (FOF ¶¶ 158-60.)

this prong of Act 55 using the 20/10/90 test set forth in Section 5(d)(1)(iv) of Act 55, 10 P.S. § 375(d)(1)(iv), because Albright provided uncompensated goods and services to more than 20% (38%) of those receiving services from Albright and at least 10% of those receiving these goods and services paid either no fees or fees that were less than 90% (85%) of the cost of the goods and services. (Trial Ct. Op. at 25-26.) Additionally, the trial court held that Albright satisfied the 5% test of Section 5(d)(1)(v) of Act 55, 10 P.S. § 375(d)(1)(v), because, throughout all of its programs, Albright donated goods and services of at least 5% (7.46%) of Albright's cost of providing those items. (Trial Ct. Op. at 26.)

The trial court also held, citing St. Margaret Seneca Place, that Albright benefits a substantial and indefinite class of persons who are legitimate subjects of charity because: a substantial majority of its nursing home admissions are from the general community; a majority of the residents are Medicaid recipients; Albright is open to the indefinite public; and there is no evidence that Albright discriminates against Medicare or Medicaid recipients. (Trial Ct. Op. at 27.) The trial court then concluded that Albright satisfied Section 5(e)(1) and (2) of Act 55, 10 P.S. § 375(e)(1), (2), for, essentially, the same reasons as under HUP. The trial court held that there could be no doubt that senior citizens generally are appropriate objects of charity and that Albright also serves the indigent and provides other benevolent care through its other programs. (Trial Ct. Op. at 27.) The trial court rejected Taxing Authorities' arguments based on Albright's charging entrance fees for the independent living portions of the CCRCs, and the trial court noted that, throughout all of Albright's programs, 40% of its participants receive some type of financial assistance and that, as residential participants' financial resources

dwindle, some participants move into the higher levels of care and obtain financial assistance. (Trial Ct. Op. at 28.)

Concluding that Albright had satisfied the HUP test and the Act 55 criteria, the trial court held that Albright, as a whole, was an IPPC that was entitled to a real estate tax exemption and sustained Albright's appeal from the revocation of its tax exemption status. (Trial Ct. Op., Conclusions of Law (COL) ¶¶ 1-4.) The trial court noted, however, that "[n]othing herein prohibits specific parcel review as permitted by law." (Trial Ct. Order.) Taxing Authorities filed an appeal with this Court, and the trial court directed Taxing Authorities to complete a Statement of Errors Complained of on Appeal pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1925(b). Taxing Authorities complied, and the trial court issued an opinion in support of its Order pursuant to Rule 1925(a), Pa. R.A.P. 1925(a). This matter is now ready for review by our Court.<sup>8</sup>

#### **IV. Issues on Appeal**

On appeal, Taxing Authorities<sup>9</sup> raise multiple issues regarding whether: the trial court's analysis comported with the HUP test and Act 55; Albright satisfied its burden of proving its status as an IPPC under HUP and Act 55; and the trial court improperly considered Albright in its corporate entirety, rather than those

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<sup>8</sup> This Court's "review in a real estate tax assessment appeal is limited to determining whether the trial court's findings are supported by substantial evidence or whether the trial court abused its discretion or committed an error of law." Dunwoody Village, 52 A.3d at 413 n.5 (Pa. Cmwlth. 2012). Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Id. As fact finder the trial court, in tax assessment cases, "resolves all matters of credibility and evidentiary weight." Id. Therefore, if the trial court's findings are supported by substantial evidence, those findings are binding on appeal. Id.

<sup>9</sup> The Township joins in County's brief.

charitable activities located only in the County, and exempted Albright property not used in furtherance of Albright’s charitable purpose. Specifically, the Taxing Authorities argue:

- (1) the trial court erred by not engaging in the HUP analysis before considering Act 55 and by comingling the constitutional requirements set forth in the HUP with the legislative requirements of Act 55;
- (2) the trial court erred in holding that Albright satisfied the second prong of the HUP test and the related “community service” standards set forth in Section 5 of Act 55, 10 P.S. § 375;
- (3) the trial court erred in concluding that Albright satisfied the third prong of HUP; and
- (4) the trial court erred in considering Albright as a corporate entity to determine whether Albright is an IPPC for real estate tax purposes and by not evaluating each parcel of Albright’s property to determine which are used for Albright’s charitable purposes.

#### **A. Propriety of the trial court’s HUP/Act 55 Analysis**

The County argues that the trial court’s opinion does not contain a stand-alone analysis of the HUP factors and, essentially, focuses on the criteria set forth in Act 55. According to the County, the trial court misunderstood the interplay between HUP and Act 55<sup>10</sup> and impermissibly applied concepts from Act 55, specifically GAAP and a five-year averaging methodology, to the HUP test. The Taxing Authorities assert that the trial court should not have engaged in an Act 55 analysis at all because Albright did not satisfy the HUP test.

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<sup>10</sup> The County indicates the trial court’s statement that Act 55 “sets forth the criteria to evaluate the five pronged test promulgated by the Supreme Court in HUP” demonstrates the trial court’s misunderstanding. (Trial Ct. Op. at 21.)

Initially, we note that the trial court’s references to GAAP and the five-year averaging methodology were related to its Act 55 analysis and not its HUP analysis. Thus, the trial court did not apply Act 55 concepts to the HUP factors. However, Taxing Authorities are correct that the trial court did not perform a **complete** analysis of all the HUP factors before engaging in its analysis under Act 55. Rather, it addressed each HUP factor, followed by the corresponding Act 55 criterion. The first step in establishing whether an institution qualifies for a real estate tax exemption as an IPPC is to satisfy all of the constitutional criteria set forth in HUP. Mesivtah Eitz Chaim of Bobov, 615 Pa. at 473, 44 A.3d at 9. “[I]f you do not qualify under the HUP test, you never get to [Act 55].” Id. Generally, the question of whether an institution qualifies under Act 55 should not be addressed until after a determination is made pursuant to HUP. Id. However, even if the trial court should have first determined whether Albright satisfied all of the HUP factors before analyzing Albright’s qualifications under Act 55, not doing so was harmless because the trial court ultimately engaged in the complete HUP analysis and concluded that Albright met the HUP test, and it also engaged in a complete Act 55 analysis and concluded that Albright met those requirements as well.

**B. Second prong of HUP/ “Community Service” standards of Act 55**

a. *The Second Prong of HUP – Donates or renders gratuitously a substantial portion of its services.*

The second prong of HUP requires the institution to establish, based on the totality of the circumstances, that it “[d]onates or renders gratuitously a substantial portion of its services.” HUP, 507 Pa. at 22, 487 A.2d at 1317. Applying the totality of the circumstances test to this matter, the County argues that Albright

donates no goods and services; therefore, it cannot satisfy this prong. The County contends that the trial court's contrary conclusion is based on Albright Accountant's testimony that, using GAAP, certain reimbursements are not taken into account in determining whether there was a "Medicaid shortfall" that Albright subsidizes. However, the County asserts, when considering whether Albright met this prong of HUP, the trial court should have looked to the "true measure" of Albright's donations to its indigent patients, which is not provided for through Albright Accountant's testimony. (County's Br. at 14.) Rather, the County contends that TA Expert's testimony that Albright is reimbursed for what is not covered by Medicaid establishes Albright's economic reality, which is a "Medicaid windfall" for Albright, and should have been considered by the trial court. (County's Br. at 24.) The County again argues that the trial court improperly applied criteria of Section 5 of Act 55, such as GAAP, to satisfy this HUP requirement.

The County further asserts that Albright is like the CCRC in Dunwoody Village, Inc., which was found not to be an IPPC, and the same result should occur here. Additionally, the County maintains that St. Margaret Seneca Place is inapplicable here because: the Supreme Court in that case did not indicate that the number of Medicaid-eligible patients was the sole measure of complying with HUP; St. Margaret Seneca Place did not involve a CCRC where some residents pay a large upfront entrance fee and a substantial monthly service fee; and the nursing home in St. Margaret Seneca Place did not discriminate against applicants by giving priority to a particular group.

Initially, we note that, in arguing that we should consider TA Expert’s testimony as evidence of Albright’s economic reality, the County essentially asks this Court to credit its expert’s testimony. The trial court, in tax assessment cases, “resolves all matters of credibility and evidentiary weight.” Dunwoody Village, 52 A.3d at 413 n.5. The County raised its assertions about the shortcomings in Albright Accountant’s testimony and reports before the trial court, and the trial court rejected those arguments choosing to credit Albright Accountant’s testimony over TA Expert’s testimony. The trial court gave detailed reasons for accepting Albright Accountant’s opinions and evidence over the evidence presented by Taxing Authorities. We may not reconsider the trial court’s credibility determination. Camp Hachshara Moshava of New York v. Wayne County Board of Assessment and Revision of Taxes, 47 A.3d 1271, 1274 n.5 (Pa. Cmwlth. 2012), petition for allowance of appeal denied, \_\_\_ Pa. \_\_\_, 69 A.3d 603 (2013). Moreover, as we stated in response to the County’s argument related to the propriety of the trial court’s HUP/Act 55 analysis, the trial court did not apply Act 55 concepts to its HUP analysis;<sup>11</sup> therefore, this is not a basis to reverse the trial court’s determination on this issue.

Turning to the merits of whether Albright satisfied this prong, our Supreme Court in HUP offered the following explanation:

Whether or not the portion donated or rendered gratuitous is “substantial” is a determination to be made based on the totality of circumstances surrounding the organization. The word “substantial” does not imply a magical percentage. It must appear from the facts

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<sup>11</sup> Albright notes that, even if the trial court did apply GAAP to its HUP analysis, this would not be an error because HUP does not refer to any particular accounting methodology.

that the organization makes a bona fide effort to service primarily those who cannot afford the usual fee.

HUP, 507 Pa. at 19 n.9, 487 A.2d at 1315 n.9. In St. Margaret Seneca Place, our Supreme Court again addressed this prong and held that the fact that the nursing home there accepted payments from Medicaid was not contrary to a finding that the nursing home was an IPPC. St. Margaret Seneca Place, 536 Pa. at 483-84, 640 A.2d at 382-83. The nursing home in St. Margaret Seneca Place had more than 48% of its residents receiving Medicaid, which covered only two-thirds of the patients' costs, with the nursing home making up the difference. Id. at 482-84, 640 A.2d at 382-83. The Supreme Court stated that, “[t]he decision to accept Medicaid payments to help defray the cost of care for residents is perfectly consistent with a finding that the nursing home advances a charitable purpose.” Id. at 483, 640 A.2d at 383. “The partial subsidy of the costs of caring for an elderly patient is unquestionably a charitable act.” Id. at 485, 640 A.2d at 383-84. This requirement “does not imply a requirement that the institution forego available government payments which cover *part* of its costs, or that it provide wholly gratuitous services to some of its residents.” Id. at 486, 640 A.2d at 384 (emphasis in original).

After reviewing St. Margaret Seneca Place, we conclude that it, among other decisions, supports the trial court's holding. The County's attempts to distinguish St. Margaret Seneca Place are unpersuasive, particularly because Albright's population of Medicaid patients exceeds that in St. Margaret Seneca Place. The nursing home in St. Margaret Seneca Place had 48% of its residents receiving Medicaid benefits, and Albright's population receiving Medicaid benefits averages 55%.

The County argues that the percentage of Medicaid patients should not be **the** decisive factor in determining whether an entity donates or renders gratuitously a substantial portion of its services. However, the trial court did not rely solely on this reason and neither does this Court. Albright also operates its MOW and LIFE programs, both of which Albright subsidizes or provides outright, as well as other benevolent care to its residents. In Lehighton Area School District v. Carbon County Board of Assessment, 708 A.2d 1297, 1300 (Pa. Cmwlth. 1998), this Court considered both the total value of a hospital’s uncompensated care, including Medicaid shortfalls, and its **donations** to a MOW program operated by a separate entity. Here, Albright itself **operates** the MOW program, which is entirely benevolent and receives no government support. (FOF ¶ 63.)

Finally, Dunwoody Village does not require a different result because, unlike the CCRC in that case, Albright accepts Medicaid residents and does not require its residents to sign a life care contract. Dunwoody Village, 52 A.3d at 411-12, 418, 420. Given the multiple programs Albright subsidizes or provides outright, it appears that Albright “makes a bona fide effort to service primarily those who cannot afford the normal fee.” HUP, 507 Pa. at 19 n.9, 487 A.2d at 1315 n.9. Based on these factors, Albright has established that it “[d]onates or renders gratuitously a substantial portion of its goods and services,” id. at 22, 487 A.2d at 1317, and has satisfied this prong of the HUP test.

*b. “Community Service” Requirement under Act 55*

Section 5(d)(1) of Act 55 sets forth six different criteria an entity seeking IPPC status can meet; if it meets any one of them, this part of the Act 55 test is satisfied. In relevant part, this Section states:

(d) Community service.—

(1) The institution must donate or render gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by actually providing any one of the following:

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(iv) Financial assistance or uncompensated goods or services to at least 20% of those receiving similar goods or services from the institution if at least 10% of the individuals receiving goods or services from the institution either paid no fees or fees which were 90% or less of the cost of the goods or services provided to them, after consideration of any financial assistance provided to them by the institution.

(v) Uncompensated goods or services which in the aggregate are equal to at least 5% of the institution's costs of providing goods or services.

10 P.S. § 375(d)(1)(iv), (v). Section 5(d)(2) provides that, in making this determination, “[t]he institution may elect to average the applicable data for its five most recently completed fiscal years for the purposes of calculating any formula or meeting any quantitative standard in paragraph (1).” 10 P.S. § 375(d)(2).

The County asserts that the trial court ignored the economic reality when it concluded that Albright met the 20/10/90 and 5% tests because Albright Accountant did not account for certain reimbursements when he calculated Albright's uncompensated goods and services. The County argues, in contrast, the methodology TA Expert used is consistent with HUP and Act 55 and should have been considered in determining Albright's IPPC status. In so arguing, the County asks this Court to take judicial notice of Albright's completed Application for Sales and Use Tax Exemption, which, according to the County, is consistent with TA Expert's testimony and shows that Albright does not pass this financial test.

The County maintains that the five-year averaging data Albright used is not in accordance with Act 55 and does not establish that Albright met either the 20/10/90 or 5% tests because: Albright Accountant did not consider the financial assistance Albright provides its residences; and, in calculating the 20%, the services the residents receive must be similar to one another and the MOW and LIFE program services are not similar to Albright's nursing home services. The County further argues that Section 5(d)(2) of Act 55 requires that an institution seeking to use the averaging methodology must use the data from the "five most recently completed fiscal years," 10 P.S. § 375(d)(2), and, because 2007 was not completed yet when Albright filed its appeal, Albright should have used the years 2002-2006 instead of years 2004-2008. Finally, the County asserts that Albright cannot rely on the 5% test because it did not raise that test before the trial court and, therefore, it is waived.

Albright's credited evidence supports the trial court's findings that Albright has met both the 20/10/90 and 5% tests. Much of the County's argument is based on its position that the trial court, by crediting the Albright Accountant's testimony, ignored the economic reality of Albright's operations. It is the trial court's role to make credibility and evidentiary weight determinations. Dunwoody Village, 52 A.3d at 413 n.5.

The County has submitted to this Court what is purported to be Albright's completed Application for Sales and Use Tax Exemption; however, it is not in the record certified to this Court and, therefore, it is not before us for review. Ritter v. Ritter, 518 A.2d 319, 323 (Pa. Super. 1986). Moreover, it involves a fact that was disputed at trial, which the trial court resolved in Albright's favor by holding that

Albright satisfied both the 20/10/90 test and the 5% test. Sheppard v. Old Heritage Mutual Insurance Co., 492 Pa. 581, 593, 425 A.2d 304, 310 (1980).

With regard to what the phrase “[f]inancial assistance or uncompensated goods or services to at least 20% of those receiving *similar goods or services* from the institution,” 10 P.S. § 375(d)(1)(iv) (emphasis added), means, we agree with Albright’s position that “similar goods or services,” id., refers to the relationship between the subsidized goods and services and the goods and services provided to full paying individuals. Act 55 does not offer any clarification on the meaning of the phrase “similar goods or services,” id., and Albright’s interpretation comports with the plain language of Section 5(d)(1)(iv) and recognizes the reality that modern charitable organizations provide an array of charitable goods and services that may or may not be similar to each other.

Finally, the County claims that the trial court reviewed the wrong five-year period. However, Albright appealed the 2008 tax year and, by the time the trial occurred in 2012, the 2008 fiscal year had been completed. Hence, there was no error in the trial court using the 2004-2008 data. Additionally, we find no waiver of the 5% test because Albright did assert that it qualified under that test, as demonstrated by the trial court’s discussion of that issue and finding that Albright met this test. (Trial Ct. Op. at 26.)

### **C. Third prong of HUP**

The third prong of the HUP test requires that the entity “[b]enefit[] a substantial and indefinite class of persons who are the legitimate subjects of charity.” HUP, 507 Pa. at 22, 487 A.2d at 1317. The County asserts that Albright

did not satisfy this prong because it caters to wealthy seniors who can afford to pay the very high entrance fees to enter the independent living section, which, in turn, guarantees them a spot in Albright's continuum of care. The County argues that, although the trial court found that "in practice" Albright has an open admissions policy, (FOF ¶ 140), Albright's policy gives priority admission in its nursing facilities to those wealthy older persons who can afford to pay to live in its independent living homes and, therefore, discriminates against potential Medicaid applicants. The County maintains that Albright's high entrance fees and monthly fees, along with its less-than-open admissions policy associated with the required financial pre-qualifications, precludes Albright from satisfying the third prong of HUP.

The District acknowledges that Medicaid patients can be legitimate subjects of charity and that Albright does admit these patients; but, nevertheless, asserts that Albright does not provide benefits and services to the indefinite public, but to the privileged, well-qualified elderly who can afford the substantial entrance and monthly fees. The District contends that Menno Haven and Dunwoody Village are instructive because those CCRCs were very similar to Albright's, and this Court held that the CCRCs did not qualify as IPPCs in those cases. Furthermore, the District asserts that the trial court inaccurately represented the amount of care Albright provides to Medicaid-eligible individuals because, although a particular number of resident days in the nursing home were from Medicaid-eligible patients, the residents of Albright's cottages and apartments are private pay, which means that a smaller portion of the services Albright provides are to its Medicaid-eligible residents.

“The aged in need of medical care are legitimate objects of charity.” St. Margaret Seneca Place, 536 Pa. at 485, 640 A.2d at 383. This Court

recognize[s] that our senior citizens are appropriate objects of charity not solely on the basis of financial need but also on the basis of emotional, social and physical challenges which increase with age. Stated differently, senior citizens are the proper objects of charity as a result of all the special needs associated with their age.

Grace Center Community Living Corporation v. County of Indiana, 796 A.2d 1008, 1013-14 (Pa. Cmwlth. 2002). We have stated

“[t]he essential feature of a public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this *indefinite* or unrestricted quality that gives it its public character . . . and none the less so because a vast majority of the citizens will certainly never derive any benefit from its use. It is enough that they may do so if they choose.”

Unionville-Chadds Ford School District v. Chester County Board of Assessment Appeals, 692 A.2d 1136, 1141 (Pa. Cmwlth. 1997) (Unionville-Chadds Ford School District I) (emphasis in original) (quoting Donohugh’s Appeal, 86 Pa. 306, 313 (1878)).<sup>12</sup>

In analyzing Taxing Authorities’ positions, we note that their arguments focus almost exclusively on the independent living section of Albright’s CCRC, which does require the residents to pay entrance and monthly fees. However, this narrow focus does not take into consideration Albright’s broader activities, such as the other CCRC facilities and programs, including its nursing and assisted living

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<sup>12</sup> Unionville-Chadds Ford School District I was affirmed by our Supreme Court in Unionville-Chadds Ford II, 552 Pa. 212, 714 A.2d 397.

facilities, LIFE program, and MOW program, all of which provide subsidized or uncompensated care and services to individuals who receive Medicaid or who are Medicaid-eligible. Albright's nursing facilities accept Medicaid-eligible individuals, and the population receiving Medicaid benefits in Albright's nursing homes averages 55%. (Trial Ct. Op. 25.) This Court has "recognize[d] that Medicaid patients are manifestly legitimate subjects of charity." Dunwoody Village, 52 A.3d at 420. Albright provides other benevolent services to other residents, and the MOW and LIFE programs provide uncompensated goods and services to seniors who are eligible for Medicaid or other Medical Assistance benefits. Accordingly, we conclude that the trial court correctly determined that individuals receiving the uncompensated or subsidized goods and services from Albright are legitimate subjects of charity. St. Margaret Seneca Place, 536 Pa. at 485, 640 A.2d at 383; Dunwoody Village, 52 A.3d at 420; Grace Center, 796 A.2d at 1013-14.

As for Albright's admissions policy, Albright's contract with its independent living residents does provide that they receive priority admission to the facilities that provide higher levels of care. However, the trial court found, based on the evidence, that, in practice, internal admissions are so low that they do not prevent Albright from accepting applicants into its nursing facilities from other sources. In accepting these applicants, Albright does not distinguish between those who are able to privately pay and those who are Day One Medicaid or Medical Assistance eligible. Because Albright does not distinguish or discriminate against the applicants for its nursing facilities, those facilities are "open to the indefinite public." Unionville-Chadds Ford School District I, 692 A.2d at 1141.

Menno Haven and Dunwoody Village do not require a different result. In Menno Haven, this Court concluded that the CCRC did not meet this prong of the HUP test because the residents were required to prove that they had sufficient financial resources to pay the entrance fees and required monthly fees for years in advance, were Medicare eligible, or applied at one of the rare times the CCRC was willing to accept a Day One Medicaid eligible person from outside the community. Menno Haven, 919 A.2d at 339-43. The CCRC in Menno Haven had, at most, a Medicaid resident population of less than 30% and only 14% of its nursing facility population was admitted from outside the CCRC. Id. at 340. The trial court had found, and this Court agreed, that the Menno Haven CCRC did not have a charitable intent for serving its residents who transitioned from the independent living facilities into the skilled care facilities because it had already accepted a large amount in fees from those residents. Id. at 343. More recently, this Court held that the CCRC in Dunwoody Village did not satisfy this prong of the HUP test because it charged substantial entrance and monthly fees and did not accept any Medicaid patients in any of its facilities, including its skilled nursing facility. Dunwoody Village, 52 A.3d at 419-20.

Although Albright charges entrance fees for its independent living facilities, it differs from the CCRCs in Menno Haven and Dunwoody Village because Albright accepts Medicaid-eligible applicants into its skilled nursing facilities on a regular basis and those residents make up 55% percent of Albright's skilled nursing facility population. In addition to subsidizing the cost of care for these residents, Albright provides other charitable services to Medicaid or Medical Assistance eligible individuals through, *inter alia*, its MOW and LIFE programs.

Accordingly, Menno Haven and Dunwoody Village do not require us to reverse the trial court's conclusion that Albright satisfied the third prong of the HUP test.

**D. Albright as a single corporate entity and parcel review.**

*a. Analyzing Albright as a single corporate entity*

The County asserts that the trial court should have limited its review to Albright's operations in the County and not considered any activities that occur elsewhere because those activities are irrelevant for determining whether Albright's County property is exempt from real estate taxation. According to the County, Albright's County operations, when viewed by themselves, are insufficient to meet either the HUP or Act 55 standards. The County argues that we should be guided by our decision in Appeal of Northwestern Corporation, 665 A.2d 856 (Pa. Cmwlth. 1995), in which this Court held that the entity seeking IPPC status did not qualify because the charitable activities of the entity did not occur on the **specific** property for which the exemption was sought, and hold that only the charitable activities on Albright's County properties should be considered in determining whether Albright is an IPPC.

Section 3 of Act 55 defines "institution" as "[a] domestic or foreign non-profit corporation, association or trust or other similar entity." 10 P.S. § 373. In Chartiers Valley School District, 794 A.2d at 984, we stated that "the basic unit of evaluation [in Act 55 is] as a corporation . . . [and] the basic unit may not be divided." Thus, this Court held that a branch of an otherwise exempt IPPC located in another taxing district was also exempt because "[o]ur evaluation focuses on a corporation, not on multiple corporations and not on parts of a corporation." Id.; see also Unionville-Chadds Ford School District I, 692 A.2d at 1143 (reviewing

Longwood Gardens, Inc. in its corporate whole to determine whether certain property belonging to Longwood was tax exempt).

Pursuant to Section 3 of Act 55, Chartiers Valley, and Unionville-Chadds Ford School District I, the trial court did not err when it considered Albright in its corporate entirety to determine whether it qualified as an IPPC. Where a non-profit corporation is involved in tax exemption matters, the basic unit is the corporation, including various divisions of a corporation. 10 P.S. § 373; Chartiers Valley, 794 A.2d at 984; Unionville-Chadds Ford School District I, 692 A.2d at 1143. Moreover, Northwestern does not support the County's position. In that case, the taxpayer sought to establish its status as an IPPC based on the activities at a facility it owned and operated, as well as activities at a facility it did not own, but managed. Northwestern, 665 A.2d at 858. Because the second facility was owned by a different entity, the taxpayer could not use the activities at the second facility to support its application for IPPC status. Id. We noted that "the entity must be the owner and occupier of the property," which was not the case in Northwestern. Id. Here, all of Albright's properties and facilities are owned and operated by the same corporate entity, Albright. Hence, as in Chartiers Valley and Unionville-Chadds Ford School District I, the proper way to determine whether Albright is an IPPC was to review it as a corporate unit. Accordingly, there was no error or abuse of discretion by the trial court.

*b. Parcel review*

Article VIII, Section 2(a)(v) of the Pennsylvania Constitution and Section 5(h) of Act 55, 10 P.S. § 375(h), require that the real property an IPPC is seeking to exempt from real estate taxes be actually and regularly used for the institution's

purpose. Veterans of Foreign Wars Post 1989 v. Indiana County Board of Assessment Appeals, 954 A.2d 100, 103 (Pa. Cmwlth. 2008) (VFW Post 1989). The District asserts that the trial court abused its discretion and/or erred in granting Albright an exemption for **all** of Albright’s property in the County because Albright did not establish that each of its parcels is “actually and regularly used for the purposes of the institution.” Pa. Const. art. VIII, § 2(a)(v); VFW Post 1989, 954 A.2d at 103. The District contends that, without analyzing each of Albright’s parcels, the trial court granted Albright tax exempt status for all of its County properties, including those which housed the RiverWoods independent living facilities. According to the District, where Pennsylvania Courts have upheld exemptions for properties that would otherwise not be exempt, but for their connection with other charitable activities, the Court did so only after engaging in a specific analysis of how and to what extent the property advanced the IPPC’s charitable purpose. The District additionally argues that the trial court’s suggestion that Taxing Authorities can do a parcel by parcel review of Albright’s land, (Trial Ct. Op. at 23), improperly places the burden on the taxing entity, not the taxpayer. Albright asserts that the trial court reviewed and properly concluded that all of Albright’s properties in the County, including the independent living facilities and the Slifer House Museum, were used to advance Albright’s charitable purpose and, therefore, should be exempt from taxation.

Article VIII, Section 2(a)(v) of the Pennsylvania Constitution permits the General Assembly to exempt from real estate taxation “that portion of real property of such institution which is actually and regularly used for the purposes of the institution.” Pa. Const. art. VIII, § 2(a)(v). Section 5(h) of Act 55 provides:

(h) Parcel review.--

(1) Nothing in this act shall affect, impair or hinder the responsibilities or prerogatives of the political subdivision responsible for maintaining real property assessment rolls to make a determination whether a parcel of property or a portion of a parcel of property is *being used to advance the charitable purpose of an institution of purely public charity* or to assess the parcel or part of the parcel of property as taxable based on the use of the parcel or part of the parcel for purposes other than the charitable purpose of that institution.

(2) Nothing in this act shall prohibit a political subdivision from filing challenges or making determinations as to whether a particular parcel of property is *being used to advance the charitable purpose of an institution of purely public charity*.

10 P.S. § 375(h) (emphasis added).

As discussed in our introduction, the question regarding which of Albright’s parcels are exempt from real estate taxes is distinct from whether Albright qualified as an IPPC. The trial court stated that, “[s]ubject to parcel limitations, [Albright] as a single corporate entity has sustained its heavy burden and is . . . entitled to real estate tax exemption,” (COL ¶ 4), and “[n]othing herein prohibits specific parcel review as permitted by law,” (Trial Ct. Order). The trial court also stated, “a taxing body can do a parcel by parcel review of an institution, to determine whether or not a given parcel of land is used to advance the charitable purpose of the organization in question, even if the parent entity is determined to be exempt from real estate taxes.” (Trial Ct. Op. at 23.) Both the District and Albright construe the trial court’s Order as indicating that all of Albright’s County properties, other than the family health center, are tax exempt. The District claims that the trial court did so without any analysis, in contravention to Alliance Home and VFW Post 1989. Albright asserts that the trial court performed the required

parcel review and determined that all of Albright's parcels satisfied the standard for tax exemption.

Taxing Authorities do not have the burden to establish that Albright's properties are not tax exempt; the burden is on Albright. Alliance Home, 591 Pa. at 467, 919 A.2d at 225. The trial court's Order and opinion do not contain the parcel by parcel review required by Article VIII, Section 2(v) of the Pennsylvania Constitution and Section 5(h) of Act 55 to determine whether those parcels are actually and regularly used for Albright's purpose or used to advance Albright's charitable purpose. However, based upon the trial court's findings and the application of the law, we are able to make a determination with regard to some of the parcels.

Because we have determined that the trial court did not err in finding that Albright is an IPPC based, considerably, on its nursing and assisted living facilities, it follows that the parcels on which those facilities are located are actually and regularly used for Albright's purpose and/or used to advance Albright's charitable purpose and, thus, are exempt.<sup>13</sup> The tax status of the parcel on which Albright's independent living facilities is a closer question but, guided by our Supreme Court's holding in Alliance Home, we conclude that this parcel is also exempt from real estate taxes.

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<sup>13</sup> We note that these parcels were, historically, exempt from real estate taxes. (FOF ¶¶ 18, 31.)

In Alliance Home, the Supreme Court was asked to determine whether the independent living facilities of a CCRC (Chapel Pointe) were entitled to a real estate tax exemption. After reviewing Chapel Pointe's mission and purpose, which was to provide an "integrated continuum of care for the elderly with an overarching charitable purpose" and "to provide a home and care for the aged and infirm," the Supreme Court held that "[c]onsidering the unique nature of the institution at issue (*i.e.*, a CCRC operated as a charitable institution), we have no doubt that the independent living facility is indeed actually and regularly used for the purposes of the institution." Alliance Home, 591 Pa. at 457, 468, 919 A.2d at 219, 225-26. The Supreme Court recognized that, if the independent living facility was viewed by itself, it "might not on its own qualify as a purely public charity," but

its role in the comprehensive scheme provided by [Chapel Pointe] is consistent with, is tied to, and advances [Chapel Pointe's] charitable purpose. The independent living facility is not a public restaurant, movie theater, golf course or some other unrelated business entity existing solely as a revenue stream to finance a different and charitable endeavor. . . . [T]he independent living units offer entry into a community which promises to provide for the future needs of the elderly and infirm, needs that may change over time to include assisted living and skilled nursing care.

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In return for the capital investment required to enter the facility and the maintenance fees thereafter, residents of the independent living facility receive both a measure of current service and, more importantly, a promise of priority consideration for placement in [Chapel Pointe's] assisted living and skilled nursing facilities, if the need should arise. That need for greater and possibly subsidized care could arise in a day, a year, or never. But the promise of such security is significant.

Id. at 468-69, 919 A.2d at 226.

Albright is “organized exclusively for charitable purposes.” (Albright’s By-Laws, Section 2.1.1, R.R. at 22a.) Its mission is to: “[m]aintain, support, and operate facilities for the housing and care of the aged, infirm, ill, handicapped, or other persons requiring like care,” (Albright’s Amended Articles of Incorporation, Section 3.1, R.R. at 8a); “[p]rovide and promote benevolent support of facilities and activities for the housing and care of the aged, infirm, ill, handicapped, or other persons requiring like care,” (Albright’s Articles of Incorporation, Section 3.6, R.R. at 13a); and to “provide a continuum of care” that “encourage[s] abundant living by anticipating and responding to the needs of the aging and frail,” (Albright Mission and Vision Statements, R.R. at 20a; Albright By-Laws, Section 2.1, R.R. at 22a). Residents of Albright’s independent living units pay an entry fee and a monthly maintenance fee, and “[i]n return for the capital investment required to enter the facility and the maintenance fees thereafter, . . . receive both a measure of current service and, more importantly, a promise of priority consideration for placement in [Albright’s] assisted living and skilled nursing facilities.” Alliance Home, 591 Pa. at 469, 919 A.2d at 226. Accordingly, we conclude, like the Supreme Court did in Alliance Home, that the independent living facilities here are a part of “the comprehensive care scheme provided by [Albright and are] consistent with, [are] tied to, and advance[] [Albright’s] charitable purpose.” Id. at 468-69, 919 A.2d at 226. Thus, the parcel on which Albright’s independent living facilities are located is exempt from real estate taxes.

This conclusion leaves in dispute the tax status of the parcels on which the Slifer House Museum and the “flood plain properties” are located.<sup>14</sup> (Amended Appeal of the Board’s Decision at 2.) It is unclear as to whether the activities on these parcels are associated with Albright’s CCRC and, therefore, we must remand this matter for the trial court to review these tax parcels to determine whether they are actually and regularly used for Albright’s purpose or used to advance Albright’s charitable purpose.

For the foregoing reasons, the trial court’s Order is affirmed to the extent that it finds that Albright is an IPPC, but we must remand for a determination as to the exemption status of certain Albright tax parcels as set forth in this opinion.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>14</sup> As mentioned, Albright does not challenge the tax status of the parcel on which the family health center is located. (Amended Appeal from the Board Decision at 2.)

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Albright Care Services, Formerly	:	
United Methodist Homes of	:	
Lewisburg Corporation and	:	
United Methodist Continuing	:	
Care Services	:	
	:	
v.	:	No. 2094 C.D. 2012
	:	
Union County Board of Assessment	:	
and Union County and Lewisburg	:	
Area School District and Kelly	:	
Township	:	
	:	
Appeal of: Union County Board	:	
of Assessment and Union County	:	
	:	
Albright Care Services, Formerly	:	
United Methodist Homes of	:	
Lewisburg Corporation and United	:	
Methodist Continuing Care Services	:	
	:	
v.	:	No. 2100 C.D. 2012
	:	
Union County Board of Assessment	:	
Association, and Union County and	:	
Lewisburg Area School District and	:	
Kelly Township	:	
	:	
Appeal of: Lewisburg Area School	:	
District	:	

**ORDER**

**NOW**, January 29, 2014, the Order of the Court of Common Pleas of the 17th Judicial District (Union County Branch) in the above-captioned matter is hereby **AFFIRMED** to the extent that it finds that Albright Care Services (Albright) is an Institution of Purely Public Charity. In accordance with the

foregoing opinion, this matter is **REMANDED** for a determination as to the exemption status of Albright tax parcels 06-046-001.LL000, 006-051-001.00000, 006-051-002.00000, and 006-051-006.00000.

Jurisdiction relinquished.

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**RENÉE COHN JUBELIRER, Judge**