ALZHEIMER: DOES THE ENTIRE IN-PATIENT FEE GO TO THE HEALTH SERVICE?

Note to Court of Cassation, Section III, Order 18 May 2023 no. 13714

The Court of Cassation, Civil Section, in its Order 18 May 2023, no. 13714, once again expressed its opinion on the nature of health services that must be paid in full by the National Health Service (NHS).

In the case under consideration, the family of a 100% disabled woman, suffering from Alzheimer's disease, had undertaken to pay a monthly fee of € 1,500 to a nursing home (*Residenza Sanitaria Assistenziale – "RSA"*). However, after about six years, the obligors revoked the commitment they had made in the past, considering that the burden of paying the in-patient fees lay exclusively on the NHS.

As well known, the orientations are not unequivocal on this point: on the one hand, there is an interpretation according to which the hospital fees of patients suffering from Alzheimer's disease and advanced senile dementia are to be charged in full to the Health Service; on the other hand, there is case law according to which purely welfare or hotel services must be borne by the guest and his family.

The second interpretation is the one shared by the lower court judges, who – both in the first and second degree of judgement – condemned the family to pay the outstanding fees, given the separability between hotel-welfare services (borne by the hospitalised patient or his family members if they assumed the burden) and those of a solely medical nature, borne by the National Health Service.

On the other hand, the Court of Cassation held that the reconstruction of the Court of Appeal was erroneous when it identified a separability between hotel-welfare services and healthcare ones.

According to the Supreme Court, *"the criterion [...] is that of the integration of the services, with an unitary and inseparable coexistence of the two aspects of the service, which produces the full burden of the economic charges on the National Health Service"*, not mattering *"that a personalised therapeutic plan had been agreed upon or provided for that individual patient and [...] that the correct implementation of said plan, in accordance with the commitments made to the patient or family members at the time of hospitalisation"* (Court of Cassation, 13714/2023, point 3.3).

Indeed, the personalised therapeutic plan falls within the basic level of health care for all citizens and can be administered only in conjunction with healthcare services, thus remaining fully within the organisational and functional framework of the public health service.

The Court reached this conclusion on the basis of an articulated reasoning that moves, first of all, from article 3-*septies*, paragraph 1 of Legislative Decree 30 December 1992 No. 502, according to which "*sociomedical services are defined as all the activities aimed at satisfying, by means of integrated healthcare paths, the needs of the individual that require unified health services and social protection actions capable of guaranteeing, even in the long term, continuity between care and rehabilitation actions"*.

On this point, the same Third Section has already stated that *"in the event that healthcare services can be provided only in conjunction with social assistance activities, [...] the healthcare nature of the service prevails in any case, since the other services – of a different nature – must be considered linked to the first by a necessary instrumental link, being aimed at enabling the care of the patient's health"* (Court of Cassation, Section III, order no. 28321 of 28 November 2017).

However, the issue does not appear to have been definitively resolved: the inseparability of the hotel-welfare and healthcare services has not been generally recognised by the Court, with the possibility that, on the basis of the patients' health histories, the burden of paying part of the in-patient fees may be deemed legitimate.

Laura Sommaruga, Partner
Email: laura.sommaruga@grplex.com

Federico Ianeselli, Senior Associate
Email: federico.ianeselli@grplex.com

Enrico Cassaro, Junior Associate
Email: enrico.cassaro@grplex.com