

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - January 11, 2007

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
WILLIAM E. McCARTHY, JJ.

2005-11765

DECISION & JUDGMENT

In the Matter of Nicholas Yannaco, etc., petitioner,
v Antonia C. Novello, etc., et al., respondents.

Ezra Huber & Associates, P.C., Mineola, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek,
Carol Fischer, and Patrick Walsh of counsel), for respondent Antonia C. Novello, as
Commissioner of the New York State Department of Health.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath
and Ellen Ravitch of counsel), for respondent Verna Eggleston, as Commissioner of
the New York City Human Resources Administration.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent New York State Department of Health dated February 9, 2005, made after a hearing, which confirmed a determination of the New York City Human Resources Administration dated March 25, 2004, that the petitioner's decedent was eligible for Medical Residential Health Care Facility Medical Assistance, effective June 1, 2003.

ADJUDGED that the determination dated February 9, 2005, is confirmed, with one bill of costs, the petition is denied, and the proceeding is dismissed on the merits.

In order to annul a quasi-judicial administrative determination rendered after a hearing involving sworn testimony, the court must conclude that the record lacks substantial evidence to support the determination (*see Matter of Lahey v Kelly*, 71 NY2d 135, 140). Substantial evidence has been defined as "such relevant proof as a reasonable mind may accept as adequate to support a

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conclusion or ultimate fact” (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; *see Matter of Tutuianu v New York State*, 22 AD3d 503, 504). Here, the determination of the New York State Department of Health, made after a hearing, which confirmed the determination of the New York City Human Resources Administration, that the petitioner’s decedent was eligible for Medicaid Residential Health Care Facility Medical Assistance, effective June 1, 2003, based upon a September 30, 2003, application date, is supported by substantial evidence (*see CPLR 7803[4]*; 18 NYCRR 360-2.4[c]; *Matter of Coleman v New York State Dept. of Social Servs.*, 196 AD2d 818).

RIVERA, J.P., SANTUCCI, SKELOS and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court