

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

D19176
Y/kmg

_____AD3d_____

Submitted - March 28, 2008

ROBERT A. SPOLZINO, J.P.
ROBERT A. LIFSON
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2007-03356

DECISION & JUDGMENT

In the Matter of the Estate of Michael Eichna,
petitioner, v Janet Demarzo, etc., et al., respondents.

(Index No. 06/25496)

Miller & Milone, P.C., Garden City, N.Y. (Tammy Lawlor of counsel), for petitioner.

Christine Malafi, County Attorney, Hauppauge, N.Y. (Adriana Lopez of counsel), for
respondent Janet Demarzo.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and
David Lawrence III of counsel), for respondent Antonia C. Novello.

Proceeding pursuant to CPLR article 78 to review a determination of the New York
State Department of Health, dated May 11, 2006, which, after a fair hearing, affirmed a determination
of the Department of Social Services of the County of Suffolk denying the application of the
petitioner's decedent for medical assistance benefits.

ADJUDGED that the petition is granted, on the law, with one bill of costs, the
determination is annulled, and the matter is remitted to the respondent Department of Social Services
of the County of Suffolk for further proceedings consistent herewith.

The petitioner failed to provide the Department of Social Services of the County of
Suffolk (hereinafter DSSCS) with the necessary documentation to verify the decedent's eligibility for
medical assistance benefits for the two-month period of his hospitalization prior to his death due to
difficulties in obtaining letters of administration. However, at or before the time of the fair hearing
before the New York State Department of Health (hereinafter NYSDOH), the petitioner submitted

June 3, 2008

Page 1.

MATTER OF ESTATE OF EICHNA v DEMARZO

the necessary documentation. Under the particular circumstances of this case, there was an insufficient basis for NYSDOH's determination affirming DSSCS's denial of benefits (*see Matter of Taylor v Bane*, 199 AD2d 1071; *Matter of Segall v D'Elia*, 92 AD2d 897). Rather, NYSDOH should have remitted the matter to DSSCS for a new determination based on the documentation submitted.

SPOLZINO, J.P., LIFSON, FLORIO and DICKERSON, JJ., concur.

ENTER:


James Edward Felzer
Clerk of the Court