

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

D20683
Y/kmg

_____AD3d_____

Submitted - September 19, 2008

REINALDO E. RIVERA, J.P.
MARK C. DILLON
JOSEPH COVELLO
DANIEL D. ANGIOLILLO, JJ.

2007-04585

DECISION & ORDER

In the Matter of Frank Rizzuto, appellant,
v Richard S. Daines, etc., et al., respondents.

(Index No. 15732/06)

John F. Castellano, Islip Terrace, N.Y., for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and
Carol Fisher of counsel), for respondents.

In a proceeding, inter alia, pursuant to CPLR article 78 to review a determination of the Commissioner of the New York State Department of Health, by his designee, dated May 31, 2006, which, after a hearing, found that the failure of the New York State Office of Mental Health to determine the petitioner's eligibility for the Medicare Savings Program was correct, the petitioner appeals from a judgment of the Supreme Court, Nassau County (O'Connell, J.) entered April 3, 2007, which denied the petition and dismissed the proceeding for failure to state a cause of action.

ORDERED that the judgment is affirmed, without costs or disbursements.

Contrary to the petitioner's contention, the Supreme Court properly denied the petition and dismissed the proceeding (*see* CPLR 7803[1], [3]).

RIVERA, J.P., DILLON, COVELLO and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

October 14, 2008

MATTER OF RIZZUTO v DAINES

October 14, 2008

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