

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

D26518
C/prt

_____AD3d_____

Argued - June 8, 2007

FRED T. SANTUCCI, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2006-05776

DECISION & ORDER ON MOTION

In the Matter of Ruben N. (Anonymous).
Elizabeth T. (Anonymous), respondent; Department of
Social Services of City of New York, appellant.

(Index No. 100221/02)

Motion by the appellant for leave to renew an appeal from an order of the Supreme Court, Kings County, dated April 27, 2006, which was determined by opinion and order of this Court dated September 16, 2008.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion for leave to renew is granted (*see* CPLR 101, 2221[e][2]; *Glicksman v Board of Educ./Cent. School Bd. of Comsewogue Union Free School Dist.*, 278 AD2d 364, 366); and it is further,

ORDERED that, upon renewal, the opinion and order of this Court dated September 16, 2008 (*Matter of Ruben N.*, 55 AD3d 257), is recalled and vacated, and the following decision and order is substituted therefor:

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Alan G. Krams of counsel), for appellant.

Jay J. Sangerman, PLLC (Ephrem Wertenteil, New York, N.Y., of counsel), for respondent.

March 16, 2010

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MATTER OF N. (ANONYMOUS), RUBEN

In a guardianship proceeding pursuant to Mental Hygiene Law article 81, the Department of Social Services of the City of New York appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Hall, J.), dated April 27, 2006, as granted its motion to recover, from the trust corpus of the Ruben N. Supplemental Needs Trust, the total medical assistance provided by Medicaid to Ruben N. over the course of his lifetime, only to the extent of directing that it be paid the sum of \$50,226.63, and otherwise denied the motion. Justice Dickerson has been substituted for former Justice Spolzino (*see* 22 NYCRR § 670.1[c]).

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the motion of the Department of Social Services of the City of New York which was for reimbursement of the *unreimbursed portion of* medical assistance provided by Medicaid to Ruben N. from *July 1, 1992*, through September 22, 2003, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed insofar as appealed from, with costs to the respondent, and the matter is remitted to the Supreme Court, Kings County, for a determination of the amount of medical assistance provided by Medicaid to Ruben N. from *July 1, 1992*, through September 22, 2003, that was not previously reimbursed, and for entry of an appropriate judgment.

Pursuant to federal and state law governing the creation of supplemental needs trusts, the State is entitled to recover, upon the death of the beneficiary, “the total amount of benefits paid throughout the beneficiary’s lifetime” (Matter of Abraham XX., 11 NY3d 429, 436; see 42 USC § 1396p[d][4][A]; Social Services Law § 366[2][b][2][iii]). Here, the Department of Social Services of the City of New York (hereinafter the DSS) provided medical assistance benefits to Ruben N. from July 1, 1992, until his death on September 22, 2003. Through settlement of a Medicaid lien in a medical malpractice action, the DSS has recovered the benefits paid for injuries attributable to the tortfeasor during the period of July 14, 1997, to August 23, 2002. DSS is entitled to recover from the remaining corpus of the supplemental needs trust, if any, the unreimbursed portion of all medical assistance benefits provided to Ruben N. during his lifetime which were not covered by the Medicaid lien (see Matter of Abraham XX., 11 NY3d at 436).

SANTUCCI, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court