

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

D27878  
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Submitted - May 27, 2010

MARK C. DILLON, J.P.  
RUTH C. BALKIN  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

2009-07152

DECISION & JUDGMENT

In the Matter of Estate of Kevin Daniell, etc.,  
appellant, v Janet Demarzo, etc., et al., respondents.

(Index No. 42355/08)

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

Christine Malafi, County Attorney, Central Islip, N.Y. (William G. Holst of counsel),  
for respondent Janet Demarzo.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael Belohlavek and  
Sudarsana Srinivasan of counsel), for respondent Richard F. Daines.

Proceeding pursuant to CPLR article 78 to review a determination of the State of New York Department of Health dated July 31, 2008, which, after a fair hearing, upheld a determination of the Department of Social Services of the County of Suffolk dated February 1, 2007, 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 Janet DeMarzo, as Commissioner of the Department of Social Services of the County of Suffolk, for further proceedings consistent herewith.

The evidence presented at the fair hearing established that, as a result of having to wait for letters of administration, the petitioner failed to meet the deadline set by the Department of Social Services of the County of Suffolk (hereinafter DSS) for the production of the necessary

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documentation to verify the decedent's eligibility for medical assistance benefits for the approximate 4½-month period of hospitalization prior to his death. However, prior to the time of the fair hearing, the petitioner submitted the requested documentation. Under the particular circumstances of this case, there was an insufficient basis for the determination of the State of New York Department of Health (hereinafter DOH) upholding DSS's denial of benefits (*see Matter of Eichna v Demarzo*, 52 AD3d 513; *Matter of Taylor v Bane*, 199 AD2d 1071; *Matter of Segall v D'Elia*, 92 AD2d 897). DOH should have remitted the matter to DSS for a new determination based on the documentation submitted.

DILLON, J.P., BALKIN, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court