

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

D33257  
Y/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 28, 2011

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

2010-04884

DECISION & JUDGMENT

In the Matter of Karen Urrutia, etc., petitioner, v  
Richard F. Daines, etc., et al., respondents.

(Index No. 15304/09)

Terry Scheiner, Port Washington, N.Y., for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek  
and Sudarsana Srinivasan of counsel), for respondent Richard F. Daines.

Proceeding pursuant to CPLR article 78 to review a determination of a designee of the Commissioner of the New York State Department of Health dated April 7, 2009, which, after a fair hearing, affirmed a determination of the Nassau County Department of Social Services that the petitioner's husband, an institutionalized spouse, should contribute the sum of \$2,972.79 in Net Available Monthly Income and that the petitioner was not entitled to a monthly income allowance increase due to exceptional circumstances.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination of the New York State Department of Health, made after a hearing, affirming a determination of the Nassau County Department of Social Services, is supported by substantial evidence (*see Matter of LoBlanco v Hansell*, 83 AD3d 1072, 1073). The petitioner failed to demonstrate "significant financial distress" caused by "exceptional circumstances" within the meaning of the spousal impoverishment provisions of federal and state law (42 USC § 1396r-5[e][2][B]; Social Services Law § 366-c[8][b]; 18 NYCRR 360-4.10[a], [b]; *see Matter of Balzarini*

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*v Suffolk County Dept. of Social Servs.*, 16 NY3d 135, 142-144; *Matter of Schachner v Perales*, 85 NY2d 316, 322). Contrary to the petitioner's contentions, a "community spouse" is not entitled to an amount in excess of the statutory minimum monthly maintenance needs allowance absent a showing of such exceptional circumstances (*Matter of Gomprecht v Gomprecht*, 86 NY2d 47, 52).

The petitioner's remaining contentions are without merit.

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court