

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

745

TP 08-01506

PRESENT: HURLBUTT, J.P., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

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IN THE MATTER OF MARY C. JACKSON, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF  
THE COMMISSIONER, RESPONDENT.

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D. VICTOR PELLEGRINO, UTICA, FOR PETITIONER.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF  
COUNSEL), FOR RESPONDENT.

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Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Herkimer County [Michael E. Daley, J.], entered May 20, 2008) to review a determination of respondent. The determination found after a fair hearing that petitioner was currently ineligible for medical assistance benefits.

It is hereby ORDERED that the determination is unanimously modified on the law and the petition is granted in part by annulling that part of the determination finding petitioner ineligible for medical assistance benefits between the date on which the personal service agreement was executed and the date on which the determination of the Herkimer County Department of Social Services was made and as modified the determination is confirmed without costs, and the matter is remitted to the Herkimer County Department of Social Services for further proceedings in accordance with the same Memorandum as in *Matter of Barbato v New York State Dept. of Health* (\_\_\_ AD3d \_\_\_ [Aug. 21, 2009]).

Entered: August 21, 2009

Patricia L. Morgan  
Clerk of the Court