

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

722

TP 11-00134

PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND GORSKI, JJ.

IN THE MATTER OF THEODORE J. USATYNSKI, AS
VOLUNTARY ADMINISTRATOR OF THE ESTATE OF
THEODORE W. USATYNSKI, DECEASED, PETITIONER,

V

MEMORANDUM AND ORDER

RICHARD F. DAINES, M.D., COMMISSIONER, NEW YORK
STATE DEPARTMENT OF HEALTH, ELIZABETH R. BERLIN,
EXECUTIVE DEPUTY COMMISSIONER, NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,
AND DAVID SUTKOWY, COMMISSIONER, ONONDAGA COUNTY
DEPARTMENT OF SOCIAL SERVICES, RESPONDENTS.

MANNION & COPANI, SYRACUSE (ANTHONY F. COPANI OF COUNSEL), FOR
PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENTS RICHARD F. DAINES, M.D., COMMISSIONER, NEW
YORK STATE DEPARTMENT OF HEALTH, AND ELIZABETH R. BERLIN, EXECUTIVE
DEPUTY COMMISSIONER, NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE.

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, Onondaga County [Anthony J.
Paris, J.], entered November 18, 2010) to review a decision after fair
hearing of the New York State Office of Temporary and Disability
Assistance. The decision, among other things, confirmed the
determination of the Onondaga County Department of Social Services
denying an application made on behalf of Theodore W. Usatynski for
Medicaid benefits.

It is hereby ORDERED that said proceeding is unanimously
dismissed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding
seeking, inter alia, to annul the decision after a fair hearing that
confirmed the determination of the Onondaga County Department of
Social Services (DSS) denying his application on behalf of his father
(decedent) for Medicaid benefits. During the pendency of this appeal,
respondents Richard F. Daines, M.D., Commissioner, New York State
Department of Health, and Elizabeth R. Berlin, Executive Deputy
Commissioner, New York State Office of Temporary and Disability
Assistance, advised this Court that the determination of DSS has been

withdrawn and that DSS was directed to redetermine decedent's eligibility for Medicaid benefits. Thereafter, petitioner's counsel advised this Court that DSS determined that petitioner was eligible for Medicaid benefits. Thus, " 'petitioner has received all the relief to which he is entitled and is no longer aggrieved, [and] the proceeding is dismissed as moot' " (*Matter of Mahagan v New York State Dept. of Health*, 53 AD3d 1118, 1119; see *Matter of Wellman v Surles*, 185 AD2d 464, 466).

Entered: July 1, 2011

Patricia L. Morgan
Clerk of the Court