

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COURT OF APPEALS

STATE OF NEW YORK

-----

MATTER OF HAWKINS,

Appellant,

-against-

BERLIN,

Respondent.

-----

No. 177  
(Papers Sealed)

20 Eagle Street  
Albany, New York 12207  
October 22, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Appearances:

ANDREA HOOD, ESQ.  
MILBANK, TWEED, HADLEY & MCCLOY LLP  
Attorneys for Appellant  
One Chase Manhattan Plaza  
New York, NY 10005

CLAUDE S. PLATTON, ASG  
NEW YORK STATE ATTORNEY GENERAL'S OFFICE  
Attorneys for Respondent State OTDA  
120 Broadway  
New York, NY 10271

SCOTT SHORR, ESQ.  
CORPORATION COUNSEL OF THE CITY OF NEW YORK  
Attorneys for Respondent NYC Department of Social Services  
100 Church Street  
New York, NY 10007

1 CHIEF JUDGE LIPPMAN: 177, Hawkins v.  
2 Berlin.

3 Counsel, do you want any rebuttal time?

4 MS. HOOD: Yes, Your Honor; two minutes,  
5 please.

6 CHIEF JUDGE LIPPMAN: Two minutes, go  
7 ahead. You're on.

8 MS. HOOD: Okay. May it please the court,  
9 we're - - - we're here today, Your Honors, because  
10 res - - - respondents claim to be entitled to child  
11 support that belongs to Ms. Hawkins, appellant in  
12 this case.

13 CHIEF JUDGE LIPPMAN: Why does it belong to  
14 Ms. Hawkins?

15 MS. HOOD: For a number of reasons, Your  
16 Honor. So one reason it belongs to Ms. Hawkins is  
17 that respondents failed to give effect to Section  
18 131(c)(1) of the Social Services Law which provided  
19 that once Ms. Hawkins' oldest son became eligible for  
20 Social Security - - -

21 CHIEF JUDGE LIPPMAN: But had the debt been  
22 repaid, the amount of the public assistance been  
23 repaid? I mean, do you - - - do you - - - are you  
24 operating at a negative or a positive in terms of the  
25 amount that - - - that had gone out for public

1 assistance vis-a-vis that particular son where you  
2 now you claim you're entitled to those money?

3 MS. HOOD: I understand, Your Honor. So -  
4 - - so we claim that we - - - we are entitled to a  
5 certain amount of prior arr - - - arrears.

6 CHIEF JUDGE LIPPMAN: Yeah, but are you - -  
7 - are you in - - - in - - - are in a negative amount  
8 in terms of that? Has that money been - - - been  
9 paid back vis-a-vis the - - - the government?

10 MS. HOOD: I'm sorry, Your Honor. I'm not  
11 - - - I'm not following the question.

12 CHIEF JUDGE LIPPMAN: What I'm saying is,  
13 when - - - when does it stop? If you were - - - if -  
14 - - has the - - - has the government been made whole  
15 in terms of what they paid out for public assistance  
16 vis-a-vis what they're getting in terms of child  
17 support - - - getting paid to them, to the  
18 government?

19 MS. HOOD: To date they have not, but under  
20 the stat - - - relevant statutes - - -

21 CHIEF JUDGE LIPPMAN: So why isn't that  
22 dispositive?

23 MS. HOOD: Because under the relevant  
24 statutes, Your Honor, they're not ent - - - they're  
25 not necessarily entitled to it.

1 CHIEF JUDGE LIPPMAN: Why isn't that  
2 assignment permanent until they get paid back?

3 MS. HOOD: It's not permanent, Your Honor,  
4 because Section 131(c)(1) provides that once an  
5 individual in a public assistance household becomes  
6 eligible for SSI, he is deemed statutorily invisible  
7 to the household.

8 JUDGE STEIN: Well, isn't it - - -

9 JUDGE RIVERA: But aren't they entitled to  
10 collect the arrears for the period during which they  
11 should have gotten the support but the person who  
12 owed the support didn't pay it?

13 MS. HOOD: I'm sorry, Your Honor?

14 JUDGE RIVERA: Okay, sorry. Don't - - -  
15 this is my confusion with the case - - -

16 MS. HOOD: Um-hum.

17 JUDGE RIVERA: - - - but I think I  
18 understand part of what you're arguing. So let's say  
19 from January to December, the child is part of the  
20 public assistance budget.

21 MS. HOOD: Um-hum.

22 JUDGE RIVERA: Okay, she assigns over the  
23 support and the father of the child pays six of those  
24 twelve months. You with me?

25 MS. HOOD: I - - - I think so.

1 JUDGE RIVERA: Okay, so for - - - six  
2 months of child support has not been paid.

3 MS. HOOD: Um-hum.

4 JUDGE RIVERA: You still with me?

5 MS. HOOD: I'm having trouble following the  
6 hypothetical, I apologize.

7 JUDGE RIVERA: Well, that tells you the  
8 problem I'm having reading these briefs.

9 MS. HOOD: Yeah, so - - - so - - -

10 JUDGE RIVERA: Okay.

11 MS. HOOD: - - - maybe I should try to - -  
12 -

13 JUDGE RIVERA: She assigns twelve months of  
14 child support over to the District because she's  
15 getting public assistance for the child for twelve  
16 months, yes?

17 MS. HOOD: For the eldest child?

18 JUDGE RIVERA: Oh, my goodness, the child  
19 at issue here. I'm not talking about Jared (ph.),  
20 I'm talking about Michael.

21 MS. HOOD: Okay.

22 JUDGE FAHEY: But they only get six months.  
23 It's difficult to collect this child support and they  
24 have only gotten six months.

25 MS. HOOD: Correct.

1 JUDGE RIVERA: So after the one year, the  
2 child, Michael - - -

3 MS. HOOD: Um-hum.

4 JUDGE RIVERA: - - - is no longer part of  
5 the budget. This is your argument.

6 MS. HOOD: Correct.

7 JUDGE RIVERA: It's terminated, correct?

8 MS. HOOD: Correct.

9 JUDGE RIVERA: All right, but six months,  
10 during the time that the child was on the budget, of  
11 child support has not been paid.

12 MS. HOOD: Um-hum.

13 JUDGE RIVERA: Is your argument that  
14 they're not entitled to those arrears?

15 MS. HOOD: No, that's not our argument.

16 JUDGE RIVERA: Okay.

17 MS. HOOD: The - - - the - - - the - - -

18 JUDGE RIVERA: What are you entitled to?

19 MS. HOOD: What - - - what we're entit - -  
20 - would it be helpful to explain - - -

21 JUDGE RIVERA: What is she entitled to?

22 MS. HOOD: What Ms. Hawkins is entitled to?  
23 Ms. Hawkins is entitled to any prior arrears that exc  
24 - - - exceed the amount of public assistance benefits  
25 that were paid out prior to 2005. In other words,

1 when the - - - Michael was still in the household.

2 JUDGE ABDUS-SALAAM: That goes back to the  
3 Chief Judge's question. Are you in arrears here?  
4 Are you in arr - - - has there been any excess  
5 payment on behalf of Michael with the arrears?

6 MS. HOOD: With respect to the arrears, we  
7 are owed a certain amount of arrears.

8 JUDGE ABDUS-SALAAM: But how - - -

9 JUDGE RIVERA: Okay, but in my  
10 hypothetical, I was assuming that there are arrears  
11 in existence and you said no, we're not claiming  
12 those arrears. So something is still owed to the  
13 district - - - support is still owed to the district  
14 during the time that you concede the child is part of  
15 the budget, that - - - and that support has not been  
16 paid. Those are arrears, are they not?

17 MS. HOOD: That - - - that's correct.  
18 They're arrears.

19 JUDGE RIVERA: Okay, and so if they haven't  
20 been paid, I guess this is the bottom line, what are  
21 you owed?

22 MS. HOOD: We are owed - - -

23 JUDGE RIVERA: Because there's still - - -  
24 right, if he - - - if the father were to still be  
25 paying support, aren't they owed the money for those

1 months that the child was on the budget and that she  
2 had assigned over the support?

3 MS. HOOD: They're - - - they're entitled  
4 to the - - - the arrears during the period of time  
5 that the - - - the SSI recipient was in the household  
6 up to the amount of the public assistance paid out  
7 during the time that that minor was in the household  
8 - - -

9 JUDGE RIVERA: But if you haven't got - - -  
10 and I think that's the question - - -

11 MS. HOOD: Right.

12 JUDGE RIVERA: - - - if - - - if there's  
13 not yet been child support that's been paid - - -

14 MS. HOOD: Um-hum.

15 JUDGE RIVERA: - - - that's the arrears.

16 MS. HOOD: Um-hum.

17 JUDGE RIVERA: And you told me no, she's  
18 not asking for that, but those still exist. What is  
19 she asking for? What money is she trying to draw  
20 from?

21 MS. HOOD: I understand. So at this point,  
22 there's no dollar amounts that's been collected by -  
23 - - by - - - by respondents that they have on their  
24 accounts that we're claiming we're entitled to. It's  
25 an issue of our entitlement to the prior arrears.

1           However, I need to caveat that, because there is a  
2           second claim where - - -

3                       CHIEF JUDGE LIPPMAN:   Yeah, has the  
4           government - - - has the government been made whole?

5                       MS. HOOD:   The government has - - - in  
6           terms of - - -

7                       CHIEF JUDGE LIPPMAN:   In other words, they  
8           paid out a certain amount of public assistance.  Have  
9           they gotten back more than what they paid out?

10                      MS. HOOD:   They haven't, but there's no  
11           entitlement for them to do that under the relevant  
12           statutory framework.

13                      CHIEF JUDGE LIPPMAN:   But you assigned  
14           those - - - those - - - those payments to them and  
15           they haven't been made whole.  Why isn't that  
16           assignment permanent to at least the point when  
17           they're made whole?

18                      MS. HOOD:   Because, Your Honor, it would  
19           allow the respondents to be reimbursed for public  
20           assistance that they have paid out to a family that  
21           doesn't include the minor on behalf of whose - - -  
22           the child support was assigned.

23                      JUDGE ABDUS-SALAAM:   But what if it were on  
24           behalf of the minor?  What if - - - what if - - -  
25           just to keep it simple, what if they paid out a

1 hundred dollars for Michael while he was eligible for  
2 public assistance, and they only collected forty - -  
3 -

4 MS. HOOD: Um-hum.

5 JUDGE RIVERA: - - - and there's still  
6 sixty owing, and he's no longer on the - - - the  
7 family's budget? Aren't they still entitled to that  
8 sixty?

9 MS. HOOD: From that time period?

10 JUDGE RIVERA: Which was my hypothetical to  
11 you.

12 JUDGE ABDUS-SALAAM: Yeah.

13 JUDGE FAHEY: Yeah.

14 MS. HOOD: From that time period - - -

15 JUDGE ABDUS-SALAAM: Yes.

16 MS. HOOD: - - - when - - - when - - -

17 JUDGE ABDUS-SALAAM: Yes.

18 MS. HOOD: - - - Michael was in the budget,  
19 yes.

20 JUDGE ABDUS-SALAAM: Or - - - or until it's  
21 paid?

22 JUDGE STEIN: And - - - and isn't that what  
23 - - -

24 MS. HOOD: Up to the amount of the public  
25 assistance benefits - - -

1 JUDGE ABDUS-SALAAM: Right.

2 MS. HOOD: - - - that were paid out during  
3 that time period. But what respondents have done  
4 wrong here is they've looked beyond that time period.  
5 They're look - - - when deciding whether Ms. Hawkins  
6 is - - -

7 JUDGE STEIN: But we haven't gotten - - -  
8 the question is we haven't gotten to that point yet  
9 because - - -

10 MS. HOOD: Yeah.

11 JUDGE STEIN: - - - they still haven't  
12 collected what they paid out up until the time period  
13 that you're - - - that's my understanding that you're  
14 - - - you're saying they should go no further. They  
15 haven't done that yet, they may never have done that  
16 - - - do that.

17 MS. HOOD: Well, actually we don't know if  
18 they've done that yet because - - -

19 JUDGE RIVERA: That's for the money and  
20 they - - -

21 JUDGE FAHEY: It's my understanding - - -

22 MS. HOOD: Which is why we need the  
23 accounting.

24 JUDGE RIVERA: - - - haven't they given you  
25 an accounting? I thought you've asked for the money

1 and they've given the accounting and they say they -  
2 - - they're still in the hole, I think it was 23,000,  
3 under your calculations?

4 MS. HOOD: Which is not correct. The  
5 respondents' briefs do not - - -

6 JUDGE RIVERA: So let me jus - - - if I'm  
7 now understanding your argument, is your argument  
8 that they can only collect arrears, as - - - as Judge  
9 Abdus-Salaam and I have described them in these  
10 hypotheticals, wheth - - - whether it's hundred  
11 dollars or my twelve months and - - - and the six  
12 months I have not been paid - - - is your argument  
13 that they can only collect those arrears during the  
14 time period that the child is actually on the budget?

15 MS. HOOD: No, no. They can - - - we  
16 concede that they can still collect on the - - -

17 JUDGE RIVERA: Five years later, they could  
18 still try and collect from the father?

19 MS. HOOD: For arrears that accrued during  
20 the period that the minor was on the budget.

21 JUDGE RIVERA: Right.

22 MS. HOOD: Yes.

23 JUDGE STEIN: Right.

24 CHIEF JUDGE LIPPMAN: Counsel, one last  
25 question. What's fair here from a policy

1 perspective? Forget the statutory framework for the  
2 time being or the rules, why is it fair that you  
3 collect this money when the government is - - -  
4 assume that the government is out the sixty dollars  
5 in the one hypothetical or whatever it is, why is it  
6 fair for you to get that money? What you're saying  
7 is once that date, that cutoff date, 2005, whatever  
8 it is, comes into play, they can't collect anymore  
9 even if they're not made whole. Why is that fair?

10 MS. HOOD: It's fair, Your Honor, because  
11 child support really, at the end of the day, is a - -  
12 - a benefit to - - - to the minor. It might be paid  
13 to the parent, but it's a benefit that the minor is  
14 entitled to. Here, respondents' interpretation would  
15 - - - would allow them to take that benefit intended  
16 for the minor and apply - - - and - - - and deprive  
17 that minor of that benefit simply because other  
18 members of that minor's family happen to still be on  
19 a public assistance budget.

20 CHIEF JUDGE LIPPMAN: Well, simply because  
21 the government feels they're entitled to the money  
22 because they haven't gotten back their outlay.

23 MS. HOOD: I can't imagine that would - - -  
24 that could be their position, but I don't think that  
25 it should - - -

1 CHIEF JUDGE LIPPMAN: You don't think  
2 that's fair, okay.

3 MS. HOOD: I do not think that's fair.

4 CHIEF JUDGE LIPPMAN: Okay, let's from the  
5 adv - - -

6 MS. HOOD: Thank you.

7 CHIEF JUDGE LIPPMAN: - - - from your  
8 adversaries and we'll see on your rebuttal what you  
9 have to say.

10 Counsel.

11 MR. PLATTON: May it please the court  
12 Claude Platton on behalf of the Commissioner of OTDA.  
13 The family - - -

14 CHIEF JUDGE LIPPMAN: What - - - answer the  
15 same question I asked your adversary, what's fair  
16 here? Why is it fair that you be able to get this  
17 money even going beyond the date that she wants to  
18 cut it off?

19 MR. PLATTON: Well, it's exactly what you  
20 said, Chief Judge Lippman, it's that the government  
21 can use assigned child support to be made whole for  
22 providing public assistance to a family. And - - -

23 JUDGE PIGOTT: That's - - - that's the - -  
24 - the nub of it, right? In other words if you have a  
25 family of four and you got an assignment of child

1 support for one child out of that family of four and  
2 you don't feel you've been fully reimbursed by the  
3 time that child reaches majority, you're going to say  
4 - - - and I think the argument with respect to 131(c)  
5 is - - - we can take that money that belongs to  
6 somebody else, to the - - - to the other three, to  
7 pay for what we - - - what we're missing down here,  
8 right?

9 MR. PLATTON: Well, I think the - - - the -  
10 - - the fundamental error - - -

11 JUDGE PIGOTT: Is that - - - is that - - -  
12 is that a no?

13 MR. PLATTON: If I understand you  
14 correctly, I guess the - - - the - - - my response is  
15 - - - is to slightly change the characterization  
16 which is we're not dealing with individuals within a  
17 family separately, and that's the fundamental error I  
18 think in petitioner's position.

19 CHIEF JUDGE LIPPMAN: Well, are you dealing  
20 with the family as a whole if the - - -

21 MR. PLATTON: The benefits are pro - - -  
22 the basic unit for providing benefits is the family -  
23 - -

24 CHIEF JUDGE LIPPMAN: So - - - so that's -  
25 - - that - - -

1 JUDGE FAHEY: But the child support  
2 payments aren't for the family as a whole. I think -  
3 - -

4 MR. PLATTON: Well - - -

5 JUDGE FAHEY: - - - isn't that the point?

6 MR. PLATTON: No, because the child support  
7 - - -

8 JUDGE FAHEY: Didn't they target it here to  
9 Michael? Don't they go with Michael? He's only the  
10 father of Michael, he's not the father of anybody  
11 else. So his - - - his payments are there but it's  
12 not a pro rata portion, in other words one-fourth or  
13 whatever, that's - - - they're going to pay off. You  
14 got to pay the whole thing for the whole family off  
15 and your argument is that that's the statute appli -  
16 - - that it provides.

17 MR. PLATTON: Well, the - - - the child  
18 support orders is for Michael's father for Michael.

19 JUDGE FAHEY: All right, there's - - -

20 MR. PLATTON: But from a - - - from the  
21 perspective of the assignment - - -

22 JUDGE FAHEY: - - - there - - - wait, wait,  
23 wait.

24 MR. PLATTON: I'm sorry.

25 JUDGE FAHEY: So if that's the case then

1           how is it fair, just, equitable for you to be able to  
2           apply that to the payments - - - the public  
3           assistance is a payment for all four people - - - or  
4           I think there were four, it might have been three, I  
5           might be wrong on that - - - but any - - -

6                   MR. PLATTON:   Because the - - - the - - -  
7           the right to child support is Ms. Hawkins' right.  
8           She is required to assign all of the - - - they're  
9           family resources, they're treated as family  
10          resources.

11                   JUDGE FAHEY:   All right, so the difference  
12          is then, from - - - from a jurisprudential point of  
13          view, is it the child's right, child support  
14          payments, or is it the mother's right?

15                   MR. PLATTON:   And that - - - right, that's  
16          the fundamental distinction and that's the error in  
17          her position.

18                   JUDGE FAHEY:   I see.

19                   MR. PLATTON:   The - - - the - - - the right  
20          to child support is Ms. Hawkins' right.  It's the  
21          family's resource - - -

22                   JUDGE RIVERA:   So if she gets fifty dollars  
23          for that month of child support and she spends it on  
24          the other child, she could do that?

25                   MR. PLATTON:   She - - - she's not expected

1 to keep separate bank accounts for each child.

2 JUDGE RIVERA: No, no, I'm asking you - - -  
3 I'm asking you.

4 MR. PLATTON: Right, so no, she's - - -  
5 these are - - - this is - - -

6 JUDGE RIVERA: She could go and spend it on  
7 herself?

8 MR. PLATTON: She could. I mean, she has  
9 to be - - - provide for the welfare of her children,  
10 but - - -

11 JUDGE RIVERA: Let me ask you this; do we  
12 have to decide that - - - because I think there's a  
13 fundamental difference about what is arrears and  
14 what's the budget between the two. Do we have to  
15 decide that to resolve this question? Because I  
16 thought the - - - the municipal - - - the  
17 municipality's brief suggests we don't even have to  
18 decide that. Under her calculations, she has no  
19 arrears that - - - that she has no money that she is  
20 due because you all are still collecting arrears even  
21 under her calculation.

22 MR. PLATTON: That's absolutely right. The  
23 - - - the earliest date that she proposes that the  
24 assignment should have ended was 2005. At that  
25 point, the amount of public benefits paid to the

1 family was 94,000 dollars. There was nothing close  
2 to that recovered for - - - for - - - for this  
3 family. So that - - - and you can stop there and - -  
4 - and that disposes of this claim that she's entitled  
5 to a refund.

6 JUDGE RIVERA: So would she then have an  
7 action at the point in time - - - if at any point in  
8 time, given the age of the child; now he's not a  
9 child - - - if you actually collected the arrears  
10 based on her calculation, is that - - - is it that  
11 it's a premature claim, it's at that point that she  
12 can come back and say okay, now you collected your  
13 arrears and you can't collect anything else - - -

14 MR. PLATTON: Well - - -

15 JUDGE RIVERA: - - - under my calculation.  
16 You may have a different calculation.

17 MR. PLATTON: That's right. It - - - it's  
18 premature. If ever there comes a point where the  
19 difference between our understanding of how this  
20 scheme works and hers would make a difference, then  
21 she could bring that claim and then - - -

22 JUDGE RIVERA: When will she know that?  
23 Because she says she disagrees right now. When would  
24 - - - how and when would she know that?

25 MR. PLATTON: Well, this - - - there - - -

1           there are arrears of I believe something like 40,000  
2           or 50,000 dollars that this father owes. If ever HRA  
3           is able to collect those, then she could legitimately  
4           make an argument - - -

5                        CHIEF JUDGE LIPPMAN: But - - - but your  
6           answer is in practical terms, that's not going to  
7           happen?

8                        MR. PLATTON: In practical terms that  
9           rarely ever happens. It - - -

10                      JUDGE RIVERA: Are you still seeking to  
11           collect them? Are you trying right now to collect  
12           them?

13                      MR. PLATTON: Yes, and we're also  
14           collecting ongoing support, not - - - no longer from  
15           Michael, since he's now emancipated, but for - - - I  
16           believe for his - - - his brother, the agency  
17           continues to keep collecting child support that's due  
18           and passing it through to Ms. Hawkins.

19                      JUDGE STEIN: But I - - - I thought part of  
20           her argument was that of that 45- or 50,000 dollars  
21           that's still outstanding, that - - - that - - - that  
22           the State didn't actually pay out that much money  
23           during the time that Michael was considered a member  
24           of the household. Is - - -

25                      MR. PLATTON: I think - - - I think that's

1 her argument.

2 JUDGE STEIN: So that - - -

3 MR. PLATTON: We have a difference of  
4 opinion about when Michael left the household but  
5 even on her conception, which is that it was when he  
6 applied for Social - - - for SSI, even then there was  
7 always an unreimbursed - - - substantial unreimbursed  
8 - - - bursed amount of public assistance.

9 JUDGE STEIN: And has that accounting been  
10 done? That - - - that's unclear to me. Can - - -  
11 can we - - - I mean does the record contain a clear  
12 breakdown of exactly how much was paid during what  
13 periods of time? Are you - - -

14 MR. PLATTON: Yes.

15 JUDGE STEIN: Because the - - - the numbers  
16 that - - - that I've been seeing are, like, for the  
17 whole time that the family was on public assistance.

18 MR. PLATTON: Right, the top-level line is  
19 for the entire period, but behind that desk review is  
20 a - - - is a spreadsheet with all of the monthly  
21 payments - - -

22 JUDGE STEIN: Okay.

23 MR. PLATTON: - - - by - - - by month from  
24 the beginning of the case. And Ms. Hawkins's papers  
25 into this court and in her - - - in the court - - -

1 courts below have been she's been perfectly able to  
2 go through and do those calculations and determine  
3 what her view is as to how much was paid. So that  
4 it's not something that - - - there's no mystery - -  
5 -

6 JUDGE PIGOTT: Mr. Platton, if - - - if you  
7 have a family that does not have any assignments  
8 attached to their - - - to their benefits and the - -  
9 - and the child reach - - - reaches the age of  
10 majority, then you just reduce the amount of monthly  
11 benefit, right, by the fact that the child's no  
12 longer there, however that's computed, right?

13 MR. PLATTON: Yes, that - - - that - - -  
14 right. The - - - the - - - the family's - - - the  
15 benefits go down - - -

16 JUDGE PIGOTT: Right.

17 MR. PLATTON: - - - from that child.

18 JUDGE PIGOTT: Is there any difference in -  
19 - - in this situation where you do have an  
20 assignment, albeit it's an uncollectable one, when  
21 the child reaches the age of majority, does the  
22 benefit go down the same way or do you - - - do you  
23 take more money because you've got this uncollected  
24 assignment?

25 MR. PLATTON: If I understand your

1 question, Judge Pigott, the - - - once the assignment  
2 ends, any child support that's paid that comes due in  
3 the future is paid to the family and is treat - - -  
4 treated as income of the family so that may affect  
5 the family's budget at that point, how much  
6 assistance they have - - -

7 JUDGE PIGOTT: Right, but on the day - - -  
8 on the day that the child reaches majority in a non-  
9 assignment case - - -

10 MR. PLATTON: Yeah.

11 JUDGE PIGOTT: - - - it goes down X.

12 MR. PLATTON: Yes.

13 JUDGE PIGOTT: Does it go down X in an  
14 assignment case, or does it go down X plus something  
15 else because there's this assignment out there?

16 MR. PLATTON: The - - - the fact that  
17 there's an assignment and that there's past due  
18 doesn't affect the amount that it goes down if I - -  
19 -

20 JUDGE PIGOTT: Does not?

21 MR. PLATTON: Does not.

22 JUDGE PIGOTT: Okay.

23 CHIEF JUDGE LIPPMAN: Okay, counsel.

24 MR. PLATTON: Thank you.

25 CHIEF JUDGE LIPPMAN: Thanks.

1                   No, no.

2                   MS. HOOD: I'm sorry.

3                   MR. SHORR: Good afternoon. May it please  
4 the court; Scott Shorr for HRA. There are no excess  
5 child support arrears for the petitioner to recover.  
6 As this - - - several of you have pointed out in the  
7 last few minutes, HRA has never collected sufficient  
8 reimbursements from all sources, including Michael's  
9 father, to offset the public assistance provided to  
10 this family before September 2005.

11                  JUDGE ABDUS-SALAAM: What about the amount  
12 that would - - - was just allocated for Michael, have  
13 you even exceeded that amount?

14                  MR. SHORR: No, we haven't, Your Honor. If  
15 - - - there is some suggestion in petitioner's papers  
16 that that's the right way to do the calculation,  
17 compare Michael's proportionate share of public  
18 assistance, which is about 57,000 dollars, to the  
19 amount we've been able to recover from his father  
20 which is only 24,000 dollars.

21                  CHIEF JUDGE LIPPMAN: So it's still not  
22 close in your mind?

23                  MR. SHORR: Not even close. And no matter  
24 how you look at these numbers, it's not even close.  
25 There's a sufficient - - - there's a significant gap

1 and until that gap is filled, there are no excess  
2 arrears about which we can now argue. There's  
3 nothing there for petitioner to recover. The  
4 questions that she's raising are purely academic and  
5 do not need to be resolved here.

6 If - - - even if we stopped counting in  
7 September of 2005, which is the earliest date  
8 petitioner suggests, at that point, the family had  
9 received approximately 94,000 dollars in public  
10 assistance. And if we give her the benefit of all  
11 the reimbursements through June of 2011, those  
12 reimbursements are only up to 58,000 dollars, a  
13 little more than that.

14 JUDGE PIGOTT: But it's - - - but it's  
15 specific - - - they're arguing just for Michael,  
16 right?

17 MR. SHORR: The - - - they're arguing about  
18 Michael but Michael was still in the household,  
19 there's no dispute, at least until September of 2005.

20 JUDGE PIGOTT: Right, but - - - but that  
21 90,000-dollar number isn't for Michael, that's for  
22 the - - - the whole family.

23 MR. SHORR: That's right. That's for the  
24 whole family. But no matter how you look at these  
25 numbers - - -

1 CHIEF JUDGE LIPPMAN: But even - - - but  
2 even if you only had Michael, it's still  
3 disproportionate?

4 MR. SHORR: It's still disproportionate, we  
5 have not been made whole, and until we are, under  
6 347.13 of the regs, there is no excess money.

7 JUDGE RIVERA: So for purposes of resolving  
8 the - - - the appeal before us, do we have to resolve  
9 this question of how you count? Do we have to  
10 resolve whether or not you only count the  
11 proportional share of the child or we count the  
12 entire family?

13 MR. SHORR: It doesn't matter, Your Honor.  
14 No matter how you count it - - - and we can go  
15 through the numbers, they are in the record - - - no  
16 matter how - - -

17 JUDGE RIVERA: I know it doesn't matter.  
18 The question is do we have to nevertheless resolve  
19 that question?

20 MR. SHORR: It does not need to be resolved  
21 for purposes of the arrears claims, because no matter  
22 how you slice it - - -

23 JUDGE PIGOTT: What's - - - what's the  
24 purpose - - -

25 MR. SHORR: - - - we haven't been made

1 whole.

2 JUDGE PIGOTT: I'm sorry. What - - -  
3 what's the purpose of 131(C) then?

4 MR. SHORR: 131(c), the invisibility  
5 provision, has no application here, as the First  
6 Department unanimously found. 131(a) talks about  
7 assigning or - - - or determining the public  
8 assistance payable to a family based on the entire  
9 membership of the family. 131(c)(1) says okay, if  
10 you have a member of the family who's on SSI, you  
11 don't consider them for purposes of determining the  
12 family's eligibility or the amount of benefits they  
13 can receive. And that helps the family because  
14 they're not going to be prejudiced by having the SSI  
15 income counted against them.

16 CHIEF JUDGE LIPPMAN: But it's not relevant  
17 in your mind to the arrears issue?

18 MR. SHORR: Not at all, Your Honor. The -  
19 - - the only question they're raising that does not  
20 involve arrears is about what we can do with the - -  
21 - the current child support payments that were  
22 received during the interim period when Michael was  
23 waiting to find out whether he would receive SSI.  
24 And during that period, their argument is well, you  
25 shouldn't be able to retain the current child support

1 collections because you also received a check from  
2 the federal government, the SSI check. They count  
3 that as a double recovery or double dipping, but it's  
4 not for the same reason we've been discussing. Until  
5 we are made whole, we can keep using the money that  
6 comes in to fill the hole.

7 CHIEF JUDGE LIPPMAN: Okay, counsel.

8 MR. SHORR: Thank you.

9 CHIEF JUDGE LIPPMAN: Thanks, counsel.

10 Counsel, rebuttal.

11 MS. HOOD: Given the direction that the  
12 discussion has turned, I - - - I would just feel  
13 compelled to remind the court that as laid out in our  
14 papers, this is really about - - - it's a standing  
15 question, it's a justiciability question, and  
16 respondents waived these standing arguments and  
17 justiciability questions by not raising them at the  
18 outset of the litigation.

19 And this wasn't just a mere technical  
20 defect; it prejudiced us. If we were aware of these  
21 arguments that they claimed we lacked standing at the  
22 outset of this litigation, we would have at that  
23 point assessed whether it made sense to proceed  
24 through the litigation, and here we are years later  
25 before you, having used - - -

1 JUDGE RIVERA: Well, they've al - - -

2 MS. HOOD: - - - a great deal of resources.

3 JUDGE RIVERA: Haven't they always claimed  
4 from the very beginning there are no arrears? You're  
5 saying they've never claimed that there are no  
6 arrears?

7 MS. HOOD: They did that below, but they've  
8 never articulated a standing argument. And under the  
9 relevant case law, the onus is on respondents to make  
10 those standing arguments at the outset of the  
11 litigation or else they're waived.

12 JUDGE RIVERA: Well, we could decide you  
13 have - - - well, I don't know let - - - let's say  
14 hypothetically we would say the following: you have  
15 standing to challenge and they say there are no  
16 arrears and we resolve the case based on there's  
17 nothing that you're owed at this time. Why can't we  
18 resolve it that way without addressing this issue of  
19 - - -

20 MS. HOOD: Sure.

21 JUDGE RIVERA: - - - how you count, becau -  
22 - - unless you're going to now argue it differently,  
23 and I - - - I think you have been trying to argue  
24 this differently. They say, even counting it your  
25 way, there's thousands of dollars that they're owed,

1 and since you agree that they can recoup that money,  
2 right, for the - - - for the period that the child  
3 was on the budget, you - - - there's - - - there's no  
4 money that you're owed, right, so the claim fails for  
5 that - - - on that basis.

6 MS. HOOD: Right, so - - - so basically,  
7 though, their - - - their position - - -

8 JUDGE RIVERA: You have standing to  
9 challenge this.

10 MS. HOOD: We're assuming that.

11 JUDGE RIVERA: But when you drill down on  
12 the claims - - -

13 MS. HOOD: Right.

14 JUDGE RIVERA: - - - you - - - you - - -  
15 there is nothing that you're owed and so the claim  
16 has no merit. That's their position.

17 MS. HOOD: The substantive - - -

18 JUDGE RIVERA: But beyond the standing,  
19 that - - -

20 MS. HOOD: Beyond the - - -

21 JUDGE RIVERA: - - - that position on the  
22 merits.

23 MS. HOOD: Right, and - - - and that relies  
24 on an incorrect interpretation of the relevant  
25 statutes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHIEF JUDGE LIPPMAN: Okay, thank you both.

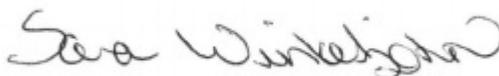
All of you.

(Court is adjourned)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Hawkins v. Berlin, No. 177 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 700 West 192nd Street  
Suite # 607  
New York, NY 10040

Date: October 28, 2015