

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

1118

TP 20-01235

PRESENT: SMITH, J.P., PERADOTTO, CARNI, AND BANNISTER, JJ.

IN THE MATTER OF CALVIN A. HALL, AS VOLUNTARY
ADMINISTRATOR OF THE ESTATE OF JOSEPHINE HALL,
DECEASED, PETITIONER,

V

MEMORANDUM AND ORDER

HOWARD A. ZUCKER, COMMISSIONER, NEW YORK STATE
DEPARTMENT OF HEALTH, SAMUEL D. ROBERTS,
COMMISSIONER, NEW YORK STATE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE AND STACY ALVORD,
COMMISSIONER, OSWEGO COUNTY DEPARTMENT OF SOCIAL
SERVICES, RESPONDENTS.

YANG-PATYI LAW FIRM, PLLC, SYRACUSE (JOSEPHINE YANG-PATYI OF COUNSEL),
FOR PETITIONER.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (KATHLEEN M. TREASURE OF
COUNSEL), FOR RESPONDENTS HOWARD A. ZUCKER, COMMISSIONER, NEW YORK
STATE DEPARTMENT OF HEALTH, AND SAMUEL D. ROBERTS, COMMISSIONER, NEW
YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE.

RICHARD C. MITCHELL, COUNTY ATTORNEY, OSWEGO, FOR RESPONDENT STACY
ALVORD, COMMISSIONER, OSWEGO COUNTY DEPARTMENT OF SOCIAL SERVICES.

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, Oswego County [Norman W.
Seiter, Jr., J.], entered April 17, 2018) to annul an amended
determination of respondents. The amended determination denied
applications of petitioner's decedent for Medicaid benefits.

It is hereby ORDERED that the amended determination is
unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner, as voluntary administrator of the estate
of Josephine Hall (decedent), commenced this CPLR article 78
proceeding seeking to annul the amended determination of the New York
State Department of Health (respondent) denying, after a fair hearing,
an application for Medicaid benefits on behalf of decedent.
Petitioner challenges respondent's conclusion that decedent did not
qualify for a hardship waiver of the determination that she was
ineligible for medical assistance (MA) because her husband transferred
assets for less than fair market value within the 60-month look-back
period. We conclude that respondent's "resolution [is] supported by

substantial evidence upon the whole record" (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181 [1978]), and we therefore confirm the amended determination.

"In determining the MA eligibility of an institutionalized individual, any transfer of assets for less than fair market value made by the individual or the individual's spouse within or after the look-back period will render the individual ineligible for nursing facility services" (18 NYCRR 360-4.4 [c] [2] [ii]). An exception applies where it is determined that the denial of eligibility will result in an undue hardship which, as relevant here, requires a demonstration that "the institutionalized individual is unable to obtain appropriate medical care without the provision of MA . . . [and that,] despite his or her best efforts, the institutionalized individual or the individual's spouse is unable to have the transferred asset returned or to receive fair market value for the asset. Best efforts include cooperating, as deemed appropriate by the commissioner of the social services district, in efforts to seek the return of the asset" (18 NYCRR 360-4.4 [c] [2] [iii] [e] [2]-[3]).

Here, substantial evidence supports respondent's conclusion that there was no indication that decedent would be unable to obtain appropriate medical care if she did not receive MA (see *Matter of Weiss v Suffolk County Dept. of Social Servs.*, 121 AD3d 703, 705 [2d Dept 2014]; *Matter of Conners v Berlin*, 105 AD3d 1208, 1210-1211 [3d Dept 2013]; see also *Matter of Delaware Operations Assoc. LLC v New York State Dept. of Health*, 187 AD3d 1560, 1562 [4th Dept 2020]). With respect to decedent's alleged inability to have the transferred assets returned, respondent concluded that the evidence presented in support of that claim was not credible, and " '[i]ssues of witness credibility are . . . for the administrative agency to resolve in the exercise of its exclusive fact-finding authority' " (*Matter of Hall v Shah*, 100 AD3d 1357, 1360 [4th Dept 2012]).

Entered: February 4, 2022

Ann Dillon Flynn
Clerk of the Court