

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

812

CA 24-01699

PRESENT: MONTOUR, J.P., SMITH, NOWAK, AND KEANE, JJ.

IN THE MATTER OF WATERFRONT OPERATIONS
ASSOCIATES LLC, DOING BUSINESS AS ELLICOTT CENTER
FOR REHABILITATION AND HEALTHCARE, PETITIONER-APPELLANT,
ET AL., PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF HEALTH AND
BARBARA GUINN, AS COMMISSIONER OF NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,
RESPONDENTS-RESPONDENTS.

COWART DIZZIA LLP, NEW YORK CITY (SUZAN ARDEN OF COUNSEL), FOR
PETITIONER-APPELLANT.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BRIAN M. LUSIGNAN OF
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Frank A. Sedita, III, J.), entered September 26, 2024, in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously vacated, the determination is confirmed without costs, and the petition is dismissed.

Memorandum: In this proceeding pursuant to CPLR article 78, petitioner-appellant (petitioner), a skilled nursing facility, appeals from a judgment that dismissed a petition seeking to annul a determination of respondent New York State Department of Health (DOH), made after a fair hearing, affirming the denial of a Medicaid application filed by petitioner's former resident (resident), who had designated petitioner as his authorized representative.

As a preliminary matter, we conclude that Supreme Court should have transferred the proceeding to this Court pursuant to CPLR 7804 (g) inasmuch as the petition in this case raises an issue "whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence" (CPLR 7803 [4]; *cf. Matter of Waterfront Ctr. for Rehabilitation & Healthcare v New York State Dept. of Health*, 162 AD3d 1717, 1718 [4th Dept 2018]; *see generally Matter of Underwood v Zucker*, 191 AD3d 1438, 1439-1440 [4th Dept

2021]; *Matter of Albino v Shah*, 111 AD3d 1352, 1354 [4th Dept 2013]). In particular, petitioner challenges the determination following a quasi-judicial hearing conducted pursuant to direction by law at which evidence was taken (see 18 NYCRR 360-2.9; see generally 18 NYCRR part 358) on grounds including that DOH's application of 18 NYCRR 360-4.10 in affirming the denial of the application is not supported by substantial evidence (see *Matter of Bosco v McGuire*, 111 AD3d 931, 932-933 [2d Dept 2013]; *Matter of Urrutia v Daines*, 90 AD3d 770, 771 [2d Dept 2011]). Indeed, generally, "[w]hen reviewing a Medicaid eligibility determination made after a fair hearing, we must determine whether the agency's decision is supported by substantial evidence and [is] not affected by an error of law, bearing in mind that the petitioner bears the burden of demonstrating eligibility" (*Matter of Flannery v Zucker*, 136 AD3d 1385, 1385 [4th Dept 2016] [internal quotation marks omitted]; see *Matter of Washington Ctr. for Rehabilitation & Nursing Home v New York State Dept. of Health*, 218 AD3d 1280, 1280-1281 [4th Dept 2023]; cf. *Waterfront Ctr. for Rehabilitation & Healthcare*, 162 AD3d at 1718). "This is so even where, as here, the relevant facts are largely undisputed, [inasmuch] as 'substantial evidence consists of proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably—probatively and logically' " (*Matter of Johnson v New York City Tr. Auth.*, 182 AD3d 970, 972 [3d Dept 2020], quoting *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181 [1978]; see *Matter of Burnett v Borden Chem. Div. Borden*, 35 NY2d 766, 767 [1974]; *Matter of Blue v Zucker*, 192 AD3d 1693, 1694 [4th Dept 2021]). While petitioner additionally raises questions whether DOH's interpretation of certain regulations is arbitrary and capricious (see CPLR 7803 [3]; *Waterfront Ctr. for Rehabilitation & Healthcare*, 162 AD3d at 1718-1719), the court nevertheless should have "transferred the entire CPLR article 78 proceeding to this Court inasmuch as the petition raises a substantial evidence question, and the remaining points made by petitioner are not objections that could have terminated the proceeding within the meaning of CPLR 7804 (g)" (*Blue*, 192 AD3d at 1694 [internal quotation marks omitted]; see generally *Matter of Hall v Shah*, 100 AD3d 1357, 1357-1359 [4th Dept 2012]). We therefore vacate the judgment, and we treat the proceeding as if it had been properly transferred and review the parties' contentions de novo (see *Matter of Corbett v Schroeder*, 214 AD3d 1407, 1407-1408 [4th Dept 2023]; *Matter of Elderwood at Cheektowaga v Zucker*, 188 AD3d 1578, 1579 [4th Dept 2020]; *Matter of Keuning v Perales*, 190 AD2d 1033, 1034 [4th Dept 1993]).

Upon conducting that review, we conclude that DOH's determination is supported by substantial evidence and is not affected by an error of law. Contrary to petitioner's contention, DOH rationally relied on 18 NYCRR 360-4.10 (c) (3) to affirm the denial of the resident's Medicaid application on the ground that the eligibility of the resident, an institutionalized spouse, could not be determined because the resident's community spouse refused to cooperate in providing necessary information about her resources (see Social Services Law § 366-c [2] [a], [b]; 18 NYCRR 360-4.10 [a] [2], [7]). Moreover,

substantial evidence supports DOH's conclusion that the exception in 18 NYCRR 360-4.10 (c) (3) did not apply inasmuch as the resident did not meet the criteria for undue hardship given that he obtained appropriate medical care without receiving Medicaid (see 18 NYCRR 360-4.10 [a] [12]; *Bosco*, 111 AD3d at 933; see also *Matter of Hall v Zucker*, 202 AD3d 1490, 1491 [4th Dept 2022]; *Matter of Conners v Berlin*, 105 AD3d 1208, 1211 [3d Dept 2013]). We have considered petitioner's remaining contentions and conclude that they are without merit.