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COURT OF APPEALS

STATE OF NEW YORK

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MATTER OF MANTILLA,

Appellant,

-against-

NO. 111

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION & DEVELOPMENT,

Respondent.

-----

20 Eagle Street  
Albany, New York  
November 19, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is  
2 Matter of Mantilla v. New York City Department of Housing  
3 Preservation.

4 MR. FAN: Good afternoon, Your Honors. Dennis  
5 Fan, on behalf of Kermit Mantilla. When Kermit came to New  
6 York to care for his dying brother Ray, he applied for  
7 Medicaid, food stamps, and home energy benefits so that he  
8 could afford to live here.

9 JUDGE GARCIA: Counsel - - -

10 MR. FAN: And despite - - -

11 JUDGE GARCIA: - - - what's the standard of  
12 review that we're applying here?

13 MR. FAN: So I think you are - - - you are on an  
14 arbitrary and capricious standard of review for an Article  
15 78 case. And I want to point out, I think, the two most  
16 arbitrary pieces of what HPD's decision are. So the first  
17 thing is, HPD said that it could sort of summarily discount  
18 information before March 2019. And that's arbitrary for a  
19 couple of different reasons. But the second thing is, HPD  
20 also reasonably - - - did not reasonably conclude, but  
21 unreasonably concluded that Kermit was somehow able to  
22 visit or was coming back and forth from Florida to New York  
23 and in fact lived in Florida. And that was part of HPD's  
24 determination as well.

25 JUDGE CANNATARO: Can you go back to the first

1 one? What - - - what's inherently arbitrary about HPD  
2 wanting to focus on the window period?

3 MR. FAN: So there's - - - there's two things  
4 that are really arbitrary about that. First is, I don't  
5 think there's anything inherently arbitrary. But what HPD  
6 said was, look, we have a Social Security letter that is  
7 mailed to you or has a - - - has a Florida address on it.  
8 That's before the window. And we're going to count that  
9 against you. But in fact, you have also SNAP letters, HEAP  
10 letters, Medicaid letters from - - - to you from that exact  
11 same month, February 2019.

12 JUDGE TROUTMAN: Is there an explanation as to  
13 why they're treated differently?

14 MR. FAN: There is no explanation of why they're  
15 treated differently. And that's what this case - - - this  
16 court's case law says. If you make a determination on  
17 essentially the same type of facts and you do it a  
18 different way, you at least need to have some sort of  
19 reasonable explanation. So it would be one thing entirely  
20 if HPD came to the table and they said, look, I don't want  
21 to look at this entire body of evidence from before the  
22 one-year period. And I don't want to look at it because I  
23 actually think it's really messy, and it doesn't really  
24 tell us very much. But then you can't hold that exact same  
25 type of document against somebody who's applying for

1 benefits. And that's fundamentally what's arbitrary and  
2 capricious.

3 JUDGE RIVERA: So you're not arguing that they  
4 must look at the pre-period information? Just if they are,  
5 then they have to look at what might actually be also  
6 favorable to the claimant.

7 MR. FAN: Especially if they claim the exact same  
8 month. And especially for this Social Security letter,  
9 when, you know, based on when he got a different document  
10 in his income recertification notarized that he actually  
11 was in New York during that period. The fact that you have  
12 a mailing address on a document doesn't mean - - -

13 JUDGE RIVERA: Well, the point is whether or not  
14 it's his primary residence, right? One could be in New  
15 York. One could be caretaking for a - - - a very, very  
16 sick relative.

17 MR. FAN: I think - - - I - - - I think that's  
18 right. One can be in different places. One can have  
19 multiple residences. But what the main point is, is if you  
20 have all of your HEAP benefits come in in February 2019,  
21 your SNAP benefits, your Medicaid benefits come in in  
22 February 2019, and what HPD said is - - -

23 JUDGE RIVERA: Well, that's because he's present  
24 in New York.

25 MR. FAN: Well, right. I mean, in - - -



1 JUDGE RIVERA: So we're back to the question - -  
2 -

3 MR. FAN: Yeah. You have to - - -

4 JUDGE RIVERA: - - - is presence alone going to  
5 get you primary residence?

6 MR. FAN: I don't think presence alone will get  
7 you primary residence. I think what Kermit also has is a  
8 whole bunch of leasing documents, right? I'm not going to  
9 call them leases, but he has leasing documents where he has  
10 actually put himself onto income recertifications, which he  
11 has to do. That's a kind of fundamental feature of being  
12 an occupant in a home. It makes their rent go up. I mean,  
13 it means that part of his \$850 Social Security paycheck  
14 that he's trying to live in New York on is now being called  
15 by Manhattan Plaza. And that's something that is fairly  
16 irrational to think that somebody who lives on Social  
17 Security alone is going to send off a third or thirty  
18 percent of their paycheck to not live in New York.

19 JUDGE RIVERA: Well, again, it's whether or not  
20 it's the primary residence, right?

21 MR. FAN: Yeah. I mean, I - - - I - - - I think  
22 that is right.

23 JUDGE RIVERA: Merely living - - - or - - - or do  
24 you think that living in the apartment satisfies primary  
25 residence?

1 MR. FAN: Yeah. I think living in the apartment,  
2 having benefits in New York, those things together satisfy  
3 what I think of - - - would be primary residence. And  
4 there's definitely a rational basis for HPD to make the  
5 exact sort of opposite decision, but I - - -

6 JUDGE RIVERA: Do - - - do the applications for  
7 the benefits that you're talking about require the  
8 individual to swear that the address they're giving is  
9 their primary residence?

10 MR. FAN: I mean, I think that's the - - - that -  
11 - - that is the fundamental sort of premise of an  
12 application for succession rights, is they're saying, look,  
13 this is my primary - - -

14 JUDGE RIVERA: No, not the succession rights, the  
15 SNAP benefits, that kind of thing.

16 MR. FAN: Yeah. They - - - you do need to swear  
17 that they're - - - they are your residence. In fact, if  
18 your - - - if your - - - you - - -

19 JUDGE RIVERA: That they're your residence or  
20 your primary residence?

21 MR. FAN: I guess, let - - - let me put it this  
22 way. Like, these things operate a little bit different,  
23 right? So like, Medicaid, for instance, if you have  
24 emergency health services out of state, you can - - - you  
25 can still use your New York Medicaid. You can go to the ER

1 out of state, but you can't get, for instance, your  
2 diabetes medication.

3 JUDGE RIVERA: Right.

4 MR. FAN: So it'd be a very strange thing to  
5 think that you had Medicaid benefits in New York and were a  
6 resident of New York, but that wasn't your primary  
7 residence because it would mean that you were living  
8 somewhere that you couldn't even get health care.

9 CHIEF JUDGE WILSON: So what happens to somebody  
10 who's on diabetes, who lives in Florida six months, New  
11 York six months, but New York is their primary residence?  
12 What do they do when they go to Florida?

13 MR. FAN: That's a - - - I mean, that's a very  
14 tough type of situation. I think what they probably - - -  
15 what they probably do is they make some lifestyle choices  
16 about where they need to live. And I think that's the  
17 fundamental thing here, right? It's, if you have - - - if  
18 you're elderly, if you're low income, if you're on Social  
19 Security, you're not kind of flying back and forth. You  
20 might see family for the holidays, but you're not going  
21 back and forth to - - - to just travel.

22 CHIEF JUDGE WILSON: And that was - - -

23 JUDGE RIVERA: Well, if what you need are meds,  
24 right, you get a certain meds - - -

25 MR. FAN: Right.



1 JUDGE RIVERA: - - - for a period of time, and  
2 you might have them mail the meds. People do that all the  
3 time.

4 MR. FAN: Yeah. You might have medication  
5 mailed. It - - - it sort of depends, right? If it's - - -  
6 if they're pills - - -

7 JUDGE RIVERA: If your doctor is in different  
8 locations, people do that?

9 MR. FAN: If they're pills, they might be  
10 different. But all that's being said is, if you have all  
11 of this, what I'm saying is that HPD just can't draw the  
12 exact opposite conclusion on the exact same type of  
13 document.

14 JUDGE RIVERA: Well, the - - - from your  
15 perspective, for purposes of succession rights, what's the  
16 - - - the - - - the core characteristic of establishing  
17 primary residence?

18 MR. FAN: So I think this court said it best in  
19 Yaniveth R., where it says this is on a totality of the  
20 circumstances. So you do want to look at this in the  
21 context of what succession is meant to do, which is to  
22 prevent people from being displaced. You know, having an  
23 apartment, having a home means that your family can come -  
24 - - they can come to you. They can take care of you. They  
25 can live with you.

1 JUDGE TROUTMAN: And so here, applying totality  
2 of the circumstances, what was done that you would say  
3 supports that the way they acted was arbitrary?

4 MR. FAN: Yeah. So I - - - I think if you really  
5 take totality of the circumstances seriously, you wouldn't  
6 be able to come up with a rule that says we only look at  
7 documents from one year. And I just want to show you two  
8 ways that that's very sort of irrational. One way is,  
9 imagine if Ray had just passed away one month earlier, in  
10 February of 2019, the - - - or 2020. That would mean all  
11 almost all the documents in this case are within the one-  
12 year period. The HEAP benefits, the Medicaid benefits, the  
13 - - - the SNAP benefits. But that would mean that Kermit  
14 had less of a connection to New York. You know, the fact  
15 that Ray had lived longer just kind of draws this arbitrary  
16 distinction where Kermit, in fact, now has - - - is subject  
17 to a one-year period.

18 The second way that I think it's arbitrary is  
19 that when you get Medicaid benefits or SNAP benefits in  
20 February of 2019 right before the one-year period, it  
21 doesn't mean that you're only using them in February. I  
22 mean, like the fact that you get your SNAP benefits and  
23 Medicaid, presumably you need them the next month and the  
24 next month and the next month too, right? Like, when you  
25 have Medicaid, it's not that you just need to go to the

1 doctor once. It's that you have ongoing health issues.

2 And so - - -

3 CHIEF JUDGE WILSON: So the - - - the worst fact  
4 for him, I think, comes outside of the period as well,  
5 which is in October of 2018, somewhere like that, where he  
6 changes his bank account from one Florida address to  
7 another Florida address.

8 MR. FAN: Yeah. I do think that's a really funny  
9 fact for him. And I think the opposing counsel on the  
10 other side cites to some things from outside the record  
11 where this is - - - yes, there's two addresses in Florida,  
12 and one of them is his sister's address in Florida and one  
13 of them was his old address in Florida. When you first - -  
14 - I mean, this happens with colle - - - last case you  
15 talked about college students, but this happens with, for  
16 instance, like, college students all the time. You move to  
17 different address. You go off out of state for college,  
18 and you need to set somewhere as your mailing address.

19 When Kermit came to New York in August of 2018,  
20 he didn't - - - you don't know how long you're going to be  
21 here for, right? You don't know how long Ray is going to  
22 last for. You don't know how long his care is going to go  
23 for. At that point, he had had a fall. And so when you  
24 have a - - - a very elderly person with both a fall and  
25 cancer complications, you actually have no idea what that

1 care is going to look like. And so in that same exact  
2 month, just to give you an example, he also has things that  
3 link him to New York. He signs documents with Manhattan  
4 Plaza.

5 JUDGE CANNATARO: Wait. Before you go there the  
6 - - - but the - - - the part about giving your address in  
7 2018, doesn't that situation allow for a wide range of  
8 permissible conclusions both in Kermit's favor and against  
9 him? I mean, where - - - where does it cross the line into  
10 arbitrariness?

11 MR. FAN: Yeah. I mean, I think one way it  
12 crosses the line is if you're - - - if you credit those  
13 sort of documents, you know, against Kermit, then I think  
14 the record needs to be opened up. And HPD needs to say,  
15 I'm going to look at the documents that have Kermit's name  
16 on them that also have his address as Manhattan Plaza from  
17 that month for August of 2018.

18 JUDGE CANNATARO: Well, if you're looking at them  
19 relative to determining whether - - - you know, if he comes  
20 in and begins from the proposition that he's living in the  
21 apartment during the relevant residency period, and you  
22 have something close in time, but you're using it to  
23 examine the state - - - the claim that he's in there for  
24 the relevant residency period, is that really looking at  
25 what he did in the past or just looking at the documents

1 that you have available to you to inform the question of  
2 what's happening during the residency period?

3 MR. FAN: Yeah. I - - - I - - - I guess this is  
4 a - - - maybe if I'm understanding your question correctly  
5 - - -

6 JUDGE CANNATARO: I - - - I'm not sure either.

7 MR. FAN: - - - which - - - which is, I - - - I  
8 think if I'm understanding your question correctly, it's -  
9 - - like, the fact that - - - for instance, if you signed a  
10 power of attorney in August of 2018 and you put a  
11 particular address down, it doesn't mean you need to stay  
12 at that address in order to exercise - - -

13 JUDGE CANNATARO: Correct.

14 MR. FAN: - - - that power of attorney.

15 JUDGE CANNATARO: Correct. And it might not - -  
16 -

17 MR. FAN: Presumably you - - -

18 JUDGE CANNATARO: And it doesn't necessarily mean  
19 that you're not living somewhere else in 2019, but it might  
20 be the only document - - - you know, it's a small universe  
21 of documents, and this is what we have. And it's telling  
22 us something about what's going on in the relevant period.

23 MR. FAN: Right. I - - - I mean, I won't quibble  
24 with you with the fact that documents that are closer in  
25 time to an event probably are generally more probative than

1 documents that are far away from events. So kind of going  
2 to Judge Wilson's question about, what about this, you  
3 know, Wells Fargo change in sort of September and October -  
4 - -

5 CHIEF JUDGE WILSON: Well, my - - - my question  
6 there is a little bit different than timing. It's - - -

7 MR. FAN: Yeah.

8 CHIEF JUDGE WILSON: It's really a couple of  
9 things. I - - - I take your point that things outside of  
10 the one-year period may inform where somebody is during the  
11 one-year period, right? So I - - - would it be a  
12 permissible inference from that change of address that he  
13 has another address in Florida? Is that a permissible  
14 inference?

15 MR. FAN: I think it would be a permissible  
16 inference to say he has somewhere else that he can sort of  
17 mail documents to. And I think - - -

18 CHIEF JUDGE WILSON: Well, but it might be a  
19 residence. We don't know, right?

20 MR. FAN: Yeah. It might be a - - -

21 CHIEF JUDGE WILSON: It might be and it might not  
22 be.

23 MR. FAN: I mean, it - - - it could be - - -

24 CHIEF JUDGE WILSON: It might be a friend's  
25 house.

1 MR. FAN: Right. It could be a friend's house.

2 CHIEF JUDGE WILSON: Right.

3 MR. FAN: It could be a sibling's house.

4 CHIEF JUDGE WILSON: Yeah. Yeah.

5 MR. FAN: It could be some other residence that  
6 he's able to - - -

7 CHIEF JUDGE WILSON: Or - - - or it could be a  
8 residence that he has, somewhere that he could live. We  
9 don't know. But that's - - -

10 MR. FAN: Yeah.

11 CHIEF JUDGE WILSON: - - - an inference you could  
12 make from it.

13 MR. FAN: That's an inference. And I - - -

14 CHIEF JUDGE WILSON: Is it - - - hang on.

15 MR. FAN: Okay.

16 CHIEF JUDGE WILSON: Is it fair that you can also  
17 make an inference that it was relatively easy for him to  
18 change his mailing address on that account?

19 MR. FAN: I think - - -

20 CHIEF JUDGE WILSON: He changed it after he was  
21 here a month or so.

22 MR. FAN: Yeah. I - - - I - - - I don't know if  
23 that's what HPD's decision rested on, but even - - -

24 CHIEF JUDGE WILSON: No. I'm - - - I'm not - - -  
25 I'm not - - - I'm asking you something different.

1 MR. FAN: Yeah. I - - - I think he probably  
2 could have made a bunch of different changes.

3 CHIEF JUDGE WILSON: Can we - - - can we make the  
4 inference from the fact that he changed it when he was - -  
5 - he arrived to take care of his sick brother. He was - -  
6 - his brother is in extremis. He's, you know, very busy  
7 with that. But he found the time to change his mailing  
8 address.

9 MR. FAN: Yeah. There - - - there are certain  
10 things that I - - - I think I - - - I want to put on this  
11 sort of hierarchy of what are things that are necessary for  
12 you to change, right, when you move addresses. So if you -  
13 - - if you move to - - -

14 CHIEF JUDGE WILSON: You know, I'm just asking if  
15 we can make an inference that that was something that was  
16 within his - - - his ability given all the things that were  
17 going on.

18 MR. FAN: Yeah. I - - - I - - - I - - -

19 CHIEF JUDGE WILSON: He did it. So it's pretty  
20 hard to - - -

21 MR. FAN: I - - - I think that somebody can  
22 change their address within a given period of time.

23 CHIEF JUDGE WILSON: And - - - and you can make  
24 an inference from the fact that he did change it that he  
25 knew how to do it and in fact did it.

1 MR. FAN: Yeah. And - - -

2 CHIEF JUDGE WILSON: And then - - - and then we  
3 have no evidence that he ever changed that again to a New  
4 York address, right?

5 MR. FAN: No. We don't have evidence that he  
6 changed that to a New York address. What you do have is  
7 that in March 2020, before his brother died, that he tried  
8 to open a sort of Chase personal account with - - - with  
9 sort of - - - that sort of information.

10 CHIEF JUDGE WILSON: Yeah.

11 MR. FAN: And so he - - -

12 JUDGE RIVERA: Well, let's go back to the mailing  
13 that - - -

14 MR. FAN: Yeah.

15 JUDGE RIVERA: - - - that you're being asked  
16 about by Chief Judge Wilson. It - - - it - - - are you  
17 saying that - - - in your response, that it is the same  
18 amount of effort, considering the - - - the demands and the  
19 pressure, of course, and the emotional issues that Mr.  
20 Mantilla is deal - - - dealing with - - - with his brother  
21 - - -

22 MR. FAN: Yeah.

23 JUDGE RIVERA: - - - and we're not discounting  
24 that. It's the same amount of effort to change one mailing  
25 address versus changing several accounts?



1 MR. FAN: They're - - - they're saying - - -

2 JUDGE RIVERA: Just to be clear - - -

3 MR. FAN: Yeah. I - - -

4 JUDGE RIVERA: - - - how he changed his mail - -  
5 - to the extent it - - - it's in the record. I'm not  
6 asking for anything that wasn't the record.

7 MR. FAN: Yeah. I mean, that would not be a  
8 similar level of effort at all, right? And I - - - I would  
9 think the thing that you would most want to change are  
10 things that are - - - and this was kind of what I was  
11 trying to say is, the things that you most want to change  
12 are things that are fundamental to your ability to live.

13 JUDGE CANNATARO: What are - - - what are those?

14 MR. FAN: Where are you going to eat, how - - -  
15 what kind of roof you're going to have over your head? And  
16 so - - -

17 JUDGE CANNATARO: No, no, no. What - - -

18 MR. FAN: Oh.

19 JUDGE CANNATARO: What document - - - you know,  
20 what proof of address stuff do you absolutely need to  
21 change when you're changing your address?

22 MR. FAN: I mean, you - - - you - - - he needs to  
23 be on the Manhattan Plaza rolls as an occupant, which means  
24 he needs to put his income - - -

25 JUDGE CANNATARO: Well, he did a - - - he did a

1 certification. But that doesn't go to the - - - I'm  
2 talking about the - - - the type of documents that they  
3 list as probative on this question of permanent residency.  
4 And they have a list. And it's, you know, utility bills,  
5 bank statements, tax returns. And - - - and I'm - - - I'm  
6 totally open to the idea that those might not be necessary  
7 things to change, but what is a necessary thing to change?

8 MR. FAN: Yeah. I - - - I mean, again, I think,  
9 where you're going to - - - how you're going to eat, where  
10 you're going to get health care, how you're going to have a  
11 roof over your head are pretty fundamentally necessary.

12 JUDGE CANNATARO: So food benefits - - -

13 MR. FAN: Where - - -

14 JUDGE CANNATARO: - - - Medicaid benefits,  
15 Medicare benefits.

16 MR. FAN: Yeah. I mean - - - and - - -

17 JUDGE CANNATARO: And what was the last thing you  
18 said?

19 MR. FAN: - - - and even where you have a roof  
20 over your head, right?

21 JUDGE CANNATARO: Where your roof is, yeah.  
22 Okay.

23 MR. FAN: Like, the fact that you're going to  
24 accrue rent obligations. And I - - - I see I'm out of  
25 time. But I just want to say one thing along the lines

1 because you did mention - - -

2 JUDGE RIVERA: Wait a minute. Let's go back to  
3 this. What would - - - the change of address to a second  
4 Florida address, what was being sent there then?

5 MR. FAN: It was - - -

6 JUDGE RIVERA: If it's in the record.

7 MR. FAN: It's just the Wells Fargo bank accounts  
8 that he has. So this is - - -

9 JUDGE RIVERA: It's just the bank account?

10 MR. FAN: It's 1,000 or 2,000 some dollars a  
11 month. It's a bank account where he has some money, right?  
12 Presumably. And he changed the address - - -

13 JUDGE RIVERA: Where the Social Security money  
14 goes, the check?

15 MR. FAN: That's not on the record. Yeah.

16 JUDGE RIVERA: Yeah. Then don't tell me. I know  
17 what I said.

18 MR. FAN: That - - - that - - - that - - - that's  
19 not on the record, at least where his Social Security  
20 amount goes.

21 JUDGE RIVERA: Okay.

22 MR. FAN: But that - - - that - - - that was - -  
23 - that is the address, right? It's not that he needs to go  
24 to that Wells Fargo branch location. We're kind of past  
25 that daily - - -

1 JUDGE RIVERA: Is that the only thing - - -

2 MR. FAN: That - - - I mean, that's the only  
3 thing that he changed during that time.

4 JUDGE RIVERA: In the record, yeah. Okay.

5 MR. FAN: Yeah. That's the only thing he - - -  
6 they changed that - - - during that time. And then the  
7 only - - -

8 JUDGE RIVERA: To the second Florida address?

9 MR. FAN: Yes.

10 JUDGE RIVERA: Okay.

11 MR. FAN: Yeah. The only other thing that's even  
12 on the second Florida address is that Social Security  
13 letter, right? That's a February 2019 Social Security  
14 letter. But we know he was in New York at that time. And  
15 that's exactly when he was getting all of his other  
16 benefits in New York in that same exact month of February  
17 2019. And I - - - if I could just do twenty seconds on the  
18 utility bill. There isn't utility bill - - - utility  
19 bills, but I think the HEAP letter kind of does exactly  
20 that sort of work, right? He - - -

21 JUDGE CANNATARO: Which letter?

22 MR. FAN: The - - - the HEAP, the home energy  
23 letter - - -

24 JUDGE CANNATARO: The HEAP.

25 MR. FAN: - - - where he's getting home energy



1 benefits in New York does exactly that sort of work.

2 CHIEF JUDGE WILSON: Thank you.

3 MR. FAN: Thank you.

4 MR. MECHANICK: Hello. Good afternoon. May it  
5 please the court. Chase Mechanick, for the respondent,  
6 HPD. What Mr. Mantilla is asking this court to do would be  
7 extraordinary. If this court were to reverse the First  
8 Department, then this would - - -

9 JUDGE RIVERA: Well, let me ask you this just as  
10 a theoretical premise. If an agency chooses to look at  
11 information pre the period - - - HPD looks at information  
12 pre the period that is only disfavorable to him, but there  
13 is also favorable information pre the period - - -

14 MR. MECHANICK: Yes.

15 JUDGE RIVERA: - - - and it chooses specifically  
16 to ignore that, would that mean that the determination  
17 against him is arbitrary and capricious?

18 MR. MECHANICK: It - - - I - - - I - - - I don't  
19 believe that's what the hearing - - -

20 JUDGE RIVERA: I didn't ask that.

21 MR. MECHANICK: Right.

22 JUDGE RIVERA: Let's just get to this first.

23 MR. MECHANICK: It - - - it - - - it could be.

24 I'd have to look at what the written decision says, but it  
25 - - - it's - - - it's entirely possible. However, that is

1 not what the - - -

2 JUDGE RIVERA: Okay.

3 MR. MECHANICK: - - - hearing officer did here.  
4 If you look at page 429 of the record, the hearing officer  
5 expressly considered information that was favorable to Mr.  
6 Mantilla from before the coresidency period. Specifically,  
7 the hearing officer considered the Chase Bank statements  
8 from 2018, 2019, and 2020. This was explicitly noted in  
9 the decision. And although she took notice of - - - of  
10 this evidence, what she said was she didn't consider it  
11 sufficient, reliable, and credible evidence corroborating  
12 his claim of primary residence.

13 JUDGE TROUTMAN: Well, how is that decision  
14 genuinely reasonable and rational in the specific context  
15 presented as required by Murphy?

16 MR. MECHANICK: Well, I - - - I'd love to extoll  
17 all of the ways that the petitioner in Murphy presented  
18 copious amounts of evidence that are - - - that are quite  
19 different from here. And Murphy - - - I mean, the first  
20 thing to note in Murphy is that, unlike in this case, all  
21 of the evidence in Murphy pointed one way. So it was  
22 directionally uniform. It all corroborated the claim of  
23 primary residence. And the court can look at this - - -

24 JUDGE TROUTMAN: But with respect to the specific  
25 context, did - - - did the hearing officer have to look at

1 the evidence based on this person, their circumstances and  
2 situation? Or you're suggesting that the - - - all - - -  
3 all individuals are treated the same regardless of the  
4 context of how they're living, circumstances they're  
5 facing?

6 MR. MECHANICK: All - - - all - - - all  
7 individuals are - - - the - - - the law applies the same to  
8 all individuals, but of course, it is a totality in  
9 circumstances test.

10 JUDGE TROUTMAN: Right.

11 MR. MECHANICK: So - - - so - - -

12 JUDGE TROUTMAN: So how is it supported here that  
13 all of the totality of the circumstances in the context of  
14 this individual supports that this was not an arbitrary  
15 decision on the part of the hearing officer?

16 MR. MECHANICK: Because in the context of this  
17 individual, we know from pages 296 - - - 292 to 296 of the  
18 record that Mr. Mantilla, for example, had an alternative  
19 source of funds, the Wells Fargo account. We know from  
20 looking at those statements that he received online banking  
21 statements. It's - - - it's inferable, therefore, that the  
22 statements would have been accessible to him. The fact  
23 that he did not produce full and complete copies of those  
24 statements, which were associated with the Florida account,  
25 and indeed, during the period of time when he claimed he



1 was living with his brother, he then - - -

2 JUDGE TROUTMAN: And the Social Security benefits  
3 that he received - - -

4 MR. MECHANICK: And - - -

5 JUDGE TROUTMAN: - - - isn't there evidence as to  
6 what his income was regardless of the tax return and the  
7 things that you say he did not?

8 MR. MECHANICK: Well, there is evidence of what  
9 his income was. The issue, though, is his primary  
10 residence. And - - -

11 JUDGE TROUTMAN: Correct. But regardless of  
12 where - - - you can have a bank account and have a bank  
13 card in a different state, but it doesn't mean you don't  
14 live somewhere else.

15 MR. MECHANICK: Well - - - well, that - - - that  
16 is in - - -

17 JUDGE TROUTMAN: You can have access to those  
18 funds.

19 MR. MECHANICK: Well, that - - - that's an  
20 inference that the hearing officer had to make. I mean,  
21 when we are in Article 78, we are sitting in review of  
22 factual determinations that have already - - -

23 JUDGE TROUTMAN: And what about the information  
24 with respect to SNAP benefits and other things that he was  
25 receiving directly from New York?

1 MR. MECHANICK: There are ten months out of the  
2 twelve-month coresidency period where his receipt of SNAP  
3 benefits and other public assistance benefits are  
4 undocumented. We - - - two months into the coresidency  
5 period, we have a - - - a couple of SNAP - - - of letters  
6 from SNAP suggesting that he remained enrolled. However,  
7 where are the SNAP recertifications? Where are the EBT  
8 card reports from that coresidency period?

9 JUDGE TROUTMAN: So again, it was proper to focus  
10 on the absence of certain documents, even those you could,  
11 in the totality, come together with the information that  
12 you want - - - that you required?

13 MR. MECHANICK: Well, I - - - I - - - I don't  
14 know if the hearing officer could have drawn a - - - a  
15 separate conclusion. I think the question - - -

16 JUDGE TROUTMAN: Well, you keep focusing on what  
17 was not provided.

18 MR. MECHANICK: Yes. Because - - -

19 JUDGE TROUTMAN: So what - - - what about what  
20 was provided?

21 MR. MECHANICK: Well, what was provided was  
22 conflict - - - was conflicting in - - - in several  
23 respects. And I'll - - - I'll get to that. First thing I  
24 want to say, though, is that we cited cases from the First  
25 Department, even where all of the evidence that is provided

1 corroborates the claim of primary residence, if the quantum  
2 of evidence is insufficient, then courts have still held  
3 that it is rational for HPD to determine that they haven't  
4 satisfied their burden of proving primary residence.

5 JUDGE CANNATARO: Counsel, I'd - - - I'd like to  
6 change the subject. And you can go back, but I just want  
7 to get this question in before time runs out. It seems to  
8 me, under my understanding of the - - - the requirements  
9 that were explained to him in the succession appeal letter  
10 that he received that there's an independent requirement  
11 that he submit a tax return or a statement explaining why  
12 he doesn't have to submit a tax return, which my view of  
13 the record is, that wasn't done at all. And I think the  
14 letter - - - the explanatory letter says that's an  
15 independent grounds for denial of succession. But the AHO  
16 doesn't get into that at all, really, in the decision.  
17 What are we to make of that? What can we do with that?  
18 You know, how - - - how do we work with that absence?

19 MR. MECHANICK: Yeah. I think what you do is you  
20 apply the governing law implicated by the decision to the  
21 facts found by the hearing officer. So the - - - the - - -  
22 the facts found by the hearing officer were that the only  
23 objective evidence that Mr. Mantilla submitted other than  
24 the income statements, which are alone insufficient - - -

25 JUDGE CANNATARO: Right.

1 MR. MECHANICK: - - - the only objective evidence  
2 were the two SNAP letters that I mentioned.

3 JUDGE CANNATARO: So it's all about primary  
4 residence. There's no grounds here for finding that the -  
5 - - that the application should have been denied based on  
6 the failure to submit a tax return.

7 MR. MECHANICK: That's - - - that's not what I'm  
8 saying. There - - - there is a - - - there is a ground for  
9 that.

10 JUDGE CANNATARO: How do you do that?

11 MR. MECHANICK: I mean - - - so first of all,  
12 from the inception of this proceeding, the parties have  
13 litigated this case before it came to this court on the  
14 understanding that the - - - that the tax return issue was  
15 embedded in the decision and would be a basis too.

16 JUDGE CANNATARO: I know. You - - - you argue  
17 it, but you know, it's not in the decision.

18 MR. MECHANICK: So what the decision says was, by  
19 implication, because the only evidence was the two SNAP  
20 letters, that means that the tax returns contemplated by  
21 302 and 4 were not submitted. And I mean, this is - - -  
22 this is footnote 4 of Oakdale. It - - - it is - - - it is  
23 close enough to the agency's reasoning that I think you can  
24 uphold it. And I don't think it would be fair for parties  
25 to litigate the - - - the - - - the matter at two appellate

1 levels on the understanding that the agency's decision was  
 2 irrational because it relied on taxes. And then when the  
 3 case finally gets to this court, argue that actually it was  
 4 irrational or - - - or actually, it did not rely on it in  
 5 the first place. That - - - that is not how these  
 6 proceedings are litigated. If - - - if I may return just  
 7 momentarily to the - - -

8 CHIEF JUDGE WILSON: Sure.

9 MR. MECHANICK: - - - to the financial records  
 10 and the SNAP records, with regard to the North Miami  
 11 address, at page 273 of the record, that is the Social  
 12 Security letter from February of 2019 reflecting the  
 13 Florida address. That indicates that the North Miami  
 14 address, the address which my adversary claims for the  
 15 first time in their reply brief was actually the sister's  
 16 address. Of course, that's nowhere in the record. That  
 17 address is associated with Mr. Mantilla's file with the  
 18 Social Security Administration. So even if this  
 19 explanation that it was his sister's mailing address had  
 20 been proffered to the hearing officer, which it was not, it  
 21 still would have been rational for the hearing officer to  
 22 not necessarily credit that explanation because it was also  
 23 the address tied to his file with the Social Security  
 24 Administration.

25 CHIEF JUDGE WILSON: Well, or to credit it and to



1 credit that his principal residence was with the sister.

2 MR. MECHANICK: Well - - - so I mean - - -

3 CHIEF JUDGE WILSON: I mean - - - right.

4 MR. MECHANICK: Yeah. It's six in one hand, half  
5 dozen. Yeah. I - - - I - - - I agree with that. And so  
6 just returning to the - - - the SNAP for a moment, I - - -  
7 I - - - I - - - as I was beginning to explain, we have an  
8 EBT card report in the record. The - - - there's no  
9 question that he was physically in New York after his  
10 brother suffered an acute medical event. He applied for  
11 public assistance. There's no waiting period to do that.  
12 He received public assistance. And there's an EBT card  
13 report for December 20 - - - the - - -

14 CHIEF JUDGE WILSON: Yeah. I was going to say,  
15 would - - - would you agree that it's very unlikely that he  
16 went back to Florida at any point during this period of  
17 time?

18 MR. MECHANICK: No. No. I wouldn't say that.  
19 Or at least I - - - I have no way to - - - to make heads or  
20 tails of it, and I don't think the hearing officer did  
21 either because most of the coresidency period is not  
22 accounted for other than through these income  
23 recertifications, which could have indicated physical  
24 presence, but not necessarily residency.

25 JUDGE RIVERA: Are you putting in question the

1 severity of his brother's illness?

2 MR. MECHANICK: No. I'm not - - -

3 JUDGE RIVERA: That he was the primary caretaker?

4 MR. MECHANICK: Well, he - - - he - - - he - - -

5 even if you assume that he - - -

6 JUDGE RIVERA: Based on the record. I'm not

7 asking for your views.

8 MR. MECHANICK: I mean, the - - - the - - - the

9 fact is he did not submit evidence as to the duration and  
10 persistence of his caretaking responsibilities. So if this

11 court is to hold that the hearing officer acted arbitrarily

12 because she didn't account for those caretaking

13 responsibilities, I believe that holding would be divorced

14 from the evidentiary record.

15 JUDGE TROUTMAN: And did he provide information

16 as to his limited resources?

17 MR. MECHANICK: Yes, he did. And - - - and - - -

18 and - - -

19 JUDGE TROUTMAN: So suggesting that he's flying

20 back and forth from Florida to New York with what?

21 MR. MECHANICK: Well, in - - - in the Chase Bank

22 account, which he - - - which he argues he had access to,

23 there were other funds going in. I mean, again, this goes

24 into the area of - - -

25 JUDGE TROUTMAN: Funds that did not cause him to

1 be excluded from SNAP benefits or other public assistance?

2 MR. MECHANICK: Well, again, the SNAP benefits  
3 are not - - -

4 JUDGE TROUTMAN: So you're saying he - - - he  
5 wasn't poverty ridden?

6 MR. MECHANICK: No, I'm not. I'm - - - I'm - - -  
7 I'm not - - - I'm not. He was of limited means. The SNAP  
8 benefits are only accounted for for the first two months of  
9 the coresidency period. We don't have any information - -  
10 -

11 JUDGE RIVERA: But let's say he goes back. What  
12 - - - how many times would he have to go back to Florida  
13 where you would say, well, that - - - that just - - - you  
14 can't have a primary residence in New York? We're not  
15 talking about going back every weekend. I don't mean that.

16 MR. MECHANICK: Right. We're not. It's not  
17 about - - -

18 JUDGE RIVERA: Once, twice?

19 MR. MECHANICK: It's not - - - it's not about the  
20 frequency. Potentially, depending also on the duration of  
21 time that he spends there, one of the factors that the  
22 hearing officer looks at is the number of days, whether  
23 it's 183 days above or below, that they're spending at  
24 their claimed primary residence.

25 JUDGE RIVERA: Is there direct evidence that he

1           went back to Florida?

2                   MR. MECHANICK: There's no direct evidence.

3                   JUDGE RIVERA: No. There's - - - so - - -

4                   MR. MECHANICK: But - - - but - - - but the - - -  
5           but this is a - - -

6                   JUDGE RIVERA: Would it be speculative to assume  
7           so given - - -

8                   MR. MECHANICK: You don't have to - - -

9                   JUDGE RIVERA: - - - given the condition of his  
10          brother and why he came to New York?

11                   MR. MECHANICK: The hearing officer wouldn't have  
12          to assume so to deny this application. Mr. Mantilla is the  
13          party with the burden. What Mr. Mantilla has to do is  
14          exclude the alternative possibilities to show to the  
15          satisfaction of the hearing officer - - -

16                   JUDGE RIVERA: That's what I'm saying. If he's  
17          showing his financial status, the condition of his brother,  
18          why he's here.

19                   MR. MECHANICK: But those are the - - -

20                   JUDGE RIVERA: Right?

21                   MR. MECHANICK: But those are factual inferences  
22          that are reserved to the hearing officer. And - - -

23                   JUDGE RIVERA: Yes. But they have to be  
24          reasonable.

25                   MR. MECHANICK: And they have to be reasonable.

1 But the hearing officer reasonably weighed that against  
2 other countervailing evidence, including the - - - as far  
3 as I can tell, the - - - the - - - the unsatisfactorily  
4 explained financial records showing Florida and a change of  
5 Florida address, the Social Security account tied to  
6 Florida, and the absence of public assistance documentation  
7 that he hadn't produced for the period prior to the  
8 coresidency period. But for reasons that are yet  
9 unexplained, he did not produce for the latter ten months  
10 of the coresidency period.

11 And just as courts may draw adverse inferences  
12 when a party has information likely to be in their  
13 possession that they do not disclose, administrative  
14 agencies may do as well. And that is a particularly  
15 important doctrine when you have a nonadversarial  
16 proceeding such as this one, where the applicant is in  
17 control of the administrative record.

18 To - - - well, I see my light is not on. Happy  
19 to answer any other questions. But I'll - - - I'll just  
20 make - - - make another point. This - - - if this court  
21 were to reverse the First Department on this record, then  
22 this would be the first published appellate decision of  
23 which we're aware - - - and my adversary has not cited any  
24 contrary cases - - - in which there was conflicting  
25 evidence as to the applicant's address and in which the

1           appellate court nevertheless held, as a matter of law, that  
2           the hearing officer was required to resolve those  
3           inconsistencies in the applicant's favor and find that they  
4           were entitled to succession rights.

5                         And so I - - - I think that the implications of  
6           this case would reverberate outside of the context of - - -  
7           of the circumstances of this one case. They would  
8           reverberate outside of the circumstances of - - - of  
9           Mitchell-Lama succession principles. I think that future  
10          litigants and courts would look to this case, if this court  
11          were to reverse, in order to challenge the reasoned  
12          judgment of administrative agencies when there's a mixed  
13          record. And I don't think that would be appropriate for  
14          the development of administrative law principles.

15                         Does the court have any other questions?

16                         CHIEF JUDGE WILSON: No. Thank you.

17                         MR. MECHANICK: Thank you.

18                         MR. FAN: I just want to make three really quick  
19          points. Just picking up on the very last point, we're not  
20          asking this court to make some broad pronouncement about  
21          what to do in cases where there's conflicting evidence.  
22          All we're saying is, yes, you can make a decision on  
23          conflicting evidence, but then you need to treat the same  
24          type of evidence the same way on each side.

25                         The second thing is, Your Honors had a - - - a

1           brief colloquy about the absence of evidence and what that  
2           means. And so I - - - I want to point you on page 429.  
3           There's a very small paragraph in the second full  
4           paragraph. And the hearing officer says, well, you know,  
5           the only documents are what reflect Mr. Mantilla being in  
6           the apartment in New York during the one-year period. And  
7           so sure, maybe you can weigh the absence of evidence, but  
8           then you also have to weigh the complete absence of  
9           evidence of Florida from the one-year period. There are  
10          zero documents that say Florida within the one-year period.  
11          So if you're going to draw that sort of adverse inference  
12          against Mr. Mantilla, then you have to do the same thing  
13          with respect to Florida documents and say there's nothing  
14          linking him to Florida within the one-year period. And so  
15          the hearing officer can weigh conflicting evidence - - -

16                   CHIEF JUDGE WILSON: Well, I - - - I wouldn't  
17          have expected him to put any in.

18                   MR. FAN: I don't think that's exactly correct,  
19          Your Honor. I mean, I think he - - -

20                   CHIEF JUDGE WILSON: Right.

21                   MR. FAN: Individuals, especially individuals  
22          with sort of limited means, I think they're trying their  
23          best to assemble whatever they have. That's why there are  
24          some documents that say Florida on it. There's some  
25          documents that say New York on it. He's not trying to hide

1 it. There's some accusation that he was trying to hide the  
2 Wells Fargo statements. Actually - - -

3 JUDGE CANNATARO: But Counsel, even if that's  
4 true - - - even if, you know, some litigants just put in  
5 everything they can get their hands on, the relevant  
6 inquiry for the hearing officer is the residency in New  
7 York. And you know - - - and - - - and - - - in that  
8 regard, there is conflicting evidence. Some of it points  
9 to Florida. Some of it points to New York. Why shouldn't  
10 they be allowed to make their own determination about that?

11 MR. FAN: I - - - I think you can make your own  
12 determination. I think that's why this case doesn't set a  
13 precedent this way. And I just want to draw this  
14 distinction between Murphy because my friend on the other  
15 side does mention Murphy. In Murphy, Supreme held and  
16 declared that this individual was entitled succession  
17 rights based on overwhelming evidence because there was  
18 only one possible reading at all to read the evidence.

19 JUDGE CANNATARO: It all went one way - - -

20 MR. FAN: It all went one way.

21 JUDGE CANNATARO: - - - for a really long period  
22 of time.

23 MR. FAN: Well, what we're not saying is that  
24 this individual has to get succession rights. What we're  
25 saying is, you should at least remand this - - - have this

1 remanded down to HPD for them to have a decision based on  
2 all the facts before them, based on information that  
3 predates the record and postdates the record, based on sort  
4 of making equal inferences based on the same exact type of  
5 documents and resolve those conflicts.

6 JUDGE RIVERA: If you would just summarize it one  
7 more time. What is it that they didn't consider that they  
8 should have?

9 MR. FAN: They didn't consider information that  
10 predated the period. And they did so - - -

11 JUDGE RIVERA: Yeah. What - - - specifically,  
12 what are you talking about?

13 MR. FAN: The SNAP letters, the - - - that  
14 predated the period, the HEAP letters, home energy letters  
15 that predated the period, the Medicaid letters that  
16 predated the period, a whole two batches of income  
17 recertifications that predated the period exactly on  
18 February 2019, which accrued rent obligations within the  
19 period. So the fact that an - - - a document is dated  
20 within the period doesn't - - - or dated just outside the  
21 period doesn't mean that you can sort of ignore it with - -  
22 - as sort of evidence as probative within the period.

23 So that's all that we're saying. It's not that  
24 you have to go as far as Murphy. I think - - - I think my  
25 friend on the other side would be correct if this court

1           went as far as Murphy and just said, on any case that's  
2           conflicting evidence, the Court of Appeals can come in and  
3           say, I actually think this is a little bit different, and  
4           so I'm going to revise the judgment of the city or any  
5           other administrative agency. I think this is different  
6           because all you have to say is, if there's conflicting  
7           evidence, the hearing officer just needs to apply the same  
8           type of reasoning to those sets of conflicting evidence so  
9           they can make credibility determinations. They can say the  
10          older the documents are, the less weight they have. Those  
11          are completely okay in terms of the type of reasoning they  
12          use. Thank you, Your Honors.

13                           CHIEF JUDGE WILSON: Thank you.

14                           (Court is adjourned)



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

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the court of Appeals of Matter of Mantilla v. New York City Department of Housing Preservation & Development, No. 111 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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