

City of New York v Novello

2006 NY Slip Op 30579(U)

December 7, 2006

Supreme Court, New York County

Docket Number: 400093/06

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER
J.S.C.
Justice

PART 5

City

INDEX NO. 400093/06

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

Novello

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1, 2

Answering Affidavits — Exhibits _____

3, 4, 5, 6, 7, 8

Replying Affidavits _____

9, 10, 11, 12

and other _____

13, 14, 15, 16, 17, 18, 19, 20.

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

DEC 11 2006

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 12/8/06

EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
THE CITY OF NEW YORK,

Petitioner,

For a Judgment Under Article 78 of the New York
CPLR

Index No.
400093/06

- against -

**ORDER AND
DECISION**

(Mot. Seq. 1)

ANTONIA C. NOVELLO, as Commissioner of the New
York State Department of Health; THE NEW YORK STATE
DEPARTMENT OF HEALTH; ROBERT DOAR, as the
Commissioner of the New York State Office of Temporary
Disability; THE NEW YORK STATE DEPARTMENT OF
TEMPORARY DISABILITY; and BRAD H., ROBERT K.,
MICHAEL R., SUSAN T., and KEVIN W., on behalf of
themselves and all others similarly situated,

Respondents

FILED
DEC 11 2006
NEW YORK
COUNTY CLERK'S OFFICE

-----X
EILEEN A. RAKOWER, J.S.C. :

The City of New York ("City") petitions this court to order the State of New York ("State"), through its proper agencies, to make provisional medicaid payments pending application, investigation and determination of whether an individual is eligible. Presently, no provisional payments are made. Rather, once a person is deemed medicaid eligible, payments are made and the City is reimbursed, retroactively, covering services rendered up to three months prior to the date of the application.

Persons in need of immediate medical attention receive treatment at hospital emergency rooms regardless of their Medicaid status. City argues that "requiring class members to seek treatment from a hospital deprives class members of the ability to select their care giver." Whether or not one can select their care giver may indeed be affected by one's status as "medicaid eligible" versus "pending determination as

to whether one is medicaid eligible.” The question before this Court is whether the legislature has authorized benefits to be paid by the State only when patients have already been found to be eligible for medicaid, or is there an avenue for the State to provide interim relief.

City relies on the prior decision of Justice Richard Braun, discussed below, to demonstrate that such an avenue not only exists, but has been upheld by the Appellate Court and establishes the foundation for the relief it claims is mandated here.

By Order dated July 7, 2006, Justice Richard Braun dismissed this petition as against Brad H., Robert K., Michael R., Susan T. And Kevin W. and all others similarly situated (“Brad H. class”). The Brad H. class began a class action in 1999 against the City and various City agencies (Brad H., et al. v. the City of New York) alleging that the City failed to provide adequate discharge planning for class members who were prisoners of New York City jails and who had been treated therein for mental illness. That action was settled by a Stipulation of Settlement executed on January 8, 2003, (“Stipulation”). The Stipulation included a means by which class members who had active Medicaid coverage within the twelve months before their anticipated release date could have that coverage reactivated upon their release from jail.

City moved in June 2003 for an order modifying the Stipulation. By Order dated November 11, 2003, (“2003 Order”) Justice Richard Braun modified paragraph 61 of the Stipulation to say

For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or; (b) the date on which the Pre-Screening Process is completed where the class member has provided necessary documentation before the completion thereof pursuant to Social Services Law §366-a(2)(a); (c) seven business days after the date on which the Pre-Screening Process is completed where an investigation is deemed necessary pursuant to Social Services Law §366-a(2)(a); (d) where it appears that a class member is in immediate need and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation.

The 2003 Order amending the stipulation, including the Court's reliance on Social Service Law § 133 as requiring the granting of temporary Medicaid benefits was upheld by the Appellate Division, First Department. (8 AD3d 142 [1st Dept. 2004], *lv. denied*, 4 NY3d 702 [2004]).

Petitioner City of New York ("City") moves for an order declaring that State respondents New York State Department of Health ("DOH") and the New York State Office of Temporary and Disability Assistance ("OTDA") failed to perform duties imposed upon them by the 2003 Order. City asserts that their inaction is arbitrary and capricious and an abuse of discretion. City now seeks the Order of this Court authorizing the City to provide "temporary Medicaid benefits" pursuant to the 2003 Order. Justice Braun, by order dated October 24, 2006, recused himself and the matter was administratively re-assigned to this Court.

Specifically, at issue here, is that provision of the 2003 Order which requires that "where it appears that a class member is in immediate need, and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation" The First Department, in affirming the Order, stated:

The stipulation of settlement needed further modification, pursuant to Social Services Law § 133, to require the grant of temporary Medicaid benefits pending the completion of an investigation for class members in immediate need. The language of the statute is clear, providing for temporary assistance and care pending any investigation relating to benefit eligibility. By definition, temporary assistance and care includes "medical assistance for needy persons" (Social Services Law § 2[18], § 363). Contrary to defendant's contention, § 133 is applicable to Medicaid benefits (see c.g. Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 215 [EDNY], *appeal dismissed* 246 F.3d 176)." (Brad H., et al. v. The City of New York, 8 AD3d 142 [1st Dept. 2004], *lv. denied*, 4 NY3d 702 [2004]).

The State argues that the Court's Order cannot be interpreted as compelling DOH to automatically give pre-investigation Medicaid benefits to all persons in the class action because DOH was not a party to that litigation, did not have a full and fair opportunity to be heard and therefore could not explain to a Court why the Order is

contrary to public policy. The 2003 Order directed City to provide benefits. Essentially, City seeks indemnification from the State for its agreement to provide temporary benefits.

Further, DOH argues that it simply lacks the authority to pay Medicaid benefits for services rendered to people who have not been determined to be eligible for the program. DOH contends that its determination is in accordance with Federal and State law; and thus, it cannot be said that their actions are in excess of jurisdiction, arbitrary and capricious, or based on an error of law.

Social Service Law section 133 provides: "If it shall appear that a person is in immediate need, temporary assistance or care shall be granted pending the completion of an investigation." Social Service Law section 2(18) provides that "Public assistance and care includes . . . medical assistance for needy persons . . ." "Medical assistance" has been found to refer to Medicaid. (See, Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 215 [EDNY], *appeal dismissed* 246 F.3d 176 (holding that the City's failure to provide Medicaid benefits to the Plaintiff class was violative of New York State Social Service law. It should be noted that all class members in Henrietta D. v. Giuliani, *supra*, were all Medicaid eligible.)

The State contends that DOH is the "single State agency" responsible for adopting regulations to implement the Medicaid program and OTDA lacks the authority to grant pre-investigation Medicaid benefits. The authority to supervise the administration of the Medical Assistance Program was transferred to DOH in 1996. To the extent that OTDA may provide reimbursement for temporary pre-investigation grants, that is limited to the programs that OTDA presently administers and none of OTDA's programs provide medical assistance.

The Medicaid program, by its own mandate, provides for the payment of some or all of the medical expenditures that are furnished to "an eligible person." (Social Service Law § 365-a(2)). The legislature carved out two exceptions, where certain persons may be presumed eligible and receive pre-determination Medicaid benefits. The first are applicants who are hospitalized and may be presumed eligible for sixty days upon discharge to a nursing facility, hospice or to certain home care providers when the applicant "reasonably appears" eligible for Medicaid and meets certain other criteria. The second are pregnant women who may be presumed eligible for prenatal care and other Medicaid services for a limited period when a qualified provider

determines, based on preliminary information, that the woman's family income does not exceed a certain amount. Granting benefits under these limited circumstances is statutorily authorized (see, Social Service Law § 364-I and New York City Rules and Regulations §§ 360-3.7(a)-(d)). The legislature made no other provision for temporary medicaid benefits.

Recognizing that applicants may have medical needs prior to being found Medicaid eligible, DOH directs those with immediate medical needs to a hospital licensed under Article 28 of the Public Health Law which is eligible to receive Medicaid funds. State Law requires hospitals to furnish medically necessary emergency care regardless of a patient's ability to pay. Hospitals also maintain facilities which provide out-patient medical care to persons who require it. Additionally, class members are eligible for the Medication Grant Program which provides all eligible persons with a means to pay for medication and medication monitoring. Any individual can still receive medically required treatment regardless of whether the funds for the treatment are provided by the City or by the State. If an applicant is later determined to be Medicaid eligible, the hospital or the applicant will then be reimbursed by the State for their expenditures, not only for services rendered during the investigation process, but also for a period of up to three months before they applied for Medicaid.

City seeks to have this Court add another class of persons¹ for whom an exception exists (Social Service Law § 364-I and New York City Rules and Regulations §§ 360-3.7(a)-(d)).

There is a [] presumption that the Legislature has investigated and found facts necessary to support the legislation * * * as well as the existence of a situation showing or indicating its need or desirability * * * Thus, if any state of facts, known or to be assumed, justify the law, the court's power of inquiry ends * * * Under the doctrine of separation of powers, courts may not legislate * * * or extend legislation. *Matter of Malpica-Orsini*, 36 N.Y.2d 568 at 570-571(1975).

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The 2003 Order pertains to a class of persons who were incarcerated (individuals who are incarcerated cannot receive Medicaid benefits) and were seeking to be "reactivated." The City concedes that not every member of this class will be found to be eligible upon reexamination.

The Legislature has determined the manner in which the Medicaid program will be administered and it has permitted pre-investigation temporary Medicaid benefits under cited circumstances.

The City can alleviate the burden of laying out funds pending investigation and reimbursement by beginning the Medicaid investigation process while the class members are still incarcerated in City correctional facilities. Many of the class members affected by the 2003 Order were Medicaid eligible before they were incarcerated and their benefits were terminated only when they went to jail.

City also has the option of urging the proper legislative bodies to address what City believes to be a void in the applicable statutes (SSL § 364-I, 18 NCYRR §§ 360.3.7 (a)-(d)) to enable the State to provide the funding of temporary pre-investigation Medicaid benefits under the circumstance presented.

Wherefore, it is hereby

ORDERED that Petitioner's application for an order declaring that "the State, in denying the City the authority to provide certain class members with "temporary medicaid benefits" as required in the Order, failed to perform duties enjoined upon them by law and made a determination in violation of lawful procedure, that was affected by an error of law, and that was arbitrary and capricious and an abuse of discretion" is denied, and it is further

ORDERED that Petitioner's application for an order directing Respondents to provide the City with the requisite authority to provide "temporary Medicaid benefits" as specified in the 2003 Order is also denied, and it is further

ORDERED that OTDA's cross-motion to dismiss the action against it is moot.

This constitutes the decision and order of the court.

DATED: December 7, 2006

FILED

 HELEN A. RAKOWER, J.S.C.
 DEC 11 2006
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