

Matter of Eichna v DeMarzo

2007 NY Slip Op 30231(U)

March 13, 2007

Supreme Court, Suffolk County

Docket Number: 0025496

Judge: John J.J. Jones

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respondent, Antonia C. Novello, as Commissioner of the New York State Department of Health, dated November 21, 2006, the Return, with exhibits thereto, the Verified Answer of respondent, Janet DeMarzo, as Commissioner of the County of Suffolk, Department of Social Services, dated November 29, 2006, with Memorandum of Law, and the Reply of Petitioner dated December 12, 2006, it is

ORDERED that this proceeding is respectfully transferred to the Appellate Division, Second Judicial Department, in accordance with CPLR 7804 (g).

The decedent, Michael Eichna, died while hospitalized on July 15, 2003, and on August 28, 2003, petitioner's law firm applied for Medicaid on decedent's behalf. On October 14, 2003, Suffolk County issued a request for documentation regarding decedent's income from employment for the period from 5/1/03 to 7/21/03, letters explaining his marital status, proof of residence and monthly rental payments. The requested documentation was not provided by its due date approximately one month later, however, and on December 9, 2003, the County sent a notice denying the application for Medicaid for failure to submit the documents. On December 12, 2003, a Fair Hearing was requested by counsel. Despite earlier "good faith" efforts, Letters of Administration were issued on April 7, 2005 to the Public Administrator of Suffolk County. A Fair Hearing was thereafter held on January 18, 2006 and continued on April 11, 2006, at which time the County's representative testified that the Letters of Administration were provided to the County approximately 3 months after they were issued. She also testified that the requested documentation was not provided until the Fair Hearing began, although petitioner's representative claimed to have submitted the required information in April and July 2005. After the hearing, it was determined that the record did not establish that petitioner submitted the required documentation as soon as it was available, or that it had good cause for its late submission, and the denial of petitioner's Medicaid application was sustained.

Petitioner, Estate of Michael Eichna, commenced this proceeding pursuant to CPLR Article 78 to review the decision after Fair Hearing of the New York State Department of Health dated May 11, 2006. Petitioner challenges the decision on the grounds that it was arbitrary and capricious, and that it was not supported by substantial evidence.

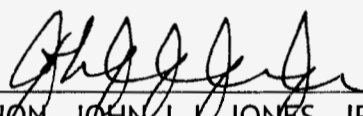
The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified, or whether the action lacks a foundation in fact, since arbitrary action is action taken without sound basis in reason or without regard to the facts (*Lyons v Whitehead*, 2 AD3d 638, 769 NYS2d 283 [2d Dept 2003], citing *Matter of Pell v Board of Educ.*, 34 NY2d 222, 313 NE2d 321, 356 NYS2d 833 [1974]). In view of the failure to request additional time to fulfill the documentation request so as to establish petitioner's claimed eligibility for benefits, and the substantial delay in submitting such documentation after the issuance of Letters of Administration, the

determination that petitioner failed to make timely submission or to establish good cause for the delay was justified and neither arbitrary nor capricious.

The respondent County has asserted that petition was not filed in a timely manner in that it was filed on September 12, 2006, four months and one day following the issuance of the Decision After Fair Hearing. In considering whether the four-month statute of limitations under CPLR 217 has run, the Courts of this State have determined that the statutory period does not begin to run until the petitioner receives notice of the administrative determination, since “fundamental fairness would seem to compel the conclusion that a petitioner should not be held to have been dilatory in challenging a determination of which he was not aware” (*Biondo v New York State Bd. of Parole*, 60 NY2d 832, 834, 458 NE2d 371, 470 NYS2d 130 [1983]). Thus, it has been held that it is the date of actual receipt of a written notice by an aggrieved party, rather than the date such notice was issued, that should be regarded as critical in measuring the time within which such party has a duty to act (*see ATM One, LLC v Landaverde*, 307 AD2d 922, 763 NYS2d 631 [2d Dept 2003]). Since respondents have offered no evidence tending to dispute petitioner’s assertion that it received notice of the Decision After Fair Hearing on May 15, 2006, this proceeding is timely.

When an Article 78 petition raises an issue as to whether an administrative hearing determination is supported by substantial evidence, the Court in which the action is commenced must transfer the proceeding to the Appellate Division (CPLR 7803 [4]; CPLR 7804 [g]; *see Magwood v Glass*, 240 AD2d 409, 658 NYS2d 401 [2d Dept 1997]; *see also Vega v Coughlin*, 202 AD2d 597, 609 NYS2d 262 [2d Dept 1994]). Since lack of substantial evidence has essentially been raised by the petitioner, this Court is bound to transfer the proceeding to the Appellate Division (*see Kaplowitz v Jackson*, 267 AD2d 239, 699 NYS2d 312 [2d Dept 1999]). Accordingly, this proceeding is respectfully transferred to the Appellate Division, Second Judicial Department. The Clerk of this Court is directed to transfer the file in this matter to the Clerk of the Supreme Court, Appellate Division, for the Second Judicial Department.

DATED: 13 March '07



HON. JOHN J. JONES, JR.
J.S.C.

CHECK ONE: FINAL DISPOSITION

NON-FINAL DISPOSITION