

Matter of Williams v Hansell

2007 NY Slip Op 31514(U)

May 23, 2007

Supreme Court, New York County

Docket Number: 0400572/2007

Judge: Kibbie F. Payne

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

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

In the Matter of the Application of

LISA WILLIAMS,

Petitioner,

INDEX NO. 400572/07

MOTION DATE 4/4/07

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules,

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

DAVID A. HANSELL, as Commissioner of the
New York State Office of Temporary and
Disability Assistance, and ROBERT DOAR, as
Commissioner of the New York City Human
Resources Administration,

Respondents.

FILED
JUN 07 2007
COUNTY CLERKS OFFICE
NEW YORK

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, and as in indicated in the attached memorandum, the motion of respondent Commissioner of the New York City Human Resources Administration to dismiss the petition is denied (motion sequence number 002), said respondent's alternative motion for leave to serve an answer within 30 days of service of notice of entry is granted, and the proceeding is stayed pending receipt of such answer.

Dated: May 23, 2007


J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4**

In the Matter of the Application of

Index No. 400572/07

LISA WILLIAMS,

Motion Seq. 001 &
002

Petitioner,

Decision & Order

For a Judgment pursuant to Article 78 of
the Civil Practice Law and Rules,

-against-

DAVID A. HANSELL, as Commissioner of the
New York State Office of Temporary and
Disability Assistance, ROBERT DOAR, as
Commissioner of the New York City Human
Resources Administration,

Respondents.

KIBBIE F. PAYNE, J.:

In this CPLR article 78 proceeding, petitioner seeks to annul the decision, after a fair hearing, of respondent David A. Hansell, as Commissioner of the State of the New York Office of Temporary and Disability Assistance (Commissioner) (see Regulations of the Department of Family Law [18 NYCRR] § 358-5.6 et seq. [governing the fair hearing process; see also Social Services Law § 22]). Therein, the Commissioner determined that the New York City Human Resources Administration (HRA) correctly declined to replace petitioner's electronically issued public assistance and food stamp benefits. Petitioner contends that the Commissioner's determination was made in violation of lawful

procedure as the Commissioner failed to adjourn the hearing for purposes of developing the evidentiary record through the use of a subpoena for an agency employee (see CPLR 7803 [3]; see also Regulations of the Department of Family Assistance [18 NYCRR] § 358-5.6 [8]). Respondent Robert Doar, as Commissioner of the HRA, moves for an order dismissing the proceeding as barred by the Statute of Limitations or, in the alternative, transferring the proceeding to the Appellate Division for a substantial evidence review.

Petitioner receives public assistance and food stamps benefits, which are posted electronically to an account in her name. To withdraw her benefits, petitioner is issued a card and personal identification number (PIN). Petitioner alleges that someone stole her PIN and used it to thief her benefits issued in April and May of 2006. After discovering that the funds were missing, petitioner applied for replacement benefits. Upon review, HRA declined to replace the benefits withdrawn from her account during those months.

Petitioner requested a fair hearing pursuant to Social Services Law § 22. Following the hearing, the Commissioner issued a decision, dated July 19, 2006, determining that HRA correctly declined to replace petitioner's public assistance and food stamp benefits. The Commissioner reasoned that no credible evidence existed to support petitioner's claim that someone other

than herself removed the funds from the account. The Commissioner emphasized that petitioner's testimony was incredible and "largely suspect due to the substantial coaching evident in her responses."

Thereafter, by letter dated October 18, 2006, petitioner's counsel requested the agency reconsider the decision and reopen the fair hearing pursuant to the Regulations of the Department of Family Assistance § 358-6.6.¹ In his letter, counsel asked the agency to waive the Statute of Limitations defense, providing that the "deadline for filing an Article 78 proceeding [challenging the decision] is November 18, 2006." On October 26, 2006, the agency informed petitioner in writing that, if "the Article 78 proceeding is commenced within 30 days of the date of our letter setting forth our final position in this matter," it would "not raise the Statute of Limitations as an affirmative defense" [emphasis added]).

On January 22, 2007, the agency issued a letter to petitioner's counsel providing, among other things, "there is no basis for reopening the hearing or otherwise disturbing the decision as issued." The agency reasoned the "claim that the hearing record was not sufficiently developed is not supported by

¹ Section 358-6.6 [a] provides, in pertinent part, that the "Commissioner may review an issued fair hearing decision for purposes of correcting any error found in such decision . . . [and that] the OAH may reopen a previously closed fair hearing record for purposes of completing such record"

our review of this matter." The letter further provided "[t]he basis for the denial of the request for an adjournment to issue subpoenas" and the "findings regarding the [petitioner's] credibility [were] appropriately addressed in the decision" Thereafter, on April 21, 2007, petitioner commenced this CPLR article 78 proceeding to annul the Commissioner's decision.

A CPLR article 78 proceeding must be commenced "within four months after the determination to be reviewed becomes final and binding upon the petitioner" (CPLR 217 [1]). To qualify as "final and binding," there must be "completeness (finality) of the determination and exhaustion of administrative remedies" (see Walton v. New York State Department of Correctional Services, 8 NY3d 186, 194 [2007]). The two prong criteria for when agency action is "final and binding" is as follows: "First, the agency must have reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party" (Best Payphones v. Dept. of Info. Tech. and Telecom. of the City of New York, 5 NY3d 30, 40 [2005], [citations omitted]). "[A] mere inquiry or even a request for reconsideration . . . will not render a prior [agency] determination nonfinal" (see Matter of Cauldwest Realty Corp. v. City of New York, 160 AD2d 489 [1st Dept. 1990]; see also Matter of Johnson v

Christian, 114 AD2d 321, 322 [1st Dept 1985). However, "[w]here an ambiguity as to when a final determination has been made was created by the official body, any questions as to when the statutory period begins to run will be resolved in favor of the petitioner" (see Matter of Montalvo, 137 AD2d 437, 438-439 [1st Dept. 1988] [citations omitted]).

By informing petitioner that its decision, upon reconsideration, would be its "final position in this matter," the agency held itself out as open and willing to change its denial of replacement benefits (see generally Best Payphones, 5 NY3d at 35). Petitioner had no reason to believe "that there would be no further administrative action and that the expenditure of additional . . . effort before [the agency] would do nothing to change the agency's position or alleviate [her] injury" (Best Payphones, Inc., 5 NY3d at 40). Accordingly, the agency's decision was not "final and binding" for purposes of CPLR 217 (1) until January 22, 2007 when the agency denied petitioner's appeal upon reconsideration. While the agency's letter, granting reconsideration, promised petitioner it would not raise the Statute of Limitations as an affirmative defense, such promise is not dispositive as to when the statutory period began to run.

As the court finds that the Statute of Limitations does not bar this proceeding, it will address the motion of the

Commissioner of HRA for an order transferring this proceeding to the Appellate Division for a substantial evidence review. "Where a substantial evidence issue specified in question four of section 7803 [of the CPLR] is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding" (CPLR 7804 [g]). Petitioner confines her arguments to the Commissioner's alleged violations of lawful procedure at the hearing, and does not alternatively raise a substantial evidence question (see CPLR 7803 [3], [4]). The question before the court is not whether, on the administrative record, substantial evidence supports the Commissioner's determination. Accordingly, no ground exists to transfer this proceeding. The court will grant the alternative request of the Commissioner of HRA for permission to serve and file an answer to the verified petition.

The court has reviewed the remaining contentions of the Commissioner of HRA for dismissal of this proceeding and finds them without merit.

Accordingly, it is

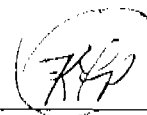
ORDERED that the motion of respondent Commissioner of the New York City Human Resources Administration to dismiss this special proceeding is denied; it is further

ORDERED that such respondent is granted 30 days after service of a copy of this order with notice of entry to serve and file an answer to the verified petition; and it is further

ORDERED that this proceeding is stayed pending receipt of the answer.

This constitutes the decision and order of the court.

DATED: May 23, 2007

A handwritten signature in black ink, appearing to be "KFP", is written inside a hand-drawn circle. The signature is positioned above a horizontal line that serves as a signature line.

KIBBIE F. PAYNE, J.S.C.