

Matter of Mark v New York City Dept. of Health and Mental Hygiene
2007 NY Slip Op 32056(U)
June 22, 2007
Supreme Court, New York County
Docket Number: 0102488/2007
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

EDWARD D. MARK

Petitioners,

To review a denial of certification for Parking Permit
for People with Disabilities

- v -

THE NEW YORK CITY DEPARTMENT OF HEALTH
and MENTAL HYGIENE, and THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,

Respondents.

INDEX NO. 102488/07

MOTION DATE 4/27/07

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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 _____

Cross-Motion: Yes No

Upon the foregoing papers, petitioner's motion pursuant to CPLR 7803 (3) for an order annulling the determination of respondent the Department of Transportation, which denied his application for a parking permit for people with disabilities, is denied and the proceeding is dismissed, in accordance with the attached memorandum.

Dated: June 22, 2007

[Signature]
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):

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
403) PERMANENTLY FILED

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

In the Matter of the Application of
EDWARD D. MARK,

Petitioner,

Index No. 102488/06
Motion Seq. 001

JUDGMENT

To review a denial of certification for
Parking Permit for People with
Disabilities by

THE NEW YORK CITY DEPARTMENT OF HEALTH
and MENTAL HYGIENE and THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,

Respondents.

UNFILED JUDGMENT
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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
11B).

KIBBIE F. PAYNE, J.:

In this CPLR article 78 proceeding, petitioner Edward D. Mark moves for an order annulling the determination of respondent New York City Department of Transportation (DOT), which denied him eligibility for a parking permit for people with disabilities (PPPD). Respondents oppose this application on the ground that the determination was not arbitrary and capricious, but rationally based on petitioner not receiving certification that his disability seriously impaired his mobility. As the DOT's determination is rational, the court will deny this application and dismiss the proceeding.

Petitioner submitted an application a PPPD, including with it an affirmation of his physician that petitioner has a permanent disability requiring him to use a private automobile

for transportation. In describing the nature of the disability, the physician provided that petitioner has a "foot drop, contracting right arch, very limited walking. Other health issues with knees . . . and removal of thyroid gland." Pursuant to 24 RCNY § 16-03, respondent the New York City Department of Health and Mental Hygiene (DOHMH) used a designated physician to perform a medical certification of petitioner's application. Dr. Eugenia Hawrylko examined petitioner for this purpose. Following her examination and review of petitioner's medical history, Dr. Hawrylko denied petitioner medical certification that he suffers from a disability seriously impairing his mobility. While noting that petitioner had health issues, Dr. Hawrylko's summary of his disability concluded that petitioner walks with a "fair gait, fair heel."

On August 28, 2006, DOT issued petitioner a denial letter of his PPPD application, indicating that he did not receive the medical certification. The DOT further informed petitioner that it could not issue a PPPD without certification from the Department of Health or Bellevue Hospital Center. Petitioner requested a re-examination, and his physician wrote a letter in support of the appeal. Thereafter, Dr. Ashok Sinha examined petitioner on the DOHMH's behalf. Dr. Sinha also denied petitioner certification, noting that petitioner's gait was almost normal and he walked without any support. Dr. Sinha

further noted that petitioner had no swelling in his knees, could raise his legs to 90 degrees and could stand on his toes.

On November 24, 2006, the DOT issued a second and final denial letter to petitioner informing him that his disability did not qualify for a PPPD. The DOT also informed petitioner that he could reapply for the permit within one year of the denial date, if his condition worsened or he developed a new qualifying condition. Petitioner commenced this CPLR article 78 proceeding, seeking to annul the determination as arbitrary and capricious. Petitioner contends that he demonstrated the need for a permit through the submission of his physician's conclusion following a physical examination. He further argues that the "DOT has no basis for its denial besides the refusal of DOH to certify [his application and would grant the permit were DOH to certify [his application]." Respondents counter that the DOT determination is rationally based.

The Rules of the City of New York establish the criteria for the issuing of PPPDs to "persons who have a permanent disability seriously impairing mobility and authorizes the use of physicians designated by the Department . . . to make decisions as to the eligibility of such persons for these special permits" (24 RCNY § 16-01 [emphasis added]). Section 16-02 of the Rules sets forth the conditions constituting permanent disabilities that seriously impair mobility (see 24 RCNY § 16-02). The remaining parts of

the chapter detail procedures for the review of the application, allowing, among other things, that the applicant engage an outside physician to review his condition and permitting such physician's conclusions to become part of the record in the administrative appeal (see RCNY § 16-03; 16-04; 16-05).

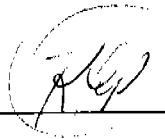
The DOT complied with the relevant criteria, and the determination is rationally based (see CPLR 7803 [3]; see generally Matter of Hughes v Doherty, 5 NY3d 100, 105 [2005]; see also Matter Pell v Bd. of Education of Union Free School Dist. No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester Cty., 34 NY2d 222, 231 [1974]). The agency properly relied on the findings of the DOHMH physician (see 24 RCNY § 16-01). Said physician conducted an examination of petitioner and reviewed his medical history. To the extent that petitioner's physician reached a contrary conclusion, the DOT was entitled to give greater weight to the findings of the DOHMH physician (see generally Matter of Iovino v Martinez, 39 AD3d 311 [1st Dept. 2007] [providing that the court is not permitted to weigh the evidence or reject an administrative agency's determination of credibility]). Finally, petitioner does not allege he suffers from any of the disabilities seriously impairing mobility listed in the criteria for issuing PPPDs (see 24 RCNY § 16-02). Accordingly, it is

ORDERED that this petition is denied and the proceeding is

dismissed.

The foregoing constitutes the judgment and order of the court.

DATED: June 22, 2007



Hon. Kibbie F. Payne, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B)