Matter of A. Holly Patterson Extended Care Facility v Daines

2008 NY Slip Op 31836(U)

June 19, 2008

Supreme Court, Nassau County

Docket Number: 4203-08/

Judge: Thomas P. Phelan

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,
Justice

TRIAL/IAS PART 5
NASSAU COUNTY

In the Matter of the Application of
A. HOLLY PATTERSON EXTENDED
CARE FACILITY,
as Representative for SEYMOUR HARRISON,

Petitioner,

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

-against-

RICHARD F. DAINES, M.D., as Commissioner
of the Department of Health of the State of New
York, and JOHN E. IMHOF, PhD., as Commissioner
of the Nassau County Department of Social Services,

Respondents.

ORIGINAL RETURN DATE:04/07/08
SUBMISSION DATE: 05/07/08
INDEX No.: 004203/08

MOTION SEQUENCE #1

The following papers read on this motion:

Notice of Petition and Petition................................	1
Answering Papers..	2,3
Petitioner's Memorandum of Law............................	4
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Petitioner A. Holly Patterson Extended Care Facility ("Holly Patterson") moves by Notice of Petition dated February 28, 2008, for judgment pursuant to Article 78 of the Civil Practice Law and Rules (1) annulling and reversing the final determination of respondents; (2) directing payment at the applicable Medicaid rates for care and treatment rendered to Seymour Harrison for the period from March 1, 2007, to present. Respondents oppose the application.

Petitioner is an extended-care facility owned and operated by Nassau Health Care Corporation, a public benefit corporation. Respondent Department of Health of the State of New York

("SDOH") supervises the administration of the Medicaid program and promulgates regulations. It is the Nassau County Department of Social Services ("DSS"), however, that takes the applications and determines the eligibility of applicants. THE SDOH issues Administrative Directives ("ADMs") with specific instructions to DSS and Informational Letters ("INFs") which clarify or update ADMs' statements.

On or about February 26, 2007, Seymour Harrison, a patient at Holly Patterson, executed a Medicaid Authorization appointing petitioner to represent him regarding his Medicaid benefits. It is alleged in the petition that Mr. Harrison entered the United States illegally in or about 1998 from Jamaica, West Indies, and it is believed that he is not married and has no children or parents.

Mr. Harrison was admitted to petitioner's facility on or about June 30, 2006, and a Medicaid application was submitted on his behalf to respondent Nassau County Department of Social Services ("DSS"). By Notice of Decision dated January 30, 2007, DSS discontinued* Mr. Harrison's Medicaid eligibility effective January 30, 2007, for failure to verify his citizenship status. A new application was thereafter submitted on January 30, 2007. DSS issued its second Notice of Decision, dated February 3, 2007, finding that Mr. Harrison had failed to verify his citizenship.

Subsequent thereto, and on May 29, 2007, another Medicaid application was submitted, together with a letter from the United States Immigration and Customs Enforcement ("ICE") informing counsel for the extended-care facility that the matter had been referred to the District Director, Citizenship and Immigration Services. Accordingly, the application was again denied based upon missing proof of citizenship. Mr. Harrison requested a state fair hearing challenging that decision. The decision was upheld following the hearing held on September 5, 2007.

Petitioner submits that contrary to the findings of respondents, Mr. Harrison meets the citizenship requirements for the Medicaid Program in that he is permanently residing under the color of law ("PRUCOL") in the United States. It is claimed by petitioner that Mr. Harrison is residing in the United States with the knowledge and acquiescence of ICE and that ICE does not intend to deport Mr. Harrison. Knowledge is claimed as a result of a letter from petitioner to ICE requesting an adjustment of status (waiver of deportation or voluntary departure status) on behalf of Mr. Harrison. Acquiescence is claimed as a result of ICE's failure to take any action to deport Mr. Harrison. Moreover, it is alleged that Mr. Harrison is wheelchair bound and requires total care as a result of complications from diabetes mellitus. Petitioner submits that it is the policy of the federal immigration agency not to deport seriously ill aliens.

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* While a patient at Nassau University Medical Center in May 2006, Mr. Harrison was approved for emergency medical coverage under client identification number DA91693V.

Both respondents request that the relief sought be denied or, in the alternative, that this proceeding be transferred to the Appellate Division pursuant to CPLR 7804(g). CPLR 7803 addresses the questions that may be raised in an Article 78 proceeding and specifies, in pertinent part, as follows:

> "3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
>
> 4. whether a determination was made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence."

Petitioner attempts to raise questions under both sections 3 and 4, alleging that the decision of Commissioner Daines was arbitrary and capricious, an abuse of discretion and not supported by substantial evidence. The standards under these sections differ.

"[I]t is important to recognize that there are different types of hearings with different legal consequences. Evidentiary hearings that are constitutionally required and have some of the characteristics of adversary trials, including cross-examination, result in 'quasi-judicial' determinations that are subject to article 78 review in the nature of certiorari, where the 'substantial evidence' inquiry is applicable (*see, e.g., Matter of Older v. Board of Educ.*, 27 N.Y.2d 333, 318 N.Y.S.2d 129, 266 N.E.2d 812; *see generally,* McLaughlin, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C7801:2, at 26-27 [1981]). Hearings that are not required as a matter of due process, in contrast, result in what have been termed 'administrative' determinations, which are subject to review only by mandamus and are governed by the 'arbitrary and capricious' standard (McLaughlin, *op. cit.*, at 28-29). . . . Indeed, as noted, in most cases where 'provision has been made for notice and a hearing' (24 N.Y.2d, at 407, 301 N.Y.S.2d 1, 248 N.E.2d 855, *supra*), the resulting determination is quasi-judicial and the availability of mandamus to review is irrelevant" (*New York City Health and Hospitals Corp. v. McBarnette*, 84 N.Y.2d 194, 203 [1994])

CPLR 7804(g) provides as follows:

> "(g) Hearing and determination; transfer to appellate division. Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issued is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be

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transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding."

Here, respondent, (SDOH), has submitted a copy of the transcript of the fair hearing before the Honorable Joel Dulberg, Administrative Law Judge, at which testimony was presented and documents admitted into evidence on the record. Petitioner was entitled to a fair hearing pursuant to Social Services Law §22. The requirements for application of the "substantial evidence" standard have been met.

Based on the foregoing, the petition herein requires review under the "substantial evidence" standard. As a consequence, transfer of this proceeding to the Appellate Division, Second Department, is mandated (CPLR 7804(g)). Accordingly, this proceeding is transferred to the Appellate Division, Second Department for determination.

This decision constitutes the order of the court.

Dated: 6-19-08

HON THOMAS P. PHELAN
J.S.C.

ENTERED
JUN 24 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE

Abrams, Fensterman, Fensterman, et al.
Attorneys for Petitioner
1111 Marcus Avenue, Suite 107
Lake Success, NY 11042-1109

Lorna B. Goodman, Nassau County Attorney
Attn: Ellen Abberbock, Deputy County Attorney
Attorneys for Respondent County
One West Street
Mineola, NY 11501

Anthony M. Cuomo, Attorney General
Attn: Derrick Robinson, Assistant Attorney General
Attorneys for Respondent State of New York
NYS Attorney General's Office
200 Old Country Road
Mineola, NY 11501-4241