

Matter of Privott v Hansell

2009 NY Slip Op 31907(U)

August 24, 2009

Supreme Court, New York County

Docket Number: 401366/09

Judge: Eileen A. Rakower

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

HON. EILEEN A. RAKOWER

PRESENT: _____

PART 5

Index Number : 401366/2009

PRIVOTT, CYNTHIA

VS.

HANSELL, DAVID A.

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1, 2, 3

4, 5, 6

7, 8, 9

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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 141B).

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 8/24/09



HON. EILEEN A. RAKOWER

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: PART 5

-----X

In the Matter of the Application of
CYNTHIA PRIVOTT,

Index No.
401366/09

Petitioner,

-against-

DECISION
and ORDER

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, and
MATTHEW BRUNE, as Deputy Commissioner of the
New York City HIV/AIDS Services Administration

Mot. Seq.
001

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appear in person at the Judgment Clerk's Desk (Room
141B).

-----X
HON. EILEEN A. RAKOWER:

Petitioner Cynthia Privott ("Petitioner") brings this Article 78 seeking an order (1) directing Respondents Doar and Brune ("City Respondents") to comply with a Decision After Fair Hearing rendered on March 25, 2009 ("3/25/09 DAFH"); and (2) directing Respondent Hansell ("State Respondent") to enforce compliance pursuant to his statutory duties. Petitioner is and was at all times relevant herein a recipient of public assistance under the Family Assistance program administered by the New York City Human Resources Administration ("HRA").

Petitioner is a recipient of emergency shelter allowance ("ESA"). ESA is available for individuals who have been medically diagnosed as having AIDS or HIV-related illness, are homeless or facing homelessness and have no viable less costly housing options (*see* 18 NYCRR §352.3(k)). In the City of New York, ESAs are administered through the HIV/AIDS Services Administration ("HASA") of HRA, pursuant to the City's duty to administer public assistance pursuant to Social Services Law ("SSL") §§61, 62, 65, and 69. State Respondent is charged with supervising local social services districts ("local districts") such as City

Respondent in their administration of public assistance programs, and establishes rules, regulations, and policies accordingly (*see* SSL §§20 & 34). Effective retroactive to April 1, 2008, State Respondent promulgated 09-ADM-03, an administrative directive (“administrative directive”) which sets forth the methodology in which local entities such as City Respondents are to count income and consider the needs of recipients of Supplemental Security Income (“SSI”) for households requesting ESA.

An ESA recipient who is dissatisfied with the local district’s determination as to the amount ESA benefits he or she may receive can challenge the local district’s determination by requesting an administrative fair hearing with State Respondent (*see* SSL §22; 18 NYCRR §358-3.1).

By Notice of Intent (“NOI”) dated January 21, 2009, City Respondent advised Petitioner of its intention to reduce her benefits to recoup a utility advance. Petitioner requested a fair hearing on February 11, 2009 to challenge the NOI. A fair hearing was held on March 16, 2009 to determine whether (1) the City Respondent’s determination to reduce Petitioner’s benefits was correct; and (2) whether the City Respondent’s determination as to the adequacy of Petitioner’s ESA since April 1, 2008 was correct. During the course of the fair hearing, the City Respondent agreed to withdraw its NOI, restore any benefits lost retroactive to January 31, 2009, and continue to provide benefits to Petitioner. Accordingly, only the second issue remained before State Respondent.

On March 25, 2009, State Respondent issued its Determination After Fair Hearing (“DAFH”), wherein State Respondent concluded that City Respondent’s determination as to the adequacy of the ESA from April 1, 2008 to the present was unsupported by the record because City Respondent “did not present evidence as to how the budget was computed for the entire period in issue.” State Respondent thus concluded that City Respondent was unable to rebut Petitioner’s allegation that it had failed to compute Petitioner’s ESA eligibility pursuant to the applicable administrative directive. Accordingly, State Respondent reversed City Respondent’s determination as to ESA eligibility and directed City Respondent to recompute Petitioner’s ESA in accordance with the budgeting methodology set forth in the administrative directive.

Following State Respondent’s DAFH, City Respondent conducted a review of its prior assessment. On April 23, 2009, City Respondent provided State

Respondent with a new determination, which City purports is in compliance with the administrative directive. Petitioner contacted State Respondent on May 5, 2009, and claimed that City Respondent had failed to comply with State Respondent's DAFH. On July 1, 2009, City Respondent sent a letter to Petitioner setting forth the methodology used to compute her ESA.

Less than a month earlier, on or around June 4, 2009, Petitioner commenced the instant Article 78 proceeding. Petitioner submits a verified petition and a memorandum of law in support. Annexed to the petition as exhibits are the DAFH; the administrative directive; and Petitioner's 5/5/09 OTDA Request for Compliance - Confirmation Page.

City Respondent cross-moves to dismiss, claiming that the petition fails to state a claim for which relief can be granted, and is mooted by City Respondents actions subsequent to the DAFH. City Respondent submits an affirmation and a memorandum of law in support of its motion. Annexed to the affirmation as exhibits are Petitioner's budget composition; the 10/1/08 NOI; and City Respondent's 7/1/09 letter to Petitioner.

State Respondent also cross-moves to have the petition dismissed as moot. Further, State Respondent claims that, to the extent that Petitioner seeks to challenge City Respondent's determinations in response to the DAFH, such a challenge must be dismissed based upon Petitioner's failure to exhaust administrative remedies. State Respondent submits an affirmation and a memorandum of law in support of its motion. Annexed to the affirmation as exhibits are copies of the DAFH; and Petitioner's Fair Hearing Information Screen, printed on July 24, 2009.

Petitioner submits an affirmation in opposition to the respective motions to dismiss. Annexed to the affirmation are affirmations of attorneys experienced in the field of providing legal services to individuals symptomatic to HIV or AIDS in the New York City area. In addition, annexed as exhibits are copies of the administrative directive; October 2, 2002 Section 8 standards, which Petitioner claims City Respondent adopted as a policy in lieu of ESA for persons such as Petitioner, so as to afford them a larger selection of housing options; and a printout from HASA's website.

State Respondent has submitted a reply affirmation, wherein it argues that Petitioner's opposition raises arguments as to the sufficiency of City Respondents' ESA; and that this exceeds the scope of the DAFH, which remanded the matter to City Respondent to supply calculations in accordance with the administrative directive in order to substantiate its findings.

The court finds that the Petition is moot because City Respondent has complied with State Respondent's DAFH. The DAFH directed City Respondent to demonstrate that it performed the calculations required by the administrative directive in arriving upon its determination with respect to Petitioner's ESA. City Respondent has subsequently provided documentation of its calculations, which it claims (1) substantiate its findings; and (2) are in compliance with the administrative directive. Since City Respondent has complied with State Respondent's DAFH, the issue is now moot.

To the extent that Petitioner still takes issue with City Respondent's findings, that is not a matter properly before the court at this time, since State Respondent has not yet had the opportunity to review City Respondent's findings and assess their validity. Indeed, the very reason State Respondent remanded Petitioner's case was because City Respondent failed to proffer evidence to substantiate its claims and demonstrate that it properly calculated Petitioner's ESA. Now that the City has demonstrated how it arrived upon its determination as to Petitioner's ESA, State Respondent can review City Respondent's findings in a fair hearing, if Petitioner chooses to challenge those findings (*see Watergate II Apartments v. Buffalo Sewer Authority*, 46 N.Y.2d 52, 57 [1978]) (stating that "It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate.").

Wherefore, it is hereby

ORDERED and ADJUDGED that Respondents' cross-motions to dismiss are granted; and it is further

ORDERED that the Petition is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: August 24, 2009



EILEEN A. RAKOWER, J.S.C.

UNFILED JUDGMENT

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