

**Matter of Borisovski v Hansell**

2010 NY Slip Op 30139(U)

January 19, 2010

Supreme Court, New York County

Docket Number: 400778/09

Judge: Joan A. Madden

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

PRESENT: Hon Joan A. M. Eder  
Justice

PART 11

Borisovski, A

INDEX NO. 400778/09

MOTION DATE 10-15-09

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

- v -

Hassell, D

The following papers, numbered 1 to \_\_\_\_\_ were read on this <sup>pehhr</sup> motion to/for Article 78 relief

PAPERS NUMBERED

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 <sup>proceeding</sup> is <sup>denied</sup> ~~granted~~ in accordance with annexed Memorandum Decision, Order & Judgment.

**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).

Dated: January 19, 2010

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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 11

----- X  
In the Matter of the Application of  
ALEXANDRE BORISOVSKI,

Petitioner,

Index No.: 400778/09

For a Judgment under Article 78 of the  
Civil Practice Law and Rules  
to Annul a Determination

-against-

DAVID A. HANSELL, NYC HRA AND  
NYS OTDA,

Respondents.

----- X

JOAN A. MADDEN, J.:

In this Article 78 proceeding, pro se petitioner Alexandre Borisovski seeks a writ of mandamus, compelling respondent City of New York Human Resources Administration (HRA)/Department of Social Services (City respondent) to deposit a payment of \$1,392 into petitioner's bank account. City respondent and respondents David A. Hansell, both as Commissioner of the New York State Office of Temporary and Disability Assistance (OTDA), and OTDA itself (State respondents) cross-move, pursuant to CPLR 3211 and Article 78, for an order and judgment dismissing the petition on the ground that the petition fails to state a cause of action. Respondents also argue that the petition is time-barred under the four-month statute of limitations, as contained in CPLR 217, and that petitioner failed to exhaust his administrative remedies.

State respondents also argue that the petition is moot since City respondent has complied with the Decisions After Fair Hearings (DAFH), and, as such, no further action is required.

#### **BACKGROUND AND FACTUAL ALLEGATIONS**

Petitioner is a recipient of Public Assistance (PA). Petitioner received notices of intent from State respondents indicating that he would be losing some of his PA benefits as a result of noncompliance with a work requirement. Petitioner then requested fair hearings to dispute these notices. Petitioner was successful at his hearings, as well as at a conference in which a notice of intent dated December 12, 2006 was withdrawn. The DAFHs, dated November 5, 2007, January 12, 2007 and February 12, 2008, all document that the petitioner should be restored "any Public Assistance benefits lost as a result of the Agency's action in accordance with the provisions of 18 NYCRR 352.31 (f)." City Motion to Dismiss, Exhibit 3.

City respondent states that it restored all payments of cash assistance and food stamps which were eligible to petitioner. In this proceeding, petitioner seeks an additional \$1,392 in benefits. Petitioner claims that the \$1,392 is the total of bi-weekly benefits that he was due to receive from: (1) October 23, 2006 to April 23, 2007; (2) May 7, 2007 to August 13, 2007; (3) September 24, 2007 to December 3, 2007; and (4) December 31, 2007 to February 25, 2008.

Petitioner filed a claim with the comptroller arguing that HRA did not comply with the DAFHs. In response, the comptroller sent petitioner a letter, dated December 31, 2008, in which it states that HRA did comply with its DAFHs and restored all required PA benefits. The letter explains that the \$1,392 which corresponds to the bi-weekly benefits in question, was for transportation grants and that since petitioner was not engaged in work activity during those time periods, he is not eligible to receive those grants.

The City respondent explains that supportive service grants, including Transportation Support Services (TSS), are issued to PA recipients who are participating in a mandated or other employment requirement. These TSS grants only cover transportation expenses to and from the work place. The City respondent alleges that, for the bi-weekly periods in question, petitioner did not attend a work assignment. It states that it "issued no TSS benefits for the periods where Petitioner lacked any employment assignment, since such grants are intended on assisting PA recipients with transportation expenses incurred to comply with New York State mandated employment requirements." Hu Affirmation, ¶ 8. The City respondent adds that, for the period where petitioner did attend a work requirement, it is undisputed that he did receive carfare or transportation grants in the amount of \$724. *Id.*, ¶ 15. Additionally, the City respondent

maintains that these grants are discretionary, not mandatory, and are provided at the discretion of the local agency.

The State respondents maintain that none of the fair hearings specifically involve a transportation grant. They state that petitioner was sanctioned for certain periods, before he won his hearings, and that he would not have normally been required to attend his work assignment. As such, he would not need a transportation grant for those time periods, and that the \$1,392 corresponds to TSS. Mathieu Affirmation, ¶ 4.

In opposition to the City and State arguments, petitioner argues that all benefits have not been restored to him, and that he should be awarded \$1,392 in transportation grants. He argues that the decisions unambiguously state that he is entitled to retroactive benefits. He claims that, "Fair Hearing decisions said all benefits must be restored. The decisions did not say transportation grants were excluded from the word 'all.'" Petitioner's Affidavit in Opposition, at 3.

#### DISCUSSION

In the context of an Article 78 proceeding, courts have held that "a reviewing court is not entitled to interfere in the exercise of discretion by an administrative agency unless there is no rational basis for the exercise, or the action complained of is arbitrary and capricious." *Matter of Soho Alliance v New York State Liquor Authority*, 32 AD3d 363, 363 (1<sup>st</sup> Dept. 2006),

citing to *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 (1974); see CPLR 7803 (3). An agency's decision is considered arbitrary if it is "without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d at 231.

It is well settled that "an agency's interpretation of the operational practices attendant to the statute that it administers is entitled to deference." *Matter of Rizzo v New York State Division of Housing and Community Renewal*, 16 AD3d 72, 79 (1<sup>st</sup> Dept), *affd* 6 NY3d 104 (2005). Respondents state that they complied with the DAFHs and restored any eligible retroactive benefits to petitioner, and there is no evidence to the contrary. In fact, City respondent argues that it is "prohibited" from issuing transportation benefits to PA recipients who are lacking a work assignment. City Memo of Law, at 4. There is no dispute that petitioner did not attend his work requirement for the bi-weekly periods in question. Therefore, he is not eligible, nor entitled to, TSS grants. Thus, it cannot be said that respondents' interpretation of the DAFH, as well as their corresponding actions, are irrational. Accordingly, the petition is denied and dismissed and the court

need not reach whether the petition is time-barred or should be denied based on petitioner's alleged failure to exhaust his administrative remedies.

**CÓNCLUSION**

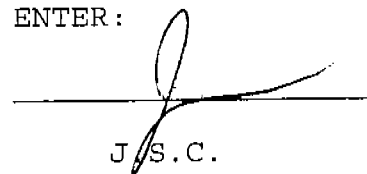
Accordingly, it is hereby

ORDERED that the cross motions of the respondents David A. Hansell, NYC HRA and NYS OTDA are granted; and it is further .

ORDERED and ADJUDGED that the petition is denied and dismissed.

Dated: January 19, 2010

ENTER:



J.S.C.