

Pedersen v Berlin

2010 NY Slip Op 31822(U)

July 10, 2010

Supreme Court, New York County

Docket Number: 101960/2010

Judge: Eileen A. Rakower

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 101960/2010
PEDERSEN, BRIAN
VS.
BERLIN, ELIZABETH R.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED

1, 2, 3
4, 5, 6
7

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 3).

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 7/10/10



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 15

-----X

BRIAN PEDERSEN,

Index No.
101960/10

Petitioner,

**DECISION
and ORDER**

-against-

ELIZABETH R. BERLIN, as Executive Deputy
Commissioner of the Office of Temporary and Disability
Assistance, and ROBERT DOAR, as Commissioner of the
New York City Human Resources Administration

Mot. Seq.
001

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
1000)

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

Petitioner Brian Pedersen ("Petitioner") brings this petition pursuant to CPLR Article 78 seeking judicial review of a Decision After Fair Hearing ("DAFH") issued by the Temporary and Disability Assistance of the New York State Department of Family Assistance ("ODTA") October 16, 2009. Petitioner names as respondent Elizabeth R. Berlin, in her capacity as Executive Deputy Commissioner of ODTA ("State Respondent"). Petitioner also names as respondent Robert Doar, in his capacity as Commissioner of the New York City Human Resources Administration ("HRA") ("City Respondent"). Petitioner claims that State Respondent has violated his due process rights under the federal and state constitutions by (1) failing to direct City Respondent to reimburse certain payments made by Petitioner as a result of City Respondent's unlawful termination of certain Public Assistance benefits; and (2) failing to compel City Respondent's compliance with the directives set forth in the DAFH. Petitioner claims that City Respondent has similarly violated his rights by failing to comply with the DAFH and by failing to make proper payments to Petitioner.

The following facts are set forth in the DAFH's Findings of Fact, and are uncontested by the parties. Petitioner is a 42 year old male who resides alone in a house owned by Petitioner, and has been a recipient of Public Assistance benefits. Petitioner has incurred property taxes and expenses for water, sewer and natural

gas, and has provided HRA with verification of said expenses. At the time of the DAFH, HRA was providing Petitioner with a regular, recurring Public Assistance grant in the amount of \$75.50 semi-monthly. HRA discontinued Petitioner's Public Assistance fuel allowance effective July 2004, without notice. HRA subsequently provided a fuel allowance to Petitioner for the second semi-monthly payment cycle of November 2007 through December 2007, and discontinued the fuel allowance effective January 2008. HRA then provided a fuel allowance for March 2008 through November 2008 and discontinued the fuel allowance effective December 2008. In addition, Petitioner borrowed \$620.00 on April 30, 2009 to make a down payment towards arrears for property taxes and related late fees totaling \$6,195.10, in order to avoid a tax lien sale. HRA issued a payment in the amount of \$5,656.27 to pay Petitioner's unpaid arrears for property taxes and late fees through June 30, 2009. However, HRA did not provide Petitioner with shelter allowances to meet his property tax obligation for July 1, 2009 through the time of the DAFH. In addition, on June, 15, 2009, Petitioner advised HRA that he needed a New York State Benefits Identification Card ("ID card"), which is required to access his Public Assistance and Food Stamp benefits, as his current card was damaged and not functioning properly. However, as of the date of the DAFH, HRA had failed to provide Petitioner with a replacement.

In the DAFH's Decision and Order section, ODTA found that HRA incorrectly failed to include an allowance for water costs (including sewer) in Petitioner's Public Assistance grant for the period of July 2004 through the time of the DAFH, and directed that HRA:

- include an allowance for water costs (including sewer) in Petitioner's Public Assistance grant in accordance with verified degree of need; and
- provide Petitioner with supplemental assistance to restore underpaid water allowances retroactive through July 2004.

ODTA also found that HRA failed to include timely allowances for fuel for heating costs in Petitioner's Public Assistance grant from July 2004 through the time of the DAFH, and directed HRA to:

- include a fuel allowance in the amount of \$28 semi-monthly in Petitioner's Public Assistance grant;

- provide Petitioner with supplemental assistance to restore underpaid fuel allowances in the amount of \$2,884.00 for the period of July 2004 through August 2009; and
- provide Petitioner with supplemental assistance to restore underpaid fuel allowances, at a rate of \$28 semi-monthly, for the period of September 2009 until the date HRA adds the fuel allowance to the recurring Public Assistance grant.

ODTA further found that HRA failed to include a timely allowance for property taxes in Petitioner's Public Assistance grant for the period from July 2004 through the time of the DAFH, and directed that HRA:

- include a shelter allowance in Petitioner's Public Assistance grant in the amount of his property taxes; and
- provide Petitioner with supplemental assistance to restore underpaid shelter allowances for July 2009 through the date the shelter allowance is added to the Public Assistance grant.

With respect to Petitioner's ID card, ODTA found that HRA failed to provide Petitioner with a replacement card, and directed that HRA take immediate action to provide Petitioner with the necessary information to obtain his assistance and benefits.

Although ODTA granted Petitioner all of the foregoing relief, ODTA found that HRA properly refused to reimburse Petitioner \$620.00 for his down payment towards arrears for property taxes and related late fees (in order to avoid a tax lien sale). ODTA reasoned that applicable regulations do not authorize assistance to pay late fees. ODTA also declined to award Petitioner all late payment and/or interest charges (1) imposed by National Grid (and its predecessor, KeySpan) in connection with his natural gas heating account; (2) imposed by the New York City Department of Environmental Protection ("DEP") in connection with his water/sewer account; and (3) imposed by the New York State Department of Finance ("DOF") in connection with his property taxes.

Petitioner commenced the instant Article 78 proceeding seeking an order declaring that the following actions were arbitrary, capricious, and violative of Petitioner's due process and equal protection rights under the federal and state constitutions: (1) City Respondent's alleged failure to comply with the DAFH; (2)

State Respondent's alleged failure to compel compliance with the DAFH; and (3) State Respondent's failure to direct the City Respondent to reimburse Petitioner for late payment interest charges resulting from the wrongful withholding of Public Assistance benefits by the City Respondent. Petitioner also seeks an order directing respondents to pay late payment interest charges attributable to City Respondents' wrongful withholding of Petitioner's Public Assistance shelter, water and fuel-for-heating allowances since July 2004.

City Respondent and State Respondent each cross-move to dismiss the petition as moot. City Respondent states that as of the date of its cross-motion, it has fully complied with the DAFH in that it has:

- issued a retroactive overpayment to the DEP in the amount of \$1,051.59 to correct the verified underpayment of water costs to meet arrears from July 2004 through the present, including late payment charges;
- recalculated Petitioner's budget to provide for a regular, recurring water allowance in the amount of \$89.03 semi-monthly;
- issued a retroactive payment to the DOF in the amount of \$1,230.96 to correct Petitioner's underpaid arrears for property taxes from July 2004 through the present, including late charges;
- recalculated Petitioner's budget to provide for a regular, recurring property tax allowance in the amount of \$50.47 to be applied towards his quarterly property tax statements;
- issued an overpayment in the amount of \$3,822 as supplemental assistance to restore underpaid fuel allowances for the period July 2004 through the present; and
- replaced Petitioner's ID card

City Respondent has submitted copies of screens from Petitioner's Welfare Management System account documenting the foregoing, and argues that based on its actions taken subsequent to the DAFH, it is entitled to dismissal. State Respondent joins in this argument.

In opposition to the cross motions, Petitioner argues that City Respondent has not fully complied with the DAFH until such time as he provides budget calculations to substantiate how the City Agency arrived at Petitioner's revised Public Assistance payments. Moreover, Petitioner claims that City Respondent has

failed to pay (1) interest charges which accrued on Petitioner's National Grid account due to the City Respondent's six-year withholding of his fuel-for-heating allowances; and (2) \$620.00 as reimbursement for Petitioner's emergency down payment to DOF to forestall the property tax lien sale.

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Based on the record before it, the court finds that City Respondent has complied with its obligations under the DAFH, has made retroactive payments to Petitioner, and has reinstated Petitioner's benefits, thereby rendering the Petition moot. Petitioner's claim that City Respondent has failed to account for interest charges which accrued on Petitioner's National Grid account is unsupported by the record. Indeed, in an e-mail dated December 31, 2009 from a social worker acting on his behalf, it is alleged that Petitioner is owed "a total of \$3,108.00 in PA fuel-for-heating allowances," and City Respondent issued a payment of \$3,822 on March 17, 2010. There is nothing in the record which demonstrates that Petitioner has any outstanding charges (interest or otherwise) from National Grid incurred in connection with the prior wrongful withholding of Public Assistance allowances for fuel. Similarly, the record indicates that Petitioner has been duly and fully compensated for City Respondent's prior failure to provide Public Assistance allowances with respect to Petitioner's property taxes.

Wherefore, it is hereby

ORDERED and ADJUDGED that the Petition is denied and the proceeding is dismissed; and it is further

[* 7]
ORDERED that the Clerk is directed to enter judgment accordingly.

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

Dated: July 10, 2010



EILEEN A. RAKOWER, 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 141B).