

**Commissioner of the Dept. of Social Servs. of the  
City of N.Y. v Scola**

2011 NY Slip Op 33019(U)

November 15, 2011

Sup Ct, NY County

Docket Number: 401646/2009

Judge: Cynthia S. Kern

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SCANNED ON 11/17/2011

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

PRESENT: CYNTHIA S. KERN  
J.S.C. Justice

PART 52

Index Number : 401646/2009  
**DOAR, ROBERT**  
VS.  
**SCOLA, STEPHEN**  
SEQUENCE NUMBER : 001  
SUMMARY JUDGMENT

INDEX NO. 401646/09  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01

Motion to/for \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_  
\_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that the motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**FILED**

NOV 16 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 11/15/11

CSK, J.S.C.

**CYNTHIA S. KERN**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 52

**FILED**

**NOV 16 2011**

-----x  
THE COMMISSIONER OF THE DEPARTMENT OF  
SOCIAL SERVICES OF THE CITY OF NEW YORK,

NEW YORK  
COUNTY CLERK'S OFFICE  
Index No. 401646/2009

Plaintiff,

-against-

**DECISION/ORDER**

STEPHEN SCOLA

Defendant.

-----x  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>4</u>

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Plaintiff, the Commissioner of the Department of Social Services of the City of New York (the "Department"), commenced this action seeking reimbursement of medical assistance ("Medicaid") paid on behalf of Rita Murphy-Scola ("Murphy-Scola" or "institutionalized spouse"), the wife of defendant Stephen Scola ("Scola" or "community spouse"). Plaintiff now moves for summary judgment declaring that it is entitled to recover from defendant the Medicaid benefits paid on behalf of Rita Murphy-Scola from February 1, 2008 to February 17, 2011. The court grants the City's motion for the reasons set forth below.

The relevant facts are as follows. Medicaid is a jointly funded Federal and State medical assistance program that is established by Title XIX of the Social Security Act. In New York

State, Medicaid is implemented by article 5, title 11 of the Social Services Law (SSL). The purpose of Medicaid is to pay for necessary medical care for eligible individuals whose income and resources are insufficient to meet the costs of their medical care. *See* 42 USC § 1396 *et seq*; SSL § 363; *Commissioner of Dept. of Social Servs. of City of N.Y. v Spellman*, 243 A.D.2d 45, 47-48 (1<sup>st</sup> Dept 1998).

The Social Security Act provides that in a case where Medicaid payments have been made under the state plan and a third party has a legal responsibility to pay for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services. *See* 42 U.S.C. § 1396a[a][25][i]; *Spellman*, 243 A.D.2d at 47-48. In this regard, the agency administering the State plan is required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the plan. *See id.*

In New York, as part of the application process for determining Medicaid eligibility, financial resource information of both the applicant institutionalized spouse and the community spouse must be submitted at the time of application. This information is required in order to determine whether the community spouse – a party with legal responsibility to pay for the health care of the applicant institutionalized spouse – has sufficient resources to provide for the institutionalized spouse's cost of medical care. *See* 18 NYCRR § 360-2.3(c). In assessing the financial eligibility for Medicaid, the community spouse is allowed a minimum monthly maintenance allowance (MMMNA) and a community spouse resource allowance (CSRA). The MMMNA and CSRA are protected allowances exempt from recovery by the Department and are adjusted annually to account for increases in cost of living. *See* 18 NYCRR § 360-4.10(c)(2) and

SSL § 366-(c)(2). At the time of Murphy-Scola's application for Medicaid assistance, the MMMNA allowance was \$ 2,610.00 per month and the CSRA allowance was \$104,400.00.

On January 7, 2008, Murphy-Scola was admitted to the Rockville Nursing Center. An application for Medicaid assistance was submitted on Murphy-Scola's behalf on or about February 25, 2008. In connection with this application, a statement of the financial resources of Scola and Murphy-Scola was prepared by the Spousal Unit of the Nursing Home Eligibility Division (the "Spousal Budget Worksheet") of the Human Resources Administration. The Spousal Budget Worksheet was created using the financial records provided by or on behalf of Murphy-Scola in connection with her Medicaid application. According to this worksheet, at the time of Murphy-Scola's application for Medicaid, Scola had total resources of \$369,263.26. After taking into account all applicable exemptions, Scola's resources exceeded the CSRA by \$257,513.26 and the MMMNA by \$395.90. Although their joint resources did not qualify Murphy-Scola for Medicaid assistance, Scola submitted a declaration where he declared that he refused to make his income and/or resources available for the cost of necessary medical care and services for Murphy-Scola. Because of Scola's refusal to pay for Murphy-Scola's medical expenses, Murphy-Scola was found to be eligible for Medicaid effective February 1, 2008.

On or about October 29, 2008, the Department's Nursing Home Eligibility Division referred this case to the City's Human Resources Administration's Department of Social Services to follow up on Scola's refusal to make his excess resources available for the cost of Scola-Murphy's care. On or around March 2, 2009, the Department sent a demand letter to Scola requesting reimbursement for Medicaid benefits paid on Murphy-Scola's behalf. Scola did not make any payments in response to this demand. On or around July 2, 2011, the Department

commenced the instant action seeking to recover the cost of Medicaid benefits paid between February 1, 2008 and February 17, 2011.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Wayburn v Madison Land Ltd. Partnership*, 282 A.D.2d 301 (1<sup>st</sup> Dept 2001). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a prima facie right to judgment as a matter of law, the burden shifts to the party opposing the motion to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim.” *Id.*

New York State Social Services Law (“SSL”) section 366(3)(a) provides that in cases where a Medicaid applicant has a responsible relative with sufficient income and resources to provide medical assistance but that relative refuses or fails to provide the necessary care and assistance, medical assistance will be furnished to that applicant. However, that section further provides that “in such cases, however, the furnishing of such assistance shall create an implied contract with such relative, and the cost thereof may be recovered from such relative....” The “implied contract is created at the time the responsible relative refuses to make his or her income and/or resources available to provide care for the institutionalized spouse. *See Comm’r of the Dep’t of Social Serv. of New York v Fishman*, 280 A.D.2d 396, 398 (1<sup>st</sup> Dept 2001). Where it is clear that the community spouse has resources that exceed his community spouse resource allocation, “[the Department] may properly bring an action to recover the cost of Medicaid benefits paid for the care of the institutionalized spouse to the extent that the community spouse

has available resources....” See *Spellman*, 243 A.D.2d at 49.

In the present case, the Department has met its initial burden of demonstrating an absence of material fact as to whether it is entitled to recover from Scola the Medicaid benefits paid on behalf of his wife. The Department has provided evidence of Scola’s income and resources at the time of application which demonstrates that Scola had sufficient resources to provide for his wife’s medical care but refused to do so. Therefore, under SSL § 366(3)(a) and as further discussed in *Spellman*, an implied contract was created enabling the Department to recover the costs incurred in providing medical care for Murphy-Scola, the institutionalized spouse from Scola, her community spouse.

In response, Scola has failed to raise any triable issue of material fact. Scola’s argument in rebuttal is that he does not have access to the resources that were previously listed in his financial records because those resources have subsequently been placed in an irrevocable trust that he does not have access to. It is undisputed that these resources were put in the trust after Murphy-Scola applied for Medicaid and after Scola refused to contribute his financial resources to the cost of Murphy-Scola’s medical care. This argument is without merit as the issue before this court is limited to whether the Department is entitled to a judgment against the defendant and not what funds can be used to satisfy any judgment which is obtained. In addition, Scola’s argument that he did not enter into an implied contract with the Department when he signed the form refusing to pay for her medical care is also without merit as the plain language of SSL § 366(3)(a) states that when a community spouse refuses to provide for the care of the institutionalized spouse, the furnishing of care by Medicaid creates an implied contract.

Accordingly, the court grants the Department’s motion for summary judgment and grants

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judgment to the Department in the amount of \$224,122.26 which represents the full amount of Medicaid benefits provided to Scola-Murphy from February 1, 2008 through February 17, 2011 together with interest. The court declines to grant the City's request for reimbursement for the costs incurred in bringing this action as the City has failed to provide a basis for this request. This constitutes the decision, order and judgment of the court. The clerk is directed to enter judgment accordingly.

Dated: 11/15/11

**FILED**

**NOV 16 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

*CK*

J.S.C.

**CYNTHIA S. KERN**  
J.S.C.