

Roberts v Boyle

2012 NY Slip Op 32615(U)

October 11, 2012

Sup Ct, New York County

Docket Number: 403137/2011

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

ALICE SCHLESINGER

PRESENT: _____
Justice

~~PART~~ PART 16

Index Number : 403137/2011
ROBERTS, LAKESHA
vs.
BOYLE, KEVIN
SEQUENCE NUMBER : 001
ARTICLE 78

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *Article 78 petition*
is granted in accordance with the
accompanying memorandum decision.

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

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: *October 11, 2012*

Alice Schlesinger, J.S.C.

ALICE SCHLESINGER

- 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

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). X

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

In the Matter of the Appeal of
LAKESHA ROBERTS,

Petitioner,

Index No. 403137/11
Motion Seq. No. 001

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

-against-

ELIZABETH R. BERLIN, as Acting Deputy Commissioner
of the New York State Office of Temporary and
Disability Assistance,

Respondent.

-----X
SCHLESINGER, J.:

Petitioner Lakesha Roberts commenced this Article 78 proceeding to reverse the August 8, 2011 Decision After Fair Hearing and obtain an order directing respondent New York State Office of Temporary and Disability Assistance (OTDA) to repay to Ms. Roberts the Supplemental Security Income (SSI) disability benefits that the agency withheld to recover public assistance payments made to Ms. Roberts while her SSI application was pending. In addition, Ms. Roberts seeks an award of attorney's fees. OTDA has opposed the petition.

Background Facts

Petitioner Lakesha Roberts is a former recipient of public assistance who now receives Supplemental Security Income (SSI) disability benefits. At issue in this proceeding is \$8,107.01 in SSI benefits that the New York City Human Resources Administration (HRA) recovered from Ms. Roberts' SSI benefits to recoup part of the \$11,548.76 in HRA benefits that Ms. Roberts was allegedly overpaid for the period from January 2010 through April 2011 while her SSI application was pending.

Ms. Roberts and her companion Gilbert Fontanez became clients of the New York City Department of Homeless Services (DHS) and began receiving shelter services in March 2009. Two months later, they became domestic partners. The couple has resided at various shelters in the city since that time.

In December 2009 Ms. Roberts applied to the Social Security Administration (SSA) to receive SSI disability benefits. SSI benefits are protected from claims of creditors with the narrow exception that public assistance agencies can recoup benefits paid while a recipient is awaiting approval of an SSI application, but only if the recipient or her representative signs an agreement authorizing the SSA to tender the non-federal portion of the initial SSI payment directly to the public assistance agency. See 42 USC §§ 407, 1383(d)(a), 1383(g). Consistent with federal law, New York State Social Services Law §158(2) requires an applicant to sign such an agreement, and the regulations limit the recoupment to the “payments for basic needs made exclusively from State and/or local funds ...” 18 NYCRR §353.2(a)(1).

The record in this case does not contain any authorization signed by Ms. Roberts. However, on May 14, 2010, Mr. Fontanez signed a form authorizing the recoupment of non-federal public assistance benefits paid while Ms. Roberts’ SSI application was pending. Mr. Fontanez signed as “applicant/representative” and not as “husband/wife or protective representative.”

In March 2011 the SSA found Ms. Roberts eligible for SSI disability benefits retroactive to January 2010, the first full month following her application. On May 2, 2011, the SSA paid the HRA \$8,107.01, which was the total of the retroactive benefits otherwise due to Ms. Roberts. A few days later, on May 9, the HRA notified Ms. Roberts

that it intended to keep the entire amount to reimburse itself for payments made to Ms. Roberts from January 2010 through April 2011. After some back and forth regarding calculations, HRA notified Ms. Roberts by letter dated June 1, 2011 that the total reimbursement due to the agency was \$11,548.76, leaving a deficit of \$3,441.75 due after the \$8,107.01 was deducted.

Ms. Roberts timely requested a fair hearing to challenge the HRA's recovery of her retroactive SSI payments. At the hearing on August 8, 2011, Ms. Roberts, representing herself, indicated that she disagreed with the recoupment both as to the specific amount calculated and overall. The HRA did not explain the variations in monthly amounts ranging from \$133.40 to \$1,525.23 that formed the basis for their calculations, nor offer any evidence to establish that the amounts were limited to the non-federal funds as required by law.

On August 8, 2011, respondent OTDA issued a Decision After Fair Hearing affirming the HRA's recovery of Ms. Roberts' entire retroactive SSI benefits check. (Petition, Exh A). The Decision does not address the two key prerequisites of recoupment; i.e, proper authorization and the prohibition against recovering federal funds. After reciting the various laws governing recoupments, and after noting that Ms. Roberts specifically objected to the calculations as being higher than the shelter amount actually paid on her behalf, the Decision simply states that Ms. Roberts "failed to present any evidence to rebut the Agency's computation of the Public Assistance benefits issued to her during the interim period." At no point were the HRA's computations explained by the Hearing Officer in the Decision to demonstrate compliance with the governing laws.

With the assistance of counsel, Ms. Roberts then commenced this Article 78 proceeding challenging the decision as arbitrary and capricious and contrary to law. Ms. Roberts first claims that the recoupment was unlawful in light of the absence of proof that Ms. Roberts had authorized it. Secondly, the HRA failed to establish that the recoupment was limited to non-federal funds. Additionally, the amount recouped allegedly included shelter benefits provided for housing Mr. Fontanez. Finally, Ms. Roberts asserts that the burden was unfairly placed on her to prove that the recoupment was incorrect, when the law places the burden of proof on the agency, mandating that "the social services agency must establish that its actions were correct." 18 NYCRR 358-5.9(a).

Discussion

Respondent urges this Court to transfer the matter to the Appellate Division pursuant to CPLR §7804(g) for a determination whether the decision after the hearing is supported by substantial evidence. The request is denied. Where, as here, the petitioner has raised legal issues regarding the fairness of the hearing, due process of law, and the proper application of regulations, the Supreme Court is obligated to resolve those issues in the first instance. *See, e.g., Feliz v Wing*, 285 AD2d 426 (1st Dep't 2001)(transfer to Appellate Division unwarranted where issues regarding the fairness of the hearing were dispositive); *McCarter v Franco*, 227 AD2d 358 (1st Dep't 1996)(trial court obligated to resolve due process issues, making transfer to Appellate Division unnecessary). Petitioner here has raised issues relating to the legal requirement of a proper authorization for the recoupment, compliance with the prohibition against recovering federal funds, and the agency's failure to conduct the hearing in accordance

with due process of law. As discussed below, these issues are dispositive and obviate the need for a transfer to the Appellate Division.

First and foremost, the rule is firm that any recoupment of SSI benefits must be done in compliance with law. What is more, as the Court of Appeals emphasized in *Matter of Rodriguez v Perales*, 86 NY2d 361,368 (1995), when directing the reimbursement of SSI benefits wrongfully recouped, “the applicable Federal statute must be strictly construed ... because, as is evident from the associated case law and legislative history, there is a strong underlying Federal policy forbidding attachment of SSI benefits without express legislative authority.” Strict compliance with the law is required even if the result “may produce a windfall for individuals...” *Id.* The decision by the Court of Appeals clearly outweighs the *dicta* in *Matter of Verbal v Perales*, 176 AD2d 805 (1991), relied upon by respondent to argue otherwise.

One of the laws that the agency failed to satisfy in this case is the requirement that it obtain a proper authorization from the recipient of benefits before implementing any recoupment. See 42 USC §§ 407, 1383(d)(a), 1383(g). Both sides agree here that the agency failed to produce at the hearing any authorization signed by Ms. Roberts; they produced only something signed by Mr. Fontanez, but the form was not properly completed. More significantly, Ms. Roberts disputed at the hearing any suggestion that she had authorized Mr. Fontanez to sign on her behalf. Respondent’s counsel here argues that an authorization should have been signed by Ms. Roberts as part of her application for benefits. But that is not enough. Proof is required that a proper authorization was completed, and the agency failed to offer such proof.

Contrary to respondent's claim, the burden is on the agency to establish that the recoupment was completed in compliance with law. Pursuant to 18 NYCRR 358-5.9(a), "in fair hearings concerning the discontinuance, reduction or suspension of public assistance ..., the social services agency must establish that its actions were correct." The regulation applies, as the recoupment here amounted to a reduction in benefits. Respondent errs in relying on an earlier provision in that section that places the burden on the recipient of benefits, as that section applies to "the denial of an application for or the adequacy of public assistance" Here, Ms. Roberts' application was not denied and she does not claim that HRA erred in calculating the amount of her monthly benefits award. Rather, she asserts that HRA erred in reducing her benefits by tendering the entire initial retroactive payment to the SSA, rather than to her. Thus, the burden of proof at the hearing rested on the agency. The agency's failure to meet its burden requires that its decision be annulled. *Matter of Benjamin v McGowan*, 275 AD2d 290 (1st Dep't 2000)(agency's failure to meet burden of proving that reduction in benefits was completed in compliance with work requirements in the law compelled that the decision be annulled and the benefits restored).

Not only did the agency fail to comply with the authorization requirement, but it also failed to prove that the funds that were recouped included only state and local funds and no federal funds. 18 NYCRR §353.2(a)(1). Respondent argues that Ms. Roberts waived that requirement by not raising it at the hearing. The argument is wholly without merit. No evidence was adduced at the hearing to suggest that the self-represented petitioner was aware of this law and that she knowingly and voluntarily waived this significant limitation on respondent's right of recoupment. See, e.g.,

Community Counseling & Mediation Services v Chera, 95 AD3d 639, 640 (1st Dep't 2012)(no waiver absent an "unmistakable, unequivocal intention to relinquish its known right"). The agency was required to establish at the hearing that the source of funds was exclusively state and city funds, and its failure to do so — and the Hearing Officer's failure to address that point — require that the decision be annulled. *Matter of Nesby v Hansell*, 69 AD3d 469, 470 (1st Dep't 2010)(directing refund of SSI benefits withheld where agency's evidence adduced at the hearing did not on its face identify the source of funds).

Wholly unavailing is respondent's attempt to correct that deficiency by submitting in this judicial proceeding an affidavit from Jeffrey Gaskell, Director of a program within OTDA, contending that the source of the recouped funds was solely state and local. The law is well-established that the court in an Article 78 proceeding is limited to the administrative record and may not entertain evidence submitted for the first time in court. See *Matter of Fanelli v New York Conciliation & Appeals Bd.*, 90 AD2d 756 (1st Dep't 1982).

The agency also failed to establish that the "incremental budgeting" rules were properly applied and that the calculations were otherwise correct. As petitioner's counsel demonstrated in her papers to this Court, not only did the charges for Ms. Roberts' shelter payments vary dramatically without explanation, but the agency apparently failed to make the proper adjustments applicable to two-person households. Again, respondent's claim of waiver is without merit. The record shows various attempts by Ms. Roberts to challenge the calculations on the ground that they exceeded the

shelter allowance that she believed was actually paid. Rather than ignoring those claims and accepting the agency's position wholesale, the Hearing Officer should have pursued the issues raised by the self-represented petitioner and developed the record further as to this key area in dispute. See *Matter of Feliz v Wing*, 285 AD2d 426 (1st Dep't 2001)(hearing failed to conform with due process where Administrative Law Judge failed to develop the testimony presented by the *pro se* petitioner).

In light of these numerous and fundamental flaws in the hearing process and in the August 8, 2011 Decision After Fair Hearing, this Court finds that the Decision is arbitrary and capricious and in violation of law and must be annulled. Further, as dictated by the First Department in *Nesby, supra*, and consistent with the decisions in *Rodriguez* and *Benjamin* discussed above, the respondent is directed to promptly refund to the petitioner the monies at issue.


Accordingly, it is hereby

ADJUDGED that the Article 78 petition is granted to the extent of annulling respondent's August 8, 2011 Decision After Fair Hearing; and it is further

ORDERED that respondent is directed to refund to petitioner the sum of \$8,107.01 that respondent wrongfully recouped from petitioner's SSI benefits; and it is further

ORDERED AND ADJUDGED that the Court in its discretion denies petitioner's request for attorney's fees.

Dated: October 11, 2012



J.S.C.

UNFILED JUDGMENT

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ALICE SCHLESINGER