

**Matter of Kroynik v New York State Office of
Temporary & Disability Assistance**

2013 NY Slip Op 30912(U)

April 25, 2013

Sup Ct, New York County

Docket Number: 402559/12

Judge: Joan B. Lobis

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: LOBIS
Justice

PART 6

Index Number : 402559/2012
KROYNIK, MOSHE
vs.
NYS OFFICE OF TEMPORARY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 2/26/13
MOTION SEQ. NO. _____

The following papers, numbered 1 to 20, were read on this motion to for Art. 78 Petition.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

No(s). 1-11
No(s). X-mot 13-16
No(s). 17-20
X-mot Reply 21-22

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

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED
APR 30 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/25/13

JBL
JOAN B. LOBIS, J.S.C.

- 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

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
In the Matter of the Application of
MOSHE KROYNIK,

Petitioner,

Index No. 402559/12

-against-

Decision and Order

NEW YORK STATE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE, NEW YORK CITY
DEPARTMENT OF SOCIAL SERVICES, and NEW
YORK STATE DEPARTMENT OF HEALTH,

Respondents.
-----X

JOAN B. LOBIS, J.S.C.:

FILED

APR 30 2013

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Motion sequence numbers 001 and 002 are consolidated for disposition. Moshe Kroynik, proceeding pro se, brings this petition under Article 78 of the Civil Practice Law and Rules challenging a determination that denied his request to be exempt from enrollment in a Medicaid Managed Care Plan (motion sequence 001). The New York State Office of Temporary and Disability Assistance (OTDA) cross-moves to dismiss the petition on the grounds that the petition is time-barred and that petitioner failed to add a necessary party. In motion sequence number 002, the Human Resources Administration of the City of New York, sued here as New York City Department of Social Services (HRA), moves to dismiss the petition on the grounds that the petition is time-barred, that the court lacks subject matter jurisdiction, that petitioner fails to state a cause of action, and that the issue is moot. For the reasons set forth below, the cross-motions are denied.

Mr. Kroynik is a recipient of Medical Assistance benefits and, on September 19,

2011, he submitted a request to HRA to be exempt from enrollment in a Medicaid Managed Care Plan. HRA denied his request. On October 24, 2011, petitioner requested a fair hearing to review HRA's denial of his request. A fair hearing was scheduled with OTDA on November 15, 2011, and was subsequently rescheduled to February 8, 2012. On February 8, 2012, petitioner failed to appear at the scheduled hearing and a default judgment was issued against him. OTDA sent petitioner a letter informing him that if he desired to reopen the hearing, he must provide good cause for his default. Petitioner requested a reopening of his case and attended a hearing on June 6, 2012. After the hearing, on July 31, 2012, OTDA issued a determination, which found that petitioner failed to establish good cause for his February 8 default, and did not reach the substantive issue of petitioner's request for exemption (the Determination).

Mr. Kroynik filed this petition on December 6, 2012, against OTDA and HRA, alleging that OTDA arbitrarily and capriciously denied his request for exemption based solely on the issue of default. In lieu of an answer, OTDA and HRA seek to dismiss the petition on the grounds that the claim is time-barred. OTDA additionally argues that petitioner failed to name the New York State Department of Health (DOH) as a necessary party. OTDA states that DOH, not OTDA, is charged with supervising the Medical Assistance Program, and that DOH is the state agency to which petitioner applied for the exemption from being placed in a Medicaid Managed Care Plan. OTDA proffers the affirmation of Richard Mathieu, an attorney in OTDA's Legal Division, who insists that OTDA is not a proper party to this proceeding, as the Determination was issued by DOH. OTDA annexes a document titled "Transmittal of Fair Hearing Decision to Appellant," which states that any lawsuit commenced in connection with the Determination shall be filed "against the State agency whose name appears at the top left of

* 4]
the decision.” Mr. Mathieu states that the State agency whose name appears at the top left of the decision is DOH.

HRA advances other arguments in addition to the petition’s alleged untimeliness. HRA asserts that the Court lacks subject matter jurisdiction, that petitioner fails to state a cause of action, and that the petition is moot. HRA declares that it is “deprived of the information necessary to properly address and answer the allegation made in the proceeding and is forced to guess the nature of Petitioner’s allegations.” In arguing these three portions of its motion, HRA relies upon its interpretation that the petition seeks to “re-open an administrative hearing” and seeks a mandamus to compel HRA “to issue petitioner public assistance benefits and/or services.”

Petitioner opposes the motions to dismiss. In response to OTDA’s assertion that he failed to add a necessary party, Mr. Kroynik submits an amended petition, adding DOH as a respondent. Petitioner also contends that his “Poor Person Order,” signed by Justice Deborah A. Kaplan on November 30, 2012, makes his petition timely. He indicates that he received the Determination in the beginning of August 2012 and also disputes HRA’s contention that the court lacks jurisdiction, that he failed to state a cause of action, and that the petition is moot. Upon receipt of the amended petition, DOH and OTDA assert that the petition was filed on December 6, 2012, which is more than four months after July 31, 2012.

An Article 78 proceeding must be commenced within four months of a final determination. C.P.L.R. § 217(1). “An administrative determination is final and binding so as

to commence the running of the Statute of Limitations when the petitioner has received notice of the determination and is aggrieved by it.” In re Cauldwest Realty Corp. v. New York, 160 A.D.2d 489, 490 (1st Dep’t 1990) (citing In re Biondo v. New York State Bd. of Parole, 60 N.Y.2d 832 (1983)). Any ambiguity or uncertainty should be resolved in favor of petitioner “to reach a determination on the merits and not deny a party his day in court.” Mundy v. Nassau County Civ. Serv. Commn., 44 N.Y.2d 352, 358 (1978) (quoting Castaways Motel v. Schuyler, 24 N.Y.2d 120, 126-27 (1969)).

Here, while the determination was dated July 31, 2012, respondents do not establish when Petitioner received notice of the Determination or when it was mailed. The transmittal letter appended to OTDA’s cross-motion to dismiss indicates that petitioner’s hearing was on June 6, 2012, and that a decision was rendered on July 31, 2012. The transmittal letter itself, however, is undated. The letter also does not indicate the method by which the Determination was delivered to petitioner. In his opposition to respondents’ motions to dismiss, petitioner indicates that he received the Determination in early August. It is plausible that petitioner received the Determination August 6, 8, or 9, which are considered to be early August and which would have rendered his petition timely filed on December 6. As there remains ambiguity regarding when petitioner received notice of the Determination and when he was aggrieved by it, the Court declines to deem the petition untimely and denies that portion of respondents’ motion to dismiss.

The Court rejects the remaining contentions advanced by HRA. It is well-established that on a motion to dismiss for failure to state a cause of action, the pleadings are to

* 6]

be afforded a liberal construction, the facts as alleged in the complaint are accepted as true, and the plaintiff is accorded the benefit of every possible favorable inference. See Leon v. Martinez, 84 N.Y.2d 83, 87 (1994). The court determines only whether the facts as alleged fit within any cognizable legal theory. Id. Here, the Court disagrees with HRA's interpretation of the petition as a mandamus to compel. In examining the petition, the Court considers it to be challenging the Determination pursuant to Section 7803(3) of the Civil Practice Law and Rules on the grounds that it "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." This is a cognizable legal theory, is sufficiently pled, and constitutes a valid cause of action. Having found that the petition is not a mandamus to compel, HRA's reasoning for dismissing the action on mootness and lack of subject matter jurisdiction fails. Accordingly, it is

ORDERED that the motions to dismiss the petition by respondents The New York State Office of Temporary and Disability Assistance (motion sequence number 001) and Human Resources Administration of the City of New York, sued here as New York City Department of Social Services, (motion sequence number 002) are denied; and it is further

ORDERED that respondents shall serve an answer to the petition within 30 days of the date of this order.

Dated: *Apr* 25, 2013

FILED

APR 30 2013

NEW YORK
COUNTY CLERK'S OFFICE

ENTER:


JOAN B. LOBIS, J.S.C.