

<b>Matter of James v Proud</b>
2014 NY Slip Op 31064(U)
April 25, 2014
Sup Ct, New York County
Docket Number: 401743/13
Judge: Carol E. Huff
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY  
**CAROL E. HUFF**

Index Number : 401743/2013

JAMES, KEITH

vs

PROUD, KRISTIN M.

Sequence Number : 001

ARTICLE 78

PART 32

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 decided in accordance  
with accompanying memorandum decision

**FILED**

APR 28 2014

COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: APR 25 2014

 \_\_\_\_\_, J.S.C.

**CAROL E. HUFF**

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 32

-----X

In the Matter of the Application of : Index No. 401743/13

KEITH JAMES, :  
 :  
 Petitioner, :

For a Judgment Pursuant to Section 3001 and Article 78 of :  
the Civil Practice Law and Rules, :

- against - :

KRISTIN M. PROUD, as Commissioner of the New York :  
State Office of Temporary and Disability Assistance; :  
ROBERT DOAR, as Commissioner of the New York :  
City Human Resources Administration; and, :  
JACQUELINE DUDLEY, as Deputy Commissioner of the :  
New York City HIV/AIDS Services Administration, :

Respondents. :

-----X

CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks to annul the May 15, 2013, Disqualification Notice he received following a Decision after Administrative Disqualification Hearing (“Decision”) rendered by the New York State Office of Temporary and Disability Assistance, dated April 15, 2013. Respondents Robert Doar, as Commissioner of the New York City Human Resources Department (“HRA”), and Jacqueline Dudley, as Deputy Commissioner of the New York City HIV/AIDS Division (“City Respondents”) cross move to dismiss the petition on grounds including noncompliance with the statute of limitations, improper raising of new issues, and a substantial evidence issue requiring transfer to the Appellate Division.

**FILED**

APR 28 2014

**COUNTY CLERK'S OFFICE  
NEW YORK**

Petitioner is a recipient of public assistance under the Safety Net Assistance program administered by HRA under the HIV/AIDS Services Administration. Petitioner was investigated by City Respondents' Bureau of Fraud Investigations, and was accused of an intentional program violation in that he failed to report to the Department of Social Services two bank accounts containing funds totaling more than \$25,000. Petitioner does not dispute the existence of the accounts, but contends that he did not intentionally fail to report information that he knew he was required to report. Following a March 19, 2013, hearing at which petitioner appeared pro se and presented no evidence or testimony, the ALJ determined that petitioner intentionally failed to report resources that would have made him ineligible for the benefits he received from March 8, 2011 to October 11, 2011. The ALJ found that petitioner should be disqualified from receiving benefits for a period of eighteen months, and should be required to pay the overissuance of benefits totaling \$5,377.50.

Petitioner contends that the Disqualification Notice should be annulled because respondents failed to comply with the provisions of 18 NYCRR § 359.6, which provides that, prior to a hearing, written notice must be provided to a person accused of an intentional violation and must include, among other things, "copies of the sections of this Part relevant to the hearing process." 18 NYCRR § 359.6(9). One such section sent to petitioner (18 NYCRR § 359.3), which sets forth "The standards for determining whether an individual has committed an intentional program violation" was an outdated version that had been amended twelve years previously.

Respondents concede the error and argue that it was harmless, and that petitioner should not be permitted to raise the issue in this proceeding since he did not raise it in the hearing. They

also contend that the proceeding is untimely and that it should be transferred to the Appellate Division because petitioner also asserts that the Decision is not supported by the evidence.

Where the issue of substantial evidence is raised, before transferring “the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue.” CPLR 7804(g).

As for the statute of limitations defense, petitioner has presented a letter, dated July 30, 2013, from respondent New York State Office of Temporary and Disability Assistance, which states that “we will not raise the Statute of Limitations as an affirmative defense provided that the Article 78 proceeding is commenced within 30 days of the date of our letter setting forth our final position in the matter.” That final position letter was dated August 26, 2013, and petitioner commenced this proceeding on September 25, 2013. Accordingly the proceeding is not time-barred.

With respect to the service to petitioner of outdated standards, the City Respondents’ contention that petitioner should be precluded from raising the issue since he failed to raise it at the hearing where he appeared pro se is disingenuous at best. A policy guideline of the State of New York Department of Social Services, dated December 11, 1996, states:

The content requirements of for notices of intent set forth in [18 NYCRR § 358, relating to fair hearings determining benefit entitlement] reflect concern for appellant’s due process rights. Where a hearing involves a notice of intent, the hearing officer must review the sufficiency of the notice to assess whether it complies with regulatory requirements and whether any deficiencies in the notice impinge on the appellant’s due process rights.

This guideline should be no less applicable to a § 359 hearing. See also 18 NYCRR § 358-5.9(a)

(“At a fair hearing concerning the denial of an application for public assistance . . . the social services agency must establish that its actions were correct.”).

As for respondents’ argument that the error was harmless, it should not be for the court to parse different versions of a statute to weigh the relative harm of providing a petitioner with the wrong one. In amending 18 NYCRR § 359.3, the Legislature determined that a change was needed and was presumably significant.

An administrative determination will be upheld unless it is shown that it “was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion.” CPLR 7803(3). Petitioner has stated a claim that respondents committed an error of law in failing to provide him with a correct version of the “standards for determining whether an individual has committed an intentional program violation,” as was required by 18 NYCRR § 359.6(9).

Accordingly, it is

ORDERED that the cross motion is denied and City Respondents are directed to file an answer to the petition within twenty days of service of notice of entry of this decision, unless the parties agree otherwise.

Dated: **APR 25 2014**

  
**CAROL E. HUFF**  
J.S.C.

**FILED**

APR 28 2014