

**Matter of Harper v New York State Cent. Register of  
Child Abuse & Maltreatment**

2014 NY Slip Op 31364(U)

May 23, 2014

Supreme Court, New York County

Docket Number: 101332/2013

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

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

Index Number : 101332/2013  
HARPER, REGINA  
vs  
NYS REGISTER OF CHILD ABUSE  
Sequence Number : 001  
ARTICLE 78

PART 52

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

*denied in accordance with the written  
decision dated 5/23/14*

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

**FILED**  
MAY 28 2014  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/23/14

**HON. PETER H. MOULTON** *[Signature]*, J.S.C.  
**SUPREME COURT JUSTICE**

- 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: IAS PART 57

-----X  
In the Matter of the Application of  
REGINA HARPER

Petitioner,

for a Judgment pursuant to Article 78  
Of the Civil Practice Law & Rules,

Index No.:  
101332/2013

-against-

NEW YORK STATE CENTRAL REGISTER OF  
CHILD ABUSE AND MALTREATMENT and  
NEW YORK CITY ADMINISTRATION FOR  
CHILDREN'S SERVICES,

**FILED**

Respondents.

MAY 28 2014

**NEW YORK  
COUNTY CLERK'S OFFICE**

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**PETER H. MOULTON, J.S.C.:**

In this Article 78 proceeding, petitioner challenges a fair hearing determination dated May 21, 2013 by an Administrative Law Judge at the Department of Special Hearings. The ALJ upheld the determination of respondent New York City Administration for Children's Services of child maltreatment. The only finding of maltreatment arose from an incident where a child of fourteen months fell from his crib while playing with his nine year old brother. Both children were in petitioner's care at the time. ACS found that petitioner's failure to immediately take the child to a doctor constituted maltreatment. She instead took the child to a regular doctor's appointment scheduled within two to three days of

the incident. There is nothing in the record to indicate that the child suffered any lasting damage.

Respondent New York State Office of Children and Family Services (sued herein as "New York State Central Register of Child Abuse and Maltreatment") ("OCFS") moves to dismiss on statute of limitations grounds. OCFS offers the affidavit of its employee Beth Mancini, who recites that pursuant to OCFS procedures the decision was mailed to petitioner "on or before May 21, 2013." She does not explain how it could have been mailed before May 21, as that is the date that the decision was issued. Respondent argues that the date of mailing is the accrual date for statute of limitations purposes.

The petition was filed on September 26, 2013. This date is more than four months after May 21, 2013. Accordingly, if respondent is correct that May 21 was the accrual date, the proceeding is time-barred under the four-month statute of limitations provided by CPLR 217(1).

Petitioner admits that she received the decision, but on May 28, 2013. Her affidavit is sufficient to rebut respondent's showing. She does not deny receipt; rather she states that she finally received the decision seven days after mailing. This would appear to constitute a longer than usual lag time for US mail, but

it is certainly the case that US mail is sometimes delayed.<sup>1</sup>

The limitations period for instituting an Article 78 proceeding challenging final agency action does not begin to run until the aggrieved party is aware of the determination, and the fact that she is aggrieved by it. (See Alterra Healthcare Corp. v Novello, 306 AD2d 787.) Accordingly, petitioner's receipt of the decision is the proper accrual date for the commencement of the running of the four month period. (See Hasberry v New York City Department of Education, 61 AD3d 523; Ousmane v City of New York, 7 Misc3d 1016[A].) Therefore May 28, 2013 is the correct accrual date and the petition was timely brought.

The motion is denied. OCFS shall have 20 days to answer the petition from service of a copy of this decision with notice of entry. At oral argument, the parties agreed that if this court were to find that the proceeding was not time-barred, then the petition raises a substantial evidence question that must be determined by the First Department. (CPLR 7804[g].)

Accordingly, it is

ORDERED that, pursuant to CPLR 7804(g), the application by petitioner to vacate an annul a determination by respondents is respectfully transferred to the Appellate Division, First

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<sup>1</sup>For comparison's sake, CPLR 2103 adds five days for service of papers by mail in a pending action. This provision does not apply to the facts of the instant case as there was no "pending action" at the time the decision was mailed to petitioner.

Department, for disposition pursuant to CPLR 7804(g). This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is, on the entire record, supported by substantial evidence (CPLR 7803[4].)

Petitioner shall serve a copy of this order on the County Clerk who is directed to transfer the file to the Appellate Division, First Department, after receipt of the answer of respondent New York State Office of Children and Family Services (sued herein as "New York State Central Register of Child Abuse and Maltreatment")

This constitutes the decision and order of the court.

Dated: May 23, 2014



**HON. PETER H. MOULTON**

J.S.C.

**FILED**  
MAY 28 2014  
NEW YORK  
COUNTY CLERKS OFFICE