

<b>Matter of Okopal v New York State Dept. of Health</b>
2014 NY Slip Op 31753(U)
July 3, 2014
Sup Ct, New York County
Docket Number: 401779/13
Judge: Michael D. Stallman
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SCANNED ON 7/8/2014

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

PRESENT: Hon. MICHAEL D. STALLMAN  
*Justice*

PART 21

In the Matter of the Application of

INDEX NO. 401779/13

ANDREW OKOPAL,

MOTION DATE 3/27/14

Petitioner,

- v -

MOTION SEQ. NO. 001

NEW YORK STATE DEPARTMENT OF HEALTH and  
NEW YORK CITY HUMAN RESOURCES  
ADMINISTRATION,

Respondents.

The following papers, numbered 1 to 5 were read on this Article 78 petition

Petition	No(s). <u>1</u>
New York State Dept of Health Answer	No(s). <u>2</u>
New York State Office of Temporary Disability Assistance Answer – Exhibits A-P	No(s). <u>3</u>
New York City Human Resources Administration Affirm. In Opposition	No(s). <u>4</u>
Reply Affidavit to Verified Answer of New York State Dept of Health	No(s). <u>5</u>

Upon the foregoing papers, this petition is decided in accordance with the memorandum decision and judgment annexed to Motion Seq. No. 002.

Copies to counsel and petitioner.

**UNFILED JUDGMENT** MICHAEL D. STALLMAN

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: 7/3/14, J.S.C.  
New York, New York

- MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):
1. Check one:.....  
2. Check if appropriate:..... MOTION IS:  
3. Check if appropriate:.....
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> CASE DISPOSED                                   | <input type="checkbox"/> NON-FINAL DISPOSITION                          |
| <input type="checkbox"/> GRANTED X DENIED   | <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| <input type="checkbox"/> SETTLE ORDER   | <input type="checkbox"/> SUBMIT ORDER                                   |
| <input type="checkbox"/> DO NOT POST <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE                                      |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 21

-----X  
In the Matter of the Application of

ANDREW OKOPAL

Petitioner,

-against-

Index No.  
401779/13

NEW YORK STATE DEPARTMENT OF HEALTH and  
NEW YORK CITY HUMAN RESOURCES  
ADMINISTRATION,

Decision and  
Judgment

Respondents.

-----X  
**HON. MICHAEL D. STALLMAN, J.:**

In this Article 78 proceeding, petitioner Andrew Okopal challenges the decision after a fair hearing, dated September 19, 2013, by respondent New York State Department of Health (DOH), approving the termination of the monthly payments made by respondent New York City Human Resources Administration (HRA) under the Medical Assistance Program for Okopal's private medical insurance, because of his refusal to provide the documentation requested by HRA. *In the Matter of the Appeal of Andrew Okopal*, Case # 00002978134B, FH # 6286255P, September 19, 2013 (Decision).

On December 26, 2012, the HRA sent a letter to Okopal, pursuant to

18 NYCRR 360-7.5 (g), requesting copies of the Explanation of Benefits (EOB) from Oxford Health Plan, his health insurance carrier, for the period from November 1, 2011 - October 31, 2012.

Okopal did not provide the requested documents, and in a follow up call, HRA again requested the documents which Okopal refused to provide, contending that the documents were protected by Federal Health Insurance Portability and Accountability Act (HIPAA). See 45 CFR § 164.500 *et seq.* As a result, on January 17, 2013, HRA sent Okopal a notice indicating that because of his failure to provide the EOBs, which it required in order to determine the cost effectiveness/benefit of paying for his private health insurance, it would no longer pay for those health insurance premiums, effective March 1, 2013.

Okopal requested a fair hearing, which was held on July 11, 2013. At the hearing, Okopal argued that, pursuant to HIPAA, his medical information was private, and that the notice demanding his documents did not provide the statutory authority pursuant to which the demand was made, and, therefore, was defective.

On September 19, 2013, Administrative Law Judge (ALJ) Christopher Gallagher issued his decision. Noting that it was uncontested that Okopal

[\* 4]

refused to provide the information requested by HRA, he rejected, as without merit, Okopal's argument that HRA's request for copies of his EOB's violated HIPAA and his doctor-patient confidentiality. With respect to Okopal's argument that the notice was defective for its failure to provide the statutory authority pursuant to which the request for documents was made, the ALJ noted that the notice specified that it was requesting documents pursuant to 18 NYCRR 360-7.5 (g). That section provides as follows, in pertinent part:

“(g) Payment or part-payment of the premium for personal health insurance covering care and other medical benefits which are authorized under the MA program may be made to the insurance carrier or to another appropriate third party:

\* \* \*

(3) on behalf of a recipient or household which is eligible for MA if the full cost of such insurance premiums was not used in calculating financial eligibility and if full or partial payment would reduce the expense of providing MA services.”

18 NYCRR 360-7.5. The ALJ also noted that Administrative Directive 93 ADM-29 of the Department of Social Services clarifies that applicant/recipients of the Medical Assistance Program must be provided with “a clear explanation of the information desired, why it is needed and how it will be obtained.” Decision at 3.

On these bases, the ALJ determined that HRA's January 15, 2013

decision to deny further medical coverage to Okopal was correct.

In his amended petition challenging the ALJ's determination Okopal argued, based upon HIPAA, that the information about his medical reimbursement was private and that HRA had no statutory basis on which to demand it.

As respondents contend, HIPAA and its regulations govern health care providers or "covered entities," not recipients of medical care, regulating to whom and under what conditions a patient's medical information can be released by covered entities. See *e.g.* standards for the uses and disclosures of protected health information under 45 CFR § 164.502 (a). Moreover, as Okopal now appears to recognize, HIPAA regulations specifically provide that even a covered entity "may use or disclose protected health information without the written authorization of the individual [in connection with] ... (d) ... (ii) [g]overnment benefit programs for which health information is relevant to beneficiary eligibility." 45 CFR § 164.512.

In his reply to respondent's brief, Okopal argues that had he been given the citation to 45 CFR § 164.512 (d) (ii) by HRA he would have provided the medical reimbursement information requested by them and

would not have lost his benefits. He contends that because HRA did not give him proper notice of the basis on which it was entitled to the information, his due process rights were violated.

As Okopal points out, it is likely that Medicaid claimants generally do not have legal training, and, therefore, are not conversant with the regulatory basis under which the social service agencies are entitled to information regarding their medical reimbursements. Nonetheless, Okopal's real complaint is not that the notice failed to provide a reference to its authority to request his EOBs, but rather that it did not cite the federal regulation which refuted his mistaken belief that HIPAA provided him a legal basis for withholding the documents requested by HRA. In any case, as respondents argue, the purpose of reply papers is to respond to arguments made in response to his petition, and not to raise a new basis for his challenge to the ALJ's decision. *Gumbs v Flushing Town Ctr. III, L.P.*, 114 AD3d 573, 574 (1<sup>st</sup> Dept 2014).

Okopal has challenged the decision on the Fair Hearing of the ALJ upholding his denial of benefits in an Article 78 proceeding. Here, as the ALJ stated, there is no dispute of fact regarding whether Okopal refused to provide the documents requested; neither does Okopal deny that he was

informed of what documents were requested or that the notice denying him benefits contained a reference to 18 NYCRR 360-7.5 (g), as the ALJ found. Thus, the question of "substantial evidence" is not involved and the standard to be applied by this court is whether the decision of the administrative tribunal was arbitrary and capricious. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974).


Based upon the above, this court concludes that the decision of the ALJ upholding HRA's denial of benefits was not arbitrary and capricious.

Accordingly it is hereby

ADJUDGED that the amended petition is denied and the proceeding is dismissed.

Dated: July 3, 2014  
New York, New York

ENTER:

  
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J.S.C.

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).