

Hallman v Park

2025 NY Slip Op 34962(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 161572/2024

Judge: Phaedra Perry-Bond

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

PRESENT: HON. PHAEDRA PERRY-BOND

PART 35

Justice

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INDEX NO. 161572/2024

ESTER HALLMAN, by her Attorney-in-Fact, Danielle Nebel,
Petitioner,

MOTION DATE 12/09/2024

- v -

MOTION SEQ. NO. 001

MOLLY WASSOW PARK, in her official capacity as
Commissioner of the New York City Department of Social
Services, JAMES V. MCDONALD, in his official capacity as
Commissioner of the New York State Department of Health,
and BARBARA C. GUINN, in her official capacity as
Commissioner of the New York State Department of
Temporary and Disability Assistance,
Respondents.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 6, 7, 10, 18, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Petitioner, Ester Hallman (Petitioner), a Medicaid recipient, commenced this hybrid proceeding pursuant to Civil Practice Law and Rules (CPLR) Article 78 and 42 United States Code (USC) § 1983 against respondents,¹ James V. McDonald in his official capacity as Commissioner of the New York State Department of Health (DOH), Barbara C. Guinn in her official capacity as Commissioner of the New York State Office of Temporary and Disability Assistance (OTDA) (collectively, State Respondents),² and Molly Wassow Park in her official capacity as Commissioner of the New York City Department of Social Services (DSS) (NYSCEF Doc No. 1,

¹ To be precise, petitioner commenced this proceeding by her attorney-in-fact and by counsel.

² The court understands from State Respondents' filings that Ms. Guinn's name was misspelled in the petition as "Guin" and the New York State Office of Temporary and Disability Assistance was mislabeled as a "Department" (NYSCEF Doc Nos. 26 and 30, notice of cross-motion and memo of law).

petition-complaint [petition]).³

Rather than serving answers, State Respondents and DSS filed separate cross-motions to dismiss (NYSCEF Doc. Nos. 26-37). Petitioner opposed the two cross-motions with a single memorandum of law, a single attorney affirmation, and exhibits (NYSCEF Doc. Nos. 40-44). Only State Respondents filed a reply (NYSCEF Doc. No. 46).

The cross-motions are consolidated for disposition. For the reasons set forth below, the cross-motions are granted, and the petition is dismissed.

I. Preliminary issue

Before addressing the substance of the cross-motions, the court must address the preliminary issue of whether Petitioner was permitted to file the memorandum of law in opposition to the cross-motions. State Respondents contended in their moving papers, that if Petitioner serves any affidavits or a memorandum of law “as part of their reply” to the cross-motion, those submissions would be in violation of the NYCRR (NYSCEF Doc. No. 30, memo of law n 4).

A proceeding commenced pursuant to CPLR Article 78 is a “special proceeding” (CPLR § 7804 [a]). Title 22 New York Codes, Rules, and Regulations (NYCRR) § 202.9 provides such “proceedings shall be commenced and heard in the same manner as motions that have not yet been assigned to a judge as set forth in section 202.8 of this Part, except that they shall be governed by the time requirements of the CPLR relating to special proceedings” (22 NYCRR § 202.9). Section 202.8 [c] of the NYCRR provides, in part, that “[t]he moving party shall serve copies of all affidavits and briefs at the time of the service of the notice of motion” (22 NYCRR § 202.8).

As noted above, Petitioner submitted opposition that included a memorandum of a law and

³ DSS is named as a respondent in the caption, but the remainder of the petition refers to DSS as HRA. In its cross-motion, this respondent denominates itself as the New York City Department of Social Services/Human Resources Administration (NYSCEF Doc Nos. 31-36).

State Respondents submitted a reply. DSS did not submit a reply or advise the court it objects to Petitioner's memorandum of law. Under these circumstances, the court considers Petitioner's submission (*see Sanchez v Steele*, 149 AD3d 458, 458 [1st Dept 2017] ["The motion court providently exercised its discretion in accepting plaintiffs' untimely opposition papers, since defendants did not demonstrate any prejudice and were able to submit reply papers"]).

II. Background

A. Statutory and regulatory framework

This proceeding concerns Petitioner's application for Medicaid-funded personal care services (PCS) for her immediate needs. "Medicaid, a joint federal-state program established pursuant to title XIX of the Social Security Act (42 USC § 1396 *et seq.*), pays for medical care for those otherwise unable to afford it" (*Matter of Nazareth Home of the Franciscan Sisters v Novello*, 7 NY3d 538, 542 [2006]). PCS are defined as "assistance with nutritional and environmental support functions and personal care functions [that are] medically necessary for maintaining an individual's health and safety in his or her own home" (18 NYCRR § 505.14 [a] [1]).

New York law mandates the use of "expedited procedures for determining medical assistance eligibility for [individuals] with an immediate need for [PCS]" (Social Services Law [SSL] § 366-a [12]). Title 18 of the NYCRR § 505.14 [b] [7] details the assessment procedures to be followed for Medicaid recipients asserting this need. Relevant to this proceeding is 18 NYCRR § 505.14 [b] [7] [iii] [a], which provides within 12 calendar days after receipt of a Medicaid recipient's application, a social services district must "refer the [recipient] for an independent assessment and medical exam and evaluate his or her need for other services[,]...and determine whether the recipient is eligible for [PCS] and, if so, the amount and duration of the [PCS] to be authorized" (18 NYCRR § 505.14 [b] [7] [iii] [a]). Also relevant to this proceeding is 18 NYCRR

§ 505.14 [b] [7] [iii] [b], which dictates a “social services district must promptly notify the recipient of the amount and duration of [PCS] to be authorized and issue an authorization for, and arrange for the provision of, such [PCS], which must be provided as expeditiously as possible” (18 NYCRR § 505.14 [b] [7] [iii] [b]).

New York City is one social services district (SSL §§ 56, 61 [1], and 365 [1]). In New York City, Human Resources Administration (HRA) administers the Medicaid program (*see Staten Is. Univ. Hosp. v Quintero*, 63 Misc 3d 58, 59-60 [App Term, 2d Dept, 11th & 13th Jud Dists 2019]). DOH supervises HRA’s administration of the program (*see* SSL § 363-a [1]; *see also* 42 USC § 1396a [a] [5] [requiring that states participating in Medicaid “either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the [program]”).

In addition, 42 USC § 1396a (a) (8) requires participating states to provide medical assistance “with reasonable promptness to all eligible individuals” (42 USC § 1396a [a] [8]). The Code of Federal Regulations (CFR) has a similar provision, but requires the State agency to provide “Medicaid promptly to beneficiaries without any delay caused by the agency’s administrative procedures” (42 CFR § 435.930 [a]).

Moreover, a State Medicaid plan must provide “an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness” (42 USC § 1396a [a] [3]; *see also* 42 CFR § 431.220 [a] [1] [“The State agency must grant an opportunity for a hearing to...[a]ny individual who requests it because he or she believes the agency [took] an action erroneously, denied his or her claim for eligibility or for covered benefits or services,...or has not acted upon the claim with reasonable promptness”]). Further, the CFR articulates when a claim concerns “services or

benefits,” the State agency “must take final administrative action” within three working days after receipt of a Medicaid recipient’s request for an expedited fair hearing (42 CFR § 431.244 [f] [3] [ii]).

In New York, SSL § 22 governs the fair hearing process (SSL § 2; *see also* 18 NYCRR 358-3.1 titled “Right to a fair hearing”). OTDA’s Office of Administrative Hearings (OAH) conducts the hearings on DOH’s behalf (18 NYCRR § 358-2.30 [b]).

B. Petitioner’s application

Petitioner applied to DSS for immediate need PCS on November 8, 2024 (NYSCEF Doc No. 34, Decision after Fair Hearing [DAFH] dated Dec. 5, 2024 at 3).⁴ The application included a Practitioner Statement of Need for Personal Care and an Affirmation of Immediate Need (*id.*). Thereafter, DSS notified the New York Independent Assessor (NYIA) of Petitioner’s application and NYIA began an investigation to determine whether Petitioner had a medical need for PCS (*id.*). A determination was not made within the 12-calendar day timeframe of 18 NYCRR § 505.14 [b] [7] [iii] [a] (*id.* at 8, 15).

On November 20, 2024, Petitioner requested a fair hearing on her application (*id.* at 4). On November 25, 2024, OAH processed a request from Petitioner for “the hearing [to] be categorized as expedited” (*id.*). OAH granted Petitioner’s request the same day and scheduled the expedited fair hearing for November 27, 2024 (*id.*). The hearing commenced on that date before an Administrative Law Judge (ALJ) (*id.* at 2). Then, the hearing was adjourned on consent to December 4, 2024 (NYSCEF Doc No. 40, Petitioner’s memo of law at 8). On December 5, 2024, the ALJ issued the DAFH (NYSCEF Doc No. 34 at 1). Accounting for the adjournment period, the ALJ issued the DAFH four working days after receipt of Petitioner’s request for an expedited

⁴ The DAFH refers to DSS as the Agency.

fair hearing. This is one day past the timeframe set in 42 CFR § 431.244 [f] [3] [ii]. With respect to Petitioner's application, the ALJ found as follows:

"The Agency is required by 18 NYRCC [sic] section 505.14 and by 16 OHIP/ADM-02 to make an eligibility determination for Immediate Needs [PCS] by a Medicaid recipient such as [Petitioner] within [12] days after receipt of [Petitioner's application]. The Agency and the [Petitioner's] attorney factually agree that the Agency has not yet completed an assessment of [Petitioner's] need, although apparently on December 4, 2024 an Agency Case Manager or equivalent did come to the home to perform a Social Assessment, constituting a start" (NYSCEF Doc No. 34 at 17).⁵

While the ALJ found Petitioner to be "medically eligible for [PCS]," such finding is not tantamount to eligibility (*id.*). The ALJ explained "there has to be a lack of alternate service, and the home setting has to be such that PCS could maintain the applicant's health and safety within the home, meaning in part that an investigation of the home setting itself is required" (*id.*). The ALJ further explained there is a "carefully crafted system of cautious and appropriate evaluation of potential PCS eligibility" and the same is to be conducted by "appropriately trained professionals" (*id.* at 18). The ALJ concluded the medical evidence provided at the hearing lacked the requisite evaluation as it consisted of a one page, undated letter from a doctor. In view of the foregoing, the ALJ did not order DSS to provide PCS to Petitioner.

Rather, the ALJ held "[t]he Agency's failure to fully and finally act in a timely manner on [Petitioner's] November 8, 2024, application for an immediate need for [PCS] was not correct and is reversed" (*id.* at 19). The ALJ directed the Agency "to immediately process [Petitioner's] November 8, 2024 application...pursuant to 16 OHIP/ADM[-]02 and later policy memoranda" and "to advise [Petitioner] of its determination in writing" (*id.*).

C. The petition

⁵ 16 OHIP/ADM-02 is a New York State Office of Health Insurance Programs Administrative Directive titled "Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Services." It is located at https://www.health.ny.gov/health_care/medicaid/publications/adm/16adm2.htm.

Petitioner filed the petition on December 9, 2024, 4 days after the DAFH was issued (*see* NYSCEF Doc No. 1).⁶ The petition contains five causes of action (*id.*), with the first two causes of action based on 42 USC § 1983. In the first cause of action, Petitioner alleges respondents did not “take final administrative action within [three] working days of [her] request for an expedited fair hearing [and thus they] violated 42 [USC] § 1983 in that they have violated 42 [USC] § 1396a (a) (3) and 42 [CFR] § 435.244 (f) (3) (ii)” (*id.* ¶¶ 21-22). In the second cause of action, Petitioner alleges respondents did not provide “[PCS] to [her] with reasonable promptness [and thus they] violated 42 [USC] § 1983 in that they violated 42 [USC] § 1396a (a) (8) and 42 [CFR] § 435.930” (*id.* ¶¶ 24-25).

The third through fifth causes of action are based on CPLR §§ 7801 and 7803. In the third cause of action, Petitioner repeats the allegation of the first cause of action, namely respondents did not “take final administrative action within [three] working days of [her] request for an expedited fair hearing” (*see id.* ¶¶ 21 and 27). In the fourth cause of action, Petitioner alleges respondents “failed to render a determination on the number of hours of [PCS] to which [she] is entitled within 12 days of [her] request for [i]mmediate [n]eeds [PCS] as required by 18 NYCRR § 505.15 [b] [7] [iii] [a], [b]” (*id.* ¶ 30).⁷ In the fifth cause of action, Petitioner alleges respondents failed to act as expeditiously as possible to provide her with immediate needs PCS as required by 18 NYCRR § 505.14 [b] [7] [iii] [b] (*id.* ¶ 33).

Turning to the petition’s prayer for relief, the court summarizes it as follows: pursuant to 42 USC § 1983, Petitioner seeks a judgment ordering respondents to take immediate final

⁶ The petition mistakenly states the DAFH was issued on December 6, 2024. The DAFH reflects that it was issued on December 5, 2024.

⁷ The petition’s reference to 18 NYCRR § 505.15 is an apparent typographical error since that regulation is unrelated to this proceeding’s subject matter. The applicable regulation is 18 NYCRR § 505.14 [b] [7] [iii] [a]-[b].

administrative action on her expedited fair hearing request, and to provide her with PCS forthwith (*id.* at prayer for relief ¶¶ A and B). Similarly, pursuant to CPLR §§ 7801 and 7803, Petitioner seeks a judgment ordering respondents to take immediate final administrative action on her expedited fair hearing request,⁸ to render a determination forthwith as to the number of PCS hours that she is entitled, and to provide her with that PCS forthwith (*id.* at prayer for relief ¶¶ C, F, and G). Petitioner also seeks such other and further relief as it relates to her request for an expedited fair hearing (*id.* at prayer for relief ¶ E).⁹

Next, pursuant to 42 USC § 1988, Petitioner seeks a judgment ordering respondents to pay her attorney's fees, expenses, and costs associated with this proceeding (*id.* at prayer for relief ¶ H).¹⁰ The prayer for relief concludes with language to the effect Petitioner did not previously seek the relief requested in the petition from this or any other court (*id.* at prayer for relief ¶ J).

D. The approval of Petitioner's application

On December 13, 2024, eight days after the DAFH was issued and four days after the petition was filed, DSS/HRA notified Petitioner it approved her for PCS (NYSCEF Doc No. 41,

⁸ Paragraph C in the petition's prayer for relief is unclear as it is missing critical words. It reads: "[p]ursuant to CPLR §§ 7801, 7803 ordering HRA, OTDA, and DOH to take final administrative action on Petitioner's [sic]" (*id.* at prayer for relief ¶ C). The court deduced paragraph C relates to the third cause of action, thus the relief requested is a judgment ordering respondents to take immediate final administrative action on Petitioner's expedited fair hearing request (*see id.* ¶ 28). This deduction is confirmed with the notice of petition's prayer for relief, which is not missing critical words (NYSCEF Doc No. 3 at prayer for relief ¶ C).

⁹ Like paragraph C, paragraph E in the petition's prayer for relief is missing critical words. It reads: "[p]roviding such other and further relief s [sic] expedited fair hearing request forthwith [sic]" (*id.* at prayer for relief ¶ E). Although the drafting is inartful, the court deduced that paragraph E is for such other and further relief as it relates to Petitioner's request for an expedited fair hearing.

¹⁰ The petition's prayer for relief contains two additional requests for attorney's fees. One does not cite any authority (*see id.* at prayer for relief ¶ D). The other is missing critical words and reads: "[p]ursuant to CPLR § 8601 et seq. ordering HRA, OTDA [sic] and this [c]ourt shall deem just and proper" (*id.* at prayer for relief ¶ I). As such, the court reviewed the notice of petition's prayer for relief. It reads in pertinent part: "[p]ursuant to CPLR § 8601 et seq. ordering HRA, OTDA, and DOH to pay Petitioner[']s attorney's fees, expenses, and costs of this action" and "[p]roviding such other and further relief s [sic] this [c]ourt shall deem just and proper" (NYSCEF Doc No. 3 at prayer for relief ¶¶ G and H). The court adds that it was careful in using the notice of petition for clarification as the relief listed therein does not always correlate to the petition. For example, the relief listed in paragraphs G and H in the notice of petition's prayer for relief is listed in paragraph I in the petition's prayer for relief.

Petitioner's counsel's affirmation ¶ 5; *see* NYSCEF Doc No. 35, DSS/HRA Notice of Decision of Initial Authorization/Reauthorization/or Denial PCS dated Dec. 13, 2024). Petitioner began receiving PCS on December 31, 2024 (NYSCEF Doc No. 41 ¶ 6).

III. Discussion

A. CPLR Article 78 and 42 USC § 1983

The actions, inactions, and determinations of New York administrative agencies can be subject to judicial review pursuant to CPLR Article 78 and 42 USC § 1983. Section 7801 of the CPLR provides in part that “[r]elief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under this article” (CPLR § 7801; *see also* *Rowe v City of New York*, 162 Misc 2d 683, 688 [Sup Ct, New York County 1994] [explaining the nature of writs of certiorari and mandamus]; *Matter of Town of Huntington v New York State Div. of Human Rights*, 82 NY2d 783, 786 [1993] [explaining the nature of writs of prohibition]).

Section 7803 of the CPLR specifies the questions a petitioner may raise in a CPLR Article 78 proceeding. The questions are: (1) whether the agency “failed to perform a duty enjoined upon it by law;” (2) whether the agency “proceeded, is proceeding or is about to proceed without or in excess of jurisdiction;” (3) whether an agency “determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion;” and (4) whether an agency’s determination, made as the result of a hearing, was “supported by substantial evidence” (CPLR § 7803 [1], [2], [3], and [4]).

Section 7806 governs judgments in CPLR Article 78 proceedings, and provides “[t]he judgment may grant the petitioner the relief to which he [or she] is entitled, or may dismiss the proceeding either on the merits or with leave to renew” (CPLR § 7806). It further provides where “the proceeding was brought to review a determination, the judgment may annul or confirm the

determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent” (*id.*). Lastly, it permits an award of “restitution or damages” provided it is “incidental to the primary relief sought by the petitioner” (*id.*). And, relatedly, Petitioner may be entitled to attorney’s fees if he or she is the prevailing party in a CPLR Article 78 proceeding against a state agency (*see* CPLR § 8601 [a]).

As for 42 USC § 1983, it “affords an aggrieved individual a civil remedy against ‘[every] person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution’ ” (*Simpson v New York City Tr. Auth.*, 112 AD2d 89, 91 [1st Dept 1985], citing 42 USC § 1983). “Municipalities and other local governmental units are included among those ‘persons’ to whom section 1983 applies” (*id.* [citation omitted]). Relief available under 42 USC § 1983 includes injunctive and declaratory relief (*Davidson v Scully*, 148 F Supp 2d 249, 254 [SD NY 2001]). Compensatory and punitive damages are also available (*Hauser v Fort Hudson Nursing Ctr., Inc.*, 202 AD3d 45, 51 [3d Dept 2021]). Moreover, “[w]hen a party succeeds on a 42 USC § 1983 claim, ‘the court, in its discretion, may allow the prevailing party...a reasonable attorney’s fee as part of the costs’ ” (*Swergold v Cuomo*, 99 AD3d 1141, 1143 [3d Dept 2012]) citing 42 USC § 1988 [b]; *Matter of Giaquinto v Commissioner of N.Y. State Dept. of Health*, 11 NY3d 179, 186 [2008]).

B. Mootness is a dispositive issue

“Generally, courts may not pass on moot questions” (*Matter of Puerto v Doar*, 142 AD3d 34, 43 [1st Dept 2016]). “[T]he doctrine of mootness is invoked where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy” (*Matter of Young [Jacobi Med. Ctr.]*, 124 AD3d 443, 444 [1st Dept 2015] [citation omitted]).

In their respective cross-motions, respondents assert Petitioner's controversy is moot because Petitioner received the substantive relief requested in the petition's prayer for relief (NYSCEF Doc Nos. 30 and 36, memos of law). Respondents point out an expedited fair hearing was held on Petitioner's application for immediate needs PCS, Petitioner was granted immediate needs PCS, and Petitioner began receiving same on December 31, 2024.

In addition, State Respondents argue the exception to the mootness doctrine is inapplicable to this proceeding. Under the exception, the "court may adjudicate an otherwise moot matter that satisfies the three critical conditions to the mootness exception in that it presents an issue that (1) is likely to recur, (2) will typically evade review and (3) is substantial and novel" (*Matter of Puerto*, 142 AD3d at 44 [internal quotation marks and citation omitted]).

For the first condition, State Respondents assert "Petitioner fails to plead that the delay in providing her immediate needs PCS is likely to recur beyond generalized allegations that 'hundreds of Medicaid recipients' have not been expeditiously provided with immediate needs PCS" (NYSCEF Doc No. 30, memo of law at 22 citing NYSCEF Doc No. 1, petition ¶ 16). Furthermore, State Respondents assert Petitioner does not plead the delay issue is likely to recur with respect to her. For the second condition, State Respondents maintain if an individual were to experience a delay akin to that experienced by Petitioner, the same can be reviewed in a CPLR Article 78 proceeding. For the third condition, State Respondents make a blanket assertion the issues at bar are not substantial and novel.

In opposition, Petitioner contends she had live causes of action at the time of the proceeding's commencement (NYSCEF Doc No. 40, memo of law). More importantly, Petitioner argues the allegations in her petition satisfy the three critical conditions to the mootness exception. The allegations are as follows:

“Upon information and belief, HRA has failed to render determinations on hundreds of requests for Immediate Needs Medicaid within the 12 days required by the Regulation and has a policy or practice of failing to do so.

Upon information and belief, HRA has failed to provide Immediate Needs [PCS] as expeditiously as possible for hundreds of Medicaid recipients and has a policy or practice of failing to do so.

Upon information and belief, HRA, OTDA, and DOH have failed to take final administrative action on expedited fair hearing requests within the 3-day time frame required by 42 [CFR] § 431.244 (f) (3) (ii) and has a policy or practice of failing to do so.

Upon information and belief, HRA, OTDA, and DOH have failed to provide [PCS] with reasonable promptness to hundreds of Medicaid recipients who have an immediate need for such services and have a policy or practice of failing to do so” (NYSCEF Doc No. 1, ¶¶ 15-18).

For the first condition, Petitioner argues she was not required to allege the delay issue she experienced is likely to recur with respect to her. Rather, Petitioner maintains it is sufficient for her to allege the delay is likely to recur to other individuals. In reply, State Respondents counter that Petitioner did not sufficiently plead the delay issue is likely to recur with respect to her or to other individuals (NYSCEF Doc No. 46, reply memo of law).

The court agrees with State Respondents. Critically, Petitioner’s allegations are made upon information and belief. They are speculative, general, conclusory, and lack factual support. Absent from the petition and motion papers are detailed factual allegations and/or evidence regarding instances of delay experienced by other Medicaid recipients or applicants. As Petitioner does not adequately plead or argue that this controversy is of a nature likely to recur, Petitioner does not satisfy the first condition to the mootness exception. Since Petitioner does not satisfy the first condition, a discussion of the other two conditions is unnecessary.

As a corollary to the mootness discussion, the court notes Petitioner is not entitled to declaratory relief. State Respondents, in their moving papers, assert they must address the issue of declaratory relief since Petitioner continued with the litigation after she received immediate

needs PCS. State Respondents stress the petition does not explicitly request declaratory relief. It is their contention that to the extent the petition seeks a declaration State Respondents violated Petitioner’s rights, such relief is unavailable as the petition is moot. In opposition, Petitioner concedes she “did not specifically request declaratory relief in the [p]etition,” but maintains this omission “does not prevent her from requesting such relief in this case” (NYSCEF Doc No. 40, mem of law at 12). Curiously, Petitioner did not seek to amend the petition to request declaratory relief, and Petitioner does not specify what she would seek as the substance of any declaratory judgment.

Finally, Petitioner is not entitled to attorney’s fees, expenses, and costs associated with this proceeding. Petitioner is not the prevailing party as the petition is moot.

III. Conclusion and Order

The court considered the parties’ other arguments and finds them unavailing, non-dispositive, and/or academic due to the analysis above. Accordingly, it is:


ORDERED that respondents’ cross-motions to dismiss the petition are granted; and it is further

ORDERED and ADJUDGED that the petition is dismissed in its entirety; and it is further

ORDERED that within 30 days of entry, counsel for respondents shall serve a copy of this decision and order together with notice of entry on counsel for Petitioner and on the office of the County Clerk, which is directed to dismiss the petition.

This constitutes the decision and order of the court.

12/19/2025
DATE



PHAEDRA F. PERRY-BOND, J.S.C.

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|-----------------------|-------------------------------------|----------------------------|-------------------------------------|-----------------------|
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> | REFERENCE |