

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

Fruci v. Mills

50 A.D.3d 1565 (N.Y. App. Div. 2008) · Decided April 25, 2008

SUMMARY

The court unanimously confirmed an administrative determination denying the petitioner funding to attend a manual osteopathy program at the Canadian College of Osteopathy. It held that a functional capacity evaluation constituted substantial evidence supporting the determination and that the Hearing Officer was not required to accept the opinion of the petitioner's treating physician.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Smith, J.P.; Lunn, J.; Fahey, J.; Pine, J.; Gorski, J.
JURISDICTION	New York
DECIDED	April 25, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division to review and annul an administrative determination denying petitioner funds to attend the Canadian College of Osteopathy.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence, defined as such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Fruci v. Mills

TOPICS

judicial review of agency action

standard of review

administrative law

appellate procedure

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PRACTICE AREAS

administrative law

disability law

appellate procedure

QUESTIONS PRESENTED

1. Whether the administrative determination that petitioner's attendance at the Canadian College of Osteopathy was inconsistent with her abilities was supported by substantial evidence.
2. Whether the Hearing Officer was required to accept the opinion of petitioner's treating physician.

HOLDINGS

1. The determination that petitioner was not entitled to sponsorship for attendance at the Canadian College of Osteopathy was supported by substantial evidence.
2. The Hearing Officer was not required to accept the opinion of petitioner's treating physician.

KEY QUOTATIONS

“such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact”
(1566)

“[I]t is not for [this Court] to substitute its judgment for that of [the Hearing Officer]” (1566)

FACTUAL BACKGROUND

Petitioner sought funding from respondent to attend the manual osteopathy program at the Canadian College of Osteopathy. A functional capacity evaluation concluded that petitioner's disabilities were inconsistent with working as an osteopath. The Hearing Officer relied on that evaluation and declined to adopt the contrary opinion of petitioner's treating physician.

PROCEDURAL HISTORY

Petitioner commenced a CPLR article 78 proceeding challenging a determination that respondent was not required to sponsor her attendance at the Canadian College of Osteopathy. The Supreme Court, Erie County, transferred the proceeding to the Fourth Department. The Appellate Division unanimously confirmed the determination and dismissed the amended petition.

DISPOSITION

dismissed

CASES CITED

- 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 180 [1978]
- People ex rel. Vega v Smith, 66 NY2d 130, 139 [1985]
- Matter of Murphy v Office of Vocational & Educ. Servs. for Individuals with Disabilities, N.Y. State Educ. Dept., 92 NY2d 477, 482 [1998]
- Matter of Shorts Bar of Rochester Inc. v New York State Liq. Auth., 17 AD3d 1101, 1102 [2005]
- Matter of Williams v Wing, 259 AD2d 1043 [1999]

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Diane Y. Devlin, J.], entered March 13, 2007) to annul a determination of respondent.

The determination denied petitioner's request for funds to enable petitioner to enroll in the manual osteopathy program at the Canadian College of Osteopathy. It is hereby ordered that the determination is unanimously confirmed without costs and the amended petition is dismissed. Memorandum: Petitioner commenced this CPLR article 78 *1566 proceeding seeking to annul the determination that respondent was not required to sponsor her attendance at the Canadian College of Osteopathy (College).

Petitioner contends that the determination that her attendance at the College is inconsistent with her abilities is not supported by substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 180 [1978]; see *People ex rel.*

Vega v Smith, 66 NY2d 130, 139 [1985]). We reject that contention (see generally *Matter of Murphy v Office of Vocational & Educ. Servs. for Individuals with Disabilities*, N.Y. State Educ. Dept., 92 NY2d 477, 482 [1998]).

The Hearing Officer relied upon a functional capacity evaluation (FCE) indicating that petitioner's disabilities were inconsistent with a position as an osteopath, and the FCE constitutes substantial evidence supporting the determination. "[I]t is not for [this Court] to substitute its judgment for that of [the Hearing Officer]" (*Matter of Shorts Bar of Rochester Inc. v New York State Liq.*

Auth., 17 AD3d 1101, 1102 [2005]). Contrary to the further contention of petitioner, the Hearing Officer was not required to accept the opinion of her treating physician (see *Matter of Williams v Wing*, 259 AD2d 1043 [1999]). Present— Smith, J.P., Lunn, Fahey, Pine and Gorski, JJ.