

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Matter of Tomei v. McDonald

2026 NY Slip Op 01571 (3d Dep't 2026) · No. CV-24-1568 · Decided March 19, 2026

SUMMARY

The New York Appellate Division, Third Department, upheld the denial of a Medicaid recipient’s request for reimbursement of out-of-pocket personal care expenses incurred after she received a Medicaid identification card and was determined eligible for services. The court held that 18 NYCRR 360-7.5 authorizes reimbursement for errors or delays in eligibility determinations, not delays in delivering authorized services, and confirmed the administrative determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Corcoran, J.; Clark, J.P.; Pritzker, J.; McShan, J.; Powers, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	March 19, 2026
DOCKET	CV-24-1568
DISPOSITION	affirmed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred from Supreme Court to the Appellate Division to review the Commissioner of Health's determination denying reimbursement for out-of-pocket personal care service expenses.
STANDARD OF REVIEW	The court reviewed the agency's construction of its own regulation for rationality and consistency with the regulation's plain meaning. A rational agency determination must be sustained even if the reviewing court would have reached a different result.
PRECEDENTIAL VALUE	published
PARTIES	Marion Tomei v. James V. McDonald, as Commissioner of Health, Commissioner of the Nassau County Department of Social Services

TOPICS

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QUESTIONS PRESENTED

1. Whether 18 NYCRR 360-7.5 authorizes Medicaid reimbursement for out-of-pocket expenses caused by an agency's delay or inability to provide already-authorized personal care services.
2. Whether the agency's interpretation of 18 NYCRR 360-7.5 was rational and consistent with the regulation's plain language.
3. Whether DOH Administrative Directive 10 OHIP/ADM-9 creates an independent reimbursement right.
4. Whether the agency's determination was arbitrary because it allegedly departed from prior fair hearing decisions.
5. Whether Tomei's due process claim was excused from the exhaustion requirement.
6. Whether Tomei preserved arguments under 42 CFR 431.246 and federal Medicaid comparability requirements.

HOLDINGS

1. The regulation authorizes reimbursement for errors or delays in Medicaid eligibility determinations, including determinations concerning the level or duration of authorized personal care services, but does not authorize reimbursement for delays or failures in delivering services that were already authorized.
2. An administrative agency's rational construction of its own regulation is entitled to deference unless it conflicts with the regulation's plain meaning.
3. The administrative directive does not create a reimbursement right independent of 18 NYCRR 360-7.5, and the regulation prevails to the extent the directive conflicts with it.
4. A petitioner may not avoid available administrative remedies merely by asserting a due process violation when those remedies could provide the requested relief.
5. Arguments based on 42 CFR 431.246 and federal Medicaid comparability requirements were unpreserved because Tomei did not raise them at a fair hearing.

KEY QUOTATIONS

“As the regulatory scheme makes clear, reimbursement is tied to errors or delays in eligibility determinations, not to errors or delays in delivery of authorized services” ([*3])

“the mere assertion of a due process violation does not excuse petitioner from pursuing available administrative remedies that can afford the requested relief” ([*5])

FACTUAL BACKGROUND

Marion Tomei was determined eligible for Medicaid in October 2020 and was approved for 24-hour live-in personal care services effective July 8, 2021. Her daughter elected the Consumer Directed Personal Assistance Program but could not locate a qualified Medicaid-participating aide during a pandemic-related aide shortage, so Tomei paid \$14,220 to a private, non-Medicaid-enrolled agency for services from July through September 2021. Tomei sought reimbursement, but the county and state agency denied the request because the expenses were incurred after she had been found eligible and issued a Common Benefit Identification Card.

PROCEDURAL HISTORY

Tomei, a Medicaid recipient, sought reimbursement from Nassau County for \$14,220 paid to a non-Medicaid-enrolled home care agency after authorized Medicaid personal care services were unavailable. The county denied reimbursement, and an administrative law judge upheld the denial after a fair hearing and reopening. Supreme Court transferred the article 78 proceeding to the Appellate Division under CPLR 7804(g), which retained jurisdiction, confirmed the determination, and dismissed the petition.

DISPOSITION

affirmed

CASES CITED

- Matter of Rovinsky v. Zucker, 167 AD3d 122, 124, 126 (3d Dep't 2018)
- Matter of Developmental Disabilities Inst., Inc. v. New York State Off. for People with Dev. Disabilities, 214 AD3d 1101, 1103-1104 (3d Dep't 2023)
- Andryeyeva v. New York Health Care, Inc., 33 NY3d 152, 174 (2019)
- Matter of Spence v. Office of the N.Y. State Comptroller, 240 AD3d 1067, 1070 (3d Dep't 2025)
- Matter of Dell'Olio v. New York State Off. of Temporary & Disability Assistance, 166 AD3d 614, 616 (2d Dep't 2018)
- Matter of Concourse Rehabilitation & Nursing Ctr., Inc. v. Zucker, 217 AD3d 1189, 1192 (3d Dep't 2023)
- Matter of Wayne Ctr. for Nursing & Rehabilitation, LLC v. Zucker, 197 AD3d 1409, 1415-1416 (3d Dep't 2021), lv denied 37 NY3d 919 (2022)
- Greenstein v. Bane, 833 F Supp 1054, 1073-1074 (SD NY 1993)
- Seittelman v. Sabol, 91 NY2d 618, 628 n 4 (1998)
- Matter of Atlanticare Mgt., LLC v. Ives, 212 AD3d 132, 143 (3d Dep't 2022), lv denied 40 NY3d 902 (2023)
- Matter of Connerton v. Ryan, 86 AD3d 698, 700 (3d Dep't 2011)
- Matter of Shining Star Home Care, LLC v. Zucker, 215 AD3d 1090, 1092 (3d Dep't 2022)
- Matter of Rispoli v. DiNapoli, 180 AD3d 1127, 1128 (3d Dep't 2020)