

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

Matter of Donvito v. Shah

108 A.D.3d 1196 (4th Dep't 2013) · No. 663 TP 12-02248 · Decided July 19, 2013

SUMMARY

The New York Appellate Division, Fourth Department, reviewed a CPLR article 78 proceeding challenging the denial of Medicaid benefits. The court held that substantial evidence supported a seven-month Medicaid penalty for transfers of assets below fair market value and the inclusion of civil service pension payments in the decedent's net available monthly income. The court unanimously confirmed the administrative determination and dismissed the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Smith, J.P.; Peradotto, J.; Lindley, J.; Valentino, J.
JURISDICTION	New York
DECIDED	July 19, 2013
DOCKET	663 TP 12-02248
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division to review an administrative determination denying the decedent certain Medicaid benefits.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Mark Donvito, voluntary administrator of the estate of Nicholas J. Donvito, deceased v. Nirav R. Shah, M.D., M.P.H., Commissioner, New York State Department of Health, Elizabeth R. Berlin, Executive Deputy Commissioner, New York State Office of Temporary and Disability Assistance, David Sutkow, Commissioner, Onondaga County Department of Social Services

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QUESTIONS PRESENTED

1. Whether the agency properly imposed a seven-month Medicaid ineligibility penalty based on the decedent's transfers of assets for less than fair market value during the look-back period.
2. Whether the petitioner rebutted the presumption that the transfers were motivated, at least in part, by an anticipation of future need to qualify for Medicaid.
3. Whether the decedent's civil service pension payments were properly included in his net available monthly income.
4. Whether the agency's determination was supported by substantial evidence.

HOLDINGS

1. The agency properly imposed a seven-month Medicaid ineligibility penalty because the petitioner failed to prove that the transfers were made for fair market value or were not motivated, at least in part, by an anticipation of future need to qualify for Medicaid.
2. The agency properly included the decedent's civil service pension payments in calculating his net available monthly income.
3. The administrative determination was supported by the requisite substantial evidence and was therefore confirmed.

KEY QUOTATIONS

“In determining the medical assistance eligibility of an institutionalized individual, any transfer of an asset by the individual . . . for less than fair market value made within or after the look-back period shall render the individual ineligible for nursing facility services” (1197)

“available income” includes pension benefits” (1198)

FACTUAL BACKGROUND

The decedent, who entered an assisted living facility in 2003 and a nursing home in 2008 after suffering a stroke, applied for Medicaid in June 2010. Before applying, he transferred \$54,162.05 to the petitioner and family members during the statutory look-back period, including a \$6,500 transfer that the petitioner claimed reimbursed expenses rather than constituted a gift. The agency also included \$1,756.90 in monthly civil service pension payments in the decedent's net available monthly income.

PROCEDURAL HISTORY

Onondaga County Department of Social Services denied the decedent's Medicaid application, imposing a seven-month ineligibility period based on resource transfers and including civil service pension payments in the decedent's net available monthly income. The determination was affirmed after a fair hearing. The Supreme Court, Onondaga County, transferred the CPLR article 78 proceeding to the Appellate Division, which confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Mallery v. Shah, 93 A.D.3d 936, 937
- Matter of Javeline v. Whalen, 291 A.D.2d 497, 497

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