STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of ANTWANE CARLISLE,

Petitioner,

-against-

COMM. BRIAN FISCHER NYDOCS,

Respondents,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-12-ST3266 Index No. 6938 -11

Appearances: Antwane Carlisle
Inmate No. 98-A-5948
Petitioner, Pro Se
Green Haven Correctional Facility
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Stormville, NY 12582-0010

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

In 2009 the New York State Legislature amended the Correction Law to add a new provision rendering qualified inmates eligible for conditional release or parole consideration six months earlier than they would have been otherwise, referred to as a limited credit time

allowance ("LCTA", see Correction Law 803-b; Matter of Abreu v Fischer, 87 AD3d 1213 [3d Dept., 2011]). The statute established certain programming and educational criteria with respect to inmate eligibility for LCTA. In a determination of the Facility Superintendent dated September 1, 2011, the petitioner was denied a limited credit time allowance by reason that "LCTA Program Criteria Not Satisfied". Specifically, it was indicated that the petitioner did not complete the ASAT (Alcohol and Substance Abuse) Program. The Central Office Review Committee subsequently affirmed the foregoing determination. The petitioner has commenced the above-captioned CPLR Article 78 proceeding to review denial of LCTA.

The petitioner indicates that he entered the ASAT program in 2009 but was prevented from completing the program due to imposition of a penalty of thirty days confinement, received as the result of a Tier II disciplinary determination.. He argues that Correction Law 803-b does not contain a requirement that he complete the ASAT Program.

As set forth in Correction Law § 803-b:

> "2. Every eligible offender under the custody of the department or confined in a facility in the department of mental hygiene may earn a limited credit time allowance *if such offender successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and:*
> (a) successfully completes one or more significant programmatic accomplishments;[1] and

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[1] "'[S]ignificant programmatic accomplishment' means that the inmate:
(i) participates in no less than two years of college programming; or
(ii) obtains a masters of professional studies degree; or
(iii) successfully participates as an inmate program associate for no less than two years; or
(iv) receives a certification from the state department of labor for

> (b) has not committed a serious disciplinary infraction or maintained an overall negative institutional record as defined in rules and regulations promulgated by the commissioner; and
> (c) has not received a disqualifying judicial determination." (Correction Law 803-b [2], emphasis supplied)

Subsequent to the date of enactment of Correction Law § 803-b, Anthony J. Annucci, Executive Deputy Commissioner of what was then the Department of Correctional Services, issued a document entitled "Notice To Inmate Population" which set forth the requirements for the LCTA. Among them, was paragraph H, denominated "Program Evaluation" which recites:

> "In accordance with Correction Law Section 805, in order to be approved for LCTA, the inmate must successfully be pursuing his or her recommended Earned Eligibility Program (EEP)/Program Plan. []"

It is well settled that in attempting to construe a statute the Court should attempt to effectuate the intent of the Legislature (see Yatauro v Mangano, 17 NY3d 420, 426-427

> his or her successful participation in an apprenticeship program; or
> (v) successfully works as an inmate hospice aid for a period of no less than two years; or
> (vi) successfully works in the division of correctional industries' optical program for no less than two years and receives a certification as an optician from the American board of opticianry; or
> (vii) receives an asbestos handling certificate from the department of labor upon successful completion of the training program and then works in the division of correctional industries' asbestos abatement program as a hazardous materials removal worker or group leader for no less than eighteen months; or
> (viii) successfully completes the course curriculum and passes the minimum competency screening process performance examination for sign language interpreter, and then works as a sign language interpreter for deaf inmates for no less than one year; or
> (ix) successfully works in the puppies behind bars program for a period of no less than two years." (Correction Law 803-b [1] [c])

[2011]; Nostrom v A.W. Chesterton Company, 15 NY3d 502, 507 [2010]; Roberts v Tishman Speyer Properties, L.P., 13 NY3d 270, 286 [2009]; State of New York v Patricia II., 6 NY3d 160, 162 [2006]). Ordinarily, the plain language of the statute is dispositive (see Matter of Polan v State of New York Insurance Department, 3 NY3d 54, 58 [2004]; Matter of Excellus Health Plan, Inc. v Serio, 2 NY3d 166, 171 [2004]; Nostrom v A.W. Chesterton Company, supra). "If the terms are clear and unambiguous, "'the court should construe it so as to give effect to the plain meaning of the words used'"" (Orens v Novello, 99 NY2d 180, 185 [2002], quoting Auerbach v Board of Educ., 86 NY2d 198, 204 [1995] quoting Patrolmen's Benevolent Assn. v City of New York, 41 NY2d 205, 208 [1976]; In the Matter of Crucible Materials Corporation v New York Power Authority, 13 NY3d 223, 229 [2009]). "'[A]n agency's interpretation of the statutes it administers must be upheld absent demonstrated irrationality or unreasonableness,' but where 'the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency'" (Lorillard Tobacco Company v Roth, 99 NY2d 316, 322 [2003] quoting Seittelman v Sabol, 91 NY2d 618, 625, 1998]).

The Correction Law clearly states that in order to qualify for LCTA the inmate must successfully participate in the work and treatment programs assigned pursuant to Correction Law 805 (see Correction Law 803-b [2], supra). It is uncontroverted that the petitioner failed to complete the ASAT Program. In the Court's view, petitioner's failure to have completed the ASAT Program was a proper basis for denial of LCTA.

The Court has reviewed and considered petitioner's remaining arguments and

contentions and finds them to be without merit.

The Court finds that the determination was not made in violation of lawful procedure, is not affected by an error of law, and is not irrational, arbitrary and capricious, or an abuse of discretion. The Court concludes that the petition must be dismissed.

Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: June 5, 2012
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Order To Show Cause dated December 12, 2011, Petition, Supporting Papers and Exhibits
2. Answer dated February 9, 2012, Supporting Papers and Exhibits
3. Petitioner's Reply Affirmation Filed January 25, 2012