

**Matter of Hawkins v Berlin**

2012 NY Slip Op 32922(U)

November 7, 2012

Sup Ct, New York County

Docket Number: 400782/12

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of*  
*CRYSTAL HAWKINS,*

INDEX NO. 400782/12

Petitioner,  
-against-

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

ELIZABETH BERLIN, et al.,  
Respondents.

MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion \_\_\_\_\_

**UNFILED JUDGMENT**

PAPERS NUMBERED

This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1114).

Notice of Motion Exhibits 1

Answering Affidavits Exhibits 2, 3, 4, 5

Replying Affidavits 6-11

CROSS-MOTION: YES  NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 11/7/12

Donna M. Mills  
**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 58

-----X  
In the Matter of the Application of  
CRYSTAL HAWKINS,

Petitioner,

-against-

Index No. 400782/12

ELIZABETH BERLIN, as Executive Deputy  
Commissioner of the New York State Office of  
Temporary and Disability Assistance, et al.,  
Respondents.

-----X

**DONNA M. MILLS, J.:**

This special proceeding is brought pursuant to Article 78 of the CPLR to appeal a determination dated April 20, 2012 by Respondent Elizabeth Berlin, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance ( "State Respondent" or "OTDA") of a second level desk review of a determination by Respondent Robert Doar ("HRA") regarding distribution of child support payments to petitioner Crystal Hawkins. Petitioner seeks to compel Respondent HRA to distribute child support payments collected on behalf of her son Michael Jackson for the period from September 2005 through January, 2007 to the petitioner. HRA and State Respondent claim that the Amended Petition should be dismissed because their determinations were based on rational interpretations of the law.

**BACKGROUND**

In December 1989, petitioner received a grant of Public Assistance ("PA"). After her son Michael was born, May 8, 1990, he was added to the budget and the HRA obtained an assignment of petitioner's right to child support from his father. When, her second son, Jarred Smith, was born March 24, 2000, he was also added to the public

assistance budget, and the city agency obtained an assignment of petitioner's right to support from Jarred's father. The assignment HRA held with regard to child support paid on Michael's behalf was made prior to October 1, 2009, the date on which the mandatory limited assignment under the Federal Deficit Reduction Act went into effect in New York.

Based on assignments of petitioner's right to child support for each of her sons, the city agency obtained orders of support requiring their fathers to pay child support. During the period that the city agency provided public assistance for petitioner and her two sons, it collected their child support payments and retained the payments (except for a pass through payment mandated by federal and state law) to reimburse respondents for the cash assistance paid to the entire family.

In June, 2001, after petitioner stopped receiving child support for Michael, she requested a First Level Desk Review from HRA to obtain an accounting for the cumulative excess support payments for Michael. In her request she asked that cumulative excess support payments for the period from September 2005 to August 2011 be reviewed.

On August 4, 2011, HRA issued a first-level desk review determination, dated August 4, 2011 ("the First-Level Disk Review Determination"). Given that a cumulative excess support payment was requested, HRA reviewed all PA and child support records for the life of the case. HRA determined that petitioner was entitled to an additional pass-through payment of \$100, but no additional child support collections were due and owing to her.

On August 19, 2011, petitioner's counsel wrote to OTDA's Division of Child

Support Enforcement, requesting a second-level desk review of child support payments for the period from September 2005 through August 2011.

OTDA sent petitioner and her counsel a second-level desk review determination, dated April 20, 2012. It confirmed the First-Level Desk Review Determination and found that petitioner was not entitled to any additional child support collections.

Petitioner filed and served the initial petition, dated April 5, 2012 commencing the instant article 78 proceeding. Then, petitioner filed the Amended Petition, dated May 23, 2012, to challenge the Second-Level Disk Review Determination.

DISCUSSION

An Article 78 proceeding is a special proceeding. It may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (CPLR 409 [b]; 7801, 7804 [h].) Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial. (CPLR 7804 [h]; Matter of York v McGuire, 99 AD2d 1023 [1984], affd 63 NY2d 760 [1984]).

The applicable standard of review is whether the administrative decision was: (1) made in violation of lawful procedure; (2) affected by an error of law; or (3) arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR 7803 [3]). An agency abuses its exercise of discretion if its administrative orders lack a rational basis. "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (Matter of Pell v Board of Educ.

Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

The parties are not in dispute that under SSL § 158(5), petitioner's rights to child support are permanently assigned to the state and local social services district as long as the support payments received do not exceed the total amount of assistance paid to the family as of the date the family no longer receives public assistance. Applying this law, this Court after reviewing the accounting done and provided to the petitioner in support of both the First and Second-Level Desk Review Determinations finds that the decisions were neither arbitrary, capricious, or erroneous. The petitioner's remaining contentions are without merit.

Accordingly it is

ADJUDGED that the petition is denied; and it is further

ADJUDGED that the proceeding is dismissed.

Dated: 11/7/12

ENTER:

*Donna M. Mills*  
J.S.C.

**DONNA M. MILLS, J.S.C.**