Matter of Harper v New York State Cent. Register of Child Abuse & Maltreatment
2014 NY Slip Op 31364(U)
May 23, 2014
Supreme Court, New York County
Docket Number: 101332/2013
Judge: Peter H. Moulton
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This opinion is uncorrected and not selected for official publication.

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 101332/2013

HARPER, REGINA

vs

NYS REGISTER OF CHILD ABUSE

Sequence Number : 001

ARTICLE 78

PART 52

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

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

denied in accordance with the written decision dated 5/23/14

FILED

MAY 28 2014

NEW YORK
COUNTY CLERKS OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

FOR THE FOLLOWING REASON(S):

Dated: 5/23/14 _____

HON. PETER H. MOULTON
SUPREME COURT JUSTICE _____, J.S.C.

1. CHECK ONE: .... ✓ CASE DISPOSED   ☐ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: ....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: .... ☐ SETTLE ORDER   ☐ SUBMIT ORDER

☐ DO NOT POST   ☐ FIDUCIARY APPOINTMENT   ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 57
------------------------------------X
In the Matter of the Application of
REGINA HARPER

          Petitioner,

for a Judgment pursuant to Article 78
Of the Civil Practice Law & Rules,

                                      Index No.:
                                      101332/2013

          -against-

NEW YORK STATE CENTRAL REGISTER OF
CHILD ABUSE AND MALTREATMENT and
NEW YORK CITY ADMINISTRATION FOR
CHILDREN'S SERVICES,

          Respondents.
------------------------------------X

PETER H. MOULTON, J.S.C.:

       In this Article 78 proceeding, petitioner challenges a

fair hearing determination dated May 21, 2013 by an Administrative

Law Judge at the Department of Special Hearings. The ALJ upheld

the determination of respondent New York City Administration for

Children's Services of child maltreatment. The only finding of

maltreatment arose from an incident where a child of fourteen

months fell from his crib while playing with his nine year old

brother. Both children were in petitioner's care at the time. ACS

found that petitioner's failure to immediately take the child to a

doctor constituted maltreatment. She instead took the child to a

regular doctor's appointment scheduled within two to three days of

the incident. There is nothing in the record to indicate that the child suffered any lasting damage.

Respondent New York State Office of Children and Family Services (sued herein as "New York State Central Register of Child Abuse and Maltreatment") ("OCFS") moves to dismiss on statute of limitations grounds. OCFS offers the affidavit of its employee Beth Mancini, who recites that pursuant to OCFS procedures the decision was mailed to petitioner "on or before May 21, 2013." She does not explain how it could have been mailed before May 21, as that is the date that the decision was issued. Respondent argues that the date of mailing is the accrual date for statute of limitations purposes.

The petition was filed on September 26, 2013. This date is more than four months after May 21, 2013. Accordingly, if respondent is correct that May 21 was the accrual date, the proceeding is time-barred under the four-month statute of limitations provided by CPLR 217(1).

Petitioner admits that she received the decision, but on May 28, 2013. Her affidavit is sufficient to rebut respondent's showing. She does not deny receipt; rather she states that she finally received the decision seven days after mailing. This would appear to constitute a longer than usual lag time for US mail, but

it is certainly the case that US mail is sometimes delayed.[1]

The limitations period for instituting an Article 78 proceeding challenging final agency action does not begin to run until the aggrieved party is aware of the determination, and the fact that she is aggrieved by it. (See <u>Alterra Healthcare Corp. v Novello</u>, 306 AD2d 787.) Accordingly, petitioner's receipt of the decision is the proper accrual date for the commencement of the running of the four month period. (See <u>Hasberry v New York City Department of Education</u>, 61 AD3d 523; <u>Ousmane v City of New York</u>, 7 Misc3d 1016[A].) Therefore May 28, 2013 is the correct accrual date and the petition was timely brought.

The motion is denied. OCFS shall have 20 days to answer the petition from service of a copy of this decision with notice of entry. At oral argument, the parties agreed that if this court were to find that the proceeding was not time-barred, then the petition raises a substantial evidence question that must be determined by the First Department. (CPLR 7804[g].)

Accordingly, it is

ORDERED that, pursuant to CPLR 7804(g), the application by petitioner to vacate an annul a determination by respondents is respectfully transferred to the Appellate Division, First

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[1]For comparison's sake, CPLR 2103 adds five days for service of papers by mail in a pending action. This provision does not apply to the facts of the instant case as there was no "pending action" at the time the decision was mailed to petitioner.

Department, for disposition pursuant to CPLR 7804(g). This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is, on the entire record, supported by substantial evidence (CPLR 7803[4].)

Petitioner shall serve a copy of this order on the County Clerk who is directed to transfer the file to the Appellate Division, First Department, after receipt of the answer of respondent New York State Office of Children and Family Services (sued herein as "New York State Central Register of Child Abuse and Maltreatment")

This constitutes the decision and order of the court.

Dated: May 23, 2014

HON. PETER H. MOULTON

J.S.C.

FILED

MAY 28 2014

NEW YORK
COUNTY CLERKS OFFICE

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