M E M O R A N D U M D E C I S I O N

SUPREME COURT : STATE OF NEW YORK

In the Matter of BESSIE LONG,

Petitioner

For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules, and Title 42 of the United States Code Section 1983

-against-

CESAR A. PERALES, as Commissioner of the New York State Department of Social Services, and JOSEPH D'ELIA, as Commissioner of the Nassau County Department of Social Services,

Respondents

Index No. 17986/88

By: MURPHY, J

Dated: 4/24/89

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In this Article 78 proceeding, the petitioner seeks judgment inter alia, annulling respondent Perales' decision after fair hearing dated June 23, 1988.

By his fair decision, the respondent State Commissioner affirmed a determination of the Nassau County Department of Social Services (hereafter "Agency") to deduct

the sum of $15,583.90 from the petitioner's initial Supplemental Security Income (hereafter "SSI") payment of $16,795.29. The amount deducted represented the amount of Home Relief benefits paid to the petitioner by the respondent Agency from October 1982 through August 1986, while her application for SSI benefits was pending.

The petitioner has asserted five numbered "claims" in her petition. The petitioner's "first claim" alleges that respondent Perales' decision "violated 42 U.S.C. 1383(d)(1) and 42 U.S.C. 407 in that it ignored the strict prohibition against the transfer or assignment of SSI benefits and against the execution, levy, attachment, garnishment or other legal process to acquire SSI benefits." The Court disagrees.

The Public Assistance Recertification Form signed by the petitioner on December 13, 1982 contained an authorization permitting the Social Security Administration (hereafter "SSA") to send the petitioner's initial payment of SSI benefits to the respondent Agency and, further, permitted the respondent Agency to deduct the amount of Home Relief benefits paid to the petitioner while her application for SSI benefits was pending. Such an authorization is permitted by 42 U.S.C. §1383(g). Indeed, the entire "interim assistance reimbursement scheme" utilized in this case is consistent with Federal statutes and regulations (see, e.g., In re Vazquez, Guerrero and Compton, 788 F.2d 130, cert. den. 479 U.S. 936).

The petitioner's "second claim" alleges that respondent Perales' decision violated 18 NYCRR §370.7(a)(4) "in that the petitioner did not sign 'the State-prescribed form' (DSS form 2424)". Again, the Court disagrees. Section 370.7(a)(4) does not specify that DSS Form 2424 must be used. It is undisputed that the petitioner did sign a State-presribed form (i.e. DSS 3174). Whether it is the State-prescribed form is a matter of construction.

"It is well settled that the construction given to statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld." (Matter of Howard v. Wyman, 28 N Y 2d 434, 438) The Court cannot say as a matter of law that respondent Perales' construction of Section 370.7(a)(4) to include the form signed by the petitioner was either irrational or unreasonable.

In her "third claim," the petitioner alleges that respondent Perales' holding "that the Recertification Forms for public assistance signed on July 1, 1982 and December 13, 1982 by the petitioner were valid even though they were not 'the State-prescribed form'" violates the doctrine of administrative stare decisis. This claim has merit. A contrary holding by respondent Perales was made on August 10, 1984 in the Matter of Vivian M. (FH#0576897J).

Furthermore, respondent Perales' present decision is inconsistent with a prior holding that a repayment authorization can only be given prospective effect (i.e.,

Matter of Gennell D. (FH#0760771H)) and prior holdings that a repayment authorization must be executed within 180 days of the application for SSI benefits to be effective (i.e., Matter of Vivian M., supra; Matter of Patricia D. [FH#0451463Z)).

The Court of Appeals has held that "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious" (Mtr. of Field Serv., 66 N Y 2d 516-517; see also, Matter of Martin, 70 N Y 2d 679). Such is the case here.

Since respondent Perales' decision in this matter does not explain the departure from prior precedent, reversal of the decision is mandated (Mtr. of Field Serv., supra).

In her "fourth claim," the petitioner alleges that "[t]he routine signing of a recertification form for public assistance by the petitioner does not amount to the knowing, intelligent formal consent and written authorization required by 42 U.S.C. 1383(g)(1) and 20 CFR 416.1902." This "claim" appears to be based upon the location of the repayment authorization on the last page of the recertification form and the size of the print used. However, since the State prescribed this form and the Federal authorities accepted it, the Court can only conclude that the form conforms to all Federal and State

requirements.

Insofar as it is alleged in the petitioner's brief that she suffers from a mental disability and suggests that it would have been impossible for her to read and understand the repayment authorization, these assertions are de hors the record. "Judicial review of administrative action is limited to the facts and record adduced before the agency when the determination was made" (Celestial Food v. Liq. Auth., 99 A D 2d 25, 26-27).

FInally, in her "fifth claim," the petitioner seeks to recover attorney's fees pursuant to 42 U.S.C. §1988. This "claim" is denied. The petitioner has not prevailed on a Federal Claim within the meaning of 42 U.S.C. §1983, which is a precondition to such an award (see, Matter of Rahmey v. BLum, 95 A D 2d 294, 299). The consistent application of the doctrine of administrative stare decisis is not a right secured by the Constitution and laws of the United States. While respondent Perales' decision is arbitrary and capricious, it is not a violation of the petitioner's right to due process. Indeed, prior administrative decisions can be overruled, superseded, or otherwise changed consistent with the Constitution and laws of the United States.

Accordingly, judgment shall be entered in favor of the petitioner annulling the decision after fair hearing, dated June 23, 1988, and remitting this matter to respondent Perales for further proceedings in accordance with this

decision.

Settle judgment on notice.

J.S.C.