

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

743

TP 08-01289

PRESENT: HURLBUTT, J.P., MARTOCHE, FAHEY, CARNI, AND PINE, JJ.

IN THE MATTER OF MARVIN J. KINNE, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF
THE COMMISSIONER, RESPONDENT.

D. VICTOR PELLEGRINO, UTICA, FOR PETITIONER.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Oneida County [Bernadette T. Romano, J.], entered June 3, 2008) to review a determination of respondent. The determination found after a fair hearing that petitioner was currently ineligible for medical assistance benefits.

It is hereby ORDERED that the determination is unanimously modified on the law and the petition is granted in part by annulling that part of the determination finding petitioner ineligible for medical assistance benefits between the date on which the personal service agreement was executed and the date on which the determination of the Oneida County Department of Social Services was made and as modified the determination is confirmed without costs, and the matter is remitted to the Oneida County Department of Social Services for further proceedings in accordance with the same Memorandum as in *Matter of Barbato v New York State Dept. of Health* (___ AD3d ___ [Aug. 21, 2009]).

Entered: August 21, 2009

Patricia L. Morgan
Clerk of the Court