

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

451

CA 10-02129

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF COUNTY OF HERKIMER,  
PETITIONER-RESPONDENT,

V

ORDER

RICHARD F. DAINES, AS COMMISSIONER OF NEW YORK  
STATE DEPARTMENT OF HEALTH, AND NEW YORK STATE  
DEPARTMENT OF HEALTH, RESPONDENTS-APPELLANTS.

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ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (VICTOR PALADINO OF  
COUNSEL), FOR RESPONDENTS-APPELLANTS.

WHITEMAN, OSTERMAN & HANNA LLP, ALBANY (CHRISTOPHER E. BUCKEY OF  
COUNSEL), AND NANCY ROSE STORMER, P.C., UTICA, FOR  
PETITIONER-RESPONDENT.

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Appeal from a judgment (denominated order and judgment) of the  
Supreme Court, Herkimer County (Michael E. Daley, J.), entered May 3,  
2010 in a proceeding pursuant to CPLR article 78. The judgment, among  
other things, granted the petition and directed respondents to  
reimburse petitioner the sum of \$692,296.37.

It is hereby ORDERED that the judgment so appealed from is  
unanimously modified on the law by vacating subparagraph (B) of the  
second decretal paragraph and as modified the judgment is affirmed  
without costs (*see Matter of County of St. Lawrence v Daines*, 81 AD3d  
212; *Matter of County of Niagara v Daines*, 79 AD3d 1702, 1705-1706).

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court