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## Public Welfare

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*N.Y. CONST. art. XVII, § 1:*

*The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.*

**SUPREME COURT, APPELLATE DIVISION**

**SECOND DEPARTMENT**

**Molloy v. Bane<sup>1</sup>**  
(decided October 2, 1995)

The petitioner, Barbara J. Molloy claimed that the termination of her Medicaid benefits by the New York State Department of Social Services [hereinafter DSS], based on the renouncement of her intestate interest in the estate of her daughter, was improper pursuant to section 2-1.11 of the New York Estate Powers and Trusts Law.<sup>2</sup> In considering the petitioner's claim, the appellate division based its reasoning on Article XVII, section I of the New York State Constitution.<sup>3</sup>

The court concluded that this section, which obligates the state to provide "aid, care and support [to] the needy,"<sup>4</sup> is limited by the "basic premise that aid is to be furnished only to the truly needy and the legislature enjoys great discretion to exclude from

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1. 214 A.D.2d 171, 631 N.Y.S.2d 910 (2d Dep't 1995).

2. *Id.* at 174, 631 N.Y.S.2d at 912-13. *See* N.Y. EST. POWERS & TRUSTS LAW § 2-1.11(b)(1) (McKinney 1981). This section provides in pertinent part: "Any beneficiary of a disposition may renounce all or part of his interest . . . ." *Id.*

3. N.Y. CONST. art. XVII, § 1. Section 1 provides: "The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." *Id.*

4. *Id.*

aid programs those individuals who have purposely created their own need.”<sup>5</sup> Accordingly, the court held that DSS had correctly terminated the petitioner’s benefits, pursuant to DSS regulations, because she had failed to pursue an alternative, available resource.<sup>6</sup> Thus, the court effectively denied petitioner’s constitutional claim to public assistance on the ground that she “theoretically perpetuated her own neediness by eschewing a potentially viable resource.”<sup>7</sup>

The petitioner moved to Florida after spending most of her life in Suffolk County, New York.<sup>8</sup> In Florida, she experienced a severe brain hemorrhage, and as a result was partially paralyzed, restricted to a wheelchair, and could no longer speak.<sup>9</sup> She returned to New York, and was eventually placed in a nursing home located in Rockland County.<sup>10</sup> Her receipt of Medicaid benefits commenced in 1989.<sup>11</sup> Two years later, petitioner’s daughter died in an automobile accident at the age of eighteen.<sup>12</sup>

Rockland County DSS, upon learning of this incident, requested three times that petitioner assign her intestate interest in her daughter’s estate to Rockland County DSS, because it believed that a wrongful death suit on the daughter’s behalf could yield a monetary recovery.<sup>13</sup> Although petitioner did not respond to the first two requests, she eventually filed her renunciation of any interest in her daughter’s estate with the Suffolk County

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5. *Molloy*, 214 A.D.2d at 174, 631 N.Y.S.2d at 913. The court stated that “[w]ho is, and who is not, needy, is determined by reference to the rules found in, among other places, Social Services Law § 366, which governs eligibility for medical assistance.” *Id.* See N.Y. SOC. SERV. LAW § 366 (McKinney 1992). This section provides in pertinent part: “Medical assistance shall be given . . . to a person who requires such assistance and who . . . is eligible to receive federal supplemental security income payments and/or additional state payments . . . .” *Id.*

6. *Molloy*, 214 A.D.2d at 174-75, 631 N.Y.S.2d at 913.

7. *Id.*

8. *Id.* at 172, 631 N.Y.S.2d at 911.

9. *Id.* at 172, 631 N.Y.S.2d at 911-912.

10. *Id.* at 172, 631 N.Y.S.2d at 912.

11. *Id.*

12. *Id.*

13. *Id.*

Surrogates Court before she received the third request.<sup>14</sup> By virtue of this renunciation, Rockland County DSS decided that she had failed to act in accordance with the requirements for Medicaid eligibility by “failing to pursue an available resource”<sup>15</sup> and, therefore, she violated section 360-2.3(c)(1) of title 18 of the Compilation of Codes, Rules and Regulations of the State of New York.<sup>16</sup> Petitioner received notice from DSS of its intent to terminate her Medicaid benefits, and she demanded that a hearing be held.<sup>17</sup>

At that hearing, the petitioner’s representative asserted that the petitioner’s renunciation was due to the fact that she would not be physically capable of enduring the trauma of a wrongful death suit because she was suffering from several debilitating illnesses.<sup>18</sup> Despite this assertion, New York State DSS agreed with Rockland County DSS and determined that she was “obligated to pursue a potential resource,” and therefore had violated the State public assistance regulations.<sup>19</sup> In response, petitioner filed suit in objection to this determination.<sup>20</sup>

The Appellate Division, Second Department affirmed the termination of the petitioner’s DSS benefits.<sup>21</sup> Although the court decided against the petitioner pursuant to state regulations, its reasoning was based, in part, on the determination to limit the scope of Article XVII, section 1 of the New York State Constitution.<sup>22</sup> The court stated that this constitutional provision

14. *Id.* at 173, 631 N.Y.S.2d at 912. The fact that the petitioner’s daughter died without a will and that the value of her estate was not discernible when Rockland County DSS requested assignment of petitioner’s intestate share to itself is undisputed. *Id.* at 172-73, 631 N.Y.S.2d at 912.

15. *Id.* at 173, 631 N.Y.S.2d at 912.

16. *Id.* See N.Y. COMP. CODES R. & REGS. tit. XVIII, § 360-2.3(c)(1) (1983). This section provides in pertinent part: “To be eligible for [assistance], the applicant must pursue any potential income and resources that may be available.” *Id.*

17. *Molloy*, 214 A.D.2d at 173, 631 N.Y.S.2d at 912.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 177, 631 N.Y.S.2d at 915.

22. *Id.* at 174, 631 N.Y.S.2d at 913.

confers upon the state the duty to assist the needy.<sup>23</sup> It explained that Medicaid benefits are based on need, the determination of which is outlined in state laws which set forth eligibility requirements.<sup>24</sup> Thus, the constitutional issue in this case focused upon the question of whether the application of these eligibility requirements to the petitioner violated her constitutional right to public assistance.<sup>25</sup>

In considering this issue, the court emphasized that the constitutional provision for public assistance was limited to the "truly needy,"<sup>26</sup> and that the legislature was entitled to deny public assistance to persons "who have purposely created their own need" for the aid.<sup>27</sup> The court relied upon the reasoning in *Matter of Kircher v. Perales*.<sup>28</sup> In *Kircher*, the Appellate Division, Second Department, stated that the Legislature, pursuant to its discretion, can define the requirements for neediness and create programs to aid the needy.<sup>29</sup> Thus, the court stated that the Legislature plays a definite role in establishing the scope of article XVII, section 1 of the New York State Constitution, since it "may establish different criteria for different types of assistance."<sup>30</sup>

The court in *Kircher* further declared that the legislature may withhold public assistance from "those who have purposely

23. *Id.* See *supra* note 3. See also *Dan J. Tucker v. Toia*, 43 N.Y.2d 1, 7, 371 N.E.2d 449, 451, 400 N.Y.S.2d 728, 730 (1977) (stating that "[i]n New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution").

24. *Molloy*, 214 A.D.2d at 174, 631 N.Y.S.2d at 913 (stating that "need[iness] is determined by reference to the rules found in, among other places, Social Services Law § 366, which governs eligibility for medical assistance").

25. *Id.* at 174, 631 N.Y.S.2d at 913.

26. *Id.* ("Underlying all eligibility determinations is a basic premise that aid is to be furnished only to the truly needy . . .").

27. *Id.*

28. 112 A.D.2d 431, 492 N.Y.S.2d 91 (2d Dep't 1985).

29. *Id.* at 433, 492 N.Y.S.2d at 94 (citing *Tucker v. Toia*, 43 N.Y.2d 1, 8, 371 N.E.2d 449, 452, 400 N.Y.S.2d 728, 731 (1977)).

30. *Id.*

created their own 'need' in order to qualify for assistance."<sup>31</sup> Therefore, the court in *Molloy* came to the conclusion that "because [the petitioner] failed to pursue an available resource," termination of her Medicaid benefits did not violate her constitutional right to public assistance.<sup>32</sup>

In addition, the appellate division addressed the argument that section 2-1.11 of the New York Estates, Powers and Trusts Law<sup>33</sup> gave the petitioner "an *absolute* right" to give up her intestate share in her daughter's estate.<sup>34</sup> The court rejected this argument, and determined that the right to renounce was in no way absolute.<sup>35</sup> The court stated that "EPTL 2-1.11 does not give [the petitioner] *carte blanche* to renounce potential available resources without impacting upon her eligibility" for Medicaid assistance.<sup>36</sup> Thus, the court determined that the public policy of limiting government aid to those who are legitimately needy overrides a person's right to reject a gift or inheritance, and therefore concluded that her right to renounce a gift did not excuse her obligation to seek out an alternative resource that was at her disposal.<sup>37</sup>

In the instant case, although the petitioner had the right to renounce her intestate share of a possible wrongful death

31. *Id.* (citing *Matter of Flynn v. Bates*, 67 A.D.2d 975, 976, 413 N.Y.S.2d 446, 447-48 (2d Dep't 1979) (holding that the petitioner was prohibited from waiving her elective share in her deceased husband's estate and then declaring that she was a needy citizen)). The *Flynn* court also stated that section 366(2)(b) of the Social Services Law supports this holding. *Flynn*, 67 A.D.2d at 976-77, 413 N.Y.S.2d at 448.

32. *Molloy*, 214 A.D.2d at 176-77, 631 N.Y.S.2d at 914-15.

33. N.Y. EST. POWERS & TRUSTS LAW § 2-1.11(b)(1) (McKinney 1981).  
*See supra* note 2.

34. *Molloy*, 214 A.D.2d at 175, 631 N.Y.S.2d at 913. The court acknowledged that there is a public policy which holds that a person has a right to refuse a gift. *Id.* at 174, 631 N.Y.S.2d at 913. However, the court declared that this policy had "to be balanced against . . . an equally established policy that public aid is not without limits, and one who receives public aid may not with impunity hide assets that might otherwise be used to pay for their care."  
*Id.*

35. *Id.* at 175, 631 N.Y.S.2d at 913.

36. *Id.* at 176, 631 N.Y.S.2d at 914.

37. *Id.*

recovery for her deceased daughter,<sup>38</sup> by doing so she perpetuated her status as a needy citizen.<sup>39</sup> Thus, the court held that DSS could make the determination that petitioner should be excluded from further participation in the Medicaid program.<sup>40</sup> Consequently, the court affirmed the limited scope of the state's welfare provision by upholding the DSS regulations requiring the pursuit of potential, alternative resources.<sup>41</sup>

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38. N.Y. EST. POWERS & TRUSTS LAW § 2-1.11(b)(1).

39. *Molloy*, 214 A.D.2d at 174-75, 631 N.Y.S.2d at 913.

40. *Id.* at 175, 631 N.Y.S.2d at 913.

41. *Id.* at 177, 631 N.Y.S.2d at 914.