

**PRESENT: HON. JEFFREY H. PEARLMAN PART 44M**

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INDEX NO. 159001/2024

MOTION DATE 09/27/2024

MOTION SEQ. NO. 001

ROBERT TUCKER, THE BOARD OF TRUSTEES OF THE  
NEW YORK CITY FIRE DEPARTMENT ARTICLE I-B  
PENSION FUND, THE MEDICAL BOARD OF THE NEW  
YORK CITY FIRE DEPARTMENT ARTICLE I-B PENSION  
FUND

Respondent.

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were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

159001/2024 MORRISON-MORGAN, DEBORAH vs. TUCKER, ROBERT ET AL  
Motion No. 001

benefits under the NYC Administrative Code § 13-347 and General Municipal Law § 207-k.”

*Petition*, NYSCEF Doc. No. 1.<sup>1</sup>

When a party makes an Article 78 motion, “judicial review is limited to whether the determination was irrational, arbitrary and capricious or contrary to law.” *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135. Article 78 of the CPLR allows a challenge to state administrative law where “a determination was... as arbitrary and capricious or an abuse of discretion.” CPLR 7803(3). “Administrative action is irrational or arbitrary and capricious if 'it is taken without sound basis in reason or regard to the facts.” *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135, quoting *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 (2010). “If a determination is rational it must be sustained even if ... another result would also have been rational.” *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d at 135. Further, the determination must be sustained “even if the court concludes that it would have reached a different result than the one reached by the agency.” *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222).

Petitioner is the widow and beneficiary of FDNY Firefighter John P. Morgan (“Decedent”). Decedent served as a Firefighter in the FDNY from August 5, 2007 continuously until his death on July 4, 2024. On June 17, 2023, the FDNY Bureau of Health Services

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<sup>1</sup> Petitioner additionally seeks a judgment pursuant to CPLR § 2307(a), “directing the respondents herein to serve and file upon the return date hereof: (a) all reports, recommendations, certificates and all other papers and documents submitted to the Board of Trustees and/or the Medical Board in connection with the application of petitioner herein; and copies of the minutes of each meeting of said Board of Trustees wherein the Board of Trustees reviewed, considered determined or otherwise acted upon the application of the petitioner.” *Petition*, NYSCEF Doc. No. 1. Because these documents were provided, the Court declines to rule on these requests.

(“BHS”) examined Decedent due to a service connected injury. *Pet. Exh. A.*, NYSCEF Doc. No. 3. In BHS’s Examination Report, decedent’s blood pressure reading was 157/98, a reading consistent with Stage II Hypertension. *Id.* On July 1, 2023, a BHS Clinic-Triage report measured Decedent’s blood pressure at 157/98, also consistent with Stage II Hypertension. *Pet. Exh. B.*, NYSCEF Doc. No. 4. Decedent died on July 4, 2023, during active service; an autopsy reported the cause of death as “cardiomegaly with recent cocaine use” with pathological diagnoses including “coronary atherosclerosis, moderate.” *Pet. Exhs. C, D*, NYSCEF Docs. No. 5-6. Petitioner filed an Application for Administrative Line-of-Duty Pension with the FDF on September 11, 2023.<sup>2</sup> *Pet. Exh. E.*, NYSCEF Doc. No. 7. On January 2, 2024, the FPF Medical Board declined Petitioner’s application on the grounds that it was “not possible to define the basis for [Decedent]’s death...[as] cardiomegaly...does not define the etiology of his death.” *Pet. Exh. F.*, NYSCEF Doc. No. 8. The Medical Board further cited “evidence of recent cocaine use” as a factor obscuring Decedent’s cause of death. *Id.* On May 29, 2024, the Board of Trustees denied Petitioner’s application based on the Medical Board recommendation. *Pet. Exh. G.*, NYSCEF Doc. No. 9.

To determine whether Respondent’s denial of benefits was arbitrary and capricious, the Court must determine whether the denial was contrary to the law. Under NY State General Municipal Law § 207-k (“the Heart Bill”), FDNY firefighters are entitled to a presumption that “any condition of impairment of health caused by diseases of the heart...resulting in...death to a paid member of the uniformed force of a...fire department, where such...firemen are drawn from competitive civil service lists, who successfully passed a physical examination on entry into the service of such respective department, which examination failed to reveal any evidence of such

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<sup>2</sup> Petitioner is entitled to death benefits, if any are granted, pursuant to Administrative Code §13-347.

condition, shall be presumptive evidence that it was incurred in the performance and discharge of duty, unless the contrary be proved by competent evidence.” Under Administrative Code of the City of New York (“Code”) § 13-316, the New York City Fire Pension Fund (“FPF”) is administered by the Board of Trustees. The Board of Trustees is a 12-member body, with four Trustees from management and eight from labor. Code § 13-316. Under Code § 13-223, disability applications are reviewed by a Medical Board made up of three physicians, who report their recommendations to the Board of Trustees.

Here, the Medical Board recommended that the Board of Trustees deny Petitioner’s application because the “basis for the cardiomegaly [was] undefined” and “evidence for recent cocaine use pre-morbid, but its role in [Decedent’s] demise [was] also not defined.” *Pet. Exh. D.*, NYSCEF Doc. No. 6. Respondents argue that the Board of Trustees is meant to rely on the Medical Board and that it was reasonable to find, in reliance on the Medical Board’s recommendation, that “petitioner failed to establish that the decedent suffered from any qualifying heart disease or that his cause of death was due to a stroke.” *Memorandum of Law*, NYSCEF Doc. No. 14. While the Board of Trustees is correct to assert that it has the discretion to rely on the Medical Board, that discretion cannot be exercised to a degree that is contrary to the law. *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135. Petitioner asserts, without objection from Respondents, that when Decedent joined the FDNY, he passed his physical examinations. *Petition*, NYSCEF Doc. No. 1. Petitioner implies, again without objection from Respondents, that those physical examinations revealed no heart conditions. *Id.* Decedent died while serving as an FDNY firefighter and his autopsy report listed cardiomegaly and coronary atherosclerosis, moderate, both heart diseases. *Pet. Exhs. C, D*, NYSCEF Docs. No. 5-6. These facts plainly qualify Petitioner for the statutory presumption that

the Heart Bill provides. Respondents contend that Petitioner “failed to furnish any proof that the decedent suffered from any heart disease or stroke.” *Memorandum of Law in Opposition*, NYSCEF Doc. No. 14. That assertion, however, flies in the face of the case law. In *Matter of Luc v. O’Neill*, the First Department ruled that “Respondents cannot deny ADR benefits in a case governed by General Municipal Law § 207-k by relying solely on the absence of evidence tying the disability to work-related stress.” 189 A.D.3d 504 (1st Dept., 2020). In *Matter of Bitchatchi v Board of Trustees of the N.Y. City Police Dept. Pension Fund, Art. II*, the Court of Appeals held that the Board “could not rely on petitioner’s deficiencies to fill its own gap in proof” and that the record needed “affirmative credible evidence to rebut the presumption we...hold that petitioner is entitled to ADR benefits.” 20 NY3d 268, 284 (2012). Therefore, the Court finds that Respondents’ actions were arbitrary and capricious.

While Petitioner’s Article 78 challenge is successful, her requested remedy is unavailable. In *Matter of Maron v. Silver*, the Court of Appeals ruled that “[a] CPLR article 78 proceeding seeking mandamus to compel the performance of a specific duty applies only to acts that are ministerial in nature and not those that involve the exercise of discretion.” 14 N.Y.3d 230 (2010). Because even with the statutory presumption intact, the Board of Trustees is still not required to grant the requested benefits, the Court may not compel Respondents to do so. Instead, the Court remands the matter to the Board of Trustees for a proper review that complies with the Heart Bill.

Based on the above reasoning, it is hereby **ORDERED** that branch (1) of the petition is granted;  
and it is further

**ORDERED** that branch (2) of the petition is denied; and it is further

**ORDERED** that that branch (3) of the petitioner is granted.

<p><u>8/26/2025</u> DATE</p>	<p><b>HON. JEFFREY H. PEARLMAN</b> J.S.C.</p>	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED <input type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
APPLICATION:		<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE
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