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Matter of Brian L. v Administration for Children's Services

Matter of Brian L. v Administration for Children's Servs. 2006 NY Slip Op 06302 [32 AD3d 325] August 24, 2006 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. As corrected through Wednesday, October 11, 2006

In the Matter of Brian L., Also Known as Mariah L., Respondent,
v
Administration for Children's Services, Appellant.

—[*1]

Order, Family Court, New York County (Sheldon M. Rand, J.H.O.), entered on or about January 18, 2006, which granted the Law Guardian's motion for an order directing the Administration for Children's Services to arrange for petitioner to have sex reassignment surgery, unanimously reversed, on the law, without costs, and the matter remanded to appellant agency for further proceedings.

This case involves the issue of whether the Family Court properly ordered the Commissioner of Social Services for the City of New York to pay for sex reassignment surgery for a 20-year-old child in foster care. While the record contains evidence that the operation is the generally recognized successful treatment for gender identity disorder, the record is incomplete, and, therefore, this issue is not yet ripe for determination. [*2]

The Commissioner should have provided the Family Court with a clear statement of the reasons for denial of this surgery (see e.g. Matter of Mid-Is. Hosp. v Wyman, 15 NY2d 374, 378 [1965]), and, consequently, we remand for that purpose (see CPLR 7806 [court may direct specified action by respondent]). The appellate arguments supporting the Commissioner's denial are speculative as the record is silent as to any basis or rationale for such denial. Furthermore, the Family Court should determine whether a fact-finding hearing is warranted once the Commissioner articulates the reasons for denying petitioner's request. Concur—Buckley, P.J., Andrias, Marlow, Nardelli and Catterson, JJ.

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