NEW YORK STATE DEPARTMENT OF FAMILY ASSISTANCE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REPORT OF SIGNIFICANT LITIGATION

(January 2012)

* indicates update since last report
**indicates new case

I. Litigation Affecting the Policies and Procedures of the Division of Temporary Assistance

***Walter E. Carver v. New York State Office of Temporary and Disability Assistance, New York State Department of Taxation and Finance, and New York State Division of Lottery**

Supreme Court, Kings County, commenced April 25, 2008.
Supreme Court Appellate Division 2nd Judicial Department, decided June 21, 2011.
United States District Court, Eastern District commenced September 10, 2008.
Untied States Court of Appeals, 2nd Circuit, decided September 23, 2010.
New York State Court of Claims, commenced October 1, 2008.
Supreme Court Appellate Division 3rd Judicial Department, decided December 16, 2010.

Parties: Petitioner/Plaintiff is an individual who was a former public assistance recipient who won the lottery on August 10, 2007 and had those winnings intercepted by OTDA. Respondents in the State Court Actions are: NYS OTDA, NYS T&F and NYS Lottery. Defendants in the Federal Court Action are: the City of New York, NYC HRA, NYC Health and Hospital Corp. and NYC Dept. of Transportation.

Character of Litigation: The State Court Action is a CPLR Article 78 and the Federal Court Action is a Class Action for Declaratory and Injunctive Relief.

Law or Regulation in Issue: Social Services Law 131-r, 336, New York Tax Law 1613-b, Fair Labor Standards Act (FLSA)

Issue: The petitioner won $10,000.00 playing the lottery on August 10, 2007. Pursuant to Social Services Law (SSL) §131-r and Tax Law § 1613-b, OTDA intercepted $5,000.00 of Mr. Carver's lottery winnings in recoupment of public assistance (PA) benefits he received during the period from September 5, 1997, through March 4, 2000. On April 25, 2008, Petitioner brought an Article 78 in the Kings County Supreme Court against OTDA in which he alleged that he owed no debt to defendant since any and all PA received was "payment" for hours "worked" at minimum wage while he was assigned by the local social service district to a WEP activity. Petitioner alleged that as a participant in the WEP program, he was assigned to work for the City of New York at Coney Island Hospital, where he sorted and delivered mail, and at the Staten Island Ferry Terminal, where he swept floors, picked up trash, and threw down salt in the winter. The petitioner also asserted that, as a WEP participant, he was required by the OTDA to work 35 hours per week and in exchange for his work, he was paid $176 every two weeks, and he also received food stamps.

Status: State Court Action: The Kings County Supreme Court dismissed the Article 78 proceeding in April of 2009 as to all the Respondents and Petitioner appealed. The Appellate Division Third Department ruled against OTDA on June 21, 2011, and remanded the case to the Supreme Court on the issue of FLSA. OTDA filed an Answer on July 27, 2011, and oral argument is scheduled for February 3, 2011.

Federal Class Action: The U.S. District Court dismissed the Plaintiff's motion on March 31, 2009 and Plaintiff appealed. The U.S. Court of Appeals 2nd Circuit held that Plaintiff had standing to assert his minimum wage claims and remanded the case to the District Court for further consideration. At this time OTDA is not a named party in this Federal Class Action.

Related Cases: None

Responsible Attorneys:
Robert Kraft, Assistant Attorney General, New York State Department of Law
Alicia Sullivan, Associate Attorney, New York State Office of Temporary & Disability Assistance
Arieh Mezoff, Senior Attorney, New York State Office of Temporary & Disability Assistance

***GRAVES et al. v. DOAR et al.**

Supreme Court, Nassau County, commenced June, 2004.

Parties: The plaintiffs are a purported class of food stamp recipients in New York State whose food stamp benefits have been or will be determined under the New York State Group Home Standardized Benefit Program (GHSBP) and whose monthly income has included or will include payments of Supplemental Security Income (SSI) benefits.

Character of Litigation: This is a hybrid Article 78 proceeding and class action for declaratory and injunctive relief.

Issue: Plaintiffs brought this action against the New York State Office of Temporary and Disability Assistance (OTDA) and the Nassau County Department of Social Services alleging that the GHSBP inappropriately reduces food stamp benefits to recipients of SSI in violation of the New York State Constitution and the State Administrative Procedures Act (SAPA) by failing to promulgate regulations. Plaintiffs further allege that the GHSBP provides an unfavorable allocation of food stamp benefits to group home recipients of SSI in comparison to GHSBP recipients in receipt of Public Assistance (PA) benefits in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I §11 of the New York State Constitution.

Status: The Court recently issued an unfavorable decision and Order in the above litigation concerning the issuance of food stamp benefits under the New York State Group Homes Pilot Project. The Order granted petitioners partial summary judgment holding that the implementation of the New York State Group Homes Pilot Project violates the rule-making requirements of Article IV§8 of the New York State Constitution and Article 2 of the SAPA. The Court denied plaintiffs motion for class certification. The Group Homes Pilot Project is a federally approved project which provides standardized food stamp benefits to Group Home residents. Subsequently, the Court issued a second Order enjoining the operation of the Group Homes Pilot Project and ordering the restoration of benefits to the named plaintiffs back to date the Project was implemented. The OTDA has appealed the Court's Orders, resulting in an automatic stay of the Orders. Subsequently, the OTDA promulgated regulations, effective October 1, 2008, which provided for a new budgeting methodology for residents of group homes. This officially terminated the Group Homes Pilot project. As a result, the OTDA dropped the appeal of the Courts' Orders and moved for dismissal of the action based on mootness. Plaintiffs, who have appealed the denial of their class certification motion, opposed the OTDA motion. On March 31, 2009, the Court issued a second decision finding that the GHSBP violated the Equal Protection clauses of the federal and the New York State Constitutions. However, the Court denied plaintiff's motion regarding alleged violations of Article XVII, Section 1 of the New York State Constitution. Although the Court adhered to its original determination denying class certifications, in the alternative, it authorized eight identified individuals, and others similarly situated, to seek leave to intervene. Further, the Court denied the State's motion to dismiss holding that the proceeding is not moot.

The Appellate Division, second Department, reversed the order of the Supreme Court denying certification of a plaintiff class and granted appellant's motion for class certification. However, the Court narrowed the class sought by plaintiff and constructed a new class definition limited to recipients of food stamps in the State of New York whose food stamp benefits were determined

and reduced under the Group Home Standardized Benefit Program and whose monthly incomes include payments of Supplemental Security Income benefits. In doing so, the potential class size was reduced from the approximately 33, 000 sought by plaintiffs to approximately 20,000 individuals.

The OTDA appealed the March 31, 2009, decision to the Appellate Division, second department. On August 30, 2011, the Appellate Division issued a split decision finding that the OTDA was in violation of the Equal Protection Clauses, but held that no additional restored food stamps benefits were owed to plaintiff class. The Court held in favor of OTDA when it refused to expand the Class to include the proposed interveners (would have doubled the class size), and found no violation of other State constitutional claims made by plaintiffs. Subsequently, OTDA received approval from the United States Department of Agriculture (USDA) for use of a standardized budgeting methodology in order to restore food stamp benefits to over 15,000 cases whose benefits were reduced when they entered the Group Homes Pilot program (as directed in the initial 2008 Court ruling). The OTDA is currently in the process of implementing the decision of the Court.

Programmatic Impact: The class size is roughly estimated to be 20,000 individuals. Prospective implementation would require computer reprogramming of the State's Welfare Management System (WMS) and the promulgation of State regulations. If the Court were to order restored benefits to a class, local social services districts would be required to do off line budgeting for every case, unless the United States Department of Agriculture (USDA) were to approve the use of a standardized benefit restoration.

Related Cases: none

Responsible Attorneys:
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John Di Bari, Associate Attorney, New York State Office of Temporary & Disability Assistance
Arieh Mezoff, Senior Attorney, New York State Office of Temporary & Disability Assistance

***M.K.B. et al v. EGGLESTON, DOAR & NOVELLO**

United States District Court, Southern District of New York, commenced December 13, 2005.

Parties: Plaintiffs are certain non-citizens who have a relatively obscure immigration status. The Defendants are the Commissioners of HRA, OTDA and DOH.

Character of Litigation: Class Action, Action for declaratory and injunctive relief.

Law or Regulation in Issue: Social Services Law §§122, 131, 366; 18 NYCRR §§349, 350, 351; 42 USC § 1983; 7 USC §2020; 7 CFR §273.2

Issue: Plaintiffs claim that HRA is failing to properly determine their eligibility for public assistance, food stamps and Medicaid. Plaintiffs allege that the HRA computer system (POS) and workers do not correctly identify the status and make them eligible for benefits. The allegation against the State OTDA and Department of Health is that we do not properly supervise and train HRA. Among the facets of that allegation is that, allegedly, our regulations with respect to the need for a social security number are inconsistent and contrary to law; and that our WMS system is difficult to use and doesn't allow the plaintiffs to be correctly determined and recorded as eligible.

A specific issue with respect to Medicaid is related to the Food Stamp program. In general, qualified aliens have to wait five years to be eligible for food stamps. However, qualified aliens who are in receipt of certain disability benefits, including Medicaid, based on a Medicaid disability determination, can receive food stamps without the five year wait. The plaintiffs want Medicaid disability determinations done on all of the class members, even if they are already receiving Medicaid without a disability determination. The only purpose of the determination would be to establish eligibility for food stamps.

Status: Plaintiffs requested discovery and the OTDA has, to date, provided many of the requested materials. The discovery request is ongoing and the OTDA will be providing additional materials to comply with the requests. The plaintiffs moved for a preliminary injunction and the Court heard argument on February 2, 2006. On February 16, 2006, the Court issued a preliminary injunction ordering the OTDA to make certain revisions and issue a new release for aliens who are victims of domestic violence. The Court deferred ruling on all other matters until after a full evidentiary hearing. Numerous depositions were held between February 17, 2006 and the March evidentiary hearing.

A 9-day evidentiary hearing concluded in late March 2006 relative to the plaintiffs' motion seeking class certification and a preliminary injunction against all defendants. OTDA moved the Court to vacate its February 16, 2006 Order wherein the Court directed OTDA to complete four actions it had voluntarily promised to perform by various dates certain in its February 8, 2006 letter to the Court.

By Opinion and Order dated August 29, 2006, the United States District Court for the Southern District of New York (Rakoff, J.) granted the plaintiffs' motion for preliminary injunctive relief by reconfirming the relief set forth in the Order of February 16, 2006.
While commending the defendants for their ameliorative actions undertaken since the commencement of this action, the Court held that additional measures were warranted.

Specifically, as against the State, in addition to directives set forth in the Court's February 16th Order, the Court ordered (1) OTDA to add a second date field to WMS so that the date an immigrant became a qualified alien and the date the immigrant entered the country can both be recorded, and in furtherance of this addition, to issue instructions explaining the use of these fields and clarifying that time accrued in different qualified alien statuses should be added together to determine eligibility for federal food stamps; (2) OTDA to issue clear and comprehensive instructions on how to open cases for aliens directly in WMS, focusing particularly on multi-suffix cases; (3) OTDA to correct a prior issuance which, according to the Court, is not sufficient to cause the Social Security Administration to issue a non-work social security number to an immigrant who lacks work authorization; and (4) the State to revise its training materials so that they accurately and comprehensively explain which immigrants are eligible for federal Medicaid.

On September 13, 2006, the State defendants moved for reconsideration of the class certification order on the grounds that two of the class members were improperly included in the class, namely, (1) LPRs who have been in that status for less than five years have no class representatives that can demonstrate the various claims such persons may have and (2) persons who are PRUCOL would require relief, that when implemented, would unavoidably require enforcement of State law against the State defendants in violation of the Eleventh Amendment to the U.S. Constitution. The Court denied the State defendants' motion for reconsideration of the class certification order.

A Stipulation of Settlement was signed by the parties on January 12, 2006. The stipulation incorporates the terms set forth in the above preliminary injunction and also provides for restored benefits and monitoring of the various programs. The fairness hearing was held on June 5, 2007, and the final Judgement was issued shortly thereafter. On June 23, 2011, plaintiffs moved to extend the stipulation against State defendants. On September 29, 2011, the Court extended the terms of the Stipulation until February 15, 2013. The State filed a Notice of Appeal.

Programmatic Impact: The Settlement provides for the identification of and notice to certain class members who are eligible for a restored benefit under the stipulation. The stipulation also provides for worker training by the City defendant. The stipulation provides for various monitoring by all defendants semi-annually for 46 months from the effective date of the stipulation. The first six semi-annual reviews were completed in June 2008, December 2008, June 2009, December 2009, May 2010 and December 2010.

Responsible Attorneys:
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John DiBari, Associate Attorney, New York State Office of Temporary & Disability Assistance
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WILLISTON et al. v. EGGLESTON et al.

United States District Court, Southern District of New York, commenced June, 2004.

Parties: Plaintiffs are a purported class of New York City residents who have sought, are seeking or will seek to apply for food stamps in New York City.

Character of Litigation: Class action pursuant to 42 USC § 1983 for declaratory and injunctive relief.

Issue: The plaintiffs brought this action against this Office and the City of New York alleging violations of State and federal law in the administration of the Food Stamp program. Specifically, plaintiffs allege that defendant's policies and practices fail to provide food stamp benefits to eligible applicants in a timely manner and that the State defendant does not properly oversee and supervise the City defendant's administration of the Food Stamp program. Further, plaintiffs allege that defendants do not provide food stamp benefits to eligible households within thirty days of application, that households are being deterred, discouraged and prevented from filing applications for food stamp benefits at initial contact with food stamp offices and that food stamp benefits are not being issued within the expedited processing time requirements by City defendant at their food stamp offices.

The plaintiffs are seeking certification of a class consisting of all New York City residents who have sought, are seeking or will seek to apply for food stamps in New York City. The plaintiffs also bring this action on behalf of two subclasses consisting of (1) New York City food stamp applicants who have not had their applications processed within 30 days of the day of application and (2) New York City residents who have been deterred, discouraged and prevented from filing an application for food stamp benefits and/or who have not received expedited food stamp benefits at New York City food stamp only offices.

The plaintiffs are seeking to permanently enjoin defendants from continuing the alleged policies and practices set forth above and a declaration that such actions violate State and federal law.

Status: The defendants moved to dismiss plaintiffs' complaint. The plaintiffs made a motion to intervene. The Court granted plaintiffs' motion to intervene on July 15, 2005 and denied defendants' motions to dismiss on July 25, 2005. The defendant OTDA submitted an answer on August 15, 2005. The City defendant's motion for leave to appeal the Court's denial of their motion to dismiss was denied. Defendants were served with Discovery requests and Interrogatories. The OTDA is in the process of responding to the Discovery request. In addition, plaintiffs moved for class certification. On June 29, 2006, the State defendant submitted our response opposing plaintiffs' motion for class certification. A settlement was reached in April 2008 which provides for State monitoring of New York City implementation of FS timeliness requirements. The State is currently monitoring those requirements.

Related Cases: Reynolds et al. v. Giuliani et al. The Food Stamp program access issues in the Reynolds litigation included the timely processing of food stamp applications, expedited processing of food stamp applications and barriers preventing individuals from applying for food stamps. However, the Reynolds litigation also involved the public assistance and Medicaid programs and concerns only New York City Job Centers. Williston involves only the Food Stamp program and relates to both New York City Job Centers and food stamp only centers. While there are clearly crossover issues with Reynolds, Williston differs to the extent that the food stamp allegations relate to food stamp only centers.

Responsible Attorneys:
William Bristow, Assistant Attorney General, New York State Department of Law
John DiBari, Associate Attorney, New York State Office of Temporary & Disability Assistance

II. **Budgetary Litigation**

CITY OF NEW YORK v. BERLIN

Supreme Court, New York County, commenced September, 2010.

Parties: The plaintiff is the City of New York (Department of Homeless Services) and the defendants are the OTDA and the New York State Division of the Budget ("DOB").

Character of Litigation: Article 78 proceeding

Law or Regulation in Issue: 1994 Memorandum of Understanding ("MOU")

Issue: The City of New York challenges OTDA's determination to not make any further payments to the City under a 1994 Memorandum of Understanding ("MOU"). The MOU provided for, among other things, the reimbursement of debt service costs for specified Tier II shelters, and established that State and federal participation in the Tier II debt service reimbursement would take place over a period of 18 years pursuant to an established amortization payment schedule. The amortization payment schedule provides for annual payments to the City of $12,407,609 through the 2012-2013 state fiscal year.

Reimbursement for this debt service under the MOU ceased because the City began to improperly claim the debt service based on case category; a practice that would overcharge federal funds based on program eligibility for residents of these shelters. In addition, OTDA asked for information about the back-up to the debt service, including whether sites were still operating and also whether the City had refinanced the original debt.

The City claims that OTDA's request for documentation of the underlying costs and debt service associated with the development of the 29 Tier II shelters is arbitrary and capricious, an abuse of discretion and contrary to law because the State reviewed and approved the capital costs and interest for State and federal reimbursement when it executed the MOU and approved the payment schedule. The City is asking that the court order the State to resume payments in accordance with the MOU, including all payments from 2004 forward that the State has withheld. The City claims it is owed approximately $113 Million through the expiration of the obligations under the MOU.

Status: OTDA is analyzing the City's allegations and preparing a response with the Attorney General's Office. The State's answer to the petition is due on January 28, 2011.

Programmatic Impact: The impact of the lawsuit, if successful is fiscal. The City is suing for $113 million. For the period through December 2009, NYC claimed $208.1 million combined federal and State share of which $152 million was paid. Of the $56 million unpaid balance $25.2 million is State share. The MOU provides for $16.5 million annual debt service through March 2013. If the remaining period is projected as being reimbursable at 50% Federal and 25% State, the payments for the period January 2010 through March 2013 would be another $40.3 million ($26.9 million federal and $13.4 million State). The State share could be higher based on the Family Assistance/ Safety Net split. The amount potentially owed would be approximately $100M.

Responsible Attorneys:
William Bristow III, Assistant Attorney General, New York State Department of Law
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III. Litigation Affecting the Operations of the Division of Legal Affairs (Office of Administrative Hearings)

FISHMAN et al. v. DAINES and PAOLUCCI

United States District Court, Eastern District of New York, commenced December 1, 2009.

Parties: The plaintiffs are a proposed class consisting of all New York State applicants for, or recipients of, Medicaid, ("A/R's"), who have requested a hearing, who defaulted the hearing, but were never sent a letter informing them that they defaulted and asking them if they have abandoned their hearing. Defendants are Richard Daines, New York State Department of Health, and John Paolucci, New York State Office of Temporary and Disability Assistance.

Character of Litigation: Class action for declaratory and injunctive relief and attorney's fees.

Law or regulations in Issue: New York State Medicaid Manual Section 2902.3 regarding default letters; 13 USC 1396a regarding timeliness; 42 CFR Sec 431.205(d) relating to due process; 42 CFR 431.223 regarding federal requirements for defaults; 18 NYCRR 358-5.5 regarding defaults.

Issue: Plaintiffs challenge the custom and practices of defendants in not sending a defaulting A/R a letter telling them they have defaulted and inquiring whether they have abandoned their Fair Hearing.

Status: Defendants' motion to dismiss was denied. The parties negotiated preliminary relief regarding the letters and will litigate the underlying merits.

Programmatic Impact: An adverse decision could result in having to permanently send out letters to A/R's who defaulted their hearings asking them if they have abandoned same and the opportunity to reschedule same.

Related Cases: None

Responsible Attorneys:
Susan Connolly, Assistant Attorney General, New York State Department of Law
Richard Mathieu, Senior Attorney, New York State Office of Temporary & Disability Assistance

***MENKING et al. v. DAINES and HANSELL**

United States District Court, Southern District of New York, commenced April 27, 2009.

Parties: The plaintiffs are a proposed class consisting of all New York City applicants for, and recipients of, Medicaid who have requested or will request Fair Hearings, for whom defendants have not rendered and implemented or will not implement a Fair Hearing decision within 90 days from the date of request of the Fair Hearing. The defendants are Richard F. Daines, MD, New York State Department of Health, and David Hansell, New York State Office of Temporary and Disability Assistance.

Character of Litigation: Class action for declaratory and injuntive relief and attorney's fees.

Law or Regulations in Issue: 42 USC § 1396a(a)(3), 42 CFR § 431.244(f), 45 CFR § 205.10(a)(16) regarding the timeliness of final administrative action.

Status: The Court is treating this case as a companion to Shakhnes v. Doar, (SDNY 2006). OTDA filed its answer, provided discovery and made a motion to dismiss which was denied. OTDA then responded to Plaintiff's motion for class certification and also filed a motion for summary judgment. The magistrate judge issued a report and recommendation certifying the class. OTDA is assessing objections to the report. There has been no decision on the summary judgment motion.

Programmatic Impact: An adverse final decision could result in court monitoring of defendant's program administration and hearings process and, potentially, the imposition of penalties.

Related Cases: Cutler v. Perales (SDNY 1988), Morel v. Giuliani (SDNY 1994) Shakhnes v. Doar (SDNY 2006)

Responsible Attorneys:
Robert Kraft, Assistant Attorney General, New York State Department of Law
Richard Mathieu, Senior Attorney, New York State Office of Temporary & Disability Assistance
Jane McCloskey, Senior Attorney, New York State Department of Health

MOREL, et al v. GIULIANI, et al.

United States District Court,Southern District of New York,

commenced June 16, 1994.

Parties: The plaintiffs are a class consisting of New York City residents who are recipients of one or more types of benefits, including Aid to Families with Dependent Children (AFDC), Home Relief (HR) or Food Stamps, who have requested or will request fair hearings in a timely manner to review a determination by the New York City Human Resources Administration (HRA) to discontinue, suspend reduce or restrict their benefits, and are entitled to aid continuing pending the issuance of a decision after fair hearing. Defendants are the Mayor of the City of New York, the Commissioner of HRA and Michael Dowling as Commissioner of the Department.

Character of Litigation: Action for declaratory and injunctive relief and attorney's fees.

Law or Regulation in Issue: 42 U.S.C. 602(a)(4); 7 U.S.C. 2020(e)(10); SSL Section 22; 18 NYCRR 358-4.2

Issue: Local social services agencies are required to restore assistance pursuant to an aid continuing directive as soon as possible, but no later than five business days from the date of notification by the Department that aid is to be continued. Plaintiffs are challenging the failure of HRA to respond to the Department's aid continuing directives in a timely manner in connection with the pending hearings of the named plaintiffs, as well as for the class, the failure of the Department to adequately supervise HRA's response to the aid continuing directives, and the failure of the Department to process timely hearing requests in a timely manner.

Status: Preliminary injunction granting class certification and provisional injunctive relief was signed on January 4, 1995. In addition to directing specific relief for the named plaintiffs the court enjoined the Department and HRA from redeploying or otherwise reducing staff responsible for insuring that class members receive benefits unchanged pending a fair hearing decision. The court also appointed a Special Master to "assist the parties in the development of a plan for the prompt disposition of requests for change of circumstances grants of aid-continuing benefits." Amended Preliminary Injunction issued in March 1996 removed the stay of redeployment and reduction of staff, and enjoined the Department and HRA to timely process hearing requests, direct aid continuing, and to implement aid continuing pursuant to the plan outlined in Principles of Agreement, which were incorporated in the order. The order also referred the case to a magistrate judge for trial by March 1, 1998. Detailed monitoring provisions are contained in the Principles of Agreement, and aid continuing data is being provided to all parties on an ongoing basis. Because of difficulties in the monitoring process, the review by the magistrate judge was adjourned several times pending completion of the negotiated monitoring activities. Based on continual showing of improvement in process, plaintiffs have initiated settlement discussions. Negotiations are underway.

Programmatic Impact: Fair hearings are requested on fewer than one of every one hundred notices sent by HRA. An adverse decision after could result in a continuation of benefits in millions of cases in which hearings are not requested, until a positive determination is made that no hearing has been requested. The Department may also be required to establish affirmative monitoring of the provision of aid continuing by HRA, which would require additional staff and resources, and could be subject to the imposition of penalties in those cases in which timely compliance with aid continuing directives is not effectuated.

Related Cases: Moore v. Perales (USDC/EDNY) 1985.

Responsible Attorneys:
George Alvarez, Assistant Attorney General, New York State Department of Law
Henry Pedicone, Assistant Counsel, New York State Office of Temporary & Disability Assistance

PIRON, et al. v. WING, et al.

Supreme Court, New York County, commenced April 1997.

Parties: The plaintiffs are a class consisting of New York City applicants for and recipients of public assistance who have requested or will request a fair hearing from a determination or act or failure to act by the New York City Human Resources Administration (HRA) concerning their receipt of, or application for, benefits.

Character of Litigation: Action for declaratory and injunctive relief and attorney's fees.

Law or Regulation in Issue: 18 NYCRR 358-5, 358-6.4.

Issue: Plaintiffs originally brought this matter as an Article 78 proceeding to address alleged non-compliance with a fair hearing decision. By order to show cause and amended complaint, plaintiffs then sought to intervene various public assistance applicants and recipients who claimed they have not received timely fair hearing decisions or timely compliance with favorable fair hearing decisions. Plaintiffs also sought class certification and a preliminary injunction requiring timely compliance with all fair hearing decisions for the proposed class and requiring OTDA to compel the HRA to timely comply with fair hearing decisions, if necessary, by imposing sanctions.

Status: This action is based solely on state regulations. OTDA opposed intervention and class certification. By decision dated June 27, 1997, the court permitted intervention and conversion of the special proceeding to an action, and granted injunctive relief requiring compliance with the fair hearing decisions of the intervenors. On December 22, 2000, the parties agreed to settle the litigation. The stipulation continued the jurisdiction of the court for a 21 month period, beginning April 1, 2001, during which time the defendants were required to comply with the regulatory timeliness standard for an agreed upon percentage of cases. Due to the events of September 11, 2001, and their impact on the hearings process and the December 22, 2000 stipulation, the parties agreed to new settlement terms on May 28, 2003. That stipulation continued the jurisdiction of the court until January 31, 2004, during which time the defendants were required to comply with the regulatory timeliness standard for an agreed upon percentage of cases in seven of the nine months of monitoring. Further settlement negotiations are pending.

Programmatic Impact: An adverse decision could result in court monitoring of defendant's compliance process and also in the imposition of penalties against either or both defendants in those cases in which timely compliance is not effectuated.

Related Cases: Moore v. Perales (USDC/EDNY) 1985.

Responsible Attorneys:
William Bristow, Assistant Attorney General, New York State Department of Law
David Amiraian, Acting Principal Administrative Law Judge, New York State Office of Temporary & Disability Assistance

SHAKHNES et al. v. DOAR, et al.

United States District Court, Southern District of New York, commenced June 21, 2006.

Parties: The plaintiffs are a proposed class consisting of all New York City applicants for, and recipients of, Medicaid funded home health services, who have requested or will request fair hearings challenging denials, reductions, or terminations of their home health services and who (1) do not receive final administrative action from defendants within ninety days of their requests for fair hearings; and/or (2) do not receive timely and adequate notice of denials, reductions, or terminations of their home health services; and/or (3) do not receive aid-continuing when they meet all the requirements for it. Defendants are Robert Doar, New York State Office of Temporary and Disability Assistance, Antonia Novello, New York State Department of Health, and Verna Eggleston, New York City Human Resources Administration.

Character of Litigation: Class action for declaratory and injunctive relief and attorney's fees.

Law or Regulations in Issue: 42 USC §1396a(a)(3), 42 CFR §431.244(f)(1)(ii) and 18 NYCRR §358-6.4(a) regarding timeliness of final administrative action; 42 USC §1396a(a)(3), 42 CFR §§ 435.912, 435.919, 431.206(b), (c) and 431.210, New York State Social Services Law §22(12), 18 NYCRR §§505.14(b)(3)(iv)(f)(2) and 358-3.3 regarding timely and adequate notices; 42 USC §1396a(a)(3), 42 CFR §§ 431.230(a), 431.231(c) and 18 NYCRR §358-3.6 regarding aid-continuing; and 42 USC §1396a(a)(5), 42 CFR §§431.10, 431.50 and 435.903, and New York State Social Services Law §§ 22, 363-a(1) and 364(2) regarding supervision of HRA.

Issue: Plaintiffs challenge the custom and practices of defendants in 1) allegedly failing to take and/or ensure final administrative action within 90 days after requests for fair hearings on Medicaid home health cases; 2) allegedly failing to provide timely and adequate notices of denial, reductions or terminations of Medicaid home health services; 3) allegedly failing to provide required aid-continuing benefits pending issuance of fair hearing decisions; and 4) allegedly failing to oversee and supervise City defendant's customs and practices concerning the provision of notice, aid-continuing and implementation of fair hearing decisions in Medicaid home health cases.

Status: Defendants have submitted an answer to the complaint and have responded to plaintiffs' discovery demands.

On September 30, 2010, the Court certified a class consisting of:

All New York City applicants for, and recipients of, Medicaid-funded home health services, who have requested or will request Fair Hearings challenging adverse actions regarding their home health services, and who are not challenging any decision regarding Medicaid eligibility, and who do not receive final administrative action from Defendants within ninety days of their requests for fair hearings. "Home health services" include home personal care, long term home health, and certified home health aide services.

The Court also granted partial summary judgment against state defendants and denied it as against the City, with respect to timeliness of final administrative action. The Court issued an order directing relief on April 15, 2011. The defendants have filed a notice of appeal.

Programmatic Impact: An adverse decision could result in court monitoring of defendants' program administration and hearings process and, potentially, the imposition of penalties.

Related Cases: Cutler v. Perales, (USDC/SDNY) 1988

Responsible Attorneys:
Robert Kraft, Assistant Attorney General, New York State Department of Law
David Amiraian, Acting Principal Administrative Law Judge, New York State Office of Temporary & Disability Assistance

VARSHAVSKY, et al v. PERALES, et al

Supreme Court, New York County, commenced February 8, 1991.

Parties: The plaintiffs are a class consisting of applicants for and recipients of one or more types of benefits, including Medical Assistance (MA), Aid to Families with Dependent Children (AFDC), Food Stamps, Home Energy Assistance Payments (HEAP), and Home Relief, who had requested fair hearings to be held in their homes because of their inability to travel. Such hearings have not been scheduled pursuant to the suspension of the scheduling of home hearings by the Office of Administrative Hearings. Defendants are Cesar Perales, the Commissioner of the New York State Department of Social Services (Department) and Mark Lacivita, Acting Director of Fair Hearing Administration.

Character of Litigation: Action for declaratory and injunctive relief and attorney's fees.

Law or Regulation in Issue: 7 CFR 273.15(o); 42 CFR 431.240(a); 45 CFR 205.10(a); SSL 22.1; 18 NYCRR 358- 3.4(g).

Issue: Plaintiffs are challenging the 1990 decision of the Office of Administrative Hearings to suspend the provision of home hearings, claiming that this decision violates the due process clauses of the State and federal constitutions, that it violates State and federal law and regulations governing the various assistance programs involved and laws prohibiting discrimination against the handicapped, and effectively amends official State regulations without following mandatory notice and comment procedures of the State Administrative Procedure Act (SAPA). Plaintiffs also allege that the Department has failed to protect the rights of handicapped persons who have no one to represent them, or to arrange or consider the availability of adequate transportation. Additionally, plaintiffs challenge the adequacy of the existing central hearing sites for the needs of handicapped persons, citing such matters as deficiencies in bathroom facilities, crowded waiting areas, long delays, lack of protection from exposure to infection for AIDS patients, and lack of adequate air purification for cardiac or respiratory patients. Plaintiffs sought certification as a class, and requested that the Department be enjoined from terminating the home hearing process, and sought a preliminary injunction ordering the scheduling of hearings at the homes of plaintiffs.

Status: Temporary restraining order signed November 1, 1991, directed the Department to conduct telephone hearings, or hearings by representative. Upon completion of the hearing, if the Administrative Law Judge were to be unable to recommend an appellant-favorable decision, the hearing was to be reopened and scheduled in the appellant's home. On November 20, 1991, an order was signed granting a preliminary injunction granting relief similar to that of the previous order, and certifying the class. Both orders were appealed by the Department. In March 1994, the Appellate Division affirmed the lower court decisions. Pursuant to the injunction, the OAH has been conducting hearings in the homes of appellants for whom the initially assigned ALJ is unable to recommend a fully favorable decision. Over two thousand of such hearings have been held statewide. It is anticipated that these hearings will continue to be held pending the ultimate resolution of the case.

Programmatic Impact: An adverse final decision could require the scheduling of a significant number of home hearings in the first instance, which would be impracticable without additional administrative law judges.

Related Cases: Suau v. Perales (USDC/SDNY) 1986.

Responsible Attorneys:
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