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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GLORIA ANNUNZIATA, individually and on
behalf of all others similarly situated,

Plaintiff,

-against-

BARBARA B. BLUM, as Commissioner of the
State of New York Department of Social
Services, and STANLEY BREZENOFF, as
Commissioner of the City of New York
Department of Social Services,

Defendants.

STIPULATION
AND
JUDGMENT

81 Civ. 302 (CSH)

U.S. DISTRICT COURT
FILED
APR 4 1963
S. D. OF N. Y.

-----X
IT IS STIPULATED that this action is settled as

follows:

1. The following terms shall have the definitions
indicated:

(a) "Agency": defendant Stanley Brezenoff, the
Commissioner of the City of New York Department of Social
Services at the time the action was commenced, his successors,
and the City of New York Department of Social Services and its
agents and employees;

(b) "State": defendant Barbara B. Blum, the
Commissioner of the State of New York Department of Social
Services at the time the action was commenced, her successors,
and the State of New York Department of Social Services and its
agents and employees;

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(c) "Appellant": A person who receives benefits and requests a fair hearing to challenge a notice generated and sent out from the agency to reduce, discontinue or restrict benefits;

(d) "Fair Hearing": The procedure by which an appellant appeals to the Commissioner of the New York State Department of Social Services from decisions or actions of the agency and has a hearing thereon;

(e) "Benefits": Aid or care received from the agency under the Medical Assistance (Medicaid) program;

(f) "Case record": All paper records relating to an appellant's notice and machine readable data which can readily be converted to a comprehensive paper record relating to an appellant's receipt of Medicaid;

(g) "Notice": A notice or notice of intent to discontinue, reduce, or restrict benefits relating to a determination made by the agency and issued by the agency.

2. The agency shall provide an appellant's case record at a fair hearing.

3. If the agency appears at a fair hearing without an appellant's case record, in those cases covered by the class as defined in paragraph 8 of this stipulation, it shall withdraw its notice.

4. Where the agency withdraws its notice without prejudice because it failed to have an appellant's case record at the fair hearing, it may reissue its notice only after procuring and reviewing the appellant's case record. The agency's new notice shall clearly advise the appellant that it is reissuing its earlier notice, and that it is doing so after procuring and reviewing the appellant's case record. A copy of the format of this notice, prior to promulgation, shall be sent by the agency to plaintiff's attorneys for approval.

5. Plaintiff Annunziata's November 12, 1980 fair hearing decision is annulled and the agency's notice that was the subject of the fair hearing is withdrawn.

6. Within 30 days after this stipulation becomes effective, the agency may reissue its notice to plaintiff Annunziata, provided it has first procured and reviewed her case record. If the agency reissues its notice and plaintiff Annunziata requests a fair hearing to review it and her case record is not at the fair hearing, the agency shall withdraw its notice and shall not reissue a notice on the same issue and the same facts.

7. This stipulation shall become effective 30 days after it becomes the judgment of the court.

8. This action shall be maintained as a class action consisting of all present or former recipients of benefits residing in the City of New York who had a fair hearing on or after December 1, 1980 to challenge an agency notice to reduce, discontinue or restrict benefits or who request a fair hearing on or after the effective date of this stipulation to challenge an agency notice to reduce, discontinue or restrict benefits.

9. Within the thirty-day period after this stipulation takes effect, the agency shall cause to be published an announcement (a copy of which is annexed hereto as Appendix A) advising recipients of benefits of the retroactive relief afforded by this stipulation five times within a thirty-day period in the following newspapers: New York Daily News, New York Post, El Diario and the Amsterdam News. The parties will accept the translation of the announcement provided by El Diario. The size of the publication of this announcement shall be no less than one-eighth of a page.

10. No later than ten days prior to the intended date of publication of the announcement described in paragraph 9 of this stipulation, the agency shall send an exact copy of the announcement to plaintiff's attorneys for approval.

11. Within the thirty-day period after this stipulation takes effect, the agency shall prominently post the announcement advising recipients of benefits of the retroactive relief afforded by this stipulation (in English and Spanish) in the public areas of every agency office under the supervision of its medical assistance program on posters which shall be at least eleven inches by seventeen inches. The announcement shall remain posted for a minimum of thirty days. The agency on or before the effective date of this stipulation shall provide plaintiff's attorneys with fifty copies of these posters.

12. Within the thirty-day period after this stipulation takes effect, the agency shall send to plaintiff's attorneys (a) proofs of publication of the announcement, and (b) proof of distribution of the announcement, for purposes of posting, to the medical assistance program.

13. All appellants as defined in this stipulation who had a fair hearing on or after December 1, 1980 and before the effective date of this stipulation, who lost their fair hearing in whole or in part and whose case record was not present at their hearing may request a new fair hearing. They shall be afforded such a hearing where such a request is made within ninety days of the effective date of this stipulation or within sixty days of the date of publication as set forth in paragraph 9 hereof, whichever period is longer.

14. Copies of any written instructions to staff issued by either the State or the agency to implement this stipulation shall be sent to plaintiff's attorneys within ten days of their issuance.

15. For a period of one year after the date upon which this stipulation becomes effective, the State shall provide to plaintiff's attorneys, to the extent possible, monthly monitoring reports setting forth by name, request date, issue date and issue code(s) those appellants who had two or more fair hearings which resulted in agency withdrawals of agency actions on identical issues within a six-month period.

16. This court shall have continuing jurisdiction over this action for the purposes of enforcing this stipulation and judgment.

17. The issue of plaintiff's entitlement to an award of attorneys' fees, pursuant to 42 USC §1988, and costs and disbursements, is reserved for later determination upon application to the court. All other claims for monetary relief asserted in this action are hereby discontinued with prejudice.

18. It is agreed that this action does not raise nor does this stipulation resolve, any issue with respect to the number or frequency of notices sent to recipients of benefits.

19. Nothing contained in this stipulation shall be deemed to be a finding or an admission that defendants have in any manner violated plaintiff's rights as contained in the Constitution, statutes, ordinances and rules and regulations of the United States, the State of New York or the City of New York.

Dated: New York, New York
DEC 1st 1982

DAVID GOLDFARB
Attorney for Plaintiff
By:



IAN F. FELDMAN
The Legal Aid Society
953 Southern Boulevard
Bronx, New York 10459

Dated: New York, New York

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants
Blum & Mullany
By:

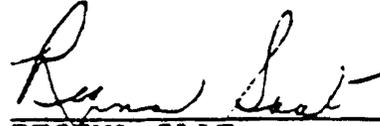


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Dated: New York, New York

February 16, 1983

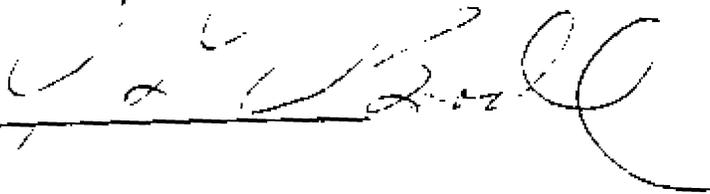
FREDERICK A.O. SCHWARZ, JR.
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Attorney for Defendants
Brezennoff and New York City
Department of Social Services
By:



REGINA SAAT
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SO ORDERED:

2/25/83



U.S.D.J. /

JUDGMENT ENTERED 4/4/83

Raymond E. [unclear]
CLERK

APPENDIX A
TO WELFARE AND MEDICAID RECIPIENTS
YOU MAY BE ENTITLED TO
MORE BENEFITS

Can you answer yes to all these questions?

1. I had a fair hearing after November 30, 1980 and before March 25, 1983;

2. I had the fair hearing because the New York City Department of Social Services tried to terminate, reduce or restrict my welfare or Medicaid benefits;

3. I lost all or part of the fair hearing;

4. (a) My complete relevant case record was not present at my welfare fair hearing; OR

(b) My case record was not present at my Medicaid fair hearing.

If you answered yes to all of these questions, you may have the right to a new fair hearing, which if you win may mean more welfare or Medicaid for you. Your case record will be present at the new hearing.

You should contact the New York State Department of Social Services by calling (212) 587-4349 or by writing to the Fair Hearing Section, Attention: RT, P.O. Box 1930, Albany, New York 12202. Please be prepared, if possible, to give the

following information when requesting this hearing: your name, case number, center number, address and date(s) your prior fair hearing(s) was/were held. If you wish a new hearing, you must request one before July 1, 1983.