

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

SEP 11 1992 8:21

ANTHONY EWING,

Plaintiff,

92-CV-6521T

v.

COURT
WESTER
W.D.N.Y.

ORDER OF PARTIAL
SETTLEMENT

MICHAEL J. DOWLING*, Individually
and in his official capacity as
Commissioner of the New York State
Department of Social Services, and
RICHARD F. SCHAUSEIL, Individually
and in his official capacity as
Director of the Monroe County
Department of Social Services,

Defendants.

[*Substituted pursuant to
Fed. R. Civ. P. 25(d)]

This action challenged the discontinuance of plaintiff's Food Stamp benefits as violating plaintiff's rights under the federal Food Stamp fair hearing regulations that require a hearing official to: "[r]equest, receive, and make part of the record all evidence determined necessary to decide the issues being raised;" and "[o]rder, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;" and "make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease." Plaintiff also challenged the failure of the defendants to determine that he met an exception to the student ineligibility rule of the Food Stamp Act and regulations by being a student who was not "physically or mentally fit."

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The parties have appeared before this Court and stated their willingness to enter into a partial settlement of this action. As part of their settlement discussions, the parties have also consented to allow this Court to resolve two disputed issues: (1) whether, as part of the settlement, defendants must provide plaintiff with an opportunity to comment on instructions which defendants have agreed to provide to New York State Department of Social Services Administrative Law Judges concerning the application of 7 C.F.R. § 273.15(m)(2)(iii) and (v) and 7 C.F.R. § 273.5 and (2) whether the fact of this settlement may be admissible in other litigation or settlement negotiations between the parties.

This Court determines that plaintiff shall not be given an opportunity to comment on the future instructions to be given to the Administrative Law Judges, although copies of those instructions shall be given to plaintiff for informational purposes only. In addition, the parties are not prohibited from referencing this Order in the course of other litigation; however, the question of whether this Order will be admissible in other litigation is not and cannot be decided here. This Court will retain jurisdiction of this matter to ensure that the settlement is implemented in accordance with its terms.

Accordingly, this action is settled upon the following terms and conditions:

1. Defendant Dowling agrees to withdraw the "Decision After Fair Hearing, FH #1765328L," dated March 10, 1992.

2. Defendant Schauseil agrees to issue plaintiff Food Stamp benefits for the months of November, 1991 through April 7, 1992, the date he began to receive Food Stamp benefits as a result of his re-application for Food Stamps. Defendant Schauseil agrees to issue the retroactive Food Stamps within 30 days of date of this Order.

3. Defendant Dowling agrees to provide instructions to all New York State Department of Social Services Administrative Law Judges concerning the provisions of 7 C.F.R. § 273.15(m)(2) (iii) and (v).

4. Defendant Dowling agrees to provide instructions to all New York State Department of Social Services Administrative Law Judges concerning the provisions of the college student ineligibility rule, 7 C.F.R. § 273.5, particularly, exceptions to the rule.

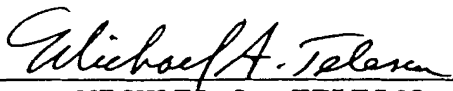
5. Defendant Dowling agrees to provide counsel for the plaintiff with a copy of the instructions referred to in paragraphs 3 and 4 prior to their issuance.

6. Nothing contained herein shall be construed as an admission or concession concerning the substantive merits of the issues raised in this action or be deemed to be an admission by either of the defendants that they have in any manner or way violated the plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States or the State of New York.

7. Plaintiff's request for attorneys' fees shall be reserved and determined in a separate motion to be placed before this Court within thirty (30) days from the date of this Order.

8. This Court shall retain jurisdiction over this action to resolve any and all disputes which arise over the implementation of this Agreement.

ALL OF THE ABOVE IS SO ORDERED.



MICHAEL A. TELESKA
United States District Judge

Dated: Rochester, New York
November 7, 1994