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U.S. DISTRICT COURT E.D.N.Y.

★ NOV 07 2017 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NEIL FISHMAN, by his legal guardian, LESLIE  
FALVO, and SURUJ SIRIKESHUN, individually :  
and on behalf of all others similarly :  
situated, :

LONG ISLAND OFFICE

Plaintiffs, : **JOINT**  
: **PROPOSED**  
: **JUDGMENT**

- against -

Index No:  
09-CV-5248

RICHARD F. DAINES, M.D., as Commissioner of :  
the New York State Department of Health, :  
and JOHN PAOLUCCI, as Commissioner of :  
the Office of Temporary and Disability :  
Assistance of the New York State Department :  
of Family Assistance, :

Defendants. :

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Upon the application of plaintiffs, having regularly come to be heard by the Court, upon reading and filing the Motion for Partial Summary Judgment dated the 20th day of April, 2016, and the plaintiffs' Memorandum of Law, Declaration, Exhibits and Statement of Undisputed Facts pursuant to Rule 56.1 in support thereof, and the defendants having filed a Statement of Undisputed Facts pursuant to Rule 56.1, together with defendants' Memorandum of Law in Opposition thereto on the 3rd day of March, 2017; and the plaintiffs' having filed a Reply Memorandum of Law in further support on the 24th day of March, 2017; and having regularly come to be heard by the Court, and the Court having filed a Memorandum and Order on March 29, 2017; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

A. Defendants are permanently enjoined from considering as abandoned the administrative appeals of Medicaid appellants who

fail to appear at their scheduled hearing, including those who had requested a fair hearing regarding their Medicaid and their public assistance benefit(s) as those benefits are defined under Title 18 NYCRR Part 350 et seq., who are not given at least ten (10) days to respond to a written letter inquiring as to whether the Medicaid appellant wishes any further action to be taken on their request for a fair hearing.

B. Defendants shall make a good faith effort to promulgate an amendment to 18 NYCRR § 358-5.5 by adding a reference to a written notice to Medicaid appellants, who failed to appear at a scheduled hearing as defined in ¶ A, advising how to request the rescheduling of such fair hearing and which states that the right to aid-continuing, if previously authorized, extends to the deadline to respond to the notice.

C. With respect to retroactive class relief, defendants shall:

(1) identify all Medicaid appellants, including those who had requested a fair hearing regarding their Medicaid and their public assistance benefit(s) as those benefits are defined under Title 18 NYCRR Part 350 et seq., whose fair hearings have been deemed abandoned, retroactive to January 1, 2012; and

(2) provide written notification to all such Medicaid appellants of their right to seek the rescheduling only of their abandoned fair hearing(s) concerning Medicaid if they so desire, at which rescheduled fair hearing(s) defendants will determine whether the Medicaid appellant has established good cause for missing the initially scheduled hearing date(s). If defendants determine good

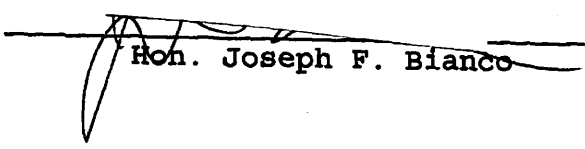
cause is established, defendants will hear evidence solely on the propriety of the action that triggered the initial fair hearing request on Medicaid. No Medicaid authorization or aid-continuing shall be granted or restored prior to issuance of a fair hearing decision.

D. The written notification to be issued under subparagraph (C)(2) above shall exclude those Medicaid appellants who have already received notice of their right to request rescheduling of their abandoned fair hearings pursuant to the preliminary injunctions issued by this Court during the pendency of this action.

E. No further written notification will be required to be sent if the Medicaid appellant fails to appear on the rescheduled fair hearing date.

SO ORDERED:

Dated: Central Islip, New York  
November 2, 2017

  
Hon. Joseph F. Bianco