

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HARRIS, WILLIAM BROWN, :
BARBARA MARROQUIN and MARIA OJEDA, :
on behalf of themselves and all :
others similarly situated, :

02 Civ. _____

Plaintiffs, :

-against- :

CLASS ACTION COMPLAINT

VERNA EGGLESTON, in her official capacity: :
as the Commissioner of The City of New :
York Human Resources Administration, and :
BRIAN J. WING, in his official capacity as the :
Commissioner of the State of New York :
Office of Temporary and Disability Assistance :

Defendants. :

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Plaintiffs, on behalf of themselves and all others similarly situated, through their attorneys, complaining of the defendants, allege upon personal knowledge as to themselves and their own acts. As to all other matters, they allege upon information and belief based upon inter alia, the investigation made by and through their attorneys. Additional information in support of the claims herein is within the exclusive possession, knowledge and control of defendants.

PRELIMINARY STATEMENT

1. Over the past ten years, the Human Resources Administration (“HRA”) has wrongly terminated the food stamps of thousands of people with disabilities. The Office of Temporary and Disability Assistance (“OTDA”), the state agency in charge of supervising HRA, has known of HRA’s practice and allowed it to continue.

2. Food stamps are a federal benefit, paid for by the federal government, intended to enable our country's poorest, most needy citizens to buy enough food. When Congress created the food stamps program in 1969, it took special care to ensure that people with disabilities would receive adequate money for food. For example, many people who receive Supplemental Security Income ("SSI"), a federal benefit for extremely poor people who are too disabled to work, are automatically eligible to receive food stamps.

3. Many disabled individuals who receive public assistance ("PA") from the state in addition to food stamps often, at HRA's behest, apply to the federal government for SSI benefits. Applying for SSI is an arduous, lengthy process, usually lasting years, but applying is worthwhile because SSI is a slightly higher and steadier source of income than PA. When PA recipients are approved for SSI, i.e. when they have proven to SSA that they are extremely poor and severely disabled, HRA should close their PA cases and stop PA payments but keep open their food stamps cases. HRA should then recalculate food stamps allotments in light of the new income from SSI. In most cases involving people moving from PA to SSI, HRA should continue or increase their food stamps payments.

4. In a substantial number of cases involving people moving from PA to SSI, HRA does not keep their food stamps cases open and fails to recalculate their food stamps allotments. Rather, HRA cuts off their food stamps without warning when HRA closes their PA cases, suddenly leaving many severely disabled people, some of whom suffer from conditions requiring special diets, such as diabetes, with no money for food. Some people who move from PA to SSI actually receive a notice stating that their

food stamps will continue, only to discover at the grocery check-out that they have no money for food.

5. HRA's practice and OTDA's acquiescence have caused a substantial number of poor people with severe disabilities to go without food, placing their mental and physical health in jeopardy and hampering their efforts to become more self-sufficient.

6. HRA's practice and OTDA's acquiescence violate: 1) the Food Stamps Act ("FSA"), 7 U.S.C.A. §§ 2011, 2014, 2015, and 2020, and the United States Department of Agriculture ("USDA") regulations implementing the FSA, 7 C.F.R. §§ 273.2(j)(2), 273.12(a)(1)(i), 273.2(k)(1)(a)(2), 273.12(c), 273.12(f)(3); 2) OTDA regulations implementing the FSA, 18 N.Y. Comp. Codes R. & Regs. Part 387; 3) the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. and the Rehabilitation Act, 29 U.S.C. § 794 et seq.; 4) the due process clauses of the New York Constitution, N.Y. Const. Art. 1, Sec. 6, and of the Fourteenth Amendment to the U.S. Constitution; 5) the equal protection clauses of the New York Constitution, N.Y. Const. Art. 1, Sec. 11, and of the Fourteenth Amendment to the U.S. Constitution; and 6) Article XVII of the New York State Constitution.

7. As explained in greater detail below, plaintiffs ask the Court for an injunction requiring HRA and OTDA to: 1) stop automatically closing the food stamp cases of PA recipients with disabilities who are approved for SSI; 2) recalculate the food stamps allotments of welfare recipients who are approved for SSI without stopping or interrupting their food stamp payments, and provide notice of any changes; and 3) issue

retroactive food stamps to all the people with disabilities whose food stamps HRA wrongly terminated or reduced.

JURISDICTION AND VENUE

8. This action is authorized by 42 U.S.C. § 1983, as an action seeking redress against local and state actors acting under color of law to deprive persons of their statutory and constitutional rights.

9. Subject matter jurisdiction is conferred upon the Court by: (1) 28 U.S.C. § 1331, which provides for jurisdiction in the district courts of civil actions arising under the Constitution, law, or treaties of the United States; and (2) 28 U.S.C. § 1343(a)(3), which provides for subject matter jurisdiction in the district courts of civil actions to redress deprivation of rights secured by the Constitution of the United States.

10. Supplemental jurisdiction of the state law claims which are related to and form part of the same case as that presented by the federal claims is authorized under 28 U.S.C. § 1367(a).

11. Venue lies within this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

The Plaintiffs

12. Plaintiff Barbara Harris resides as a single person in the County of Kings, City and State of New York. Ms. Harris suffers from bipolar disorder, panic disorder, chronic asthma and high blood pressure.

13. Before December 2000, Ms. Harris was on PA and was receiving around \$122 in food stamps a month.

14. In December 2000, SSA awarded her SSI because of her disabilities.

15. Prior to Ms. Harris receiving SSI, HRA regularly deposited Ms. Harris' food stamps allotment in an account she could access using a standard Electronic Benefits Transfer ("EBT") card provided to food stamps recipients. In March 2001, however, when she tried to buy groceries, she discovered that HRA had cut off her food stamps with no advance notice. Because HRA failed to separately determine her food stamps allotment and instead terminated food stamps, Ms. Harris requested an administrative hearing before an OTDA administrative judge ("ALJ") to challenge the termination.

16. On April 30, 2001, an ALJ issued a written decision ruling that HRA had cut off Ms. Harris' food stamps without adequate notice and directing HRA to restore, retroactively, her food stamps. HRA did not, however, restore her food stamps at that time but continued to deprive her of these federally funded benefits. It was not until June 21, 2001, that HRA provided Ms. Harris with any retroactive food stamps, and even then it gave her only about two-thirds of what it owed her.

17. Due to her panic disorder, the numerous trips she needed to make to keep her food-stamp benefits caused her great physical and mental distress, including lack of menstruation, diarrhea, dizziness and high blood pressure.

18. During the three months she had to endure without food stamps, Ms. Harris had to ask friends for food and go to charities to get meals, all of which was emotionally draining and humiliating.

19. Plaintiff William Brown resides as a single person in the County, City and State of New York. He suffers from diabetes, asthma, high blood pressure and partial paralysis of his left-side as a result of a stroke he suffered in 1993.

20. In 1989, Mr. Brown began receiving welfare, including PA, Medicaid, and food stamps. At that time, he received rent assistance of \$215, cash assistance of \$68 per month, and \$110 in food stamps per month. Over the years, the amount of food stamps he received increased to \$130 per month.

21. In late December 2000, he was approved for SSI and Social Security Disability Income ("SSD"). In 2001, he began receiving a total of \$763 per month in SSI and SSD.

22. At about the same time that he began to receive SSI and SSD, HRA cut off his food stamps without notice. HRA also discontinued his Medicaid benefits.

23. In January 2001, when Mr. Brown went to one of HRA's income support centers to find out what had happened, an HRA employee misrepresented to Mr. Brown that he was no longer eligible for food stamps or Medicaid because he received SSI.

24. In early February 2001, Mr. Brown applied for emergency assistance to move to his current residence. HRA granted his request, but continued to represent falsely that he was not eligible for either food stamps or Medicaid.

25. With help from counsel, Mr. Brown requested a fair hearing challenging HRA's decision to terminate his food stamps. The ALJ found that HRA had wrongfully discontinued Mr. Brown's food-stamp benefits in February 2001. The ALJ

ordered HRA to restore his food stamps retroactive to February 2001 and to issue a timely and adequate notice of intent if it wished to cut off Mr. Brown's food stamps in the future.

26. Since February, 2001, Mr. Brown has received \$68 of food stamps a month, which recently went up to \$73 a month. He has not been reinstated to his prior food stamps level of \$130. Nor was he provided with any notice or an explanation of why his food-stamp benefits were reduced, despite the ALJ's decision to the contrary.

27. Plaintiff Barbara Marroquin resides as a single person in the County of the Bronx, City and State of New York. She suffers from bipolar and anxiety disorders.

28. She began receiving PA in 1995.

29. SSA approved Ms. Marroquin for SSI in April 2000.

30. On April 22, 2000, HRA notified Ms. Marroquin that her PA benefits would be discontinued due to her receipt of SSI but that her food stamps would continue. The notice further provided that HRA might request Ms. Marroquin to come in to re-evaluate her food stamps eligibility.

31. Despite what HRA stated in its notice, in May 2000, HRA cut off Ms. Marroquin's food-stamp benefits without notice.

32. After appearing at several administrative fair hearings between December 2000 and August 2001, at which she challenged the discontinuance of her food stamps, Ms. Marroquin received retroactive food-stamp benefits from HRA, though not for the entire period in which her benefits were cut off and not for the entire amount.

Because HRA did not reinstate Ms. Marroquin's food stamps prospectively, she requested another fair hearing.

33. On March 8, 2002, the ALJ ordered HRA to provide food stamps to Ms. Marroquin, retroactive to September 2002. Despite this decision, Ms. Marroquin receives no food stamps at all.

34. Due to her efforts to restore her food stamps, Ms. Marroquin's mental condition deteriorated and she has had to be hospitalized -- once in November 2000 and again in the fall of 2001. Without food stamps, Ms. Marroquin cannot purchase adequate amounts of food for her children, who visit her on weekends. Thus, she must spend all her money on food for them and cannot afford other necessary items.

35. Plaintiff Maria Ojeda resides as a single person in the County of the Bronx, City and State of New York. Ms. Ojeda suffers from major depression with psychotic features, diabetes, severe asthma and hepatitis C.

36. Ms. Ojeda applied for SSI in March 2000. In August 2001, Ms. Ojeda's SSI application was approved.

37. One month earlier, in July 2001, HRA discontinued her food-stamp benefits, allegedly because she had missed an appointment with an employment program. At the time, she had been receiving about \$130 per month in food stamps.

38. Represented by counsel, Ms. Ojeda challenged HRA's decision at a fair hearing in July 2001. The ALJ ruled in Ms. Ojeda's favor, ordering HRA to restore her \$130-per-month allotment retroactively.

39. Despite aggressive advocacy by Ms. Ojeda's counsel, HRA has refused to comply with the ALJ's decision. When counsel for Ms. Ojeda inquired as to the reason for the discontinuance, she was informed that Ms. Ojeda would not be issued food stamps because she receives SSI.

40. Without food stamps, Ms. Ojeda can barely afford to eat at all and cannot afford the special diets required by her diabetes and hepatitis C.

The Defendants

41. Defendant Verna Eggleston is the Commissioner of HRA. She is responsible for, inter alia: (1) the overall operation and administration of the Family Assistance ("FA"), Safety Net Assistance ("SNA"), Food Stamps, and Medicaid programs within New York City, including the Office of Employment Services ("OES"); and (2) complying with Federal and State laws and regulations relating to the Medicaid, FA, SNA, Food Stamps, and OES programs.

42. Defendant Brian J. Wing is the Commissioner of OTDA. He is responsible for, inter alia, (1) the administration of New York State's FA, SNA, and Food Stamps programs; (2) supervision of the administrator of the FA, SNA, and Food Stamps programs for the local social services districts; and (3) assuring that the applicable state and city agencies, including HRA comply with those programs.

CLASS ALLEGATIONS

43. The named plaintiffs bring this action on their own behalf, and pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of a class defined as follows:

All persons who: a) receive, received, or are entitled to receive food stamps; b) are found eligible to receive SSI from SSA while they are, were, or will be receiving food stamps; and c) reside, resided,

or will reside in categorically eligible households, i.e., households in which each member receives benefits under a State program funded under Part A of the Title IV of the Social Security Act, 42 U.S.C. § 1381 et seq., or aid to the aged, blind, or disabled under Title I, X, XIV, or XVI of the Social Security Act, 42 U.S.C. § 301 et seq. when receiving food stamps and found eligible to receive SSI.

44. The class is so numerous that joinder of all members is impracticable. As of November 2001, 223,892 individuals were categorically eligible for food stamps because they received SSI and lived alone. Yet, in February 2002, only 126,569 SSI recipients received food stamps, leaving nearly 100,000 categorically eligible individuals without food stamps.

45. There are numerous common questions of law and fact, including:

Does HRA wrongly terminate or reduce the food stamps of a substantial number of PA recipients with disabilities who begin receiving SSI?

Does OTDA fail to oversee HRA's administration of the food stamps program?

Does HRA's policy and practice of terminating or reducing the food stamps of the defined class violate federal and state constitutions and applicable federal and state laws and regulations pertaining to disabled persons and the distribution of food stamps?

Does OTDA's failure to oversee the administration of the food stamps program by HRA with the effect of terminating or reducing the food stamps of the defined class violate federal and state constitutions and applicable federal and state laws and regulations pertaining to disabled persons and the distribution of food stamps?

46. Declaratory and injunctive relief are appropriate with respect to the class as a whole because Defendants have acted on grounds applicable to the class. The deprivation of food stamps suffered by the named plaintiffs as set forth in Paragraphs 12 through 40 hereof typifies HRA's practice of automatically closing the food stamps cases of a substantial number of PA recipients who begin receiving SSI.

47. The named Plaintiffs can fairly and adequately protect the interests of the class. Because of their indigency, Plaintiffs are represented by the Urban Justice Center and Patterson, Belknap, Webb & Tyler LLP. Plaintiffs know of no conflicts of interest among members of the class.

48. A class action is superior to other available methods of adjudication because it will avoid numerous, nearly identical separate actions by class members.

STATUTORY AND REGULATORY FRAMEWORK

49. In 1964, Congress enacted the FSA to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." The Act authorizes subsidies, in the form of food stamps, to eligible households. 7 U.S.C. § 2014. Households in which all members receive SSI are deemed categorically eligible. 7 U.S.C. 2014(a); 7 CFR § 273.2 (j)(2).

50. The food stamp program is regulated at the federal level by the United States Department of Agriculture ("USDA"). 7 U.S.C. § 2013 (a). The USDA makes grants to the appropriate State agencies and is charged with ensuring that the funds are distributed to eligible households in accordance with the FSA and with the USDA's regulations. See 7 U.S.C. §§ 2013(a), 2014(b), 2020. In New York, OTDA is the agency in charge of administering the program statewide and oversees HRA's administration of the program in New York City. See 18 NYCRR Part 387.

51. The FSA and federal and state regulations implementing the FSA require HRA to make it particularly easy for people with disabilities who receive SSI to maintain food stamps. For instance, the FSA and regulations mandate that:

- a. Households in which all members receive SSI are deemed to be "categorically eligible" for food stamps. 7 U.S.C. § 2014(a); 7 C.F.R. § 273.2 (j)(2)(i).

b. 18 N.Y. Comp. Code Rules & Regs. § 387.14(a)(5) essentially tracks this definition of households that are "categorically eligible" to receive and continue to participate in the food stamp program.

c. Households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits shall be food stamp eligible based on their PA/SSI status. 7 C.F.R. § 273.2(k).

d. Such households are exempted from income tests, and need not supply verification of social security number, sponsored alien information, or residency information. 18 NYCRR 387.14(5) (i)(b).

e. While States may condition some households' receipt of food stamps on regular reports of income and household composition, the FSA explicitly forbids States to require households in which everyone is disabled to file such reports. 7 U.S.C. §§ 2015(c)(1)(A)(iii), 2015(c)(5).

f. A change in status such as the one involved here, i.e., a switch from PA to SSI, requires "the State agency [to] take prompt action on all changes to determine if the change affects the household's eligibility or allotment." Section 273.12(c).

g. Section 273.12(f)(3) prohibits termination of a household's food stamp benefits without making a "separate determination of continued eligibility for such participation."

h. Section 273.13 prohibits termination of food stamps unless a notice has been given and an opportunity to contest the termination at a fair hearing.

i. 7 C.F.R. § 276.1(a)(4) specifies that "[S]tate agencies [i.e., HRA and OTDA] shall be responsible for efficiently and effectively administering the [Food Stamp] Program by complying with the provisions of the [Food Stamp Act] . . ."

52. The FSA even requires the SSA and the USDA to work together to ensure that eligible SSI households receive food stamps. For example, the SSA and the USDA must inform SSI applicants at the SSA office of the availability of food stamps and provide SSI approved applicants with a "simple application" for food stamps. USCA § 2020(j)(1).

53. The USDA has attempted to carry out its duty by repeatedly informing HRA and OTDA that HRA cannot automatically terminate the food stamps of SSI recipients, but to no avail.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

54. When SSA determines that a PA recipient is disabled and approves him or her to receive SSI, it is HRA's policy, custom and practice to terminate the recipient's food stamps along with his or her PA in a substantial number of cases. Unless enjoined, HRA will continue to deprive these persons of the food stamps to which they are entitled.

55. OTDA supervises HRA's administration of the food stamps program. It knows of and acquiesces in the aforesaid policy, custom and practice of automatically terminating food stamps along with PA in a substantial number of cases involving PA recipients who are approved for SSI. It has failed to stop HRA from violating the applicable federal, state, and city laws and regulations, and unless enjoined, it will continue to do so.

56. The USDA has requested that OTDA and HRA remedy their policy, custom and practice so that they would no longer automatically terminate food stamps along with PA in a substantial number of cases involving PA recipients who are approved for SSI.

57. In June 1990, recognizing its obligations under the FSA and regulation set forth above, HRA put into effect a procedure for effecting a seamless transfer from the status of a PA recipient to that of one on SSI. This procedure is set forth in HRA Center Director's Memo 90-46 June 21, 1990. Paragraph 3 of that Director's Memo entitled "Public Assistance Closings". explicitly covers continuation of

food stamps for a PA recipient once he or she is terminated from PA by becoming eligible for SSI by activating a so-called "closing code 574" on its computer system.

58. With respect to "Eligible Households", upon determining that the household remains eligible for food stamps, the caseworker is directed to "[U]se the p.a. closing code [identified in subparagraph (a) as "574"] that you would normally use." The directive then states that "[T]he computer will automatically issue an additional month's food stamp benefit to the household." (emphasis added). It then directs caseworkers to "[T]ransfer the case to the NPA Food Stamp Program according to the directions on page 2."

59. Although the Director's Memo provides a mechanism for a seamless transition from PA to SSI, in practice, HRA follows only the first part of the memo, using the p.a. closing code "574." This results in the loss of food stamps for a substantial number of people.

60. USDA, HRA and OTDA discussed this issue in connection with a draft of a Program Access Review ("PAR") based on studies of job centers conducted by USDA in November and December 1998 sent to OTDA and HRA. In addition to other serious problems, USDA found that, contrary to federal law:

"When public assistance was denied at the Job Centers reviewed, applicants were required to file new applications at a Non Public Assistance (NPA) center."

61. This means that people who became ineligible for PA, for example, because they began receiving SSI, were illegally required to file completely new applications for food stamps at a separate office, an "NPA" center designated for food stamps-only cases.

62. To correct the problem, USDA stated:

1. All local offices accept and act on food stamp applications (even when the eventual management of the cases will be transferred to another office).

2. Applicants are not required to file a new application at an NPA center but should have already completed application forwarded to an NPA center.

3. **Appropriate action is taken to continue uninterrupted Food Stamp benefits when appropriate at the time of TANF benefit [PA] termination.** (emphasis added).

63. In cases of welfare recipients approved for SSI, recommendation #3 meant that HRA and OTDA would be required to continue their food stamps uninterrupted, without a new application.

64. In a letter dated January 8, 1999, Jason Turner, then Commissioner of HRA, strongly objected to the report, saying "... we do not have to encourage food stamp applications," and urged USDA not to release it. Brian Wing, Commissioner of OTDA, backed up Turner in a letter dated January 14, 1999.

65. OTDA and HRA together submitted official comments on the draft report on January 19, 1999. The USDA was not mollified by OTDA's and HRA's comments, and in the final version of the PAR, released February 5, 1999, again stated:

OTDA must take immediate action to ensure that

1. Applicants are not required to file a new application at an NPA center, but should have the already completed application forwarded to an NPA center.

2. **Appropriate action is taken to continue uninterrupted food stamp benefits, when appropriate, at the time of TANF benefit [PA] termination.** (emphasis added).

66. In a letter accompanying the report, Francis E. Zorn, Administrator of the Northeast Region of the USDA's Food and Nutrition Service ("FNS"), threatened to suspend payment of the administrative costs of the program if OTDA and HRA did not comply within forty days.

67. In a letter dated April 6, 1999, Zorn threatened to "disallow 5,000,000 per quarter of the Federal share of New York's food stamp program administrative costs, retroactive to February 5, 1999." Zorn reiterated that OTDA and HRA must "ensure that households who are denied other program benefits are not required to file another application for food stamp benefits." Wing responded on May 7, 1999, assuring Zorn specifically that "procedures are in place to ensure that households who are denied other program benefits are **not required to file another application for food stamps.**" (emphasis added).

68. In a letter dated March 3, 2000, Zorn alerted OTDA to HRA's continued non-compliance with the Food Stamps Act and summarized a Program Access Review ("PAR") conducted in November 1999. She stated:

Cases closed for Public Assistance (PA) are not separately determined for food stamps

Our review confirmed that some public assistance (PA) cases are closed without being separately evaluated for food stamp eligibility. The issue of separate determination has been a long-standing concern for FNS.

The State must ensure that cases closed for PA are separately determined for food stamps . . . [Y]our agency must provide us with an immediate plan of corrective action on this serious program deficiency.

69. On April 4, 2001, William Lienhard, one of plaintiffs' attorneys in this case, met Burton Blaustein, a Deputy Commissioner for HRA, at a symposium on

welfare reform at New York University School of Law. When questioned about PA recipients losing their food stamps and having to start over again with new applications for food stamps at a different office when they were approved for SSI, Mr. Blaustein and his aides assured Mr. Lienhard that it did not happen. Mr. Blaustein and his aides explained that all the local centers could and did continue food stamps uninterrupted when recipients were approved for SSI.

70. On April 5, 2001, the following day, Miranda Schell, a UJC advocate, faxed a letter to Mr. Blaustein concerning plaintiff William Brown, a diabetic. Schell stated:

Please issue Mr. Brown's food stamps immediately and retroactively. At this time, he cannot afford to eat, and this is an emergency.

(emphasis in original).

71. On April 10, 2001, contradicting HRA's statements to the USDA and Mr. Blaustein's assurances to Mr. Lienhard, Mr. Blaustein wrote back:

On January 16, 2001, the Income Clearance Program **closed Mr. Brown's P.A. case because he started receiving SSI.** The closing code 215 was used. As per our Staff Development Coordinator, the closing code 215 generates and initiates the mailing of a notice to the appropriate Food Stamps (F.S.) Office instructing it to contact the new SSI recipient. **On receipt of this notice the F.S. Office is to mail the new SSI recipient a food stamps application. The P.A. Center is not responsible for preparing a separate food stamps determination packet in this case.**

(emphasis added).

72. HRA never provided Mr. Brown with a notice or a new application. It simply cut off his food stamps without warning.

73. Recently, Robert O'Halloran of HRA represented that since September 2001, it had set up a manual transfer process whereby HRA effects a seamless transfer of food stamp benefits for single person households terminated from PA upon becoming eligible for SSI benefits. Mr. O'Halloran did not know whether this manual transfer covered all such cases and had no information about any efforts of HRA to contact the approximately 95,000 SSI-eligible households that are currently not receiving food stamps and whose SSI eligibility occurred prior to September 2001.

FACTS OF INDIVIDUALLY NAMED PLAINTIFFS

74. The facts pertaining to the defendants' depriving individually named plaintiffs of food stamps set forth in paragraphs 12 through 40 herein constitute factual allegations common to this class.

IRREPARABLE INJURY AND NO ADEQUATE REMEDY AT LAW

75. HRA's discontinuance of plaintiffs' food stamp benefits when plaintiffs qualify for SSI causes irreparable injury to plaintiffs' physical and mental health by depriving them of adequate nutrition and forcing them to rely on friends and charities for food.

76. OTDA's failure to ensure that HRA continues food stamps benefits to plaintiffs and the other members of the class when they qualify for SSI causes irreparable injury to plaintiffs' physical and mental health by depriving them of adequate nutrition and forcing them to rely on friends and charities for food

77. Plaintiffs have no adequate remedy at law.

**AS AND FOR A FIRST CLAIM FOR
RELIEF AGAINST BOTH DEFENDANTS**

78. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI and OTDA's ratification thereof through its acquiescence in this custom, practice and policy of HRA violate the Food Stamps Act, 7 U.S.C.A. §§ 2011, 2014, 2015, and 2020, as well as violate the USDA regulations implementing the Food Stamps Act, 7 C.F.R. §§ 273.2(j)(2), 273.12(a)(1)(i), 273.2(k)(1)(a)(2), 273.12(c), 273.12(f)(3).

**AS AND FOR A SECOND CLAIM FOR
RELIEF AGAINST BOTH DEFENDANTS**

79. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI and OTDA's ratification thereof through its failure to supervise HRA violate the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. and the Rehabilitation Act, 29 U.S.C. § 794 et seq.

**AS AND FOR A THIRD CLAIM FOR
RELIEF AGAINST BOTH DEFENDANTS**

80. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI and OTDA's ratification thereof through its failure to supervise HRA violate the due process clause of the Fourteenth Amendment to the U.S. Constitution, enforceable under 42 U.S.C. § 1983, in that these customs, practices and policies wrongfully deprive needy people of a vested property interest without notice or hearing.

**AS AND FOR A FOURTH CLAIM FOR
RELIEF AGAINST HRA**

81. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI violates the due process clause of the New York Constitution, N.Y. Const. Art. 1, Sec. 6, in that this custom, practice and policy wrongfully deprives needy people of a vested property interest without notice or hearing.

**AS AND FOR A FIFTH CLAIM FOR
RELIEF AGAINST BOTH DEFENDANTS**

82. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI and OTDA's ratification thereof through its failure to supervise HRA violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, enforceable under 42 U.S.C. § 1983, in that these customs, practices and policies irrationally and unfairly discriminate against and, in fact, penalize needy people with disabilities who have received or are eligible to receive SSI benefits. The actions of HRA and the ratification thereof through its acquiescence by OTDA of those actions have necessarily created and carved out a special class of needy people otherwise eligible for food stamps who are denied those stamps by virtue of their being members of the class defined herein.

**AS AND FOR A SIXTH CLAIM FOR
RELIEF AGAINST HRA**

83. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI violates

the equal protection clauses of the New York Constitution, N.Y. Const. Art. 1, Sec. 11, in that this custom, practice and policy irrationally and unfairly discriminates against and, in fact, penalizes needy people with disabilities who have received or are eligible to receive SSI benefits. The actions of HRA have necessarily created and carved out a special class of needy people otherwise eligible for food stamps who are denied those stamps by virtue of their being members of the class defined herein.

**AS AND FOR A SEVENTH CLAIM FOR
RELIEF AGAINST HRA**

84. HRA's custom, practice, and policy of termination or reducing the food stamps of a substantial number of PA recipients who are approved for SSI violate OTDA regulations implementing the Food Stamps Act, 18 N.Y. Comp. Codes R. & Regs. Part 387.

**AS AND FOR A EIGHTH CLAIM FOR
RELIEF AGAINST HRA**

85. HRA's custom, practice, and policy of terminating or reducing the food stamps of a substantial number of PA recipients who are approved for SSI violates Article XVII, Section 1 of the New York State Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this court enter a judgment in their favor and in favor of the defined class as follows:

1. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class defined as all persons who: a) receive, received, or are entitled to receive food stamps; b) are found eligible to receive SSI from SSA while they are, were, or will be receiving food stamps; and c)

reside, resided, or will reside in categorically eligible households, i.e., households in which each member receives benefits under a State program funded under Part A of the Title IV of the Social Security Act, 42 U.S.C. § 1381 et seq., or aid to the aged, blind, or disabled under Title I, X, XIV, or XVI of the Social Security Act, 42 U.S.C. § 301 et seq. when receiving food stamps and found eligible to receive SSI.

2. Issue a declaratory judgment that the custom, practice and policy of HRA in terminating or reducing food stamps of plaintiffs and the defined class and the ratification thereof by OTDA through its acquiescence and failure to supervise HRA violate the following federal statutes and regulations:

- a. The Food Stamps Act, 7 U.S.C. §§ 2011, 2014, 2015 and 2020;
- b. 7 C.F.R. § 273;
- c. The Americans With Disability Act, 42 U.S.C. § 12132, et seq.;
- d. The Rehabilitation Act, 29 U.S.C. 794, et seq.;
- e. The due process clause of the Fourteenth Amendment to the U.S. Constitution; and
- f. the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

3. Issue a declaratory judgment that the custom, practice and policy of HRA in terminating or reducing food stamps of plaintiffs and the defined class violates the following state statutes and regulations:

- a. 18 New York City Comp. Code Rules and Regulations, Part 387;
- b. The due process clauses of the New York Constitution, Article I, § 6;
- c. The equal protection clauses of the New York Constitution, Article I, § 11 and
- d. Article XVII, § 1 of the New York Constitution.

4. Issue a declaratory judgment that the violations of HRA and OTDA set forth above were done under color of law and in violation of 42 U.S.C. § 1983.

5. Order injunctive relief against both defendants, jointly and severally, and their successors and all those acting in concert with them temporarily, preliminarily and permanently enjoining the continuing violations set forth in ¶¶ 2 and 3 of this prayer for relief.

6. Direct HRA and OTDA to prepare and implement a program to ensure that:

a) when disabled PA recipients are approved for SSI, their food stamps continue uninterrupted, with no additional appointments, applications, or paperwork required of the recipients, and their food stamps allotments are properly recalculated;

b) when disabled PA recipients are approved for SSI, they receive adequate notice of any change in their food stamps allotments

7. Direct HRA to make restitution to all members of the class from whom it has wrongfully withheld food stamps and establish a procedure for making such restitution.

8. Issue a decree providing this Court with continuing jurisdiction subsequent to the entry of the relief set forth above and appointing a Special Master to ensure compliance with the injunctive decrees issued hereunder.

9. Award plaintiffs their costs and reasonable attorneys' fees as provided for in 42 U.S.C. § 1988.

10. Grant such other and further relief as the court may deem just and proper.

Dated: April 1, 2002

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