

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LOVELY H., GLORIA Q., MICHELE N.,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

05 Civ. 6920 (LTS)

- against -

VERNA EGGLESTON, as  
Administrator/Commissioner  
of the New York City Human Resources  
Administration,

Defendant.

**CLASS ACTION  
COMPLAINT**

-----X

Plaintiffs, by and through their attorneys, for their complaint against defendant  
allege as follows:

**PRELIMINARY STATEMENT**

1. This is a class action for declaratory and injunctive relief brought under Title II of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973, the Due Process Clause of the United States and New York State Constitutions, and New York State and City civil rights statutes and regulations.

2. The plaintiffs and the class and subclass they seek to represent are poor New Yorkers who are disabled under federal, state and city statutes and regulations, and who have received or will receive a notice from the New York City Human Resources Administration ("HRA") involuntarily transferring their public assistance cases to one of three segregated "hub" centers, located great distances from many of their homes.

3. Plaintiffs seek the same choice that is afforded to most non-disabled welfare recipients: the ability to maintain eligibility for public assistance benefits in their local

welfare centers (known as "Job Centers"), and to avoid being forced to receive these benefits in segregated settings, far from their homes, that almost exclusively serve disabled individuals.

4. Plaintiffs also seek reasonable accommodations that would enable them to receive HRA services in a way that does not discriminate against them because of their disabilities.

### **JURISDICTION**

5. This Court has subject matter jurisdiction over this action under 28 U.S.C.A. §§ 1331 and 1343(a)(3) and (4). The action arises under the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, and the Due Process Clause of the United States Constitution.

6. This Court has supplemental jurisdiction under 28 U.S.C.A. § 1367 over plaintiffs' claims under the New York State Constitution and state and local laws prohibiting disability discrimination.

7. Venue properly lies in this district pursuant to 28 U.S.C.A. § 1391(b)(1) and (2).

### **PARTIES**

8. Plaintiff LOVELY H. lives in Arverne in the Far Rockaway section of Queens with her elderly, disabled mother. In January, 2005, she received a notice transferring her public assistance, Food Stamp and Medicaid case from her local welfare center located three blocks from her home in Far Rockaway, Queens to "hub" center 39 in Union Square, Manhattan – ninety minutes away from her home. She suffers from disabilities within the meaning of the New York State Human Rights Law and the ADA.

9. Plaintiff GLORIA Q. lives in the Jackson Heights section of Queens. In January 2005, she received a notice involuntarily transferring her public assistance, Food Stamp

and Medicaid case from her local welfare center located 15 minutes from her home in Queens to "hub" center 39 in Union Square, Manhattan – over one hour away. Ms. Q. suffers from disabilities within the meaning of the New York State Human Rights Law and the ADA.

10. Plaintiff MICHELE N. lives in Howard Beach, Queens with her sister. In April, 2005, she received a notice transferring her public assistance, Food Stamp and Medicaid case from her welfare center located in Jamaica, Queens to "hub" center 39 located in Union Square, an hour away from her home. She suffers from disabilities within the meaning of the New York State Human Rights Law and the ADA.

11. Defendant VERNA EGGLESTON is the Commissioner of HRA, the executive agency of the City of New York which has responsibility for the operation and administration of public assistance programs for New York City residents, including: cash assistance, Food Stamps and Medicaid. Commissioner Eggleston is sued in her official capacity.

#### **CLASS ACTION ALLEGATIONS**

12. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, pursuant to Rule 23(a), Rule 23(b)(1) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

13. The plaintiff class consists of recipients of public assistance, Food Stamps and/or Medicaid in New York City who have a physical, mental or medical impairment within the meaning of the New York State Human Rights Law, N.Y. Exec. Law § 292(21) (McKinney 2005), and who have received or will receive a notice from HRA involuntarily transferring their case to one of three "hub centers" in Manhattan, the Bronx, or Brooklyn. This section of the New York State Human Rights Law defines disability as (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted

clinical or laboratory diagnostic techniques, or (b) a record of such an impairment, or (c) a condition regarded by others as such an impairment. *Id.*

14. The subclass is comprised of class members, each of whom (a) has a physical and/or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment.

15. The class and subclass are so numerous that joinder of all members is impracticable. According to HRA, over 45,000 adults receiving public assistance report that they suffer from an impairment that limits their functioning. Most of these persons have received, or will receive, a notice from HRA involuntarily transferring their case to one of the three "hub centers" in Manhattan, the Bronx, or Brooklyn.

16. The rules, policies, procedures, and methods of administration of the government agencies that administer and supervise public assistance in New York City that form the factual basis for this complaint are common to all members of the class and subclass. The relief sought will apply to all of them.

17. Questions of law common to the members of the class and subclass include whether defendant Eggleston has violated:

a. the Due Process Clause of the United States Constitution and New York State Constitution by providing plaintiffs with misleading notice regarding the transfer of their cases to hub centers that does not offer them a right to challenge the transfers; and

b. federal, state and city laws prohibiting disability discrimination based on HRA's segregation of plaintiffs, failure to provide them with an option to remain at their local centers, disparate treatment of plaintiffs, failure to provide reasonable modifications, and use of methods of administration that have a disparate impact.

18. The claims of the plaintiffs are typical of the claims of the entire class and subclass.

19. The named plaintiffs are capable of fairly and adequately representing the class and subclass and protecting its interests. Counsel for the plaintiffs, the Legal Aid Society, is a legal services organization with substantial experience in class action litigation on behalf of persons with disabilities and persons eligible for public assistance. Counsel are not aware of any conflicts among members of the proposed plaintiff class and subclass.

20. The prosecution of separate actions by individual members of the class and subclass would create a risk of inconsistent and varying adjudications that would establish incompatible standards of conduct for the defendant.

21. The prosecution of separate actions by individual members of the class and subclass would create a risk of adjudications with respect to individual members which would, as a practical matter, substantially impair the ability of other members to protect their interests.

22. The defendant has acted or refused to act on grounds generally applicable to the class and subclass, making appropriate injunctive and declaratory relief with respect to the class and subclass as a whole.

### **FACTS COMMON TO THE CLASS**

#### **Basic Public Assistance, Food Stamps and Medicaid: The Scope of Subsistence Level Benefits**

23. HRA is responsible for administering basic subsistence level benefits for indigent New Yorkers, including cash assistance, Food Stamps and Medicaid. Two types of cash assistance are provided: Family Assistance, which provides cash assistance to indigent families with children under 18 years of age, and Safety Net Assistance, which provides cash assistance to poor persons whose needs are not otherwise met by any other assistance program. Food

Stamps are designed to enable poor New Yorkers to obtain food to maintain a healthy diet. The Medicaid program enables low-income individuals to access health care and medication.

24. Each of these public benefit programs provides subsistence-level benefits to poor New Yorkers based upon their income and need for assistance. The maximum amount of public assistance cash benefits that will be provided to an individual per month is \$352.10; a mother with one child will receive a maximum of \$501.50. The maximum amount of Food Stamps that will be provided to an individual per month is \$149; a mother and child will receive a maximum of \$274.

#### **Accessing Benefits: The Local Welfare Center**

25. Poor New Yorkers in need of cash assistance, Food Stamps or Medicaid can apply for these benefits at one of 29 local welfare offices called "Job Centers" located throughout the five boroughs of New York City and operated by HRA. There are nine centers in Brooklyn, nine centers in Manhattan, six centers in the Bronx, four centers in Queens and one center on Staten Island. There are also several centers that serve special populations such as veterans and refugees.

26. Once a case is opened and an individual is receiving public assistance, Food Stamps and/or Medicaid, a recipient must return to the Job Center during the year to prove that she continues to remain eligible for benefits, a process known as "recertification." Recipients must recertify at the Job Center at least every six months.

27. A recipient must also return to her Job Center to have her case adjusted every time she has a "change in circumstance" such as: when she gets a job; when she loses a job; when she needs to change day care arrangements for her child so she can work or she needs

to stay at home to care for a child with a serious illness or disability rather than attend a work assignment; when she has a baby; or when a family member moves out of the house.

28. Recipients must also return to their Job Centers to correct any errors in the amount of cash or Food Stamps they receive and to deal with any problems accessing their benefits. Finally, welfare recipients return to their welfare centers to resolve emergencies and to secure benefits to prevent eviction and utility shut-offs.

**Assessment of Ability to Participate in Work Activities**

29. As a condition of receiving public assistance in New York State, all recipients must be engaged in work activities unless they are exempted from participating in such activities. N.Y. Soc. Serv. Law § 335-b.

30. Individuals who are ill, incapacitated, or deemed disabled are exempt from work activities. N.Y. Soc. Serv. Law § 332(1).

31. Individuals who have functional limitations are deemed "work limited" and may be assigned to work activities only if the assignment is consistent with the individual's treatment plan, if a social services official determines that such person is able to perform the work assigned, and such assignment will assist the individual's transition to self-sufficiency. Where no treatment plan exists, the work activities must be consistent with the individual's mental and physical limitations. N.Y. Soc. Serv. Law § 335-b(5)(e).

32. As part of the application process, and on an ongoing basis thereafter, HRA must determine whether an applicant or recipient is exempt from work activities.

33. All of the individual's limitations must be communicated to the person supervising the work assignment. N.Y. Soc. Serv. Law § 335-b(5)(f).

34. HRA is required to inquire at application, recertification, or whenever it has reason to believe that a physical or mental impairment may prevent the individual from fully engaging in these work activities. N.Y. Soc. Serv. Law § 332-(b)(1).

35. HRA is aware that a significant percentage of public assistance recipients in New York City experience serious health, mental health, or other disability issues that prevent them from fully or partially engaging in traditional employment activities, and that render them either permanently disabled, unable to engage in work activities for a stated period of time, or work limited.

36. According to HRA, in December 2004, over half (55.7%) of public assistance recipients with children were found to be fully or partially unable to participate in work.

**HRA's Past Policy: Most Recipients Were Served at  
Their Local Job Centers No Matter How Disabled**

37. Beginning in or prior to 1997, HRA contracted with a private vendor, HS Systems, Inc. ("HS Systems") to assess those individuals it had reason to believe had a physical or mental impairment that may have prevented the individual from fully engaging in work activities.

38. For this purpose, HS Systems evaluated the individuals, and determined their abilities to engage fully in work activities. The contractor determined whether individuals were either fully able to engage in work activities, exempt from work activities, or work limited with stated functional limitations. The categories of limitations reported to HRA by HS Systems included: limitations on travel; limitations on interactions with others; limitations related to bladder and bowel functioning; limitations on breathing and environmental conditions; limitations on learning; and limitations on manual tasks.

39. Based on these contractor ratings, HRA, in turn, took one of the following actions: exempted those individuals altogether from work activities; provided them with a modified assignment to account for their functional limitations; required them to attend a rehabilitation or "wellness" program run by a contractor to become medically and/or vocationally ready for a job in the future; or determined they had no limitations and assigned them to a work activity without limitation.

40. Until November 2004, nearly all applicants and recipients who were evaluated for work limitations continued to be served at their local Job Center, no matter what the outcome of the assessment of their ability to engage in work activities. Although some work-limited or medically exempt clients' work program requirements were administered by a single, centralized office, nearly all of these clients could continue to go to their local Job Center to attend to their cases, regardless of whether they were found to be completely exempt from work activities, work-limited, or fully able to engage in work activities.

#### **The Consequences of Missing Appointments**

41. HRA conditions receipt of public benefits on satisfaction of many requirements, among them on-time attendance at many appointments, including face-to-face recertification, eligibility verification, and Office of Child Support Enforcement appointments. *See, e.g.*, N.Y. Soc. Serv. Law § 131(5); N.Y. Comp. Codes R. & Regs. tit. 18, §§ 351.21 and 369.2(b). In addition, clients must submit documentation of numerous pieces of information and respond to requests for information within strict deadlines (often ten calendar days of the request). *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 18, §§ 351.1-2; 351.1(b)(iv), 22(b) & (c).

42. In addition, receipt of public assistance and Food Stamp benefits is contingent on satisfaction of public assistance work program requirements, including

establishing an exemption, *see* N.Y. Comp. Codes R. & Regs. tit. 12, § 1300.2, or participating in work activities if one is not exempt. *See* N.Y. Comp. Codes R. & Regs. tit. 12, § 1300.9.

43. Whenever a benefits recipient fails to report on time for a mandatory appointment, HRA initiates an "adverse case action." There are at least two common types of adverse case actions – case closings and sanctions. A case closing means that the public assistance, Food Stamps, and/or Medicaid case is closed for every person in the household. *See* N.Y. Comp. Codes R. & Regs. tit. 18, § 351.22(b). Under some circumstances, a household member can be penalized by being removed from the household budget or by a 25% reduction in the household grant. *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 18, § 352.30(d)(1) & (4); N.Y. Comp. Codes R. & Regs. tit. 12, § 1300.12(b)(1).

44. A sanction eliminates the recipient's *pro rata* share of cash and food stamps for a pre-determined amount of time. *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 18, §§ 352.30(d)(2)-(3) & 1300.12(d). The computer system used by HRA requires worker input to ensure that clients do not receive sanctions or case closings. Unless a worker (1) affirmatively informs the system that the client attended the appointment successfully or (2) cancels or reschedules the appointment, the system generates an adverse case action notice automatically.

45. A recipient who is not exempt from public assistance and Food Stamp work requirements and who fails without good cause to comply with any work requirement is sanctioned. For example, if a client misses a day of a vocational rehabilitation program without documentation of good cause for absence on that particular day, she is sanctioned. HRA initiates the sanction process unless its computer is told not to do so. If there is only one person in the household, the public assistance and Food Stamp cases are closed completely for a fixed period of time. (Under New York State law, work sanctions do not apply to Medicaid. N.Y. Soc. Serv.

Law § 366(1)(a)(1).) For recipients without children, the first sanction lasts for a minimum of 90 days; the next is for a minimum of 150 days; after that, all sanctions are for a minimum of 180 days. For recipients with children, the sanction removes the *pro rata* share of the recipient's public assistance and Food Stamp benefits. The first sanction is until compliance, the second for a minimum of three months, and thereafter, for a minimum of six months. N.Y. Soc. Serv. Law § 342(2).

46. Recipients who are exempt from work rules, including those exempt due to disability, may not be sanctioned for work-rule violations. Nonetheless, they are required to attend a host of mandatory appointments, including appointments for medical evaluations and treatment. If they fail to appear for these mandatory appointments, HRA closes their public assistance and Food Stamp cases. For a recipient who has been exempted from work due to disability, this means that if she misses an appointment to be medically tested or otherwise verify her disability, her case will be closed. Appearance at those appointments is considered a condition of eligibility.

47. The process of "un-doing" a case closing or sanction requires traveling to an in-person appearance at a city or state office to attend what is known as either a "conciliation" appointment or an administrative fair hearing. At this in-person appearance, a client must demonstrate "good cause" to stop the sanction or case closing to get her case reopened and her benefits restored. Often this is not a simple matter. For example, even where a client has a chronic medical condition like asthma, which may cause her to predictably miss some appointments, HRA often expects the client to produce a doctor's note or some evidence beyond her own statements as to why she missed an appointment on that particular day. Whether she has

such evidence or not, she then must travel to the city or state office to present the reasons "good cause" should be granted.

**HRA's New Policy: Disabled Recipients Are Forced Out of Their Local Job Centers to Segregated Centers Located Far from their Homes**

48. In order to provide employment-related services to clients with physical and mental impairments, HRA has implemented a new program called the Wellness, Comprehensive Assessment, Rehabilitation and Employment program (the "WeCARE Program"). HRA has contracted with two private vendor organizations, Federation Employment and Guidance Services, Inc. (known as "FEGS") and Arbor Education & Training, L.L.C. ("Arbor E&T"), to deliver the services under the WeCARE Program. The assessment services provided by the WeCARE vendors have taken the place of the medical evaluation services formerly provided by HS Systems. These vendors are charged with assessing 45,000 HRA clients with mental and physical impairments and providing them with appropriate rehabilitative services or assisting them in getting permanent disability benefits.

49. The WeCARE Program vendors and subcontractors will serve clients at various sites in the five boroughs, but not at the Job Centers, including the hub centers.

**Segregated Administration of Benefits Cases of Physically and Mentally Impaired Clients**

50. The public benefits cases of WeCARE Program clients are still to be administered at Job Centers. However, these centers have been designated "hub" centers or "WeCARE job centers." These centers perform the same operations to administer public assistance, Food Stamps, and Medicaid as other Job Centers throughout the city.

51. There are three such centers: the Union Square Center (39) in Manhattan, the Fulton Center (61) in downtown Brooklyn, and the Concourse Center (45) in the Bronx.

These hub centers will only serve clients with physical or mental impairments. HRA has been transferring all cases of non-impaired clients out of these centers.

52. Although WeCARE clients are from all five boroughs of New York City, there are no "hub" centers in Staten Island or Queens. Staten Island and Queens clients with physical or mental impairments are to be served at the Union Square Center in Manhattan.

53. WeCARE Program vendor staff are not located at the "hub" centers, nor at any other job centers, despite the fact that one of the contractors, Arbor E&T, stated in its contract submissions registered with the City of New York that it could "co-locate" WeCARE Program staff at Job Centers throughout the City.

54. HRA has issued instructions to its own welfare center workers concerning the WeCARE Program. These instructions, set forth in the "WeCARE Policy Directive," do not direct HRA workers to provide all of the type of accommodations to clients that are required of the WeCARE Program vendors. Thus, from the perspective of disabled clients, the "hub" center is no different from the local Job Center from which their case was transferred. It offers no special services or even the type of simple modification measures required of vendors. *See* ¶¶ 81-84, *infra* (describing reasonable modifications required of vendors). The hub center plays no substantive role in the WeCARE Program. The hub centers amount to mere "shells," centralized repositories for the cases of disabled persons. The only difference is location. The result of the transfer to segregated "hub" centers is that most disabled clients will now have to travel farther to attend all of the required appointments at their welfare centers or to seek assistance from those centers.

**Transfer of Public Assistance Cases to Segregated WeCARE "Hub Centers"**

55. Starting in November 2004, HRA began transferring the public benefits cases of all 45,000 individuals whom its medical contractor found have physical or mental impairments and resulting functional limitations that affect their ability to work to these same three "hub" center locations in the City.

56. HRA has also been transferring public assistance cases of non-disabled households out of the "hub" centers to other Job Centers in order to make room for disabled transferees.

57. As a result of these transfers, HRA's local welfare centers will have virtually no clients with disabilities, and nearly all clients with disabilities will have their cases assigned to hub centers.

58. HRA is consciously making its hub centers into segregated centers dedicated almost exclusively to persons with disabilities, while preventing these individuals from being served at their local centers.

59. HRA has instructed its workers that when a new applicant has a functional limitation on work activities, the agency must transfer that case to one of its three "hub centers," instead of maintaining the case at the local center where the applicant applied for benefits.

60. Because of this change, tens of thousands of recipients with work limitations must now travel to their "hub center," for example: in order to recertify eligibility; every time they have a "change in circumstance"; every time it becomes necessary to correct an error in the amount of cash or Food Stamps they receive or to deal with problems accessing their benefits; and when it is necessary to secure emergency benefits such as payments to prevent eviction and utility shut-offs. See ¶¶ 27-28, *supra*.

61. Clients whose cases have been transferred to a hub center, and who have attempted to obtain emergency benefits from their local Job Centers, have been told by local center staff that they must travel to their hub center to obtain these benefits.

**WeCARE Program Services Are Not Provided At Hub Centers So Transfer of Cases is Unnecessary**

62. It is unnecessary to segregate the provision of services to disabled persons by transferring their cases to a limited number of hub centers.

63. The WeCARE Program vendors and subcontractors provide services at various locations throughout the city, not at the hub centers.

64. HRA's own workers staff the hub centers and they perform essentially the same functions as are performed at all other Job Centers. Those functions include conducting recertifications, adjusting benefits, correcting payment problems, and issuing emergency benefits like rent arrears grants and payments to avoid utility shut-off.

65. Because the actual services provided by WeCARE vendors and subcontractors will not be located at segregated hub centers, and because the work performed by HRA's own workers at hub centers is basically no different from the work performed at local centers, it is entirely unnecessary to transfer the public assistance, Food Stamp and Medicaid cases of disabled persons to a limited number of segregated hub centers.

**HRA Has Sent Transferred Clients Confusing Letters with Misleading Information About the Right to Request Reasonable Modifications**

66. Initially, HRA sent notices to about 23,000 recipients of public assistance, Food Stamps and Medicaid that their cases had been/would be transferred to a new center. HRA transferred these recipients because their records showed they had one or more mental and/or physical impairments. HRA made no exceptions for persons for whom known impairments

could make it difficult to get to a hub center at a greater distance from their homes. HRA did not notify recipients of any option to continue to receive benefits or services at their local Job Center.

67. The text of the notice sent to recipients whose cases were being transferred stated:

Upon receipt of this notice, your case will be serviced by the new Center whose name and address is listed on the top left corner of this notice. If there is any change in your situation or if you need to call the center, please use the telephone number on this notice.

68. The notice failed to provide any option but to be involuntarily transferred to this segregated "hub center." The notice failed to inform recipients about procedures to follow that would permit them to continue receiving services at their local welfare center. The notice failed to apprise recipients of their rights under the Americans with Disabilities Act. The notice failed to specify what constitutes a "change in your situation," making it difficult for recipients to know what is required of them with respect to the new center. The notice failed to indicate that recipients may continue to seek emergency benefits from their local Job Center, regardless of whether their case has been transferred to a "hub center."

69. On March 18, 2005, HRA sent a subsequent notice to these 23,000 recipients, informing them:

Recently, you were notified by mail that your public assistance case was transferred to the:

WeCARE Job Center # \_\_\_\_\_,  
[mailing address of center]

This center will serve public assistance recipients who are WeCARE Program participants. Your public assistance benefits, services, and recertification will be handled by the Center to which your case was assigned, whose staff will receive special training in

the services WeCARE offers, and will be better equipped to coordinate your eligibility needs with your WeCARE activities.

However, if you have a medical and/or mental health condition that makes it impossible for you to travel to your WeCARE Job Center, or if your inability to travel has caused you to miss an appointment at the WeCARE Job Center, you may telephone the HRA Infoline at (877) 472-8411 to ask for information how to obtain a reasonable accommodation. [sic.]

70. In the March 18, 2005 notice, HRA misled clients by informing them that it must be "impossible for you to travel" to hub centers in order to inquire about obtaining a reasonable accommodation. This language discouraged clients from contacting HRA unless they met this misleading standard. The same misleading information has been incorporated in the transfer letters that have been issued since that time.

71. HRA's March 18, 2005 notice does not explain whether recipients may choose to continue receiving services at their local welfare centers. The notice fails to explain the term "reasonable accommodation." The notice fails to apprise recipients of their rights under the Americans with Disabilities Act. The notice fails to indicate whether disabled recipients may continue to seek emergency benefits from their local welfare center, regardless of whether their case has been transferred to a "hub center."

72. Due to a computer error, HRA mistakenly included the wrong names and identifying information on 17,000 of these notices. Thus, on March 22 and 23, 2005, HRA sent a third notice to 17,000 of the 23,000 transferred individuals, instructing them to destroy or return the second notice they had received and reiterating the information from the second March 18, 2005 notice.

73. HRA is currently using another similar form letter to tell clients that their case has been transferred to a hub center.

74. An analysis by the Word Perfect word processing software feature called Grammatik reveals that the initial transfer notice, the March 18, 2005 notice and the March 22-23, 2005 notice sent by HRA to individuals with disabilities who had been transferred to hub centers were drafted at a reading level that requires more than a 15th grade education.

**No Meaningful Opportunity to Challenge a Transfer to a Hub Center**

75. Disabled clients whose cases are closed because they have difficulty traveling to a hub center for a mandatory appointment have no opportunity to challenge their assignment to a hub center. Although a client may challenge the case closing or sanction at a conciliation appointment at the Job Center or a State administrative fair hearing, even if she prevails and succeeds in getting her case reopened and her benefits restored, she will be unable to challenge her assignment to a hub center. This relief is not available at a conciliation or fair hearing. Thus, disabled clients face an ongoing threat of having their cases closed numerous times due to travel hardships and other problems attributable to the involuntary transfer to a hub center.

**Failure to Provide Reasonable Modifications, Inadequacy of Training and Supervision**

76. Reasonable modifications in the defendant's policies, practices, procedures, and methods of administration are necessary to enable plaintiffs to apply for, successfully obtain, and maintain eligibility for public assistance, Food Stamps and Medicaid.

77. Reasonable modifications in the defendant's policies, practices, and procedures are necessary to afford plaintiffs an opportunity to apply for, obtain, and maintain eligibility for public assistance on terms equal to and as effective as those enjoyed by non-disabled persons.

78. HRA has failed to adequately train and supervise its staff in local Job Centers regarding the rights of qualified individuals with disabilities, their rights to receive benefits and services pursuant to the ADA, and how to provide reasonable accommodations to such individuals.

79. HRA has failed to adequately train and supervise its staff at hub centers regarding the rights of qualified individuals with disabilities, their rights to receive benefits and services pursuant to the ADA, and how to provide reasonable accommodations to such individuals.

80. Local Job Centers and hub centers both fail to provide reasonable modifications that HRA specifically requires its WeCARE Program vendors and subcontractors to provide clients participating in WeCARE Program services.

81. Specifically, the WeCARE Program vendors and subcontractors, though not the hub centers or Job Centers, are to provide the following types of reasonable modifications as a form of case management:

(a) "Engagement," which involves ongoing contact with disabled clients initiated by vendor staff, as frequently as is clinically necessary;

(b) "Outreach," which involves the vendor taking progressive escalating steps to engage or re-engage disabled clients. For example, when an individual "fails to report" (FTR) for an appointment or "fails to comply" (FTC) with an activity or appointment, the WeCARE Program vendor is required to contact the individual by telephoning, sending letters, making collateral contacts with family members or others, and making home visits. An adverse action, such as a sanction or case closing, cannot be taken until escalating outreach has failed.

(c) "Facilitation" requires the WeCARE Program vendor to work with a disabled client to promote attendance at scheduled WeCARE Program appointments, providing necessary reasonable accommodations, including escorts where appropriate.

(d) "Monitoring of Compliance," which involves various steps by which WeCARE Program vendor staff monitor and evaluate a client's progress in the program.

(e) "Crisis intervention," which is provided by the WeCARE Program vendor as appropriate to identify early warning signs of crisis and/or relapse and to intervene timely and assist the client in obtaining emergency services.

82. The WeCARE Program vendor is also to take steps to ensure that needed accommodations are identified, recorded, and provided by the vendor or its sub-contractors. At the initial WeCARE Program Assessment Appointment, the vendor is supposed to determine the accommodations needed by each client to participate successfully in the WeCARE Program assessment process. The vendor is also supposed to inform the client about the right to accommodations in all WeCARE Program services.

83. In its report on the assessment, the WeCARE Program vendor is to identify, among other things, any accommodations the client requires to fulfill work requirements.

84. The WeCARE Program vendor is also required to accommodate clients' needs in rescheduling appointments.

85. The practices required of WeCARE Program vendors are not offered by HRA staff at the agency's own welfare centers, including hub centers.

86. These accommodations can be provided at hub centers and local Job Centers.

87. There is a generic ADA policy directive that applies to all Job Centers but it does not address many of the needs, or include references to many of the reasonable accommodations that are described in HRA's guidelines applicable to WeCARE Program vendors.

88. HRA knows or has reason to know that plaintiffs and members of the plaintiff class, all of whom have disabilities within the meaning of the ADA and/or state law

often require reasonable accommodations like telephoning, sending letters, making home visits, and/or providing case management services in order meaningfully to access their benefits.

89. The WeCARE Program vendor also provides reasonable modification to prepare clients with mental and physical impairments for work. For example, WeCARE Program vendors' job preparation and job search services are to include specialized activities for people with disabilities, such as "job coaching" and "job shadowing," as well as a specific orientation on the legal rights of people with disabilities.

**Disabled Individuals are Burdened and Harmed by the HRA's New Segregated System**

90. HRA's new "hub" centers create substantial additional burdens for individuals with physical and mental impairments who have been assigned there, without any corresponding justification or benefit.

91. First, they are at greater risk of having their cases closed due to missing a required appointment, such as an eligibility recertification, because of a travel hardship. A recipient who fails to report to a mandatory appointment has her public assistance and Food Stamps cases closed. Thus, disabled individuals who have difficulty attending appointments at hub centers are at risk of having their cases closed. As of March 22, 2005, 791 individuals whose cases had been transferred to hub centers had their cases closed for failing to report to appointments even before the WeCARE Program was fully operational.

92. Second, disabled individuals who have travel limitations experience greater pain and discomfort traveling to a distant hub center than to their local Job Center.

93. Third, regardless of travel hardship, many disabled individuals will incur much greater time and inconvenience traveling to remote hub centers. Some will also incur additional travel costs that they cannot afford.

94. Fourth, regardless of travel hardship, disabled individuals who require emergency benefits, such as an emergency rent arrears grant to prevent eviction or a utility arrears grant to prevent a utility shut-off, will have greater difficulty obtaining those emergency benefits, and therefore are at greater risk of eviction and/or utility shut-off. This risk is particularly acute for class members who experience travel hardships because of their disabilities.

95. Fifth, regardless of travel hardship, HRA's segregated hub system harms disabled individuals as a class by stigmatizing them and relegating them to second-class status.

#### **FACTS CONCERNING THE NAMED PLAINTIFFS**

##### **Lovely H.**

96. Lovely H. is 45 years old and lives in Arverne in the Far Rockaway area of Queens, with her mother.

97. Lovely H. suffers from anxiety, with a specific phobia that makes it very difficult for her to talk and interact with other people. Her condition also leads her to be extremely worried about her own safety and that of her mother when she is away from home. She tries to avoid interacting with others as much as possible because it causes her so much anxiety.

98. She also has Major Depressive Disorder. Her symptoms include: depressed mood, loss of interest, difficulty concentrating, loss of confidence, and lack of energy. At least twice a week, she experiences severely debilitating symptoms that make it extremely difficult for her to get out of bed. Ms. H. also suffers from sleep apnea. During periods of depression, her sleep apnea is uncontrolled, and she is only able to sleep three or four hours per night.

99. In addition to these problems, Lovely H. also suffers from arthritis, back pain, and obesity, which make it difficult and painful for her to walk and to climb stairs.

100. These conditions substantially limit Lovely H.'s ability to walk, climb stairs, sleep, interact with other people, maintain a *regular* schedule, and work. As a result of Lovely H.'s severe anxiety, she becomes extremely anxious when she leaves her home. Her problems climbing up and down stairs make it particularly difficult to use the subway system.

101. Lovely H. receives individual and group therapy once a week at a local mental health clinic, and sees a psychiatrist at the clinic monthly. She is also treated with medication and an oxygen CPAP machine for her apnea, and uses a cane to assist her when she walks.

102. HRA has evaluated Lovely H.'s functional impairments on several occasions and has concluded that she likely meets the Federal Supplemental Security Income ("SSI") benefits criteria to be considered disabled *due* to her psychiatric condition, and should be exempt from work requirements as a result of her disability.

103. Lovely H.'s only source of support is public assistance, Food Stamps and Medicaid. Prior to January 2005, she received her benefits through her local center in Rockaway, Job Center 79, located just three blocks from her home.

104. Sometime in early January 2005, she received a notice transferring her to the segregated hub center in Manhattan – ninety minutes away from her home. The notice did not inform her that she had any *choice* in the matter or that she could request a State administrative fair hearing if she did not think she should be transferred.

105. In April, Lovely H. needed help from her new hub center. She rents a room from her mother, but her rent checks were being sent by HRA to a Wyoming address with

a Puerto Rico zip code. She needed this problem fixed and also needed a copy of her public assistance budget to give to the landlord. She called her worker at the hub center and asked if he could correct her landlord's address and mail her the budget printout because it was so difficult for her to travel. The worker denied her request for a reasonable modification. He refused to mail her the printout and told her that if she wanted it, she would have to travel in person to the center. He also told her that she needed to bring in proof of her address to correct her shelter payments.

106. Lovely H. traveled to the segregated center in Manhattan on April 4, 2005. Because she was too afraid to travel alone, her seventy-year old mother, who also uses a cane and has trouble walking, traveled with her. To get to hub center 39 at Union Square, Lovely H. and her mother had to navigate two different subway lines and climb several stairways at each station.

107. By the time Lovely H. arrived at hub center 39 ninety minutes later, she was in pain and was *experiencing* a great deal of anxiety due to the crowds she faced on public transportation during her journey.

108. Lovely H. received no special accommodations at the segregated hub center in Manhattan. She was forced to wait for over one hour in a crowded waiting room without being helped. She told the worker at the desk that she could not be around crowds due to her medical condition, and asked if she could leave the papers she needed to give her worker, but she was told that she could not. She finally left before being seen because she was so uncomfortable in the waiting room. Lovely H.'s attorney intervened with hub center 39 and helped her correct the address for her rent checks.

109. Lovely H. would like to continue to receive her benefits from her local welfare center and is afraid that she will not be able to handle the stress or pain caused by ninety minute trips on public transportation to the hub center in Manhattan.

110. Due to Lovely H.'s medical conditions, she also requires appropriate reasonable modifications so that she may have equal access to benefits and services. Lovely H. would like to communicate with her center by mail, fax, or telephone to provide information and documentation whenever possible, as it is very difficult for her to leave her home. At times when it is necessary for her to appear at a Job Center in person, she requires flexibility in her appointments to make it easier for her to comply, and she requires limited wait times because she experiences anxiety waiting at the center.

**Gloria Q.**

111. Gloria Q. is a 50 year old disabled recipient of cash assistance, Food Stamps and Medicaid who suffers from major depressive disorder and back pain due to degenerative joint disease.

112. She lives alone in Queens and is substantially limited in her ability to walk, interact with others, travel by public transportation, sleep, eat and work.

113. The symptoms of her depression include lack of energy, depressed mood, lack of interest, anxiety, lack of *concentration*, and decreased appetite. Due to her degenerative joint disease, she suffers pain from extended periods of sitting, standing or walking.

114. Gloria Q. attends weekly psychotherapy sessions and monthly appointments with a psychiatrist located close to her home as part of her treatment plan. She has also been prescribed medication for her physical and psychiatric condition. HRA has evaluated Gloria Q.'s limitations and concluded that she has difficulty standing and walking for long periods of time and could only manage "limited travel" and not during rush hour. HRA also

concluded that she would need guidance and understanding in responding to co-workers and supervisors if she were assigned to an employment activity.

115. Until January 2005, Gloria Q. received her public benefits through her local Job Center in Queens – 15 minutes away from her home. In January 2005, Gloria Q. received a form notice transferring her case away from her local center to a hub center in Manhattan – a distance that would take her at least one hour to travel. The notice did not offer her any alternatives or help if she had difficulty getting to the new center.

116. Gloria Q. was fearful that if her case were transferred to Manhattan she would have greater difficulty attending appointments and that her case would be closed if she missed an appointment. She wanted to continue to receive her benefits through her local center rather than traveling an hour into Manhattan, so her attorney requested that she be allowed to remain there. HRA did not respond to this request.

117. HRA has attempted to close Gloria Q.'s public assistance case twice this year for failure to attend various mandatory public assistance appointments in Manhattan. On one occasion, she arrived late to an appointment at HS Systems. On another occasion, she was unable to attend an appointment at the hub center 39 in Manhattan. In both instances, HRA refused to reschedule these appointments as a reasonable accommodation to her disability. Gloria Q. was forced to retain an attorney and request a fair hearing to avoid loss of her public assistance benefits.

118. In April, Gloria Q. tried to apply for an emergency rent arrears grant at her local welfare center to prevent her eviction. Instead of helping her with the emergency, the local center told her that she had to apply at hub center 39 in Manhattan for help because her case had

been transferred. Gloria Q. was forced to travel to Manhattan to apply for the emergency grant, even though her local center was authorized to accept the emergency grant application.

119. Due to Gloria Q.'s medical condition, she requires reasonable modifications so that she may have equal access to benefits and services. Gloria Q. would like to communicate with her welfare center by mail, fax, or telephone to provide information and documentation whenever possible, as it is very difficult for her to leave her home. At times when it is necessary for her to appear in person, she requires flexibility in her appointments to make it easier for her to comply, and case management services to assist her with tasks such as explaining notices, rescheduling appointments as necessary, and helping with emergency issues such as a utility shut-off notice.

**Michele N.**

120. Michele N. is 44 years old and lives in Howard Beach with her sister. For the past five years she has been suffering from major depressive disorder and anxiety. Until 2000, Michele N. worked for about twenty years as a shipping clerk, at times working two jobs, sometimes seven days per week.

121. In September, 2000, Michele N. began suffering from severe depression and anxiety, in part because her mother was very ill. She was frequently so upset at work that she experienced crying spells on the job. Unable to continue working, she began receiving disability benefits from her employer due to her health problems. Michele N. attempted to work several times over the next few years but was unable to hold a job for long.

122. Michele N. has difficulty sleeping at night, and often cannot fall asleep until four or five o'clock in the morning. She also has frequent, severe headaches.

123. Michele N. is treated at a local mental health clinic where she has weekly sessions with a therapist. She sees a psychiatrist once a month for psychotherapy and

medication. She is substantially limited in her ability to work and to interact with others, concentrate, take care of her personal hygiene, sleep, and travel on public transportation.

124. By 2004 Michele N.'s depression and anxiety had worsened so that she would hardly ever leave the house alone, and she had to apply for public assistance, Food Stamps, and Medicaid. HRA has evaluated Michele N.'s functional impairments and has concluded that she is impaired in her ability to work. She is awaiting a determination on her application for SSI benefits.

125. Up until April 2005, Michele N.'s welfare center was in Jamaica, Queens, but later that month she received a notice stating that she was transferred to hub center 39, the hub center in Union Square, Manhattan.

126. Michele N. is very concerned about having her public assistance, Food Stamp, and Medicaid case handled in Manhattan. It would be difficult for her to travel alone on public transportation, because she often experiences the symptoms of panic attacks – rapid heart beat and shortness of breath – when she feels she is not in control of her environment, especially in close places with strangers, like subway cars.

127. Also, because of her problems sleeping, it is extremely difficult for her to make early morning appointments. Once, when she was assigned an early appointment for HS Systems she asked if they could please make it later in the day but was told that was not possible.

128. Michele N. is upset about having to travel to Manhattan because of the subway and of rush-hour travel. Her sister is recovering from surgery and will be unable to travel with her to her welfare center. It will be difficult enough for Michele N. to travel to her old center in Queens. She is very concerned that she will not be able to manage to travel to hub center 39 in Manhattan, and that she may lose her benefits if she misses an appointment.

Michele N. requires help accessing her benefits – in particular, help making appointments at convenient times and places or the ability to do things by phone or fax. HRA has denied her attorney's request that her case be transferred back to the Queens welfare center.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF  
(On Behalf of Subclass)**

**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT**

**A. Discrimination Claims**

129. HRA is a "public entity" within the meaning of the ADA, 42 U.S.C.A. §2131(1), and U.S. Department of Justice implementing regulations, at 28 C.F.R. § 35.104.

130. Each plaintiff and each member of the plaintiff subclass have at least one "disability," as that term is used in the ADA. The ADA defines "disability" as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; having a record of such impairment; or being regarded as having such impairment, as defined under the ADA at 42 U.S.C.A. § 12102(2) and 28 C.F.R. § 35.104.

131. Each plaintiff and member of the plaintiff subclass is a "qualified individual with a disability" as defined under the ADA, 42 U.S.C.A. § 12131(2) and 28 C.F.R. § 35.104, because each person is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by HRA.

132. Defendant discriminates against plaintiffs and members of the plaintiff subclass in violation of 42 U.S.C.A. § 12132 and its implementing regulations, 28 C.F.R. § 35.130, in the following ways:

(A) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to administer services, programs and activities in the most integrated setting in violation of 28 C.F.R. § 35.130(d) by forcing plaintiffs to access their benefits and services related to public assistance, Food Stamps and Medicaid in separate "hub centers," which are segregated settings that almost exclusively serve persons with disabilities.

(B) Defendant discriminates against plaintiffs and members of the plaintiff subclass by denying plaintiffs the option to participate in services, programs and activities that are not separate or different in violation of 28 C.F.R. § 35.130(b)(2) by forcing plaintiffs to receive services through the "hub" centers.

(C) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to provide reasonable modifications necessary for subclass members to apply for, successfully obtain, and maintain eligibility for public assistance, Food Stamps, and Medicaid, in violation of 42 U.S.C.A. § 12112(b)(5)(A) and 28 C.F.R. § 35.130(b)(7).

(D) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to (i) afford subclass members such benefits in a manner that is equal to others; and (ii) provide subclass members with benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 35.130(b)(1)(ii) & (iii).

(E) Defendant discriminates against plaintiffs and members of the plaintiff subclass by intentionally treating subclass members differently from non-disabled public assistance, Food Stamp and Medicaid recipients in violation of 28 C.F.R. §§ 35.130(a) & 35.130(b)(1)(I)-(ii) & (vii).

(F) Defendant discriminates against plaintiffs and members of the plaintiff subclass by using methods of administration that subject subclass members to discrimination in violation of 28 C.F.R. §§ 35.130(b)(3)(I)-(ii) & 35.130(b)(8).

133. With respect to each kind of discrimination, paragraphs (A)-(F), defendant discriminates against plaintiffs and members of the plaintiff subclass because of their disabilities.

**B. Notice Claim**

134. Notices sent to plaintiffs and members of the plaintiff subclass indicating that their cases have been transferred to one of three "hub centers" violate the ADA by failing to

inform them adequately that they may be protected from such an action by the ADA and of the manner in which they may seek an exemption under the ADA, and by providing misleading information on the right to request reasonable modifications, in violation of 28 C.F.R. § 35.106.

**SECOND CLAIM FOR RELIEF  
(On Behalf of Subclass)**

**VIOLATIONS OF THE REHABILITATION ACT**

**A. Discrimination Claims**

135. HRA is a "recipient" of "federal financial assistance," as defined by Section 504 of the Rehabilitation Act of 1973 and by implementing regulations promulgated by the U.S. Department of Justice, the U.S. Department of Health and Human Services, and the U.S. Department of Agriculture, thereby rendering HRA subject to Section 504. 29 U.S.C.A. § 794(b)(1); 28 C.F.R. § 41.3(d)-(e); 45 C.F.R. § 84.3(f)-(h); 7 C.F.R. § 15b.3(f)-(g).

136. The administration by HRA of the public assistance, Food Stamp and Medicaid programs, which are funded in part with federal financial assistance, constitute "programs or activities" subject to Section 504 of the Rehabilitation Act of 1973. 29 U.S.C.A. § 794(b)(1).

137. Each plaintiff and each member of the plaintiff subclass has at least one "disability," as that term is used in Section 504 of the Rehabilitation Act. Like the ADA, Section 504 defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities. 29 U.S.C.A. § 705(9)(B) & (20)(B).

138. Each plaintiff and each member of the plaintiff subclass is a "handicapped person," as that term is defined in regulations implementing Section 504. Section 504 regulations define a handicap as a physical or mental impairment that substantially limits one or

more of the major life activities of such individual. 28 C.F.R. § 41.31(a); 45 C.F.R. § 84.3(j), (l); 7 C.F.R. § 15b.3(i).

139. Each plaintiff and each member of the plaintiff subclass meets the essential eligibility requirements for the receipt of services and is therefore a "qualified handicapped person," as that term is defined in regulations implementing Section 504. 28 C.F.R. § 41.32; 45 C.F.R. § 84.3(l); 7 C.F.R. § 15b.3(n)(4).

140. Defendant discriminates against plaintiffs and members of the plaintiff subclass in violation of 29 U.S.C.A. § 794(a) and its implementing regulations, 28 C.F.R. § 41.51; 45 C.F.R. § 84.4; 7 C.F.R. § 15b.4, in the following ways:

(A) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to administer services, programs and activities in the in the most integrated setting, in violation of 28 C.F.R. § 41.51(d); 45 C.F.R. § 84.4(b)(3); 7 C.F.R. § 15b.4(b)(1)(iii), by forcing plaintiffs to access their benefits and services related to public assistance, Food Stamps and Medicaid in separate "hub centers," which are segregated settings that almost exclusively serve persons with disabilities.

(B) Defendant discriminates against plaintiffs and members of the plaintiff subclass by denying subclass members the option to participate in services, programs and activities that are not separate or different, in violation of 28 C.F.R. § 41.51(b)(2); 45 C.F.R. § 84.4(b)(3); 7 C.F.R. § 15b.4(b)(3), by forcing subclass members to receive services through the "hub centers."

(C) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to provide reasonable modifications necessary for subclass members to apply for, successfully obtain, and maintain eligibility for public assistance, Food Stamps, and Medicaid, in violation of 29 U.S.C.A. § 794(a).

(D) Defendant discriminates against plaintiffs and members of the plaintiff subclass by failing to (i) afford subclass members such benefits in a manner that is equal to others; and (ii) provide subclass members with benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 41.51(b)(1)(ii)-(iii); 45 C.F.R. §§ 84.4(b)(2) & 84.4(b)(1)(ii)-(iii); 7 C.F.R. § 15b.4(b)(1)(ii)-(iii).

(E) Defendant discriminates against plaintiffs and members of the plaintiff subclass by intentionally treating subclass members differently from non-disabled public assistance, Food Stamp and Medicaid recipients, in violation of 28 C.F.R. §§ 41.51(a) &

41.51(b)(1)(i)-(ii), (vii); 45 C.F.R. §§ 84.4(a) & 84.4(b)(1)(i)-(ii), (vii); 7 C.F.R. §§ 15b.4(a) & 15b.4(b)(1)(i)-(ii), (vii).

(F) Defendant discriminates against plaintiffs and plaintiff members of the subclass by using methods of administration that subject subclass members to discrimination, in violation of 28 C.F.R. § 41.51(b)(3)(i)-(ii); 45 C.F.R. § 84.4(b)(4)(i)-(ii); 7 C.F.R. § 15b.4(b)(4)(i)-(ii).

141. With respect to each kind of discrimination, paragraphs (A)-(F), defendant discriminates against plaintiffs and members of the plaintiff subclass because of their disabilities.

**B. Notice Claim**

142. Notices sent to plaintiffs and plaintiff members of the subclass indicating that their cases have been transferred to one of three "hub centers" violate the Section 504 of the Rehabilitation Act by failing to inform them adequately that they may be protected from such an action by the Rehabilitation Act and the manner in which they might seek an exemption under the Rehabilitation Act, and by providing misleading information on the right to request reasonable modifications, in violation of 28 C.F.R. § 39.111; 45 C.F.R. § 84.8(a); 7 C.F.R. § 15b.7(a).

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF THE UNITED STATES CONSTITUTION – DUE PROCESS**

143. At all times relevant herein, defendant was acting under color of statutes, ordinances, regulations, custom, or usage of the State of New York.

144. Defendant violates the rights of all class members guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, which is actionable pursuant to 42 U.S.C.A. § 1983, in at least two ways:

(A) by misleading class members as to their rights to seek a reasonable modification in response to the agency's decision to transfer them to the "hub" centers by advising plaintiffs that they could only seek information about such reasonable modifications should traveling to the "hub" center be "impossible" for them; and

(B) by failing or refusing to ensure that HRA staff provide class members of adequate notice and a meaningful opportunity to be heard regarding the decision to transfer them to "hub" centers.

#### **FOURTH CLAIM FOR RELIEF**

##### **VIOLATIONS OF THE NEW YORK STATE CONSTITUTION – DUE PROCESS**

145. Defendant violates the rights of all class members guaranteed by Article I, § 11 of the New York State Constitution, in at least two ways:

(A) by misleading class members as to their rights to seek a reasonable modification in response to the agency's decision to transfer them to the "hub" centers by advising plaintiffs that they could only seek information about such reasonable modifications should traveling to the "hub" center be "impossible" for them; and

(B) by failing or refusing to ensure that HRA staff provide class members with adequate notice and a meaningful opportunity to be heard regarding the decision to transfer them to "hub" centers.

#### **FIFTH CLAIM FOR RELIEF**

##### **VIOLATIONS OF § 296(2)(a) OF THE NEW YORK STATE HUMAN RIGHTS LAW**

146. HRA "hub" centers are places of public accommodation. N.Y. Exec. Law § 292 (9).

147. Plaintiffs and all class members are persons with a disability within the meaning of N.Y. Exec. Law § 292 (21).

148. Defendant subjects plaintiffs and all plaintiff class members to discrimination in their civil rights on the basis of their disability by segregating them in "hub" centers, prohibiting their continued access to local centers; adopting policies, procedures and methods of administration that have a disparate impact on disabled persons and treating them differently than non-disabled persons, in violation of the State Human Rights Law. N.Y. Exec. Law § 296-2 (a).

**SIXTH CLAIM FOR RELIEF**

**VIOLATIONS OF THE NEW YORK STATE  
CIVIL RIGHTS LAW § 40-c**

149. At or before the commencement of this action, notice thereof has been served upon the attorney general of the State of New York.

150. Plaintiffs and all plaintiff class members are persons with a disability within the meaning of N.Y. Exec. Law § 292(21).

151. Defendant subjects plaintiffs and all plaintiff class members to discrimination in their civil rights on the basis of their disability by segregating them in "hub" centers, prohibiting their continued access to local centers, adopting policies, procedures and methods of administration that have a disparate impact on disabled persons, and treating them differently than non-disabled persons, in violation of New York State Civil Rights Law. N.Y. Civ. Rights Law § 40-c.

**SEVENTH CLAIM FOR RELIEF**

**VIOLATIONS OF THE NEW YORK STATE SOCIAL SERVICES LAW**

152. Plaintiffs and all plaintiff class members are disabled within the meaning of N.Y. Soc. Serv. Law § 331(3).

153. The defendant is discriminating against plaintiffs on the basis of handicap in violation of N.Y. Soc. Serv. Law § 331(3) by assigning them to separate facilities for programs offered by the New York City social services district under Title 9B of the Social Services Law.

**EIGHTH CLAIM FOR RELIEF**

**VIOLATIONS OF THE REGULATIONS OF THE NEW YORK STATE  
DEPARTMENT OF SOCIAL SERVICES**

154. Defendant discriminates against plaintiffs and all plaintiff class members by forcing class members to access their benefits and services related to public assistance, Food Stamps and Medicaid in separate "hub" centers, which are segregated settings that almost exclusively serve persons with a substantial handicap to employment, in violation of N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1, including but not limited to the following:

(A) Defendant discriminates against plaintiffs by denying plaintiffs an aid, care, service or other benefit and privilege on the basis of handicap in violation of N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(1).

(B) Defendant discriminates against plaintiffs by providing an aid, care, service or other benefit and privilege to plaintiffs on the basis of their handicaps that are different and provided in a different manner from that provided to others who are not handicapped. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(2).

(C) Defendant discriminates against plaintiffs by subjecting plaintiffs to segregation and separate treatment in matters related to their receipt of aid, care, services, other benefits or privileges on the basis of their handicaps. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(3).

(D) Defendant discriminates against plaintiffs by restricting them in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, care, services, other benefits or privileges on the basis of their handicaps. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(4).

(E) Defendant discriminates against plaintiffs by denying them the opportunity to participate in a program through the provision of services or otherwise or affording them an opportunity to do so which is different from that afforded others under the program. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(6).

(F) Defendant discriminates against plaintiffs by making a distinction on the basis of handicap in relation to use of physical facilities and intake and application procedures. N.Y. Comp. Codes R. & Regs. tit. 18, § 303.1(b)(7).

#### **NINTH CLAIM FOR RELIEF**

#### **VIOLATIONS OF THE NEW YORK CITY HUMAN RIGHTS LAW**

155. Defendant is a "person" subject to N.Y.C. Admin. Code § 8-107(4)(a).

156. Plaintiffs and all plaintiff class members have a disability within the meaning of N.Y.C. Admin. Code § 8-102(16).

157. Defendant discriminates against plaintiffs in violation of N.Y.C. Admin. Code § 8-107(4)(a) by refusing, withholding from or denying plaintiffs accommodations, advantages, facilities or privileges because of their disabilities.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs request that this Court grant them the following relief: Certify a plaintiff class pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2).

158. Adjudge and declare that the policies, practices, omissions and conditions described above are in violation of the rights of the plaintiffs and the class and subclass they seek to represent under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Due Process Clause of the United States and New York State Constitutions, the New York State Human Rights Law, the New York State Civil Rights Law, the New York State Social Services Law and its implementing regulations and the New York City Civil Rights Law.

159. Permanently enjoin defendant, her agents, employees and all persons acting in concert with them:

(a) from operating "hub" centers in a manner that serves class members in a segregated setting; and

(b) to offer class members the option to remain at their local job center, or to transfer back to their local job center if their case has already been transferred to a "hub" center.

160. Order defendant to refrain from employing methods of administration that have the effect of discriminating against class members based on their disabilities.

161. Order defendant to reopen all the public assistance, Food Stamp, and/or Medicaid cases of all transferred class members that were closed following the transfer, reverse all other adverse actions taken against transferred class members following the transfer, and restore all lost benefits.

162. Order defendant, her agents, employees and all persons acting in concert with them to make reasonable accommodations available to class members in a manner that allows them to comply with the conditions of eligibility for public assistance, Food Stamps and Medicaid at their local welfare centers.

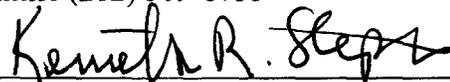
163. Award plaintiffs, pursuant to 29 U.S.C.A. § 794(b), 42 U.S.C.A. § 1988, and 42 U.S.C.A. § 12205, the costs of this suit and reasonable attorneys' fees and litigation expenses.

164. Retain jurisdiction of this case until the defendant has fully complied with the orders of this Court, and there is a reasonable assurance that the defendant will continue to comply in the future; and

165. Award such other and further relief as the Court deems just and proper.

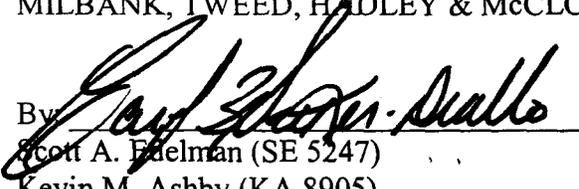
Dated: New York, New York  
August 3, 2005

THE LEGAL AID SOCIETY  
Steve Banks  
Attorney-in-Charge  
Ariene Holder, Esq.  
Attorney-in-Charge, Civil Practice Area  
Scott Rosenberg, Director of Litigation  
Richard Blum, of counsel  
Kathleen Kelleher, of counsel  
Kenneth R. Stephens, of counsel  
Susan E. Welber, of counsel  
Kyla Ratliff, of counsel  
199 Water Street, 3d Floor  
New York, New York 10038  
Telephone (212) 577-3300  
Facsimile (212) 509-8753

By:   
Kenneth R. Stephens (KS 7914)

-and-

MILBANK, TWEED, HADLEY & McCLOY LLP

By 

Scott A. Faelman (SE 5247)

Kevin M. Ashby (KA 8905)

Carolyn Walker-Diallo (CW 9022)

One Chase Manhattan Plaza

New York, NY 10005

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

Attorneys for the Plaintiffs