

PRESENT. *Hon. Stanley J. Skala*
Index Number : 042582/1979

PART 29

CALLAHAN, ROBERT

vs
CAREY, HUGH L.

Sequence Number : 015

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION DECIDED IN ACCORDANCE WITH
THE ATTACHED MEMORANDUM DECISION.**

Dated: 11/8/06

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 29

-----x
CALLAHAN, et al.

Plaintiffs,

Index No.: 42582/79

-against-

CAREY, as Governor of the State of New York, et al.

Defendants.
-----x

Sklar, J.:

The Legal Aid Society as counsel to the Coalition for the Homeless moves for an order directing the City defendants to provide it with copies of any shelter termination notices at the time that such notices are issued to homeless individuals, who are residing in homeless shelters pursuant to the August 26, 1981 Final Judgment by Consent ("the Decree") in this case¹.

The Decree provides in relevant part that:

1. The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.

The Decree further requires (at ¶ 10) that a twice monthly report be issued by employees appointed by the defendant Commissioner of the City's Human Resources Administration ("HRA") "describing compliance or lack thereof with each provision of the

¹ An order directing the City defendants to provide Legal Aid with a copy of all shelter termination notices during the pendency of this application has been issued.

decree". The Decree mandates (at ¶ 11) that plaintiff's counsel, the Legal Aid Society, "be provided with access to any records relevant to the enforcement and monitoring of this decree". Pursuant to the Decree (at ¶ 12) HRA's Commissioner was required to deliver daily by hand to plaintiff's counsel a statement listing "the number of men who were denied shelter at each shelter... and the reason for each such denial". The provisions of the Decree were expanded to include homeless adult women. See Eldredge v Koch, 98 AD2d 675, 469 NYS2d 744 (1st Dept, 1983)

In 1995 the State promulgated regulation 18 NYCRR § 352.35 which required as a condition of eligibility for temporary housing assistance for the homeless, that they comply with certain requirements of that regulation, including the requirements set forth in independent living plans ("ILP") tailored to each homeless individual seeking shelter. The failure to comply on one occasion with an ILP would lead to the issuance of a Notice of First ILP Violation which sets forth the individual's entitlement to request a fair hearing, the procedures for obtaining such a hearing, the means for the individual to access their files, and how the individual could, if they desired, seek the assistance of an attorney, including Legal Aid. According to the notice, a finding that an individual violated the ILP on one occasion would not result in their expulsion from their current shelter, but a finding that they violated it a second time would, for at least 30 days or until the failure to comply stopped, whichever was longer. The second alleged violation would result in a Notice to Discontinue Temporary Housing Assistance (Shelter), which again afforded the individual with the right to request a hearing and set forth the procedures to obtain one, advised of a right to access their file and notified that free legal assistance might be available, including through Legal Aid. This notice which is the sanction notice in issue on this

motion, also advised the individual that their shelter would be discontinued in 10 days unless they followed the steps set forth in the notice to obtain a fair hearing.

18 NYCRR § 352.35 provides in relevant part (at subd (c)) that:

“Temporary housing assistance will not be denied or discontinued for failure of the individual ... to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual”.

Legal Aid now asserts that since paragraph 11 of the Decree requires that plaintiffs’ counsel be provided access to records relevant to the enforcement and monitoring of the Decree, it must be provided with a copy of any shelter sanction termination² notice to ensure that individuals entitled to shelter under paragraph 1 of the Decree are not erroneously denied shelter. Legal Aid is particularly concerned that there will be shelter residents whose mental or physical impairments would not only render them unable to comply with their ILPs but also render them unable to protect their interests when they are handed sanction notices, and thus be improperly evicted from the shelters, thereby potentially endangering them. Legal Aid, noting that the shelter population consists in part of vulnerable individuals, wants to receive a copy of each shelter sanction termination notice to prevent any mistake in the sanction process that might in the absence of the assistance of counsel result in serious injury to or death of an individual.

The application is opposed on the grounds that there are many safeguards in place, such as multiple layers of review at the provider and agency levels, to try to ensure that individuals, who are incapable of complying with the regulations, will not be evicted from the

² Legal Aid is not urging on this application that it is entitled to receive a copy of the first ILP violation notice when it is issued .

shelters and that in any event the Decree does not require production of sanction notices to Legal Aid because the provisions of the Decree concern only the “sufficiency and quality of shelter”. This latter assertion is premised on the first page of the Decree, which recites that the plaintiffs had commenced an action challenging the sufficiency and quality of shelter for homeless men.

In reply Legal Aid does not dispute that the City defendants have taken steps to try to minimize the possibility that an individual will be wrongfully evicted, but it maintains that the City defendants are not infallible and have made errors. For example, Legal Aid points to one shelter resident, Ezekiel K. whose shelter allegedly suspected him of being mentally impaired. Mr K. was served with shelter termination sanction notice for his alleged failure to comply with a shelter ILP that required him to undergo a mental health evaluation. Legal Aid, having been given notice of the sanction notice, represented him at the hearing which resulted in a reversal of the Agency’s determination to discontinue Mr. K’s housing. The reversal was due to the Agency’s failure to set forth in the notice a reason for the Agency’s action. See Banks reply aff. ¶ 22 The reversal led to a revision of the sanction notice form, which thereafter required the stated reason for the Agency’s proposed termination to include specific facts and dates. See Hurwitz aff., exh F; O Vesey aff., p 8 It is conceded that the ALJ in Mr. K’s case never reached the underlying merits of the case. Ibid

Legal Aid also points to the case of Christopher P., whose shelter records indicate “[c]lient may be dysfunctional, learning disabled or unable to read”. See Banks reply aff ¶ 7 While a psychiatric evaluation performed by the agency’s Medical Director after Mr. P. was served with the sanction notice, concluded that Mr. P. did not suffer from an impairment which would preclude him from complying with his ILP requirements, again the merits were never

reached because the sanction notice was defective and was withdrawn at the fair hearing. About a year later Mr. P. was served with a First ILP Violation for a number of alleged failures, including the failure to have psychiatric assessment completed. Since this was a first notice Legal Aid was not apprised of it. Mr. P. evidently requested a hearing which resulted in a finding that the Agency was correct in issuing a first ILP violation since he had not applied for public assistance by a certain date. The ALJ because she found that the violation was properly issued, decided she did not have to reach the other issues, including whether he violated his ILP by not completing his psychiatric examination.

Following a review of all the papers submitted I find that paragraph 11 of the Decree requires the City defendants to provide notice of the shelter sanction termination notices at the time they are issued. The claim that the Decree only requires that Legal Aid be provided with records relevant to the sufficiency and quality of shelter is undercut by the section that mandates the provision of shelter to certain classes of individuals (See Decree, pp 2-3), the sections that deal with intake and require the City defendants to accept shelter applications for those found eligible (Id ¶¶ 5-7), and the section on compliance and monitoring which requires the Commissioner (at ¶ 12(c)) to deliver daily to plaintiffs' counsel a statement listing the number of men who were denied shelter and the reason for each such denial. This latter section appears to relate to individuals, who when seeking or applying for shelter (as opposed to those whose shelter was being terminated), were denied it, and does not relate merely to the sufficiency and quality of shelter, but rather to the denial of shelter. Such notice was presumably required so that Legal Aid could investigate to see whether that denial was improper. Since the provisions of the Decree are not limited to the sufficiency and quality of shelter and since the Decree mandates

that shelter be provided to certain individuals and that the City defendants provide access to any record relevant to the Decree's enforcement, the shelter sanction termination notices must be provided to Legal Aid when issued.

While the City has taken many commendable steps to try to ensure that no one who is entitled to shelter is wrongly deprived of it, human error is inevitable and the risk of harm is too great to ignore in this population which contains many vulnerable individuals.

In light of the foregoing the motion is granted. My interim order is extended to the signing of the order to be settled hereon.

Settle order.

Dated: November 8, 2006
60 Centre Street
New York, NY

A handwritten signature in black ink, appearing to be 'J.S.C.', is written above a horizontal line.

J.S.C.