

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRELL MCCOY, on behalf of himself
and all others similarly situated,

Plaintiff,

- against -

ANTHONY J. RESTAINO, as Commissioner of
the Niagara County Department of Social Services,

Defendant.

13-CV-00711- RJA - HBS

**STIPULATION AND
ORDER OF
SETTLEMENT**

WHEREAS, this action was commenced pursuant to 42 U.S.C. § 1983 to enforce rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and New York State and federal statutes and regulations on behalf of persons alleging that Defendant fails to process applications for cash public assistance and/or Supplemental Nutrition Assistance Program ("SNAP") benefits (hereinafter "food stamps"),¹ including food stamp applications entitled to expedited processing, in the time frames mandated by state and federal law, and to provide timely and adequate written notices of delays in determinations of eligibility for cash public assistance and/or food stamps, including notice of fair hearing rights.

¹ Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Sections 4001 and 4002 of P.L. 110-246. In New York State, SNAP benefits are commonly known as food stamps.

WHEREAS, Plaintiffs seek preliminary and permanent injunctions enjoining Defendant to (1) timely process applications for food stamps and /or cash public assistance; and (2) provide timely and adequate written notice in the event that no decision on eligibility has been made within the statutory time frames required by federal and state law for food stamps and/or cash public assistance and advising applicants of their right to a fair hearing to contest such delay.

WHEREAS, Defendant denies any and all claims of wrongdoing asserted in connection with Plaintiffs' complaint; and

WHEREAS, the parties desire to settle this action on terms and conditions just and fair to all parties;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys for the respective parties herein, that this action is settled, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms and conditions:

I. DEFINITIONS

1. "Applicant" means any person or household that applies for food stamps, Medicaid, or public assistance, including emergency assistance.

2. "NCDSS" means the Niagara County Department of Social Services.

3. "Expedited service of a food stamp application" refers to the processing of a food stamp application on an expedited basis for households that meet the criteria for expedited processing set forth in 7 U.S.C. § 2020(e)(9), 7 C.F.R. § 273.2(i) and 18 N.Y.C.R.R. § 387.8(a).

4. "Family Assistance" means the assistance pursuant to N.Y. Soc. Serv. Law. § 349 and any and all successor programs.

5. "Food stamps" means assistance provided pursuant to the Food Stamp Act of 1977,

as amended, 7 U.S.C. § 2011 *et seq.*, and any and all successor programs.

6. “Public Assistance” refers to the Family Assistance and Safety Net Programs pursuant to NY Social Services Law sections 131, 158 and 349 and any and all successor programs.

7. “Safety Net Assistance” means the assistance pursuant to N.Y. Soc. Serv. Law § 157 *et seq.* and any and all successor programs.

II. CLASS CERTIFICATION

8. All Niagara County residents who, since July 9, 2010, have applied for, are currently applying for, or will apply for food stamps and/or cash public assistance in Niagara County.

III. DEFENDANT’S OBLIGATIONS

9. NCDSS shall provide to all applicants and prospective applicants who seek food stamps and/or public assistance at NCDSS, complete and accurate mandated information about the availability of assistance for which they seek to apply.

10. NCDSS shall accept for processing each application for food stamps on the first day the applicant contacts NCDSS as required by 7 U.S.C. § 2020 (e)(2)(B)(iii); 7 C.F.R. § 273.2(c)(1), (c)(2)(I).

11. NCDSS shall act promptly on all applications for food stamps and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and been determined eligible as required by 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a).

12. NCDSS shall screen applicant households to determine if the household is eligible for expedited service of their food stamp application at the time the household applies for benefits

in accordance with 7 U.S.C. § 2020(e)(9) and 7 C.F.R. § 273.2(i)(2).

13. NCDSS shall provide expedited service of a food stamp application to households eligible for such expedited service no later than the fifth calendar day following the day the application is filed in accordance with 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a) and no later than the seventh calendar day following the date the application is filed as set forth in 7 U.S.C. § 2020 (e)(9) and 7 C.F.R. 273.2(i)(3).

14. NCDSS shall provide eligible households that complete the initial application process an opportunity to participate in the food stamp program as soon as possible, but no later than thirty calendar days following the date the application was filed as required by 7 U.S.C. § 2020(e)(3); 7 C.F.R. §§ 273.2 (g)(1).

15. NCDSS shall promptly process applications for public assistance as required by 18 N.Y.C.R.R. §§ 350.3(b), 351.1(c)(1) and § 351.8(b).

16. NCDSS shall conduct the personal interview to establish eligibility for public assistance within seven working days from the date of filing, except when there is an indication of emergency need, in which case the interview must be held immediately, as required by 18 N.Y.C.R.R. § 350.3(c).

17. NCDSS shall grant or deny public assistance within 30 days from the date of application for Family Assistance and within 45 days from the date of application for Safety Net Assistance, except for specified, acceptable reasons for delay as set forth in 18 N.Y.C.R.R. § 351.8(b).

18. NCDSS shall maintain a case record for each application and for each case of public assistance as required by 18 N.Y.C.R.R. § 354.1(b).

19. NCDSS shall provide each applicant with a notice of eligibility determination for

public assistance and food stamps, including notice of the right to a fair hearing, as required by 7 C.F.R. § 273.10(g)(1) and 18 N.Y.C.R.R. § 351.8(b); 18 N.Y.C.R.R. § 355.1(a)(4).

20. NCDSS represents that it has implemented a comprehensive plan to restructure the department in order to provide timely and efficient service to applicants. Further NCDSS agrees that it shall expeditiously enact any changes to policy statements, procedures manuals, and internal directives necessary to ensure that their respective staff, employees, agents and assigns comply with the terms and conditions of this Stipulation. In addition, NCDSS shall conduct such training as is necessary to ensure that its staff, employees, agents, and assigns comply with the terms and conditions of this Stipulation.

IV. MONITORING

21. Each month during the term of this Stipulation, NCDSS shall provide Plaintiffs' counsel with the monitoring reports set forth in paragraphs 22 through 25 of this Stipulation.

22. WMS WINR 1240 – "Application/registry Processing Report."

23. WMS WINR 4113 – "Application Register – Summary of Application Activity by Local Office, Unit, Worker and Case Type."

24. NCDSS generated Expedited SNAP Report in Excel format.

25. NCDSS generated Monthly Application Processing Report in Excel format.

V. INFORMAL REVIEW PROCESS

26. NCDSS agrees to provide a mechanism by which Plaintiffs' counsel or their designee may bring to the attention of the NCDSS those instances in which it is claimed that an application may not have been processed in accordance with applicable Federal and/or State statutes and regulations cited herein. NCDSS agrees to investigate the processing of said application and to advise Plaintiffs' counsel or their designee of the result of said investigation

within forty-eight (48) hours, excepting therefrom the full 24 hours of any weekend day, holiday or other days when NCDSS offices are closed as part of a county-wide closure. The contact person and those responsible for taking the necessary action by or on behalf of NCDSS to resolve these issues will be as follows: Public Assistance - Lisa Williams; Food Stamps – Lisa Williams. Defendant shall provide Plaintiffs' designated contact with the identity of any successors to, or temporary replacements for, the persons responsible for resolving the issues within 10 days of the date such successors or temporary replacements are appointed. In the case of temporary replacements such notice shall contain the beginning and ending date of such replacement and shall further advise whether the original designee is returning or whether another temporary replacement is identified. The contact persons designated by the Plaintiffs to bring such matters to the attention of NCDSS are: Katie L. Kestel Martin and Joseph Kelemen. Plaintiffs shall provide the Defendant's designated contact with the identity of any successors to, or temporary replacements for, the persons responsible for resolving the issues within 10 days of the date such successors or temporary replacements are appointed. In the case of temporary replacements such notice shall contain the beginning and ending date of such replacement and shall further advise whether the original designee is returning or whether another temporary replacement is identified. In the event that no designated individual is available, Plaintiffs and Defendant agree that Office of Counsel for NCDSS and counsel for the plaintiff shall act in the place of such designated individual or temporary replacement until he or she resumes that duty.

VI. JURISDICTION

27. No provision herein shall infringe upon any individual applicant's right to seek to compel NCDSS to provide him or her with an application for or a grant of food stamps, public assistance, or with the expedited processing of an application for food stamps by way of an

administrative hearing or in any court.

VII. DISPUTE RESOLUTION

28. The parties agree that either party may, upon motion to this Court, allege a claim of noncompliance with the terms of this Stipulation. Prior to bringing any such motion, the party will be required to make reasonable efforts to resolve the dispute with the other party. In the event such reasonable efforts fail to resolve the dispute, the party shall serve written notice on the other party of any claim of non-compliance, and the other party will have thirty (30) days from date of service of the written notice of non-compliance in which to respond to the claim of non-compliance. If the matter is not resolved during the thirty (30) day period, then the party may serve upon the other party, within thirty (30) days from receipt of the response to the claim of non-compliance, a notice of intent to file a motion with this Court alleging either a claim of non-compliance or seeking a protective order. No such motion shall be filed until at least ten (10) business days from the date of service of the notice of intent. Any motion shall detail any and all such efforts to resolve the dispute prior to seeking Court intervention. The time periods set forth in this paragraph may be extended by mutual written agreement of the parties.

29. The parties hereto acknowledge that each applicant for assistance has the right to have action taken within the time frames set forth in the statutes and regulations, however, as a result of the requirement that NCDSS process a large number of applications, combined with the complexity of the process, and the possibility of error, parties recognize that time frames may be missed, on occasion. As a result, the parties agree that non-systemic individual and isolated violations of this Stipulation shall not form a basis for a finding that Defendant has acted in contempt of this Stipulation.

VIII. GENERAL PROVISIONS

30. Plaintiffs agree to maintain for all time the confidentiality of all confidential information obtained by Plaintiffs during the course of this litigation and during the monitoring as provided herein and shall not disclose such information to any individual, other than Defendants and any individual class member whose case is involved, except to the extent necessary to enforce any right under this Stipulation. Nothing in this paragraph shall preclude any person from utilizing, for any purpose, non-confidential information obtained by Plaintiffs in the course of this litigation and monitoring as provided herein. Nothing in this paragraph shall interfere with or diminish the rights of Plaintiffs to enforce this Stipulation.

31. Defendant agrees that Plaintiffs may make application for attorney's fees in this case pursuant to 42 U.S.C. § 1988.

32. Within 45 days of entry of this Stipulation, Plaintiffs' counsel shall submit a request for attorney's fees and costs to Defendant through Defendant's counsel of record. If the parties are unable to agree to an award of fees and costs within 60 days of Plaintiffs' submission of said request, then Plaintiffs shall file a bill of costs and motion for attorney's fees and costs with the Court, pursuant to 42 U.S.C. § 1988. In response, Defendant shall not challenge Plaintiffs' entitlement to fees and costs but may only challenge the amount of the request.

33. The terms and conditions of this Stipulation shall become effective upon the "so ordering" of the Stipulation.

34. This Stipulation is final and binding upon the parties, their successors and assigns.

35. The Parties recognize and acknowledge that the only consideration for signing this Stipulation are the terms stated herein and no other promise, agreement or representation of any kind has been made to any party by any person or entity whatsoever to cause any party to sign this

Stipulation.

36. This Stipulation constitutes a compromise settlement of disputed and contested matters between the Parties. It shall not be construed as an admission of any sort by any of the Parties, nor shall it be used as evidence in a proceeding of any kind, except as necessary to administer and/or enforce the terms of this Stipulation.

37. This Stipulation constitutes an integrated stipulation, containing the entire understanding of the Parties with respect to the matters addressed herein and, except as set forth in this Stipulation, no representations, warranties or promises, oral or written, have been made or relied on by the Parties. This Stipulation shall prevail over any prior communications between the Parties or their representatives relative to matters addressed herein. This Stipulation may not be changed unless the change is in writing and signed by the Parties.

38. The Parties warrant and represent that they have read and understand the foregoing provisions of this Stipulation and that they and their respective signatories are fully authorized and competent to execute this Stipulation on their behalf.

39. Subject to the right of Plaintiffs to seek extension of the Court's jurisdiction as provided in this paragraph and paragraph 40, the Court shall retain jurisdiction over this Stipulation for a period of 36 months from the date this Stipulation is approved and so ordered by the Court, at which time the Court's jurisdiction shall end and the claims against Defendant shall be dismissed with prejudice, unless the Stipulation is extended against Defendant as provided herein.

- a. Plaintiffs may file a motion seeking an order extending the term of this Stipulation up to an additional 24 months against Defendant in the event the monitoring provided for by this Stipulation shows systemic non-compliance with timeliness

provisions set forth in this Stipulation or defendant has failed to provide monitoring required by this Stipulation. If the Court determines that there is systemic non-compliance with the timeliness obligations as set forth in this Stipulation, the Court may extend the term of this Stipulation up to an additional 24 months and order such other and further relief as may be appropriate against Defendant.

- b. At the end of the additional period ordered by this Court, if any, Plaintiffs may seek an order extending the term of this Stipulation up to an additional 24 months against Defendant in the event the monitoring provided by this Stipulation shows systemic non-compliance with the timeliness provisions set forth in this Stipulation or if Defendant has failed to provide the monitoring required by this Stipulation. If the Court determines that there is systemic non-compliance with the timeliness obligations as set forth in this Stipulation, the Court may extend the term of this Stipulation up to an additional 24 months and order such other and further relief as may be appropriate to ensure compliance with the obligations mandated by law against defendant.
- c. Any motion pursuant to paragraph 38(a) or 38(b) to extend the jurisdiction of the Court must be filed no earlier than 90 days prior to the termination of the Stipulation. Plaintiffs' right to seek extension of the Court's jurisdiction shall not be diminished by the pendency of any other motion for enforcement or contempt.

40. Nothing herein shall prevent Plaintiffs from moving for enforcement of this Stipulation, including the remedy of extension of the Court's jurisdiction, notwithstanding the expiration of the jurisdictional extensions provided in Paragraph 38, based on a showing of systemic non-compliance by Defendant with timeliness provisions set forth in this Stipulation or

where Defendant has failed to provide monitoring required by this Stipulation. Any such motion must be filed no earlier than 90 days prior to the date this Stipulation is due to terminate under Paragraph 38, including any extension to the termination date as a result of an order entered pursuant to motion filed under paragraph 38 (a) or 38 (b).

IX. NOTICES

40. Notices authorized or required to identify a designated contact person or temporary replacement pursuant to paragraph 26 of this Stipulation and all notices required by paragraph 28 thereof, shall be by Certified Mail – Return Receipt Requested and by regular mail to the parties hereto at the addresses set forth below, provided however, that nothing in this Stipulation shall prevent the parties from employing other methods of providing notice in addition to the procedure required herein or from waiving, in writing, formal notice requirements when circumstances warrant.

TO THE PLAINTIFF:

Marc Cohan, Esq.
Petra T. Tasheff, Esq.
Jenny R. A. Pelaez, Esq.
NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE
275 Seventh Avenue, Suite 1506
New York, New York 10001

And,

Joseph A. Kelemen, Esq.
WESTERN NEW YORK LAW CENTER
237 Main Street, Suite 1030
Buffalo, New York 14203

TO THE DEFENDANT

OFFICE OF COUNSEL
NIAGARA COUNTY DEPARTMENT
OF SOCIAL SERVICES
20 East Avenue, P.O. Box 506
Lockport, New York 14095

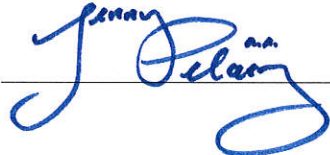
And,

NIAGARA COUNTY ATTORNEY
175 Hawley Street
Lockport, New York 14094

DATED: New York, New York
3/27, 2014

NATIONAL CENTER FOR LAW
AND ECONOMIC JUSTICE, INC.
Marc Cohan, Of Counsel
Petra T. Tasheff, Of Counsel
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Tel. (212) 633-6967

By:

A handwritten signature in blue ink, appearing to read "Jenny Pelaez", written over a horizontal line.

DATED: Buffalo, New York
3/25, 2014

WESTERN NEW YORK LAW CENTER
Joseph Kelemen
Executive Director
237 Main Street, Suite 1030
Buffalo, New York 14203
Tel. (716) 855-0203

By:

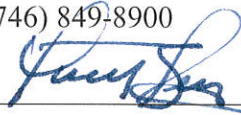
A handwritten signature in blue ink, appearing to read "Joseph Kelemen", written over a horizontal line.

DATED: Buffalo, New York
3/25/ 2014

Horwitz & Fine, P.C.

Michael F. Perley
Attorney for Defendant Anthony J. Restaino
Commissioner of the Niagara County
Department of Social Services
1300 Liberty Building
Buffalo, NY 14202
(746) 849-8900

By: _____



IT IS SO ORDERED.

DATED: Buffalo, New York
_____, 2014

HUGH B. SCOTT
U.S. Magistrate Judge