

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE Sc.

SUPERIOR COURT

SAMUEL STEVENS and)

DELFIN MEDINA)

VS.)

PC/99-5963

CHRISTINE FERGUSON, ET ALS)

HEARD BEFORE THE HONORABLE JUSTICE SUSAN E. MCGUIRL

MOTION FOR SUMMARY JUDGMENT

MONDAY, MAY 21, 2003

APPEARANCES:

GRETCHEN BATH, ESQUIRE.FOR THE PLAINTIFFS

BRENDA BAUM, ESQUIRE.FOR THE DEFENDANT

JACQUELINE KELLY.FOR THE DEFENDANT


(DEPT. OF HUMAN SERVICES)

Kristen F. Turner, RPR

Court Reporter

CERTIFICATION

I, Kristen Turner, hereby certify that the succeeding pages 1 through 15, inclusive, are a true and accurate transcript of my stenographic notes.



Kristen Turner, RPR
Court Reporter

07 24 03 10:00 FAX 401 222 3010 RE: CIVIL GENERAL CIVIL 2004

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MONDAY, MAY 21, 2003

1
2 THE CLERK: Stevens and Medina vs. Christine
3 Ferguson. I think it's ready for a bench decision; is
4 that correct?

5 MS. BATH: Yes your Honor.

6 THE COURT: Could everybody put their names on the
7 record?

8 MS. BATH: Gretchen Bath for the plaintiffs.

9 MS. BAUM: Brenda Baum for the defendant.

10 MS. KELLY: Jacqueline Kelly for Department of
11 Human Services.

12 THE COURT: It's my understanding we are here just
13 on the decision, correct?

14 MS. BAUM: Yes, your Honor.

15 THE COURT: All the parties produced all the memos.

16 MS. BATH: I'm sorry I didn't hear, your Honor.

17 THE COURT: You're just here for the decision?

18 MS. BATH: Yes, your Honor.

19 THE COURT: The issues in this case focus on the
20 defendant, Department of Human Services preprogrammed
21 assistance denial notices, whether or not the denial of
22 plaintiff Stevens' application violated Federal law.
23 The assistance at issue in this case is in two forms:
24 medical assistance and food stamps. DHS programmed its
25 computer so when medical assistance or food stamps are

1 denied, a worker selects from standardized text. The
2 preprogrammed responses at issue are 1 and 2, "You did
3 not provide all the required information," henceforth
4 the medical and food stamps assistance; and; 3, There
5 are no eligible members in the Rhode Island Medical
6 Assistance Case. So, the medical assistance issue of
7 the first two are catchalls, as I see it.

8 Also, in addition to that, DHS can free form text
9 messages, but they are neither mandatory -- they were
10 not for the two plaintiffs -- nor can they be used as a
11 substitute for the preprogrammed responses. They are
12 merely supplements if they are used. There are no
13 preprogrammed texts for refusing, as opposed to failure,
14 to provide information.

15 Plaintiff Medina applied for medical assistance in
16 '99, and in August 5th of '99 his claim was denied. He
17 was denied using option number 3, "There are no eligible
18 members," et cetera, and he appeared to be found
19 ineligible because he had not provided verification he
20 was a legal alien. He reapplied in September of '99.
21 DHS sent him a list of documents to provide, which he
22 seemingly did. In October of '99 he was denied using
23 option 1. He did not provide all the required
24 information, but the notice did not say what was
25 missing. Apparently, he was not denied because of

1 failure to provide information, but because he had
2 answered "no" to the question about disability on the
3 English-only application. Eventually he was found
4 disabled and ineligible.

5 As for plaintiff Stevens, in August of '99 he
6 applied for medical assistance, and DHS, prior to
7 denying, circled many items on his application that he
8 should bring to his interview, and was told to bring a
9 settlement letter from his lawyer as well as a note from
10 the landlord. He had received money from a suit and
11 used it to pay back rent, or that is what he had
12 indicated anyway. He was denied in September of '99,
13 using option 1. The unstated reasons appeared to be
14 failure to return a certain form, and he did not sign
15 the application.

16 In September of 1999 he again applied for medical
17 assistance and for food stamps. Oral request were made
18 by DHS to bring certain documents. No deadlines,
19 assistance or contact was initiated at that point or
20 given by DHS. In November of '99 he was refused for
21 both programs using the "failure to provide all required
22 information," number 1 option. Apparently, he was
23 orally told that he had not signed his application. He
24 went in the next day, signed the application and was
25 approved, but not retroactively.

1 It seems to me there's some dispute about what DHS
2 alleges was missing from the November of '99 denial on
3 those primarily self-created, I think, by the inability
4 of the Department to clarify that issue during the
5 discovery phase of the case. But, in any event, the
6 standardized denial gave a phone number and name
7 regarding questions and a standardized notice regarding
8 a right to appeal. Stevens claims he brought all the
9 necessary information, and DHS denies that assertion. A
10 DHS application booklet is given to applicants for
11 medical assistance and food stamps. At the end of the
12 list -- at the end of the list an example of necessary
13 documentation, it states that the agency will assist if
14 one is unable to obtain documentation.

15 The plaintiffs moved the Court for relief arguing
16 that DHS's denial notices are inadequate and violate due
17 process under the State and Federal Constitutions.
18 Further, the plaintiff maintains the DHS violated
19 Federal statutes and regulations, as well as state law,
20 in failing to provide adequate notice regarding denial
21 of assistance.

22 Finally, Stevens argues that DHS denied his food
23 stamp application, a violation of Federal law, and that
24 DHS's policies contravene Federal law.

25 In reply, DHS maintains the notice

1 satisfactorily -- satisfied regulatory and
2 constitutional requirements. The State argues that
3 adequate notice regarding rights to hearings and appeals
4 are given, telephone number are given for questions, and
5 that the denial of Steven's food stamp application were
6 correct.

7 Finally, DHS asserts that credibility
8 determinations are required to determine if the notices,
9 as given, were adequate.

10 The Court is reviewing this issue on the basis of a
11 summary judgment, which is a proceeding by which the
12 proponents must demonstrate by affidavits, depositions,
13 pleadings and other documentary matters that he or she
14 is entitled to judgment as a matter of law and there are
15 no genuine issues of material fact. Palmisciano vs.
16 Burrillville Racing Association, 603 A2d 317. The Court
17 has indicated during a summary judgment proceeding, "the
18 Court does not pass upon the weight or credibility of
19 the evidence, but must consider the affidavits and
20 pleadings in a light most favorable to the party
21 opposing the motion. The trial justice must look for
22 factual issues before the Court at this point in time to
23 determine whether or not there are any issues involving
24 material facts."

25 The only issue -- the only tasks of the trial

1 justice in ruling on a summary judgment motion is to
 2 determine whether or not there is a genuine issue of
 3 material fact. When an examination of the documents
 4 presented to the Court viewed in the light most
 5 favorable to the party opposing the motion reveals no
 6 such issue, the suit is ripe for summary judgment.

7 Parties are seeking declaratory relief in
 8 accordance with Rhode Island General Laws 9-30-1
 9 entitled Uniformed Declaratory Judgments Act. Pursuant
 10 to that chapter of the General Laws, this Court "has the
 11 power to declare rights, status and other legal
 12 relations whether or not further relief is or could be
 13 claimed. The declaration can be affirmative or negative
 14 in form and effect; and such declaration shall have the
 15 force and effect of a final judgment or decree. It is
 16 within this Court's discretion to refuse to enter or
 17 render a declaratory judgment if such judgment would not
 18 terminate the uncertainty that gives rise to the
 19 proceeding, Rhode Island General Laws 9-30-6.

20 Medical assistance programs were established in
 21 order to enable the state to furnish medical assistance
 22 for those unable to pay for medical services in time of
 23 need. Refer to U.S.C. 42, U.S.C. 1396 and Rhode Island
 24 General Laws 40-8-1. If an applicant meets the
 25 eligibility requirements, the state must furnish the

1 assistance with reasonable promptness and without delay
2 caused by the agency's administrative procedures, 42
3 U.S.C. 1396(a) (8). Eligibility is determined in a
4 manner consistent with simplicity of administration as
5 well as the best interests of the recipients. That is
6 at 42 U.S.C. 1396(a)19.

7 The Food Stamp programs were established to
8 alleviate hunger and malnutrition and to raise
9 nutritional levels of low income households. That is 7
10 U.S.C. 2011. Applicants need not be disabled, but must
11 meet minimal eligibility requirements, verified by the
12 agency, along with other factors in determining
13 eligibility. 7 U.S.C. 2020(e)3. For purposes of this
14 program, an application is filed on the date that the
15 application is received, even if incomplete, as long as
16 it contains the applicant's name, address and signature.
17 7 U.S.C. 2020(e) (2) (B) (iv). The agency has an
18 affirmative duty to explore and to resolve unclear and
19 incomplete information, and, to that end, the agency
20 must be as prompt as possible in scheduling interviews,
21 7 C.F.R. 273.2(g)3. Refusal to provide verification is
22 a valid basis for denial, whereas a mere failure to
23 provide verification is not a valid basis for denial. 7
24 U.S.C. 2015(c). An agency must provide food stamps if
25 eligible or notice if deemed ineligible. That is 7

1 U.S.C. 2020(e) (3) or 7 C.F.R. 273.2(g)3, or a notice of
2 a pending status, 7 C.F.R. 273.10(g) (iii), within 30
3 days of the receipt of the application. If within 30
4 days such determination is not made, the agency must
5 determine whether it was the agency or the applicant
6 that was responsible for the delay. 7 C.F.R.
7 273.2(h) (1) .

8 Article 1, Section 2 of the Constitution of the
9 State of Rhode Island states, in part, "All free
10 governments are instituted for the protection, safety
11 and happiness of the people. All the laws, therefore,
12 are to be made for the good of the whole. No person
13 shall be deprived of life or liberty, or property
14 without due process of law." Similarly, the Fourteenth
15 Amendment to the United States Constitution provides
16 that no state may "deprive any person of life, liberty
17 or property without due process of law."

18 Public assistance, and the denial or termination of
19 it, implicates due process concerns. The Court in
20 Goldberg vs. Kelly, 397 U.S. 254, 1970 case stated in
21 part that, "The fundamental requisite of due process of
22 law is the opportunity to be heard. The hearing must be
23 'at a meaningful time and in a meaningful manner.' In
24 the present context these principals require that a
25 recipient have timely and adequate notice detailing the

1 reasons for proposed termination and an effective
2 opportunity to defend by confronting any adverse
3 witnesses and presenting his own arguments and evidence
4 orally. These rights are important in cases such as
5 those before us, where recipients have challenged
6 proposed terminations that have incorrect or misleading
7 factual basis or premises or misapplication of rules or
8 policies to the facts of a particular case.

9 In that particular case the Court held that the
10 lower court's ruling that the failure to provide a fair
11 hearing prior to determination of welfare benefits
12 failed to satisfy procedural due process. They affirmed
13 the lower court's decision because the procedure denied
14 respondent the opportunity to be heard, defend and
15 confront evidence or witnesses prior to termination.

16 There's also case law in Rhode Island, I think, on
17 the issue of preprinted notices. In Avanzo vs. Fallon
18 625 A2d 208, a 1993 case, the Court cited Goldberg with
19 approval. Our Supreme Court indicated that, "Prior to a
20 termination of welfare benefits a recipient must be
21 given notice of the detailed reasons for which his or
22 her termination, as well as the opportunity for a
23 pretermination hearing which he or she is entitled to
24 come before the officer with authority to determine his
25 or her continuing eligibility." After the fact written

1 submissions do not fit the bill, as many recipients do
2 not write well, and a recipient needs to be able to mold
3 his arguments to those that the decisionmaker deems
4 important. "A fortiori compliance with the foregoing
5 principles would not be achieved by a caseworker's
6 review of the files and a standing -- sending of the
7 standard notice to all recipients without indicating the
8 specific reason for termination." Although informal
9 procedures would suffice, notices containing only
10 general conclusory language without specific relevance
11 to the recipients' individual cases would not suffice."
12 The lack of individualized notice rendered hearings on
13 the part of the recipient's request of the hearings less
14 than meaningful, since they were not notified in the
15 manner of which they failed to meet the standards.

16 Within the Superior Court of Rhode Island there is
17 certainly pervasive reasoning for finding generalized,
18 nonspecific denial notices inadequate as a matter of law
19 and violative of the Federal and State Constitution.
20 There's also case law from other jurisdictions holding
21 that preprogrammed denials such as in this case are
22 violative of due process. I would cite just one case,
23 Correia vs. Department of Public Welfare, 605 N.E. 2d
24 1233, a 1993 Massachusetts case, and Rhode Island
25 Superior Court, 1995 at PC/93-2806, Flynn vs. Department

1 of Human Services, the Court decided in an agency
2 appeal, in that instance, that the General Public
3 Assistance eligibility notices were insufficient because
4 the agency failed to give individualized bases for its
5 decision. "It is elementary for the opportunity to be
6 heard to be meaningful, one must be forewarned of the
7 subject matter of the hearing with sufficient detail so
8 that an intelligent explanation or rebuttal can be
9 formulated to adequately prepare to speak on one's
10 behalf to confront and cross-examine adverse witnesses,
11 a party must be clearly apprised of the reasons for
12 contemplated agency action." While other Superior Court
13 decisions have been determined in a different way, I
14 would note then the Court has reviewed Kroll vs.
15 Department of Human Services, another case PC/93-3396,
16 Superior Court decision from 1994, in those cases there
17 were clear, individualized and explicit reasons for
18 denying the application, and the Court found no error in
19 the agency's determination to that effect.

20 Further, from a statutory argument, the State and
21 Federal law require adequate reasoning for denial of
22 medical assistance and it must be given with the
23 specific regulation alleged to be violated. In this
24 case I do not think there was adequate and specific
25 individualized reasons for the denials that were given

1 in these particular instances. Again, I don't think the
2 standard notice which is given to all recipients without
3 indicating the specific reason and a detailed reason for
4 the termination refusal is sufficient.

5 Federal law requires when denying food stamps that
6 DHS gives each applicant with a clear, written statement
7 how to cooperate, and prohibits mere failure to provide
8 verification or completion of the application as grounds
9 for denial, again, 7 U.S.C. 2020(e)(3), 2015(c).

10 Refusing is a ground for denial. DHS has admitted food
11 stamps are denied when an applicant fails to provide the
12 required documentation, and does not differentiate
13 between "failure" and "refusal." Defendant's concession
14 in this regard about its own failure to comply with
15 Federal agency's requirements leaves little more to
16 discuss in that vein.

17 I also note there's a time requirement that also
18 became an issue in this particular case. In any event,
19 in this case I find there are no significant material
20 facts in dispute. I would indicate that I thought the
21 only real facts in dispute was so much of the
22 cooperation level of the individual work-up. In my
23 mind, there was cooperation extended by the individual
24 workers in the particular case with telephone numbers,
25 for example. But, again, I don't think when you look at

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the statutory requirements for written notification that that can supplement or substitute for the detailed written refusal that needs to be given.

In any event, in my opinion this court declares that the preprogrammed responses that DHS uses to inform applicants their application is denied violate the Federal and State Constitutional requirements of procedural due process. "There are no eligible members" as a preprogrammed response, is little more than a tautology. Of course, if the applicant was eligible, there would be no need to send notice that the application is ineligible. Similarly, requiring an applicant to take extra steps to determine how an applicant "did not provide all the required information" without more information or detail, violates procedural due process rights. Such responses provide no notice at all as to why applications are being denied, and such notice prevents an applicant from crafting a meaningful argument or rebut such an agency assertion on appeal. Additionally, requiring some form of individualized notice, which the Rhode Island Supreme Court and the United States Superior Court, previous cases made clear, is a constitutional requirement, would not place the burden on the agency, especially in light of the fact the information should, and must, be in the agency's