

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARLENY ACEVEDO and ALTAGRACIA

GALINDEZ, on their own behalf and on behalf of all others similarly situated,

01 Civ. \_\_\_\_\_

Plaintiffs,

**CLASS ACTION COMPLAINT**

- against -

JASON TURNER, as Commissioner

of the New York City

Department of Social Services;

BRIAN J. WING, as Commissioner

of the New York State Office of

Temporary and Disability Assistance;

and ANTONIA NOVELLO, as

Commissioner of the New York State

Department of Health,

Defendants.

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**PRELIMINARY STATEMENT**

1. This is a class action suit brought pursuant to 42 U.S.C. \* 1983 by individuals applying for and receiving public assistance in New York City who have been sanctioned for failure to comply with the Office of Child Support Enforcement (OCSE) cooperation requirements to challenge defendants\* policies and practices of (1) failing to notify them how they can get these sanctions lifted, and (2) failing to lift these sanctions when they take the steps sufficient to lift the sanctions. Plaintiffs and the class can ill afford to be subject to such sanctions \* which take the form of reducing the household\*s public assistance grant by twenty-five percent and denying or discontinuing the medicaid of the non-compliant parent \* since they desperately need these benefits to meet their needs for medical care and for other basic necessities, as well as to support their efforts to achieve self-sufficiency.

2. Plaintiffs seek a preliminary and a permanent injunction enjoining defendants from (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE.

3. Plaintiffs seek a permanent injunction enjoining City defendant to identify all persons unlawfully deprived of public assistance and/or medicaid benefits based on OCSE sanctions and provide them with benefits, if eligible, retroactively to the day that they were deprived benefits.

4. Plaintiffs seek a preliminary and permanent injunction enjoining State defendants to ensure that City defendant complies with the terms of the preliminary and permanent injunctions, respectively.

### **JURISDICTION AND VENUE**

5. This action is authorized by 42 U.S.C. \* 1983, as an action seeking redress of the deprivation of statutory and constitutional rights.

6. This Court has jurisdiction over this action under (a) 28 U.S.C. \* 1331, which vests United States district courts with jurisdiction over civil actions arising under the Constitution, law, or treaties of the United States; (b) 28 U.S.C. \* 1343(a)(3), which vests United States district courts with jurisdiction over civil actions to redress deprivation of rights secured by the Constitution of the United States; and (c) 28 U.S.C. \* 1367, which vests United States district courts with supplemental and pendent jurisdiction.

7. Venue properly lies with this district pursuant to 28 U.S.C. \* 1391(b).

## **PARTIES**

### **Plaintiffs**

8. Marleny Acevedo resides at 1672 Davidson Avenue, Apartment 2D, Bronx, New York, 10453.

9. Altagracia Galindez resides at 1717 Madison Avenue, Apartment 1L, Ridgewood, New York, 11385.

### **Defendants**

10. Defendant Jason A. Turner ("City defendant Turner") is the Commissioner of the City of New York Human Resources Administration ("HRA"), which is the local social services agency that serves New York City. City defendant Turner is responsible for: (a) the overall operation and administration of the public assistance and medicaid programs within New York City, including the operation of public benefits offices; and (b) complying with federal and state laws and regulations relating to the public assistance and medicaid programs.

11. Defendant Brian J. Wing ("State defendant Wing") is the Commissioner of the State of New York Office of Temporary and Disability Assistance. State defendant Wing is: (a) responsible for administering New York State\*s public assistance program; (b) partially responsible for administering the State\*s medicaid program; and (c) responsible for supervising the local social services districts, including New York City, in their administration of the public assistance and medicaid programs.

12. Defendant Antonia Novello ("State defendant Novello") is the Commissioner of the State of New York Department of Health. State defendant Novello is: (a) primarily responsible for administering the State\*s medicaid program; and (b) responsible for supervising the local social services districts, including New York City, in their administration of the medicaid program.

## **CLASS ALLEGATIONS**

13. Plaintiffs bring this action on behalf of a class defined as:

All persons who have applied for, are applying for, will apply for, are receiving, or have received public assistance from City defendant and whose public assistance has been reduced and/or medicaid denied or discontinued for failure to comply with child support enforcement requirements.

14. This class is so numerous that joinder of all members is impracticable. Based on state-wide information, it can be estimated that there are over two thousand public assistance recipients in New York City who currently are sanctioned because they failed to comply with OCSE. Hundreds of additional applicants and recipients are sanctioned each year for failure to comply with OCSE.

15. There are numerous questions of fact and law common to the class. At issue are defendants\* policies and practices concerning their procedures for sanctioning public assistance applicants and recipients for failure to comply with OCSE. These policies and practices affect the entire class.

16. The individual plaintiffs\* claims are typical of the claims of the class in that all of the named plaintiff class representatives have sought to apply for, are applying for, are receiving, or have received public assistance, and have been sanctioned for failure to comply with OCSE.

17. Declaratory and injunctive relief are appropriate with respect to the class as a whole because defendants have acted on grounds applicable to the class.

18. The named plaintiffs and the proposed class are represented by the New York Legal Assistance Group, whose attorneys are experienced in class action litigation and will adequately represent the class.

19. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that the prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

### **STATUTORY AND REGULATORY SCHEME**

20. The following paragraphs set forth the relevant federal and state statutes and regulations that govern defendants\* administration of the public assistance and medicaid programs.

#### **A. The Public Assistance Program**

21. New York State constitutional and statutory law place a duty on social services officials to provide adequately for those individuals and families who do not have sufficient funds to support themselves and to ensure as far as possible that families be kept together and not be separated for reasons of poverty alone. *See* N.Y. Const. Art. 17, \* 1; N.Y. Soc. Serv. Law \* 131(1), (3).

22. New York has established the family assistance program, which is available to families with a child under eighteen and to pregnant women, to comply with this duty. *See* N.Y. Soc. Serv. Law \* 349.

23. The family assistance program is partially federally-funded through the Temporary Assistance for Needy Families (TANF) Program, 42 U.S.C. \* 601 *et seq.*

24. New York State law provides that local social service offices must "provide applicants and recipients . . . with clear and detailed information concerning programs of public assistance, eligibility requirements therefor, methods of investigation and benefits available under such programs." 18 N.Y.C.R.R. \* 351.1(b); *see also id.* \* 355.1(a)(1).

25. An applicant who is denied public assistance is entitled to a notice so stating. This notice must include an explanation of the reason for denying the public assistance application. *See* 18 N.Y.C.R.R. \*\* 358-2.2(a)(3), -3.3(a)(2)(i).

26. Once an applicant is found eligible for public assistance, this assistance can only be reduced with advance notice that details the reason for the reduction. *See* 18 N.Y.C.R.R. \* 358-2.2(a)(3), -3.3(a)(1)(i).

## **B. The Medicaid Program**

27. The Social Security Act of 1965 established the medicaid program as a joint federally- and state-funded, state-administered program. The medicaid program is intended to help poor families and individuals access needed medical services and thereby attain or retain the capability for independence or self-care. *See* 42 U.S.C. \* 1396.

28. Under New York\*s medicaid program, New York City is a local social services district that must administer the medicaid program within the parameters of federal and state regulations. *See* N.Y. Soc. Serv. Law \*\* 62(1), 363.

29. To be eligible for medicaid, an applicant must lack sufficient income to meet his or her medical needs. *See* 42 U.S.C. \* 1396a(a)(1), (10)(A), (10)(C); N.Y. Soc. Serv. Law \* 366.

30. The agency\*s policies and procedures must ensure that eligibility is determined in a manner consistent with the simplicity of administration and the best interests of the applicant or recipient. *See* 42 U.S.C. \* 1396a(a)(19); 42 C.F.R \* 435.902.

31. Medicaid "shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. \* 1396a(a)(8).

32. An applicant who is denied medicaid is entitled to a notice so stating. This notice must include an explanation of the reason for denying the medicaid application. *See* 42 C.F.R. \* 435.912; *see also* 18 N.Y.C.R.R. \*\* 358-2.2(a)(3), -3.3(a)(2)(i), 360-2.5(b).

33. Once an applicant is found eligible for medicaid, this assistance can only be reduced with advance notice that details the reason for the reduction. *See* 42 C.F.R. \*\* 431.210(b), 431.211, 435.919; *see also* 18 N.Y.C.R.R. \* 358-2.2(a)(3), -3.3(a)(1)(i).

### **C. Child Support Enforcement Requirements and Sanctions**

34. Public assistance applicants and recipients must cooperate in good faith with local social service districts in establishing the paternity of children born out-of-wedlock, locating any absent parent or putative father, establishing, modifying, and enforcing child support orders, and obtaining support payments. 18 N.Y.C.R.R. \* 369.2(b)(1)(iii); *see also* 42 U.S.C. \* 608(a)(2); 45 C.F.R. \* 264.30(a).

35. Cooperation in good faith includes appearing at local child support enforcement units to provide information relevant to child support enforcement. 18 N.Y.C.R.R. \* 369.2(b)(1)(iii)(b).

36. If an individual fails to cooperate in establishing paternity or in establishing, modifying, or enforcing a support order, then their public assistance grant will be reduced by twenty-five percent. 18 N.Y.C.R.R. \* 352.30(d)(4); *see also* 42 U.S.C. \* 608(a)(2); 45 C.F.R. \* 264.30(c).

37. If an individual fails to cooperate in establishing paternity or in establishing, modifying, or enforcing a support order, then their medicaid will be denied or discontinued. 18 N.Y.C.R.R. \* 360-3.2; *see also* 42 C.F.R. \* 433.148(a)(2).

38. OCSE sanctions are not durational sanctions with a minimum specified time period; instead OCSE sanctions last only for the time period during which the individual fails to cooperate with OCSE. 18 N.Y.C.R.R. \*\* 352.30(d)(4), 360-3.2.

## **DEFENDANTS\* POLICIES AND PRACTICES**

### **OCSE Cooperation**

39. All public assistance applicants and some public assistance recipients are screened for referral to OCSE. Applicants and recipients with minor children who have absent parents and no child support order for the children are referred to OCSE to provide information about the absent parents and, if appropriate, cooperate with attempts to secure child support.

40. OCSE has four offices: 32-20 Northern Boulevard, Queens, New York, 11101; 847 Concourse Village East, Bronx, New York, 10451; 115 Chrystie Street, New York, New York, 10002; and 80 DeKalb Avenue, Brooklyn, New York, 11201. The office to which City defendant refers a client depends upon the borough in which the client resides.

41. City defendant sanctions those who fail to attend their OCSE appointments. City defendant also sanctions those who fail to cooperate at their OCSE appointments, or otherwise fail to cooperate with OCSE requirements. The OCSE sanction consists in a twenty-five percent reduction in the family\*s public assistance grant and the denial or discontinuance of the non-compliant parent\*s medicaid.

42. On information and belief, City defendant routinely fails to notify those who they sanction for failing to comply with OCSE of the procedures for lifting the sanction. City defendant does not use a standard form that includes such information when an applicant receives notice of an OCSE sanction. Instead, City defendant relies on case workers to manually write on notices that applicants that an applicant has been sanctioned and the procedures for lifting the sanction. However, case workers routinely fail to take the additional step of writing on the notice the procedure for lifting the sanction.

43. On information and belief, City defendant routinely fails to lift OCSE sanctions when those sanctioned express a willingness to comply with OCSE. City defendant employs no centralized system for those sanctioned to take advantage of when they are willing to comply. Instead, City defendant relies on case workers who have many other job responsibilities to lift OCSE sanctions.

44. City defendant\*s routine failure to inform those sanctioned of the procedures for lifting the sanctions and to lift the sanctions when those sanctioned indicate a willingness to comply with OCSE rise to the level of practice, if not policy.

45. State defendant Wing\*s Public Assistance Source Book provides as follows: "The notice to a PA applicant/recipient who is sanctioned for refusing or failing to cooperate with child support enforcement also must include the information that, at any time, the sanctioned individual may reapply and comply . . . ." VIII-T-1.12 (\* 7(b)(3)(b)) (Nov. 30, 1998).

46. State defendant Wing\*s Public Assistance Source Book also provides as follows: "A sanctioned individual who indicates a willingness to cooperate [with OCSE] must be informed . . . of the specific action(s) which must be taken to have assistance provided or reinstated. When the individual cooperates or makes a good faith effort to cooperate, the sanction must be ended." VIII-T-1.14 (\* 7(b)(3)(f)) (Nov. 30, 1998).

## **The Role of State Defendants**

47. State defendants are charged with supervisory authority over City defendant\*s administration of the public assistance and medicaid programs.

48. The State defendant know, or should know, that City defendant has failed to provide those who are sanctioned for failure to comply with OCSE notice of the procedures for getting the sanction lifted and to lift sanctions when those sanctioned indicate a willing to comply with OCSE. On information and belief, State defendants have not taken any action to ensure that City defendant complies with federal and state law on this matter.

### **FACTS OF INDIVIDUAL NAMED PLAINTIFFS**

#### **Marleny Acevedo**

49. Ms. Acevedo, who is 19 years old, lives with her son Xavier Martinez, who is 8 months old.

50. At the end of 2000, Ms. Acevedo was scheduled for an appointment at the Bronx OCSE office. She went to the appointment, completed a questionnaire about Xavier\*s father, and answered the questions that they asked her about him. Then, in February 2001, Ms. Acevedo received a notice from OCSE telling her to go to a March 5, 2001, family court appointment in downtown Manhattan.

51. Ms. Acevedo was unable to make it to court on March 5. On March 2 (a Friday), her son had his immunization shots. However, over the weekend, he developed a fever. He still had this fever on March 5. In addition, it was snowing on that day. Because of this, Ms. Acevedo could not make to the appointment, but instead had to stay home to take care of her sick son. The next day, she took her son to see his doctor, who told her to keep him at home and to give him aspirin.

52. On March 6, 2001, Ms. Acevedo called the number on the letter that she had received scheduling the March 5 appointment to explain why she could not make it on March 5. She told the person that she spoke with that her son was sick and it was snowing. However, the person on the phone told her that she would be sanctioned for missing the appointment.

53. Later that week, Ms. Acevedo spoke to her case worker, Mr. Crespo, at the Melrose Income Support Center about the OCSE situation. He told her that because she missed the scheduled appointment, she would be sanctioned.

54. In March, 2001, Ms. Acevedo\*s public assistance was reduced from \$68.50 twice a month to \$51 twice a month. However, she never received a letter from the City telling her that this would happen.

55. On March 14, 2001, Ms. Acevedo\*s social worker at TASA at Inwood House asked for a fair hearing on her behalf to challenge the OCSE sanction, as well as to challenge the City\*s failure to add her son to her budget. However, the fair hearing date has not yet been set. Also, while the fair hearing acknowledgment form calls for her aid to continue at the level before the sanction, she has not received this aid continuing. A complaint was submitted through the *Morel v. Giuliani* lawsuit to address this situation, but the City has not restored her benefits to what she was receiving before she was sanctioned.

56. After her public assistance was reduced, Ms. Acevedo met with her case worker, Mr. Crespo. He gave her another appointment date with OCSE for May 2, 2001. Ms. Acevedo went to this appointment, filled out another questionnaire about Xavier\*s father, and met with Mr. Steinberg, an OCSE worker. She told Mr. Steinberg about her sanction, but he told her that she had to speak with her case worker about lifting the sanction.

57. Since May 2, Ms. Acevedo has met with her case worker several times about lifting her OCSE sanction. However, so far, he has not done so. In fact, the last time she picked up her public assistance it had been reduced to \$44 for no apparent reason.

58. In addition to her sanction, the City has never put Ms. Acevedo\*s son on her budget, even though she submitted a copy of his birth certificate to her case worker. A complaint concerning this was submitted through the *Brown v. Giuliani* lawsuit. However, Ms. Acevedo\*s son still has not been added to her budget. Ms. Acevedo does not understand how the City can give her an OCSE sanction when her son is not even on her budget.

59. It has been extremely difficult for Ms. Acevedo to support herself and her son with an OCSE sanction and without her son on the budget. She is now receiving only \$44 in public assistance and \$129 in food stamps, rather than the \$109 in public assistance and \$238 in food stamps that she should be receiving. Ms. Acevedo has not been able to afford enough food for herself, and has had to skip meals. In addition, she has not been able to buy enough baby food for her son. Also, Ms. Acevedo has not be able to buy enough diapers for her son, or sufficient clothing for herself and her son. Finally, she has not been able to pay her bills, and is facing eviction from her apartment due to owing back rent.

### **Altagracia Galindez**

60. Ms. Galindez, who is 44 years old, live with her five children: Jomeiry, who is 14; Jomayra, who is 12, Jonathan, who is 11; Janairy, who is 9; and Jasmyn, who is 7.

61. For about the past two years, Ms. Galindez has been getting less than her full amount of public assistance benefits. However, she did not know the reason for this. Ms. Galindez only found out about two weeks ago that the reason she was not getting the

proper amount of public assistance was that she had an OCSE sanction. However, she does not remember ever getting a letter from the City stating that my public assistance would be reduced because she did not comply with OCSE.

62. On June 25, 2001, Ms Galindez called Mr. Salano at her Center, the Queens Job Center. He scheduled her for an appointment on June 29 with the OCSE offices in Queens. Ms. Galinez then received a notice in the mail later that week with the appointment date.

63. Ms. Galindez attended the June 29 appointment. She told the person with whom she met that she had an OCSE sanction. The OCSE worker told Ms. Galindez that they would work on the sanction, but did not tell her when the sanction would be lifted.

64. Ms. Galidnez has had difficulty making ends meet. She has not been able to keep up with her bills, and is behind in her gas and telephone bills. Also, Ms. Galindez has had to forgo food because of a lack of money to buy enough. In addition, she has not been able to buy clothes for her five children with the money that she receives.

## **STATEMENT OF CLAIMS**

### **FIRST CLAIM AGAINST DEFENDANTS**

65. Defendants\* policy and practice of denying applications for and discontinuing ongoing public assistance benefits based on a failure to comply with OCSE without notification of the availability of and procedures for lifting an OCSE sanction violates plaintiffs\* and plaintiff class members\* rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Due Process Clause of the New York State Constitution, and New York State public assistance law and regulations. U.S. Const. Amend. XIV, \* 1; N.Y. Const. Art. I, \* 6; 18 N.Y.C.R.R. \*\* 351.1(b), 355.1(a)(1); 358-2.2(a)(3), -3.3(a)(1)(i), (2)(i).

### **SECOND CLAIM AGAINST DEFENDANTS**

66. Defendants\* policy and practice of failing to increase public assistance benefits when recipients are willing to comply with OCSE violates plaintiffs\* and plaintiff class members\* rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution, the Due Process and Equal Protection Clauses and Article 17, \* 1 of the New York State Constitution, and New York State public assistance law and regulations. U.S. Const. Amend. XIV, \* 1; N.Y. Const. Arts. I, \*\* 6, 11, XVII, \* 1; 18 N.Y.C.R.R. \* 352.30(d)(4).

### **THIRD CLAIM AGAINST DEFENDANTS**

67. Defendants\* policy and practice of denying applications for and discontinuing ongoing medicaid based on a failure to comply with OCSE without notification of the availability of and procedures for lifting an OCSE sanction violates plaintiffs\* and plaintiff class members\* rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, federal medicaid law and regulations, the Due Process Clause of the New York State Constitution, and New York State medicaid law and regulations. U.S. Const. Amend. XIV, \* 1; N.Y. Const. Art. I, \* 6; 42 C.F.R. \*\* 431.210(b), 431.211, 435.919, 435.912; 18 N.Y.C.R.R. \*\* 351.1(b), 355.1(a)(1), 358-2.2(a)(3), -3.3(a)(1)(i), (2)(i), 360-2.5(b).

#### **FOURTH CLAIM AGAINST DEFENDANTS**

68. Defendants\* policy and practice of failing to restore medicaid benefits when public assistance recipients are willing to comply with OCSE violates plaintiffs\* and plaintiff class members\* rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution, the Due Process and Equal Protection Clauses and Article 17, \* 1 of the New York State Constitution, and federal medicaid law and regulations. U.S. Const. Amend. XIV, \* 1; N.Y. Const. Arts. I, \*\* 6, 11, XVII, \* 1; 42 U.S.C. \* 1396a(a)(8); 18 N.Y.C.R.R. \* 360-3.2.

#### **REQUEST FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court:

- a. Certify this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- b. Declare, pursuant to 28 U.S.C. \* 2201, that City defendant\*s policies and practices of (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE, violate the plaintiffs\* and plaintiff class members\* rights under federal and state law and the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- c. Preliminarily enjoin defendants, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure

to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE.

d. Preliminarily enjoin State defendants, pursuant to Rule 65 of the Federal Rules of Civil Procedure, to ensure that City defendant refrains from (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE.

e. Permanently enjoin defendants, pursuant to 28 U.S.C. \* 2202, from (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE.

f. Permanently enjoin City defendant, pursuant to 28 U.S.C. \* 2202, to identify all persons unlawfully deprived of medicaid, and/or public assistance benefits based on OCSE sanctions and provide them with benefits, if eligible, retroactively to the day that they were deprived benefits based on the OCSE sanction.

g. Permanently enjoin State defendants, pursuant to 28 U.S.C. \* 2202, to ensure that City defendant refrains from (1) reducing class members\* public assistance and denying or discontinuing their medicaid benefits for failure to comply with OCSE without simultaneously providing written notice of the availability of and procedures for lifting the OCSE sanctions, and (2) failing to lift OCSE sanctions when class members express their willingness to comply with OCSE.

h. Award reasonable attorneys\* fees, as provided by 42 U.S.C. \* 1988;

i. Award costs and disbursements; and

j. Order such other and further relief as the Court deems just and proper.

Dated: New York, New York

July 3, 2001

Respectfully submitted,

YISROEL SCHULMAN (YS 3107)

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