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Case Notes

State and City Officials' Obligations to Provide Medicaid and Food Stamps to Eligible Immigrants Are Enforceable Under Section 1983; Duty to Provide TANF and State-Funded Benefits Is Enforceable Under State Law

M.K.B. v. Eggleston challenges the systemic failure of State and local social service officials to provide Medicaid, food stamps, TANF, and state-funded public benefits to eligible immigrants in New York City.¹ After a nine-day evidentiary hearing, the district court certified a plaintiff class, found a high likelihood that defendants would be found liable on all claims, and issued detailed preliminary injunctive relief. A comprehensive settlement has been submitted to the district court for approval after a fairness hearing.

Background

A Qualified Alien, as defined in 8 U.S.C. § 1641(b) and (c), is eligible for Medicaid and TANF assistance if she entered the United States before August 22, 1996, or if she has been in a Qualified Alien status for five or more years; or if she is exempted from the five-year bar by 8 U.S.C. § 1613(b), (d). A Qualified Alien may be eligible for food stamps if, among other grounds, she (1) has been in a Qualified Alien status for five or more years, or (2) is under 18 years old, or (3) is receiving benefits or assistance for blindness or disability within the meaning of the Food Stamp Act. In New York State, a non-citizen is eligible under state law for state-funded cash public assistance (known as Safety Net Assistance) and state-funded Medicaid if she is a Qualified Alien who is ineligible for Temporary Assistance for Needy Families (TANF) because of the five-year bar, or if she is permanently residing in the United States under color of law (Prucol).

Qualified Aliens include battered spouses or children whose petitions under the Violence Against Women Act have been approved or found to set forth a prima facie case (“VAWA self-petitioners”). They also include battered spouses or children on whose behalf a U.S. citizen or lawful permanent resident spouse or parent has filed an I-130 petition and who

present acceptable proof of domestic abuse (described here as the “I-130 Group”).² Both groups are described here collectively as Battered Qualified Aliens.³

Relevant Facts

Because of pervasive deficiencies in policy directives, training, and the design of State and City computer systems, certain groups of noncitizens in New York City were routinely erroneously denied Medicaid, food stamps, TANF, or state-funded public benefits or all four on account of their immigration status. They included Battered Qualified Aliens; lawful permanent residents who had been in that status for less than five years; and noncitizens who are Prucol. Many eligible applicants in these groups were deterred or discouraged from applying for assistance on account of their immigration status. Others, whose minor children had open public benefit cases and who sought to be added to those cases, had their requests denied because of their immigration status.

Battered immigrants were particularly devastated by these actions, as they were often forced to choose between destitution and returning to the batterer for economic support. Plaintiffs' counsel became aware of the systemic and pervasive nature of these problems in New York City through the work of attorneys—Reena Ganju of Sanctuary for Families and Elizabeth Saylor of the Legal Aid Society, in particular—representing battered immigrants seeking public benefits.

Deficiencies in Policies and Training. Various policy directives and training materials erroneously stated the eligibility requirements for Battered Qualified Aliens and Prucols. These errors led to pervasive misunderstandings among City workers concerning the eligibility of immigrants for public benefits. City workers routinely failed to understand, for example, that Qualified Aliens who entered the United States before August 22, 1996, are eligible for TANF and Medicaid; that the minor children of Qualified Aliens are eligible for food stamps; and that Prucol aliens, Battered Qualified Aliens in the I-130 group, VAWA self-petitioners with an approved petition, and lawful permanent residents who had been in that status for less than five years are eligible for state-funded benefits.

Computer System Design Flaws. Erroneous denials were also attributable to design flaws in the City and State computer systems used to administer benefits in New York City. The City's primary computer system for processing applications for

¹*M.K.B. v. Eggleston*, 445 F. Supp. 2d 400 (S.D.N.Y. 2006).

²See 8 U.S.C. § 1641(c).

³In common parlance, representatives of immigrant domestic violence survivors refer to this group as “battered qualified aliens.”

public benefits (the Paperless Office System, or POS) presents the worker with a structured set of questions pertaining to an applicant's eligibility for benefits. POS had no immigration status option for a Battered Qualified Alien, however. Workers could access the screen used to open a case for Battered Qualified Aliens only by choosing options that did not, in fact, apply to them (for example, a parolee for at least one year or a legal permanent resident). Some workers who were correctly attempting to open an immigrant's case deliberately "miscoded" the applicants as citizens or green card holders in an attempt to work around these limitations. When applications were miscoded, however, benefits were often later discontinued if the recipients were unable to verify the immigration status wrongly entered into the computer.

Deficiencies in the design of the State's primary computer system used to administer public benefits (the Welfare Management System, or WMS) were also responsible for errors. (POS served as a "front end" for WMS and passed information to it.) WMS had a single date field for recording both the date of entry into the United States and the date on which an applicant became a Qualified Alien. Entering the latter date overwrote the former, often causing WMS to regard a pre-1996 entrant as ineligible for Medicaid and TANF. Cases in which some family members were eligible for federal benefits and others for state benefits could not be opened in POS and had to be opened directly in WMS as so-called multisuffix cases. The absence of adequate instructions on how to accomplish this for immigrants, poor training, and weaknesses in the WMS design repeatedly combined to cause such cases to "error out."

Social Security Numbers. Policies and practices concerning social security number requirements contributed to wrongful denials of applications. The City sent applicants who were eligible for federal benefits to the Social Security Administration for a social security number. However, they were given letters prepared by the City, based on instructions by the State, that were insufficient on their face to warrant issuance of a social security number. Applicants who returned from the Social Security Administration with a social security number denial letter were then denied public benefits. Although Qualified Aliens and Prucols who are ineligible for Medicaid and TANF are eligible for state-funded Medicaid and Safety Net Assistance so long as they *apply* for a social security number (even if one is denied), City workers routinely misunderstood and misapplied this rule.

Inadequate Notice. When some applicants in a household were accepted for benefits and others were denied them on account of immigration status, the notice of decision indicated only that benefits had been granted. No notice was given that some persons had been denied benefits, or who had been accepted and who had been denied. Without receiving a written notice of any kind, immigrants who asked to be added to an open public benefits case for a family member, and who were deemed ineligible because of their immigration status, were told that they would not be added to the case.

Legal Claims

The complaint in *M.K.B.*, filed in December 2005, alleges that eligible Battered Qualified Aliens, lawful permanent residents who have been in that status for less than five years, and Prucol aliens are systematically and erroneously denied food stamps, Medicaid, TANF, and state-funded public benefits on account of their immigration status.⁴ The plaintiffs include thirteen noncitizens who were eligible for but who—on account of their immigration status—were denied Medicaid, cash public assistance, or food stamps or all three. The defendants are the commissioners of two state agencies that supervise the administration of public benefits in New York State—the New York State Office of Temporary and Disability Assistance, which supervises TANF, Safety Net Assistance, and the Food Stamp Program, and the New York State Department of Health, which supervises the Medicaid program—and the New York City commissioner of the local social services district, the Human Resources Administration, which processes applications for all these programs.

The complaint alleges six federal claims against the City defendant. Four claims allege that the City has a policy, custom, and usage of denying food stamps and Medicaid to eligible class members, in violation of the Food Stamp Act and the Medicaid Act, 7 U.S.C. § 2020(e)(3) and 42 U.S.C. § 1396a(a)(8), and of deterring and discouraging eligible class members from applying for those benefits, in violation of 7 U.S.C. § 2020(e)(2)(B)(iii) and 42 U.S.C. § 1396a(a)(8). A fifth claim alleges that the City has a policy, custom, and usage of giving no notice or inadequate notices of denial to class members, in violation of due process and federal regulations, 7 C.F.R. § 273.10(g)(1) (food stamps) and 42 C.F.R. §§ 435.911 and 435.912 (Medicaid). The sixth claim alleges that the City's deliberate indifference to the need to give proper training and supervision to its employees caused or contributed to these violations.

A seventh claim against the State defendants alleges that the Office of Temporary and Disability Assistance and the Department of Health caused or contributed to these violations, rendering the State defendants jointly and severally liable for them; that the State defendants violated their responsibilities under federal law as the single State agencies responsible for administering the Food Stamp Program and the Medicaid program, in violation of 7 U.S.C. § 2020(n) and 42 U.S.C. § 1396a(a)(5); and that the state agencies have been deliberately indifferent to the need to provide proper training and supervision to Human Resources Administration employees who administer food stamp and Medicaid benefits. Additional claims under state law involving the erroneous denial of state-funded benefits are alleged against the City defendant under the court's supplemental jurisdiction.

Decisions of the Court

The defendants moved to disqualify all of the individual attorneys who represent the plaintiffs and their entire law firms,

⁴Plaintiffs' counsel in *M.K.B.* included Elizabeth Saylor, Chris Lamb, Jenny Baum, Camille Carey, and me of the Legal Aid Society; Jane Greengold Stevens and Caroline Hickey of the New York Legal Assistance Group; Barbara Weiner of the Empire Justice Center, and Ronald Abramson, Russell Jacobs, and Shawn McNellis of Hughes Hubbard & Reed LLP.

and to prohibit various paralegal assistants, interns, and Rena Ganju, who represented some of plaintiffs in prior, related actions, from testifying based on the “advocate-witness rule.” The court denied that motion on February 15, 2006.⁵ A few days later, it denied the City’s motion for reargument.⁶ By order dated February 16, 2006, the court held that plaintiffs were likely to prevail against various legal defenses asserted by the defendants and directed the defendants to take corrective actions that they agreed should be made. Among other provisions, the order required the City to make corrections to its POS computer system and to refer all applications by Battered Qualified Aliens to designated subject-matter experts.⁷

In March 2006 the court held a nine-day evidentiary hearing to determine whether additional preliminary injunctive relief or class certification or both were warranted. The testimony of Ganju, who testified as a fact witness regarding dozens of battered immigrant clients whom she represented while at Sanctuary for Families, was critical in establishing the pervasive and systemic nature of the legal violations.

On August 29, 2006, in a lengthy decision, the court found “a very high likelihood that the City will be found liable on all of plaintiffs’ claims.”⁸ According to the court, 42 U.S.C. § 1396a(a)(8), 7 U.S.C. § 2020(e)(3), 7 U.S.C. § 2020(e)(9), and various implementing regulations confer rights that are enforceable under Section 1983.⁹ Likewise, the court found, the plaintiffs have implied rights of action under the state statutes that support their pendent causes of action against the City.¹⁰ Turning to the facts, the court found that plaintiffs “have made a very substantial showing that the mistaken determinations were the direct results of the flawed design of the City’s computer system (‘POS’), the pervasive errors in the City’s training materials and policy directives, and the widespread worker ignorance resulting from the inadequate training of the City employees. Moreover, the City Defendant had notice of all of these systemic failings.”¹¹

The court found that, “[b]eyond all else, plaintiffs have also clearly established for these purposes an overwhelming likelihood of success on their contention that the City, in its failure to adequately train its employees, was ‘deliberately indiffer-

ent’ to the violation of plaintiffs’ federal rights.”¹² Addressing the liability of the State defendants, the court held that “although the State had some direct role in the problems here at issue, it is sufficient for present purposes for the Court to conclude, as it does, that the plaintiffs have clearly established a likelihood that the State Defendants will be held vicariously liable for the City Defendant’s violations of plaintiffs’ federal rights.”¹³

Having found that plaintiffs “established a clear or substantial likelihood of success on the merits against both the City Defendant and State Defendants,” the court held that plaintiffs were entitled to such injunctive relief as necessary to prevent irreparable harm.¹⁴ Rejecting the defendants’ arguments that the ameliorative measures they took after the filing of the lawsuit rendered the action moot, the court ordered additional, detailed injunctive relief against all defendants. The court directed the State defendants to make corrections to and issue clear instructions regarding the WMS computer system; to correct its policy directive regarding social security numbers; and to revise its Medicaid training materials. The court ordered the City defendant to revise its policy directives regarding social security numbers and Prucol eligibility; to refer all cases involving green card holders who have had their green cards for less than five years to specialists known as “immigrant liaisons”; and to conduct extensive training.¹⁵

The court certified a plaintiff class consisting of all Battered Qualified Aliens, lawful permanent residents who have been in that status for less than five years, and Prucols who are, have been, or will be eligible for state or federally funded public assistance, Medicaid, or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have benefits discontinued or reduced, (c) have been or will be discouraged or prevented from applying; or (d) have been or will be encouraged to withdraw an application by a New York City job center because of a misapplication of immigrant eligibility rules.¹⁶

The State moved to reargue those portions of the court’s decision that granted relief on behalf of Prucols (on Eleventh Amendment grounds) and lawful permanent residents who were in that status for less than five years (on the ground that

⁵*M.K.B. v. Eggleston*, 414 F. Supp. 2d 469 (S.D.N.Y. 2006).

⁶*M.K.B. v. Eggleston*, No. 05 Civ. 10446, 2006 U.S. Dist. LEXIS 8385 (S.D.N.Y. Feb. 23, 2006).

⁷ *M.K.B. v. Eggleston*, No. 05 Civ. 10446 (S.D.N.Y., Feb. 16, 2006).

⁸*M.K.B. v. Eggleston*, 445 F. Supp. 2d 400, 435 (S.D.N.Y. 2006).

⁹*Id.* at 428.

¹⁰*Id.* at 429.

¹¹*Id.* at 434.

¹²*Id.* at 435.

¹³*Id.* at 436.

¹⁴*Id.* at 437.

¹⁵*Id.* at 438–40.

¹⁶*Id.* at 440–43.

the class was overbroad and should have been divided into subclasses). The court denied that motion in its entirety.¹⁷

Proposed Settlement

On January 12, 2007, the parties signed and submitted for court approval a comprehensive settlement agreement. A hearing on the fairness, reasonableness, and adequacy of the proposed settlement under Federal Rule of Civil Procedure 23(e) is scheduled for May 24, 2007.¹⁸

General Injunctive Relief. The proposed settlement enjoins the City defendant to refrain from denying, discontinuing, or reducing public benefits based on immigration status to eligible class members, and from turning away, deterring, discouraging, or refusing to permit class members from applying for public benefits on the basis of immigration status. The City may require class members to apply for a social security number to the extent necessary to establish or maintain eligibility for TANF, Medicaid, or food stamps; however, it may not deny or discontinue state-funded cash public assistance and state-funded Medicaid so long as the class member makes a timely and complete application to the Social Security Administration for a social security number. All notices to class members must separately indicate which household members are accepted for public benefits, which are denied benefits, and for which public benefits they have been accepted or denied. The defendants are required to comply fully with the February 16, 2006, and August 29, 2006, preliminary injunctions, including their obligations to make necessary corrections to City and State computer systems and to ensure that eligibility determinations for all class members are made by immigrant liaisons or staff with equivalent specialized training.

Training. The City is required to train 150 immigrant liaisons and to develop curricula and training on immigrant status recognition and documentation relevant to immigration status, and the eligibility of class members for public benefits, including social security number requirements. The full elements of the curriculum must be incorporated into "new hire" training for all staff who handle the eligibility-determination part (both application and recertification) that is based on immigration status. Periodic reinforcement training is required. Training requirements in the injunctions issued by the court on February 16 and August 29, 2006, are continued for the duration of the agreement.

Classwide Retroactive Relief. The proposed settlement provides for extensive classwide retroactive relief. Two groups of class members will receive "automatic" case reviews to determine their entitlement to retroactive benefits without having to request retroactive relief in response to a classwide notice. Those groups are (1) class members whose U.S. citizen children were accepted for public benefits, but the class member was not accepted based on immigration status; and (2) class members who were Battered Qualified Aliens or law-

ful permanent residents who had been in that status for less than five years at the time of application and whose non-citizen children were not accepted for food stamps based on immigration status. The City will automatically review those case files and determine whether and to what extent each class member is entitled to retroactive cash public assistance, food stamps, or Medicaid or all three and, upon making the determination, will automatically issue benefits retroactive to December 13, 2002, for cash assistance and Medicaid and December 13, 2004, for food stamps. Class members whose case files are incomplete, or for whom additional information may be needed to make a determination, will be called in for interviews and afforded an opportunity to supply information or documentation or both proving their eligibility as of the date of the original application or discontinuance. All other class members will be sent notices inviting them to respond and request retroactive relief.

Quality Assurance and Monitoring. The proposed settlement provides for extensive classwide monitoring, reporting, and quality assurance measures. Every six months the City defendant is required to review the case files of a systematic sample of 150 class members. For each case, the City must report to plaintiffs' counsel whether the class members were eligible for cash public assistance, food stamps, or Medicaid or all three; whether they were accepted or denied for those benefits; whether computer errors delayed the provision of benefits beyond the statutory time frame for making a decision; whether the procedures and rules regarding the use of social security numbers were properly applied; and whether adequate notice of an acceptance, denial, discontinuance, or reduction of benefits was given. Any errors discovered must be corrected within fifteen days. If the same type of error based on immigration status occurred in three or more cases, then the City must conduct reinforcement training in the affected offices or must correct any policy or procedure responsible for the errors.

The State defendants must independently review a subset of the cases reviewed by the City and must determine and report to plaintiffs' counsel whether any member of the household should have been categorized as a recipient of TANF, food stamps, Medicaid, or, for certain categories of battered immigrants, state-funded Medicaid. If the state agencies determine that errors were made, they must issue to the City a directive requiring corrective action. If the same type of error occurred in three or more cases, then the State must direct the City to conduct reinforcement training and, if necessary, to correct any policy or procedure responsible for the errors.

Informal Relief System. The proposed settlement makes permanent an informal relief system required as part of the February 16, 2006, preliminary injunction. Advocates representing class members who have been wrongly denied public benefits on account of their immigration status may refer requests for relief under the *M.K.B.* settlement to plaintiffs' counsel.

¹⁷ *M.K.B. v. Eggleston*, No. 05 Civ. 10446, 2006 U.S. Dist. LEXIS 81704 (S.D.N.Y. Nov. 7, 2006).

¹⁸ The proposed settlement can be viewed and downloaded at www.mkbsettlement.org.

Commentary and Reflections

The work of two legal advocates for battered immigrants—Reena Ganju and Elizabeth Saylor—was critical to the investigation and development of the *M.K.B.* case. Ganju's decision to participate as a fact witness rather than as cocounsel was instrumental in enabling the plaintiffs to prove pervasive and systemic violations at trial. The assistance of a large team of attorneys and paralegals at the New York law firm of Hughes Hubbard & Reed LLP, led by Ronald Abramson, was essential to the successful prosecution of the case. In addition to the direct representation of a number of clients and legal research and drafting, Hughes Hubbard & Reed furnished critical technical and logistical support (including an extranet where over 35,000 pages of discovery and all pleadings, depositions, filings, and research were posted and available online and in court).

During the investigation and preparation phase, the plaintiffs carefully considered the scope of the class. Ultimately the class definition was narrowed to focus on those categories of noncitizens for whom violations were most pervasive. This decision enabled counsel to focus resources on the areas of greatest concern and maximized the likelihood of proving systemic violations.

In negotiating the proposed settlement, we emphasized training, monitoring, and quality assurance measures in an effort to ensure that changes in policies and procedures mandated by the settlement would be translated into effective actions at the frontline, worker level. In formulating procedures for classwide retroactive relief, we strove to ensure that a significant part of the class would receive retroactive benefits without having to request such relief by responding to a classwide notice. We also focused on ensuring that class members who received "automatic" case reviews would be evaluated for relief for all benefit programs (cash public assistance, food stamps, and Medicaid) and that retroactive benefits would be issued for the full period authorized by the statute of limitations through the present. To preserve gains achieved in preliminary injunction orders, we ensured that the settlement would make those orders final and would require the defendants to comply fully with them.

For further information about the *M.K.B.* settlement or to contact plaintiffs' counsel, visit www.mkbsettlement.org/.

[Editor's Note: Case documents in *M.K.B. v. Eggleston* (Clearinghouse No. 56,101) are available in our Poverty Law Library at www.povertylaw.org/.]

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National Class Action Alleging Federal Government Fails to Protect Medicaid Beneficiaries in Medicare Prescription Drug Program Will Proceed; Class Is Certified

Situ v. Leavitt is a national class action brought in federal district court on behalf of the 6.4 million Medicaid beneficiaries who were transferred into the Medicare Part D program in 2006 and had trouble accessing their medically necessary prescriptions.¹ The case was filed in April 2006 against the federal government for failing to enroll these vulnerable beneficiaries properly into the program or to subsidize their costs or both. The suit seeks declaratory and injunctive relief. Representing the U.S. Department of Health and Human Services (HHS) Secretary Michael O. Leavitt, the U.S. Department of Justice moved to dismiss the case and objected to the certification of the class on every conceivable ground.

In this case note I describe the circumstances that led to the filing of the lawsuit, some of the key challenges presented in the case, and the plaintiffs' recently defeating a motion to dismiss and obtaining nationwide certification of the class. I describe how privatization in government benefit programs presents obstacles to accountability and enforcement on behalf of low-income consumers.

New Prescription Drug Benefit

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added Medicare Part D, a new prescription drug benefit, to the Medicare program.² The Medicare Part D program is intended to give Medicare beneficiaries access to prescription drug benefits through private insurance plans. The addition of Part D was made with much political fanfare and marked the biggest change in government-provided health care since Medicare and Medicaid were first created in 1965.

With a hotly disputed multibillion-dollar price tag and partisan bickering over the passage of the legislation, Medicare Part D has been controversial since its inception. The relative merits of the program will likely be debated for years to come. Its early harmful impact on Medicare's most vulnerable recipients and the problems created for the Medicaid population, however, have been widely reported and virtually undisputed, except perhaps by the current administration and the Centers for Medicare and Medicaid Services (CMS) administering the program.

Medicare Part D is a voluntary program for most of the 43 million Medicare beneficiaries who are eligible for it. For the dual eligibles, those Medicare beneficiaries who are also eligible for Medicaid, the benefit is essentially mandatory. When Medicare Part D became effective on January 1, 2006, each of the 6.4 million Medicaid beneficiaries who are eligible for Medicare

¹*Situ v. Leavitt*, No. C06-2841, 2007 WL 127993 (N.D. Cal. Jan. 12, 2007).

²Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066.

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