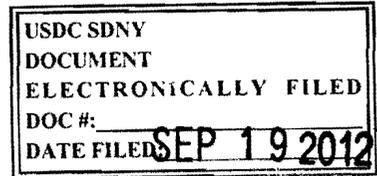


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
LOVELY H., GLORIA Q., AND MICHELE :
N., individually and on behalf of :
all other similarly situated, :
:
Plaintiffs, :
:
-v- :
:
VERNA EGGLESTON, as Commissioner of :
the New York City Human Resources :
Administration, :
:
Defendant. :
-----X

05 Civ. 6920 (KBF)
MEMORANDUM & ORDER

KATHERINE B. FORREST, District Judge:

In 2004, the New York City Human Resources Administration ("HRA") implemented changes in how it administered public assistance, food stamps and Medicaid benefits to welfare recipients with disabilities. Specifically, the HRA program moved physical reporting locations to three "hub" centers in New York City for individuals who suffered from certain medical or mental disabilities. Previously, those individuals had been able to report to 29 neighborhood offices. This lawsuit followed in August 2005.

Plaintiffs allege violations of the Title II of the Americans with Disabilities Act ("the ADA"), Section 504 of the Rehabilitation Act of 1974 ("the Rehabilitation Act"), the Due Process Clauses of both the U.S. and New York State

Constitutions, and various New York State and City civil rights statutes and regulations.

On April 19, 2006, Judge Swain, to whom this case was originally assigned, ordered preliminary injunctive relief and certified a plaintiff class. On May 3, 2006, HRA informed the Court of its intention to close the hub centers. The last such center was closed in July 2006. However, between the time that the hub centers had been opened and their closing, a large number of cases were closed or suffered a reduction in benefits (referred to as "sanctions").

The parties then conducted extensive discovery to identify those class members who had had appointments at hub centers, failed to appear for those appointments and whose cases were closed or suffered sanctions as a result. The parties attempted to negotiate a settlement of monetary claims. In November 2006, the parties entered into a stipulation in which they agreed that those individuals with currently opened cases would receive monetary payments according to a formula. That stipulation did not contain any concession of liability.

The parties disputed then--and continue to dispute now-- whether those class members whose cases were closed and have not been reopened, are eligible for what the parties have characterized as "retroactive" cash payments. Specifically, the parties dispute whether New York Social Services Law § 106-b

prevents monetary payment to an individual whose case is closed. This dispute is premised upon the assumption that such monetary payments can and must be characterized only as "corrective" or "retroactive" benefits payments, rather than compensatory damages for violation of plaintiffs' rights under various statutes.

In January 2007, plaintiffs filed a motion for partial summary judgment as to HRA's liability for the remaining class members who had lost benefits as a result of having their cases transferred to hub centers and whose cases were subsequently closed. In light of ongoing settlement discussions, in March 2009, Judge Swain *sua sponte* terminated that motion without prejudice.

To date, the parties have been unable to resolve their remaining differences regarding payments to class members whose cases remain closed.

In November 2011, this case was transferred to this Court. Despite the passage of years since the case was filed, a number of issues remained open. The Court set a schedule that allowed for resolution of those issues and a trial date in November 2012. Based upon the Court's discussion with the parties regarding its view of the motion, the parties requested an extension of the schedule in this action, which sets trial for February 2013.

Plaintiffs have now moved for partial summary judgment on the question of whether New York Social Services Law § 106-b precludes payment to class members who would otherwise be entitled to compensation, solely because they no longer have an open public assistance case. As discussed below, the Court finds that the motion is premature because seeks an adjudication on damages prior to a determination of liability.

It is axiomatic that summary judgment as to damages can only follow a determination that damages are in fact owed (i.e., that the defendant is actually liable for damages). See Amerada Hess Corp. v. Yuma Shipping Corp., No. 82 Civ. 2136, 1985 WL 458, at *4 (S.D.N.Y. Mar. 27, 1985) ("It is difficult to imagine how the Court could rule on damages . . . without first determining the liability issue . . ."). In the absence of such a finding, any such determination could only amount to an inappropriate advisory opinion.

Here, while the parties have done an admirable job of attempting to resolve this matter without a trial, there is no admission before the Court of liability. Certainly settlement discussions are not *ipso facto* an admission of liability. Plaintiffs' motion is premised at the outset on an assumption of liability. When that premise was disputed by defendants in opposition to this motion, plaintiffs responded by pointing to what they characterize as a concession of liability in both a

hearing before a magistrate on this matter that preceded a written stipulation resolving certain issues, and the stipulation itself. The Court has reviewed both the transcript to which plaintiffs have referred and the stipulation itself. Defendants have made no concession that could be construed as one of liability--either at the hearing or in the stipulation itself. Indeed, at oral argument on this motion, counsel for defendants specifically denied that they had in any way conceded liability as to any issue.

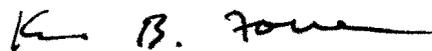
This Court cannot make a determination as to what damages may be due in advance of a determination that anything is due at all. Accordingly, a judicial determination of summary judgment at this stage of the proceedings would be inappropriate and putting the proverbial cart before the horse.

For the reasons set forth above, plaintiffs' motion for summary judgment is denied. As discussed on the August 29, 2012, conference call with the parties, if the parties wish to stipulate as to liability for even one plaintiff, the Court will issue a ruling as to the question of damages.

The Clerk of the Court is directed to terminate the motion
at Docket No. 164.

SO ORDERED:

Dated: New York, New York
September 19, 2012



KATHERINE B. FORREST
United States District Judge