

NOTES

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GALE COKER, et al v. OTIS R. BOWEN,
et al

No. 86-2448
September 2, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GALE COKER and CARLA ESTES,
on behalf of themselves and
their minor dependent children,
Jonquil Hotel
1600 W. Jonquil Terrace
Chicago, Illinois 60626,

TONY PORTER, on behalf of herself
and her minor dependent children,
Congress Hotel,
206 W. Franklin Street,
Baltimore, Maryland 21201,

NATIONAL UNION OF THE HOMELESS,
2021 20th Street and Spring Garden,
Philadelphia, Pennsylvania 19130,

and

NATIONAL COALITION FOR THE
HOMELESS, 1620 I Street, N.W.,
Washington, D.C. 20006,

Plaintiffs,

v.

OTIS R. BOWEN, M.D., Secretary,
United States Department of
Health and Human Services,
200 Independence Avenue, S.W.,
Washington, D.C. 20201,

and

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue, S.W.,
Washington, D.C. 20201,

Defendants.

PENN.-J.

86-2448

Civil Action No. _____

SEP 2 1986

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Gale Coker and Carla Estes, on behalf of themselves and their minor dependent children (collectively the "Coker-Estes family"), Tony Porter, on behalf of herself and her minor dependent children (collectively the "Porter Family"), the National Union of the Homeless, and the National Coalition for the Homeless, by their attorneys, bring this action against defendants Otis R. Bowen, M.D., in his capacity as Secretary, United States Department of Health and Human Services, and the United States Department of Health and Human Services (collectively "HHS" or "defendants"), for declaratory and injunctive relief. In support of their claims, plaintiffs allege as follows:

NATURE OF THE CASE

1. This is an action to compel defendants to discharge their statutory and regulatory duty to ensure that States participating in a federal program and receiving federal funds provide emergency shelter assistance to homeless families.

2. Homelessness among families in America today has reached crisis proportions. Each month thousands of families nationwide become homeless as a result of eviction, natural disaster, financial destitution and other emergencies beyond their control. Homeless families -- frequently mothers with young children -- are the fastest-growing category of homeless people and are now

estimated to constitute as much as forty (40) percent of the two to three million homeless persons nationwide. In several States, such as Illinois and Massachusetts, homeless families are estimated to comprise a majority of the homeless population.

3. The Emergency Assistance to Families ("EAF") program, administered by HHS, creates a federal right to temporary shelter in States that have committed to furnish, pay for or secure family shelter in emergency situations. Pursuant to Title IV-A of the Social Security Act, 42 U.S.C. § 601 et seq. (the "Act"), and implementing regulations promulgated thereunder (the "regulations"), HHS is required to ensure that such States actually provide emergency shelter assistance to eligible needy families with children. HHS is obligated by the Act and the regulations to monitor, review, oversee and enforce the provision of emergency assistance by States participating in the EAF program.

4. HHS has failed to discharge this obligation. Defendants have taken neither the specific actions required by the regulations nor any action adequate to ensure that participating States actually provide emergency assistance to needy families with children, and have enforced the Act in an arbitrary and capricious manner. As a result, participating States frequently refuse, fail and otherwise do not substantially provide the emergency assistance, including emergency shelter, that they have committed and are required to provide to families eligible under the EAF program.

5. Because of defendants' failure to discharge their obligations, homeless families across the country, although in desperate need, are not receiving the emergency shelter assistance to which they are entitled under federal law. For example:

(a) In Delaware, more than fifty (50) percent of the homeless families that seek emergency shelter assistance are turned away by the Delaware Department of Health and Social Services;

(b) In Illinois, it has been estimated that there are at least 5,000 homeless families, several hundred in the City of Chicago alone. The Illinois Department of Public Aid frequently fails to provide eligible homeless families with the emergency shelter assistance to which they are entitled and has contracted with only one private agency, the Salvation Army Emergency Lodge, for the provision of emergency shelter solely within Chicago;

(c) In New York, despite a number of court rulings recognizing their right to emergency shelter, thousands of homeless families have been denied shelter and relegated -- with their children -- to sleep in squalid welfare offices;

(d) In Washington State, the Department of Social and Health Services provides emergency shelter assistance to only about one out of ten homeless families; and

(e) In Michigan, there are approximately 6,400 homeless families, yet fewer than 250 shelter beds are provided by the Department of Social Services

6. Defendants' refusal to enforce the Act and to carry out the specific monitoring procedures required by the regulations has removed all effective federal oversight of the provision of emergency shelter assistance under the EAF program. Plaintiffs seek a declaration that HHS is obligated by the Act and its own regulations to ensure that participating States adhere to their commitments to provide emergency shelter assistance to all eligible families, and an order compelling defendants to discharge this obligation.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1361. Venue in this district is proper under 28 U.S.C. § 1391(e). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57, Fed. R. Civ. P.

PARTIES

8. Gale Coker is a 34 year old white male. Carla Estes is a 24 year old white female. Their children are Donnie, age 2, and Shanadora, age 1, and Ms. Estes is pregnant with another child due to be born in January 1987. The Coker-Estes family is indigent and was eligible in August 1986 for emergency shelter assistance under the State

of Illinois emergency assistance plan. Despite repeated requests, the State of Illinois, through its social service agencies, has refused to secure emergency shelter for the Coker-Estes family or to refer the Coker-Estes family to any private or public agency that provides emergency shelter to homeless families. As a needy family with children, the Coker-Estes family is among the intended beneficiaries of the monitoring, oversight and enforcement obligations established by the Act and the regulations.

9. Tony Porter is a 30 year old woman with a 12 year old son, Arnold, and a six-month old son, Shawn. The Porter family was eligible in August 1986 for emergency shelter assistance under the State of Maryland emergency assistance plan. Despite repeated requests, the State of Maryland, through its social service agencies, has refused to secure emergency shelter for the Porter family or to refer the Porter family to any private or public agency that provides emergency shelter to homeless families. As a need family with children, the Porter family is among the intended beneficiaries of the monitoring, oversight and enforcement obligations established by the Act and the regulations.

10. The National Union of the Homeless (the "National Union") is a national organization headquartered in Philadelphia, Pennsylvania, composed of currently and formerly homeless persons, including homeless and formerly homeless families. The National Union has approximately

6,000 members and is affiliated with numerous local unions around the country.

11. The National Coalition for the Homeless (the "National Coalition") is a not-for-profit corporation organized and existing under the laws of the State of New York. The National Coalition's fundamental purpose is to alleviate the misery and vindicate the rights of the homeless, including their right to effective enforcement of statutory and regulatory compliance mechanisms established for their aid and protection. The National Coalition, its board members, and its affiliated organizations provide aid and services to, and advocacy for, homeless persons (including homeless families) throughout the United States.

12. Otis R. Bowen, M.D. ("Bowen" or the "Secretary"), named in his official capacity, is Secretary of the United States Department of Health and Human Services. Bowen has statutory responsibility for the administration of the Act and the EAF program.

13. The United States Department of Health and Human Services is an agency of the executive branch of the government of the United States.

FACTS

A. The Emergency Assistance to Families Program

14. The EAF program is a federally created and funded entitlements program designed to provide prompt,

temporary assistance to needy families with children. Pursuant to the Act, the purpose of EAF is to avoid destitution of needy children and to provide living arrangements for needy children and their families. 42 U.S.C. § 606(e)(1).

15. States participate in the EAF program by committing, in plans submitted to the Secretary for approval, to provide emergency assistance to needy families with children. The State plan is a comprehensive description of the nature and scope of the State's program which must give assurances that the program will be administered in conformity with the requirements of the Act and the regulations. 45 C.F.R. § 201.02. Following approval of their plans by the Secretary, States receive reimbursement under the Act (known as federal "matching funds") for up to fifty (50) percent of their quarterly emergency assistance expenditures. 42 U.S.C. § 603(a)(5).

16. The Act requires States participating in the EAF program to provide emergency assistance to eligible families in accordance with the commitments of their plans. As a condition of approval of their plans by the Secretary, States are required to define the circumstances under which emergency assistance will be provided, to specify the types of emergency assistance and services that will be provided and, in particular, to specify whether emergency assistance includes "securing family shelter." 45 C.F.R. § 233.120(a)(4). States that commit to furnish emergency

shelter, to provide emergency assistance payments for shelter, or to secure family shelter must do so.

17. As a condition of approval of their plans by the Secretary, States are required to specify that "emergency assistance will be given forthwith." 45 C.F.R. § 233.120(a)(5).

18. Twenty five (25) States, the District of Columbia, and Puerto Rico participate in the EAF program. In their approved plans, each of these States except California specifies that emergency shelter, emergency assistance payments for shelter, or emergency assistance services for securing family shelter (or each of the foregoing) will be provided to eligible families in emergency situations.

B. The Federal Government's Responsibility

19. HHS administers the EAF program and authorizes the payment of federal matching funds for States' EAF expenditures. HHS is obligated under the Act to ensure that States receiving federal matching funds for expenditures for emergency assistance under approved plans adhere to the commitments of their plans.

20. HHS is obligated by the regulations, promulgated in implementation of the Act, to take specific actions to ensure that States participating in the EAF program adhere to the commitments of their approved plans:

(a) HHS is required to review case records and State agency operations to ensure adherence to federal regulatory requirements, including the requirement that emergency assistance be provided forthwith. 45 C.F.R. §§ 201.10(c), 233.120 (a) (5);

(b) HHS is required to review the administration of State and local public assistance to determine whether State agencies are adhering to the substantive legal and administrative provisions of their approved plans. 45 C.F.R. § 201.10(a);

(c) HHS is required to audit the operations of State agencies to determine whether those agencies are being operated in a manner that provides a reasonable degree of assurance that federal matching funds are being expended properly and as provided for under the State plans. 45 C.F.R. § 201.12(a);

(d) HHS is required to conduct a continuing observation of States' quality control systems to identify case errors, including underpayment of assistance to eligible families, and to direct necessary corrective action. 45 C.F.R. §§ 201.10(b), 205.40; and

(e) HHS is required, where the actions described at subparagraphs (a) through (d) above reveal a serious problem with respect to a State's adherence to the provisions of its plan, to direct the State agency to correct its practice. 45 C.F.R. § 201.13(b).

21. HHS is empowered under the Act to require States to provide whatever information and make any reports that the Secretary determines are necessary to evaluate compliance with the Act and adherence to the commitments of approved plans. 42 U.S.C. § 602(a)(6).

22. HHS is empowered under the regulations and the Act to take all action necessary to ensure that States comply with federal regulatory requirements and the commitments of approved plans. The regulations require HHS to discuss questions of noncompliance with State agency officials and permit negotiations between HHS and States in lieu of administrative hearings on the conformity of State plan administration to the requirements of the Act. 45 C.F.R. §§ 201.6(c), 213.1(b). The Secretary is authorized to conduct hearings to determine whether States are in conformity with the requirements of the Act. 42 U.S.C. § 604(a).

C. The Federal Government's Failure to Ensure Compliance

23. HHS has not taken, and is not taking, the specific actions required by the regulations to assess State compliance with the commitments of approved plans, and has failed to take any action adequate and necessary to ensure that States actually provide emergency shelter assistance to eligible homeless families.

24. HHS has failed, and is failing, to comply with the regulations described at paragraph 20 above:

(a) HHS has failed to review the operations and case records of any State agency to ensure that emergency assistance is provided forthwith;

(b) HHS has failed to review the public assistance administration of any State to determine whether States are adhering to all of the substantive legal and administrative provisions of their approved plans and to determine, in particular, whether States are providing emergency shelter assistance to eligible families in accordance with the commitments of their plans;

(c) HHS has failed to audit the operations of any State agency to determine whether funds are being expended for the purposes for which appropriated and provided for under their approved plans and to determine, in particular, whether States are providing emergency shelter assistance to eligible families in accordance with the commitments of their plans;

(d) HHS has permitted States to exempt EAF from quality control systems and has failed to identify EAF underpayment errors and to direct necessary corrective action; and

(e) HHS has failed to direct any State agency to correct serious problems with respect to compliance with the emergency shelter assistance provisions of its approved plan.

25. HHS has failed, after written inquiry by the National Coalition, to bring its procedures into compliance with the regulations described at paragraph 20 above.

26. Nothing in the Single Audit Act of 1984, 31 U.S.C. § 7501 et seq. (the "Audit Act"), relieves HHS of the obligation to carry out the specific monitoring and oversight actions required by the regulations. Although the Audit Act provides that audits conducted by States in accordance with the Audit Act shall be relied upon by federal agencies to the extent such audits provide an agency with the information required to discharge its responsibilities under federal law and regulations, no audits have as yet been conducted under the Audit Act. The Audit Act expressly provides that federal agencies "shall conduct" any audits necessary to carry out their statutory and regulatory obligations.

27. HHS has failed, and is failing, to exercise its power under the Act, described at paragraph 21 above, to require States to provide information and make reports sufficient to evaluate State compliance with the regulations and the commitments of approved plans:

(a) HHS has never required any State participating in the EAF program to report on its compliance, or lack of compliance, with the commitments of its plan specifying that emergency shelter assistance will be provided to eligible families;

(b) HHS has never required any State participating in the EAF program to provide information or reports on the total funds expended (or percentage of total EAF funds expended) by that State for emergency shelter assistance, the number of emergency shelter beds made available by that State for use by eligible families, the number of occasions and the circumstances in which that State has failed or has been unable to provide or secure emergency shelter for eligible families, or the number of occasions and the circumstances in which that State has failed or has been unable to provide or secure emergency shelter forthwith;

(c) HHS has never conducted or caused to be conducted any type of evaluation, review, audit or continuing observation to determine whether any State participating in the EAF program has improperly denied, failed forthwith to provide, or underpaid assistance for emergency shelter to eligible families; and

(d) The Secretary has never initiated or caused to be initiated any judicial or administrative proceeding to determine whether any State participating in the EAF program has improperly denied, failed forthwith to provide, or underpaid assistance for emergency shelter to eligible families.

28. HHS has failed, and is failing, to take any of the actions, described at paragraph 22 above, to encourage, induce or require States receiving federal

matching funds to provide emergency shelter assistance in accordance with the regulations and the commitments of their approved plans. The Secretary has never negotiated with any State agency official, conducted hearings concerning any State's compliance with the Act, or otherwise taken action against any State participating in the EAF program for reason of the State's failure to comply with the commitments of its plan specifying that emergency shelter assistance will be provided to eligible families.

29. As a result of defendants' failure to act, described at paragraphs 23 through 28 above, HHS does not and cannot determine whether, or ensure that, States adhere to the regulations and the commitments of their approved plans in the provision of emergency assistance.

30. HHS has conducted some financial and administrative reviews of aspects of State EAF programs. These reviews are not designed to, nor do they in fact, determine whether States provide emergency assistance to eligible families in accordance with the commitments of their plans. Without authority under the Act, HHS has conducted and used these reviews solely to restrict the disbursement of EAF funds and to disallow quarterly claims submitted by the States for the payment of federal matching funds for emergency assistance expenditures. HHS has disallowed claims for the payment of federal matching funds where it has determined that States have provided emergency assistance (including emergency shelter assistance) to

families not eligible under their plans, have made emergency assistance payments in excess of those authorized in their plans or in situations HHS has determined are not emergencies, or lack documentation to support claimed expenditures for emergency assistance. Nonetheless, HHS has taken no action to identify and correct the underpayment, improper denial, or failure of States to provide emergency assistance to eligible families.

D. Injury to Plaintiffs

31. The Coker-Estes family has arbitrarily and unlawfully been denied emergency shelter assistance by Illinois. If not for defendants' failure to ensure State compliance with the EAF commitments of approved plans, the Coker-Estes family would have received the emergency assistance to which they are entitled.

32. Illinois has committed in its approved plan to provide emergency assistance in the form of shelter for eligible homeless families. The plan provides that the Illinois Department of Public Aid will provide emergency assistance services for "securing shelter." The plan also provides that vendor assistance payments for emergency shelter will be made if an eligible family "is homeless or is threatened with homelessness" as a result of an eviction or court order to vacate the home; fire, flood or other natural disaster; or because of physical abuse by the spouse. The Illinois plan further provides that emergency

shelter will be furnished if a "[f]amily is unable to pay for housing."

33. Defendants have failed to take any action adequate to ensure adherence to these commitments and the requirements of the regulations. While HHS conducted an "administrative review" of the Illinois EAF program in 1984, that review did not include any examination of instances in which emergency assistance was denied or whether assistance was underpaid. The review did not examine whether Illinois actually provided emergency assistance services to "secure shelter."

34. The 1984 review revealed that Illinois furnishes emergency shelter only to families receiving Aid to Families with Dependent Children ("AFDC") assistance from the Illinois Department of Public Aid. Although this restriction violates the "equitable treatment" requirement of 45 C.F.R. § 233.10(a)(1), the interpretation of that requirement by HHS in its Action Transmittal No. SSA-AT-82-28 (November 5, 1982), and the Supreme Court's decision in Blum v. Bacon, 457 U.S. 132 (1982), HHS failed to direct Illinois to bring its EAF program into compliance.

35. The Coker-Estes family was denied emergency shelter assistance by the Illinois Department of Public Aid ("Public Aid") and the City of Chicago Department of Human Services ("DHS") in August of 1986.

36. The Coker-Estes family was unable to pay for housing and was eligible to receive emergency assistance

under the Illinois plan at all times that assistance was denied. The Coker-Estes family has been directly injured by defendants' unlawful actions in that, among other things, they have not received the emergency assistance to which they are entitled pursuant to the Act and have been denied the benefit of compliance mechanisms established for their aid and protection.

37. The Porter family has arbitrarily and unlawfully been denied emergency shelter assistance by Maryland. If not for defendants' failure to ensure State compliance with the EAF commitments of approved plans, the Porter family would have received the emergency assistance to which they are entitled.

38. Maryland has committed in its approved plan to provide emergency assistance in the form of shelter for eligible homeless families. The plan provides that the Maryland Department of Human Resources, through local social service agencies, will provide emergency assistance services, specifically, "information, referral, counseling, securing shelter, child care, etc.," for "problems attributable to the emergency crisis situation." The plan expressly covers a variety of emergencies, including "eviction or foreclosure," which are defined in the plan to include a "[p]hysical put out" as well as a court-ordered eviction. The plan further provides that emergency assistance payments, up to a maximum of \$350, will be made

for the "provision of temporary shelter" in cases of eviction or foreclosure.

39. Defendants have failed to take any action adequate to ensure adherence to these commitments and the requirements of the regulations. While HHS conducted a "financial review" of Maryland's EAF program in 1985, that review did not include any examination of instances in which emergency assistance, including emergency assistance services for "referral," "securing shelter," and "child care," was denied or refused. The review analyzed the "accounting records" of the Frederick County Department of Social Services "to determine the accuracy of [EAF] payments reported by local agencies" and "to determine eligibility, allowability and accuracy of the authorization." The review resulted in a disallowance of \$201 of claimed federal matching funds.

40. The Porter family has been denied emergency shelter assistance by the Baltimore City Department of Social Services ("DSS") and the Maryland Department of Human Resources in September 1985 and July and August of 1986.

41. The Porter family was eligible to receive emergency assistance, including emergency assistance services, under the Maryland plan -- by virtue of having been physically "put out" in September 1985 and July and August 1986 -- at all times that assistance was denied. The Porter family has been directly injured by defendants' unlawful actions in that, among other things, they have not

received the emergency assistance to which they are entitled pursuant to the Act and have been denied the benefit of compliance mechanisms established for their aid and protection.

42. The National Union has been directly injured by defendants' unlawful actions in that, among other things, its members have not received the emergency assistance to which they are entitled and have been denied the benefit of compliance mechanisms established for their aid and protection.

43. The National Coalition has been directly injured by defendants' unlawful actions in that, among other things, its fundamental purpose has been undermined and it has been forced to devote significant resources, including additional funds and effort, to identify and counteract defendants' actions and to provide additional aid and services to, and advocacy for, homeless families with needy children.

44. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I

(Failure to Comply with Regulations)

45. Plaintiffs incorporate the allegations of paragraphs 1 through 44 as if specifically set forth here.

46. The failure of defendants to comply with the regulations described at paragraph 20 above is arbitrary,

capricious, and not in accordance with law, in violation of the Act and the Administrative Procedure Act, 5 U.S.C. § 706(2).

COUNT II

(Abdication of Enforcement Responsibility)

47. Plaintiffs incorporate the allegations of paragraphs 1 through 44 as if specifically set forth here.

48. Defendants have unlawfully withheld, unreasonably delayed and wholly abdicated taking any action adequate and necessary to ensure that States receiving federal matching funds provide emergency shelter assistance to eligible families in accordance with the regulations and the commitments of their approved plans, in violation of the Act and the Administrative Procedure Act, 5 U.S.C. § 706(1).

COUNT III

(Arbitrary and Capricious Enforcement; Exceeding Statutory Authority)

49. Plaintiffs incorporate the allegations of paragraphs 1 through 44 as if specifically set forth here.

50. Defendants have acted arbitrarily and capriciously, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2), and in excess of their statutory authority, by enforcing the Act solely to restrict the payment of federal matching funds for unauthorized or undocumented emergency assistance expenditures while taking no action to

identify or correct the improper denial or underpayment of emergency assistance.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray:

1. That this Court enter a judgment declaring that defendants are obligated:

(a) to review case records and State agency operations to ensure adherence to federal regulatory requirements, including the requirement that emergency assistance be provided forthwith, in accordance with 45 C.F.R. §§ 201.10(c), 233.120(a)(5);

(b) to review the administration of State and local public assistance to determine whether State agencies are adhering to the substantive legal and administrative provisions of their approved plans, in accordance with 45 C.F.R. § 201.10(a);

(c) to audit the operations of State agencies to determine whether those agencies are being operated in a manner that provides a reasonable degree to assurance that federal matching funds are being expended properly and as provided for under the State plans, in accordance with 45 C.F.R. § 201.12(a);

(d) to conduct a continuing observation of States' quality control systems to identify case errors, including underpayment of emergency assistance to eligible

families, and to direct necessary corrective action, in accordance with 45 C.F.R. §§ 201.10(b), 205.40;

(e) where the actions described at subparagraphs (a) through (d) above reveal a serious problem with respect to a State's adherence to the provisions of its plan, to direct the State agency to correct its practice, in accordance with 45 C.F.R. § 201.13(b); and

(f) to take all other monitoring, review, oversight and enforcement actions adequate and necessary under the Act to ensure that States actually provide emergency shelter assistance to eligible families in accordance with the Act, the regulations and the commitments of their approved plans.

2. That this Court enter an order compelling defendants to discharge such obligation; and

3. That this Court award plaintiffs the costs of this action and reasonable attorneys' fees, and such other and further relief as deemed just and proper.

GALE COKER
CARLA ESTES
TONY PORTER
NATIONAL UNION OF THE HOMELESS
NATIONAL COALITION
FOR THE HOMELESS

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Dated: September 2, 1986.