

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GERTRUDE WILLISTON; and TAWANA, LATOYA,
and TANDIKA CUMMINS, by their parent, PAULETTE
CUMMINS, on their own
behalf and on behalf of all others similarly situated,

04 Civ.

Plaintiffs,

CLASS ACTION
COMPLAINT

- against -

VERNA EGGLESTON, as Commissioner of the New York
City Department of Social Services; and ROBERT DOAR,
as Commissioner of the New York State Office of
Temporary and Disability Assistance.

Defendants.

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PRELIMINARY STATEMENT

1. Plaintiffs Gertrude Williston and Tawana, Latoya and Tamika Cummins bring this action on behalf of themselves and a class of needy New York City individuals and families, challenging Defendants' policies and practices of failing to provide food stamps to those eligible in a timely manner, in violation of federal and state law, and State Defendant's failure to properly oversee and supervise City Defendant's administration of the Food Stamps program, in violation of federal and state law.

2. Plaintiff Gertrude Williston brings this action on behalf of herself and a subclass of needy New York City individuals and families, challenging Defendants' policies and practices of failing to provide food stamps to those eligible within thirty days of application, in violation of federal and state law.

3. Plaintiffs Tawana, Latoya, and Tamika Cummins, by their parent, Paulette Cummins,

bring this action on behalf of themselves and a subclass of needy New York City individuals and families, challenging Defendants' policies and practices of (a) deterring, discouraging and preventing individuals and families from filing applications for food stamps upon initial contact with the Non-Public Assistance ("NPA") food stamps offices; and (b) failing to provide expedited food stamp benefits at the NPA food stamps offices within the time frame required by federal and state law.

4. Plaintiffs seek to permanently enjoin Defendants to provide food stamps to those eligible in a timely manner, in compliance with federal and state law.

5. Plaintiffs further seek to permanently enjoin Defendants (a) from deterring, discouraging and preventing persons from filing applications for food stamps upon initial contact with the NPA food stamps offices; and (b) to issue expedited food stamp benefits at the NPA food stamp offices within the time frames required by federal and state law.

6. Plaintiffs seek to permanently enjoin State Defendant to oversee and supervise City Defendant's administration of the Food Stamp program.

JURISDICTION AND VENUE

7. This action is brought under 42 U.S.C. § 1983 to redress the deprivation of statutory and constitutional rights.

8. Jurisdiction over this action is conferred upon this court by (a) 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, law, or treaties of the United States; (b) 28 U.S.C. § 1343(a)(3), which provides for jurisdiction in the United States district courts of 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.

9. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b).

CLASS ALLEGATIONS

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

All New York City residents who have sought, are seeking, or will seek to apply for food stamps in New York City.

11. This class is so numerous that joinder of all members is impracticable. Hundreds of New York City residents apply for food stamps in New York City each month.

12. There are numerous questions of fact and law common to the class concerning whether Defendants fail to provide food stamps within the time frames required by law.

13. The individual Plaintiffs' claims are typical of the claims of the class in that all of the named Plaintiffs are eligible for food stamps, and have sought to apply for or are seeking to apply for food stamps in New York City.

14. Plaintiffs also bring this action on behalf of a subclass defined as

All New York City residents who have applied for food stamps in New York City and who have not had those applications processed within thirty days of the date of application.

15. The subclass is so numerous that joinder of all members is impracticable. Hundreds of New York City residents apply for food stamps in New York City each month.

16. There are numerous questions of fact and law common to the class concerning whether Defendants fail to provide food stamps within the time frames required by law.

17. Gertrude Williston's claims are typical of the claims of the subclass in that she is eligible for food stamps, has sought to apply for or is seeking to apply for food stamps and has not received food stamps within thirty days of the date of application.

18. Plaintiffs further bring this action on behalf of a subclass defined as:

All New York City residents who have sought, are seeking, or will seek to apply for food stamps in New York City at food stamps offices which do not accept applications for cash assistance, and who have been deterred, discouraged and prevented from filing applications and/or who have not received expedited food stamp benefits.

19. The subclass is so numerous that joinder of all members is impracticable. Hundreds of New York City residents apply for food stamps at the NPA food stamps offices each month.

20. There are numerous questions of fact and law common to the subclass concerning Defendants' policies and practices of (a) deterring, discouraging and preventing Plaintiffs and Plaintiff subclass members from filing applications for food stamp benefits upon initial contact with the NPA food stamps offices; and (b) failing to provide expedited food stamp benefits at the NPA food stamps.

21. Tawana, Latoya, and Tandika Cummins's claims are typical of the claims of the subclass in that they were deterred, discouraged and prevented from filing an application for food stamps upon initial contact with the NPA food stamps office.

22. Declaratory and injunctive relief are appropriate with respect to the class as a whole and with respect to the subclasses as a whole because Defendants have acted on grounds applicable to the class and to the subclass.

23. The named Plaintiffs and the proposed class, along with the proposed subclasses, are represented by the New York Legal Assistance Group, the Urban Justice Center and the Welfare Law

Center, whose attorneys are experienced in class action litigation and will adequately represent the class.

24. 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.

PARTIES

Plaintiffs

25. Plaintiff Gertrude Williston resides at 1269 Sheridan Avenue, Apt. 5K, Bronx, NY.

26. Plaintiffs Tawana, Latoya, and Tandika Cummins reside at 317 Lefferts Avenue, Apt. 5F, Brooklyn, NY.

Defendants

27. Defendant Verna Eggleston is the Commissioner of the City of New York Human Resources Administration, which is the local social services agency that covers New York City. She is responsible for, *inter alia* (a) the overall operation and administration of the Food Stamps program within New York City, including the operation of the Food Stamps Centers; and (b) complying with federal and state law and regulations relating to the Food Stamps program.

28. Defendant Robert Doar is the Commissioner of the State of New York Office of Temporary and Disability Assistance. He is responsible for, *inter alia*, (a) the administration of New York State's Food Stamps program; (b) supervision of the administration of the Food Stamps program for the local social services districts, including New York City; and (c) complying with federal and state law and regulations relating to the Food Stamps program.

STATUTORY AND REGULATORY SCHEME

Food Stamps Entitlement

29. Congress established the federally funded, state-administered Food Stamp program in 1964 to “safeguard the health and well-being of the nation’s populations by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011; 7 C.F.R. § 271.1.

30. To be eligible for ongoing food stamps, a household’s net income must be below the federal poverty line, and its available resources may not exceed \$2,000 (or, where a household includes a member who is disabled or is sixty years of age or older, \$3,000). 7 U.S.C. § 2014(c), (g).

Law Governing Processing of Applications

31. Under the federal Food Stamp Act, households must be permitted to file an application on the first day they contact the local social services office. 7 U.S.C. § 2020 (e)(2)(B)(iii); 7 C.F.R. § 273.2(c)(1), (2)(i).

32. If an individual or household seeks to apply jointly for cash assistance and food stamps, any delays in the processing of the application for cash assistance may not result in a delay of the processing of the food stamps application. 7 U.S.C. §§ 2014(b); 2020(e)(1)(B)(i), (e)(3); 7 C.F.R. § 273.2 (g)(1).

33. If the cash assistance application is denied or withdrawn, the applicant can not be required to submit a new application for food stamps. 7 U.S.C. §§ 2014 (b); 2020(e)(1)(B)(i), (e)(3); 7 C.F.R. § 273.2(g)(1).

34. The State agency and its delegate agencies must provide ongoing food stamps to eligible applicants no later than 30 days after date of application. 7 U.S.C. § 2020(e)(3); 7 C.F.R § 273.2 (a), (g)(1).

Expedited Food Stamp Benefits Requirements

35. The State agency and its delegate agencies must provide expedited food stamps to: (1) households with \$100 or less in liquid resources (cash) and less than \$150 in gross monthly income; (2) households with shelter costs that are more than the total gross income and liquid resources; and (3) certain migrant and seasonal worker households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2 (i)(1).

36. 7 U.S.C. § 2020(e)(9) is implemented by 7 C.F.R. § 273.2(i)(2), which requires a state to affirmatively “identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed *or as individuals come in to apply.*” 7 C.F.R. § 273.2(i)(2) (emphasis added); 7 U.S.C. § 2020(e)(9).

37. Under federal law, expedited food stamp benefits must be provided to eligible households not later than the seventh calendar day following the date an application is filed. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(3)(i).

38. However, in New York State, expedited food stamp benefits must be available to eligible households within five days of the date the application is filed. 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a).

FACTUAL ALLEGATIONS COMMON TO THE PLAINTIFF CLASS AND SUBCLASSES

A. Background

39. Persons seeking to apply for food stamps may apply at either a Job Center or an NPA food stamps office. Both locations are administered by Defendants. At Job Centers, applicants can also apply for cash assistance and/or medical assistance. At NPA food stamps offices, applicants may only apply for food stamps.

40. There are 32 Job Centers and 20 NPA food stamps offices located throughout the five

boroughs of New York City.

41. According to the 2003 New York City Mayor's Management Report, approximately 871,000 people received food stamps in New York City in Fiscal Year 2003. Of that, approximately 439,000 received food stamps through NPA food stamps offices.

42. However, it is estimated that approximately 800,000 people who are eligible for food stamps do not receive that crucial assistance.

B. The Application Process in the Job Centers

43. At first contact with a Job Center, a person seeking assistance is given a State approved sixteen page common application form, sometimes referred to as the "joint application."

44. Defendants routinely fail to provide food stamps to eligible persons within thirty days of applying.

C. The Application Process at the NPA Food Stamps Offices

45. Applicants for food stamps must be provided with a four page food stamps application upon initial contact with the NPA food stamps offices.

46. Defendants deter, discourage and prevent persons from applying for food stamps at initial contact with the NPA food stamps offices. Workers, in violation of federal and state law, routinely tell persons that they cannot apply for food stamps because they do not have income, or because of their immigration status.

47. Workers at NPA food stamp offices, in violation of federal and state law, routinely tell persons that they cannot apply for food stamps on the first date they contact the NPA food stamps office and instead must return another day, and/or unnecessarily misdirect persons to other NPA food stamps offices or Job Centers.

48. Workers at NPA food stamps offices, in violation of federal and state law, routinely provide misinformation about immigrants' eligibility for food stamps and wrongly inform persons that they cannot apply for food stamps without original copies of documents such as Social Security cards or birth certificates.

49. Defendants routinely fail to screen persons who come to the NPA food stamps offices for expedited food stamps benefits eligibility.

50. Defendants routinely fail to issue expedited food stamps to eligible households within five days of applying.

FACTS OF INDIVIDUAL NAMED PLAINTIFFS

Gertrude Williston

51. Gertrude Williston is 59 years old and resides at 1269 Sheridan Avenue, Apartment 5K, Bronx New York, with her husband, Rupert Williston, also age 59.

52. Gertrude Williston and her husband have been lawful permanent residents of the United States since August 1998.

53. Rupert Williston worked as a carpenter in Jamaica and the United States for more than twenty years. He was forced to stop working in December 2003 when he suffered a stroke. Due to neurological problems stemming from the stroke, he has not been physically able to work since his stroke.

54. Ms. Williston has been supporting her husband and herself on and off as a home health aide. She worked for Alliance for Health from April 14, 2002 to August 22, 2003. At that point she took a short-term disability leave because she suffered from diabetes, high blood pressure and other medical conditions.

55. Ms. Williston received short-term disability benefits of \$170 gross per week for a week in early September 2003, and then again from early November until the middle of December 2003. At the end of her short-term disability leave, her employer could not find work for her.

56. In January 2004, Ms. Williston applied for unemployment insurance benefits but was denied. She continued to look for employment without success.

57. Without any income or resources, the Willistons depended on the assistance of their 38 year-old daughter, Yvonne Reid, to help them with their rent, food and expenses. However, their daughter could not afford to continue to support them as she has her own family and works at a low-wage job.

58. The Williston's rent is \$625 per month and they pay approximately \$45 a month for gas and electricity. They are currently two months behind in their rent.

59. On or about January 26, 2004, Gertrude Williston went for a routine check up at Lincoln Hospital. At the hospital, a food stamps outreach worker from the Citizens Advice Bureau told her about food stamps and advised her that she and her husband were eligible for them. The outreach worker helped Ms. Williston complete a food stamps application and scheduled an appointment for her to apply for food stamps at Center 40, an NPA food stamps office, on January 30, 2004.

60. On January 30, 2004, Ms. Williston went to Center 40 to apply for food stamps for her husband and herself. She submitted the completed application to the caseworker, Ms. Finley. She told Ms. Finley that she had applied for unemployment insurance benefits in January 2004. Ms. Finley asked her to provide her with a copy of the Department of Labor's medical form that was completed by her treating physician, Dr. Pathkumar, as part of the application for unemployment

insurance benefits by February 20th. Ms. Finley also told her that in a few days she would receive expedited food stamp benefits on the Medicaid benefits card that she already had.

61. On or about February 2nd, Ms. Williston received \$275 in expedited food stamps, covering January 30, 2004 to February 29, 2004.

62. On or about February 18, Ms. Williston called Ms. Finley to explain that she could not obtain a copy of the Department of Labor letter by the deadline. Ms. Finley granted Ms. Williston an extension until February 27, 2004 to return the form.

63. On February 26, 2004, Ms. Williston went to Center 40 and submitted a copy of the Department of Labor medical form to the receptionist.

64. The Willistons ran out of food from the expedited food stamps by the second week of March. They were again forced to borrow money for rent, food and utilities from their daughter.

65. Ms. Williston has never received a notice regarding the status of her food stamps application.

66. Aside from the expedited food stamps that were used up by the second week of March, Ms. Williston has not received any other food stamps.

67. In the beginning of May 2003, Ms. Williston began working as a home health aide at Caring People Alliance, where she earns \$540 gross every two weeks; even with this income, they continue to be eligible for food stamps. Even with her job, they continue to have difficulty meeting their expenses, such as food and rent.

68. Due to her diabetes and high blood pressure, Ms. Williston should eat a special diet of fish and vegetables. With their limited income and lack of resources, she often cannot afford to eat these foods; her blood sugar levels are often too high as a result. Mr. Williston also has a special

anti-cholesterol diet, and they often cannot afford to buy him the nutritious, low-cholesterol foods that he requires.

69. Ms. Williston contacted Ms. Betancourt at the Citizens Advice Bureau to tell her that they had never received ongoing food stamps. She referred her to Amy Leung, an advocate at the Urban Justice Center.

70. On April 23, 2004, Ms. Leung requested a fair hearing to challenge Defendants' failure to provide Ms. Williston with food stamps.

71. On May 19, 2004, a fair hearing was held regarding the City Defendant's failure to act on Ms. Williston's food stamps application.

72. State Defendant's Administrative Law Judge ruled in Ms. Williston's favor in a decision dated May 26, 2004. In this decision, the City Defendant is directed to process Ms. Williston's application for food stamps and to restore all lost benefits resulting from their failure to provide Ms. Williston with food stamps within thirty days of her submitting the application.

73. To date, Ms. Williston has not received any further food stamps.

Tawana, Latoya, and Tandika Cummins

74. Tawana, Latoya, and Tandika Cummins reside with their parents, Paulette and Aubrey Cummins, and their grandmother, Lynette Cummins, at 317 Lefferts Avenue, Apartment 5F, Brooklyn, NY.

75. Lynette Cummins purchases and prepares food separately from the rest of the family because she has a special anti-cholesterol diet; she is therefore considered a separate household for food stamps purposes.

76. Each member of the Cummins family is a legal permanent resident.

77. Tawana, Latoya, and Tandika Cummins are eligible for food stamps; due to additional durational residency requirements imposed on non-disabled adults, Paulette and Aubrey Cummins are not.

78. Paulette Cummins supports her family on the \$678 monthly she earns as a sales clerk. Aubrey Cummins has been searching for work, but has been unsuccessful and is currently unemployed.

79. The Cummins's monthly rent is \$574 and they pay approximately \$86 a month for gas and electricity.

80. With this limited income, it is difficult for Ms. Cummins to provide her family with adequate food.

81. In October 2003, Ms. Cummins went to apply for food stamps for Tawana, Latoya, and Tandika at the NPA food stamps office located at 275 Bergen Street in Brooklyn. She completed the application for food stamps and spoke to her caseworker, Ms. Dunston. Ms. Dunston looked at her application and wrongly told her that her children were not eligible for food stamps because they were only legal permanent residents, not citizens. She refused to accept or process the application.

82. Ms. Cummins then contacted a community organization in New York City. One of the organization's staff members drafted a letter for her to submit to the NPA food stamps office when she reapplied for food stamps.

83. On November 7, 2003, Ms. Cummins returned to the same NPA food stamps office with a signed application for food stamps. She then again met with the caseworker. Once again, Ms. Dunston tried to discourage her from applying for food stamps for her children. She again wrongly

told her that her children were not eligible for food stamps because they only recently came to the United States.

84. In response to Ms. Dunston's discouragement, Ms. Cummins showed her the letter from the community organization worker. After Ms. Dunston read the letter, she took the completed application.

85. On this same day, Ms. Dunston told her that she had to return to the NPA food stamps office by November 19th with certain required documents.

86. On November 13, 2003, well before the November 19th deadline, Ms. Cummins went to the NPA food stamps office to drop off the requested documents.

87. On or about November 14, 2003, Tamara, Latoya, and Tandika received \$296 in expedited food stamps, covering November 7 to November 30, 2003.

88. By mid-December, Ms. Cummins had not heard anything from the NPA food stamps office about the ongoing food stamps application and had not received any ongoing food stamps. The family had used up their expedited food stamps at this point. Ms. Cummins called Ms. Dunston and was informed that she would have to wait for an unknown period of time because there were too many applications to handle.

89. By the first week of January 2004, Tamara, Latoya, Tandika were still without ongoing food stamps. Worried, Ms. Cummins again called Ms. Dunston and was told that her children would receive food stamps in a week.

90. On January 13, 2004, more than two months after submitting the food stamps application, Tawana, Latoya, and Tandika finally received ongoing food stamps.

91. During the more than two month period that Tawana, Latoya, and Tandika waited for

food stamps, it was tremendously difficult for Ms. Cummins to feed the family. She only had enough food to cook dinner twice a week. The family made these two meals last the rest of the week by eating very small portions. She also could not afford nutritious food, such as juice, fruits and meat. Their meals largely consisted of rice, vegetables and crackers.

92. Although the children receive free lunch at school, often four-year old Tandika complained of hunger.

STATEMENT OF CLAIMS

FIRST CLAIM AGAINST DEFENDANTS

93. Defendants' policies and practices of failing to provide ongoing food stamps to eligible individuals and families within thirty days of the date of application violates 7 U.S.C. § 2020(e)(3) and 7 C.F.R. § 273.2(a)(2), (g)(1).

SECOND CLAIM AGAINST DEFENDANTS

94. Defendants' policies and practices of deterring, discouraging and preventing eligible individuals and families from filing applications for food stamps at initial contact with the NPA food stamps offices violate 7 U.S.C. § 2020(e)(2)(B),(e)(9), and 7 C.F.R. § 273.2 (c)(2), (e)(1), (g), (i)(2)-(3).

THIRD CLAIM AGAINST DEFENDANTS

95. Defendants' policies and practices of failing to provide expedited food stamp benefits in a timely manner to eligible households at NPA food stamps offices violate 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2 (a)(2), (i)(2), (i)(3)(i); N.Y. Soc. Serv. Law § 133; and 18 N.Y.C.R.R. § 387.8(a)(2)(i)(a).

FOURTH CLAIM AGAINST DEFENDANTS

96. State Defendant's policy and practice of failing to properly oversee and supervise City Defendant's administration of the food stamps program violates 7 U.S.C. § 2020, *et seq*, and N.Y. Soc. Serv. L § 95(3)(a).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court

13. Permanently enjoin Defendants from (i) failing to provide food stamps to eligible individuals and families within the federally- mandated time frames; (ii) deterring, discouraging and preventing needy individuals and families from filing applications for food stamps at initial contact with the NPA food stamp offices; and (iii) failing to provide expedited food stamp benefits to eligible individuals and families within the time frames required by federal and state law at NPA food stamps offices;

14. Enter a declaration pursuant to 28 U.S.C. § 2202 that Defendants' policies and practices of (i) failing to provide food stamps in a timely manner to eligible individuals and families; (ii) deterring, discouraging and preventing needy individuals and families from filing applications for food stamps at initial contact with the NPA food stamp offices; and (iii) failing to provide expedited food stamp benefits to eligible individuals and families within the time frames required by federal and state law at NPA food stamps offices, violate the Plaintiffs' and Plaintiff class and subclass members' rights under federal and state law;

15. Enter a declaration pursuant to 28 U.S.C. § 2202 that State Defendant's policies and practices of failing to properly oversee and supervise City Defendant's administration of the food stamps program violate the Plaintiffs' and Plaintiff class and subclass members' rights under federal and state law;

16. Enjoin State Defendant from failing to oversee and supervise City Defendant's administration of the Food Stamp program;

17. Enjoin Defendants to (i) identify all persons unlawfully deterred from or delayed in applying for food stamps at NPA food stamp offices, process their applications, and provide them with benefits, if eligible, retroactive to the first day they attempted to apply, and (ii) identify all persons who did not receive food stamps in a timely manner, and provide them with benefits, if eligible, retroactive to the date of application;

18. Award reasonable attorneys' fees, as provided by 42 U.S.C. § 1988;

19. Award costs and disbursements; and

20. Order such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 14, 2004

Respectfully submitted,

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