

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D32192  
W/prt

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Submitted - June 2, 2011

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
SHERI S. ROMAN  
ROBERT J. MILLER, JJ.

2010-05344  
2010-05771

DECISION & ORDER

In the Matter of Sheila Graves, et al., respondents, v  
Robert Doar, etc., appellant, et al., respondent/defendant

(Index No. 10218/06)

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Eric T. Schneiderman, Attorney General, New York, N.Y. (Benjamin N. Gutman and  
Richard O. Jackson of counsel), for appellant.

John Castellano, Islip Terrace, N.Y., and Law Office of Peter Vollmer, P.C., Sea  
Cliff, N.Y., for respondents (one brief filed).

In a hybrid proceeding pursuant to CPLR article 78 to review several determinations of Robert Doar, Commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance, each dated February 23, 2006, which, after a fair hearing, affirmed several determinations of John E. Imhof, Commissioner of the Nassau County Department of Social Services, each dated December 19, 2004, inter alia, reducing the food stamp benefits of the petitioners/plaintiffs and action, inter alia, for declaratory and injunctive relief, Robert Doar, as Commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance appeals, (1) as limited by his brief, from so much an order of the Supreme Court, Nassau County (Woodard, J.), dated April 16, 2010, as granted the petitioners/plaintiffs' motion for an award of an attorney's fee pursuant to the Equal Access to Justice Act (CPLR art 86) to the extent that it determined that an order and interlocutory judgment of the same court dated December 13, 2007, inter alia, declaring that the Group Home Standardized Benefits Program of the Office of Temporary and Disability Assistance was implemented in violation of article IV (§ 8) of the New York Constitution and article 2 of the State Administrative Procedure

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Act, constituted a final judgment within the meaning of CPLR 8602(c), and that Robert Doar was not substantially justified in taking the position that the Group Home Standardized Benefits Program of the Office of Temporary and Disability Assistance was exempt from the rulemaking requirements of article IV (§ 8) of the New York Constitution and article 2 of the State Administrative Procedure Act, and (2) from a money judgment of the same court entered May 21, 2010, which, upon the order, is in favor of the petitioners/plaintiffs and against Robert Doar, as Commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance, in the sum of \$335,003.58, as and for an award of an attorney's fee.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the money judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the money judgment in the action and proceeding (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the money judgment (*see* CPLR 5501[a][1]).

An award of an attorney's fee under the Equal Access to Justice Act (CPLR art 86) is generally left to the sound discretion of the trial court (*see Matter of Priester v Dowling*, 231 AD2d 638). Under the circumstances of this case, the award of an attorney's fee was not an improvident exercise of discretion.

Contrary to the appellant's contention, an award of an attorney's fee is not limited to cases where there has been a final judgment in an action or proceeding but, rather, may be awarded where a plaintiff or petitioner has prevailed in an intermediate order or interlocutory judgment on an issue that is central to the case (*see MacDonald v Schweiker*, 553 F Supp 536, 539). Here, the petitioners/plaintiffs sought to permanently enjoin the appellant, among others, from implementing the Group Home Standardized Benefits Program (hereinafter the GHSBP), to compel him to provide monthly food stamp benefits to group home recipients of Supplemental Security Income (hereinafter SSI) benefits in amounts equal to those received by Public Assistance (hereinafter PA) recipients, to compel the State to promulgate regulations to govern the operation of the GHSBP in accordance with the rulemaking requirements of article IV (§ 8) of the New York Constitution and article 2 of the State Administrative Procedure Act (hereinafter the SAPA), to obtain the benefits they would have received since January 1, 2005, had the GHSBP never been implemented, and to annul the determination to reduce the monthly food stamp benefits of one of the petitioners/plaintiffs. The petitioners/plaintiffs obtained substantial relief in an order and interlocutory judgment, including (1) an injunction prohibiting the appellant from applying the GHSBP's methodology of calculating food stamp benefits unless and until formal regulations were properly promulgated, (2) the annulment of the 2004 Fair Hearing determinations which affirmed the reduction of food stamp benefits to the petitioners/plaintiffs pursuant to the GHSBP, (3) a directive to the appellant and the commissioner of the relevant county social services department mandating the reinstatement of the petitioners/plaintiffs' food stamp benefits in the amount issued to them in the month prior to the

implementation of the GHSBP, and (4) a directive to the appellant and the commissioner of the relevant county social services department mandating the restoration of the petitioners/plaintiffs' food stamp benefits retroactively to the month prior to the implementation of the GHSBP.

“The determination of whether the State’s position was substantially justified is committed to the sound discretion of the court of first instance and is reviewable as an exercise of judicial discretion” (*Matter of Simpkins v Riley*, 193 AD2d 1009, 1010-1011). The burden of establishing substantial justification rests with the State, which must make a strong showing to support its position (*see Matter of Barnett v New York State Dept. of Social Servs.*, 212 AD2d 696). The Supreme Court providently exercised its discretion in concluding that the appellant was not substantially justified in taking the position that the GHSBP was exempt from the rulemaking requirements of the New York Constitution and the SAPA.

RIVERA, J.P., ENG, ROMAN and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court