

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

D32198  
W/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 2, 2011

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

---

2009-04567  
2010-02295

DECISION & ORDER

In the Matter of Sheila Graves, et al., respondents-appellants, v Robert Doar, etc., et al., appellants-respondents.

(Index No. 10218/06)

---

Eric T. Schneiderman, Attorney General, New York, N.Y. (Benjamin N. Gutman and Peter Karanjia of counsel), for appellant-respondent Robert Doar, as Commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance.

John Castellano, Islip Terrace, N.Y. and Law Office of Peter Vollmer, P.C., Sea Cliff, N.Y., for respondents-appellants (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 appeals, (1) as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Woodard, J.), entered April 2, 2009, as granted that branch of the petitioners/plaintiffs' motion which was for summary judgment on the first cause of action declaring that the Group Home Standardized Benefits Program of the Office of Temporary and Disability Assistance violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and article I (§ 11) of the New York Constitution, awarding the petitioners/plaintiffs all retroactive benefits

August 30, 2011

Page 1.

MATTER OF GRAVES v DOAR

denied them under the Group Home Standardized Benefits Program, and authorizing eight identified individuals and others similarly situated to seek leave to intervene in the instant proceeding and action, and, (2) as limited by his brief, from so much of an order and interlocutory judgment (one paper) of the same court entered February 4, 2010, as, upon the order entered April 2, 2009, declared that the respondents/defendants' implementation of the Group Home Standardized Benefits Program violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and article I (§ 11) of the New York Constitution, awarded the petitioners/plaintiffs retroactive benefits, and certified the proposed intervenors as members of a class consisting of "recipients of food stamps in the State of New York whose food stamp benefits were determined and reduced under the Group Home Standardized Benefits Program and whose monthly income included payments of Supplemental Security Income benefits," John E. Imhof separately appeals from the same order and interlocutory judgment, and the petitioners/plaintiffs cross-appeal from so much of the same order and interlocutory judgment as failed to restore all additional food stamp benefits over and above the prereduction levels to which they and members of the defined class would have been entitled, from January 1, 2005, had the Group Home Standardized Benefits Program not been implemented, denied that branch of their motion which was for summary judgment on the third cause of action declaring that the implementation of that program violates article XVII (§ 1) of the New York Constitution, in effect, awarded summary judgment to the respondents/defendants declaring that the Group Home Standardized Benefits Program does not violate that provision of the New York Constitution, and, in effect, declared that the Group Home Standardized Benefits Program does not violate that provision of the New York Constitution.

ORDERED that the appeal by John E. Imhof from the order and interlocutory judgment is dismissed as abandoned, without costs or disbursements; and it is further,

ORDERED that the appeal from the order entered April 2, 2009, is dismissed, without costs or disbursements, as that order was superseded by the order and interlocutory judgment; and it is further,

ORDERED that the order and interlocutory judgment is modified, on the law and the facts, by deleting the provision thereof certifying the proposed intervenors as members of a class consisting of "recipients of food stamps in the State of New York whose food stamp benefits were determined and reduced under the GHSBP and whose monthly income included payments of SSI benefits"; as so modified, the order and interlocutory judgment is affirmed insofar as appealed from by Robert Doar and insofar as cross-appealed from, without costs or disbursements.

The State of New York implemented a five-year pilot program, known as the New York State Group Home Standardized Benefits Program (hereinafter the GHSBP), authorizing a fixed allocation of food stamps to group-home residents, based on a matrix that charted geographic region (either the New York City metropolitan area, consisting of the City of New York, and Nassau, Suffolk, Westchester, and Rockland Counties, or the remainder of the state) and income source (either public assistance [hereinafter PA] benefits, Supplemental Security Income [hereinafter SSI] benefits/other Social Security Administration benefits, or other income source). The petitioners/plaintiffs (hereinafter the petitioners) are residents of group homes, and are entitled to, and/or are recipients of, SSI benefits. They alleged, inter alia, that, under the GHSBP, recipients of SSI benefits residing in group homes were awarded less than one half the monthly food stamp

allotment given to similarly-situated PA recipients, in violation of their equal protection rights. They moved, among other things, for summary judgment on that ground. The Supreme Court awarded summary judgment to the petitioners on their first cause of action, and declared that the implementation of the GHSBP violated the Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and article I (§ 11) of the New York Constitution. The Supreme Court also directed the restoration of monthly food stamp benefits which the petitioners would have received had the GHSBP not been implemented but, in effect, awarded summary judgment to the respondents/defendants in connection with the third cause of action declaring that the GHSBP did not violate article XVII (§ 1) of the New York Constitution, which recites that the “aid, care and support of the needy . . . shall be provided by the state.”

Legislation concerning economics and social welfare need only be rationally related to the achievement of a legitimate state purpose in order to withstand an equal protection attack (*see Matter of Bernstein v Toia*, 43 NY2d 437; *see generally Lovelace v Gross*, 80 NY2d 419; *Matter of Davis*, 57 NY2d 382; *but see Tucker v Toia*, 89 Misc 2d 116, *affd* 43 NY2d 1). Even under the rational basis test, the Supreme Court properly awarded summary judgment in favor of the petitioners on the equal protection cause of action, and declared that the implementation of the GHSBP violated the Equal Protection Clauses of the United States and New York Constitutions since the petitioners established that the respondents/defendants did not have a rational basis for providing higher allotments of food stamps to similarly-situated recipients of PA than to recipients of SSI. The respondents/defendants failed to provide a sufficient justification for, or proof that the United States Department of Agriculture actually approved of, any income exclusions for PA recipients (*see* 7 CFR 273.9[c][1][i][F]). Moreover, the respondents/defendants failed to justify the different treatment accorded to PA payments and SSI payments made to a group home provider on behalf of a resident of a facility that are in excess of the normal maximum PA grant, in light of the fact that grants of equal amounts are paid to the provider for the clients in their care regardless of whether the resident receives PA or SSI.

The Supreme Court also properly limited the petitioners’ recovery to the restoration of monthly food stamp benefits which they would have received had the GHSBP not been implemented, as they are already entitled to this relief pursuant to their successful contention that the GHSBP is invalid by virtue of its implementation in the absence of a proper and formal rulemaking procedure (*see Matter of Graves v Doar*, \_\_\_\_\_AD3d\_\_\_\_\_ [Appellate Division Docket No. 2010-05344; decided herewith]). To the extent that the petitioners seek retroactive relief in the form of food stamp allotments that are equal to those awarded to their counterparts receiving PA, the cause of action pursuant to 42 USC § 1983 is barred since it does not seek to conform the future conduct of the State and its officers to constitutional norms, but seeks merely to recover damages from the State to remedy a past violation of law, and the State and its officers in their official capacities are not “persons” within the meaning of 42 USC § 1983 subject to such liability (*see Matter of Giaquinto v Commissioner of N.Y. State Dept. of Health*, 11 NY3d 179, 187, 188; *see also Matter of Forth*, 254 AD2d 836; *Barresi v Mahoney*, 240 AD2d 570). The petitioners are also not entitled to recover retroactive benefits equal to those received by their PA recipient counterparts pursuant to their State constitutional claims, as such relief would be inconsistent with the Supreme Court’s prior invalidation of the GHSBP methodology of calculating food stamp benefits (*see generally Matter of Graves v Doar*, 62 AD3d 874). Rather, the declaration herein that the GHSBP violates the Equal Protection Clauses of the United States and New York Constitutions is a

meaningful equitable remedy to which the petitioners and the members of the class are entitled.

The Supreme Court also properly, in effect, declared that the GHSBP does not violate article XVII (§ 1) of the New York Constitution. The petitioners concede that what is at issue on their cross appeal is not the denial of all food stamp allotment benefits to SSI recipients, but rather the unequal allotment of those food stamp benefits as between SSI and PA recipients. The Court of Appeals has stated that article XVII (§ 1) does not command that “in carrying out the constitutional duty to provide aid, care and support of the needy, the State must always meet in full measure all the legitimate needs of each recipient” of State aid (*Matter of Bernstein v Toia*, 43 NY2d at 448-449; see also *Tucker v Toia*, 43 NY2d at 7; *Matter of Barie v Lavine*, 40 NY2d 565, 570). While Article XVII (§ 1) imposes on the State an affirmative duty to provide aid, care, and support to those it classifies as needy, “[the] Constitution provides the Legislature with discretion in determining the means by which this objective is to be effectuated, in determining the amount of aid, and in classifying recipients and defining the term ‘needy’” (*Tucker v Toia*, 43 NY2d at 8). Accordingly, to the extent that the petitioners are challenging the facial sufficiency of the benefits allotted to SSI recipients under the GHSBP, they may not rely upon New York Constitution article XVII (§ 1); to the extent that they challenge only the unequal allotment of benefits, that constitutional provision is inapposite (see *Bernstein v Toia*, 43 NY2d at 448-449).

Finally, for an SSI recipient to qualify as a class member under the definition of the class, that individual must have been receiving food stamp benefits prior to the implementation of the GHSBP. If an SSI recipient had not been previously receiving food stamps, then there would be no way to determine the individual’s benefits threshold and, hence, whether his or her benefits had actually been “reduced” when the GHSBP was implemented. The class necessarily consists of those SSI recipients who were previously receiving food stamp benefits but, upon the implementation of the GHSBP, had their food stamp benefits reduced. Thus, any SSI recipient who was not receiving food stamps prior to the implementation of the GHSBP are not members of the defined class, and are not eligible to obtain the relief sought by the petitioners. On this record, the petitioners have failed to prove that the eight additional proposed intervenors fit within the class definition in order to be certified as members of the class previously defined by this Court in *Matter of Graves v Doar* (62 AD3d 874).

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

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court