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COURT OF APPEALS
STATE OF NEW YORK

MATTER OF ANDERSEN,

Appellant,

-against-

NO. 42

HEIN,

Respondent.

20 Eagle Street
Albany, New York
April 15, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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1 CHIEF JUDGE WILSON: First argument on the
2 calendar is matter of Andersen v. Hein. Counsel?

3 MS. AKHTAR: Good afternoon. May it please the
4 court, my name is Saima Akhtar. I'm a senior attorney at
5 the National Center for Law and Economic Justice. We're
6 one of the firms representing the petitioners in this
7 matter. As a preliminary, I'd like to request three
8 minutes to be reserved for rebuttal.

9 CHIEF JUDGE WILSON: Yes.

10 MS. AKHTAR: Thank you. In its most basic
11 formulation, this appeal is asking the panel to determine
12 whether the respondent may carve its own exception from
13 this court's existing jurisprudence in Carver v. State of
14 New York and the Federal Fair Labor Standards Act. The
15 result of such an exception would be to deny the - - -

16 JUDGE TROUTMAN: How is this in violation of
17 Carver?

18 MS. AKHTAR: Yes, Your Honor. The determination
19 of the Appellate Division set forth an additional criteria,
20 essentially, for examination of whether or not the Fair
21 Labor Standards Act provisions that are identified in
22 Carver would protect a recipient of WEP. In this case, the
23 court determined that there was a close relationship and
24 that the Safety Net Assistance Benefits at issue were
25 related to the SSI benefits that the respondent was seeking

1 - - -

2 JUDGE RIVERA: But why isn't that right? Why
3 isn't it double dipping?

4 MS. AKHTAR: It's not double dipping because the
5 benefits are not equivalent essentially. One of the core
6 issues in this case, the core issue, is that the respondent
7 is essentially entirely neglecting the fact that the
8 petitioner has performed labor.

9 JUDGE TROUTMAN: Why isn't this simply ultimately
10 shifting who pays the bill, so to speak, for that labor?

11 MS. AKHTAR: It doesn't shift - - - it doesn't
12 merely shift the bill.

13 JUDGE TROUTMAN: So the federal government gives
14 back to the State what the State pays out.

15 MS. AKHTAR: Right. The federal government does
16 give back to the State in the interim assistance
17 reimbursement process.

18 JUDGE TROUTMAN: And do you agree that the State
19 is entitled to reimbursement?

20 MS. AKHTAR: The State is entitled to
21 reimbursement where we're talking about, I will say,
22 straight benefits, but the mitigating factor in this case
23 is that the petitioners performed labor.

24 JUDGE GARCIA: So - - -

25 JUDGE SINGAS: So that's different than Carver,



1 right?

2 MS. AKHTAR: No. Mr. Carver performed labor in
3 exchange for his Safety Net Assistance benefits, and the
4 Court found that his Safety Net Assistance benefits served
5 as his compensation for the labor, and that's why - - -

6 JUDGE RIVERA: Yeah, but - - - and he got paid
7 once.

8 MS. AKHTAR: And he got paid once.

9 JUDGE RIVERA: But why isn't this getting paid
10 twice?

11 MS. AKHTAR: This isn't getting paid twice
12 because when the State - - - I'm going to take you into a
13 little bit of technicality about the State's reimbursement
14 process. So the way the reimbursement process works is,
15 under the Interim Assistance Reimbursement Agreement, the
16 Social Security Administration has entered into this
17 essentially a memorandum of understanding with the State of
18 New York, with the respondent agency. And at that point in
19 time, all of the paperwork and record keeping falls to the
20 respondent under the terms of the agreement. So when it
21 comes time to certify the amount of interim assistance
22 that's recoverable, the respondent simply transmits a
23 number. What is happening right now is that the respondent
24 is transmitting 100 percent of the value of the safety net
25 assistance. There's no accounting at all for any labor

1 performed. And in fact, it's - - -

2 JUDGE RIVERA: Let me try this hypothetical.

3 MS. AKHTAR: Yes.

4 JUDGE RIVERA: I'm getting benefits. We work out
5 that at the appropriate wage, I get - - - I'm just going to
6 make up a number.

7 MS. AKHTAR: Make up a number.

8 JUDGE RIVERA: \$50.

9 MS. AKHTAR: \$50.

10 JUDGE RIVERA: I'm getting a low number.

11 MS. AKHTAR: I - - - that's fine.

12 JUDGE RIVERA: \$50, covering a particular period
13 of time. The State pays that. Now, the feds have done
14 their calculations. They've decided that the person - - -

15 MS. AKHTAR: The State does - - -

16 JUDGE RIVERA: I'm sorry, the feds - - -

17 MS. AKHTAR: I apologize.

18 JUDGE RIVERA: - - - determined that the person
19 is eligible for the federal benefits - - -

20 MS. AKHTAR: Yes.

21 JUDGE RIVERA: - - - right, for the exact same
22 period.

23 MS. AKHTAR: Yes.

24 JUDGE RIVERA: And moving forward proactively,
25 right?

1 MS. AKHTAR: Yes.

2 JUDGE RIVERA: Okay. And the State takes the 50
3 off the top that it had already paid.

4 MS. AKHTAR: Yes.

5 JUDGE RIVERA: But - - - and the worker gets all
6 the rest?

7 MS. AKHTAR: Yes.

8 JUDGE RIVERA: Okay. So that doesn't sound to me
9 like anyone is being denied the prevailing wage.

10 MS. AKHTAR: The problem is that the - - - the
11 participants in the program, the recipients of benefits - -
12 -

13 JUDGE RIVERA: Yes.

14 MS. AKHTAR: - - - are entitled to keep their
15 wage. Essentially what the State is doing - - -

16 JUDGE RIVERA: They did. They got the \$50. What
17 have I misunderstood?

18 MS. AKHTAR: They would be entitled to receive
19 the Safety Net - - - the SSI repayment were it not being
20 used to recover and - - -

21 JUDGE RIVERA: So you're saying the State is
22 paying one type of benefit, and the SSI is a different kind
23 of benefit? Could they have received both simultaneously?

24 MS. AKHTAR: No. They would not receive both
25 simultaneously.

1 JUDGE RIVERA: Okay. So again, you're getting
2 \$50 once, not twice?

3 MS. AKHTAR: You get \$50 as compensation for your
4 work.

5 JUDGE HALLIGAN: Are there any individuals who
6 fulfill their work requirement through private employment?
7 In other words, this is a - - - something that is - - -

8 MS. AKHTAR: So - - -

9 JUDGE HALLIGAN: Go ahead.

10 MS. AKHTAR: Yes, I apologize. I think what
11 you're asking is whether or not these individuals in this
12 program are privately employed.

13 JUDGE HALLIGAN: No. I'm asking - - - I think
14 I'm trying to ask a different question, which is in the
15 group of individuals who are receiving interim assistance,
16 to the extent they are subject to a work requirement, do
17 any of them satisfy that requirement through some sort of
18 private sector employment as opposed to the Work Experience
19 Program?

20 MS. AKHTAR: There are ways that they could work
21 in a private sector job.

22 JUDGE HALLIGAN: Okay. And so in - - - as I
23 understood the regs, those individuals, if they're not
24 receiving through that employment the same number of
25 dollars that they would just through a standard interim

1 assistance grant, they get some kind of top up. Is that
2 right? In other words, they get an amount that would - - -
3 if they're earning in a private sector job under whatever
4 that number is, they would be provided with those dollars.
5 Is that right?

6 MS. AKHTAR: I believe what you're articulating
7 is they would receive the difference between the - - -

8 JUDGE HALLIGAN: Yes, that's right.

9 MS. AKHTAR: - - - issued SSI benefit - - -

10 JUDGE HALLIGAN: Yes.

11 MS. AKHTAR: - - - and the amount of the wage?

12 JUDGE HALLIGAN: Um-hum. Is that right?

13 So those individuals, I take it, are only
14 receiving the delta between whatever they are earning
15 through whatever employment and whatever the benefit
16 number. They're also receiving full interim assistance?

17 MS. AKHTAR: No.

18 JUDGE HALLIGAN: What I'm trying to drive out, I
19 guess, is it seemed to me - - - I'm trying to understand
20 how the scheme works, that an individual who is fulfilling
21 a work requirement through private employment would not
22 receive - - - I know you don't call it double dipping - - -
23 but the additional dollars when the back payment comes
24 through. Is that correct?

25 MS. AKHTAR: So as a baseline point, I actually

1 want to be really clear. The majority of individuals who
2 have pending SSI applications are not subject to a work
3 requirement.

4 JUDGE HALLIGAN: Yes, I understand. And that
5 would make sense given the requirements for SSI
6 eligibility, I assume.

7 MS. AKHTAR: Yes. I - - - that's not the reason
8 for it. I mean, the respondent has an expressed policy
9 separate from that and the participation in WEP - - -

10 JUDGE HALLIGAN: Okay.

11 MS. AKHTAR: - - - can't be used to infer as to
12 the employability on the disability application, but that -
13 - - so the majority of people are not working.

14 JUDGE HALLIGAN: But for those who are.

15 MS. AKHTAR: For those who are, I think the
16 calculation would have to be done in the same way,
17 fundamentally, because their Safety Net Assistance benefits
18 serve the function of compensation for the work.

19 JUDGE TROUTMAN: So does this turn - - - if we
20 accept your argument, does it turn the WEP payments into
21 income? The interim money that's paid, is it now income to
22 the recipient?

23 MS. AKHTAR: It - - - I mean, Safety Net
24 Assistance serves as income. When SSI is provided, SSI
25 serves as income. When people receive their SSI back pay,

1 they receive a lump sum that is not generally counted.

2 JUDGE CANNATARO: So somewhat related to that.

3 If it is income, and I believe that the SSI requirements
4 require an exclusion for income, wouldn't it serve on - - -
5 on that end to reduce the amount of the SSI benefit?

6 MS. AKHTAR: When - - - I'm sorry. When you say
7 it serves as income, do you mean the Safety Net?

8 JUDGE CANNATARO: No. If the money earned in
9 this employment context is, as suggested, really just a
10 form of income, it's a minimum wage for work done, and the
11 SSI includes a requirement that benefits be reduced, it has
12 to be deducted from the SSI benefit. Wouldn't that happen
13 in your case?

14 MS. AKHTAR: So if someone is employed and begins
15 receiving SSI or was employed privately, completely
16 independent of the Public Assistance scheme, during - - -

17 JUDGE CANNATARO: Well, why is it independent?
18 Why is it not the same thing? If you're earning a wage for
19 work done, what's so different about doing it under the
20 Interim Assistance Program or any other employment?

21 MS. AKHTAR: So the way SSI would treat the wage
22 is actually more generous than what the respondent is doing
23 here.

24 JUDGE CANNATARO: Can you - - -

25 JUDGE SINGAS: So what would be the implication

1 of - - - or would there be any implication if we adopted
2 your argument on interim assistance? Do you think maybe
3 the states might say, you know what, we're not going to
4 front this money any longer because we're not going to get
5 recouped?

6 MS. AKHTAR: No, I don't, because - - -

7 JUDGE RIVERA: Why not?

8 MS. AKHTAR: - - - there continues to be a
9 Constitutional mandate to provide for the aid and care of
10 the needy under Article 17 of the State Constitution. That
11 won't change.

12 JUDGE GARCIA: But would they - - -

13 CHIEF JUDGE WILSON: So if there's a - - - sorry;
14 go ahead.

15 JUDGE GARCIA: But would they - - - as I
16 understand it, some of this is, you know, work in a
17 nonprofit, right?

18 MS. AKHTAR: Yes.

19 JUDGE GARCIA: And that nonprofit then gets the
20 benefit of this work. The State pays the person doing the
21 work. And then, essentially, the federal government
22 reimburses the State. So the nonprofit gets the benefit of
23 the labor. The State gets reimbursed because they probably
24 wouldn't pay for that on their own. And if we rule in your
25 favor, why would the State ever do that? Why wouldn't they

1 just say, okay, we'll pay you and then we'll just recover?
2 And then there's no work at the nonprofit. The food
3 kitchen doesn't have somebody working there, and the State
4 gets fully re - - - you know, compensated for what they've
5 laid out.

6 MS. AKHTAR: So I will say the parameters of this
7 program are exceptionally limited. The issue here only
8 applies in circumstances where people in a Work Experience
9 Program, what's called WEP. There are any of a number of
10 other ways that the State can meet and ask participants to
11 meet their work requirement that are not participating in
12 WEP. And as it is, WEP is optional essentially to the
13 counties because we have a dual state/county administered
14 system. So it's not - - -

15 JUDGE GARCIA: Right. But wouldn't the county
16 opt out then and then those positions and those, you know,
17 jobs will go unfilled and the county will just wait and get
18 reimbursed because we don't have a budget to pay for
19 somebody to essentially volunteer in a nonprofit.

20 MS. AKHTAR: The county could opt out of
21 providing WEP. They can't opt out of meeting their work
22 requirement in other ways.

23 CHIEF JUDGE WILSON: If somebody is earning as -
24 - - a wage that is higher than the federal minimum wage,
25 can the State recoup the difference?

1 MS. AKHTAR: If someone - - -

2 CHIEF JUDGE WILSON: A WEP - - - a WEP

3 participant.

4 MS. AKHTAR: If a WEP participant earned higher -

5 - -

6 CHIEF JUDGE WILSON: Say \$15 an hour. 17 is the

7 wage here.

8 MS. AKHTAR: So it's not - - -

9 CHIEF JUDGE WILSON: And the federal minimum wage

10 is \$7.25, maybe.

11 MS. AKHTAR: Yes. It's not a separate wage

12 calculation. So it - - - there is not a way for a WEP

13 participant essentially to receive a higher minimum wage

14 than that bare bones calculation that's done.

15 CHIEF JUDGE WILSON: I'm sorry. You - - - so

16 some - - - I didn't understand that entirely. Somebody who

17 was working in the WEP program can't earn more than the

18 federal minimum wage?

19 MS. AKHTAR: The calculation is done using the

20 minimum wage provision that's in the statute. So there's

21 no, essentially, outside provision to earn separately.

22 CHIEF JUDGE WILSON: So you're saying if somebody

23 were in the WEP program, earning 15 - - - actually getting

24 paid \$15 an hour - - -

25 MS. AKHTAR: That would not - - -

1 CHIEF JUDGE WILSON: The federal government would
2 treat that as if they were only being paid 7.25?

3 MS. AKHTAR: Right. That would not actually be
4 the WEP program because the WEP program only functions by
5 placing people into work assignments and then providing
6 them with their Safety Net Assistance benefits in exchange
7 as compensation for the participation in the volunteer
8 activity or this other form of activity in another
9 placement.

10 JUDGE RIVERA: All right. So if I'm
11 understanding you, there's whatever system to figure out
12 what the benefits will be for that individual, right? And
13 then they work, I don't know if it's backwards or forwards,
14 how much per hour one would be - - - well, on that wage,
15 per hour to get you to that amount. Is that what they're
16 doing?

17 MS. AKHTAR: Yes. The number of hours - - -

18 JUDGE RIVERA: Okay.

19 MS. AKHTAR: - - - assigned is - - -

20 JUDGE RIVERA: That gets you to that amount, and
21 that's what they demand that you do. And you must do it?

22 MS. AKHTAR: Yes.

23 JUDGE RIVERA: Okay. Thank you.

24 MS. AKHTAR: Thank you.

25 CHIEF JUDGE WILSON: Thank you.



1 MS. NEPVEU: Good afternoon, Your Honors. May it
2 please the court, Kate Nepveu for Respondents. Your
3 Honors, just to pick up on the questions that were just
4 asked. The number of hours - - - if somebody is required
5 to participate in work activities, the hours are calculated
6 by taking their benefit, which is based on the need that
7 they have, and dividing it by the highest minimum wage
8 applicable. So Your Honor was asking about the federal
9 versus state. It's the state minimum in which is - - -

10 JUDGE RIVERA: So they're basically working for
11 the amount of benefit that they get but at a particular
12 wage amount. Am I getting that right?

13 MS. NEPVEU: If they're required to work, and
14 as - - -

15 JUDGE RIVERA: Yeah. No, no, that's - - -

16 MS. NEPVEU: Yeah, yes.

17 JUDGE RIVERA: - - - the only group we're talking
18 about.

19 MS. NEPVEU: Yes, exactly.

20 JUDGE RIVERA: So they wouldn't get more than
21 that because they're working backward from the amount that
22 they want to give them?

23 MS. NEPVEU: That's correct.

24 JUDGE RIVERA: Or that they're going to give
25 them, excuse me.

1 MS. NEPVEU: Yes. Because - - - and so the
2 petitioners here always received the value of the
3 applicable minimum wage through their Safety Net
4 Assistance. That's how it's calculated. And so they
5 were - - - they received the protection that this court - -
6 -

7 JUDGE RIVERA: Then they're not really getting a
8 benefit.

9 MS. NEPVEU: I'm sorry?

10 JUDGE RIVERA: They're getting - - - they're not
11 getting a benefit. They're getting work - - - they're
12 getting paid for work.

13 MS. NEPVEU: No, they are getting a benefit, Your
14 Honor, because the argument that petitioners are
15 essentially - - -

16 JUDGE RIVERA: Well, they're earning every
17 dollar, are they not?

18 MS. NEPVEU: But your benefits are calculated
19 based on your need.

20 JUDGE RIVERA: Okay.

21 MS. NEPVEU: If you don't - - - if you're not
22 required to work - - -

23 JUDGE RIVERA: I'm only dealing with the group
24 that has to work, right?

25 MS. NEPVEU: Right. But the benefits are the

1 same whether or not you're able to work.

2 JUDGE RIVERA: I understand the amount is the
3 same. I get that.

4 MS. NEPVEU: Right. So it's not your benefit
5 doesn't depend on whether or not you are able to
6 participate in acti - - -

7 JUDGE RIVERA: The amount that you've decided is
8 appropriate for the person. I get that.

9 MS. NEPVEU: Right, right.

10 JUDGE RIVERA: Okay.

11 MS. NEPVEU: And so that's why - - -

12 JUDGE RIVERA: But the small group that works is
13 earning every dollar because they're not - - - they're not
14 staying somewhere else - - - well, let me put it a
15 different way. They're not getting the benefit without
16 putting in their labor.

17 MS. NEPVEU: That's correct, but it's no - - -

18 JUDGE RIVERA: Is it dollar for dollar, you do
19 not give a dollar more once you do this calculation for the
20 person who works. Is that correct?

21 MS. NEPVEU: No. Because it might be the case
22 that they might - - - there's a maximum hour that can be
23 assigned based on the value - - -

24 JUDGE RIVERA: I see.

25 MS. NEPVEU: - - - of the minimum wage, but there

1 might not be, you know, wor - - - there may not be
2 activities available - - -

3 JUDGE RIVERA: I see.

4 MS. NEPVEU: - - - or somebody might be sick.
5 It's not as though I'm an hourly worker, have my - - -

6 JUDGE TROUTMAN: Why is it fair that whether you
7 work or you don't, it's the same rule?

8 MS. NEPVEU: Because it's a benefit based on your
9 need. The argument that Petitioners are effectively making
10 is that somebody who is unable to work or to participate in
11 work activities should get less than somebody who is able
12 to participate in work activities. That's not what public
13 assistance is. Public assistance is based on your needs.

14 JUDGE HALLIGAN: What do you do - - -

15 CHIEF JUDGE WILSON: Does the - - - does the - -
16 -

17 MS. NEPVEU: Yes, Your Honor.

18 CHIEF JUDGE WILSON: Go ahead.

19 MS. NEPVEU: Somebody.

20 JUDGE HALLIGAN: What do you do about the FLSA
21 free and clear cases? How do you - - - what's your
22 argument that this approach comports with those?

23 MS. NEPVEU: It comports because petitioners
24 always receive the value of the minimum wage.

25 JUDGE HALLIGAN: Well, we said - - -



1 MS. NEPVEU: And they never - - -

2 JUDGE HALLIGAN: We said that we treat this like
3 FLSA wages, right? That question has already been
4 answered. And so why is the recoupment not essentially
5 some diminishment of those wages?

6 MS. NEPVEU: Because the - - - it's a
7 reimbursement of the Safety Net Assistance. Petitioner - -
8 -

9 JUDGE HALLIGAN: Is it because they never - - -
10 do the checks never go to them, they just go to the State?
11 Is that the notion that they're not going through the hands
12 of the recipients in the first instance?

13 MS. NEPVEU: I mean, that's accurate, but that's
14 not the operative point.

15 JUDGE HALLIGAN: Okay.

16 MS. NEPVEU: The point is that petitioners are
17 never out of pocket. They always receive their Safety Net
18 Assistance, which by definition includes the value of
19 the - - -

20 JUDGE HALLIGAN: Well, why wouldn't that be true
21 with the lottery as well? I thought with the lottery, the
22 question - - - maybe I misunderstood how it operated, but I
23 thought that the recoupment was from the lottery funds, not
24 from the funds that were provided as part of participation
25 in the WEP program in the first instance.

1 MS. NEPVEU: Right. Because the lottery prize
2 was a windfall that came from outside what this court calls
3 in Matter of - - -

4 JUDGE HALLIGAN: But how is that responsive to -
5 - - to the question of what I thought I heard you saying
6 was that the lottery is distinct because it is a different
7 kind of source, right?

8 MS. NEPVEU: And the kind of source that Safety
9 Net Assistance is, it was designed by the legislature to be
10 a substitute or a loan while SSI applications were pending.
11 This court explained in Matter of Del Mar that applicants
12 for SSI used to be just completely ineligible for home
13 relief, which is what Safety Net Assistance is now. The
14 legislature realized that by excluding SSI applicants from
15 Safety Net Assistance, they were just leaving them out in
16 the cold. They had no access to assistance at all. So the
17 legislature amended the law and said that SSI applicants
18 can get state assistance up and to the point that they get
19 their first SSI payment. At that point, they transitioned
20 from State assistance to SSI, and then the State is
21 reimbursed from SSI.

22 JUDGE TROUTMAN: Do you agree with - - -

23 MS. NEPVEU: So what this Court said in Delmar,
24 those State benefits are in the nature of a loan or a
25 substitute for SSI benefits. The legislature always

1 intended that Safety Net Assistance while the necess - - -

2 JUDGE RIVERA: Yeah, but you don't necessarily
3 have to work for an employer to get that loan.

4 MS. NEPVEU: Yes. That is - - -

5 JUDGE RIVERA: I mean, that is the difference,
6 right? It's not really a loan. I can get a loan and
7 not - - - you know, I don't have to work.

8 MS. NEPVEU: It's also - - - it's contingent
9 because not everybody has to work for it. Not everyone has
10 to participate in work activities. In fact, most - - - if
11 - - -

12 JUDGE RIVERA: But I'm only talking about the
13 group that - - -

14 MS. NEPVEU: Right. I just - - - I just want - -
15 -

16 JUDGE RIVERA: I understand that.

17 MS. NEPVEU: Yes. I just want to clarify.
18 That's something that's important. If the local district
19 knows that somebody has applied for SSI, the only way they
20 can require them to participate in work activities is if
21 they go through a fair hearing.

22 JUDGE RIVERA: Okay.

23 MS. NEPVEU: There's - - - there's medical exams.
24 There's a whole process. So it appears in this case that -
25 - - that the districts didn't know that the petitioners had



1 applied for SSI, and that's why they required them to work.
2 But - - -

3 CHIEF JUDGE WILSON: Are there activities that
4 are not - - - the WEP activities that are not paid
5 employment but that would qualify as work under WEP? Or
6 put differently, that wouldn't - - - the person wouldn't be
7 an employee under FLSA but still would be complying with
8 WEP. Educational, some kind of training, other things like
9 that?

10 MS. NEPVEU: There - - - this is to be a little
11 technical. There are work activities - - -

12 CHIEF JUDGE WILSON: Yep.

13 MS. NEPVEU: - - - and that can include paid
14 private employment. That can include subsidized. That can
15 include training. As you mentioned, WEP is a separate - -
16 - is one kind of work activity which is unpaid work for
17 governments or not-for-profits. And that's all that's at
18 issue here because that is what was issue in Matter - - -
19 at issue and Matter of Carver. And the reason this is
20 different than Matter of Carver is because in Matter of
21 Carver, Mr. Carver was entitled to both his Safety Net
22 Assistance and also to the lottery. They were separate
23 things, and therefore, the court found, effectively, that
24 to reduce the lottery was to retroactively reduce the
25 Safety Net Assistance because he was entitled to both.



1 JUDGE TROUTMAN: Is it correct that that
2 petitioners asserted that previously the WEP work was taken
3 into consideration up - - - up until 1997 or so?

4 MS. NEPVEU: Yep, your - - - yes, Your Honor,
5 because in - - -

6 JUDGE TROUTMAN: Why the change?

7 MS. NEPVEU: In 1997, the legislature amended the
8 Social Security law. It used to be that the Social
9 Security law prohibited local districts from placing liens
10 to recover public assistance to the extent that those - - -
11 that WEP participation was included. So that was a change
12 in the law, and that's no longer prohibited. And to the
13 extent - - - and you know, the extent that - - - so now
14 there is no - - -

15 JUDGE TROUTMAN: So the reason for the change was
16 policy?

17 MS. NEPVEU: I don't actually have that off the
18 top of my head. I apologize, Your Honor, but I think the
19 fact that the legislature no longer prohibited liens to
20 recover assistance that included WEP hours cuts against
21 petitioners here.

22 JUDGE TROUTMAN: So they just took away the
23 prohibition?

24 MS. NEPVEU: Yes.

25 JUDGE GARCIA: Counsel, I'm still - - -

1 JUDGE RIVERA: So let me ask you about that. Two
2 people similarly situated otherwise, one is, though, the
3 waiting - - - has an SSI application pending. It's then
4 decided in their favor. They're going to get retroactive
5 money. The other one, let's say during that period, SSI
6 has already made a determination. Now SSI would not,
7 right, if they were working, it's not going to take the
8 money, or is it going to take the money? Do they get all
9 of the SSI?

10 MS. NEPVEU: It - - -

11 JUDGE RIVERA: Obviously they're not working
12 under the WEP program. I mean some other employment.

13 MS. NEPVEU: I'm sorry. I don't quite follow the
14 question. I think if you're asking how much Safety Net
15 Assistance is reimbursed.

16 JUDGE RIVERA: Yeah.

17 MS. NEPVEU: It's - - - is it the full - - - it
18 depends. Sorry. It comes out of the first SSI check.

19 JUDGE RIVERA: Okay.

20 MS. NEPVEU: And it's only up to the amount of
21 Safety Net Assistance. If usually the Safety - - - the SSI
22 is more than the Safety Net Assistance. If it happened to
23 be less, the State eats the loss. The State can't attempt
24 to get all of its Safety Net Assistance back by going
25 after - - -

1 JUDGE RIVERA: No, I understood that. I think
2 I'm asking something perhaps a little closer to a question
3 Judge Halligan asked - - -

4 MS. NEPVEU: I'm sorry that I didn't understand.

5 JUDGE RIVERA: - - - no, no - - - previously.
6 I'm not being clear. Does SSI allow one to be employed
7 during the period that one is receiving SSI benefits?

8 MS. NEPVEU: I'm afraid I'm not that familiar.

9 JUDGE RIVERA: Okay.

10 MS. NEPVEU: You know, you have to demonstrate
11 that you're elderly, blind or disabled, and I'm not sure
12 how - - -

13 JUDGE RIVERA: To be able to be eligible for SSI.

14 MS. NEPVEU: Yeah. Excuse me. Yes. So I'm not
15 sure what it looks at.

16 JUDGE RIVERA: So it may not be that the person
17 is even able to work.

18 JUDGE HALLIGAN: But one could be - - -

19 MS. NEPVEU: Yes - - -

20 JUDGE RIVERA: To be eligible for SSI.

21 MS. NEPVEU: If they have applied for SSI,
22 they're not allowed to be required to participate in work
23 activities by the local districts.

24 JUDGE RIVERA: Okay.

25 MS. NEPVEU: Local districts maybe don't know or

1 they get mixed up or whatever. And occasionally some
2 people may choose to volunteer. We know there are a
3 handful of people who do that, but if you tell the local
4 district I have applied for SSI, the local district cannot
5 require you to participate in work activities of any kind
6 unless there's been a fair hearing.

7 JUDGE RIVERA: Is that because - - - again,
8 because once - - - when one receives SSI, they cannot be
9 employed.

10 MS. NEPVEU: I'll take your word for it, Your
11 Honor.

12 JUDGE RIVERA: No, it's a question.

13 MS. NEPVEU: I'm afraid I don't actually know,
14 but I assume - - - I assume that - - -

15 JUDGE RIVERA: All right. Maybe your adversary
16 knows. I'll ask her.

17 MS. NEPVEU: I assume - - - I assume not because
18 of the income requirements.

19 JUDGE RIVERA: Okay. If not.

20 JUDGE HALLIGAN: Let me ask you - - -

21 JUDGE RIVERA: So they would have gotten those
22 benefits. Let's assume for one moment not. Let's just go
23 with that for one moment.

24 MS. NEPVEU: Sure.

25 JUDGE RIVERA: Then that means they would have

1 received those benefits straight out without anyone
2 discounting anything, right, and recouping anything,
3 correct?

4 MS. NEPVEU: If they weren't - - - if they hadn't
5 received Safety Net Assistance to begin with, then no. No.
6 There would be no Safety Net Assistance to be reimbursed.

7 JUDGE RIVERA: No, I was just talking about
8 someone employed.

9 MS. NEPVEU: Because they're not receiving Safety
10 Net Assistance. The only question here is the State's - -
11 -

12 JUDGE RIVERA: Okay.

13 MS. NEPVEU: - - - fronting Safety Net Assistance
14 deliberately in order to tide people over while their SSI
15 is pending. Your Honor?

16 JUDGE GARCIA: Yes. I'm still struggling a bit
17 with the distinction of Carver.

18 MS. NEPVEU: Sure.

19 JUDGE GARCIA: And it seemed the gist of Carver
20 to me and pointed out by the dissent, is the worker was an
21 employee of the City, right, for purposes of FLSA. And
22 again, the gist of that seems to be that they're an
23 employee. They need to get paid. So if you're going to
24 then take money away from them that essentially they
25 got - - - they should have gotten paid, you have a problem,

1 and it's related to FLSA. So how - - - why is - - - and
2 under the statute at that time, they could go after the
3 lottery earnings. So why is that different? Like the gist
4 of that claim, how is that different depending on the
5 source of the money?

6 MS. NEPVEU: Right. Because it comes down to are
7 you separately entitled to it or not? And the Appellate
8 Division's decision here is consistent with Matter of
9 Carver because Carver didn't consider - - -

10 JUDGE GARCIA: It seem - - - it seems to me at
11 the time Carver was decided, right before that decision,
12 you weren't entitled to both, because under the law, I
13 think they could go after the lottery earnings.

14 MS. NEPVEU: Right. And under Carver - - -

15 JUDGE GARCIA: And we said you're not entitled.

16 MS. NEPVEU: Well, under Carver, you can still up
17 as long as the individual receives the full value of
18 minimum wage. So for Carver, any reduction of his lottery
19 would have brought him underneath. If - - -

20 JUDGE HALLIGAN: But I thought that your
21 adversary's argument was that they are separately entitled
22 because FLSA entitles them to it as payment for the - - -

23 MS. NEPVEU: And that's not correct.

24 JUDGE HALLIGAN: Okay. But why is that not
25 correct?

1 MS. NEPVEU: Because the legislature specifically
2 designed only provides Safety Net Assistance as a temporary
3 substitute for SSI.

4 JUDGE HALLIGAN: But the - - - that - - - I mean
5 that seems certainly correct, but I'm not sure how that
6 addresses the question of whether wages are for labor, and
7 they appear to be FLSA wages following Carver, I think.
8 I - - - you don't dispute that. I take it you're not
9 asking us to revisit that question. So I - - - I'm not
10 sure. I hear you saying they're distinct, but I'm not sure
11 I understand why you're telling us that distinction matters
12 - - -

13 MS. NEPVEU: Sure.

14 JUDGE HALLIGAN: - - - for purposes of Carver.

15 MS. NEPVEU: Carver said, yeah, benefits are
16 compensation, but it didn't - - - I'm sorry, Your Honor.
17 May I finish?

18 CHIEF JUDGE WILSON: Well, compensation - - -
19 yes, please do.

20 MS. NEPVEU: Okay.

21 CHIEF JUDGE WILSON: Compensation protected by
22 FLSA though, right?

23 MS. NEPVEU: Yes. And FLSA applies here and is
24 met because the benefits that petitioners receive in Safety
25 Net Assistance are never reduced and those necessarily meet



1 the minimum wage requirement. Carver didn't say that
2 benefits stop being benefits for all purposes just because
3 someone participates in minimum - - - in Work Experience
4 Programs. It just wasn't an issue there. There was no
5 interim assistance. So Safety Net Assistance effectively
6 has kind of a dual character. It's wages if you're worried
7 about minimum wage protections, but it's also benefits
8 because it's still public assistance. And we briefly
9 discussed the problems that there would be if you stopped
10 considering them - - - if you consider them wages for all
11 purposes.

12 JUDGE HALLIGAN: I know your light's on, but if I
13 could just ask you, do you agree with your adversaries
14 contention, as I understood it, that you are obligated to
15 pay interim assistance as a constitutional matter
16 regardless of what you do about the WEP requirements?

17 MS. NEPVEU: No, Your Honor, because if we were,
18 then the legislature wouldn't have originally said that
19 you're ineligible for Safety Net - - -

20 JUDGE HALLIGAN: Well, it could be that the
21 Constitution requires that it hadn't been litigated, or the
22 legislature enacted something that was constitutionally
23 required. You disagree, though, in terms of the - - - the
24 contention about the constitutional mandate?

25 MS. NEPVEU: Yes.

1 JUDGE HALLIGAN: Okay.

2 MS. NEPVEU: I just wanted to just briefly finish
3 what I was saying about the dual nature of Safety Net.
4 They're partly wages. They're partly benefits. The way
5 you look - - - decide which is most important is to look at
6 legislative intent. When Carver, it was the congressional
7 intent that minimum wage protections sweep broadly. Here,
8 it's the legislative intent that was explained by this
9 court in Matter of Delmar, that it's meant to be a
10 substitute. Every time this court has looked at interim
11 assistance, Matter of Del Mar, Rodriguez, Baez, it's
12 recognized that to receive interim assistance without being
13 reimbursed would result in double payments.

14 CHIEF JUDGE WILSON: It sounds a little odd,
15 though, doesn't it, to say that we are balancing the
16 congressional intent of the federal government in one
17 statute against the state's intent in a state statute?

18 MS. NEPVEU: There's no contradiction, Your
19 Honor, because, again, the minimum wage protections is met
20 here. Safety Net Assistance meets the minimum or exceeds
21 the minimum wage value, and that's never diminished. So
22 petitioner's received the value or more than the value of
23 the minimum wage for the time they spent participating in
24 WEP. That - - - there's - - - so there's no contradiction.
25 They've got the protection of the FSLA. They are being

1 paid - - - receive benefits once. What they're asking for
2 is to receive - - - asking to receive the minimum wage
3 twice. They're asking to receive it from Safety Net
4 Assistance and then from SSI. The law does not entitle
5 them to that.

6 CHIEF JUDGE WILSON: Thank you.

7 MS. NEPVEU: Unless the court has further
8 questions, thank you, Your Honors.

9 JUDGE HALLIGAN: Can you address the contention
10 that the, you know, wages are not being clawed back is what
11 I essentially understood the point to be. And so
12 therefore, there's not a FLSA violation. What is being
13 diminished is the benefit which is not covered by FLSA?

14 MS. AKHTAR: I think that this is a nomenclature
15 issue. The wages are absolutely being clawed back.

16 JUDGE HALLIGAN: Well, wait a second, though.
17 I'm not - - - as a technical matter, I'm not sure that's
18 correct, right? So why should, in fact, the way the money
19 is flowing not be dispositive as opposed to what - - - what
20 you're contending?

21 MS. AKHTAR: So I think actually the way the
22 money is flowing is problematic. And if - - - I will just
23 take a second, the Petitioners received the Safety Net
24 Assistance from the Department of Social Services as
25 compensation for the labor that they provide for the work

1 that they're doing. At some point after the fact,
2 subsequently, the Social Security Administration sends a
3 letter saying, hey, you're actually eligible for SSI
4 benefits. As a matter of course under the interim
5 assistance reimbursement process, this - - - there's a
6 notification between the Social Security Administration and
7 the state agency - - - it may actually come to the county.
8 But the obligation then lies with the state agency or the
9 county specifically to calculate the amount of the recovery
10 and send that number back to the Social Security
11 Administration. What is happening right now is that even
12 where the petitioners' perform labor, and we understand
13 that, you know, that labor is compensable through their
14 Safety Net benefits, the respondent is certifying the full
15 amount of Safety Net Assistance without in any way reducing
16 or accounting for the labor that was provided.

17 JUDGE CANNATARO: So to take that position, you
18 necessarily, I would guess, have to reject your adversary's
19 contention that the Safety Net benefit has a dual nature to
20 it. That it's a benefit that happens to satisfy the FLSA
21 requirements, right? Because - - -

22 MS. AKHTAR: FLSA doesn't create an exemption for
23 sources of income. It doesn't matter where wages or
24 compensation is paid from. FLSA is about the relationship
25 and the nature of the - - -



1 JUDGE CANNATARO: Right. But I believe her
2 argument would be and yes, these benefits - - - she still
3 thinks they're benefits - - - are complying with the FLSA
4 requirements, but that doesn't change their character as a
5 Safety Net benefit. Whereas I hear you to say, absolutely,
6 the characters changed. These are just wages now.

7 MS. AKHTAR: I think that it is functional in
8 terms of something that happens at the time the labor is
9 provided, right? These people are providing labor, and
10 labor must be compensated under the - - -

11 JUDGE RIVERA: But how is that? You've got - - -
12 you're going to get these interim benefits, right?

13 MS. AKHTAR: Yes.

14 JUDGE RIVERA: They're getting the interim
15 benefits. And the State says, okay, will you fall into the
16 small category of individuals that has to work to be able
17 to receive these benefits. Have I misunderstood that
18 because - - -

19 MS. AKHTAR: No, it's actually - - -

20 JUDGE RIVERA: - - - I see you nodding your head?

21 MS. AKHTAR: It's generally not a decision.
22 It's something that happens - - - I mean, I think these
23 are cases that where people have generally fallen through
24 the cracks. So it's not an intentional choice by the State
25 to compel these people around the Safety - - - the work

1 exemption for people with pending SSI. I would say - - -

2 JUDGE RIVERA: But isn't that what - - - let's
3 get back to WEP. You're going to get benefits.

4 MS. AKHTAR: Yes.

5 JUDGE RIVERA: But to get these - - - it's a - -
6 - is it not a criteria to receive the benefits to work?

7 MS. AKHTAR: For Safety Net Assistance?

8 JUDGE RIVERA: Correct.

9 MS. AKHTAR: There are many people who are
10 exempted from the work requirements.

11 JUDGE RIVERA: I'm talking about the ones we're
12 talking about here. The ones who worked.

13 MS. AKHTAR: These people - - - yes. The people
14 who are at issue and these petitioners are required to work
15 as a condition of receiving Safety Net Assistance.

16 JUDGE RIVERA: To be able to get the benefits.

17 MS. AKHTAR: Yes.

18 JUDGE RIVERA: And the benefits working backwards
19 and then tracked to the wage, whatever the number - - - the
20 amount of the wage is at the time, right?

21 MS. AKHTAR: Yes.

22 JUDGE RIVERA: So again, I'm having difficulty
23 seeing how if - - - if that's what's happened and then you
24 get SSI and it's retro, it's not double dipping to say I
25 get to keep that amount, which was necessary - - - excuse

1 me. I had to work to get that amount, and I also want this
2 additional amount for the exact same period.

3 MS. AKHTAR: For the State to fully recover the
4 amount of funds that were paid as labor is to essentially -
5 - -

6 JUDGE RIVERA: Yeah.

7 MS. AKHTAR: - - - benefit the State over the
8 recipient of that labor. They would - - - these
9 individuals would otherwise receive their - - - that back
10 retro pay themselves, right, if the State weren't - - -

11 JUDGE RIVERA: But they were only - - - the point
12 is they were only entitled to the SSI. This is just during
13 the period while they're waiting, while its pending.
14 Right? The State has said, okay, we don't want to leave
15 you destitute, right? We're going to provide something in
16 the interim and then we're going to get reimbursed, and
17 they might not even get fully reimbursed. But that's - - -
18 that's the intent depending on the retroactive payment.

19 MS. AKHTAR: But the State's - - - I understand,
20 but the entitlement to Safety Net under State law and under
21 the State constitution is distinct and independent from the
22 existence of SSI. Safety Net, contrary to what the
23 respondent has said, is not only a program that exists for
24 people with pending SSI applications; it's a broad general
25 assistance program in New York that's available to

1 thousands of people for a range of different issues and for
2 a range of different reasons.

3 JUDGE RIVERA: So you're saying it's wholly
4 possible to get safety net and SSI for the exact same
5 period of time, and neither one of these, neither the State
6 or the feds, are going to take into account this other
7 money? And - - - and as a consequence, reduce what you
8 would receive.

9 MS. AKHTAR: I think that that would be unlikely
10 to happen at this point, but there is - - -

11 JUDGE RIVERA: What does that mean, unlikely to
12 happen?

13 MS. AKHTAR: Because there are data matches
14 through the Social Security Administration databases, I
15 think that that would be unlikely to actually occur.

16 JUDGE RIVERA: That wouldn't happen. You'd get -
17 - - be getting two simultaneously.

18 MS. AKHTAR: Right. That would not happen.

19 JUDGE RIVERA: Yeah, but okay. Right, unlikely.
20 But let's get to the one that might happen. So the one
21 that might happen. Can you actually receive both of those
22 checks without the feds or the State taking into
23 consideration that you're receiving two?

24 MS. AKHTAR: No, because to receive an SSI
25 payment would put you over income substantially for the

1 Safety Net Assistance because the Safety Net eligibility
2 level is so incredibly low. I see that my red light is on.
3 I would like to address one prior point of yours as to how
4 the SSI benefit treats earnings that came up. When an
5 individual is just applying - - - outside of the Safety Net
6 context, when an individual is just applying for SSI, and
7 if there are earnings that come up during the eligibility
8 period, the rule is actually the same for people in the
9 eligibility period as it would be for individuals with
10 ongoing SSI. And there's a particular way of calculating
11 that. I'm going to just double-check to make sure I don't
12 mislead you with this.

13 So in terms of SSI and earnings, there's a
14 baseline deduction of the first \$85 that are disregarded
15 from calculation. And then earnings above the first \$85
16 are disregarded 50 percent. And then - - - so the 50
17 percent disregard of the earnings above the initial 85 is
18 kept by the participant. And then the 50 percent that's
19 not disregarded, it yields a dollar for dollar reduction in
20 the SSI benefit.

21 JUDGE RIVERA: Okay.

22 MS. AKHTAR: The difference in that situation, of
23 course, is that the Social Security Administration is going
24 to have the employment records themselves and be doing that
25 calculation. It is a more generous calculation than what

1 the Respondent is proposing be applied to the petitioners
2 in this case because - - -

3 JUDGE CANNATARO: But that calculation would
4 still be applied in this scenario to reduce the SSI
5 benefit, wouldn't it?

6 MS. AKHTAR: No, because the SSI, because of the
7 Interim Assistance Reimbursement agreement, SSI doesn't
8 have any of those records. The actual calculation is
9 wholly under the control of the State. And it's - - -

10 JUDGE CANNATARO: Could they not require the
11 applicant to provide that information?

12 MS. AKHTAR: They do not require the applicant to
13 provide that information.

14 JUDGE CANNATARO: So the applicant who's
15 receiving Safety Net Assistance gets to disavow the
16 existence of that income - - - the wage income?

17 MS. AKHTAR: No. Right now the State is taking
18 100 percent of the wage income that comes from the Safety
19 Net Assistance.

20 JUDGE CANNATARO: Not, but I'm saying if - - - if
21 we give you what you're asking for and you just acknowledge
22 that the amount of your benefit is subject to a formula
23 that would ostensibly reduce the amount of the SSI benefit,
24 your clients in the position of the applicants before us
25 would not have to disclose it or be subject to that.

1 MS. AKHTAR: Right. It would actually be a
2 different third case scenario. I don't think, you know, we
3 haven't - - - I haven't had the exploration. I don't think
4 it would be inappropriate to expect the respondent to
5 render the calculation in accordance with the treatment of
6 earned income by the Social Security Administration, but
7 that hasn't been the dialog so far. And that is distinct
8 from all of the other categories of recovery that were
9 covered initially by the Andersen case and settled. I want
10 to just as a clarification, lottery intercepts are still
11 permissible. Personal injury recoveries and insurance
12 proceeds settlements can all be recovered against for
13 purposes of Safety Net Assistance debt. But in all of
14 those cases, there is this WEP minimum wage calculation
15 that is applied against the recovery so that the respondent
16 does not recoup from that lump sum the value of the labor
17 that was provided by the Safety Net participant, and that
18 was enacted as part of the settlement in this case for the
19 other members of the class and has been in place since
20 2023.

21 CHIEF JUDGE WILSON: And in those cases, the
22 lottery or whatever recoupment, is how - - - is the WEP
23 rate based on the federal minimum wage or state?

24 MS. AKHTAR: The higher, the state minimum wage.

25 CHIEF JUDGE WILSON: The state. Thank you.



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MS. AKHTAR: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Shea Hammontree, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Andersen v. Hein, No. 42 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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