

**Matter of Holmes v Perales**

2004 NY Slip Op 30319(U)

January 14, 2004

Sup Ct, Suffolk County

Docket Number: 88-14477

Judge: Ralph F. Costello

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**COPY**

SUPREME COURT - STATE OF NEW YORK  
I.A.S. **PART 27** - SUFFOLK COUNTY

**PRESENT:**

Hon. RALPH F. COSTELLO  
Justice of the Supreme Court

Mot. Seq. # 026 - Mot D

..... X  
In the matter of RENITA HOLMES, KIM NASH, :  
PAULINE SALMON, TANYA PEDERSEN, :  
and **JAMES** McDONALD, on behalf of themselves, :  
their minor dependent children, and all others :  
similarly situated, :

NASSAU/SUFFOLK LAW SERVICES  
By: Robin A. Sparks, Esq.  
Attys. for Plaintiffs and Constance Daniels  
1757 Veteran Memorial Highway, Suite 50  
Islandia, New York 11749

Plaintiffs, :

CONSTANCE DANIELS, on behalf of herself :  
and her 4 minor dependent children, :  
Proposed Plaintiff-Intervenor, :

ELIOT SPITZER, Attorney General  
By: Susan M. Connolly, Esq.  
Attorney for Defendant **NY S DSS**  
300 Motor Parkway, Suite 205  
Hauppauge, New York 11788

- against -

CESAR A. PERALES, as Commissioner of the New :  
York State Department of Social Services, and :  
WILLIAM BARTSCH, as Commissioner of the :  
Suffolk County Department of Social Services, :

ROBERT J. CIMINO, Suffolk County Attorney  
By: Rita E. Adler, Esq.  
Attorney for Deft. Suffolk County DSS  
100 Veterans Memorial Hwy., PO Box 6100  
Hauppauge, New York 11788-0099

Defendants. :

..... X

Upon the following papers numbered 1 to 23 read on this motion for intervention and preliminary injunction; Notice of Motion/ Order to Show Cause and supporting papers 1 - 8; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers 9 - 18; Replying Affidavits and supporting papers 19 - 23; Other \_\_\_\_\_; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by the proposed plaintiff for leave to intervene in the pending action as party plaintiffs on behalf of herself, Constance Daniels, and her four (4) dependent children; and for permission to serve the summons and verified complaint proposed, is granted; and it is

Holmes v **NY S** DSS  
Index No. **88**- 14477  
Page No. **2**

**ORDERED** that the intervenor's application for a preliminary injunction, enjoining the defendants from termination of plaintiffs' standard housing allowance or the denial of a supplemental shelter allowance in the sum of \$443.00, which is the difference between the plaintiffs standard monthly shelter allowance of \$457.00 and the **\$900.00** that is actually charged for the rental of the apartment in which the family resides, is granted to the extent provided; and it is

**ORDERED** that the Commissioner of New York State Department of Social Services (NYS DSS) and the Commissioner of the Suffolk County Department of Social Services (SCDSS) are preliminarily enjoined from terminating plaintiffs standard shelter allowance; and it is

**ORDERED** that upon prior compliance inspection by the DSS Inspection Unit, NYSDSS is directed to authorize the SCDSS to supplement plaintiffs monthly shelter allowance currently in the sum of \$457.00, by a supplement of \$443.00, for a total shelter allowance of \$900.00, excluding utilities; and it is

**ORDERED** that payments shall be made directly to the landlord Robert Dosch of both standard and supplemental shelter allowances in the sum of \$900.00, provided SCDSS has confirmed the safety, prior removal, replacement or repair noted on prior inspection regarding:

(1) the living room windows, light fixtures, telephone cable wires, ceiling hole, removal of the floor hookup from L.P. gas, place fireproof seal over fireplace opening, replacement or repair of carpet, provide safety cover for exposed electric cable to exterior light and install electrical outlets for lighting and ventilation; and

(2) the replacement or repair of floor covering, faucet, provide cover for electric wire to currently exposed ceiling fixture, paint sheetrock, replace flammable panel adjacent to stove with fireproof retardant material, and

(3) the installation or repair of the bathroom outlet, ceiling fixture and window **frame**; and

(4) the enlargement of windows in the 6'x12' front room used as second bedroom; and

(5) the repair of door frame, in left rear 11'x11' bedroom, securing electric baseboard unit and installing outlet to eliminate extension cord; and

(6) the repair of the concrete entrance steps, closure of the hole at ground level from the previous heat system, reset replacement bedroom windows, close gaps; and finally

(7) the replacement or repair of a garage door, clean garage, discard of unusable tools, gasoline cans and all debris; and it is

**ORDERED** that the supplemental rental payment to Robert Dosch shall be made retroactive to March 2003, upon completion of repairs as enumerated, which are alleged to have been performed; and it is

Holmes v NYS DSS  
Index No. 88-14477  
Page No. 3

**ORDERED** that the supplemental shelter payment is further conditioned on plaintiffs continued eligibility for public assistance, based on need pursuant to **SSL §13 1-a**, **SSL 9352.3**, **SSL §350(1)(a)** and that the family applicant has: (a) children; (b) at least one of whom is a public assistance recipient; (c) in jeopardy of losing permanent housing; (d) the actual rental value exceeds the recipient's shelter allowance; and (e) the adult recipient is not under sanction.

Constance Daniels, on behalf of herself and four minor children, clearly demonstrate an entitlement to the standard shelter allowance and the approval of a supplemental shelter allowance commensurate with reasonable actual fair market rental values documented for at least a one bedroom apartment in this geographical region during the 2002 year. The Office of Housing and Inter-governmental Affairs has published "Fair Market Rents" for Suffolk County since 1993. In 1992 the fair market rent for a one-bedroom unit was at least \$1,045. The Suffolk County plan entitled "The Crisis of Homelessness in Suffolk County" included a document of "Facts about Housing Costs in Nassau-Suffolk," showing the decline in rental availability at reasonable values within this region and the broad discrepancy between the public assistance maximum shelter allowance and actual rental value.

Daniels selected a small (271 square foot) apartment, which is a legal one-family dwelling located at 14 Hickory Street, Wyandanch, New York. The Town of Babylon Building Department has issued a permit to the owner for one-family use dated September 10, 2003 which is scheduled to expire June 20, 2004. Daniels took occupancy on February 1, 2003 and continues to reside at this residence. The rent charged for the premises is \$1,200.00 per month which was reduced by the owner to \$900.00 per month, without heat or utilities. Daniels receives a \$457.00 standard monthly shelter allowance as part of the public assistance grant to house herself and four infant sons, ages 1, 4, 5 and 8. Daniels is unable to pay the \$443.00 difference between the standard shelter allowance and rental value with subsidies from outside employment or assistance from family or friends.

In view of the discrepancy and default in payment the owner of the premises, Robert Dosch, notified Daniels in April 2003 that unless the difference in rental value was paid retroactive to March 2003, he would proceed to evict the family. Daniels applied to SCDSS for a supplemental shelter allowance, which was denied. DSS failed to approve the supplemental shelter value after an inspection of the premises disclosed violations of the New York State Property Maintenance Code, which allegedly threatened the family health and safety.

Dispute exists concerning whether an inspection is required under the circumstances and whether the violations disclosed present a safety factor. It appears that when the recipient entitled to shelter selects the housing which is paid from the standard shelter allowance of the basic grant, an inspection is not required. However, Section 166 of the Social Service Department, and Local Law of Suffolk County permit the SCDSS to withhold a shelter allowance where the housing is dangerous, hazardous or detrimental to life or health. In the event a recipient independently chooses the shelter, SCDSS need not inspect but must verify that the building has a valid

Holmes v NYS DSS  
 Index No. 88-14477  
 Page No. 4

Certificate of Occupancy and/or rental permit and does not have a violation of law which is dangerous, hazardous or detrimental to life or health (Section 166-6[B], Local Law No.10-1994).

Defendants admit that Daniels independently selected the premises. DSS did not inspect, and the recipient was entitled to payment to the owner of the standard shelter allowance included in the basic grant. However, when a supplemental shelter allowance is requested, the defendants contend that the "Holmes" relief requires an inspection of the shelter pursuant to an informal arrangement between counsel for recipient applicants and the defendants. In the absence of an express direction to inspect on a supplemental application, the arrangement alleged by defendants is in dispute. DSS inspected the Daniels' premises on May 1, 2003. Violations disclosed in writing appear to render the shelter inadequate or unsafe. While space is minimal, the itemized violations appear to be relatively minor, are reparable and are alleged to have been completed following a Town inspection on August 19, 2003. This could be confirmed upon a follow-up inspection by DSS.

Daniels is clearly entitled to preliminary injunctive relief. The applicant is eligible for a supplemental shelter allowance under law (Social Service Law § 350[1]); *Jiggerts v Grinker*, 75 NY2d 411 [1990]; *Golding (Bell) v Dowling*, Index No. 92-6111, Nassau County Supreme Court Order entered July 10, 2002, [J. Marvin E. Segal]). The standard shelter allowance does not cover actual fair rental values in the Nassau or Suffolk community. The shelter is legal and is subject to reasonable repair. Alternative emergency housing in a hotel or motel is not likely larger and is definitely more costly, at least \$100.00 per day, \$700.00 per week and at least \$2,800.00 per month as opposed to the \$900.00 requested. The current premises also offers the family a home environment rather than a transitory living condition. Thus, preliminary relief is warranted. Daniels has demonstrated the likelihood of success on the merits, that the family will suffer irreparable injury from the failure to supplement the rent differential and that eviction is inevitable, without alternate option. The Daniels family, the defendants and the public will be injured. Therefore, the balance of equities favors the approval of rent supplementation for this family to prevent eviction and additional expense to the taxpayer, subject to a prior follow-up inspection to insure the integrity of the owner, and the safety of the family pending the outcome of this dispute (*Jiggerts v Perales*, 202 AD2d 341, 609 NYS2d 222 [1994]; CPLR 6301 *et seq*; CPLR 100 *et seq*).

Dated: Jan 14, 2004

**RALPH F. COSTELLO**

J.S.C.

FINAL DISPOSITION  NON-FINAL DISPOSITION