Jiggetts v Dowling
2007 NY Slip Op 34174(U)
December 21, 2007
Supreme Court, New York County
Docket Number: 0040582/1987
Judge: Karla Moskowitz
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.

SCANNED ON 12/31/2007
[* 1]

C032

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. KARLA MOSKOWITZ PART 03
Justice

---x

BARBARA JIGGETTS, et al.,

Plaintiffs,

-against-

MICHAEL DOWLING, as Commissioner of the New York State Department of Social Services, et al.

Defendants.

---x

INDEX NO. 40582/1987

MOTION DATE ______

MOTION SEQ. NO. 346

MOTION CAL. NO. ______

The following papers, numbered 1 to ______ were read on this motion to/for ______

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is

ORDERED that this motion + cross motion is decided in accordance with the accompanying Decision and Order.

FILED
DEC 28 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: December 21, 2007

KARLA MOSKOWITZ J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

---x

BARBARA JIGGETTS, et al.,

Index No. 40582/1987

Plaintiffs,

-against-

MICHAEL DOWLING, as Commissioner of the New York State Department of Social Services, et al.

Defendants.

---x

FILED
DEC 28 2007
NEW YORK COUNTY CLERK'S OFFICE

Decision and Order
(Motion 346)

MOSKOWITZ, KARLA:J.

Intervenor Gloria Mendez ("Mendez") originally brought this motion, (sequence no. 346) seeking inter alia, intervention and a declaration that the shelter allowance for families with children in New York City bears no reasonable relation to the cost of housing in New York City and that the current shelter allowance does not enable families to stay together in a home-type setting, in violation of this Court's Judgment entered on September 5, 1997 (the 1997 Judgment) and § 350(1)(a) of the Social Services Law. Mendez also sought a permanent injunction: (1) requiring the State New York State Department of Social Services (the "State Defendant") to promulgate an adequate shelter allowance schedule for families with children in New York City, in conformance with the 1997 Judgment and § 350(1)(a) of the Social Services Law; (2) enjoining the rent supplements as set forth in 18 NYCRR § 352(a)(2) insofar as the regulation purports to authorize the termination of supplemental rental assistance for families in receipt of interim relief in this action if there is a break in assistance of more than one calendar month or if the family has been sanctioned; and (3) enjoining 18 N.Y.C.R.R §§352.7(g)(3) and (4) insofar as these regulations provide that shelter arrears payments must be limited to a total period of six months once every five years unless the local social services district determines, at its discretion,

that additional shelter arrears payments are necessary based on the individual case circumstances; and (4) ordering the State Defendant to direct the New York City Department of Social Services to pay all of proposed plaintiff-intervenor's arrears to the date of entry of judgment and to provide Mendez with a monthly shelter grant in the full amount of her rent, provided she continues to remain eligible for public assistance.

The State Defendant opposed Mendez' motion and cross-moved for a declaration that the current shelter regulations as set forth in 18 NYCRR § 352 are in compliance with this Court's Judgment entered September 5, 1997 and the requirements of Social Services Law § 350.

On August 30, 2006, I granted Mendez' motion to intervene and continued the temporary restraining order. (See decision and order dated August 30, 2006 [August 2006 decision] at pg. 9). At the same time, I denied that part of Mendez' motion challenging various aspects of the regulations because Mendez had not yet been denied relief under them. (Id. at 11).

In August, I also ordered a hearing because I could not determine as a matter of law whether or not the State had set housing allowances that bore a reasonable relation to the cost of housing in New York City. (Id. at 12). That hearing occurred on March 26-28 of this year (the "March hearing"). The parties then submitted proposed findings of fact and conclusions of law on May 14, 2007. This decision follows.

BACKGROUND

I. History of the Case and Evolution of the Statutory Framework

The original plaintiffs brought this action under the public assistance program known as Aid for Dependent Children ("ADC"). ADC was the State promulgation of the Federal Aid to Families with Dependent Children ("AFDC") program. In 1990, the New York Court of Appeals

[* 4]

determined that New York's Social Services Law § 350(a)(1) imposes a duty on the State Commissioner of Social Services to establish shelter allowances for ADC recipients bearing a reasonable relationship to the cost of housing in New York City. (See Jiggetts v Grinker, 75 NY2d 411, 417). In so holding, the Court of Appeals relied on the statute's express language:

> 1. (a) Allowances shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child, in accordance with the provisions of section one hundred thirty-one-a of this chapter and other applicable provisions of law. Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home and for the support, maintenance and needs of the other relative if he or she is without sufficient means of support, provided such parent, parents and relative are not receiving federal supplemental security income payments and/or additional state payments for which they are eligible. The social services official may, in his discretion, make the incapacitated parent the grantee of the allowance and when allowances are granted for the aid of a child or children due to the unemployment of a parent, such official may make the unemployed parent the grantee of the allowance.

(emphasis supplied). Section 350 (a)(1) remains unchanged today.

The Court of Appeals then remanded the case back to this court for a determination as to whether the shelter allowances that the Commissioner had established in 1988 were adequate under the statutory standard. (Id.).

After a three and one half month trial, this court found that the 1988 shelter allowances did not bear a reasonable relationship to the cost of housing in New York City. (See Decision and Order dated April 16, 1997 [the "1997 Interim Order"] at pp. 109-110 and ordered the Commissioner to "develop and submit to the Secretary of State for promulgation by March 2, 1998 or, on application to the court, by a reasonable date thereafter, a proposed schedule of

shelter allowances for [The Aid to Dependant Children Program] and any successor program"). (1997 Judgment at pg. 11). The Appellate Division affirmed the 1997 Judgment. (See Jiggetts v Dowling, 261 AD2d 144 [1st Dept 1999]). On October 14, 1999, the Court of Appeals dismissed the State's motion for leave to appeal. (See Jiggetts v Dowling, 94 NY2d 796 [1999]).

Meanwhile, in 1996, Congress replaced the AFDC program with a five-year time-limited program known as Temporary Assistance to Needy Families ("TANF"). In 1997, New York State replaced the ADC program with the Family Assistance ("FA") program. (See N.Y. Soc. Serv. Law §§ 343-360). This new State-Federal statutory scheme prohibits the receipt of funds for more than sixty months during a recipient's lifetime, regardless of need. (See 42 U.S.C. § 608(a)(7)[A]).[1]

These new programs were part of a larger overhaul of the welfare system that occurred nationwide during the late 1990's. The philosophy behind welfare reform was to promote self-sufficiency and encourage work in order to move people away from the cycle of poverty. (See Supplemental Affidavit of Robert Doar, sworn to March 10, 2004 ("Doar Aff."), Def. Ex. 8 at ¶¶

---

[1] For families receiving FA who reach the Federal five-year time limit, the New York State Legislature enacted the SNA program. (N.Y. Soc. Serv. Law §§ 157-165). When a family receiving FA reaches the Federal five-year time limit, the family interviews with the requisite local agency. If the family wishes to continue receiving assistance, that agency transfers that family to the SNA program. On a prior motion, the State took the position that Social Services Law § 350(a)(1) requiring adequate allowances does not apply to SNA recipients. In a decision dated March 3, 2003, this court held that the requirement in Social Services law § 350(a)(1) requiring adequate allowances applies to SNA recipients. On July 25, 2005, the Appellate Division, First Department reversed on the ground I should not have allowed SNA recipients to intervene in a lawsuit that originally involved a different program. (See Jiggetts v Dowling, 21 Ad3d 178, 181-182 [2005]). Thereafter, on August 23, 2006, in the related case of Brownley v Doar, Index No. 402724/2005, I dismissed a similar complaint challenging the adequacy of shelter allowances under SNA. The Appellate Division, First Department affirmed this decision on October 2, 2007. (See 44 AD3d 313). The SNA program is not at issue on this motion.

2-9).

A. The Interim Relief System

Before the State promulgated new regulations, because the court had found that 1988 shelter allowances did not bear a reasonable relationship to housing costs in New York City and in order to avoid the need for repeated intervention motions in this action, this court directed the parties to operate an interim relief system for families with children who face eviction solely because of the inadequacy of the shelter allowance schedule ("Jiggetts interim relief"). Accordingly, the State Defendant routinely approved requests for Jiggetts interim relief according to the following schedule:

Family Size	1	2	3	4	5	6	7
Housing Allowance	$450	$550	$650	$700	$725	$750	$775

B. The Current Shelter Allowance for FA Families

The State did not comply with the 1997 Judgment. Accordingly, plaintiffs moved for further relief. On March 21, 2002, I issued an order requiring defendants to comply with the 1997 Judgment in 120 days. In response to that order, the State defendant issued a proposed shelter allowance schedule. The defendant issued a revised schedule in February 2003 that it adopted as final in August 2003. That schedule became effective on November 1, 2003 and has not increased since that time. That schedule is:

Family Size	1	2	3	4	5	6	7	8+
Housing Allowance	$277	$283	$400	$450	$501	$524	$546	$546

(18 NYCRR § 352.3[a][1]).

[* 7]

C. Federal Eviction Prevention Supplement Program

The State regulations that created the current shelter allowance also provide for local service districts to grant shelter allowance supplements while court cases challenging the adequacy of those shelter allowances for families with minor children are pending. As a result, in December 2004, the State, through the Office of Temporary and Disability Assistance ("OTDA"), approved a New York City plan to supplement the current shelter allowance pursuant to Social Services Law § 352.3(a)(3) called the Federal Eviction Prevention Supplement ("FEPS"). As of May 1, 2005, OTDA began offering FEPS to public assistance families in New York City who would otherwise have been eligible for Jiggetts interim relief. These families are eligible for shelter allowances up to the following levels:

Family Size	1	2	3	4	5	6	7
Housing Allowance	$650	$750	$850	$900	$1000	$1100	$1200

The FEPS program provides that families can obtain an additional rent supplement of up to $100 month, but that amount will be subtracted from the cash benefits otherwise available to the family for non-shelter needs such as food. The FEPS program is time limited to a period of up to five years with extensions theoretically available for good cause. Additionally, FEPS does not provide for payment of any excess rent for a month in which the local social services district has sanctioned a family.

In October 2003, motion sequence no. 129 was before the court that challenged the then current shelter allowance schedule as inadequate considering the actual cost of housing in New York City. While that motion was pending, the State Defendant raised the shelter allowance

amounts to their current levels and approved FEPS for New York City. Thus, in November 2005 Mendez filed this motion to challenge the new schedule and the additional allowances under FEPS as inadequate considering the actual costs of housing in New York City. Plaintiff-intervenor also challenges FEPS' restrictions as violating § 350(1) of the Social Services Law.

As mentioned earlier, in the August 2006 decision, I denied that part of Mendez' motion challenging several FEPS requirements because Mendez had not received a denial of FEPS benefits. As there has been no motion to renew, the court assumes that Mendez' situation is unchanged or that her family's housing needs have been met. The court will therefore not consider the restrictions under FEPS in its analysis because the issues are not ripe.

DISCUSSION

I. The Allowances in the 2003 November Regulations and the Supplements Under FEPS Comply with the 1997 Judgment

The issue at the hearing was whether the current structure, (i.e. the November 2003 allowances along with FEPS) complies with the 1997 judgment and §350(a)(1) of the Social Services Law.

A. Contentions of the Parties

According to plaintiff-intervenor, the State's very approval of the supplements under the FEPS program shows that the State believes that the November 2003 shelter allowances are inadequate. However, it is undisputed that the rents in New York City are higher than the rest of the state and rise quickly. It is not unreasonable to use rent supplements that New York City sets initially as a flexible way of handling both higher and rising rents. It also is not a matter of serious dispute that FEPS is, as a practical matter, part of the New York State scheme applicable

to New York City as well as a City of New York Program because OTDA approved the program and continues to operate it.

According to plaintiff's research, for those who are eligible, FEPS would cover only 63% of the 2005 TANF population while the others would have contract rents greater than the FEPS level for their household size. (Plaintiff's Proposed Findings of Fact ¶ 103). Specifically, plaintiff believes that "among the 33,817 TANF households who were living in private unsubsidized rental housing in 2005 (the year the FEPS program became operational), 12,291 families would have had contract rents greater than the FEPS level for their household size." (Id.) Plaintiff also contends that most of the 12,291 families with FEPS deficits would not be eligible for FEPS because of the rule that the actual cost may not exceed the total FEPS allowance by more than $100 (the FEPS rent "cap"). Only 3,798 TANF households with FEPS deficits had contracts within $100 of the FEPS allowance. (See Pl. Ex.17.)[2] The remaining 8,493 families had contract rents greater than $100 above the FEPS allowance, and therefore would not have been eligible for FEPS even if they were facing eviction in a non-payment proceeding, were the tenant of record and satisfied all other FEPS eligibility criteria. Those 8,493 families would be eligible to receive only the regular shelter allowance for their household size. In addition, plaintiff claims her research indicates that 51% of all TANF households paid contract rents in 2005 greater than the FEPS level for two ($750), regardless of household size (Pl. Ex. 30). 24% paid contract rents greater than the FEPS level for four ($900). (Pl. Ex. 32.)

In 1997, I found that the method used to set shelter allowances 'was not a reasonable

[2] 1,286 families had deficits under $50; and another 2,512 had deficits between $50 and $99. (See PL. Ex. 17.)

means of estimating the cost of housing for families on public assistance in New York City" because "it was based on the 65th percentile of recipient rents." (April 1997 Interim Order at pg. 16, ¶ 21). Thus, if plaintiff were correct, it would appear that the State has still failed to comply with the 1997 Judgment.

However, the State's data indicates that about 93% of recipients have housing within the allowances the State provides, including FEPS. In analyzing what FEPS levels to set, OTDA looked at data from 2003. In order to assess the ability of FEPS to cover rental obligations, OTDA looked at all cases in 2003 with a gap between the 2003 shelter allowance and their contract rent ("Schedule Deficit"cases). OTDA then calculated the difference between their contract rent and the combined 2003 Shelter Allowance and 2005 FEPS rent supplement in order to assess: (1) the number of cases in which the 2003 Shelter Allowance and the FEPS supplement fully covers the rent; and (2) the size of the rent deficit remaining for those cases not fully covered. (See Supplemental Affidavit of David Dlugolecki , sworn to August 12, 2004, [Dlugolecki Supp. Aff.] ¶ 12). OTDA found through this analysis that 18,703 (86%) of the 21,870 2003 Schedule Deficit cases would have no rent deficit under FEPS should they become threatened with eviction. (Dlugolecki Supp. Aff. ¶ 14). In addition, of the 3,167 remaining FEPS-Schedule Deficit cases, nearly half (49 %) have small remaining deficits: 884 cases have deficits of $50 or less, and 666 cases have deficits of $50 to $100. (Dlugolecki Supp. Aff. ¶ 15). Thus, the shelter allowance and FEPS would adequately cover at least 93 % of the Schedule Deficit cases because their rent deficit is fully covered or the deficit is very small (under $100). (Dlugolecki Supp. Aff. ¶ 15; *see also*, Defendant's Exhibit 25 indicating coverage for 94.1% of the New York City TANF and Time Limited Safety Net Cases from November 2003).

B. The Legal Framework

In Campaign for Fiscal Equity v State, 8 N.Y.3d 14, 28 (2006), the Court of Appeals reiterated the role of the courts when assessing state financing:

> On the one hand, the Judiciary has a duty 'to defer to the Legislature in matters of policy making, particularly in a matter so vital as educational financing, which has as well a core element of local control. We have neither the authority, nor the ability, nor the will to micromanage education financing.' On the other hand, it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violations of them"

(Citations omitted). Thus, the court must take care not to substitute its decision for that of the administrative agency. (See Klostermann v Cuomo, 61 N.Y.2d 525, 539-41 [1984] [policy determinations on social welfare issues are not primarily questions a court should determine]). Instead, "the manner by which the State addresses complex societal and governmental issues is a subject left to the discretion of the political branches of government." (Campaign for Fiscal Equity v State, 8 N.Y.3d 14, 28 [2006] [quoting New York State Inspection, Security and Law Enforcement Employees v Cuomo, 64 N.Y.2d 230, 240 [1984]; see also Howard v Wyman, 28 N.Y.2d 434, 438 [1971] [an agency's interpretation and determinations in administering one of its regulations are entitled to the greatest weight and a court must sustain those determinations if there is any rational basis to support them]). In reviewing agency action, the mere existence of alternatives to executive and administrative methods and choices is insufficient to undermine those methods provided that the agency's choices are reasonable and have support in the record. (See Ferrer v Quinones, 132 A.D.2d 277 [1st Dept 1987]).

The Court of Appeals in sustaining the complaint in this action concluded that section 350(a)(1) of the Social Services Law "imposes a statutory duty on the State Commissioner of

Social Services to establish shelter allowances that bear a reasonable relation to the cost of housing in New York City. . ." (Jiggetts v Grinker , 75 NY2d 411, 415 (1990). The Court of Appeals stated:

> We construe these [statutory] provisions as manifesting the Legislature's determination that family units should be kept together in a home-type setting and imposing a duty on the Department of Social Services to establish shelter allowances adequate for that purpose. A schedule establishing assistance levels so law that it forces large numbers of families with dependent children into homelessness does not meet the statutory standard.

(Id).

Although the State has this obligation to provide housing allowances that bear a sufficient relationship to actual housing costs, the State has no obligation to ensure 100% of all FA recipients' shelter costs. (See Bernstein v Toia, 43 NY2d 437, 448-49 [1977]).

C. Findings

Here, the State's analysis of the level of need for, and development of, the 2003 housing supplements is rational. OTDA rationally developed the 2003 shelter allowance regulations through reliance upon an independent nationally-renowned expert (Dr. Olsen) who determined the rent levels for adequate, but modest, private unsubsidized apartments. OTDA then set the shelter allowance at sufficient levels to pay for those modest apartments. In developing the shelter allowance in 2003, as opposed to prior occasions, OTDA kept in mind the broader purpose of welfare reform to promote the transition from welfare to work and was mindful not to set the allowance so high as to discourage that transition. OTDA also took into account the characteristics of the public assistance household. The majority of public assistance households gain other income from, for example, persons receiving Supplemental Security Income ("SSI").

(Supplemental Affidavit of Robert Doar, sworn to march 10, 2004 at ¶20). Others obtain contributions to the overall household income from persons who are non-citizens without legal status, but who nevertheless earn money here. The shelter allowance was not intended to and should not pay the costs to shelter such persons.

The record evidence thus establishes that the shelter allowance schedule, analyzed in the context of the demographics of the City's public assistance population and the welfare policies the Legislature adopted in 1997 bears a rational relation to the cost of housing for TANF/FA families and enables at least 93 % of that population to maintain its housing.

Plaintiff has failed to meet her "heavy burden of showing that the regulation is unreasonable and unsupported by any evidence" (Big Apple Food Vendors, 90 N.Y.2d, 402, 408 [1997]). She has not proven that the various policy rationales underlying the 2003 shelter regulation, (*i.e.*, promoting self-sufficiency and encouraging work) and the methodologies used to achieve those rationales, are irrational, or that the 2003 regulation has caused a large percentage of TANF/FA families to enter New York City's homeless shelter system because of the inadequacy of the shelter supplement.

Rather, plaintiffs have merely demonstrated that some families live in private apartments renting above the 2003 shelter allowance schedule or above the FEPS levels. Plaintiffs have not demonstrated that what they call "rent deficits" have led to large numbers of TANF/FA recipients with children becoming homeless.

For example, the Vera Institute's Report on Homelessness, that plaintiffs' own expert, Patrick Markee, cited as the most comprehensive study on the recent causes of homelessness in New York City, found that the most common cause of homelessness in New

York City was job loss, followed by eviction for either non-payment of rent, building-related issues or landlord-tenant conflict. The Vera Report discussed various reasons for non-payment of rent, such as job loss, the loss or reduction of public benefits, or the tenants' withholding of rent due to poor building conditions, but did not discuss any inadequacy in the shelter allowance amount.

Plaintiff's data has also failed to take into account the characteristics of a typical public assistance household that often includes income from SSI, child support or other sources.

Much of plaintiff's expert opinions relied on anecdotal evidence. For example, at the hearing, plaintiff's called Scott Autwater, an Assistant Executive Director with the Citizen's Advice Bureau ("CAB") in the Bronx. Plaintiff utilized Mr. Autwater and information from CAB to try to prove that finding apartments in the Bronx at or below the shelter allowance is nearly impossible. However, the information from CAB did not involve a statistical analysis. Nor was Mr. Autwater able to testify definitively that these families were unable to obtain housing after they left CAB. Moreover, the responsibility of the State defendant is to provide shelter allowances sufficient to keep families together in their homes. The shelter allowances do not need to be sufficient to allow families to move. Presumably those families who have been residing in their apartments for some time have cheaper residences than they would have if they moved to new apartments.

In sum, the defendant has demonstrated that the 2003 shelter allowance regulation along with FEPS complies with this Court's 1997 judgment because the State has shown a rational basis for the shelter allowances it set and that the allowance, along with FEPS, bears a reasonable relation to the cost of housing in New York City enabling families to stay together as Social

Services Law § 350(1)(a) mandates. Plaintiff has not adduced evidence sufficient to show that the allowances the State set, along with FEPS, were unreasonable and violate Social Services Law § 350(a)(1).

Accordingly, it is

ORDERED that Plaintiff-Intervenor Gloria Mendez' motion for a permanent injunction requiring the State defendant to promulgate a new, higher shelter allowance schedule for New York City recipients of Family Assistance and for other relief is denied; and it is further

ADJUDGED, DECREED AND DECLARED that the 2003 Shelter Allowance regulation, set forth at 18 NYCRR § 352.3 complies with Social Services Law § 350 and this Court's 1997 Judgment; and it is further

ORDERED that defendant's cross-motion is granted; and it is further

ORDERED that the temporary injunction I issued pending this decision and order shall continue for 120 days from service of a copy of this order with notice of entry and then dissolve; and it is further

ORDERED that other injunctions I ordered on behalf of other plaintiff-intervenors shall continue for 120 days from service of a copy of this order with notice of entry and then dissolve.

Dated: December 21, 2007

ENTER:

FILED

DEC 28 2007

J.S.C.

NEW YORK COUNTY CLERK'S OFFICE