

**Matter of Stewart v Roberts**

2019 NY Slip Op 34115(U)

September 24, 2019

Supreme Court, Albany County

Docket Number: 5507-15

Judge: Francis T. Collins

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NYSCEF DOC. NO. 2  
 PRESENT: HONORABLE FRANCIS T. COLLINS  
 Acting Justice

RECEIVED NYSCEF: 11/05/2019

STATE OF NEW YORK  
 SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of **TRICIA STEWART**  
 on behalf of herself, her minor children ZAS and ZS,  
 and on behalf of all individuals similarly situated,

Petitioner-Plaintiff,

For a Judgment Pursuant to Article 78  
 of the Civil Practice Law and Rules

-against-

**SAMUEL D. ROBERTS**, as Commissioner of the  
 New York State office of Temporary and Disability  
 Assistance and

**SARAH MERRICK**, as Commissioner of the  
 Onondaga County Department of Social Services,

Respondents-Defendants.

(Supreme Court, Albany County, Article 78 Term)

APPEARANCES: Empire Justice Center  
 By: Susan C. Antos, Esq.  
 Saima A. Akhtar, Esq.  
 Attorneys for petitioner and plaintiff class  
 119 Washington Ave., 3<sup>rd</sup> Floor  
 Albany, NY 12210

Legal Services of Central New York  
 By: Julie B. Morse, Esq.  
 Attorney for petitioner and plaintiff class  
 221 South Warren St., Suite 300  
 Syracuse, NY 13202

Letitia James, Attorney General of the State of New York  
 By: Brian Matula, Esq.  
 Attorney for respondent, Samuel D. Roberts  
 The Capitol  
 Albany, NY 12224-0341

Collins, J.

**FINAL  
 JUDGMENT**  
 Index No.: 5507-15  
 RJI No.: 01-15-ST7295

Tricia Stewart and on behalf of ZAS and ZS v Samuel D. Roberts and Sarah Merrick  
Index No.: 5507-15, RJI No.: 01-15-ST7295

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Petitioner-plaintiff Tricia Stewart (“plaintiff”), having commenced a hybrid Article 78 proceeding and Declaratory Judgment Action pursuant to Articles 9, 78 and 30 of the Civil Practice Law and Rules (“CPLR”) on behalf of herself and proposed class members by filing a Verified Petition (“Petition”) and Class Action Complaint (“Complaint”) on or about November 20, 2015, seeking to reverse and annul a Fair Hearing determination of respondent Samuel D. Roberts (“defendant”), as Commissioner of the Office of Temporary and Disability Assistance (“OTDA”) and to, inter alia, permanently enjoin defendant from considering the fair market value of a nonexempt vehicle as an “available” resource, and to instead consider the equity in the vehicle when determining eligibility for public assistance pursuant to the New York State Social Services Law;

WHEREAS, the defendant Roberts thereafter filed a motion for Summary Judgment and the plaintiff filed a cross motion for summary judgment and class certification,

WHEREAS, by Judgment dated August 11, 2016 (entered August 23, 2016), in Albany County Supreme Court, this Court denied plaintiff’s motion for class certification, and partially granted plaintiff’s motion for summary judgment by annulling and reversing the underlying Fair Hearing determination and remitting the matter to defendant for a calculation of the amount of retroactive benefits due and owing to plaintiff and declaring that the aforementioned application of applicable laws and regulations of defendant is in violation of the Social Services Law insofar as defendant neglects or refuses to advise social services districts to consider only an applicant’s equity interest in the non-exempt portion of the fair market value of his or her vehicle when determining whether an individual meets the \$2,000 or \$3,000 resource limitations set forth in Social Services Law § 131-n (1) (a) and 18 NYCRR 352.23 (b);

Tricia Stewart and on behalf of ZAS and ZS v Samuel D. Roberts and Sarah Merrick  
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WHEREAS, the defendant appealed the August 11, 2016 Judgment to the Appellate Division, Third Department, and the plaintiff cross-appealed to the extent the Judgment denied plaintiff's motion for class certification;

WHEREAS, on June 21, 2018, the Appellate Division issued an Opinion and Order modifying the Judgment of the Supreme Court by reversing the denial of plaintiffs' motion for class certification and remitting the matter to the Supreme Court for discovery on the issue of numerosity, and affirming the Judgment in all other respects;

WHEREAS, plaintiff made a motion to renew seeking a Judgment pursuant to CPLR 901 certifying this action as a class action and defining the relief that will be provided to the plaintiff class, and upon reading and filing the Notice of Motion to Renew, the supporting Affirmation of Susan C. Antos, Esq., with exhibits, and the accompanying Memorandum of Law, all dated March 15, 2019; the Memorandum of Law of the respondent Roberts and the affidavit of Alison Maura, both dated May 17, 2019, the Reply Affirmation of Susan Antos, Esq, with exhibits, and Memorandum of Law, both dated May 31, 2019, and upon all previous papers and proceedings in the matter, the Court issued a Decision and Order dated June 20, 2019 and an Amended Decision and Order dated July 12, 2019 granting plaintiffs' motion for class certification and defining the class as follows:

“ All applicants and recipients of public assistance in New York State who received, applied for, or will apply for public assistance benefits between July 20, 2015 and the date on which Defendant issues formal guidance advising social services districts that an automobile[,] which is not an exempt resource (as defined in Social Services Law § 131-n [1] [a] and 18 NYCRR 352.23 [b]), and in which the owner has minimal or no equity interest, is not an “available” resource which would disqualify the owner from the receipt of public assistance, and who, within the applicable time frame and at the time of the application or re-certification:

- a. Owned, own, or will own a motor vehicle that has a fair market value exceeding the applicable resource levels set forth in Social Services Law § 131-n [fn 1] within the applicable time frame, and
- b. Have, had, or will have a loan, note or other encumbrance on the motor vehicle which results in the applicant or recipient having no equity or minimal equity [fn 2] in such motor vehicle, within the applicable time frame, and
- c. Were, are, or will be denied public assistance, or had, have or will have their public assistance benefits discontinued, as a result of the ownership of such motor vehicle, within the applicable time frame.

fn1: The applicable maximum fair market value of a motor vehicle which Social Services Law § 131-n declared to be an exempt resource was \$9,300 on the date that the action was commenced (\$4,650 if the vehicle was not needed for work or to look for work) until May 15, 2016; \$10,000 from May 16, 2016 until March 31, 2017; \$11,000 from April 1, 2017 until March 31, 2018; and \$12,000 from April 1, 2018 until the present. The lower resource exemption for people not able to work was eliminated effective May 19, 2016. Laws of 2016, ch. 54, pt. X.

fn2: For purposes of this Order, “minimal equity” shall mean where the equity value of the vehicle and the applicant’s other resources are less than (i) the \$2,000 general resource exemption or (ii) the \$3,000 general resource exemption if the owner of the motor vehicle is age 60 or over, as set forth in Social Services Law § 131-n’ ” (Amended Decision and Order dated July 12, 2019, quoting petitioner’s Proposed Supplemental Order, pp. 4-5).

WHEREAS, following certification of the plaintiff class the Court conferred with the attorneys for the parties to discuss the most efficient and practical means of identifying and notifying putative class members of their potential eligibility for corrective benefits, and considered the terms of plaintiffs’ Proposed Supplemental Order and Amended Proposed Supplemental Order submitted in support of their motion to renew; defendant’s proposed Final Judgment submitted together with a letter from defense counsel dated August 9, 2019 in which defendant reserved his objection to the Court’s Decision and Order, Amended Decision and Order and the resulting Final Judgment, and plaintiffs’ Proposed Supplemental Judgment submitted together with a letter from plaintiffs’ counsel dated August 20, 2019,

**NOW** it is hereby **ORDERED, ADJUDGED AND DECREED**, that

1. Empire Justice Center and Legal Services of Central New York shall be designated as co-counsel to the Class in this action;
2. Within 60 days of the Entry of this Judgment, defendant OTDA shall issue a General Information System (GIS) message (the “formal guidance” referred to in the class definition) that advises social services districts that an automobile which is not an exempt resource as defined in Social Services Law § 131-n (1) (a) and 18 NYCRR 352.23 (b), and in which the owner has minimal or no equity interest, is not an “available” resource which would disqualify the applicant or recipient from the receipt of public assistance. This GIS message will state that the policy change is to be applied prospectively effective immediately, and that further instructions will be forthcoming regarding affected class members owed corrective benefits. The defendant will follow the issuance of the GIS message with a more comprehensive Administrative Directive (ADM) within 90 days of the issuance of the GIS message. The ADM will also direct social services districts to void any public assistance overpayments discovered in the usual course of business when such overpayments were or are based solely on a vehicle with a fair market value over the vehicle resource limit in Social Service Law § 131-n (1) (a), and there is evidence in the recipient’s file that the recipient had minimal or no equity interest in the vehicle. Where there is no evidence of the existence of a loan, note or other encumbrance, the district shall give the recipient an opportunity to present such evidence before making further recovery of said overpayment.
3. Within 30 days of the issuance of the GIS message described in paragraph 2, defendant

- OTDA shall issue guidance to its Office of Administrative Hearings regarding the policy set forth in said GIS message, and will state that the policy change shall be applied to any fair hearing pending as of the date of the issuance of the directive.
4. Within 30 days of the issuance of the Administrative Directive described in paragraph 2, defendant OTDA shall issue guidance to its Office of Administrative Hearings regarding the policy set forth in said Administrative Directive, and will state that the policy change shall be applied to any fair hearing pending as of the date of the issuance of the directive.
  5. For purposes of this Judgment the following definitions shall apply:
    - a. “Potential class member” shall refer to all individuals on the lists provided by OTDA to social services districts as described in paragraph 6, below.
    - b. “Putative class members” shall refer to individuals on the potential class member list who have been identified by social services districts to have, on or after July 20, 2015, applied for and been denied public assistance, or who were discontinued from public assistance for the reason that they own, or have owned a motor vehicle with a fair market value exceeding the applicable resource levels set forth in Social Services Law § 131-n (1) (a) and 18 NYCRR 352.23 (b). “Putative class members” will not be considered to be members of the plaintiff class until the social services district has determined that there was a loan, note or other encumbrance on the motor vehicle resulting in the applicant or recipient having no equity or minimal equity in such motor vehicle, within the applicable time frame.
  6. Within 150 days of the Entry of this Judgment, defendant OTDA shall provide each social services district with a list of potential class members and instructions with respect

to determining their entitlement to corrective payments.

7. The instructions referenced in paragraph 6 shall advise each social services district how to identify class members and how to calculate corrective benefits. The instructions shall direct that:

- a. Within 30 days of receipt of such list and instructions, each social services district shall identify all putative class members - persons on the list who, on or after July 20, 2015, applied for and were denied public assistance, or who were discontinued from public assistance for the reason that they own, or have owned a motor vehicle with a fair market value exceeding the applicable resource levels set forth in Social Services Law § 131-n (1) (a) and 18 NYCRR 352.23 (b). If the list provided by the defendant contains more than 50 but less than 1,000 potential class members in a district, such district shall have 60 days to identify such cases. If the list contains 1,000 or more potential class members in a district, such district shall have 120 days to identify such cases.
- b. After identifying all putative class members, each district must then determine if each individual is a class member - an individual who was determined otherwise eligible for public assistance but denied because they owned a vehicle with a fair market value over the exempt vehicle resource level in Social Services Law § 131-n, in which the individual had no or minimal equity value in the vehicle (as set forth in the class definition). The district will do this by taking the following steps:
  - i. Within 90 days of receiving the list of potential class members from

- OTDA, the social services district must issue a notice to each putative class member (hereinafter "Notice of Class Action," described more fully in paragraph 8), scheduling an appointment to determine whether the putative class member is a class member and, if so, the relief to which the class member may be entitled.
- ii. Unless the putative class member requests a change in the appointment date, the date of the interview shall be no more than 120 days after the district has received the list of potential class members.
  - iii. At the interview, the social services district shall advise the putative class member of the type of documents that can be provided to show proof of indebtedness, including but not limited to, loan documents on the vehicle that was the subject of the public assistance denial, and proof of income during the relevant time period that may be required to make a determination.
  - iv. When making a determination as to whether an individual is a class member, the social services district must review the relevant case file to determine if at any relevant time the putative class member has been a recipient of Supplemental Nutrition Assistance Program (SNAP) benefits or Medicaid. The district must utilize any relevant information regarding indebtedness on the vehicle or any other relevant eligibility information that is already in the putative class member's file for purposes of promptly determining whether the individual is a class member and, if so, the period

- that the class member was underpaid public assistance.
- v. If the putative class member's case record contains any evidence (including but not limited to references to debt or loan documents in any part of the case record, including but not limited to any social services district case notes, applications or recertification paperwork) that his or her vehicle was subject to a debt during the applicable time frame, the social services district shall, prior to the interview:
- (A) evaluate the equity value of the vehicle at the time of application or discontinuance or period of overpayment;
  - (B) make a preliminary assessment of the putative class member's possible eligibility at the time of application; and
  - (C) determine, where possible, whether each putative class member may be eligible for corrected benefits for the period commencing with the date the applicant or recipient would have been eligible but for the erroneous denial or discontinuance of public assistance.
- vi. If such a determination is not possible with the information in the case record and provided by the putative class member, the social services district shall provide the putative class member with a clear explanation of the documents that must be submitted within 60 days for such a determination to be made.
- vii. The social services district shall be reminded that:
- (A) if the putative class member has previously verified necessary

information which is not subject to change and the district possesses documentation of such verification in its files, the putative class member shall not be required to resubmit verification of such information (18 NYCRR § 351.5 [a]).

(B) when the putative class member has made reasonable efforts to obtain information or verification from a third party, and the third party fails or refuses to provide the information or verification or seeks to impose a charge or fee for providing the information to the applicant or recipient, the social services official must pay such fee or must assist the applicant or recipient in obtaining the information or verification from the third party or by other means as may be necessary (18 NYCRR § 351.5 [a]).

- viii. Where a class member is not currently eligible for public assistance, but is found to have had some period of eligibility for public assistance within the period of class certification, the social services district must document in the class member's public assistance record the period of eligibility and the amount of any corrective payment due under this Judgment for future reference in the event the class member becomes eligible for public assistance in the future.
- ix. Provide each putative class member who has had their eligibility re-determined in accordance with the forgoing paragraphs, with a Notice of Determination within 30 days of their interview or submission of

requested documents (whichever is later), advising them of the determination as to their eligibility for benefits during the period of review. Such notice shall indicate the time period reviewed, and the determination of eligibility over the course of that time period. Said notice shall conform to the requirements 18 NYCRR § 358-2.2, including, but not limited to conveying the right to a fair hearing.

8. The Notice of Class Action referenced in paragraph 7 (b) (i) shall be sent by first class mail and shall also
  - a. Advise each putative class member that:
    - i. they are receiving the notice because they may be a class member in the case of *Stewart v Roberts*, and may be entitled to a corrective payment for a wrongful denial or discontinuance of public assistance based on the agency's valuation of an automobile that they owned at the time of the agency action;
    - ii. the purpose of the interview is to begin the process of establishing their status as a class member which may result in a determination that they are entitled to a corrective payment.
  - b. If the putative class member is not able to attend an appointment at the time chosen by the social services district, they may request that the appointment be rescheduled. The Notice shall provide a phone number and email address at the social services district that the putative class member can use to reschedule the appointment. Additionally, the Notice shall advise that the putative class member

- may also reschedule the appointment in person at the social services district.
- c. If the putative class member no longer resides in the social services district that issued the denial or discontinuance, he or she shall be allowed to request that the interview take place in the district in which the person resides, and the district of residence shall act as a liaison to the district that issued the denial.
- d. Provide telephone and email contact information for class counsel.
9. Within 45 days of the date this Judgment, class counsel shall provide defendant's counsel with suggested language for the notices described in paragraphs 7 (b) (i) and 8. Defendant will consider this language when it drafts the notice language but is under no obligation to adopt this language.
10. To the extent there are individual cases in which unique issues arise, defendant shall provide class counsel with the contact information for a person or persons at OTDA having the authority to assist in resolving such unique issues. Such contact information may include a shared electronic mailbox and/or telephone number. Defendant will also provide the name and contact information of a liaison who shall be available if plaintiff's counsel receives no substantive reply to an inquiry to the shared number or mailbox within ten (10) business days.
11. The envelopes that contain the Notice of Class Action described in paragraphs 7 (b) (i) and 8, shall have a unique return address so that the defendant can track all returned notices. If the notice is returned with a yellow sticker that contains a new address, indicating that it is not being forwarded because the forwarding time has expired, the defendant shall resend the notice to the new address.

12. "Confidential information" means the name or other personally identifying information of an applicant for or recipient of benefits including but not limited to: address, social security number, and date of birth.
13. Any confidential information provided to plaintiffs' counsel by defendant shall be deemed received subject to the following protective order:
  - a. Plaintiffs' counsel agree to maintain for all time the confidentiality of all confidential information obtained by plaintiffs' counsel during the course of this litigation and during the monitoring as provided herein. Plaintiffs' counsel shall not disclose confidential information to any individual, other than defendant, defendant's employees, any experts retained by plaintiffs' counsel, and any individual class member whose case is affected by this Judgment, to the extent necessary to enforce any right under this Judgment, or as directed by subsequent Court Order.
  - b. Nothing in paragraph 13 (a) shall preclude the attorneys of record or their retained experts from utilizing, for any purpose, non-confidential information obtained by the plaintiffs' counsel in the course of this litigation and monitoring as provided herein. Nothing in paragraph 13 (a) shall interfere with or diminish the rights of plaintiffs to enforce this Judgment.
14. All reports or class member information supplied by defendant to plaintiffs' counsel shall remain confidential and may not be supplied to anyone other than the attorneys of record in this action, any experts retained by plaintiffs' counsel and the Court under seal.
15. In the 36 months following the entry of the GIS referenced in paragraph 2 above, OTDA

will provide written reports on a quarterly basis to plaintiffs' counsel that include the following information:

- a. For each social services district, a report that identifies:
  - i. The aggregate number of putative class members identified;
  - ii. For each putative class member, the case number of the class member's public assistance case;
  - iii. For each putative class member, the date of initial denial or discontinuance of public assistance;
  - iv. For each class member, the date of redetermination of eligibility, if one occurs;
  - v. For each class member that is currently eligible for assistance, the total amount of any corrective benefits that have been issued and the period of time represented by that amount;
  - vi. For each class member that is not currently eligible, the total amount of any public assistance benefits that have been determined to be payable under the terms of this Judgment and the period of time represented by that amount;
- b. For each social services district, the aggregate number of potential class members identified who fail to respond to the notice or complete the application process as well as the aggregate number of class members who have completed the process but are subsequently denied;

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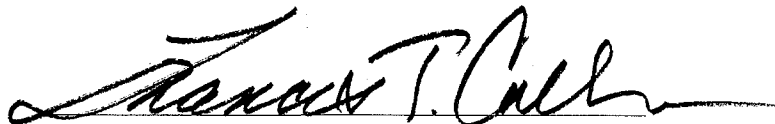
- c. In the aggregate, for the state as a whole:
- i. The number of potential class members who were mailed a notice and form inviting them to apply for public assistance;
  - ii. The number of potential class members who were determined eligible for corrective benefits;
  - iii. The number of potential class members who were determined ineligible;
  - iv. The aggregate amount of corrective benefits paid as a result of applications completed through the redetermination process under this Judgment;
  - v. The number of notices sent that were returned as undeliverable.

This constitutes the Judgment of the Court. The original Judgment is returned to the attorney for the plaintiff with a copy being sent to the defendant. A copy of the Judgment and supporting papers have been delivered to the County Clerk for placement in the file. The signing of this Judgment, and delivery of a copy of the Judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

SO ORDERED AND ADJUDGED.

ENTER.

Dated: Saratoga Springs, New York  
September 24, 2019



Francis T. Collins  
Acting Supreme Court Justice