

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

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BASMAH AGEL, JATNNA AQUINO, K.B., TABITHA
DANIEL, L.H., NAKISHA RIEARA, TARIN RIVERA, &
MICHEL TOLIVER on their own behalf and on behalf of all
others similarly situated,

Plaintiffs-Petitioners,

Index No. ____ / ____

For a Judgment Pursuant to Articles 30 and 78 of
the Civil Practice Law and Rules,

- against -

VERIFIED PETITION
AND CLASS ACTION
COMPLAINT

NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES
& MOLLY WASOW PARK, as Acting Commissioner of the
New York City Department of Social Services & the CITY OF
NEW YORK,

Defendants-Respondents.

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Plaintiffs-Petitioners Basmah Agel, Jatnna Aquino, K.B., Tabitha Daniel, L.H., Nakisha
Rieara, Tarin Rivera, and Michel Toliver, by and through their undersigned attorneys, The Legal
Aid Society and Hughes Hubbard & Reed LLP, bring this Verified Petition and Class Action
Complaint on their own behalf and on behalf of similarly situated individuals against the New
York City Department of Social Services (“DSS”), its Commissioner Molly Wasow Park, and
the City of New York, and in support thereof allege the following:

PRELIMINARY STATEMENT

1. Plaintiffs-Petitioners bring this action to prevent Defendants-Respondents from
unlawfully terminating or failing to renew their rent subsidies under the City Fighting
Homelessness and Eviction Prevention Supplement program (“CityFHEPS”) or the Family

Homelessness and Eviction Prevention Supplement program (“FHEPS”). CityFHEPS and FHEPS rental assistance is critical for many low-income families in New York City, where rent is the highest in the State. For Plaintiffs-Petitioners and those who are similarly situated, rental assistance is necessary to maintain them in their current apartments and protect them from eviction and homelessness.

2. As set forth below, Defendants-Respondents, as a pattern and practice, routinely terminate the rent supplements of CityFHEPS households, despite those households timely applying for renewal of their subsidies, sometimes multiple times. Defendants-Respondents routinely fail to timely process renewal applications, provide CityFHEPS recipients with receipts of such applications, or send notices if they do not receive renewal applications. Without any review of whether CityFHEPS recipients made timely applications for renewal of their rent subsidies, Defendants-Respondents send termination notices and terminate recipients’ benefits.

3. Similarly, Defendants-Respondents, as a pattern and practice, routinely terminate the rent supplements of FHEPS households who have recertified for cash assistance and therefore qualify for continued rent subsidies. Defendants-Respondents fail to provide FHEPS families with clear, adequate, and timely notices that their rent supplements have been terminated, or directions for seeking restoration of those supplements. Furthermore, receptionists and personnel at Defendants-Respondents’ Benefit Access Centers appear to have no information or procedures to explain to FHEPS families how to have their FHEPS subsidies restored (or modified in the event the family’s rent has increased). As a result, Defendants-Respondents’ employees wrongly send families to legal services offices and community-based providers, instead of providing the services necessary to ensure families’ access to FHEPS subsidies is restored.

4. Families who cannot secure restoration or modification of their CityFHEPS or FHEPS benefits and are therefore unable to pay their rent risk eviction and homelessness.

5. Plaintiffs-Petitioners therefore request a declaratory judgment that Defendants-Respondents' conduct violates their own rules for administration of rental assistance benefits, State law, and federal and State due process guarantees. Plaintiffs-Petitioners further request that the Court enter judgment directing Defendants-Respondents to take steps to remedy these violations.

PARTIES

6. Defendant-Respondent DSS is responsible for the administration of public assistance benefits in New York City, including the rent supplements known as CityFHEPS and FHEPS. DSS maintains its principal office at 150 Greenwich Street, New York, New York 10038.

7. Defendant-Respondent Molly Wasow Park is the Acting Commissioner of DSS. Defendant-Respondent Park maintains her principal office at 150 Greenwich Street, New York, NY 10038.

8. Defendant-Respondent City of New York maintains its principal office c/o Corporation Counsel at 100 Church Street, 5th floor, New York, New York 10007.

9. Plaintiff-Petitioner Basmah Agel lives at 7622 Third Avenue, Apartment 3F, Brooklyn, New York 11209 with her four children, ages 9, 13, 17, and 19. She has lived in this apartment for nearly six years.

10. Plaintiff-Petitioner Jatnna Aquino lives at 323 Bedford Park Blvd., Apartment 04G, Bronx New York 10458 with her three-year-old child. Ms. Aquino has lived in this apartment for seven years.

11. Plaintiff-Petitioner K.B. lives at 35 East 94th Street in Brooklyn, NY 11212 with her father and her five-year-old child. She has lived in this apartment for seven years.

12. Plaintiff-Petitioner Tabitha Daniel lives at 117 Arlington Avenue, Apartment 2, Staten Island, New York 10303 with her partner and six children, ages 7, 11, 14, 20, 21, and 22. She has lived in this apartment for approximately one year.

13. Plaintiff-Petitioner L.H. lives at 332 42nd Street, Apartment 1C, Brooklyn, New York 11232 with her two children, ages 11 and 24. She has lived in this apartment for 14 years.

14. Plaintiff-Petitioner Nakisha Rieara lives at 2236 Creston Avenue, Apartment 5E, Bronx, NY.10453 with her 16-year-old child. She has lived in this apartment for eight years.

15. Plaintiff-Petitioner Tarin Rivera lives at 3220 Netherland Avenue, Apartment 4G, Bronx New York 10463 with her two children, ages 12 and 18. She has lived in this apartment for five years.

16. Plaintiff-Petitioner Michel Toliver lives at 540 Audubon Avenue, Apartment 56, New York, NY, 10040. He has lived in this apartment for two years.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this action because it is brought pursuant to Articles 30 and 78 of the New York Civil Practice Law and Rules ("CPLR").

18. Venue properly lies in New York County pursuant to CPLR §§ 503(a), 504(3), 506(b), and 7804(b).

19. The CityFHEPS and FHEPS programs operate only in New York City, and Defendants maintain offices in New York County. Accordingly, the acts and omissions giving rise to this Complaint occurred in New York County.

STATEMENT OF FACTS

I. THE CITYFHEPS PROGRAM AND DEFENDANTS-RESPONDENTS' PROCEDURES FOR CITYFHEPS APPLICATIONS AND RENEWALS

20. In the fall of 2018, Defendants-Respondents established the CityFHEPS program, which is targeted at providing rental assistance to households in or at risk of entering City shelters.¹

21. In addition to families in City shelters, families at risk of homelessness may be eligible for CityFHEPS if: (1) the household includes someone who served in the U.S. Armed Forces; (2) the household has moved out of shelter into the home of family or friends (using “Pathway Home” benefits) and would be eligible for CityFHEPS if they were in a New York City Department of Homeless Services or New York City Human Resources Administration (“HRA”) shelter; (3) the household was referred by a CityFHEPS qualifying program, and DSS determines that CityFHEPS is needed to avoid shelter entry; (4) the household is facing eviction in court (or was evicted in the past year), lives in a rent-controlled apartment, and will use CityFHEPS to stay in that apartment; or (5) the household is facing eviction in court (or was evicted in the past year) and includes someone who has previously lived in a Department of Homeless Services shelter, has an active Adult Protective Services case, or is in a designated community guardianship program.

22. Pursuant to City legislation in 2021, CityFHEPS supplement levels were substantially increased to match the Fair Market Rents set by the United States Department of Housing and Urban Development.

23. Since the inception of CityFHEPS’s predecessor program in 2015, Defendants-Respondents have contracted with not-for-profit organizations in the community to run

¹ Title 68 of Rules of the City of New York, Rental Assistance Program Rules §§ 10-1 *et seq.*

“HomeBase” centers that provide services to families at risk of eviction or homelessness, including assistance with applying for or maintaining CityFHEPS benefits.

24. Annual CityFHEPS renewals are handled by the Rental Assistance Program, which is currently located at Defendants-Respondents’ offices at 109 East 16th Street, New York, New York.

25. Under CityFHEPS Rule 10-8, a household receiving CityFHEPS rental assistance “will receive four annual renewals” if they meet eligibility criteria, including income eligibility; continue to be in substantial compliance with program requirements; and continue to reside in the same apartment that the program approved.

26. Instructions for filing renewal applications are on Defendant-Respondents’ website in Form DSS-7ZI CityFHEPS Renewal-English-Renewal-FAQ. Those instructions provide that Defendants-Respondents will send renewal applications to CityFHEPS families five months before the subsidy year expires.

27. When DSS sends households their renewal applications, it includes a notice advising that the application must be returned within 30 days of the date of the notice for CityFHEPS supplements to continue.

28. Defendants-Respondents’ instructions state: “[I]f you do not return the renewal application by the first deadline, we will send you one warning notice.”²

29. Until the beginning of the COVID-19 pandemic, Defendants-Respondents sent receipts to CityFHEPS households when those households submitted applications for renewal of their benefits. Defendants-Respondents would also provide notices when a household’s subsidy was renewed. At times, the notice included an upward modification of the subsidy due to an

² Form DSS-7Z(E).

increase in the household's rent or a downward modification of the subsidy due to an increase in the household's income.

30. If a CityFHEPS recipient did not send a renewal application by the date indicated on the first notice, Defendants-Respondents would send a warning notice.³ The warning notice would indicate that if the CityFHEPS recipient did not send a renewal application within 30 days of the date of the second notice, their benefits would terminate.⁴

31. If DSS had not logged a renewal application and the required documents by the date indicated on the second notice, it would send a notice of termination of CityFHEPS benefits to the recipient and their landlord.

II. DEFENDANTS-RESPONDENTS' PATTERN AND PRACTICE OF UNLAWFULLY TERMINATING CITYFHEPS SUPPLEMENTS DURING THE ANNUAL RENEWAL PROCESS

32. Defendants-Respondents are failing to process timely applications for renewal of CityFHEPS rental subsidies.⁵

33. Instead, Defendants-Respondents are sending termination notices to families seeking to renew CityFHEPS benefits, even though those families have timely submitted renewal applications with all required documentation by e-mail, regular mail, or by personally applying to the Rental Assistance Program Unit at 109 East 16th Street, New York, New York.

34. Thousands of CityFHEPS households are receiving termination notices despite timely and – in some cases – multiple renewal submissions.

³ DSS Policy Bulletin #2021-009, at 32-33 (Dec. 29, 2001).

⁴ DSS-7g (E) 06/03/2020.

⁵ This issue has become a matter of press interest. *See, e.g.,* Safiyah Riddle, *City Taps Nonprofit Lawyers to Help Tackle Backlog of Rental Assistance Claims*, THE CITY (Mar. 13, 2023), <https://www.thecity.nyc/2023/3/13/23638228/lawyers-backlog-rental-assistance-claims> (“Debra Velasquez, 55, is a CityFHEPS recipient who has been unable to complete the annual recertification of her benefits since mid-December, despite having a Legal Aid Society lawyer assisting her. Her landlord is still missing rent that was supposed to be paid by the city, covering January and February at least.”).

III. THE FHEPS PROGRAM

35. Section 131(1) of the New York Social Services Law states that “[i]t shall be the duty of social services officials, insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves, in accordance with the requirements of this article and other provisions of this chapter.”

36. With respect to low-income families with children, Section 350(1)(a) of the Social Services Law provides: “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. Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home”

37. In *Jiggetts v. Grinker*, the Court of Appeals held that Section 350(1)(a) imposes a statutory duty on the State Commissioner of Social Services to establish allowances that bear a reasonable relation to the cost of housing.⁶ That case was remanded, and after trial, judgment was entered and later affirmed against the Commissioner for failing to discharge his statutory duty to provide adequate shelter allowances.⁷

38. In 2003, the New York State Office of Temporary and Disability Assistance (“OTDA”) responded by issuing regulations setting forth new statewide housing allowances and authorizing local social services districts to provide “an additional monthly shelter supplement to families with children who are public assistance applicants or recipients and who will reside in private housing.”⁸ OTDA subsequently issued an administrative directive requiring local social services districts to apply to OTDA for approval of any shelter supplement program and for any

⁶ *Jiggetts v. Grinker*, 75 N.Y.2d 411, 415 (1990).

⁷ *Jiggetts v. Dowling*, 261 A.D.2d 144 (1st Dep’t 1999).

⁸ 18 N.Y.C.R.R. § 352.3(a)(3)(i).

amendment to a shelter supplement program.⁹

39. On December 7, 2004, the City of New York applied for OTDA approval of FHEPS's predecessor program, the Family Eviction Prevention Supplement ("FEPS"). Two days later, OTDA approved that program.⁵

40. The FEPS program has been modified several times since its inception. In 2017, OTDA approved the FHEPS program, which modified FEPS by increasing the supplement amount permitted under the program and expanding eligibility to survivors of domestic violence, among other changes.

41. FHEPS is a shelter supplement program that, pursuant to State regulation, provides rent subsidies to low-income New York City families with children who receive cash assistance and have been evicted or are facing eviction, who have lost their housing or ability to pay for housing due to domestic violence, or who have lost their housing because of health or safety issues.¹⁰ FHEPS was developed to prevent at-risk families, and particularly minor children, from entering the shelter system, and to enable those families already in shelter to find alternative housing.

42. Pursuant to State legislation, in 2021, FHEPS subsidy levels were substantially increased to levels at least as high as the Fair Market Rents set by the United States Department of Housing and Urban Development. The most recent FHEPS plan approved by OTDA in February 2023 includes FHEPS subsidy levels that correspond with CityFHEPS rent levels, which are set by HRA at the standard adopted by the New York City Housing Authority pursuant to Section 982.517 of Title 24 of the Code of Federal Regulations. These levels are slightly

⁹ N.Y. OTDA Admin. Directive 03 ADM 7, at 9.

¹⁰ New York City Human Resources Administration, Rental Assistance: FHEPS, *available at* <https://www1.nyc.gov/site/hra/help/fheps.page> (last visited April 3, 2023).

higher than 100% of Fair Market Rents.

43. After a FHEPS shelter supplement is approved, the amount of the household's supplement can increase up to the maximum supplement established for a family of that size if the increase is allowable and documented in the household's lease or rental agreement.¹¹

44. Unlike families with CityFHEPS, FHEPS families do not have to renew or recertify their rent supplement each year. They do, however, need to recertify their cash assistance case annually to ensure that they remain eligible for FHEPS.

IV. DEFENDANTS-RESPONDENTS' PROCEDURES FOR FHEPS APPLICATIONS AND MODIFICATIONS

45. From 1992 until 2020, families were permitted to apply for FHEPS and its predecessor programs only through approved legal services providers or six not-for-profit organizations ("Paid FHEPS Providers") that had contracted with HRA. Paid FHEPS Providers also processed FHEPS modifications and restorations. Many of these organizations were co-located in HRA "welfare" (and later "job") centers, which are now known as Benefits Access Centers.

46. Families whose rents increased after they were initially approved for FHEPS were required to apply for a FHEPS "modification" through a legal services provider or a Paid FHEPS Provider. Similarly, families whose FHEPS supplements had been terminated for any reason were required to seek restoration of their supplement through a legal services provider or Paid FHEPS Provider. In general, legal services providers only assisted families with their FHEPS benefits when those providers represented the family in housing court.

47. Paid FHEPS Providers submitted approximately 7,000 FHEPS applications per

¹¹ New York State Office of Temporary and Disability Assistance, Family Prevention Supplement, at 8 (Dec. 9, 2004).

year, including applications for modifications and restoration of FHEPS benefits, and had approximately 75 full-time equivalent employees. Legal services offices trained by The Legal Aid Society and approved by the State submitted approximately 1,000 FHEPS applications per year. These legal services offices completed these applications without compensation in order to resolve housing court cases for tenants they were obligated to represent under contract with Defendants-Respondents.

48. In or around 2018, DSS took over responsibility for the processing of FHEPS applications. In January 2020, DSS terminated its contracts with Paid FHEPS Providers and issued new rules whereby all FHEPS applications, modifications, and restorations would be handled by DSS staff.¹²

49. DSS's primary portal for applications, the AccessHRA web portal, contains no mechanism for families to adjust or restore their FHEPS supplements. Families facing eviction can apply for "rent arrears," but selecting this choice frequently results in issuance of a recoupable one-time payment to pay current rent arrears, rather than a request for an initial application for a FHEPS supplement, or modification or restoration of a FHEPS supplement.

50. Neither AccessHRA nor HRA's website provides any direction to families who seek to adjust or restore their FHEPS supplements.

51. Families who call HRA's only available phone number face hours-long wait times and disconnection.

52. Families who visit a Benefits Access Center are told that the centers do not process FHEPS applications, restorations, or modifications. Those families are told to go back to the location that processed their original FHEPS application. In many cases, however, that

¹² HRA Policy Bulletin, 22-2013 (Feb. 18, 2022) (reflecting the new procedure).

location is a Paid FHEPS provider that no longer processes FHEPS applications or a legal services provider that generally only submits FHEPS restorations and modifications when they are representing a family in housing court. Benefit Access Centers are supposed to process FHEPS restoration and modification applications, but there is no way to access services.

53. HRA staff have also told some families to contact HomeBase to process FHEPS modification or restoration applications. However, HomeBase only processes FHEPS applications for families seeking to move to a different apartment; it does not process applications for modification or restoration of benefits where a family is seeking to remain in its current apartment.

V. DEFENDANTS-RESPONDENTS' PATTERN AND PRACTICE OF UNLAWFULLY TERMINATING FHEPS SUPPLEMENTS DURING THE CASH ASSISTANCE RECERTIFICATION PROCESS

54. A member of a household receiving cash public assistance is required, every year, to recertify the family's income and other eligibility for that assistance. A family's continued eligibility for cash assistance enables them to continue receiving FHEPS benefits. During the recertification process, however, HRA frequently arbitrarily removes FHEPS from a family's adjusted household budget, including by using the code "R16," which stands for "Shelter Supplement Denied or Ends," to indicate that the family's FHEPS supplement has been terminated.

55. This arbitrary removal contravenes HRA procedures mandating that FHEPS supplements and any contributions required under that program "shall be increased, reduced or terminated as a result of changes in a household's income, composition, or rent, and must be calculated in accordance with the criteria of the FHEPS program."¹³

¹³ HRA Policy Directive # 17-26-ELI, at 8.

56. The FHEPS plan and HRA procedures mandate that FHEPS applicants and participants must receive timely and adequate notice of all actions taken on their case.¹⁴ However, when HRA arbitrarily removes a family's FHEPS subsidy during the re-budgeting process, the household does not receive adequate notice of FHEPS termination.

57. In the Notice of Change sent to households about re-budgeting, OTDA and HRA report a reduction in the family's shelter allowance, but do not explicitly mention FHEPS or alert the household to the removal of FHEPS from their budget.¹⁵

58. The Notices of Change typically state that the family "no longer has a need for [a] Shelter Supplement," even though that is not the case, and the family is still eligible for FHEPS. The Notices confusingly cite to 18 N.Y.C.R.R. § 352.7, which governs public assistance supplements other than FHEPS (such as furniture allowances), whereas FHEPS is governed by 18 N.Y.C.R.R. § 352.3(a)(3)(i).

59. The Notices of Change give families no direction on how they can restore the FHEPS supplements to which they are entitled.

INDIVIDUAL PLAINTIFF-PETITIONER FACTS

Basmah Agel

60. Plaintiff-Petitioner Basmah Agel lives in a rent stabilized apartment at 7622 Third Avenue, Apartment 3R, Brooklyn, New York 11209 with her four children.

61. Ms. Agel is 45 years old, and her four children are 9, 13, 17 and 19.

62. Her family has lived in their current apartment for nearly six years.

63. Prior to her last cash assistance recertification on or about October 7, 2022,

¹⁴ See FEPS Policy Clarifications, at 3 (4-29-05).

¹⁵ Notice of Decision on Your Public Assistance, Supplemental Nutrition Assistance and Medical Assistance, at 1--2 (Oct. 20, 2022).

Ms. Agel received cash assistance of \$561/month, and the full rent of \$2,010/month was sent to her landlord. The \$2,010 rental assistance she received consisted of a regular shelter allowance for five people of \$501/month and a FHEPS subsidy of \$1,509/month.

64. At the beginning of December 2022, two months after her cash assistance recertification, HRA arbitrarily removed the FHEPS subsidy from Ms. Agel's budget.

65. Ms. Agel now owes four months of rent that her FHEPS allowance would otherwise have covered. The total amount of outstanding rent is currently \$6,036 for the period from December 2022 to March 2023.

66. Ms. Agel contacted The Legal Aid Society for help with restoring her FHEPS supplement.

67. Ms. Agel's landlord told her she was going to sue for eviction if Ms. Agel did not pay her rent by March 31, 2023, but agreed to delay doing so after speaking with an attorney from The Legal Aid Society. Ms. Agel's landlord could sue for eviction at any time.

Jatnna Aquino

68. Plaintiff-Petitioner Jatnna Aquino lives with her three-year-old child in a rent-stabilized apartment at 323 Bedford Park Blvd., Apartment 04G, Bronx, New York 10458.

69. Ms. Aquino, age 26, has lived in that apartment for seven years.

70. Prior to her last cash assistance recertification on or about July 3, 2022, Ms. Aquino received \$183/month in cash assistance, and full rent of \$1,095.26/month was sent to her landlord.

71. The two monthly payments to her landlord totaling \$1,095.26 were comprised of a shelter allowance of \$277/month and a FHEPS payment of \$818.26/month.

72. During the cash assistance recertification process, Ms. Aquino provided DSS with

a lease renewal for the term of August 1, 2022 to July 31, 2024, under which her rent increased to \$1,122.65/month.

73. In October 2022, three months after the July 2022 recertification of her cash assistance, Ms. Aquino's FHEPS supplement was arbitrarily removed from her budget without notice or information on how to restore or modify the amount of her supplement.

74. Ms. Aquino went to her Benefits Access Center and asked how to restore her FHEPS supplement. The receptionist told Ms. Aquino that she should go back to the place where she first obtained FHEPS.

75. Ms. Aquino contacted the legal services provider who had represented her in housing court and obtained FHEPS benefits on her behalf. The legal services provider told her that they usually only help with FHEPS when they are representing a person in housing court. They then referred Ms. Aquino to The Legal Aid Society.

76. As of the end of March, Ms. Aquino is six months behind in paying her rent. On March 31, 2023, Ms. Aquino received a nonpayment petition.

K.B.

77. Plaintiff-Petitioner K.B., aged 38, lives with her five-year-old daughter and 65-year-old father at 35 East 94th Street, Apartment L.B., Brooklyn, New York 11212.

78. K.B.'s rent is \$1,267.36 pursuant to a two-year rent-stabilized lease. K.B. has an open cash assistance case for her daughter, and in December 2021, the household was approved for a FHEPS subsidy.

79. When K.B.'s household was approved for a FHEPS subsidy, they received \$183/month in cash assistance and \$1,254.81/month in rental assistance, which was comprised of \$277/month in shelter allowance and \$977.81/month in FHEPS subsidies. The rental assistance

was sent directly to the landlord.

80. K.B. did her annual cash assistance recertification in November 2022 and provided HRA with all the necessary documents, including a lease renewal confirming her rent amount. After her annual recertification was processed, however, HRA removed the FHEPS subsidy from her case as of mid-December 2022. K.B. did not receive adequate notice that her FHEPS subsidy had been terminated.

81. In December 2022, K.B.'s landlord received \$627.40, only half of K.B.'s monthly rent.

82. In both January and February 2023, K.B.'s landlord received only the \$277 monthly shelter payments.

83. When K.B. realized the FHEPS subsidy was removed from her case, she contacted The Legal Aid Society because they had represented her family in housing court and submitted the FHEPS application on their behalf.

84. K.B. never received a notice informing her that the FHEPS subsidy was removed from her case or explaining why it had happened.

85. K.B. and her family have received a 14 Day Rent Demand. Her landlord could sue her for eviction at any time.

Tabitha Daniel

86. Plaintiff-Petitioner Tabitha Daniel, age 38, has lived at 117 Arlington Avenue, Apartment 2, Staten Island, New York 10303 for about one year with her partner and six children. Her children are ages 7, 11, 14, 20, 21, and 22.

87. Ms. Daniel moved to her current apartment from the shelter system.

88. Prior to the termination of her CityFHEPS subsidy, Ms. Daniel received

\$1,579.80/month in rental assistance, which was comprised of \$501/month in a regular shelter allowance and \$1660.80/month that was sent directly to her landlord as a CityFHEPS subsidy.

89. On October 12, 2022, Ms. Daniel applied to renew her CityFHEPS subsidy via email. She did not receive a response.

90. Before the termination of her subsidy, Ms. Daniel attempted to renew her CityFHEPS subsidy multiple times—through mail, e-mail, and fax.

91. Ms. Daniel's CityFHEPS subsidy was terminated as of February 1, 2023.

92. On or about February 28, 2023, Ms. Daniel went in person to the Rental Assistance Program Unit to inquire about her renewal application, but did not receive any update. The staff member with whom she spoke advised her to wait for a notice in the mail.

93. Ms. Daniel is three months behind in paying her rent to the landlord. Her landlord could sue her for eviction at any time.

L.H.

94. Plaintiff-Petitioner L.H. lives with her two sons in a rent-stabilized apartment at 332 42nd Street, Apartment 1C, Brooklyn, NY 11232.

95. L.H. has lived in her studio apartment for 14 years.

96. L.H. is 52 years old. Her eldest son, O.M., is 24 years old, and her younger son is 11 years old.

97. O.M. has a cash assistance case for one, and his younger sibling receives Supplemental Security Income in the amount of \$914/month plus a \$23/month supplement from the State. L.H. is the payee for her younger son's Supplement Security Income. She is listed on the cash assistance case for her older son and does most of the paperwork for that case.

98. Prior to his most recent cash assistance recertification on or about October 1,

2022, O.M. was receiving cash assistance of \$183/month. The family's landlord was receiving rent of \$793.38/month, which was comprised of \$277/month in a shelter allowance and \$516.38/month in FHEPS benefits.

99. L.H. sent the balance of her rent directly to her landlord each month, ensuring that her full rent was paid.

100. In mid-November 2022, however, HRA arbitrarily removed the FHEPS supplement from L.H.'s budget without notice or information on how to restore the subsidy or modify the amount of her supplement.

101. L.H. went to the Benefits Access Center on Bergen Street in Brooklyn several times to ask how to restore her FHEPS benefits. Each time, she was not given any direction on what to do or where to go.

102. In January 2023, L.H. went to CAMBA HomeBase for help with restoring her FHEPS supplement. CAMBA HomeBase told her that it would take 4-6 weeks to get an appointment.

103. In February 2023, L.H. went to Defendants-Respondents' office at East 16th Street. She waited there for several hours until a staff member finally told her that her FHEPS case was not there. She later found out that FHEPS renewals are not processed at that location.

104. L.H. had her appointment with CAMBA HomeBase during the first week in March. At that appointment, a staff member interviewed L.H., but did not tell her what, if anything, would be done about her case.

105. CAMBA HomeBase processes FHEPS modifications for those seeking to move apartments, but does not process restorations of FHEPS benefits.

106. L.H. is currently short on 4.5 months of rent. Her landlord could sue her for

eviction at any time.

Nakisha Rieara

107. Plaintiff-Petitioner Nakisha Rieara is 48 years old and lives with her 16-year-old son at 2239 Creston Avenue, Apartment 5E, Bronx, New York, 10453.

108. Ms. Rieara has lived in that apartment since 2014. Ms. Rieara is disabled and uses a walker to ambulate.

109. Ms. Rieara's cash assistance case closed in August 2022 when she received a notice that she had failed to recertify.

110. Ms. Rieara never received a notice informing her that she needed to recertify, but she nevertheless reapplied, and her case was reopened in the fall of 2022. When her case reopened, her FHEPS subsidy was reinstated, and her landlord began receiving \$1,109.28/month, comprised of \$283/month in shelter allowance and \$826.28/month in FHEPS subsidies.

111. In July 2022, Ms. Rieara signed a rent-stabilized renewal lease, which provided for an increase in her rent. The increase was effective on November 1, 2022 and raised her monthly rent from \$1,109.28 to \$1,176.39 (an increase of \$67.11/month).

112. On October 5, 2022, and again on October 26, 2022, Ms. Rieara contacted HRA to notify them that her rent would be increasing on November 1, 2022, and to request that HRA adjust her FHEPS subsidy to reflect the increase in her rent.

113. HRA failed to timely modify Ms. Rieara's FHEPS subsidy. She now owes rental arrears based on the change in her rent and could be sued for this difference at any time.

Tarin Rivera

114. Plaintiff-Petitioner Tarin Rivera is 52 years of age and the mother of two children ages 12 and 19. Her family has lived at 3220 Netherland Avenue, Apartment 4G, Bronx New

York 10463 for the last five years. Both of Ms. Rivera's children have special needs.

115. Prior to recertifying for cash assistance on or about October 19, 2022, Ms. Rivera received cash assistance of \$389/month. Her landlord received directly full rent of \$1,579.80/month, which was comprised of \$400/month in a regular shelter allowance and \$1,179.80/month in FHEPS subsidies.

116. During the recertification process, HRA removed Ms. Rivera's FHEPS supplement.

117. By notice dated October 20, 2023, HRA informed Ms. Rivera that her landlord would no longer receive any funds for rent and stated that Ms. Rivera no longer needed a rent supplement. This was not true.

118. After receiving the notice dated October 20, 2023, Ms. Rivera contacted the legal services provider who had previously represented her in housing court. Because she no longer had a housing court case pending, her case with that organization was closed.

119. Ms. Rivera was referred to The Legal Aid Society to seek restoration of her FHEPS rental assistance.

120. Ms. Rivera currently owes her landlord \$5,309.10, equating to 4.5 months of her FHEPS subsidy.

121. Ms. Rivera's landlord could sue her for eviction at any time.

Michel Toliver

122. Plaintiff-Petitioner Michel Toliver, age 56, has lived at 540 Audubon Ave., Apartment 56, New York, NY, 10040, for two years.

123. Since March 2022, Mr. Toliver's landlord has received partial rent of \$986.60/month, consisting of Mr. Toliver's CityFHEPS rental assistance subsidy. Mr. Toliver

paid the remaining portion of his rent (\$310.03/month) based on his social security income.

124. Ms. Toliver's CityFHEPS subsidy payments occurred for one year and expired on February 28, 2023.

125. In October 2022, Mr. Toliver received a first notice in the mail that his CityFHEPS subsidy would expire in February 2023. He attempted to renew his subsidy by mailing a renewal application and supporting documents to the Rental Assistance Program Unit at 109 East 16th Street, 10th Floor, New York, NY 10003.

126. In December 2022, Mr. Toliver received a second notice that he needed to renew his CityFHEPS subsidy. He sent his renewal documents to the Rental Assistance Program Unit a second time by overnight mail with tracking.

127. In January 2023, Mr. Toliver received a "final notice" that his CityFHEPS subsidy was about to expire. After receiving that notice, he brought his renewal application and supporting documents to the Rental Assistance Program Unit in person.

128. In February 2023, Mr. Toliver went in person to the Rental Assistance Program Unit several times to inquire about his renewal application. He never received an update on the application and was advised to wait for a letter in the mail.

129. Mr. Toliver also called the CityFHEPS hotline on many occasions but was only connected to a staff member on one occasion. The staff member confirmed receiving his renewal application and advised him to wait for an approval notice in the mail.

130. Mr. Toliver is one month behind in paying rent to his landlord. His landlord could sue for eviction at any time.

CLASS ALLEGATIONS

131. Plaintiffs-Petitioners bring this action on behalf of a class of all individuals in

New York City who are eligible for renewal or continuation of their CityFHEPS or FHEPS assistance but have had or will have that assistance unlawfully terminated by Defendants-Respondents following the annual renewal or recertification process (the “Class”).

132. The Class satisfies the numerosity, commonality, typicality, adequacy, and superiority requirements of CPLR § 901 for maintaining a class action.

133. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, each month, thousands of families are required to submit annual renewals of their CityFHEPS subsidies, and thousands more who receive FHEPS must complete annual recertifications for their cash assistance cases. Because this information is confidential, the identity of many class members is unknown to Plaintiffs-Petitioners, and therefore joinder is impractical.

134. There are numerous questions of fact and law common to the Class. The claims in this action are that Defendants-Respondents are failing to act in accordance with their procedures, State law, and federal and State due process requirements in their administration of CityFHEPS renewals and cash assistance recertifications. The factual and legal determinations necessary to resolve that dispute are common to the Class.

135. The individual Plaintiffs-Petitioners’ claims are typical of the claims of the Class. The named Plaintiffs-Petitioners are eligible for renewal or continuation of their CityFHEPS or FHEPS assistance but have had that assistance unlawfully terminated by Defendants-Respondents following the annual renewal or recertification process.

136. The named Plaintiffs-Petitioners and the proposed Class are represented by attorneys at The Legal Aid Society and Hughes Hubbard & Reed LLP who have experience with class action litigations and will adequately represent the Class.

137. A class action is superior to other available methods for a fair and efficient adjudication of this matter because the prosecution of separate actions by individual Class members would unduly burden the Court and create the possibility of conflicting decisions.

FIRST CAUSE OF ACTION

(Violation of CityFHEPS Rule 10-8 and Agency Procedures)

138. Plaintiffs-Petitioners repeat and re-allege the allegations contained in paragraphs 1-137 as if fully set forth herein.

139. City FHEPS Rule 10-08 mandates that eligible recipients “will receive four annual recertifications” if they meet eligibility criteria.

140. This mandate is implemented in policy directives and information posted on DSS’s website.

141. Despite this mandate, Defendants-Respondents, as a policy and practice, fail to provide adequate and timely renewals, causing Plaintiffs-Petitioners to lose their CityFHEPS subsidies and putting them in danger of being sued and evicted from their homes.

142. In doing so, Defendants-Respondent are acting contrary to law, in violation of lawful procedure, and arbitrarily and capriciously.

SECOND CAUSE OF ACTION

(Violation of Social Services Law and Implementing Regulations and Agency Procedures)

143. Plaintiffs-Petitioners repeat and re-allege the allegations contained in paragraphs 1-137 as if fully set forth herein.

144. Sections 131 and 350 of the New York Social Services Law mandate that Defendants-Respondents provide eligible families with an adequate shelter subsidy.¹⁶

¹⁶ See *Jiggetts v. Grinker*, 75 N.Y.2d 411, 415 (1990).

145. This mandate is implemented through Defendants-Respondents' rules and procedures, including FHEPS Plans developed in accordance with Social Services Regulation § 352.3(a)(3), interpreting the New York Social Services Law.

146. Defendants-Respondents' policies mandate that adjustments to families' FHEPS supplements will be made as appropriate by Defendants-Respondents' staff.¹⁷

147. Despite this mandate, Defendants-Respondents, as a policy and practice, routinely and without basis terminate the FHEPS supplements of families when the family recertifies for cash assistance.

148. In doing so, Defendants-Respondents are acting contrary to law, in violation of lawful procedure, and arbitrarily and capriciously.

149. Due to Defendants-Respondents' unlawful actions, Plaintiffs-Petitioners are deprived of supplements to which they are legally entitled, causing them to fall into arrears in their rent and risk eviction proceedings and homelessness.

THIRD CAUSE OF ACTION

(Violation of Due Process)

150. Plaintiffs-Petitioners repeat and reallege the allegations contained in paragraphs 1-137 as if fully set forth herein.

151. Defendants-Respondents, as a pattern and practice, fail to give families constitutionally adequate notice prior to terminating their FHEPS supplements in response to changes in household composition and/or income. Defendants-Respondents' notices do not adequately notify families that their rental subsidies have been terminated, nor do they

¹⁷ See HRA Policy Directive # 17-26-ELI (stating that that the FHEPS supplement and any contributions required under the program "shall be increased, reduced or terminated as a result of changes in a household's income, composition, or rent, and must be calculated in accordance with the criteria of the FHEPS program.").

adequately describe the reasons for such termination. Those notices also fail to advise families how they may seek reversal of the unlawful termination of their benefits.

WHEREFORE, Plaintiffs-Petitioners respectfully request that this Court enter judgment:

- a) Declaring that Defendants-Respondents have violated CityFHEPS Rule 10-08 by terminating Plaintiffs-Petitioners' CityFHEPS subsidies when their renewal applications had been timely received;
- b) Declaring that Defendants-Respondents have violated Sections 131 and 350 of the New York Social Services Law and their implementing regulations, FHEPS plans, and procedures, by terminating Plaintiffs-Petitioners' FHEPS rent subsidies despite their continued eligibility for those subsidies;
- c) Declaring that Defendants-Respondents have violated Plaintiffs-Petitioners' rights under the United States and New York State Constitutions by failing to provide adequate notice when terminating Plaintiffs-Petitioners' FHEPS rent subsidies;
- d) Directing Defendants-Respondents to identify and restore the CityFHEPS and/or FHEPS benefits of Plaintiffs-Petitioners and all Class members whose benefits were wrongly terminated;
- e) Directing Defendants-Respondents to: (i) establish procedures to enable Plaintiffs-Petitioners and the Class to apply for restoration or modification of their CityFHEPS supplements through Defendants' web portals and physical offices; (ii) provide receipts to Plaintiffs-Petitioners and the Class when their CityFHEPS annual renewal applications are received; (iii) log annual renewal applications of Plaintiffs-Petitioners and the Class and send notices to Plaintiffs-Petitioners and the Class if their annual renewal applications have not been received; (iv) cease terminating CityFHEPS subsidies when recipients' renewal applications have been timely received; (v) restore recipients' CityFHEPS subsidies within 30 days of receiving a late submission or sooner if necessary to meet an emergency; and (vi) train Defendants-Respondents' personnel on CityFHEPS renewal, restoration, and modification procedures;
- f) Directing Defendants-Respondents to: (i) establish procedures to enable Plaintiffs-Petitioners and the Class to apply for restoration or modification of their FHEPS supplements through Defendants-Respondents' web portals and physical offices; (ii) cease terminating recipients' FHEPS supplements during the cash assistance recertification process; (iii) establish procedures to safeguard FHEPS supplements during the cash assistance recertification process; (iv) establish procedures for the adjustment and recalculation of FHEPS supplements upon changes in family income, composition, or rental amount; (v) post information and procedures concerning restoration and modification of FHEPS supplements on Defendants-Respondents' website; and (vi) train

Defendants-Respondents' personnel on FHEPS restoration and modification procedures;

g) Awarding Plaintiffs-Petitioners their attorneys' fees and costs; and

h) For such other and further relief as may be just and equitable.

Dated: New York, New York
April 4, 2023

THE LEGAL AID SOCIETY

By: /s/ Lilia I. Toson

Lilia I. Toson
Edward Josephson
Susan C. Bahn
Zach Hudson
Emily Lundgren
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HUGHES HUBBARD & REED LLP

By: /s/ Fara Tabatabai

Fara Tabatabai
One Battery Park Plaza
New York, NY 10004
Tel: (212) 837-6000
fara.tabatabai@hugheshubbard.com

Attorneys for Plaintiffs-Petitioners

VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF KINGS)

BASMAH AGEL, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
March 29, 2023



BASMAH AGEL

Sworn to and subscribed before me
this 29th day of March, 2023



Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2024

AFFIDAVIT OF TRANSLATION

STATE OF NEW YORK)
 ss.:
COUNTY OF QUEENS)

Susan Yousefi, being duly sworn, deposes and says:

1. I speak both Arabic and English.
2. Upon information and belief, Basmah Agel, does not speak or read English.
3. I translated the within Verified Petition-Complaint into Arabic for Basmah Agel, and s/he indicated that she understood same and that the statements therein were true to the best of her knowledge.

Susan Yousefi

Susan Yousefi

Sworn to before me this 4th day of April, 2023

Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2026

VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF THE BRONX)

JATNNA AQUINO, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: Bronx, New York
March 31, 2023

Jatnna Aquino
JATNNA AQUINO

Sworn to and subscribed before me
this 31 day of March, 2023



Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2026

AFFIDAVIT OF TRANSLATION

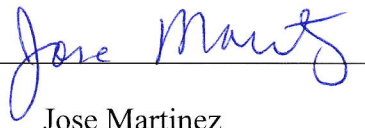
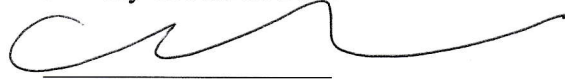
STATE OF NEW YORK)

ss.:

COUNTY OF THE BRONX)

JOSE MARTINEZ being duly sworn, deposes and says:

1. I speak both Spanish and English.
2. Upon information and belief, J.A., does not speak or read English.
3. I translated the within Verified Petition-Complaint into Spanish for J.A. and she indicated that s/he understood same and that the statements therein were true to the best of her knowledge.


Jose MartinezSworn to before me this
31st day of March 2023
Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2026

VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF BROOKLYN)

K.B., being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
March 30, 2023



K.B.

Sworn to and subscribed before me
this 30th day of March, 2023



Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2026

VERIFICATION

STATE OF NEW YORK)
 Richmond
 COUNTY OF KINGS) SS.:

TABITHA DANIEL, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: *Staten Island*
 New York, New York
 March 31, 2023
April


 TABITHA DANIEL

Sworn to and subscribed before me
 this 3rd day of ~~March~~, 2023
April


 Notary Public



VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

L.H. being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: Brooklyn, New York
March 30, 2023

L-H
L.H.

Sworn to and subscribed before me
this 30th day of March, 2023

[Signature]
Notary Public


Commission Expires July 23, 2023
Qualified in Kings County
No. 02LA6171226
Notary Public, State of New York
Christopher D. Lamb
Christopher D. Lamb
Notary Public, State of New York
No. 02LA6171226
Qualified in Kings County
Commission Expires July 23, 2023

AFFIDAVIT OF TRANSLATION

STATE OF NEW YORK)
 ss.:
COUNTY OF QUEENS)

Johanna Zapateiro , being duly sworn, deposes and says:

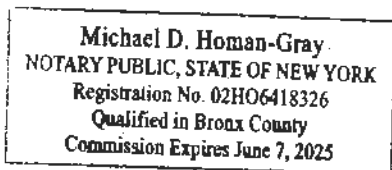
1. I speak both Spanish and English.
2. Upon information and belief, LH., does not speak or read English.
3. I translated the within Verified Petition-Complaint into Spanish for L. H., and s/he indicated that she understood same and that the statements therein were true to the best of her knowledge.



Johanna Zapateiro

Sworn to before me this 29th day of March, 2023

Michael D. Homan-Gray
Notary Public



VERIFICATION

STATE OF NEW YORK)

ss.:

COUNTY OF BRONX)

NAKISHA RIEARA, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
March 31, 2023



NAKISHA RIEARA

Sworn to and subscribed before me
this 31st day of March, 2023



Notary Public

Emily Ruth Lundgren
Notary Public, State of New York
Registration No. 02LU6429015
Qualified in Kings County
Commission Expires February 7, 2026

VERIFICATION

STATE OF NEW YORK)

ss.:

COUNTY OF THE BRONX)

TARIN RIVERA, being duly sworn, deposes and says:

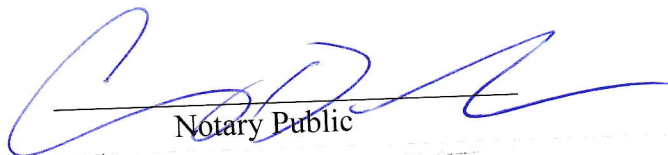
I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: Bronx, New York
March 31, 2023



Tarin Rivera

Sworn to and subscribed before me
this 31st day of March, 2023


Notary Public

Christopher D. Lamb
Notary Public, State of New York
No. 02LA6171226
Qualified in Kings County
Commission Expires July 23, 2023

VERIFICATION

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

MICHEL TOLIVER, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-captioned action. I have reviewed the complaint-petition and know the contents to be true to my own knowledge that apply to me, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York

March 29, 2023



MICHEL TOLIVER

Sworn to and subscribed before me
this 29th day of March, 2023



Notary Public

FAITH ANNE MEIXELL
Notary Public, State of New York
Registration No. 02ME6443505
Qualified in Kings County
Commission Expires Nov. 7, 2026