

Judge Penley

08 CIV 8469

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U.S. DISTRICT COURT
S.D.N.Y.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OCT -2 2008
U.S.D.C. S.D. N.Y.
CASHIERS

MARVA WILSON,

Plaintiff,

-against-

DAVID HANSELL, as Commissioner of the
New York State Office of Temporary and
Disability Assistance, and ROBERT DOAR,
as Administrator/Commissioner of the New York
City Human Resources Administration,

Defendants.

08 Civ.

COMPLAINT

Plaintiff, by and through her attorneys, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief brought under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, the Due Process Clauses of the United States and New York State Constitution, and New York State and

City civil rights statutes and regulations as well as New York State Social Services Law.

2. Plaintiff Marva Wilson is a mother of four children whose subsistence level public assistance benefits and Food Stamps were reduced in July 2007 due to a sanction imposed by the New York City Human Resources Administration (“HRA”) when she missed an appointment because she needed to be treated for a fractured ankle in an emergency room. Plaintiff alleges that the loss of her subsistence benefits during the sanction period, which lasted more than six months, was a direct result of discrimination against her on the basis of her disability by the New York State Office of Temporary and Disability Assistance (“OTDA”) and HRA, and constituted a violation of her rights to due process of law.

3. Specifically, Ms. Wilson challenges (1) a sanction that was imposed on her public assistance and Food Stamps case because of her disability, and (2) a policy and practice of OTDA and HRA that denies individuals with disabilities timely reinstatement of their benefits following sanction periods when they assert that they have a physical or mental impairment that limits their ability to fully participate in work activities.

4. Ms. Wilson seeks an order directing defendants to reverse and expunge the sanction levied against her; to reinstate all lost benefits; and to conform their policies and practices to meet the requirements of the ADA and specifically permanently enjoining defendants from continuing their policy and practice of refusing to timely reinstate benefits to persons with disabilities who are willing to comply with welfare-to-work policies, but have a good-faith basis to claim that they have a physical or mental impairment that limits their ability to work.

JURISDICTION

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 1343(a)(3) and (4). This action arises under the Americans with Disabilities Act (“ADA”),

42 U.S.C. §§ 12101 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Due Process Clause of the United States Constitution.

6. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over plaintiff's claims against defendant DOAR under the New York State Constitution and state and local laws prohibiting disability discrimination and implementing New York's welfare policies.

7. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

8. Plaintiff MARVA WILSON lives in Brooklyn, New York. Marva Wilson has a physical disability, severe arthritis of her left ankle, and also suffers from the effects of a fracture in her left ankle, which substantially limit her major life activities of standing and walking. Marva Wilson is a person with a disability within the meaning of the ADA; the Rehabilitation Act; the New York State Human Rights Law; the New York State Social Services Law and the New York City Human Rights Law.

9. Plaintiff Marva Wilson is eligible for public assistance, Food Stamps and Medicaid programs which are administered by defendant HRA.

10. Defendant DAVID HANSELL is the Commissioner of the New York State Office of Temporary and Disability Assistance, the executive agency of the State of New York responsible for supervising the operation and administration of all public assistance programs in New York State, including those operated or administered locally in New York City by the Human Resources Administration; for holding fair hearings requested by public assistance recipients after adverse determinations by local agencies, including HRA and for issuing final decisions with respect to such hearings in compliance with federal and state law. Commissioner HANSELL is sued in his official capacity.

11. Defendant ROBERT DOAR is the Commissioner of the New York City Human

Resources Administration, the executive agency of the City of New York which has responsibility for the operation and administration of public assistance programs for New York City residents, including: cash assistance, Food Stamps and Medicaid. Commissioner DOAR is sued in his official capacity.

FACTS

12. Plaintiff Marva Wilson resides with her four children, ranging in age from 15 to 3. The family receives public assistance, Food Stamps and Medicaid.

13. On June 1, 2007, Ms. Wilson went to the emergency room of the University Hospital of Brooklyn, NY, SUNY Downstate Medical Center for treatment of pain and swelling in her left ankle resulting from an accident she had experienced the day before while working in her part-time job as a home health aid escorting a patient in a wheelchair. At the emergency room she was diagnosed with a fracture of her left ankle.

14. Upon information and belief, HRA's Center 64 had scheduled an appointment for Ms. Wilson on June 1, 2007. She was unable to attend because of her fractured ankle.

15. On or about June 13, 2007, Ms. Wilson went to Center 64 and brought them papers issued by the SUNY Downstate Medical Center emergency room on June 1, 2007, and explained why she missed the welfare center appointment and could not fully participate in HRA work activities due to her physical impairment. The Center 64 worker she saw refused to accept her medical documentation.

16. Upon information and belief, despite the documentation of the injury and treatment presented by Ms. Wilson, HRA did not find that Ms. Wilson had "good cause" to miss her appointment and instead sanctioned her for failing to comply with or report to an employment-related appointment.

17. An HRA notice dated June 21, 2007 concerning the sanction states that the sanction would reduce Ms. Wilson's cash grant from a total of \$632 to \$506 because she "willfully and without good reason failed or refused to comply with the requirement to keep an employment or work activity appointment." The notice states the public assistance sanction would continue for 180 days and until Ms. Wilson "demonstrates that he/she is willing to comply with employment or training rules." The notice also states that Ms. Wilson "may demonstrate a willingness to comply at any time but the sanction will not end before December 29, 2007."

18. The June 21, 2007 notice also states that HRA would reduce Ms. Wilson's Food Stamp grant from \$492.00 to \$441.00 for a period of two months.

19. Upon information and belief, the sanction on Ms. Wilson's public assistance and Food Stamps went into effect on July 2, 2007.

20. Ms. Wilson never received the June 21, 2007 notice imposing the sanction in the mail. The first time she saw the notice was at an OTDA fair hearing on the sanction held on September 24, 2007.

21. The September 24, 2007 fair hearing concerned, among other issues, HRA's sanction of Ms. Wilson's public assistance and Food Stamps. Ms. Wilson appeared at the hearing pro se.

22. By decision dated October 19, 2007, OTDA determined that it was without jurisdiction to review the sanction on Ms. Wilson's cash assistance case because the hearing was requested more than 60 days after HRA's determination to reduce her public assistance benefits.

23. In the October 19, 2007 decision, OTDA affirmed HRA's decision to reduce Ms. Wilson's Food Stamps. This decision was made on behalf of defendant HANSELL.

24. At some point after July 2, 2007, Ms. Wilson's public assistance case was

transferred from Center 64, to HRA's welfare center number 71 ("Center 71"), the "Intensive Case Services" Center, located on East 16th Street in Manhattan.

25. HRA never notified Ms. Wilson, in person or in writing, of the steps she needed to take to get the sanction lifted immediately after December 29, 2007 so that her benefits could be reinstated at the earliest possible time.

26. Upon information and belief, on or about December 26, 2007, Center 71 generated a "Sanction Call-In" notice notifying Ms. Wilson of an appointment at Center 71 on or about Saturday, January 12, 2008.

27. Ms. Wilson attended the appointment at Center 71 on January 12, 2008. She was using crutches at the time, and her left foot was in a cast. She attended the appointment to get her sanction lifted and her benefits restored.

28. When she appeared for the January 12, 2008 appointment, Ms. Wilson informed Center 71 staff that she did not believe she could fully engage in work activities because of her difficulty traveling, standing and walking. She brought a June 1, 2007 document issued by SUNY Downstate Medical Center and showed it to Center 71 staff.

29. Center 71 refused to lift Ms. Wilson's sanction on January 12, 2008. Instead, HRA and Center 71 treated plaintiff's statement that she was not able to fully engage in work activities because of a documented medical condition as a failure or refusal to comply with work requirements.

30. On March 13, 2008, Ms. Wilson appeared for a fair hearing before an OTDA Administrative Law Judge, concerning, among other issues, whether HRA's continued sanction of Ms. Wilson's case was correct.

31. A decision on the March 13, 2008 hearing was issued by OTDA on March 21,

2008. The decision affirmed HRA's decision to continue the employment program sanction of Ms. Wilson, and specifically asserted that plaintiff's request for a disability-based exemption from the agency's work rules was not sufficient to indicate a willingness to comply with the agency's employment program requirements. This decision was made on behalf of defendant HANSELL

32. On or about April 1, 2008, Ms. Wilson's medical assessment was completed by HRA's Wellness, Comprehensive Assessment, Rehabilitation and Employment program ("WeCARE"), and she was found exempt from work requirements because of her medical limitations. She remains exempt to date.

33. HRA finally lifted Ms. Wilson's sanction on April 1, 2008.

34. On July 18, 2008, Ms. Wilson submitted to OTDA a request for a reopening of the hearing held on March 13, 2008, or a corrected decision, on the basis of the errors of law contained within OTDA's March 21, 2008 fair hearing decision.

35. On September 3, 2008, OTDA responded to Ms. Wilson's request for a reopened fair hearing or a corrected decision. OTDA denied Ms. Wilson's request. The OTDA response states: "Your contention that the mere request for an exemption from employment requirements is sufficient to indicate that the individual is willing to comply with employment requirements is not persuasive."

36. OTDA's September 3, 2008 response also states: "Since the appellant had not yet been determined exempt at the time of the hearing, the decision correctly upholds the agency's determination not to restore the needs of the appellant to the budget at that time."

37. HRA's policy is that until a sanctioned individual has completed the WeCARE evaluation process, the issue of whether to lift a sanction is not ripe for consideration in the

ordinary course of HRA business.

38. The policy and practice of HRA and OTDA denies individuals with disabilities timely reinstatement of their benefits following sanction periods when they assert that they have a physical or mental impairment that limits their ability to fully participate in work activities.

39. Upon information and belief, it can take several weeks or more from the time a public assistance recipient is referred to HRA's WeCARE program before an evaluation is complete and a determination is made about whether the client should be fully or partially exempt from HRA work activities.

40. By comparison, a public assistance recipient who is not limited in their ability to fully participate in work activities, can have their benefits reinstated promptly by indicating they are willing to comply with work activity requirements.

41. Defendant HANSELL has been deliberately indifferent to the need to adequately train and supervise the staff of OTDA, including but not limited to OTDA Administrative Law Judges, and to train and supervise HRA and defendant DOAR regarding their respective agencies' legal obligations and proper procedures required to afford public assistance and Food Stamps recipients such as Ms. Wilson their rights pursuant to the ADA, State and local anti-discrimination laws, and to due process of law.

42. Defendant DOAR has been deliberately indifferent to the need to adequately train and supervise the staff of HRA regarding the agency's legal obligations and proper procedures required to afford public assistance and Food Stamps recipients such as Ms. Wilson their rights pursuant to the ADA, State and local anti-discrimination laws, and to due process of law.

CLAIMS FOR RELIEF

FIRST CLAIM
VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

43. HRA and OTDA are public entities within the meaning of 42 U.S.C. § 12131(1), and the U.S. Department of Justice implementing regulations, at 28 C.F.R. § 35.104.

44. Marva Wilson has a “disability” as that term is used in the ADA. She suffers from physical impairments that substantially limit one or more of her major life activities, including the ability to ambulate and stand. 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.

45. Marva Wilson is a “qualified individual with a disability,” as defined under the ADA, 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104, because she is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by HRA and supervised by OTDA.

46. The defendants discriminated and continue to discriminate against Marva Wilson in violation of 42 U.S.C. § 12132 and its implementing regulations, 28 C.F.R. § 35.130, because of her disability by, inter alia, failing to provide her reasonable modifications to HRA and OTDA programs and policies which are necessary for her to successfully obtain and maintain eligibility for public assistance and Food Stamps, and by engaging in methods of administration that have the effect of discriminating against persons with disabilities and fail to afford them with an opportunity to obtain and maintain eligibility for public assistance and Food Stamps on terms equal to and as effective as those enjoyed by non-disabled persons.

47. Defendants HANSELL and DOAR have also failed to provide adequate notice to Marva Wilson of her ADA rights and procedures for requesting and appealing denials of

reasonable accommodations, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.106.

SECOND CLAIM FOR RELIEF
VIOLATIONS OF THE REHABILITATION ACT

48. Defendants HRA and OTDA are each a “recipient” of “federal financial assistance,” as defined by Section 504 of the Rehabilitation Act of 1973 and by implementing regulations promulgated by the U.S. Department of Justice, and the U.S. Department of Health and Human Services, thereby rendering HRA and OTDA subject to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d)-(e); 45 C.F.R. § 84.3(f)-(h).

49. The administration of the public assistance programs and services by HRA and supervised by OTDA, which are funded in part with federal financial assistance, constitute “programs or activities” subject to the Rehabilitation Act of 1973. 29 U.S.C. § 794(b)(1).

50. Marva Wilson has at least one “disability,” as that term is used in Section 504 of the Rehabilitation Act. Like the ADA, Section 504 defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities. 29 U.S.C. § 705(9)(B) & (20)(B).

51. Marva Wilson is a “handicapped person,” as that term is defined in regulations implementing Section 504. Section 504 regulations define a handicap as a physical or mental impairment that substantially limits one or more major life activities of such individual. 28 C.F.R. § 41.31(a) and 45 C.F.R. § 84.3(j), (l).

52. Marva Wilson meets the essential eligibility requirements for the receipt of public assistance, Food Stamps and Medicaid and is therefore a “qualified handicapped person,” as that term is defined in regulations implementing Section 504. 28 C.F.R. § 41.32 and 45 C.F.R. § 84.3(1).

53. Defendants discriminated and continue to discriminate against Marva Wilson in

violation of 29 U.S.C. § 794(a) and its implementing regulations, 28 C.F.R. § 41.51 and 45 C.F.R. § 84.4, because of her handicap, by, inter alia, failing to provide her reasonable modifications to HRA and OTDA programs and policies which are necessary for her to obtain and maintain eligibility for public assistance and Food Stamps, and by engaging in methods of administration that have the effect of discriminating against persons with disabilities and fail to afford them an opportunity to obtain and maintain eligibility for public assistance and Food Stamps on terms equal to and as effective as those enjoyed by non-disabled persons.

54. HRA and OTDA have also violated Section 504 of the Rehabilitation Act by failing to inform plaintiff of her rights under the Federal Rehabilitation Act and the manner in which they may seek a reasonable modification of HRA policies to have HRA accommodate her disability in the process of providing her with public assistance and Food Stamps in violation of 28 C.F.R. § 39.111 & 45 C.F.R. § 84.8(a).

THIRD CLAIM FOR RELIEF
VIOLATION OF THE UNITED STATES CONSTITUTION – DUE PROCESS

55. At all times relevant herein, defendants HANSELL and DOAR were acting under color of statutes, ordinances, regulations, custom, or usage of the State of New York or the City of New York.

56. Plaintiff Marva Wilson had and still has a protected property interest in the receipt of public assistance and Food Stamps benefits she is entitled to receive under State and federal law.

57. Defendant DOAR violated and continues to violate the rights of plaintiff guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution by, inter alia, depriving her of a property interest without adequate notice regarding the initiation or lifting of a sanction or a procedure for providing public assistance benefits while

a request for a full or partial exemption from work activities is pending; imposing a sanction and depriving her of subsistence benefits beginning in July 2007, in a manner that was arbitrary and capricious, concluding that she “willfully” failed or refused to comply with an employment program appointment without making a good faith effort to investigate the issue of willfulness; and by refusing to timely reinstate her benefits because she asserted her right to claim that she has medical conditions which limit her ability to fully engage in work activities, a right that is specifically authorized under the relevant State statutes.

58. Defendant HANSELL violated plaintiff’s due process rights by his ratification, endorsement or acquiescence in the actions and omissions of HRA referenced in the preceding paragraph, and by failing to adequately train and supervise the staff of OTDA and HRA with respect to such matters.

STATE LAW CLAIMS ASSERTED AGAINST DEFENDANT DOAR

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE NEW YORK STATE CONSTITUTION – DUE PROCESS

59. Defendant DOAR violated and continues to violate the rights of plaintiff guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution by, inter alia, depriving her of a property interest without adequate notice regarding the initiation or lifting of a sanction or a procedure for providing public assistance benefits while a request for a full or partial exemption from work activities is pending; imposing a sanction and depriving her of subsistence benefits beginning in July 2007, in a manner that was arbitrary and capricious, concluding that she “willfully” failed or refused to comply with an employment program appointment without making a good faith effort to investigate the issue of willfulness; and by refusing to timely reinstate her benefits because she asserted her right to claim that she has medical conditions which limit her ability to fully engage in work activities, a right that is

specifically authorized under the relevant State statutes.

FIFTH CLAIM FOR RELIEF
**VIOLATIONS OF NEW YORK STATE AND CITY ANTI-DISCRIMINATION
STATUTES**

60. HRA is a place of public accommodation under N.Y. Exec. Law § 292(9) and a “person” subject to N.Y.C. Administrative Code § 8-107(4)(a).

61. Plaintiff is a person with a disability or handicap within the meaning of N.Y. Exec. Law § 292(21); N. Y. Soc. Serv. L. § 331(3) and N.Y.C. Administrative Code § 8-102(16).

62. Defendant DOAR subjected and continues to subject plaintiff to discrimination in her civil rights on the basis of her disability by adopting policies, procedures and methods of administration that have a disparate impact on disabled persons and treating them differently than non-disabled persons, and by refusing, withholding from or denying plaintiff accommodations, advantages, facilities or privileges because of her disability in violation of N.Y. Exec. Law § 296-2(a), N.Y. Soc. Serv. L. § 331(3) and N.Y.C. Administrative Code § 8-107(4).

SIXTH CLAIM FOR RELIEF
VIOLATIONS OF NEW YORK STATE SOCIAL SERVICES LAW

63. Defendant DOAR, as Commissioner of HRA, violated plaintiff’s rights by sanctioning plaintiff and by failing to timely lift the sanction in a manner that was arbitrary and capricious and in contravention of lawful procedures as set forth in N.Y. Soc. Serv. Law § 342, and in violation of N.Y. Soc. Serv. L. §§ 331(3), 332(1)(a) and 332-b, which set forth the procedures and requirements for evaluating claims made by individuals who have physical or mental impairments that limit their ability to comply fully with employment program requirements. Defendant DOAR’s policy with respect to the lifting of sanctions necessarily results in a sanction period longer than permitted by law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court grant her the following relief:

64. Adjudge and declare that the polices, practices, omissions and conditions described above are in violation of the rights of the plaintiff under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Due Process Clause of the United States and New York State Constitutions, the New York State Human Rights Law, the New York State Social Services Law and the New York City Civil Rights Law.

65. Order defendants to reverse the sanction imposed upon plaintiff in June 2007, and to issue her any and all retroactive benefits that would accordingly be due to her, and to expunge the sanction from her records;

66. Permanently enjoin defendants, their agents, employees and all persons acting in concert with them, from subjecting plaintiff to the illegal policies, practices, omissions and conditions described above;

67. Award plaintiffs, pursuant to 29 U.S.C. § 794(b), 42 U.S.C. § 1988, and 42 U.S.C. § 12205, and the New York City Human Rights Law, N.Y.C. Administrative Code § 8-502(f), the costs of this suit and reasonable attorneys' fees and litigation expenses;

68. Retain jurisdiction of this case until the defendants have fully complied with the orders of this Court, and there is a reasonable assurance that the defendants will continue to comply in the future; and

69. Award such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 2, 2008

Respectfully submitted,

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