

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 82238

_____)
MIRIAM JOHNSON, on behalf of))
herself and all others similarly))
situated,))
))
Plaintiff))
))
v.))
))
CARMEN CANINO-SIEGRIST, ¹ in her))
capacity as Commissioner of the))
Department of Public Welfare,))
Defendant))
_____)

STIPULATION FOR
SETTLEMENT

The parties, through their undersigned attorneys,
voluntarily enter into this Stipulation. The parties agree to
the following:

I. Class Action

The parties agree that the prerequisites to maintaining a
class action listed in Rule 23(a) of the Massachusetts Rules of
Civil Procedure are met with respect to the plaintiff's claims
for relief relating to Food Stamp disqualifications for
"intentional program violations" and with respect to the
plaintiff's claims for relief relating to the use of interpreters
at administrative hearings relating to Food Stamps. The class is

1 After this action was initiated, Carmen Canino-Siegrist
succeeded Charles M. Atkins as Commissioner of the
Department of Public Welfare and, therefore, is
substituted as defendant pursuant to Mass. R. Civ. P.
25(d).

defined as 1) the class of past, present, and future Food Stamp applicants and recipients who are not fluent in English and against whom the Department of Public Welfare ("the Department") has imposed, seeks to impose, or in the future will seek to impose, through an Administrative Disqualification Hearing, a Food Stamp disqualification penalty based upon an alleged intentional program violation without first assuring that the applicant or recipient was provided a penalty warning notice in a language in which the applicant or recipient was fluent prior to the date of the alleged intentional program violation, and 2) the class of past, present, and future Food Stamp applicants and recipients who are not fluent in English and who seek an administrative hearing regarding their rights under the Food Stamp program.

II. Relief to Named-Plaintiff, Miriam Johnson

1. The Department has already provided relief to Ms. Johnson in the form of lifting the disqualification against her. The defendant agrees that any and all claims against Ms. Johnson relating to the alleged intentional program violation asserted in the Department's notice dated January 10, 1986, a copy of which is attached as Appendix No. 1, are extinguished. The decision dated February 24, 1986, in "A.D. Hearing No. 602341", a copy of which is attached as Appendix No. 2, shall be treated as having been reversed and replaced by a determination that Ms.

Johnson did not commit an "intentional program violation."

III. Relief Relating to Food Stamp Disqualifications

1. Statement of Rights and Duties

The defendants will comply with the following statements of rights and duties with respect to imposing disqualification penalties against Food Stamp applicants or recipients, as if a declaratory judgment had been entered, and the parties agree that the appropriate remedy for persons aggrieved by any alleged noncompliance shall be an action pursuant to General Laws chapter 231A to enforce the rights and duties as stated.

a. In order to establish that an "intentional program violation" of Food Stamp program rules pursuant to 7 U.S.C. §2015, 7 C.F.R. §273.16, and 106 C.M.R. §§367.500-367.825, was committed by a member of a household entitled under 7 U.S.C. §2020(e)(1)(B) and 7 C.F.R. §272.4(b)² to written materials in their native or primary language, the Department must prove at an Administrative Disqualification Hearing that a written warning notice of the relevant disqualification penalties ("penalty warning notice") was given in a language in which an adult

² A copy of the version of 7 C.F.R. §272.4(b) currently in effect is attached as Appendix No. 3.

household member was fluent³ before the date of the alleged violation⁴.

b. An essential element of proof of an intentional program violation pursued through an Administrative Disqualification Hearing, or by a waiver of the right to such a hearing, against a person who is not fluent in English is that an adult household member was provided the written penalty warning notice in a language in which he or she was fluent at the time the notice was provided. A person against whom the Department seeks to establish an administrative disqualification is entitled to written notice of this element of proof prior to the Administrative Disqualification Hearing.

2. Retroactive Relief

The defendant will provide relief to those class members against whom the Department had already imposed administrative disqualification penalties prior to the implementation of the procedures set forth in section 3, below,

³ The parties mean by fluency in a language the ability to speak and understand that language and to communicate in that language.

⁴ This lawsuit does not address the right of the plaintiff or of the classes she represents to receive other notices or materials used in the Food Stamp program in their primary language. The plaintiff and the class members do not waive any rights they might have regarding such other notices and materials.

by rescinding the disqualification penalty and by restoring lost Food Stamp benefits to any person who was not fluent in English and who was not provided the penalty warning notice in a language in which he or she was fluent before the date of the alleged intentional program violations. To accomplish this:

a. The Department will identify the group of class members to receive notice of retroactive relief through a two-part computer match. First, the Department will match the social security numbers (SSN's) of all Massachusetts Food Stamp recipients with a federally compiled list of all Food Stamp recipients in the country who have been disqualified from the Food Stamp Program for committing an intentional program violation. This will provide a list of the SSN's of all disqualified recipients in the state. The Department will then match these SSN's with all the state Food Stamp recipients who the Department has coded for race as Hispanic or Asian.⁵ (The Hispanic code includes all persons who identify themselves as Hispanic and Black, as well as persons who identify themselves only as Hispanic.) This second match will provide the Department with a list of all Hispanic and Asian Food Stamp recipients who have been disqualified from the Food Stamp Program.

⁵ The parties acknowledge that the class may consist of more than persons coded for race as Hispanics and Asians. Although other potential class members will not receive notice of the retroactive relief available, they are entitled to be considered for such relief if they identify themselves to the Department within 120 days of the date of this Stipulation.

b. The Department will then mail a notice, as set forth in Appendix No. 4, attached hereto, to each of the persons identified by the two-part computer match described in subsection a, above. This notice will be sent within 30 days from the date of this Stipulation. The notice will be sent in the following languages: English, Spanish, French, Chinese, Cambodian, Laotian and Vietnamese.

c. For every member of the class who responds to the notice, the Department will review his or her Administrative Disqualification file to make a preliminary determination of whether the class member was provided the written penalty warning notice in a language in which he or she was fluent. The preliminary determination will include an investigation of the file to determine the language or languages in which the written penalty warning notice was provided and, if necessary, an interview with the class member's case worker to ascertain if the class member was fluent in English at the time the class member was provided with the penalty warning notice.

d. If the Department makes a preliminary determination that the class member was not provided a written penalty warning notice in a language in which he or she was fluent, the Department will mail a notice to the class member of that determination, as set forth in Appendix No. 5, attached hereto, and will restore to the class member the Food Stamp benefits lost

during the disqualification period, and the Department will erase the disqualification from his or her record so that any subsequent disqualifications will not be compounded⁶ based on the erased disqualification.

e. All remaining class members who responded to the notice for whom the Department's preliminary determination indicates that they were provided the written penalty warning notice in a language in which the class member was fluent will receive a second notice from the Department, as set forth in Appendix No. 6, attached hereto, explaining the class member's right to a hearing. This notice will be sent in the language in which the class member is fluent.

f. The hearing will be held by the Department's Division of Hearings in accordance with Department fair hearing regulations. At the hearing, the Department must present its evidence as to why retroactive relief was denied to the class member. If the hearing referee finds that the Department has not proved that the class member was provided the written penalty warning notice, prior to the date of the alleged intentional program violation, in a language in which he or she was fluent at

⁶ Current federal and state Food Stamp regulations require that the first disqualification for an alleged intentional program violation be for a period of six months, the second be for a period of twelve months, and the third be permanent. 7 C.F.R. §272.16(b); 106 C.M.R. §367.800. Thus, the penalty is "compounded" for second and third disqualifications.

the time of receipt of the warning notice, the referee must order the provision of retroactive relief. The defendant will instruct the hearing referees to make findings as to the language in which the penalty warning notice, if any, was provided to the class member and as to whether or not the class member was fluent in that language at that time. The defendant further will instruct the hearing referees to make a final ruling consistent with the terms of this Stipulation.

g. The Division of Hearings will provide a translator at the hearing if the class member requests a translator at least one week before the hearing is scheduled or agrees to a postponement in order to allow time for a translator to be secured.

h. If the hearing referee determines that the class member was not provided the written penalty warning notice in a language in which he or she was fluent, then the Department will restore to the class member the Food Stamp benefits lost during the disqualification period and will erase the disqualification from the class member's records so that no subsequent disqualifications will be compounded based on the erased disqualification.

i. The department cannot estimate the time required to make preliminary determinations, hold hearings, and restore

benefits without knowing the size of the class who will respond. However, the Department agrees to complete this process within one year of signing of this Stipulation.

j. The Department will provide plaintiff's attorneys with a final report of all the Department actions taken pursuant to section 3(a) through 3(i) of this Stipulation. This report will include data on the number and type of responses to each of the notices and the amount of benefits restored. The Department will not provide any data which could identify an individual recipient or applicant, unless authorized to do so by the recipient or applicant.

3. Prospective Relief

The defendant will provide prospective relief to the members of the class by not imposing an administrative disqualification penalty against any person to whom the Department did not provide, prior to the date of the alleged intentional program violation, the penalty warning notice in a language in which he or she was fluent at that time. To accomplish this:

a. The Department will require that an essential element of proof of an intentional program violation at an Administrative Disqualification Hearing is that, prior to the date of the alleged intentional program violation, a written penalty warning

notice was provided in a language in which an adult household member was fluent at the time.

b. The Department staff who prepare and represent the Department in cases of suspected intentional program violations will make a preliminary determination that an adult household member was provided the written penalty warning notice in a language in which he or she was fluent. This determination will be based on any documents in the recipient's file indicating whether the recipient or an adult household member was fluent in English and, if not, in what language the recipient was fluent and, if necessary, an interview with the recipient's case manager.

c. If the preliminary determination indicates that an adult household member was not provided the written penalty warning notice in a language in which he or she was fluent, the Department will treat the case as an "unintentional program violation" and will not prosecute the case. Disqualifications are not imposed on recipients who have committed unintentional program violations.

d. If the preliminary determination indicates that an adult household member was provided the written penalty warning notice in a language in which he or she was fluent, then the Department will proceed to prosecute the case as an intentional

program violation.

e. Proving that, prior to the date of the alleged intentional program violation, an adult household member was provided the penalty warning notice in a language in which he or she was fluent at that time will be an essential element of the Department's case at the Administrative Disqualification Hearing.

f. Within 90 days after the date of this Stipulation, the Department will amend the current notice sent to recipients suspected of committing an intentional program violation which lists the evidence see as reflected in Appendix 20 attached hereto the Department will present at the Administrative Disqualification Hearing to include the fact that an adult household member was provided the written penalty warnings in a language in which he or she is fluent at the time of the alleged violation.

g. The Department will take all reasonable steps to amend its regulations at 106 C.M.R. §367.550, 367.660, and 367.675, as set forth in Appendices Nos. 7 through 9. The Department will promulgate the final regulatory amendments within 90 days of the date of this Stipulation and will implement the amendments beginning no later than 60 days after the date the final amendments are published in the Massachusetts Register.

h. To ensure that applicants and recipients are notified of the penalty warnings in their appropriate language, the Department will include in the Food Stamp application and redetermination materials the notice of the penalty warnings and notice of the opportunity to have a Department provided interpreter at a Hearing. (Appendix No. 19.) This written notice will be provided at application and at redetermination and will be in the following languages. English, Spanish, Armenian, Cambodian, Chinese, French, Greek, Haitian Creole, Italian, Laotian, Polish, Portuguese, Russian, and Vietnamese.

IV. Relief Relating to Interpreters at Department Hearings

1. Statement of Rights and Duties

The defendants will comply with the following statements of rights and duties with respect to providing administrative hearings to past, present, and future Food Stamp applicants and recipients, as if a declaratory judgment had been entered, and the parties agree that the appropriate remedy for persons aggrieved by any alleged noncompliance shall be an action pursuant to General Laws chapter 231A to enforce the rights and duties as stated.

a. Past, present, and future Food Stamp applicants and recipients who are entitled under federal Food Stamp law to bilingual staff services⁷ are entitled to the services of a Department-provided interpreter at any Department-conducted administrative hearing involving, in whole or in part, the applicant's or recipient's rights under the Food Stamp program, including administrative disqualification hearings. The guidelines in Appendix No. 10 set forth standards of adequate interpretation to be followed at any such Department conducted hearings.⁸

b. Food Stamp applicants and recipients are entitled to written notice of the right to a translator when they are notified of the scheduling of a hearing by the Department.

2. Prospective Relief

a. The Department will take all reasonable steps to amend its regulations at 106 C.M.R. §§367.050, 367.150, 367.325,

7. Federal law regarding bilingual staff services in the Food Stamp program is currently set forth in 7 C.F.R. §272.4(B), a copy of which is attached as Appendix No. 1.

8. This lawsuit does not address the right of the plaintiff or of the class she represents to receive other bilingual staff services in the Food Stamp program. The plaintiff and the class members do not waive any rights they might have regarding such other services.

367.375, 367.400, and 343.450, as set forth in Appendices Nos. 11 through 16. The Department will promulgate final regulatory amendments 90 days after the date of this Stipulation and will implement the amendments beginning no later than 60 days after the date the final amendments are published in the Massachusetts Register.

b. Within 90 days after the date of this Stipulation, the Department will create or revise the following forms and notices, using the language set forth in Appendix No. 20, attached hereto, and substitute the new or revised forms and notices for those currently in use:

(1) Notice of the right to request an interpreter to accompany all systems-generated notices that trigger the right to a hearing, including the denial, termination, reduction, or amount of benefits.⁹

(2) Notice of Hearing date.

c. Within 90 days after the date of this Stipulation the Department will revise the Division of Hearings "Manual for Welfare Referees" by adding a new section F, as set forth in the

⁹. The parties acknowledge that all systems-generated notices are propounded only in Spanish and English. The plaintiff and the class members do not waive any right they may have to litigate at a future time their right to receive any such systems-generated notice in the language in which they are fluent.

attached Appendix No.10 (with the former section F and following sections to be relettered).

- d. The Department will also provide written notification to applicants and recipients of the opportunity to have an interpreter at Department hearings at application and redetermination. (Appendix 19) This notice will be included in the Food Stamp application and redetermination materials. It will be in the following languages. English, Spanish, Armenian, Cambodian, Chinese, French, Greek, Haitian Creole, Italian, Laotian, Polish, Portuguese, Russian and Vietnamese.

V. Documents

The Department will provide the plaintiff's attorneys with copies of the following:

- a. All final versions of regulation amendments made pursuant to this Stipulation promptly after they are filed with the Secretary of the Commonwealth.

- b. All final versions of new notices and forms and of revisions to existing notices and forms made pursuant to this Stipulation promptly after they are printed.

c. The "Manual for Welfare Referees" promptly after the changes made pursuant to this Stipulation are implemented.

2. The Department agrees not to make additional regulatory amendments or changes to any of the forms or notices attached to this Stipulation or to the Division of Hearings "Manual for Welfare Referees" in the future that would affect the substance of the amendments or changes to be made pursuant to this Stipulation, except as required by changes in state or federal law, without first providing the plaintiff's attorneys with copies of the drafts of such amendments or changes at least 30 days before they are to take effect. This agreement to provide copies of the drafts is in no way intended to relieve the defendant from her obligation to abide by all of the provisions in this Stipulation. It is understood that if the Department makes regulatory amendments or changes to its notices or forms that conflict with the provisions in this Stipulation, except as required by changes in state or federal law, the provisions of this Stipulation shall be enforceable pursuant to General Laws chapter 231A.

VI: Attorneys Fees

The Department agrees to pay the plaintiff's attorneys reasonable attorney's fees for the hours expended in litigating and settling this action.

Thomas E. Noonan
Special Assistant
Attorney General
B.B.O. #373400



Lynn Girton
B.B.O. #193640
Greater Boston Legal Services
68 Essex Street
Boston, Ma 02111
(617) 357-5757, ext. 2998
Attorney for Miriam Johnson



Ruth F. Greenholz
B.B.O. #345137
Department of Public Welfare
180 Tremont Street
Boston, MA 02111
(617) 574-0880
Attorney for Carmen Canino-
Siegrist, Commissioner

Approved pursuant to Rule 23(c) of the Massachusetts Rules of Civil Procedure on this _____ day of _____, 1990.

Judge

*Just to
this page*

RFG:clm/johnson1