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GEORGE MARBLEY, KATIE McCLAIN, and ELLEN BEAUREGARD on behalf of themselves and all others similarly situated, Plaintiffs, v. MARY JO BANE, individually and as the Commissioner of the New York State Department of Social Services, JAMES P. McCAFFREY, as Commissioner of Albany County Department of Social Services, ORA LANGDON, as Commissioner of the Franklin County Department of Social Services, on behalf of themselves and all other county commissioners of Social Service Districts within the State of New York, Defendants.

93-CV-393

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

1994 U.S. Dist. LEXIS 4504

**April 2, 1994, Decided
April 4, 1994, Filed**

COUNSEL: [*1] For plaintiffs: PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC., Albany, New York, OF COUNSEL: CHARLES BRENNAN, ESQ.

For defendants: G. OLIVER KOPPELL, Attorney General for the State of New York, Albany, New York, OF COUNSEL: JEFFREY DVORIN, ESQ., Asst. Attorney General.

JUDGES: McAvoy

OPINION BY: THOMAS J. McAVOY

OPINION

ORDER

Hon. Thomas J. McAvoy

Chief U.S. District Judge

Plaintiffs moved for certification of a defendant and a plaintiff class, and for partial summary judgment. Defendants opposed the motions and cross-moved for summary judgment in their favor. The motions were heard before the Honorable Thomas J. McAvoy on November 26, 1993. Due deliberation having been had, and an oral decision having been read into the record, it is hereby

ORDERED that plaintiffs' motion for certification of plaintiff class of

all tenants who are responsible for making out-of-pocket payments for utility bills and receive energy assistance through utility allowances that include energy costs under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, section 202 of the Housing Act of 1949, who have had or will have their eligibility or benefits [*2] under the Low-Income Home Energy Assistance Program reduced or eliminated under color of the regulations, policy and practice governing the New York State Home Energy Assistance Program (HEAP) or New York State HEAP Plan

is granted; and it is further

ORDERED that plaintiffs' motion for certification of a defendant class of

all county commissioners of social services districts located within the State of New York

is granted; and it is further

ORDERED that plaintiffs' motion for partial summary judgment be denied with respect to plaintiffs' claim that 18 NYCRR Section 393.4(c)(i) violates the Low Income Home Energy Assistance Act of 1981 ("LIHEAA"), and it is further

ORDERED that defendants' motion for summary judgment be granted with respect to plaintiffs' claim that 18 NYCRR Section 393.4(c)(i) violates LIHEAA, and it is further

ORDERED that defendants' motion for summary judgment be granted with respect to plaintiffs' claim that the New York State HEAP Plan's treatment of government subsidized housing tenants who have heat included in their rent violates Section 927 of the Housing and Community Development Act of 1992 ("HCDA"), and it is further

ORDERED that plaintiffs' [*3] motion for summary judgment be denied with respect to the claim that the New York State HEAP Plan's treatment of government subsidized housing tenants who have heat included in their rent violates Section 927 of HCDA, and it is further

ORDERED and DECLARED that plaintiffs' motion for summary judgment be granted with respect to plaintiffs' claim that defendants' reduction of HEAP payments to federally subsidized housing tenants who pay for their heating costs separately from rent violates Section 927 of HCDA, and it is further

ORDERED that defendants' motion for summary judgment be denied to the extent that defendants' reduction of HEAP payments to federally subsidized housing tenants who pay for their heating costs separately from rent violates Section 927 of HCDA, and it is further

ORDERED that defendants' motion for summary judgment is granted with respect to plaintiffs' claim that New York's HEAP program violates the equal protection rights of government subsidized housing tenants who have heat included in rent, and it is further

ORDERED that plaintiffs' motion for summary judgment is denied with respect to plaintiffs' claim that

New York's HEAP program violates the equal protection [*4] rights of government subsidized housing tenants who have heat included in rent, and it is further

ORDERED that defendants' and plaintiffs' motions for summary judgment are denied with respect to plaintiffs' claim that defendants violated the equal protection rights of federally subsidized housing tenants who pay for their heating costs separately from rent, and it is further

ORDERED that defendants' motion for summary judgment is granted with respect to any claim for monetary relief against defendant Bane in her official capacity, and it is further

ORDERED that defendants' motion for summary judgment is granted on the ground of qualified immunity with respect to any claim against the defendant class for monetary relief for any violation of Section 927 of the HCDA during the 1992/93 HEAP year, and it is further

ORDERED that plaintiffs' request for prospective injunctive relief requiring the defendant class to discontinue the practice of providing reduced benefits to federally subsidized housing tenants who pay for their heating costs separately from rent, upon defendants' representations at oral argument that the defendants have discontinued this challenged policy, is moot, and it [*5] is further

ORDERED that defendants' and plaintiffs' motions for summary judgment are denied with respect to plaintiffs' equitable claim for retroactive relief against the defendant class on behalf of plaintiff class members who pay separately for heat and who had 1992/93 HEAP year benefits reduced because defendant class failed to incorporate the provisions of Section 927 of the HCDA in the 1992/93 HEAP Plan.

Dated April 2, 1994

at Binghamton, New York

Thomas J. McAvoy

Chief U.S. District Judge