



George E. Pataki
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Brian J. Wing
Commissioner

February 20, 1998

Ian F. Feldman, Esq.
The Legal Aid Society
953 Southern Boulevard
Bronx, NY 10459

Re: Rodriguez v. Blum
Annunziata v. Blum

Dear Mr. Feldman:

This is in response to your letter of February 9, 1998, to Commissioner Wing, in which you expressed your concern that the Office of Temporary Assistance (OTDA) and the New York City Human Resources Administration have been in violation of the Stipulations and Judgments in the above-referenced cases.

Please be advised that the OTDA takes seriously its responsibility to comply with the directives in these cases, and hearing officers in the Office of Administrative Hearings are reminded periodically of the requirements concerning the production of the case record at fair hearings. A copy of the most recent memorandum, which was distributed on August 23, 1996, is attached for your information.

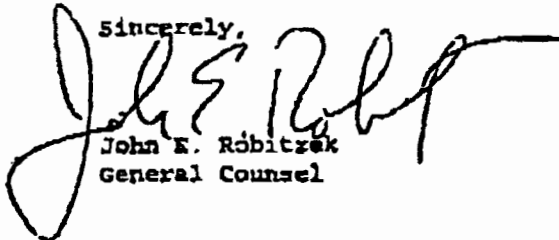
It is my understanding that these practices are being followed. In 1997, for example, 62,851 notices were withdrawn because of HRA's failure to produce the relevant case record, and 20,253 reversals were issued on the same basis.

Since your letter did not provide any examples of the reported violations, it would be helpful if you would advise us of any specific cases in which you believe such violations have occurred, so that appropriate corrective action can be taken as soon as possible. To ensure that any problem is expeditiously addressed, please bring this information to the attention of Russell J. Hanks, Deputy General Counsel for the Office of Administrative Hearings with a copy to me.

APPENDIX *jc*

I trust that this adequately addresses your concerns. If you would like to discuss this matter further, please feel free to give me a call at 512-474-9502.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Róbitzek". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

John E. Róbitzek
General Counsel

Attachment

cc: Russell J. Hanks
Sebastian Addamo
Henry Pedicone

M E M O R A N D U M
DSS-524ELTO: All NYC Hearing Officers and
Supervising Hearing Officers

DATE: August 23, 1996

FROM: Russell J. Hanks
RJH

SUBJECT: Hearing Decisions

As you are undoubtedly aware, the volume of decisions issued by our office contains a significant and increasing percentage of "general remands" and "Rodriguez" withdrawals. These decisions are problematical in that they create difficult compliance monitoring situations, often result in a repeat of the same action with subsequent hearing requests, and in "general remand" cases are of increasing concern to The United States Department of Agriculture, Food and Nutrition Service (FNS).

For these reasons it is critical that we strive to conduct hearings and issue decisions that provide specific relief, and finality, to the original hearing request.

In notice based hearings, the terms of the stipulation in Rodriguez v. Blum require that the Agency withdraw its determination to discontinue, reduce or restrict the Appellant's public assistance if it does not appear at the hearing with the Appellant's complete relevant case record.

"Complete relevant case record" is defined as . . . "that portion of an appellant's case record maintained by the agency in each of the following areas pertinent to the issue or issues at the hearing: (i) face to face recertification, (ii) income maintenance, (iii) employment." What constitutes a "complete relevant case record" must be determined on a case by case basis. It is not necessarily the entire record for the client or even the entire record on the underlying subject matter. An assessment should be made by the hearing officer in each case to determine if all documents pertinent to the issue or issues are present at the hearing. If the hearing officer determines that all relevant documents are present, the hearing should proceed. In the event that all documents, pertinent to the issue or issues at the hearing, are not present, the Agency must withdraw its notice pursuant to Rodriguez. If the hearing officer concludes that the documents brought by the agency are not the complete relevant case record, but the agency will not withdraw the notice because it thinks it has brought the relevant case record, the hearing officer's decision should specify what documents were available at the hearing, why the documents were insufficient and what additional documents should have been included.

In situations where the hearing officer determines that the complete, relevant case record is present and proceeds with the hearing, the issue may expand or the record may develop in such a way that additional documents, not present, become pertinent. In such circumstances a recess (to access WMS) or an adjournment (to obtain documents) may be appropriate. Such an adjournment is only appropriate when there is a strong expectation that the district will obtain the additional documents and that the appellant will not be unreasonably harmed by the delay. Multiple adjournments are not justifiable for this purpose.

In non-notice based hearings, every effort should be made to develop a record sufficient to permit the issuance of a decision containing a specific directive.

These approaches should improve our ability to provide specific relief to Appellants, give clearer direction to Compliance staff and address the concerns of FNS. They should also help reduce the volume of repetitive hearing requests which is critical in these times of record request level activity.

Please consult with your supervisor if you have any questions

RJH:mh

cc: John E. Robitzek
Sebastian Addamo
Robert McDougall
Henry Pedicone



Daniel L. Greenberg
Executive Director and
Attorney-in-Chief

The Civil Division
Helaine M. Barnett
Attorney-in-Charge

Bronx Neighborhood Office
Marshall Green
Attorney-in-Charge

February 9, 1998

Brian J. Wing
Commissioner
State of New York
Office of Temporary and Disability Assistance
40 North Pearl Street
Albany, New York 12243-0001

Rae Linefsky
Acting Commissioner
The City of New York
Human Resources Administration
250 Church Street, 15th Floor
New York, New York 10013

Re: Rodriguez v. Blum
Annunziata v. Blum

Dear Commissioners Wing and Linefsky:

The State of New York Office of Temporary and Disability Assistance and The City of New York Human Resources Administration and certain of their employees have been and are violating the Stipulation and Judgment in Rodriguez v. Blum, 76 Civ. 4518 (VLB) (S.D.N.Y. Mar. 3, 1983), and the Stipulation and Judgment in Annunziata v. Blum, 81 Civ. 302 (CSH) (S.D.N.Y. Apr. 4, 1983).

Rodriguez is being violated whenever (a) the City appears at a fair hearing without the recipient's "complete relevant case record," Rodriguez ¶ 1(g), and fails to withdraw its notices to and notices of intent to reduce, discontinue or restrict the recipient's public assistance benefits, and (b) the State fails to deem the City's failure as a withdrawal.

Annunziata is being violated whenever (a) the City appears at a fair hearing without the recipient's "case record," Annunziata ¶ 1(f), and fails to withdraw its notices to and notices of intent to reduce, discontinue or restrict the recipient's medical assistance benefits, and (b) the State fails to deem the City's failure as a withdrawal.

Unless I receive from you or your general counsels immediate assurances that (a) all violations of the Stipulations and Judgments will cease immediately, and (b) all notices the City failed to withdraw and the State failed to deem withdrawn will be withdrawn, and all benefits reinstated, I will be compelled to seek contempt against your agencies and its employees responsible for and participating in the violations.

Sincerely,

Ian F. Feldman
Assistant Attorney-in-Charge
(718) 991-4758 ext. 248

cc: John E. Robitzek
General Counsel
Office of Legal Affairs
State of New York
Office of Temporary and Disability Assistance

Russell J. Hanks
Deputy General Counsel
Office of Administrative Hearings
State of New York
Office of Temporary and Disability Assistance

Gabriel W. Gorenstein
General Counsel
The City of New York
Human Resources Administration