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Panel Grants Attorney's Fees in Food Stamp Program Case

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A unanimous appeals panel in Brooklyn last week approved the payment of \$335,000 to two Long Island attorneys who in 2007 won an injunction that resulted in the payment of an estimated additional \$6.6 million annually in food stamp benefits to 15,000 mentally disabled people living in group homes.

However, the panel declined to grant broader retroactive relief for the group home residents.

The two attorneys, John F. Castellano and Peter Vollmer, succeeded in winning an injunction from Supreme Court Justice Michele M. Woodard in Nassau County blocking New York state from continuing to pay a reduced level of food stamp benefits to disabled residents of group homes receiving federal Supplemental Security Income (SSI) assistance.

The panel also sustained the fee award, agreeing with Justice Woodard that the state was not "substantially justified" in its legal position in contending that the split payment plan was exempt from the requirements of the Administrative Procedure Act.

Starting in 2005, the state Office of Temporary and Disability Assistance, which administers the federal food stamp program, began paying food stamp benefits to SSI recipients in group homes that were less than the amount provided to residents receiving state-funded public assistance.

According to Mr. Vollmer, typically under the program, which went into effect on Jan. 1, 2005, public assistance recipients received \$216 a month in food stamp benefits while those on SSI were issued \$84 a month.

The group home residents, part of the class action in *Matter of Graves v. Doar*, 10218/06, were mentally disabled individuals, many of whom had recently been released from state institutions. Most of the class members received financial assistance under the SSI program, which provides benefits to the indigent disabled, but some received state-funded public assistance while their applications for federal assistance were processed.

In 2007, Justice Woodard blocked the continuation of the different benefits, ruling that the state had not complied with public notice requirements required by the Administrative Procedure Act in introducing its new approach.

The state responded to the ruling by eliminating the dual-benefit approach as part of a broader overhaul of the way it administered the food stamp program.

That decision resulted in the 15,000 SSI beneficiaries living in group homes statewide receiving an estimated \$6.6 million more each year in food stamp benefits, according to Anthony Farmer, a spokesperson for the Office of Temporary and Disability Assistance.

Retroactive Relief at Issue

In her 2007 ruling, Justice Woodard limited retroactive relief to those SSI recipients receiving food stamps before the introduction of the dual benefit levels on Jan. 1, 2005.

Her ruling, however, did not provide any retroactive benefits to SSI recipients who moved into group homes during the nearly four years the program was in place. It did not end until Sept. 30, 2008.

To win retroactive benefits for that broader class, Mr. Vollmer and Mr. Castellano, the director of the Mercy Homes Advocacy Program, continued to press the litigation, arguing that the discrepancy

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violated the equal protection clause.

Justice Woodard accepted the argument in a 2009 decision, and that ruling was affirmed by the Appellate Division, Second Department, panel last week.

Both Justice Woodard and the panel agreed that since a government benefit was involved, the state was only required to show a "rational basis" for the disparity between the benefit levels. Both courts, however, concluded that the state could not meet that standard, which is designed to give officials a broad range of discretion.

Despite finding a constitutional violation, the appeals court decided that no broader retroactive relief was appropriate than that granted by Justice Woodard in 2007.

The fee award compensated the two attorneys for work done through Justice Woodward's 2007 ruling blocking the state from continuing its dual-benefit approach. Mr. Vollmer said the attorneys intend to file a separate fee application for work done subsequent to the 2007 ruling.

The same panel, Justices Reinaldo E. Rivera, Randall T. Eng, Sheri S. Roman and Robert J. Miller, decided the appeals of both the attorney's fee award and the equal protection ruling. The panel heard arguments on June 2.

Assistant Attorneys General Benjamin N. Gutman and Peter Karanjia represented Robert Doar, commissioner of the Office of Temporary and Disability Assistance of the New York State Department of Family Assistance, on the equal protection and retroactivity issues.

Mr. Gutman and Richard Jackson represented the state in the fees portion of the case.

Mr. Vollmer and Mr. Castellano both began their legal careers in the federally funded legal services program. Their careers briefly overlapped at the Nassau/Suffolk Law Services Committee.

Mr. Castellano was a staff attorney and supervisor in the Long Island program's Mental Health Law Project from 1977 to 1987.

Mr. Vollmer was a supervisor for five of the six years he was with the program's public entitlement unit from 1986 to 1993.

According to a recent fee application, Mr. Vollmer has prevailed in 151 of the 188 cases he has brought. Twenty-one of those cases have been certified as class actions, with one resulting in a settlement ending a New York City policy that withheld public assistance benefits from recipients while they were required to attend a dispute-resolution session.

Another resulted in a requirement that New York City more rapidly process applications for home heating assistance.

Mr. Castellano became the director of the legal services for Mercy Haven Inc. in 1997, a non-denominational group founded by two nuns with the Mercy Sisterhood in 1985. Mercy Haven operates three residential homes for the mentally disabled on Long Island.

Mr. Castellano, Mercy Haven's sole lawyer, is the founder of its advocacy program. Since the program was set up in 1997, he and Mr. Vollmer had teamed up on a number of cases.

Mr. Vollmer is based in Sea Cliff, and the Mercy Advocacy Program is located in Islip Terrace.

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