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The Wages of Welfare Reform: A Report on New York City's Job Centers

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The Wages of Welfare Reform: A Report on New York City's Job Centers

The Committee on Social Welfare Law

"Between the idea and the reality ... falls the shadow."\(^1\)

Waving the banner of welfare reform, President Clinton signed historic legislation in August 1996 abolishing poor families' federal entitlement to direct cash assistance and replacing it with a decentralized system of conditional block grants to the states. To qualify for these grants, most states—including New York—overhauled their own welfare systems and added rigorous new welfare-to-work requirements (the most prominent of which is frequently called "workfare"), as well as other programs which became conditions of eligibility for assistance. Not surprisingly, New York City, with one of the largest and most concentrated welfare populations in the United States, has become a crucible for these momentous changes.

Even before the passage of federal legislation, the administration of Mayor Rudolph Giuliani had taken aggressive steps to place the City at the cutting edge of welfare reform by restructuring its public assistance system. In April 1995, the Mayor denounced the welfare system in New York City as too "user-friendly" and declared that "[i]t was a system say-

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ing, please come and take the money."2 In response to this alleged state of affairs, he introduced NYC-WAY ("Win, Accountability, You"), designed to tighten administrative procedures and move more public assistance recipients into workfare. In 1997, Mayor Giuliani brought Jason Turner to New York from Wisconsin, where he has been credited with dramatically reducing the welfare caseload, to become Commissioner of the Human Resources Administration ("HRA")3 and announced a major initiative to transform the City's "Income Support Centers," which had provided primary access to a variety of welfare-related services, into "Job Centers," designed to emphasize workfare requirements and drastically reduce public assistance rolls.

The Job Center initiative has caused widespread controversy and prompted federal litigation, Reynolds v. Giuliani.4 The Reynolds plaintiffs claimed that staff at the Job Centers were preventing the poor from applying for Medicaid, food stamps, cash assistance, and emergency assistance in violation of federal and state law and the federal Constitution. On February 29, 1999, a District Court judge agreed and enjoined the City's program until such time as corrective measures could be implemented.5

This report examines the Job Center initiative and surrounding litigation. Part I describe the background of welfare reform in New York City. Part II discusses the philosophy of welfare reform embraced by Mayor Giuliani and Commissioner Turner, the principal architect of the Job Centers, and briefly analyzes the Giuliani Administration's earlier policies that laid the groundwork for the Job Center program. Part III lays out the operation of the Job Centers. Part IV describes the impact the Job Center conversion has had on applicants. Part V outlines the Reynolds litigation. Part VI contains concluding remarks.

3. HRA is the local social services agency responsible for administering New York's cash assistance, food stamp, and Medicaid programs.
4. Lakisha Reynolds, Georgina Bonilla, April Smiley, Lue Garlick, Adriana Calabrese, Jenny Cuevas, and Elston Richards v. Rudolph Giuliani, as Mayor of the City of New York; Jason Turner, as Commissioner of the City of New York Human Resources Administration; Brian J. Wing, as Commissioner of the New York State Office of Temporary and Disability Assistance; and Barbara DeBuono, as Commissioner of the New York State Department of Health. 98 CIV 8877, S.D.N.Y. 1998.

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I. BACKGROUND—WELFARE IN NEW YORK CITY

Public assistance (welfare) in New York has historically referred to two cash assistance programs, Aid to Families with Dependent Children ("AFDC") and Home Relief ("HR"). AFDC was created by the federal government, funded jointly by state and federal governments, and offered assistance primarily to single parents and their children. HR was purely a creation of New York State under its constitutional mandate to care for the poor and served as a catchall for any needy person who was not eligible for other benefits, although most HR recipients were single adults and childless couples.

With the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), the federal government abolished the AFDC program and replaced it with a block grant program, Temporary Assistance to Needy Families ("TANF"). Principles which are central to federal welfare reform are that federal welfare benefits will be time-limited and that the states will exercise considerably more discretion over rules governing the benefit programs and eligibility criteria.

One year after the federal enactment of PRWORA, New York enacted the Welfare Reform Act of 1997 ("WRA"). This law replaced AFDC with Family Assistance (New York's TANF program), and replaced HR with Safety Net Assistance. In large measure, the State's welfare overhaul tracks federal welfare reform, although it also provides that households that reach their designated time limit (five years for Family Assistance and two years for Safety Net Assistance) may still be eligible for a modified, but not time-limited benefit. The State agencies which oversee these programs are the Office of Temporary and Disability Assistance (cash assistance and food stamps) and the Department of Health (Medicaid).

In New York City, the Human Resources Administration administers Family Assistance and Safety Net Assistance, as well as the federal food stamp and Medicaid programs. These benefits are provided through neighborhood Income Support Centers, formerly known as Income Maintenance Centers. As discussed in detail below, Commissioner Turner has begun the process of converting these centers into Job Centers. The centers screen and process applications and generally manage the cases of public assistance applicants and recipients. Separate food-stamp-only and Medicaid-only centers handle the cases of recipients who are not eligible

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7. Cases are distributed based on zip codes, so that each neighborhood center serves individuals who live in from three to six zip codes, depending on the concentration of poverty.
for or do not seek cash assistance.

The welfare cash benefit has two components: the basic allowance, which is uniform statewide, and the shelter allowance, which varies by county. Despite yearly increases in the cost of living, neither element of the public assistance grant has been modified since a 6% increase in 1990.8

Finally, it should be noted that while state and federal welfare reform have already had a profound impact on benefits for the needy, the New York City welfare initiatives that are the subject of this article were, to a significant degree, adopted independent of state and federal legislation. The PRWORA and the WRA block-granted welfare benefits imposed time limits on cash assistance and significantly reduced aid to legal, non-citizen immigrants. The New York City initiative focuses on administrative procedures, particularly the application process, and aggressively enforces the work rules, affording little latitude to recipients among the array of work activities allowable under federal and state law. Welfare reform legislation may have encouraged some of the features of the Job Center conversion, but it may be argued that national and state welfare reform most significantly affected the City’s restructuring of public assistance by fostering an atmosphere that made a program of dramatic cuts in aid to the poor more politically acceptable.

II. WELFARE REFORM IN NEW YORK CITY

Since his election in November 1993, Mayor Giuliani has been an aggressive proponent of rigorous and extensive work requirements and time limits as a means of reducing welfare rolls. And since 1997, the Mayor’s policies have been fueled by the equally-stringent mind set of Commissioner Turner.

A. The Giuliani Philosophy

At the core of the welfare philosophy articulated by the Mayor is the belief that poverty—and the need for public assistance—is largely the product of the failure of individual will, rather than a symptom of a flawed socio-economic system. In his view, it is appropriate to reduce the welfare caseload substantially by (1) making it much more difficult to apply for and ob-

8. The grant amount varies depending on household size. For example, the grant for a household of two in New York City is $468.50 ($250 for shelter costs and $218.50 for the family’s remaining expenses); for a household of three, the grant increases to $577 per month ($286 for shelter costs and $291 for remaining expenses).
tain benefits and (2) conditioning receipt of benefits on work and other forms of obligation. The Mayor has pledged to end welfare in New York City by the year 2000 through caseload reduction and the universal adoption of a full-time workfare requirement. In his most recent State of the City address, Mayor Giuliani declared:

We’ve got to re-establish over and over again, the social contract: for every benefit an obligation. . . . We have got to be willing to treat social problems as if everyone is your child, everyone is your relative. You wouldn’t just want them to be dependent the rest of their lives. You would want to get them back to work. . . . HRA is going to turn into a big employment agency.

Mayor Giuliani’s decision to bring Jason Turner from Wisconsin to run HRA was equally crucial in defining the Administration’s position. Turner had established his reputation by helping to develop and implement the Wisconsin Works (“W-2”) program, among the first welfare programs to incorporate universal work requirements, time-limited benefits, and diversion efforts to discourage people from applying for assistance. The W-2 program played a major role in causing a 71% drop in Wisconsin’s welfare caseload in less than three years. Commissioner Turner has been, if anything, a more outspoken proponent of workfare than Mayor Giuliani.

Commissioner Turner set forth his philosophy in stark detail in a November 1998 speech given at the State University of New York’s Rockefeller Institute. In that address, Turner denied the existence of any cause-and-effect relationship between poverty and either family dysfunction or negative outcomes for children, even though he acknowledged that there is a strong correlation in the incidence of these factors. Turner argued that merely “intervening directly to increase income” would not alleviate the social ills associated with poverty. Rather, he asserted that the welfare system

11. According to the United States Conference of Mayors’ Status Report on Hunger and Homelessness in America, released on February 18, 1999, 47% of former Wisconsin welfare recipients reported hunger in their households.
12. Address given by Commissioner Turner at the Rockefeller Institute of the State University of New York, New York City, November 17, 1998.

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must also enforce behavioral and attitudinal change by creating a type of Skinner box operating on the principle of punishment rather than rewards, in which "the consequences of non-work, or ineffective work, are met with an immediate system response."\textsuperscript{13}

While the Giuliani Administration has generally embraced the notion of reciprocal social obligation in addressing these issues, a different, much harsher principle has also shaped the Administration's policies. Commissioner Turner has declared that the welfare system should be used as a stick to correct disfavored habits and behaviors:

Many individuals we try and help have had an absence of boundaries; they have had excess freedom. . . . What we need to create is something that was not possible in the old entitlement system—an urgency to take action. We need to create, if you will, a personal crisis in individuals' lives which can be [used] constructively as a tool for helping them.\textsuperscript{14}

Within this conceptual framework, an individual's inability to work himself out of the system will, in most instances, represent a personal failure to take action and overcome social maladaptations. As a consequence, personal upheaval resulting from changes in welfare rules and requirements may reflect not systemic flaws, but a necessary stage in the salutary personal crises that the system is designed to create.

An attitude such as this leads directly to the view that cutting the welfare caseload is, in itself, not a budgeting tool but a valued objective, with little regard for how it is accomplished or what happens to those people who will not receive assistance. The extent to which this attitude has dictated the Administration's actual policies is central to the controversy over the Job Center initiative.

\textbf{B. Local Precursors of the Job Center Initiative}

Well before Commissioner Turner's appointment and the announcement of the Job Center initiative, the Giuliani Administration had begun to make fundamental changes in the City's public assistance system. In January 1995, the City introduced NYC-WAY, a two-pronged program designed to (1) make the welfare application process much more rigorous and (2) impose work-related requirements on greater numbers of recipients. In the words of then-mayoral adviser Richard Schwartz, the tighten-
ing of the application process was designed to "restore integrity" to the welfare system; the expansion of work requirements would help to "build a sense of reciprocity."\textsuperscript{15} The program initially applied only to Home Relief clients—primarily unmarried individuals and childless couples—but was later expanded to include the AFDC population as well.

1. NYC-WAY Applications. To screen welfare applicants more aggressively for possible fraud, HRA developed a process called Eligibility Verification Review ("EVR"). In addition to completing the usual application process, with its range of interviews at the Income Support Center and production of a lengthy list of documents to verify eligibility, applicants were subjected to two additional requirements. First, all applicants, regardless of where they resided, were required to report to the EVR office in downtown Brooklyn, where they were questioned by one or two fraud investigators concerning the same eligibility documentation that was submitted at the Income Support Center. Second, one or more EVR fraud investigators would conduct an unannounced home visit, theoretically to confirm the applicant's stated place of residence.\textsuperscript{16}

2. NYC-WAY Work Program. Between 1994 and 1995, federal and state law recognized a wide range of activities that could meet welfare-to-work participation requirements, including an array of educational and training programs.\textsuperscript{17} But the Mayor's NYC-WAY initiative made it clear that workfare would be the primary activity, and that little allowance would be made for other work-related endeavors. Indeed, a Center Director Memorandum from the Deputy Commissioner of Income Support Operations to field managers and center directors noted that the only education and training programs for which recipients could request consideration as work activities would be those that involved "short-term vocational training of 90 days or less."\textsuperscript{18} HRA began to articulate a goal of

\begin{itemize}
\item[16.] The general tenor of this program is amply demonstrated by the fact that these investigators were known to wear badges which closely resembled those of the New York City Police. In addition, investigators would verbally identify themselves as "the FEDS," an acronym for HRA's "Front-End Detection System," when attempting to gain entrance to an applicant's home. \textit{McKean v. Giuliani}, N.Y. Sup. Ct., December 31, 1995.
\item[18.] Center Director (CD) Memo, December 19, 1994, cited in \textit{New York City "WAY... Not Yet the Way}, Mark Green, Public Advocate for the City of New York, June, 1995, p.5.
\end{itemize}
100 percent participation in work programs, particularly in workfare and job search activities.

In addition, the assignment of work activities began to occur much earlier in the process. As soon as clients filed an application, they were required to fulfill extensive job search assignments; failure to comply with any aspect of these requirements resulted in the rejection of the application. If and when their applications were accepted, they were promptly given workfare assignments.

The NYC-WAY initiative yielded immediate, dramatic results. By April 1995, the Mayor, in a celebratory press conference with Governor George Pataki, was able to declare that the denial rate for applications for Home Relief had risen from 20% in the first quarter of 1994 to 56% for the same period in 1995. Of course, interpretations of the statistics differed sharply, with the Mayor arguing that only the truly needy were now being accepted for assistance, and advocates claiming that many truly needy people were being driven away by the new procedural hurdles. Regardless of the analysis, the essential component of the Mayor’s approach to welfare policy—the rapid and massive reduction of the rolls through aggressive new administrative and procedural measures—was in full swing.

As striking as the impact of NYC-WAY proved to be, its effects were modest compared to policies implemented following the appointment of Commissioner Turner in February 1997.

III. THE JOB CENTERS

Mayor Giuliani and Commissioner Turner began converting HRA’s 31 Income Support Centers to Job Centers in April 1998. By December 1998, 15 of the 31 Income Support Centers had been converted. Although it was Commissioner Turner’s intention to complete the conversion of all centers by the Spring of 1999, this plan was preliminarily enjoined by the Reynolds court. This lawsuit and the court’s decision therein are discussed in Section V below.

A. The Job Center Application Process

Job Center procedures differ greatly from Income Support Center application procedures, which are still in place at those centers that have

20. This section describes the application process prior to modifications made pursuant to the Reynolds litigation. Those changes are discussed below.
not yet been converted. To advance the Mayor's goal of reducing the number of persons receiving assistance, the Job Center staff focuses its efforts at every step on dissuading applicants from submitting an application for any assistance, despite federal mandates that prohibit such efforts.\textsuperscript{21} Applicants are required to complete a number of steps in the process before actually receiving an application form and must revisit the Job Center at least once before the application form is submitted. This procedure also fails to address emergencies such as hunger and imminent homelessness.

Furthermore, the newly converted Job Centers are allocated a prescribed funding level for their operating budgets commensurate with their budget for the previous year. Each is required to make efforts to reduce its caseload by 10\% each year for three years and, to the extent it succeeds, is permitted to use the savings for a variety of uses, a troubling incentive for administrators to encourage the improper denial of welfare applications.\textsuperscript{22}

The following are the steps in the application process at Job Centers. Presumably, these three steps may be completed on the first visit to the center, after which the applicant may or may not receive an application form on which to request assistance. HRA has 30 days (45 for Safety Net applicants) to determine eligibility for ongoing benefits \textit{after} the application form has been submitted with all necessary documentation.

\textbf{1. Step One: Receptionist}

An applicant for assistance at Job Centers is first required to see a Receptionist, one of whose primary duties is to screen the applicant to ensure that she is in the correct zip code catchment area and is seeking to apply for cash assistance, as opposed to food stamps or Medicaid alone; the procedure requires that applicants seeking only food stamps or Medicaid be directed to a different center. The Receptionist is also charged with explaining Job Center procedures and the myriad hurdles involved in the application process. Instead of merely describing the procedures, however, it appears that many Receptionists have been focusing on the obstacles in an effort to divert applicants from the process.\textsuperscript{23} Furthermore,

\textsuperscript{21} 7 U.S.C. §2020(c)(2)(b)(III), 7 C.F.R. §273.2(c)(1) and (2) (households must be permitted and, in fact, encouraged, to file a food stamp application on the first day that they contact the local social services office); 42 U.S.C. §1396a(8), 42 C.F.R. §435.906 (an individual or household who wishes to make an application for Medicaid benefits must be given the opportunity to do so without delay).

\textsuperscript{22} Included in the initial plan was a provision allowing 10\% of these savings to be used for worker bonuses, a measure which was not approved in the final plan.

\textsuperscript{23} Reynolds v. Giuliani, Declaration of Michelle Stevens, December 9, 1998.
Receptionists have routinely misinformed applicants by telling them, for example, that welfare, expedited food stamps, and emergency needs grants no longer exist, or that all assistance is subject to time-limits, when, in reality, food stamps and Medicaid are not time-limited.\textsuperscript{24} Receptionists have also improperly turned away applicants who arrive at Job Centers after 9:30 a.m., telling them that they are too late to apply that day.\textsuperscript{25}

If the potential applicant has not yet been dissuaded from applying, the Receptionist will ask her to complete a Participant Job Profile ("PJP") form,\textsuperscript{26} which is not used in the Income Support Centers but is required of all individuals and families seeking any type of aid at a Job Center, including expedited food stamps and emergency rent assistance. The primary purpose for the PJP form is to identify potential alternative sources of support, such as friends or relatives. Once a person identifies any such source, she is often told to withdraw from the process and/or to return with proof that the relative or friend cannot support her and her family, regardless of status, legal obligation or ability to provide assistance.\textsuperscript{27} In addition, the PJP is used to elicit information that may be used for making workfare assignments during the application process.\textsuperscript{28}

Another deterrent procedure which violates both federal food stamp and Medicaid law mandates applicants to obtain documents from other agencies and outside sources, for instance the New York State Office of Employment Services or Family Court, as a condition of completing the PJP form.\textsuperscript{29}

The last page of the PJP has two signature lines: one for consent to be investigated for fraud as a condition of eligibility and, directly below it, a signature line for the applicant to consent to HRA's withdrawal of the PJP. Efforts are made to persuade applicants to sign the withdrawal and, because of the proximity of the two signature lines and the fact that the

\textsuperscript{24} Id.

\textsuperscript{25} Id.

\textsuperscript{26} A significantly different version of this form called the "Application/Job Profile" has since been created as part of the City's Revised Corrective Action Plan and was submitted to the Reynolds court on March 16, 1999; the court has not yet ruled as to whether the revisions are sufficient to address the legal violations. These revisions are discussed in Section V.

\textsuperscript{27} Reynolds v. Giuliani, Stevens Declaration.

\textsuperscript{28} Id.

\textsuperscript{29} 7 C.F.R. § 273.2(c)(2) (an application filed on day one by an individual or household seeking to apply for food stamps need only include the applicant's name, address and signature, with documentation of eligibility, such as income and household composition, submitted at another time).
applicant is required to sign the first signature line in order to have the application process continue, some applicants sign the bottom line, inadvertently withdrawing from the application process.

2. Step Two: Financial Planner

An applicant who has completed the PJP form and has not thus far withdrawn her application is next referred to a Financial Planner who is responsible for processing all requests for emergency assistance, such as expedited food stamp and rental assistance grants when evictions and utility shut-offs are imminent. The Financial Planner reviews the PJP form with the applicant and discusses alternative sources of support. Financial Planners may suggest that the applicant instead seek non-governmental forms of charity, including family support networks outside of New York City and financial assistance from churches, foundations and community-based organizations.30

Although there is nothing wrong in theory with suggesting alternative sources of assistance, in reality, Financial Planners concentrate their efforts on attempting to dissuade applicants from continuing the application process and not working toward the applicant’s best interests or intent.31 For instance, Financial Planners have frequently referred families with inadequate or no food supplies to soup kitchens or food pantries rather than processing their emergency assistance applications; the families then leave the center, only to find that the food pantry has run out of food or closed for the day. Neither are Financial Planners eager to handle applicants’ other emergency needs. Those who lack crucial medications, such as insulin, are told they must wait until the entire application is approved in contravention of regulations requiring that emergent health needs be addressed immediately.32 Families facing eviction for non-payment of rent are told that no emergency grants exist or that they must wait until their application has been approved before receiving emergency grants that could keep them safely housed.33

30. Although this practice should change with the new Application/Job Profile form, described above, the PJP form is not an application form. Under the original procedure, the applicant was required to fill out the PJP form as a condition of receiving the actual application for benefits.


32. Id.

33. Id.; 42 C.F.R. §435.930 (the state agency and its delegate local agency must provide

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3. Step Three: Employment Planner

After meeting with the Financial Planner, the applicant must be finger-imaged and video-imaged as part of the agency’s fraud detection program and then interviewed by an Employment Planner. The Employment Planner gives the applicant a calendar covering about six weeks’ worth of job-related appointments and reminds the applicant that her application will be denied if she misses any of the appointments, even for good cause. The applicant is also told that she must engage in job search activities at the Job Center from 9:30 AM until 4:30 PM on every day she does not have an employment-related appointment scheduled. After this meeting, the applicant is either given a blank application form or is told to return the next day to complete an application form, after which she will receive an interview some seven business days hence to submit the documentation of her eligibility.

IV. THE IMPACT OF THE JOB CENTER PROGRAM

Individuals and families compelled to navigate the Job Center process experience significant harm. Typical applicants for assistance are destitute. They have almost no food, have no cash whatsoever, and have been unemployed for some time. Many have had unemployment benefits which have long since run out. Parents may have received child support at some point in time, but this has generally ceased. The children are usually in need of medical care, which is likely to have been available only on an emergency basis at a public hospital. Families have inadequate clothing and furniture, are on the verge of eviction, and have exhausted all sources of family and community support.

In the autumn of 1998, the New York City Coalition Against Hunger announced that the demand for charity food among New York’s needy was on the rise. On October 16, 1998, after an investigation of the problem, The New York Daily News reported that “[g]rowing hunger is no sur-

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assistance for applicants to secure emergency medical care as needed); N.Y.C.R.R. §351.2(f) (categorical eligibility factors: special eligibility requirements of Emergency Assistance to Families [EAF] must be considered whenever there is a possibility of eligibility for one of these categories; when eligibility or presumptive eligibility is evident, full utilization of these categories must be made); 18 N.Y.C.R.R. §382.2 (predetermination grants must be made to families or individuals when all evidence secured supports a presumption of categorical eligibility but full documentation is lacking, a decision upon which must be made as soon as possible in the application process); 18 N.Y.C.R.R. §372.1 (EAF defined as all aid, care and services to deal with crisis situations threatening the family and urgent needs resulting from a sudden occurrence or set of circumstances demanding immediate attention).

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prise given that the city closed over 163,000 food stamp cases and over 119,000 welfare cases with few of those terminated from benefits finding employment.34 The following week, The Daily News reported that 388,000 people, many of them children, were suffering from hunger.35

Receipt of expedited food stamps, emergency Medicaid, and a small predetermination cash grant, to which applicants are entitled under the law, could provide temporary relief while they juggle employment requirements, fraud detection interviews, and appearances in housing court. Yet the failure of Job Center staff to assist these applicants, described in exhaustive detail in the Reynolds complaint, is not only a matter of record, but is consistent with the Administration's publicly-espoused method for reducing the welfare rolls.

If applicants with employment histories and families for whom they provide daily care are unable to access assistance in this system, persons with special needs are doomed from the start. The federal Americans with Disabilities Act (ADA), as well as numerous state statutes, afford handicapped individuals important protections both in the world of work and when applying for public benefits. State regulations mandate that the Job Center Receptionist, Financial Planner, Employment Planner, and all other employees inquire as to whether an applicant for benefits may have a mental or physical impairment that would limit her ability to participate in work activities. If either the applicant or the staff person believes an impairment exists, the applicant must be given ten days to return to the center with medical documentation. The Job Center worker may also refer the applicant to Health Services Systems ("HSS"), a City-contracted medical examiner, for an independent examination.36

Recent Medicaid legislation has created the concept of "special needs plans" for, among other groups, people with mental disabilities.37 People qualifying for these special need plans are entitled to more comprehensive health services and are considered work-limited or unable to work.38

Nonetheless, both the State Office of Temporary and Disability Assis-

36. 12 N.Y.C.R.R. §1300.2(c)(1) and (d).
37. Social Services Law §332-b.

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tance and HRA have failed to implement these procedures. Rather, it is HRA's policy to assume that each person is able to participate in work activities unless they have received a disability determination by the Social Security Administration. This policy has been translated into practices which often fail to accommodate the impaired and disabled and, in many instances, divert them from the application process.

According to HRA's Job Center Operations Manual, the Financial Planner is instructed to review with the applicant questions concerning medical problems that could limit ability to work. But regardless of the response, the Financial Planner must also inform the applicant that, in order to be eligible for benefits, she or he must first complete 35-50 days of mandatory job search activities. Such information is overwhelming to those suffering from a debilitating mental or physical condition and is likely to divert these applicants from ever pursuing an application.

Disabilities typical among applicants for public assistance at Job Centers include high blood pressure, cardiac and circulatory illnesses, seizure disorders, memory lapses, anemia, pulmonary and respiratory disease, orthopedic disabilities, heart disease, and all forms of mental illness. With no access to regular health care and prescription drugs, these conditions have usually gone untreated for some time. Although the law provides that applicants shall receive emergency Medicaid to cover health crises, the Job Centers have generally failed to provide such information or assistance, requiring the completion of the entire application process before their medical needs can be met.

with limitations or "work limited" under Social Services Law §§332-b and 335-b (5)(e) who are assigned to work programs which exceed their limitations or exacerbate their conditions; State and City Commissioners were required to modify notices and procedures and enjoined from assigning class members to workforce until promulgating regulations and procedures which conform to relevant provisions under the Americans with Disabilities Act).

40. Social Services Law §364-j (m) (mental health special needs plan defined); 13 N.Y.C.R.R §302 (c)(11).
42. 42 C.F.R. §435.930 (the state agency and its local delegate agency must provide assistance for applicants to secure emergency medical care as needed). As part of the City's response to the court's January order in Reynolds, HRA issued Policy Directive 99-09, which requires that Job Centers distribute brochures about the ADA and assist applicants if they affirmatively notify the Receptionist that they are unable to complete the forms or wait on line to be interviewed due to their disabilities.
New York State policy mandates that homeless applicants and recipients be evaluated for employability in the same manner as the general population. The fact that homelessness may pose significant obstacles to compliance with work rules should be addressed, but such status is not, by itself, a basis for any exemption.43

Nonetheless, homeless persons often travel long distances to obtain public shelter, usually without carfare, and few shelters are within walking distance of the Job Centers. Moreover, many of their belongings, such as extra clothing, are often in storage and unavailable for daily use. The opportunity to shower, do laundry, and prepare for job interviews is difficult to find, and mail service in the shelter system is precarious at best. Time and again, applications by the homeless are rejected, allegedly for failure to fully complete the application process and almost always without the receipt of written notice.

Because inability to keep an appointment due to lack of carfare does not constitute good cause, even when no transportation money is provided, the litany of required interviews mandated by the process serves as a nearly insurmountable obstacle for homeless individuals and families. Despite such obvious pitfalls, the City plans to open a single, city-wide Job Center for all homeless applicants instead of accepting applications in neighborhood centers,44 multiplying transportation difficulties.

Even more troubling are regulations which require that homeless families residing in City shelters be sanctioned if the head of household fails twice in a thirty-day period to fulfill, among other responsibilities, any Job Center or workfare requirements.45 The penalty for this failure is revocation of the entire family’s access to shelter for thirty days. In addition, HRA has not ruled out referring the sanctioned parent to the City’s Administration for Children’s Services on child neglect charges and placing the children in foster care if appropriate housing is not found.

Victims of domestic violence are also more vulnerable under the Job Center application process. It is an HRA policy to ask applicants if they are victims of domestic abuse.46 However, any applicant so identified is required, as a condition of applying for benefits, to meet with a worker in

44. The injunction in Reynolds has delayed the implementation of this plan.
45. 18 N.Y.C.R.R. §352.35(e)(1) (homeless individuals and families who reside in City shelters must comply with requirements for participation in employment programs including looking for work and accepting work assignments).

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the Domestic Violence Unit ("DVU"). This requirement is especially burdensome because many Job Centers do not have a DVU on site, which means victims are required to wait several days for an appointment at another location. It is only after she has attended this interview that the applicant is allowed to proceed with the application process.

V. THE REYNOLDS LITIGATION

In the fall of 1998, following escalating complaints by New York City advocates, the United States Department of Agriculture ("USDA") launched an investigation of HRA's application procedures. In November, State Commissioner Brian J. Wing announced, "We have struggled throughout the one-year life of the State Food Assistance Program to avert a disaster due to New York City's flagrant disregard of program rules. We were forced to set a precedent by sending our auditors into New York City to clean up the [program] . . . [a]nd we currently are doing all we can to hold off the arrival of the USDA Office of Inspector General, until we can get the mess in New York City cleaned up."47

At the same time, the federal Health Care Financing Administration ("HCFA") began an investigation of reports that HRA was discouraging families from completing the Medicaid application process, also in conjunction with the Job Center program, prompting the State Department of Health to initiate its own investigation.

On December 16, 1998, as a result of barriers established by the Giuliani Administration to applications for public benefits at Job Centers, a group of applicants represented by The Legal Aid Society, the Welfare Law Center, New York Legal Assistance Group, and Northern Manhattan Improvement Corporation filed a federal class action lawsuit against the City of New York and New York State claiming that the City, and the State as its supervisory agency, were discouraging and deterring thousands of needy applicants from applying for food stamps, Medicaid, cash benefits, and emergency assistance, and that the State was failing to enforce applicable statutes and regulations. The complaint alleged that the City's practices denied individuals and families necessary food, medical care and cash to meet emergency needs.

The complaint further alleged that the violations were the direct result of the conversion of Income Support Centers to Job Centers. Plaintiffs maintained that, in furtherance of Mayor Giuliani's avowed goal of

diverting individuals and families from receiving public assistance, Job Center workers routinely and wrongfully denied individuals and families emergency food stamp and cash benefits, denied them the opportunity to apply for assistance on their first visit to a Job Center, pressured them into withdrawing their applications, and failed to provide notices of application denials and hearing rights.

At a hearing on December 16, 1998, U.S. District Court Judge William J. Pauley issued a temporary restraining order requiring the City to provide food stamps and emergency assistance to meet the needs of the named plaintiffs and ordered an expedited hearing regarding the plaintiffs' systemic allegations.

On January 20, 1999, one day before a hearing on plaintiffs' request that the court enjoin the implementation of the Job Center program, the USDA released its draft audit report with the following findings:

1. The Centers reviewed do not permit households to apply for the Food Stamp Program on the same day the household contacts them; do not encourage households to file an application the same day they contact the centers; do not make applications readily accessible to potentially eligible households; encourage households to withdraw their "job profiles" (applications for temporary cash assistance) and treat this as a withdrawal of their application for Food Stamp Assistance, and do not tell households of their right to apply for food stamp benefits independent of other program choices.

2. Applicants are inadequately screened for expedited (emergency) service.

3. The Centers reviewed impose eligibility requirements that exceed the standards set by the Food Stamp Act and regulations.

4. When public assistance was denied at the Job Centers reviewed, applicants were required to file a new application for food stamps at a different center.

5. Substantial non-compliance with the Food Stamp Administration and regulations has gone undetected and unaddressed at the local level.48

On January 25, 1999, following a three-day preliminary injunction hearing which was held after settlement discussions broke down, Judge Pauley issued a forty-nine page decision

(a) finding that New York City Job Centers illegally discourage destitute individuals and families from applying for Food Stamps, Medicaid and cash assistance and deny them such assistance; (b) enjoining the City from converting any more Income Support Centers to Job Centers; and (c) ordering City officials to develop a corrective action plan, to comply with the law, and to continue an informal process to address individual cases of urgent need.49

Based on the extensive record presented at the preliminary injunction hearing, the court concluded that plaintiffs had shown a systemic violation of law, rejected the City's argument that the problems were isolated incidents, and ordered the above relief.50 In granting plaintiffs' request for an injunction, the court concluded that plaintiffs faced the risk of irreparable harm and had shown a likelihood of success on the merits of their legal claims. The court rejected defendants' argument that plaintiffs had not stated a cause of action under 42 U.S.C. §1983 and held that food stamp and Medicaid statutes and regulations gave plaintiffs an enforceable legal right, that plaintiffs had an overarching property interest in receiving food stamps, Medicaid and cash assistance, and had asserted a viable due process right.

On March 16, 1999, following negotiations with plaintiffs over an initial plan for correcting the program's deficiencies, the City submitted to the court a Revised Corrective Action Plan which responded to plaintiffs' suggestions regarding the retraining of agency workers and mechanisms to ensure the effective implementation of corrective actions.

The revised policies and procedures make it clear that prospective applicants have the right to submit an application form on their first visit to the center and have their emergency needs addressed at the same time, a significant improvement in the process. The new form resembles the form used at Income Support Centers and is completed before the PJP. In addition, the request for benefits is featured more prominently than the employment assessment, the request to withdraw the application has


50. Id.
been moved to the last page, and the form has been modified so that the request for cash benefits can be withdrawn while continuing the request for food stamps and Medicaid.

New signs have been posted which inform applicants of their right to apply for ongoing benefits and emergency assistance on the first day they visit the Job Center and center staff have been retrained regarding these rights. The City has retrained more than 3,300 welfare case workers and suspended 6 others without pay for turning away applicants during business hours.

On May 24, 1999, Judge Pauley agreed that HRA had made sufficient modifications in its application procedures to proceed with the conversion of three of the remaining six Income Support Centers. According to the Judge, conversion of the remaining three may go forward when HRA demonstrates that the plan has resulted in concrete improvements.51 According to Judge Pauley, “While the...defendants' corrective action plan represents a significant step, it remains to be seen whether the plan's numerous policy directives will yield salutary results at job center.”52

VI. CONCLUDING REMARKS

While the City's modifications in its policies and procedures have been drafted so as to ensure that Job Centers do not impede the rights of the poor to seek assistance when it is needed, effective implementation of the plan may be more difficult to attain. Young children are the population most vulnerable to the consequences of deep poverty, and poor mothers with very young children are among the least able to support themselves through work in the labor market. Yet access to transitional benefits and programs can help these fragile families to move from dependency to self-sufficiency.

An editorial in The New York Times correctly asserts: “If the burden is on the welfare applicant to find other support or to do the most menial private or public jobs to receive welfare, the burden is on the city to make certain that the poor and their 420,000 children currently on welfare are not neglected. Drug addicts, the disabled and new mothers must have help converting to the mayor's work-for-welfare system. Decent child care must also be available for those taking jobs to get their public checks, and

52. Id.
some kind of training is needed to shift those on workfare to real jobs. If Mayor Giuliani wants to boast on the national political circuit about ending welfare in New York City, he must be careful not to create a beggar class in the process."\footnote{53. "Ending Welfare," The New York Times, July 21, 1998.}
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