

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM PART 1, NEW YORK COUNTY

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. EDWARD J. GREENFIELD

Justice

In the matter of the application of

Joyce Ann Miller et al

— against —

Blanche Bernstein et al

DOCKETED
RECEIVED
PART 1

The following papers numbered 1 to _____ read on this motion

No. 155 in Calendar of

Notice of Motion Order to Show Cause - and Affidavits Annexed

Answering Affidavit

Replying Affidavit

Affidavit

Affidavit of Service

Pleadings — Exhibit

Stipulation — Referee's Report — Minutes

Filed Papers

See Motion # 155

Upon the foregoing papers this motion and motion #155 of this date are consolidated for disposition and the proceeding is permitted to be discontinued with prejudice in accordance with stipulation "so ordered" herein.

I, Yvonne Lewis, an attorney and counsel at law, do hereby certify pursuant to CPLR Rule 2105, that I have compared this proceeding with the original and have found it to be a true and complete copy.

DATED: May 23, 1978

Yvonne Lewis

FILED

MAY 11 1978

NEW YORK
CO. CLERK'S OFFICE

Dated: May 11, 1978

Briefs: Plaintiff's Defendant's Petitioner's Respondent's Relator's

Briefs

County Clerk's No.

623

19

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
JOYCE ANN MILLER, JUANITA FRAZIER,
PERLA COHEN and EVA ACEVEDO on behalf
of themselves and all others similarly
situated,

Petitioners,

For a Judgment Pursuant to Article 78
of the C.P.L.R.

-against-

BLANCHE BERNSTEIN, as Commissioner of
the New York City Department of Social
Services,

Respondent.

STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE

Index No. 623/78

BOOK SPECIAL TERM N.Y. SUP.
PART I JOURNAL

MAY 11 1978

TO RECEIVED
CLERK FROM JUSTICE BOOK

WHEREAS, Petitioners commenced this proceeding pursuant
to Article 78 of the Civil Practice Law and Rules seeking certain
relief relating to reimbursement for home attendant services, and

WHEREAS, Respondent has answered the petition and denied
Petitioners' claims, and

WHEREAS, the parties hereto seek to avoid further
litigation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
between the parties hereto, as represented by their attorneys, as
follows:

1. The respective claims, allegations, issues and causes of
action contained in the petition are withdrawn and the above-capt-
ioned proceeding is discontinued with prejudice.

2. Respondent affirms that the Department of Social Services of The City of New York ("the Department") has compiled a list of approximately 1200 individuals who have received authorized home attendant services ("recipients"), who, by February 23, 1978 had notified or whose home attendants had notified the district offices of the Office of Case Intake and Management ("OCIM") that the recipients had not received reimbursement for home attendant services which were authorized for any period prior to January 13, 1978, and who OCIM had reason to believe had not been provided with reimbursement for such services. This list also contains the names and addresses of the home attendants for most but not all of the recipients on this list. The Department has also received from other agencies and offices the names of other recipients and their home attendants similar to those described immediately above.

3. The Department shall determine whether the recipients, for each of whom a claim for non-reimbursement for home attendant services has been alleged, as set forth in Paragraph "2" hereinabove, have been provided with reimbursement for any period prior to January 13, 1978.

4. In the event that the Department determines that reimbursement has not been provided to such a recipient, as set forth in Paragraph "3", the Department shall then determine whether such reimbursement should be so provided. If the Department determines that such reimbursement should be so provided, the Department shall take such corrective action as the circumstances of the

particular case shall require in order that reimbursement, by issuing an appropriate check, be provided to such recipients on or before April 17, 1978. If the Department determines that such reimbursement should not be provided, on or before April 17, 1978 the Department shall notify such recipient of the reasons for this determination by the Department and of the recipient's right to request a fair hearing.

5. a. The Department shall take the steps set forth in subparagraph "b" with regard to individuals who have received authorized home attendant services and (1) who, after February 23, 1978, have notified or whose home attendants have notified OCIM or the Division of Home Attendant Services of the Department ("the Division") that the recipients have not received reimbursement for such services for any period prior to and including April 17, 1978, and who OCIM or the Division believes may not have received reimbursement for such services prior to and including April 17, 1978, or (2) who, after February 23, 1978, OCIM believes, based upon information from sources other than recipients or home attendants, may not have received reimbursement for such services for any period prior to and including April 17, 1978.

- b. The Department shall determine whether reimbursement should be provided to recipients described in subparagraph "a" hereinabove, and shall, on or before June 1, 1978, reimburse such recipients who the Department determines should be provided with reimbursement for such services. If the Department determines that such reimbursement should not be provided, the Department shall, on or before June 1, 1978, notify such recipients in writing of the reasons for the determination of the Department and of the recipients' right to request a fair hearing.
- 6.
- a. The Department shall commence to mail checks for reimbursement to recipients of home attendant services, for such services, on all initial cases authorized subsequent to May 15, 1978, within 2 weeks after the semi-monthly reimbursement period during which duly authorized services were rendered by the approved home attendant for the recipient.
 - b. After August 15, 1978, the Department shall mail checks for reimbursement to all recipients of home attendant services within 2 weeks after the semi-monthly reimbursement period during which duly authorized services were rendered by the approved home attendant for the recipient.

7. On or before July 15, 1978, the Department shall ensure that its procedures, in accordance with applicable laws and regulations, shall provide, in part, that:

- a. The Department shall determine an applicant's eligibility for home attendant services within 30 days from the submission to the Department, on forms promulgated by the Department, of a properly executed physician's request that home care services be provided to the applicant.
- b. The Department shall provide applicants with notification of the Department's determination of the application for home attendant services and of the applicant's right to a fair hearing.

8. a. The Department shall conspicuously post signs by June 15, 1978 in the Office of the Division of Home Attendant Services and in district offices of OCIM informing recipients of home attendant services and home attendants that inquiries concerning reimbursement for home attendant services may be directed to the district offices of OCIM or such other office or offices as the Department shall determine.

b. By June 1, 1978, and again by August 1, 1978, the Department shall notify in writing then current recipients, and those home attendants who had previously provided services and whose names and

addresses are then stored in the computerized data bank located at the Division of Home Attendant Services, that inquiries concerning reimbursement for home attendant services may be directed to the district offices of OCIM or such other office or offices as the Department shall determine.

- c. The Department shall notify, in writing, recipients and home attendants authorized after August 1, 1978, that inquiries for home attendant services may be directed to the district offices of OCIM or such other office or offices as the Department shall determine.

9. On or about June 3, 1978 the Department shall commence to compile a list of individuals who have received authorized home attendant services, who have notified or whose home attendants have notified the district offices of OCIM that such recipients have not been provided reimbursement for home attendant services which were authorized and received for any period prior to May 1, 1978, and who OCIM has reason to believe have not been provided reimbursement for such services. The Department shall also compile the names and addresses of home attendants for these recipients from information provided by the recipients and home attendants who notify OCIM of the non-reimbursement of recipients as set forth immediately above. The Department shall then inform the attorney for the Petitioners of the names and addresses of all home attendants so compiled. The names and addresses of the home attendants shall be held confidential by the attorney for the Petitioners as

set forth in Paragraph "11" hereinbelow.

10. On or about November 17, 1978 the Department shall commence to compile a list of individuals who will have received authorized home attendant services, who prior to November 1, 1978 have notified or whose home attendants have notified the district offices of OCIM that such recipients have not been provided reimbursement for home attendant services which were authorized and received for any period prior to November 1, 1978, and who OCIM has reason to believe had not been provided reimbursement for such services. The Department shall also compile the names and addresses of home attendants for these recipients from information provided by the recipients and home attendants who notify the district offices of OCIM of the non-reimbursement of recipients as set forth immediately above. The Department shall then inform the attorney for the Petitioners of the names and addresses of all home attendants so compiled. The names and addresses of the home attendants shall be held confidential by the attorney for the Petitioners as set forth in Paragraph "11" hereinbelow.

11. Within one week from the execution of this Stipulation the Department shall provide to the attorney for Petitioners the names and addresses of home attendants which are included in the list of recipients compiled by OCIM as set forth in Paragraph "2" hereinabove. The attorney for Petitioners represents that the purpose of providing the attorney for Petitioners with the names and addresses of these home attendants is to enable said attorney to

notify these home attendants of this Stipulation and the contents thereof, and to review compliance by the Respondent with the provisions of this Stipulation. The attorney for Petitioners further represents that said names and addresses will be held confidential and will not be disclosed to any person who is not personally supervised by the attorney for Petitioners.

12. It is recognized that there may be occasional instances of individual recipients of home attendant services who should receive reimbursement pursuant to the provisions of this Stipulation who may not receive such reimbursement for reasons which may or may not be within the control of the Department. In such instances, the Department shall reimburse such individual recipients of home attendant services within three weeks after the Department has been notified that such recipient has not received such reimbursement.

13. Nothing herein shall be construed to prohibit the Department of Social Services, in its sole discretion, from modifying or amending, from time to time, its procedures for the reimbursement of recipients for home attendants services, or from deleting or replacing said procedures, so long as said modifications, deletions, changes, or additions do not impede reimbursement to a recipient of home attendant services by the Department when such reimbursement should be made.

14. The Respondent hereto admits to none of the claims, allegations, issues or causes of action set forth in the petition, and the within settlement shall not constitute an admission by the Respondent of any of the claims, allegations, issues or causes of action set forth in the petition.

15. The terms of this Stipulation may be enforced by applicants or recipients, or where appropriate by home attendants, who have not received reimbursement for home attendant services, in accordance with the terms of this Stipulation.

16. Nothing contained herein shall be construed to deem home attendants to be employees of the Department, the Human Resources Administration of The City of New York, or The City of New York.

17. Any reference in this Stipulation to the Office of Case Intake and Management shall be deemed to refer, after April 21, 1978, to the Division of General Social Services.

18. All of this is to be without costs or attorneys' fees as against one or the other parties hereto.

JOHN C. GRAY, JR.
Attorney for Petitioner
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(212) 855-8003

Yvonne Lewis
Yvonne Lewis, of Counsel

SO ORDERED:

Edward J. Greenfield
Justice Edward J. Greenfield

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(212) 566-4699/2192

Steven M. Goldberg
Steven M. Goldberg
Assistant Corporation Counsel

DATED: New York, New York
May 5, 1978

James M. Abramson
James M. Abramson
Associate General Counsel
Human Resources Administration
Office of Legal Affairs
220 Church Street - Rm. 670