

NEW YORK SUPREME COURT—QUEENS COUNTY

I A S PART 2

Present: Hon ... ARTHUR W. LONSCHNEIN ... JUSTICE

the Matter of the Application of CATHLEEN YORK,
Petitioner,
-- against --
BARBARA J. SABOL, as Commissioner of the New York
City Department of Social Services, and CESAR A.
PERALES, as Commissioner of the New York State
Department of Social Services, Respondents.

INDEX
NUMBER ... 26577 ... 19.91
MOTION
DATE ... Jan 14 ... 19.92
MOTION
NUMBER ... 10
TRIAL
CAL. NUMBER

The following papers numbered 1 to .4... read on this motion .. Article .78

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Motion/Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Upon the foregoing papers it is ordered that this petition is granted to the extent indicated, and is otherwise denied without prejudice to renewal upon completion of the Fair Hearing. The cross-motions are denied.

This is a special proceeding pursuant to CPLR Article 78 to compel the respondent New York City Department of Social Services to continue the petitioner's benefits at their original level pending a so-called Fair Hearing. The Fair Hearing is required by Social Services Law and applicable regulations of the State Department of Social Services issued thereunder. If the Fair Hearing is requested within ten days of the mailing to the recipient of notice of the reduction in services, the benefits must be continued pending the Fair Hearing.

Hear, there is a dispute as to whether or not the petitioner's representative requested the Fair Hearing in time to entitle the petitioner to a continuation of benefits. It seems

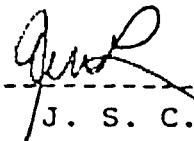
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to the court that the timeliness of the request is a matter for determination by the Administrative Law Judge. Fairness requires that the benefits be continued at the original level, of \$196.50 semi-monthly, pending the Fair Hearing, and the respondent Sabol is directed to do so. Payment shall be made by Electronic File Payment Transfer, as before.

Further, the respondents cross-move to dismiss the petition. Respondent Sabol, the Commissioner of the New York City Department of Social Services, restricts her motion to so much of the petition as seeks relief under 42 USC § 1983. Pursuant to the recent decision of the Court of Appeals in Thomasel v Perales, ___ NY2d ___, however, it is clear that a wrongful refusal to continue benefits pending a Fair Hearing does state a cognizable claim under 42 USC § 1983. Respondent Perales, the Commissioner of the New York State Department of Social Services, seeks dismissal on the theory that he had complied with the law in issuing proper directives to the City department. The Court of Appeals in Thomasel held, to the contrary, that the State and City agencies could not be separated in this way. The cross-motions are denied.

Any claim for attorney's fees will have to await the outcome of the Fair Hearing.

Date: February 6, 1992



J. S. C.