

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**Sandra Fuller, Art Watkins, Beverly Harris,
Gladys Hamilton, David McElrath, Jo Ann Van Petten White,
and Sarah Rienzi**, on behalf of themselves and
all others who are similarly situated,

Plaintiffs,

vs.

Ithaca Housing Authority, and Brenda Westfall, as acting Executive
Director of the Ithaca Housing Authority,

Defendants.

STIPULATION

Civil Action No.
5:04-cv-155
(NAM/DEP)

WHEREAS plaintiffs have commenced a lawsuit on behalf of individual plaintiffs who are past, present and future residents of housing, operated or subsidized through the Ithaca Housing Authority, whose rent is calculated based on their income. Plaintiffs allege that defendants have: a) overcharged plaintiffs by adding to the amount of income the plaintiffs actually receive in cash, the amount of the health insurance premiums paid on plaintiffs' behalf by Medicaid or Social Security, despite a federal regulation that requires defendants to exclude payments made for medical care when calculating the amount of a tenant's income for subsidized housing; b) alternatively, plaintiffs claim that defendants have charged rents that are illegally high because they failed to deduct from plaintiffs' income all the medical expenses required by law, including the amount of insurance premiums paid on plaintiffs' behalf; and c) plaintiffs also allege that the notices of rent increases provided to them by defendants fail to comply with the Due Process Clause of the 14th Amendment to the United States Constitution because they fail to provide any information on how to challenge an incorrect rent calculation;

and d) that even when plaintiffs have raised concerns about the rent calculation with management, plaintiffs were not provided any information on the due process procedures to challenge an incorrect rent calculation, or offered access to the administrative due process procedures required by law; and

WHEREAS plaintiffs and defendants are desirous of resolving the issues in this matter without prolonged litigation,

NOW, THEREFORE, it is hereby stipulated between the parties hereto as follows:

PLAINTIFF CLASS

1. The parties agree that the prerequisites for class certification as set forth in Fed. R.

Civ. P. 23 (a) and (b)(2) are satisfied with regard to the plaintiff class defined as:

Tenants

All past, present and future residents of housing operated by or subsidized through the Ithaca Housing Authority whose rent is calculated based on their income.

2. The class is so numerous that joinder of all members is impracticable. Over 200 current residents of Titus Towers alone are class members, as are hundreds of future tenants.

ACKNOWLEDGMENT OF DEFENDANTS' LEGAL OBLIGATIONS

3. Defendants affirm that it is the mission of Ithaca Housing Authority to comply with federal and state laws and regulations, and to be able to demonstrate that it has done so.

4. Defendants acknowledge, however, that, by failing to exclude the amount of the Medicare Part B premiums paid on behalf of plaintiffs when calculating "Annual Income" (which defendants refer to as "Total Income" on their forms), defendants have inadvertently violated 42 U.S.C. §1437a and 24 C.F.R. §5.609(c)(4).

5. Defendants acknowledge that, by failing to deduct the amount of the Medicare Part B premiums paid by or on behalf of plaintiffs as a medical expense – to the extent that total medical expenses exceed 3% of “Annual Income” – when the premium was not excluded under 24 C.F.R. §5.609(c)(4), defendants have inadvertently violated 42 U.S.C. §1437a and 24 C.F.R. §5.611.

6. Defendants acknowledge that, by failing to provide plaintiffs with adequate and timely notice about their right to challenge their rent increases, and how to exercise that right, defendants have inadvertently denied plaintiffs due process of law in violation of the 14th Amendment to the United States Constitution.

GENERAL AGREEMENT

Current Tenants

7. The parties agree that defendants have re-budgeted each Current Tenant’s rent prospectively – excluding from income any Medicare Part B premiums paid on their behalf by New York State Medicaid or the Social Security Administration.

8. Defendants shall then calculate the amount of each Current Tenant’s retrospective overpayment, from January 2001 to the present, together with pre-judgment interest at the federal judgment rate.

9. Once the above-referenced calculations are completed, and the amount of each Current Tenant’s overpayment ascertained, defendants will send each Current Tenant a letter, with language and in a format subject to Plaintiffs’ approval, which:

- a) explains the Current Tenant’s rent decrease;
- b) informs the Current Tenant of the amount of his or her overpayment;

- c) notifies the Current Tenant that he or she may either receive a check, or a credit for a rent decrease, to refund the amount the tenant overpaid;
- d) explains, in plain language, the method for calculating rents, and a list of exclusions from income and deductions from income;
- e) identifies an individual, who will be adequately trained, who is responsible for answering Current Tenants' questions about rent calculation and recalculation issues;
- f) explains what to do if the Current Tenant believes his or her rent calculation is wrong, including:
 - i) instructions as to the procedure for requesting an informal conference; and
 - ii) a statement that free legal services to assist the Current Tenant may be available through Tompkins/Tioga Office of Legal Assistance of Western New York.

10. In addition, defendants shall check each Current Tenant's file to make sure that any health insurance premiums, paid by or on behalf of Tenants who do not qualify for exclusion under §5.609(c), are deducted to the extent that these premiums, plus any other medical expenses, exceed 3% of income as required by §5.611.

11. Defendants shall recalculate the rent of any Current Tenant who does not qualify for exclusion under §5.609(c), and provide him or her with a letter which complies with all provisions of paragraph 9, above. This letter shall also:

- a) state the amount of each such Tenant's medical expenses as previously reported to the Ithaca Housing Authority; and

- b) instruct each such Tenant to inform Ithaca Housing Authority if his or her medical expenses were underreported.

12. Defendants shall provide plaintiffs' counsel with a list of all Tenants who do not qualify for exclusion under §5.609(c). Defendants shall also provide plaintiffs' counsel with information on the source(s) of payment for these Tenants' health insurance premiums.

Former Tenants

13. Using the rules in paragraphs 7 and 8, above, defendants shall calculate the overpayments made by all Former Tenants, whose rents were calculated under §5.609 from January 2001 to the present.

14. Defendants shall make a diligent effort locate a current address for each Former Tenant. The Defendant will use reasonable efforts to locate each Former Tenant. The Defendant will advise the Plaintiff's counsel whether each Tenant has been located and the parties will then discuss whether any further searching, and to what extent such searching, shall be made, if any. After all searching agreed to has been completed;

- a) if there are any Former Tenants who are unable to be located, any overpayment due such unlocated Former Tenant, shall be held by the Defendant for two (2) years after such determination, or until June 1, 2007, whichever is earlier, for payment to said unlocated Former Tenant if such unlocated Former Tenant shall be locate by such date, or if not, such overpayment shall be donated to benefit the current Tenants' programs and services, and
- b) if there are any Former Tenants who are deceased, any overpayment due such deceased Former Tenant, shall be paid to the estate of the Former

Tenant if HUD approves or shall be donated to benefit the current tenants' programs and services.

15. Defendants shall send each Former Tenant a letter, with language and in a format subject to Plaintiffs' approval, which:

- a) informs the Former Tenant of the amount of his or her overpayment, including the amount of rent overpaid from January 2001 to the present, and the amount of pre-judgment interest calculated at the federal rate;
- b) notifies the Former Tenant that he or she may receive a check, to refund the amount the Former Tenant overpaid;
- c) explains, in plain language, the method for calculating rents, and a list of exclusions from income and deductions from income;
- d) identifies an individual, who will be adequately trained, who is responsible for answering questions about rent calculation and recalculation issues;
- e) explains what to do if the Former Tenant believes his or her overpayment calculation is wrong, including:
 - i) instructions as to the procedure for requesting an informal conference; and
 - ii) a statement that free legal services may be available through Tompkins/Tioga Office of Legal Assistance of Western New York to assist the Former Tenant.

16. Each Former Tenant who can be located shall be paid the amount they are owed no later than 60 days after the Former Tenant's current address is identified.

Notices of Future Rent Changes

17. The parties shall agree upon two form letters, which:
- a) notify Tenants of the information that they must provide to allow Ithaca Housing Authority to accurately calculate rent changes; and
 - b) notify Tenants of future rent changes.

18. Both form letters shall include a plain-language explanation of the method for calculating rents and a list of exclusions from income and deductions from income.

19. The form letter notifying Tenants of rent changes shall explain:
- a) how to get more information on how their rent was calculated;
 - b) their right to an informal meeting;
 - c) how to exercise their grievance rights under the regulations; and
 - d) the possibility that legal assistance may be available from Tompkins/Tioga Office of Legal Assistance of Western New York.

Training and Staffing

20. Ithaca Housing Authority has retrained the staff members who have and will conduct the recalculations of rent and the calculation of future rent.

21. Defendants will provide an adequate number of trained staff to complete the rent recalculations in accordance with the timetables in this agreement.

Monitoring

22. The parties will agree on a reevaluation worksheet to be used by Ithaca Housing Authority staff to determine whether individual Tenants are eligible for a reduction in rent and refunds for overpayments.

23. No later than March 1, 2005, defendants will provide plaintiffs' counsel with a list of all Current and Former Tenants whose rents were reevaluated as a result of the settlement.

Said list shall indicate each such Tenant's:

- a) name;
- b) period of tenancy between January 2001 and the present;
- c) certification period (e.g., June to May);
- d) current or previous rent;
- e) correct rent after reevaluation;
- f) amount of refund or rent credit;

24. Defendants shall also provide plaintiffs' counsel with copies of all worksheets for all Current and Former Tenants whose files were reviewed, at the same time defendants provide the list described in paragraph 23.

25. To ensure compliance with the terms of the stipulation, counsel for plaintiffs will select 20 files for review, which defendants will produce. If plaintiffs' counsel determines that all files are correctly budgeted, no further file production will be necessary. However, if plaintiffs' counsel determines that some files contain errors, the parties will determine what additional sampling is necessary based on the type and the frequency of the errors.

26. The parties shall agree on the language of a release, to be provided to each Tenant whose file is reviewed by plaintiffs' counsel.

27. For a period of three years following entry of Judgment, defendants shall not change the language in any letter containing due process rights without the prior approval of plaintiffs' counsel.

Rule 23(e) Process and Notices

28. Defendant Ithaca Housing Authority shall bear the cost of any notices to class members required under Rule 23.


Attorneys' Fees and Costs

29. Defendants stipulate that plaintiffs are prevailing parties within the meaning of 42 U.S.C. §1988, and are entitled to reasonable attorneys' fees and costs for the prosecution of this action.

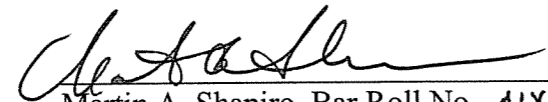
30. The parties will attempt to resolve the amount of a reasonable attorneys' fee and costs through the following process:

- a) plaintiffs' counsel will provide defendants' counsel with their time records and billing rate information, documentation on any costs, and will exercise billing judgment in calculating a proposed fee amount.
- b) the parties will negotiate to see if they are able to reach an agreement on the amount of a reasonable fee to submit for Court approval; and
- c) if the parties are unable to reach an agreement, either party may notify the other in writing that there is no further expectation of a negotiated settlement. Plaintiffs' counsel shall then file a motion for attorneys' fees within 30 days of receipt of such a notice from counsel for defendants, or within 30 days of the sending of such a notice to defendants' counsel.

DATED: March ~~14~~, 2005
Rochester, New York


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