SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
----------x

In the Matter of the Application of ARSENIO LEAL CHAMIZO,

Index No. 401773/2011

Petitioner

DECISION AND ORDER

- against -

NEW YORK CITY HUMAN RESOURCES,

Respondent

----------x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Petitioner, neither represented nor fluent in English, commenced this proceeding on forms provided to him by a court clerk. Although the forms name the parties "Petitioner" and "Respondent," neither the Notice of Petition nor the Verified Petition refers to C.P.L.R. Article 4 or 78 or any other provision governing special proceedings. Petitioner's Verified Petition does, however, seek to reverse respondent's decision that petitioner was ineligible for Food Stamps, now the Supplemental Nutrition Assistance Program (SNAP), based on his alien status. C.P.L.R. § 7803. The only relief that the Verified Petition seeks is the retroactive Food Stamps that he was eligible for from September 2009 to May 2011.

II. FACTUAL RECORD

Attached to the Verified Petition is a document signed by a United States Immigration and Customs Enforcement Deportation Officer of the United States Department of Homeland Security,

dated November 19, 2009, identifying petitioner by a photograph of him, his birthdate, his Social Security Number, and another identification number. The document "TO: Whom It May Concern" specifies petitioner's alien status:

> Mr. Leal-Chemazo, Arsenio, born . . . in Cuba was ordered deported from the United States . . . on August 12, 1987. Mr. Leal-Chemazo, Arsenio was released from custody on an Order of Supervision on December 6, 2005. Mr. Leal-Chemazo, Arsenio cannot be removed to Cuba at this time due to current conditions in his home country. Mr. Leal-Chemazo, Arsenio is currently reporting to Immigration and Customs Enforcement as required. . . . This is the second letter I have provided for Mr. Leal-Chemazo . . . .

Also attached to the Verified Petition is the Decision by the New York State Office of Temporary and Disability Assistance (OTDA) on petitioner's appeal from respondent's determination denying petitioner Food Stamps because he was an ineligible alien. Consistent with the history from the United States Department of Homeland Security, the decision found that petitioner was "under an order of deportation that has been withheld under the Immigration and Nationality Act." Decision After Fair Hearing at 2 (Nov. 15, 2010). Specifically, "he was granted Withholding of Removal" and as

> a Cuban entrant is categorically a qualified alien and entitled to Food Stamp benefits . . . . Accordingly, the Agency's determination to discontinue the Appellant's Food Stamp benefits because he is an ineligible alien is reversed.

Id. at 3.

Consequently, the State OTDA ordered respondent to: "Issue to the Appellant Food Stamp benefits retroactive to August 7, 2009, if the Appellant is determined to be otherwise eligible

therefor." Id. at 4. Nevertheless, according to another undisputed document attached to the Petition, respondent, despite having received the State OTDA's Decision, notified petitioner via a notice dated November 22, 2010, that: "Your case was reviewed. Currently you are not eligible for Food Stamps benefits due to your alien status. (. . . Order of Supervision dated 08.31.10)" Respondent's refusal to follow the State OTDA's Decision then prompted this proceeding.

After petitioner commenced this proceeding, respondent provided him Food Stamps for July 16, 2009, through May 31, 2011. Respondent then claimed that it provided petitioner ongoing Food Stamps from June 1, 2011, forward.

III. RESPONDENT'S MOTION TO DISMISS THE PETITION

Respondent has moved to dismiss the petition, on the grounds that respondent has provided petitioner all the relief sought in his Petition, and therefore it no longer states a claim for relief and is moot. C.P.L.R. §§ 3211(a)(2) and (7), 7803, 7804(f). In opposition, petitioner attests that during September 2009 through May 2011 he was diabetic and recovering from spinal surgery and thus in particular need of nourishment, of which he was deprived by respondent's denial of Food Stamps. He suffered malnourishment and, to feed himself, incurred travel expenses in seeking donations from churches, incurred debts from borrowing funds for food, and resorted to retrieving discarded food from trash cans. He explains that, when respondent restored the Food Stamps due him immediately after he commenced this proceeding, he

realized that the prior denial was more than a mistake; it was intentional mistreatment. He now seeks $250,000 in damages for respondent's intentional and neglectful denial of his rights and his resulting physical, mental, and emotional mistreatment. He supports his vulnerable condition with medical evidence indicating that at least as of 2013 he suffered from many conditions that may be caused or exacerbated by poor nutrition: hypertension, hypercholesterolemia, xerosis cutis, hyperopia, hyperlipidemia, obesity, and depressive disorder, in addition to diabetes and post-lumbar surgery syndrome.

Moreover, after respondent restored petitioner's Food Stamps through May 2011, respondent once again denied petitioner Food Stamps for four more months, September through December 2011, without explanation: a suspension of benefits that respondent finally explained and remedied only in January 2014, upon petitioner's continued complaint. To petitioner, this further denial was but further indication of respondent's intentional and neglectful mistreatment and violation of his rights.

IV. PETITIONER'S POTENTIAL ENTITLEMENT TO DAMAGES

A. Incidental Damages in a Proceeding Pursuant to C.P.L.R. Article 78

Insofar as this proceeding may be considered pursuant to C.P.L.R. Article 78 and thus limited to damages that are incidental to the primary relief petitioner sought, the retroactive Food Stamps, C.P.L.R. § 7806, that limitation is but a product of a court clerk's forms supplied to a prospective litigant with limited fluency in English. Even in a proceeding

pursuant to C.P.L.R. Article 78, however, incidental damages are recoverable if they are the "natural and proximate consequences, and not the remote consequences, of a wrongful act." Rose Lee Mfg. v. Chemical Bank, 186 A.D.2d 548, 551 (2d Dep't 1992). Monetary relief may be incidental to an Article 78 proceeding if the relief is contingent on the court's determination that action by a governmental agency was unlawful, and the damages flow directly from that action. Gross v. Perales, 72 N.Y.2d 231, 236 (1988); Hughes Village Restaurant, Inc. v. Village of Castleton-on-Hudson, 46 A.D.3d 1044, 1047 (3d Dep't 2007); Choudary v. Limandri, 38 Misc. 3d 1227 (Sup. Ct. N.Y. Co. 2012).

The compensation petitioner seeks is not speculative; it is not for additional benefits, gains, or advantages he might have received had he been provided the Food Stamps when due. See Lukas v. Ascher, 299 A.D.2d 262, 263 (1st Dep't 2002); Oberoi v. Dennison, 55 A.D.3d 1033 (3d Dep't 2008); Murphy v. Capone, 191 A.D.2d 683, 684 (2d Dep't 1993). It is for losses he suffered when prevented from purchasing and maintaining adequate nutrition during the period when respondent denied him the Food Stamps that were to allow him to purchase and maintain adequate nutrition. Hughes Village Restaurant, Inc. v. Village of Castleton-on-Hudson, 46 A.D.3d at 1045, 1047. Inadequate nutrition, adverse consequences to physical and mental health, and the indignities of begging and scavenging for discarded food: all are the expected "natural and proximate consequences, and not the remote consequences" of respondent's wrongful denial of Food Stamps.

Rose Lee Mfg. v. Chemical Bank, 186 A.D.2d at 551.

B. Damages in a Plenary Action

As set forth above, nothing casts this litigation in the form of a proceeding pursuant to C.P.L.R. Article 78 other than the designations "Petitioner" and "Respondent" on the forms supplied to Arsenio Leal Chamizo by a court clerk. Moreover, the court may convert a proceeding pursuant to C.P.L.R. Article 78 to a plenary action or maintain the litigation as a hybrid special proceeding and plenary action. C.P.L.R. § 103(b) and (c); New York State Psychiatric Assn., Inc. v. New York State Dept. of Health, 19 N.Y.3d 17, 22-23 (2012); New York State Superfund Coalition, Inc. v. New York State Dept. of Envtl. Conservation, 18 N.Y.3d 289, 292-93 (2011); Yatauro v. Mangano, 17 N.Y.3d 420, 425 (2011); Phillips v. City of New York, 66 A.D.3d 170, 173 n.2 (1st Dep't 2009).

Food Stamps, now SNAP benefits, the benefits that Chamizo erroneously was denied, are a federal statutory entitlement. 7 U.S.C. §§ 2015(f), 2020(e). See 8 U.S.C. §§ 1231(b)(3), 1612(a)(2)(A)(iii); 7 C.F.R. § 273.4(a)(6)(i)(E) and (ii)(D). The federal Food Stamps statutes and their implementing regulations are intended to benefit persons in Chamizo's circumstances and confer unambiguous, mandatory, and hence enforceable rights pursuant to 42 U.S.C. § 1983. Gonzaga Univ. v. Doe, 536 U.S. 273, 280, 282 (2002); Blessing v. Freestone, 520 U.S. 329, 340-41 (1997); Wilder v. Virginia Hosp. Assn., 496 U.S. 498, 509, 511-12 (1990); M.K.B. Eggleston, 445 F. Supp. 2d 400,

428 (S.D.N.Y. 2006).

The New York City Human Resources Administration (HRA) that Chamizo sues is an agency of the City of New York, a municipality amenable to suit for damages under 42 U.S.C. § 1983. Owen v. City of Independence, 445 U.S. 622, 647-48 & n.30 (1980). HRA or the City may not be held liable for damages under § 1983 if they are caused by a City employee's isolated act or omission, Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 405 (1997); Collins v. City of Harker Heights, 503 U.S. 115, 122 (1992); Pembaur v. City of Cincinnati, 475 U.S. 469, 478 (1986), but may be held liable if Chamizo establishes that HRA's policy, custom, or usage produced the deprivation of his federal rights. City of Canton v. Harris, 489 U.S. 378, 385 (1989); Ramos v. City of New York, 285 A.D.2d 284, 302 (1st Dep't 2001). He may meet that standard by demonstrating that City employees' unlawful practices, in depriving the persons with whom the employees interact of federal rights, were so well ingrained or so persistent and widespread that City policymaking officials constructively acquiesced in those practices. Connick v. Thompson, ___ U.S. ___, 131 S. Ct. 1350, 1359 (2011); Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. at 404; Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989). Where unlawful practices have become the agency's standard operations, the City's failure to train or supervise employees so that they operate lawfully amounts to the City's deliberate indifference to its employees' deprivation of federal rights, which will subject

the City to liability. Connick v. Thompson, 131 S. Ct. at 1359-60; City of Canton v. Harris, 489 U.S. at 388; Bumbury v. City of New York, 62 A.D.3d 621, 622 (1st Dep't 2009); Ramos v. City of New York, 285 A.D.2d at 304.

In M.K.B. Eggleston, 445 F. Supp. 2d at 434, the court found that HRA's "pervasive errors in . . . training materials and policy directives, and the widespread worker ignorance resulting from the inadequate training of City employees," despite HRA's "notice of all these systemic failings," amounted to a City policy, custom, and usage of mistaken determinations denying Food Stamps to eligible, qualified aliens. See Connick v. Thompson, 131 S. Ct. at 1360-61; Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. at 407; Ramos v. City of New York, 285 A.D.2d at 304. A specific category of aliens who were direct victims of HRA's policy, custom, and usage were "aliens living in the United States with the permission or acquiescence of the federal immigration authorities and whose departure federal immigration authorities do not contemplate enforcing": precisely the category into which Chamizo falls. M.K.B. Eggleston, 445 F. Supp. 2d at 404. See Lewis v. Thompson, 252 F.3d 567, 571-72 (2d Cir. 2001) HRA caseworkers and their supervisors repeatedly denied Food Stamps to this category of aliens for the same erroneous reason as HRA repeatedly denied Food Stamps to Chamizo, because of their immigration status. M.K.B. Eggleston, 445 F. Supp. 2d at 431. See id. at 416-17. The rules governing their eligibility "were systematically misapplied, chiefly because City

policy bulletins and training materials contained many errors . . . , and HRA policymakers had ample notice of these problems." Id. at 435.

Regarding HRA's notice of, but deliberate indifference to, the pervasive and systemic unlawful denials of benefits to eligible aliens, the court found that "HRA policymakers knew . . . their employees would encounter the kinds of problems here at issue in processing applications" of aliens in Chamizo's category, id., aliens "permanently residing under color of law" in the United States ("'PRUCOL' aliens"). Id. at 404. In the absence of adequate training or supervision that "would clearly have made the responsibilities of the City workers less difficult in this situation," there was "a clear history of HRA caseworkers mishandling the determinations." Id. at 435-36. See Ramos v. City of New York, 285 A.D.2d at 304. HRA caseworkers' lack of awareness of PRUCOL aliens' eligibility for benefits was attributable "to defective training materials used by the City to train these workers." M.K.B. Eggleston, 445 F. Supp. 2d at 436. Finally, "the wrong choices by HRA employees brought about by the foregoing conditions 'frequently caused the deprivation' of . . . rights." Id. See Ramos v. City of New York, 285 A.D.2d at 304.

Notably, HRA denied Food Stamps to Chamizo approximately one year after the court's findings in M.K.B. Eggleston, 445 F. Supp. 2d 400. HRA well may have undertaken adequate corrective measures in the intervening year so that the erroneous denial of Food Stamps to Chamizo, an eligible, qualified alien, because of

his immigration status, was not the product of the City policy, custom, and usage that caused a pattern of just such erroneous denials to eligible, qualified aliens because of their immigration status. Absent that evidence, however, Chamizo well might show that HRA policymakers' continued adherence to the same approach that previously failed to prevent inadequately trained HRA employees' violations of federal law establishes the necessary deliberate indifference to trigger municipal liability for his claimed damages. Connick v. Thompson, 131 S. Ct. at 1360-61; Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. at 407, 409.

V. CONCLUSION

As respondent's pending motion to dismiss is quick to point out, however, Chamizo's current Verified Petition still does not seek the damages for respondent's violation of his federal rights and his resulting physical, mental, and emotional injury. On this basis, the court grants respondent's motion, unless by November 3, 2014, see C.P.L.R. § 205(a), Chamizo has served and filed an amended or supplemental pleading, in the form of either a petition pursuant to C.P.L.R. Article 78, alleging such incidental damages, or a complaint in a plenary action, alleging municipal liability for damages under 42 U.S.C. § 1983 or state law. See Martinez v. City of Schenectady, 97 N.Y.2d 78, 83 (2001); Brown v. State, 89 N.Y.2d 172, 194 (1996). Respondent's voluntary, albeit belated, compliance with the State OTDA's order to issue to Chamizo Food Stamps retroactive to August 2009 and

reversal of respondent's notice dated November 22, 2010, that he was ineligible for Food Stamps due to his alien status provide the redress he seeks in his Verified Petition's single claim for relief: Food Stamps from September 2009 to May 2011. C.P.L.R. §§ 3211(a)(2) and (7), 7804(f); Santiago v. Berlin, 111 A.D.3d 487 (1st Dep't 2013); Eve & Mike Pharm., Inc., 107 A.D.3d 505 (1st Dep't 2013); In re Carl J., 94 A.D.3d 473, 474 (1st Dep't 2012); Callwood v. Cabrera, 49 A.D.3d 394 (1st Dep't 2008).

DATED: May 1, 2014

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).