LAURA MAISONET,

Plaintiff-Appellant

v.

NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF FAMILY DEVELOPMENT,

Defendant-Respondent

SUPREME COURT OF NEW JERSEY

DOCKET NO. 38, 860

Civil Action

Sat below:

Petrella, P.J.A.D.
Conley, J.A.D.
Villaneuva, J.A.D.

BRIEF OF AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY

LEGAL SERVICES OF NEW JERSEY
Melville D. Miller, Jr. President
Harris David
100 Metroplex Drive
P. O. Box 1357
Suite 402
Edison, NJ 08818-1357
(908) 572-9100

On the brief:

Melville D. Miller, Jr.
Harris David

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STATEMENT OF FACTS

Amicus adopts the statement of facts of the Petitioner as set forth in the Petition For Certification, pp. 1-5.

ARGUMENT

POINT I

THE CIVIL RIGHTS ATTORNEY FEES AWARDS ACT OF 1976, 42 U.S.C. §1988, IS VITAL TO THE ENFORCEMENT OF FEDERAL LAW AND TO ENABLING PUBLIC INTEREST LEGAL ORGANIZATIONS TO MEET THE OVERWHELMING AND UNMET DEMAND FOR SERVICES.

Throughout the State of New Jersey, legal services programs are confronted with a tremendous demand for their services. Statewide Legal Services handled over 41,000 new cases in 1994, but at current funding still are able to meet no more than one-fifth -- 20% -- of the actual need. As a result of this overwhelming demand on already limited attorney time, attorneys have scarce resources to devote to more complex cases, and are unable to provide legal assistance to the vast majority of those in need.

The Civil Rights Attorney Fees Awards Act of 1976, 42 U.S.C. §1988, (CRAFA) is an important tool in the struggle to meet the existing and unmet need for legal services. It encourages private attorneys to provide representation in civil rights cases as private "attorney generals." It is a fundamental part of the remedial scheme designed by Congress to encourage and achieve compliance with federal law.

In Shadis v. Beal, 685 F.2d 824 (3d Cir. 1982), the Third Circuit identified the public policy considerations that justify attorney fee awards to legal services programs and other groups furnishing pro bono publico representation:

1) the award of fees to such organizations "promotes the enforcement of the underlying statutes as much as an award to privately retained counsel;"

2) "legal services organizations often must ration their limited financial

and manpower resources. Allowing them to recover fees enhances their capabilities to assist in the enforcement of congressionally favored individual rights;"

3) "the award encourages the legal services organization to expend its limited resources in litigation aimed at enforcing the civil rights statutes;"

4) "the award encourages potential defendants to comply with civil rights statutes;"

5) "legal services organizations render valuable services to their clients and their communities. Legal aid organizations are often the sole representatives of the economically, socially and culturally deprived in their disputes with landlords, government welfare agencies, employers and creditors;"

6) "fee incentives to legal aid offices are essential to enable legal services organizations to provide more than individual, routine legal services for poor litigants. To a great extent, legal services organizations must allocate limited resources among various possible clients. Of necessity, the potential for fee recovery will be one of the factors considered in the allocation and use of resources for the maximum benefit of the poor."[1]

In addition, the enforcement of the attorney fee remedy would be a further inducement for welfare officials to resolve cases correctly and efficiently, without taking positions which needlessly foster litigation. In contrast, the improper denial of benefits in this case forced Legal Services to litigate in the Appellate Division to secure federal rights under a statute that on its face demonstrated the invalidity of respondent's position.[2] This constituted a substantial and unnecessary drain on the scarce resources of the Passaic County

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[1]. Shadis v. Beal, supra at 830-831

[2]. See Petition for Certification, p. 2.

Legal Aid Society.[3] Such a drain harms not only the Legal Services program; it seriously harms the thousands of clients, many of which Legal Services will not be able to represent, who cannot receive its services.

POINT II

PETITIONER IS ENTITLED TO ATTORNEY FEES IN THIS CASE.

In the instant case, the Appellate Division ruled in petitioner's favor on the merits, and found that the Division of Human Services had violated the federal Food Stamp Act. The Food Stamp act is enforceable under 42 U.S.C. §1983. Victorian v. Miller, 813 F.2d 718 (5th Cir. 1987) Since petitioner prevailed on the merits, she is entitled to attorney fees under the CRAFA, and claimants have been awarded attorney fees for vindicating rights under the Food Stamp Act. Gonzalez v. Pingree, 821 F.2d 1526, 1531 (11th Cir. 1987); Velez v. Coler, 767 F.Supp. 253, 257 (M.D. Fla. 1991); Rahmey v. Blum, 466 N.Y. Supp. 2d 350, 354-56 (A.D.2 Dept. 1983).[4]

The Appellate Division erred in declining to exercise jurisdiction over the 1983 and 1988 claims. The substantive argument petitioner raised in the Appellate Division -- that the welfare board had violated the Food Stamp Act --

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[3]. The appeal required the work of two attorneys, including the Director of Litigation.

[4]. An attorney who vindicates federal civil rights "should ordinarily recover an attorneys' fee unless special circumstances would render such an award unjust." Newman v. Piggie Park Enterprise, Inc., 390 U.S. 400, 402 (1968); Staten v. Housing Authority of the City of Pittsburgh, 638 F. 2d 599 , 604 (3d Cir. 1980). "(T)he court's discretion to deny a fee award to a prevailing plaintiff is narrow." New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 100 S.Ct. 2024, 2033 (1980) (emphasis added). "[A]wards should be automatic except in the most extraordinary circumstances," Staten v. Housing Authority, supra at 605, n. 12, and fees should be awarded "almost as a matter of course." Dawson v. Patrick, 600 F.2d 70, 79 (7th Cir. 1979).

Legal services organizations are entitled to attorney fees to the same extent and at the same market rates as private practitioners. Blum v. Stenson, 465 U.S. 886 (1984).

was precisely the same argument she raised in the administrative proceeding below.[5] Appellant thus raised below the claim she sought to enforce through §1983 and §1988 in the Appellate Division. Indeed the Appellate Division based its decision on the Food Stamp Act and the same implementing regulations raised by appellant at the administrative level. Maisonet v. Dep't of Human Services, 274 N.J. Super. 228, 232-237 (App. Div. 1994).

By denying attorney fees, and thus refusing to grant full relief, the decision below suggests that an alternative procedure, in which attorney fees could be sought, was available to petitioner. Indeed the State in this case argues that petitioner could have filed an affirmative action pursuant to §1983 in the New Jersey Superior Court, Chancery or Law Division, or in federal district court. (Brief on Behalf of Respondent In Opposition to Petition for Certification, pp. 9-10). However, the effect of the Court decision (and the respondent's argument) conflicts with established New Jersey procedural requirements that review of administrative agency actions be sought first in the Appellate Division. R.2:2-3(a)(2).[6] Further, under the entire controversy doctrine, this Appellate Division path becomes the mandatory channel for all related claims.[7]

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[5]. In appealing the recommendation of the ALJ to respondent Marion Reitz, appellant argued that the denial of food stamp benefits violated federal food regulations which implemented the federal statute. Brief and Appendix of Appellant, pp. 10A-12A.

[6]. See also n. 7, infra.

[7]. It is unclear whether the State is arguing that petitioner should have filed an affirmative action under §1983 in the law division instead of filing a notice of appeal, or whether, petitioner should have filed two actions: a notice of appeal, and a 1983 action in the Law Division. Filing in the Law Division instead of in the Appellate Division, would violate the requirement that review of the actions of state agencies must be sought by appeal in the Appellate Division. In Equitable Life Mort. v. N.J. Div. of Taxation, 151 N.J. Super. 232, 234 (App. Div. 1977), certif. denied 75 N.J. 535. Judge Sylvia Pressler held that:

Petitioner thus followed state mandated procedures. The only thing that claimant did not do was to mention 1983 and 1988 below, statutory bases for fees that could not have been acted upon by the administrative law judge, or the Division of Human Services. By exhausting administrative remedies petitioner proceeded in the most efficient and economical manner. She should not be denied attorney fees because she could not have raised 1983 and 1988 below, an action that would have been legally irrelevant. A resolution of her claims would also have satisfied the policy underlying the entire controversy doctrine.

CONCLUSION

Based on the foregoing reasons, amicus curiae respectfully requests that this Court reverse the decision of the Court below.

LEGAL SERVICES OF NEW JERSEY
Melville D. Miller, Jr., President

By: Harris David
Harris David

> It is fundamental ... and a matter of state constitutional imperative that challenge of [final agency] action be sought by way of a review in lieu of prerogative writs ... It is moreover the mandate of the implementing rules of practice ... that such review be initiated in [the Appellate Division], and not in the trial division of the Superior Court. 151 N.J. Super. at 237.

See also Bishop v. N.J. Sports & Exposition, 168 N.J. Super. 533, 537 (App. Div. 1979)

Filing two actions in the Appellate and Law Divisions would violate the entire controversy doctrine, in addition to constituting a massive waste of resources. Compare Pascucci v. Vagot, 71. N.J. 40, 53 (1976) ["(T)here should be expeditious adjudication of all matters in controversy between the parties at one time and place," and "piecemeal litigation is to be avoided."]