MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

March 25, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

| | |
|---|---|
| File Name: | *Curto, Patricia v. New York State Office of Temporary and Disability Assistance and Erie County Department of Social Services* |
| Document Received: | Verified Petition |
| Name of Claimant: | Patricia J. Curto<br>20 Hazel Court<br>West Seneca, New York 14224 |
| Claimant's attorney: | Claimant is proceeding *pro se*. |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle M. Parker (dld)
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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In the Matter of the Application of

Patricia J. Curto,
Petitioner,

-against-

New York State Office of
Temporary and Disability Assistance and
Erie County Department of Social Services
Respondents,
For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

AMENDED
NOTICE OF PETITION
Index No.2013 - 000048
Judge Drury

382605

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To : Erie County Department of Social Services

PLEASE TAKE NOTICE that upon the annexed amended petition of Patricia J. Curto, verified on the 12th day of February 2013, petitioner Patricia J. Curto will petition this Court at 2:00 p.m. on March 27, 2013, at the Courthouse located, at 25 Delaware Ave. 2nd Floor, Buffalo, New York in Part 8 before Hon. Timothy J. Drury, for a judgment granting the relief requested in the annexed Amended Petition and such other, different, and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICER, that pursuant to Civil Practice Law and Rules 403(b), you are hereby required to serve copies of your answer on the undersigned no later than the seventh day prior to the day set above for the submission of this proceeding.

Dated: March 12, 2013
Erie County, New York

Respectfully submitted,

Patricia J. Curto, pro se
20 Hazel Ct.
West Seneca, NY 14224
Email;nikkidog1125@yahoo.com

TO:
Erie County Attorney Michael A. Siragusa
95 Franklin Street, Suite 1634
Buffalo, NY 14202

This paper received at the
Erie County Attorney's Office
from [illegible] on
the 15th day of March, 2013
at [illegible] a.m./p.m.
[illegible]
Assistant County Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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In the Matter of the Application of

Patricia J. Curto,
Petitioner,

-against-

New York State Office of
Temporary and Disability Assistance and
Erie County Department of Social Services
Respondents,
For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

AMENDED PETITION
Index No. 2013- 000048

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To the Supreme Court of the State of New York for Erie County:

The petition of Patricia J. Curto complaining of the respondent New York State Office of Temporary and Disability Assistance, and Erie County Department of Social Services respectfully alleges:

1. Petitioner Patricia J. Curto, in this petition challenges respondent New York State Office of Temporary and Disability Assistance Fair Hearing #6122594M discussions, reasons, decisions and findings which are obviously incorrect, unreasonable, arbitrary, capricious, unlawful/illegal, not supported by the evidence and the evidence so establishes beyond any doubt.

2. NYCRR 18NYCRR part 358 allows petitioner to petition the Supreme Court of the State of New York pursuant to Article 78, challenging the hearing decision(s) of the respondent New York State Office of Temporary and Disability Assistance.

3. Pursuant to both the provisions of the Social Services Law and the case law, the New York State Department of Social Services and the Erie County Department of Social Services are part of the same administrative agency with the Commissioner of the New York State Department of Social Services as its chief administrative officer. As a matter of law, the ECDSS has no status to challenge the decisions of the respondent NY State OTDA under CPLR article 78. Therefore this Article 78 proceeding is limited to respondent OTDA's reasons, decisions, findings and evidence submitted at OTDA's hearing; and ECDSS can not put forth any other reason(s) and/or evidence.

4. The Home Energy Assistance Program/HEAP consists of three different benefits **(see exhibit A)**: Regular Benefit; Emergency Benefit; and Heating Equipment Repair or Replacement. Respondent Erie County Department of Social Services verbally and in writing, approved regular HEAP benefits for Petitioner. ECDSS provided petitioner with a written "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" notices dated March 15, 2012 (for $300) and April 16, 2012 (for $150) **(see exhibit B)** and there was no subsequent adverse notices/decisions. Therefore indisputably confirming and establishing, petitioner Curto has meet all requirements/criteria for regular HEAP benefits. Notably **exhibit B** HEAP Approval Notices cited above were also an exhibit at OTDA's July 19, 2012 fair hearing.

5. This proceeding is brought pursuant to CPLR Article 78 to challenge the New York State Office of Temporary and Disability Assistance hearing determinations dated Friday November 7, 2012 for Hearing # 6122594, mailed from Albany NY, and received by petitioner on Tuesday November 11, 2012 The gravamen of the Article 78 proceeding:

a) hearing decision # 6122594 findings of facts state that in March 2012, ECDSS accessed Curto's NYSEG account and was informed that her account was electric heat, ECDSS at the hearing presented a NYSEG account detail printout (dated 7/19/12) for Curto's account stating "**Heating Type:** ele" and ECDSS testified at the hearing they phoned NYSEG and confirmed Curto has an electric heating account but the hearing decisions states NYSEG did not confirm Curto has an electric heating account;

b) ECDSS testified at the hearing the HEAP benefits approved March 2012 was never send to NYSEG; no documentary evidence was presented that it was ever send to NYSEG and ECDSS's fair hearing summary states the same but the hearing decision/discussion states HEAP was send to NYSEG (and they returned it);

c) July 16, 2012 predates July 19, 2012 but the hearing states/decided ECDSS fair hearing packet composed of the summary and copies of documents, created and dated July 19th were mailed to Curto on July 16th. Notably ECDSS Fair Hearing packet (summary) submitted at the July 19, 2012 hearing, states a copy was **not sent** to Curto/appellant.

6. Petitioner requested a fair hearing, from respondent New York State Office of Temporary and Disability Assistance and for the reasons set forth in **exhibit C** (March 15th approved HEAP benefit had not been sent to NYSEG acct. #1001-48-450 and April 16th approved supplemental HEAP benefit was to be incorrectly/improperly sent to National Fuel Gas (petitioner has no active NFG account) instead of New York State Electric and Gas/(NYSEG).

7. The Fair Hearing was held on July 19, 2012 and was tape recorded by the respondent OTDA. Petitioner requested from the respondent OTDA a copy of the tape recording of the Fair Hearing and has received it.

8. Petitioner presented respondent OTDA at the hearing on July 29, 2012, respondent ECDSS written "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" dated March 15, 2012 (for $300 Basic HEAP) and April 16, 2012 (for $150 Supplemental HEAP) **(see exhibit B). The March 15, 2012 notices states petitioner heats with electric and $300 HEAP benefit will be sent to NYSEG for account #1001-4805-450** (petitioner's NYSEG electric heat account). Respondent ECDSS (OTDA's agent) did not claim nor did respondent ECDSS present at the hearing any subsequent notices or decisions sent to petitioner by ECDSS nor did respondent OTDA find or so decide there was any subsequent notices.

**POINT - NYSEG Confirmation of Electric Heat Account/Supplemental HEAP**

7. Respondent ECDSS at the July 29, 2012 hearing testified and presented documentary proof/**confirmation from NYSEG,** that petitioner had an **active electric heating account** (#1001-4805-450) with NYSEG **(see exhibit D) account #1001-4805-450 is coded as heating** with electric;

**AND**

Respondent OTDA's 9/7/12 hearing decision "**FINDINGS OF FACT**" page 2 quoting "12. In March 2012, the agency accessed Appellant's account (#1001-4805-450) with NYSEG and was informed that her heating type was electric.", **see exhibit E.**

**AND**

Respondent ECDSS written "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" notices establishes petitioner Curto met all the requirements, if confirmation from NYSEG is required, ECDSS confirmed prior to

March 15, 2012 , exhibit B;

**BUT**

Respondent OTDA's fair hearing decision dated November 7, 2012, which is the subject of this Article 78 Petition, states on page 7 "NYSEG refused to confirm that the Appellant as having an electric heating account." and that HEAP should not be paid to "NYSEG without confirmation that the Appellant has an active electric heating account." $150 HEAP Benefit should not be paid to NYSEG (should be paid to National Fuel), see exhibit E). Notably besides NYSEG, the $150 Supplemental HEAP was not sent to National Fuel = neither received approved $150 Supplemental HEAP, see exhibit B.

**BUT**

Respondent OTDA's fair hearing decision dated November 7, 2012, which is the subject of this Article 78 Petition, states on page 7 "The record showed that the Agency authorized the additional benefit to the **last know heating provider**, National Fuel Gas." The additional benefit notice was dated **April 16, 2012** . OTDA's 9/7/2012 decision establishes the last known heating provider by the Agency/ECDSS, was NYSEG and not NFG, see: Respondent OTDA's 9/7/12 hearing decision "FINDINGS OF FACT" page 2 quoting "12. **In March 2012**, the agency accessed Appellant's account (#1001-4805-450) with NYSEG and was informed that her heating type was electric."; and Respondent ECDSS written **March 15, 2012** "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" was for NYSEG. Also OTDA's 9/17/2012 decision pg 3 #15 states the April 16, 2012 Notice was CNS = a computer generated notice and irrefutably the vendor code (entered by ECDSS) was incorrect - the numeric vendor code was for NFG instead the prior approved NYSEG.

**POINT - Approved Regular HEAP Was Not Sent to NYSEG**

8. There was no evidence, either documentary or testimonial presented at the July 29th hearing that respondent ECDSS had ever sent ECDSS approved regular HEAP benefits contained in ECDSS "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" dated March 15, 2012 and April 16, 2012 **(see exhibit B),** to petitioner's electric heat account (#1001-4805-450) with NYSEG;

**AND**

Respondent ECDSS fair hearing summary dated 7/19/12 **(see exhibit F)** and ECDSS's hearing testimony, confirmed petitioner's claim that ECDSS had never sent ECDSS approved HEAP benefits contained in ECDSS "Home Energy Assistance Program (HEAP) Notice of Eligibility Decision - Approval" dated March 15, 2012 and April 16, 2012 **(see exhibit B),** to petitioner's electric heat account (#1001-4805-450) with NYSEG. NFG not NYSEG returned $300 regular HEAP, **see exhibit F 1,** NFG printout presented at hearing by ECDSS.

**BUT**

Respondent OTDA's fair hearing decision dated November 7, 2012, which is the subject of this Article 78 Petition, states on page 7 the Match 15th approved $300 Regular HEAP benefit was sent to NYSEG (and NYSEG returned the payment to ECDSS), **see exh E.**

**POINT - FAIR HEARING PACKAGE UNTIMELY**

9. Respondent ECDSS presented at the July 19, 2012 hearing, a 30+ page fair hearing package signed and dated July 19, 2012 **(see F),** and not dated July 16, 2012 (or prior). The fair hearing package contains thirteen/13 pages dated July 19. 2012 (a

computer generated date).

**AND**

Respondent ECDSS initially testified at the July 19, 2012 hearing, petitioner was not entitled to hearing package, in clear violation of petitioner's rights pursuant to 18NYCRR part 358;

**AND**

ECDSS fair hearing summary dated July 19, 2012 states a copy **was not sent** to appellant/Curto, **see exhibit F**;

**AND**

Respondent ECDSS mailed an envelop delivered to petitioner after the hearing and post marked July 17, 2012 with 40 cent postage affixed, which was not and could not be the 30+ page hearing summary, **(see exhibit G)** because 40 cents is insufficient postage for 30+ pages;

**BUT**

Respondent OTDA's fair hearing decision dated November 7, 2012, which is the subject of this Article 78 Petition, states on page 6-7 **exhibit E**:

a) ECDSS had mailed the packet (notably does not state when/if timely);

b) Curto was given the choice to adjourn or proceed therefore Curto's "motion to preclude was denied", violates NYS Social Services law 18NYCRR part358-3.7(b)(4) because OTDA's choices are adjourn or preclude and because this fair hearing was NOT aid continuing (adjournment is prejudicial), OTDA had to preclude;

c) OTDA did not preclude ECDSS's fair hearing package.

**ADDITIONALLY**

**POINT**

10. Respondent OTDA's fair hearing decision dated November 7, 2012, which is the subject of this Article 78 Petition (**exhibit E**) page 3-6 "**APPICABLE LAW**", erroneously cites and quotes from their HEAP Manual:

- a manual is not the law;

- the manual conflicts with the law;

- the pages cited and partial quotes from their manual are not applicable to the instant action regarding **regular HEAP**, see below.

11. OTDA's Nov. 7, 2012 decision page 5-6, cites and quotes from page 44 of their HEAP Manual which is for, quoting "**F. ADDITIONAL ELIGIBILITY CRITERIA FOR HEAT OR HEAT-RELATED EMERGENCY BENEFITS**. The instant action is for denial of **regular HEAP not emergency HEAP** therefore is not applicable.

12. OTDA's Nov. 7, 2012 decision page 6, cites and quotes from page 53 of their HEAP Manual which is for, quoting "**G.ADDITIONAL ELIGIBILTY CRITERIA FOR HEATING EQUIPMENT REPAIR OR REPLACEMENT**. The instant action is for denial of **regular HEAP not heating equipment repair/replacement** therefore is not applicable.

**POINT**

13. The instant action was commenced in early January 2013. The OTDA's attorney, Ms Calhoun, has repeatedly requested adjournment until March 15, 2013. The instant action has repeatedly been adjourned. The deadline for 2012/2013 regular HEAP is March 15, 2013. OTDA's fair hearing decision dated Nov. 7, 2012 (which is the subject

of this instant action) is arbitrarily, capricious, and incorrect etc., in denying petitioner regular HEAP, has not been vacated. Regular HEAP benefits for 2012/2013 is $400 plus any additional benefits. See **exhibit H.**

**POINT**

14. The records and documents of the respondents are not public and accessible only to Curto and under limited circumstance by social services employees and social services law protects the privacy of petitioner Curto's records, documents and information.

**CONCLUSION**

15. Respondent OTDA's fair hearing decisions, reasons/discussions, facts are without basis, incorrect, irrelevant, erroneous and irrelevant as stated above.

16. Respondent OTDA's fair hearing decision's discussions are baseless, erroneous, unlawful/illegal and contrary to the testimony of petitioner and ECDSS at the hearing and contrary to the hearing evidence (documents/records) and the law, as stated above.

17. Therefore respondent OTDA's decision(s) and finding(s) is without basis, is arbitrary, capricious, unlawful/illegal, abusive, obviously incorrect and unreasonable, not based on hearing evidence and testimony (notably including undisputed), is based on errors in law and fact, as stated above.

WHEREFORE, petitioner respectfully requests that judgment be entered pursuant to Article 78 of the Civil Practice Law and Rules:

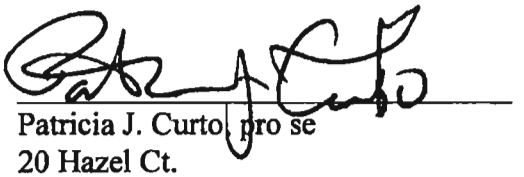
VACATING and setting aside respondent OTDA Fair Hearing #6122594M decision(s);

DIRECTING respondents send to NYSEG, for account number 1001-4805-450 $850 HEAP benefits plus any additional benefits;

DIRECTING respondents to pay all of petitioners cost, fees and expenses related to this petition;

DIRECTING all Court records be seal, redact petitioner's name, replace petitioner's name with Jane Doe;

GRANT such other, different, and further relief as the Court may deem just and proper.



Patricia J. Curto, pro se
20 Hazel Ct.
West Seneca, NY 14224
Dated: March 12 , 2013

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE ) ss:

PATRICIA J. CURTO, being duly sworn, deposes and says:

I am familiar with the facts and circumstances set forth in the foregoing Amended Petition. I have read the foregoing Amended Petition and know the contents thereof; the same is true to my own knowledge, except as to those matters stated upon information and belief, which are believed to be true.

Patricia J. Curto, pro se
20 Hazel Ct.
W. Seneca, NY 14224

Sworn to before me this
12th day of March, 2013

Notary Public

MICHELLE M. ZUREK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
LIC. #01ZU5062830
My Commission Expires July 8, 20 14