



COUNTY OF ERIE

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May 11, 2011

GA

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:	<i>Parson, Starlin vs Carol Dankert as Comm. of the Erie County Dept. of Social Services and the County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Starlin Parson
Claimant's attorney:	Susan C. Antos, Esq. Empire Justice Center 119 Washington Avenue, 2nd Floor Albany, New York 12210

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By:
THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

11D-4

UNITED STATES DISTRICT COURT

for the

Western District of New York

Starlin Parson,

Plaintiff

v.

Carol Dankert as the Commissioner of the Erie
County Department of Social Services and the

County of Erie, New York,

Defendants,

SUMMONS IN A CIVIL ACTION

Civil Action No.

11 CV 0320

To: (Defendant's name and address) Carol Dankert, as the Commissioner of the Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Susan C. Antos, of counsel
Empire Justice Center
119 Washington Avenue, 2d floor
Albany, NY 12210

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

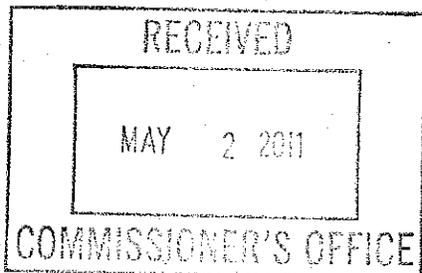
CLERK OF COURT

Michael J. Roemer

Signature of Clerk or Deputy Clerk

Date:

4/28/11



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

STARLIN PARSON,

Plaintiff,

- against -

**CAROL DANKERT AS THE COMMISSIONER OF THE
ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES**

COMPLAINT

and

CASE NO.

THE COUNTY OF ERIE, NEW YORK,

Defendants.

PRELIMINARY STATEMENT

1. Plaintiff Starlin Parson brings this action under the Fair Labor Standards Act of 1938, ("FLSA"), 29 U.S.C. § 201, *et seq.*, to be lawfully paid minimum wages by Defendants for his work, and to obtain a portion of his retroactive Supplemental Security Income ("SSI") benefits illegally retained by the Erie County Department of Social Services ("ECDSS").
2. As a condition of receiving public assistance -- in the form of interim assistance -- from Defendant ECDSS from at least November, 2007 until April of 2008, and again from July of 2009 - February, 2010. Mr. Parson was required to participate in work activities.
3. In exchange for the work performed at his workfare assignments, Mr. Parson received cash public assistance as wages at a rate at least equal to the minimum wage.

9. Plaintiff seeks monetary damages pursuant to 29 U.S.C. § 216(b).
10. Venue in this court is proper under 28 U.S.C. § 1391(b) because a substantial part of the acts, events and occurrences giving rise to Plaintiff's claims occurred in the Western District of New York.
11. The unlawful employment practices described in this complaint were committed within the Western District of New York.
12. Plaintiff, Starlin Parson, is a resident of Cattaraugus County, New York. From approximately November, 2007 – April, 2008 and July of 2009 – February, 2010, he resided in Erie County, and was an “employee” as defined in the FLSA.
13. An “employee” under the FLSA is “any individual employed by an employer.” 29 U.S.C. § 203(e)(1).
14. The Plaintiff has given his written consent to be a party to this action as required by 29 U.S.C. § 216(b).
15. Defendant Carol Dankert is the Commissioner of the Erie County Department of Social Services (“ECDSS”) and is responsible for the administration of public assistance programs, including the interim assistance program, throughout Erie County.
16. The County of Erie is a governmental subdivision with a principle office in Buffalo, New York.
17. Upon information and belief, all relevant times, Defendant ECDSS contracted with the County of Erie to place Safety Net Assistance (“SNA”) recipients like Mr. Parson in work assignments at the Rath Building, 95 Franklin Street, Buffalo, New York 14202.
18. At all times relevant to this action, Defendants ECDSS and the County of Erie were “employers” as defined in the FLSA. An “employer” under the FLSA includes “any

24. New York Social Services Law (“SSL”) § 336-c defines the criteria for a work experience program (“WEP”) and prohibits any assignment from exceeding a number of hours which equals the amount of assistance payable, including food stamps, divided by the higher of the state or federal minimum wage.
25. The Social Security Act, 42 U.S.C. § 1383(g), provides that, pursuant to an agreement between a state and the Secretary of the United States Department of Health and Human Services (“the Secretary”), the Secretary may issue to a local agency an individual’s initial SSI benefit payment, and the local agency may retain an amount sufficient to reimburse itself for “interim assistance” furnished to that individual. Interim assistance is defined in relevant part as “assistance financed from State or local funds and furnished for meeting basic needs (a) during the period, beginning with the month following the month in which the individual filed an application for [SSI] benefits . . . , for which he was eligible for such benefits . . .” 42 U.S.C. § 1383(g)(3). *See also* 20 C.F.R. § 416.1902 *et seq.*
26. The New York State Social Services Law provides, consistent with the Federal statute and regulations, that “an applicant for or recipient of safety net assistance shall be required, as a condition of eligibility” to authorize the federal department of health and human services to “deduct from his or her initial payment the amount of safety net assistance granted for any month for which he or she subsequently is determined eligible to receive supplemental security income benefits.” SSL § 158(2).
27. The New York Code of Rules and Regulations, at 18 N.Y.C.R.R. § 353.1, contains the relevant regulations concerning reimbursement to the local social services district of interim assistance benefits paid while an SSI application is pending.

Defendant Erie County Department of Social Services in amounts ranging from approximately \$88.83 to \$374.00 per month.

32. The public assistance benefits received by Mr. Parson were Safety Net Assistance (“SNA”), which is funded in equal portions by Erie County and the State of New York.
33. As a condition of eligibility, recipients of SNA benefits must engage in work activities and many are assigned to perform in the Work Experience Program (WEP), which is also known as workfare.
34. WEP workers clean and maintain public buildings and parks, sweep streets, and perform low-level and mid-level clerical and maintenance jobs for public, non-profit, and private employers in New York State.
35. On or about September 18, 2007, ECDSS made a work experience referral for Mr. Parson to “Work force Crew #13 at the Rath Office Building” maintained and operated by the Defendant County of Erie.
36. Attached as Exhibit A is a true and correct copy of a “referral document”, dated September 18, 2008 from the Defendant Dankert, describing Plaintiff’s duties as “maintenance.”
37. While working at the Rath Office Building, Mr. Parson mopped and swept floors, cleaned windows, cleaned elevators, polished doors, vacuumed, took garbage to the basement and performed other tasks as directed.
38. If Plaintiff Parson failed to report or perform work for the Defendants without good cause, Defendant ECDSS could terminate his SNA, leaving him destitute. New York. SSL § 342(3). See Exhibit A, and Exhibit B attached hereto where advised Mr. Parson that:

46. On or about April 14, 2010, Defendant ECDSS sent a written notice to Mr. Parson stating that it had received a portion of his retroactive payment awarded by the SSA, and that ECDSS was retaining the entire remaining balance of Mr. Parson's retroactive SSI payment, totaling \$5,991.25 to reimburse itself for all interim public assistance paid to Mr. Parson. A copy of this notice is attached hereto as Exhibit C.
47. On April 20, 2010, Mr. Parson requested a fair hearing in which challenged this recovery. Mr. Parson was partially successful at his hearing, and as a result the agency reduced its claimed recovery from \$5,991.25 to \$5,428.25. He was advised of this adjustment by a notice dated November 1, 2010. A true and correct copy of which is attached hereto as Exhibit D.
48. The calculations prepared by Defendant ECDSS are attached as Exhibit B, and describe how the Defendant ECDSS calculated the \$5,428.25 that it retained. These calculations did not credit any of the Plaintiff's work, valued at minimum wage or any other wage rate.
49. The retention of the \$5,428.25 by Defendant ECDSS was improper since Mr. Parson had already worked for the benefits paid to him.
50. By taking a portion of the SSI benefits owed to Mr. Parson, Defendants failed to compensate Mr. Parson at the minimum wage rate for the work he performed.

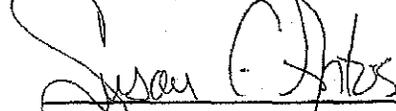
FIRST CAUSE OF ACTION

51. At all times relevant to this action, Plaintiff was an employee of the Defendants within the meaning of 29 U.S.C. § 203(e)(1).

- C. Declare that the refusal of Defendant ECDSS to treat work performed by Safety Net Assistance recipients in the WEP program as work, is a violation of FLSA and therefore unlawful;
- D. Award Plaintiff reasonable attorney's fees and costs of the action;
- E. Award Plaintiff pre-judgment interest as provided by law; and
- F. Award Plaintiff such other relief as the Court deems just and proper.

Dated: Albany, New York
April 11, 2010

respectfully submitted,



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