

are actually eligible, in violation of the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, *et seq.*, and implementing regulations.

2. Plaintiffs seek declaratory and injunctive relief to compel the Department to: (a) enact, implement, and enforce ongoing statewide systemic policies designed to ensure that the Department has the means to provide reasonable accommodation for Plaintiffs and the class they seek to represent to ensure meaningful access; and (b) ensure that the Department does not rely on methods of administration that tend to screen out individuals with disabilities so that individuals with disabilities may be afforded equal and meaningful access to obtaining and retaining subsistence level benefits under the DTA Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elders, Disabled, and Children (EAEDC), and Food Stamp programs.

II. JURISDICTION

3. The Court's subject matter jurisdiction over this action is conferred by 28 U.S.C. §1331 and 29 U.S.C. §794a. Declaratory relief is authorized by 28 U.S.C. §§2201(a) and 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

III. PARTIES

A. Plaintiffs

4. Plaintiff LaSonya Harper resides in Dorchester, Massachusetts and is disabled by Bipolar Disorder and Anxiety Disorder and physical impairments. She receives TAFDC and Food Stamps through the Department.

5. Plaintiff Toccara Freeman resides in Roslindale, Massachusetts and is disabled by Major Depressive Disorder, Panic Disorder with Agoraphobia, Learning Disorders and a cognitive impairment. She receives TAFDC and Food Stamps through the Department.
6. Plaintiff Elsie Diaz resides in Charlestown, Massachusetts and is disabled by Diabetes and resulting physical impairments. She receives TAFDC and Food Stamps through the Department.
7. Plaintiff Anthony Marchese resides in Newton, Massachusetts and has Muscular Dystrophy which limits him to a wheelchair and limits his use of his hands. He receives Food Stamps through the Department.

B. Defendant

8. Massachusetts Department of Transitional Assistance is the state agency charged with providing subsistence level benefits to indigent individuals and families through the Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elders, Disabled and Children (EAEDC) and the Food Stamp programs.

IV. CLASS ACTION ALLEGATIONS

9. The Plaintiffs are indigent individuals with disabilities who are eligible for a DTA program and who sue on behalf of themselves and all other similarly situated persons pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.
10. The named Plaintiffs seek to represent a proposed plaintiff class defined as all disabled individuals who are or will be eligible for TAFDC, EAEDC, or Food Stamps benefits through the Department of Transitional Assistance, but who have been or will be denied equal access to these programs either because DTA's failure to implement appropriate system-wide

procedures and regulations for providing accommodations (including, *inter alia*, notice, responding to assertions of disability as well as requests for accommodations, recordkeeping procedures, implementation of granted accommodations, and grievance), denies them needed accommodations and/or because the Department relies on methods to administer its programs that tend to screen out individuals with disabilities.

11. The prerequisites to a class action specified in Rule 23(a) of the Federal Rules of Civil Procedure are satisfied in this action by the proposed plaintiff class.
12. The proposed class is so numerous that joinder of all its members is impracticable. The precise number and identity of the potential class cannot be determined because the class includes future applicants for benefits who will be denied access at the outset. The identity of many class members, those who have asserted disability to DTA or requested reasonable accommodation, is known to DTA but not to the Plaintiffs.
13. There are questions of law and fact common to the proposed class, including the following:
 - a. Whether the Department's current practices and policies fail to ensure the provision of reasonable accommodations needed by disabled applicants and recipients, thereby denying otherwise eligible individuals with disabilities equal access to the Department's programs in violation of Title II of the Americans with Disabilities Act and its implementing regulations and Section 504 of the Rehabilitation Act and its implementing regulations.
 - b. Whether the Department fails to provide Plaintiffs with adequate notice of and information regarding nondiscrimination requirements, including notice of the

right to request reasonable accommodation, in the operation of its programs and whether its failure to do so is a violation of Title II of the Americans with Disabilities Act and its implementing regulations and Section 504 of the Rehabilitation Act and its implementing regulations.

- c. Whether the Department relies on methods of administration that tend to screen out individuals with disabilities thereby denying equal access to the Department's programs and whether this violates Title II of the Americans with Disabilities Act and its implementing regulations and Section 504 of the Rehabilitation Act and its implementing regulations.
14. The named Plaintiffs' claims are typical of the claims of the proposed class. The named Plaintiffs and members of the proposed class all claim that Defendant's actions and failures violate Plaintiffs' rights under Title II of the ADA and Section 504 of the Rehabilitation Act.
 15. The named Plaintiffs will fairly and adequately represent the interests of the proposed class. In supporting their individual claims, the named Plaintiffs will simultaneously advance the claims of absent class members.
 16. Bringing separate actions on behalf of each individual Plaintiff would create a risk of inconsistent adjudications and/or adjudications which would as a practical matter be dispositive of the interests of individual members of the class who were not party to the adjudications.
 17. Plaintiffs' counsel have the resources, expertise and experience to prosecute this action.
 18. The Plaintiffs' claims satisfy the requirement of Rule 23(b)(2) of the Federal Rules of Civil Procedure in that the Defendant has acted on grounds generally applicable to the

proposed class, thereby making appropriate final injunctive relief and declaratory relief with respect to the proposed class as a whole.

V. FACTS

A. Systemic Allegations

General Policies, Procedures and Practices

19. The Department administers the Transitional Aid to Families with Dependent Children (TAFDC) program (the primary cash assistance program in Massachusetts for indigent families with minor children), the Emergency Aid to Elders, Disabled and Children (EAEDC) program (a cash assistance program for certain individuals who cannot work for a specific set of reasons, including disability), and the Food Stamp program.
20. A number of Department procedures and practices that apply to all of these programs result in deprivation of benefits and other harm to disabled individuals and their families.
21. The Department requires applicants to submit an application and third party verification of information relevant to eligibility for benefits.
22. The Department requires recipients periodically to re-verify any eligibility factor that may be subject to change.
23. The Department also requires recipients to notify the Department and submit third party verification any time there is a change in their situation in order to determine whether the change affects eligibility in any way.
24. With only narrow exceptions, the Department requires in-person appointments in connection with both the initial application process and subsequent reviews of eligibility.
25. Common eligibility-related information for which the Department requires third party

verification include identity, household composition, relationship of household members to the head of the household, ages, proof of application for social security number for any household member without a social security number (including minor children), source and amount of income, the termination of any income the applicant or recipient claims no longer to be receiving, assets, living arrangement, shelter-related expenses, immigration status, and proof of application for any benefits not administered by DTA for which the applicant may be eligible, such as unemployment compensation.

26. In many cases, the Department requires third party verification of additional information, such as the work activity of every adult in the household, and if an adult has stopped working recently, proof that employment has terminated and final pay date and amount, medical expenses, child care expenses, immunization records for each child and school attendance for each child between the ages of six and fourteen, the value of any vehicle, health insurance coverage, and information about any parent who is not in the home.
27. For each program, if an applicant or recipient has difficulty obtaining a requested verification, the Department's regulations require the caseworker to assist the applicant or recipient in obtaining the verification or in obtaining an alternate form of verification.
28. Applicants and recipients are each assigned to a particular caseworker who is primarily responsible for all actions taken on the person's case and for communications with the person.
29. Most TAFDC, EAEDC and Food Stamp cases are administered by the local Department office covering the geographic area in which the applicant or recipient lives.
30. The Department has also established centralized offices for certain cases where a recipient is receiving federal Supplemental Security Income (SSI) disability benefits.

31. One such centralized office, located in Fall River, handles TAFDC cases from across the state in which a parent is receiving SSI for herself and TAFDC for her children.
32. In this centralized office in Fall River, each caseworker is responsible for approximately 700 cases and consequently cannot provide accommodations in all of their cases in which accommodations are needed.
33. Another such centralized office, located in Malden, handles Food Stamps cases from across the state for SSI-recipient individuals who are receiving only Food Stamps from the Department.
34. In this centralized office in Malden, each caseworker is responsible for approximately 3500 cases and consequently cannot provide accommodations in all of their cases in which accommodations are needed.
35. Caseworkers in all DTA offices routinely fail to provide accurate information to applicants and recipients about Department programs, including such matters as eligibility requirements, verification requirements, work rules, and the opportunity for reasonable accommodation if needed due to a disability.
36. The Department's primary means of communication with applicants and recipients is through written notices, many of which are computer generated, often without the caseworker's knowledge.
37. For many applicants and recipients, mailed written notices are the only form of communication they receive from the Department.
38. The content and format of many of the Department's notices render them inaccessible to individuals with certain disabilities.

39. Although the Department instructs applicants and recipients to contact their caseworkers or a centralized Recipient Services office with questions about notices or their cases in general, there are entire categories of notices that cannot be accessed either by caseworkers or Recipient Services staff.
40. Department procedures call for providing written notice about an applicant's rights and responsibilities at the time of application, including the person's obligation to inform the Department of any change in their circumstances that might affect their eligibility for benefits and the serious penalties for not reporting changes. These procedures also call for providing some limited information about right to nondiscriminatory treatment, including the right to request a reasonable accommodation, at the point of application.
41. When initiating a periodic review of eligibility for cash assistance, the Department, without first consulting with the recipient, routinely sends a notice requiring the recipient to attend an appointment with the caseworker at a specific date and to bring the verifications listed in the notice.
42. The penalty for not attending an appointment for an eligibility review is termination from the program.
43. When initiating a periodic review of eligibility in the Food Stamp program, the Department sends a notice requiring the recipient to submit a new application by a particular date and to contact the caseworker to set up an appointment.
44. The Department instructs applicants and recipients that they may communicate with their caseworker by telephone.
45. The Department's phone systems are inadequate to the task of handling the daily volume

of voicemails received by caseworkers. As a result, caseworkers' voicemail boxes are routinely full so that applicants and recipients are unable to leave messages.

46. The main telephone numbers for some local DTA offices routinely go unanswered.
47. Caseworkers routinely fail to return calls in response to voicemail messages that are left by applicants, recipients and advocates.
48. The Department relies heavily on a computer program called BEACON to administer its programs.
49. In many instances, the BEACON computer system makes automated determinations about initial and continuing eligibility for and amount of benefits.
50. Caseworkers routinely rely on the information contained in BEACON and on prompts provided by BEACON to take actions in a case.
51. The Department has programmed BEACON such that, in a number of situations, the input or lack of input of information by a caseworker triggers BEACON to reduce or terminate a recipient's benefit and to issue a notice to the recipient, often without the caseworker's knowledge.
52. The Department relies on duty workers to respond to requests which are either urgent or to which the regular caseworker has not responded. Duty workers do not ordinarily know the individuals whom they serve while on duty and usually have access only to the data in BEACON. Duty workers are generally only available to those individuals who physically come to the DTA office.
53. There are many circumstances in which the Department knows an applicant or recipient has a disability. In the TAFDC and EAEDC programs, DTA administers a disability

determination process whereby an applicant or recipient completes a nineteen page form, known as a Disability Supplement, providing detailed information about conditions, symptoms, treatment, resulting limitations, and providers. The Department subcontracts with the Disability Evaluation Service at the University of Massachusetts Medical School (“DES”) to gather medical evidence and evaluate the claim.

54. The results of those evaluations are used to render individuals exempt from time limit and work requirements in the TAFDC program and to confer eligibility based on disability in the EAEDC program. However, neither the conclusion of disability or the underlying medical evidence is evaluated to determine whether any accommodation is needed.
55. Similarly, in the Food Stamps program an applicant or recipient may inform the Department of a disability in order to have a more favorable calculation applied to their case, but the Department does not evaluate that information to determine whether any accommodation is needed.
56. The Department has a procedure which many individuals with disabilities rely on whereby the individual may choose to have funds deducted from their cash assistance grant and paid to a vendor for rent or utilities.
57. Under the Department’s vendor payments procedures, deductions from the recipient’s monthly cash assistance continue automatically for a set period of time; however, the corresponding payments to the landlord or utility company must be manually authorized each month through a multi-step process involving multiple staff in the local and central offices.
58. Under the Department’s vendor payment procedures, if all steps in the payment process are not completed each month, funds can be deducted from an individual’s grant without

actually being paid to the vendor, with no notice to the individual that the vendor was not paid.

59. The methods used by the Department to administer its programs, as described in this complaint, impose barriers to accessibility and tend to screen out individuals with disabilities, thereby denying equal access.
60. Individuals with disabilities are denied equal access and are at risk of improper deprivation of subsistence level benefits due to:
- a. The Department's failure to provide applicants and recipients with accurate information regarding program eligibility and other aspects of its programs;
 - b. The Department's routine errors regarding application of its own policies and regulations;
 - c. The Department's failure to provide reliable and consistent means by which applicants and recipients may contact their caseworker because many individuals with disabilities are more likely to experience greater difficulty navigating through bureaucratic hierarchy to obtain a response, and to have fewer alternatives upon which to rely if they are not able to establish eligibility for a benefit.
 - d. The Department's reliance on inaccessible written materials as its primary means of communication with applicants and recipients, which poses an insurmountable barrier to certain disabled individuals whose disabilities, such as cognitive or learning disabilities, limit their ability to read or understand written materials.
 - e. The Department's system for scheduling appointments.

- f. The Department's failure to operate the vendor payment system in a manner that ensures payment to the vendor when funds are deducted from a recipient's cash assistance grant and provides notice to the recipient if a payment cannot be made.
61. The Department's methods of administration of its programs can be revised in ways that would address many of the barriers that tend to screen out individuals with disabilities without fundamentally altering the Department's programs.

Policies, Procedures and Practices Relating to the Provision of Reasonable Accommodations

62. Notwithstanding a written policy that outlines basic procedures for responding to requests for accommodation, the Department has failed to implement, enforce and monitor system-wide policies and procedures to provide reasonable accommodations when needed by disabled applicants and recipients to assure that they have meaningful access to the Department's programs. Existing policies, procedures and practices fail to provide for:
- a. Routine, timely and effective screening of applicants or recipients to identify those who might need reasonable accommodations in order to access and maintain eligibility for the Department's programs;
 - b. Routine screening of applicants and recipients prior to taking adverse actions (e.g. denial or termination of eligibility) against individuals to determine whether individuals with disabilities need reasonable accommodations in order to have equal access to the Department's programs;
 - c. Appropriate response when an applicant or recipient affirmatively articulates that a disability prevents compliance with a Department requirement;
 - d. Affirmative consultation with an applicant or recipient regarding the potential

need for an accommodation when the individual has been found disabled through the Department's own disability determination process or the individual has otherwise verified his or disability to the Department;

- e. Routine, timely and meaningful written or oral notice to applicants and recipients of the right to request a reasonable accommodation;
 - f. Timely response to requests for accommodation;
 - g. Meaningful notice of the right to request reconsideration of the Department's decision regarding an accommodation request and a written policy regarding the time period within which such a request must be made;
 - h. Implementation, tracking or monitoring of approved accommodations on a consistent, on-going basis;
 - i. Automated mechanisms for identifying individuals with approved accommodations;
 - j. Automated mechanisms for implementing approved accommodations through BEACON or other computer systems or automated mechanisms to prompt caseworkers to take the steps necessary to implement approved accommodations;
 - k. Monitoring to assure that the Department's agents, such as education, training and job search providers, provide reasonable accommodations to DTA applicants and recipients and otherwise uphold the Department's obligations under the ADA and Rehabilitation Act.
63. Individuals with disabilities can have difficulty with several aspects of the operation of this system which can be accommodated without fundamental alteration of the Department's

programs.

- a. Individuals with cognitive and mental disabilities frequently have difficulty:
 - i. understanding written notices and need oral explanations;
 - ii. completing tasks and need assistance, including assistance obtaining third party verifications, completing paperwork, and extension of deadlines;
 - iii. remembering or understanding the steps the Department is requiring them to take and need oral and/or written explanations and reminders of appointments, requirements, and deadlines;
 - iv. taking public transportation and being in public settings and may need to conduct their case through some combination of contact through telephone, mail and home visits.
- b. Individuals with physical disabilities frequently have difficulty:
 - i. getting to the DTA office and need to conduct their case through some combination of telephone, mail, facsimile, and home visits;
 - ii. obtaining third party verifications and need assistance obtaining third party verifications;
 - iii. physically reading or completing paperwork and need assistance actually reading notices or forms and filling in forms;
 - iv. communicating orally by telephone or in person if they are deaf or have a hearing impairment and may to use a TTY machine and/or American Sign Language (ASL) interpreter.

Impact of DTA Policies, Practices and Procedures on Individuals with Disabilities

64. The Department knows that individuals with disabilities apply for and receive benefits through DTA programs. Nationally, the incidence of disability amongst applicants and recipients of welfare benefits is quite high. The most consistent estimates are that between twenty-five percent and thirty-three percent of TANF recipients have a serious mental health illness, and twenty percent of TANF recipients are known to have a physical disability that impairs their ability to work. Twenty-five to thirty-three percent of TANF recipients are known to have a learning disability. In the Food Stamp program, approximately twenty-five percent of recipients are known to be disabled themselves or have a household member who is disabled.
65. Between July, 2005 and June, 2006 the most recent timeframe for which data is available to the Plaintiffs, the Department found 3,123 individuals in the TAFDC program to have a disability which prevents them from being able to work for at least thirty days and 4,781 individuals in the EAEDC program to have a disability which prevents them from being able to work for at least sixty days. Some of these individuals need an accommodation to secure equal access to benefits.
66. In addition, in the TAFDC program, hundreds of parents who have not gone through the disability determination process nevertheless have a disability which requires some accommodation.
67. In the EAEDC program, disability is an eligibility factor for adults under the age of sixty, so some number of applicants who need an accommodation in order to establish eligibility are found not to be eligible. Others, who are found eligible due to a factor other than disability, such as age, still require accommodations to secure equal access to benefits.

68. Across all of the Department's programs, there are numerous applicants and recipients whose eligibility for benefits is not contingent on being considered disabled by the Department, who nevertheless are disabled and need reasonable accommodations to secure equal access to benefits.

69. As a result of the Department's operation of its programs, significant numbers of individuals with disabilities who are actually eligible for a Department benefit are denied assistance both because their disabilities are not accommodated and because the mechanisms the Department uses to administer its programs tend to screen out individuals with disabilities.

B. Facts with Respect to Plaintiffs

Plaintiff LaSonya Harper

70. LaSonya Harper lives in Dorchester, Massachusetts with her nineteen and sixteen year old sons, D. and S. At times relevant to this case prior to June 29, 2007, Ms. Harper lived in Milton, Massachusetts, and her household at times included her nephew, T. and her niece, S.

71. Ms. Harper suffers from Bipolar Disorder and Anxiety Disorder which substantially impact several major life activities. She also has arthritis and related joint pain that limit her mobility. Ms. Harper is very isolated socially, has major difficulty sleeping such that she describes "walking the floors all night long" for days and weeks on end and is unable to tolerate being in public, including taking public transportation. She has great difficulty interacting with other people and completing tasks. She regularly becomes so anxious and agitated that she literally cannot complete sentences. She also cannot consistently comprehend written materials, including the Department's written notices.

72. Ms. Harper receives Supplemental Security Income (SSI) as a result of her psychiatric disabilities. She currently receives \$388 per month in TAFDC benefits for her younger son and Food Stamps for the household of \$111.
73. Because Ms. Harper receives SSI as a result of her disabilities, the Department exempts her from the TAFDC time limit and work requirements.
74. Because Ms. Harper's psychiatric disabilities prevent her from being able to pay bills on her own, she instituted vendor payments with the Department whereby the Department is supposed to deduct funds from her TAFDC grant for rent and utilities and then pay her landlord and utility companies directly. On four separate occasions from 2004 through 2006 the Department failed to make these vendor payments properly, despite deducting the funds from Ms. Harper's TAFDC grant. The vendor payments were corrected only after Greater Boston Legal Services intervened repeatedly, and only after months went by that the payments were not made.

The Department's Failure to Provide Reasonable Accommodations

75. Ms. Harper's impairments make it extremely difficult for her to take the steps necessary to maintain her eligibility for TAFDC and Food Stamps benefits.
76. The Department has in the past issued a notice terminating her benefits because of alleged noncompliance, namely failure to provide verification, that resulted from her disabilities. This termination was averted only because Ms. Harper contacted Greater Boston Legal Services for assistance and Greater Boston Legal Services was able to file a timely appeal.

77. Because her disabilities make it extremely difficult for her to respond to communication from the Department and to comply with Department requirements, Ms. Harper filed a written request for reasonable accommodations on or about December 22, 2006 in order to protect her benefits.
78. Ms. Harper asked the Department to provide the following accommodations:
- a. Handle Ms. Harper's case by mail instead of requiring her to come to the DTA office.
 - b. Provide ongoing assistance obtaining all necessary verifications.
 - c. Contact Ms. Harper by phone prior to taking any action and prior to sending a notice to explain the action and notice.
 - d. Contact Ms. Harper by phone prior to taking any adverse action to check whether her alleged noncompliance is related to her impairments.
79. At a telephone conference with Ms. Harper's attorney, the Department representatives stated that Ms. Harper's requests would be approved but that BEACON could not record or track the accommodation request in any way and that even the mere fact of an approved accommodation request would be available only to a Department worker who had the physical case file.
80. The Department's written decision, dated February 22, 2007, provided that for the period February 1, 2007 through March 31, 2008, the Department would:
- a. Provide assistance obtaining necessary verifications.
 - b. Contact Ms. Harper by telephone "prior to an action taken on her case due to her impairment."

81. Because this decision was silent on some aspects of the request the Department had agreed to orally and ambiguous with respect to other aspects, Ms. Harper made a written request to the Department on March 2, 2007 through her attorney requesting clarification of the Department's decision.
82. To date, the Department has not responded to Ms. Harper's request for clarification.
83. By April, 2007, the Department transferred Ms. Harper's case to the Fall River Centralized TAFDC Office which handles some TAFDC cases where a parent receives SSI. Ms. Harper did not receive a telephone call explaining the notice connected with this action as called for by the approved accommodation.
84. The only change leading up to this transfer was the accommodation request and the Department's stated limitations of ability to adhere to the accommodations.
85. Concurrent to these events, Ms. Harper's health deteriorated to the point that she recognized that she could no longer provide the care her nephew and niece needed, and she therefore sought alternate living arrangements for them.
86. On or about May 9, 2007, Ms. Harper requested through her attorney that the Department increase her vendor payments for utilities to meet her higher bills and informed the new DTA office of the existence of the approved accommodation request and the need to clarify the scope of the approved accommodation.
87. Upon reviewing the approved accommodation, the Department concluded that the Fall River Centralized TAFDC Office could not provide these accommodations and transferred the case back to the Dorchester DTA office.

88. The Department did not call Ms. Harper to explain the transfer and instead informed her by a notice dated June 5, 2007 which failed to provide the name or contact information for the caseworker who would be responsible for her case.
89. Ms. Harper learned of the transfer when, prior to receiving the notice, she telephoned the Fall River Centralized TAFDC Office to report that her niece had left her home and to request that her TAFDC and Food Stamps be lowered accordingly and to report that she was planning to move to a new apartment in Dorchester by July 1, 2007 and to make necessary changes, including setting up new vendor payments.
90. In this call, the Department informed Ms. Harper that the case was transferring back to the original office specifically because of the accommodation request, that the Department had not completed the necessary invoices for her vendor payments for rent and utilities and that there had been errors with past vendor payments, the nature and scope of which the caseworker could not otherwise explain.
91. Because of the transfer of Ms. Harper's case, the Department did not take steps to act on the change Ms. Harper had reported in her household and failed to reduce Ms. Harper's TAFDC or Food Stamps grant to reflect the departure of her niece.
92. Ms. Harper therefore received an overpayment of benefits, which though no fault of her own, she can be held responsible to repay.
93. The Department continues to fail to adhere to the accommodation, even in the more limited scope approved in writing and has yet to clarify the discrepancy between the commitments made orally and the approval as written.

94. The Department has sought to terminate Ms. Harper's benefits in the past for alleged noncompliance that should be covered by the accommodation even in the more limited scope of the Department's written approval.
95. Because Ms. Harper needs these accommodations to comply with nearly any requirement the Department can impose, the failure to provide these accommodations means that Ms. Harper will lose benefits whenever the Department requires any action of her.
96. Ms. Harper's current caseworker is retiring at the end of 2007 and standard Department practice calls for a new caseworker to a case to call the recipient in to meet with her and to review all eligibility factors, including updating verifications. If that standard practice is followed and Ms. Harper is required to come to an appointment or to provide verifications, she will lose her benefits because she cannot comply with such requests.
97. The Department's failure to provide reasonable accommodation therefore places Ms. Harper at real and immediate risk of future loss of benefits.

The Department's Failure to Make Vendor Payments and Resultant Harm to Ms. Harper

98. On four separate occasions since 2004, the Department has failed to make approved vendor payments despite withholding the funds from Ms. Harper.
99. The transfer of Ms. Harper's case from the Fall River Centralized Office, which was itself a direct result of her accommodation, resulted in her vendor payment for rent for June not being paid timely.
100. After repeated unsuccessful attempts over the prior weeks to reach any staff who would take action on her case, on June 28, 2007, Ms. Harper notified the Department through her attorney of her scheduled June 29th move, requested that her vendor payments be changed in

light of her move, and provided complete verification of her lease and all other necessary information to implement a new vendor payment for rent.

101. The Department nevertheless failed to make vendor payments for rent from July through December, 2007 despite withholding \$1035 from her TAFDC grant.

102. The Department provided no notice to Ms. Harper that her rent payments were not actually being made.

103. Although the Department became aware that the landlord was not receiving payments as early as August, and continuing through October, as of December 20, 2007, the Department had not yet corrected the failure to make rental payments.

104. The failure to make vendor payments was caused and/or prolonged as a direct result of the transfers between the two DTA offices.

105. These office transfers in turn were cause by the inability of both DTA offices to adhere to the approved accommodation.

106. Had the accommodation been provided by either office, the vendor payment problem would not have occurred and/or would not have been prolonged.

107. Ms. Harper has suffered and is continuing to suffer harm she otherwise would not have suffered as a result of the Department's failure to make vendor payments for rent.

108. Because Ms. Harper's nephew and niece no longer live with her, the housing subsidy she relies on was reduced to a subsidy for a two bedroom apartment effective January 1, 2008. If she remains in her current apartment, her rent will more than double and be utterly unaffordable. To sustain housing that is affordable, she must move to a two bedroom apartment by January 1, 2008.

109. Because Ms. Harper is in the first year of her lease, she may not move without authorization from her current landlord.
110. Ms. Harper's current landlord has refused to release her from her current lease because of her rental arrearage.
111. Because Ms. Harper relies on a housing subsidy, she also needs approval of the housing authority that administers her subsidy in order to move.
112. Ms. Harper's housing authority has also refused to process her request to move because of her rental arrearage.
113. The housing authority has further notified Ms. Harper that her subsidy may be terminated because of her apparent failure to pay rent.
114. Ms. Harper has also been harmed as a direct result of the Department's failure to make vendor payments for rent because her application for a two bedroom apartment was denied substantially due to the unpaid rent. This particular apartment was uniquely suited to her needs because it is located near family members who could provide vital support to her family.
115. Because of the Department's ongoing failure to correct the vendor payments for her rent, it is impossible for Ms. Harper to move by January 1, 2008, and she therefore will be subject to a rental increase that she cannot afford.
116. Also as a direct result of this same failure, Ms. Harper suffered acute distress and worsening of her psychiatric conditions to the point she was unable to sleep or eat.
117. Wherever Ms. Harper does move, her disabilities will once again force her to rely on vendor payments to protect her housing and utilities, and she will likely face the same or

similar harms yet again because of the Department's ongoing failure to make approved vendor payments in any consistent manner.

Plaintiff Toccara Freeman

118. Toccara Freeman lives in Roslindale, Massachusetts with her seven-year old son, J. and her one-year old daughter, C.

119. Ms. Freeman suffers from Major Depressive Disorder, Panic Disorder with Agoraphobia, Learning Disorders and a cognitive impairment, all of which substantially impact one or more major life activities.

120. As a result of her disabilities, Ms. Freeman is unable to read or understand most written materials, including notices sent to her by the Department. Her aural comprehension is also limited.

121. Ms. Freeman's sole income is \$491 per month in TAFDC, which she receives for her son, J., and herself. Ms. Freeman also receives \$426 per month in Food Stamps each month for J., C. and herself. Ms. Freeman does not receive child support for either of her children. J.'s father was murdered several years ago. C.'s father has no contact with the family.

122. Ms. Freeman's history on TAFDC reveals several short interruptions in her benefits, including periods when her TAFDC benefits were terminated and then quickly reinstated.

123. Since she began receiving TAFDC, Ms. Freeman has been unable to understand or comply with the Department's work program requirements, which left her vulnerable to sanctions that reduced or terminated her cash assistance.

124. In February 2004, Ms. Freeman was improperly sanctioned and her benefits terminated because the Department claimed she had failed to comply by not participating in community

service, even though the Department had not taken the required steps of referring her to a particular community service site or of providing child care. After intervention by Greater Boston Legal Services, the Department agreed that the sanction had been improperly issued and Ms. Freeman's benefits were reinstated.

125. In April 2004, Ms. Freeman requested a disability exemption from the Department.
126. Because Ms. Freeman was both unable to understand the questions asked on the nineteen page form and unable to write her responses, her sister helped her complete for the form. Ms. Freeman indicated on the form that she had trouble getting places, had difficulty with directions, and needed help in order to attend doctors' appointments and visit relatives. Moreover, Ms. Freeman indicated that she needed help with reading and had trouble remembering things.
127. In January 2005, DES denied Ms. Freeman's request for a disability exemption because she did not attend a consultative examination with a medical doctor even though she had noted in her application that she needed help getting to doctors and that it was difficult for her to get places due to difficulty with directions.
128. DES regularly provides transportation to consultative exams for TAFDC applicants and recipients but did not offer to do so for Ms. Freeman despite the clear information on her application that she was likely to be unable to get to an exam on her own and could not respond to written notices.
129. On December 8, 2006, the Department informed Ms. Freeman by notice that a sanction would be implemented because she had not met the work program requirement. As a result of

this sanction, Ms. Freeman's benefits were lowered by approximately \$100 per month starting on December 28, 2006.

130. By notice dated January 10, 2007, the Department informed Ms. Freeman that it would terminate her TAFDC benefits effective January 29, 2007 and Food Stamp benefits effective February 12, 2007 because she missed an appointment with her caseworker. Ms. Freeman missed the appointment because she was away when the notice came and on the day of the scheduled appointment.

131. Ms. Freeman went to her local DTA office on approximately January 30, 2007 after realizing that her TAFDC benefits had been terminated when they had not been deposited in her account on the day they regularly appear. Ms. Freeman explained that she had been away, and in an attempt to get her benefits reinstated and to explain her need for assistance, she informed her caseworker that she is disabled.

132. Although the Department could have reinstated her immediately, and should have explored why she thought her disability was relevant and whether she needed an accommodation, the Department took weeks to process Ms. Freeman's case, and she and her children went without any income or Food Stamps until February 23.

133. When Ms. Freeman told her caseworker that she is disabled, her caseworker gave her another Disability Supplement form to complete in order to request that the Department consider her disabled and therefore not require her to participate in the work program. Her caseworker did not offer to help her complete the nineteen page form, nor did she grant her "good cause" to prevent her from being subject to penalties for not meeting the Department's work program requirements while completing the lengthy form.

134. On February 8, 2007, Ms. Freeman contacted Greater Boston Legal Services again because she remained without income and due to her disabilities Ms. Freeman was unable to complete the disability supplement form that the Department had given her.
135. Greater Boston Legal Services subsequently informed the Department that Ms. Freeman was in the process of completing the disability supplement with her attorney, and the Department agreed that upon receipt of the disability supplement, Ms. Freeman would be considered “presumptively exempt” according to the Department’s policies, and therefore not subject to the work program requirements.
136. With assistance from her attorney, Ms. Freeman completed the Department’s Disability Supplement form and submitted it to the Department on February 22, 2007.
137. When the Department reopened Ms. Freeman’s TAFDC, Ms. Freeman’s caseworker nonetheless mailed her a letter telling her that she was being referred to a job search program because she was required to participate in the Department’s work program.
138. In addition, when Ms. Freeman’s TAFDC case was reopened, the previous sanction remained in place, which meant that Ms. Freeman’s cash assistance amount was erroneously reduced.
139. Had Ms. Freeman not had legal representation, she would not have understood that the letter telling her she was required to participate in job search was made inapplicable by her submission of the disability supplement or that there was an error in the amount of her TAFDC grant.

140. In April 2007, the Department determined through its disability determination process that Ms. Freeman is unable to work as a result of her disability; the exemption will last until May 7, 2008.
141. On May 4, 2007, through her attorney, Ms. Freeman submitted a request to the Department for ongoing accommodations needed as a result of her disabilities. The requested accommodations are necessary to afford Ms. Freeman equal access to the TAFDC and Food Stamp programs and specifically to protect her from reduction or termination of benefits.
142. Ms. Freeman's disabilities make it extremely difficult, if not impossible, for her to successfully navigate the Department's systems and comply with program requirements to ensure that her subsistence-level benefits remain intact. Because of her learning disabilities and cognitive impairments, Ms. Freeman cannot read or understand notices sent to her. In addition, she has difficulty completing forms and at times has difficulty obtaining required verifications from third parties. Ms. Freeman's anxiety and agoraphobia make it intolerable for her to travel via public transportation to her local DTA office.
143. Ms. Freeman therefore requested that the Department provide the following accommodations:
- a. Arrange home visits or taxi transportation to and from the local DTA office when in-person appointments are required.
 - b. Call Ms. Freeman to explain all notices or other written materials to her.
 - c. Provide Ms. Freeman with assistance obtaining required verifications.
 - d. Call Ms. Freeman to remind her of upcoming deadlines.

- e. Contact Ms. Freeman by phone before taking any adverse action to see whether any alleged noncompliance with program rules or requirements is related to her disabilities.

144. On June 6, 2007, the Department approved Ms. Freeman's accommodation request with some modifications that limited the scope of the accommodations requested. The Department agreed to the following accommodations:

- a. Arrange for home visits when appointments are required.
- b. Call Ms. Freeman to explain all notices or other written material to her, with the limitation that "the Department will be unable to call Ms. Freeman when mass mailing change notices are generated by [the Department's computer system]."
- c. Provide assistance with obtaining required verifications on an on-going basis.
- d. Call Ms. Freeman to remind her of upcoming deadlines.
- e. Contact Ms. Freeman by phone before taking any adverse action to see whether any alleged noncompliance is related to her disabilities with the limitation that "the Department is unable to do so for any adverse mass mailing changes generated by Beacon."

145. By letter to the Department dated June 20, 2007, Ms. Freeman's attorney sought written clarification of the scope of the approved accommodation on Ms. Freeman's behalf.

Specifically, Ms. Freeman's attorney asked that the Department explain which notices are included in the category of "mass mailing notices" referred to in the approved accommodation.

146. Ms. Freeman's attorney also sought written clarification of the time period within which a request for reconsideration of an accommodation decision must be made, as neither the Department's form for requesting reconsideration nor the Department's written policies provide this crucial information.

147. The Department's response was that the policies fail to set any timeframe for a response and that the Department could not specify which notices they would call Ms. Freeman to explain and which they would not.

148. Based on information provided to Plaintiffs' attorneys by the Department in other cases regarding its limited ability to accommodate by calling recipients about notices, the limitation imposed on Ms. Freeman's accommodation mean that the Department will not contact to her to explain a wide range of notices that could have significant impact on her benefits, including determinations about her particular eligibility for benefits, such as: reduction or termination of benefits, claims of fraud or overpayment, or intent to disqualify her from TAFDC or Food Stamps prospectively. Each of these actions would trigger appeal rights but the Department's purported inability to contact Ms. Freeman to explain such actions means she will also be unable to exercise her appeal rights.

149. Despite the approved accommodations, Ms. Freeman remains at risk of losing her TAFDC and Food Stamps because she needs an accommodation in order to maintain her eligibility for benefits and the Department has not adequately responded to her request for an accommodation and does not have adequate systems in place to allow it to implement even the approved accommodation on an on-going basis.

150. There is a very real risk that the Department will be unable to implement the approved accommodation consistently on an on-going basis and Ms. Freeman will lose benefits as a result. It is certain that in the near future, the Department will mail Ms. Freeman an appointment letter or a notice telling her of a required verification but will not contact her to explain the notice, which could result in a termination of benefits if she does not respond.

Plaintiff Elsie Diaz

151. Ms. Elsie Diaz lives in Charlestown with her children, A., age 15 and B., age 6.

152. Ms. Diaz suffers from diabetes which substantially impacts one or more major life activities. As a result of her diabetes, Ms. Diaz is legally blind and has other physical limitations and requires extensive medical care.

153. Ms. Diaz receives SSI for herself because of her disabilities and receives \$491 per month in TAFDC benefits for her children. The whole family receives \$194 per month in Food Stamps.

154. Because Ms. Diaz receives SSI as a result of her disabilities, the Department exempts her from the TAFDC time limit and work requirements.

Improper Verification Requests and Termination of Ms. Diaz's Benefits

155. In March, 2007 the Department initiated a regular periodic review of Ms. Diaz's eligibility for TAFDC and Food Stamps. At her appointment for that review with her caseworker, the caseworker asked if Ms. Diaz's son, A., was receiving SSI. Ms. Diaz explained that though she had applied for SSI for A., the application was still pending.

156. On March 13, 2007, the Department removed Ms. Diaz's older son from the TAFDC grant, claiming that he was getting SSI.

157. Although the Department can verify receipt of SSI through interagency contact, the Department nonetheless required Ms. Diaz to obtain proof of the fact that her son was not receiving SSI.
158. In addition, for unknown reasons, the Department also required that Ms. Diaz provide written verification of the TAFDC grant amount that she was receiving, even though the Department itself administers Ms. Diaz's TAFDC benefits.
159. Though it was a significant hardship, Ms. Diaz went to the Social Security Administration and obtained proof that her son was not receiving SSI. Ms. Diaz also obtained verification of her TAFDC grant amount from the Department's income verification unit. She faxed these verifications to the Department twice and called her caseworker to ask if they had been received. Not having received any response, she subsequently went in person to the DTA office and handed the verifications to Department staff, but the Department either lost or failed to act on these verifications and refused to restore her TAFDC.
160. Ms. Diaz contacted Greater Boston Legal Services, and only after a legal advocate's intervention did the Department restore full benefits.
161. The Department then transferred Ms. Diaz's case from her local office in Revere to the centralized office in Fall River that handles some TAFDC cases where the parent receives SSI for herself.
162. Ms. Diaz's legal advocate filed a written complaint on the handling of Ms. Diaz's case pursuant to 106 CMR 706.150 which requires that the Department provide a written response to such complaints and sent copies of the complaint letter to the Regional Manager in DTA's Central Office who oversees the Revere DTA office as well as the Assistant Commissioner of

Field Operations. To date, there has been no written response.

The Department's Failure to Provide Reasonable Accommodations

163. On May 18, 2007, through her legal advocate, Ms. Diaz filed an accommodation request with the Department because her visual impairment, combined with her physical impairments, greatly impact her ability to read written notices, comply with the Department's verification requirements, physically get to the Department's office and other offices from which the Department would require her to obtain verifications, and to complete forms as required by the Department.

164. Ms. Diaz therefore asked that the Department take the following steps to accommodate her on an on-going basis:

- a. Call Ms. Diaz to explain orally all written materials sent to her.
- b. Complete any required forms by phone and mail the completed forms to Ms. Diaz to sign.
- c. Extend deadlines as necessary to allow for this process to be completed.
- d. Provide ongoing assistance obtaining any required verifications.
- e. Contact Ms. Diaz by phone prior to taking any adverse actions to see whether any alleged noncompliance is related to her disabilities.

165. On June 6, 2007, the Department approved Ms. Diaz's accommodation request with modifications that limited the scope of the accommodation requested. The Department agreed to take the following steps to accommodate Ms. Diaz:

- a. Call Ms. Diaz to explain all written material sent to her "by her worker. We will not be able to give advance notice of batch mailings."

- b. Complete required forms by phone with Ms. Diaz, and mail completed forms to Ms. Diaz for her review and signature.
 - c. Extend deadlines as necessary to process forms.
 - d. Provide assistance with obtaining verifications on an on-going basis.
 - e. Contact Ms. Diaz by phone before taking any adverse actions to see whether any alleged noncompliance is related to her disability. “However, batch jobs done by [the Department’s computer system] that result in adverse actions are beyond the control of the worker and we cannot guarantee that the worker will be able to notify [Ms.] Diaz.”
166. At the same time that the Department approved a modified version of Ms. Diaz’s accommodation request, it transferred her case from the Fall River Centralized TAFDC Unit to the Revere DTA office.
167. The Director of the Fall River Centralized TAFDC Unit explained to a GBLIS attorney that the reason for the transfer was that the Centralized TAFDC Unit is unable to accommodate individual recipients even in the manner approved in Ms. Diaz’s case just as it was in Ms. Harper’s case and had therefore sent the case back to the Revere DTA office.
168. Although the Revere DTA assigned her case to a Spanish speaking caseworker when the case transferred back, it was subsequently assigned to an assistant director who does not speak Spanish and who does not generally handle individual cases. Although the Department’s policy is to assign clients who do not speak English to bilingual workers and although the Revere DTA office has several Spanish speaking workers, it appears that her case was assigned to a non-Spanish speaking worker as a direct result of her accommodation

request. Ms. Diaz received no telephone call explaining this change; rather, she happened to notice on a document relating to her Food Stamps, that the name and phone number of the caseworker listed had changed.

169. When Ms. Diaz has tried to contact that assistant director, he gets the Spanish speaking caseworker who used to handle Ms. Diaz's case, the very caseworker whose mishandling of Ms. Diaz's case resulted in the improper reduction of her benefits which was the subject of the written complaint six months ago to which DTA has yet to respond. This caseworker does not in fact interpret for the supposed new caseworker but instead provides the information herself and has provided misinformation to Ms. Diaz about her eligibility for benefits.
170. On September 4, 2007, Ms. Diaz, through her legal advocates, requested reconsideration of the Department's decision with respect to Ms. Diaz's May 18 request for an accommodation. Ms. Diaz sought reconsideration because the Department stated that it could not provide her with oral explanations of all written materials sent to her. Moreover, the Department also stated that it could not contact Ms. Diaz before taking adverse actions, including reductions and termination of benefits, resulting from so-called "batch mailings" and "batch jobs done by [the Department's computer system]."
171. Although the Department has not responded to multiple requests in multiple cases and outside of individual cases to clarify the scope of notices or actions considered to be "batch" or "mass" other than to require Plaintiffs' attorneys to seek this information through a public records request, it is clear that these terms refer to notices and actions which could result in determinations regarding Ms. Diaz's particular eligibility for benefits, including reductions,

terminations, claims of overpayment or fraud, and not a generalized eligibility or rule change.

172. In accordance with Department procedures, the request for reconsideration was directed to the Director of Equal Opportunity in DTA's Central office.
173. As of October 11, Ms. Diaz's legal advocates had not received any notice of or response to their request for reconsideration. Ms. Diaz's attorney therefore attempted to contact the Department to inquire about the status of the request for reconsideration. Because the form for requesting reconsideration indicates that such requests should be directed to the Director of Equal Opportunity, Ms. Diaz's attorney contacted the Central DTA office and asked for the Director of Equal Opportunity. The operator did not know who should receive the call, and tried several people within the Department, including someone in the Human Resources Department.
174. When Ms. Diaz's attorney did reach the right staff, the Executive Assistant for the Director of Civil Rights and Equal Opportunity for the Executive Office of Health and Human Services (EOHHS), she learned that the Department had no record of the request for reconsideration even though the request had been faxed and mailed as instructed by the Department's Field Operations Memo on accommodations. Ms. Diaz's attorney therefore submitted the request for reconsideration again but as of December 19, 2007, there has been no response.
175. In the meantime, the Department has failed to implement the accommodation as approved. Ms. Diaz has received written notices that should have prompted calls from her caseworker under the Department's approved accommodation, but Ms. Diaz did not receive calls from her caseworker.

176. Because the accommodation approved by the Department is inadequate and because the Department does not have the systems or staffing in place to enable it to implement the limited accommodation that it did approve, Ms. Diaz is denied equal access to the Department programs and is at risk of losing her subsistence-level TAFDC and Food Stamps because she needs an accommodation in order to maintain her TAFDC and Food Stamp benefits.

Plaintiff Anthony Marchese

177. Anthony Marchese lives in Newton with his wife of 15 years.

178. Mr. Marchese has Muscular Dystrophy, and Mrs. Marchese has Cerebral Palsy. Both receive SSI because of their disabilities, which restrict them to wheelchairs and limit their abilities to perform many daily tasks, such as personal care and household tasks. They are able to live independently in the community because they receive case management services from a non-profit agency that are provided to individuals who would have to live in institutional settings were it not for case management. Despite physical limitations, they live active lives and are trained as Access Monitors through the Massachusetts Office of Disabilities. In this role, they review businesses to determine whether they are accessible to individuals with disabilities. They also work to improve access within their community.

179. Because their income is limited, Mr. Marchese applied for Food Stamps for himself and his wife and was found to be eligible. Because his income was SSI only, the Department certified his eligibility for two years, from November 16, 2005 through October 7, 2007.

180. The Department issued a termination notice dated August 23, 2007 informing Mr. Marchese that his Food Stamps were ending and that he needed to contact his caseworker, schedule an interview with the caseworker, whose office is in Revere, complete an

application, and provide verifications by September 22, 2007 to continue to receive Food Stamps.

181. Mr. Marchese telephoned his caseworker approximately ten times over the three weeks after he received this notice seeking to start this process. Some of these times, he was unable to leave a message because the caseworker's voicemail box was full. He was able to leave some messages, but he never received a return phone call, an appointment, an application, or a list of requested verifications.

182. Mr. Marchese's case manager also called the Department approximately ten times. She was eventually able to reach a supervisor and explained to that supervisor that Mr. Marchese was unable to come to the office because of his disabilities and was therefore requesting to complete any necessary processes by mail and telephone. Although the supervisor informed Mr. Marchese's case manager that he could indeed complete the process by mail, the Department did not mail Mr. Marchese the paperwork that would be required to do so. Mr. Marchese and the case manager both continued to call the Department and to request the necessary paperwork, however, Mr. Marchese did not receive the promised paperwork from the Department, and his Food Stamps terminated on October 7, 2007.

183. He subsequently obtained a Food Stamps application through his case manager, and completed and mailed that to the Revere DTA office. At that point, his case manager contacted Greater Boston Legal Services on his behalf.

184. Meanwhile, even though Mr. Marchese's Food Stamps remain closed, he received a notice dated October 3, 2007 informing him that his Food Stamps grant would increase to \$104 per month as a result of a cost of living adjustment. Mr. Marchese understandably

thought this notice meant his Food Stamps case was open, but in fact, it remained closed, and the actual increase Mr. Marchese received was just \$3 and was for October 1-7, 2007, prior to when his case closed.

185. When a local office is nonresponsive, the only alternative is to seek information from DTA's Central Office. Mr. Marchese's attorney therefore contacted DTA Recipient Services, the office within DTA's Central office that is charged with fielding calls from and on behalf of recipients and explaining Department notices and actions, to get information about the October 3rd notice. Recipient Services explained that no one within Recipient Services or within a local office could view this notice, so they could not fully explain it.

186. Greater Boston Legal Services contacted the Revere DTA office on Mr. Marchese's behalf on October 16, 2007, and the Department reassigned his case to a new caseworker who contacted Mr. Marchese. The new caseworker took a new application by phone with Mr. Marchese and mailed him the application to sign. She did not receive or act on the application he had previously mailed to the Department.

187. The Department approved Mr. Marchese's Food Stamps on October 19, 2007 at the amount of \$101 per month.

188. Mr. Marchese's attorney contacted his new caseworker on or about October 26 to seek final resolution of that case. Although that call was not returned, a follow up call made on November 16 was returned and as of that date, the Department could not account for the application Mr. Marchese sent in, along with the verifications he sent in which included financial and personal information.

189. The Department subsequently sent Mr. Marchese a notice dated November 16,

establishing a phone appointment and asserting that this appointment was required to complete his Food Stamps application even though the Department had opened his Food Stamps case. The notice listed his former caseworker, but in fact, he did not receive any telephone call at the appointed time.

190. After three requests by his attorney, the Department has yet to return his original documents.

191. Although Mr. Marchese's Food Stamps were restored after legal intervention and he has been approved to receive Food Stamps for two years, he experienced a disruption in these subsistence level benefits because the methods the Department uses, including the inadequate phone system and lack of appropriate response to phone calls that do get through, tend to screen out individuals with disabilities who are unable to go to the DTA office or otherwise navigate an alternative when phone and mail contact are met with no response. Because he is unable to go to the Revere DTA office due to his disabilities, the Department's ongoing failure to have adequate systems to respond to telephone calls and mail places Mr. Marchese's benefits at significant future risk whenever there is communication he must have with the Department, such as reporting a change or recertifying his eligibility for Food Stamps.

VII. CLAIMS

First Claim: Violations of the ADA

A. Equal Access to Services

192. Each individual Plaintiff, and each member of the plaintiff class, is a "qualified individual with a disability" under the meaning of Title II of the ADA, 42 U.S.C. §12131(2).

193. Each named Plaintiff and each member of the plaintiff class is a “qualified individual with a disability” as defined under the ADA at 42 U.S.C. § 12131(2) and 28 C.F.R. § 35.104, as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department.

194. The Department is a "public entity" within the meaning of Title II of the ADA. 42 U.S.C. §12131(1).

195. Through the acts and omissions alleged herein, the Defendant has, by reason of Plaintiffs’ disabilities excluded Plaintiffs from participation in the Department’s programs, services and activities; denied Plaintiffs the benefits of the Department’s programs, services, and activities; and subjected Plaintiffs to discrimination in violation of Title II of the ADA, 42 U.S.C. §12132.

196. The Defendant’s acts and omissions are in violation of the equal access and nondiscrimination requirements set forth in Title II of the ADA, and the regulations promulgated thereunder, and have resulted in injury to Plaintiffs.

197. By failing to implement a system to ensure that the Plaintiffs’ rights to be free from discrimination are upheld, DTA denies equal access to eligible applicants and recipients in violation of Title II of the ADA and implementing regulations.

B. Failure to Make Reasonable Modifications

198. Regulations implementing Title II of the ADA provide that a “public entity shall make

reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

199. The Department has failed to make reasonable modifications to its policies, practices and procedures where necessary to avoid discrimination against the Plaintiffs on the basis of disability and has not demonstrated that any of the required modifications would fundamentally alter the nature of the Department’s services, programs or activities.

200. The Defendant’s failure to make modifications to its policies, practices and procedures has caused harm to the Plaintiffs through the denial of benefits and services.

C. Methods of Administration

201. Regulations implementing Title II of the ADA provide that “a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity's program with respect to individuals with disabilities” 28 C.F.R. § 35.130(b)(3).

202. The Department has adopted methods of administration that have the effect of subjecting the Plaintiffs to discrimination based on disability and have defeated or substantially impaired the accomplishment of the objectives of the Department’s programs for the Plaintiffs.

Second Claim: Violation of Section 504 of the Rehabilitation Act

A. Equal Access to Services

203. Each individual Plaintiff is an "otherwise qualified individual with a disability" under the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. §794 ("Section 504").
204. The Department receives a significant portion of its operating funds from Federal sources, therefore it operates a "program or activity receiving Federal financial assistance" as defined by Section 504.
205. Through the acts and omissions alleged herein, the Defendant has, by reason of Plaintiffs' disabilities excluded Plaintiffs from participation in the Department's programs, services and activities; denied Plaintiffs the benefits of the Department's programs, services, and activities; and subjected Plaintiffs to discrimination in violation of Section 504.
206. The Defendant's acts and omissions are in violation of the equal access and nondiscrimination requirements set forth in Section 504, and the regulations promulgated there under, and have resulted in injury to Plaintiffs.

B. Reasonable Accommodation

207. Regulations implementing Section 504 require that the Department "shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program." 28 C.F.R. § 41.53.
208. The Department has failed to make reasonable accommodations to the known physical and mental limitations of the Plaintiffs and has not demonstrated that any required accommodations would impose an undue hardship in the operation of its programs.

209. The Defendant's failure to provide accommodations has caused harm to the Plaintiffs through the denial of benefits and services.

C. Methods of Administration

210. Regulations implementing Section 504 prohibit recipients of federal financial assistance from "utiliz[ing] criteria or methods of administration ... (i) [t]hat have the effect of subjecting handicapped persons to discrimination on the basis of handicap; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons." 28 C.F.R. § 41.51(b)(3); 45 C.F.R. § 84.4(b).

211. The Department has adopted methods of administration that have the effect of subjecting the Plaintiffs to discrimination based on disability and have defeated or substantially impaired the accomplishment of the objectives of the Department's programs for the Plaintiffs.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Assume jurisdiction of this matter.
2. Order preliminary injunctive relief for Plaintiff LaSonya Harper correcting the Department's failure to make vendor payments for rent for the months of August, 2007 through December, 2007.
3. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) with respect to the proposed class identified herein.
4. Enter a declaratory judgment in accordance with 28 U.S.C. §2201 and Fed. R. Civ. P. 57,

declaring that the Defendant's actions and failures to act violate the federal statutory and regulatory provisions cited in the Claims of the Complaint as follows:

- a. The Department's current practices and policies fail to ensure the provision of reasonable accommodations needed by disabled applicants and recipients in violation of Title II of the Americans with Disabilities Act and its implementing regulations and Section 504 of the Rehabilitation Act and its implementing regulations.
 - b. The Department's methods of administering the TAFDC, EAEDC and Food Stamp programs tend to screen out individuals with disabilities in violation of Title II of the Americans with Disabilities Act and its implementing regulations and Section 504 of the Rehabilitation Act and its implementing regulations.
5. Enter an order requiring the Department to modify its systems consistent with the declaratory judgment.
- a. Adopt, implement and monitor systemic policies and procedures designed to identify individuals with disabilities who may be in need of reasonable accommodations in order to enjoy equal access to the TAFDC, EAEDC and Food Stamp programs, and provide these individuals with information about their rights under Title II of the ADA and Section 504 of the Rehabilitation Act including their right to request reasonable accommodations.
 - b. Adopt, implement and monitor systemic policies and procedures for responding to requests for reasonable accommodation in a timely manner.
 - c. Adopt, implement and monitor systemic policies and procedures for tracking

approved reasonable accommodations and systemic policies to ensure on-going implementation of approved accommodations.

- d. Adopt, implement, and monitor methods of administration that do not screen out applicants and recipients with disabilities.
 - e. Adopt, implement and monitor systemic policies and procedures to assure that the Department's agents uphold its obligations under the Title II of the ADA and Section 504 of the Rehabilitation Act.
6. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 12205 and 29 U.S.C. § 794a(b); and
7. Order such other, further, or different relief as the Court deems equitable and just.

Respectfully Submitted,

PLAINTIFFS

December 20, 2007

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