New York, NY - The New York Civil Liberties Union and Legal Services of NYC today sued the New York State Office of Temporary and Disability Assistance (OTDA) for discriminating on the basis of gender identity against nonbinary New York residents.

OTDA’s computer system, which determines access to food stamps, Medicaid, and many other programs and emergency services, bars nonbinary people from applying for or receiving benefits unless they misidentify their gender as “male” or “female.” This conflicts with state and municipal policies that recognize gender “X” on identification documentation, including birth certificates, violating the state constitution as well as state and local anti-discrimination laws.

OTDA’s refusal to update its systems has severe consequences for nonbinary New Yorkers. They must choose between lying under oath about their gender identity in order to receive the benefits to which they are entitled and consequently being misgendered by the government employees who manage their case or, if they seek to be recognized as nonbinary, being denied emergency assistance or facing unnecessary delays.

The lawsuit names two individual plaintiffs, Jules Donahue and Jaime Mitchell, as well as organizational plaintiff Princess Janae Place, a community-based organization led by, and for, people of trans experience in the Bronx.

“I have been unable to find stable work since the pandemic began and turned to public assistance for help. I encountered more barriers to accessing help than others solely because I am nonbinary, and I was forced to choose between forgoing emergency support with medical coverage, cash assistance, and EBT benefits, and the emotional harm of being misgendered at such a vulnerable time. No New Yorker should have to make this choice,” said Jules Donahue (they/them).

“When I received my new birth certificate, updated with gender ‘X,’ I wanted to update my SNAP and Medicaid information right away, only to be told that it wasn’t possible. No cisgender New Yorker is misgendered by OTDA’s systems by default in order to receive help – why am I? New York State has chosen to treat me and other disabled nonbinary New Yorkers differently when we are at our most vulnerable, conditioning access to lifesaving assistance by forcing me to deny my true gender,” said Jaime Mitchell (they/them).

“As a transgender advocate leading an organization that provides gender-affirming support primarily to transgender and nonbinary people of color transitioning from homelessness to permanency, I have seen firsthand the financial and emotional harm that choosing between being who you are and fitting into a government database can cause. This discriminatory red tape must be removed immediately,” said Jevon Martin (he/him), executive director of Princess Janae Place.

The lawsuit names OTDA, the state agency responsible for administering benefits to New Yorkers experiencing challenges including housing, financial and food instability, and the New York City Department of Social Services (NYC DSS), the municipal social services agency overseen by OTDA. NYC DSS Commissioner Steven Banks has himself made multiple requests to OTDA to update its computer systems to recognize gender “X.” In an April 2019 letter to Acting OTDA Commissioner Michael Hein, Commissioner Banks outlined a pattern of unlawful obstruction and excuses set forth by OTDA to ignore the legal rights afforded to nonbinary New Yorkers pursuant to various laws. Banks writes that OTDA’s refusal to recognize the “X” gender marker is “in direct conflict with our commitment to serving all New Yorkers with dignity and respect, and infringes on the rights of all nonbinary clients to gender self-determination in accordance with GENDA.”

This lawsuit highlights the broader failings of New York state’s error-prone benefits infrastructure. OTDA’s dangerously outdated computer system has been the subject of previous lawsuits and criticism for widespread bugs and failures that have resulted in a wide array of New Yorkers receiving unjust benefits denials or interruptions. Nonbinary New Yorkers are the latest in a long list of vulnerable groups to be affected by the state’s refusal to upgrade to a more adaptable system.

New York State recognizes its obligation to respect the rights of nonbinary people in some contexts, but refuses to do so when New Yorkers are in need, said Bobby Hodgson, senior staff attorney from the New York Civil Liberties Union. A broken system of the state’s own making cannot justify discrimination. This case may be one of the first of its kind, but neither history nor the law is on OTDA’s side.

*New York’s decades-long refusal to fix this archaic and outdated system is not only cruel; it has life-threatening consequences for nonbinary individuals who need these benefits now more than ever,” said Jose Abrigo, director of LGBTQ/HIV advocacy from Legal Services NYC’s Manhattan Office. Nonbinary individuals deserve better from New York, which claims to respect the rights of the trans and nonbinary individuals. OTDA must end this discriminatory practice once and for all by fixing this dilapidated system. Nonbinary New Yorkers’ very lives depend on it.*

The World Professional Association for Transgender Health (WPATH) specifically addresses the importance of not only obtaining accurate gender marker[s] on identity documents but also ensuring that organizations and institutions accurately note a person’s self-identified gender identity, as part of the recommended treatment to help alleviate gender dysphoria. In fact, one study found a drastic reduction in suicide attempts for transgender people, including nonbinary transgender people, who had even just one identity document that accurately reflected their gender identity.

In the lawsuit, the NYCLU and Legal Services NYC demand that OTDA add as a gender identity option in the state benefits system, update related materials and guidance, and retrain social services staff in all localities on gender-affirming conduct when serving nonbinary New Yorkers in need.

In addition to Hodgson and Abrigo, counsel on the case includes NYCLU staff attorney JP Perry, Equal Justice Works fellow Gabriella Larios and LSNYC attorneys Iris Bromberg, Anne Stephenson and Marie Vaz.