UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CARMEN CORREA, on behalf of herself and all others similarly situated,

Plaintiff,

v. 19-cv-00656-JJM-PAS

COURTNEY E. HAWKINS, in her official capacity as Director of the Rhode Island Department of Human Services,

Defendant.
_____/

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR A TEMPORARY RESTAINING ORDER AND PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

Plaintiff bring this action on behalf of herself and a putative class to challenge Defendant's policies and practices of providing inadequate notice of overissuances for the Supplemental Nutrition Assistance Program ("SNAP," also known as Food Stamps). This practice of providing inadequate notice of SNAP overissuances violates the SNAP Act, 7 U.S.C. § 2011 et seq. and regulations, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Plaintiff seeks a temporary restraining order and, after a hearing, a preliminary injunction enjoining Defendant 1) from issuing SNAP Overissuance Demand Letters without adequate written notice; (2) from taking any action to reduce Plaintiff's SNAP

benefits and those of other class members or recoup a claimed overissuance based upon Demand Letters previously issued; and (3) to reinstate individual class members whose SNAP benefits were reduced without adequate advance notice and provide them with retroactive benefits. At a minimum, the notices should be required to include a detailed individualized explanation of reason for the overissuances and an explanation of the calculation of the overissuance.

STATUTORY AND REGULATORY SCHEME

SNAP is a federally-funded, state administered program. Congress established the Food Stamp Program, now known as SNAP, in 1964 to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households." Pub. L No. 88-525, § 2, 78 Stat. 703 (codified at 7 U.S.C. § 2011). In order to "alleviate . . . hunger and malnutrition," Congress enacted the Food Stamp Program to "permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing the food purchasing power for all eligible households who apply for participation." *Id.* Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program ("SNAP"), and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Pub. L. No. 110-246, §§ 4001-02, 122 Stat. 1651, 1853-1860.

The federal government provides complete funding to the states for all SNAP benefits, and at least 50% of the states' administrative costs involved in their operation of the program. 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. § 277.1(b), 277.4. Each state must designate a single state agency responsible for administering SNAP and complying with federal statutory and regulatory requirements. 7 U.S.C § 2020(a), (d)

and (e); 7 C.F.R. §§ 271.4(a), 277.4. The state agency's responsibilities include recouping overissuances made to SNAP recipients. 7 C.F.R. § 273.18(a)(2)&(3).

Rhode Island participates in SNAP. The Department of Human Services ("DHS") is the single state agency responsible for administering SNAP in Rhode Island, in compliance with federal statutes and implementing SNAP regulations. R.I. Gen. Laws § 40-6-8. DHS must provide "timely, accurate, and fair services to applicants for and participants in" SNAP. 7 U.S.C. §2020(e)(2)(B)(i).

Rhode Islanders may qualify for SNAP benefits if they have income less than 185% of the federal poverty level (200% for individuals who are elderly or disabled). The amount of SNAP benefits that a household is eligible for depends on a variety of factors, including the type of income (for example, certain deductions, including deductions for the costs of dependent care, may be taken from earned income), shelter expenses, number in the household, citizenship/alien status, and, for elderly and disabled applicants, medical expenses. Declaration of Mary Curtin, dated, Dec. 12, 2019 (Curtin Dec.), ¶ 4.

The federal regulations provide for claims against SNAP recipients for benefits that have been overpaid. 7 C.F.R § 273.18(a)(i). The state agency, DHS, is required 'to establish and collect any claim by following these regulations." 7 C.F.R. § 273.18(a)(2). The regulations set forth three types of claims: (1) Intentional Program Violation (IPV) ["IPV"], (2) Inadvertent Household error ["IHE"], and (3) Agency error ["AE"]. 7 C.F.R. § 273.18(b).

The regulations require that each State agency must develop and mail written notice to the household to begin collection action on any claim. 7 C.F.R. § 273.18(e)(3)(i). If

the claim "was not established at a hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter." 7 C.F.R. § 273.18(e)(3)(iii). The initial demand letter must include the type (IPV, IHE, AE or similar language), **the reason for the claim and how the claim was calculated**, among other things. 7 C.F.R. § 273.18(e)(3)(iv). For current SNAP recipients, the State Agency may recoup the overissuance by collecting for an IHE or AE claim, the greater of $10 per month or 10 percent of the household's monthly allotment. 7 C.F.R. § 273.18(e)(g)(iii).

STATEMENT OF FACTS

A. Defendant Issues Overissuance Notices with Inadequate Notice

Prior to September 2016, the state used a computer system called InRhodes to determine SNAP benefits, including generating notices regarding overissuances. Curtin Dec. ¶5. Using that system, the former InRhodes demand letters identified the cause or reason of the overissuance in the beginning of the notice on page 1 as well as a detailed calculation of the overissuance amount. *Id.* & Exhibit A.[1]

Rhode Island decided to replace InRhodes with a single integrated electronic eligibility system that would determine eligibility and benefits, including overissuances, for all public assistance programs. The project was called the Unified Health Infrastructure Project, or UHIP. UHIP went live in September 2016. *Id,* ¶6. After UHIP

[1] In the attached Exhibit A to the Curtin Declaration, DHS identified the "type" of error, there "Agency Error" and the cause—"job income, which resulted in an overpayment in SNAP Benefits for the period of April 1, 2015 thru April 30, 2015." The Demand Letter states that it also includes a "detailed calculation of overpayment amount" in an attached worksheet. In contrast, since resuming Overissuance Demand Letters in May 2019, DHS only identifies the "type" of error, but provides no cause or reason and does not explain how the overissuance was calculated. Curtin Dec., ¶10 & Exhibit C thereto.

went live, DHS stopped issuing claims for SNAP overissuances for several years. *Id.* ¶7. As of May 2019, FNS had authorized DHS to review SNAP overissuance claims as part of a plan for DHS to begin processing SNAP overissuance claims on a pilot basis only, and the overissuance claims would be limited to those that arose pre-UHIP, i.e., they all pre-dated September 2016. *Id.* & Exhibit B.

The pilot program to review overissuance claims began on or about May 15, 2019. *Id.* ¶ 8. 200 cases were authorized for review. *Id.* At a November 2019 SNAP Advisory Committee meeting, the SNAP Administrator Bethany Caputo advised that a second pilot had been authorized for an additional 200 SNAP overissuance claims. *Id.* ¶ 9. Thus, there is a significant pool of SNAP overissuance claims yet to be processed, including both pre-UHIP and post-UHIP claims. *Id.* After the two pilot projects have been completed, DHS will expand the number of SNAP overissuance claims for which demand letters are sent, and eventually DHS will send demand letters for both the overissuances that arose pre-UHIP and the overissuances that arose post-UHIP. *Id.*

After the pilot project started, Rhode Island Legal Services got calls from several clients who had received notices from DHS saying that they had received overissuances and that they needed to repay the overissued funds ("Overissuance Demand Letters," or "Demand Letters "), either by paying cash or by having their monthly SNAP benefits reduced. *Id.* ¶10. The format of the notice was the same for each client: the notice stated only that there had been an error, identifying the type of error as either an Agency error or a Household error, and, unlike the pre-UHIP InRhodes demand letters, did not identify the cause of the overissuance. *Id.* & Exhibit C thereto.

B. Plaintiff Carmen Correa Received Inadequate Overissuance Demand Letter

Plaintiff Carmen Correa, a resident of Woonsocket, Rhode Island who lives with her thirteen-year-old old niece, received an Overissuance Demand Letter dated September 23, 2019 stating that she had received an overissuance of $1,925 during the period May 1, 2014-March 31, 2015. Declaration of Carmen Correa, dated December 9, 2019, ¶¶ 1, 2, 9. The notice only indicated the type of error, "Agency Error," and did not provide the reason for the error. *Id.* & Exhibit.

Ms. Correa's only income comes from child support and SNAP benefits. *Id.* ¶14. She began receiving SNAP benefits in about 2010. *Id.* ¶7. Without further information, she does not know the reason why the Agency erred and cannot mount a challenge to the overissuance determination.

Without full SNAP benefits, Ms. Correa will have great difficulty in feeding herself and her niece. She is now very worried that her SNAP benefits will be reduced and that she will not be able to pay her utility bills and will have her utilities shut off. *Id.* ¶14.

ARGUMENT

A. THIS COURT SHOULD TEMPORARILY RESTRAIN AND PRELIMINARILY ENJOIN DEFENDANT'S VIOLATIONS OF THE SNAP ACT AND THE DUE PROCESS CLAUSE OF THE FOURTEEENTH AMENDMENT

In considering whether to grant a temporary restraining order or preliminary injunction, the court "must consider (1) the likelihood of success on the merits; (2) the potential for irreparable harm if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the

hardship to the movant if no injunction issues; and (4) the effect (if any) of the court's ruling on the public interest." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc*., 102 F.3d 12, 15 (1st Cir.1996) (citation omitted). *See also Sindicato Puertorriqueno de Trabajadores v. Fortuno,* 699 F.3d 1, 10 (1st Cir. 2012). The standard for granting a temporary restraining order turns on a consideration of the same factors. *Int'l Ass'n of Machinists Aero Workers, Local Lodge No. 1821 v. Verso Paper Corp.*, 80 F. Supp. 3d 247, 277-278 (D. Me. 2015).

The First Circuit and its district courts have readily granted interim injunction relief to enforce entitlements to public benefits. *See, e.g., Mass. Ass'n of Older Americans v. Sharp,* 700 F. 2d 749,754 (1st Cir. 1983) (preliminary injunction requiring reinstatement of Medicaid benefits for AFDC recipients with stepparent income until state redetermines whether they are eligible as categorically needy); *Westenfelder v. Ferguson*, 998 F. Supp. 146, 159 (D.R.I. 1998)(preliminary injunction issued enjoining enforcement of durational requirements that reduced welfare benefits for newcomers to Rhode Island); *Febus v. Gallant,* 866 F. Supp. 45, 47 (D. Mass. 1994)(preliminary injunction issued stopping wrongful denial and termination of public assistance benefits, including Medicaid).

Plaintiff satisfies these standards, and both temporary restraining order and preliminary injunctive relief are warranted

B. PLAINTIFFS AND CLASS MEMBERS ARE IRREPARABLY HARMED BY DEFENDANT'S UNLAWFUL CONDUCT IN ISSUING OVERPAYENT NOTICES AND RECOUPING ALLEGD OVERISSUANCES WITHOUT ADEQUATE ADVANCE NOTICE.

The First Circuit and its district courts have found irreparable harm when public benefits have been terminated. *See, e.g., Mass. Ass'n of Older Americans,* 700 F. 2d at

753; *Westenfelder*, 998 F. Supp. at 157; *Febus,* 866 F. Supp. at 47. Accordingly, this Court in *Westenfelder* held that welfare recipients seeking preliminary relief enjoining reductions of 30% in their benefits demonstrated the imminent threat of irreparable harm, finding that "plaintiffs are individuals on the economic precipice." 998 F. Supp. at 157. This Court stated: "The particular amounts represented by the thirty percent reduction of aid . . .are crucial to such persons, and the deprivation of these amounts works immediate hardships which cannot be remedied by a later judgment in their favor. In these circumstances, the bell cannot later be unrung." *Id.* In *Becker v. Toia*, 439 F. Supp. 324, 336 (S.D.N.Y. 1977), the court found that the imposition of a requirement of paying co-payments for Medicaid services would cause irreparable harm, noting that the additional cost would have "drastic effects on plaintiffs" who "will be forced to live below a subsistence level."

Here, as in *Westenfelder,* the Defendant is severely restricting the ability of individuals to meet their basic needs. Individuals who do not appeal or enter into an overissuance agreement will have their benefits reduced by the greater of $10 or 10%. Individuals receive SNAP because of their low incomes, and they already find it difficult to feed themselves with the full SNAP benefit. The loss of SNAP benefits can not only leave them without the resources to obtain food but also imperil their housing and utilities.

C. PLAINTIFF IS LIKELY TO SUCCEED ON HER CHALLENGE TO THE NOTICE BECAUSE THE U.S. CONSTITUTION AND THE SNAP PROGRAM REQUIRE RHODE ISLAND TO PROVIDE SNAP RECIPIENTS WITH DUE PROCESS AND THE DEFENDANT HAS FAILED TO PROVIDE ADEQUATE NOTICE

The likelihood of success test for interim injunctive relief turns on the Court's determination of the "probable outcomes" of Plaintiff's underlying claims. *Cohen v.*

Brown Univ., 991 F.2d 888, 902 (1st Cir. 1993). Here, Plaintiff readily meets the test. As demonstrated below, Defendant's failure to provide adequate written notice of the agency's decision to recoup allege overissuances of SNAP benefits denies Plaintiff due process both under the United States Constitution and federal SNAP law.

1. **Defendant's notice does not satisfy the Constitution's guarantee of due process**

In *Goldberg v. Kelly,* 397 U.S. 254, 264 (1970), the Supreme Court held that a pre-termination hearing was required before public assistance benefits could be terminated. And, as the Supreme Court recognized, a recipient must "have timely and adequate notice detailing the reasons for a proposed termination" in order for the opportunity to be heard to be meaningful. *Id.* at 267-68. Here, Defendant only provided the type of error, Agency Error or Household Error, causing the claimed overissuance and did not include the reason or cause of the overissuance. Such absence of notice clearly violate the commands of *Goldberg v. Kelly* for "adequate notice detailing the reasons for a proposed termination." *Id.*

Further, Plaintiff meets the three-part test set out in *Matthews v. Eldridge*, 424 U.S. 319 (1976), for pre-termination notice and hearings: (1) the degree of potential deprivation; (2) the "fairness and reliability of existing pre-termination procedures, and the probable value, if any, of additional procedural safeguards"; and (3) "the public interest." *Id.* at 341, 343, 347.

With regard to the first factor, as Plaintiff receives SNAP based on economic need, she is a "person[s] on the very margins of subsistence." *Id.* at 340.

With regard to the second factor, the absence of any reason for the alleged overissuance indicates that the effort to recoup the alleged overissuance lack fairness

and reliability. Further, long-standing problems of the UHIP program evidence that the effort to recoup overissuances lack fairness and reliability; there is a very high probability that the data used to determine alleged overissuances is erroneous.

An earlier lawsuit involving the UHIP system challenged delays in processing SNAP benefits. *See Gemmel v. Hawkins,* C.A. No. 16-350 WES. Special Master Deming Sherman, who was appointed to develop and recommend a corrective action plan for the processing of food stamp applications, filed a report in that case, which is attached as Exhibit A. He reported that "the UHIP/RIBridges system has a number of flaws. . . The system has not fully worked as designed. . . " *Id.* at 2. He reported that "[t]he customer portal, through which most of the applications for services were supposed to be filed has not worked properly." *Id.* at 3. He found that social workers who assist applicants are critical of the design of the system; they have found that most applications are filled out on paper and scanned into the system, and there are "problems losing documents in the system." *Id.* at 3-4. He noted that the "UHIP/RIBridges problems are a combination of personnel and technical issues." *Id*. at 5-6. Given these long-standing and systemic problems, the processing of overissuances without advance notice of the reason lacks fairness and reliability.

Further, providing notices that identify the reason for the alleged overissuance has substantial value. If forced to provide a valid reason in fact for the alleged overissuance, Defendant may discover its own error and eliminate or reduce erroneous overissuance claims. In any event, as the Supreme Court recognized in *Goldberg v. Kelly*, an adequate notice is necessary for a meaningful opportunity to challenge claims. *See* 397 U.S. at 267-68.

2. Defendant's Notices Do Not Satisfy SNAP Statute and Regulations

The SNAP statute and regulations specify the requirements of procedural due process, and the pertinent regulation specifies the requirements for the content of notices regarding overissuances of SNAP benefits.

It cannot be disputed that the absence of any reason for the alleged overissuance and information about how the alleged overissuance was calculated violates these straightforward requirements. Plaintiff Correa was only told that the error was an Agency Error, and she was not provided with any information regarding the cause or basis for calculating the alleged overissuance. Correa Dec. ¶10 & Exhibit. Plaintiff's situation is typical of the class. Mary Curtin, a paralegal for Rhode Island Legal Services, has represented other recipients of SNAP benefits who have been issued overissuance notices that did not provide the reason for the alleged Agency or Household Error. Curtin Dec., ¶10 & Exhibit C.

It also cannot be disputed that the written notice provided to Plaintiff flunks the test set out in the SNAP regulations. Both *Goldberg v. Kelly* and 7 C.F.R. §273.18(e)(3)(iv) indicate that the demand letter must include the reason for the overissuance and an explanation of how the alleged overissuance was calculated.

Courts routinely find that public benefit recipients have established a likelihood of success on the merits when states fail to provide adequate advance written notice to recipients of public benefits, including SNAP, prior to terminating or reducing benefits. Thus, in *Febus,* the court noted "[m]yriad cases establish defendant's obligation" to give "notice sufficient to allow a meaningful defense against the Department's impending action," and held that the plaintiffs "have therefore demonstrated a high probability of

success on the merits of their case as to this inadequate notice." 866 F. Supp. at 47. *See also Schroeder v. Hegstrom,* 590 F. Supp. 121, 131 (D. Or. 1984)(granting permanent injunction where notice did not provide sufficient information to enable recipient to determine if termination was in error); *Philadelphia Welfare Rights Org. v. Bannon,* 525 F. Supp. 1055, 1061 (E.D. Pa. 1981) (granting permanent injunction where notice did not explain statutory change and exceptions for the presence of an elderly person or person with a disability); *Becker v. Toia*, 439 F. Supp. 324, 331 (S.D.N.Y. 1977)(granting preliminary injunction, finding Medicaid recipients showed probable success on the merits because the notice was inadequate as, among other things, it did not give the reason for the action).

D. THE BALANCE OF THE EQUITIES STRONGLY FAVORS PLAINTIFF

The loss of SNAP benefits greatly outweighs any purported injury accruing to Defendant, should the Court grant her motion for a temporary restraining order and preliminary injunction. Courts have found that the balance of equities strongly favors public benefit recipients when a state agency terminates or reduces benefits without adequate notice. *See, e.g., Becker,* 439 F. Supp. at 336 (balance of equities favors Medicaid recipients). In this case, the hardships for the SNAP beneficiaries whose benefits are reduced far exceed the hardship to the Defendant in taking the necessary steps to provide adequate advance notice to SNAP recipients that meets the basic requirements set by federal law before reducing their benefits and in reinstating those individuals whose benefits were reduced without adequate notice.

E. THE RESTRAINING ORDER AND INJUNCTION WILL SERVE THE PUBLIC INTEREST

The final prong of the test for issuing interim injunctive relief requires Plaintiff to

establish that the TRO/preliminary injunction will not adversely affect the public interest. As the court found in *Febus,* the public interest will not be served "by removing proper, needy recipients from the public assistance rolls because of inadequate and misleading notice." 866 F. Supp. at 47.

Plaintiff's request for interim injunctive relief vindicates the public interest by ensuring that Plaintiff and the proposed class receive the adequate written advance notice to which they are entitled under federal law prior to reduction of their SNAP benefits and that Defendant fulfill her statutorily-imposed duty.

F. THIS COURT SHOULD WAIVE THE REQUIREMENT THAT A BOND BE POSTED

This Court has discretion to waive the posting of any pond required by Fed. R. Civ. P. 65(b) or to set a token bond. *Crowley v Furniture & Piano Moving, Furniture Store Drivers, etc., Local No. 82,* 679 F.2d 978, 1000 (1st Cir. 1982), *rev'd on other grounds,* 467 U.S. 526 (1982*)*. The court identified several important factors for a district court to consider in deciding whether to require a bond: (1) "at least in noncommercial cases, the court should consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant. . . .;" (2)"in order not to restrict a federal right unduly, the impact that a bond requirement would have on enforcement of the right should also be considered. One measure of the impact lies in a comparison of the positions of the applicant and the enjoined party." *Id.* The court went on to note that, "a bond requirement would have a greater adverse effect where the applicant is an individual and the enjoined party an institution that otherwise has some control over the applicant than where both parties are individuals or institutions."

CONCLUSION

For all of the foregoing reasons, the Plaintiff hereby respectfully requests that this Court issue a temporary restraining order and, after hearing thereon, that a preliminary injunction, be granted enjoining the Defendant 1) from issuing Overissuance Demand Letters without adequate written notice; (2) from taking any action to reduce Plaintiff's SNAP benefits and those of other class members or recoup a claimed overissuance based upon Demand Letters previously issued; and (3) to reinstate individual class members whose SNAP benefits were reduced without adequate advance notice and provide them with retroactive benefits, pending hearing on the merits

Respectfully submitted,

/s/ Ellen Saideman

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CERTIFICATE OF SERVICE

I hereby certify that I filed the within document via the ECF system on this 13th day of December 2019 and that it is available for viewing and downloading to all counsel of record and that I provided the within document by email to:

Rebecca Partington, Department of Attorney General
rpartington@riag.ri.gov

/s/ Ellen Saideman

Ellen Saideman, Esq.