

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

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SHALONDA SPRUILL, on behalf of herself and
all others similarly situated,

No. 09 CV _____

Plaintiff,

v.

GARY ALEXANDER, in his official capacity
as Director of the Rhode Island Department of Human Services
Defendant.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTIONS FOR
TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTIVE RELIEF**

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ECONOMIC JUSTICE, INC.**

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PRELIMINARY STATEMENT

Plaintiff Shalonda Spruill brings this action on behalf of herself and a class of needy families and individuals in the State of Rhode Island challenging defendant's policies and practices of failing to process applications timely and to provide food stamps in a timely manner in violation of federal law.² Plaintiff, on behalf of herself and a subclass of needy families and individuals, also challenges defendant's policies and practices of failing to provide expedited issuance of food stamps in a timely manner and/or failing to provide applicants with timely and adequate written determinations of their eligibility for expedited issuance of food stamps.

Plaintiff seeks a temporary restraining order enjoining defendant to (1) immediately process the application of the named plaintiff, and, if found eligible for expedited food stamps, to provide such food stamps within 24 hours of the time the Court's Order is entered; and (2) immediately process the application of the named plaintiff, and if found eligible for food stamps, to provide such food stamps within 48 hours of the time the Court's Order is entered. Plaintiff seeks a preliminary injunction enjoining defendant to (1) process all applications for food stamps within the time frames required by federal law; and (2) provide food stamps and expedited food stamps to eligible individuals on a timely basis.

² 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. Sections 4001 and 4002 of P.L. 110-246. In Rhode Island, Supplemental Nutrition Assistance Program benefits are commonly known as Food Stamps. Accordingly, in this Memorandum of Law, plaintiff still uses the term food stamps. Unless separately noted, the renaming of the program did not change defendant's legal obligations.

STATEMENT OF FACTS

Defendant Fails to Process Applications for Food Stamps in a Timely Manner

On information and belief, Rhode Island is failing to process thousands of applications in a timely manner. Recent data from the United States Department of Agriculture Food and Nutrition Service shows that for the period from April 2008 to September 2008, Rhode Island's timely processing rate was only 82.64 percent. This is a decline from a prior period of January 2008 to June 2008, when the timely processing rate was 85.86 percent. See Exhibits 1-2 to the complaint.

This violation of law has been ongoing: for example, in FY 2007, according to data reported by the United States Department of Agriculture Food and Nutrition Service, which oversees state compliance with food stamp requirements, Rhode Island failed to timely process more than 13 percent of all applications. (See FY 2007 Application Processing Timeliness at http://www.fns.usda.gov/fsp/qc/2007-processing_rate.htm).

Plaintiff Facts

Plaintiff Shalonda Spruill, who resides in Providence, Rhode Island, filed an application for food stamps for herself and her 8 year old daughter in mid-May at the Providence DHS office.

She returned to DHS on May 28, 2009 to find out the date of her application interview because she had not received anything about an interview in the mail. When she returned to DHS on May 28, 2009, she was told that there was no record of an application on file for her. She was given another application and told to complete it and submit it to DHS, which she did.

Although she was told on May 28 that she would receive a letter with an interview date in 7 days, she did not receive a letter from DHS until June 15 or 16, 2009. The letter, dated June 12, 2009, stated that her application interview was scheduled for July 15, 2009, two months after she applied for benefits, and a month and a half after she submitted the second application.

Ms. Spruill called supervisors at the Providence DHS office to see if her application could

be scheduled for an earlier date. She also sought help from Rhode Island Legal Services, which called DHS on her behalf to attempt to get an earlier interview. To date, she has not been given an earlier interview date.

Ms. Spruill does not have money to buy groceries that she and her daughter need. Ms. Spruill lost her job. She has applied for Unemployment Insurance but has not yet received benefits. She has no money in a checking account or savings. She was living off of her tax return but she has used up that money. Her family gives her food so she can pack lunch for her daughter to take to school but her chief concern is making sure her daughter has enough to eat beyond those lunches. Ms. Spruill eats less than she used to and does not always eat three meals a day.

Ms. Spruill was eligible for expedited food stamps, but defendant has not provided food stamps on an expedited basis.

ARGUMENT

POINT I

DEFENDANT SHOULD BE PRELIMINARILY ENJOINED FROM VIOLATING FEDERAL LAWS GOVERNING THE RIGHT OF PLAINTIFF AND PLAINTIFF CLASS MEMBERS TO TIMELY RECEIVE FOOD STAMPS.

In the First Circuit a plaintiff must satisfy four criteria in order to demonstrate entitlement to a temporary restraining order or preliminary injunction. The plaintiff must show that (1) plaintiff will suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm which granting injunctive relief would inflict on the defendant; (3) plaintiff has exhibited a likelihood of success on the merits; and (4) the public interest will not be adversely affected by the granting of the injunction. *See Suarez-Cestero v. Pagan-Rosa*, 172 F.3d 102, 104 (1st Cir. 1999). *See also Planned Parenthood League of Massachusetts v. Bellotti*, 641 F.2d 1006, 1008-09 (1st Cir. 1981); *Febus v. Gallant*, 866 F. Supp. 45 (D. Mass. 1994)(preliminary injunction issued to enjoin

wrongful denial and termination of federal assistance, including food stamps).

A. The Plaintiff and the Putative Class Will Suffer Irreparable Injury If the Injunction Is Not Granted.

For plaintiff and the members of the plaintiff class, food stamps are an essential source of support that permits them to survive at the barest edge of poverty. Without food stamps, a meager subsistence benefit, they will be unable to purchase food for themselves and their families. None of them can suffer the loss of food stamps without experiencing serious harm and, indeed, such harm has already begun to disrupt their lives and threaten their health and safety.

The named plaintiff and many members of the plaintiff class have already suffered harm as a direct consequence of defendant's policy and practice of (a) failing to provide expedited issuance of food stamps in a timely manner; and (b) failing to provide ongoing food stamps in a timely manner. Since plaintiff and members of the plaintiff class and subclass are suffering the loss of benefits to which they are entitled under the federal Food Stamp program, they suffer irreparable harm.³

For indigent people, the potential harm arising from the failure to timely process applications is great, for every day that the plaintiff might have to live without subsistence-level benefits is a day of "brutal need" causing physical and emotional effects that cannot be compensated with later payments. *Goldberg v. Kelly*, 397 U.S. 254, 260-65 (1970). When faced with the specter of an improper deprivation of food stamps to needy individuals, courts have promptly provided preliminary relief to prevent the harm that necessarily flows from the loss of such benefits. As the

³ Plaintiff also claims a constitutional deprivation in the defendant's failure to comply with her due process right to be provided timely notice. This Court has held that the deprivation of a constitutional right is itself sufficient to demonstrate irreparable injury. *Westenfelder v. Ferguson*, 998 F. Supp. 146, 158 (D.R.I. 1998); *See also, Maldonado v. Houstoun*, 177 F.R.D. 311 (E.D. Pa. 1997).

District Court observed when Indiana was sued for failure to process food stamps appropriately in 1985:

it is reasonable to conclude that, unless a preliminary injunction issues to prevent delays and interruptions in food stamp benefits, the plaintiffs may be deprived of food. The deprivation of this basic human need is extremely serious and is quite likely to impose lingering, if not irreversible, hardships upon recipients.

Haskins v. Stanton, 621 F.Supp. 622, 627 (N.D.Ind. 1985), *aff'd*, 794 F. 2d 1273, 1277 (7th Cir. 1986) (citation omitted).

In *Westenfelder*, this Court observed that even a reduction in benefits to poor persons constituted irreparable harm:

At the outset, plaintiffs are correct in their assertion that they need not demonstrate that they have already suffered irreparable harm; rather, they simply must demonstrate that the potential for such harm exists. [Citation omitted.] That burden is met here. As noted supra, plaintiffs are individuals on the economic precipice. The particular amounts represented by the thirty percent reduction of aid under the durational residency requirement, e.g., \$ 135 to plaintiff Monica Westenfelder, 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 unring.

Westenfelder, 998 F. Supp. 146, 157 (citations omitted). The *Westenfelder* decision follows well established precedent in Rhode Island:

When presented with threatened terminations, reductions or denials of desperately needed public assistance benefits, this Court has consistently found immediate and irreparable harm to be present. [Citation omitted.] The threatened harm to Plaintiffs and their children must be considered both immediate and irreparable.

Sweeney v. Affleck, 560 F. Supp. 1118, 1127 (D.R.I. 1983), later decision *reversed on other grounds sub nom. Sweeney v. Murray*, 732 F.2d 1022. See also *Roselli v. Affleck*, 373 F. Supp. 36, 49 (D.R.I. 1974), *aff'd*, 508 F.2d 1277 (1st Cir. 1974).

The *Westenfelder* court further noted that

The irreparability of harm is further heightened by the fact that, even if the interim loss of benefits could be remedied by a later judgment on the merits, an order of payment for benefits wrongly withheld would be precisely the kind of retroactive monetary relief barred by the Eleventh Amendment. Thus, plaintiffs could not even take comfort in the knowledge that they would eventually receive the amounts wrongly withheld.

Id. at 158 (citations omitted).

See also *Moreno v. U.S. Dept. of Agric.*, 345 F. Supp. 310 (D.D.C. 1972)(noting that a district judge had previously in the case issued a nationwide temporary restraining order enjoining USDA from denying food stamp participation to households solely because they included an unrelated person), *aff'd*, 413 U.S. 528 (1973); *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974)(issuing a preliminary injunction prohibiting USDA from returning hundreds of millions of dollars in unspent food stamp appropriations to the general fund of the U.S. Treasury).

In *Willis v. Lascaris*, 499 F. Supp. 749 (N.D.N.Y. 1980), the court considered a request for a preliminary injunction in the context of a procedural due process claim. In ruling on the issue of harm in favor of the plaintiffs, the court stated that “[e]ven a slight change in food stamp allotments effects a public assistance household's ability to procure the necessities of life.” *Willis*, 499 F. Supp. at 759 (citing *Goldberg v. Kelly*, 397 U.S. 254 (1970)).

As detailed above, the defendant’s conduct has caused and will cause plaintiff and members of the plaintiff class and subclass to do without subsistence level benefits. Absent an injunction, defendant will continue to inflict similar harm on thousands of additional individuals and families.

B. Plaintiffs Are Likely to Succeed on the Merits

Plaintiff and the proposed class readily satisfy the First Circuit’s third prong of the four stage test, which is considered “to be crucial to the granting of preliminary injunctive redress.” *Calenda v. Rhode Island Board of Medical Review*, 565 F. Supp. 816, 818 (D.R.I. 1983). The test is whether the plaintiff can demonstrate “a probability of success on the merits.” *Id.* The plaintiff need show

only that her chance of succeeding is not “slim.” At this stage of the analysis the court must simply examine “probable outcomes,” and if they consider that the plaintiff is likely to succeed, a preliminary injunction should be granted. *Kleczek v. Rhode Island Interscholastic League* 768 F. Supp. 951, 953 (D.R.I. 1991).

Here, defendant clearly violates federal law by failing to timely process applications for food stamps. Hence, this court should issue a temporary restraining order requiring defendant to (1) immediately process the application for food stamps of the named plaintiff, and, if found eligible for expedited food stamps, to provide such food stamps within 24 hours of the time that the Court’s Order is entered; and (2) immediately process the application for food stamps of the named plaintiff, if found eligible for food stamps, and if found eligible for food stamps, to provide such food stamps within 48 hours of the time the Court’s Order is entered. Further, this Court should issue a classwide preliminary injunction enjoining defendants to (1) process food stamps within time frames required by federal law; and (2) provide food stamps and expedited food stamps to eligible individuals on a timely basis.

Defendant fails to process food stamp applications in a timely manner and fails to provide expedited food stamps to eligible applicants in violation of federal law. As set forth above and in the accompanying exhibits, defendant’s conduct violates the law in that defendant fails to process applications in a timely manner.

The duty to comply with the mandates of the Food Stamp Program is unequivocal. While Rhode Island “is not legally obligated to participate in [federally funded public assistance programs]; if it does, it must comply with federal requirements. . . .” *Rothstein v. Wyman*, 467 F.2d 226, 232, (2d Cir. 1972), *cert. denied*, 411 U.S. 921 (1973), *reh’g denied*, 411 U.S. 988 (1973). *See also, Burns v. Alcala*, 420 U.S. 575 (1975), *Rosado v. Wyman*, 397 U.S. 397 (1970).

Defendant’s conduct fails to comply with the clear mandates of federal Food Stamp law. The

law could not be more specific. Under the federal Food Stamp Act, households must be permitted to file an application on the first day they contact the local social services office. 7 U.S.C. § 2020(e)(2)(B)(iii); 7 C.F.R. § 273.2(c)(1), (2)(i). If an individual or household seeks to apply jointly for cash assistance and food stamps, any delays in the processing of the application for cash assistance may not result in a delay of the processing of the food stamps application. 7 U.S.C. §§ 2014(b); 2020(e)(3), (i)(2); 7 C.F.R. §§ 273.2(g)(1), (j)(1)(iii). If the cash assistance application is denied or withdrawn, the applicant can not be required to submit a new application for food stamps. 7 U.S.C. §§ 2014 (b); 2020(e)(3), (i)(2); 7 C.F.R. §§ 273.2(g)(1), (j)(1)(v).

Application processing time frames are explicit. The State agency (and any delegate agencies) must provide ongoing food stamps to eligible applicants no later than 30 days after date of application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1). In addition, the Food Stamp Act requires that states provide food stamps to certain needy households on an expedited basis. 7 U.S.C. § 2020(e)(9). All applicants for food stamps must be screened to determine whether they qualify for expedited issuance of food stamps. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(2). The applicant has no obligation to self-identify for expedited issuance—it is the agency’s obligation to identify them. Yet, as set forth above, defendant does not comply with the law, failing to process applications for food stamps in a timely manner for unconscionably large numbers of applicants. Indeed, most recently, almost one-fifth of all applicants experienced delays in the processing of their applications.

In this Circuit, there is no question but that defendant’s failure to timely process food stamp applications renders plaintiff and the proposed class all but certain to succeed on the merits. Indeed, as the First Circuit noted:

Finally, no particular percentage of compliance can be a safe-harbor figure, transferable from one context to another. Like ‘reasonableness,’ *See Caswell v. Califano*, 583 F.2d 9, 18 (1st Cir.

1978), ‘substantiality’ must depend on the circumstances of each case, including the nature of the interest at stake and the degree to which noncompliance affects that interest. In the present case, the interest at stake -- entitlement to subsistence-level benefits -- is great [citations omitted], making the consequences of failure to comply quite serious.

Fortin v. Commissioner of Mass. Dep't of Pub. Welfare, 692 F.2d 790, 795 (1st Cir. 1982) (upholding contempt finding for failing to timely process public assistance applications). *See also Robidoux v. Celani*, 987 F.2d 931, 938 (2d Cir. 1993) (court found cause of action in unlawful delays in food stamp and cash assistance processing); *Gonzalez v. Pingree*, 821 F.2d 1526, 1531 (11th Cir. 1987) (holding that plaintiff is entitled to pursue § 1983 action for redress of violation of her right to expedited food stamps); *Victorian v. Miller*, 813 F.2d 718, 723-24 (5th Cir. 1987) (*en banc*) (holding that applicants for expedited food stamps could bring § 1983 action to enforce state compliance with Act's requirements).

C. The Injury Suffered by Plaintiff and the Proposed Class Outweighs Any Harm Which Granting Injunctive Relief Would Inflict on the Defendant.

The harm plaintiff will experience outweighs any harm the defendant might suffer if the injunction is granted, and the injunction will promote rather than harm the public interest. As noted, defendant’s failure to timely process applications means that plaintiff suffers the loss of assistance necessary for her family’s very survival. Any potential inconvenience caused the defendant by this order should not be considered by the Court as a bar to the requested relief. Plaintiff seeks only defendant’s compliance with the requirements of federal law and the due process mandates of the United States Constitution. The proposed relief provides defendant with an opportunity to meet his legal obligations. As stated by the Seventh Circuit,

Because the defendants are required to comply with the [law in question], we do not see how enforcing compliance imposes any burden on them. The Act itself imposes the burden; this injunction merely seeks to prevent the defendants from shirking their responsibilities under it.

Haskins v. Stanton, 794 F. 2d 1273, 1277 (7th Cir. 1986) (granting preliminary injunction requiring defendant's compliance with federal timeliness standards for processing food stamp applications.)

D. The Injunction Will Not Harm The Public Interest

The final prong of the test requires the plaintiff to establish that granting the preliminary injunction will not adversely affect the public interest. *Suarez-Cestero v. Pagan-Rosa*, 172 F.3d 102 (1st Cir. 1999). *See also Planned Parenthood League of Massachusetts v. Bellotti*, 641 F.2d 1006 (1st Cir. 1981) (citing *Women's Community Health Ctr., Inc. v. Cohen*, 477 F. Supp. 542, 544 (D.Me.1979) (citations omitted); *Calenda v. Rhode Island Board of Medical Review*, 565 F. Supp. at 816, 819.

Here, the proposed temporary restraining order and preliminary injunction protect the public interest by ensuring that plaintiff and other needy people receive the food stamps to which they are entitled under federal law and that the defendant fulfills his statutorily imposed duty.

E. The Appropriate Scope Of The Preliminary Injunction

The harm suffered by plaintiff and members of the plaintiff class and subclass may not be remedied by any but the most immediate and comprehensive action by this Court. Each day that the plaintiff and members of the proposed plaintiff class and subclass are forced to go without needed assistance is a day that their well-being and that of their families is threatened. This Court should preliminarily enjoin defendant from failing to process applications timely in conformity with federal statutes and regulations.

The ordering of this relief is an effective and appropriate remedy in cases involving unlawful delays in the processing of applications and the payment of public benefits. Indeed, the relief requested as to the processing of applications is well within the nature of relief which courts have ordered to address the types of abuses present in this case. In *Haskins*, the District Court, in light of the delays present, preliminarily enjoined the defendant to, *inter alia*:

(1) to permit persons requesting food stamp assistance to file an application form for participation in the food stamp program on the same day that such persons first contact the food stamp office in person or by telephone (7 U.S.C. §§ 2020(e)(2) and (6) and 7 C.F.R. § 273.2(c)(1));

* * *

(3) to provide food stamp coupons to . . . destitute households within five days after the date of application (7 U.S.C. §§ 2020(e)(6) and (9) and 7 C.F.R. § 273.2(I)(3));

(4) to design their food stamp application procedures to identify households eligible for five-day expedited service (7 C.F.R. § 273.2(i)(2));

* * *

(6) to complete certification of and provide an allotment retroactive to the period of application to any eligible household within 30 days of its filing of an application (7 U.S.C. §§ 2020(e)(3) and (6));

Haskins v. Stanton, 621 F. Supp. at 630. On review, the Seventh Circuit concluded that “We therefore find that the trial judge did not abuse his discretion in granting the injunction, and, for the reasons stated above, the order granting the injunction is affirmed.” *Haskins v. Stanton*, 794 F. 2d 1273, 1277 (7th Cir. 1986).

Similarly, in *Class v. Norton*, the district court ordered, and the Second Circuit affirmed, that interim benefits must be granted to applicants of cash assistance whose applications were pending beyond the statutorily permitted time frame. *Class v. Norton*, 376 F. Supp. 496, 502 (D. Conn. 1974), *aff’d in part and rev’d in part*, 505 F.2d 123 (2d Cir. 1974); *Smith v. Miller*, 665 F.2d 172 (7th Cir. 1981) (affirming court order requiring automatic approval of applications for special medical services under the Medicaid program where applications are not processed within the statutory time limits).

POINT II

THIS COURT SHOULD WAIVE THE REQUIREMENT THAT A BOND BE POSTED

In the First Circuit, the District Court has extensive discretion to waive the posting of any

bond required by Fed. R. Civ. P. 65(b) or to set a token bond. *International Ass'n of Machinists & Aerospace Workers v. Eastern Airlines*, 925 F.2d 6, 9 (1st Cir. 1991), *cert. denied*, 502 U.S. 901 (1991); *citing, inter alia, Crowley v. Furniture & Piano Moving, Furniture Store Drivers, etc., Local No. 82*, 679 F.2d 978, 999-1001 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984). As the court noted in *Long Term Care Pharm. Alliance v. Ferguson*:

Fed. R. Civ. P. 65(c) normally requires the party obtaining injunctive relief to post a bond or other security. However, “the special nature of suits to enforce important federal rights or ‘public interests;’ arising ‘out of comprehensive federal health and welfare statutes;’” often dictates that no bond need be posted. [Citations omitted.] Such is the case here.

260 F. Supp. 2d 282, 295 (D. Mass. 2003), *vacated and remanded* on other grounds, 362 F.3d 50 (1st Cir. 2004) (enjoined change in Medicaid reimbursement rule; reversed on standing grounds).

Here, waiver of the bond is appropriate because plaintiff, an indigent person, seeks to enforce important federal rights.

CONCLUSION

For all of the foregoing reasons, plaintiff respectfully requests that her motion for a temporary restraining order and preliminary injunctive relief be granted.

July 6, 2009

Respectfully submitted,

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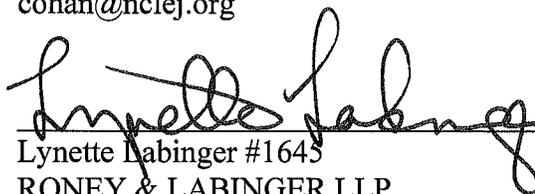
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