

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, STATE
OF NEW YORK, STATE OF
CALIFORNIA, STATE OF
CONNECTICUT, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, ATTORNEY
GENERAL DANA NESSEL ON
BEHALF OF THE PEOPLE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF OREGON, COMMONWEALTH
OF PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH OF
VIRGINIA, and CITY OF NEW
YORK,

Plaintiffs,

v.

U.S. DEPARTMENT OF
AGRICULTURE; GEORGE ERVIN
PERDUE III, in his official capacity as
Secretary of the U.S. Department of
Agriculture, and UNITED STATES
OF AMERICA,

Defendants.

Case No. 1:20-cv-00119

**DECLARATION OF JEFFREY GASKELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Jeffrey Gaskell, pursuant to 28 U.S.C. Section 1746, declare under penalty of perjury as follows:

1. I am the Deputy Commissioner of the New York State Office of Temporary and Disability Assistance (“OTDA”) Employment and Income Support Programs. I am familiar with the matters set forth herein, either from professional knowledge, conversations with OTDA staff, or on the basis of documents that have been provided to and reviewed by me.

2. I have worked for OTDA on public assistance issues since 1986.

3. OTDA’s mission is to help vulnerable New Yorkers to meet their essential needs and to advance economically by providing opportunities for stable employment, housing, and nutrition. OTDA empowers New Yorkers to improve their financial security and household stability in support of strong families and communities.

4. OTDA is authorized to establish rules, regulations, and policies upon which public assistance will be provided within the State and to otherwise carry out its powers and duties as established under the Social Services Law (SSL).¹

5. Additionally, OTDA is charged with the supervision of local departments of social services and the reimbursement of welfare costs, the advancement of grants of money for welfare purposes, and the administration of a discretionary fund.²

6. The Commissioner of OTDA exercises general supervision over the work of all social services districts, determines the policies and principles upon which public assistance is provided within the State by State and local social services districts, and establishes regulations

¹ SSL § 20(3)(d).

² SSL § 20(3)(b).

for the administration of public assistance by the State and local social services districts in accordance with the law.³

7. The local social services districts are charged with the duty, so long as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the requirements and provisions governing assistance and related provisions of the SSL.⁴

New York State and the Supplemental Nutrition Assistance Program

8. In furtherance of its constitutional and statutory obligations, OTDA supervises the administration of Supplemental Nutrition Assistance Program (SNAP).⁵ SNAP is administered by 58 social services districts.⁶

9. The purpose of the federally funded SNAP, formerly known in New York as the Food Stamp program, is to reduce hunger and malnutrition by supplementing the food purchasing of eligible low-income individuals and families, including low-income working people, senior citizens, and the disabled. SNAP eligibility and benefit levels are based on household size, income, and a variety of other factors.

10. In 2019, an average of 2.7 million New York residents a month received a total of almost \$4.4 billion in SNAP benefits during the year.⁷

11. Federal law provides that the “State agency of each participating state shall have the responsibility of certifying [SNAP] applicant households,” and that “[t]he responsibility of the agency of the State government shall not be affected by whether . . . [SNAP] . . . is operated on a

³ SSL § 34(3).

⁴ SSL § 131(1).

⁵ SSL §§ 29, 95.

⁶ SSL §§ 56, 61–62.

⁷ See *2019 Annual Report*, New York State Office of Temporary and Disability Assistance (2019), <http://otda.ny.gov/news/attachments/OTDA-Annual-Report-2019.pdf>.

State-administered or county-administered basis.”⁸ Federal law also requires the State to maintain records necessary to determine the State’s compliance with federal law and regulation in administering SNAP.⁹

12. SNAP benefits are funded 100-percent by the federal government. The costs of administering SNAP are funded 50-percent by the federal government.¹⁰

Administrative Impact

13. USDA requires a population known as able-bodied adults without dependents (ABAWDs) to meet certain work or work-related requirements as a condition of receiving SNAP benefits, unless the ABAWD is otherwise exempt or is subject to a waiver of the requirements.¹¹ In order for an ABAWD to maintain eligibility for SNAP benefits, the individual must participate 80-hours a month in a combination of work or work qualifying activities, for more than 3-months in a 36-month period.

14. All social services districts must evaluate each SNAP applicant or recipient’s employability and ABAWD status at application, re-certification and whenever they become aware of a change in a household’s circumstances. If there is an individual in the household who may be an ABAWD, social services districts must inform the household of the time limit, which individual(s) are subject to the requirement, exemption criteria, the consequences for refusing or failing to comply with the ABAWD requirement without good cause and the action that may be taken by the ABAWD to maintain or re-establish eligibility for SNAP benefits for more than 3-

⁸ 7 U.S.C. § 2020(a).

⁹ *Id.* § 2020(a)(3).

¹⁰ 7 U.S.C. § 2025(a); 7 C.F.R. § 277.4.

¹¹ 7 U.S.C. § 2015(o).

months in the 36-month period.¹² At a minimum, this information must be provided during the eligibility interview verbally and in writing.¹³

15. Districts that do not have a federally approved ABAWD waiver for the full county are required to monitor compliance with the ABAWD requirement on a monthly basis. This requires districts to establish procedures and have staff capacity for gathering monthly attendance verification for all ABAWDs; entering actual hours of participation in work activities in the caseload management system and/or appropriate New York City (NYC) systems for all ABAWDs; and monitoring compliance with the 80-hour monthly work requirement for every ABAWD individual each month to ensure that non-compliant ABAWDs do not receive more than 3 months of SNAP.

16. ABAWDs who have failed to meet the ABAWD requirements for two months and are not meeting the ABAWD requirement in the third month must be issued a Notice of Adverse Action, requiring staff to review individual case record documentation to make certain the correct decision on discontinuance of benefits is made and initiated in a timely manner to prevent the issuance of a fourth month of SNAP benefits.

17. Social services districts must ensure that any SNAP benefits provided to such individuals are consistent with ABAWD rules, necessitating the collection of information about activities each ABAWD is performing and determination whether those activities satisfy the requirements. By substantially increasing the number of ABAWDs subject to these requirements,

¹² 18 N.Y.C.R.R. § 385.3(d); *see also* OTDA, Administrative Directive Memorandum 18-ADM-09, *Supplemental Nutrition Assistance Program (SNAP) Able Bodied Adults Without Dependents (ABAWDs) Policy Update and Guidance on the New 36-Month Time Period* (Dec. 31, 2018), <http://otda.ny.gov/policy/directives/2018/ADM/18-ADM-09.pdf>.

¹³ *Id.*

USDA in the Final Rule will necessarily increase the number of individuals with whom social services districts will need to perform the additional monitoring work.

18. In New York as of October 2019, there were approximately 113,445 ABAWDs living in waived areas and 16,908 ABAWDs living in non-waived areas. OTDA estimates that as a result of the Final Rule, only one county in the State consisting of 7 ABAWDs, will qualify for the waiver. Thus, once the 7 waived individuals are removed from the figures, approximately 130,346 ABAWDs in New York State likely will be subject to the work requirements for ABAWDs and will be at risk of losing SNAP benefits within three months if they do not comply with or document exemption from ABAWD work requirements. The number of individuals newly subject to ABAWD work requirements represents an almost sevenfold increase in ABAWD population.

19. With the loss of the ABAWD waiver in all but one district in New York State, districts must notify all individuals subject to the ABAWD time limits well in advance of the waiver expiration. This is requiring districts to review their current caseload to identify individuals who will be subject to the ABAWD requirements beginning April 1, 2020 and provide adequate notification. This is a labor intensive, manual process for each district as it requires running caseload reports and manually reviewing each case record and sending manual notices (districts outside of New York City) –ABAWD Informational Letter (LDSS-5072) and the mandatory ABAWD Work Activity Letter (LDSS-5127) that provides the offer of enrollment in an ABAWD qualifying work activity. The cost for these mailings is borne by OTDA and social services districts.

20. No additional funding was provided to the State or social service districts to address the changes presented by the new rule, to ensure meaningful service to an exponentially larger

ABAWD population, in less than four months. This would necessitate the reallocation of existing resources, additional staffing to ensure ABAWD compliance, and additional noticing and adherence to due process requirements.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct.

DATED this January 15, 2020 at Albany, New York.


