

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

ALICE LEITTER, CHRISTOPHER  
BOYLE, DORIS ANDERSON,  
RUSSELL ANDERSON, NOREEN  
DAINES, and ELLEN BROWER,

Plaintiffs,

v.

RICHARD ARMSTRONG, in his  
Official Capacity as Director of the Idaho  
Department of Health and Welfare,

Defendant.

Case No. 1:10-cv-361-BLW

**ORDER APPROVING AGREED  
PLAN AND LIFTING  
TEMPORARY RESTRAINING  
ORDER**

Before the Court is a Notice of Agreement Concerning Proposed Plan for Lifting Temporary Restraining Order and Continuing Objection of Plaintiffs (Dkt. 30). The Court previously ordered that Defendant had correctly identified a group of 255 individuals affected by the Temporary Restraining Order (TRO). *Order on Motion to Lift TRO*, Dkt. 29. However, the Court denied the motion to lift the TRO, and required the Idaho Department of Health and Welfare (IDHW) to propose a procedure by which to provide notice to the remaining 125 affected individuals, of the rule change at issue in this case.

**ORDER APPROVING AGREED PLAN AND LIFTING TRO - 1**

The parties now present a procedure that they stipulate is in keeping with the Court's Order (Dkt. 29). Plaintiff maintains that the proposed notice procedure does not satisfy due process, *Notice* (Dkt. 30 at 4), but agrees that the procedure appears to meet the conditions established by this Court.

The stipulated proposed procedure is as follows:

- A. The Department will conduct the interviews by telephone.
- B. Each telephone interview would be conducted by a Department employee with the individual residing in the CFH.
- C. The CFH provider would be present during the interview as well.
- D. At each interview, the Department employee will perform the following:
  1. Explain the rule change to eligibility that took effect as of July 1, 2010.
  2. Explain that the district court suspended the rule by virtue of the TRO.
  3. Explain that the effect of the court's ruling was to temporarily reinstate benefits.
  4. Explain that the court has lifted its order and that AABD Cash benefits will be terminated on a specific date.
  5. Explain that the individual has the right to appeal the termination of benefits.
  6. Request the name of a guardian or person assigned to handle their personal business.
  7. Provide the names of possible resources for the individual to contact, i.e. SILC, DRI, and Idaho Legal Aid.
  8. Ask the individual and CFH provider if they understand that the

individual's AABD cash benefits will be terminated and that the individual has the right to appeal the termination.

- E. The interview will supplement the written notice procedures presented to the court in the Defendant's motion and memoranda to lift the temporary restraining order, which will mean written notice will be provided to the individual, the CFH provider and to all known appointed guardians or DRI, as applicable.
- F. Additionally, if, during the interview process, the individual identifies a guardian or other personal representative who handles their business, a notice will be provided to that identified person as well.
- G. The Department shall keep specific records of each telephone interview, including a written checklist for the Department staff which will indicate that the Department staff member conducting the interview has covered each of the items listed above.

*Notice*, Dkt. 30 at 3.

In light of the parties' agreement, and finding that the proposed procedure addresses the Court's concerns from its prior Order (Dkt. 29), the Court will adopt the parties' stipulated plan. Although noting Plaintiff's continuing objection, the Court will lift the Temporary Restraining Order.

## **ORDER**

### **IT IS ORDERED THAT:**

1. The agreed procedure for providing notice, set forth herein, is

**APPROVED.**

2. The Temporary Restraining Order (Dkt. 14) is **LIFTED**.



DATED: March 31, 2011

*B. Lynn Winmill*

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Honorable B. Lynn Winmill  
Chief U. S. District Judge