UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MONICA NAVARRO PIMENTEL, individually and on behalf of a class of similarly situated persons,

Plaintiff,

v.

SUSAN DREYFUS, in her official capacity as Secretary of the Washington State Department of Social and Health Services,

Defendant.

CASE NO. C11-119 MJP

ORDER GRANTING CLASS CERTIFICATION AND TEMPORARY RESTRAINING ORDER

This comes before the Court on Plaintiff's motion for a temporary restraining order ("TRO") and preliminary injunction (Dkt. No. 2) and Plaintiff's motion for class certification (Dkt. No. 5). Having reviewed the motions, the responses (Dkt. No. 13 and 15), all documents submitted with the briefing, and having heard oral argument on January 27, 2011 (Dkt. No. 9), the Court GRANTS Plaintiff's motion for a TRO and class certification.

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Background

A. Statutory Framework

The federal food stamp program now known as the Supplemental Nutrition Assistance Program ("SNAP") was created in 1964. See 7 U.S.C. § 2011 *et seq.* SNAP provided federal funding to states who administered distribution of the federal food benefits.

In 1996, Congress passed the Personal Responsibility and Work Reconciliation Act ("PRWORA"), which severely restricted the eligibility of legal immigrants for SNAP benefits. 8 U.S.C. § 1612 and § 1613. After PRWORA, legal immigrants no longer receive federal-funded food assistance. However, in its place, Congress authorized states to voluntarily provide state-funded food assistance to legal immigrants rendered ineligible by PRWORA. 7 U.S.C. § 2016(i).

In 1997, Washington exercised its option to continue to provide legal immigrants with state-funded food assistance and created the Food Assistance Program for Legal Immigrants ("FAP"). RCW 74.08A.120. In other words, the Department of Social and Health Services ("DSHS") structured FAP so that households with aliens rendered ineligible by PRWORA would receive both state-funded Basic Food assistance and federal-funded food assistance, provided the total benefits any household received did not exceed the federal food stamp amount for that household. See Wash. St. Reg. 97-20-124 (Oct. 1, 1997); WAC 388-424-0025.

On September 13, 2010, Governor Gregoire issued Executive Order 10-04 mandating a 6.3 percent reduction to general fund-state appropriations due to declining state revenue. In September 2010, DSHS announced it would repeal FAP due to budget cuts. Wash. St. Reg. 10-19-135. On November 17, 2010, DSHS published a Proposed Rule amending FAP rules. Wash. St. Reg. 10-23-109. On December 29, 2010, the Department filed a permanent rule. Wash. St.

Reg. 11-02-035. The result of DSHS's rule-making is that the state food assistance program will cease to exist, effective February 1, 2011. Id.

B. Complaint Allegations

Plaintiff Monica Navarro Pimentel ("Pimentel") is a legal immigrant with three children. She currently receives food benefits on behalf of her household through the federally-funded food assistance program and through state-funded food assistance under FAP. (Pimentel Decl. ¶ 11.) Specifically, Pimentel receives federally-funded food assistance on behalf of her two youngest children who are United States citizens and receives state-funded food assistance under FAP because her alien status renders her ineligible for federal food assistance. (Id.) Both food assistance programs are administered by Washington and she, therefore, receives them together. (Id.) Prior to this litigation, she did not know her food benefits were funded separately. (Id.)

On January 18, 2011, DSHS mailed notices to recipients that their food assistance would be terminating or reduced because there was no funding for FAP. (Pimentel Decl., Ex. A). Pimentel received notice on January 20, 2011. (Id. at ¶ 17.) The notice stated her household's benefits would be reduced from $647 to $341 per month. (Id. at 9.) The notice did not explain why ineligible household members did not meet the citizenship or alien status requirements for the federal food assistance program or indicate what information or verification DSHS relied upon in reaching this determination. (See Pimentel Decl. Ex. A.)

Analysis

A. Class Certification

Plaintiff seeks to represent two classes of individuals:

(1) All Washington state residents who

(a) were receiving state-funded Basic Food benefits under FAP and received notification that these benefits would terminate on January 31, 2011 because there was no funding for the program; or

(b) in the future would be eligible for the Washington State Basic Food Program, but for the fact that they do not meet citizenship and alien status requirements of WAC 388-424-0020 and who are either qualified aliens or Permanently Residing Under Color of Law in the United States (hereinafter referred to as "Class").

(2) For purposes of the due process claim, Washington state residents who

(a) are receiving state-funded Basic Food benefits now and whose benefits are being reduced or terminated effective February 1, 2011. (hereinafter referred to as "Due Process Subclass").

Defendant does not object to certification of the Class. (Dkt. No. 15.) But Defendant does object to certification of the Due Process Subclass. (Id.). Plaintiff indicated at the hearing that the language of the Due Process Subclass may require clarification. Plaintiff is granted leave to amend the Due Process Subclass, however, the Court still considers here the classes defined in briefing.

a. Standard

Rule 23 "provides a one-size-fits-all formula for deciding the class-action question." Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 130 S.Ct. 1431, 1437 (2010). A class action may be maintained if the party seeking certification meets all four criteria in Rule 23(a) and at least one of the three categories of Rule 23(b). Rule 23(a) requires the Court to find that:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

Plaintiffs here seek certification under Rule 23(b)(2), which requires the Court to find that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate resting the class as a whole."

The Ninth Circuit recently reaffirmed that "at the class certification stage, while Eisen [v. Carlisle & Jacquelin, 417 U.S. 156 (1974)] prohibits a court from making determinations on the merits that do not overlap with the Rule 23 inquiry, district courts must make determinations that each requirement of Rule 23 is actually met." Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 590 (9th Cir. 2010) (en banc). This is to be a "rigorous analysis to ensure that the prerequisites of Rule 23 have been satisfied." Id. at 594. The Ninth Circuit rejected a "significant proof" requirement to be imposed on a plaintiff seeking certification of a class. Id. at 595.

1. Numerosity

Plaintiff has satisfied the numerosity requirement for both the Class and Due Process Subclass. The size of the class is approximately 10,000 households comprised of more than 30,000 persons. (Provenzano Decl. ¶ 20; Ex. G). Approximately 14,350 persons in these households will no longer be eligible for state-funded Basic Food if FAP is terminated. (Id.) The Court finds the proposed Class and Due Process Subclass are sufficiently numerous as to make joinder of all plaintiffs impractical. See Fed. R. Civ. P. 23(a)(1).

2. Common questions of law or fact

There are common questions of law and fact applicable to all members of the proposed Class and Due Process Subclass. Common questions facing all members of the proposed classes include: (1) whether DSHS's elimination of FAP and continuation of Basic Food benefits to U.S. citizens and certain qualified aliens violates the Equal Protection Clause; (2) whether the notices that DSHS sent Due Process Subclass terminating or reducing their food assistance effective February 1, 2011 were inadequate and violated the Due Process Clause; (3) whether the Class and Due Process Subclass are entitled to declaratory relief under 42 U.S.C. § 1983. The Court finds sufficient common questions of fact and law to satisfy Rule 23(a)(2).

3. Typicality

The Court finds Plaintiffs' claims to be typical of those of the proposed Class and Due Process Subclass. DSHS sent a standardized notice to Plaintiff and other members of the Class and Due Process Subclass purporting to terminate their state-funded Basic Food benefits under FAP. (Pimentel Decl. Ex. A). Plaintiff is in danger of losing her FAP benefits after receiving a notice alleged to be defective. These allegations are common to the proposed class. The Court finds typicality is satisfied. Fed. R. Civ. P. 23(a)(3).

4. Adequacy

The Court is satisfied the named individuals and class counsel will represent the Class and Due Process Subclass. Fed. R. Civ. P. 23(a)(4). The main inquiry here is whether the named plaintiffs and counsel have conflicts of interest with other class members, and whether the named Plaintiffs will prosecute the action vigorously on behalf of the class. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998).

Here, Columbia Legal Services exists to represent the interests of those within the proposed class and has extensive experience in class action challenges and public assistance litigation. The Court finds the class counsel to be adequate.

With respect to the named Plaintiff, Ms. Pimentel has demonstrated her interest in prosecuting this case by filing the instant complaint. To the extent Defendant argues the Due Process Subclass should not be certified because Ms. Pimentel lacks standing, the argument fails. Defendant seems to believe Ms. Pimentel cannot challenge the notice's adequacy because the notices informed her of FAP's termination and not of her ineligibility. But regardless if a program is terminated altogether or merely changed so as to render a recipient ineligible, the effect on the recipient is the same—the recipient's benefits will be terminated or reduced. A recipient suffers injury when DSHS fails to provide adequate notice for the reason their benefits were terminated or reduced. The Court finds Ms. Pimentel has standing and is adequate to represent the Class and Due Process Subclass.

5. Certification under Rule 23(b)(2)

Plaintiffs here seek injunctive and declaratory relief that, if granted, will apply equally to all members of the proposed Class and Due Process Subclass. DSHS's actions here apply to those in the proposed classes that received inadequate advanced notice and whose benefits will be terminated or reduced. The Court finds the requirements of Rule 23(b)(2) easily satisfied.

B. Temporary Restraining Order

a. Standard

A plaintiff seeking injunctive relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the

balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008) (rejecting the Ninth Circuit's approval of an injunction when plaintiffs only demonstrated the "possibility" of irreparable harm); see also Alliance for Wild Rockies v. Cottrell, ___ F.3d ___, No. 09-35756, 2010 WL 2926463, at *3-5 (9th Cir. Jul. 28, 2010) (holding the Ninth Circuit's "sliding scale" approach continued to be valid after Winter).

b. Likelihood of Success on the Merits

i. Equal Protection

Federal classifications based on alienage are subject to rational basis review. Matthews v. Diaz, 426 U.S. 67 (1976). But state classifications based on alienage are generally subject to strict scrutiny. Bernal v. Fainter, 467 U.S. 217, 227-28 (1984). Only when Congress has established a uniform rule regarding alienage for states to follow is the state's action in following that rule also subject to rational basis review. Plyler v. Doe, 457 U.S. 202, 219 n. 19 (1982).

Here, Congress has not enacted a uniform rule for states to follow in administering their state-funded food assistance program. In other words, this is different from Sudomir v. McMahon, 767 F.2d 1456 (9th Cir. 1985). Congress has not defined a uniform rule regarding eligibility for state-funded food programs filling the gap left after PRWORA. In Sudomir v. McMahon, the Ninth Circuit found Congress established a uniform law under the Aid to Families with Dependent Children ("AFDC") barring states from providing welfare to aliens who had applied for, but not yet received, political asylum. Id. Specifically, the law provided that to be eligible for the AFDC program "the individual must be . . . an alien . . . permanently residing in the United States under color of law." Id. at 1466 (quoting 42 U.S.C.§ 602(a)(33) prior to its amendment). In contrast, here, Congress merely states, "a State is authorized to

determine the eligibility for any State public benefits of [qualified aliens]." 8 U.S.C. § 1622(a); see also Ehrlich v. Perez, 908 A.2d 1220, 1244 (Md. 2006)(finding PRWORA prescribes no uniform rule and applying strict scrutiny). This is a broad grant of discretion and not a uniform policy regarding eligibility; therefore, it must meet strict scrutiny.

Defendants make three arguments for rational basis review; none of which are persuasive. First, Defendants contend courts routinely uphold federal law restricting state-administered federal benefits to specific legal aliens under rational basis review. See, e.g., Aleman v. Glickman, 217 F.3d 1191, 1197 (9th Cir. 2000). While this is true, it is irrelevant. Courts have applied rational basis review for alienage classifications used in administering federally-funded benefits subject to federal alienage classifications. The program challenged here is a state-funded benefit. As discussed above, state-funded benefits are subject to strict scrutiny.

Second, Defendants argue there is no Equal Protection violation because the state-funded food assistance program will no longer exist and DSHS will only administer federally-funded food benefits based on federal alien classifications. Defendant's argument misses the point. Plaintiff is alleging DSHS's decision to eliminate the state-funded food assistance program while continuing to administer other food assistance programs to U.S. citizens and others itself violates Equal Protection. Regardless of whether the state continues to administer a federally-funded food assistance program based on federal alien classifications, DSHS's decision to cut the state-funded program benefitting aliens exclusively is subject to strict scrutiny.

Third, Defendants argue strict scrutiny only applies when states exercise discretionary authority inconsistent with the uniform law set by Congress. This argument is unpersuasive. As discussed above, strict scrutiny is the default with respect to state classifications based on

alienage. Only if a uniform law set by Congress authorizes states to make decisions regarding the state-funded assistance programs would rational basis apply. Since PRWORA provides no uniform rule when states subsequently elect to provide state-funded food assistance, strict scrutiny applies. See Aliessa ex rel Favad v. Novello, 96 N.Y.2d 418 (N.Y. 2001)(finding PRWORA prescribes no uniform rule such that state-funded Medicaid program's exclusion of aliens was subject to strict scrutiny); Korab v. Koller, 2010 WL 5158883 (D. Hawai'i 2010)(finding PRWORA "creates neither a federal classification nor a uniform federal policy" regarding state-funded benefits). Here, DSHS exercised its discretionary authority under 8 U.S.C. § 1622(a) when cutting FAP. This decision is subject to strict scrutiny.

Under strict scrutiny, Plaintiff has established a likelihood of success on the merits. State budgetary considerations are not a compelling interest for a state to discriminate against aliens or immigrants.

ii. Due Process

Defendant argues Plaintiff is not likely to succeed on the merits of her Due Process claim because (1) relaxed Due Process standards apply and (2) Plaintiff lacks standing to challenge the notice. Neither argument is persuasive.

The termination of welfare benefits "involves state action that adjudicates important rights" and the state's conduct must comport with the requirements of due process. Goldberg v. Kelly, 397 U.S. 254, 261 (1970). To determine whether a given procedure is constitutionally sufficient, the Court must consider (1) the private interest implicated by the state action, (2) the "risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) the state's interest, "including the fiscal and administrative burdens" that alternative procedures would require.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976); see also Greene v. Babbitt, 64 F.3d 1266, 1274 (9th Cir. 1995). In the context of public benefits, a notice of termination "must be reasonably calculated to apprise the claimants of the action taken and afford them an opportunity to present their objections." Rodriguez v. Chen, 985 F. Supp. 1189, 1194 (D. Ariz. 1996).

Here, DSHS's notice likely violated Due Process. The notices failed to identify those members of the household ineligible due to their alien status and to explain why these members did not meet the alien status requirements. In addition, the notices failed to indicate what information or verification DSHS relied on to reach its determination or describe how DSHS pro-rated ineligible member's income or allowable expenses or otherwise adequately set forth the income, deduction, and expense figures used in calculating recipients' benefits.

While Defendants believe "individualized notice is not required when benefits are terminated by a change in the law rather than a change in an individual's circumstances," the argument is without merit. In Atkins v. Parker, the Court held recipients of the federal food stamp program had no greater right to advance notice of the change in program than did "any other voters." 472 U.S. 115 (1985). But Atkins involved a substantive change to the program mandated by Congress. The Court observed, "a sufficient grace period" provided those affected by the change in law with an adequate opportunity to become familiar with it. Id. at 130. Here, the decision to end FAP was made by a state agency's rule-making in the waning days of 2010. Although DSHS argues it acts in a legislative capacity when engaging in rule-making, this is wholly different than Atkins. Since Plaintiff and other class members do not have the opportunity to express their objections by voting DSHS out of office, the notices are subject to due process standards.

To the extent Defendant argues Plaintiff lacks standing, the argument again fails. Plaintiff has standing to challenge the adequacy of notice regarding FAP's termination. While the program is scheduled to terminate and issues of eligibility may be moot, Plaintiff was still harmed by DSHS's failure to explain the reduction of her household's benefits from $647 to $341. Telling Plaintiff and other class members simply that the state-funded food assistance program was cut does not adequately explain the amount their food benefits were reduced by. In fact, Plaintiff appears to have only recently learned through this litigation that her food benefits are funded separately by federal and state resources with different eligibility requirements. (Pimentel Decl. ¶ 11.) Since Plaintiff has suffered an injury in fact that is traceable to DSHS's inadequate notice and it is likely that the injury will be redressed by injunctive relief, Plaintiff has standing to bring the Due Process claim.

The Court finds Plaintiff has shown a likelihood of success on the merits of her Due Process claim.

c. Irreparable Harm

Plaintiff has demonstrated, and Defendants do not contest, that Plaintiff is in danger of irreparable harm. As the Supreme Court noted in Goldberg v. Kelly, 397 U.S. 254, 261 (1970), public assistance satisfies a "brutal need." Denial of food benefits of any member of the class exposes that individual to grave harm. (See Navarro Pimentel Decl. ¶ 19). Ms. Pimentel is the mother of three children who has been granted legal status under the Violence Against Women Act. (Id. at ¶3-6.) While she applies for work authorization, Ms Pimentel relies on food benefits to feed her family. (Id. at ¶¶ 14-15.) Several courts have recognized this irreparable harm particularly with respect to food stamps. See, e.g., Haskins v. Stanton, 794 F.2d 1273, 1276-77 (7th Cir. 1986); Willis v. Lascaris, 499 F.Supp. 749, 756-59 (N.D.N.Y. 1980)("[T]he

consequences of mistakes in the social service arena are more harmful than if they are made in other governmental programs because the ability of people to survive may be jeopardized.") TRO is needed to prevent Plaintiffs and the Class from suffering from irreparable harm.

d. Balancing of Hardships/Public Interest

These elements weigh strongly in Plaintiff's favor. The assistance the FAP program provides is vital for Plaintiff and other members of the Class and Due Process Subclass. Plaintiff and other class members are legal immigrants whose income and other financial resources make them dependent on government assistance for food. While the public's interest is served by conserving the resources of the state, the need to the Plaintiff and class members is extreme and substantial. Plaintiff's and classes' suffering "is far more compelling than the possibility of some administrative inconvenience or monetary loss to the government." Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983). In addition, the public interest is served in providing assistance to the Class pending resolution of this dispute. The public has a strong interest in insuring that public programs are administered in compliance with Due Process. The Court finds these two factors weigh in Plaintiffs' favor.

e. Bond

Considering the limited resources faced by Plaintiffs and the other class members, the Court waives the bond requirement.

Conclusion

The Court GRANTS Plaintiff's motion to certify the Class and Due Process Subclass. If they so choose, Plaintiff is allowed leave to amend the Due Process Subclass. The Court GRANTS Plaintiff's motion for a TRO. The Court ORDERS Defendant not to terminate

Plaintiff's or other Class members' state-funded food assistance under the Food Assistance Program for Legal Immigrants on January 31, 2011 or to deny any Class members' application for such benefits after that date because of lack of funding. The Court also ORDERS Defendant not to terminate or reduce Plaintiff and other Due Process Subclass members state-food assistance until they have been served adequate notice in accordance with Due Process.

Parties are requested to meet and confer to determine whether (1) the TRO may be extended beyond fourteen (14) days pursuant to Rule 65(b)(2) of the Federal Rules of Civil Procedure, or (2) additional briefing and hearing on the preliminary injunction is needed. If the latter, the parties must submit a schedule to the Court by Friday, February 4, 2011.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 28th day of January, 2011.

Marsha J. Pechman
United States District Judge