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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MONICA NAVARRO PIMENTEL, et.
al.,

Plaintiff,

v.

SUSAN DREYFUS,

Defendant.

CASE NO. C11-119 MJP

ORDER GRANTING PLAINTIFF'S
MOTION FOR CLARIFICATION
AND DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

This comes before the Court on Defendant's motion for reconsideration (Dkt. No. 41), Plaintiff's motion to file supplemental pleading (Dkt. No. 47), and Plaintiff's motion to clarify the preliminary injunction order (Dkt. No. 38). Having reviewed the motions, the responses (Dkt. Nos. 40, 45 and 50), the replies (Dkt. Nos. 44 and 46), and all related filings, the Court DENIES Defendant's motion for reconsideration, GRANTS Plaintiff's motion to file supplemental pleading, and CLARIFIES the preliminary injunction issued February 17, 2011.

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ORDER GRANTING PLAINTIFF'S MOTION FOR
CLARIFICATION AND DENYING
DEFENDANT'S MOTION FOR
RECONSIDERATION- 1

1 **Background**

2 Plaintiff Monica Navarro Pimentel (“Pimentel”) is suing Defendant Susan Dreyfus
3 (“Defendant”) in Dreyfus’s official capacity as head of the Washington State Department of
4 Social and Health Services (“DSHS”). Pimentel alleges DSHS’s elimination of a state-funded,
5 state-administered food assistance program, benefitting legal immigrants exclusively, violates
6 Equal Protection and Due Process. On February 17, 2011, the Court issued a preliminary
7 “PROHIBIT[ING] Defendant from terminating Plaintiff’s or other Class members’ state-
8 funded food assistance under the Food Assistance Program for Legal Immigrants while this
9 litigation is pending.” (Dkt. No. 38.)

10 1. Defendant’s Motion for Reconsideration

11 Defendant timely requests the Court reconsider its February 17, 2011 decision. Under
12 Local Rule 7(h), “[m]otions for reconsideration are disfavored.” LR 7(h). “The court will
13 ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or
14 a showing of new facts or legal authority which could not have been brought to its attention
15 earlier with reasonable diligence.” Id.; see also Marlyn Nutraceuticals, Inc. v. Mucos Pharma,
16 571 F.3d 873, 880 (9th Cir. 2009)(finding a motion for reconsideration warranted only when a
17 district court is presented with newly discovered evidence, committed clear error, or when there
18 is an intervening change in the controlling law). Defendant presents seven arguments for
19 dissolving or modifying its preliminary injunction.

20 First, Defendant believes the enactment of Engrossed Substitute House Bill 1086 (“ESHB
21 1086”) one day after the Court’s February 17, 2011 order constitutes a new fact or legal authority
22 warranting reconsideration. 2011 Wash. Sess. Law 86. (Def. Br. at 3.) The Court disagrees.
23 ESHB 1086 provides a supplemental operating budget for the remainder of fiscal year 2011 (i.e.,
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1 June 30, 2011) and mandates FAP benefits “be fifty percent of the federal supplemental nutrition
2 assistance program benefit amount.” 2011 Wash. Sess. Law 78. However, as Defendant
3 concedes, ESHB 1086 does not prevent the Washington legislature from “impos[ing] new budget
4 or legal limitations on Defendant’s administration of FAP (including elimination)” after the
5 fiscal year ends. (Def. Reply Br. at 2.) “Voluntary cessation” of the challenged action does not
6 moot the case. See Friends of the Earth, Inc. v. Laidlaw Enviromental Svcs, Inc., 528 U.S. 167
7 (2000). Whether or not the legislature decides to continue FAP, fund FAP in whole, or fund
8 FAP in part, it is clear the Court’s preliminary injunction remains necessary to ensure FAP is not
9 eliminated in a manner that violates Equal Protection or Due Process.

10 Second, Defendant requests the Court reconsider its decision because DSHS’s
11 administration of FAP merely reflects uniform federal law. (Def. Br. at 4). The Court finds
12 Defendant’s argument repeats those already presented to the Court. A motion for
13 reconsideration should not be used to ask the court “to rethink what the court ha[s] already
14 thought through.” In re America West Airlines, Inc., 240 B.R. 34, 38 (Bankr. D.Ariz.1999); see
15 also Union Pac. R.R. Co. v. Coast Packing Co., 236 F.Supp.2d 1130, 1137 (C.D. Cal.
16 2002)(holding that a motion for reconsideration may not repeat “any oral or written argument”).
17 Because the Court carefully considered Graham v. Richardson, 403 U.S. 365 (1971), Soskin v.
18 Reinertson, 353 F.3d 1242 (10th Cir. 2004), and Cid v. South Dakota Dep’t of Social Serv’s, 598
19 N.W.2d 887 (S.D. 1999), when issuing the preliminary injunction, the Court will not revisit its
20 decision absent a showing of clear error.

21 Third, Defendant believes reconsideration is appropriate because DSHS’s actions meet
22 strict scrutiny. (Def. Br. at 4.) Defendant offers no new fact or legal authority as to why this
23 argument was not presented during prior briefing and the Court declines to reconsider its

1 decision based on an issue presented for the first time on a motion for reconsideration.

2 Regardless, even if the Court were to consider it, Defendant's strict scrutiny argument appears
3 misplaced. Defendant contends the FAP classification is narrowly tailored to meet a compelling
4 state interest. (Def. Br. at 5.) But, as the Court has previously observed, Plaintiff's concern is
5 not the FAP classification, but DSHS's elimination of FAP or reduction in FAP benefits. In
6 order to meet strict scrutiny, DSHS must identify how the attempt to eliminate FAP is narrowly
7 tailored to meet a compelling state interest.

8 Fourth, Defendant requests the Court eliminate its notice requirement regarding federal
9 SNAP benefits. (Def. Br. at 5.) As with its second argument, Defendant repeats issues already
10 presented to the Court. (Compare Dkt. No. 24, ¶¶ 19 and 22 with Dkt. No. 42 ¶ 10.) The
11 preliminary injunction requires DSHS to explain how it prorated any ineligible household
12 member's income or allowable expenses and set forth the income, deduction and expense figures
13 so that Due Process Subclass members can verify their SNAP benefits were correctly calculated.
14 The Court's preliminary injunction does not go beyond the requirements of due process. DSHS
15 is not required to send notices to households receiving SNAP benefits only. DSHS is only
16 required to send notices to households affected by changes in FAP benefits. An explanation of a
17 household's SNAP benefits is necessary because, for many recipients, SNAP and FAP
18 effectively operated as a single program.

19 Fifth, Defendant requests the Court eliminate the requirement that DSHS notify recipients
20 of all the rules relied upon in calculating the Due Process Subclass members' food assistance.
21 Defendant argues this is impractical and burdensome because "over one hundred rules can apply
22 to a household's composition, an individual's eligibility for benefits, and the determination of a
23 household's eligibility and benefit level" and "composing detailed and personalized letters . . .

1 | could require attorney review and take thousands of hours of staff time.” (Camp Decl., Dkt. No.
2 | 42 ¶ 11.) The Court is unpersuaded. In Pimentel’s case, DSHS attempted to eliminate the
3 | Pimentel household’s food benefits by half. This is a significant reduction affecting Pimentel
4 | and her three children. While DSHS need not list every single rule it uses in administering food
5 | benefits, a complete and understandable explanation of which rules DSHS relied on for
6 | calculating the individual’s benefits is necessary.

7 | Sixth, Defendant believes notice is not required because changes in FAP benefits will be
8 | authorized legislatively as opposed through rule-making under ESHB 1086. (Def. Br. at 6.) As
9 | discussed above, the Court’s preliminary injunction prevents the implementation of ESHB 1086.
10 | Notice is still required for termination or reduction to FAP benefits.

11 | Finally, Defendant requests the Court reconsider the overall equities given that ESHB
12 | 1086 provides funding for FAP at fifty percent. (Def. Br. at 7.) The Court finds the change in
13 | equities insufficient to trigger reconsideration of the preliminary injunction. While ESHB 1086
14 | may change the “balance of equities,” it does not influence the Court’s finding of a likelihood of
15 | success on the merits. To the extent Defendant seeks to administer FAP at fifty percent while
16 | continuing to fully-fund food assistance to citizens, Defendant fails to articulate how this action
17 | differs from eliminating FAP when considering Equal Protection. As was the case when DSHS
18 | sought to eliminate FAP while continuing to administer food assistance to citizens, DSHS would
19 | be treating two similarly-situated classes of people differently based on their alienage.
20 | Therefore, the Court declines to dissolve or modify the scope of the preliminary injunction.

21 | 2. Plaintiff’s Motion for Clarification

22 | Pimentel filed a motion to clarify the preliminary injunction so as to enjoin Defendant
23 | from both terminating and denying any Class members’ application for FAP benefits because of
24 |

1 lack of funding. (Dkt. No. 38.) In her reply brief, Pimentel also asks the Court to “bar
2 Defendant from making any changes to its FAP regulations which tighten the eligibility
3 requirements of the program or result in across-the-board benefit reductions without first seeking
4 leave of the Court.” (Dkt. No. 44 at 4.) Defendant does not object to including Class members
5 who may be denied FAP benefits in the future and proposes an amended preliminary injunction
6 that would likewise recognize Defendant’s uncontested ability to terminate, reduce, or deny FAP
7 benefits in accordance with pre-existing FAP rules. The Court CLARIFIES the preliminary
8 injunction as provided in this Order’s conclusion.

9 **3. Plaintiff’s Motion to File Supplemental Pleadings**

10 Plaintiff seeks permission to file a supplemental pleading pursuant to Rule 15(d) of the
11 Federal Rules of Civil Procedure in order to challenge Defendant’s recent decision to reduce
12 FAP instead of eliminate it. (Dkt. No. 47.) Without waiving any applicable defenses, Defendant
13 does not object. (Dkt. No. 50.) The Court GRANTS Plaintiff’s request to file supplemental
14 pleading, as attached in Exhibit D to Provenzano’s Declaration. (See Dkt. No. 48, Ex. D.)

15 **Conclusion**

16 The Court GRANTS Plaintiff’s request to file supplemental pleading, as attached in
17 Exhibit D to Provenzano’s Declaration. (See Dkt. No. 48, Ex. D.) The Court GRANTS
18 Plaintiff’s motion for clarification and DENIES Defendant’s motion for reconsideration. The
19 Court MODIFIES the preliminary injunction to read:

20 “The Court PROHIBITS Defendant from terminating Plaintiff’s or other Class members’
21 state-funded food assistance or denying Class members’ application for benefits under the Food
22 Assistance Program for Legal Immigrants while this litigation is pending, if the termination,
23 reduction, or denial would be premised on the adoption of any of the regulations that ended

1 funding of FAP benefits effective February 1, 2011. The Court ORDERS DSHS to administer
2 the FAP program in accordance with DSHS's previous FAP regulations. This preliminary
3 injunction shall not interfere with certification periods established under Wash. Admin. Code
4 388-416-0005 nor shall it interfere with DSHS's ability to terminate, reduce, or deny FAP
5 benefits to those not eligible to receive FAP benefits under previous FAP regulations.

6 The Court also ORDERS Defendant not to terminate or reduce Plaintiff's and other Due
7 Process Subclass members' state-food assistance until they have been served adequate notice in
8 accordance with Due Process. The notices must do the following:

- 9 1. Adequately advise Due Process Subclass members as to which members of their
10 household are considered ineligible due to their alien status, why these ineligible
11 household members do not meet the citizenship or immigration status requirements of
12 WAC 388-424-0020 and WAC 388-400-0040, and what information DSHS relied upon
13 in reaching this determination.
- 14 2. Explain how DSHS prorated any ineligible household member's income or allowable
15 expenses under WAC 388-450-0140 and set forth the income, deduction, and expense
16 figures, including rent, used by DSHS so that Due Process Subclass members can review
17 and determine whether their SNAP benefits were correctly calculated;
- 18 3. Set forth all the rules that DSHS relied upon in calculating the Due Process Subclass
19 members' food assistance.

20 The Court ORDERS Defendant make a reasonable effort to notify Class and Due Process
21 Subclass members of the entry of this ORDER and the impact it will have on their food benefits
22 through a news release, timely posting of information on their website, and distributing similar
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1 information through food program outreach contractors and food assistance partners. Defendant
2 must keep Plaintiff's counsel reasonably apprised of all its efforts to comply with this Order."

3 (amended language underlined).

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

5 Dated this 22nd day of March, 2011.

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9 Marsha J. Pechman
United States District Judge