

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHELLE CASE, NICOLE KELLY,  
L.H. and L.J. by their next friend NICOLE KELLY,  
KATHLEEN DYGAS, and T.Z. by her next friend  
KATHLEEN DYGAS,  
on behalf of themselves and  
all others similarly situated,

Plaintiffs,

Case No.

v.

MAURA CORRIGAN,  
in her official capacity as Director,  
Michigan Department of Human Services,

Defendant.

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**VERIFIED CLASS ACTION COMPLAINT**

**PRELIMINARY STATEMENT**

1. This lawsuit is brought by recipients of Family Independence Program (FIP) cash assistance benefits to enforce their rights – and the rights of similarly situated recipients -- to procedural due process under the Fourteenth Amendment to the United States Constitution and to Family Independence Program benefits under Michigan’s Social Welfare Act.

2. Michelle Case, Nicole Kelly, Kathleen Dygas and T.Z., individually and on behalf of a class, seek the Court’s immediate intervention to prevent the Defendant’s Michigan Department of Human Services from terminating FIP benefits on October 1, 2011 to more than 25,000 parents and children (a) without providing the affected individuals with meaningful notice at a meaningful time, in violation of their rights under the due process clause of the

fourteenth amendment to the Constitution and (b) without determining whether they are entitled to continue receiving FIP under the specific provisions of the Social Welfare Act. Plaintiffs, on behalf of themselves and other recipients, seek to enforce their right to continue receiving FIP until they are given meaningful, pre-termination notice of the basis for their termination as required by the Constitution, and until their eligibility under the Social Welfare Act ends.

3. Defendant's Department of Human Services ("the Defendant") has slated Plaintiffs and similarly situated FIP recipients for termination of their FIP benefits on October 1, 2011, and has sent them pre-termination notices that (a) cite a secret policy that has neither been published nor made publicly available, and (b) provide only a vague, generic explanation of the reason for termination.

4. The Defendant has slated Plaintiffs and similarly situated FIP recipients for termination of their FIP benefits on October 1, 2011, because they or someone in their group allegedly "has exceeded the Federal Time Limit maximum to receive Family Independence Program benefits," in violation of the Michigan Social Welfare Act, which prescribes a 48-month time limit on FIP eligibility in Michigan that has not been exceeded by Plaintiffs and the class they seek to represent. Although Federal law imposes time limits on the Defendant's use of federal Temporary Assistance to Needy Families (TANF) funds to pay for cash assistance, it does not impose time limits on recipients' eligibility for or receipt of FIP. Defendant does not have legal authority to impose a time limit of FIP eligibility through the implementation of an administrative policy that conflicts with the specific time limits and exceptions enacted by the legislature in the Social Welfare Act.

5. Plaintiffs seek a temporary restraining order and preliminary injunction to prevent imminent harm to themselves and thousands of other, similarly situated children and parents, to

prevent the Defendant, which administers the FIP program, from terminating FIP based on eligibility time limits until (a) the Defendant has provided Plaintiffs and members of the class with written notice, at least 10 days prior to termination, that (i) provides a citation to legal authority that is published and publicly available at the time the notice is sent and (ii) details the factual and legal reasons for the termination, and until (b) the Defendant determines whether the recipients are ineligible for FIP under the specific provisions of the Social Welfare Act.

6. Plaintiffs seek declaratory and injunctive relief under 42 U.S.C. 1983 to prevent Defendants from violating Plaintiffs' due process rights, under both the Fourteenth Amendment to the United States Constitution. Plaintiffs seek supplementary declaratory and injunctive relief to prevent the Defendant from terminating FIP based on eligibility time limits unless it has been determined that the recipient has received FIP for 48 countable months under the Michigan Social Welfare Act. Plaintiffs seek notice to the Plaintiff class under Fed. R. Civ. P 23(d), and an award of attorney's fees and costs under 42 U.S.C. 1988.

#### **JURISDICTION**

7. This court has jurisdiction over the Plaintiffs' constitutional claims under 28 U.S.C. §1331 and §1343, and supplemental jurisdiction over the Plaintiffs' state claim under 28 U.S.C. §1367(a).

8. This court has jurisdiction to issue declaratory relief and injunctive relief under 28 U.S.C. § 2201 and 2202.

9. Plaintiffs' claim that the Defendant is violating their due process rights under the fourteenth amendment to the Constitution of the United States by terminating their needs-based FIP cash assistance after sending pre-termination notices that cite a secret, unpublished policy regarding a "Federal Time Limit maximum to receive Family Independence Program benefits",

and by not detailing the facts on which the termination is based, involves a question of federal law.

10. Plaintiffs' claim that the Defendant is acting in excess of her authority and violating their rights under the Social Welfare Act arises from the same mass termination of FIP benefits based on an alleged "Federal Time Limit maximum" that gave rise to Plaintiffs' due process claim.

11. Resolution of Plaintiffs' state law claim regarding the unlawfulness of the Defendant's use of an alleged "Federal Time Limit maximum" to terminated their FIP benefits depends in part on the interpretation of the federal statute governing the Temporary Assistance to Needy Families block grant.

## **PARTIES**

### **Named Plaintiffs**

12. MICHELLE CASE is a citizen of the United States who resides in Saginaw County, Michigan with her minor child, B.C.

13. NICOLE KELLY is a citizen of the United States who resides in Genesee County, Michigan, with her two minor children, L.H. and L.J.

14. L.H. is a citizen of the United States and resident of Genesee County, born in 1998.

15. L.J. is a citizen of the United States and resident of Genesee County, born in 2002.

16. KATHLEEN DYGAS is a citizen of the United States who resides in Macomb County, Michigan with her two minor children, S.Z. and T.Z.

17. T.Z. is a minor citizen of the United States and a resident of Macomb County, Michigan, born in 2000, who brings this suit through his next friend and mother, KATHLEEN DYGAS.

18. On or about September 11, 2011, the Defendant sent notice to MICHELLE CASE informing her that FIP benefits for herself and her child would be terminated October 1, 2011.

19. An accurate copy of the Notice of Case Action sent to Ms. Case on about September 11, 2011 is attached as Exhibit B.

20. On or about September 11, 2011, the Defendant sent notice to NICOLE KELLY informing her that FIP benefits for herself and her children, L.H. and L.J., would be terminated October 1, 2011.

21. An accurate copy of the Notice of Case Action sent to Ms. Kelly on about September 11, 2011 is attached as Exhibit C.

22. On or about September 11, 2011, the Defendant sent notice to KATHLEEN DYGAS informing her that FIP benefits for herself and her daughter, T.Z. would be terminated October 1, 2011.

23. An accurate copy of the Notice of Case Action sent to Ms. Dygas on about September 11, 2011 is attached as Exhibit D.

24. The reason for termination given in the notices the Defendant sent Ms. Case, Ms. Kelly, and Ms. Dygas --and to more than 10,000 similarly situated families --was “You or a member of your group has exceeded the Federal Lifetime maximum to receive Family Independence Program benefits. Manual Item(s): BEM 234.”

#### **The Due Process Class**

25. The named Plaintiffs belong to, and seek to represent, a class consisting of all current and future FIP recipients who are threatened with termination by the Defendant of their FIP assistance without written notice, at least 10 days prior to termination, that (a) provides a citation to legal authority that is published and publicly available at the time the notice is sent and (b)

details the factual and legal reasons for the termination.

26. Plaintiffs bring this action on their own behalf and, pursuant to Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

27. The class is so numerous that joinder of all members is impracticable.

28. More than 10,000 families with more than 20,000 children currently receiving FIP have received notices from the Defendant that their FIP will end October 1, 2011 because they or someone in their household “has exceeded the Federal Time Limit maximum to receive Family Independence Program benefits, Manual Item(s): BEM 234.”

29. The exact size of the class, and the names and location of class members, are in the exclusive control of the Defendant.

30. The question of whether or not Defendant’s termination of Plaintiffs’ and class members’ FIP without providing 10 days written notice prior to termination (a) citing published, publicly available legal authority and (b) detailing the factual and legal basis for the termination violates the due process clause of the fourteenth amendment to the Constitution is common to all class members.

31. The claims and defenses of the named Plaintiffs are typical of the claims of the class.

32. The claims of the named Plaintiffs arise from the same conduct by the Defendant that has been or will be applied to all class members.

33. The named Plaintiffs will fairly and adequately represent the class.

34. The named Plaintiffs’ attorneys are competent and experienced in the areas of law raised in this litigation.

35. There is no foreseeable antagonism or conflict of interest within the class.

### **The Time Limit Class**

36. The named Plaintiffs belong to, and seek to represent, a class consisting of all current and future FIP recipients who are threatened with termination by the Defendant of their FIP assistance based on alleged federal time limits when they have not received FIP for 48 countable months under the Social Welfare Act.

37. Plaintiffs bring this action on their own behalf and, pursuant to Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

38. The class is so numerous that joinder of all members is impracticable.

39. More than 10,000 families with more than 20,000 children currently receiving FIP have received notices from the Defendant that their FIP will end October 1, 2011 because they or someone in their household “has exceeded the Federal Time Limit maximum to receive Family Independence Program benefits, Manual Item(s): BEM 234.”

40. Upon information and belief, more than 5,000 of the families that have received notice their FIP is ending because of a “Federal lifetime maximum” have not received FIP for more than the 48 countable months to which they are entitled under the time limit on eligibility established by the Social Welfare Act, M.C.L.A. 400.57p and .57r.

41. The exact size of the class, and the names and location of class members, are in the exclusive control of the Defendant.

42. The question of whether or not it is unlawful for Defendant to terminate Plaintiffs’ and class members’ FIP based on time limits when they have not received FIP in excess of the 48 countable months allowed under the Social Welfare Act is common to the class.

43. The claims and defenses of the named Plaintiffs are typical of the claims of the class.

44. The claims of the named Plaintiffs arise from the same conduct by the Defendant that

has been or will be applied to all class members.

45. The named Plaintiffs will fairly and adequately represent the class.

46. The named Plaintiffs' attorneys are competent and experienced in the areas of law raised in this litigation.

47. There is no foreseeable antagonism or conflict of interest within the class.

### **Defendant**

48. MAURA CORRIGAN is the director of the Michigan Department of Human Services.

49. The Department of Human Services is the state agency responsible for administering Michigan's Family Independence Program (FIP).

50. As the Director of DHS, the Defendant is responsible for administering the FIP program in compliance with the Constitution and laws of the United States.

51. As the Director of DHS, the Defendant is responsible for administering FIP in compliance with the Constitution and laws of Michigan.

### **FACTS**

#### **Plaintiffs' Facts**

#### **-Michelle Case-**

52. MICHELLE CASE currently receives \$306 per month in FIP benefits.

53. Ms. Case's 8-year old son, B.C., is severely disabled and receives \$674 per month in Supplemental Security Income (SSI) disability benefits, which he has received since birth because of Charge Syndrome which has resulted in severe, multiple disabilities including deafness and blindness.

54. Ms. Case's household has no income other than FIP and SSI.



55. Ms. Case currently receives about \$162 per month in food assistance for herself and her son.

56. B.C. is unable to care for his own personal needs including bathing, dressing, feeding, etc. (he must be fed through a tube).

57. Since at least October 2007 Ms. Case has been exempt or deferred from participating in employment and training programs as a FIP recipient under the Social Welfare Act because of her son's disabilities, which require her to be available to him at home and at school to such an extent that she is unable to regularly participate in employment or training activities.

58. Ms. Case has not received FIP in 48 months that would be countable toward the time limit on FIP contained in state law and policy, M.C.L.A. 400.57p and .57r; BAM 102.

59. Exhibit E is an accurate copy of a Department printout showing that Ms. Case has received **no** months of FIP that count toward the 48-month state time limit on receipt of FIP benefits and 88 months of FIP that count toward the 60 month limit on the state's use of federal TANF funds to pay for cash assistance grants.

60. On or about September 11, 2011, Ms. Case received a Notice of Case Action from the Defendant advising her that her FIP will end October 1, 2011 and citing BEM 234 as the policy authority for the termination. *Exhibit B*.

61. Ms. Case was unable to determine whether she had any grounds for preventing the loss of FIP benefits because she could not and cannot find or read the policy the Defendant is applying to her.

62. Ms. Case was unable to make an informed decision about whether she had a defense to the termination of her FIP benefits before the deadline for requesting a pre-termination

hearing, but requested a hearing because she is unable to support herself and her child without continued receipt of FIP, in light of her inability to work while meeting the needs of her son.

**-Nicole Kelly-**

63. NICOLE KELLY currently receives about \$360 per month in FIP benefits for herself and her 9- and 13-year old children.

64. Ms. Kelly is self-employed as a hairdresser, making about \$200- \$400 per month after expenses including a \$95 per week fee to rent a booth in a salon.

65. Ms. Kelly's household has no income other than FIP and her earnings from self-employment.

66. Ms. Kelly currently receives less than \$525 per month in food assistance for her family of 3.

67. For all or most of the months that she has received FIP since October 2007, Ms. Kelly has been employed and meeting the requirements of her Family Self Sufficiency Plan.

68. To comply with her Family Self Sufficiency Plan or employment and training requirements, Ms. Kelly has participated in job search, community service work, and other activities assigned by the JET or Work First program, in addition to her employment as a hairdresser.

69. Because she has been employed and meeting the requirements of her Family Self-Sufficiency Plan, Ms. Kelly has not received FIP in 48 months that would be countable toward the time limit on FIP contained in state law and policy, M.C.L.A. 400.57p and .57r; BAM 102.

70. On or about September 11, 2011, Ms. Kelly received a Notice of Case Action from the Defendant advising her that her FIP will end October 1, 2011 and citing BEM 234 as the policy authority for the termination. *Exhibit C*.

71. Ms. Kelly was unable to determine whether she had any grounds for preventing the loss of FIP benefits because she could not and cannot find or read the policy the Defendant is applying to her.

72. Ms. Kelly was unable to make an informed decision about whether she had a defense to the termination of her FIP benefits before the deadline for requesting a pre-termination hearing, and therefore did not submit a hearing request.

**-Kathleen Dygas-**

73. KATHLEEN DYGAS currently receives \$403 per month in FIP benefits for herself and her 11 year old daughter, T.Z.

74. Ms. Dygas's 9-year old son, S.Z., is disabled and has received Supplemental Security Income (SSI) disability benefits since his birth, currently receiving \$674 per month.

75. Ms. Dygas's household has no income other than FIP and SSI.

76. Ms. Dygas currently receives about \$360 per month in food assistance.

77. Ms. Dygas has been exempt or deferred from participating in employment and training programs as a FIP recipient under the Social Welfare Act since at least January 2008, because of her son's disabilities, which require her to be available to him at home and at school to such an extent that she is unable to regularly participate in employment or training activities.

78. On about August 24, 2011, the Defendant sent Ms. Dygas an Appointment Notice telling her that her case was being "targeted as reaching your 48 months Federal Lifetime Limit for cash assistance" and would close on October 1, 2011.

79. An accurate copy of the August 24, 2011 letter from the Defendant to Ms. Dygas is attached as Exhibit F.

80. On about August 29, 2011, the Defendant sent Ms. Dygas a notice telling her she had reached her lifetime limit for cash benefits and would stop receiving benefits on October 1, 2011, but not telling her the legal authority for the decision, the length of the lifetime limit, and the length of time she had accumulated toward the limit.

81. An accurate copy of the August 29, 2011 letter from the Defendant to Ms. Dygas is attached as Exhibit G.

82. Ms. Dygas requested a hearing on September 1, 2011.

83. An accurate copy of Ms. Dygas's hearing request is attached as Exhibit H.

84. On about September 11, 2011, the Defendant sent Ms. Dygas a Notice of Case Action advising her that her FIP will end October 1, 2011 and citing BEM 234 as the policy authority for the termination.

85. An accurate copy of the September 11, 2011 notice from the Defendant to Ms. Dygas is attached as Exhibit D.

86. Although Ms. Dygas requested a hearing before the deadline date of 9/21/2011 contained in the September 11, 2011 notice, Exhibit A, the Defendant has not deleted the negative action pending the outcome of Ms. Dygas's hearing. *Ex. I (Department's Hearing Summary)*.

87. Because the negative action/termination has not been deleted, Ms. Dygas's FIP grant will stop on October 1, 2011 absent a temporary restraining order from this Court.

88. Exhibit J is an accurate copy of a Department printout indicating that Ms. Dygas has received 3 months of FIP that count toward the 48-month state time limit on receipt of FIP benefits and 116 months of FIP that count toward the 60 month limit (with exceptions) on the state's use of federal TANF funds to pay for cash assistance grants.

### **Irreparable Harm**

89. Plaintiffs MICHELLE CASE, NICOLE KELLY, L.H., L.J., KATHLEEN DYGAS, and T.Z., and the members of the class they seek to represent, will suffer the irreparable harm of being unable to meet their basic, subsistence needs, as a result of the Defendant's termination of their FIP cash assistance, unless the Defendant is temporarily restrained, and preliminarily and permanently enjoined from violating the Plaintiffs' and class members' rights.

### **Facts Common to Named Plaintiffs**

90. The Notices of Case Action sent to the named Plaintiffs on September 11, 2011 ("Notices of Case Action") do not tell them what the "Federal Time Limit maximum" is or how much time they allegedly have used.

91. The Notices of Case action do not specify whose time has exceeded federal time limits.

92. The Notices of Case Action cite a policy, BEM 234, which is not published or publicly available to the recipients of the notices.

93. The Defendant publishes its policies for operating the FIP program in a series of manuals, including the Bridges Administrative Manual (BAM) and Bridges Eligibility Manual (BEM), which are publicly available online at <http://www.mfia.state.mi.us/olmweb/ex/html/>.

94. The Defendant submits a State Plan for operation of its TANF cash assistance program to the U.S. Department of Health and Human Services and makes the State Plan publicly available on a section of its website (<http://www.michigan.gov/dhs>) devoted to News, Publications & Information > Reports > State Plans & Federal Regulations.

95. Beginning on September 2, 2011, the Center for Civil Justice has been attempting to get the Defendant to publish and post the state policy being used by Defendant as the basis for

the October 1, 2011 termination of FIP assistance to tens of thousands of indigent families, as reflected by the emails attached as Exhibit K.

96. The Defendant has failed and refused to post or make publicly available the BEM 234 time limit policy.

97. The Defendant has instituted a standard operating procedure of not publishing its policy changes prior to their effective date.

98. Defendant acknowledged this procedure in an e-mail to the Center for Civil Justice, dated September 20, 2011, which is attached as Exhibit L.

99. Exhibit M is the TANF State Plan for the period January 1, 2010 through December 31, 2011 available on the Defendant's website on the date the Defendant sent pre-termination notices to the named Plaintiffs and on the date this action was filed.

100. Exhibit N is the Table of Contents listing the State plan materials available on the Defendant's website on the date the Defendant sent pre-termination notices to the named Plaintiffs and on the date this action was filed.

101. Exhibit O is the Table of Contents listing the BEM items available on the Defendant's website on the date the Defendant sent pre-termination notices to the named Plaintiffs and on the date this action was filed, which does not include BEM 234.

102. Exhibit P is an accurate copy of the information available on the Defendant's website regarding "Welfare Reform", and reachable by attempting to go to [www.michigan.gov/welfarereform](http://www.michigan.gov/welfarereform), both on the date the Defendant sent pre-termination notices to the named Plaintiffs and on the date this action was filed.

103. Exhibit Q is an accurate copy of BAM 102, the FIP Time Limit policy available on the Defendant's website, both on the date the Defendant sent pre-termination notices to the named Plaintiffs and on the date this action was filed.

**Family Independence Program ("FIP") and Temporary Assistance to Needy Families ("TANF")**

**-Generally-**

104. Michigan's Aid to Dependent Children ("ADC") program was renamed the Family Independence Program ("FIP") under 1995 P.A. 223. M.C.L.A. 400.57(2).

105. FIP is a needs-based program that provides cash assistance for low-income parents with minor children. *M.C.L.A. 400.57 et seq.*

106. In 1996 the Personal Responsibility and Work Opportunity Reconciliation Act established the Temporary Assistance for Needy Families ("TANF") block grant to replace the Aid to Families with Dependent Children ("AFDC") program as the source of federal funding for family cash assistance programs under Title IV-A of the Social Security Act. *42 U.S.C. 601 et seq.*

107. The AFDC program was jointly administered by the state and federal governments, using eligibility criteria established by federal statute and regulations.

108. Under AFDC, the federal government paid a percentage of the cost of providing cash assistance to eligible families, and a percentage of the state's administrative costs.

109. Under TANF, the state receives a block grant in a set annual amount, which varies from state to state, to be used for family cash assistance and other purposes specified in the federal statute.

110. The TANF statute and regulations give states much broader latitude than they had under the old AFDC statute and regulations to establish eligibility criteria for their state family cash assistance program.

111. The TANF block grant amount available to the state may vary depending on the amount of state funds the state spends on activities, programs, or services that count as maintenance of effort (“MOE”) spending.

112. The amount of the state’s federal TANF funding and its required state spending under federal TANF law may also vary depending on whether the state has a) incurred penalties for failing to meet minimum MOE requirements or to meet overall work participation rates required for its TANF cash assistance caseload, or b) received bonuses for meeting certain other performance measures.

113. FIP is administered using both federal TANF block grant funding and state funds.

114. Some families receive monthly FIP grants that are paid for with state funds only.

115. Beginning in 2007, Michigan used state funds, rather than TANF, to pay for FIP grants provided to families receiving FIP who, if they were receiving TANF-funded FIP, would be considered to be two-parent families for purposes of determining whether the state is meeting the overall TANF work participation rates established by the federal government.

116. For many years, Michigan used state funds, rather than TANF, to pay for FIP grants provided to adults on FIP who were considered incapacitated and to families in which the only child on the grant was 19 years old and finishing high school.

**-60 Month Time Limit on State ‘s Use of Federal Funds-**

117. The Defendant may not use federal TANF funds for a FIP grant to a family that includes an adult who has received TANF-funded cash assistance for 60 months or more,



excluding any months that the individual received cash assistance as a minor child who was not a head of household or married to a head of household, except that the state can provide TANF for more than 60 months to up to 20% of its average monthly TANF caseload under hardship exemptions defined by the state. *42 U.S.C. 608(a)(7)*.

118. Michigan began using TANF funds to pay for the FIP program in about October 1996, thus starting the 60-month “clock” on the use of TANF funds for certain FIP cases.

119. Since it began administering FIP as its TANF cash assistance program in 1996, Michigan has used the 20% hardship exception to continue using federal TANF funds for families who meet Michigan FIP eligibility requirements but who contain an adult who has received 60 months of TANF-funded FIP.

120. The federal TANF statute’s restriction on the Defendant’s use of TANF funds does not impose any legal restrictions on Defendant’s ability to use state funds to provide FIP to needy families that include an adult who has received TANF-funded assistance for more than 60 months. *42 U.S.C. 608(a)(7)(F)*.

**- 48 Month Time Limit on Receipt of FIP -**

121. All FIP cases are governed by the FIP requirements of the Social Welfare Act, regardless of funding sources used for the FIP.

122. The Social Welfare Act contains a 48-month lifetime limit on an individual’s eligibility for FIP, which began on October 1, 2007. *M.C.L.A. 400.57r*.

123. The 48 month time limit applies regardless of the funding source of the individual’s FIP.

124. From October 1, 2007 through September 30, 2011, months in which an individual receives FIP do not count toward the 48 month limit if (a) the individual was

exempted from participation in the employment and training activities know as “Work First” or “Jobs Education Training (JET)”; (b) the individual was working and meeting the requirements of his or her family self-sufficiency plan; (c) the individual was living in a county with unemployment at least 25% higher than the statewide average; or (d) the individual had certain FIP eligibility requirements waived because of domestic violence. *M.C.L.A. 400.57p and BAM 102 p. 1.*

125. Beginning October 1, 2011, the only months that do not count toward the individual’s 48 month limit are those months in which the individual is exempt from JET because of the individual’s age (under age 16, age 16-18 and attending secondary school, age 65 or older), or because the individual has a disability lasting 90 days or more, or receipt of SSI or Social Security disability benefits, or the individual is experiencing domestic violence.

*Amendment to M.C.L.A. 400.57p and 400.57f effective October 1, 2011. 2011 Pub. Act 131.*

126. Beginning October 1, 2011, the Defendant has the discretion to not count toward the 48 month limit any months in which the individual is exempt from participation in JET because he or she is needed in the home to care for a disabled spouse or child. *Amendment to M.C.L.A. 400.57p and 400.57f effective October 1, 2011. 2011 Pub. Act 131.*

**- Federal Rights at Issue in this Case -**

127. Under the due process clause of the Fourteenth Amendment to the United States Constitution, individuals have the right to a meaningful notice and an opportunity to be heard before their FIP (a need-based governmental benefit program) is terminated.

128. Under the due process clause of the Fourteenth Amendment to the Constitution, individuals whose FIP is terminated have the right to a pre-termination notice that details the reasons for the termination and tells the precise, individualized reasons for the termination.

129. The Defendant must provide notice and an opportunity to be heard to anyone who wants to challenge the denial, termination or reduction of FIP benefits. *U.S. Const., Amend. 14, cl.1*; *42 U.S.C. 602(a)(1)(B)(iii)*; *45 C.F.R. 205.10 et seq.*; *M.C.L.A.400.9 and .37*; *Mich. Admin. Code R. 400.901 et seq.*

130. Under the due process clause of the Fourteenth Amendment, individuals whose FIP is terminated because of alleged time limits have the right to publicly accessible, written standards that define and explain the time limits at the time the notice of termination is sent.

131. The individual rights established by the due process clause of the Fourteenth Amendment are enforceable against Defendant under 42 U.S.C. 1983.

132. Under the federal TANF statute, individuals who are terminated from TANF-funded cash assistance programs have the right to a fair hearing. *42 U.S.C. 602(a)(1)(B)(iii)*.

133. Under federal regulations that interpret and apply the federal TANF statute and the due process clause of the Fourteenth Amendment to the United States Constitution, individuals have the right to a pre-termination notice that fully explains the factual and legal basis for the proposed termination. *45 C.F.R. 205.10(a)(4)(B)*.

## **CAUSES OF ACTION**

### **Count I – Right to Due Process**

134. Defendant is violating Plaintiffs' rights under the due process clause of the Fourteenth Amendment to the United States Constitution by providing pre-termination notices that (a) cite as the legal basis for the termination a secret policy that has neither been published nor made publicly available, and (b) provide only a vague, generic explanation of the reason for termination.

135. Plaintiffs' rights under the due process clause of the Fourteenth Amendment to

the United States Constitution are enforceable against Defendant under 42 U.S.C. § 1983.

**Count II – Right to FIP unless 48 Month Time Limit Reached**

136. Defendant is exceeding her statutory authority under the Social Welfare Act by imposing a time limit on FIP eligibility upon Plaintiffs due to limits on the use of federal funding that is inconsistent with the specific time limits and exceptions thereto set forth by the Michigan legislature in the Social Welfare Act.

137. Defendant is denying Plaintiffs and the class they seek to represent the right to receive FIP, if otherwise eligible, for up to 48 countable months under the Social Welfare Act, M.C.L.A. 400.57p & .57r.

**PRAYER FOR RELIEF**

Plaintiffs respectfully request that this honorable Court:

- A. Assume jurisdiction of this case;
- B. Provisionally and permanently certify this case as a class action under FRCP 23(b)(2);
- C. Declare that Defendant's practices and policies of denying meaningful notice of the law and policy upon which their denial of benefits are in violation of the Fourteenth Amendment to the United States Constitution.
- D. Declare that Defendant's denial of FIP to persons who have not exceeded the 48 countable months under the Social Welfare Act violates the Social Welfare Act, MCLA 400.57p & .57r.
- E. Issue a Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief enjoining the Defendant to continue Family Independence Program (FIP) benefits to Plaintiffs and members of the Due Process Class until they receive a new Notice of Case Action

and BEM 234 (or whatever policy is controlling) is publicly available for review for at least 10 days after receipt of the notice.

F. Issue a Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief enjoining the Defendant to continue FIP benefits to Plaintiffs and members of the Due Process Class until Defendant provides accurate, pre-termination notice of the reasons for FIP denials, including information about the length of the time limit being imposed, the identity of the individual whose receipt of FIP has exceeded the limit, and the number of countable months that individual has received FIP.

G. Issue a Temporary Restraining Order, Preliminary and Permanent Injunctive Relief enjoining the Defendant to continue FIP benefits to Plaintiffs and members of the Time Limit Class unless and until it is determined that they have received FIP for more than 48 countable months under the time limits set by the Social Welfare Act, MCLA 400.57p and .57r.

H. Award Plaintiffs their costs and reasonable attorney's fees under 42 U.S.C. § 1988.

I. Grant such other and further relief as may be just and proper.

Respectfully submitted,

Dated: September 29, 2011

s/Jacqueline Doig  
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