UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NICOLE KELLY, L.H. AND L.J.,
by their next friend NICOLE
KELLY, KATHLEEN DYGAS, and T.Z. by
her next friend KATHLEEN KYGAS,

On behalf of themselves and
all others similarly situated,

Case No. 11-cv-14298

Paul D. Borman
United States District Judge

v.

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

Defendant.
_____/

OPINION AND ORDER DENYING PLAINTIFFS' OCTOBER 13, 2011 MOTION FOR EXPEDITED HEARING AND RULING ON OBJECTIONS TO NOTICES SENT BY DEFENDANT (DKT. NO. 17) DISMISSING THE ACTION

This matter is before the Court on Plaintiffs' October 13, 2011 Motion for Expedited Hearing and Ruling on Objections to Notices Sent by Defendant. (Dkt. No. 17.)[1] Defendant filed a response on October 14, 2011. (Dkt. No. 19.) Thereafter, the Court held a telephone conference on October 14, 2011, with the two parties. The Court concludes that a hearing is not required. E.D. Mich. L.R. 7.1. For the reasons that follow, the Court DENIES the motion and DISMISSES the action.

[1] On October 13, 2011, the Court received a Joint Motion by the NAACP and the Michigan Welfare Rights Organization to file an amicus brief in support of Plaintiffs' motion. The Court has accepted the amicus brief.

I. INTRODUCTION

On October 4, 2011, this Court granted in part and denied in part Plaintiffs' motion for a temporary restraining order and preliminary injunctive relief. (Dkt. No. 12, October 4, 2011 Opinion and Order.) The Court found that the September 11, 2011 Notices that Defendant sent to recipients of Family Independence Program ("FIP") benefits, notifying them of the scheduled termination of their benefits, failed to comport with the requirements of procedural due process. The Court provisionally certified a class, with regard only to Count I of Plaintiffs' Complaint, for purposes of granting the injunctive relief requested, restrained Defendant from terminating FIP benefits pursuant to the September 11, 2011 Notice and ordered Defendant to mail to the class members a new notice that conformed to the requirements of *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Garrett v. Puett*, 707 F.2d 930 (6th Cir. 1983). The Court further declined to exercise supplemental jurisdiction over Count II of Plaintiffs' Complaint, a state law claim that challenged the substance of Defendant's policy implementing the new statutory amendments to Michigan's welfare laws.

On October 12, 2011, as required by the Court's October 4, 2011 Opinion and Order, Defendant mailed new notices ("the revised notices") to the class members. Plaintiffs now challenge the constitutional sufficiency of those revised notices, arguing that they continue to violate the class members' procedural due process rights under the United States Constitution. The Court disagrees and, for the reasons that follow, DENIES Plaintiffs' motion.

II. ANALYSIS

In its October 4, 2011 Order, this Court was concerned principally with two fundamental due process failings in the September 11, 2011 Notice: (1) it failed to identify any then-publicly available statute or policy, the review of which would have better enabled a recipient to determine whether

they had any basis to request a hearing to challenge the termination of their benefits; and (2) it failed to afford recipients a full 10-day time frame within which to request a hearing and retain their current level of benefits. The Court concludes that the revised notices correct both deficiencies adequately, as measured against the requirements of due process.

Plaintiffs cite the Court to no authority to support their contention that due process requires the type of detailed, individualized, error-free notice that Plaintiffs now seek. In fact, the Sixth Circuit's reasoning in *Garrett* suggests just the opposite. The notices in *Garrett*, which are described in the district court opinion in that case, gave no such detail. For example, one of the contested notices informed the recipient that some portion of a family member's income had to be counted in determining eligibility and that "[t]he total income which had to be counted for your family is therefore more than 150% of the Department's need standard so your case must be closed." 557 F. Supp. at 12. Another notice stated: "Due to new federal law regarding the value of automobiles . . . the equity value of your car over $1500 [sic] had to be counted as a resource. This made your total resources more than the Department's standards so your case must be closed." *Id.* at 11 (alterations in original). Another notice informed the recipient that "[d]ue to a new federal law regarding income . . . A new method of counting earned income and deductions increased the amount of earnings which had to be counted in your budget." *Id.* (alterations in original).

In *Garrett*, the Sixth Circuit, in concluding that these notices satisfied the requirements of due process, expressly adopted the district court's reasoning and expressly rejected, as the district court had done, a line of Seventh Circuit cases that required more individualized information to be provided pre-termination:

For the reasons stated by the district court, this court respectfully declines to follow

> the decisions of the Seventh Circuit in *Dilda v. Quern*, 612 F.2d 1055 (7th Cir.), *cert. denied sub nom., Miller v. Dilda*, 447 U.S. 935, 100 S.Ct. 3039, 65 L.Ed.2d 1130 (1980); *Banks v. Trainor*, 525 F.2d 837 (7th Cir.1975), *cert. denied*, 424 U.S. 978, 96 S.Ct. 1484, 47 L.Ed.2d 748 (1976); and *Vargas v. Trainor*, 508 F.2d 485 (7th Cir.1974), *cert. denied*, 420 U.S. 1008, 95 S.Ct. 1454, 43 L.Ed.2d 767 (1975).

707 F.2d at 931-32. Read collectively, these Seventh Circuit cases require "state authorities to provide public assistance recipients with detailed notice, including a 'breakdown of income and deductions so that the recipients could determine the accuracy of the computations . . . .'" *Dilda*, 612 F.2d at 1057 (quoting *Vargas*, 508 F.2d at 842).

In expressly rejecting this line of authority, the Sixth Circuit in *Garrett* chose to adopt the rationale expressed in cases such as *Turner v. Walsh*, 435 F. Supp. 707, 713 (W.D. Mo. 1977), *aff'd*, 574 F.2d 456 (8th Cir. 1928), on which the district court in *Garrett* had relied in its explicit rejection of the Seventh Circuit cases. 557 F. Supp. at 14, n.7. In *Turner*, plaintiffs challenged the procedural sufficiency of notices sent by the Missouri Department of Social Services discontinuing Aid to Families with Dependent Children (AFDC) benefits. Plaintiffs complained, in part, that the notice failed to "inform recipients in a meaningful way of the precise change in law as applied to their individual situation, and [] was not specifically tailored so as to be individually meaningful." 435 F. Supp. at 711. The court dismissed this aspect of plaintiffs' challenge to the notice, finding that the notice adequately complied with the requirements of 45 C.F.R. § 205.10(a)(4)(iii) which, compatible with *Goldberg*, required "a statement of the intended action, the reasons for the intended action, a statement of the specific change in the law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued." Concluding that the notices that were sent included all of the essential due process requirements, the court in *Turner* concluded:

> Although plaintiffs challenge the adequacy of the notice on the basis of its failure to individualize for each recipient, the Court does not find the notice deficient in that respect. Although, admittedly, in setting forth the statement of the intended action, the reasons therefor, and the specific change in law requiring the action, the notices were identical in form and cursory in language, the essential elements of notice were present. Each recipient was informed that a new state law changed the method of determining their ADC benefits (reason for the change); that, based on information presently available, the benefits would be adjusted to a specific amount stated (statement of the intended action); and the new state law requiring the change was specified: "Section 208.150." While this brief, computerized notice may leave much to be desired in the way of detail, and its computerized, fill-in-the-blank language may indeed be confusing to some readers, it is sufficiently clear and complete to fill [sic] the minimum requirements of the regulation.

435 F. Supp. at 713. In citing *Turner* with approval, and expressly rejecting the Seventh Circuit line of cases requiring greater detail and more individualized reasons for termination, the Sixth Circuit in *Garrett* clearly embraced a less onerous procedural standard than Plaintiffs seek to have this Court adopt. 707 F.2d at 931-32. The instant revised notices meet the *Garrett* standard - and then some.

The revised notices, which are divided into 60 month and 48 month groups depending upon which limit is applicable to a recipient's termination, inform a recipient, under a bold, capitalized and underlined subheading, of the:

> **REASON FOR THE INTENDED ACTION**:
>
> The intended action results from a change in law and policy that placed a lifetime limit on the receipt of assistance through the Family Independence Program. Your group is no longer eligible for the Family Independence Program because the person(s) listed below has received 48 [60] months or more of benefits, which is the time limit allowable for eligibility.
>
> __ countable assistance [indicating the group member and the countable months of assistance]
>
> The statutes and policies that apply to this action are:
>
> 42 U.S.C. 608(a)(7)
> Michigan TANF State Plan

> Social Welfare Act, MCL 400.57-57u, as amended
> Michigan Public Act 131 of 2011
> Michigan Public Act 132 of 2011
> Social Welfare Act, MCL 400.6(3) and (4)
> BEM 210 and 234

Pls.' Mot. Ex. A, p. 2 (emphasis in original).

The revised notices then inform recipients of their right to request a hearing, again in bold, underlined and capitalized print: "**HEARING RIGHTS**: You have a right to a hearing to contest the Department's calculation that your assistance should stop because of the 48 [60] month time limit." Pls.' Mot. Ex. A, p. 2 (emphasis in original). This section then repeats the statutory and policy bases for the decision and directs recipients to the next page of the notice, where the hearing rights are explained in greater detail. That next page, which is dedicated to explaining the process for requesting a hearing, *begins* with a bolded statement explaining what recipients must do if they wish to retain their current benefits while they appeal the decision to terminate their FIP benefits:

> **Right to an Administrative Hearing**
>
> **If you want to continue getting your current benefits while you appeal this action,** DHS must receive your hearing request **within 10 days** of the mailing of this notice, on or before **October 24, 2011**.

Pls.' Mot. Ex. A, p. 3 (emphasis in original). The notice then goes on to explain that the recipient has 90 days within which to challenge the action, and reiterates that if DHS receives a request for a hearing after the 10-day period described in the preceding paragraph, but within the 90 day period, a hearing will be granted but benefits will be discontinued in the interim. This language is a far cry from the language that this Court observed in the September 11, 2011 notice, and described as sleight of hand, which presented these hearing rights in reverse order, with the result that the 10-day time frame for retaining current benefit levels was somewhat obscured by the preceding description

of the 90-day time frame.

The revised notice informs the recipient first and foremost what they must do to retain their current benefit levels. Although Plaintiffs complain that the language regarding the time-frame within which recipients must respond in order to retain benefits is confusing because the letter is dated October 11, 2011, the Court disagrees that a fair reading of the revised notice renders that date unclear. October 24, 2011, more than 10 days in the future, is highlighted and is clearly the "critical" date by which a recipient must act in order to retain their current level of benefits. Moreover, any confusion on this point is clarified two paragraphs later in the revised notice when the critical date is repeated: "Your hearing request must be received by the DHS on or before October 24, 2011, to continue your assistance at the former level or to have your current assistance continued or reinstated."

The Court sees little difference between the level of detail in the *Garrett* notices and the information conveyed in the revised notices, which inform recipients of the statute and the specific policy which necessitate the change, the reason for the change, i.e. that the person listed in the notice has received more than 48 (or 60) countable months of benefits, and has exceeded the new allowable time under the cited statute and policy, and also clearly explain the recipient's right to request a hearing and continue receiving assistance. The policy is identified and available so that any recipient who questions whether they have in fact exceeded the allowable months under the new rules can ascertain whether in fact they have. The notice is just that - it is a notice. The Defendant is not required to provide individual computations for each benefit recipient or to justify its termination decision in the notice. That is the purpose of an administrative hearing, should a recipient opt to request one.

Importantly, the BEM 234 is now publicly available and the "discretion" which the Defendant has chosen to exercise with regard to eliminating clock stoppers and hardship exemptions can now be gleaned from the publicly available statutes and policies. The Court rejects Plaintiffs' assertion that the list of relevant statutes and policies provided in the revised notice is over-inclusive and misleading. As Defendant has explained in its responsive brief, each of the cited statutes and policies is a relevant part of the legal authority supporting Defendant's termination of FIP benefits. Additionally, each notice assigns the recipient a "specialist" whom they can contact by phone with any further questions about the applicability of the new law and policy to their individual circumstances. In essence Plaintiffs ask this Court to insist that Defendant include the details of how the Defendant calculated the allowable months in each and every case terminated – a breakdown of the relevant data "so that the recipients could determine the accuracy of the computations." *Dilda*, 612 F.2d at 1057. Neither *Goldberg* nor *Garrett* mandates this level of detail or individualized information.

In asking this Court to insist that Defendant supply Plaintiffs' proposed notice, Plaintiffs overreach. The Court finds that Defendant's revised notices satisfy the due process concerns presented in the September 11, 2011 notice.

III. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiffs' Motion for Expedited Hearing and Ruling on Objections to Notices Sent By Defendant (Dkt. No. 17) and DISMISSES the action.

IT IS SO ORDERED.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: 10-14-11