

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DEBRA HATTEN-GONZALES, et al.,

Plaintiffs,

vs.

**No. CIV 88-0385 JC/ACT
Consolidated with
No. CIV 88-0786 JC/ACT**

**PAMELA S. HYDE, Secretary of
the New Mexico Human Services
Department,**

Defendant.

**PLAINTIFFS' SECOND MOTION
TO ENFORCE COMPLIANCE WITH COURT ORDER
AND MEMORANDUM IN SUPPORT THEREOF**

Pursuant to the Modified Settlement Agreement of August 27, 1998 (hereafter "the Decree"), Plaintiffs respectfully move this Court for an Order requiring Defendant to comply with the Decree. In support of this Motion, Plaintiffs state:

1. In the Decree, the Court specifically restrained Defendant, its officers, agents, servants, employees and attorneys from violating the terms, conditions and undertakings of the Decree. Doc. # 279.

2. The Decree specifically states that it is "binding on defendant HSD Secretary, his successors and agents." Decree, page 3.

3. The Decree requires Defendant to implement and utilize a standard, uniform application procedure for the Food Stamps and Medicaid programs and to ensure that eligible applicants are not turned away because Defendant is requesting unnecessary or excessive information. See Decree, pages 7 – 21. Specifically, the Human Services Department is prohibited from requiring information unnecessary to the determination of applicants' eligibility and benefit amounts. Decree, page 12.

4. The Decree mandates that the Human Services Department's eligibility workers are allowed to request of applicants **only** those verification documents which are necessary to establish eligibility and benefit amounts for the assistance program(s) for which **the applicant** has applied. Decree, page 14 (emphasis added).

5. The Decree requires the Human Services Department "to continue to meet and to confer with counsel for the applicants regarding the progress made towards implementation of this Agreement's terms until each such term is finally implemented." Decree, page 3.

6. The Decree also requires "the parties to make good faith efforts to resolve any differences that may arise in the course of rendering this Agreement operational." *Id.*

7. The Decree allows the parties to seek a ruling from the Court if the parties cannot resolve their differences. *Id.*

8. The Decree further provides that "the applicants are entitled to review the implementation of the Decree to determine if its terms, conditions and undertaking are implemented in a timely and correct fashion." Decree, pages 23 – 24.

9. Additionally, the Decree provides:

HSD will not make changes in the application processing practices or the use of standard form documents adopted pursuant to this Agreement without providing counsel for applicants with at least one month's advance notice and an opportunity for a conference on the matter, unless emergency implementation of a regulation must be accomplished before thirty days elapse, but in no event may any terms of this Agreement be modified or revoked unless required by changes in the federal law or regulations.

Decree, pages 26 – 27.

10. On July 13, 2006, the Court entered a Memorandum Opinion and Order granting Plaintiffs' previous Motion to Enforce Compliance with Court Order, in which the Court found that "[t]he Decree, does still impose... the necessity of a modicum of good faith in dealing with the Plaintiffs' complaints of violations." Doc. # 317 at 3. The Court concluded:

The remedies that Plaintiffs ask for in their Motion to Enforce Compliance are not unreasonable or particularly onerous, and indeed, seem now necessary to meet the requirements of good faith negotiations.... The request for meetings between July and December and further cooperation thereafter will hereby be enforced.

Doc. # 317 at 4.

11. Defendant is unlawfully requiring applicants for Food Stamps and Medicaid to supply Defendant with the social security numbers and immigration status of non-applicants who are members of the applicants' extended families but who are not applying for benefits. Under federal law, the immigration status of extended family members is irrelevant to the eligibility of the applicant: an applicant may not be denied Food Stamps because a member of the applicant's family is not a U.S. Citizen or a legal

resident. Not only do these requests violate the Decree because they are not necessary for the determination of applicants' eligibility and benefit amounts for these programs, these requests also run counter to federal regulations which prohibit requests for social security numbers and immigration status of non-applicant family members. Federal regulations prohibit such requests because they improperly deter many people from applying for needed benefits.

12. Through a public records request, Plaintiffs' counsel obtained an apparently incomplete copy of a proposed amended version of Defendant's "Help Us Make A Decision" form (hereafter "HUMAD"). The HUMAD form is an important part of both the Food Stamps and Medicaid application processes. Defendant's proposed change in the HUMAD form addresses new federal requirements for proof of citizenship and identity. Although citizenship and identity must be proved under federal law, there is some flexibility in both the documentation required to prove these matters and in the format and wording of the request. Plaintiffs believe there are alternate ways to satisfy federal requirements that will not be so arduous and so confusing for applicants. The Decree requires the Department to adopt such alternatives. Decree, page 14. Making changes in the HUMAD form without notifying or conferring with Plaintiff's counsel prior to the changes violates the Decree provision requiring the Department to notify and confer with counsel for applicants before a standard form document used in the application process is modified. See ¶ 9, above. Defendant's failure to comply with this provision precluded any attempt to resolve this matter informally.

13. On July 12, 2007, Plaintiffs sent Defendant a letter with two requests: (1) that Defendant work with Plaintiffs to bring the public benefits application into compliance

with the Decree by deleting the sections that require social security numbers and immigration status of non-applicants because this requirement exceeds what is necessary for a determination of the applicants' eligibility and benefit level, and (2) that Defendant work with Plaintiffs to ensure that the changes Defendant wants to make in the HUMAD form are in compliance with the Decree. See July 12, 2007 letter, attached as Exhibit 1. Plaintiffs also explained in their July 12, 2007 letter that they have recently seen numerous examples of Food Stamp applicants being illegally denied food stamps because a member of the applicant's family is not a U.S. Citizen or legal resident. Because citizens and qualified legal residents are eligible for food stamps regardless of the citizenship status of other members of the household, Plaintiffs requested that Defendant work with them to ensure that these improper denials did not continue.

14. On August 9, 2007, Defendant responded that "under the July 13, 2006 Order, HSD required cooperation ended in June of 2007. There will be no further responses to your July letter[] until there have been decisions on [defendant's pending] motions." See August 9, 2007 letter, attached as Exhibit 2.

15. Thus, Defendant is violating the Decree by requiring unnecessary information and documentation by applicants, by unilaterally changing its forms and by refusing to meet and negotiate in good faith with Plaintiffs. See also the Court's most recent Order of July 13, 2006, requiring that Defendant continue to meet with and confer with Plaintiffs to attempt to resolve their differences. Doc. # 317.

16. Pursuant to the language of the Decree, Plaintiffs are seeking the assistance of the court to resolve this matter. Because of the nature of this motion, Defendant was not asked whether it opposed the motion.

MEMORANDUM OF LAW

I. **Defendant's Application Form for Food Stamps and Medicaid is out of Compliance with the Decree Because it Requires Applicants to Provide Unnecessary and Excessive Information – Social Security Numbers and Citizenship Status of Non-Applicants**

The Decree prohibits Defendant from requiring information unnecessary to the determination of applicants' eligibility and benefit amounts so as not to deter eligible applicants from applying for benefits. See Decree, pages 12 and 14. The Decree directs that the eligibility worker will only request "those verification documents which are necessary to establish eligibility and benefit amounts for the assistance program(s) for which the applicant has applied." Decree, page 14, paragraph 16. Because the Department's application form currently requires information which is not required by law, i.e. the social security numbers and immigration status of **non-applicants**, the application requires excessive verification and violates the Decree.

While the actual applicants for Food Stamps and Medicaid must be citizens or qualified aliens in order to be eligible, the law is clear that the citizenship status and social security numbers of **non-applicant** members of the household are not relevant, and thus are unnecessary, to determining an **applicant's** eligibility for Food Stamps and Medicaid. See 42 C.F.R. § 435.910 (2006) and 8.200.410.10 – 11 NMAC relating to Medicaid; and see 7 C.F.R. § 273.6 (2007) , 8.139.400.12 NMAC, and 8.139.410.8-9 NMAC relating to Food Stamps. In implementing the federal regulations, the United States Department of Health and Human Services (hereafter "DHHS") has provided the states with guidance regarding what is considered unnecessary information. The DHHS indicates that states are prohibited from requiring disclosure of social security numbers

and citizenship/immigration status of non-applicants because such information is unnecessary and may deter U.S. citizens from applying for benefits to which they are entitled.

States must require disclosure of the citizenship or immigration status *only* of the person or persons for whom Medicaid benefits are being sought (i.e., the applicant(s)).... [f]or example, if a parent applies for Medicaid on behalf of his or her child, the citizenship or immigration status of the parent (or other household members) is irrelevant to the child's eligibility, and the state may not require that parents disclose the information.

Questions and Answers relating to the Office of Civil Rights guidance statement, Question and Answer 3, *available at* <http://www.hhs.gov/ocr/nationalorigin/finalqa.html>, attached as Exhibit 3. In another guidance statement, DHHS again informed the states that the citizenship status and social security numbers of non-applicants are not program requirements and their collection had the potential of improperly deterring applications for needed benefits.

...U.S. citizen children and other eligible persons who live in immigrant families still may be deterred from applying for benefits because they are concerned about responding to certain questions on application forms regarding the disclosure of immigration status and social security numbers (SSNs) for family members who are not seeking assistance....Although federal law may sometimes require states to ask these questions of applicants, many states are requiring non applicants to disclose immigration status and/or SSNs, even though this information is not legally required.

Letter to State Health and Welfare Officials¹ released September 21, 2000, p. 1, *available at* <http://www.hhs.gov/ocr/immigration/triagency.html>, attached as Exhibit 4.

¹ DHHS' Office of Civil Rights further states that deterring citizen children and household members from applying for benefits because certain members of their household are not citizens may well be a violation of Title VI of the Civil Rights Act which prohibits discrimination based on national origin. See Letter to State Health and Welfare Officials released September 21, 2000, p. 1, *available at*

Defendant's current application for Food Stamps and Medicaid unlawfully requires that the applicant provide the social security number and immigration status of **every** member of the household, even if the applicant is the only citizen member or "qualified alien" of the household applying for benefits, as is usually the case where a child is the applicant and no other household member seeks benefits. See Defendant's application form for Medicaid only, attached as Exhibit 5, and Defendant's application form for Medicaid and Food Stamps, attached as Exhibit 6. Defendant's application form for Medicaid and Food Stamps specifically instructs the applicant to submit the social security number, immigration status, and other unnecessary information for "everyone who lives in your home even if you are not applying for them." See first page of Exhibit 6. The application, on its face, demands unnecessary, excessive verification, and is therefore, out of compliance with the Decree.

Defendant acknowledges that the mutual goal of the Defendant and the Plaintiffs is to assist all eligible individuals to qualify for Food Stamps and Medicaid. See Decree, page 7. However, as long as the application requests the social security numbers and citizenship status of non-applicants, families of immigrants will be deterred from applying. In fact, it is likely these families will not complete the application, even if children and other members of the household are eligible, due to their concern in answering questions on the application regarding disclosure of social security numbers

<http://www.hhs.gov/ocr/immigration/triagency.html>; see also 45 C.F.R § 80.1 (2006), and see Questions and Answers relating to the Office of Civil Rights guidance statement, question and answer 3 and 11 at <http://www.hhs.gov/ocr/nationalorigin/finalqa.html> (reasoning "even asking non-applicants to disclose such information, without stating clearly that this information is not required, raises concerns under Title VI of the Civil Rights Act of 1964, if the effect is to deter otherwise eligible applicants who are protected against discrimination by Title VI from applying for benefits.").

of all household members. Defendant must change the application forms in order to be in compliance with the Decree.

II. **The Department is Changing its HUMAD Form Without Consulting with Plaintiffs' Counsel, in Violation of the Decree**

In 2006, Congress passed the Deficit Reduction Act ("DRA") which requires, among other things, that Medicaid applicants prove their citizenship and identity. In the past, Plaintiffs' counsel have asked Defendant to provide them with information concerning implementation of the Deficit Reduction Act requirements. Defendant has taken the erroneous position that such changes to the application process do not fall under the Decree because they are simply changes imposed by federal law. See July 27, 2006 letter, attached as Exhibit 7. Plaintiffs can discern no limiting language in the Decree that would render the manner by which Defendant chooses to implement DRA requirements in the application process as being outside the scope of the Decree. Thus, Defendant's refusal to consult and negotiate with Plaintiffs about its implementation of changes to the application process violates the Decree.

Several years ago, with Plaintiffs' active input, the Department created a "Help Us Make A Decision" form ("HUMAD"), which is used when Medicaid and/or Food Stamp applicants miss an initial interview and either need to re-schedule or need to supply Defendant with additional documentation in order to qualify for a program. According to Defendant, "[t]he Help Us Make A Decision form, which lists the specific verification needed to determine eligibility, serves multiple purposes in the application process. The HUMAD form is mailed to the applicant after a missed interview or when

the caseworker has not received the verification previously requested. Copies... are kept in the applicants' case file." Doc. 320 at 9. Indeed, the HUMAD form was developed with Plaintiffs' counsel in an attempt to bring Defendant into compliance with Decree requirements that applicants be provided adequate notice of what verification they are missing in order to complete the application process.

Plaintiffs' counsel have received, through a public records request, an incomplete copy of what appears to be a draft of a revised HUMAD form, attached as Exhibit 8. (The previous HUMAD form, was attached by Defendant to Doc. 320 as Exhibit N-5.) Defendant's proposed change in the HUMAD form would require applicants to provide Defendant with a birth certificate as well as proof of identity. Although these changes appear to be prompted by new federal requirements, Plaintiffs believe there are alternate ways to satisfy federal requirements that will not be so arduous and so much of a deterrent for applicants. However, Defendant has not notified, let alone conferred with, Plaintiffs' counsel about its proposed revisions to this important part of the benefits application process. Moreover, Plaintiffs' counsel is concerned that the above-referenced changes in the HUMAD form are only the tip of the iceberg of what may be many other changes Defendant is making or has already made in other forms. Any such changes, without consultation with Plaintiffs' counsel, are in violation of the Decree.

III. **Relief Requested**

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order requiring the Department to do the following:

(1) amend its public benefits applications so that it only requests the social security numbers and immigrant status of the actual applicants, and not all household members;

(2) seek input from and negotiate in good faith with Plaintiffs before changing the HUMAD form or any of its other forms related to the Food Stamps and Medicaid application processes; and

(3) confer in good faith with Plaintiffs on other issues of compliance raised by Plaintiffs.

Respectfully submitted,

/S/ GAIL EVANS

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2007 I filed the foregoing pleading electronically with the United States District Court, causing the same to be electronically served on opposing counsel, Paul Ritzma at paul.ritzma@state.nm.us.

/s/ GAIL EVANS
Gail Evans