

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Walter Barry, et al.,

Plaintiffs,

Case No. 13-cv-13185

Hon. Judith E. Levy

v.

Nick Lyon, in his capacity as
Acting Director, Michigan
Department of Human Services,

Defendant.

**ORDER REGARDING AMENDED CLASS NOTICE [107] AND
IMPLEMENTATION OF THE COURT'S JANUARY 9, 2015
ORDER [91]**

This matter is before the Court on plaintiffs' Amended Proposed Notice (Dkt. 107) to the class certified in the Court's January 9, 2015 Opinion and Order (Dkt. 91). The Court held a status conference with the parties on March 24, 2015, at which the contents of plaintiffs' original proposed notice (Dkt. 98) and defendant's objections to the notice (Dkt. 102) were discussed. Plaintiffs were permitted to file an amended proposed notice based on those discussions. Having

thoroughly reviewed the parties' submissions on the proposed notice and the amended proposed notice, and having carefully considered defendant's objections to the proposed notice, as articulated both in his response brief and through counsel at the status conference, the Court ORDERS that:

(1) Plaintiffs' Amended Proposed Notice to Class (Dkt. 107-1), Claim Form for FAP (Dkt. 98-3), Hearing Form (Dkt. 98-4), and Poster (Dkt. 98-5) are APPROVED as to form and content¹;

(2) Within 28 days of entry of this Order, defendant shall mail the Notice (Dkt. 107-1), Claim Form (Dkt. 98-3), Hearing Request Form (Dkt. 98-4), an application for food assistance benefits, and a postage paid envelope addressed to Department of Human Services, Barry Lawsuit Processing Unit, [address to be determined], to all class members, by first class mail addressed to the last address known to the Department of Human Services (DHS);

¹ Defendant objects that the Notice must inform class members that they may opt out of the litigation and that they may enter an appearance through their own attorney, under Fed. R. Civ. P. 23(c)(2)(B). (Dkt. 102 at 5.) But Rule 23(c)(2)(B) only applies to classes certified under Rule 23(b)(3). The class in this case was certified under Rule 23(b)(2). (Dkt. 91, Opinion and Order 91.) Rule 23(c)(2)(A) thus applies to the Notice, which is only required to be "appropriate."

(a) DHS shall fill in information specific to each class member on the Notice, Claim Form, and Hearing Request Form, to the extent such information is contained in DHS records;

(b) The return address on the envelopes shall indicate the notice was sent from the Michigan Department of Human Services, and the front of the envelope shall contain the statement, “IMPORTANT NOTICE ABOUT DHS BENEFITS” in bold, capital letters;

(c) DHS shall send the Notice, Claim Form, and Hearing Request Form in Spanish to any class member on record with DHS as being Spanish-speaking or who later comes to defendant’s attention as needing information in Spanish;

(d) DHS shall send the Notice, Claim Form, and Hearing Request Form in Arabic to any class member on record with DHS as being Arabic-speaking or who later comes to defendant’s attention as needing information in Arabic;

(3) For any notices sent under (1) above that are returned as undeliverable, defendant shall use a people locator service to find the current address for the relevant class member, and shall re-send the notice with the new mailing date and new deadline date to the corrected address within 21 days of receiving the returned notice;

(4) Within 28 days of entry of this Order, defendant shall print and distribute 24 inch by 36 inch copies of the Notice Poster (Dkt. 98-5). Defendant shall distribute a number of posters to each DHS office sufficient to ensure that one poster will be posted in each lobby, reception, and waiting area, along with directions that these posters must be prominently displayed in all lobby, reception, and waiting areas. DHS shall post the notice on its website at a location to be agreed upon by the parties, which location will be available via links on locations to be agreed upon by the parties. DHS shall also provide at least one poster to all legal services offices in Michigan listed in Dkt. 98-6, and at least one poster to each Community Action Agency in Michigan and to each Michigan Works! Agency office, with a request that these

posters be prominently displayed until at least 180 days after entry of this Order. DHS shall also provide up to 500 posters to not-for-profit, community-based organizations or human services providers that request them by emailing DHS at an email address to be determined, or by calling DHS at a phone number to be determined, on a first-come, first-served basis;

(5) Food Assistance Program (FAP) benefits due on or after January 1, 2013 shall be restored to class members under 7 U.S.C. § 2023(b). The Court will postpone determination of how defendant will restore FAP benefits (*see* Dkt. 98, pp. 6-12 and Dkt. 102, pp. 10-13) until discussions between DHS and the U.S. Department of Agriculture Food and Nutrition Service regarding a streamlined process for restoration of FAP benefits have concluded, or until notified by the parties that further action from the Court is necessary;

(6) Defendant shall compile and provide to plaintiffs' attorneys a searchable and sortable spreadsheet or data file (such as an Excel or Access file) that contains for all class members the information specified below;

(a) Within 21 days of entry of this Order, defendant shall provide a spreadsheet or data file that contains, for each class member, the information listed in numbers 1-6 below;

(b) Within 42 days of entry of this Order, defendant shall provide an updated spreadsheet or data file that contains, for each class member, the information listed in numbers 1-12 below. The information in numbers 7-12 shall be provided to the extent that defendant has that information;

(c) Every 14 days thereafter, defendant shall provide an updated spreadsheet or data file that contains, for each class member, the information listed in numbers 1-12 below;

(d) Defendant shall continue to provide such updates until 12 months have elapsed from the date of provision of the first spreadsheet or data file, per (6)(a) above. After the 12 months have elapsed, if the spreadsheet or data file shows that there are pending applications, claims, or hearing requests, defendant shall continue to provide the biweekly

updates in (6)(c) until all pending applications, claims, or hearing requests have been resolved;

(e) Updates shall consist of a completely updated spreadsheet or data file;

(f) The spreadsheet or data file shall contain, for each class member, the following information:

All class members:

1. Name;
2. Last address known to DHS;
3. Case number;
4. The date the criminal justice disqualification notice was sent to the class member, both initially and, if returned, when re-mailed;
5. The type of benefits (FAP, FIP, CDC, SDA, or RAP) affected by the denial, termination, or reduction of benefits, and, for each type of benefit affected, whether it was denied, terminated, or reduced, and the

effective date(s) of the termination, denial, or reduction of benefits;

6. The date, if any, on which the class member requested a hearing regarding benefits denied, reduced, or terminated because of a criminal justice disqualification, as well as the disposition of the hearing request or that it is pending;

7. The date, if any, on which the class member applied for benefits after DHS sent the class member a Notice of Decision (Dkt. 107-1),

a. Which benefits (FIP, FAP, CDC, SDA, RAP) the class member applied for, and whether the application is still pending,

b. If approved, the monthly benefit amount approved,

c. If denied, the reason for the denial;

Subclass members

8. Contingent on the outcome of discussions between DHS and the U.S. Department of Agriculture Food and Nutrition Service, whether DHS has classified the class member as being in Group 1, Group 2, or Group 3, or as not a member of those groups (*See* Dkt. 98, pp. 6-12);

9. The date(s), if any, of all applications for FAP submitted by the class member or household subsequent to the criminal justice disqualification, other than those disclosed in number 7 above, and whether the application(s) was approved, denied, or is still pending,

a. If approved, the monthly FAP allotment for the first full month for which FAP was prospectively approved for the class member and his / her household after the criminal justice disqualification notice,

b. If denied, the reason for denial;

10. The date, if any, on which the class member submitted a Claim Form;

11. Whether the class member or class member's household received a FAP supplement (restored back benefits) for benefits denied, terminated, or reduced based on a criminal justice disqualification,

a. The total amount of the FAP supplement / back benefits,

b. The months for which the FAP supplement / back benefits were approved,

c. For any class member for whom benefits are not restored, the specific problem that prevented restoration of benefits (e.g., income, assets, residence, verification, work sanction, not in Groups 1, 2, or 3, etc.),

d. Whether the class member filed a Hearing Request in response to notice regarding the denial or amount of the FAP supplement, and the

disposition of any such hearing request. Disposition means whether the request was dismissed without a hearing, the appeal was settled without a hearing, defendant's decision was reversed by a decision and order, or defendant's decision was affirmed by a decision and order;

12. The number of notices mailed out under (2) above that are returned as undeliverable, the number of individuals not located under (3) above, and the number of notices returned after re-mailing under (3) above;

(7) For the period defined in (6)(d) above, defendant shall provide the Court and plaintiffs with monthly written reports detailing DHS' progress in implementing the Court's January 9, 2015 Order.

IT SO ORDERED.

Dated: March 31, 2015

s/Judith E. Levy

Ann Arbor, Michigan

JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 31, 2015.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager