

Pa. Judge Calls USDA's COVID-19 Food Aid Limits 'Illogical'

By **Matthew Santoni**

Law360 (September 11, 2020, 9:41 PM EDT) -- A Philadelphia federal judge on Friday lifted limits that allegedly kept 40% of Pennsylvania households receiving food assistance from getting additional help during the COVID-19 crisis, ruling that the U.S. Department of Agriculture's limits on benefits were "illogical" and contradicted federal law intended to provide additional emergency assistance.

U.S. District Judge John Milton Younge granted a preliminary injunction blocking the USDA from following an interpretation of the Families First Coronavirus Response Act that had meant families already getting the maximum monthly benefit from the Supplemental Nutrition Assistance Program before the pandemic could not get any more. Such an interpretation ran counter to Congress' intention expressed in the emergency legislation, Judge Younge wrote.

"In this court's view, if Congress had intended to deny any relief ... to households at the maximum applicable allotment, it would have said so expressly by, for example, including language authorizing 'emergency allotments' only to 'eligible' SNAP households or, more explicitly, by providing that SNAP households receiving the maximum monthly allotment are not eligible for 'emergency allotments,'" his opinion said.

The judge's injunction, limited to Pennsylvania to tailor relief to the proposed class of Keystone State households represented by two women from Pittsburgh and Philadelphia, allowed the state to reapply to the USDA for additional aid that it can distribute to SNAP recipients — including those already at the top of the scale. The lawsuit seeking to permanently rule the USDA's guidance unlawful under the Administrative Procedures Act will continue.

Under the prepandemic system, monthly SNAP benefits were capped depending on family size and income. After COVID-19 struck, Congress passed the FFCRA, which included a section allowing states to request additional emergency payments through the SNAP program. But the USDA issued guidance in March and April that said emergency increases in assistance could only take each household up to the preexisting limits, so families that had already been getting the maximum benefit could not get any more.

Arguing that 40% of Pennsylvania households getting SNAP benefits were already at the maximum and were still unable to meet their nutritional needs as food banks and grocery stores were stretched thin, Latoya Gilliam and Kayla McCrobie filed the proposed class action against the USDA in July.

Judge Younge said the USDA guidance and its blanket denial of states' requests to go above the limit were contrary to Congress' intention in the FFCRA to provide emergency help to families struggling even more because of the coronavirus.

"USDA's interpretation reads the word 'emergency,' and the phrase 'emergency allotments,' out of the statute or, at minimum, renders them meaningless and superfluous," the judge's opinion said. "If, as USDA contends, an 'emergency allotment' cannot increase a household's regular 'allotment' beyond 'the applicable maximum monthly allotment for the household size,' ... the term 'emergency allotment' is substantially meaningless in a statute that, as noted above, is expressly intended to provide emergency relief to all SNAP households. ... To the 40 percent or more of Pennsylvania's SNAP households whose pre-COVID 'allotment' was already at the 'applicable maximum monthly allotment,' the term 'emergency allotment' is illusory and superfluous."

The USDA interpretation also disregarded the law's instruction that states back up their requests for additional assistance with data, the judge ruled. If the law only provided for increasing benefits to each household's maximum, there would be no need for states to show data for the varying effects of the pandemic and each state's needs, he said.

Despite the USDA's reservations that relief for the proposed class would require the state to also take action, a representative for the Pennsylvania Department of Human Services said Gov. Tom Wolf would move quickly to resubmit the state's application for additional aid.

"The Wolf administration has previously urged the USDA to reconsider this limited aid, and we welcome Judge John Milton Younge's order granting a preliminary injunction against USDA's interpretation," DHS spokesperson Erin James said. "As a result of this order, DHS will seek USDA approval to issue emergency allotments for all Pennsylvania SNAP households that did not previously qualify."

A representative from Community Legal Services, one of the groups representing the proposed class, said the ruling undid the unintended result that the neediest households were ineligible for aid, while those that were relatively better off got the most.

"The judge agreed that USDA's interpretation of FFCRA is contrary to law and our clients will receive the additional food benefits so desperately needed during these unprecedented times," said John Lavelle of Morgan Lewis & Bockius LLP, another attorney representing the proposed class.

Representatives for the USDA did not immediately respond to requests for comment Friday.

The proposed class is represented by John P. Lavelle Jr. and Jonelle Saunders of Morgan Lewis & Bockius LLP, and Amy E. Hirsch, Elizabeth D. Soltan and Louise E. Hayes of Community Legal Services Inc.

The USDA is represented by Kuntal V. Cholera of the U.S. Department of Justice.

The case is Gilliam et al. v. USDA et al., case number 2:20-cv-03504, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Breda Lund.