

USDA Inks \$712M Deal In Suit Over 'Illogical' Food Aid Limits

By Hailey Konnath

Law360 (April 1, 2021, 10:55 PM EDT) -- The U.S. Department of Agriculture has agreed to shell out \$712 million in emergency food assistance to hundreds of thousands of Pennsylvania households, a deal that ends litigation over what a Pennsylvania federal judge said were "illogical" limits on food assistance during the COVID-19 pandemic.

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

The USDA and a proposed class of households have reached a deal ending the litigation, they told the court Wednesday. The action should be dismissed with prejudice and the preliminary injunction dissolved as moot, they said in a joint stipulation for dismissal.

Under the deal, the USDA has approved about \$712 million in emergency allotments requested by Pennsylvania pursuant to the court's preliminary injunction. On top of that, the USDA will change its national policy so that millions of families nationwide get additional benefits they are owed, according to the agreement.

In a statement issued Thursday, the USDA said it would provide \$1 billion per month in additional food assistance to 25 million people in very low-income households struggling because of the pandemic.

Agriculture Secretary Tom Vilsack said that the emergency SNAP increases authorized last year "were not being distributed equitably, and the poorest households — who have the least ability to absorb the economic shocks brought about by COVID — received little to no emergency benefit increases."

The USDA will also foot the bill for the plaintiffs' counsel, who were attorneys with Community Legal Services and Morgan Lewis & Bockius LLP. According to the settlement, Morgan Lewis has requested \$175,000 in fees and court costs while Community Legal Services requested \$85,000.

Louise Hayes, supervising attorney at Community Legal Services, said in a statement Wednesday that more than 650,000 households in Pennsylvania "will finally be getting the extra SNAP they were previously denied."

"The pandemic has greatly increased hunger, and this will help parents put food on the table for their children," Hayes said.

John Lavelle, a partner at Morgan Lewis, said in a statement Thursday that his clients' case was challenging in that a California federal court had ruled in favor of the USDA in a similar suit last summer.

"Ultimately we were successful in persuading the Eastern District of Pennsylvania court that, contrary to the California court's ruling, the USDA's interpretation was unlawful because it was contrary to the statute's unambiguous meaning, congressional intent and the overall SNAP statutory scheme," he said.

Wednesday's settlement was not unexpected. In a January motion, the plaintiffs told the court that in light of President Joe Biden's administration taking over, they had "reason to believe that the new administration will reexamine, and have a different view of" the guidance underlying the dispute.

And in a status report last week, the plaintiffs said that discussions to resolve the litigation had been productive.

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 last spring 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.

Latoya Gilliam and Kayla McCrobie lodged the putative class action in July, 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.

Judge Younge's temporary injunction last fall, limited to Pennsylvania to tailor relief to the proposed class of Keystone State households, 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.

"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,'" the judge said.

The USDA interpretation also disregarded the law's instruction that states back up their requests for additional assistance with data, Judge Younge ruled at the time. 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.

The USDA didn't immediately return requests for comment late Thursday.

The proposed class was represented by John P. Lavelle Jr., Kenneth M. Kulak, Timothy J. Geverd, Adina D. Bingham and Caitlin McKenna of Morgan Lewis & Bockius LLP, and Louise Hayes, Amy Hirsch and Elizabeth Soltan of Community Legal Services of Philadelphia.

The USDA is represented by Kuntal V. Cholera of the U.S. Department of Justice's federal programs branch.

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.

--Additional reporting by Matthew Santoni. Editing by Jay Jackson Jr.

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