

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

TAMI LEITING-HALL and)
ASHLEY DANKLEFF, individually,)
and on behalf of all others similarly situated,)
)
Plaintiffs,)

v.)

KERRY WINTERER, as Chief Executive Officer)
of the Nebraska Department of Health and Human)
Services, and THOMAS PRISTOW, as Director)
of the Division of Children and Family Services,)
)
Defendants.)

FIRST AMENDED COMPLAINT
(Class Action)

PRELIMINARY STATEMENT

1. The named Plaintiffs and all others similarly situated are indigent individuals who are seeking desperately needed benefits from the Supplemental Nutrition Assistance Program (“SNAP”), commonly known as food stamps, administered by the Nebraska Department of Health and Human Services (“the Department”).

2. Defendants’ ongoing and persistent failure or refusal to process initial and recertification (hereafter “renewal”) SNAP applications and to provide SNAP benefits in the time frames mandated by federal statute and implementing regulations causes hundreds of low-income Nebraskans to go hungry.

3. According to Defendants' own statements, Nebraska had an overall application processing timeliness rate of 69.03% for federal fiscal year 2013. This means that 30.97% of SNAP applications were not timely processed that year.

4. Plaintiffs bring this action on behalf of themselves and all others similarly situated, to challenge Defendants' failure to timely process initial and renewal applications for and to provide SNAP benefits to eligible households, as required by federal SNAP statutes and implementing regulations.

5. Plaintiffs seek preliminary and permanent injunctive relief enjoining Defendants, in their official capacities, from failing to timely process initial and renewal SNAP applications and to provide SNAP benefits to eligible households within the mandated time frames.

JURISDICTION

6. This action is brought under 42 U.S.C. § 1983 to redress the deprivation of federal statutory and constitutional rights.

7. The Court's subject matter jurisdiction over this action is conferred by 28 U.S.C. § 1331, which provides for jurisdiction in the United States District Courts over civil actions arising under the Constitution, laws, or treaties of the United States.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

9. Declaratory relief is authorized by 28 U.S.C. §§ 2201(a) and 2202 and by Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

CLASS ALLEGATIONS

10. Plaintiffs bring this action under Federal Rules of Civil Procedure 23(a) and (b)(2) on behalf of a class defined as follows:

All Nebraska residents who since January 1, 2012 have applied, are applying, or will apply for initial and renewal Supplemental Nutrition Assistance Program (SNAP) benefits.

11. The named Plaintiffs allege that Defendants' policies and practices of failing to process initial and renewal applications for SNAP benefits, and to provide benefits to those eligible, violate federal law and deprives them and all others similarly situated of SNAP benefits to which they are legally entitled.

12. The class is so numerous that joinder of all members is impracticable. Precise numbers regarding those adversely affected by Defendants' failure or refusal to comply with federal law by processing SNAP applications and providing SNAP benefits on a timely basis are in possession and control of the Department, which also has possession and control of the records for the Plaintiffs and all those similarly situated. Thousands of Nebraskans apply for SNAP benefits each month and, once deemed eligible, are subject to having their eligibility recertified every six months.

13. There are questions of law and fact common to the proposed class, including: 1) whether Defendants have a custom, pattern, or practice of failing to process initial and renewal applications and to provide benefits to eligible households within the time frames required by law; and 2) whether Defendants' practices of failing to timely process initial and renewal SNAP applications and to provide benefits to eligible households violate federal SNAP statutes and implementing regulations.

14. The named Plaintiffs' claims are typical of the claims of the plaintiff class. The named Plaintiffs and members of the class have applied or will apply for SNAP benefits and have experienced unlawful delays by Defendants in processing those applications for benefits.

15. The named Plaintiffs will fairly and adequately protect the interests of the proposed plaintiff class. In supporting their individual claims, the named Plaintiffs will simultaneously advance the claims of absent class members. The named Plaintiffs know of no conflicts of interest among class members.

16. The named Plaintiffs and the proposed class are represented by Nebraska Appleseed Center for Law in the Public Interest and the National Center for Law and Economic Justice, whose attorneys are experienced in class action litigation and will adequately represent the class. Counsel has the resources, expertise, and experience to prosecute this action on behalf of the plaintiff class.

17. The Plaintiffs' claims satisfy the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure in that the Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final injunctive relief and declaratory relief with respect to the proposed class as a whole.

18. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that the prosecution of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

PARTIES

Plaintiffs

19. Plaintiff Tami Leiting-Hall resides in Lincoln, Nebraska.
20. Plaintiff Ashley Dankleff resides in Lincoln, Nebraska.

Defendants

21. Defendant Kerry Winterer is Chief Executive Officer of the Nebraska Department of Health and Human Services. Defendant Thomas Pristow is Director of the Division of Children and Families of the Nebraska Department of Health and Human Services. In their official capacities, they are responsible for, *inter alia*, the statewide operation and administration of the Nebraska Supplemental Nutrition Assistance Program, in compliance with the Federal Supplemental Nutrition Assistance Program. Neb. Rev. Stat. § 68-309; 475 NAC 1-003.02.

STATUTORY AND REGULATORY SCHEME

Overview

22. The following sets forth the federal statutes and implementing regulations which require Defendants to, *inter alia*, timely accept applications, including initial and renewal applications, process those applications, determine eligibility, and provide SNAP benefits to eligible households.

23. Congress established the federally funded, state-administered Food Stamp Program in 1964 in order to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011; 7 C.F.R. § 271.1.

24. Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program (“SNAP”) and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Sections 4001 and 4002 of P.L. 110-246.

25. The federal government provides complete funding to states for all SNAP benefits and also at least 50% of the states’ administrative costs involved in their operation of the program. 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 277.1(b), 277.4.

26. Each state participating in the SNAP program must designate a single state agency responsible for administering the SNAP program and complying with federal SNAP statutory and regulatory requirements. 7 U.S.C. § 2020(a), (d), and (e); 7 C.F.R. §§ 271.4(a).

27. The state agency’s responsibilities include the certification of eligible applicant households and the issuance of SNAP benefits to the households. 7 U.S.C. § 2020(a)(1), (e).

28. The State of Nebraska participates in and accepts federal funding to administer the SNAP program.

29. The Department is the single state agency responsible for administering the SNAP program in Nebraska, in compliance with federal statutes and implementing regulations. Neb. Rev. Stat. § 68-309.

30. To be eligible for SNAP benefits, households’ net income must be below the federal poverty line (100% FPL), and the household must meet other eligibility requirements set forth in the federal Food and Nutrition Act, 7 U.S.C. 2011 *et seq.*

31. In 2014, for a family of two, 100% FPL is \$15,730. 79 Fed. Reg. 3593 (Jan. 22, 2014).

32. In the case of certain households that do not include an elderly or disabled member, the net income, after specified allowable exclusions but before specified allowable deductions, must not exceed 130% of the Federal Poverty Level. 7 U.S.C. § 2014(c)(2).

33. The Food and Nutrition Act requires that SNAP benefits “shall be furnished to all eligible households who make application for such participation.” 7 U.S.C. § 2014(a).

Filing of Initial Applications, Interviews, and Verifying Eligibility

34. Under the federal Food and Nutrition Act and implementing regulations, Defendants must permit households to file an application on the first day that they contact the local social services office. 7 U.S.C. § 2020(e)(2)(B)(iii); 7 C.F.R. §§ 273.2(c)(1), (c)(2)(i).

35. Defendants must “encourage” households to file SNAP applications the same day they or their representatives contact the office in person or by telephone, and express “interest in obtaining food stamp assistance or express concerns which indicate food insecurity.” 7 C.F.R. § 273.2(c)(2)(i).

36. The applications filed on the first day of contact by households seeking to apply for SNAP benefits need only include the applicant name, address, and signature.

37. Households need not be interviewed prior to filing their applications. 7 C.F.R. § 273.2(c)(1).

38. Defendants must make information regarding SNAP requirements and procedures generally available and must explain to SNAP applicants their rights and responsibilities concerning eligibility for benefits. 7 C.F.R. §§ 273.2(c)(4), (e)(1), 272.5(b)(3).

39. Defendants must schedule an interview for all applicant households who are not interviewed on the day they submit their applications and must schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after an application is filed. 7 C.F.R. § 273.2(e)(3).

40. Defendants must conduct interviews required in connection with determining eligibility at the SNAP office, other mutually acceptable location, or by telephone under specified circumstances. 7 C.F.R. § 273.2(e).

41. Defendants must notify each household that misses its interview that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts defendants within the 30 day application processing period, Defendants must schedule a second interview. Defendants may not deny a household's application prior to the 30th day after application if a household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, Defendants must issue prorated benefits from the date of application. 7 C.F.R. § 273.2(e)(3).

42. Defendants must give each household at the time of application a notice of the verification requirements that the household must meet. The notice, *inter alia*, must inform the household of the agency's responsibility to assist the household in obtaining

verification, provided the household is cooperating with the state agency. 7 C.F.R. § 273.2(c)(5); 7 C.F.R. § 273.2(f)(5).

43. Defendants must give households at least 10 days to provide required verifications. 7 C.F.R. § 273.2(f).

44. For households that qualify for expedited processing, as described in ¶¶ 47-49, Defendants must verify the applicant's identity through a collateral contact or readily available documentary evidence as provided in 7 C.F.R. § 273.2(f)(1) and must make reasonable efforts to verify specified other eligibility factors within the expedited processing standard, but cannot delay benefits beyond seven days solely because these eligibility factors cannot be verified. 7 C.F.R. § 273.2(i)(4).

Initial Applications and Timely Processing Requirements

45. The Food and Nutrition Act of 2008 and implementing regulations require the Department, as administered by Defendants, to process SNAP applications on a timely basis.

46. Defendants must provide ongoing SNAP benefits to eligible applicants no later than 30 days after date of application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. §§ 273.2(a), (g)(1).

47. The Department, as administered by the Defendants, must affirmatively identify households eligible for expedited service at the time the households request assistance. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(2).

48. Defendants must provide expedited issuance of SNAP benefits to households with very low incomes and liquid resources, households whose housing costs

exceed the sum of their income and liquid resources, and certain migrant and seasonal worker households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1).

49. Defendants must provide expedited SNAP to eligible households not later than the seventh day following the date an application is filed. 7 U.S.C. § 2020(e)(9)(A); 7 C.F.R. § 273.2(i)(3)(i).

50. Defendants must certify households in accordance with the eligibility rules and procedures set forth in the federal Food and Nutrition Act and implementing regulations. 7 U.S.C. §§ 2014(a); 2020(e)(3), (4), (9); 7 C.F.R. Part 273.

51. Defendants must certify households for a specified period of time. 7 C.F.R. § 273.10(f).

Renewal Applications

52. Prior to the start of the last month of the household's certification period, Defendants must give each household notice of the expiration of its certification period and the need to re-apply. 7 U.S.C. § 2020(e)(4).

53. As to each household that applies by the specified date and is eligible, Defendants must provide the SNAP allotment no later than one month after the household receives its last allotment issued pursuant to the prior certification. 7 U.S.C. § 2020(e)(4).

54. 7 U.S.C. § 2020(e)(4) is implemented by 7 C.F.R. § 273.14, which requires Defendants, *inter alia*, to provide the required notice to households by specified dates, interview applicant households at least once every twelve months for those certified for twelve months or less, recertify eligibility, and issue benefits within specific time frames to households who have applied within the specified time frames.

55. Defendants must provide households with a notice of expiration containing, *inter alia*, the date the certification period expires and the date by which a household must submit an application in order to receive uninterrupted benefits. 7 C.F.R. § 273.14(b)(1).

56. Defendants must provide households with notices of required verifications and the due date for such verifications and to give the household at least 10 days to provide the required information. 7 C.F.R. § 273.14(b)(4).

57. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification. 7 C.F.R. § 273.14(b)(4).

58. Defendants must give households at least 10 days after the required interview in which to provide verification before the certification period expires. 7 C.F.R. § 273.14(b)(3)(iii).

59. Defendants are required to provide eligible households an opportunity to receive SNAP benefits no later than 30 calendar days after the date the household received its last allotment or by its normal issuance date in the month following the end of its certification period. 7 C.F.R. § 273.14(d).

FACTUAL ALLEGATIONS

60. ACCESSNebraska is the state of Nebraska's service delivery system, where clients may apply for and maintain public assistance, including SNAP. Through ACCESSNebraska, SNAP households may submit initial and renewal applications

through local Department offices or through an online process and may complete interviews over the telephone.

61. Defendants' administration of the ACCESSNebraska system has caused and continues to cause widespread problems for SNAP applicants, thereby preventing applicants from completing the initial or renewal application process in a timely manner and receiving the SNAP benefits to which they are entitled.

62. According to a set of data maintained by the Department, in 2013, Nebraska had an overall timeliness rate of 69.03%, meaning 30.97% of applications were not timely processed in federal fiscal year 2013.

Plaintiff Tami Leiting-Hall

63. Plaintiff, Tami Leiting-Hall, resides in Lincoln, Nebraska with her son, age 10.

64. Ms. Leiting-Hall works at a fast food restaurant around 35 hours per week. Her gross wages are around \$577 every two weeks. Their household has no other income.

65. On or about June 16, 2014, Ms. Leiting-Hall submitted a renewal application for SNAP benefits.

66. Ms. Leiting-Hall also submitted her lease and electric bill as verifications on June 16, 2014, although the Department had yet to request them.

67. On June 17, 2014, Ms. Leiting-Hall submitted copies of her paystubs as verifications, although the Department had yet to request them.

68. On July 14, 2014, Ms. Leiting-Hall called ACCESSNebraska and spoke with a caseworker who told her that her case was "pending" and that the Department still

had two days to process her application, and suggested that she utilize community resources like food banks and soup kitchens in the meantime.

69. On July 30, 2014, Ms. Leiting-Hall completed a SNAP interview with the Department, however, as of the time of this filing Ms. Leiting-Hall has yet to receive SNAP benefits for the month of July 2014.

Plaintiff Ashley Dankleff

70. Plaintiff Ashley Dankleff resides in Lincoln, Nebraska with her husband and their four year old son and nine month old daughter.

71. On June 13, 2014, Ms. Dankleff and her husband applied for SNAP through the online ACCESSNebraska system and electronically submitted paystubs as verification of their income, although the Department had yet to request them

72. When Ms. Dankleff and her husband applied for SNAP, her husband made around \$800 each month at his job, and she made around \$600 each month from the federal work study position she held while in school for her master's degree.

73. In the two months since they applied for SNAP, Ms. Dankleff's husband changed jobs and now works at a call center making \$1,123 every two weeks. Their household has no other income, as Ms. Dankleff is no longer in school or employed and is looking for a new job.

74. Since June 13, 2014, Ms. Dankleff and her husband repeatedly contacted ACCESSNebraska to check the status of their SNAP application and were told by caseworkers that their application was pending and that they needed to submit additional paystubs or resubmit the same paystubs.

75. Ms. Dankleff and her husband scanned and submitted the verbally requested paystubs electronically.

76. Aside from one written notice to resubmit paystubs and their affirmative calls to ACCESSNebraska, Ms. Dankleff and her husband had no contact with the Department in regards to their SNAP application.

77. On August 26, 2014, since her household had yet to be notified of its eligibility, Ms. Dankleff attempted to submit a new application but was unable to do so because each time she clicked “Apply Now,” on the ACCESSNebraska website, she was sent back to the welcome page.

78. That day, in her continued efforts to obtain SNAP, she learned that the June 13, 2014 application was still open and pending, that a caseworker had been assigned, and that an interview had been scheduled for August 28, 2014 of which she and her husband had yet to be notified.

79. Later on August 26, 2014, Ms. Dankleff called the caseworker assigned to her case and left her a voicemail notifying her that she could complete an interview before August 28, 2014.

80. On August 27, 2014, the caseworker called Ms. Dankleff, and she completed an interview over the phone.

81. During the interview, the caseworker requested additional paystubs as income verifications and told Ms. Dankleff that she had 10 days to submit them,

82. On August 28, 2014, Ms. Dankleff scanned and electronically submitted the requested paystubs.

83. At the time of filing, Ms. Dankleff and her family have yet to receive SNAP benefits.

STATEMENT OF CLAIMS

FIRST CLAIM

84. Defendants' policies, practices, and procedures of failing to process initial SNAP applications and to provide benefits to eligible households within seven or thirty days of the date of application as appropriate violate 7 U.S.C. § 2020(e)(3) and (9), and implementing regulations 7 C.F.R. §§ 273.2(a)(2), (i)(2), (i)(3)(i), and (g)(1) and 7 U.S.C. § 2014(a).

SECOND CLAIM

85. Defendants' policies, practices, and procedures of failing to allow SNAP households to complete the SNAP renewal application process in time to receive benefits for the new certification period and to determine such households' eligibility within the required time frames and provide SNAP benefits for the new certification period to those eligible violate 7 U.S.C. § 2020(e)(4) and implementing regulations, 7 C.F.R. § 273.14, and 7 U.S.C. § 2014(a).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in favor of plaintiffs and the class they represents as follows:

- a) Certify this action as a class action under Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure with respect to the proposed class identified herein.
- b) Declare that Defendants' policies and practices of failing:

- (1) to process all initial applications for SNAP, including expedited SNAP, and to provide benefits to those eligible, within the time frames required by law, violate plaintiffs' and plaintiff class members' rights under 7 U.S.C. § 2020(e)(3) and (9), and implementing regulations 7 C.F.R. §§ 273.2(a)(2), (i)(2), (i)(3)(i) and (g)(1) and 7 U.S.C. § 2014(a); and
- (2) to ensure a) that SNAP households have the right to re-apply and complete the application process in time to receive benefits; and b) that Defendants determine such households' eligibility within the mandated time frames and provides SNAP benefits to those eligible, violate 7 U.S.C. § 2020(e)(4) and implementing regulations, 7 C.F.R. § 273.14 and 7 U.S.C. § 2014(a);
- c) Preliminarily and permanently enjoin Defendants from failing to:
 - (1) ensure that SNAP applicants have the right to apply, including the right to apply for recertification, and to complete the application process in time to receive SNAP benefits within the federally mandated thirty day time frames; and
 - (2) determine such households' eligibility within the mandated time frames and provide SNAP benefits within the mandated thirty day time frames to those eligible; and
 - (3) identify those SNAP households whose rights to apply and receive SNAP benefits timely have been violated and restore to such

households the SNAP allotments that Defendants have wrongfully withheld from them, as required by federal SNAP law.

- d) Award litigation costs and reasonable attorneys' fees, as provided for by 42 U.S.C. § 1988;
- e) Award costs and disbursements; and
- f) Order such other and further relief as the Court may deem just and proper.

DATED: August 29, 2014

TAMI LEITING-HALL and
ASHLEY DANKLEFF, individually and on
behalf of all others similarly situated

s/ Molly M. McCleery
Molly M. McCleery
Bar Number: 25151
James A. Goddard
Bar Number: 24150
Attorneys for Plaintiffs
Nebraska Appleseed Center for Law
In the Public Interest
941 O Street, Suite 920
Lincoln, Nebraska 68508
Telephone: (402) 438-8853
Fax: (402) 438-0263
E-mail: mmccleery@neappleseed.org
jgoddard@neappleseed.org

Marc Cohan
Mary R. Mannix
Jenny R. A. Pelaez
Attorneys for Plaintiffs
National Center for Law and Economic Justice
275 Seventh Avenue, Suite 1506
New York, New York 10001
Telephone: (212) 633-6967
Fax: (212) 633-6371

E-mail: cohan@nclej.org
mannix@nclej.org
pelaez@nclej.org

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2014, the foregoing First Amended Complaint was filed with the Clerk of the United States District Court for the District of Nebraska, using the CM/ECF system which will send notification of such filing to Michael J. Rumbaugh.

s/ Molly M. McCleery
Molly M. McCleery
Bar Number 25151
Attorney for Plaintiff
Nebraska Appleseed Center for Law
In the Public Interest
941 O Street, Suite 920
Lincoln, Nebraska 68508
Phone: (402) 438-8853
Fax: (402) 438-0263
E-mail: mmccleery@neappleseed.org