

Oh S.N.A.P.! Texas Being Sued for Failing to Comply with Federal Law

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Texas recently joined the club of states being sued under federal law for failing to timely process applications for food stamps. The class action suit is designed to bring Texas into compliance with federal law and help thousands of eligible families gain access to government entitlements. Currently, tens of thousands of deserving Texans are going without assistance because of the State's administrative shortcomings.

The Law

Congress established the federally funded, state administered food stamp program in order to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households.¹ In October 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. SNAP is entirely funded by the federal government,² and additionally reimburses states for 50 percent of the cost for administering the program.³ States participating in SNAP are required to designate a single state agency to administer the program and comply with federal law.⁴ In Texas, that agency is the Texas Health and Human Services Commission (HHSC).⁵

In order to be eligible for food stamps, a household's net income must fall below the federal poverty line – currently \$18,310 for a family of three.⁶ Federal law requires that households be permitted to file an application on the first day they contact the food stamp office.⁷ State agencies are then required by federal law to act promptly on all applications for food stamps and give eligible applicants an opportunity to participate in SNAP. HHSC is federally mandated to provide food stamps to qualified applicants no later than 30 days after the date of application.⁸ Additionally, for those households who need immediate assistance, expedited issuance of food stamps is generally available. Further, households with very low income and liquid resources, households whose housing costs exceed the sum of their income and liquid resources, and certain migrant

¹ Cong. Declaration of Policy, 7 U.S.C. § 2011 (West 2009) "...Congress finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods."

² 7 U.S.C. § 2013(a) (West 2009).

³ 7 U.S.C. § 2025(a) (West 2009).

⁴ 7 U.S.C. § 2020(a), (d), (e) (West 2009).

⁵ TEX. HUM. RES. CODE ANN. §§ 33.0005 – 33.0006 (Vernon 2009).

⁶ 7 U.S.C. § 2014(c) (2009); *see also* Dep't of Health & Human Servs., 74 Fed. Reg. 4199-4201 (Jan. 23, 2009).

⁷ 7 U.S.C. § 2020(e)(2)(B)(iii) (West 2009); 7 C.F.R. § 273.2 (c)(1), (c)(2)(i) (West 2009).

⁸ 7 U.S.C. § 2020(e)(3) (West 2009); 7 C.F.R. § 273.2(a)(2), (g)(1) (West 2009).

and seasonal worker households are eligible for expedited issuance.⁹ Federal law requires HHSC to provide expedited food stamps to eligible households no later than the seventh day following the date when an application is filed.¹⁰

The Violation & Complaint

For some time, HHSC has not been complying with federal law. HHSC has continuously failed to provide food stamps to eligible applicants within the 30 days required by law, and the problem only appears to be getting worse. According to HHSC's own data, an alarming 41.4 percent of applications were not processed in a timely manner in September 2009.¹¹ As a result, over 43,600 eligible Texas families suffered.¹²

Statistics indicate this problem is nothing new to HHSC. In January 2009, 19.2 percent of applications were not processed timely.¹³ In March 2009, 23.6 percent of applications were not processed timely.¹⁴ And in June 2009, 33.4 percent of applications processed were outside the 30 day requirement.¹⁵ In all, HHSC has seen an increase of 22.2 percent in the untimely processing of food stamp applications since January of this year.¹⁶

The Texas class action lawsuit was brought under the federal civil rights law, 42 U.S.C. § 1983, to redress the deprivation of federal statutory rights to eligible Texas households.¹⁷ The suit was brought on the behalf of all Texas residents who, since May 21, 2007, have applied, are applying, or will apply for food stamps.¹⁸ Plaintiffs seek to permanently require the Texas agency to adhere to the timeframe requirements set by federal law for processing applications and providing food stamps to eligible households.¹⁹

Similar Statistics & Similar Situations

Texas is not alone in failing to comply with the federal timeliness requirements. States across the U.S. have seen a dramatic increase in the number of households participating in their respective state SNAP program and are having difficulty adjusting. According to the latest figures released by the United States Department of Agriculture (USDA), the number of households nationally participating in the SNAP program increased 24.6 percent from July 2008 to July 2009.²⁰ That's roughly an increase of 3,205,034 more

⁹ 7 U.S.C. § 2020(e)(9) (West 2009); 7 C.F.R. § 273.2(i)(1) (West 2009).

¹⁰ 7 U.S.C. § 2020(e)(9) (West 2009); 7 C.F.R. § 273.2(i)(3)(i) (West 2009).

¹¹ Texas Health & Human Servs. Comm., *SNAP Timeliness Reports*, available at <http://www.hhsc.state.tx.us/research/FMTtimeliness.html>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Comp. ¶ 4; available at <http://www.kera.org/radio/news/complaint.pdf>.

¹⁸ Comp. ¶ 7; available at <http://www.kera.org/radio/news/complaint.pdf>.

¹⁹ Comp. ¶ 9; available at <http://www.kera.org/radio/news/complaint.pdf>.

²⁰ U.S. Dep't of Agriculture, *Supplemental Nutrition Assistance Program: Number of Households Participating*, available at <http://www.fns.usda.gov/pd/30SNAPcurrHH.htm>.

American households enrolled in the program since July of 2008.²¹ Utah and Nevada have had the largest increase of households enrolled in SNAP over the past year, while Iowa, Indiana, and Arkansas round out the states with the smallest increase of houses enrolled in the program.²² Not surprisingly, the states with the largest populations, New York, Texas, California, and Florida, now each all have over a million households participating and receiving supplemental nutritional assistance in the form of food stamps.²³ As a result, more and more households across the country are finding it harder than ever to receive access to the health benefits they are entitled to by federal law.

Citizens and legal non-profit groups are beginning to fight back. Other states are seeing more and more lawsuits filed against them for failing to timely process food stamp applications. This year alone, the National Center for Law and Economic Justice filed lawsuits in Indiana, New York, and Maryland for failing to comply with the federal timeliness requirements.²⁴ In July 2009, the ACLU filed a lawsuit in Rhode Island for the same untimely delays.²⁵ And California and Texas were the most recent states added to list of those states sued for lack of compliance with the governing federal law.²⁶

What's Next for Texas?

If Texas could improve its percentage of timely administered applications it could qualify for monetary bonuses provided by the USDA to help improve the situation. Last month, USDA Agriculture Secretary Tom Vilsack announced its annual bonus awards to states for outstanding and timely customer service in providing SNAP benefits.²⁷ Each year, the USDA awards a total of \$12 million in performance bonuses to eight states with the best and most improved program access index, and \$6 million to the six States with the highest rate of timely processed applications.²⁸ Missouri, Oregon, and Tennessee topped the list with a cumulative total of over \$7 million in additional funding through the USDA incentive program.²⁹ Furthermore, in June of 2009, SNAP also awarded \$30 million to states for excellence and improvement in administering benefits.³⁰ Awardees included Delaware, Florida, Georgia, Idaho, Mississippi, Nebraska, New Hampshire, North Carolina, Ohio, South Dakota, Wyoming, Colorado, and Oklahoma – but not Texas.³¹

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Nat'l Center for Law & Econ. Justice, *Major Developments in NCLEJ Litigation Since 2002*, available at <http://www.nclej.org/2009.php> (last accessed Nov. 4, 2009).

²⁵ See American Civil Liberties Union, Rhode Island, *Active Cases: Spruill v. Alexander*, available at <http://www.riaclu.org/CourtCases/Case/SpruillVAlexander.html> (last accessed Nov. 5, 2009).

²⁶ Bay Area Legal Aid, *Suit Filed to Protect Poor*, available at <http://www.baylegal.org/view?id=130>.

²⁷ U.S. Dep't of Agriculture, Newsroom, *Agriculture Secretary Tom Vilsack Announces \$18 Million to States for Outstanding, Timely Nutrition Aid* (Sept. 30, 2009), available at <http://www.fns.usda.gov/cga/PressReleases/2009/PR-0481.htm>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ USDA Newsroom, *supra* note 27.

HHSC recently petitioned the Texas Legislature for more funding to improve its administration of the SNAP program. The Texas General Appropriations Act, Senate Bill 1, Article II, allowed HHSC to request funding for an additional 656 eligibility staffers to deal with anticipated workload and caseload growth.³² However, before HHSC would see any money, the Governor, the Legislative Budget Board, and the Comptroller must approve its request at least 30 days prior to any proposed funding transfer.³³ Unfortunately, in late September of this year the Legislative Budget Board denied HHSC's request for an additional 656 staffers to administer the program, and instead only approved an additional 250.³⁴

Conclusion

The USDA recently acknowledged the current status of food stamp administration in Texas as unacceptable and in a situation where actions must be taken immediately.³⁵ In response to the political pressure and a growing number of hungry and upset Texans, Texas officials are finally saying they are in the process of hiring an additional 700 workers to remedy the problem.³⁶ Only time will tell if additional staffers will remedy Texas's problem. In the mean time, thousands of hungry households will continue to wait for better days and for Texas to find a solution that actually works.

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³² S.B. 1, 81st Reg. Sess. (Tex. 2009), available at http://www.lbb.state.tx.us/Bill_81/6_FSU/81-6_FSU_0909_Art1_thru_Art2.pdf.

³³ *Id.*

³⁴ Corrie MacLaggan, *Federal Officials: Texas must speed up processing of food stamp applications or risk federal funding*, AUSTIN AMERICAN-STATESMAN, Sept. 26, 2009, <http://www.statesman.com/news/content/region/legislature/stories/2009/09/26/0926foodstamps.html>; see also Assoc. Press, *Texas to Hire 250 Food-Stamp Workers Amid Crunch*, Oct. 4, 2008, available at <http://www.kvia.com/Global/story.asp?S=11254790>.

³⁵ *Id.*

³⁶ Joe Conger, *Texas' Promises of More Workers Isn't Cutting the Mustard*, KENS 5 SAN ANTONIO, Oct. 15, 2009, <http://www.kens5.com/news/local/66567757.html>.