

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

SUFFOLK, SS.

**SUPERIOR COURT
CIVIL ACTION
NO.**

KELLY GLYNN, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

AMY KERSHAW, as Commissioner of the
Massachusetts Department of Transitional
Assistance,

Defendant.

COMPLAINT

PRELIMINARY STATEMENT

Preliminary Statement

1. This case challenges policies and practices of the Department of Transitional Assistance (DTA) pursuant to which DTA presumes that households who have used their Supplemental Nutrition Assistance Program (SNAP) benefits out of state for a period of time are no longer residents of Massachusetts. DTA then either terminates the household's SNAP benefits or requires the household to re-verify residency and terminates SNAP if it does not receive re-verification it deems sufficient.

2. These DTA policies and practices violate federal law which requires DTA to facilitate interoperability and portability of SNAP nationwide so that beneficiaries can access SNAP benefits issued by their home state in any other state. The policies and practices also

violate federal law governing verification of residency and federal law prohibiting the state from pursuing re-verification of information that is not both unclear and required to be reported by the household. In addition, DTA's policies and practices on out-of-state SNAP usage impermissibly regulate interstate commerce in violation of the United States Constitution and impermissibly burden the right to travel in violation of the Massachusetts and United States constitutions.

3. Plaintiff Kelly Glynn and members of the plaintiff class she seeks to represent are surviving in poverty and rely on SNAP benefits to meet their basic food needs. Defendant, through her agency, the Department of Transitional Assistance (DTA), cut off Ms. Glynn's and class members' SNAP benefits after they used their benefits outside Massachusetts, denying them the resources to buy the food they need and causing them to go hungry.

4. Plaintiffs seek a declaration that DTA's policies and procedures regarding out of state use of SNAP benefits violate state and federal law and the Massachusetts and United States constitutions, and a preliminary and permanent injunction enjoining DTA from taking any action against Massachusetts SNAP households who spend their SNAP benefits outside of Massachusetts.

Parties

Plaintiffs

5. Plaintiff Kelly Glynn is a homeless resident of Massachusetts. Her official address is her parents' home in Everett, Massachusetts where she often stays. Until August 10, 2020, she was receiving SNAP benefits through DTA.

6. Plaintiff Glynn brings this action on her own behalf, and on behalf of a class consisting of all households in Massachusetts who have been or will be subjected to DTA's policies regarding use of SNAP benefits outside Massachusetts.

Defendant

7. Defendant Amy Kershaw is the Commissioner of the Massachusetts Department of Transition Assistance (DTA), which is the state agency responsible for the administration of the Supplemental Nutrition Assistance Program in Massachusetts. DTA has its principal place of business at 600 Washington Street, Boston, Massachusetts 02111.

Jurisdiction

8. This Court has jurisdiction over this action pursuant to G.L. c. 212, § 4; G.L. c. 214, § 1; G.L. c. 231A; and G.L. c. 30A, § 14; including jurisdiction over federal claims arising under 42 U.S.C. § 1983.

Class Allegations

9. The named plaintiff brings this action on behalf of a class of all SNAP households in Massachusetts who have been or will be subjected to DTA's policies and practices regarding use of SNAP benefits outside Massachusetts.

10. The proposed class meets the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure in that:

- a. The class is so numerous that joinder of all members is impracticable.
- b. There are questions of fact and law common to the class including whether the defendant's policies and practices regarding out-of-state use of SNAP benefits violate federal law and the United States and Massachusetts constitutions.
- c. The named plaintiff's claims are typical of the claims of the class.
- d. Declaratory and injunctive relief is appropriate with respect to the class as a whole.

e. The named plaintiff and the proposed class are represented by the Massachusetts Law Reform Institute, whose attorneys are experienced in class action litigation and will adequately represent the class.

f. Common questions of law predominate and a class action is superior to other methods for a fair and efficient adjudication of this matter.

Facts and Legal Background

Kelly Glynn

11. Kelly Glynn is 55 years old. She was born in Massachusetts and has been a resident of Massachusetts her entire life.

12. Ms. Glynn worked for a number of years in Massachusetts but has not worked for some time and has no regular source of income. Until August 2020, she was receiving SNAP benefits through the Department of Transitional Assistance (DTA) in the amount of \$194 a month.

13. Ms. Glynn has been homeless for some time. She describes herself as “living out of a suitcase.” Her official address is her parents’ home in Everett, Massachusetts where she often stays. Ms. Glynn receives mail at this address, including mail from the Department of Transitional Assistance. She has a Massachusetts state identification card, renewed in October 2019, with that address.

14. In January 2020, Ms. Glynn traveled from Massachusetts to Stuart, Florida to help a very close friend who had undergone several surgeries. Ms. Glynn planned to stay for a couple months to help her friend and her friend’s family.

15. Because of the pandemic, Ms. Glynn has stayed in Florida much longer than she expected. She would like to return to Massachusetts as soon as possible, but she takes seriously

the advice of many experts that it would not be safe for her to travel now because of the COVID-19 pandemic. Moreover, she would not be able to comply with the current Massachusetts requirements for travelers from Florida, who must either quarantine for 14 days after arriving in Massachusetts or be able to produce proof of a negative test result for COVID-19 from a test sample taken no longer than 72 hours before arrival. Massachusetts COVID-19 Travel Order, <https://www.mass.gov/info-details/covid-19-travel-order#lower-risk-states-> (last visited September 18, 2020). Ms. Glynn does not have access to a test in Florida. Nor does she have a way to quarantine when she returns to Massachusetts, since she would have to stay at her parents' home which does not have enough separate space for her to quarantine. She also does not want to risk infecting her parents who are in their 80s.

16. While in Florida, Ms. Glynn used her SNAP benefits at Florida grocery stores to buy food for herself and reduce the burden on her friend and her friend's family.

17. SNAP recipients are not required to notify DTA when they use their benefits in another state. In fact, Ms. Glynn was not required to report anything to DTA until her next recertification, scheduled for January 2021, unless her gross income went above the reporting threshold for her case.

18. Nevertheless, DTA sent a notice titled "Residency Verification Notice" dated April 3, 2020 to Ms. Glynn at her Everett address. The notice stated "Our records indicate that you have been using your benefits in Florida during the past several months. You need to provide us with verification that you still reside in Massachusetts. You must provide this verification within 10 days of receiving this notice or your case will be closed. If you are no longer a Massachusetts resident, you may apply for benefits in the state in which you reside."

19. Under the heading, “Examples of Proofs You May Provide,” the notice listed the following: “Current rent receipt, current utility bills, current mortgage statement, current school enrollment verification of children or other acceptable verification of residency.”

20. Ms. Glynn responded to this notice with a copy of her recently renewed Massachusetts state ID showing her Everett address.

21. By notice dated July 6, 2020, DTA informed Ms. Glynn that it would terminate her SNAP benefits on August 10, 2020 for failure to provide the requested verification of Massachusetts residency. This time, Ms. Glynn sent a statement written and signed by her mother declaring that Ms. Glynn’s address is her mother’s home in Everett.

22. DTA then sent Ms. Glynn another Residency Verification notice identical to the first one, dated July 7, 2020, the day after the termination notice. In response, Ms. Glynn sent DTA a copy of an envelope sent to her at her Everett address.

23. The notices DTA sent to Ms. Glynn told her that she could call a SNAP worker if she needed help. After several attempts to reach the number provided in the notice, Ms. Glynn was able to speak with a SNAP worker who told her she should apply for SNAP in Florida. Ms. Glynn understands that it would not be legal for her to apply for and receive SNAP benefits in Florida, because she is not a resident of Florida, nor does she intend to become a resident of Florida.

24. Even before Ms. Glynn’s SNAP benefits were cut off, she could not buy all the food she needed to maintain her health. Sometimes she did not have enough food, and had to skip meals. She says it is worse now; in addition, having to rely on her friend for food is very upsetting to her.

The Federal and State SNAP Program

25. Congress established the federally-funded, state administered Food Stamp Program, now called the Supplemental Nutrition Assistance Program (SNAP), to “safeguard the health and well being of the Nation’s population by raising the levels of nutrition among low income households.” 7 U.S.C. § 2011. The goal of the program is to “alleviate hunger and malnutrition [by]...permit[ing] low income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.” 7 U.S.C. § 2011; *see also* 7 U.S.C. § 2026(b)(1)(B)(i) (“goal of supplemental nutrition assistance program” is to provide food assistance to raise levels of nutrition among low income individuals”).

26. The program is *administered* by state agencies that request to participate in the program, subject to federal regulations. 7 U.S.C. §§ 2012(t), 2013(a), 2020(a). The federal government covers the entire cost of SNAP benefits, and half of the State’s administrative costs. 7 U.S.C. §§ 2013(a), 2015(a).

27. In Massachusetts, the Department of Transitional Authority (DTA) is the state agency responsible for administering the SNAP program. G.L. c. 18, §§ 1, 2. State law requires DTA to carry out the SNAP program “in conformity with all requirements governing the granting of federal aid to the commonwealth.” G.L. c. 18, § 10.

28. Participation in SNAP is “limited to those households whose incomes and other financial resources ... are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.” 7 U.S.C. § 2014(a).

29. Federal law provides that SNAP benefits are an entitlement for those who apply and are eligible: “Assistance under this program shall be furnished to all eligible households who make application for such participation.” 7 U.S.C. § 2014(a).

30. Federal law requires that the state agency “provide timely, accurate, and fair service to applicants for, and participants in, the supplemental nutrition assistance program.” 7 U.S.C. § 2020(e)(2)(B)(i).

31. The federal statute requires the Secretary of Agriculture to “issue such regulations consistent with this chapter as the Secretary deems necessary or appropriate for the effective and efficient administration of the supplemental nutrition assistance program.” 7 U.S.C. § 2013(c). The statute also provides that “the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this chapter.” 7 U.S.C. § 2020(e)(6)(A).

32. Federal law requires state agencies that participate in SNAP to deliver SNAP benefits via an electronic benefits transfer (EBT) system that complies with federally established standards. 7 U.S.C. § 2016(h). SNAP beneficiaries use their EBT cards to purchase SNAP-authorized food products at grocery stores and other authorized SNAP vendors.

33. Federal law also requires participating states to facilitate interoperability and portability nationwide so that SNAP beneficiaries can access SNAP benefits issued by their home state in any other state. 7 U.S.C. § 2016(j)(2). “The term ‘portability’ means a system that enables program benefits in the form of an electronic benefit transfer card to be used in any State by a household to purchase food at a retail food store or wholesale food concern approved under this chapter.” 7 U.S.C. § 2016(j)(1)(E).

34. Federal SNAP regulations, 7 C.F.R. § 273.3(a), provide that “[a] household shall live in the State in which it files an application for participation.” The regulations also provide that “[t]he State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require

an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.”

35. Federal SNAP regulations, 7 C.F.R. § 273.2(f)(1)(vi), also provide that at application:

The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

36. Households are certified for SNAP for specified periods of time. 7 U.S.C. § 2012(f). “Certification period” is defined as “the period for which households shall be eligible to receive benefits.” Certification periods are generally no more than 12 months but may be longer if all adult household members are elderly or disabled. 7 U.S.C. § 2012(f).

37. SNAP households are required to report certain changes in accordance with standards prescribed by the Secretary of Agriculture, either periodically or shortly after the change occurs, depending on the certification period and reporting type to which the state has assigned them. 7 U.S.C. § 2015(c).

38. DTA assigns most SNAP households to a reporting type called “Simplified Reporting.” 106 C.M.R. § 366.110(C).

39. Most Simplified Reporting households must be recertified every twelve months and must complete an Interim Report at the six-month point. Between those two review points,

households only have to report if their gross income goes over the gross income limit for their household size, if they are subject to certain work rules and their work hours go below 20 hours per week, or if they receive substantial lottery or gambling winnings. 7 C.F.R. § 273.12(a)(5)(iii)(G). Households with a member who is a person with disabilities or is 60 or older do not have to report any changes to their income between review points. Simplified Reporting households do not have any other reporting requirements.

40. DTA assigns many households where all adult members are age 60 or older or disabled to a type of Simplified Reporting called the SNAP Elderly-Disabled Simplified Application Project (EDSAP). EDSAP households are certified for 36 months and do not have to complete Interim Reports. EDSAP participants are not required to report changes during the certification period unless someone joins or leaves the household or someone in the household starts working. DTA Online Guide, Simplified Reporting During Case Maintenance, https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/%21SSL%21/WebHelp/SNAP/Certification_Types/Simplified_Reporting_During_Case_Maintenance.htm (last visited Sept. 29, 2020).

41. DTA assigns many applicants for or recipients of federal Supplemental Security Income benefits (SSI) to a Massachusetts SNAP demonstration project called Bay State CAP (CAP stands for “Combined Application Project”). Bay State CAP participants are certified for 36 months and are not required to report any changes to DTA at all. Instead, they must report any changes that might affect SSI eligibility to the Social Security Administration which reports the information to DTA. 106 C.M.R. § 366.910(B)(3)-(5). See Social Security Program Operations Manual System, SI BOS01801.302, available at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501801302BOS> (last visited September 21, 2020).

42. In addition to the limitations on when households are required to report changes, the federal statute also limits when the state can require the household to clarify information the state has received. The federal statute, 7 U.S.C. § 2020(e)(26), allows the state to “pursue clarification and verification, if applicable, of information relating to the circumstances of the household received from data matches . . . only if the information – (A) appears to present significantly conflicting information from the information that was used by the State agency at the time of certification of the household; (B) is obtained from data matches carried out [to identify prisoners, deceased persons, or persons receiving SNAP benefits from another state]; or (C)(i) is less than 60 days old relative to the current month of participation of the household; and (ii) if accurate, would have been required to be reported by the household based on the reporting requirements assigned to the household by the State agency under [7 U.S.C. §] 2015(c)”

43. The “action on data matches” statutory provision, 7 U.S.C. § 2020(e)(26), was enacted as part of the Agriculture Improvement Act in 2018. Pub. L. No. 115-334, § 4009 (Dec. 20, 2018). The Conference Report states that it was “intended to codify existing regulation” at 7 C.F.R. § 273.12(c)(3), which established “[p]rocedures for required action on data matches.” H.R. Rep. 115-1072, at 622 (2018) (Conf. Rep.).

44. The regulation at 7 C.F.R. § 273.12(c)(3), codified by 7 U.S.C. § 2020(e)(26), is headed “Unclear information.” The regulation provides:

During the certification period, the State agency might obtain unclear information about a household’s circumstances from which the State agency cannot readily determine the effect on the household’s continued eligibility for SNAP, or in certain cases benefit amounts. The State agency may receive such unclear information from a third party. Unclear information is information that is not verified, or information that is verified but the State needs additional information to act on the change.

(i) The State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure if unclear information received outside the periodic report is: Fewer than 60 days old relative to the current month of participation; and would, if accurate, have been required to be reported under the

requirements that apply to the household under 273.12 based on the reporting system to which they have been assigned. Additionally, the State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure for any unclear information that appears to present significantly conflicting information from that used by the State agency at the time of certification.

.....

(ii) If the unclear information does not meet the criteria in paragraph (c)(3)(i) of this section and does not relate to the matches described in paragraph (c)(3)(iii) of this section [i.e., matches to identify beneficiaries who are incarcerated or dead], then the State agency shall not act on the information or require the household to provide information until the household’s next certification action or periodic report is due. A State may follow up with a household to provide information on a voluntary basis if that information would result in an increase in benefits but may not take adverse action if the household does not respond.

See also 7 C.F.R. § 273.12(a)(5)(vi)(barring the state from acting on data matches the state receives from other sources where the information was not required to be reported by the household).

45. The federal SNAP statute, 7 U.S.C. § 2014a, provides that “notwithstanding any other provision of law, a household certified to participate in the Supplemental Nutrition Assistance Program is required to report in a manner prescribed by the Secretary if the household no longer resides in the State in which it is certified.”

46. Nothing in federal or state SNAP law or policy requires households to report temporary stays out of state. However, a DTA Operations Memo states that DTA monitors “the continuous out of state EBT usage of . . . SNAP benefits in an effort to determine if residency may be presumed to be abandoned.” DTA Operations Memo 2013-34 (July 26, 2013), available at <https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/fo/13/34.pdf> (last visited Sept. 20, 2020). According to the Operations Memo, DTA then takes action depending on whether the household receives only SNAP or receives a combination of cash assistance and SNAP, the length of time the household used benefits out of state, and whether the benefits were used only in New England or New York or in other states. The Operations Memo states that some

households are required to re-verify their Massachusetts residency and are terminated if DTA does not receive the re-verification or if DTA does receive it but deems it insufficient. SNAP households where any member receives cash assistance are simply closed after 70 days of usage outside New England or New York.

47. DTA has not issued any publicly available guidance stating whether it has made any changes to the out-of-state usage policies and procedures set forth in the Operations Memo.

Claims

First Claim: DTA's Policies and Practices on Out-of-State SNAP Usage Violate Federal Statute and Regulations on Interoperability and Portability of SNAP Benefits

48. DTA's policies and practices penalize households for out-of-state usage of SNAP benefits in violation of 7 U.S.C. § 2016(j)(2), which requires the state to facilitate interoperability and portability nationwide so that SNAP beneficiaries can access SNAP benefits issued by their home state in any state.

Second Claim: DTA's Policies and Practices on Out-of-State SNAP Usage Violate the Federal SNAP Statute and Regulations that Govern Verification of Residency.

49. By terminating households with a pattern of out-of-state SNAP usage for not providing particular but unspecified proof of Massachusetts residency, DTA violates 7 U.S.C. § 2020(e)(6)(A), which requires the State agency to certify applicant households in accordance with regulations issued by the Secretary, and the federal SNAP regulation regarding residency at 7 C.F.R. § 273.2(f)(1)(vi), that construes and implements the statute. The regulation, 7 C.F.R. § 273.2(f)(1)(vi): (1) requires the state agency to accept any documents or collateral contact that reasonably establish the applicant's residency, and (2) waives verification of residency in the case of homeless households.

Third Claim: DTA’s Policies and Practices on Out-of-State SNAP Usage Violate the Federal SNAP Statute and Regulations, which Bar the State from Acting on Information Unless the Information Is Both Unclear and Required to Be Reported by the Household.

50. By taking action during the certification period against SNAP households based on information about out-of-state usage, which is not both “unclear” and required to be reported by the household, DTA violates 7 C.F.R. § 273.12(c)(3)(“Unclear information”), and 7 U.S.C. § 2020(e)(26), which codified § 273.12(c)(3), as well as the federal regulation at 7 C.F.R. § 273.12(a)(5)(vi)(barring the state from acting on most data matches where the information was not required to be reported by the household).

Fourth Claim: DTA’s Policies and Practices on Out-of-State SNAP Usage Violate the Commerce Clause of the United States Constitution

51. DTA’s policies and practices regarding out-of-state use of SNAP benefits constitute an impermissible state regulation of interstate commerce in violation of Article I, § 8, cl. 3 of the United States Constitution.

Fifth Claim: DTA’s Policies and Practices on Out-of-State SNAP Usage Impermissibly Burden the Constitutional Right to Interstate Travel.

52. DTA’s policies and practices regarding out-of-state SNAP usage impermissibly burden the right to interstate travel protected by (1) the Massachusetts Constitution, including Articles 1, 10 and 12 of the Declaration of Rights; and (2) the United States Constitution, including the Privileges and Immunities Clause of Article IV, § 2, and the Privileges or Immunities and Due Process clauses of Article XIV, § 1.

Sixth Claim: DTA’s Violations of Federal Law Are Actionable Under 42 U.S.C. § 1983.

53. DTA is liable under 42 U.S.C. § 1983 for depriving households who use their SNAP benefits out of state of rights secured by the United States Constitution, the federal SNAP statute, and the federal regulations that construe and implement the statute.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Issue a short order of notice on plaintiff's request for preliminary relief.
2. Enter a preliminary and permanent injunction directing defendant to stop taking action against SNAP households based on their out-of-state usage of SNAP benefits.
3. Certify that this action may be maintained as a class action under Rule 23 of the Massachusetts Rules of Civil Procedure on behalf of the class defined above.
4. Order defendant to restore benefits that it improperly denied pursuant to its flawed policies and practices regarding out-of-state SNAP usage.
5. Issue a declaration that defendant's policies and practices with respect to out-of-state SNAP usage violate the federal SNAP statute and the implementing regulations that construe the statute, the Commerce Clause of the United States Constitution, and the protections against undue burdens on the right to travel in the Massachusetts and United States constitutions.
6. Award plaintiffs reasonable attorneys' fees and costs as provided by 42 U.S.C. § 1988.
7. Order such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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