

*Poverty Law Section – First Friday CLE – July 9, 2010*

*What Legal Aid Attorneys Should Know About Food Stamps, and Litigating for Systemic Change*

A Brief History of Recent Food Stamps Litigation in Texas:

**JUNE 2008 – JULY 2009**

**Attorney for Defendants:** Lone Star Legal Aid's Jeff Larsen filed a series of individual cases in federal court.

**Issue in all cases:** HHSC's untimely processing of food stamps and Medicaid applications is violation of federal law.

**Cases filed:** U.S District Court – Southern District

**Valdez Andrade v. Hawkins – June 2008**

**Mangalino v. Hawkins – July 2008**

**Baumgardner v. Hawkins – September 2008**

**Calip v. Hawkins – December 2008**

**Samuy v. Hawkins – January 2009**

**Cavazos v. Hawkins - July 2009**

**Contreras v. Hawkins -**

The first five cases were consolidated on January 9, 2009 and again on March 16, 2009.

**Disposition:**

Calip and Baumgardner were dismissed, due to mootness, on Defendants motion and over Plaintiff's objection.

The remaining five were disposed of with a Stipulated Dismissal without prejudice, also due to mootness.

Plaintiffs in all 7 cases received all benefits due to them.

**JULY 2009**

**Howard v. Hawkins**

U.S District Court – Western District – Austin Division

Class Action with 2 individual plaintiffs and all others similarly situated.

**Attorneys for Defendants:** Texas Legal Services Center (Bruce Bower); National Center for Law and Economic Justice (Marc Cohan, Mary R. Mannix, Petra T. Tasheff), Lynn Sanders

**Issue:** HHSC's untimely processing of food stamps applications is violation of federal and state law.

**Disposition:** Defendants Motion to Dismiss (based on Gonzaga argument – no federal enforceable right of action by plaintiffs) was granted by Judge Sam Sparks on October 8, 2009. Plaintiffs are on appeal to the Fifth Circuit.

**DECEMBER 2009**

**Gonzales, et al v. Suehs – Original Petition**

345<sup>th</sup> State District Court, Travis County

7 individual plaintiffs and 2 group plaintiffs

**Attorneys for Defendants:** Texas RioGrande Legal Aid (Robert Doggett, Amy Johnson, Renee Trevino, David Hall)

**Issue:** HHSC's untimely processing of food stamps applications is violation of state law.

## **JUNE 2010**

### **Gonzales, et al. v. Suehs – Amended Petition**

49 individual plaintiffs and 5 group plaintiffs

**Attorneys for Defendants:** Texas RioGrande Legal Aid (Robert Doggett, Amy Johnson, Renee Trevino, David Hall), Lone Star Legal Aid (Marty Orozco, Jonathan Wu), Legal Aid of NorthWest Texas (John Shaw)

#### **Additional Issues:**

1. HHSC's rules, policies, and practices violate statutory duty to ensure widest, efficient distribution of benefits.
2. HHSC's untimely eligibility decisions illegally delay food assistance to needy families.
3. HHSC's process keeps Texas families who need food in the dark in violation of state law.
  - a. Applications fails to state that only a name, signature and address are necessary to start the process and that benefits are provided from the date of the application.
  - b. HHSC fails to notify applicants of documents needed from the beginning.
  - c. HHSC fails to timely and adequately notify applicants of a decision.
  - d. HHSC notices fail to include information required by law including basis for denial, right to fair hearing, name of HHSC contact, name of persons providing free legal assistance.
  - e. HHSC fails to notify applicants of pending applications.
  - f. HHSC's phone system prevents applicants from contacting caseworkers.
  - g. HHSC fails to notify recipients of recertification deadlines.
4. HHSC fails to assist applicants with locating verification documents as required by state law.
5. HHSC fails to timely provide food stamp benefits after eligibility is determined.
6. HHSC fails to provide continuing benefits to applicants when HHSC fails to make timely recertification decisions.
7. HHSC is depriving plaintiffs of their right to due course of law under the Texas Constitution.

**Case status:** On June 22, 2010, Defendants filed a Plea to the Jurisdiction arguing in part that none of the time limits in processing applications nor the standards for processing and assisting applicants in the process are mandatory and that no law prohibits or provides consequences for the actions or lack of actions taken by HHSC. They also assert that applicants do not have a property interest protected by due process.

**The Federal Government imposes \$3.96 million fine against Texas for their failure to properly administer the food stamp program in Texas.**

In late June 2010, the U. S. Department of Agriculture assessed a \$3.96 million fine against Texas and HHSC for their failures in administering the food stamp program in Texas citing their high error rates. Only four states received such a rebuke and, of the four, Texas incurred the biggest fine.