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U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONNA SALDIVAR, et al., )

Plaintiffs, )

v. )

NO. C 83-4637 TEH

LINDA McMAHON, et al., )

Defendants. )

MEMORANDUM DECISION

LINDA McMAHON, et al., )

Third-party Plaintiffs, )

v. )

MARGARET HECKLER, et al., )

Third-party Defendants. )

This class action<sup>1/</sup> was brought by California residents who receive public assistance under the federally assisted programs of Aid to Families with Dependent Children (AFDC),<sup>2/</sup> Refugee Cash Assistance (RCA),<sup>3/</sup> and Food Stamps (FS).<sup>4/</sup> The plaintiffs filed suit on October 3, 1983, alleging that implementation of the state policy set forth in MMP § 22-022.2(j) would deny them due process of law. They seek to declare unconstitutional and permanently enjoin that policy which permits county welfare agencies to dispense with ten days advance notice of proposed reductions or terminations in welfare aid, where the

1 recipients file their monthly reports late and information in  
2 the tardy report or the late submission itself suggests that an  
3 alteration in aid is due. The defendants, Linda McMahon and  
4 Michael Franchetti, [hereafter referred to as "the State"] are  
5 California officials responsible for implementing the challenged  
6 policy.<sup>5/</sup> They have filed a third-party action against their  
7 federal counterparts.<sup>6/</sup> To date, the role of the federal third-  
8 party defendants has been in the nature of amicus curiae on  
9 behalf of the state.

10 On October 7, 1983, the Court temporarily enjoined the  
11 State from preparing to institute the challenged policy, which  
12 was originally scheduled to go into effect December 1, 1983.  
13 See Temporary Restraining Order, No. 83-4637-TEH (October 7,  
14 1983).<sup>7/</sup> The temporary restraining order was extended beyond  
15 the statutory period by agreement of the parties. On December  
16 2, 1983, after extensive briefing, the questions presented by  
17 this case were heard by the Court, pursuant to Rule 65(a)(2) of  
18 the Federal Rules of Civil Procedure. In our interim order of  
19 December 9, 1983, we found the state's proposed procedures incon-  
20 sistent with the plaintiffs' property interest in receiving  
21 essential welfare benefits without significant interruptions or  
22 delays and permanently enjoined the State from implementing them.  
23 See Interim Order, No. 83-4637 TEH (December 9, 1983). The pre-  
24 sent memorandum decision supercedes the abbreviated order of  
25 December 9, 1983.

26 //

27 //

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## I. BACKGROUND

### A. Federal Legislation

States participating in the federally assisted AFDC, RCA, and FS programs are required to calculate the amount of aid due a welfare recipient afresh each month.<sup>8/</sup> Under the Omnibus Budget Reconciliation Act of 1981 (OBRA),<sup>9/</sup> the monthly review must be based on information submitted by each recipient family or household in a thorough monthly report. The report describes the family's income and other circumstances which may affect the level or propriety of its aid,<sup>10/</sup> and is submitted in the first part of each month.<sup>11/</sup> The benefits allotted the recipient the following month reflect the report's contents.<sup>12/</sup>

In OBRA, Congress also authorized participating states to dispense with ten days advance notice of impending reductions or terminations in aid, where information contained in the monthly report indicates that an adjustment in aid is in order.<sup>13/</sup> The Act and its implementing regulations permit notice of such changes to be provided as late as the date of the adverse action itself.<sup>14/</sup> The provision's legislative history indicates that its purpose is to allow states to adjust the level of benefits due quickly and thereby avoid overpayments.<sup>15/</sup>

### B. California Procedures

In California, approximately one million families or households are subject to the mandatory monthly reporting requirements. See Order Certifying Class Action, No. 83-4637 TEH (November 8, 1983). The parties have estimated that each month approximately fifty to one hundred thousand recipients file their required monthly reports late. Under the current

1 system, when a recipient files his or her monthly report so late  
2 in the reporting month that timely notice is precluded, the  
3 State must delay the planned adjustment, issue the higher level  
4 of benefits, and notify the recipient of the State's intent to  
5 reduce or terminate benefits the following month. The State may  
6 not reduce or terminate aid without notifying the affected  
7 recipient at least ten days before the planned action. On  
8 receiving notice of the impending change in aid, all recipients  
9 have ten days from the date of the notice to request hearings to  
10 challenge the state action and to request the reinstatement of  
11 their benefits at the earlier level pending resolution of the  
12 dispute.

13 During the ten-day advance notice period, the affected  
14 recipient and the State have several opportunities to resolve  
15 their differences. In Los Angeles County, for instance, after a  
16 recipient requests a hearing and reinstated benefits, the county  
17 routinely takes a "second look" at the circumstances surrounding  
18 the proposed reduction or termination in benefits. See Declara-  
19 tion of Marilyn Kaplan (November 22, 1983).<sup>16/</sup> This informal  
20 practice allows most disputes to be resolved during the advance  
21 notice period and without need for a hearing. Id.; see also  
22 Declaration of Charles Greenfield (November 22, 1983) (describing  
23 the series of dispute resolution procedures available during the  
24 advance notice period in Santa Clara County.)<sup>17/</sup>

25 C. The Challenged California Procedures - MMP § 22.022.2(j)

26 Under the policy announced in MMP § 22.022.2(j), county  
27 welfare agencies are permitted to inform welfare recipients of  
28 proposed reductions or terminations in benefits, less than ten  
days before the proposed action, when (1) the recipient submits a

1 monthly report late (e.g., when a complete monthly report is  
2 received after the eleventh calendar day of the month) and (2)  
3 the basis for the action is either information contained in the  
4 report or the late submission itself.<sup>18/</sup> Under MMP §  
5 22.022.2(j), recipients who file their monthly reports so late  
6 in the reporting month that the State cannot provide timely  
7 notice before its planned termination or reduction in aid, will  
8 receive notice "as soon as possible but no later than" the date  
9 of the planned action. MMP § 22.022.2(j). The late-filing  
10 recipient then has ten days from the date of the notice to have  
11 his or her benefits reinstated at the earlier, higher level  
12 pending resolution of the dispute. See MMP § 22.022.3.<sup>19/</sup>

13         Affected recipients, however, will experience delays in  
14 receipt of the promised reinstated benefits which will range, at  
15 present, from one to fifteen working days. See Declarations of  
16 John D. Simon,<sup>20/</sup> Lonnie M. Carlson (November 10, 1983). Where  
17 the request for reinstated benefits is made directly to the  
18 county welfare agency, the benefits will be disbursed within one  
19 to five working days of the request. The counties which operate  
20 under this system are called "intake" counties and serve about  
21 half of the state's welfare recipients. Id. In the remaining  
22 counties, where the request for reinstated benefits is funneled  
23 through the Department of Social Services in Sacramento, the  
24 delay experienced by an affected recipient will range from six  
25 to fifteen working days. The average delay in these counties is  
26 over eleven working days.<sup>21/</sup>

27         Based on the record before the Court, and for the  
28 reasons set forth below, we hold that the policy set forth in

1 MMP § 22-022.2(j), as it is proposed to be implemented in Cali-  
2 fornia, violates plaintiffs' due process rights because it signi-  
3 ficantly increases the likelihood of governmental error in the  
4 provision of essential welfare benefits, without adequately  
5 shielding eligible recipients from the severe consequences of  
6 such increased risk of error. Nothing in our consideration of  
7 the competing interests presented in these circumstances, see  
8 Logan v. Zimmerman Brush Co., 455 U.S. 422, 434 (1982); Mathews  
9 v. Eldridge, 424 U.S. 319, 335 (1976); Goldberg v. Kelly, 397  
10 U.S. 254, 262-63 (1970), sanctions such a burdensome accommoda-  
11 tion. Accordingly, the State is permanently enjoined from imple-  
12 menting the constitutionally flawed procedures.

## 13 II. DISCUSSION

14 Eligible recipients have a property interest in receiv-  
15 ing welfare benefits without significant interruptions or delays.  
16 Goldberg v. Kelly, 397 U.S. 253, 264-66 (1970). The strength of  
17 that interest and the procedures demanded by the Due Process  
18 Clause to protect it, vary with the setting, Morrissey v.  
19 Brewer, 408 U.S. 471, 481 (1982); Mathews v. Eldridge, 424 U.S.  
20 at 335, and must reflect an appropriate accommodation of the  
21 competing governmental and societal interests. Logan v.  
22 Zimmerman Brush Co., 455 U.S. at 434.

23 As an initial matter, we therefore reject the position,  
24 advanced by the plaintiffs, that the practice of providing  
25 timely notice cannot be constitutionally altered in the welfare  
26 context. The Supreme Court established no such proposition in  
27 Goldberg v. Kelly, 397 U.S. 254. See Harrell v. Harder, 369 F.  
28 Supp. 810, 816 (D. Conn. 1974) ([The Goldberg Court] "speaks in.



1 terms of general procedural requirements designed to protect  
2 basic constitutional rights; it does not purport to lay down  
3 specific requirements."). Even in the welfare context, the con-  
4 stitutional need for timely notice disappears if the elimination  
5 of that procedure "neither affect[s] the likelihood of the  
6 agency's rendering an erroneous decision nor subject[s] the  
7 recipient to brutal need." Id., at 820; see also Hurley v.  
8 Toia, 432 F. Supp. 1170, 1176 (S.D.N.Y. 1977) ("Of course, if  
9 dispensing with a pretermination hearing will not significantly  
10 affect the likelihood of the agency's rendering an erroneous  
11 decision, due process will not require one.") The central ques-  
12 tion in this case, thus, is whether the scheme contemplated by  
13 MMP § 22-022.2(j) avoids the constitutional pitfalls of  
14 increased governmental error and significant interruptions in  
15 essential welfare aid. For the reasons stated below, we find  
16 that it does not.22/

17 A. The Due Process Balancing Test

18 To test the adequacy of procedures against the demands  
19 of due process, the Supreme Court has used a balancing test,  
20 which

21 generally requires consideration of  
22 three distinct factors: first, the pri-  
23 vate interest that will be affected by  
24 the official action; second, the risk of  
25 an erroneous deprivation of such  
26 interest through the procedures used,  
and the probable value of additional or  
substitute procedural safeguards; and  
finally, the function involved and the  
fiscal and administrative burdens that  
the additional or substitute procedural  
requirement would entail.

27 Mathews v. Eldridge, 424 U.S. at 355. The somewhat prolix

28 Mathews factors were more simply described by the Supreme Court

1 recently as (1) the importance of the private interest and the  
2 length or finality of the deprivation, (2) the likelihood of  
3 governmental error, and (3) the magnitude of the governmental  
4 interests involved. Logan v. Zimmerman Brush Co., 455 U.S. at  
5 434.

6 1. The Nature and Importance of the Private Interest

7 The plaintiffs have an interest in receiving  
8 welfare benefits without significant interruptions or delays.  
9 Goldberg v. Kelly, 397 U.S. at 264-66. The importance of that  
10 interest, for the purposes of evaluating the constitutionality  
11 of the State's proposed procedures, turns on the length of the  
12 interruption. Logan v. Zimmerman Brush Co., 455 U.S. at 434.  
13 Only those interruptions which seriously effect a recipient's  
14 ability to procure essential services--food, medication, cloth-  
15 ing, utilities, and housing--raise due process concerns.  
16 Goldberg v. Kelly, 397 U.S. at 264 (The "critical factor" in  
17 determining the process due a welfare recipient before aid is  
18 temporarily interrupted, is that interruptions "may deprive an  
19 eligible recipient of the very means by which to live. . . .  
20 Since he lacks independent resources, his situation immediately  
21 becomes desperate." ) (Emphasis in original). In Morgan v. Maher,  
22 449 F. Supp. 229, 233 (D. Conn.), aff'd mem., 591 F.2d 1331 (2nd  
23 Cir. 1978), the court found that the loss of a single,  
24 bi-monthly payment seriously interfered with the welfare  
25 recipient's ability to live:

26 Because the recipient is, by definition,  
27 living on a subsistence level, a single  
28 lost payment will impact directly upon the  
availability of essential services--food,  
utilities, and housing.



1 The declarations submitted by the named plaintiffs in this case  
2 bear out the Morgan court's observations succinctly. For plain-  
3 tiff Donna Saldivar, a lengthy interruption in receipt of her  
4 monthly grant of approximately \$500, will leave her without  
5 funds to pay her rent, and to buy food and medication for her  
6 daughter and herself. See Declaration of Donna Saldivar  
7 (October 3, 1983). Plaintiff Ana Maria Camacho, who receives  
8 approximately \$550 a month in welfare aid to support herself and  
9 two daughters, is "almost totally without food" by the first of  
10 the month and without means to buy medication for herself and  
11 her family. Moreover, if Ms. Camacho fails to pay her rent by  
12 the fifth of the month, she must pay an extra fee. See Declara-  
13 tion of Ana Maria Camacho (October 3, 1983).

14 In this case, the length of the interruption in bene-  
15 fits varies from county to county. See supra at 5. In "intake  
16 counties," a recipient affected by MMP § 22.022.2(j) who re-  
17 quests reinstated benefits, will receive the promised aid with-  
18 in, on the average, three working days of the request. Id.  
19 In the remaining counties, counties which serve over half of the  
20 recipient population, affected recipients will experience delays  
21 in the receipt of reinstated benefits, averaging over eleven  
22 working days or more than two working weeks. Id. The latter  
23 delay constitutes a significant interruption in the receipt of  
24 essential aid, cognizable under the Due Process Clause. A gap  
25 in the receipt of benefits of this magnitude unquestionably  
26 effects the ability of eligible recipients to meet their  
27 essential needs.<sup>23/</sup> Cf. Morgan v. Maher, 449 F. Supp. at  
28 233, 235 (To satisfy statutory requirements, the state was

1 ordered to provide emergency assistance to AFDC recipients who  
2 sought to replace missing checks no later than four days after  
3 the mailing of the lost check.)

## 4 2. The Risk of Governmental Error

5 Our next concern is whether the State's proposal to  
6 eliminate the ten-day advance notice period, currently available  
7 to late-filing recipients, significantly affects the likelihood  
8 of error in the provision and calculation of welfare benefits.  
9 Where the likelihood of a significant and erroneous interruption  
10 in aid is small, the Due Process Clause is not offended. See  
11 Harrell v. Harder, 369 F. Supp. at 820 (The Court approved a  
12 series of exceptions to the timely notice requirement where "the  
13 situations described in the exceptions [were] . . . so narrowly  
14 circumscribed that the possibility of factual error in the deci-  
15 sion whether to terminate direct payment of benefits [was] . . .  
16 virtually non-existent.") Because governmental error in the  
17 welfare context is so costly, however, the courts have been  
18 particularly vigilant in their scrutiny under this factor. See,  
19 e.g., Yee-Lit v. Richardson, 353 F. Supp. 996, 999 (N.D. Cal.)  
20 ("The Court realizes that no regulatory system can be foolproof;  
21 however, any court is constrained to minimize mistakes in the  
22 welfare area."), aff'd mem., 412 U.S. 924 (1973); see also  
23 Goldberg v. Kelly, 397 U.S. at 264 n. 12 (where the Supreme  
24 Court noted the "welfare bureaucracy's difficulties in reaching  
25 correct decisions on eligibility.")

26 Our analysis reveals that the procedures contemplat-  
27 ed by MMP § 22.022.2(j) threaten to increase significantly the  
28 risk of governmental error in the provision and calculation of

1 welfare benefits. By permitting the State to adjust or termi-  
2 nate benefits based on a welfare worker's unchecked interpreta-  
3 tion of complex financial data supplied by the recipient, MMP §  
4 22-022.2(j) greatly exacerbates the twin risks that "decisions  
5 [will be] based on misleading factual premises," Goldberg v.  
6 Kelly, 397 U.S. at 268, and that "the rules or policies [will be  
7 misapplied] to the facts of particular cases." Id. First, the  
8 policy is grounded in the questionable assumption that the data  
9 supplied by the recipient is accurate and reliable. The court  
10 in Cardinale v. Mathews, 399 F. Supp. 1163, 1174 (D.D.C. 1975),  
11 held this supposition to be fallacious in the welfare context:  
12 "the accuracy of information is not assured merely because it is  
13 submitted by the recipients." Under the circumstances of this  
14 case, where recipients are asked to provide rather complex finan-  
15 cial and personal data, via a less-than-perfect governmental  
16 form, see Turner v. McMahon, No. 81-4457 TEH (N.D. Cal., Sept-  
17 ember 30, 1983),<sup>24/</sup> the assumption is especially misplaced.  
18 Moreover, the policy contains no checks against the risk that  
19 the individual welfare worker will misapply "the rules or  
20 policies to the facts of particular cases," Goldberg v. Kelly,  
21 397 U.S. at 268. In Harrell v. Harder, the court, before approv-  
22 ing an exception to the timely notice requirement based on infor-  
23 mation submitted by the recipient, insisted that the welfare  
24 worker's initial determination be "certified as accurate" by a  
25 second official "by a written statement before action is taken."  
26 Harrell v. Harder, 369 F. Supp. at 821, 823 (emphasis in  
27 original). No such protective procedures are included in this  
28 scheme. Finally, the policy virtually eliminates the opportuni-

1 ties now available to the late-filing recipient and the State to  
2 resolve their differences and correct error during the advance  
3 notice period. See supra at 4.

4           The State does not seriously dispute that its pro-  
5 posed summary procedures significantly increase the risk of  
6 error in the calculation and provision of benefits. Rather, it  
7 argues that the scheme's provision for reinstating benefits in-  
8 sulates eligible recipients from the effects of such error, and  
9 makes the increased risk irrelevant for the purposes of this  
10 analysis. As we have already noted, the State's contention that  
11 the policy's provision for reinstating benefits sufficiently  
12 shields welfare recipients from the consequences of the  
13 increased risk of error is belied by the documentation which the  
14 State itself submits to the court. See Declaration of James D.  
15 Simon.<sup>25/</sup> Under the administrative mechanisms currently in  
16 place, about half of the recipients of subsistence-level aid in  
17 this state would experience delays in the receipt of reinstated  
18 benefits averaging over eleven working days. The brutal need  
19 inflicted by such a lengthy deprivation is not, as the State has  
20 argued, metaphysical.

21           3. The Magnitude of the State's Interest

22           The remaining question for this Court is whether  
23 the State's interest in ensuring that recipients do not receive  
24 payments to which they are not entitled is sufficient to vali-  
25 date the proposed summary procedures. We think not. The consti-  
26 tutional failing of the policy flows from the State's current  
27 inability to disburse reinstated benefits quickly enough to  
28 shield eligible recipients from a significant interruption in

1 benefits. That flaw is not overcome in the welfare context by  
2 the State's legitimate and laudable interest in avoiding overpay-  
3 ments and protecting the public fisc. Goldberg v. Kelly, 397  
4 U.S. at 266. Nor is it validated by the fact that the trouble-  
5 some interruption is caused, in some sense, by the recipient's  
6 failure to file a timely monthly report. While we are not unsym-  
7 pathetic to the State dilemma--the recipient's late filing  
8 forces the state to choose between its twin goals of providing  
9 timely notice and promptly adjusting the level of aid, the  
10 State's proposed solution strikes an accommodation which the Due  
11 Process Clause forbids. The summary procedures increase the  
12 risk of governmental error in the provision and calculation of  
13 welfare benefits and leave eligible recipients vulnerable to a  
14 significant interruption in essential welfare benefits.

15 We therefore hold that the summary procedures  
16 proposed by the State in MMP § 22-022.2(j), as they would be  
17 currently implemented in California, violate the plaintiffs' due  
18 process rights by significantly increasing the likelihood of  
19 governmental error in the provision of essential welfare bene-  
20 fits, without adequately shielding eligible recipients from the  
21 severe consequences of such increased risk of error. In so rul-  
22 ing, we assume that the State could devise a state-wide mechan-  
23 ism, similar to that now in place in the "intake" counties.  
24 Such a mechanism would likely decrease the period of interrupted  
25 benefits sufficiently to meet the requirements of due process.  
26 At present, however, no such system is in place, and  
27 accordingly,


28 //

1 IT IS HEREBY ORDERED that the policy set forth in  
2 MMF § 22-022.2(j) is PERMANENTLY ENJOINED as violative of the  
3 plaintiffs' due process rights.

4 IT IS FURTHER ORDERED that use of the hearing  
5 rights language on NA 960X, NA 960Y, NA 290A, NA 291A, and the  
6 universal back, language reflective of the enjoined policy, is  
7 also ENJOINED from use. So enjoined are the following instruc-  
8 tions: 1) "if you believe this action is wrong, you can ask for  
9 a State Hearing. See the back of this notice for instructions  
10 . . . ."; 2) "You may receive continued benefits if you ask for  
11 a hearing by the 10th day after the Date of Notice or before the  
12 Effective Date of this Action, whichever gives you more time. .  
13 . . ."

14 IT IS SO ORDERED.

15  
16  
17 DATED: January 11, 1984

  
THELTON E. HENDERSON  
UNITED STATES DISTRICT JUDGE



FOOTNOTES

1  
2 1/plaintiffs represent a class of all present and future  
3 beneficiaries of the Aid to Families with Dependent Children  
4 (AFDC), Refugee Cash Assistance (RCA), and Food Stamp(FS) pro-  
5 grams administered by the California Department of Social Ser-  
vices. See Order Certifying Class Action, No. 83-4637 TEH  
(November 8, 1983).

6 2/42 U.S.C. §§ 601 et seq. (1983).

7 3/ 8 U.S.C. § 1522(e)(Supp. 1983).

8 4/ 7 U.S.C. §§ 2011 et seq. (1973).

9 5/Ms. McMahon is the Director of the California Department  
10 of Social Services. Mr. Franchetti is the Director of the Cali-  
fornia Department of Finance.

11 6/The third-party defendants are Margaret Heckler, Secre-  
12 tary of the Department of Health and Human Resources, and John  
Block, Secretary of the Department of Agriculture. The third-  
party action is not resolved by this memorandum decision.

13 7/Under the TRO, the State was enjoined from using certain  
14 language on notice of action forms which reflected the chal-  
lenged policy of untimely notice. See Temporary Restraining  
15 Order, No. 83-4637 TEH (October 7, 1983).

16 8/42 U.S.C. § 602(a)(13)(1983); 8 U.S.C. § 1522(e)(4)(Supp.  
1983); 7 U.S.C. § 2015(c)(Supp. 1983).

17 9/Pub. L. 97-35, 95 Stat. 357.

18 10/42 U.S.C. § 602(a)(14)(A)(1983); 8 U.S.C. § 1522(e)(4)  
19 (Supp. 1983); 7 U.S.C. § 2015(c)(Supp. 1983).

20 11/Under the federal regulations, each state sets the time  
21 tables for receipt of the monthly reports, 45 C.F.R. §§ 233(b),  
(c)(1982); 8 U.S.C. § 1522(e)(4)(Supp. 1983); 7 U.S.C. § 2015(c)  
22 (Supp. 1983). In California, monthly reports are timely if sub-  
mitted by the eleventh calendar day of the report month.

23 12/California has used this method, called the "Monthly  
24 Reporting and Retrospective Budgetary System," to calculate AFDC  
benefits for approximately ten years.

25 13/42 U.S.C. § 602(a)(14)(B)(1983); 45 C.F.R. § 205.10(a)  
26 (4)(ii)(1982); 8 U.S.C. § 1522(e)(4)(Supp. 1983); 7 U.S.C.  
§ 2020(e)(10)(Supp. 1983); 7 C.F.R. § 273.21(j)(3)(ii)(1983).

27 14/ Id.

28 15/See, e.g., 127 Con. Rec. S 5911 (daily ed. June 9, 1981)  
(statement of Sen. Leahy).

1 16/ During the course of these proceedings, the State and  
2 the plaintiffs have submitted a number of third-party declara-  
3 tions to the Court. Counsel, in their arguments to the Court,  
4 have assumed the correctness of the facts stated in the declara-  
5 tions, and none have been opposed in any way. Accordingly, and  
6 pursuant to Rule 804(b)(5) of the Federal Rules of Evidence, the  
7 Court accepts as true, for the purposes of this ruling, the un-  
8 contested evidence offered in the various declarations.

9 17/ See supra at note 16.

10 18/ In relevant part, MMP 22-022.2(j) provides:

11 Timely notice [i.e., ten days advance notice]  
12 is not required . . . although the county shall  
13 send adequate notice as soon as possible but no  
14 later than the effective date of the action [when]:

15 . . . .

16 (j) the county receives a complete Monthly  
17 Eligibility Report (CA7) after the eleventh calen-  
18 dar day of the report month and the county's action  
19 to discontinue or decrease aid is a result of the  
20 information on the CA7 or the recipient's failure  
21 to submit a timely or complete report of earnings  
22 without good cause . . . .

23 19/ MMP § 22.022.3 provides in relevant part:

24 If timely notice is not required under the pro-  
25 visions of section 22-022.2, and the claimant re-  
26 quests a state hearing within ten days of the re-  
27 quired adequate notice, aid shall be reinstated  
28 retroactively . . .

20/ See supra at note 16.

21 21/ The estimated delays are based on data submitted by the  
22 State which indicates how long it currently takes the State to  
23 reinstate AFDC benefits for those recipients who have received  
24 timely notice of impending changes in aid and thereafter have  
25 requested hearings and reinstated benefits. See Declarations of  
26 John D. Simon, Lonnie M. Carlson (November 10, 1983).

27 22/ In proceeding to the merits of this action, we decline  
28 the federal defendant's invitation to dismiss this action on the  
grounds of improper parties and prematurity. U.S. Const. art.  
III. First, as welfare recipients, the plaintiffs are subject  
to the operation of the policy which they allege violates their  
rights to procedural due process; that status and challenge  
affords them sufficient personal stake in the controversy to  
assure this Court that they are proper parties. See Valley  
Forge Christian College v. Americans United for Separation of  
Church and State, 454 U.S. 464, 474 (1982); see also Rochester

1 v. White, 503 F.2d 263, 267 n. 11 (3rd Cir. 1974); and Committee  
2 for Full Employment v. Blumenthal, 606 F.2d 1062, 1065, 1065 n.  
3 11 (D.C. Cir. 1979). Second, the dispute is sufficiently  
4 immediate and concerns matters sufficiently certain to defeat  
5 the claim of prematurity. Cf. Baker v. Regional High School  
6 District No. 5, 476 F. Supp. 319 (D. Conn. 1979). But for this  
7 Court's Temporary Restraining Order, the challenged policy would  
8 be in effect at present. Moreover, the condition which triggers  
9 the policy -- a welfare recipient's late filing of his or her  
10 monthly report -- is neither remote, nor speculative. Cf.  
11 O'Shea v. Littleton, 414 U.S. 495, 498-99 (1974). Finally, a  
12 number of prudential concerns, including the hardship occasioned  
13 by postponed review for both the State and the plaintiffs,  
14 support our conclusion that present judicial action is appropri-  
15 ate. See Poe v. Ullman, 367 U.S. 497, 508-09 (1961).

16 23/In Barrett v. Roberts, 551 F.2d 662, 665-69 (5th Cir.  
17 1977), the Fifth Circuit upheld the district court's denial of a  
18 preliminary injunction sought by welfare recipients whose bene-  
19 fits were delayed from eight to twenty days by a state proce-  
20 dure, reasoning that the interruption in aid was not severe  
21 enough to offend the plaintiffs' due process rights, as enunciated  
22 in Goldberg v. Kelly. We find the Barrett decision distin-  
23 guishable and unpersuasive. First, the delay-causing scheme  
24 challenged in Barrett did not eliminate the advance notice  
25 period with its curative procedures for reducing the risk of  
26 erroneous deprivations. See infra at 10-12. Second, and more  
27 significantly, we reject the Fifth Circuit's suggestion that  
28 Goldberg v. Kelly is not implicated by an interruption in aid of  
over two working weeks. That harsh conclusion finds no support  
in the language of the Goldberg decision, as the Barrett Court  
acknowledges, Barrett v. Roberts, 551 F.2d at 666-67, nor is it  
countenanced by the reality of the welfare recipient's precar-  
ious situation, see Morgan v. Maher, 449 F. Supp. at 233.

24/Before initiating this suit, the plaintiffs challenged  
the constitutional adequacy of the monthly reporting forms. We  
held that the forms, though "far from perfect," were sufficient  
to provide constitutionally adequate notice. Turner v. McMahon,  
Civ. #81-4457 TEH (N.D. Cal., September 30, 1983).

25/See supra at note 16.