

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO  Denver City &amp; County Bldg.  1437 Bannock St., Rm. 256  Denver, CO 80202</p>	
<p>Plaintiffs: VALERIE IMANI HAWTHORNE-BEY, ET AL.,</p> <p>v.</p> <p>Defendants:  KAREN REINERTSON, Executive Director of the Colorado Department of Health Care Policies And Financing, Individually and in her Official Capacity, ET AL.,</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 04CV7059</p> <p>Div.: Ctrm. 1</p>
<p>Counsel for Plaintiffs:</p> <p>Michael J. Cook, # 8242  Sherman &amp; Howard L.L.C.  633 Seventeenth Street, Suite 3000  Denver, CO 80202  Phone Number: (303) 297-2900  Fax Number: (303) 298-0940</p> <p>Edwin S. Kahn, #2666  Maureen S. Farrell, #13726  D. Elisabeth Arenales, #23083  1490 Lafayette Street, Suite 206  Denver, CO 80218  Phone Number: (303) 573-5669  Fax Number: (303) 573-4947</p> <p>B. Lawrence Theis, #6621  Musgrave &amp; Theis, LLP  370 17<sup>th</sup> Street, Suite 4450  Denver, CO 80202  Phone Number: (303) 385-4700  Fax Number: (303) 385-4725</p> <p>Marc Cohan  Mary R. Mannix  Petra T. Tasheff  Welfare Law Center, Inc.  275 Seventh Avenue, Suite 1205  New York, New York 10001  Phone Number: (212) 633-6967</p>	
<p><b>MOTION FOR PRELIMINARY INJUNCTION</b></p>	

Plaintiffs move the Court to enter a preliminary injunction requiring:

A. Defendants to process all applications and recertifications/redeterminations for Food Stamps, Medicaid, Colorado Works, CHP+ and Old Age Pension benefit programs (the "Programs") and issue benefits of the Programs within the time frames required by applicable statutes and regulations.

B. Restraining Defendants from terminating, suspending, denying or reducing Program benefits except in conformity with applicable statutes and regulations and upon proper notice.

C. Requiring Defendants to implement an emergency system for processing and providing benefits for the Programs for applicants for and recipients of the Programs whose benefits have not been processed, recertified, redetermined or provided within the time frames required by applicable statutes and regulations.

D. Restraining Defendants from seeking recovery of overpayments to Program benefit recipients as a result of overpayments generated by the Colorado Benefits Management System (CBMS) or as a result of actions taken and benefit payments made because of the failure of CBMS to operate properly or timely.

E. Requiring Defendants to send only accurate, appropriate and timely notices to Program applicants and participants and immediately cease sending automatic notices and client correspondence generated by CBMS to Program benefit applicants and recipients that are inaccurate, redundant and confusing.

F. Requiring Defendants to prepare a Corrective Action Plan ("Plan") which shall include a detailed plan, with milestones and benchmarks, for bringing the processing of all pending Program applications and recertifications/redeterminations into compliance with applicable law.

G. Appointing a Special Master to assist the Court in evaluating and monitoring Plaintiffs' emergency processing of benefits, Plaintiffs' Corrective Action Plan, the current problems with the CBMS system and whether the CBMS system can, within a reasonable period of time, be expected to timely and accurately process welfare benefits.

1. Plaintiffs filed this action on August 30, 2004, and immediately sought an order barring Defendants from implementing and operating the CBMS system in such a way as to adversely affect benefits recipients through the entry of false information into the system. A hearing was held on August 30, 2004, and the Court entered a preliminary injunction consistent with Plaintiffs' initial request. That order was reduced to writing and signed by the Court on September 2, 2004.

2. The initial Complaint, superseded by an Amended Complaint filed September 15, 2004, asserted that by implementing the Colorado Benefits Management System (CBMS) in its current state, Defendants were implementing a deeply flawed system which seriously and adversely affected benefits processing and delivery to lawfully entitled recipients. Plaintiffs filed a second motion for preliminary injunction on September 21, 2004, seeking an Order requiring Defendants to suspend use of CBMS and temporarily return to using the predecessor Legacy Systems.

3. A hearing on Plaintiffs' second motion for preliminary injunction was heard over three days, beginning September 23, 2004. At the conclusion of that hearing, this Court declined to enter a preliminary injunction, but warned Defendants that: "My view of the system as it works now is a lot closer to Plaintiffs than it is to Defendants. . . . So I don't want the State to think they are out of the woods. They have to fix these problems; there is no doubt about it and you have a big job ahead of you."

4. The Court also made the following statement at the conclusion of that hearing:

This Court is very aware of the separation of powers and finds that very strong principal of our government that this Court does not want to violate. But that does not go so far as to say that in the future I'm not going to judge any future case---- if they come in and show there are plaintiffs that are damaged by the system that I won't stop them, and I will.

5. Plaintiffs sought leave to file a Third Amended Complaint on October 19, 2004, substituting individual Plaintiffs who were suffering harm as of that date. The Court has not yet ruled on Plaintiffs' Motion to File a Third Amended Complaint. The Plaintiffs named in that Complaint, and other members of the Plaintiff class, nevertheless continue to suffer improper delays and denials of Program benefits.

6. Plaintiffs will show that they are entitled to the relief they seek by evidence establishing at least the following:

a. Thousands of Program benefits cases are out of compliance with Federal and State processing requirements.

b. A very substantial and growing number of Program benefits applicants have not had their applications timely processed, have wrongfully been denied, have received inadequate notice, including no notice or conflicting and erroneous notices, and many more are at imminent risk of the same.

c. A very substantial number of benefits recipients are not receiving their benefits, or are having their benefits reduced, suspended or denied without cause and without adequate notice, and are having recovery actions initiated against them as a result of CBMS related processing errors and many more are at imminent risk of the same.

d. Plaintiffs and other potential class members have suffered, and in many instances continue to suffer or are at imminent risk of suffering, irreparable harm,

including going without food, forgoing necessary medical care for themselves or their children, and being unable to meet the basic expenses of daily living.

e. Defendants have been unable to resolve the benefits problems of plaintiffs and potential plaintiffs, despite the high priority placed by Defendants on resolving these cases.

f. The limited emergency processing procedures Defendants have put in place are insufficient to address the needs of, and are not addressing the needs of, most Programs applicants and recipients.

g. Despite extraordinary efforts by the Counties and the authorization of substantial overtime, the backlog of cases awaiting processing has grown to alarming proportions with no realistic hope of catching up without a substantial additional investment of resources, and an appropriate plan to address case cleansing and the case backlog.

h. The additional resources the Defendants invested to date are not sufficient to ensure a reasonable and speedy resolution to case processing delays, accurate processing of benefits, and legally sufficient noticing.

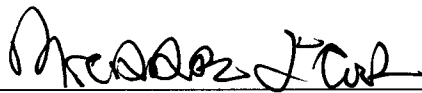
i. The U.S. Department of Agriculture has found Defendants to be out of compliance with federal Food Stamp program requirements and has required the Defendants to submit a corrective action plan. The Food Stamp program, by the Defendants own admission, has been the most successfully performing program under CBMS.

7. Without an injunction requiring Defendants to take immediate action, Plaintiffs and others similarly situated will continue to suffer irreparable harm and their constitutional property rights to receive Federal and State mandated benefits will continue to be violated.

8. The legal grounds for this Motion are set forth in Plaintiffs' Memorandum Brief in Support of Plaintiffs' Motion for Further Preliminary Injunction filed in this matter on September 21, 2004, Plaintiffs' Reply Memorandum in Response to Defendants' Objection to Motion for Preliminary Injunction filed September 27, 2004, and in Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Order Granting Preliminary Injunction, which is being filed with the Court contemporaneously herewith.

DATED THIS 3<sup>rd</sup> DAY OF DECEMBER 2004.

SHERMAN & HOWARD L.L.C.

By: 

Michael J. Cook #8242  
633 17<sup>th</sup> Street, Suite 3000  
Denver, CO 80202  
Telephone: (303) 297-2900  
Facsimile: (303) 298-0940

Edwin S. Kahn, #2666  
Maureen S. Farrell, #13726  
D. Elisabeth Arenales, #23083  
Colorado Center on Law and Policy  
1490 Lafayette Street, Suite 206  
Denver, CO 80218  
Telephone: (303) 573-5669  
Facsimile: (303) 573-4947

B. Lawrence Theis, #6621  
Musgrave & Theis, LLP  
370 17<sup>th</sup> Street, Suite 4450  
Denver, CO 80202  
Telephone: (303) 385-4700  
Facsimile: (303) 385-4725

Marc Cohan  
Mary R. Mannix  
Petra T. Tasheff  
Rebecca L. Scharf  
Welfare Law Center, Inc.  
275 Seventh Avenue, Suite 1205  
New York, NY 10001  
Telephone: (212) 633-6967  
Facsimile: (212) 633-6371

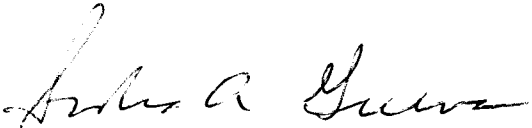
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **Motion for Preliminary Injunction** has been served electronically via LexisNexis to the following on this the 5 day of December 2004.

Wade S. Livingston, Esq.  
Renny Fagan, Esq.  
Attorney General Office  
Human Services Unit  
State Services Section  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

Jim Miles, Esq.  
Special Assistant Attorney Generals  
Miles & Peters, P.C.  
1430 Larimer Square, Suite 400  
Denver, CO 80202

  
\_\_\_\_\_