UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BILL PETER EDUARD BENNETT,

Plaintiff,

v.

The STATE OF MICHIGAN; GRETCHEN E. WHITMER, in her official capacity as Governor of Michigan; ROBERT GORDON, in his official capacity as Director of the Michigan Department of Health & Human Services.

Defendants.

Case No. 20-cv-11885
Hon. Denise Page Hood
Mag. Judge R. Steven Whalen

Plaintiff demands a jury

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PLAINTIFF'S VERIFIED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, WITH SUPPORTING BRIEF

In compliance with L.R. 7.1, Plaintiffs sought concurrence with the relief requested herein by sending a detailed email correspondence to the Defendants and the Attorney General for the State of Michigan, explaining the legal basis of this motion and the relief sought, on July 2, 2020. To date, neither the Defendants nor the Attorney General have responded.

Plaintiff moves the Court for a preliminary injunction pursuant to Fed. R. Civ. P. 65. Plaintiff makes this motion on the grounds that:

1. Plaintiff is likely to prevail on the merits of his claim;

2. Plaintiff will suffer irreparable harm if preliminary relief is not granted;

3. Third parties will not be harmed by the relief sought; and

4. The public interest will be served by granting the relief sought.

Plaintiff specifically requests that the Court issue a temporary restraining order and preliminary injunction to:

A. Enjoin Defendants from denying Plaintiff the benefits he would be entitled to but for his 2005 drug felony convictions.

B. Enjoin Defendants from holding Plaintiff to owe an overissuance or from pursuing any means of collecting this overissuance either directly and through third parties or from otherwise putting Plaintiff at any disadvantage because of this alleged overissuance.

C. In the alternative, enjoin Defendants from refusing to grant Plaintiff a reasonable accommodation under the Rehabilitation Act as requested resulting in eligibility for Food Assistance benefits.

D. Grant any other relief this Court deems equitable and just.

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
****ORAL ARGUMENT REQUESTED RE PRELIMNARY INJUNCTION****

Questions Presented:

1. Whether this court should enjoin Defendants from denying Plaintiff the Food Assistance Program benefits he would be entitled to but for his 2005 drug felony convictions?

2. Whether this court should enjoin Defendants from holding Plaintiff to owe an overissuance or from pursuing any means of collecting this overissuance either directly and through third parties or from otherwise putting Plaintiff at any disadvantage because of this alleged overissuance?

3. Whether this court should enjoin Defendants from refusing to grant Plaintiff a reasonable accommodation under the Rehabilitation Act as requested and approve his application for Food Assistance Program benefits?

Controlling Authority:

U.S. Const. art. I, § 10

U.S. Const. amend. VIII

U.S. Const. amend. XIV, § 2

Mich. Const. art. I, § 16

Mich. Const. art. I, § 17

28 U.S.C. § 2201

29 U.S.C. § 705

29 U.S.C. § 794

42 U.S.C. § 1983

MCL 400.43a(b)4

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I. INTRODUCTION

On August 22, 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat 2105, commonly referred to as the Welfare Reform Act. Passed during the height of America's War on Drugs, the Act included Section 115. 21 USC 862a. Denial of Assistance and Benefits for Certain Drug-Related Convictions, which provides:

> (a) An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible for . . . benefits under the food stamp program.

The federal law also allows states to opt out of this provision or to enact a modified version by express legislation. 21 USC § 862a(d)(1) or 110 Stat 2105, § 115(d)(1):

> (d) Limitations
>
> (1) State Elections
>
> (A) Opt out
>
> A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a).

The just quoted statutes will be referred to as the "federal law" or the like.

From 1999 to 2011, Michigan opted out of this federal law almost entirely, applying the federal prohibition only to individuals who were currently on, and in violation of, their probation or parole due to drug convictions:

> **Sec. 619**. The department shall exempt from the denial of title IV-A assistance and food assistance benefits, contained in 21 USC 862a, any individual who has been convicted of a felony that included the possession, use, or distribution of a controlled substance, after August 22, 1996, provided that the individual is not in violation of his or her probation or parole requirements. Benefits shall be provided to such individuals as follows:
>
> (a) A third-party payee or vendor shall be required for any cash benefits provided.
> (b) An authorized representative shall be required for food assistance receipt.[1]

[1] http://www.legislature.mi.gov/documents/1999-2000/publicact/pdf/1999-PA-0135.pdf

The state did not impose the current restrictions until 2011, when it added additional language to the 1999 exemption. This added language imposes a lifetime ban on individuals with two or more felony drug convictions from receiving food assistance and is the current law today:

ADDED LANGUAGE:

> **(2) Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted in 2 or more separate cases of a felony that included the possession, use, or distribution of a controlled substance after August 22, 1996. [bold not in original]**

Michigan's human services agency, the Family Independence Agency, now the Michigan Department of Health and Human Services, then implemented policy to reflect this change. BEM 203 states that "An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both convictions were for conduct which occurred after August 22, 1996." Bridges Eligibility Manual, MDHHS, BEM 203, available at https://dhhs.michigan.gov/ OLMWEB/EX/BP/Public/ BEM/203.pdf. The just quoted Michigan law, along with BEM 203, will be referred to as "the Policy". It is this 2011 Policy which prohibits Mr. Bennett from receiving food assistance due to his 2005 drug possession felonies.

Most states have passed laws that waive the 1996 federal ban. See Plaintiff's Verified Complaint, paragraph 63(e)). Michigan, however, maintains one of the most stringent prohibitions in the nation.[2] That Michigan originally opted out of the federal law and then implemented its own draconian Policy years later is especially peculiar among the states. This was able to happen because, from 1999-2011, Michigan opted out of the federal law via a line

[2] Peter Ruark, "The 1990s are over. Remove Michigan's drug felony ban on public assistance," Mich. League for Pub. Pol., Jul. 23, 2019, https://mlpp.org/the-1990s-are-over-remove-michigans-drug-felony-ban-on-public-assistance/; *see also* O'Rourke, Yang, at *infra*.

item in the state's annual budget. [3] As such, it was easy for the state to quietly codify the new policy. For the legal reasons set forth below, Plaintiff argues that this provision is illegal, unconstitutional, and in violation of his civil rights.

II. STATEMENT OF FACTS

A. Plaintiff is a Disabled Veteran Who is Being Deprived Food Assistance Benefits Due to a State Law Enacted After His Criminal Convictions

Plaintiff's Verified Complaint clearly lays out the facts in the case. Mr. Bennett did not disclose his drug convictions. See ALJ Opinion cited in Compl., ¶ 49. As a result, Defendants have found that he owes the state upwards of $3,000 as a Food Assistance Program (FAP) overissuance. He has, on multiple instances, requested a reasonable accommodation from the state. All have been denied. Mr. Bennett attempted to reapply for FAP benefits in 2019, including a reasonable accommodation request with his application. He was denied solely based on a law passed in 2011, six years after his 2005 drug convictions.

B. The Current Pandemic Has Highlighted the Deprivation Created by the State's Policy, Causing Increased Food Insecurity for Mr. Bennett

In response to the pandemic, Michigan, like many other states, has urgently liberalized access to FAP benefits. For example, Michigan has waived work requirements, greatly expanded food assistance eligibility among college students, automatically enrolled households receiving free school lunch in the food assistance program, automatically provided each eligible household the maximum possible benefits, and suspended administrative recoupment of overissuances.[4]

[3] http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0067.pdf

[4] Additional food assistance for 350,000 Michigan families approved in response to COVID-19 emergency; SNAP work requirements also temporarily waived, Michigan.gov, https://www.michigan.gov/coronavirus/0,9753,7-406-98158-523398--,00.html; MDHHS and LEO partner to help low-income college students enrolled in career and technical education programs to receive food assistance, id., at https://www.michigan.gov/som/0,4669,7-192-29942_34762-528136--,00.html; https://fns-prod.azureedge.net/sites/default/files/resource-files/MI-SNAP-COV-SuspendClaimsCollection-Approval.pdf

These policies have been justified on a number of intersecting grounds related to public health and economic security. *See* infra.

As stated by Governor Whitmer, "No Michigander should have to worry about putting food on the table . . . especially during a global pandemic. Now, tens of thousands of Michiganders will be able to access the food they need while we work to slow the spread of COVID-19 . . . . '" *Id.* (quoting Governor Gretchen Whitmer, Mar. 27, 2020). Recognizing the exigencies caused by the pandemic, expanded food assistance is necessary to ensure that vulnerable Michiganders, like Mr. Bennett, can stock up on food, especially as the price of food has risen during the pandemic. Agnieszka de Sousa, Ruth Olurounbi, and Pratik Parija, "Key Food Prices Are Surging After Virus Upends Supply Chains," Bloomberg, Apr. 6, 2020.[5]

However, Mr. Bennett, and those like him, remain entirely left behind.

III. ARGUMENT

"Four factors are particularly important in determining whether a preliminary injunction is proper: (1) the likelihood of plaintiff's success on the merits; (2) whether the injunction will save the plaintiff from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction." In re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985) (citations omitted). This brief will work in reverse order, first addressing the second, third, and fourth factors and then addressing the first, in large part because "the basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." Sampson v. Murray, 415 U.S. 61, 88 (1974).

[5] https://www.bloomberg.com/news/articles/2020-04-06/key-food-prices-are-surging-after-virus-upends-supply-chains

A. Plaintiff Will Suffer Irreparable Harm

"A plaintiff's harm from the denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages." Overstreet v. Lexington-Fayette Urban County Government, 305 F.3d 566, 578 (6th Cir. 2002) (citation omitted). Arguably, this is the most important factor in considering a request for preliminary relief. In re DeLorean Motor Co., 755 F.2d, at 1230; Roth v. Bank of the Commonwealth, 583 F.2d 527, 537-38 (6th Cir. 1978) (expressly finding that success on the merits was not likely, but still affirming grant of injunctive relief due to showing of irreparable harm; noting that such an outcome is justified when "the balance of hardships tips decidedly toward plaintiff."). This brief will focus on four cognizable harms: death or serious injury, loss of essential welfare benefits, financial ruin, and constitutional violations. This section will then discuss why an injunction here helps the public at little cost to Defendants.

1. Food Insecurity and Health Consequences

Few will doubt that "Without food. . . strength and mental alertness begin to decline immediately." Cunningham v. Jones, 567 F.2d 653, 657 (6th Cir. 1977) (citing Finney, at *infra*.) Even absent a pandemic, food insecurity and chronic malnutrition, especially in the severely disabled and immunocompromised, constitutes an irreparable injury. It is thus telling that deprivation of adequate nutrition is considered cruel and unusual punishment. *See* Cunningham v. Jones, 567 F.2d 653, 657-8, 660 (6th Cir. 1977) (citing cases; deprivation of proper caloric intake for prisoners may constitute cruel and unusual punishment). In Jones, the 6th Circuit positively cited a Mississippi District Court order mandating that that " . . . . in no event shall such inmates receive less than 2000 calories per day." Id., at 656 (quoting Gates v. Collier, 349 F.Supp. 881, 900 (N.D. Miss.1972)). While these cases do not squarely address likelihood of

success on the merits here, they do stand for the proposition that food insecurity and malnutrition are harms warranting injunctive relief, id., at 656-7 (citing Finney v. Arkansas Board of Correction, 505 F.2d 194, 207-08 (8th Cir. 1974)); Finney, id., at 207.

It is essential for immunocompromised individuals like Mr. Bennett to maintain a healthy diet. Bredbenner, at *supra*. Those with COPD are five times more likely to suffer from severe coronavirus.[6] Mr. Bennett can only afford a diet largely consisting of processed meat. His lack of access to proper food is the equivalent of lack of access to needed medical care.

Because closer grocery stores are too expensive, Mr. Bennett does his food shopping at Walmart. He must travel in his wheelchair approximately 1.5 miles to shop. This exertion triggers his anxiety and, in turn, his COPD. Perhaps more disturbingly, Mr. Bennett has been thrown out of his wheelchair and robbed on the way to the store.

Both his mental and physical health are ticking time bombs. This Court need not wait for them to explode to issue a preliminary order. If, for example, an institution had inadequate fire safety protections, "It would verge on the absurd to suggest that" a litigant "would have needed to wait for a fire to break out in the facility prior to being able to allege irreparable injury." Zaya, *infra* at *9 (referencing 501 F.2d 1291, 1301 (5th Cir. 1974)). The heightened risk of injury or death alone satisfies the imminent harm requirement. *See, e.g.,* id.; Zaya v. Adducci, 2020 WL 2079121, slip op., at *3 (Apr. 30, 2020, W.D. Mich.) (citing risk of CORONA virus as irreparable harm in extending TRO mandating release of inmate from immigration detention).

[6] Giuseppe Lippi (Section of Clinical Biochemistry, Department of Neuroscience, Biomedicine and Movement, University of Verona) & Brandon Michael Henry (Cardiac Intensive Care Unit, The Heart Institute, Cincinnati Children's Hospital Medical Center), "Chronic obstructive pulmonary disease is associated with severe coronavirus disease 2019 (COVID-19)," Letter to Editor, March 24, 2020, available at https://www.resmedjournal.com /article/S0954-6111(20)30081-0/fulltext.

2. Loss of Benefits

Courts also presume that irreparable harm is caused by the loss of health-related welfare benefits. Indeed, "[C]ourts in many circuits have held the irreparable harm prong automatically met when the loss of medical benefits are at stake." Carpenter-Barker v. Ohio Department of Medicaid, 2018 WL 898971, at *4 (S.D. Ohio 2018) (citing *see* Whelan v. Colgan, 602 F.2d 1060, 1062 (2nd Cir. 1979) ("'In fact, the threatened termination of benefits such as medical coverage for workers and their families obviously raises the specter of irreparable injury'"); Indep. Living Ctr. of S. Cal., Inc. v. Maxwell-Jolly, 572 F.3d 644, 658 (9th Cir. 2009); Cota v. Maxwell-Jolly, 688 F. Supp. 2d 980, 997 (N.D. Cal. 2010).

Such reasoning is applicable here. Nutrition benefits and health benefits are not meaningfully distinguishable in this context, if for no other reason than FAP is cast as a health program and proper nutrition and medical benefits are each essential to one's health. *See* "Michigan Food Assistance Program," Benefits.gov, https://www.benefits.gov/benefit/1222.

3. Irreparable financial hardship

Without food assistance, Mr. Bennett must make tradeoffs between necessities of daily living. Mr. Bennett may have his Social Security Disability Income garnished to repay the state. His "impending loss or financial ruin . . . constitutes irreparable injury." Performance Unlimited, Inc. v. Questar Publishers, Inc., 52 F.3d 1373, 1382 (6th Cir. 1995). In Questar, the 6th Circuit found irreparable injury because, "without the payment of royalties by Questar, Performance will be unable to operate its business and the business will suffer economic collapse or insolvency." Id.

4. Constitutional Violation

"When constitutional rights are threatened or impaired, irreparable injury is presumed." Obama for America v. Husted, 697 F.3d 423, 436 (6th Cir. 2012) (citations omitted). As will be discussed below, by using a 2011 law to strip Mr. Bennett of food assistance because of drug possession crimes he plead to in 2005, Defendants violate Mr. Bennett's constitutional rights in myriad ways.

5. The Public Interest and the Balance of Equities Favor Preliminary Injunctive Relief

Providing food access to low-income, disabled individuals supports the public's interest. Food assistance benefits are 100% funded by the federal government. The trend across states has been to recognize that these food assistance prohibitions are not productive, *see* Crystal S. Yang, "Does Public Assistance Reduce Recidivism?", American Economic Review: Papers & Proceedings 2017, 107(5): 551–555, *available at* https://doi.org/10.1257/aer.p20171001. There can be no credible argument that substantial harm will befall society if Mr. Bennett's motion is granted. "[I]t is always in the public interest to prevent violation of a party's constitutional rights." G & V Lounge, Inc. v. Mich. Liquor Control Comm'n, 23 F.3d 1071, 1079 (6th Cir. 1994).

B. Likelihood of Success on the Merits

Mr. Bennett argues that Defendants have legally wronged him in two primary ways: (1) by refusing to provide him with food assistance because of his 2005 drug convictions; and (2) by garnishing, or maintaining their intent to garnish, his $913 monthly SSDI.

Defendants have violated Mr. Bennett's constitutional and statutory rights in a number of ways. First, the Policy has no discernable purpose or rational relationship to a legitimate goal and is not narrowly tailored towards a compelling government interest. Thus, the Policy does not

withstand Fourteenth Amendment scrutiny. The constitutional infirmity behind this policy is magnified by its specifics: it retroactively imposes new consequences for Mr. Bennett's past plea bargains; it creates a lifelong irrebuttable presumption against those like Mr. Bennett; and it arbitrarily targets and unpopular group and, by its terms, discriminates against the poor.

Second, and along similar lines, the Policy and its application to Mr. Bennett are unduly harsh in violation of the Eighth Amendment and Michigan's constitutional corollary. By stripping Mr. Bennett of a vital property interest for the rest of his life, the Policy acts as an excessive fine. Alternatively, because the Policy is a "punishment," it also violates Mr. Bennett's rights against cruel and unusual punishment and the application of ex post facto laws.

Lastly, even if the Policy and its application to Mr. Bennett are not in and of themselves unlawful, Defendants have illegally denied Mr. Bennett reasonable accommodations from either the Policy itself or the resulting collection efforts.

1. Due Process and Equal Protection Concerns Under the 14th Amendment

This section will discuss three ways that Defendants have violated Mr. Bennett's 14th Amendment rights: by violating his substantive and procedural due process rights through retroactive application of law, by creating an irrebuttable presumption, and by making distinctions between classes of people in violation of Equal Protection.

a. Retroactive Application/Procedural Due Process

Defendants are employing a 2011 Michigan law to forever bar Mr. Bennett from food assistance because of 2005 drug possession convictions. Notably, the Policy in question only applies to felony drug convictions after August 22, 1996, because it is modeled after a federal law which only applies to convictions after August 22, 1996. *See* Sec. IIA, at *supra*. The federal,

however, law took effect on August 22, 1996, and included this qualifier to prevent retroactive application.[7] The Policy's retroactive application violates both the federal and state constitutions.

i. Federal Constitution

"The Due Process Clause . . . protects the interests in fair notice and repose that may be compromised by retroactive legislation." Landgraf v. USI Film Products, 511 U.S. 244, 266 (1994). Courts primarily employ their concerns about retroactivity not to strike down laws as unconstitutional, but to presume statutes operate prospectively as a matter of statutory interpretation. Id., at 272 ("While the constitutional impediments to retroactive civil legislation are now modest, prospectivity remains the appropriate default rule"). Here, however, the Policy's retroactive application should render it unconstitutional.

First, courts employ the presumption against retroactivity, in part, as a tool of constitutional avoidance. I.N.S. v. St. Cyr, 533 U.S. 289, 300 (2001). Courts read ambiguous statutes as prospective, in some instances, because to read them as retroactive would render them unconstitutional. *See* Landgraf, 511 U.S., at 281-282 (discussing rationale for reading punitive and compensatory damage provision as applying only prospectively); St. Cyr, at id. Here, the Court has no choice but to read the Policy as applying retroactively. This is likely the Policy's constitutional undoing, though far be it for Mr. Bennett to object if the Court chooses to read the Policy as applying only to prospective convictions. *See* id.

Second, the retroactive application of law here is especially offensive to due process concerns. This is the case for two reasons – first because the Policy operates with "primary retroactivity," Friess, at *infra*, and second because the Policy implicates essential due process concerns beyond those normally associated with civil retroactivity.

[7] The Federal law allows states to opt out. Michigan did so in 1999, then enacted the two conviction provision in 2011. Inexplicably, it did not change the date after which the convictions must have occurred.

As applied to Mr. Bennett, the Policy is unconstitutional because it operates with "primary retroactivity." Id. While not all retroactive applications of law are unconstitutional, "'primary retroactivity' defines laws that alter the past legal consequences of past private actions . . . . [S]tatutes that apply with primary retroactivity are usually invalid." Friess v. City of Detroit, 2019 WL 1379865, Case No. 17-14139, slip op., at *5 (E.D. Mich., Mar. 27, 2019) (citing, *see e.g.,* Plaut v. Spendthrift Farm Inc., 514 U.S. 211, 115 S.Ct. 1447, 1456 (1995), Jan Laitos, Legislative Retroactivity, 52 Wash. U. J. Urb. & Contemp. L. 81, 89 (1997); *see also* Landgraf, 511 U.S. 244).

Mr. Bennett has a property interest in his FAP eligibility. *See* Hamby v. Neel, 368 F.3d 549, 557-9 (6th Cir. 2004); Flatford v. Chater, 93 F.3d 1296, 1304 (6th Cir. 1996) ("In light of *Perales*, all appellate courts to date, including this one, have not questioned whether a social security claimant has a property interest in benefits for which he or she hopes to qualify.") (citing Perales, 402 U.S. at 401–02). As such, a 2011 law taking away Mr. Bennett's right to benefits due to a 2005 judgment is legally similar to a 2011 law imposing additional monetary liability upon a 2005 judgment; such "primary" retroactive application of law is unconstitutional. Friess, at id.; Laitos, 52 Wash. U. J. Urb. & Contemp. L., fn. 129 (listing cases).

The Policy also implicates procedural due process concerns regarding his criminal convictions. Mr. Bennett twice pled guilty to drug possession in 2005 with no possible awareness that, in 2011, those exact pleas would render him permanently banned from food assistance. In fact, at the time of his pleas, the federal law was in place and Michigan had a milder form in place. *See* People v. Temelkoski, 501 Mich. 960 (2018); U.S. v. Randolph, 230 F.3d 243, 249 (6th Cir. 2000); Brady v. U.S., 397 U.S. 742, 755 (1970) (A guilty plea must be entered "by one fully aware of the direct consequences."); *see also* Padilla v. Kentucky, 559 U.S. 356, 365 (2010)

("We . . . have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance . . . .'"); Landgraf, 511 U.S., at 281-282.

Imposing these retroactive consequences upon Mr. Bennett robs him of the benefit of his bargain in his plea agreements and, similarly, violates constitutional principles of fairness governing the use of plea agreements. Indeed,

> Although plea agreements are contractual in nature, a defendant's underlying right of contract is constitutional, and therefore implicates concerns in addition to those pertaining to the formation and interpretation of commercial contracts between private parties. Therefore, [b]oth constitutional and supervisory concerns require holding the government to a greater degree of responsibility than the defendant . . . for imprecisions or ambiguities in the plea agreements. U.S. v. Johnson, 979 F.2d 396, 399 (6th Cir. 1992) (string cite/citations/quotations omitted).

The facts at bar go well beyond mere "imprecisions or ambiguities" in Mr. Bennett's "plea agreements." Id. At the time of his pleas, Mr. Bennett could not have considered that he was permanently forfeiting food assistance.

The Supreme Court, evoking due process concerns, has gone to great lengths to avoid reading new civil laws to attach retroactive civil disabilities to previous plea bargains. *See*, *e.g.,* I.N.S. v. St. Cyr*,* 533 U.S. 289, § III; Vartelas v. Holder, 566 U.S. 257, § II (2012). While these are cases of statutory interpretation, their application of the presumption against retroactivity is employed for the sake of constitutional avoidance. St. Cyr, at 300 ("[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible,' we are obligated to construe the statute to avoid such problems.") As such, while these cases are not decided on constitutional grounds, that is only because statutory ambiguities in the laws at issue allowed the Court to avoid potentially adverse constitutional determinations. Still, the Court does not shy from expressing that constitutional principles militate against retroactive application of law, especially if it disrupts a

previous plea bargain. *See* Id., at 314-316; Vartelas, at 266 (citations omitted). And here, the text of the law renders retroactive application unavoidable, thus forcing the constitutional question.

ii. State Constitution

It is unconstitutional for civil disabilities to attach retroactively so as to disrupt settled legal expectations in place at the time of a plea agreement. *See* Temelkoski, 501 Mich. 960; *see also* United States v. Neuhard, 770 Fed.Appx. 251, fn. 3 (6th Cir. 2019) (citing Temelkoski) The Policy was enacted six years after Mr. Bennett plead guilty. Its retroactive application violates the settled legal expectations at the time of his pleas. Indeed, "Where retroactive application of a statute disturbs settled expectations based on the state of the law upon which a party relied at the time an action was taken such that 'manifest injustice' would result, the Due Process Clause prohibits retroactive application of the law." Temelkoski, 501 Mich. 960 (2018) (citations omitted).

b. Irrebuttable Presumption and Lack of Rational Basis

Defendants' Policy imposes a lifelong ban on persons with convictions for two or more drug offenses receiving food assistance. The Supreme Court has long disfavored policies that create "irrebuttable presumptions" against classes of people, finding that such policies lack a rational basis and violate due process rights under the Fifth Amendment and the Fourteenth Amendment. Vlandis v. Kline, 412 U.S. 441, 446-47 (1973). The Court has struck down laws revoking drivers licenses of drivers unable to post security to cover damages from car accidents, Bell v. Burson, 402 U.S. 535 (1971), an Illinois law declaring unmarried fathers unfit to raise children, Stanley v. Illinois, 405 U.S. 645 (1972), and, a Connecticut law presuming that applicants to Connecticut's state universities had no intention of becoming permanent state residents. Vlandis, 412 U.S., at 448. In another instance, the Court found that the federal government's presumption that children claimed as dependents are financially ineligible for food

assistance to be violative of due process rights. United States Dep't of Agriculture v. Murry, 413 U.S. 508, 514 (1973).

Here, Defendants' Policy reaches back in time and irrebuttably finds that people with convictions for two or more drug offenses since 1996 will never be fit to receive food assistance. At hearing, Mr. Bennett may only argue about whether he, in fact, has two drug convictions since 1996. Such conclusive presumptions thus both violate Mr. Bennett's right to be heard, *see* Stanley, 405 U.S., at 650, and lack a rational basis, *see* Murry, 413 U.S., at 513. Such presumptions are especially onerous in the government benefits context. *See, e.g.,* id., Turner v. Dept. of Emp., 423 U.S. 44 (1975) (unemployment insurance), Vlandis, 412 U.S., at 451-2 (in-state tuition).

c. The Policy Arbitrarily Targets Mr. Bennett and Those Similarly Situated

i. Individuals with Drug Felony Records

Targeting drug felons for a lifelong ban and maintaining that ban through the pandemic while otherwise expanding food assistance cannot be squared with Equal Protection concerns. *See* Romer v. Evans, 517 U.S. 620, 633 (1996) (" A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense."); U. S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 534 (1973) ("For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.") As stated by the Supreme Court, "The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. It also imposes a

requirement of some rationality in the nature of the class singled out." Rinaldi v. Yeager, 384 U.S. 305, 308-9 (1966).

The Policy's targeting of drug felons for a lifelong ban is deeply arbitrary. This is articulated by the treatment of drug felons compared to similarly situated groups. For example, those who trade food assistance for drugs receive a two-year ban. BAM 720, p. 18, https://dhhs.michigan.gov/OLMWEB/EX/BP/Public/BAM/720.pdf. Those who commit fraud to receive multiple FAP benefits receive a ten-year ban. BEM 203, at p. 1. Those who commit an intentional program violation, including those who traffic in FAP benefits in an amount less than $500, receive a discretionary finite penalty. Id., at 4; BAM 720, at p. 18. Those with convictions for embezzlement, theft, and murder are eligible for FAP and receive increased benefits during the pandemic. *See* Michigan.gov, at *supra*, BEM 203 (no disqualification for these crimes). It is unconstitutional to single out a group from benefits in such an arbitrary manner. *See, e.g,* Moreno, 413 U.S., at 534; Augusta Towing Co., Inc. v. U.S., 5 Cl.Ct. 160, 165 (Ct. of Cl. 1984) (listing cases).

ii. Individuals and Households Who Are Indigent

Many laws, of course, have a disparate impact on the poor. However, a law or legal regime may not explicitly reserve harsher sanctions for the poor, while providing lesser sanction to those with more money. *See* Bearden v. Georgia, 461 U.S. 660, 665 (1983) (cannot automatically sentence indigent defendant to prison for failing to make restitution) (citation omitted). That is exactly what the Policy does, by providing a legal disability which, by its terms, applies only to the indigent, as only the indigent are eligible for food assistance. The legal disability imposed by the Policy applies only to those who either are or will become eligible for food assistance. See *id* at 665-666 (analyzing disparate treatment of poor under both due process and equal protection).

2. The Policy is an Excessive Fine under the Eighth Amendment and Michigan Constitution and Violates Mr. Bennett's Rights Against Cruel and Unusual Punishment and the Application of Ex Post Facto Laws.

To show that the Policy constitutes an excessive fine, Mr. Bennett must first prove that the Policy is a "fine" and then prove that the Policy is "excessive." *See* U.S. Const. Am. VIII; Austin, at *infra*. *see* Plaintiff's Verified Complaint at paragraph 59.

a. The Policy imposes a "fine"

The Eighth Amendment's Excessive Fines Clause ("the Clause") limits the state's authority to take away its citizens' property, be it in cash or otherwise, as means of punishment: "The Excessive Fines Clause . . . 'limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.' Forfeitures—payments in kind—are thus 'fines' if they constitute punishment for an offense." U.S. v. Bajakajian, 524 U.S. 321, 328 (1998) (quoting Austin v. United States, 509 U.S. 602, 609–610 (1993)). Put more simply, the Clause provides "[p]rotection again excessive punitive economic sanctions". Timbs v. Indiana, 139 S.Ct. 682, 689 (2019).

As such, the Clause's protections apply to both tangible and intangible property interests. *See, e.g.,* People v. Huag, 37 N.W. 21, 27-28 (Mich. 1888) (lifetime ban on liquor license); Alexander v. U.S., 509 U.S. 544, 558 (1993) (forfeiture of business interests "no different, for Eighth Amendment purposes, from a traditional 'fine.'"); United States v. Mongol Nation, 370 F.Supp.3d 1090, 1120 (C.D. Cal. 2019) (collective membership marks); Public Employee Retirement Admin. Com'n v. Bettencourt, 474 Mass. 60, 70 (2016) (state pension benefits); U.S. v. Tanner, 853 F.Supp. 190, 194 (W.D. Va. 1994) (promissory notes & business interests); von Hofe v. U.S., 492 F.3d 175, 181-2 (2007) (spouse's half interest in home); Shoul v. Penn., 643 Pa. 302, 326-8 (2017) (driver's license) (applying Austin, 509 U.S., at 609). The key question is

simply whether Defendants have stripped Mr. Bennett of some property interest. *See* Timbs v. Indiana, 139 S.Ct., at 689.

Mr. Bennett "has a property interest in benefits for which he . . . hopes to qualify." Flatford, 93 F.3d, at 1304 (citing consensus among circuits). The Sixth Circuit addressed a nearly identical question in Hamby. There, the court held that a Medicaid applicant's "claim to benefits gave him a protectable property interest." Hamby, 368 F.3d, at 559 (citing Perales, 402 U.S., at 398).

Thus, because Mr. Bennett has a property interest in his claim to benefits, if the Policy stripping Mr. Bennett of his eligibility amounts to "punishment," then the Policy should be treated as imposing a "fine" under the Eighth Amendment. *See* Bajakajian, 524 U.S., at 328. Importantly, to constitute a fine, the Policy need not impose a *criminal* punishment. Austin, 509 U.S., at 609-10. "Thus, the question is not, whether" the law in question "is civil or criminal, but rather whether it is punishment." Id., at 610.

And the "punishment" requirement should not be overstated. The Policy need only "serv[e] in part to punish" to qualify as a "fine". Id.

The Policy serves as punishment "at least in part." Id., at 618. In Austin, the Supreme Court held that civil in rem forfeiture of Defendant's car involved in the commission of the drug crime constituted "punishment" for Excessive Fine purposes. Id. The Court focused largely on the fact that the forfeiture law applied primarily to criminals. The forfeiture law in question provided for an innocent owner defense, thus evidencing the legislature's intent "to impose a penalty only upon those who are significantly involved in a criminal enterprise. . . The inclusion of innocent-owner defenses . . . reveals . . . congressional intent to punish only those involved in drug trafficking." Id., at 619. "Further," the Austin Court stressed that "Congress has chosen to

tie forfeiture directly to the commission of drug offenses." Id. Perhaps more fundamentally, the forfeiture in Austin was a fine because it "imposes an economic penalty" in connection with a crime. Austin, 509 U.S., at 617.

Similarly, in holding a civil forfeiture to constitute a punitive fine in Bajakajian, the Court emphasized that the forfeiture "cannot be imposed upon an innocent owner . . . but only upon a person who has himself been convicted of a § 5316 reporting violation." U.S. v. Bajakajian, 524 U.S. 321, 328 (1998). The Policy is more punitive than the forfeitures in Austin or Bajakajian. Here, the Policy is restricted to those who have drug felony convictions, and it is an automatic result of those convictions, making it even more punitive. Id., at 525.

b. The Fine is Excessive

The question then becomes whether the fine imposed upon Mr. Bennett is excessive. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." Bajakajian, 524 U.S., at 334. The grave consequence the Policy imposes upon Mr. Bennett cannot be squared with the nature of his fifteen-year-old drug possession convictions. *See* id., at 339; Huag, subsection C(2) at *infra*.

In assessing proportionality, it is paramount to assess the gravity of Mr. Bennett's specific actions and the proportionality of the consequence in relation to the specific damage done; Mr. Bennett's intent and circumstances behind his crimes are also relevant. Bajakajian, 524 U.S., at 338-9. Mr. Bennett has been convicted of no crimes beyond simple drug possession for personal use. That the Policy prohibits Mr. Bennett from receiving food assistance for the rest of his life is especially problematic. The Policy's drastic consequences here cannot be considered proportional.

c. The Policy Constitutes Cruel and/or Unusual Punishment

First, it must be established that the Policy constitutes "punishment." Next, it must be established that the Policy is "cruel and unusual" under the federal Constitution, U.S. Const. Am. VIII, "or cruel or unusual" under the Michigan Constitution, Mich. Const. 1963, Art. I, § 16. The standard for determining whether the state has imposed a "fine" is distinct from determining whether the state has imposed a "punishment"; the standard for determining whether a fine is "excessive" is distinct from determining whether a punishment is "cruel" and/or "unusual.

i. The Policy Exacts "Punishment" Upon Mr. Bennett

The Policy must cross a higher threshold of 'punitiveness' to qualify as a "punishment" under the Cruel/Unusual Punishment clauses of the Michigan and Federal Constitution than to qualify as a "fine." Something must be punitive "at least in part" to be a "fine"; but to be "punishment," tautologically, it must first and foremost be a punishment. *Compare* Austin, at id. Alexander, at id. /U.S. ex rel. Smith v. Gilbert Realty Co., Inc., 840 F.Supp. 71 (E.D. Mich. 1993) (Qui Tam action imposes "fine" under Eighth Amendment), *with* Ingraham v. Wright, 430 U.S. 651, 664, 667-8 (1977). That said, per Ingram, "An examination of the history of the Amendment and the decisions of this Court construing the proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes," which is readily applicable here. Ingraham, 430 U.S., at 664.

The Supreme Court accounts for the following in considering whether an act is "punishment":

> Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only [up]on a finding of scienter, whether its operation will promote the traditional aims of punishment--retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all

> relevant to the inquiry, and may often point in differing directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-9 (1963).

The Sixth Circuit further considers the following definition of punishment: "(1) it involves pain or other consequences typically considered unpleasant; (2) it follows from an offense against legal rules; (3) it applies to the actual (or supposed) offender; (4) it is intentionally administered by people other than the offender; and (5) it is imposed and administered by an authority constituted by a legal system against which the offense was committed." Snyder, at *infra*, 834 F.3d, at 701 (citations omitted). The Policy: (1) imposes painful consequence upon Mr. Bennett, though the government acknowledges his financial eligibility and inability to otherwise provide for himself; (2) it stems, not just from "an offense against the legal rules," but from the felony convictions themselves; (3) it applies only to those who have already been convicted of multiple drug felonies or those currently failing to comply with probation; (4)/(5) it was imposed, and is administered by, the State of Michigan, and mirrors the federal War on Drugs, *see* Senator Gramm, at *infra*.

ii. The Policy is Cruel and/or Unusual

It first bears mention that the Federal and Michigan constitution's restrictions on the government's ability to punish are distinct. The former prohibits "cruel and unusual" punishment. The latter prohibits "cruel or unusual punishment." The difference in language ("and" versus "or") has led courts to interpret Michigan's Constitutional prohibition to be broader than the Federal Constitution's. People v. Nunez, 619 N.W.2d 550, 554 n.2 (Mich. App. 2000). Importantly, while proportionality is relevant to both, proportionality is particularly dispositive under the Michigan Constitution. People v. Lorentzen, 387 Mich. 167, 176 (1972); *see* People v. Johnson, 423 N.W.2d 52, 54 (Mich. App. 1988); People v. Bowling, 830 N.W.2d

800, 804 (Mich. App. 2013). Thus, while it is offensive to both, the Policy's application to Mr. Bennett more clearly violates the Michigan Constitution than the Federal. People v. Benton, 294 Mich.App. 191 (2011).

By the State of Michigan's own standards, if Mr. Bennett does not get food assistance, he will go hungry. Punishing Mr. Bennett for his 2005 drug felonies by condemning him to a life of food insecurity is inhumane. In Huag, the Supreme Court of Michigan held it to violate state and federal prohibitions against cruel/unusual punishment to permanently strip Defendant Huag of his license to sell liquor. The Court stressed the inherently cruel and unusual nature of harsh and indefinite restrictions on one's livelihood, especially when such consequences are "mandatory".

d. Ex Post Facto Laws

If the Policy imposes a punishment, it is clearly unconstitutional as an ex post facto law. Does #1-5 v. Snyder, 834 F.3d 696, 705-6 (6th Cir. 2016. As discussed above, the Policy is a punishment. Its retroactive application is thus unconstitutional under both the state and federal constitutions. Lindsey v. Washington, 301 U.S. 397, 401 (1937) ("The Constitution forbids the application of any new punitive measure to a crime already consummated, to the detriment or material disadvantage of the wrongdoer."); People v. Earl, 845 N.W.2d 721, 725 (Mich. 2014).

3. Defendants Have Illegally Denied Mr. Bennett Reasonable Accommodations From Either the Policy Itself or the Resulting Collection Efforts; these Collection Efforts also Violate Mr. Bennett's Constitutional Due Process

a. Rehabilitation Act: Application of the Policy Itself

The Rehabilitation Act obligates entities who distribute and administer federal benefits, such as FAP, to make reasonable accommodations to ensure that "no otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, . . be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal

financial assistance." 29 U.S.C. § 794; *see* U.S. Airways v. Barnett, 535 U.S. 391, 397-98 (2002); *see also* Mayberry v. Von Valtier, 843 F.Supp. 1160, 1166 (W.D. Mich. 1994). This duty to reasonably accommodate includes a duty to provide reasonable modifications to a "disability-neutral rule." Barnett, at id.

The Supreme Court has recognized that the effects of a disability cannot be distinguished from the disability itself. *See* School Bd. Of Nassau County v. Airline, 480 U.S. 273, 282 (1987). The obligation to accommodate the effects of a disability encompasses a duty to accommodate criminal convictions resulting from disability. *See, e.g.,* Walsted v. Woodbury Co., 113 F.Supp.2d 1318 (N.D. Ia. 2000); Simmons v. Tm. Assoc. Mgmt., Inc., 287 F.Supp.3d 600, 603 (W.D.Va. 2018). In Walsted, for example, the court held that the Americans with Disabilities Act may prohibit an employer from firing an employee for twice being convicted of on-the-job theft when the theft stemmed from the employee's disability and a reasonable accommodation could prevent the theft in the future. Walsted, at 1333-4. In Simmons, the court held under the Fair Housing Act, which employs a similar definition of "disability" to the Rehabilitation Act, that a landlord could not deny housing to an applicant based upon his indecent exposure conviction where that conviction arose from disability. Simmons, at id. The court suggested that the landlord must provide a reasonable accommodation by simply overlooking the past conviction as the disability that caused it was stabilized. Id.

The text of the Rehabilitation Act provides especially prescient guidance in cases like Mr. Bennett's - where the subject convictions stemmed from drug abuse. As stated by the Act, "[T]he term 'individual with a disability' does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use . . . . Nothing in [the above] clause should be construed to exclude as an individual with a disability any individual

who . . . has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use." 29 U.S.C. § 705(20)(C)(i). This clause necessarily also indicates that past drug convictions should not be disqualifying for those like Mr. Bennett who have completed rehab. To read the clause as applying to former "illegal use of drugs" but not former drug convictions leads to an absurd result – that past illegal drug use should not be held against disabled applicants unless they got caught.

As detailed in his Verified Complaint, Mr. Bennett's drug use stemmed directly from his disabilities. The Rehabilitation Acts states that drug use may be disqualifying when "an individual . . . is currently engaging in illegal use of drugs [and] a covered entity acts on the basis of such use." Defendants are not acting on such a basis but are rather exclusively on the basis of drug use from 2005. Doing so discriminates against Mr. Bennett because of his past drug use stemming from disability, in contravention of the Rehabilitation Act. *See* MX Group, Inc. v. City of Covington, 293 F.3d 326, 342 (6th Cir. 2002) Defendants wrongfully denied Mr. Bennett's reasonable accommodation request accompanying his most recent FAP.

b. Rehabilitation Act: Resulting Collection Efforts

Mr. Bennett has, on several instances, requested that the overissuance be waived as a reasonable accommodation under the Michigan's hardship waiver procedure. Indeed, Michigan's hardship waiver policy is designed for exactly these situations. *See* MCL 400.43a(b)4. The overissuance stemmed from his disability. Administrative Law Judge Ferris held that the lack of reporting resulted from his "mental impairment that would limit the understanding or ability to fulfill this requirement with respect to completing an application for FAP." See Compl. ¶ 38.

Perhaps more troublingly, Defendants categorically exclude disability as a hardship that may serve as the basis for a hardship waiver or compromise. Instead of evaluating his reasonable accommodation requests/requests for hardship waiver, Defendants denied them on the sole basis that Mr. Bennett did not experience unexpected medical expenses. See Exhibits 1 & 2. Excluding disability as a ground for hardship waiver itself discriminates against the disabled, in violation of the Rehabilitation Act. *See* 29 U.S.C. § 794; Barnett, 535 U.S., at 397-98; see also Mayberry v. Von Valtier, 843 F.Supp., at 1166.

c. Due Process: Overissuance

Mr. Bennett did not report his convictions on his first FAP application because the application did not ask about them. Mr. Bennett's overissuance resulted because of his drug convictions. Forcing him to repay money he reasonably relied upon because he failed to answer a question that was not asked cannot be squared with due process protections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

In Lambert v. People of the State of California, 355 U.S. 225 (1957), the Supreme Court addressed whether it violated due process to convict a sex offender of failing to register when the offender did not have notice of the registration requirement. In reversing the conviction, the Court emphasized that "engrained in our concept of due process is the requirement of notice." Id., at 228. Here, Mr. Bennett filled out a benefits application and answered the questions that were asked.

IV. Conclusion

Mr. Bennett faces dire consequences if he cannot get proper nutrition. He is unable to get food assistance because of the retroactive application of a 2011 Policy. Adding insult to injury, Defendants threaten to garnish his $913 in monthly income. Instead, Defendants should be

enjoined from denying Mr. Bennett food assistance and from garnishing his Social Security Disability Income.

Respectfully submitted,
UNIVERSITY OF MICHIGAN
VETERANS LEGAL CLINIC

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MICHIGAN POVERTY LAW PROGRAM

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Dated: July 27, 2020

I verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in the foregoing Verified Motion and Brief in Support are true and correct to the best of my knowledge and belief.

Executed on the 10th day of July, 2020

/s/Bill Bennett_____
Bill Bennett

EXHIBIT 1

STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

September 5, 2018

To: Bill Bennett
Attn: Eric Sirota, Attorney
Veterans Law Clinic
Michigan School of Law
701 S. State Street
Ann Arbor, MI 48109

From: Bobi Dixon-Ingalls, Policy Specialist
Overpayment Establishment Section
PO Box 30037 Suite 808
Lansing, MI 48909
517-284-2959

Re: DHHS Case No.: 101446806
DHHS Claim Number: 10000-6898642

Dear Mr. Bennett,

You recently requested a hardship/compromise of your debt with the Michigan Department of Health and Human Services (MDHHS). The MDHHS looks at claims for compromise with unexpected and unforeseen high out-of-pocket medical expenses. These are medical expenses that are NOT covered by Medicaid, Medicare or other third-party payees.

MDHHS will NOT compromise ANY debts that were the result of an intentional program violation (IPV) or if you were found guilty through a court of law.

If you have out-of-pocket medical expenses that are not paid by Medicaid, Medicare an insurance company or other third party, your claim can be reviewed for compromise. Please provide verification of your current medical expenses directly to me at the address above. I can review for a compromise determination.

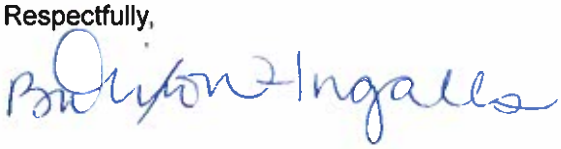
Other verifications I will need include; clarification of information in your request. You stated in your request:

1. That you have no assets and no bank accounts. However, our records indicate your social security disability benefits are deposited into a checking account. Please send verification of all bank accounts and any assets you have.

2. That you are a disabled veteran. However, you did not state if you have a service connected disability.

- If your disability is a service connected disability, please provide verification of your compensation or status of your application.
- If your disability is not related to your service, please provide verification of your VA pension or status of your application.

Respectfully,



Bobi Dixon-Ingalls

EXHIBIT 2

STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

RICK SNYDER
GOVERNOR

NICK LYON
DIRECTOR

November 21, 2018

To: Bill Bennett
Attn: Olivia Dworkin and Nicole Hoehle, Student Attorneys
Veterans Law Clinic
Michigan School of Law
701 S. State Street
Ann Arbor, MI 48109

From: Bobi Dixon-Ingalls, Policy Specialist
Overpayment Establishment Section
PO Box 30037 Suite 808
Lansing, MI 48909
517-284-2959

Re: DHHS Case No.: 101446806
DHHS Claim Number: 10000-6898642

Dear Mr. Bennett,

You recently requested a hardship/compromise of your debt with the Michigan Department of Health and Human Services (MDHHS). The MDHHS looks at claims for compromise with unexpected and unforeseen high out-of-pocket medical expenses. These are medical expenses that are NOT covered by Medicaid, Medicare or other third-party payees.

You are correct, federal regulations, Michigan administrative rules and MDHHS policy do allow for MDHHS to compromise claims. Due to the nature of business at MDHHS, all clients we serve have economic hardships. The Department uses out of pocket medical expenses and emergent and unforeseen emergencies as a guideline for approval.

Although you did provide medical documentation, no medical expenses were provided.

If you have out-of-pocket medical expenses that are not paid by Medicaid, Medicare an insurance company or other third party, your claim can be reviewed for compromise. Please provide verification of your current medical expenses directly to me at the address above. I can review for a compromise determination.

Respectfully,

Bobi Dixon-Ingalls

Bobi Dixon-Ingalls