

“The 60-month rule is incredibly unfair”

Legal advocate speaks on cuts to Michigan welfare aid

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The World Socialist Web Site recently spoke to Terri Stengl, executive director for the Center for Civil Justice (CCJ). CCJ sponsored two legal challenges to the termination of welfare benefits implemented by Michigan’s Governor Rick Snyder. The measures impose a 48-month cash assistance limit on benefits. CCJ’s first case was filed before a federal judge opposing the short notification period for the cutoff of benefits. CCJ won this case, forcing the state to delay the cutoffs by one month and stipulating that notices had to be sent out in a timely fashion. The second lawsuit, filed on behalf of four Genesee County clients, is still pending.

Terri Stengl: The first lawsuit we filed in August was to challenge the notices that were sent out to clients. That was a due process challenge. We said the notices that were sent out to clients did not provide them with enough information about why they were being cut off. Also those who received a notice could not get access to the rule that was being applied. The policy rule was not made public until after the deadline for filing the hearing.

Lawrence Porter: This was a federal case?

TS: This was a federal case that we filed in August. And the federal judge said yes, the notices don’t provide due process. You have to give everybody a new notice. That is what led to the delay in the implementation [of the termination of cash assistance] from October 1 to November 1.

LP: So this was a federal case, and a state decision?

TS: There were two cases. There was a federal case that delayed the implementation and generated a new notice. And at the end of October we filed a case in state court in Genesee County. That’s the one you probably heard about, the state case. The federal case is done. All we got was a new notice. So we filed a state case at the end of October.

What we were saying in the state case is we are challenging the policy, not a law, not a regulation, just the

policy that the department wrote that it was cutting most of the people off under a 60-month time limit. That was based on how many months someone received federally funded benefits since 1996.

LP: And the law went back to 2007?

TS: What happened was in 1996 Congress changed what used to be called the ADC program [Aid to Dependent Children], which was an entitlement program so that for anyone who qualified in the state the fed kicked in half of the money. It was then changed to a block grant. They then said to the states, we are only going to pay federal dollars for up to 60 months, but you can exempt up to 20 percent of your caseload. That is what the federal law said. The Michigan legislature and Governor (John) Engler chose not to have any time limit from 1996 to 2007. So, now the legislature is saying we want to have a time limit and we are going to start the clock in 2007.

LP: This was passed under the Clinton administration.

TS: Yes, and at that point [counselor for the Department of Health and Human Services] Peter Edelman quit in protest because he disagreed with the Clinton administration signing that law.

LP: So, between 1996 and 2007 there were no limits....

TS: Right, there were no limits and in 2007 the legislature implemented a 48-month time limit. They started the clock on October 1, 2007, and they built in a number of exemptions and clock-stoppers—things that didn’t count against the clock.

Then in 2011, the Michigan legislature tightened up, if you will, the 48-month limit, and eliminated the clock-stoppers....

And the [DHS] on its own, completely separate from what was written in the state law, came up with this other time limit that said if you got more than 60 months of benefits, going all the way back to when the federal law was passed in 1996, we were going to knock you off. So they basically re-set where the clock started. They basically said there are no

exemptions or clock-stoppers, and they came up with this entirely separate rule as a matter of state policy as opposed to state statute....

Administrative agencies are supposed to follow federal law; they are supposed to follow state law. There are some instances where they can come up with policies that are more specifically different than the state law. But this is something that is in a manual; it is online, and they came up with a written rule saying, “We are going to cut all of these people off under this rule”—and the federal law does not require it. It actually conflicts with what the legislature passed under the 48-month rule. And they came up with it as an independent ground to cut people off.

LP: And this is what you are challenging?

TS: Yes. The state basically told us that all but about 100 families were being cut off under the 60-month rule instead of the 48-month rule....

We are saying that the state law does not authorize it. It was not promulgated as an official administrator rule. So those are two separate arguments. One is that it conflicts with what the legislature did do. And because of this it does not fall within certain inscriptions. Once the legislature speaks you can’t do something that contradicts that unless you have the authority for it. They are trying to say the federal funding rule requires them to do that [cut people off] and that is simply not true.

LP: In other words what they have done is to come up with another rule based on a different interpretation, if they want to call it that.

TS: It is not even an interpretation; it is just an out-and-out different way to cut people off. They are looking at each person getting cash and saying if either rule applies, they will cut them off. People are being cut off under different rules. For those who received benefits from 1996 to 2007, they can be cut off now—even if they have been working since 2007.

LP: So what they are doing is looking at each case and trying to cut people off either way—through the federal rule or the state policy?

TS: Right, right, they are running a test, running both tests.

LP: What is your feeling about these cuts all together?

TS: The 60-month rule is incredibly unfair. It is very, very harsh. It is applying a rule to people who for 15 years were told these rules didn’t apply, that they were deferred. For example, if a family had a very disabled child, we recognized they could not necessarily work while caring for the child. Now all those months are counted against people. So in a lot of situations people were told there was one set of rules, and now they are told something new.

Another example is people who were working low-wage

jobs from 2007 to 2011 and supporting a large family. Previously they were told that those months didn’t count against them. Now those months, under the state law, count against them. Going forward, and under the 60-month rule, all of them count, period.

LP: A large number of the people who are being cut off are working. They just don’t earn enough money.

TS: Yes! Since the Engler administration, people who were doing what we asked them to do, accepting jobs and working the hours they need to work, were not cut off. Why should we not help them out, just because they are not earning enough yet or they haven’t found a job?

If they are playing by the rules and doing whatever their caseworkers are asking them to do to find a job and keep a job, then why cut the safety net out? This is especially true in the current climate where the wages are stagnant and a lot of people are working part-time jobs or multiple part-time jobs. If you have a few kids you are probably not making enough to make ends meet.

LP: That is the major issue. Many people have told the WSWs that the majority of the funds they receive must go to rent.

TS: Yes, because housing costs continue to go up—rents along with mortgages. And people have used their allocation to pay utilities.

I think there are a couple of issues with this hearing process. I am not sure whether clients really had advanced notice of how the department was counting the months, if they do want to contest it. Were clients’ attorneys told that they had to be there at a certain time or their case would be dismissed? Were they told they would have to wait around until their case was called? It may take hours before a case is called.

LP: Yes, I heard yesterday that this is exactly what happened. People were waiting for hours.

TS: Yes, people could be thinking, “Gee, I have a 10 a.m. hearing. I’ll take an hour off from work.” So people very well may have to leave because of work or kids and not be prepared for that. This is a change from other hearings because then clients were told a specific time and the hearing generally lasted an hour and they were done.



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