COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO.

KELLY GLYNN, et al.,

Plaintiffs,

v.

AMY KERSHAW, as Commissioner of the Massachusetts Department of Transitional Assistance,

Defendant.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR PRELIMINARY RELIEF

I. INTRODUCTION

Plaintiffs in this case seek a temporary restraining order and preliminary injunction restraining and enjoining the Department of Transitional Assistance (DTA) from taking action against Massachusetts SNAP households who spend their SNAP benefits outside of Massachusetts. Pursuant to its policies and practices, DTA presumes that households who have used their benefits out of state for a period of time are no longer residents of Massachusetts. DTA then either terminates the household's SNAP benefits or requires the household to re-verify residency and terminates SNAP if DTA does not receive re-verification it deems insufficient.

These DTA policies and practices violate federal law which requires DTA to facilitate interoperability and portability of SNAP nationwide so that beneficiaries can access SNAP benefits issued by their home state in any other state. These policies and practices also violate federal law governing verification of residency and federal law allowing the state to pursue re-

verification of information only if the information is both unclear and required to be reported by the household.[1]

Plaintiffs face irreparable injury and are likely to succeed on the merits of their claims that DTA violates federal law when it penalizes Massachusetts residents who spend their SNAP benefits outside Massachusetts.

II. LEGAL BACKGROUND

A. The Federal and State SNAP Program

Congress established the federally-funded, state administered Food Stamp Program, now called the Supplemental Nutrition Assistance Program (SNAP), to "safeguard the health and well being of the Nation's population by raising the levels of nutrition among low income households." 7 U.S.C. § 2011. The goal of the program is to "alleviate hunger and malnutrition [by]...permit[ing] low income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation." 7 U.S.C. § 2011; *see also* 7 U.S.C. § 2026(b)(1)(B)(i) ("goal of supplemental nutrition assistance program" is to provide food assistance to raise levels of nutrition among low income individuals").

SNAP is administered by state agencies that request to participate in the program, subject to federal regulations. 7 U.S.C. §§ 2012(t), 2013(a), 2020(a). The federal government covers the entire cost of SNAP benefits, and half of the State's administrative costs. 7 U.S.C. §§ 2013(a), 2015(a). In Massachusetts, the Department of Transitional Authority (DTA) is the state agency responsible for administering the SNAP program. G.L. c. 18, §§ 1, 2. State law requires DTA to

[1] Because plaintiffs have a strong likelihood of success on their statutory claims, plaintiffs have refrained from raising their constitutional claims in this motion. *See SCVNGR, Inc. v. Punchh, Inc.*, 478 Mass. 324, 325 (2017) (duty to avoid unnecessary decisions of serious constitutional issues).

carry out the SNAP program "in conformity with all requirements governing the granting of federal aid to the commonwealth." G.L. c. 18, § 10.

Participation in SNAP is "limited to those households whose incomes and other financial resources ... are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." 7 U.S.C. § 2014(a). Federal law provides that SNAP benefits are an entitlement for those who apply and are eligible: "Assistance under this program shall be furnished to all eligible households who make application for such participation." 7 U.S.C. § 2014(a). In light of the critical nature of the benefit and its entitlement status, Congress has required that state agencies "provide timely, accurate, and fair service to applicants for, and participants in, the supplemental nutrition assistance program." 7 U.S.C. § 2020(e)(2)(B)(i).

Federal law requires state agencies that participate in SNAP to deliver SNAP benefits via an electronic benefits transfer (EBT) system that complies with federally established standards. 7 U.S.C. § 2016(h). SNAP beneficiaries use their EBT cards to purchase SNAP-authorized food products at grocery stores and other authorized SNAP vendors. Federal law also requires participating states to facilitate interoperability and portability nationwide so that SNAP beneficiaries can access SNAP benefits issued by their home state in any other state. 7 U.S.C. § 2016(j)(2). "The term 'portability' means a system that enables program benefits in the form of an electronic benefit transfer card to be used in any State by a household to purchase food at a retail food store or wholesale food concern approved under this chapter." 7 U.S.C. § 2016(j)(1)(E).

Federal regulations implementing the SNAP statute are careful to assure that low income individuals are not barred from benefits because they are homeless or lack a specific proof that they are residents of the state. The regulations provide that "[a] household shall live in the State in which it files an application for participation," but add that "[t]he State agency shall not

require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents." 7 C.F.R. § 273.3(a). Indeed, residency need not be verified for homeless households, migrant workers, or households newly arrived in the state "where verification of residency cannot reasonably be accomplished." 7 C.F.R. § 273.2(f)(1)(vi). Further, "[a]ny documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed." *Id.*

Households are certified for SNAP for specified periods of time. 7 U.S.C. § 2012(f). "Certification period" is defined as "the period for which households shall be eligible to receive benefits." Certification periods are generally no more than 12 months but may be longer if all adult household members are elderly or disabled. 7 U.S.C. § 2012(f). SNAP households are required to report certain changes during the certification period, either periodically or shortly after the change occurs, depending on the certification period and reporting type to which the state has assigned them. 7 U.S.C. § 2015(c).

DTA assigns most SNAP households to a certification period and reporting type called "Simplified Reporting." 106 C.M.R. § 366.110(C). Declaration of Victoria Negus, ¶ 3. Most Simplified Reporting households must be recertified every twelve months and must complete an Interim Report at the six-month point. Between those two review points, households only have to report if their gross income goes over the gross income limit for their household size, if they are subject to certain work rules and their work hours go below 20 hours per week, or if they receive substantial lottery or gambling winnings. Households with a member who is a person with disabilities or is 60 or older do not have to report any changes to their income between review

points. Simplified Reporting households do not have any other reporting requirements.[2] Negus Dec., ¶ 3.

In addition to limiting what changes SNAP participants are required to report and when they must report, federal law also restricts when the state may take action based on information the state has received. Thus, 7 U.S.C. § 2020(e)(26), allows the state to –

> pursue clarification and verification, if applicable, of information relating to the circumstances of the household received from data matches . . . only if the information – (A) appears to present significantly conflicting information from the information that was used by the State agency at the time of certification of the household; (B) is obtained from data matches carried out [to identify prisoners, deceased persons, or persons receiving SNAP benefits from another state]; or (C)(i) is less than 60 days old relative to the current month of participation of the household; and (ii) if accurate, would have been required to be reported by the household based on the reporting requirements assigned to the household by the State agency under [7 U.S.C. §] 2015(c) . . . .

This statutory provision, 7 U.S.C. § 2020(e)(26), was enacted as part of the Agriculture Improvement Act in 2018. Pub. L. 115-334, § 4009 (Dec. 20, 2018). The Conference Report states that it was "intended to codify existing regulation" at 7 C.F.R. § 273.12(c)(3), which established "[p]rocedures for required action on data matches." H.R. Rep. No. 115-1072, at 622 (2018) (Conf. Rep.).

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[2] Most other SNAP households have even fewer reporting and recertification requirements. DTA assigns many households where all adult members are age 60 or older or disabled to a type of Simplified Reporting called the SNAP Elderly-Disabled Simplified Application Project (EDSAP). EDSAP certifies eligible households for 36 months and does not require an Interim Report. EDSAP participants are not required to report changes during the certification period unless someone joins or leaves the household or someone in the household starts working. Negus Dec., ¶ 4.

DTA assigns many applicants for or recipients of federal Supplemental Security Income (SSI) benefits to a Massachusetts demonstration project called Bay State CAP. (CAP stands for "Combined Application Project"). Bay State CAP participants are certified for 36 months and are not required to report any changes to DTA at all. Instead, they must report any changes that might affect SSI eligibility to the Social Security Administration which reports the information to DTA. *See* Negus Dec., ¶ 5.

The regulation at 7 C.F.R. § 273.12(c)(3), intended to be codified by 7 U.S.C. § 2020(e)(26), is headed "Unclear information." The regulation provides:

> During the certification period, the State agency might obtain unclear information about a household's circumstances from which the State agency cannot readily determine the effect on the household's continued eligibility for SNAP, or in certain cases benefit amounts. The State agency may receive such unclear information from a third party. Unclear information is information that is not verified, or information that is verified but the State needs additional information to act on the change.
> (i) The State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure if unclear information received outside the periodic report is: Fewer than 60 days old relative to the current month of participation; and would, if accurate, have been required to be reported under the requirements that apply to the household under 273.12 based on the reporting system to which they have been assigned. Additionally, the State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure for any unclear information that appears to present significantly conflicting information from that used by the State agency at the time of certification.
> ……
> (ii) If the unclear information does not meet the criteria in paragraph (c)(3)(i) of this section and does not relate to the matches described in paragraph (c)(3)(iii) of this section [i.e., matches to identify beneficiaries who are incarcerated or dead], then the State agency shall not act on the information or require the household to provide information until the household's next certification action or periodic report is due. A State may follow up with a household to provide information on a voluntary basis if that information would result in an increase in benefits but may not take adverse action if the household does not respond.

See also 7 C.F.R. § 273.12(a)(5)(vi)(barring the state from acting on data matches the state receives from other sources where the information was not required to be reported by the household).

Nothing in federal or state SNAP law or policy requires households to report temporary stays out of state.[3] However, according to a DTA Operations Memo, DTA monitors "the

[3] There are not even any specific rules requiring the household to report a move out of state. The federal SNAP statute, 7 U.S.C. § 2014a, provides that "notwithstanding any other provision of law, a household certified to participate in the Supplemental Nutrition Assistance Program is required to report in a manner prescribed by the Secretary if the household no longer resides in the State in which it is certified." The Secretary has not prescribed any specific manner of reporting out-of-state residency.

continuous out of state EBT usage of … SNAP benefits in an effort to determine if residency may be presumed to be abandoned." DTA Operations Memo 2013-34 (July 26, 2013), available at https://eohhs.ehs.state.ma.us/DTA/PolicyOnline/olg%20docs/fo/13/34.pdf (last visited Sept. 20, 2020). The memo says that DTA then takes action depending on whether the household receives only SNAP or receives a combination of cash assistance and SNAP, the length of time the household used benefits out of state, and whether the benefits were used only in New England or New York or in other states. According to the memo, some households are required to re-verify their Massachusetts residency and are terminated if DTA does not receive the re-verification or if DTA does receive it but deems it insufficient. SNAP households where any member receives cash assistance are simply closed after 70 days of usage outside New England or New York.

III. FACTS

Plaintiff Kelly Glynn[4] was born in Massachusetts and has lived in Massachusetts her entire life. She has been homeless for some time. She describes herself as "living out of a suitcase." Until August 10, 2020, she was receiving SNAP benefits through DTA.

Ms. Glynn's official address is her parents' home in Everett, Massachusetts where she often stays. Ms. Glynn receives mail at this address, including from the Department of Transitional Assistance. She has a Massachusetts state identification card, renewed in October 2019, with that address.

In January 2020, Ms. Glynn traveled from Massachusetts to Stuart, Florida to help a very close friend who had undergone several surgeries. Ms. Glynn planned to stay for a couple months to help her friend and her friend's family. Because of the pandemic, Ms. Glynn has stayed in Florida much longer than she expected. She would like to return to Massachusetts as

[4] For facts regarding Ms. Glynn, please see the Complaint, which Ms. Glynn has verified.

soon as possible, but she takes seriously the advice of many experts that it would not be safe for her to travel now because of the COVID-19 pandemic. Moreover, she would not be able to comply with the current Massachusetts requirements for travelers from Florida, who must either quarantine for 14 days after arriving in Massachusetts or be able to produce proof of a negative test result for COVID-19 from a test a sample taken no longer than 72 hours before arrival. Massachusetts COVID-19 Travel Order, https://www.mass.gov/info-details/covid-19-travel-order#lower-risk-states- (last visited September 18, 2020). Ms. Glynn does not have access to a test in Florida. Nor does she have a way to quarantine when she returns to Massachusetts, since she would have to stay at her parents' home which does not have enough separate space for her to quarantine. She also does not want to risk infecting her parents who are in their 80s.

While in Florida, Ms. Glynn used her SNAP benefits at Florida grocery stores to buy food for herself and reduce the burden on her friend and her friend's family. SNAP recipients are not required to notify DTA when they use their benefits in another state. In fact, Ms. Glynn was not required to report anything to DTA until her next recertification, scheduled for January 2021, unless her gross income went above the reporting threshold for her case.

Nevertheless, in April 2020, DTA sent a notice titled "Residency Verification Notice" to Ms. Glynn at her Everett address. The notice stated "Our records indicate that you have been using your benefits in Florida during the past several months. You need to provide us with verification that you still reside in Massachusetts. You must provide this verification within 10 days of receiving this notice or your case will be closed. If you are no longer a Massachusetts resident, you may apply for benefits in the state in which you reside." Ms. Glynn responded to this notice with a copy of her recently renewed Massachusetts state ID showing her Everett address.

By notice dated July 6, 2020, DTA informed Ms. Glynn that it would terminate her

SNAP benefits on August 10, 2020 for failure to provide the requested verification of Massachusetts residency. This time, Ms. Glynn sent a statement written and signed by her mother declaring that Ms. Glynn's address is her mother's home in Everett.

DTA then sent Ms. Glynn another Residency Verification notice identical to the first one, dated July 7, 2020, the day after the termination notice. In response, Ms. Glynn sent DTA a copy of an envelope sent to her Everett address.

The notices DTA sent to Ms. Glynn told her that she could call a SNAP worker if she needed help. After several attempts to reach the number provided in the notice, Ms. Glynn was able to speak with a SNAP worker who told her she should apply for SNAP in Florida. Ms. Glynn understands that it would not be legal for her to apply for and receive SNAP benefits in Florida, because she is not a resident of Florida, nor does she intend to become a resident of Florida.

Even before Ms. Glynn's SNAP benefits were cut off, she could not buy all the food she needed to maintain her health. Sometimes she did not have enough food, and had to skip meals. She says it is worse now; in addition, having to rely on her friend for food is very upsetting to her.

Ms. Glynn is not alone. Other SNAP households who use their benefits out-of-state are similarly terminated without regard to their continuing need for food assistance. Negus Dec, ¶¶ 10-14.

IV. LEGAL ARGUMENT

When presented with a motion for preliminary injunction, "[t]he task for the motion judge is to balance the risk of irreparable harm to the plaintiff and defendant 'in light of [each] party's chance of success on the merits' at trial." *Planned Parenthood League of Massachusetts,*

Inc. v. Operation Rescue, 406 Mass. 701, 710 (1990) (quoting *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980)). A court faced with a request for a preliminary injunction must weigh the potential harm to the plaintiffs and their likelihood of success on the merits against any showing of irreparable harm that might ensue if the injunction were granted. *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 87-88 (1984). As the Supreme Judicial Court has stated:

> Since the goal is to minimize the risk of irreparable harm, if the moving party can demonstrate both that the requested relief is necessary to prevent irreparable harm to it and that granting the injunction poses no substantial risk of such harm to the opposing party, a substantial possibility of success on the merits warrants issuance of the injunction.

Packaging Indus., 380 Mass. at 617 n.12.

For the reasons set forth in Part A, the plaintiffs have a strong likelihood of success on the merits of their claims that DTA's policies and practices regarding out-of-state SNAP usage violate federal law. For the reasons set forth in Part B, plaintiffs face the immediate threat of irreparable harm that outweighs any risk of harm to DTA if it is preliminarily enjoined from taking action against households who use their benefits outside Massachusetts. The requested preliminary relief should therefore be granted.

A. Plaintiffs Have a Substantial Likelihood of Success on the Merits of Their Claims That DTA's Policies and Practices on Out-of-State SNAP Usage Violate Federal Law.

1. Violation of Federal Statute Requiring Interoperability and Portability of SNAP Benefits

Congress enacted interoperability and portability requirements for the SNAP program, in 2000. Electronic Benefit Transfer Interoperability and Portability Act, Pub. L. No. 106-171, § 3 (Feb. 11, 2000). The statute unequivocally requires the state to facilitate nationwide interoperability and portability of SNAP benefits so that SNAP beneficiaries can access SNAP benefits issued by their home state in any other state. 7 U.S.C. §2016(j)(2).

The Act states that its purposes are:

> (1) to protect the integrity of the food stamp program;
> (2) to ensure cost-effective portability of food stamp benefits across State borders without imposing additional administrative expenses for special equipment to address problems relating to the portability;
> (3) to enhance the flow of interstate commerce involving electronic transactions involving food stamp benefits under a uniform national standard of interoperability and portability; and
> (4) to eliminate the inefficiencies resulting from a patchwork of State-administered systems and regulations established to carry out the food stamp program.

Pub. L. No. 106-171, § 2.

Supporters of the bill emphasized that one of its goals was to assure that electronic benefit transfer systems for providing food stamp benefits afforded beneficiaries the same options to use their benefits in any state that they had under the previous food stamp coupons system. In the words of Rep. Goodlatte, who introduced the House version of the bill,

> Under the old paper food stamp system, recipients could redeem their food coupons in any authorized food store anywhere in the country. For example, a food stamp recipient living in Bath County, Virginia, could use their food stamps in their favorite grocery store, even if that happened to be in West Virginia. Similarly, a recipient living in Tennessee could visit their mother in Virginia and purchase food for their children while away from home.
> . . . . . .
> EBT portability is simply allowing recipients of benefits under the food stamp program to redeem those benefits without regard to State borders at the stores they choose.

146 Cong. Rec. H62-01, H63 (daily ed. Jan. 31, 2000). Speaker Boehner reinforced this point:

> This common sense piece of legislation will achieve portability for the delivery of food stamp benefits in every State across the Nation. The legislation that my colleague has introduced is very important as the States make the transition from paper coupons or food stamps to a more efficient electronic system.

146 Cong. Rec. H62-01, H64 (daily ed. Jan. 31, 2000). *See also* 146 Cong. Rec. H62-01, H63-H65 (daily ed. Jan. 31, 2000). (statements of Rep. Combest, Chair of the House Agriculture Committee; Rep. Stenholm; Rep. Emerson); 146 Cong. Rec. E63-01, E63 (daily ed. Jan. 31, 2000) (statement of Rep. Clayton) ("a significant number of shoppers need the flexibility to shop at stores across state lines, which is a program benefit enjoyed without restrictions under the

previous coupon redemption system"). Sen. Fitzgerald, the lead sponsor of the Senate bill, specifically commented on the importance to a beneficiary "living in Illinois" of being able to "visit family in Tennessee and still purchase food for his children." 145 Cong. Rec. S14877-01, S14878 (daily ed. Nov. 19, 1999). *See also* 146 Cong. Rec. H62-01, H64 (daily ed. Jan. 31, 2000) (statement of Rep. Jackson-Lee) ("Clearly, we do not want our citizens burdened when they cross state lines to visit friends and families").

Instead of *facilitating* portability, as required by the statute, DTA *penalizes* SNAP households who use their benefits for a period of time outside Massachusetts – either terminating their SNAP or requiring them to re-prove the bona fides of their Massachusetts residency and terminating them if they do not do so to DTA's satisfaction. Because these policies and practices violate the express statutory mandate of 7 U.S.C. § 2016(j)(2), plaintiffs are likely to succeed on the merits of this claim.

2. Violation of the Federal SNAP Statute and Regulations that Govern Verification of Residency

The federal SNAP statute, 7 U.S.C. § 2020(e)(6)(A), requires the State agency to certify applicant households in accordance with regulations issued by the Secretary. A regulation issued by the Secretary to implement the statute, 7 C.F.R. § 273.2(f)(1)(vi), among other things (1) requires the state agency to accept any documents or collateral contact that reasonably establish the applicant's residency, and 2) waives verification of residency in the case of homeless households.[5]

DTA does not comply with these mandates when it pursues further verification of

[5] The state is supposed to verify residency "prior to certification for households initially applying." 7 C.F.R. § 273.2(f)(1)(vi). The regulations do not require re-verification of residency when the household is recertified. However, the federal regulations state that "information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification." 7 C.F.R. § 273.2(f)(8)(i)(D).

residency from households who have used their SNAP benefits out of state. As shown by Ms. Glynn's case, the agency did not accept documents that reasonably establish her residency, including her Massachusetts state ID and the written statement from her mother attesting to Ms. Glynn's address in Everett. DTA appears to have made no effort to make a collateral contact[6] to confirm her mother's written statement in accordance with federal regulations. Moreover, DTA does not waive verification of residency in the case of homeless households as required by federal regulation. Plaintiffs are therefore likely to succeed on the merits of their claim that DTA policies and practices of requiring households who have used their benefits out of state to re-verify their residency violate the federal statute, 7 U.S.C. § 2020(e)(6)(A), and the regulations that construe and implement the statute, including 7 C.F.R. § 273.2(f)(1)(vi).

3. Violation of Federal Statute and Regulations Barring State from Acting on Information Unless the Information is Both Unclear and Required to Be Reported by the Household

The federal "unclear information" regulation, 7 C.F.R. § 273.12(c)(3), which Congress intended to codify when it enacted 7 U.S.C. § 2020(e)(26), bars DTA from acting on information unless the information is both "unclear" and required to be reported by the household. The information DTA receives from its tracking of out-of-state SNAP usage confirms that the household is using its benefits out-of-state as it is permitted to do under federal law. This information is undisputed. It is not "unclear." No doubt DTA will argue that information about continued out-of-state usage, while not unclear in itself, raises a question about whether the household continues to reside in Massachusetts. The regulation, however, does not authorize

[6] For the SNAP rules on collateral contact, see 7 C.F.R. § 273.2(f)(4)(ii).

DTA to act on information that simply raises a question, as opposed to information that is in fact "unclear."[7]

Moreover, even if the information about out-of-state SNAP usage were somehow "unclear" under the regulation, the regulation allows DTA to pursue clarification from the household only if the information "would, if accurate, have been required to be reported under the requirements that apply to the household under 273.12 based on the reporting system to which they have been assigned." 7 C.F.R. § 273.12(c)(3)(i). Most SNAP households in Massachusetts must be recertified every twelve months and must complete an Interim Report at the six-month point. Between these review points, these households are spared having to communicate with or interact with DTA except in very limited circumstances. Many households have even longer intervals between review points and even more limited reporting requirements. Nothing in the federal statute or regulations requires SNAP households who use their benefits out of state to re-verify their Massachusetts residency. The "unclear information" regulation, 7 C.F.R. § 273.12(c)(3), expressly prohibits DTA from acting on "unclear information" the household was not required to report. Plaintiffs are therefore likely to succeed on the merits of their claim that DTA violates federal law when it acts on the out-of-state usage data match.

B. Plaintiffs Will Suffer Irreparable Harm If the Injunction Is Not Granted and There is No Substantial Risk of Harm to the Defendant.

Loss of or reduction in SNAP benefits is commonly reported as the trigger for food insecurity among low-income households.[8] When SNAP benefits are cut off or run out,

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[7] The Food and Nutrition Service explanation of the "unclear information" regulation in the Federal Register Preamble to the final rule focused on information from a data match (such as new hire, employer, and unearned income data bases) that indicates a change in the household's income which, if correct, was required to be reported. The Preamble does not suggest any other types of "unclear information" that would warrant action against the household. 82 Fed. Reg. 2010, 2019-20 (Jan. 6, 2017).

households skip meals, substitute "Top Ramen," pasta and other cheap starches as well as canned goods for healthier foods, and rely on kin, friends, and food pantries.[9] Food insecurity is strongly tied to adverse health outcomes including depression, obesity, anemia in children, diabetes, asthma, and chronic obstructive pulmonary disease.[10]

There is no question that these harms are "irreparable." "Given the precarious financial state of these plaintiffs, the medical and psychological problems they must cope with, and the imminent danger (with [one named plaintff], the reality) that their [subsistence] benefits will be cut off . . . , I find abundant irreparable injury to the plaintiffs if they are denied preliminary injunctive relief." *Minnefield v. McIntire*, No. CIV. A. 99-3349, 1999 WL 823890, at *10 (Mass. Super. Aug. 27, 1999) (Gants, J.). *See also Smith v. Comm'r of Transitional Assistance*, 431 Mass. 638, 652 (2000) (affirming preliminary injunctions that recognized irreparable harm to families caused by the loss of subsistence benefits). "The denial of essential public benefits like food stamps which help provide for basic nutrition and sustenance undeniably constitutes irreparable harm." *Briggs v. Bremby*, No. 3:12CV324 VLB, 2012 WL 6026167, at *18 (D. Conn. Dec. 4, 2012) (granting preliminary injunction), *amended on reconsideration*, No. 3:12-CV-00324 VLB, 2014 WL 1246696 (D. Conn. Mar. 24, 2014),

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[8] *See* Food and Nutrition Service, U.S. Dep't of Ag., *SNAP Food Security In-Depth Interview Study (Final Report)* at 23 (March, 2013), *available at* https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf (last visited Sept. 29, 2020). A household is considered food insecure if it has difficulty getting enough food for an active healthy life because of a lack of resources. *Id.* at 1.

[9] *SNAP Food Security In-Depth Interview Study (Final Report)* at 27-36. Asking for help from kin or friend networks or food pantries has psychic costs – shame at having to ask, loss of friends who tire of being relied upon, and stigma. *Id.* at 29-33.

[10] *See* John T. Cook and Ana Poblacion, *An avoidable $2.4 Billion Cost: The Estimated Health Related Costs of Food Insecurity and Hunger in Massachusetts*, Children's HealthWatch, February 2018, *available at* http://macostofhunger.org/wpcontent/uploads/2018/02/full-report.pdf (last visited Sept. 25, 2020).

and *aff'd*, 792 F.3d 239 (2d Cir. 2015. *See also Haskins v. Stanton*, 794 F.2d 1273, 1276-77 (7th Cir. 1986) (holding that "the deprivation of food [resulting from the denial of food stamps] is extremely serious and is quite likely to impose lingering, if not irreversible, hardships upon recipients")*; Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 157-58 (D.D.C. 2018) ("forgoing food or other necessities [is] clearly irreparable in nature"); *M.K.B. v. Eggleston*, 445 F. Supp. 2d 400, 437-38 (S.D.N.Y.2006) ("Given the often perilous economic circumstances of the plaintiffs in this case, and those similarly situated, the denial of public benefits to such individuals unquestionably constitutes irreparable harm."); *Philadelphia Welfare Rights Org. v. O'Bannon*, 525 F. Supp. 1055, 1056, 1058-60 (E.D. Pa. 1981) (irreparable injury where plaintiffs lost food stamp benefits averaging less than $25 a month). As the court in *Moore v. Miller*, 579 F. Supp. 1188, 1192 (N.D. Ill. 1983) said in its preliminary injunction memorandum and order:

> An unjustified decrease in welfare payments could deprive a recipient and the recipient's family of essential food, clothing, shelter and health care. A subsequent payment by the state cannot adequately compensate a recipient for being required to subsist for a period in a manner incompatible with health and well-being. For those in the "grip of poverty," living on the financial edge, even a small decrease in payments can cause irreparable harm. This court is unable to hold otherwise.

By contrast, DTA will not suffer any cognizable harm from entry of the requested injunction. The state cannot reasonably complain that compliance with the law is too onerous. *See Briggs v. Bremby*, No. 3:12-CV-00324 VLB, 2014 WL 1246696, at *3 (D. Conn. Mar. 24, 2014) (rejecting state objection that injunction ordering it to process food stamp applications within statutory time frames was overly burdensome and prescriptive). DTA can simply stop taking action against households who use their benefits out of state pending a decision on the merits. Nor can the state complain that it will incur significant costs if preliminary relief is granted. SNAP benefits are paid for entirely with federal funds. The state can continue to pay SNAP benefits to households who use their benefits out of state without incurring any costs

whatsoever other than half of the very small administrative cost of issuing the benefits. Negus Dec., ¶¶ 8-9. *Cf. Healey v. Comm'r of Pub. Welfare*, 414 Mass. 18, 27-28 (1992) (even where benefits are paid for in part with state funds, risk that preliminary injunction would cause department to reduce benefits to others or overspend its budget held insufficient to outweigh irreparable injury to welfare recipients temporarily deprived of child care benefits).

Thus, any harm claimed by DTA from being preliminarily enjoined from terminating SNAP benefits to households who lawfully use their benefits out of state pales in comparison to the very real threat to plaintiffs' ability to meet their nutritional needs. As the Supreme Court said in *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970), "[T]he interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens." *See also Hess v. Hughes,* 500 F.Supp. 1054, 1059 (D.Md.1980) (granting injunction against failure to process food stamps applications in accordance with federal requirements): "In balancing the likelihood of irreparable harm to the plaintiffs versus the injury to the defendants should an injunction be issued, it is clear that any administrative hardship to the State . . . is grossly outweighed . . . by the obvious deleterious effect to the plaintiffs – the lack of food." The balance of harms therefore clearly weighs in favor of granting the requested preliminary injunction.

V. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court preliminarily enjoin DTA from terminating the named plaintiff's and all class members' SNAP benefits based on their out-of-state use of SNAP and respectfully request that the Court preliminarily order DTA to reinstate Ms. Glynn's benefits.

Respectfully submitted,

Deborah Harris, BBO # 557774
MASSACHUSETTS LAW REFORM INSTITUTE
40 Court Street, Suite 800
Boston, MA 02108
(617) 357-0700 ext. 313
dharris@mlri.org

With assistance from:

Aisha Sleiman, Esq.
asleiman@mlri.org
Victoria Negus, Paralegal
vnegus@mlri.org
Massachusetts Law Reform Institute
40 Court Street, Suite 800
Boston, MA 02108
(617) 357-0700

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