

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

FAYE CURTIS,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Civil No. 94-332-P-C
)	
COMMISSIONER,)	
MAINE DEPARTMENT OF)	
HUMAN SERVICES, et al.,)	
)	
<i>Defendants</i>)	

**RECOMMENDED DECISION ON CROSS-MOTIONS FOR JUDGMENT
BASED ON A STIPULATED RECORD**

At issue in this class action is the statutory period of disqualification imposed against recipients of federal food stamps who are found to have committed certain misconduct in connection with obtaining or using the food stamps. By regulation, the U.S. Secretary of Agriculture (“Secretary”) and the Maine Department of Human Services (“DHS”) delay, in certain circumstances, the onset of such a disqualification period until the recipient reapplies for food stamps and is otherwise found eligible for the program. The plaintiff, on behalf of herself and others similarly situated in Maine, challenges this practice in light of the language in the Food Stamp Act providing that disqualification shall begin “immediately upon the rendering of [the] determination” of misconduct. *See* 7 U.S.C. § 2015(b)(1). She also presses a claim, pursuant to 42 U.S.C. § 1983, alleging violation of her due process rights through an alleged failure to inform her on a timely basis that the onset of her disqualification would be delayed. She seeks declaratory and injunctive relief, as well as costs and attorney fees.

DHS is the state agency that administers the food stamp program in Maine; its commissioner is sued in his official capacity. The court has previously granted the Secretary's motion to intervene as a defendant. The parties now submit the controversy for decision based on a stipulated record. Any factual disputes may therefore be resolved by the court. *See Boston Five Cents Sav. Bank v. Secretary of Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985). I conclude that the challenged regulation violates the plain language of the Food Stamp Act.

I. Facts and Procedural History

As stipulated by the parties, *see* Stipulated Record (“Stipulated Facts”) (Docket No. 15), the relevant facts may be summarized as follows. Pursuant to the Food Stamp Act, 7 U.S.C. §§ 2011-2030, DHS administers the federal food stamp program in Maine. *Id.* at ¶¶ 3-4. In January 1993, a DHS food stamp caseworker received information that the plaintiff had obtained a monetary settlement in connection with a workers' compensation claim. *Id.* at ¶ 5a. The caseworker then confirmed this information through correspondence with an insurance company. *Id.* On February 9, 1993 the caseworker sent the plaintiff the following notice:

I have received verification from Allstate Insurance that you were receiving \$71.41 per week in workmen's [sic] compensation from Sears from 11-17-91 until 12-17-92 which you never reported and you received a lump sum Settlement of 7,500 on 12/22/92[.] Because of this settlement you are over the asset limit of 2,000 and you have been overpaid for this entire period.

Id. at 5b and Exh. A.¹ On March 4, 1993 DHS sent the plaintiff a letter formally charging her with “intentionally violating the rules of the Food Stamp Program” by “[w]ithholding facts.” *Id.* at Exh. B² and C. The letter repeated the allegations made by DHS on February 9, cited forms completed and signed by the plaintiff in February, March, June and December of 1992 indicating that she was not receiving any workers' compensation benefits, and advised the plaintiff that a disqualification hearing would be held on May 28, 1993. *Id.* at Exh. C. The letter also contained the following notice:

If the hearing officer finds the charge to be true or if you sign a waiver of your hearing rights, you will be disqualified as follows: Six (6) months (First Violation). . . . If you choose to do so, you can waive your right to the scheduled hearing by checking one of the boxes below, signing your name, and returning this notice to this office not later than 10 days before the scheduled hearing. You have the right to

¹ According to the Stipulated Facts, Exhibit A consists of “[a] copy of the computer record of the letter that was generated.” *Id.* at ¶ 5b. Exhibit A does not appear to be a computer record, but rather a form completed by hand that includes a message intended for the plaintiff. I therefore assume that this message was, in fact, sent to the plaintiff, albeit in a form that may not match Exhibit A.

² According to the parties, Exhibit B is a copy of the “Intentional Program Violation” letter sent by DHS to the plaintiff on March 4. Stipulated Facts at ¶ 5c. In fact, what appears in the record as Exhibit B are three pages, the first of which appears to be the top half of the DHS letter, signed and returned by the plaintiff and appearing in the record as Exhibit C, rendered yet more undecipherable because it is partially obscured by a certified mail receipt. The two pages of Exhibit B that follow bear no discernable connection to the half-letter appearing as the first page of the exhibit. Page three appears to be an information sheet advising the recipient, in relevant part, that her disqualification

will begin with the first month after the hearing decision or waiver is received, provided you are still eligible to receive benefits. If you are not eligible, the penalty will begin the first month you reapply and are found eligible. Regardless of when the penalty is started, you and the other members of your household must repay all incorrect benefits received as a result of the violation.

Exh. B at 3 (emphasis in original). Given the state of the record, whether the plaintiff received this notice prior to her signing the waiver of her right to a hearing is something I consider an unresolved factual dispute. I do not resolve it, however, for reasons I discuss later.

remain silent concerning the charges. Anything you say or sign concerning the charges can be used in a court of law.

Id. The plaintiff checked the box on the form indicating that she “admit[s] to the facts presented and . . . understand[s] that a disqualification penalty will be imposed,” signed in the appropriate place, and returned the form to DHS, which received it on March 10, 1993. Stipulated Facts at ¶ 5d and Exh. C. Sometime between March 10 and March 16, DHS sent the plaintiff a notice confirming that she had waived her right to a hearing, and advising her of the following: “[Y]ou are disqualified from participation in the food stamp program for 6 months If you are not presently receiving Food stamps the disqualification period will be postponed until you reapply and are found otherwise eligible.” *Id.* at ¶ 5e and Exh. D. The record reflects no further contact between DHS and the plaintiff until July 15, 1993 when the plaintiff called the agency to ask when she would be able to resume receiving food stamps. *Id.* at ¶ 5f. A caseworker told the plaintiff that she would have to reapply and be found eligible, whereupon her six-month disqualification would begin. *Id.* The plaintiff reapplied for food stamps on July 15, 1993; DHS found her eligible and advised that her six-month disqualification period would then begin, retroactive to July 1, 1993. *Id.* at ¶ 5g. On December 2, 1993 the plaintiff again reapplied for food stamps and resumed receiving them as of January 1, 1994. *Id.* at ¶ 5h.

Had the plaintiff’s six-month disqualification period begun on April 1, 1993, the earliest possible date on which she would otherwise have been eligible, she would have been entitled to receive food stamps again beginning on October 1, 1993. *Id.* at ¶¶ 5e, 6. Because DHS did not treat the disqualification period as having begun until July 1, the plaintiff lost three months’ worth of food stamp benefits. *Id.* at ¶¶ 5g, 7.

The plaintiff filed her class action complaint against the DHS commissioner in November 1994 seeking to represent

[a]ll past, current and/or future Food Stamp recipients in the State of Maine who since October, 1993 have been denied Food Stamps pursuant to [DHS's] policy of beginning any Food Stamp disqualification period from the point when the individual reapplies for and is determined eligible to receive benefits rather than beginning the disqualification period immediately upon the rendering of the determination that a person has committed an intentional program violation.

Complaint ¶ 6; *see also* Motion for Class Certification (Docket No. 2). The court granted the motion for class certification on December 12, 1994 and later the Secretary's motion to intervene as a party defendant. *See Curtis v. Comm'r, Maine Dept. of Human Servs.*, 159 F.R.D. 339, 342 (D. Me. 1994); The United States Department of Agriculture's Motion to Intervene (with endorsement) (Docket No. 12). Each party has now moved for judgment based on a stipulated record.³

II. Analysis

The question at the core of this case is a straightforward one: May the U.S. Department of Agriculture, and a state agency administering that state's federal food stamp program, lawfully delay the onset of a recipient's misconduct-related disqualification period in light of the apparent directive from Congress that such a disqualification begin immediately upon the determination of misconduct?

The relevant provision of the Food Stamp Act provides:

Any person who has been found by any State or Federal court or administrative agency to have intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes

³ In the interest of avoiding duplication of effort, DHS had not filed a memorandum in support of its motion for judgment but, rather, has adopted the positions taken by the Secretary in his memorandum. *See* letter from Assistant Attorney General Christopher C. Leighton (Docket No. 22). I therefore refer to the arguments made in the Secretary's memorandum as those of both defendants.

a violation of [the Act], the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing coupons or authorization cards shall, *immediately upon the rendering of such determination*, become ineligible for further participation in the program

35 U.S.C. § 2015(b)(1) (emphasis added). The period of ineligibility lasts for six months upon the first such determination. *Id.* at (b)(1)(i). A one-year disqualification applies in certain other circumstances.⁴ By regulation, both the Secretary and DHS do not begin the period of disqualification until the recipient is otherwise qualified to participate in the program.⁵

The facts surrounding the named plaintiff in this proceeding illustrate the significance of the timing issue: The information she withheld from DHS, that she had received certain workers' compensation payments, would have rendered her ineligible for food stamps regardless of the disqualification penalty. Thus, it was only when she had used up enough of these funds to become otherwise again eligible for food stamps based on the level of her personal assets, that the disqualification was of any practical significance to her. *See* 7 U.S.C. § 2014 (outlining financial eligibility standards for food stamps).

⁴ Subparagraphs (ii) and (iii) provide for a one-year disqualification upon the second such determination or upon the first finding that the recipient has traded food stamps for a controlled substance, and a permanent disqualification upon further misconduct or upon a finding that the recipient has traded food stamps for firearms, ammunition or explosives. *Id.*

⁵ The Secretary's regulations provide that “[i]f the individual is not eligible for the [food stamp] Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.” 7 C.F.R. § 273.16(e)(8)(iii) (after administrative hearing); *see also id.* at subsections (f)(2)(iii) (same language, as to waived hearing) and (g)(2)(ii) (same language, as to adjudications). Section FS-777-2 of the DHS Food Stamp Manual provides that, pursuant to the aforementioned regulations, if a disqualified individual is not participating in the program “the disqualification period will be deferred until the client reapplies and is found eligible to resume participation.” *Id.* at p. 5 under heading “Notification of Decisions” (Exh. 2 to Plaintiff's Memorandum in Support of Motion for Judgment Based Upon a Stipulated Record) (Docket No 21).

The plaintiff contends that the Secretary's policy, and therefore that of DHS, is illegal in light of the plain language of Section 2015. The position of the defendants is that section 2015 permits their policy of delayed disqualification onset, and that to hold otherwise would frustrate the declared congressional purpose of strengthening penalties for abuse of the federal food stamp program.

Resolution of the problem requires the court to follow the interpretive pathway created by the Supreme Court in *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Pursuant to *Chevron*, judicial review of any agency's construction of a statute the agency administers involves a two-step process:

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Id. at 842-43 (footnotes omitted); *see also Nationsbank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 130 L. Ed. 2d 740, 748 (1995); *Brown v. Gardner*, 130 L. Ed. 2d 462, 468 (1994); *Strickland v. Comm'r, Maine Dept. of Human Servs.*, 48 F.3d 12, 16 (1st Cir. 1995). As the First Circuit recently emphasized in another case involving the Secretary's construction of the Food Stamp Act, “[i]n performing the first part of the *Chevron* analysis, no deference is due. Instead, courts must look primarily to the plain meaning of the statute, drawing its essence from the particular statutory language at issue, as well as the language and design of the statute as a whole.” *Id.* (citations and internal quotation marks omitted). One court has already resolved the question presented here by concluding that the regulation runs directly afoul of the plain meaning of the statute. *See Anderson*

v. North Carolina Dept. of Human Resources, 428 S.E.2d 267, 269 (N.C. App. 1993), *but see Garcia v. Concannon*, No. 93-1173-JO (D. Ore. Mar. 7, 1994) (reaching opposite result).

In *Public Citizen v. United States Dept. of Justice*, 491 U.S. 440 (1989), one question before the Court was whether Congress intended the Federal Advisory Committee Act (“FACA”) to apply to the Department of Justice's practice of turning to a committee of the American Bar Association (“ABA”) for advice on potential nominees for federal judgeships.⁶ *Id.* at 443. At issue was whether the ABA committee is “utilized” by the President or the Justice Department in the sense Congress contemplated when it used that word in FACA. *Id.* at 452. The Court answered the question in the negative, *see id.* at 467, making some observations in the process that are relevant to the present controversy. Characterizing “utilize” as a “woolly verb” with “contours left undefined by the statute itself,” the Court noted that, “[r]ead unqualifiedly, it would extend FACA's requirements to any group of two or more persons, or at least any formal organization, from which the President or an Executive agency seeks advice.” *Id.* at 452. The Court observed that even a “nodding acquaintance with FACA's purposes” belied such a notion, reasoning by way of example that Congress could not have intended for FACA to apply when the President seeks the views of the NAACP, the American Legion or even his own political party. *Id.* at 452-53. Accordingly, the court held that “[w]here the literal reading of a statutory term would compel an odd result, the [court] must search for other evidence of congressional intent to lend the term its proper scope.” *Id.* at 454 (citation and internal quotation marks omitted).

By contrast, there is nothing especially woolly, or even fuzzy, about the word “immediately” or the phrase “immediately upon the rendering of such determination” as used in section 2015(b).

⁶ FACA was designed to eliminate unnecessary advisory committees, and to subject the creation and operation of such committees to uniform standards and public scrutiny. *Id.* at 446-47.

The contours of the word “immediately,” if not manifestly self-evident, certainly do not embrace an event that, as here, took place some three months after the relevant determination. Likewise, there would be nothing left of the word at all if it were read to permit the Secretary and DHS to delay the onset of the disqualification period indefinitely, as the challenged regulatory scheme does in certain circumstances.⁷ “If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.” *Strickland*, 48 F.3d at 17.

There are, of course, certain “rare and exceptional” cases where the court may disregard even the plain meaning of the words in a statute. *See Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991) (application of statute as written was not “demonstrably at odds with the intentions of its drafters”). Further judicial inquiry is appropriate when applying the words as written would be “so bizarre that Congress could not have intended it.” *Id.* at 191 (citation and internal quotation marks omitted); *see also United States v. X-Citement Video, Inc.*, 130 L. Ed. 2d 372, 379 (1994) (court should not assume Congress intended “positively absurd” results). This is not such a case. Congress most recently enacted the disqualification provisions at issue in this proceeding as part of the Omnibus Budget Reconciliation Act of 1981.⁸ *See* P.L. 97-35, § 112; 95 Stat. 357, 362 (1981). Accepting, *arguendo*,

⁷ The defendants nevertheless would themselves dress section 2015(b)(1)(B) in a coat of wool. They accuse the plaintiff of “[f]ixating on a single word,” and seek to refocus the court's attention on the provision's requirement of immediate disqualification from “*further* participation” in the food stamp program. *See* Defendant-Intervenor's Reply to Plaintiff's Motion for Judgment Based Upon a Stipulated Record (Docket No. 26) at 3 (emphasis in original). They argue that a person cannot “become ineligible” for “further participation” until the person is otherwise eligible, and therefore that Congress did not intend for the disqualification to take effect immediately after the determination of misconduct. This, to say the least, is a strained reading of the plain language of the statute.

⁸ As the plaintiff notes, the 1981 amendment was actually a recodification of a provision originally added to the Food Stamp Act in 1977. *See* Food and Agriculture Act of 1977, P.L. 95-113, § 6(b), 91 Stat. 913, 964-65 (1977). The 1977 act amended section 2015 to include language that
(continued...)

the defendants' contention that within the four corners of this enactment is a discernable congressional purpose to strengthen the penalty provisions of the Food Stamp Act and thus deter fraud and abuse of the food stamp program,⁹ the fact remains that in rewriting the disqualification provisions in that enactment Congress retained the critical word “immediately” as well as the critical concept of disqualification “immediately upon” the rendering of a determination of misconduct. This suggests a deliberate purpose in defining when the disqualification periods at issue here are to begin. Needless to say, there is nothing inherently inconsistent between a general purpose to strengthen penalties for fraud and abuse in the food stamp program and a specific decision that program disqualification is to take effect immediately upon the determination of ineligibility. Had Congress intended to vest in the federal and state agencies administering the program an unfettered discretion to tailor the punishment to fit the crime, it would not have limited program

⁸(...continued)
disqualification periods shall

take effect immediately upon the relevant administrative or judicial finding and to remain in effect, without possibility of administrative stay, unless and until the finding of fraud is subsequently reversed by a court of appropriate jurisdiction, but in no event shall the period of disqualification be subject to judicial review.

Id. at 965.

⁹ Because I conclude that the statutory language is not ambiguous, I do not consider it necessary for the court to search the legislative history for further insight into the congressional intent. However, as the First Circuit recently noted, it “remains unclear whether, and if so, to what extent, a court engaged in the first stage of a *Chevron* inquiry may use other tools of statutory construction, such as legislative history, in searching for Congress' unambiguously expressed intent on a particular issue.” *Strickland*, 48 F.3d at 16-17 (citation omitted); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987) (when plain language appears to settle question, courts may look to legislative history for clear expression to contrary). Here, the defendants cite legislative history suggesting that by enacting the enforcement provisions in 1981, Congress intended to increase penalties for abusers of the food stamp program and thereby deter such abuse. Since such a view is in accord with the plain meaning of the statute, I need not determine whether consideration of the legislative history is appropriate because the result would be the same in either instance.

disqualification to six months for first offenses, and to one year for second transgressions. Thus, in the circumstances, it furthers, rather than frustrates, the legislative intent to conclude that Congress meant what it said when it used the word “immediately.” This is so even though, as the defendants point out, this interpretation may have the effect of rendering the disqualification period insignificant to some food stamp recipients who have committed sanctionable misconduct. As the Supreme Court has noted,

[deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice -- and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law.

Rodriguez v. United States, 480 U.S. 522, 526 (1987) (emphasis in original); *see also Brown v. Secretary of Health & Human Servs.*, 46 F.3d 102, 108 (1st Cir. 1995).

The challenged regulatory scheme plainly runs afoul of the express congressional directive to commence any period of disqualification imposed under section 2015(b) immediately upon the determination of misconduct. I conclude that the plaintiff and the other members of the class are entitled to a declaratory judgment to that effect. The plaintiff further contends that DHS violated her due process rights by failing to notify her, prior to her waiving her right to an administrative hearing, that the disqualification period would be deferred. I do not reach this claim in light of my determination that the deferral itself is violative of the Food Stamp Act.¹⁰

III. The Remedies

¹⁰ The plaintiff also seeks relief against DHS pursuant to 42 U.S.C. § 1983, based on the same facts. It is clear, and the defendants do not contend otherwise, that DHS is subject to section 1983 liability if it has violated the Food Stamp Act. *See Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) (section 1983 remedy encompasses violations of federal statutes as well as federal constitution). The only additional remedy sought by the plaintiff in connection with her section 1983 claim is the recovery of attorney fees pursuant to 42 U.S.C. § 1988.

Having determined that the plaintiff and the class she represents are entitled to judgment, the next question that requires consideration is what additional relief, if any, is appropriate. The plaintiff seeks a permanent injunction requiring the defendants to comply with section 2015(b), to redetermine the food stamp eligibility of all members, and to award appropriate food stamp benefits to all class members retroactively. The parties do not address themselves to the question of remedies in the memoranda accompanying their motions for judgment on a stipulated record. However, in its order granting the plaintiff's motion for class certification, the court has previously determined that the Eleventh Amendment is not a bar to retroactive relief in this proceeding. *See Curtis*, 159 F.R.D. at 342. The court noted that 7 U.S.C. § 2023(b) authorizes retroactive awards of food stamp benefits for periods of not more than a year prior to the date on which suit is commenced. *Id.* As a general proposition, “[a]n injunction should be narrowly tailored to give only the relief to which plaintiffs are entitled.” *Brown v. Trustees of Boston University*, 891 F.2d 337, 361 (1st Cir. 1989), *cert. denied*, 496 U.S. 937 (1990). The injunctive relief sought here is straightforward, easily implemented by the administering agencies, and would require little oversight by the court. I do not address the plaintiff's claim for attorney fees at this time. *See* Local Rule 32.

IV. Conclusion

For the foregoing reasons, I recommend that the court **GRANT** the plaintiff's motion for judgment in her favor and that of the class she represents by declaring and adjudging that the challenged regulations (7 C.F.R. §§ 273.16(e)(8)(iii), (f)(2)(iii) and (g)(2)(ii)) violate the Food Stamp Act because they fail to impose disqualification penalties *immediately* upon the determination of

misconduct, and by enjoining DHS and the Secretary to bring such regulations and practices into compliance with the Food Stamp Act in this respect and to recalculate the food stamp benefits of any class members adversely affected by the challenged regulations on or after November 2, 1993. I further recommend that the defendants' motions for judgment in their favor be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Cape Elizabeth, Maine this 28th day of April, 1995.

*David M. Cohen
United States Magistrate Judge*