

NOV 03 2009

STATE OF MINNESOTA
COUNTY OF RAMSEY

By JHL Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT
OTHER CIVIL

Deanna Brayton, Darlene Bullock, Forough Mahabady,
Debra Branley, Marlene Griffin and Evelyn Bernhagen,
on behalf of themselves and all others similarly situated,

Civil File No.

62 CV-09-11693

Plaintiffs,

vs.

SUMMONS

Tim Pawlenty, Governor of the State of Minnesota,
Thomas Hanson, Commissioner, Minnesota Department
of Management and Budget, Cal Ludeman, Minnesota
Department of Human Services, and Ward Einess,
Commissioner, Minnesota Department of Revenue,

Defendants.

The State of Minnesota to the Above-Named Defendant:

You are hereby summoned and required to serve upon Plaintiffs' attorney an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

MID-MINNESOTA LEGAL ASSISTANCE

DATE: 10-29-09

BY

Galen Robinson
Galen Robinson
Attorney No. 165980
David Gassoway
Attorney No. 389526
430 First Avenue North Suite 300
Minneapolis, MN 55401
(612) 332-1441

Ralonda J. Mason
Attorney No. 194487
830 W. St. Germain Suite 300
PO Box 886
Saint Cloud, MN 56302
(320) 253-0121

Attorneys for Plaintiffs

STATE OF MINNESOTA
COUNTY OF RAMSEY

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Deanna Brayton, Darlene Bullock, Forough
Mahabady, Debra Branley, Marlene Griffin and
Evelyn Bernhagen, on behalf of themselves and all
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Plaintiffs,

CLASS ACTION COMPLAINT

vs.

Tim Pawlenty, Governor of the State of Minnesota,
Thomas Hanson, Commissioner, Minnesota
Department of Management and Budget, Cal
Ludeman, Minnesota Department of Human Services,
and Ward Einess, Commissioner, Minnesota
Department of Revenue,

Defendants.

PRELIMINARY STATEMENT

Low-income Minnesota residents who receive Minnesota Supplemental Aid Special Diet funding, and residents who qualify for a Renter Property Tax Refund bring this suit to challenge both the Governor's and the Commissioner of Management and Budget's use of Minn. Stat. § 16A.152 to reduce allotments of funds appropriated and signed into law at the beginning of the current biennium. These reductions in allotments reduce the benefits designed for poor, often disabled and elderly residents who rely on these programs to meet their basic needs. Plaintiffs seek declaratory relief that the defendants' actions violate Minnesota Law and the Minnesota Constitution. Plaintiffs also seek injunctive relief to prevent the Minnesota Departments of Management and Budget, Human Services, and Revenue from implementing the unallotments.

JURISDICTION

1. Plaintiffs bring this action pursuant to article I, section 8 of the Minnesota Constitution.
2. Plaintiffs also bring this action for declaratory judgment pursuant to Minn. Stat. § 555.01.

PARTIES

3. Plaintiff Deanna Brayton is a 49-year-old resident of Anoka County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services.
4. Plaintiff Darlene Bullock is a 72-year-old resident of Aitkin County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services.
5. Plaintiff Forough Mahabady is a 54-year-old resident of Hennepin County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services.
6. Plaintiff Debra Branley is a 56-year-old resident of St. Louis County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services. Ms. Branley is also a renter who regularly applies for and receives a Renter Property Tax Refund from the Minnesota Department of Revenue.
7. Plaintiff Marlene Griffin is a 53-year-old resident of Ramsey County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services. Ms. Griffin is also a renter who is eligible to apply for a Renter Property Tax Refund from the Minnesota Department of Revenue.

8. Plaintiff Evelyn Bernhagen is a 57-year-old resident of Anoka County, Minnesota, and receives Minnesota Supplemental Aid Special Diet benefits through the Minnesota Department of Human Services. Ms. Bernhagen is also a long-time renter who regularly applies for and receives a Renter Property Tax Refund from the Minnesota Department of Revenue.

9. Defendant Tim Pawlenty is the Governor of the State of Minnesota. Governor Pawlenty is sued in his official capacity. Pursuant to the Minnesota Constitution, article IV, section 23, Governor Pawlenty has the power to veto an individual appropriation, and pursuant to Minnesota Constitution, article V, section 3, he has the duty to ensure that the laws of the state are faithfully executed.

10. Defendant Thomas Hanson is the Commissioner of the Minnesota Department of Management and Budget. Commissioner Hanson is sued in his official capacity. Among other duties, Commissioner Hanson is responsible for managing the state's financial affairs pursuant to Minn. Stat. § 16A. Included among his duties are the following:

- a. Managing the state's financial affairs including keeping expenditure and revenue accounts, Minn. Stat. § 16A.055;
- b. Requiring executive agencies to prepare financial reports so the legislature and the governor can compare spending plans with appropriations for state programs, Minn. Stat. § 16A.06;
- c. Obtaining and preparing budget information from state agencies, Minn. Stat. § 16A.10;
- d. Forecasting revenue and expenditures, Minn. Stat. § 16A.103;
- e. Obtaining agency spending plans and approving expenditures or setting an allotment if the spending plan is within the amount and purpose of an appropriation, Minn. Stat. § 16A.14;
- f. Where there is a determination that the probable receipts for the general fund will be less than anticipated and the amount needed for the remainder of the biennium will be

less than needed, reducing the amount in the budget reserve to balance expenditures with revenue, and if necessary due to an additional deficit, reducing unexpended allotments of any prior appropriation, Minn. Stat. § 16A.152.

11. Defendant Cal Ludeman is the Commissioner of the Minnesota Department of Human Services. He is sued in his official capacity. Among his duties, he is responsible for the administration of the Minnesota Supplemental Aid Act, Minn. Stat. § 256D.33-54, which includes payment to individuals eligible for MSA-special diets pursuant to Minn. Stat. §§ 256D.425 and 256D.44 subdiv. 5(a).

12. Defendant Ward Einess is the Commissioner of the Minnesota Department of Revenue. He is sued in his official capacity. Among his duties, he is responsible for administration of the Property Tax Refund, Minn. Stat. § 290A, which includes payment to individuals eligible to receive a Renter Property Tax Refund pursuant to Minn. Stat. §§ 290A.03, subdiv. 11, and 290A.04, subdivs. 1 and 2a. Pursuant to Minn. Stat. § 270C.30, he prescribes the format and content of all returns, and he is also responsible for the prevention of waste or unnecessary spending of public money, Minn. Stat. § 270C.03 subdiv. 2(1).

CLASS ALLEGATIONS

13. The individual plaintiffs bring this action pursuant to Rules 23.01 and 23.02(b) of the Minnesota Rules of Civil Procedure.

14. The class of persons whom the plaintiffs seek to represent is defined as follows:
All adults who reside in Minnesota:

(a) Who have been or will be denied Minnesota Supplemental Aid Special Diet benefits as a result of the defendants' actions to reduce allotments; and/or

(b) Who will file for and receive a reduced Renter Property Tax Refund as a result of the defendants' actions to reduce allotments.

15. The class of persons whom the plaintiffs seek to represent is so numerous that joining all members is impracticable. The exact size of the class is unknown but includes tens of thousands of persons residing in Minnesota. The class members are geographically dispersed, have limited financial resources, and are unlikely to institute individual actions.

16. Questions of law or fact common to the plaintiffs and members of the class dominate. These include whether defendants' reduction in allotments to Health and Human services programs and to the Renters Tax Refund program violates Minn. Stat. § 16A.152 and the Minnesota Constitution.

17. The claims of the named plaintiffs are typical of the claims of all members of the class.

18. The named plaintiffs will fairly and adequately protect the interests of the class.

19. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief for the class as a whole.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

20. Pursuant to article III, section 1 of the Constitution of the State of Minnesota, no branch of government can exercise powers belonging to another branch of government.

21. Pursuant to article IV of the Constitution of the State of Minnesota, the Legislature is granted the power to pass bills which create or amend the laws of the state and forward them to governor for approval or veto. Legislative bills become law if signed by the governor.

22. Pursuant to article IV, section 23 of the Constitution of the state of Minnesota the governor is granted the authority to veto one or more items within an appropriation bill while still approving the remainder of the bill. However, the legislature has the authority to separately

reconsider each vetoed item. The vetoed item may still become law upon vote by two thirds of the members elected in each house.

23. Pursuant to article V, section 3 of the Constitution of the State of Minnesota, the governor has a constitutional duty to take care that the laws of Minnesota are faithfully executed. The Governor's power with respect to passage of laws of the state is limited to the power granted him in article IV to either sign or veto laws passed by the legislature.

24. Pursuant to article XI, section 6 of the Minnesota Constitution, the budget for the state of Minnesota must be balanced with revenues sufficient to pay funds appropriated. Funds may not be disbursed unless there is an appropriation.

25. Pursuant to article XI, sections 5(c) and 6, certificates of indebtedness may be issued beginning on the first day of the biennium and ending on the last day of the biennium in anticipation of taxes levied for or other revenues appropriated to any fund of the state for expenditure during the biennium.

26. Pursuant to Minn. Stat. § 16A.14 subdiv. 1, the Commissioner of Management and Budget may not set an allotment beyond a fiscal year.

27. Pursuant to Minn. Stat. § 16A.14 subdiv. 3, agencies must submit spending plans to the Commissioner of Management and Budget by July 31 of each year. The spending plans must certify that the amount required for each activity is accurate and is consistent with legislative intent.

28. Pursuant to Minn. Stat. § 16A.14 subdiv. 4, the Commissioner of Management and Budget must approve the estimated amount for expenditure if the spending plan is within the amount and purpose of the appropriation. The commissioner must also keep in mind whether there is a need for the appropriation in the next allotment period. The commissioner shall

modify the spending plan and the allotment to conform with the appropriation and the future needs of the agency.

29. Pursuant to Minn. Stat. § 16A.14 subdiv. 5, after approval, the Commissioner of Management and Budget may modify spending plans for cause.

30. The Commissioner of Management and Budget, with the approval of the Governor, can *reduce unexpended allotments* if he determines three things:

- (a) That probable *receipts* for the general fund *will be less than anticipated*;
- (b) The amount available *for the remainder* of the biennium will be less than needed;
and
- (c) There is no money remaining in the budget reserve account.

This process is commonly referred to as “unallotment.” See Minn. Stat. § 16A.152 subdiv. 4.

Minnesota Supplemental Aid

31. Minnesota Supplemental Aid, commonly known as MSA, is a state-wide program that provides cash assistance to elderly and disabled Minnesota residents who are recipients of the Supplemental Security Income (SSI) program or who are disabled and who are found to have additional maintenance needs. Eligible individuals receive a monthly cash grant which supplements their SSI grant. Minn. Stat. § 256D.33-54.

32. MSA recipients who have certain medically prescribed diets are entitled to an additional monthly allowance to pay the anticipated costs of maintaining that diet when “the cost of those additional dietary needs cannot be met through some other maintenance benefit.” Minn. Stat. § 256D.44 subdiv. 5(a). The additional amount paid is determined by the type of diet. Diets eligible for the additional payments and the amount of payment for each diet are set forth in Minn. Stat. § 256D.44 subdiv. 5(a).

33. Individuals who follow an eligible diet must provide verification from a licensed physician documenting the need for the diet. Minn. Stat. § 256D.44 subdiv. 5(a).

Renter Property Tax Refund

34. Low- and middle-income Minnesotans pay a larger share of their income in property taxes than higher-income Minnesotans do.

35. The Renter Property Tax Refund reduces the burden of higher taxes on low- and middle-income taxpayers by providing a tax refund to households whose rental property taxes are high in relation to their income. A Renter Property Tax Refund is allowed for renters in Minnesota if the amount of their rent that constitutes the property tax exceeds a percentage of household income as established by the legislature. Minn. Stat. § 290A.04 subdivs. 1 and 2a.

36. By statute, 19 percent of a tenant's rent is considered payment toward property taxes paid. Minn. Stat. § 290A.03 subdiv. 11.

37. The legislature appropriates from the general fund in the state treasury to the commissioner of revenue the amount necessary to make the renter's property tax refund payments required under section 290A.04, subdiv. 2a. Minn. Stat. § 290A.23 subdiv. 1.

FACTUAL ALLEGATIONS

38. In February and November of each year, the Commissioner of Management and Budget is required to prepare a forecast of revenue and expenditures for the state. Minn. Stat. §16A.103 subdiv. 1.

39. In November 2008, the Minnesota Department of Management and Budget issued a forecast which projected a budget deficit of \$4.847 billion for the 2010/2011 biennium. Minnesota Management & Budget Office, *Minnesota Financial Report*, November 2008, pages 78, 80.

40. On January 27, 2009, Governor Pawlenty submitted to the legislature his proposed budget for the 2010/2011 biennium. Based on the November forecast, Governor Pawlenty's proposed budget included numerous reductions to state funded programs which he presented as a way to balance the state's budget in light of the projected budget deficits.

41. In February 2009, a new forecast was released showing "no material change in Minnesota's FY 2010-11 budget outlook." The Commissioner continued to project a state budget shortfall of \$4.847 billion. Minnesota Management & Budget Office, *Minnesota Financial Report*, February 2009.

42. Following negotiations with the legislature and in light of the newly available stimulus funds, Governor Pawlenty issued a revised FY 2010-11 budget on March 17, 2009. The revised budget continued to recognize a budget deficit as projected in November 2008 and again in February 2009. Minnesota Management & Budget Office, *Letter and Attachment to Letter from Governor Pawlenty*, March 17, 2009.

43. In April 2009, The Department of Management and Budget issued a state Economic Update showing that state revenues received in February and March 2009 were less than previously forecast. Minnesota Management & Budget Office, *State Revenues Below Forecast in February and March*, April 2009.

44. Pursuant to article IV, section 23 of the Minnesota Constitution, Governor Pawlenty has the authority to either accept or reject a bill presented by the legislature. If the bill is a funding bill, the Governor has authority to reject specific appropriations contained within the bill while otherwise accepting the remainder of the bill. This is known as a line-item veto. The Governor can only exercise his right to a line-item veto for budget appropriations.

45. On May 11, 2009, the state legislature approved and sent the Health and Human Services appropriations bill, HF 1362, to Governor Pawlenty. This bill contained the state budget appropriations for Human Services programs for the 2010/2011 biennium. Included in this bill were appropriations to fund the Minnesota Supplemental Aid special diets.

46. On May 14, 2009, Governor Pawlenty signed HF 1362. He accepted all the spending provisions contained in HF 1362, the omnibus health and human services bill with the sole exception of the appropriation to fund the General Assistance Medical Care (GAMC) program in FY 2011. The Governor exercised his right to line-item veto the GAMC funding for the second year of the biennium. An attempt by the legislature to override this veto was unsuccessful.

47. The Governor chose not to use his constitutional line-item veto right to veto other items in HF 1362.

48. As a result of the Commissioner of Management and Budget's February and April Forecasts, Governor Pawlenty knew the anticipated receipts for the general fund, and that additional revenues would be needed to pay for the remainder of the programs for which funds were appropriated in HF 1362 at the time he signed the appropriations into law.

49. Also on May 14, 2009, Governor Pawlenty held a news conference in which he announced that he would reduce allotments to a variety of state programs for the purpose of balancing the 2010/2011 biennium budget.

50. On May 18, 2009, the state legislature approved and sent HF 2323 to Governor Pawlenty. This bill, the "revenue bill," contained provisions for increased revenue needed to pay for the appropriations which had already been signed into law by Governor Pawlenty and balance the budget for the 2010/2011 biennium.

51. On May 18, the 2009 legislative session ended. The legislature does not have authority to extend their session beyond the first Monday following the third Saturday in May. Minn. Const. Art. IV, § 12.

52. On May 21, 2009, Governor Pawlenty vetoed HF 2323, the revenue bill. At the time he vetoed HF 2323, Governor Pawlenty knew that state revenues were less than previously forecast and also that either additional revenues or savings would be needed to balance the state budget.

53. Governor Pawlenty created a budget shortfall when he signed the budget bills into law and subsequently vetoed the revenue bill. Governor Pawlenty knew that additional funds would be needed to balance the budget when he vetoed the revenue bill.

54. The Governor has the authority to call the legislature into special session on extraordinary occasions. Minn. Const. art. IV, § 12. The Governor allowed the legislative session to end without a balanced budget. He chose not to call the legislature back into special session for the purpose of resolving the budget imbalance.

55. On June 4, 2009, Commissioner Hanson authored a letter to Governor Pawlenty in which he advised the Governor that the state's revenues were not anticipated to be sufficient to support the planned spending during the 2010/2011 biennium.

56. On June 8, 2009, Commissioner Hanson met with community members concerning the Governor's plan to reduce allotments as a way to create a balanced budget.

57. On June 16, 2009, Commissioner Hanson sent Governor Pawlenty a letter stating "[T]he enacted budget spends a projected \$2.676 billion more than available for fiscal years 2010-11. No budget reserve remains to help mitigate this shortfall." Commissioner Hanson

proposed a series of spending reductions including a \$236 million reduction in human services spending, and a \$67 million reduction in state renter property tax refunds and other payments.

MSA-Special Diet Reduction

58. The reduction in human services spending proposed by Commissioner Hanson included elimination of funding for the MSA Special Diet program effective November 1, 2009 through June 30, 2011. The defendants projected that this reduction would save the state \$5.333 million.

59. The MSA Special Diet program provides a monthly cash supplement to elderly and disabled residents who need to follow a special diet because of a medical condition. The special diet must be prescribed by a licensed physician. The cash supplement assists with the additional costs of maintaining the medically prescribed special diet and is only available when those costs are not adequately met by another benefit program. Minn. Stat. § 256D.44 subdiv. 5(a).

60. Individuals receiving MSA Special Diet assistance live on a fixed income. For most, their primary income is Supplemental Security Income (SSI). SSI is a federally-funded low-income program for elderly and disabled individuals. It pays a monthly cash grant designed to meet only the recipient's basic needs. The special diet recipient may also receive a small cash grant, frequently \$81 per month, from the MSA program. The MSA grant is a state-funded supplement designed to meet basic needs not adequately covered by SSI. Neither the SSI grant nor the basic MSA grant contemplates the additional expenses of a medically prescribed diet; therefore, these grants do not provide adequate funds to pay those additional costs.

61. On September 11, 2009, Charles E. Johnson, Assistant Commissioner Children and Family Services, issued Welfare Bulletin # 09-69-04 which informed counties, inter alia, that

as a result of the unallotment of MSA Special Diets (MSA-SD), the program would be suspended effective November 1, 2009. The bulletin instructs counties to arrange to identify all current recipients of MSA-SD and send them a new Maxis generated notice at least ten days in advance to inform them that state money for MSA-SD has ended due to unallotment as of November 1, 2009.

62. The state's anticipated revenues for the entire biennium are sufficient to fully cover the cost of MSA-SD for the first year of the 2010/2011 biennium. The first year of the biennium runs from July 1, 2009 through June 30, 2010.

Renter Property Tax Refund Reduction

63. Governor Pawlenty's unallotments also included a reduction in the state Renter Property Tax Refund. However, Defendants' proposal does this by changing the statutorily prescribed amount used to calculate the refund.

64. Defendant Einess publishes the form Plaintiffs will use to file a claim for the Renter Property Tax Refund. This form is published and made available with the Minnesota Income Tax Return forms and instructions in early 2010 which is the start of the 2009 tax filing period.

65. The defendants' attempt to reduce the Renter Property Tax Refund through unallotment reduces the portion of rent used to calculate the refund from the statutorily prescribed 19% of the rent paid to 15% of the rent paid. This adjustment, which amends prior law, will reduce refunds received by renters in 2010.

66. The defendants do not have a constitutional authority to unilaterally amend a statutory provision.

67. The state legislature will reconvene on February 4, 2010. The state legislature has sufficient time to take action to address the budget shortfall for the balance of the biennium.

Plaintiff Deanna Brayton

68. Plaintiff Deanna Brayton is a 49-year-old woman living in Anoka County, Minnesota. She suffers from multiple health conditions which has rendered her disabled.

69. Ms. Brayton has been diagnosed with an autoimmune disorder, rheumatoid arthritis, degenerative disc disease, osteoporosis, high cholesterol, elevated blood sugar, underactive thyroid, irritable bowel syndrome, traumatic brain injury, irregular heartbeat, anxiety, migraine headaches and visual disturbances. In addition, she suffers from frequent blood clots, kidney stones and multiple ill-defined leg fractures. As a result of these impairments, Ms. Brayton is required to closely monitor her health. She takes multiple medications and follows a strict, medically prescribed diet.

70. Ms. Brayton is required to maintain a low cholesterol diet. In addition, she must follow both a lactose free diet and a gluten free diet. She must also carefully control her daily protein to between 40 and 60 grams. Finally, she must follow an anti-dumping diet. Purchasing and preparing foods that meet this complex mix of dietary restrictions is difficult and expensive.

71. Ms. Brayton's only sources of income are Supplemental Security Income of \$674 per month and Minnesota Supplemental Aid (MSA). Currently, Ms. Brayton receives a total of \$415.40 from MSA: \$81 as her basic MSA grant with a special needs supplement of \$334.40 to cover her special dietary needs. Ms. Brayton also receives \$16 per month in Food Support benefits.

72. Ms. Brayton currently spends an average of \$400 per month on food.

73. Ms. Brayton's monthly expenses of \$1,221 exceed her current monthly income of \$1,089.40. She routinely delays payments on some expenses each month, paying that creditor the following month and leaving another expense unpaid. In this way, Ms. Brayton is able to get by.

74. Pursuant to the defendants' allotment reductions, Ms. Brayton will lose her MSA Special Diet funding effective November 1, 2009. This will result in a loss of \$334.40 per month. This is money Ms. Brayton relies on each month to purchase the foods she needs to follow her medically prescribed diets.

Plaintiff Darlene Bullock

75. Plaintiff Darlene Bullock is a 72-year-old woman living in Aitkin County, Minnesota. She suffers from multiple health conditions which have rendered her disabled.

76. Ms. Bullock has been diagnosed with type II diabetes, had a stroke in 1993, underwent a triple bypass surgery in 2005 and had a stint placed in her heart in 2009 to prevent artery blockage. As a result of these impairments, Ms. Bullock is required to closely monitor her health. She takes multiple medications and follows a strict, medically prescribed diet.

77. Ms. Bullock is required to maintain a low cholesterol, high residue hypoglycemic, high protein diet. Purchasing and preparing foods that meet her dietary restrictions is expensive.

78. Ms. Bullock's only sources of income are Social Security Disability Insurance of \$255 per month, retirement income of \$439 per month and Minnesota Supplemental Aid (MSA). Currently, Ms. Bullock receives a total of \$201 from MSA: \$81 as her basic MSA grant with a special needs supplement of \$119 to cover her special dietary needs. Ms. Bullock also receives \$16 per month in Food Support benefits.

79. Ms. Bullock currently spends an average of \$250 per month on food.

80. Ms. Bullock's monthly expenses of \$930 exceed her current monthly income of \$895. She routinely goes without basic needs each month in order to get by.

81. Pursuant to the defendants' allotment reductions, Ms. Bullock will lose her MSA Special Diet funding effective November 1, 2009. This will result in a loss of \$119 per month. This is money Ms. Bullock relies on each month to purchase the foods she needs to follow her medically prescribed diet.

Plaintiff Forough Mahabady

82. Plaintiff Forough Mahabady is a 54-year-old woman who lives in Hennepin County, Minnesota.

83. Ms. Mahabady has a number of health problems which has resulted in her being totally disabled. Ms. Mahabady has recently been treated for kidney cancer. In addition she has had two hip replacements and suffers from various digestive problems. These health conditions result in Ms. Mahabady being forced to maintain a strict high protein diet.

84. Ms. Mahabady's only sources of income are Social Security Disability Insurance income of \$803 per month and Minnesota Supplemental Aid (MSA). Currently, Ms. Mahabady receives a total of \$200 from MSA. The entire amount of the MSA Ms. Mahabady receives is a result of her qualification for the special diet supplement. In addition, Ms. Mahabady receives \$152 in Food Support benefits.

85. Ms. Mahabady spends an average of \$350 per month for food to maintain her high protein diet.

86. Ms. Mahabady's monthly expenses of \$1,892 exceed her current monthly income of \$1,003. As a result she has been forced to borrow money from family and friends each month.

87. Pursuant to the defendants' allotment reductions, Ms. Mahabady will lose her MSA Special Diet funding effective November 1, 2009. Without this funding, Ms. Mahabady will not have enough money to purchase the food items she needs to maintain her medically necessary diet.

Plaintiff Debra Branley

88. Plaintiff Debra Branley is a 56-year-old disabled woman who lives in St. Louis County, Minnesota. She lives in an apartment and pays monthly rent.

89. Ms. Branley has significant health problems that have resulted in her total disability. She has acromegaly panhypopituitarism which resulted in the removal of her pituitary gland. She also had renal disease resulting in a kidney transplant. She suffers from rheumatoid arthritis and depression. Currently, Ms. Branley is experiencing difficulty maintaining her weight, causing her doctors significant concern. Ms. Branley's diet is restricted because of her multiple health conditions. She follows a medically prescribed and monitored diet.

90. Ms. Branley's only source of income is Social Security Disability Insurance in the amount of \$701 per month and MSA in the amount of \$354 per month. Her current MSA grant includes \$250 for her special diet. Ms. Branley also gets \$16 per month in food support. Occasionally, Ms. Branley is able to supplement her income by working as an election judge or some other community service for which she receives a small stipend.

91. Ms. Branley spends an average of \$250 per month for food.

92. Ms. Branley's monthly expenses are \$1366. This exceeds her total monthly income of \$1055. Ms. Branley is forced each month to make choices about which bill to pay in full and which to underpay.

93. Pursuant to the defendants' allotment reductions, Ms. Branley will lose her MSA Special Diet funding effective November 1, 2009. Without this funding, Ms. Branley will not have enough money to purchase the food items she needs to maintain her diet.

94. Ms. Branley has been a renter for a number of years. Each year she applies for the Renter Tax Refund. Ms. Branley uses the money she receives to buy food and other basic need items. Ms. Branley depends on the Renter Tax Refund to purchase things that she needs but cannot afford on her monthly income.

95. Pursuant to Defendants' allotment reductions, Ms. Branley will experience a reduction in her Renter Tax Refund for the current year.

Plaintiff Marlene Griffin

96. Plaintiff Marlene Griffin is a 53-year-old woman living in Ramsey County, Minnesota. She suffers from multiple health conditions which have rendered her disabled. She lives in an apartment and pays monthly rent.

97. Ms. Griffin has been diagnosed with lupus, rheumatoid arthritis, osteoporosis, fibromyalgia, anemia, asthma, diabetes, hypertension, emphysema, renal disease and carpal tunnel syndrome. In addition, she suffers from complications to gastric bypass surgery. These complications led to the removal of Ms. Griffin's stomach resulting in digestion difficulties and vitamin deficiency. Ms. Griffin closely monitors her health. She takes multiple medications and vitamin supplements. She also follows a strict, medically prescribed diet.

98. Ms. Griffin is required to maintain a low sugar and low sodium diet. In addition, she must follow both a lactose free diet and a gluten free diet.

99. Ms. Griffin's only sources of income are Supplemental Security Income of \$674 per month and Minnesota Supplemental Assistance (MSA). Currently, Ms. Griffin receives a

total of \$211 from MSA: \$81 as her basic MSA grant with a special needs supplement of \$130 to cover her special dietary needs. Ms. Griffin also receives \$16 per month in Food Support benefits.

100. Ms. Griffin currently spends an average of \$200 per month on food.

101. Ms. Griffin's monthly expenses of \$919 exceed her current monthly income of \$885. Each month, Ms. Griffin is forced to forgo some basic need item because she does not have the money.

102. Pursuant to the Defendants' allotment reductions, Ms. Griffin will lose her MSA Special Diet funding effective November 1, 2009. This will result in a loss of \$130 per month. This is money Ms. Griffin needs to purchase the foods she needs to follow her medically prescribed diets.

103. Ms. Griffin is a low-income renter and as such is eligible for the Renter Tax Refund program.

104. Pursuant to Defendants' allotment reductions, Ms. Griffin will receive a lower Renter Tax refund.

Plaintiff Evelyn Bernhagen

105. Plaintiff Evelyn Bernhagen is a 57-year-old disabled woman who lives in Anoka County, Minnesota. She lives in an apartment and pays monthly rent.

106. Ms. Bernhagen has a number of health conditions which includes hypoglycemia and high cholesterol. As a result of these medical conditions, Ms. Bernhagen must follow a medically prescribed diet.

107. Ms. Bernhagen's only sources of income are Supplemental Security Income of \$674 per month and Minnesota Supplemental Aid (MSA). Currently, Ms. Bernhagen receives a

total of \$151.40 from MSA: \$81 as her basic MSA grant with a special needs supplement of \$70.40 to cover her special dietary needs. Ms. Bernhagen also receives \$38 in Food Support benefits.

108. Ms. Bernhagen spends an average of \$200 per month for food.

109. Ms. Bernhagen's monthly expenses are \$925. Her current monthly income is \$825.40. Her income is already insufficient to meet her monthly expenses. As a result, Ms. Bernhagen maintains a revolving loan through her bank. Each month she borrows the extra funds she needs and then repays that amount the following month.

110. Pursuant to the defendants' allotment reductions, Ms. Bernhagen will lose her MSA Special Diet funding effective November 1, 2009. Without this funding, Ms. Bernhagen will not have enough money to purchase the food items she needs to maintain her medically necessary diet.

111. Ms. Bernhagen has been a renter for a number of years. Each year she applies for the Renter Property Tax Refund. Ms. Bernhagen uses the money she receives to pay off the balance of her revolving loan. Because of the monthly interest attached to her loan, Ms. Bernhagen increases the amount of her debt each month. Ms. Bernhagen depends on the Renter Property Tax Refund to pay off the growing debt so that she can maintain the system of borrowing each month to meet her basic needs.

112. Pursuant to Defendants' allotment reductions, Ms. Bernhagen will experience a reduction in her Renter Property Tax Refund for the current year.

IRREPARABLE HARM

113. Plaintiffs are suffering or are in danger of suffering irreparable harm if their MSA-Special Diet funds are terminated November 1, 2009. Plaintiffs have no adequate remedy at law to prevent this termination of their benefits on November 1, 2009.

114. Plaintiffs are in danger of suffering irreparable harm if their Renter Property Tax Refunds are reduced. Plaintiffs have no adequate remedy at law to prevent this reduction in their property tax refunds.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF MINN. STAT. §§ 16A.14 and 16A.152

115. Defendant Hanson's failure to allot funds up to the level of their appropriation at the beginning of a biennium pursuant to Minn. Stat. § 16A.14 violates his duty to allot funds as appropriated at the beginning of a biennium.

116. Defendant Hanson's unallotment of funds before making an initial allotment violates Minn. Stat. § 16A.14.

117. Defendant Hanson's unallotment of funds beyond the current fiscal year violates Minn. Stat. § 16A.14 subdiv. 1.

118. Defendants' use of Minn. Stat. § 16A.152 to reduce funds appropriated and signed into law is not permitted by the statute because, among other reasons:

(a) The probable receipts needed to fund these appropriations were known, and therefore not less than anticipated at the time the appropriations were signed into law.

(b) The amounts needed to fund the appropriations were known before the biennium began.

(c) There are sufficient revenues available to meet the expenses of the MSA-SD program and the Renter Property Tax Refunds until such time as the legislature reconvenes and can address any future budget deficits.

119. Defendant Ludeman's instructions to counties in *Welfare Bulletin* #06-69-04 which direct counties to send notices informing persons receiving MSA-Special Diets that their benefits are terminated as a result of the unallotment of the funds for that program violate the law.

**SECOND CLAIM FOR RELIEF
MINN. STAT. § 290A.23 subdiv. 11**

120. Only the legislature has the authority to amend a state statute.

121. Defendants' use of Minn. Stat. § 16A.152 to reduce the statutorily prescribed amount of rent used to calculate the Renter Property Tax Refund from 19% to 15% is not permitted by law and is thus ineffectual.

**THIRD CLAIM FOR RELIEF
VIOLATION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

122. Only the legislature has the authority to amend a state statute.

123. Defendants' reduction of the statutorily prescribed amount of rent used to calculate the Renters Tax Refund from 19% to 15% is not permitted by the Minnesota Constitution.

**FOURTH CLAIM FOR RELIEF
VIOALTION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

124. If Minn. Stat. § 16A.152 is interpreted to grant authority to the Commissioner of Management and Budget and the Governor to unallot funds in order to balance the state budget

at the beginning of a biennium, the statute is an unconstitutional delegation of authority from the legislative to the executive branch of government.

**FIFTH CLAIM FOR RELIEF
VIOLATION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

125. The Governor's use of unallotment at the beginning of the biennium rather than his constitutional authority to balance the state budget by using the line-item veto to reduce appropriations before the beginning of the biennium violates the separation of powers as established in the Minnesota Constitution.

126. The Governor's failure to use the line-item veto to balance the state budget unlawfully deprived the legislature of its constitutional right in article IV, section 23 to attempt to override any proposed veto of an appropriation.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request this Court to:

1. Certify this case as a class action;
2. Issue a declaratory judgment which provides:
 - A. Minn. Stat. § 16A.152 does not grant the defendants the power to reduce allotments at the beginning of a biennium when the probable receipts for the general fund were known, and therefore not "less than anticipated."
 - B. Defendants' use of Minn. Stat. § 16A.152 to reduce appropriations signed into law at a time when the amounts needed for those appropriations were known is contrary to authority delegated to them pursuant to the plain meaning of the statute.
 - C. Minn. Stat. § 16A.152 does not grant the defendants the power to reduce allotments at the beginning of the biennium when there are sufficient funds available in the

general fund to fully fund all appropriations until such time as the legislature reconvenes and can address any future budget shortfalls.

D. Because allotments cannot extend beyond a fiscal year, any attempt by Defendants to use Minn. Stat. § 16A.152 to unallot funds for fiscal year 2010 is contrary to the provisions of Minn. Stat. § 16A.14 and therefore void.

E. Minn. Stat. § 16A.152 does not grant the defendants the power to revise the program eligibility or administrative provisions surrounding the Renter Property Tax Refund as set forth in Minn. Stat. § 290A.23 subdiv. 1.

F. Defendants' attempt to rewrite substantive provisions regarding eligibility and administration of the Renter Property Tax Refund program exceeds the authority delegated to them under Minn. Stat. § 16A.152 and violates the separation of powers provisions of the Minnesota Constitution.

G. Pursuant to article III of the Minnesota Constitution, Minn. Stat. § 16A.152 is an unconstitutional delegation of powers from the legislative to the executive branch of government if it is interpreted to permit Defendants' actions to a) unallot appropriations when the amount of receipts available for the general fund is known and therefore *not less than anticipated*, b) unallot appropriations when the amount of revenue needed to fund appropriations signed into law is known at the beginning of the biennium, and c) unallot appropriations at the beginning of the biennium when there is sufficient revenue in the general fund to fully fund appropriations until the Governor calls a special session or the legislature reconvenes.

H. Defendant Governor Pawlenty's failure to veto individual appropriations that he disagreed with, and instead to employ Minn. Stat. 16A.152 to reduce appropriations already signed into law is an unconstitutional usurpation of the legislature's constitutional right

to attempt to override the Governor's decision with respect to individual appropriations and as such is a violation of the separation of powers doctrine.

3. Grant a permanent injunction that:

A. Prohibits the Commissioner of Management and Budget from reducing allotments to agencies below the amount of funds appropriated by HF 1362 as signed into law by Governor Pawlenty.

B. Prohibits the Commissioner of Management and Budget from reducing the amount available for the Renter Property Tax Refund below the amount necessary to calculate refunds based upon the 19% prescribed by statute.

C. Prohibits the Commissioner of Health and Human services from taking any action to reduce or terminate plaintiffs' MSA Special Diet assistance payments.

D. Orders the Commissioner of Health and Human Services to reinstate and make retroactive payment of any MSA Special diet payments terminated effective November 1, 2009.

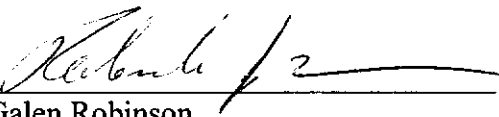
E. Orders the Commissioner of Revenue to use current law which sets the amount of rent constituting property tax as 19% when publishing Renter Property Tax Instructions or Tables for distribution at the start of the 2009 tax filing season.

F. Orders the Commissioner of Management and Budget to restore and allot funds as appropriated by the legislature and signed into law by the Governor.

4. Grant such other and further relief as this Court finds just and equitable.

Dated: 10-29-09

MID-MINNESOTA LEGAL ASSISTANCE

BY 

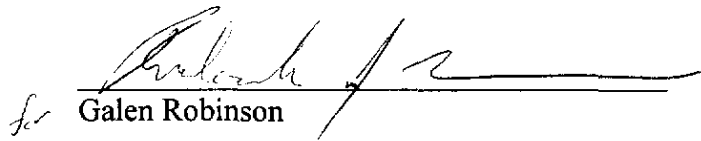
Galen Robinson
Attorney No. 165980
David Gassoway
Attorney No. 389526
430 First Avenue North Suite 300
Minneapolis, MN 55401
(612) 332-1441

Ralonda J. Mason
Attorney No. 194487
830 W. St. Germain Suite 300
PO Box 886
Saint Cloud, MN 56302
(320) 253-0121

Attorneys for Plaintiffs

ACKNOWLEDGMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.21, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party if the plaintiffs or their attorney act in bad faith, assert a frivolous claim, assert an unfounded position to delay or harass, or commit a fraud upon the court.


for Galen Robinson