



60 Month Time Limit Lawsuit (Smith v Corrigan) Update
April 25, 2012

DHS is expected to mail notice to class members on April 27, 2012 explaining how they can take action to regain FIP benefits. At this point, we believe most class members should wait to receive the notices before taking any further action. Please read below for more detailed information. It is important for advocates to prepare to advise families affected by the lawsuit.

DHS Policy Change

DHS stated it would issue an Interim Policy Bulletin and an amended TANF State Plan on Thursday, April 19. The policy went up on the public DHS website on Monday April 23, 2012. It is Interim Bridges Policy Bulletin 2012-006, available at <http://www.mfia.state.mi.us/olmweb/ex/BP-2012-006.pdf>.

It is not clear whether or how local office staff were notified that the bulletin had been issued. At least one class member reports her caseworker and the caseworker's supervisor were totally unaware of this Policy Bulletin and denied her re-application for FIP, based on the 60 month time limit, on April 20, 2012,

CCJ has heard that an email went out to at least some DHS staff on Wednesday April 18, 2012, providing at least some information about the court ruling and telling them that notices and applications would be sent to clients affected by the lawsuit at some point in the future.

It is not clear what instructions have been given to local office staff regarding implementation of the Circuit Court Order and BPB 2012-006. We hope to see copies of those instructions soon. Please share any information you receive from DHS or clients about this.

Notices to Class Members

Notices will be sent to all class members (families terminated or denied FIP based on the 60 month time limit).

Class members will receive the following documents in the mailing:

- **Notice to People Cut Off FIP Cash Assistance Because of the 60 Month Time Limit Policy** (a court-ordered notice intended to fulfill the requirements of MCR 3.501 regarding notice to the class). A copy of this Class Notice is available on the CCJ website.
- **Notice About FIP/Cash Assistance Time Limit Lawsuit**
- (A DHS-issued notice on DHS letterhead, explaining a special reapplication process for class members). A copy of this DHS Notice is available on the CCJ website.
- **DHS Assistance Application** (DHS 1171) with a special sticker on it. A copy of the DHS Assistance Application is available on the DHS website at http://michigan.gov/documents/dhs/DHS_Information_Booklet_and_Assistance_Application_242170_7.pdf.
- (See below for class members who lose their “stickered” application).

The Class Notice will be posted on the DHS and CCJ websites and in DHS offices. It also will be published in several newspapers around the state.

Will families begin to receive FIP again?

Families will be able to apply to begin receiving FIP again, without the 60 month time limit being applied to them. They will not be automatically reinstated. This allows them to choose whether they wish to use months on FIP that may count toward the individuals’ 48 month limit.

Reminder: Months on FIP do not count toward the individual’s 48 month limit if (1) they are before October 2007 or (2) if the person is exempt (deferred) from JET/work participation based on (a) disability expected to last 90 days or more, (b) disability of a child or spouse, (c) domestic violence, or (d) age (65+) in the month they receive FIP. See Issue Alert 11-10-01 for more information. Contact CCJ if you want more information about advocating for families losing FIP due to the 48 month limit.

Families will have to choose how to reapply. If they reapply with a paper application with a sticker, class members will get faster processing of their application and will be able to receive benefits back to the second half of March, if they were otherwise eligible. If they apply using an “unstickered” application (through MIBridges or on an unmarked paper application), the application will not be processed for back benefits and they will not get faster processing – will be treated just like a non-class member’s application.

Families that lose their “stickered” application can write “LOST STICKER” at the top of their application if they want to apply for benefits back to March 16. DHS will check to be sure they are on the list of class members.’

Deadline: Applications with stickers will be accepted if they are received by DHS or postmarked by June 11, 2012.

What about FIP benefits from November 2011 through the first half of March?

DHS takes the position that no benefits are due for that period. CCJ believes clients are entitled to request and receive benefits for these months if they wish to receive them. CCJ is analyzing client options to identify the best avenue for pursuing benefits for earlier months. CCJ encourages other legal advocates to contact us with their ideas and analysis.

Is the case over (what's happening in the courts)?

The case is not over. Below is a description of pending matters and a timeline of events.

The Michigan Court of Appeals is considering Defendant's/Appellant's Motion to Amend their Claim of Appeal to include the April 10, 2012 Order.

The court issued a scheduling order putting the case on the June calendar for argument. The Defendant's brief is due no later than May 2, with Plaintiffs' brief due 7 days later. A decision on Defendant's appeal will issue after that.

The Michigan Supreme Court is considering Defendant's April 18, 2012 motion for reconsideration of their denial of a stay and their order requiring the Court of Appeals to consider whether Plaintiffs are entitled to summary judgment on the alternative ground that Defendant failed to comply with the Administrative Procedures Act, if it determines the Circuit Court erred in ruling that Defendant exceeded her authority under the Social Welfare Act. Defendant has also asked the Supreme Court to set a deadline for the Court of Appeals to issue a decision.

March 28, 2012 - Genesee County Circuit Court issued an order stating that Defendant Corrigan exceeded her authority when she issued the 60 month time limit. The order is available on CCJ's website.

March 29, 2012 - Genesee County Circuit Court denied the state's motion for stay, keeping the March 28 Order in effect. The order denying stay is available on CCJ's website.

April 10, 2012 - in a 2-1 decision, the Michigan Court of Appeals denied the state's motion for stay, keeping the March 28 Order in effect. The Order is available on the Court of Appeals website at http://coa.courts.mi.gov/documents/coa/public/orders/2012/309447%2818%29_order.pdf.

April 10, 2012 - Genesee County Circuit Court issued an Order Entering Judgment, Specifying Relief and Ordering Notice to the Class, stating that the 60 month time limit policy violates MCLA 400.57p and .57r, and also MCLA 400.6. It enjoins the

Defendant from “terminating or denying FIP benefits to the Plaintiff Class based on time limits unless and until it is determined that they have received FIP for more than forty-eight countable months under the time limits set by the Social Welfare Act, MCLA 400.57p and .57r.” And it orders Defendant to provide notice to the class as required by MCR 3.501. The order is available on CCJ’s website.

April 13, 2012 – in a 6-1 decision, the Michigan Supreme Court denied Defendant’s bypass application for leave to appeal and Defendant’s motion for a stay, and instructed the Court of Appeals to decide the case on an expedited basis, addressing two specific questions. The order is available on the Supreme Court website at http://coa.courts.mi.gov/documents/sct/public/orders/20120413_s144913_30_144913_2012-04-13_or.pdf.

WHAT SHOULD ADVOCATES DO?

Be prepared to assist clients who receive the notices related to the lawsuit. This may include assistance with:

- Finding out how many countable months of FIP they have accumulated under the 48 month time limit
- Evaluating whether the “count” is correct (months are not always coded correctly and some months counted under policy may not be countable under the 48 month time limit in state law- contact CCJ if you have questions)
- Evaluating whether individuals will be eligible for a JET/work participation deferral that will prevent them from accruing additional months toward the 48 month time limit
- Establishing or verifying that they should be deferred from JET/work participation

CCJ is developing a Q/A document for use in answering questions families may have about the notices and the lawsuit. Please email Jackie Doig at jdoig@ccj-mi.org with questions you have about the notices and procedures that should be included in the Q/A.