

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-1439

MAINE MUNICIPAL ASSOCIATION,)
CITY OF PORTLAND, and CITY OF)
WESTBROOK,)

Petitioners,)

v.)

MAINE DEPARTMENT OF HEALTH)
AND HUMAN SERVICES, and MARY)
MAYHEW, COMMISSIONER, MAINE)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)

Respondents.)

MOTION OF REHMA REBECCA
JUMA AND SUAVIS FURAHA TO
INTERVENE, WITH INCORPORATED
MEMORANDUM OF LAW

MOTION TO INTERVENE

Rehma Rebecca Juma and Suavis Furaha move this court, pursuant to Maine Rules of Civil Procedure 24(b), for an order permitting them to intervene as plaintiffs in this action. As required by Maine Rules of Civil Procedure 24(c), the Complaint of the proposed Intervenor-Plaintiffs accompanies this motion along with a draft order granting intervention.

The reasons for this motion are as follows:

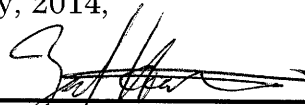
1. This action involves a challenge to the legality of a new eligibility rule for General Assistance issued by the Maine Department of Health and Human Services.

2. This Eligibility Rule would require municipalities to prohibit certain groups of non-citizens, including asylum-seekers, from receiving General Assistance.
3. Rehma Rebecca Juma and Suavis Furaha are both asylum-seekers who depend on General Assistance from support for themselves (and, in the case of Furaha, her children). Without access to General Assistance, Juma and Furaha would likely be homeless and unable to continue their educations.
4. Juma and Furaha have applied for asylum in the United States, but they are not yet eligible to legally work in this country.
5. Juma and Furaha, like the petitioners, intend to challenge the process by which the Eligibility Rule was adopted. In addition, Juma and Furaha intend to challenge the constitutionality of the rule under Maine's equal protection clause.
6. Neither of these claims will unduly delay or prejudice the adjudication of the rights of the original parties. Proposed Intervenor-Plaintiffs' primary claim is identical to one raised by the original petitioner—review under the Maine Administrative Procedures Act. Under the canon of constitutional avoidance, adjudication of proposed Intervenor-Plaintiffs' constitutional claim will only be necessary if all other statutory and regulatory challenges are first satisfied.
7. Juma and Furaha's interests are not, though, independently and adequately represented by the municipalities in this matter. For the municipalities, the Eligibility Rule represents an added expense and administrative burden, but for Juma and Furaha it represents a question of survival. Juma and Furaha are directly denied the equal protection of the law by the Eligibility Rule, in

violation of the Maine Constitution, in a way that is distinct from any burden imposed upon the municipalities.

Wherefore, Rehma Rebecca Juma and Suavis Furaha respectfully request the Court to allow intervention under the provision of Maine Rules of Civil Procedure 24.

Respectfully submitted, this 17th day of July, 2014,



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NOTICE

Pursuant to M.R. Civ. P. 7(b)(1) of the Maine Rules of Civil Procedure, opposition to this motion in accordance with M.R. Civ. P. 7(c) must be filed not later than 21 days after the filing of this motion unless another time is provided by these Rules or set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

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MAINE DEPARTMENT OF HEALTH)
AND HUMAN SERVICES, and MARY)
MAYHEW, COMMISSIONER, MAINE)
DEPARTMENT OF HEALTH AND)
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Respondents.)

ORDER

ORDER

For good cause shown, the Motion to Intervene filed by Rehma Rebecca Juma and Suavis Furaha is Granted. Rehma Rebecca Juma and Suavis Furaha shall be allowed to appear as party Plaintiffs in this action.

Dated:

Justice, Superior Court

STATE OF MAINE
Cumberland, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-1439

REHMA REBECCA JUMA and)
SUAVIS FURAHA,)

Intervenor-Plaintiffs,)

v.)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

MARY MAYHEW, Commissioner,)
Maine Department of Health and)
Human Services,)

Defendant.)

COMPLAINT

Intervenor-Plaintiffs Rehma Rebecca Juma and Suavis Furaha bring this civil action for declaratory and injunctive relief, and allege as follows:

INTRODUCTION

1. Intervenor-Plaintiffs Rehma Rebecca Juma and Suavis Furaha were born in Burundi, but they were forced to flee their homes. Juma fled, without her family, due to her life being placed at risk, while Furaha fled with her four children because of fear of political persecution. They have filed for asylum in the United States and have received documentation from the federal government attesting to the fact that they are residing in the United States lawfully pending an asylum decision. Because Juma and Furaha are not permitted to legally work in this country until they wait the required 180 days for work authorization their

ability to support themselves is very limited. Nevertheless, they are taking the necessary steps to enable them to join Maine's workforce as soon as they are eligible. Juma attends high school and Furaha is learning English (she is already fluent in four other languages), which she studies through the Westbrook Adult Education. Furaha's children have attended school in Portland and Westbrook, and they have become fluent in English. Juma and Furaha rely on the General Assistance program to provide for basic necessities--food, shelter, clothing, and medicine--in order to meet their basic needs and avoid homelessness. A new eligibility rule issued by the Maine Department of Health and Human Services ("the Department") seeks to prevent Juma and Furaha from being eligible to apply for General Assistance, even though they have broken no law and even though they are subject to the jurisdiction of the State of Maine. This new eligibility rule was issued without any public input and over the objection of the Maine Attorney General. The rule discriminates against Juma and Furaha based on their alienage. Juma and Furaha request that this court declare this rule null and void and enjoin its enforcement.

PARTIES

2. Intervenor-Plaintiff Rehma Rebecca Juma is a non-citizen, adult resident of the City of Portland, County of Cumberland, State of Maine. She was born in Burundi, in 1995, but was forced to flee, without her family, due to her life being placed at risk. She came to the United States in September 2013, to seek asylum. She currently is in high school and is working hard to improve her

limited English proficiency. She is unable to work due to her immigration status and the fact that she is waiting for work authorization. Without employment, income or resources and without family or friends, she has had to turn to the General Assistance program in the City of Portland for her most basic economic support. Without the support she receives from General Assistance, she would be homeless, and very likely unable to complete her education.

3. Plaintiff Suavis Furaha is a citizen of Burundi, who fled political persecution in that country with her four school-age children. Furaha has applied for asylum in the United States, but until she waits the required 180 days for work authorization she is legally unable to work. Furaha is studying English at Westbrook Adult Education, and she has reached level four in proficiency; she is fluent in French, Kirundi, Kinyarwanda, and Swahili. Furaha's children attend public school Westbrook. Furaha and her family have no other source of income or financial assistance other than General Assistance. If Furaha became ineligible to apply for General Assistance, she and her family would likely lose their apartment and be homeless.
4. Defendant Mary Mayhew is sued in her official capacity as the Commissioner of the Maine Department of Health and Human Services, which is located in Augusta, Maine. Defendant Mayhew is delegated certain responsibilities under Maine's General Assistance laws, including providing reimbursement to municipalities for the proper provision of General Assistance benefits.

JURISDICTION AND VENUE

5. Jurisdiction is pursuant to 4 M.R.S. §105; 14 M.R.S. §5951 et seq.; and 14 M.R.S. §6051(13).
6. Venue is proper in Cumberland County, pursuant to 14 M.R.S. §501.

STATUTORY BACKGROUND AND PROCEDURAL HISTORY

Statutory Background

7. General Assistance is a Maine public assistance program, funded and administered by the state and by municipalities for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves and their families. 22 M.R.S. §4301(5).
8. The statutory provisions governing General Assistance are contained in Chapter 1161 of Title 22 of the Maine Revised Statutes, codified at 22 M.R.S. §§4301-4326 (“General Assistance statute”).
9. General Assistance provides a specific type and amount of aid for defined needs during a limited period of time; it is not a “grant-in-aid” or general welfare program.
10. For Fiscal Year 2013, the General Assistance program provided approximately \$18 million in financial assistance to individuals and families across Maine, without consideration of those individuals’ citizenship or immigration status.
11. The Department of Health and Human Services is the Maine state agency responsible for administering the state portion of General Assistance funding.
12. The General Assistance statute sets forth the conditions of eligibility for assistance. In addition to “need,” the statute allows municipalities (but not the

Defendant) to establish standards of eligibility that are consistent with the statute, as provided in chapter 1161.

13. The General Assistance statute ascribes certain responsibilities to the Defendant, including providing certain reimbursement to municipalities for the operation of the General Assistance program, reviewing the municipal administration of the program and operating the General Assistance program in the unorganized territories.
14. From time to time, the Defendant has issued regulations pursuant to the Maine Administrative Procedures Act, 5 M.R.S. §§8051-8064, regarding various provisions of the General Assistance program.

Procedural History

15. On December 18, 2013, the Defendant issued proposed Rule 17P for the administration of the General Assistance program that would bar certain non-citizens from obtaining benefits under the General Assistance program.
16. Following public notice, a public hearing (on January 10, 2014), and a public comment period, Rule 17P was submitted to the Maine Attorney General for final approval as to legality and form.
17. On May 16, 2014, the Maine Attorney General advised the Defendant that proposed Rule 17P would not be approved because the rule violated the Maine Constitution's prohibition on unfunded municipal mandates, because DHHS lacked the statutory authority to enact such a rule, and because the rule would constitute a denial of the the equal protection of the law.

18. On June 13, 2014, the Defendant issued a document entitled Maine Department of Health & Human Services Office for Family Independence General Assistance Program Guidance (“Eligibility Rule”).
19. The Eligibility Rule restricts General Assistance eligibility to certain groups of lawfully-present non-citizens (such as refugees) and denies General Assistance to other groups of lawfully-present non-citizens (such as asylum seekers with pending asylum applications).
20. Further, the Eligibility Rule alters state reimbursement for General Assistance.
21. In addition, the Eligibility Rule requires municipalities to begin investigating and verifying the immigration status of applicants for General Assistance and requires municipalities to inform the Defendant as to the number of qualified non-citizens that municipalities are including in their General Assistance programs.
22. Finally, on June 23, 2014, Governor LePage added to the Eligibility Rule, informing municipalities in writing that “if DHHS finds that any municipality fails to comply with the law, it will cut off all General Assistance reimbursement to that community.”

Failure to Follow Rulemaking Procedure

23. The actions of the Defendant, including the determination to cut off all General Assistance funding to municipalities who fail to follow the Department’s June 13th instruction is a “rule” within the meaning of the Maine Administrative Procedures Act (5 M.R.S. §8002(9)) because it contains rules, standards,

statements of policy; because it implements, interprets, and makes specific the law governed by the Department; because it describes the procedures and practices of the Department; and because it is intended to be judicially enforceable.

24. The Defendant did not provide public notice of the Eligibility Rule, as required by 5 M.R.S. §8052(1).
25. The Defendant did not provide an opportunity for a public hearing concerning the Eligibility Rule, as required by 5 M.R.S. §8052(1).
26. The Defendant did not hold a public comment period concerning the Eligibility Rule, as required by 5 M.R.S. §8052(3).
27. The Defendant did not prepare and issue a written statement setting forth the factual and policy basis for the Eligibility Rule and addressing the written and oral comments that it did not receive (because of her failure to hold a public hearing or a public comment period), as required by 5 M.R.S. §8052(5).
28. The Defendant did not file the Eligibility Rule with the Secretary of State, as required by 5 M.R.S. §8052(6).
29. The Eligibility Rule was not submitted to or approved by the Attorney General as to form and legality, as required by 5 M.R.S. §8052(7)(B).

Harm to the Intervenor-Plaintiffs

30. Intervenor-Plaintiffs depend on General Assistance for all basic human needs.

31. Without General Assistance, Intervenor-Plaintiffs will be unable to pay for their basic necessities, rent, electricity, heat and other utilities, food and other household supplies.
32. Intervenor-Plaintiffs have no other source from which they can obtain financial support. They have no family and no friends in this country who can provide support to them.
33. Without the help Intervenor-Plaintiffs receives from General Assistance they will become homeless.
34. Intervenor-Plaintiff Juma will likely be unable to finish school if she is unable to receive General Assistance.
35. Intervenor-Plaintiff Furaha will likely be unable to finish learning English if she is unable to receive General Assistance, and she will likely be unable to ensure that her children receive an education.
36. The actions of the Defendant place Intervenor-Plaintiffs at substantial risk of irreparable harm to their health and safety.
37. Although, at the present time, neither the City of Portland nor the City of Westbrook have adopted the rule changes demanded by the Defendant, there is a substantial risk that the cities will be forced to enact these changes. Intervenor-Plaintiffs are also unable to freely change their residence in the state for fear of being denied General Assistance by a municipality that has adopted the Eligibility Rule.

Alienage Discrimination

38. The Eligibility Rule bars certain non-citizens from applying for or receiving General Assistance, no matter how great their need.
39. The Eligibility Rule requires municipalities to deny General Assistance to non-citizens who have come to the United States seeking asylum from political or religious persecution.
40. As applicants for asylum, Intervenor-Plaintiffs are legally present in this country.

CLAIM FOR RELIEF

Count I. Judicial Review of Rules (5 M.R.S. §8058)

41. Intervenor-Plaintiffs incorporates paragraphs 1-40 set forth above.
42. By statute, Maine provides that any aggrieved party may obtain judicial review of rulemaking, by a declaratory judgment action. 5 M.R.S. §8058(1).
43. Intervenor-Plaintiffs are aggrieved parties because the Eligibility Rule would prevent them from applying for and receiving a government benefit to which they would otherwise be eligible.
44. The Eligibility Rule is void under 5 M.R.S. §8057(1) because it was adopted in a manner other than that proscribed by 5 M.R.S. §§8052, 8053, and 8054.
45. The Eligibility Rule is void and is of no legal effect under 5 M.R.S. §8057(2) because it was not filed with the Secretary of State or approved by the Attorney General, as required by 5 M.R.S. §8056(2)

46. The Eligibility Rule is void because it changes the method of reimbursement to municipalities in violation of existing rules of the Department that have been duly promulgated through the APA.

**Count II. Unlawful Discrimination
(Maine Const. Art. 1 Sec. 6-A)**

47. Intervenor-Plaintiffs incorporates paragraphs 1-46 set forth above.

48. The Maine Constitution guarantees the equal protection of the law to all persons.

49. Intervenor-Plaintiffs are persons within the meaning of the Maine Constitution.

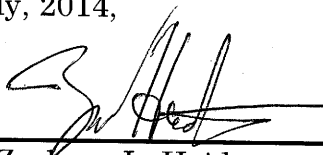
50. Defendant's actions deny Intervenor-Plaintiffs the equal protection of the law by denying them a government benefit solely on the basis of alienage.

PRAYER FOR RELIEF

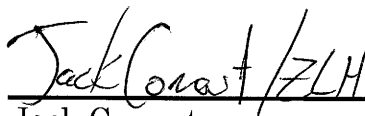
Intervenor-Plaintiffs therefore respectfully request that the Court enter a judgment including, but not limited to:

- a) A declaration the Eligibility Rule is void;
- b) A declaration that the Eligibility Rule unlawfully discriminates;
- c) An injunction prohibiting the Defendant from enforcing the Eligibility Rule;
- d) Such additional and further relief as the Court deems just and equitable.

Respectfully submitted, this 17th day of July, 2014,



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