

Expert: Court documentation of HSD scandal ‘unprecedented’

Written by By Joey Peters NM Political Report
Friday, 15 July 2016 00:32



Two things about New Mexico’s scandal over the state allegedly falsifying applications for the Supplemental Nutrition Assistance Program stand out to Samuel Chu.

The first is documentation of the scandal in federal court, which in May included three top state Human Services Department officials refusing to answer a total of nearly 100 questions from lawyers. Instead, they asserted their Fifth Amendment rights, which allow people to avoid possibly incriminating themselves.

“We generally don’t see that,” Chu, the national synagogue organizer with Mazon, a California-based anti-hunger organization that tracks food stamp issues across the country.

The Fifth Amendment pleadings came after multiple HSD employees told the court of an alleged

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statewide practice of adding false resources to applications for emergency benefits through SNAP, the federal program formerly known as food stamps.

HSD officials encouraged the practice, according to nine employee testimonies, to clear backlogs of emergency SNAP applications that hadn't been processed in the required amount of time. Federal law requires those emergency applicants, which only apply to the poorest of the poor, receive their benefits within seven days. Failure for a state to do so can lead to sanctions from the federal government.

Testimony on scandal ‘unique’

Chu said allegations of similar practices have come up in other states. But they're rarely documented in public, as they have been in New Mexico since April.

“The fact that all these things are coming out in court records and under oath makes it unique, because we don't usually get the opportunity to really see the department's inner workings in this way,” he said in an interview. “I think that that is a precedent.”

The sheer length of the problem in New Mexico is the other big stand-out to Chu. The allegations came as part of the Debra Hatten-Gonzales lawsuit, which attorneys filed in 1988. The suit accused HSD of mishandling Medicaid and food stamp processing. That resulted in a 1990 federal consent decree, which plaintiffs from the lawsuit—including lawyers with the New Mexico Center on Law and Poverty—say HSD still isn't meeting today.

Last week, lawyers finished closing arguments on a motion for a federal court to appoint an independent monitor that would direct HSD's benefits division, the Income Support Division (ISD), and bring it into line with the Hatten-Gonzales consent decree.

The process is known as a receivership and is also supported by local Democratic Party leadership and local advocacy groups like New Mexico Voices for Children.

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Chu, whose organization provides funding for the Center on Law and Poverty, also supports the idea.

“It is almost impossible when there is such a broad, longstanding inability to perform a particular function, to expect that the department is going to fix itself,” he said.

HSD argued such a receivership would only make the department’s benefits processing worse. In an April court hearing, HSD Secretary Brent Earnest called the plan a “recipe for chaos.”

Earnest said such a receivership would create “an inherent conflict” between the independent monitor and HSD’s leadership by prompting an inevitable clash for dollars within the department between the two.

“The [receiver] would want to take money away from other parts of the department like Medicaid,” Earnest said in court.

State admits problem, calls for ‘objective reviewer’

HSD’s leadership gradually acknowledged the gravity of the situation in the three months since the fake SNAP assets allegations first rocked the agency.

During the May hearing, HSD attorney Christopher Collins first made statements that the department was willing to hire “an objective reviewer” to identify the existing issues that still need to be fixed to comply with the consent decree. Collins also said HSD would open a competitive bid for “consulting and assistance” to the department in three areas: compliance with the consent decree, the agency’s operations and training of employees.

At the time, Collins also acknowledged the hiring process for this consultant firm could take nine months. He added that the firm would take at least another three months to complete the reform process.

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But last week, HSD attorneys and Earnest added a new proposal; the department pushed for the judge to appoint a “special master” who would effectively monitor HSD’s actions on compliance with the consent decree and report findings periodically to the court. He or she would answer to Earnest and HSD leadership.

The receivership, on the other hand, would give the monitor authority to make decisions regarding HSD’s benefits processing to put the department in compliance with federal law.

HSD spokesman Kyler Nerison didn’t return requests for comment Tuesday on how department officials arrived at their current position advocating for a special master. Nerison typically does not respond to requests for comment from *NM Political Report*.

Louise Pocock, a staff attorney at the Center on Law and Poverty, called HSD leadership’s steady admission of the department’s problems with following the consent decree “a step forward.”

“After these last few months of hearings, Secretary Earnest is beginning to see the problems we’ve been alleging over the years are maybe more serious than he previously understood,” Pocock said in an interview.

But she argued the remedy of a “special master” over a receivership would not fix the underlying issues.

California corrections in 11-year receivership

New Mexico, of course, isn’t the only state government to mishandle food benefits processing. Last year, Massachusetts came under controversy after its Department of Transitional Assistance switched to a new computer system and left nearly 100,000 people who otherwise should have received aid without food benefits.

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Massachusetts addressed the scandal by adding help phone lines for applicants, prioritizing SNAP beneficiaries who are at the highest risk of losing aid and adding resources to its call centers.

The state did not need a special master or to be put into receivership.

But difficulties with ASPEN, the new computer system in New Mexico, is just one of many problems that the Center on Law and Poverty point to in the need for a receivership. Other problems include enforcing unnecessary standards on applications from immigrants, a failure to write SNAP applications and notices on the required sixth grade level and denying applications for procedural reasons.

Legal precedent for a receivership comes from a case in California that led to the appointment of an independent monitor in 2005 to oversee and direct health care at the California Department of Corrections. At the time, an average of one California inmate died a week, which a judge ruled was caused by “medical malpractice or neglect” by the state.

Advocates like Chu, who said he lived through the controversy in California, say the result of a receivership has been worth the trouble, leading to better health care and accountability.

But it’s also been costly.

Today, 11 years later, the California Corrections Department still remains in a receivership.

California’s corrections agency runs on a roughly \$10 billion budget. HSD runs on a \$6.5 billion budget.

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