IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

KATHLEEN GILLMAN,

Plaintiff,

v. CIVIL ACTION NO. 3:87-0803

HOUSING AUTHORITY OF
MINGO COUNTY, et al.,

Defendants.

MEMORANDUM OPINION & Order

This case is currently before the court on a motion for a preliminary injunction filed by the plaintiff, Kathleen Gillman, against the defendants, the Housing Authority of Mingo County (HAMC) and Harry Moore, the landlord of the plaintiff. The case was originally filed in the Circuit Court of Mingo County, West Virginia, and was removed by the defendants to this court on the basis of federal question jurisdiction, pursuant to 28 U.S.C.A. § 1441(b) (West 1973). The original action is implicitly based upon 42 U.S.C.A. § 1983 (West 1981), as Gillman claims that HAMC wrongfully terminated her housing assistance payments to which she was entitled under the Section 8 Existing Housing Program and regulations promulgated thereunder by the Department of Housing and Urban Development (HUD).

I. JURISDICTION

As a threshold matter, the court notes that neither the plaintiff nor defendants assert that this action was brought under § 1983. However, the court has so construed the

pleadings, pursuant to Rule 8(f), Fed. R. Civ. P., so "as to do substantial justice." Id. In Phelps v. Housing Authority of Woodruff, 742 F.2d 816 (4th Cir. 1984), the Court of Appeals held that §1983 could not be used as an enforcement mechanism by private individuals for the alleged violation of a statutory right under the § 8 program. However, the Supreme Court, in a case subsequent to Phelps, held that §1983 does provide participants in the § 8 program with a private cause of action to remedy violations by state officials of federal housing law. See Wright v. Roanoke Redev. & Housing Auth., 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987). In Wright, tenants in a public housing project sued the local housing authority (PHA), claiming that the PHA had overcharged them for utilities, thereby violating the Brooke Amendment to the Housing Act of 1937, 42 U.S.C.A. § 1437 (West 1989). The Court held that there exists a cause of action under § 1983 to enforce rights under the Brooke Amendment, which places a statutory cap upon the percentage of a tenant's income that may be charged as the tenant's contribution to the total rent paid to a landlord. The interpretation of the regulations issued by HUD as a result of the Brooke Amendment are at issue in the present case. Further, in Beckham v. New York City Housing Auth., 755 F.2d 1074 (2nd Cir. 1985), the Second Circuit held that § 1983 provides an "enforcement mechanism to enforce statutory rent limitations." Id. at 1077. Finally, in Virginia Hosp. Ass'n v. Baliles, 868 F.2d 653 (4th Cir. 1989) cert. granted in

part by ___U.S.___, 110 S.Ct. 49, 107 L.Ed.2d 18 (1989), the Fourth Circuit cast doubt upon the validity of its holding in Phelps. Id. at 660, n.8. See also Drake v. Pierce, 691 F.Supp. 264 (W.D. Wash. 1988). Based upon a reading of these cases, this court holds that 42 U.S.C.A. § 1983 provides the mechanism by which a tenant can enforce the statutory cap upon tenants' payments which is codified at 28 U.S.C.A. §1437a. This reasoning also applies to HUD's regulations issued thereunder, which, when validly promulgated, have the "force and effect of law." See Chrysler v. Brown, 441 U.S. 281, 99 S.Ct. 1705, 60 L.Ed.2d 208 (1979); Holly v. Housing Authority of New Orleans, 684 F.Supp. 1363 (E.D. La. 1988). Therefore, while no private cause of action exists within the statutory text of the § 8 program itself, this court has jurisdiction over the matters at issue in this case, and §1983 provides the means by which plaintiffs may seek redress for violation of § 8 of the United States Housing Act.

II. BACKGROUND

The United States Housing Act of 1937, 42 U.S.C.A. 1437 et seq. (West Supp. 1989), as amended, created the Section 8 Existing Housing Program (Program). The statute provides that the Program's purpose is to "aid[ ] lower-income families in obtaining a decent place to live...." Id. at 1437f. The Program is administered by HUD through area offices and local public housing agencies (PHA's). Under the Program, a certain percentage of an eligible tenant's rent is subsidized and the subsidy is paid directly to the landlord

by the PHA. The remainder of the rent is the responsibility of the tenant, and is known as the "total tenant payment." The PHA, pursuant to statutory guidelines and HUD regulations, calculates the total tenant payment. The subsidy which the PHA pays to the landlord is determined by subtracting the total tenant payment from the rent charged by a private landlord who has agreed to participate in the Program.

In early 1986 the plaintiff, Kathleen Gillman, applied for housing assistance payments under the Program. In June 1986, the local housing authority (HAMC) approved her application and executed a lease with her landlord (Moore) whereby HAMC paid the entire amount of the $200 per month rent directly to Moore, as Gillman had no income at the time. In March 1987, Gillman was recertified for continuation in the Program and a lease was executed for the period of June 1987 to June 1988 on essentially the same terms as the prior lease, except that HAMC also paid a utility allowance of $7 per month to Gillman. At this recertification meeting, Gillman did not mention that she had applied for Social Security benefits in May of 1985.

On June 18, 1987, Gillman was notified by the Social Security Administration that her application for benefits had been approved. As a result, Gillman was to receive a lump-sum amount of $7501.33 for "money due her for May 1985 through June 1987," a period of twenty-five months. Plaintiff's Exhibit 1, Preliminary Injunction Hearing on July

31, 1989 [hereinafter "Hearing"]. Gillman was contemporaneously notified that she would begin receiving a monthly check of $340 beginning July 1, 1987. Ms. Gillman's sister, Tina Grace, called HAMC and orally informed the HAMC Executive Director, Virginia Branham, that Gillman would be receiving the lump-sum and monthly payments. Up to this point, the parties agree as to the facts.

Gillman contends that within a few days of orally notifying HAMC of her change in income, pursuant to her obligations under the lease and HUD regulations, she mailed a copy of the notification letter to HAMC. HAMC contends that the letter was never received, and, in addition, asserts that it requested by means of a memo dated June 23, 1987, that Gillman submit written verification but that this information was never provided. Plaintiff claims that she never received this memorandum.

The parties also agree that on March 11, 1988, another recertification meeting was held, and that plaintiff informed HAMC that she was receiving monthly benefits of $340 per month and had previously received a lump-sum amount for back payments. HAMC contends that this was the first time that they knew of the amounts involved. On March 20, 1988, based on the information received at the meeting, HAMC informed Gillman that she had been overpaid in the amount of $2484 as a result of her failure to inform HAMC of changes in her income. Also, a new lease was executed for the period from June 1988 to June 1989, which provided that plaintiff

was to pay $82.00 per month toward the rent for that year and HAMC was to pay $128 per month. HAMC states that this lease and the 1988 contract executed between it and the plaintiff did not reflect the overpayment resulting from the lump-sum receipt, because "HAMC planned to permit the Plaintiff to repay the overpayment, so that she could remain a Program participant." Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction at 3 [hereinafter "Opposition"]. Pursuant to this plan, HAMC asserts that it offered Gillman a repayment agreement on June 14, 1988, but she refused to execute the agreement. Gillman agrees that this sequence of events occurred. However, she claims that she refused to execute the agreement because: (1) she had reported the receipt of benefits, orally and in writing; (2) HAMC's executive director acknowledged that she had received an oral notification; and (3) she had disbursed the lump-sum amount for payment of, inter alia, medical expenses incurred in the past, pursuant to the Social Security Administration's admonition that "[i]f the money is not spent before January 01, 1988, we will count any money left over as part of [your] resources" and "[f]or 1988, the limit on resources is $1900.00." Plaintiff's Exhibit 1, Hearing. Therefore, Gillman requested that HAMC reconsider its decision as to repayment. HAMC did so in August 1988, but reaffirmed its earlier decision to require repayment, because "the Plaintiff's evidence [as to notification of changes in income] was insufficient to allow the HAMC to waive

repayment." Opposition at 3. Plaintiff once again refused to execute the proferred repayment agreement.

The next occurrence in the relevant sequence of events took place in December of 1988. On December 28, HAMC conducted an interim reexamination of income. In February 1989, Gillman was informed that, effective April 1, 1989, her housing assistance payments would terminate, as the inclusion of the full lump-sum amount as income, combined with her monthly checks from Social Security, rendered her ineligible for benefits for a period of one year. In a hearing before the HAMC Appeal Board held on April 18, 1989, the decision of HAMC was upheld. Plaintiff then filed the present action, seeking declaratory and injunctive relief. A hearing was held by this court on July 31, 1989, at which evidence was presented by Gillman and HAMC as grounds for granting or denying the injunction, respectively. Moore did not appear and, pursuant to a representation by plaintiff's attorney that injunctive relief is no longer being sought against him, as he has taken no steps to evict the plaintiff, the court need only address the issue of whether injunctive relief is appropriate as to HAMC.

III. INJUNCTIVE RELIEF

The test to be applied in the Fourth Circuit to determine whether a preliminary injunction should be granted has been established by Blackwelder Furniture Co. of Statesville v. Seilig Manufacturing Co., Inc., 550 F.2d 189 (4th Cir. 1977) and its progeny. In accordance with

these cases, this court must balance several factors: (1) the likelihood of success on the merits on the part of the party bringing the motion; (2) the probable harm to the movant if the injunction is not granted; (3) the probable harm to the non-movant if the injunction is granted; and (4) the public interest involved in a grant or denial of the injunction. Id. at 195-96. "If the balance of the harms tips decidedly in favor of the party requesting the injunction, then that party need only raise a serious question on the underlying merits." United States of America, et al. v. The Singer Company, No. 89-2346, slip op. at 12 (4th Cir. Nov. 22, 1989). On the other hand, "if the likelihood of success is great, the need for showing the probability of irreparable harm is less...." North Carolina State Ports Auth. v. Dart Containerline Co., 592 F.2d 749, 750 (4th Cir. 1979). In essence, the factors of probable success and balance of harms occupy points on a continuum; the importance of a showing as to one is inversely related to the requirement that the other be shown with a requisite degree of certainty. "The decision to grant or deny a preliminary injunction depends upon a 'flexible interplay' among all the factors considered." Blackwelder, 550 F.2d at 196.

"The objective of a preliminary injunction is to minimize those changes which will most profoundly affect one of the parties in an adverse manner if they occur before the merits of the question or questions in issue are decided." Singer, slip op. at 21.

a. Balance of harms

> [T]he two more important factors [when deciding whether or not to grant an injunction] are those of probable irreparable injury to plaintiff without a decree and of likely harm to the defendant with a decree. If that balance is struck in favor of plaintiff, it is enough that grave or serious questions are presented; and plaintiff need not show a likelihood of success.

Blackwelder, 550 F.2d at 196. See also Johnson v. Bergland, 586 F.2d 993, 995 (4th Cir. 1978). Therefore, it is appropriate that this court should first address these two factors.

In support of her motion for a preliminary injunction, the plaintiff asserts that, because of the uncertainty and inherent delay involved in a potential receipt of monetary damages, she has no adequate remedy at law. The defendant counters by stating that Gillman has asked for money damages in this case, and that the amount of such damages are "readily calculable or collectable," as she has requested damages in the amount of $10,000. The plaintiff also states that, as a result of the termination of her housing assistance payments, she is unable to pay for other necessary living expenses because the rent which she must now pay pursuant to her lease with the landlord comprises 57% of her monthly income. She testified at the

hearing held on July 31, 1989, that, as a result of HAMC's actions, she cannot purchase prescribed medication, which costs nine dollars ($9.00) per month. Because she cannot afford this medicine, she suffers from migraine headaches and emotional disturbances which the medicine is intended to prevent. Further, she receives thirty-five dollars ($35.00) per month in food stamps and this is all that she has to spend for food each month. Finally, she asserts that she cannot afford to buy basic cleaning supplies and materials. The defendant meets these contentions by stating that her "family could lend assistance to her during the pendency of this action." Opposition at 12.

Gillman does not address the issue of the probability of harm to the defendant if the injunction is granted. The defendant does, albeit in a cursory fashion, allege potential harm. HAMC states that "needy persons who do qualify for housing assistance under the HAMC programs could be denied housing relief while the Plaintiff unjustly receives assistance." Id. at 13.

HAMC misconstrues the nature of the inquiry involved as to whether a plaintiff has an "adequate remedy at law." It is true that Gillman may potentially obtain a monetary judgment in a trial of this case. This fact she does not contest, and, normally, the collection of damages at some point in the future would provide an adequate remedy. However, it does not follow that such damages, potentially recoverable at some future point in time, provide an adequate

remedy in this case. Gillman's contention is that she needs money now in order to maintain a decent place to live and in order to meet her necessary daily, weekly and monthly expenses. Damages recoverable in the future will not provide her with the ability to meet these expenses when such must be paid at this point in time, not at some later date. The fact that her family may be able to assist her does not change the uncontroverted fact that based on her present income level she cannot afford such basic necessities of life as medicine and food, both of which are necessary for the maintenance of her physical and emotional well-being. It is obvious to this court that there is not only a probability of harm to the plaintiff in this case if an injunction is not granted, there is almost a certainty that such harm will occur, if it has not already. The reality of probable harm here cannot be summarily disregarded by a casual and flippant assertion on the part of the defendant that her family may be able to assist her.

The probability of harm to the plaintiff must be balanced against the probability of harm to the defendant. The plaintiff does not address this issue, but the defendant does. HAMC refers to the possibility that "needy persons who do qualify for housing assistance under the HAMC programs could be denied housing relief while the Plaintiff unjustly receives assistance" and that the grant of an injunction under the circumstances of this case "simply 'opens the door' to fraudulent schemes." Opposition at 13. This argument is

the court's mind whether it has done so in this case. HAMC asserts that the plaintiff, Gillman, admittedly having orally notified HAMC of the impending receipt of benefits, should have ensured that written verification was received by HAMC. HAMC further contends that, since her assistance payments were not immediately recalculated, this should have alerted her to the fact that HAMC did not receive the letter she claims to have sent. Even though there is nothing in the regulations or in HAMC's policy handbook that references a written notice or report, HAMC essentially contends that plaintiff is estopped from complaining because of her own mistake in not making sure that such a written notice was received. On the other hand, HAMC apparently refuses to recognize that it may have made a mistake, such as losing the notice sent by the plaintiff before it reached her file, and states that "it is not the PHA's obligation to conduct an investigation to determine that a tenant is receiving additional moneys." Id. at 10. While this may be true as a general proposition, this court cannot say that in this case HAMC had no such obligation to investigate within a reasonable period of time, after having been informed, at least orally, that a receipt of money was forthcoming.

As discussed above, any contention that the plaintiff has purposely circumvented any regulations is patently without merit, based on HAMC's own admissions. Moreover, broad and sweeping pronouncements that the grant of an injunction here could lead to "an upheaval in the entire

housing program" are merely inflammatory and meritless assertions which do not warrant further discussion. This court finds no subversion of the public interest in the facts of this case, based on the record before it, and no reason to deny the injunction based on the arguments of HAMC regarding the public interest involved.

c. Likelihood of success

Having found that a balancing of the probable harms to the parties tips "decidedly in favor of the party requesting the injunction," the court need only ascertain whether Gillman has raised "a serious question on the underlying merits," Singer, supra, slip op. at 12. The court need not consider whether there is a substantial likelihood of success on the merits, only whether there have been "grave or serious questions raised." Id.

The defendant claims that the actions taken by it were in accordance with and are supported by federal law and regulations and that the facts of this case do not give rise to the application of equitable estoppel. In support of these claims, HAMC states, inter alia, that: (1) it had no duty to make a change in the plaintiff's rental assistance after receiving verbal notification only; (2) it was justified in including the lump-sum as income two years after its receipt, as the federal regulations do not stipulate any time limit within which repayment can be sought; (3) the reason for the delay was the plaintiff's refusal to accept HAMC's initial decision and her appeal thereof; (4)

plaintiff's knowledge of the regulations should have led to the conclusion that HAMC had not received a written verification, since there was no change in her assistance payment after she sent it; (5) HAMC had no choice but to terminate assistance; and (6) the evidence is clear that HAMC made no error and any error is solely the fault of Gillman.

Plaintiff responds that: (1) she complied with her obligations by reporting the lump-sum receipt, orally and, subsequently, in writing; (2) at the latest, HAMC should have acted in March 1988, when it admittedly knew of the lump-sum receipt, by recalculating plaintiff's income and, thereby, her total tenant payment for the contract year of 1987-1988; and (3) requiring Gillman to repay this amount in cash or include it in income two years after its receipt is arbitrary and unreasonable action.

"[T]his court must decide whether [HAMC], a state agency, has violated the provisions of Section 8 of the Housing Act." Holly v. Housing Authority of New Orleans, 684 F.Supp. 1363, 1367 (E.D. La. 1988). More specifically, the court must determine whether there exist grave or serious questions as to whether a violation has occurred.

In Holly, the court found no fraud in the failure of the plaintiff to report cohabitation with her spouse in a short-lived marriage. Therefore, the housing authority was not justified in terminating her assistance pursuant to its discretionary authority, granted by 24 C.F.R. § 882.210 (d)(1)-(2), to terminate such assistance for fraud or failure to fulfill the tenant's reporting obligations found at 24 C.F.R. § 292.118. Summary judgment was granted in favor of the plaintiff, partially because she did not know that she was required to report such information.

The court does not doubt the authority of HAMC to include a lump-sum payment in annual income when calculating the total tenant payment. Also, the court recognizes that the thirty-percent cap on the tenant payment mandated by 42 U.S.C.A. § 1437a does not apply in all situations. In Dayton Metropolitan Housing Authority v. McKee, 37 Ohio App.3d 102, 524 N.E.2d 180 (Ct. App. Ohio 1987), appellee had rented a public housing unit for $1.00 per month while unemployed. She obtained employment but failed to notify the PHA until one year later. As a result, she owed $873.00 and executed an agreement with the PHA to remit the amount of overpayment in 15 equal monthly installments. Subsequently, she failed to make any payments pursuant to the agreement and was served with a notice of eviction. On appeal, the question involved was whether the payments constituted "rent" or "miscellaneous charges," as those terms are defined by the statute. The appellate court held that "the tenant's retroactive payments

were payments of 'rent' for past occupancy of her dwelling." Id., Westlaw p. 3. Further, the court held that the thirty-percent ceiling on rent found in 42 U.S.C.A. § 1437a(a) and the regulations promulgated thereunder did not apply to this case, because the "retroactive rent payments represent[ed] arrearages for actual rent previously accrued and fraudulently withheld from the public housing authority." Id. at 4 (emphasis added). Therefore, the PHA was "not precluded from charging retroactive rent payments even though, when coupled with current monthly rent charges, the total payments exceed[ed] the thirty-percent ceiling." Id.

Based on this reasoning, the court upheld the eviction of the appellee for non-payment of rent. While this case is obviously not mandatory authority, binding upon this court, it does, especially considering the dearth of authority on the issue, constitute persuasive authority. However, the facts of the two cases are easily distinguishable, as there is no evidence of, or meritorious allegation of, fraud in the present case. The court does not question the right of HAMC to take the action it did in this case, merely the manner in which it acted, based on the facts of this case.

In Beckham v. N.Y. City Housing Auth., 755 F.2d 1074 (2d Cir. 1985), the court stated, in agreement with McKee, that the percentage limits found in the statute do not apply to "tenant households that carelessly or deliberately ignore the annual recertification requirement." Id. In Beckham,

the tenants involved had apparently totally failed to provide the information needed for certification; therefore, the PHA imposed a rent calculated by using an "economic" rent schedule which was based upon the size of their apartments. Similarly, in Khawaja v. Lynch, 1989 WL 109545 (W.D.N.Y. Sept. 22, 1989), the court upheld a recalculation of income which resulted in the plaintiff expending more than fifty percent of his monthly income as his share of the rent. The recalculation was performed when plaintiff's two adult sons moved into his government-subsidized apartment. Denying the plaintiff's motion for a permanent injunction, the court noted that granting the injunction would result in the "unneedy adult sons [receiving] a rent subsidy at taxpayer expense" and that "[t]o the extent the plaintiff suffers from the consideration of his sons' income, such hurt is not due to HUDs' arbitrariness [in including their income in the calculation of the total tenant payment] but rather to his own willingness to countenance freeloading offspring." Id. at p. 2-3. See also Head v. Jellico Housing Auth., 870 F.2d 1117 (6th Cir. 1989); compare Owens v. Housing Authority of City of Stamford, 394 F.Supp. 1267 (D.Conn. 1975).

The court understands that Congress, in enacting the Program, intended "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." 42 U.S.C.A. § 1437. Further, HAMC "has the power under state law to adopt reasonable policies and regulations necessary to carry out

its statutory functions and responsibilities" when a specific policy or means of enforcing a HUD regulation is not provided for pursuant to HUD regulations or the contract entered into by HUD and HAMC. Baker v. Cincinnati Metro. Housing Auth., 490 F.Supp. 520 (S.D. Ohio 1980), aff'd 675 F.2d 836 (6th Cir. 1982). However, the law also requires that local housing authorities take action "in a reasonably expeditious manner." 24 C.F.R. § 882.216(b)(5).

The court also realizes that great deference and weight must be accorded "to the interpretation given the statute by the officers or agency charged with its administration." Udall v. Tallman, 380 U.S. 1, 16, 85 S.Ct. 792, 804, 13 L.Ed.2d 616 (1956). However, "this deference is constrained by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose, and history." International Brotherhood of Teamsters v. Daniel, 439 U.S. 551, 566 n.20, 99 S.Ct. 790, 800 n.20, 58 L.Ed.2d 808 (1979). This court is empowered to set aside agency action, in the final analysis, only if such action is "arbitrary, capricious, an abuse of discretion, [or] otherwise not in accordance with law." Turner v. Perales, 708 F.Supp. 512 (W.D.N.Y. 1988), aff'd 869 F.2d 140 (2nd Cir. 1989). Since Congress and HUD have not directly spoken to the issue at hand by means of the statute and the regulations promulgated thereunder, all that the court must decide is whether HAMC's actions in the context of the Program are reasonable, and, therefore, not arbitrary and capricious.

See Chevron v. National Resources Defense Council, Inc., 467 U.S. 837, 844, 104 S.Ct. 2778, 2782-83, 81 L.Ed.2d 694 (1984).

At this juncture in the case, the court cannot hold that HAMC's actions were reasonable, on the one hand, or unreasonable, on the other. A decision on the merits is inappropriate without further factual development regarding the customary practice and procedure of HAMC when such situations arise and/or the practices and policies of other PHA's in like situations. See Nash v. Washington, 360 A.2d 510 (D.C. App. 1976). This decision is to be made by the fact-finder at a trial, if a trial becomes necessary. However, the court finds that the plaintiff has raised serious questions as to the reasonableness of the action involved here. Arguably, the plaintiff complied with her obligation to report by orally reporting the receipt of the lump-sum payment. Further, it may be that the failure of HAMC to act in a timely manner would also give rise to a meritorious claim of equitable estoppel on the part of Gillman. See In re Jack Hudson, Inc., 6 Bankr. 153 (Nev. 1980). Finally, it is apparent to the court that, at a minimum, HAMC acted contrary to law and reason when it included the entire lump-sum amount in Gillman's income. The lump-sum received was for the period of May 1985 to June 1987. The plaintiff was first accepted into the Program in June 1986. Therefore, only the benefits received for June 1986 to June 1987 can rationally be included as income for

that period. A contrary ruling would defy logic and rational thought. At most, the lump-sum received for the first twelve month period could be treated as an asset and any income earned thereon included as "net income derived from assets for the 12-month period following the effective date of certification." 24 C.F.R. § 813.106.

In light of the facts and circumstances of this case, in conjunction with the fact that a balancing of harms clearly favors the plaintiff here, as discussed above, this court concludes that the injunction should be granted, and the same shall be, pursuant to the terms of the order of this court filed contemporaneously herewith.

The clerk of the court is directed to send a certified copy of this memorandum opinion to all counsel of record.

ENTER:

ROBERT J. STAKER
United States District Judge

A TRUE COPY, Certified this

DEC 21 1989

RONALD D. LAWSON, CLERK
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON

KATHLEEN GILLMAN,

Plaintiff,

v. CIVIL ACTION NO. 3:89-0803

HOUSING AUTHORITY OF
MINGO COUNTY, et al.,

Defendants.

ORDER

This case came to be heard upon the motion of the plaintiff, Kathleen Gillman, for a preliminary injunction pursuant to Rule 65, Fed. R. Civ. P., pending the final disposition of the issues involved herein. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel and the entire record in the case, has filed a memorandum opinion contemporaneously herewith. In conformity with the reasoning of the memorandum opinion, and pursuant to Rule 65, Fed. R. Civ. P., it is hereby ORDERED that the motion of the plaintiff for a preliminary injunction be, and the same hereby is, GRANTED against defendant, the Housing Authority of Mingo County (HAMC), as well as its officers, agents, servants and employees.

Specifically, based upon the entire record, it is hereby ORDERED, ADJUDGED AND DECREED that a PRELIMINARY MANDATORY INJUNCTION will issue and said defendant is ORDERED to resume paying to or on behalf of the plaintiff the benefits under the Section 8 Housing Program to which she

would be entitled if the lump-sum payment received for retroactive Social Security benefits were not included in the calculation of her income. Such payments are to begin effective January 1, 1990, and are to continue until the disposition of this action on the merits.

Further, said defendant is PERMANENTLY ENJOINED from including as income for purposes of calculating the total tenant payment under the Section 8 Housing Program that portion of the lump-sum payment for retroactive Social Security benefits which represents benefits owed for any period(s) prior to June 1986.

Finally, as the plaintiff has been allowed to proceed in forma pauperis, and pursuant to the court's discretion under Rule 65(c), Fed. R. Civ. P., it is further ORDERED that no security or bond be required for issuance of this injunction.

The clerk of the court is directed to send a certified copy of this ORDER to all counsel of record.

Done this 21 day of December, 1989.

ENTER:

Robert J. Staker

ROBERT J. STAKER
United States District Judge

A TRUE COPY, Certified this

DEC 21 1989

RONALD D. LAWSON, CLERK
By [illegible]
Deputy