

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CANDY BOWLING *et al.*

Plaintiff,

v.

MICHAEL DEWINE, in his official capacity
as GOVERNOR of the State of Ohio, *et al.*

Defendant.

Case No.:

Judge

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs SHAWNEE HUFF (“Huff”), CANDY BOWLING (“Bowling”), and DAVID WILLIS (“Willis”, collectively with Huff and Bowling, the “Plaintiffs”), hereby move this Court pursuant to Civ. R. 65 for the issuance of a Temporary Restraining Order and Preliminary Injunction enjoining Defendants Michael Dewine and Matt Damschroder from denying Ohioans the right to receive FPUC benefits provided pursuant to 42 U.S.C. § 1105.4. The reasons for Plaintiffs’ Motion are fully contained in the foregoing Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This matter is before the Court on Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction prohibiting the Defendants from denying the Plaintiffs their FPUC benefits provided pursuant to 42 U.S.C. § 1105.4.

II. LAW AND ARGUMENT

A. Standard of Review

1. Standard for a Restraining Order pursuant to Civ. R. 65(a)

Civ. R. 65(a) allows this Court to issue a temporary restraining order without written or oral notice to the adverse party of attorney if: (a) Specific facts set forth in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (b) the moving party's counsel certifies in writing any efforts made to give notice and the reasons why it should not be required. In reviewing a Motion for a Temporary Restraining Order the Court must determine: (1) Whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent a stay; (3) whether granting the stay would cause substantial harm to others; and (4) whether the public interest would be served by granting the stay. *Ne. Ohio Coalition for the Homeless & Serv. Emps. Int'l Union Local 1199 v. Blackwell*, 467 F.3d 999, 1005-06 (6th Cir. 2006). These four factors are not prerequisites that must be met but are interrelated considerations that must be balanced together. *Mich. Coal of Radioactive Material Users, Inc. v. Grientrog*, 95 F.2d 150, 153 (6th Cir. 1991).

2. Standard for Preliminary Injunctions pursuant to Civ. R. 65(b)

In order to grant a preliminary injunction pursuant to Civ. R. 65(b), a court must look at: (1) whether there is a substantial likelihood that plaintiff will prevail on the merits, (2) whether plaintiff will suffer irreparable injury if the injunction is not granted, (3) whether third parties will be unjustifiably harmed if the injunction is granted, and (4) whether the public interest will be served by the injunction." *Hydrofarm, Inc. v. Orendorff*, 10th Dist. No. 08AP-287, 180 Ohio App. 3d 339, 2008 Ohio 6819, P18, 905 N.E.2d 658, quoting *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.* (1996), 109 Ohio App.3d 786, 790, 673 N.E.2d 182, citing *Valco Cincinnati, Inc. v. N&D Machining Serv., Inc.* (1986), 24 Ohio St.3d 41, 24 Ohio B. 83, 492 N.E.2d 814. The primary goal of preliminary injunctive relief "is to preserve the status quo pending final determination of the matter." *Ohio Urology, Inc. v. Poll* (1991), 72 Ohio App.3d 446, 454, 594 N.E.2d 1027; *Dunkelman v. Cincinnati Bengals, Inc.*, 158 Ohio App.3d 604, 2004 Ohio 6425, P45, 821 N.E.2d 198 (noting the "purpose of a preliminary injunction is to preserve the status quo of the parties pending a decision on the merits").

B. Plaintiffs are Substantially Likely to Succeed on the Merits of this Matter

Both the legal issues and the factual cases in this matter are simple and straightforward. In this matter the Plaintiffs are seeking declaratory relief that the Defendants are required pursuant to ORC 4141.43(I) to secure all possible federal pandemic unemployment benefits available to unemployed Ohioans conferred under 42 U.S.C. §§ 1101, 1104, and 1105. *See* Compl. ¶¶ 35-53 generally. On May 13, 2021, Governor Dewine announced that Ohio will end its participation in all federally funded pandemic unemployment insurance programs, including PUA, PEUC and FPUC effective June 26, 2021. *Id.* at ¶ 29¹ This Complaint is being filed after

¹ *See also* "Ohio ending extra unemployment benefits program in June" May 13, 2021 (<https://www.fox19.com/2021/05/13/live-gov-dewine-gives-update-after-announcing-vaccine-lottery-health-order-end-date/>) (last visited July 2, 2021)

the expiration of the FPUC benefits which the Plaintiffs are seeking a declaration of rights which would require the reinstatement of the FPUC benefits for all Ohioans. *See* Compl. generally. The Plaintiffs are seeking declaratory relief based upon the explicit text of ORC 4141.43(I) which clearly states:

The director shall cooperate with the United States department of labor to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, and administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the "Social Security Act" that relate to unemployment compensation, the "Federal Unemployment Tax Act," (1970) 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, the "Wagner-Peyser Act," (1933) 48 Stat. 113, 29 U.S.C.A. 49, the "Federal-State Extended Unemployment Compensation Act of 1970," 84 Stat. 596, 26 U.S.C.A. 3306, and the "Workforce Innovation and Opportunity Act," 29 U.S.C.A. 3101 et seq.

ORC 4141.43(I). This language is clear and it is well within the power of this Court to interpret whether the Plaintiffs' interpretation is correct with respect to the duties of the Defendants. Accordingly, this favor weighs heavily in favor of the relief sought by the Plaintiffs in this Motion.

C. Plaintiffs Will Continue to Suffer Irreparable Harm Absent an Injunction

As noted in the Complaint and attached Affidavits of Plaintiffs Bowling and Willis, there was notable immediate harm to each Plaintiff when the FPUC benefit terminated. All three Plaintiffs are unable to meet their basic living expenses. *See* Exhibit 1 at ¶ 10; *see also* Exhibit 2 at ¶ 10. Plaintiff Bowling's necessary living expenses include care for a service animal. *See* Exhibit 1 at ¶ 10. Plaintiff Willis's necessary living expenses include his cell phone expense. *See* Exhibit 2 at ¶ 10. None of these Plaintiffs have supplemental sources of income and each week that the \$300.00 benefit is knowingly withheld the Plaintiffs face immediate financial hardship. Accordingly, this favor weighs heavily in favor of the relief sought by the Plaintiffs in this Motion.

D. No Undue Hardship will be Imposed On Defendant if the Injunction is Granted.

Continuing payment of federal pandemic UI benefits to Ohioans until September 6 maintains the status quo. These funds have already been appropriated by Congress and are available in the Unemployment Trust Fund to be received by eligible Ohioans. *See* 15 U.S.C. § 9021(g)(1)(B); *see also* 15 U.S.C. 9023(d)(3); *see also* 15 U.S.C. § 9025(d)(1)(B). Continuing to allow access to these benefits favors the status quo as they have been available in their current form since December 27, 2020, or roughly 6 months. The State's costs to administer the CARES Act Benefits are covered by CARES Act Funding. *See* 15 U.S.C. §§ 9021(g), 9023(d), 9025(a)(4)(A). Therefore, the State is neither harmed nor inconvenienced by continued distribution of CARES Act benefits until September 2021 and both injunctive relief and a restraining order preventing the Defendants refusing the on-going FPUC benefits is warranted. Accordingly, this favor weighs heavily in favor of the relief sought by the Plaintiffs in this Motion.

E. The Public Interest Will Be Served by Issuing a Preliminary Injunction

As noted above, the injunction the Plaintiffs request stops the Defendants from refusing to accept on-going FPUC benefits for the benefit of Plaintiffs and other eligible recipients. The public interest at stake directly impacts over 300,000 Ohioans who were receiving the enhanced benefits as of May 8, 2021 and the payments were to provide an additional \$98 Million boost to Ohio's economy.² There is no dispute that the United States temporarily enhanced the federal unemployment insurance program for all persons, including the Plaintiffs and members of the

² What does this mean in Ohio? To calculate the impact, cleveland.com and The Plain Dealer took the number of Ohioans who were receiving the \$300 supplement - 327,554 as of May 8 - and multiplied that number by \$300 to get \$98,266,200. <https://www.cleveland.com/news/2021/05/loss-of-federal-unemployment-aid-may-cost-ohio-more-than-help-it.html> (last viewed July 6, 2021 at 9:00 a.m).

putative class, in direct response to the severe, diverse, and on-going economic hardships caused by the COVID-19 pandemic and its aftermath. By refusing to accept the FPUC benefits the Defendants have violated both the clear mandate of ORC 4141.43(I) but also a basic economic need that the Plaintiffs and putative class have to rely upon the Defendants to provide. Accordingly, this favor weighs heavily in favor of the relief sought by the Plaintiffs in this Motion.

III. CONCLUSION

WHEREFORE Plaintiffs hereby move this Court pursuant to Civ. R. 65 for the issuance of a Temporary Restraining Order and Preliminary Injunction enjoining Defendants Michael Dewine and Matt Damschroder from denying Ohioans from refusing to accept FPUC benefits provided pursuant to 42 U.S.C. § 1105.4 and for all other relief this Court may deem just and proper.

Respectfully submitted,

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