

IN THE FRANKLIN COUNTY, OHIO COURT OF COMMON PLEAS
CIVIL DIVISION

STATE ex rel CANDY BOWLING, et al :
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 Plaintiffs, : Case No. 21 CVH07-4469
 :
 v. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

STATE ex rel JAMES PARKER, et al :
 :
 Plaintiffs : 21CVH08-5524
 :
 vs. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

SEBESTIAN NASH, et al :
 :
 Plaintiffs : 21CVH08-5525
 :
 vs. : JUDGE HOLBROOK
 :
 MICHAEL DEWINE, et al :
 :
 Defendants. :

ORDER AND ENTRY

This matter is before the Court on the cross motions for summary judgment of the parties as well as plaintiffs' emergency motion for an order directing defendants to secure funds. Having carefully reviewed the evidence submitted, arguments of counsel, and relevant law, the Court issues the following entry and orders.

Background

On March 27, 2020, in response to the COVID-19 Pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which, among other things, provided enhanced unemployment insurance benefits for workers who would not otherwise be eligible for relief. 15 U.S.C. § 9001 et seq. Three types of benefits were created by the CARES Act: (1) Pandemic Unemployment Assistance ("PUA"); (2) Pandemic Emergency Unemployment Compensation ("PEUC"); and (3) Federal Pandemic Unemployment Compensation ("FPUC"), which increased the amount of unemployment insurance benefit payments a worker could receive by \$300 a week from December 27, 2020 to September 6, 2021. See 15 U.S.C. § 9023, further amended by the American Rescue Plan Act of 2021 ("ARPA"), Pub L. No. 117-2, §§ 9011, 9013, 9016 (March 11, 2021). The CARES Act required the U.S. Secretary of Labor to provide CARES Act benefits through agreements with the states and specifically provided that agreements regarding the receipt of PEUC and FPUC benefits may be terminated by a state upon 30 days' written notice. 15 U.S.C. §§ 9023(a), 9025(a).

On May 13, 2021, Governor Mike DeWine announced that Ohio would end its participation in the FPUC program effective June 26, 2021. As a result of this announcement, plaintiffs, who allege they are all recipients of FPUC benefits filed actions against Governor DeWine and Matt Damschroder, in his official capacity as Director of the Ohio Department of Job and Family Services. Simultaneous to the filing of the complaint in Case No. 21CVH07-4469, plaintiffs moved the court for a temporary restraining order and preliminary injunction. Within the motion, plaintiffs argued they were entitled to a preliminary injunction enjoining the State of Ohio from prematurely terminating their FPUC benefits.

Following a hearing on plaintiffs' motion for temporary restraining order and preliminary injunction, this Court found that while plaintiffs' loss of FPUC benefits was a significant and irreparable injury, they had not shown by clear and convincing evidence a substantial likelihood of success on the merits of their claims. Naturally, plaintiffs appealed.

In a decision dated August 24, 2021, the Tenth District Court of Appeals disagreed with this Court's findings. *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902. Therein, the court of appeals concluded "that FPUC is one of the 'available advantages' described in R.C. 4141.43(I) that the General Assembly requires [defendants] 'secure' to the citizens of the State of Ohio." *Id.* at P47. But see *Caron v. New Hampshire et al.*, 2021-CV-00423, slip op. at 7 (Sup. Ct. N.H. Sept. 27, 2021) ("[S]imply because PUA 'benefits are distributed by utilizing the same accounting systems used to fund the administrative costs of the state [unemployment insurance] programs' under the [social security act,] it does not follow that the PUA benefits themselves are 'advantages available under the [social security act].'"); *Brannon v. McMaster*, 434 S.C. 386, 864 S.E.2d 548, 549-50 (S.C. 2021) (per curiam) (concluding that PUA is not an advantage "available under the provisions of the Social Security Act" (quotation and emphasis omitted); *Unemployed Workers United v. Ducey*, 254 Ariz. 95, 518 P.3d 293 (App.2022) (FPUC benefits did not morph into an "advantage[] available under" the social security act simply because the federal government used "Social Security infrastructure" and "methods of administration" to distribute FPUC benefits; recognizing Ohio as the "outlier" on this issue); *Holcomb v. T.L.*, 175 N.E.3d 1177, 1183 (Ind. Ct. App. 2021) ("Utilizing this established accounting system and specifying how funds should be moved around and made available for distribution is entirely different from creating a new federal benefit

program, which the CARES Act is."). The court of appeals further found that defendant Mike DeWine had a clear legal duty under R.C. 4141.43(I) to continue participation in the extended Federal Unemployment Benefits. Thus, according to the court of appeals, this Court "abused its discretion when it determined that [plaintiffs] were not likely to succeed on the merits of the claim and denied the preliminary injunction." *Bowling*, 2021-Ohio-2902 at P55. The matter was remanded for the purpose of implementing the findings of the court of appeals and for consideration of the third and fourth factors of a preliminary injunction; namely, whether third parties will be unjustifiably harmed if the injunction is granted, and whether the public interest will be served by the injunction.

Due to the expedited timeframes associated with the issues in this case, the Court proceeded to take testimony and evidence at a hearing on August 27, 2021. Before the hearing, however, defendants appealed the court of appeals' opinion eliminating this Court's jurisdiction over the case.

On November 22, 2022, more than one year after the expiration of the FPUC benefits, the Supreme Court of Ohio issued a one sentence decision stating, "[t]his cause is dismissed, sua sponte, as moot." *State ex rel. Bowling v. DeWine*, Slip Opinion No. 2022-Ohio-4122.

In an Order and Entry dated March 12, 2024, this Court granted plaintiffs leave to supplement and amend their complaints, which they have done asserting four causes of action – declaratory judgment, injunctive relief, and two petitions for mandamus. In its simplest form each claim seeks an Order from this Court mandating that defendants take all necessary action to obtain from the United States Department of Labor all remaining funds available to Ohio for the payment of the FPUC benefits.

Defendants responded to the amended complaint, generally disputing the availability of any remaining FPUC benefits. The instant motions for summary judgment followed.

In support of their motions, both parties presented the *same* evidence; namely, the July 12, 2024 declaration of Jim Garner, Administrator of the office of Unemployment Insurance, Employment and Training Administration, United States Department of Labor (the “Declaration”). The entirety of Mr. Garner’s declaration is as follows:

DECLARATION OF JIM GARNER

I, Jim Garner, make the following declaration to the best of my knowledge and belief.

1. I am currently the Administrator of the Office of Unemployment Insurance (OUI), Employment and Training Administration (ETA), United States Department of Labor (DOL). I have served in this position since July 4, 2021. Previously, I served for nine years as Deputy Administrator of OUI. In my capacity as Administrator, I am responsible for providing executive management and oversight of OUI, which provides leadership, direction, and assistance to state workforce agencies in the implementation and administration of state unemployment insurance (UI) programs, Federal unemployment compensation programs (including those programs established under the Coronavirus Aid, Relief, and Economic Security (CARES) Act), and other wage-loss, worker dislocation, and adjustment assistance compensation programs.
2. In my capacity as the Administrator of OUI, I regularly communicate by email with the State Unemployment Insurance Directors and State Workforce Administrators that oversee state UI agencies across the country.
3. Attached as Exhibit 1 is a true and accurate copy of an email I sent on September 3, 2021, to the State Unemployment Insurance Directors and State Workforce Administrators overseeing state UI agencies in the following states: Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming. For privacy reasons, this email has been redacted to exclude the full email address of each individual.

4. This email was sent in the ordinary course of my duties as Administrator of OUI.
5. A copy of this email was made available on OUI's web page, COVID-19 Information for State Unemployment Insurance Agencies, <https://oui.doleta.gov/unemploy/coronavirus/> on September 30, 2021.
6. The email explains that if a state's termination rescission is accepted by the Department, the Department would cover all benefit and administrative costs.
7. As stated in, the email, "We [the Department] understand[] there may be additional considerations when a state is responding to a court order and we're happy to discuss those on a case-by-case basis." This remains true even if the court order is issued after October 6, 2021.
8. This email continues to represent the position of the Department.

The email attached to the Declaration is dated September 3, 2021, approximately 13 months prior to the Supreme Court of Ohio's dismissal of the appeal in this case as moot. The entirety of the email is as follows:

Hi everyone:

Some states have reached out to the Department because they are re-considering termination of one or more of the CARES Act UI programs, either voluntarily or in response to a court order. If your state is re-considering its termination of one or more CARES Act programs, please reach out to the Department as soon as possible to discuss the options that may be available to ensure that any changes are made prior to October 6, which is 30 days after the CARES Act programs expire and the last day on which claimants may submit new PUA applications (with limited exceptions as per Section 4.c. and Attachment II to UTPL No. 16-20, Change 6).

The Department will consider a request to rescind that is submitted in writing and signed by the Governor or their appointed designee. Should the Department agree to having a termination notice be rescinded, the state will need to continue to accept applications and issue payments as if there had been no effective termination. Further, following an accepted rescission, all weeks of unemployment after the earlier termination will be covered under the state's previously signed implementing agreement and all administrative and benefit costs will be federally funded.

We understand there may be additional considerations when a state is responding to a court order and we're happy to discuss those on a case-by-case basis.

If a state does re-institute one or more CARES Act programs, the state will be expected to individually notify the individuals who were previously eligible for these programs at the time of the earlier termination. Additionally, the state must have a process in place to obtain the retroactive continued claims (including weekly self-certifications for individuals receiving PUA). Finally, the state will be expected to comply with the provisions identified in UIPL No. 14-21, Change 1, based on the program expiration date and not the state's rescinded termination date.

Please reach out if additional discussion would be helpful.

Sincerely,

Jim
Jim Garner, Administrator

According to both plaintiffs and defendants, Mr. Garner's Declaration and email demonstrate there is no question of fact and that they are entitled to summary judgment as a matter of law.

Law and Analysis

Summary judgment is provided for and controlled by Civil Rule 56. When a summary judgment motion is properly supported by evidence and demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, summary judgment is appropriately granted. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977); Civ.R. 56. Once this initial burden is satisfied, the party opposed to the motion may not sit idly by, but must respond with evidence to demonstrate that a genuine issue of material fact remains for adjudication. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). If the party resisting summary judgment fails

to respond in such a manner, a granting of summary judgment for the moving party may be appropriate. *Id.*

COUNT 1 - Declaratory Judgment

The Court first considers the plaintiffs' claim for declaratory judgment. A declaratory judgment action is a civil action that provides a remedy in addition to other legal and equitable remedies that may be available. *Burge v. Ohio Atty. Gen.*, 10th Dist. No. 10AP-856, 2011-Ohio-3997, ¶ 7, citing *Victory Academy of Toledo v. Zelman*, 10th Dist. No. 07AP-1067, 2008-Ohio-3561, ¶ 8. The purpose of the Declaratory Judgments Act, codified at R.C. Chapter 2721, is "to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations," and courts are to liberally construe and administer it. *One Energy Ents., LLC v. Ohio Dept. of Transp.*, 10th Dist. No. 17AP-829, 2019-Ohio-359, ¶ 30, citing *Swander Ditch Landowners' Assn. v. Joint Bd. of Huron & Seneca Cty. Commrs.*, 51 Ohio St.3d 131, 134, (1990). As is pertinent to this matter, R.C. 2721.03 states:

[A]ny person whose rights, status or other legal relations are affected by a * * * statute * * * may have determined any question of construction or validity arising under the * * * statute * * * and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03. Further, "to be entitled to declaratory relief, a plaintiff must demonstrate: (1) a real controversy exists between the parties, (2) the controversy is justiciable in nature, and (3) speedy relief is necessary to preserve the rights of the parties." *Steele v. Collins*, 10th Dist. No. 09AP-9, 2009-Ohio-4836, ¶9, citing *Harris v. Ohio Adult Parole Auth.*, 10th Dist. No. 06AP-374, 2007-Ohio-142, ¶11.

For a real controversy to exist, it is not necessary that a violation of a statute, contract or other regulation take place; rather this element is satisfied when there exists

a controversy “between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Burger Brewing Co.*, 34 Ohio St.2d at 97, citing to *Peltz v. South Euclid*, 11 Ohio St.2d 128, 131 (1967). With respect to whether a controversy is “justiciable,” or ripe for review, the United States Supreme Court has proscribed a two-pronged test to aid in that determination. *Toilet Goods Assn. v. Gardner*, 387 U.S. 158, 162 (1967). Courts are first to determine whether the issues tendered are appropriate for judicial resolution, and then to assess the hardships of the parties if judicial relief is denied at that stage. *Id.*

In the case at hand, the Court finds that the plaintiffs have met the three prerequisites for a declaratory judgment action. There is no question of fact that an actual justiciable controversy exists between the plaintiffs and defendants regarding the application and interpretation of the CARES Act as it relates to the mandates of R.C. 4141.43(I). Indeed, the Tenth District Court of Appeals has ruled in plaintiffs’ favor with respect to this dispute finding “that FPUC is one of the ‘available advantages’ described in R.C. 4141.43(I) that the General Assembly requires [defendants] ‘secure’ to the citizens of the State of Ohio.” *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902, P47.

The question now is whether the FPUC benefits are still “available.” Having carefully reviewed the Declaration and email, the Court finds that there is no ambiguity or question of fact that defendants can rescind the termination of the FPUC program, and that upon acceptance of the rescission “all administrative and benefit costs will be federally funded.” Email at ¶2. According to the Declaration, this remains the position of the Department of Labor. Thus, the Court further finds that immediate relief is necessary for the preservation of the parties’ rights.

Based on the forgoing, and pursuant to the Tenth District Court of Appeals holding in *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902, the Court finds that summary judgment on the plaintiffs' claim for declaratory judgment is warranted.

COUNT 2 - Injunctive Relief

The Court turns its attention now to the plaintiffs' application for a permanent injunction. "A party seeking a permanent injunction 'must demonstrate by clear and convincing evidence that they are entitled to relief under applicable statutory law, that an injunction is necessary to prevent irreparable harm, and that no adequate remedy at law exists.'" *McDowell v. City of Gahanna*, 2009-Ohio-6768, ¶ 9 (10th Dist.), quoting *Acacia on the Green Condo. Ass'n v. Gottlieb*, 2009-Ohio-4878, ¶ 18 (8th Dist.).

There is no question that plaintiffs were eligible for FPUC benefits at the time defendants terminated its FPUC termination. Further, the law of this case as set forth in *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902 is that plaintiffs are entitled to the relief they are seeking under the CARES Act and FPUC program. Similarly, this Court has held that plaintiffs established irreparable injury by clear and convincing evidence. See Decision and Entry dated July 29, 2021 at p.8 (To be sure, this Court finds plaintiffs' loss of benefits as a result of Governor DeWine's actions to terminate the State's participation in FPUC to be a significant and irreparable injury. To argue otherwise is disingenuous.). Finally, other than defendants' rescission of the termination of participation in the FPUC program, there is no other way for plaintiffs to obtain the FPUC benefits to which they are entitled. And as recognized in *Bowling*, money damages, here, would not "constitute a meaningful or effective remedy for [Plaintiffs'] claims." *Id.* at ¶22; but see Sadler dissent. Thus, there is no adequate remedy at law.

In sum, the Court finds that there are no questions of fact and that plaintiffs are entitled to a permanent injunction as a matter of law.

COUNT 3 - Mandamus (Restoration of FPUC Benefits)

Next, the Court turns its attention to the plaintiffs' first petition for a writ of mandamus in which they seek a writ from this Court requiring defendants to take all actions necessary to immediately restore FPUC benefits and seek Ohio's share of any remaining funds. To be entitled to a writ of mandamus, plaintiffs must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) defendants have a clear legal duty to provide it, and (3) plaintiffs do not have an adequate remedy in the ordinary course of the law. See *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13.

Guided by the forgoing legal framework and having previously held that there is no question of fact with respect to plaintiffs' claims for declaratory judgment and injunctive relief, it necessarily follows that there is also no question of fact and that plaintiffs are entitled to a writ of mandamus restoring Ohio's participation in the FPUC program and resulting benefits as a matter of law.

COUNT 4 - Mandamus (Prompt Pay any FPUC Benefits Received)

Finally, the Court addresses plaintiffs' second mandamus claim in which they seek a writ requiring defendants to take all actions necessary to promptly pay any FPUC benefits received. Again, to be entitled to a writ of mandamus, plaintiffs must establish by clear and convincing evidence that (1) they have a clear legal right to the requested relief, (2) defendants have a clear legal duty to provide it, and (3) plaintiffs do not have an adequate remedy in the ordinary course of the law. See *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13.

Because defendants are not in possession of any FPUC benefits, the Court finds that there remains a question of fact as to defendants' legal duty to promptly pay the same. Accordingly, summary judgment on this claim is premature.

Conclusion

Based on the forgoing, defendants' motion for summary judgment is **DENIED** and plaintiffs' motion for summary judgment is **GRANTED, in part** and **DENIED, in part**. Genuine issues of material fact remain as to plaintiffs' petition for a writ of mandamus requiring defendants to promptly pay any FPUC benefits received pursuant to the orders herein.

JUDGMENT ENTRY

It is therefore ORDERED, ADJUDGED, and DECREED as follows:

1. Pursuant to *State ex rel Candy Bowling v. Mike DeWine*, 2021-Ohio-2902, FPUC is one of the "available advantages" described in R.C. 4141.43(I) that the General Assemble requires Defendants "secure" to the citizens of the State of Ohio;
2. Defendants acted in violation of R.C. 4343.41(I) when they terminated participation in the FPUC program prior to its expiration;
3. Defendants are hereby ORDERED pursuant to R.C. 4343.41(I) to take all action necessary to reinstate Ohio's participation in the FPUC program from June 26, 2021 through its expiration; and
4. Defendants are hereby ORDERED pursuant to R.C. 4343.41(I) to take all action necessary to obtain Ohio's share of FPUC program benefits from the United States Department of Labor.

Pursuant to R.C. 2505.02 and Civ.R. 54(B), **this is a final appealable order and there is no just cause for delay.**

IT IS SO ORDERED.

Electronic notification to counsel of record

Franklin County Court of Common Pleas

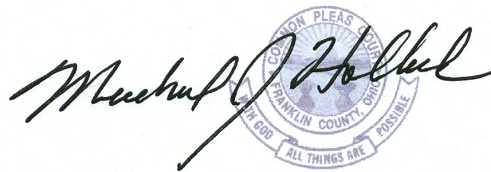
Date: 02-12-2025

Case Title: THE STATE OF OHIO EX REL ET AL -VS- OHIO DEPARTMENT
OF JOB AND FAMILY SERVIC ET AL

Case Number: 21CV005524

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "Michael J. Holbrook", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS", "FRANKLIN COUNTY, OHIO", and "ALL THINGS ARE POSSIBLE".

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 21CV005524

Case Style: THE STATE OF OHIO EX REL ET AL -VS- OHIO
DEPARTMENT OF JOB AND FAMILY SERVIC ET AL

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 21CV0055242024-07-2999980000
Document Title: 07-29-2024-MOTION FOR SUMMARY
JUDGMENT - DEFENDANT: OHIO DEPARTMENT OF JOB AND
FAMILY SERVIC
Disposition: MOTION DENIED