

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DEBRA HATTEN-GONZALES, et al.,

Plaintiffs,

v.

Civil No. 88-0385 KG/CG

BRENT EARNEST, Secretary of the
New Mexico Human Services Department,

Defendant.

ORDER APPOINTING SPECIAL MASTER

This Court having determined that the appointment of a special master to assist the parties and the Court in the New Mexico Human Services Department (“HSD”), Income Support Division’s (“ISD”) implementation of the Consent Decree governing this case is necessary, lawful, and justified, now sets forth the duties, authorities, and other requirements of the special master below:

I. The Special Master Shall Be Accountable to the Court

The special master will be accountable only to the Court and will not be supervised by Plaintiffs or the HSD Secretary. The special master will be independent from Plaintiffs and HSD and will not be an employee of the State. In the course of her or his work, the special master may consult with Plaintiffs, the HSD Secretary, other New Mexico officials, and any consultants hired by HSD.

II. Duties, Term and Authority of the Receiver

The purpose of the special master is to objectively review and determine HSD’s compliance with the Consent Decree, other Court Orders, and federal law concerning

the process for obtaining and maintaining Supplemental Nutrition Assistance Program (“SNAP”) and Medicaid benefits. The special master will proceed with all reasonable diligence to determine and facilitate HSD’s compliance. The scope of work, duties, authority and terms for the special master includes:

A. The special master will be a subject-matter expert who has experience with SNAP and Medicaid eligibility determination processes, including working with integrated eligibility systems. The special master will be a full-time position.

B. Appointment will be until January 1, 2018, at which time the special master will report to the Court on HSD’s compliance and make a recommendation for any further remedial measures to be taken to ensure compliance, including the propriety of a receivership. The Court will terminate the appointment of the special master at such time as the Court determines that HSD has a system in place that brings it into compliance with the Consent Decree, all other Court Orders in this case, and federal law concerning the process for obtaining and maintaining SNAP and Medicaid benefits, even if this occurs within the initial appointment period.

C. Specifically, the special master will have the duties of:

1. Utilizing her or his expertise to serve as an unbiased and objective advisor to HSD on issues related to compliance to include the content and issuance of policies and procedures, staff directives, training (content and delivery), notices, application processing timeliness, and all aspects of HSD’s SNAP and Medicaid eligibility processes necessary to bring those processes into compliance with the Consent Decree, all other Court Orders, and federal law.
2. Making recommendations for compliance to HSD. The special master will have monitoring authority related to SNAP and Medicaid eligibility processes within HSD sufficient to achieve compliance.
3. Reporting to the Court on or before January 1, 2018, and providing an assessment of Defendant’s compliance with the Consent Decree, all other Court Orders, and federal law. Based on that assessment, the

special master will recommend any further remedial measures to ensure compliance, including the propriety of a receivership, if necessary.

D. During the course of his or her appointment, the special master will report to the Court as follows:

1. The special master will file bi-monthly joint status reports with the Court outlining the status of compliance with the objectives and outlining what still needs to be done.
2. The special master will file the reports with the Court electronically with copies to Plaintiff and HSD.
3. As requirements of the Consent Decree and other Court Orders are fully satisfied, the special master will inform the Court of these compliance accomplishments.
4. The special master may petition the Court for remedy if the special master determines either HSD or Plaintiff are taking action or are refusing to take action that is not consistent with the goals of compliance.
 - a. Any such motion by the special master will be briefed on an expedited calendar (response in five days, reply in three days) and decided as soon as convenient by the Court.
 - b. To the extent the special master needs legal counsel, the special master shall retain counsel independent of the State.
5. The special master may communicate ex-parte with the Court, HSD or Plaintiffs.
6. Plaintiffs and HSD retain all access to the Court should they disagree with any decision of the special master or opposing party.

E. The HSD Secretary and all other HSD employees shall cooperate fully with the special master and assist the special master in completing her or his duties.

F. The HSD Secretary shall ensure that the special master is provided all information and data, access to all HSD offices and employees, access to case files, access to the ASPEN system and all HSD contractors working on the ASPEN system,

and such other access or assistance as the special master determines may be necessary to perform the duties set forth in this Order.

G. The special master will regularly consult with the HSD Secretary about her or his work and progress in determining compliance. The special master will also work closely and communicate and/or meet regularly with Plaintiffs' counsel to discuss issues, problems, concerns and progress. The special master will ensure that Plaintiffs' counsel are supplied with up-to-date data and other information necessary to allow them to track the status of compliance by HSD.

III. Process for Selecting and Appointing the Special Master

A. Plaintiffs and Defendant shall attempt to reach agreement on a person to serve as special master in this case. Within 30 days of the entry of this Order the parties shall inform the Court whether they have agreed on a person to serve as a special master under the terms set forth above and, if so, submit the resume of this person and a proposed salary that is commensurate with the person's qualifications and experience.

B. If the parties cannot agree on a special master, within 45 days of the entry of this Order, each party shall submit the names of three or fewer persons who they believe can fulfill the duties of the special master set forth above and who are available to be appointed to this position until January 1, 2018, as well as the proposed special master's resume and proposed salary that is commensurate with the person's qualifications and experience.

C. The Court will select a person to serve as special master and issue an Order concerning the appointment, the special master's starting date and annual salary.

D. Defendant shall pay the special master's salary.

IV. Continuing Court Supervision

A. At any time during the tenure of the special master either party may, on its own initiative or at the request of the special master, file any motions they believe are necessary concerning implementation of the Consent Decree and this Court's other Orders.

B. At any time during the tenure of the special master either party may file a motion with the Court concerning the conduct or replacement of the special master.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE

THE HONORABLE KENNETH J. GONZALES
UNITED STATES DISTRICT JUDGE