

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

BILL PETER EDUARD BENNETT,

Plaintiff,

v.

Case No. 20-CV-11885  
Hon.  
Mag.

**Plaintiff demands a jury**

The STATE OF MICHIGAN;  
GRETCHEN E. WHITMER, in her  
official capacity as Governor of  
Michigan; ROBERT GORDON, in  
his official capacity as Director of  
the Michigan Department of Health  
& Human Services.

Defendants.

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**VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Bill Peter Eduard Bennett, by his attorneys, the University of Michigan Law School Veterans Legal Clinic and the Michigan Poverty Law Program, brings this complaint against Defendants the State of Michigan, Gretchen E. Whitmer, and Robert Gordon.

**Parties, Jurisdiction, and Venue**

1. Claims in this action include:
  - a. Deprivation under the color of state law of Plaintiff's Eighth Amendment and Fourteenth Amendment constitutional rights under the Civil Rights Act of 1871;
  - b. Disability discrimination and failure to accommodate a disability under the Rehabilitation Act;
  - c. Claims for relief under the Michigan Constitution; and,
  - d. Claims for declaratory relief.
2. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. § 1331.
3. Plaintiff Bill Bennett is an individual residing in this District.
4. All of the events at issue took place in this District.
5. Defendant State of Michigan is subject to the terms of the Rehabilitation Act (Pub.L. 93-112), which abrogates its sovereign immunity from lawsuits under the Rehabilitation Act.
6. Defendant Gretchen E. Whitmer, sued here in her official capacity, is the Governor of the State of Michigan. As Governor, Defendant Whitmer is the chief executive of the State of Michigan, the legal and political entity responsible for administering food assistance programs for residents of the State of Michigan. Defendant Whitmer is ultimately

responsible for ensuring that the State of Michigan acts in accordance with federal statutory and constitutional law.

7. Defendant Robert Gordon, sued here in his official capacity, is the Director of the Michigan Department of Health & Human Services (the Department). As Director, Defendant Gordon is responsible for determining and enforcing policies governing Michigan's food assistance programs. Michigan's Social Welfare Act of 1939 and Executive Organization Act of 1965 provide that the Department will administer food assistance programs. *See Michigan Compiled Laws (MCL) 400.1 et seq.; MCL 16.731.*
8. Accordingly, personal jurisdiction lies in this court.
9. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
10. Plaintiff applied for food assistance while residing in this District.
11. Plaintiff's application was received and processed by agents of the State of Michigan working primarily in this District.
12. Accordingly, venue lies in this Court pursuant to 28 U.S.C. § 1939.

### **Synopsis**

13. Mr. Bennett is a military veteran who receives Social Security Disability Income. He would be entitled to receive food assistance from the State of Michigan, but has been denied food assistance because, in 2005, he twice plead guilty to possession of crack cocaine for personal use. At the time that Mr. Bennett plead to these charges, the State of Michigan did not deny food assistance on these grounds. Now, because of this policy, Mr. Bennett cannot receive food assistance for the rest of his life. Mr. Bennett challenges this policy and its application here on a number of statutory and constitutional grounds.

### **Mr. Bennett's Health Issues**

14. Mr. Bennett suffers from COPD, limited mobility, high blood pressure, post-traumatic stress disorder, schizoid personality disorder, and paranoid personality disorder.
15. Mr. Bennett is especially at risk due to the pandemic. Perhaps most importantly, because he is immunocompromised, Mr. Bennett's treating physician has advised him that maintaining a healthy diet is especially essential during the pandemic. Mr. Bennett, however, cannot afford fresh fruits and vegetables or other immuno-bolstering groceries. He also cannot afford both food and, for example, hand sanitizer and a mask.
16. Michigan and many other states have urgently expanded access to food assistance in the face of the pandemic. For example, Michigan has waived work requirements, greatly expanded food assistance eligibility among college students, automatically enrolled households receiving free school lunch in the food assistance program, automatically provided each eligible household the maximum possible benefits, and suspended decreasing food assistance to recoup overissuances. Mr. Bennett, however, remains entirely left behind.
17. Not only does he receive no food assistance, but Defendants have made it known that they may begin garnishing his already meager Social Security Disability benefits at any time to recoup his alleged overissuance; the suspension of such collection efforts applies only to current Food Assistance Program ("FAP") recipients, not to those like Mr. Bennett who the state denies food assistance entirely.

### **General Allegations**

18. Mr. Bennett is a 62-year-old disabled, veteran of the United States Army who relies on \$913 in monthly Social Security Disability Insurance payments.

19. At \$913 per month, Mr. Bennett's annual income is roughly 15% below the federal poverty guidelines.
20. In addition, Mr. Bennett is a recovering crack cocaine addict who has completed outpatient rehabilitation.
21. Mr. Bennett turned to crack cocaine to relieve symptoms of his mental disorders, which were exacerbated by his being sexually assaulted while in the Army.
22. At the time, Mr. Bennett did not know that medical services or assistance were available to him through the Department of Veterans Affairs or otherwise.
23. As a result of his use of crack cocaine, in 2005, Mr. Bennett plead guilty to two felony counts (April 2005 and September 2005) of possession of a personal quantity (under 25 grams) of crack cocaine.
24. As part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193), the federal government instituted a ban on providing food assistance to anyone with a felony drug conviction. The law provides that: “An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))) shall not be eligible for— . . . (2) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977.” 21 U.S.C. § 862a.
25. However, the law allows states to opt out of this provision. The State of Michigan partially opted out of the law from 1999 through September 2011, when Michigan implemented the current law. Michigan law states, *inter alia*, that those with two or more

drug felonies convictions since August 1996 could be permanently excluded from food assistance:

Sec. 619. (1) Subject to subsection (2), the department shall exempt from the denial of title IV-A assistance and food assistance benefits under 21 USC 862a [the federal corollary] any individual who has been convicted of a felony that included the possession, use, or distribution of a controlled substance, after August 22, 1996, provided that the individual is not in violation of his or her probation or parole requirements . . . .  
(2) Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted in 2 or more separate cases of a felony that included the possession, use, or distribution of a controlled substance after August 22, 1996.

26. In October 2011, the Michigan Department of Health and Human Services (“MDHHS”

or “the Department”), in turn, amended its policy governing eligibility for food assistance. Specifically, Bridges Eligibility Manual Section 203 (BEM 203) was amended to read: “An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both convictions were for conduct which occurred after August 22, 1996.”

27. Mr. Bennett applied and was approved for Social Security disability benefits (RSDI).

28. Additionally, Mr. Bennett applied for assistance on February 13, 2015 (“First FAP Application”).

29. The application did not ask him about his prior criminal history.

30. The Department approved Mr. Bennett’s application and Mr. Bennett began to receive food assistance valued at \$194 per month on February 21, 2015.

31. On September 13, 2016, Mr. Bennett completed a second application for food assistance (“Second FAP Application”) after moving to Washtenaw County, Michigan from Jackson County, Michigan.

32. This second application asked if Mr. Bennett had been “convicted of a drug felony.” Mr. Bennett indicated that he had not. But as subsequently determined by an Administrative Law Judge (see *infra*), Mr. Bennett was flustered, confused, and did not understand how to complete the application because of his disabilities. Further, a case worker who helped Mr. Bennett with the application did not assist in providing clarity.
33. In October 2017, the Department informed Mr. Bennett that it overissued him food assistance as Mr. Bennett was ineligible for food assistance because of the Policy. The Department expressed its intent to collect this overissuance from Mr. Bennett.
34. In doing so, the Department accused Defendant of committing an intentional program violation (IPV) and of intentionally concealing his criminal history.
35. Mr. Bennett appealed the termination of his food assistance and the overissuance determination. Mr. Bennett also challenged the IPV charge. The Department, through the Michigan Office of Administrative Hearings and Rules (MOAHR), denied Mr. Bennett’s appeal but found that Mr. Bennett’s omission of his drug convictions were due to his disabilities and because the First FAP Application did not ask about his convictions.
36. Specifically, the administrative law judge found that Mr. Bennett “had an apparent mental impairment that would limit the understanding or ability to fulfill [his] requirement” to provide correct information in applying for food assistance.
37. On May 23, 2018, the Department demanded repayment of the overissuance, which the Department valued at \$3,136.
38. On July 31, 2018, Mr. Bennett administratively requested reconsideration of the decision and requested a hardship waiver of the \$3,136 demanded of him.

39. Specifically, Mr. Bennett requested a hardship waiver because of his needing a reasonable accommodation of his disabilities.
40. On November 20, 2018, the Department rejected Mr. Bennett's hardship waiver.
41. The Department indicated that hardship waivers were only permitted if an applicant had a sudden medical expense.
42. In denying Mr. Bennett's hardship waiver, the Department made no meaningful effort to accommodate Mr. Bennett's disabilities.
43. On March 18, 2019, Mr. Bennett again applied for food assistance ("Third FAP Application"), this time requesting a reasonable accommodation of his disabilities with his application.
44. Specifically, Mr. Bennett indicated that his felony drug convictions arose as a result of his disabilities. Mr. Bennett requested that he be accommodated by being granted an exemption from the Department's Policy. Mr. Bennett cited case law holding that, in some instances, criminal convictions must be accommodated when those convictions arise from disabilities. *See Walsted v. Woodbury Co.*, 113 F.Supp.2d 1318 (N.D. Ia. 2000); *Simmons v. Tm. Assoc. Mgmt., Inc.*, 287 F.Supp.3d 600, 603 (W.D.Va. 2018).
45. On March 29, 2019, the Department denied Mr. Bennett's Third FAP Application.
46. In denying Mr. Bennett's Third FAP Application, the Department made no meaningful effort to accommodate Mr. Bennett's disabilities.
47. On or about June 25, 2019, the Department provided Mr. Bennett notice that they would begin having his Social Security Disability Income withheld to repay his overissuance. The notice stated that Mr. Bennett could challenge this withholding within 60 days.



48. On or about July 10, 2019, Mr. Bennett sent a letter challenging the withholding and requesting that the overissuance be waived. Mr. Bennett included a request for a reasonable accommodation, citing the Administrative Law Judge's opinion that he failed to properly complete the original food assistance applications because of his disabilities.
49. On or about August 6, 2019, the Department responded, denying his request for waiver without meaningfully considering his reasonable accommodation request.
50. On August 29, 2019, Mr. Bennett appealed through MOAHR the Department's denial of his Third FAP Application and request for reasonable accommodation.
51. On October 31, 2019, the Department filed a responsive brief and motioned for summary disposition.
52. On November 12, 2019, Mr. Bennett replied to the Department's motion for summary disposition.
53. On December 3, 2019, the MOAHR granted the Department's motion for summary disposition.
54. Mr. Bennett continues to experience food insecurity because of his ineligibility for food assistance and is forced to choose between purchasing food and other necessities, such as clothing, face masks and cleaning supplies.
55. Further, Defendants maintain their claim to collect Mr. Bennett's overissuance from his Social Security disability income or other sources of income. On information and belief, this garnishment has not begun, but Defendants maintain the ability to begin this garnishment at any time.

56. Due to Defendants' illegal actions, Mr. Bennett faces injuries, including but not limited to loss of essential benefits, physical injury and risk of serious illness and death, and garnishment of his Social Security Disability benefits.

**COUNT I**  
**Deprivation of Eighth Amendment Rights Under Color of State Law,**  
**both facially and as applied**  
*Eighth Amendment Protection from Excessive Fines*  
*and from Cruel and Unusual Punishment,*  
*as incorporated by the Fourteenth Amendment to the United States Constitution*  
**42 U.S.C. § 1983**

57. Plaintiff restates and incorporates here all previously stated allegations.

58. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have excessively fined or, in the alternative, cruelly and unusually punished, Mr. Bennett by stripping away his food assistance benefits for the rest of his life due to two non-violent crimes he committed in 2005, well before the Policy was in place.

59. The Policy effectuated a fine against Mr. Bennett under the Eighth Amendment because it both terminated his existing benefits and stripped him of benefits to which he is entitled but for the unlawful Policy.

60. Additionally, or in the alternative, the Policy effectuates a punishment against Mr. Bennett under the Eighth Amendment because it imposes stark consequences upon Mr. Bennett due to his criminal activity as part of a larger government effort to criminalize drug possession.

61. Defendants have violated Plaintiff's Eighth Amendment rights in several ways, including but not limited to:

- a. Defendants' Policy deprives Plaintiff, who the Social Security Administration and Veterans Administration have determine to be both mentally and physically

disabled to the point that he cannot work, of benefits required for food security.

As a result, Plaintiff is forced to choose between purchasing food and other necessities with the little money that he receives from Social Security disability;

- b. Defendants' Policy deprives Plaintiff of benefits required for food security for the remainder of his life;
- c. Defendants stripped Mr. Bennett of food assistance for the rest of his life even though the Policy was not in place, and in fact had been explicitly rejected by the legislature, at the time he plead to his two convictions.
- d. Defendants' punitive action against Plaintiff is disproportionate to the offenses that Plaintiff was convicted of, which were possession of crack cocaine for personal use in 2005;
- e. Defendants' Policy has become unusual among states. Only four states (Kansas, Michigan, Missouri, Texas) ban persons convicted of two or more drug possession felonies from receiving food assistance for life. A fifth (Nebraska) bans for life persons convicted of three or more drug possession offenses, and only one state (South Carolina) bans for life all persons convicted of any drug felonies. All other states have either no ban for persons with drug possession felony convictions, temporary bans, or bans than can be lifted by meeting certain criteria;
- f. The Policy acutely risks Mr. Bennett's life and health and shows a unique indifference to his well-being because of fifteen-year-old drug possession convictions.

62. Defendants have therefore denied and continue to deny Plaintiff's fundamental right to be free from excessive fines and from cruel and unusual punishment.

63. Defendants were acting under color of state law, thereby violating 42 U.S.C. § 1983.

64. As a direct and proximate result of Defendants' wrongful acts, Plaintiff sustained injuries and damages, as discussed herein.

**COUNT II**  
**Violation of Michigan Constitution Art, I, § 16,**  
**both facially and as applied**  
***Protection from Cruel or Unusual Punishment***

65. Plaintiff restates and incorporates here all previously stated allegations.

66. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have fined and continue to civilly fine Plaintiff for his prior felony drug convictions by denying him eligibility for food assistance.

67. The Policy exacts a fine or alternatively a punishment under Article I § 16 of the Michigan Constitution.

68. Defendants have violated Plaintiff's Art I. § 16 rights in several ways, including but not limited to the reasons plead above.

69. Defendants have therefore denied and continue to deny Plaintiff's fundamental right to be free from cruel or unusual punishment.

**COUNT III**  
**Denial of Equal Protection and Due Process under Color of State Law**  
**in Violation of the Fourteenth Amendment**  
**both facial and as-applied**  
**42 U.S.C. § 1983**

70. Plaintiff restates and incorporates here all previously stated allegations.

71. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have denied Plaintiff eligibility for food assistance on the basis of his prior felony drug convictions.

72. Defendants' Policy mandates lifelong ineligibility for food assistance.

73. Defendants' Policy is a blanket policy applying to every member of a class without exception, specifically those with two or more felony drug convictions.

74. Defendants' Policy violates the 14<sup>th</sup> Amendment of the United States Constitution for reasons, including but not limited to:

- a. Defendants' Policy ties together two utterly unrelated concepts: drug possession and food assistance.
- b. Defendants' Policy presumes that those with two drug convictions after 1996 can never again safely use food assistance for the remainder of their lives and makes no exception for those like Mr. Bennett who have completed drug rehabilitation.
- c. Defendants' Policy arbitrarily targets drug felons and makes arbitrary distinctions between drug felons and other groups.
- d. Defendants' Policy seeks to stigmatize a politically unpopular group.
- e. Defendants' Policy enacts additional disability upon drug felons simply because they are indigent and eligible for FAP benefits.
- f. Defendants' Policy retroactively attaches new disabilities to Mr. Bennett's 2005 plea agreements.
- g. Defendants have suspended collection of FAP overissuances and expanded FAP access to Michiganders during the pandemic while arbitrarily and capriciously refusing to provide similar treatment to Mr. Bennett and those similarly situated.

75. Defendants have therefore denied and continue to deny Plaintiff's fundamental rights to due process and equal protection under the law.

76. Defendants were acting under color of state law, thereby violating section 1983.

**COUNT IV**

**Denial of Due Process Under Color of State Law, both facially and as applied  
*Policy Denies Plaintiff Due Process under the Federal Constitution and Michigan***

***Constitution***

**42 U.S.C. § 1983**

**Const. 1963, art. 1, § 17**

77. Plaintiff restates and incorporates here all previously stated allegations.

78. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have denied Plaintiff eligibility for food assistance on the basis of his prior felony drug convictions.

79. Defendants' Policy and accompanying actions deny Plaintiff a property or other interest protected under the Fourteenth Amendment.

80. Defendant's procedures for informing Plaintiff of the Policy and for implementing the Policy were insufficient for several reasons, including but not limited to:

- a. Defendants Policy was not in place when Defendant was convicted of the April and September 2005 felony drug crimes. Defendants' Policy, put in place in October 2011, applied retroactively to all drug convictions after August 22, 1996. Plaintiff received no notice—and could not possibly have received notice—of the Policy prior to his guilty plea to felony drug charges;
- b. Mr. Bennett was deprived of essential benefits and faces garnishment of Social Security Disability Income for failing to answer a question that was not asked on his First FAP Application.

- c. In response to the pandemic, Defendants widely suspended overissuance collections for those receiving food assistance, but not for Mr. Bennett who, as held by an ALJ, accrued the alleged overissuance due to a faulty FAP application and his own disability.

81. Defendants were acting under color of state law, thereby violating section 1983.

82. As a direct and proximate result of Defendants' wrongful acts, Plaintiff sustained injuries and damages, including but not limited to loss of earnings.

83. Plaintiff seeks declaratory judgment from this Court that he is not liable for the alleged overissuance of food assistance.

**COUNT V**

**Violation of Ex Post Facto Clause of U.S. Constitution (Art I, § 10) and of Michigan Constitution (Art I, § 10),  
both facially and as applied  
*Policy Punishes Plaintiff Retroactively*  
42 U.S.C. § 1983**

84. Plaintiff restates and incorporates here all previously stated allegations.

85. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have denied Plaintiff eligibility for food assistance on the basis of his prior felony drug convictions.

86. Defendants denied Plaintiff eligibility for food assistance retroactively. Defendants did not exclude Plaintiff from Michigan's food assistance program because of his 2005 felony drug convictions until 2011. Defendant was banned from receiving food assistance based on a policy that was not in effect at the time of his plea.

87. By punishing Plaintiff retroactively, Defendants violated Art I, § 10 of the United States Constitution, which prohibits states from enacting ex post facto laws.

88. Similarly, the Policy, on its face, punishes those whose convictions took place before the Policy was enacted in 2011.
89. Defendants were acting under color of state law, thereby violating section 1983.
90. As a direct and proximate result of Defendants' wrongful acts, Plaintiff sustained injuries and damages, including but not limited to loss of earnings.

#### **COUNT VI**

#### **Disability Discrimination & Failure to Provide Reasonable Accommodation Termination of FAP Benefits and subsequent denial of FAP Benefits Section 504 of the Rehabilitation Act as Amended**

91. Plaintiff restates and incorporates here all previously stated allegations.
92. A mental impairment that substantially limits one or more major life activities is a "disability" within the meaning of the Rehabilitation Act.
93. Per Section 504, no qualified disabled person, shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity conducted by a state agency that receives federal financial assistance.
94. A state agency receiving such assistance, shall make reasonable accommodation to the known mental limitations of an otherwise qualified disabled individual unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.
95. The State of Michigan receives federal financial assistance to support its food assistance program.
96. Reasonable accommodations include making exception to official policies.
97. Mr. Bennett requested a reasonable accommodation regarding his food assistance eligibility and put Defendants on notice of his disability on multiple instances, including



but not limited to in his administrative challenge to his initial food assistance application and with his Third FAP Application.

98. Upon receipt of a request for accommodation, or knowledge of a need for accommodation, a state agency has a duty to engage the individual in an interactive process to determine the propriety and availability of reasonable accommodations.
99. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have discriminated and continue to discriminate against Plaintiff by several means, including but not limited to:
  - a. Failure to properly grant Mr. Bennett a reasonable accommodation, thereby denying him eligibility for food assistance on the basis of his non-drug related mental disabilities. Plaintiff's felony drug convictions cannot be divorced from his underlying mental disabilities, not including drug addiction. Plaintiff used illegal narcotics to self-medicate the symptoms of those disabilities. Use of illegal narcotics, from which Plaintiff's felony drug convictions arise, is itself a symptom of Plaintiff's mental disabilities.
  - b. Failing to grant Mr. Bennett a reasonable accommodation, thereby denying him eligibility for food assistance on the basis of his drug addiction. Plaintiff's drug addiction is itself a "mental impairment" within the meaning of the Rehabilitation Act and use of illegal narcotics, from which Plaintiff's felony drug convictions arise, is a symptom of Plaintiff's drug addiction.
  - c. Failing to engage in a sufficient interactive process with Mr. Bennett in response to his request for a reasonable accommodation.

d. Failing, in the midst of the pandemic, to provide needed accommodations to Mr. Bennett and, in fact, failing to extend otherwise-provided protections to him despite the unique risks created by his disability.

100. Defendants violated Section 504 of the Rehabilitation Act by failing to grant Plaintiff a reasonable accommodation or to engage Plaintiff in the interactive process upon his request for accommodation.

**COUNT VII**  
**Disability Discrimination**  
***Disability Discrimination and Failure to Provide Reasonable Accommodation,***  
***regarding FAP Overissuance and Request for Hardship Waiver***  
**Sections 504 of the Rehabilitation Act as Amended**

101. Plaintiff restates and incorporates here all previously stated allegations.

102. Defendants claim that Plaintiff is liable for Defendants' overissuance of food assistance.

103. A mental impairment that substantially limits one or more major life activities is a "disability" within the meaning of the Rehabilitation Act.

104. The Department's overissuance of food assistance to Plaintiff was a result of Plaintiff's disability. As held by the Administrative Law Judge, Mr. Bennett accrued the alleged overissuance, in large part, because his disabilities prevented him from correctly completing his application.

105. As such, Mr. Bennett requested a reasonable accommodation with his request for a hardship waiver, as well as in response to Defendants' subsequent collection actions.

106. Defendants, who are responsible for the administration of food assistance in the State of Michigan, have discriminated and continue to discriminate against Plaintiff by denying him a requested reasonable accommodation.

107. Defendants violated Section 504 of the Rehabilitation Act by failing to engage Plaintiff in the interactive process upon his request for accommodation and by instituting a policy against granting reasonable accommodations pertaining to overissuances.

**COUNT VIII**  
**Claim for Declaratory Relief**  
***Overissuance of Food Assistance***  
**Legal Bases Stated in Counts I – VIII and**  
**28 U.S. Code § 2201**

108. Plaintiff restates and incorporates here all previously stated allegations.

109. Defendants claim that Plaintiff is liable for Defendants' overissuance of food assistance.

110. The Defendants denied Plaintiff due process, because Plaintiff, in completing and submitting his first application for food assistance, relied on the absence on the application of any question about felony drug convictions.

111. Defendants' Policy, and overissuance resulting from it, is unlawful for reasons stated in Counts I - VIII.

112. In addition, Defendants procedure specifically pertaining to the overissuance denied Plaintiff due process because:

- g. Defendants included no reference to the Policy in the First FAP Application that Plaintiff completed in February 2015;
- h. Defendants included no reference to the Policy in the information booklet available with the First FAP Application and no opportunity for applicants to otherwise learn about application requirements (subtitled "Important Things about Programs and Services");
- i. Plaintiff had no reason to expect that he was subject to any bans or restrictions on his receipt of food assistance. Plaintiff was not directly apprised before entering his 2005

guilty pleas or at his sentencings of his ineligibility for food assistance and could not possibly have been directly apprised of his ineligibility because the Policy did not go into effect until 2011.

113. Defendants now threaten Plaintiff's property interest in his personal savings by demanding repayment for the overissuance.

114. As held by the Administrative Law Judge, Plaintiff's failure to disclose his felony convictions resulted from his disabilities and from the fact that the First FAP Application did not ask about them.

115. Plaintiff relied on the absence of any question about felony drug convictions to his detriment, because Defendants now demand repayment for the overissuance of food assistance following his first application for food assistance.

116. Plaintiff's application for food assistance was, as the Department itself found, entirely innocent. Plaintiff was, in effect, unable to avoid the consequences of the Policy and is now unable to defend his violation of the Policy.

117. Plaintiff seeks declaratory judgment from this Court that he is not liable for the overissuance of food assistance from September 2016 to January 2017.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray judgment against Defendants as hereinafter set forth:

1. An order from this Court that Defendants except Plaintiff from the Policy;
2. An injunction out of this Court prohibiting any further acts of wrongdoing;
3. Declaratory relief under 28 U.S. Code § 2201 and this Court's equitable and statutory power declaring that Plaintiff is not liable for any overissuance of food assistance;

4. Compensatory damages in whatever amount Plaintiff is found to be entitled, including, but not limited to the value of food assistance that Defendant would have received had he been excepted from the Policy beginning on March 18, 2019;
5. Exemplary damages in whatever amount Plaintiff is found to be entitled;
6. Punitive damages in whatever amount Plaintiff is found to be entitled;
7. An award of interest, costs, reasonable attorney fees, and expert witness fees; and finally,
8. Whatever other equitable relief appears appropriate at the time of final judgment.

Respectfully submitted,  
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Dated: July 10, 2020

I verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Executed on the 10th day of July, 2020.

/s/Bill Bennett  
Bill Bennett

**JURY DEMAND**

Plaintiff, by and through his attorneys, demands a trial by jury of all issues in this matter.

Respectfully submitted,  
UNIVERSITY OF MICHIGAN  
VETERANS LEGAL CLINIC  
/s/ Eric S. Sirota  
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Dated: July 10, 2020