COMMENTS TO PROPOSED SNAP RULE REVISIONS.

by

Dennis J. Wall

Monday, September 23, 2019.

You published your Propose SNAP rule revisions along with your commentary in the Federal Register, 84 F.R. 35570 - 33581. You wrote that you propose to redefine "benefits" from the Food and Nutrition Act written by Congress, and that you propose "to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare." 84 F.R. at 35570.

1. *Your first proposed change is to redefine "benefits" in the Food and Nutrition Act written by Congress.*

You wrote that you wanted to redefine "benefits" for purposes of "categorical eligibility to mean ongoing and substantial benefits[.}" 84 F.R. at 35570. Your redefinition of "benefits" in your proposed rule change is invalid and unauthorized, and it is preempted by statutes enacted by Congress because it directly conflicts with the Food and Nutrition Act and the statutory provisions enacting the Supplemental Nutrition Assistance Program (SNAP) written by Congress.

"Benefit" for purposes of the Supplemental Nutrition Assistance Program "means the value of supplemental nutrition assistance provided to a household by means of" various sources described in 7 USCA § 2012 (d). There is no room in the statutory definition to add your alien concept of "ongoing and substantial benefits." If the statute needs amending, it is up to Congress to amend it, not you. You have no authority to redefine the "benefit" which Congress intended to address. Requiring the provision or receipt of "ongoing and substantial benefits" is simply not "other means of providing assistance, as determined by the Secretary," which is the only discretion you have been given in the Congressional definition of "benefit" in 7 USCA § 2012(d)(2).

For all these reasons, your proposed rule is unreasonable.

Your proposed rule is also unreasonable because it does not address the problem you lay out for your proposed rule in 84 F.R. at 35570, which you say is that "categorical eligibility for SNAP [can] be conferred on households based on receipt of minimal benefits issued by TANF-funded programs ...." If that is true and if that is your problem, then the "TANF-funded programs" of which you speak are the programs to be addressed, not the statutory definition of SNAP "benefits."

Your proposed rule, again, is unreasonable because it does not address your problem with "TANF-funded programs which may not conduct a robust eligibility determination and do not meaningfully move families toward self-sufficiency." 84 F.R. at 35570. Your proposed rule does not even address any such "TANF-funded programs," even assuming that such programs may exist. Even if such programs exist, that they "may not conduct a robust eligibility determination" is not addressed by your proposed rule here.

You do not provide any evidence at all -- and I am not aware that any evidence exists but it is not my burden to produce such evidence, the burden is yours and you have not met it -- that your proposed rule will somehow "ensure that TANF-funded programs conferring categorical eligibility align more closely with SNAP eligibility standards outlined in the Food and Nutrition Act." 84 F.R. at 35572.

Further, whether such programs may or may not "conduct a robust eligibility determination," back to 84 F.R. at 35570, is a policy consideration that was already addressed by Congress when it implemented SNAP as a program of block grants to the States. If you are unhappy with how the States are directing their grant money under this program, you should address them and not redefine "benefits" instead. Parenthetically, your stated "determination" that your proposed rule "does not have federalism implications" is obviously hooey, in other words, it is false.

2. *Your proposed rule would increase hunger and poverty in the United States "because," as you say, "more elderly individuals may not otherwise meet the*

SNAP eligibility requirements." 84 F.R. at 35576. For those additional reasons, your proposed rule is not reasonable.

The Supplemental Nutrition Assistance Program is about whether people have enough to eat, not whether they are working or capable of working. Congress set out the purpose of SNAP in 7 USCA § 2013(a). Under that statute, the Secretary is authorized by Congress to run "a supplemental assistance program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment[.]"

Your second announced proposed rule change, which is "to limit the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports and childcare" 84 F.R. at 35570, is unreasonable under SNAP for many reasons.

Eligibility for SNAP has never involved "subsidized employment, work supports and childcare" so that people including parents can work. Other federal programs and other federal statutes and, yes, rules address your expressed concerns with "subsidized employment, work supports and childcare." Your proposed rule is not authorized by SNAP, and once again your proposed rule is also contrary to the Congressional purpose and statutes.

Your commentary in the Federal Register is replete with seemingly uncountable references to people who receive SNAP going out and getting a job -- regardless of whether the people who apply for SNAP are too old or too infirm to be capable of working. Those sentiments are inconsistent with the purpose of SNAP which, to say again, is about whether people have enough to eat. It was not the purpose of Congress in enacting SNAP to focus on whether people are working or capable of work because other statutes deal with work requirements while this statute focuses on the issue of people getting enough to eat.

Your concern in the end with jobs and work supports "that support family self-sufficiency" 84 F.R. at 35572, and "that support meaningful work opportunities ... that help move families from welfare to self-sufficiency" 84

F.R. at 35573 and *see* 84 F.R. at 35574, is not the concern of SNAP. Your concerns are better expressed in the context of TANF, then, and should be directed there if at all. Your proposed rule is unreasonable under SNAP.

And your proposed rule is discriminatory against the elderly. You admit as much when you write "that there is a potential for civil rights impacts to result" if your proposed rule is implemented "because more elderly individuals may not otherwise meet the SNAP eligibility requirements." 84 F.R. at 355776.

Discrimination is not a reasonable result.

Parenthetically, did you mean that "more" elderly people will be affected than not, or that "more" elderly people will not be able to receive SNAP allotments because of the new SNAP eligibility requirements under your proposed rule and, if that is what you meant, then what other rules exist, aside from your proposed rule, which in your mind would also prevent elderly people from receiving SNAP allotments? You can see that your language is confusing and it is hard to argue that confusing language leads to reasonable results in any case.

3. *SNAP is a program of block grants from your Federal government to the States, as previously noted. The additional requirements which your proposed rule would impose upon the States are unreasonable and in any event you are not authorized to be the one to impose new requirements upon the States.*

You admit that "[u]nder the proposed rule, a State would be required to inform FNS [the USDA Food and Nutrition Service] of all non-cash TANF benefits that confer categorical eligibility." 84 F.R. at 35574 - 35575. You call this new requirement that you impose a "notification requirement," and you say that it "would not unduly burden most State agencies," which makes it okay, you say. 84 F.R. at 35575.

Yet, you claim that you "considered" whether your proposed rule has federalism implications and you also claim that you "determined" that there are no federalism implications here. To use a good old word that completely describes what you are saying, that's hooey, in other words, that's false. And unreasonable.

4. *Conclusion.*

For all these reasons, whether taken separately or together, your proposed rule is unreasonable under the Supplemental Nutrition Assistance Program statutes enacted by Congress. Your proposed rule should be withdrawn and rewritten before it is implemented, if ever. If it is implemented it should be struck down.

Thank you for your consideration.

Sincerely,

Dennis Wall