

STATE OF MINNESOTA
COUNTY OF RAMSEY

FILED
Court Administrator

JUL 19 2011

By  Deputy

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil
Court File No. 62-CV-11-5203

In re Government Shutdown Litigation,

In Re Temporary Funding of Core Functions of
the Executive Branch of the State of Minnesota

**ORDER REGARDING THE STATE
OPERATED SERVICES DIVISION OF
THE DEPARTMENT OF HUMAN
SERVICES AND PROGRAMS FUNDED
BY THE FEDERAL OFFICE OF
REFUGEE RESETTLEMENT, AND THE
PETITION OF TED VOLK**

On June 23, 2011, the undersigned heard oral argument pursuant to the Motion of Petitioner Lori Swanson, Attorney General for the State of Minnesota, for temporary funding of the executive branch. On June 29, 2011, the Court issued its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding.

In its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding dated June 29, 2011, the Court appointed retired Minnesota Supreme Court Chief Justice Kathleen Blatz as Special Master to hear and make recommendations to the Court with respect to issues regarding compliance with the terms of its Order. On July 1, July 5, July 7, July 8 and July 12, 2011, Special Master Blatz conducted evidentiary hearings regarding Petitioners seeking state funding as providers of critical core functions of government.

The Court accepts and adopts the attached findings of the Special Master subject to modification pursuant to Minn. R. Civ. P. 53.07(b) with respect to the requests of government offices and petitions brought by programs (hereinafter listed).

Based on the file, proceedings, and recommendations, the Court makes the following

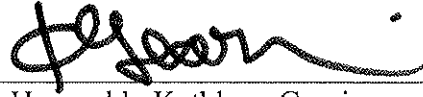
ORDER:

1. The Court amends its Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 to include continued funding of all programs and services that receive federal funds disbursed to the State by the Office of Refugee Resettlement within the United States Department of Health and Human Services, as set forth in the Special Master's attached recommendation, as these are pass through funds of the federal government.
2. The petition filed by Ted Volk requesting the Court to direct the Minnesota Department of Transportation to shut off the ramp metering system is denied. The issue of whether the ramp metering system actually improves public safety should be left to the legislature.
3. The following clarifications regarding the State Operated Services Division of the Department of Human Services are adopted and made part of this Court's June 29, 2011 Order: The Commissioner of the Department of Human Services has the discretion to rehire and assign State Operated Services Division staff to the extent that she believes they are necessary (1) to support Assertive Community Treatment ("ACT") teams, Crisis Response teams, Crisis beds, and rehabilitation services, or (2) to support other critical core functions of government within the scope of the June 29, 2011 Order.

Dated:

BY THE COURT:

7-19-11



The Honorable Kathleen Gearin
Chief Judge
Ramsey County District Court

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS FOR
PROGRAMS FUNDED BY THE
FEDERAL OFFICE OF REFUGEE
RESETTLEMENT**

On July 1, 2011, July 5, 2011 and July 7, 2011, individual Petitioners came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center continued funding of programs and services that receive federal funds disbursed to the State from the Office of Refugee Resettlement within the United States Department of Health and Human Services. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Numerous attorneys and witnesses appeared for associations and other organizations to urge the continued funding of these refugee-resettlement programs and services.¹

Based upon the testimony, submissions from the attorneys and witnesses, and the arguments of counsel, the Special Master now makes the following:

Recommendation

1. The Court should **AMEND** the Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2012 to require the continued funding of all

¹ The Karen Organization of Minnesota, Lifetrack Resources and Lutheran Social Service each submitted petitions to the Special Master that focused on this issue, either in whole or in part.

programs and services that receive federal funding disbursed to the State by the Office of Refugee Resettlement within the United States Department of Health and Human Services (“ORR”).

Concerns of Petitioners

1. Petitioners seek continued funding of numerous programs funded with federal funds provided to the State by the ORR.

Analysis

1. Petitioners provide services to refugees who have been resettled to Minnesota under the federal Refugee Resettlement Program, which is overseen by the ORR.

2. The Special Master heard testimony that 100% of the funding disbursed by the Department of Human Services’ Resettlement Program Office (“RPO”) is federal block-grant funding provided by the ORR under the Refugee Resettlement Program.

3. The Court recognized that some spending was required to continue under Supremacy Clause principles because the State had certified through state-plan submission to the federal government that certain benefits would be promptly provided to eligible Minnesota citizens. (Order p. 7 ¶ 25.) The State followed a similar process when it sought funds from the ORR. Specifically, it had to submit a plan to the Director of the ORR describing “how [it] intend[ed] to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible” and “how [it would] insure that language training and employment services are made available for refugees receiving cash assistance.” 8 U.S.C. § 1522(6)(A).

4. Further, unlike many federal programs that provide block grants to the State, grants under the Refugee Resettlement Program are subject to specific exigency requirements.

The statutory authority allowing the Director of the ORR to disburse these block grants imposes specific requirements on States receiving these funds, as follows:

As a condition for receiving assistance under this section, a State must –

...

(B) meet standards, goals, and priorities, developed by the Director [of the ORR], which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services.

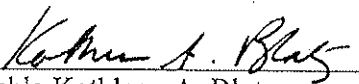
8 U.S.C. 1522(6)(B). The implementing regulations specifically provide that it is the purpose of the ORR block-grant program “to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.” 45 C.F.R. § 400.1(b).

Furthermore, the Director of the ORR “has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.” *Id.* § 400.1(c).

5. Pursuant to the Court’s Order Regarding Continuing Funding of Grants and Programs by Department of Human Services of July 13, 2011 (“July 13th Order”), Refugee Cash Assistance, Refugee CMA Grants and Refugee Medical Assistance continue to be funded during the shutdown. (July 13th Order p. 3 ¶¶ 9-10.) In its July 13th Order, the Court adopted the Special Master’s Recommendation to deny continued funding of Refugee Social Services because the need for continued employment support to needy populations is not a critical core function of government under the Order. (*Id.* p. 3 ¶ 11.) The Special Master did not reach the question of whether continued funding of such programs was required under the Supremacy Clause principles of the Order. (Report and Recommendations of Special Master Regarding Continuing Funding of Grants and Programs by Department of Human Services p. 16.)

6. Federal law explicitly conditioned the payment of all Refugee Resettlement Program funds on the State meeting federally-mandated “standards, goals, and priorities . . . which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services.” 8 U.S.C. § 1522(6)(B) (emphasis added). The Director of the ORR has specifically identified employment services and English language training as priorities for states operating programs and services with Refugee Resettlement Program funds. 45 C.F.R. § 400.1(b), (c). The State may not avoid these federal requirements mandating the timely provision of these services to refugees because the Legislative and Executive Branches have failed to enact a budget. The Court has already found that the payment and provision of services under certain federal programs is mandated by the Supremacy Clause. (Order p. 7-8, ¶¶ 24-25.) These same principles apply with equal force to the payment and provision of services under the federal Refugee Resettlement Program. Accordingly, the Special Master now recommends that the Court amend the Order to require continued funding of all grants and programs that receive funds disbursed to the State under the federal Refugee Resettlement Program.

Dated: July 14, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS REGARDING
PETITION OF TED VOLK**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 12, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General for the State of Minnesota; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Attorney William Butler, Butler Liberty Law; and Ted Volk appeared on behalf of Petitioner.

Based upon the arguments presented at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court clarify its June 29, 2011 Order to direct the Minnesota Department of Transportation ("MNDOT") to shut-off the ramp metering system as a non-critical core function should be **DENIED**.

Concerns of Petitioner

1. Petitioner is an aerospace engineer and architecture integrity specialist. Petitioner asserts that MNDOT's continued operation of ramp metering on Minnesota highways violates the Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 ("Order").

Analysis

1. Petitioner appeared in his individual capacity to request that the Court clarify its Order and direct MNDOT to stop Minnesota's highway ramp metering system which is still being operated since the shutdown. Petitioner bases his request on the fact that ramp metering is not explicitly authorized by the Court's Order and that there is insufficient empirical evidence that ramp meters contribute to the safety or efficiency of Minnesota roads.

2. Petitioner testified that during the 2005 partial government shutdown, the Court's Order specifically provided that MNDOT "[c]ontinue ramp meters ... operations." (Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, June 23, 2005 Ex. B p. 13 ("2005 Order").) By contrast, the Court's June 29, 2011 Order does not explicitly provide for the continued operation of the ramp metering system.

3. Petitioner stated that the noninclusion of ramp metering in Exhibit A of the 2011 Order should be legally significant, i.e., that ramp metering is not deemed a critical core function.¹

The Petitioner accurately points out that the relevant 2005 and 2011 lists of critical and/or core operations differ in the level of detail. The 2005 Order provided explicitly for the following "portions" of the "critical operations plan":

- Provide highway operations and maintenance emergency services affecting the safety of the public:
 - o Barricade replacement
 - o Repair damaged guardrails or replace any removed construction site barriers
 - o Repair hazardous conditions on roadways (pavement blow-ups, obstructions, wash-outs, etc.)
 - o Traffic signal repair, stop and yield sign replacement
- Continuation of active (200) construction projects
- Hazardous Material Incident Response
- Stillwater Lift Bridge operation
- Continue ramp meters and MnPASS Hot Lane operations

¹ Petitioner also noted that the 2005 Order expressly continued MnPASS operations and that the 2011 Order did not. To date, MnPASS has been shut down, in contrast to ramp metering.

- Assessment of traffic damage to bridges
- Maintain aeronautic navigation systems
- Maintain pilot weather information systems
- Provide computer and communications affecting the State Patrol in shared facilities
- Provide Gopher One responses
- Provide essential department leadership and management, communications, and support services
- Continue to process payment for active county/municipal state aid projects; critical project plan review

(2005 Order Ex. B p. 13.) Under the 2005 Order it appears that approximately 864 of the 4,828 MNDOT employees continued to be employed.

4. The 2011 list of Priority One and Priority Two Services is more succinct. The Transportation activities “recommended to continue” pursuant to Exhibit A are:

- Emergency Highway Repair
- Aeronautic Navigation
- Emergency Communication Networks
- Truck Permitting
- Incident command and support for critical services

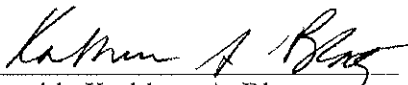
(Order Ex. A p. 8.) Exhibit A estimates that a total of 217 full-time employees are necessary to meet the operations MNDOT deemed critical.

5. The Order, read as a whole, assumes the operation of the highway system and continuation of functions deemed necessary by MNDOT. While Petitioner correctly notes that the current 2011 list does not specify that ramp meters are to continue, it is assumed to be included in the Court’s Order. The Order provides that critical core functions include the “[m]aintenance of public safety.” (Order p. 9 ¶ 27(2).) The Statewide Contingency Response Team (“Response Team”) established four statewide priority service definitions to meet its objectives during a government shutdown. A report of the Response Team was attached as Exhibit A to the Order. (Order Ex. A III(A).) Exhibit A’s Priority 1 Critical Services includes those services relating to the “immediate threat to public health and/or safety” and expressly

includes “[c]ontinuance of transportation safety functions and the protection of transport property.” (*Id.*; see also pp. 5-6 ¶ 18 for the Court’s reference to the federal government’s designation of certain activities as core or essential services pursuant to the OMB Memorandum). Based on the Order and the evidence elicited during the hearing on this petition, it appears that there are a number of functions associated with the successful operation of the truck highway system – including cameras, intersection stoplights on trunk highways, illuminated overhead lights, and ramp meters – that have been left to the sound discretion of the MNDOT Commissioner. Moreover, no evidence was presented of the number, if any, of MNDOT employees who are charged with the duties of running the highway ramp meter system.

6. Based upon a fair reading of the Court’s Order, the Special Master does not agree that the continuation of ramp metering is prohibited under the Court’s June 29, 2011 Order. The Special Master declines to address the fundamental issue of whether ramp metering, in fact, contributes positively to the safe or efficient use of our highways. In the past, that issue has been addressed by the Legislative and Executive branches, and any present concerns in this regard should be brought to their attention. Accordingly, the Special Master recommends that the Court Petitioner’s request to clarify the Order be denied.

Dated: July 15, 2011



The Honorable Kathleen A. Blatz
Special Master

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-5203

In Re: Temporary Funding of Core Functions
of Executive Branch of the State of Minnesota

**SPECIAL MASTER
RECOMMENDATIONS FOR STATE-
OPERATED SERVICES DIVISION OF
THE DEPARTMENT OF HUMAN
SERVICES**

On July 1, 2011, July 8, 2011, and July 12, 2011, individual Petitioners came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center requesting the rehiring of employees within the State Operated Services Division of the Department of Human Services. Present before the Special Master were Lori Swanson, Attorney General; Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; and Joseph Cassioppi, Special Counsel to the Office of the Governor. Numerous attorneys and witnesses appeared for associations and other organizations to urge the rehiring of employees within the State Operated Services Division who provide services to county and community-based mental health centers and programs.¹

Based upon the testimony, submissions from the attorneys and witnesses, and the arguments of counsel, the Special Master now makes the following:

Recommendation

1. The Court should **CLARIFY** its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 ("Order"), as permitting the

¹ The Minnesota Coalition of Community Mental Health Programs, the CommUNITY Initiative, and Rachel Scott, M.D., each submitted petitions on this issue, in whole or in part, to the Special Master.

Department of Human Services (“DHS”) to rehire staff within the State Operated Services Division (“SOSD”) who provide services to county and community-based mental health centers and programs. If so clarified, the Special Master recommends that the Court require the Commissioner of DHS to exercise discretion so that only those employees in the SOSD deemed essential to the provision of critical core functions are rehired.

Concerns of Petitioners

1. Petitioners are providers and recipients of mental-health services throughout Minnesota. They request an order clarifying that DHS has the authorization to rehire SOSD employees necessary to allow for the continued provision of critical services to mentally ill Minnesota citizens.

Analysis

1. SOSD employees provide services at a variety of community mental health centers and programs throughout the state. SOSD employees are state employees who provide direct services at county or non-profit run mental-health treatment centers and programs. These employees are highly trained mental-health professionals who are an integral part of many centers’ and programs’ staffs.

2. In many counties, SOSD employees perform vital roles in the provision of services to mentally ill individuals. First, SOSD employees constitute part of Assertive Community Treatment (“ACT”) teams that administer medications to individuals at their homes and help prevent hospitalizations. SOSD employees are also on county Crisis Response teams, which travel to homes as first responders when an individual has a mental-health emergency and can help to prevent hospitalization or imprisonment. SOSD employees also help to operate Crisis beds, which provide a safe, temporary alternative to hospitalization when an individual has

a mental-health emergency. Finally, SOSD employees help counties to provide mental-health rehabilitative services designed to stabilize individuals with persistent mental illness.

3. SOSD employees have years of experience treating severely mentally ill individuals at state-run hospitals before the State moved from institutional care to a community-based mental health system. When these state-run facilities were closed, many of these SOSD employees were retained by the State and then deployed to county and nonprofit community treatment centers and programs. The counties pay the State for the use of these SOSD employees.

4. Exhibit A to the Order permitted the funding of staff within the State Operated Services (“SOS”) of DHS but directed the Department to “prioritize critical service [and] treatment.” (Order Ex. A (under “Human Services”).) Accordingly, the Commissioner tailored its list of retained SOS employees to not include SOSD employees working at county and community health-centers. These individuals were laid off due to the ongoing government shutdown.

5. Since the beginning of the shutdown, DHS and the Special Master have learned that the layoff of these SOSD employees has had a dramatic effect on many county-based mental-health providers throughout the state. There has been a 50% reduction in crisis and ACT services because of the lack of SOSD staffing. At least one crisis-response team is no longer able to offer mobile services because it lacks sufficient staff. Mobile services are essential to ensure that seriously and persistently mentally ill people continue to take necessary drugs and medications. In Northeast Minnesota, programs have closed their crisis beds because they lack sufficient staff. In addition, they are no long providing on-call services between midnight and

8:00 a.m. In Southwest Minnesota, there are programs that have lost all but one county staff member, and, thus, cannot provide any services.

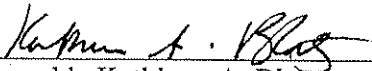
6. In the absence of SOSD employees, other employees at the community mental health programs and centers are having to work double shifts, which is taking a toll on the quality of the services provided and is not sustainable. Programs are full and they are unable to take any additional referrals.

7. Continued provision of services by SOSD employees in community mental-health treatment programs is essential to the safety of mentally ill individuals and the community at large. These are services that constitute critical core functions of government that remain funded under the Order. (Order p. 9 ¶ 27, subs. 2, 3.) The Court has specifically recognized that the same services/programs involved here are critical core functions that are to remain funded under the Order. (See Order Regarding Continuing Funding of Grants and Programs by Department of Human Services, July 13, 2011 p. 4 ¶ 15 (recognizing that continued funding of mental health grants “fall within the parameters of the June 29, 2011 Order”).) The Special Master has heard testimony that the lack of these services has already resulted in increased hospitalization of mentally-ill individuals and the need to call in law-enforcement agencies to deal with individuals in mental-health crisis.

8. The Office of the Governor and the Attorney General agree that ACT teams, Crisis Response teams, Crisis beds, and rehabilitation services provided by counties with the assistance of staff from SOSD are critical core functions of government. DHS has stated, however, that the need for state staffing to support those services varies from county to county and from program to program. Accordingly, the Special Master recommends that the Court amend the Order to clarify that the Commissioner of DHS has the discretion to rehire and assign

SOSD staff to the extent that she believes they are necessary (1) to support ACT teams, Crisis Response teams, Crisis beds, and rehabilitation services, or (2) to support other critical core functions of government within the scope of the Order.

Dated: July 14, 2011



The Honorable Kathleen A. Blatz
Special Master