

FILED
Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

JUL 14 2011

SECOND JUDICIAL DISTRICT

By  Deputy

In re Government Shutdown Litigation,

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

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

**ORDER REGARDING PETITIONS OF
CARE PROVIDERS OF MINNESOTA
AND AGING SERVICES OF
MINNESOTA, AND 41 STATE
HIGHWAY PATROL TROOPERS**

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 7 and July 8, 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. Petitioners' request that the Court amend the Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 to fund 41 State Troopers of the Minnesota Highway Patrol who have not yet completed their field training is denied.
2. The Court amends the Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 to authorize funding for the Department of Health to rehire the necessary staff to update the Minnesota Nursing Assistant registry and maltreatment investigators essential to address any reports of alleged maltreatment or misconduct by providers licensed by the Department of Health.

Dated:

7-14-11

BY THE COURT:



The Honorable Kathleen R. Gearin
Chief Judge
Ramsey County District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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

**REPORT AND RECOMMENDATIONS
OF SPECIAL MASTER REGARDING
PETITION OF CARE PROVIDERS OF
MINNESOTA AND AGING SERVICES
OF MINNESOTA**

This matter came on for hearing before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 7, 2011. Present before the Special Master were 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; Susan Voigt as attorney for Petitioners Care Providers of Minnesota and Aging Services of Minnesota, and Christine Bakke, administrator of the care center at St. Benedict's Senior Community in St. Cloud.

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

Recommendation

1. The Special Master recommends that the Court **AMEND** its Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding of June 29, 2011 (the "Order") to authorize funding for the Department of Health to rehire the necessary staff to update the Minnesota Nursing Assistant registry and maltreatment investigators essential to address any reports of alleged maltreatment or misconduct by providers licensed by the Department of Health.

Concerns of Petitioners

1. Petitioners request that sufficient funding be provided to the Department of Health to allow continued updating of the Minnesota Nursing Assistant Registry. Petitioners may not hire new certified nursing assistants without confirming their membership in the registry, which they are presently unable to do. Given the high levels of staff turnover at Petitioners' providers, this ongoing failure to update the registry is affecting staffing levels, which, in turn, is affecting the care received by the elderly Minnesota citizens. Care providers are concerned that the continued failure Department of Health staff to update the Registry will require them to stop admitting new patients because they will be unable to provide proper care for them with limited numbers of nursing assistants available.

Analysis

1. Petitioners are trade associations comprised of nursing home providers, senior housing, and assisted living establishments. Petitioners' members employ nearly 90,000 people in the care and service of the elderly in Minnesota. Of these, 17,000 are certified nursing assistants.

2. Petitioners' member organizations experience a very high rate of staff turnover among certified nursing assistants. In 2008, the annual turnover rate for nursing assistants was 41.7%. Failure to fund positions for the continued updating of this registry risks creating a significant staff shortage for those entities providing personal care services to elderly Minnesota citizens.

3. The Special Master heard argument that before a health care provider hires a certified nursing assistant, the provider must verify that he or she has completed an approved nursing assistant training and testing program and meets state and federal requirements to work

in certified nursing homes and certified boarding care homes. In addition, federal law requires that providers may not hire individuals to work as nursing assistants unless the providers specifically inquire of the Minnesota Nursing Assistant Registry as to their certification as a proper nursing assistant. Petitioner's providers are presently unable to make this federally required inquiry.

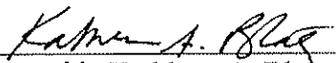
4. The Special Master heard testimony that the failure to update the Minnesota Nursing Assistant Registry during the ongoing government shutdown has already affected staffing by care providers. After storm damage destroyed the roof of a nursing home in Belview, Minnesota the first week of July 2011, the residents of the home were transferred to other care providers. However, the nursing assistant staff could not be transferred to these other certified care providers because they were unable to verify their status on the Minnesota Nursing Assistant Registry.

5. The Order concluded that "matters relating to the life, health, and safety of Minnesota citizens," were critical core functions of government that should continue to be funded during the shutdown. (Order p. 15 ¶4.) In addition, the Court concluded that necessary administration and supportive services were critical core functions that should continue. (*Id.* p. 9 ¶ 27, subp. 5.) The Special Master recommends that continued funding Department of Health staff necessary to update the Minnesota Nursing Assistant Registry is a critical core function of government essential to the life, health, and safety of elderly Minnesotans who receive care from certified nursing assistants while in residential care. Over half of these seniors rely on Medicaid payments for their care.

6. The Department of Health also requests authorization to re-hire maltreatment investigators sufficient to investigate any reports of maltreatment that come in during the

ongoing government shutdown. The Court previously adopted the Special Master's recommendation that the Licensing Division of the Department of Human Services be provided limited funding so as to permit maltreatment/misconduct investigations by that Division to continue during the ongoing government shutdown. (Order July 7, 2011.) The Special Master recommends a similar course with respect to maltreatment/misconduct investigations conducted by the Department of Health. An inability to investigate and, if necessary, suspend the subjects of such maltreatment reports could jeopardize the well-being of vulnerable populations. Continued funding of these services is necessary to ensure the life, health, and safety of elderly Minnesotans receiving care in facilities licensed by the Department of Health. The Office of the Governor represented that the Commissioner of Health, in the exercise of discretion, will re-hire only the minimal staff to perform these critical functions.¹

Dated: July 12, 2011



The Honorable Kathleen A. Blatz
Special Master

¹ It was represented to the Special Master that only 2 or 3 employees will need to be re-hired to perform the functions requested by Petitioner and the Department of Health.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

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 SEEKING CONTINUED
FUNDING FOR 41 STATE HIGHWAY
PATROL TROOPERS WHO HAVE NOT
COMPLETED THEIR FIELD TRAINING**

This matter came before the Special Master, the Honorable Kathleen A. Blatz, in Room 230 of the Minnesota Judicial Center on July 8, 2011. Present before the Special Master were Alan Gilbert, Solicitor General and Deputy Attorney General; Jacob Kraus, Assistant Attorney General; David Lillehaug, Special Counsel to the Office of the Governor; Joseph Cassioppi, Special Counsel to the Office of the Governor; and Sergeant Mathew Hodapp, President of Minnesota State Patrol Troopers Association and board member of Minnesota Law Enforcement Association on behalf of 41 State Troopers who have not yet completed their field training.

Based upon the testimony at the hearing, the Special Master makes the following:

Recommendation

1. Petitioner's request that the Court amend the Findings of Fact, Conclusions of Law and Order Granting Motion for Temporary Funding of June 29, 2011 (the "Order") to fund 41 State Troopers of the Minnesota State Highway Patrol who have not yet completed their field training should be **DENIED**.

Concerns of Petitioner

1. Petitioner requests that the Court order continued funding of the 41 highway patrol officers who were laid off effective July 1, 2011. As of May 6, 2011, the 41 State Troopers, the subjects of this Petition, were licensed peace officers in the State of Minnesota. However, they have not yet completed their field training and, thus, are not permitted to patrol by themselves at this time.

2. Petitioner argues that continued funding of these 41 laid-off State Troopers is essential to the maintenance of public safety under the Order. Petitioner noted that a long layoff may result in these officers leaving the State Patrol to work for other law-enforcement agencies, which would cost the State given the amount spent to date on their training.

Analysis

1. Exhibit A to the Order provided for the continued funding of the State Patrol during the shutdown. (Order Ex. A “Public Safety”.) In the exercise of discretion, the Commissioner of Public Safety excluded from this complement 41 State Troopers with the Minnesota State Patrol who have not yet completed their field training. This exercise of discretion was contemplated by the Court in its attachment of Exhibit A. (*See* Order Ex. A § I (setting forth “Planning Assumptions” and recognizing that “[a]gencies should plan minimal / necessary staffing levels for the priority one and two critical services).)

2. On July 8, 2011, the Court issued an Order denying a petition for continued funding brought by seven detectives in the Department of Commerce Insurance Fraud Division. In the July 8th Order, the Court explained that “[w]hile having some law enforcement officers is a core function, the Court does not have the authority to determine how many and what areas of enforcement should be covered. Those decisions are the province of the other branches.”

3. Prior to the shutdown, the Commissioner of Public Safety exercised her discretion in determining the number of State Troopers necessary to ensure continued public safety during the shutdown. The Special Master recommends that the Court not interfere with this exercise of discretion and deny Petitioner's request.

Dated: July 4, 2011



The Honorable Kathleen A. Blatz
Special Master