

DISTRICT OF COLUMBIA
Office of Administrative Hearings
441 4th Street, NW, Suite 450N
Washington, D.C. 20001

ANGEL GREGORY, SIERRA MOORE,
BRITNE THOMAS, individually, and on
behalf of all others similarly situated,

Petitioners,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES,

Respondent.

Case No.: 2024-SHEL-XXXXXX

**EMERGENCY CLASS ACTION REQUEST FOR HEARING ON NOTICES ISSUED IN
VIOLATION OF RIGHT TO BE CONSIDERED FOR EXTENSIONS**

Petitioners Angel Gregory (“Ms. Gregory”), Sierra Moore (“Ms. Moore”), and Britne Thomas (“Ms. Thomas”) (together, the “Named Petitioners”), by and through undersigned counsel, individually and on behalf of all others similarly situated (with the Named Petitioners, the “Petitioners”), all of whom received a Notice of Program Exit from the Rapid Rehousing Program issued by the Department of Human Services between April 1, 2024 and June 30, 2024 (the “NPEs”), request an emergency hearing prior to an administrative review, based on their claim (set forth in detail below) that the NPEs are invalid on their face because, contrary to the Notices, Petitioners had the right to be considered for extensions at the time of the issuance of the Notices. *See* D.C. Code § 4-754.42(c) (“that the Office of Administrative Hearings may grant a hearing prior to the completion of the administrative review, if emergency relief is requested and on proper notice to all parties, to decide if a notice required by § 4-754.33(b) or (c) (other than a notice of an emergency action) has not been given or is invalid on its face”).

PRELIMINARY STATEMENT

1. Between April 1, 2024 and June 30, 2024, Respondent Department of Human Services (“DHS”) approved or directed the issuance of over eight hundred NPEs to families then participating in the Family Re-Housing and Stabilization Program (“FRSP” or “Rapid Rehousing Program”). This action seeks emergency relief on behalf of the class of persons who received those NPEs. Specifically, Petitioners seek an Order declaring that the NPEs were uniformly defective, and therefore without legal force or effect, and for such further supplemental relief as may be appropriate.

2. The basis for Petitioners’ claim is that each of the NPEs, which were issued at the direction of DHS, uniformly included an affirmative statement that a request by the FRSP participant for an extension of participation in the FRSP “shall not be considered for the remainder of FY 2024.” This statement deprived the FRSP participants of a meaningful opportunity to be considered for an extension, as required by the Family Re-Housing Stabilization Program Protection Congressional Review Emergency Amendment Act of 2023 (“FRSP Protection Act” or “Act”). D.C. Act 25-273 (amending D.C. Code § 4-753.01(b)(4)(B)). DHS included the statement on the alleged ground that “funding is not available” within the FRSP for such extensions. DHS’s statement (1) violated the FRSP Protection Act because it unilaterally eliminated individualized determinations for extension requests, including without limitation whether “funding is available” on an individualized basis, and (2) even if DHS were permitted by the FRSP Protection Act to determine on a non-individualized basis that “funding is not available,” on information and belief, its assertion that “funding is not available” for extensions was factually inaccurate, and instead, represented an arbitrary and capricious decision by DHS to decline to use available FRSP funding for extensions.

3. Petitioners also request an interim order preliminarily certifying the class; continuing participation by all Petitioners in the FRSP until this action is resolved, and, if this action does not resolve all claims, until each individual Petitioner's individual appeal of their NPEs has been heard and decided; ordering DHS to provide each Petitioner the opportunity to request an extension of their participation in the FRSP and to review each request individually; ordering DHS to refrain from issuing any new NPEs to Petitioners who request an extension until they have been individually assessed and final non-appealable determinations have been made on their requests for extensions; and provide such other additional relief, on an interim basis or otherwise, as may be appropriate to protect the Petitioners' rights to participate in the FRSP.

JURISDICTION

4. D.C. Code § 2-1831.03(a) of the Office of Administrative Hearings Amendment Act of 2003 and D.C. Code § 4-754.41(a) of the Homeless Services Reform Act ("HSRA") provide jurisdiction to the Office of Administrative Hearings ("OAH") with respect to appeals by participants of program exits from the FRSP. In general, OAH may hear appeals when an FRSP participant has requested a fair hearing within 90 days of receiving a written notice of program exit. D.C. Code § 4-754.41(a). In addition, under law applicable to Petitioners, participants are entitled to continued receipt of benefits for appeals lodged within 15 days of such notice. D.C. Code § 4-754.41(d). The Named Petitioners, and upon information and belief some putative class member Petitioners, appealed their NPEs within 15 days of receiving such notice.

5. In addition, the FRSP Protection Act explicitly provides jurisdiction over appeals for FRSP participant extension request denials. D.C. Act 25-273, § 2(b)(iv). All Petitioners

have been unlawfully deprived of their right to be considered for extensions, thereby tolling any applicable time limitation on appeals.

6. This class action may be brought on behalf of all Petitioners because at least one named member of the class has filed an appeal, and further, under the circumstances presented by the deficient NPEs, any class member who did not file an appeal is legally and equitably excused from doing so.

7. The OAH Rules do not address the issue of class certification. Instead, OAH Rules 2970.3 and 2801.1 together provide that, where the OAH Rules “do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure (the “Superior Court Rules”) to decide the issue.” Rule 23 of the Superior Court Rules, therefore, provides guidance for the certification of a class and, as set forth below, the class meets those requirements.

PARTIES

Angel Gregory

8. Angel Gregory is a District of Columbia resident participating in the FRSP with her two-year-old son. Ms. Gregory and her son both suffer from multiple health conditions and other issues that limit her ability to achieve and maintain stable housing.

9. Ms. Gregory entered the FRSP in December 2021, but was not assigned to a case manager until May 2022. Thereafter, she was assigned three different case managers by her provider, East River Family Strengthening Collaborative.

10. During her time in the FRSP, Ms. Gregory has experienced extensive deficient housing conditions, and received minimal and inconsistent case management services, further limiting her ability to achieve and maintain stable housing.

11. Ms. Gregory does not currently work. Her income comes from Temporary Assistance for Needy Families (“TANF”), and she receives Supplemental Nutrition Assistance Program (“SNAP”) benefits. Ms. Gregory is currently enrolled in school to obtain a medical assistance degree. She is scheduled to graduate in 2025.

12. Ms. Gregory’s rent is currently \$3,265. She pays \$152 per month and her FRSP subsidy covers \$3,113. Given her lack of employment, Ms. Gregory cannot afford market rent without the FRSP subsidy or a permanent housing voucher.

13. On or about April 13, 2024, Ms. Gregory received a Notice of Program Exit (“NPE”) stating that she would be exited from FRSP on May 31, 2024, that she would receive her last FRSP rental subsidy payment for the month of May 2024, and that she would not receive case management or other supportive services after May 31, 2024. The notice stated that Ms. Gregory had reached the twelve (12) month limit for receiving FRSP assistance on May 31, 2024, that she could not be recertified, and that because she had exceeded the program’s time limit and because FRSP funds had been exhausted, DHS would not consider an extension request.

14. After receiving the NPE, Ms. Gregory filed a timely appeal with OAH and currently has benefits pending the appeal. Ms. Gregory’s appeal number is 2024-SHEL-00214.

Sierra Moore

15. Sierra Moore is a District of Columbia resident participating in the FRSP with her three-year-old son. Ms. Moore’s son has been diagnosed with a disability.

16. Ms. Moore was approved for participation in the FRSP on June 1, 2022, but was not assigned to a provider for case management assistance until December 2022, when she was assigned to Core DC.

17. Despite receiving limited employment assistance for finding gainful employment and receiving no resources or assistance for childcare from her Core DC case managers, Ms. Moore has consistently attempted to work, with part-time jobs, between June 2022 and August 2023. In September 2023 she began taking classes through the Department of Employment Services (“DOES”) in order to improve her employment prospects.

18. More recently, Ms. Moore has been unable to seek employment due to the increasing demands of caring for her son who has a disability that requires significant attention.

19. Ms. Moore’s rent is \$1,805 per month, her FRSP subsidy covers \$1,731, and her portion of the rent is \$74. Given her employment barriers and having to take care of her son, Ms. Moore cannot afford full rent without the FRSP subsidy or a permanent housing voucher.

20. On or about May 7, 2024, Ms. Moore received an NPE stating that she would be exited from FRSP on June 30, 2024, that she would receive her last FRSP rental subsidy payment of \$1,731 for the month of June 2024, and that she would not receive case management or other supportive services after June 30, 2024. The notice stated that Ms. Moore had reached the twelve (12) month limit for receiving FRSP assistance on June 30, 2024, that she could not be recertified, and because she had exceeded the program’s time limit and because FRSP funds had been exhausted, DHS would not consider an extension request.

21. After receiving the NPE, Ms. Moore filed an appeal with OAH on May 14, 2024 and currently has benefits pending the appeal. Ms. Moore’s appeal number is 2024-SHEL-00448.

22. Ms. Moore, through her counsel, requested an FRSP extension on June 21, 2024. On July 19, 2024, Core DC responded to her counsel that “CORE DC is unable to grant her request.”

Britne Thomas

23. Britne Thomas is a District of Columbia resident participating in the FRSP with her sons and her daughter.

24. Ms. Thomas was approved for participation in FRSP in approximately January 2021, but did not receive a case manager for the first six months of her participation (until roughly June 2021). Ms. Thomas experienced significant deficient housing conditions during her time in FRSP and her case managers did not provide much, if any, support. The Greater Washington Urban League serves as her FRSP provider.

25. Ms. Thomas works full time at a job that she secured without assistance from her case managers. While she works full time, Ms. Thomas is unable to afford her rent without an FRSP subsidy or without a permanent housing voucher. Ms. Thomas' rent is \$1,877, her FRSP subsidy is \$1,432, and she is required to pay \$445 per month in rent plus her utilities, including gas and electric. This rent has not been adjusted even though her income has varied, especially because her child support is rarely, if ever, paid.

26. On or about June 28, 2024, Ms. Thomas received an NPE stating that she would be exited from FRSP on July 31, 2024, that she would receive her last FRSP rental subsidy payment of \$1,432 for the month of July 2024, and that she would not receive case management or other supportive services after July 31, 2024. The notice stated that Ms. Thomas had reached the twelve (12) month limit for receiving FRSP assistance on October 12, 2023, that she could not be recertified, and that because she had exceeded the program's time limit and because FRSP funds had been exhausted, DHS would not consider an extension request.

27. After receiving the NPE, Ms. Thomas filed an appeal with OAH on May 13, 2024 and currently has benefits pending the appeal. Ms. Thomas' appeal number is 2024-SHEL-00439.

28. Ms. Thomas requested an FRSP extension in July 2024 after she received the NPE. She never received an approval or denial of this extension request.

29. Ms. Thomas was told to apply for a voucher, which she did in the summer of 2024. She never received an approval or rejection either verbally or in writing on her voucher application.

Respondent

30. Respondent DHS is charged by statute with administering the FRSP.

CLASS ACTION DEFINITION AND ALLEGATIONS

31. This action for declaratory and supplemental relief is brought by Petitioners as a class action in accordance with the provisions of Rules 23(a) and 23(b)(2) of the Superior Court Rules, on their own behalf, on behalf of their minor children and spouses, if applicable, and on behalf of the following class of all other similarly situated homeless families residing in the District:

All families who were participating in the FRSP as of April 1, 2024 and thereafter were emailed, mailed, provided by hand delivery, or otherwise received an NPE in April, May or June 2024, asserting that they had reached an alleged time limit for participation in the FRSP.

32. The membership of the class is so numerous that joinder of all members is impractical. On or about June 11, 2024, DHS provided an FRSP exit update that reflected that it had issued 816 NPEs in April, May, and June. **Exhibit A.** All of these notices were issued on the basis of reaching an alleged time limit for participation in the FRSP.

33. There are questions of law and fact in the action common to the class, including: (a) whether DHS was required to consider individual requests for extensions by the Petitioners; (b) whether DHS had funding available between April 1, 2024 and the end of FY 2024 to consider individual extension requests; and (c) whether DHS wrongfully and improperly exited participants from the FRSP, and terminated FRSP benefits for those participants, based on NPEs that were invalid and legally deficient because they contained the statement that extensions would not be considered. The relief sought is common to the entire class.

34. The claims of the Named Petitioners, who are representatives of the class herein, are typical of the claims of the class in that all members of the class, including the Named Petitioners, have been in the FRSP for twelve (12) months or longer, received NPEs for reaching an alleged time limit in the FRSP, and were denied the opportunity to be considered for an extension and to appeal any denial of an extension.

35. The Named Petitioners are representative parties for all Petitioners and are able to, and will, fairly and adequately protect the interests of the class. They are not subject to any unique defenses with respect to the claims raised in this action, and there is no conflict as between the Named Petitioners and other putative class member Petitioners with respect to this action or with respect to the claims for relief. The Named Petitioners intend to prosecute this action vigorously in order to secure remedies for the entire class.

36. The requirements of the Superior Court Rule 23(b)(2) are met in that the Respondent has at all times acted or refused to act on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as whole.

37. The attorneys for Petitioners are experienced and capable in litigation in both class actions and housing and homeless services law and have successfully represented claimants in other litigation of this nature.

FACTS: STATUTORY BACKGROUND

38. In 2005, the District of Columbia passed the Homeless Services Reform Act (“HSRA”) to “reaffirm the District of Columbia’s commitment to addressing the problem of homelessness . . . to codify the rights and responsibilities of clients of homeless services providers, and the standards by which the District of Columbia and homeless services providers must deliver services to clients[.]” Preamble, D.C. Law 16-35 (Oct. 22, 2005).

39. The Continuum of Care section of the HSRA includes Rapid Re-Housing programs “for the purpose of providing housing relocation and stabilization services and time-limited rental assistance to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in permanent housing.” D.C. Code § 4-753.01(b)(4)(B).

40. FRSP is a rental subsidy program designed to assist families experiencing homelessness or the imminent risk of homelessness. FRSP is the family program of rapid re-housing which is “a program that provides housing relocation and stabilization services and time-limited rental assistance, as necessary, to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in permanent housing such that recipients may remain in the housing when assistance ends.” D.C. Code § 4-751.01(31A).

41. At the time the NPEs were issued, the Program Exit section of the HSRA stated: “(a) A provider may exit a client from a housing program only when: (1)(A) The housing program is provided on a time-limited basis, and the client's time period for receiving services has run; (B) The Mayor determines that the client cannot be recertified to continue receiving

services; and (C) The client was assigned to the provider for substantially all of the client's time in the housing program.” D.C. Code § 4-754.36b(a)(1)(A-C).

42. Because the fundamental goal of the FRSP is to provide participants with sufficient time to stabilize participant housing, extension requests are a critical component of the operation of the FRSP. To that end, the D.C. Council enacted the FRSP Protection Act, effective October 26, 2023, and at all times relevant hereto. The preamble of the Act stated that its purpose was “[t]o amend, on emergency basis, due to congressional review, the Homeless Services Reform Act of 2005 to establish grounds for an extension to the Family Re-Housing Stabilization Program, whereby the Department of Human Services, or its designee, will thoroughly consider the totality of the participant’s circumstances, including their progress and eligibility for affordable housing.” D.C. Act 25-273.

43. To further that end, the FRSP Protection Act provided that:

(ii) The Department, or the Department’s designee, shall consider requests for Family Re-Housing Stabilization Program (“FRSP”) assistance extending past 12 months if: (I) There is funding available within FRSP; (II) The participant has requested an extension in writing; (III) The participant has made a good faith effort towards the achievement of goals set forth in an individualized plan with the aim of a targeted progression towards exit from the supports of FRSP, as observed by the service provider at consistent intervals, but cannot yet sustain housing stability independently of FRSP; and (IV) The participant has not yet been approved for permanently affordable housing.

Id. § 2(b)(ii).

44. The FRSP Protection Act recognized that the extension process, including all appeals, must be completed before a participant could be exited from the program:

(iv) If a requested extension of FRSP assistance by a participant is denied, the participant shall be given 30 days written notice prior to the final subsidy payment explicitly setting forth the reason for the denial of additional assistance and inform the participant that the FRSP participant has a right to: (I) Appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal; and (II) The continuation of FRSP services

pending the outcome of any fair hearing requested within 15 days of receipt of written notice of a termination.

Id. § 2(b)(iv).

FACTS: DHS IMPROPERLY ISSUED 816 NOTICES OF PROGRAM EXIT

45. Upon information and belief, on or about March 21, 2024, DHS began to issue letters to FRSP participants informing them that DHS “will resume program exit for families who have received program support for more than 12 months.” An example of one such letter, dated March 21, 2024, is attached hereto as **Exhibit B**. It advised that a participant’s provider “will continue to work with you on your case management plan and provide information on program exit procedures.” *Id.* The letter stated that “You may have the right to request a program extension. Your assigned FRSP case manager will provide you with information on when and how to request a program extension, if available, at the appropriate time.” *Id.* The letter further advised that “your FRSP provider must issue you both written and oral notice of your exit from FRSP via a document called the Notice of Cessation.” *Id.* Finally, it clarified that “**This letter is NOT a Notice of Program Exit.**” *Id.*

46. Less than one month later, on April 5, 2024, DHS announced at a budget oversight hearing that the agency had decided to terminate approximately 2,200 families from the FRSP who had received the assistance for at least twelve (12) months. *See Exhibit C* (an excerpt of the transcript of the hearing); Committee on Housing, Budget Oversight Hearing (Apr. 5, 2024), https://dc.granicus.com/ViewPublisher.php?view_id=56.

47. Also, on April 5, 2024, DHS published a notice in the D.C. Register (hereafter the “No Funding Determination”) stating that the agency had exhausted “funding for extensions.” A copy of the No Funding Determination is attached hereto as **Exhibit D**. The No Funding Determination also stated that “DHS relied on budget appropriations and Program spending

projections for FRSP rental subsidies and other FRSP services for current participants and projected new enrollees to reach this determination that funding is unavailable within FRSP for extending FRSP assistance beyond the standard program period of twelve (12) months.” *Id.*

48. The substantive portion of the No Funding Determination concluded with the following statement: “Accordingly, requests for FRSP assistance extending beyond the standard program period of twelve (12) months shall not be considered for the remainder of Fiscal Year (FY) 2024.” *See id.*

49. In April 2024, Respondent and its agents began issuing the NPEs to Petitioners to end their participation in the FRSP, including case management and rental assistance services. Copies of the Named Petitioners’ NPEs are attached hereto as **Exhibit E**.

50. Each Petitioner received an NPE in April, May or June 2024, for reaching an alleged time limit in the FRSP.

51. Upon information or belief, DHS asserted in each of the NPEs that the participant had been a participant in the FRSP for at least twelve (12) months.

52. Despite the requirements of the FRSP Protection Act, upon information and belief, the NPEs did not inform Petitioners that they could be considered for extensions for participation in the FRSP, and instead (as set forth below) affirmatively informed Petitioners that extension requests would *not* be considered, thwarting their statutory right to be considered for an extension.

53. Specifically, upon information and belief, each of the NPEs stated:

Program Extension Requests Shall Not Be Considered Due to Funding Constraints

Pursuant to 29 DCMR § 7812.2, DHS published a Notice of Exhaustion of Funding for Extensions of FRSP assistance in the *District of Columbia Register* on April 5, 2023 [sic – 2024]. Accordingly, requests for FRSP assistance

extending beyond the standard program period of twelve (12) months shall not be considered for the remainder of Fiscal Year 2024.

See Exhibit E.

54. In short, instead of considering extension requests and determining – individually on a totality of the circumstances basis – whether the Petitioners should receive an extension in the FRSP, DHS improperly decided that all Petitioners would be summarily denied that opportunity.

**FACTS: DHS HAD AVAILABLE FUNDING
WITHIN FRSP WHEN IT ISSUED THE NPEs**

55. Throughout Fiscal Year 2024, including at the same time that it was refusing to consider individual extension requests for the 816 participants who received NPEs, DHS, upon information and belief, continued to enroll new participants in the FRSP.

56. Additionally, upon information and belief, DHS either withdrew NPEs or did not issue NPEs to certain FRSP participants who had been in the FRSP for longer than 12 months, if they had been “Reassessed for TAH/PSH Eligible” thereby granting de facto extensions and allowing those participants to remain in the FRSP beyond the alleged time limit on participation (the “12 Month NPE Exceptions”). *See Exhibit A.*

57. DHS also issued emergency regulations during this time authorizing the agency to provide financial incentives to FRSP participants for things like increasing income and matching with permanent vouchers. *See* 71 D.C. Reg. 003315, § 7811 (Mar. 22, 2024) (Emergency Regulations, exp. 6/30/24).

58. Furthermore, DHS sought, and on or about July 8, 2024 received, ***an additional \$25.48 million*** in funding for the FRSP for Fiscal Year 2024. *See Exhibit F.*

59. On July 11, 2024, the D.C. Housing Authority approved a special preference for families exiting the FRSP, up to 1,300 Housing Choice Vouchers (the “DCHA Special

Preference Approval”). A copy of the DCHA Special Preference Approval is attached hereto as **Exhibit G**. DCHA limited the preference “for applicants referred directly by DHS and whose participation in the FRSP is ending between May 1, 2024, and July 31, 2024, due to time limits for assistance and/or program expiration.” *Id.* Finally, the DCHA Special Preference Approval states that “DHS shall assist FRSP participants with applications for the housing choice voucher program and shall refer qualified applicants to DCHA.” *Id.* Despite the foregoing, upon information and belief, DHS continued to refuse to consider extension requests for participants applying for those vouchers.

CLAIMS FOR RELIEF

COUNT I

PETITIONERS ARE ENTITLED TO RELIEF BECAUSE DHS’S REFUSAL TO CONSIDER EXTENSION REQUESTS VIOLATED THE FRSP PROTECTION ACT

60. Paragraphs 1 through 59 of this Complaint are incorporated into this paragraph as if fully set forth herein.

61. The language, spirit, and intent of the FRSP Protection Act was to ensure that FRSP participants had the ability to seek FRSP extensions *prior* to receiving an NPE, to require DHS to consider such requests on an individualized basis in accordance with the standards set forth in the Act, and to afford each participant the opportunity to appeal any subsequent denial of such a request.

62. Instead of considering extension requests, which the Act required, DHS arbitrarily prevented Petitioners from being considered for an extension. By issuing NPEs that stated that extension requests “*shall not be considered*,” DHS violated the language, spirit, and intent of the Act and the Act’s requirement that DHS “*shall consider*” extension requests individually, and determine on a totality of the circumstances basis whether to grant the extension request.

63. In addition, under the Act, because DHS was required to consider extension requests, DHS would have been required to review each request individually. In order to deny an extension request, DHS would have had to provide the participant with 30-days written notice prior to the final subsidy payment explicitly stating the reason for the denial, and it would also have had to notify the participant of their right to appeal the denial through an administrative review and fair hearing, and the ability to obtain benefits pending the appeal if the appeal was filed within 15 days of receipt of the written notice of termination. DHS's decision to refuse to consider extension requests thus effectively circumvented the due process afforded by the Act, by both refusing to consider extension requests submitted and stating to those who had not yet submitted a request for extension, that any such request would be futile due to the purported lack of funding.

64. The foregoing actions by DHS violated the FRSP Protection Act. Accordingly, the NPEs issued to the class were not lawfully issued and must be declared invalid, legally deficient, and rescinded.

COUNT II

PETITIONERS ARE ALTERNATIVELY ENTITLED TO RELIEF BECAUSE DHS'S DETERMINATION THAT FUNDING WAS NOT AVAILABLE FOR EXTENSIONS WAS ARBITRARY AND CAPRICIOUS AND A VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

65. Paragraphs 1 through 59 of this Complaint are incorporated into this paragraph as if fully set forth herein.

66. Even if the Act permitted DHS to make a determination about funding availability on a non-individualized basis, DHS's own actions show that funding was available within the FRSP for extensions when it issued the NPEs containing a statement to the contrary.

67. DHS has the burden to prove that funding was not available within FRSP for FRSP extensions.

68. In 2022, OAH found in multiple cases that not only was the burden on DHS to prove that funding was not available in the FRSP in order to absolve the agency of its obligation to consider extension requests, but that a conclusory statement of lack of funding was not sufficient to meet such a burden. **Exhibit H** (2022-SHEL-00063) at 12-13. *See also* **Exhibit I** (2022-SHEL-00050) at 11-12; **Exhibit J** (2022-SHEL-00090) at 9-10; **Exhibit K** (2022-SHEL-00046) at 13-14; **Exhibit L** (2022-SHEL-00098) at 15-16.

69. In one case, the judge held that:

choosing to cut off Petitioner and others because they fall into this category [having been in the program for more than 18 months], while the program is otherwise funded for new applicants and other recipients, does not mean that funding is not available. It means that DHS is choosing not to make it available to an entire category of recipients rather than evaluating the merits of each individual recipient on a case-by-case basis. That approach runs afoul of the law.

Exhibit H (2022-SHEL-00063, at 13).

70. Two years later, in April 2024, DHS again claimed lack of funds in support of its NPEs to the Petitioners and its refusal to consider a request for an extension by any Petitioners who sought one, while at the same time DHS continued to place new families in the FRSP, did not issue notices to the 12 Month NPE Exceptions, authorized incentive payments to current participants, received an additional \$25.48 million in July 2024 for the FRSP, and arranged for DCHA to provide preferences to class members for 1,300 new permanent housing vouchers.

71. There is no statutory directive as to how FRSP funds should be allocated.

72. DHS made an arbitrary and capricious decision when it created an artificial class of FRSP participants who had been in the program for over 12 months and who did not qualify as 12 Month NPE Exceptions, and then chose to favor other groups of FRSP participants (new

entrants and the 12 Month NPE Exceptions) over the artificially created class, without regard to the purposes of the program or the requirements for individualized determinations for determining the amount of assistance appropriate for each participant, including those who had been in the program for more than 12 months.

73. DHS has made this policy decision – refused to spend available funds on FRSP-contemplated extensions of subsidies—where such decision is neither mandated by law nor consistent with the purposes and goals of the FRSP. DHS continued to adhere to its invalid policy decision after it requested and received an influx of \$25.48 million in new FRSP funding for Fiscal Year 2024.

74. Absent substantive proof that in fact “no funding was available” “within FRSP” as of April 5, 2024, the NPEs issued to Petitioners were not lawfully issued and must be declared invalid and legally deficient to exit Petitioners from the FRSP and rescinded *ab initio*. DHS’s determination that it would not consider extension requests for Petitioners because FRSP funding was allegedly unavailable was arbitrary and capricious and a violation of the Administrative Procedure Act.

75. Therefore, even if the FRSP Protection Act permitted DHS to determine on a non-individualized basis that no funding was available for extensions, the NPEs were not lawfully issued and must be declared invalid and legally deficient and rescinded.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioners respectfully request that the court:

1. Enter a preliminary order (a) CERTIFYING a class consisting of all families who were participating in the FRSP as of April 1, 2024 and thereafter received an NPE in April, May or June 2024, asserting that they had reached an alleged time limit for

- participation in the FRSP, and (b) REINSTATING during the pendency of this action any members of the putative class who have already been exited from the FRSP, including paying rental assistance since the date of exit from the program;
2. DECLARE that all NPEs issued to Petitioners between April 1, 2024 and June 30, 2024 on the basis that the Petitioner had reached an alleged time limit for participation in the FRSP are legally defective and without force and effect;
 3. ORDER DHS to provide each Petitioner with the opportunity to request an extension of participation in the FRSP, and thereafter to assess each request individually as the HSRA requires;
 4. REFRAIN from issuing any new Notices of Program Exit to Petitioners who request an extension until they have been individually assessed and final non-appealable determinations have been made on their requests for extensions; and
 5. PROVIDE such additional relief, on an interim basis or otherwise, as may be appropriate to protect the Petitioners' rights to participate in the FRSP in a manner consistent with its statutory purposes and goals.

Dated: October 22, 2024

Respectfully Submitted,

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ANGEL GREGORY, SIERRA MOORE,
BRITNE THOMAS, individually, and on
behalf of all others similarly situated,

Petitioners,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES,

Respondent.

Case No.: 2024-SHEL-XXXXX

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2024, a true and correct copy of the foregoing Complaint was sent via electronic mail to:

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