

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI 19th
JUDICIAL CIRCUIT

LINDA GERKEN, *et al.*,)
Plaintiffs,)
)
v.) Case No. 06AC-CC00123-03
)
) Division IV
GARY SHERMAN, *et al.*,)
Defendants.)

CLAIMS PROCESS ORDER

1. **The Class and Eligibility to File a Claim**

A. *Class Definition.* The Judgment applies to the Plaintiff Class, which is defined as: “persons eligible for and who receive or who have received monthly payments from the blind pension fund in any month during the period beginning February 1, 2001 and ending June 30, 2010, including Supplemental Security Income recipients (whether SAB¹ eligible recipients or AB-Conversion² recipients) and State Blind Pension fund pension recipients [collectively referred to as “Members” and individually referred to as “Member”]. (This definition comes from the class certification Order of July 25, 2007, as amended by court rulings regarding statute of limitations).

B. *Class Members Eligible to File a Claim.* Members who are eligible to submit a claim for damages [hereinafter referred to as an “Eligible Member(s)”] are those members of the class who received at least one monthly payment from the Blind Pension Fund for the period of February 1, 2001 through June 30, 2010, and who are entitled to compensation for an underpayment in blind pension benefits that accrued on or after

¹ For purposes of this Claims Process Order the term “SAB” shall refer to Supplemental Aid to the Blind.

² For purposes of this Claims Process Order the term “AB-Conversion” shall mean Aid to the Blind Conversion.

February 1, 2001, under this Judgment which hereby adopts and incorporates the order of December 1, 2016. For purposes of this Judgment and Claims Process Order, “Current Eligible Members” are Eligible Members who are entitled to receive a current, blind pension payment as of the date of calculation of the payment due under the Judgment.

C. *Class Members Ineligible to File a Claim.* Any Member who is not an Eligible Member [hereinafter referred to as “Ineligible Members”] shall not be entitled to file a claim for compensation for an underpayment in blind pension payments under this Judgment and Order.

2. **The Judgment**

A. The Court entered an Order on December 1, 2016, in favor of Eligible Members and against Department in the amount of \$23,812,017, plus simple interest at 9% from and after July 26, 2016 until paid. This Court now orders that the principal amount plus pre judgment interest of 9% from July 26, 2016 to September 27, 2017, amounts to a total judgment of \$26,312,279. The judgment is the sum of the claimed underpayments: the total historic underpayments to Members and associated 9% interest calculated through September 27, 2017.

B. The Court further awards judgment for attorneys’ fees in the amount of 25% of the \$26,312,279, or \$6,578,070 plus simple interest at 9% from and after September 27, 2017. Said attorneys’ fees shall be paid to Class Counsel: attorneys John Greider and Deborah S. Greider, LLC, Clayton, MO, and attorneys John Ammann, Barbara Gilchrist, and Amy Sanders of the Legal Clinic, Saint Louis University School of Law, St. Louis, MO.

C. The claims process will provide the mechanism for receiving, reviewing, resolving, determining, and paying Eligible Members’ claims from the balance of the “common fund” and distributing the unclaimed balance of the common fund, if any, at

the end of the claims process as provided herein. For purposes of this Judgment and Claims Process Order, the “common fund” shall refer to the amount of money required to pay the underpaid pension payments and attorney fees as set forth in this Judgment and Claims Process Order.

D. Class Counsel need not file a Claim Form for the attorneys’ fees awarded them. The Class Counsel’s Attorney fees shall be due and payable in the manner provided by law, after this Claims Process Order is entered.

E. Post-judgment interest shall accrue on the “common fund” in the manner provided by law.

3. Damages/Payments due to Eligible Members

A. Although Judgment is entered this date, Execution on the judgment shall be stayed, and the General Assembly is directed to appropriate sufficient funds to satisfy the Judgment on or before July 1, 2018. In the event that a sufficient amount to satisfy the Judgment is not appropriated from the General Assembly by July 1, 2018, then plaintiffs may pursue all available means of enforcement as allowed by law.

B. Department shall calculate the total payment due each Eligible Member if the required monthly pension payment required under this Judgment exceeds the actual payment to the Eligible Member for any month or months beginning February 1, 2001, and ending June 30, 2010, utilizing the following formula:

$$\begin{aligned} & +\text{Sum of the monthly Underpayments (u)} \\ & + \text{Interest} \\ & = \text{Gross Damages owed} \\ & - \text{Member’s pro rata Attorney Fee (25\% of Gross Damages Owed)} \\ & = \text{Total payment due to eligible member} \end{aligned}$$

Where: Underpayment (u) equals the difference between the required monthly pension payment and the amount actually paid for any given month.

C. Each Eligible Member’s damages will be paid from the “common fund”. Since attorneys’ fees have been awarded to Class Counsel in an amount equal to 25% of the

common fund, each Eligible Member's damages will be reduced by 25% as set forth in paragraph 3.B above.

4. Notices to Eligible and Ineligible Members and Claim Form

A. *Notice to Eligible Members.*

(1) The Department shall initiate the claims process by mailing the "Notice to Eligible Members and Claim Form" which is attached hereto and incorporated by reference herein as Exhibit A to each Eligible Member who is not a Current Eligible Member, and Exhibit A-1 to each Current Eligible Member. [Notice to Current Eligible Members].

(2) The Department shall mail Exhibits A and A-1 no later than (sixty) (60) days from the date that funds are available after this Judgment becomes final and any appeals are exhausted.

(3) The Department also shall post a link to an electronic copy of Exhibits A and A-1 on the Department of Social Services website. These Exhibits shall be posted on the Department's website on the same date that the first of the notices are originally mailed and shall remain on the Department of Social Services' website for no less than ninety (90) consecutive days.

(4) The Department shall mail Exhibits A and A-1 by first class, United States Postal Service (USPS) mail to each Eligible Member or Current Eligible Member at his or her last known address of record with the blind pension program. The Member's address of record shall be the last known address that the Department maintains for the Eligible Member or Current Eligible Member in the rolls of blind pensioners in the Department's information system. If the USPS returns a Notice to the Department as

undelivered with a new forwarding address, then the Department will forward the Notice to the Member at the new address. Forwarding the Notice to the new address shall not extend the deadline for filing a claim. The Department shall send a list to class counsel of all persons for whom the notice is returned with no new forwarding address, together with the last known address of record with the blind pension program. Upon written request of an eligible member, DSS shall send the Notice to the member's authorized representative or attorney in lieu of sending to the eligible Member. DSS will respond to all reasonable written requests by Class Counsel for contact information for an individual eligible member.

(5) The Department is under no obligation to locate or identify the personal representative or heirs of a deceased Eligible Member. However, the Department shall send the Notice and Claim form to any person identifying himself or herself as a personal representative of a deceased Member who makes a request for the same prior to the claims deadline and provides adequate documentation to establish that the individual is the lawfully appointed personal representative of the deceased member.

(6) Except as specifically provided herein, the Department is under no further obligation to take any additional steps to locate and notify Eligible Members.

(7) It is the responsibility of all Members (Eligible and Ineligible) to provide the Department with an accurate address for service of notice and correspondence required by this Claims Process. Members shall notify the Department of any change in their address within 30 business days. All correspondence that the Department mails to the Member at his or her address of record shall be deemed properly served.

B. *Notice to Ineligible Members.*

(1) The Department shall, within ten (10) days of mailing Exhibits A and A-1, mail a notice to all Ineligible Members utilizing the notice form which is attached hereto and incorporated by reference herein as Exhibit B. This notice shall be distributed, mailed, published, and otherwise made available as provided herein.

(2) Ineligible Members are not entitled to file a claim form. Any claim filed by an Ineligible Member is void and will be denied without additional notice.

(3) Except as specifically provided herein, the Department is under no further obligation to take any additional steps to locate and notify Ineligible Members.

C. *Procedure for Eligible Members to File a Claim*

(1) Procedure for Current Eligible Members.

(a) Current Eligible Members are not required to and shall not file a claim form under Section (2) below.

(b) Unless a Current Eligible Member serves notice of waiver, or of a request for administrative review on the form provided, the Department shall pay the total payment to the current eligible member as calculated in paragraph 3(B) above to each Current Eligible Member no later than one hundred and fifty (150) days of the date that Exhibit A-1 is mailed to the Current Eligible Member.

(c) Current Eligible Members shall have ninety (90) days from the date on Exhibit A-1 to serve a Request for Administrative review of that decision or a Notice Waiving Payment on the Department. No extensions of time shall be allowed. If a Current Eligible Member does not serve a timely Request for Administrative Review, the Department's decision as

specified in the notice shall be final, and it shall be conclusively binding on all parties for all purposes and not subject to further administrative or judicial review.

(d) If a Current Eligible Member waives his or her right to receive payment, then the decision is final for all purposes.

(2) Procedure for Eligible Members who are not current recipients of a blind pension payment as of December 1, 2016:

(a) Eligible Members shall file a completed claim form no later than ninety (90) days from the date that the Notice to Eligible Members and Claim Form is originally mailed. Any claim form that is not actually received by the Department following the procedures set out in this Claims Process Order by the deadline shall be untimely and shall be denied. No extensions of time shall be allowed.

(b) An Eligible Member shall file his or her claim with the Department by one of two methods:

(i) By mailing the original, fully completed claim form to the Department at the following address:

Family Support Division
Attn: Blind Pension Claims
P.O. Box 2320
Jefferson City, Mo. 65102

(ii) By e-mailing a scanned copy of the fully completed claim form in PDF format to the Department of Social Services at the

following e-mail address:

Email: BPclaims@dss.mo.gov

The Eligible Member who elects to file a claim electronically shall retain the original of the claim form and shall produce it to the Department upon request. Failure to produce the original claim form without good cause shall result in the denial of the claim. Any claim that is not timely filed with the Department following one of these procedures shall be denied.

(c) The claim form must be fully completed. The member or the member's authorized representative shall provide all information requested on the form and shall sign the claim form. The Member or the Member's authorized representative shall certify subject to penalty of perjury that all information provided in the claim form shall be true, accurate and complete. Claim forms that are incomplete shall be denied.

(d) Only one claim form will be processed for each Eligible Member. The Department shall not be required to review or decide between conflicting claims on behalf of a Member. The Department will process the first completed claim form received for an Eligible member.

D. Miscellaneous Notice Provisions.

(1) The Department shall publish the notice to class members set forth as Exhibit E - in newspapers of general circulation in the following locations within Missouri: St. Louis City, Kansas City, Springfield, Joplin, Columbia and Cape Girardeau. The notice shall be published once each week for one month and two times in the following month, with the first notice to be published no later than ten (10) days of the date that the

Department initiates the claims process by mailing “Notice to Eligible Members and Claim Form” (Exhibit A).

(2) The Department shall post a copy of the Court’s Judgment and a copy of this Claims Process Order on its website. These documents shall be posted no later than thirty (30) days after this Judgment becomes final and is not stayed. These documents shall thereafter remain posted on the website until the claims process is concluded and the Court receives and approves a Satisfaction of Judgment herein.

(3) The Missouri Council of the Blind is permitted to post a copy of any documents referred to herein, including this Claims Process Order, and to use other reasonable measures to disseminate the Notices and Claim Form, but shall have no obligation to do so. If the Missouri Council of the Blind chooses to post a copy of Exhibits A and A-1 on its website or otherwise disseminate the Notices and Claim form, the Missouri Council for the Blind shall also post or disseminate a copy of Exhibit B in the same manner.

(4) Class Counsel is permitted to disseminate Exhibits A, A-1 and B by reasonable means, but shall have no obligation to do so. If Class Counsel chooses to disseminate Exhibits A and A-1, they shall also post or disseminate copies of Exhibit B in the same manner.

5. Processing of Claims from Eligible Members. The Department shall process claims received from Eligible Members who are not Current Eligible Members by following the procedures set out in this subsection.

A. The Department shall have one hundred and twenty (120) days from the date that the claims from Eligible Members are due to process the claim and to notify the Eligible

Members of the Department's decision. If the claim is complete and the Member is eligible for a payment, then the Department shall calculate the amount of the damages owed to the Eligible member following the procedure set out in paragraph 3(B) above. The Department shall notify each Eligible Member at his or her address of record by first-class mail whether the claim has been approved or denied using the form set forth in Exhibit C [Notice of Approved Claim] or Exhibit D [Notice of Denied Claim].

B. If an Eligible Member does not file a timely request for administrative review of the Department's decision following the procedures specified in paragraph 6 of this Order, the Department's decision shall be final for all purposes and shall not be subject to further review. The Department shall pay final claims from Eligible Members within ninety (90) days from the date that the time for appeal expires.

6. Requests for Administrative and Judicial Review. Eligible Members, Current Eligible Members and Ineligible Members who disagree with the Department's decision may request administrative review of the decision by following the procedures set forth in this subsection.

A. To request administrative review, the Member shall file the request for administrative review with the Family Support Division within ninety (90) days of the date of the notice. Any request for administrative review filed after that date shall be untimely, shall be summarily denied without further proceedings, and the Department's decision shall be final for all purposes. The filing of a timely request for administrative review shall automatically stay the Department's obligation to pay any amounts otherwise due on the claim until the request for review has been finally resolved.

B. The Request for Administrative Review shall be in writing and shall clearly

state the legal and factual basis for the Member's request for review. The Member shall attach any and all documents that the Member wishes the hearing officer to review.

C. Administrative Review shall be limited to the specific issues raised in the written Request or the Department's response thereto, and shall be based solely upon the information attached to the request for review and the Department's response. Any issue not specifically raised is waived for all purposes.

D. The Department shall have one hundred and twenty (120) days from the date of service of a Request for Administrative Review to file a written response to the Request, and shall send a copy of such to the Member.

E. The Request for Administrative Review shall be limited to the following issues: whether, under the court's Judgment and the Claims Process Order, the claim was properly filed; whether the Member's authorized representative is appropriately authorized to file a claim on behalf of a Member; and whether the Department properly calculated the amount owed to the Member; or the Department properly denied the claim. Members are prohibited from requesting any review of or collaterally attacking the Judgment, the Claims Process Order or any other judgment or order made by the Court in this case.

F. The burden of proof shall be on the Member to establish by a preponderance of the evidence that the Department's decision did not comply with the Court's Judgment and Claims Process Order.

G. The Administrative Review and the record thereof shall consist of a review of the Member's request for administrative review and supporting documentation and the Department's written response and supporting materials. The Administrative Review

shall be conducted by a Special Master nominated by the Department and appointed by the Court for that purpose. The Court may appoint more than one Special Master to process the case. The Special Master(s) shall be licensed attorneys at law and shall be chosen by the Court from the Administrative Hearing Officers employed by the Division of Legal Services for the Department of Social Services. The Special Master(s) shall receive compensation from their current employer in the normal course of their duties, but shall not receive additional compensation for their duties under this Order.

H. The Hearing Officer shall make a decision based solely on the written record unless the Member specifically requests a hearing by a telephone conference call or an in-person hearing. The request for a hearing by telephone conference call or a hearing on the record shall be made in writing, shall specify the reasons therefore, and shall be part of the Request for Administrative Review form as specified in Exhibits A-1, B, C and D. The Hearing Officer shall grant the request for a hearing by telephone conference call if the Member provides good cause. The Hearing Officer may grant an in-person hearing in the county where the Member is located if the Hearing Officer determines that there is good cause for an in-person hearing and the Member is reasonably unable to present his or her case for review by written submission or telephone conference call. The hearing shall be conducted as provided by existing statutes and regulations. Evidence shall be submitted under oath. For purposes of this paragraph, good cause shall mean that the Member establishes the paper review does not afford him or her a reasonable opportunity for review of the Department's decision.

I. The Hearing Officer shall prepare a Review Decision which shall consist of written findings of fact, conclusions of law and a decision based solely on the evidence

adduced for the record. A copy of the Review Decision shall be mailed to the Member (or his/her attorney of record or authorized representative) at his/her address of record, to class counsel, and the Department. The original of the Review Decision shall be signed by the Hearing Officer and filed with this Court. The Review Decision shall contain a form that a Member who wishes to request Judicial Review shall use to make such request.

J. Any Member who disagrees with the Administrative Review Decision may request judicial review of the Review Decision. The Request for Judicial Review shall be filed with this Court no later than sixty (60) days from the date of Administrative Review Decision and a copy sent to the Family Support Division as specified in the notice form. Any request for Judicial Review filed after that date shall be untimely, shall be summarily denied without further proceedings, and the Review Decision shall be final and binding on all parties for all purposes. The filing of a timely Request for Judicial Review shall automatically stay the Department's obligation to pay any amounts due on the claim until the request for review has been finally resolved. Upon receipt of notice that a Member has requested judicial review the Special Master(s) shall prepare a record on judicial review following procedures set forth in §536.130 RSMo. The scope of the court's inquiry on judicial review of the Review Decision shall be limited exclusively to whether or not the Department's decision complies with the Judgment and Claims Process Order.

K. Upon the completion of the period for filing and responding to requests for judicial review, the parties shall notify the court that there are pending requests for judicial review for determination. At the request of the Department or the Class Counsel,

or on the Court's own motion, the Court may schedule a hearing to determine procedures for handling the judicial reviews or to resolve disputes about the implementation of the judicial review process.

L. The Department shall pay the amounts, if any, awarded in all final decisions on judicial review within one hundred and twenty (120) days of the date that the Court's decision on judicial review becomes final.

7. Legal Advice and Assistance to Members.

A. Class members with questions about the claims process or who request legal assistance with submitting a claim may contact class counsel or may seek independent legal advice. The Department shall, upon written request, provide such additional facts and documentation about the Member and the Department's calculation to class counsel or the Member's attorney. Any attorney making a request for facts and documentation under this paragraph, except for class counsel, shall provide an authorization to release information executed by the Member or the Member's authorized representative that complies with all applicable privacy laws. The Department shall not be required to provide any information under this paragraph without a valid authorization or an order of this Court.

B. An Eligible or Ineligible Member may act personally or through an authorized representative.

(1) An authorized representative of the Member shall be either:

(a) the court appointed, personal representative of the estate of a deceased eligible Member; or

(b) an individual, competent adult who is authorized by the Member to act

- on behalf of the Member by a power of attorney for that purpose; or
- (c) a court appointed legal guardian or conservator of the Member; or
- (d) the Member's attorney.

(2) Any person purporting to act as an authorized representative shall submit with the claim form an original or certified copy of power of attorney, letters of appointment of guardianship or conservatorship, letters of appointment as personal representative, an official entry of appearance by legal counsel on behalf of the Member or other official documentation establishing his or her authority to act on behalf of the Member.

(3) Any Member acting by or through an authorized representative shall be bound by the acts of his or her authorized representative. Any disputes between a Member and his or her authorized representative shall be a separate matter between the Member and his or her authorized representative and shall not be the subject of litigation or review in this claims process in this lawsuit.

C. The Department, and its employees and contractors are not permitted to provide legal advice or assistance in completing the claims process to Members. Members who contact the Department with questions shall be directed to contact Class Counsel.

8. Resolution and Payment of Remaining Claims

A. Upon completion of the processing and payment of all claims, including attorneys' fees, the Department shall file a Motion requesting that the Court enter an Order finding that the Judgment has been paid in full. The Motion shall be accompanied by a report containing the following information:

- (1) List of Eligible Members who filed claims and the disposition of each claim.

The disposition of each claim shall include the following information for each Eligible

Member who filed a claim:

(a) The amount of the payment, or

(b) The reason the claim was denied;

(2) List of Current Eligible Members who have been paid, the date of the payment, and the amount; and

(3) List of Eligible Members, other than Current Eligible Members, who did not file a claim.

B. The Department shall serve a copy of the Motion and Report on Class Counsel. Class Counsel shall have sixty (60) days of service of the Motion and Report to respond. DSS shall respond to all reasonable requests by Class Counsel for a review of documentation on individual cases.

C. If Class Counsel do not file a timely objection, then the Court shall grant the Motion without further notice and shall enter an order finding that the Defendants have satisfied the judgment in full and also shall enter an order finally disposing of any further proceedings in this case with prejudice.

D. If Class Counsel files a timely objection or response, the Court shall hold other proceedings as may be appropriate to finally dispose of this case.

E. Any and all funds remaining in the Common Fund after payment of all claims and attorney fees shall be paid back into the Blind Pension Fund.

9. Costs and Attorney Fees

A. Department will pay all costs associated with publication, notice, mailing, and administration of the claims process.

B. The obligation of the Department to pay attorney fees and litigation costs for the

class and its members is limited to the provisions of the Court's Judgment. Department shall not be liable for or required to pay attorney fees, litigation expenses or costs of the Class, class members, eligible members, in eligible members or their representatives for the claims process, requests for administrative and/ or judicial review or any other reason except as specifically set forth herein.

10. Miscellaneous Provisions.

A. The Court reserves the authority to resolve disputes or unresolved issues about the claims process as it is implemented.

(1) If a dispute arises about the implementation of the claims process, Class Counsel and Department's counsel shall first confer and attempt to resolve the dispute. If the parties are able to resolve the dispute, the parties shall reduce their proposal to writing and submit it to the Court for approval. The Court may hold a hearing on the proposed resolution on its own motion or upon the request of the parties.

(2) If the parties are unable to resolve the dispute, then either Class Counsel or Department's counsel shall file a motion requesting the Court to intervene to resolve the dispute. Plaintiffs and Department shall each be given a reasonable time and opportunity to respond to the motion. The Court may hold a hearing on the motion as may be necessary.

B. This claims process was developed based upon and is only applicable to the provisions of the Court's Judgment of this date and its order of December 1, 2016, based upon the mandates of the Court of Appeals in *Gerken I*, *Gerken II*, *Gerken III*, and *Gerken IV*.

C. Nothing herein is intended to waive, nor shall it be deemed to waive, any party's right to appeal the entry of this Order and/or of any of its provisions.

APPROVED BY:

Plaintiff Class

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Class Counsel
Department Counsel

It is so ordered. Judgment entered.

September 27, 2017
Date

Honorable Patricia Joyce