

Northern Justice Project, LLC
 A Private Civil Rights Firm
 406 G Street, Suite 207
 Anchorage, AK 99501
 Phone: (907) 308-3395; Fax: (866) 813-8645

STATE OF ALASKA
 THIRD JUDICIAL DISTRICT
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James J. Davis, Jr., AK Bar No. 9412140
 Goriune Dudukgian, AK Bar No. 0506051
 Nicholas Feronti, AK Bar No. 2106069
NORTHERN JUSTICE PROJECT, LLC
 406 G Street, Suite 207
 Anchorage, AK 99501
 (907) 308-3395 (telephone)
 (866) 813-8645 (fax)
 Email: jdavis@njp-law.com
 Email: gdudukgian@njp-law.com
 Email: nferonti@njp-law.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

NATILIA EDWARDS, on behalf of)
 herself and all those similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF HEALTH, Heidi Hedberg, in her)
 official capacity as Commissioner of)
 the Department, DIVISION OF)
 PUBLIC ASSISTANCE, and Deb)
 Etheridge, in her official capacity)
 as Director of the Division,)
)
 Defendants.)

Case No. 3AN-23-05707 CI

**COMBINED REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S
 MOTIONS FOR PRELIMINARY INJUNCTION AND CLASS CERTIFICATION**

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COMBINED REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S
 MOTIONS FOR PRELIMINARY INJUNCTION AND CLASS CERTIFICATION
Natilia Edwards, et al. v. State of Alaska, et al.; Case No. 3AN-23-05707 CI
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Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

I. PRELIMINARY STATEMENT

Each year, thousands of Alaskans apply for Adult Public Assistance (“APA”) benefits.¹ These benefits are supposed to give a small amount of cash assistance – for basic “subsistence” – to indigent Alaskans who are disabled, blind, or elderly.² Yet these benefits help no one until the defendants (hereinafter, collectively, the “State”) actually process an application and start paying out assistance to eligible individuals. As such, when the State receives an APA application, state law requires that it *must* render an eligibility decision and notify the applicant within 30 days.³

Unfortunately, the State has long failed to meet this deadline, leaving numerous impoverished Alaskans waiting and waiting for vital public assistance benefits. Indeed, when Ms. Edwards first filed this lawsuit and sought class certification in April 2023, she presented data from the State showing that it had timely processed just 37.1% of APA applications in the current state fiscal year.⁴ This compliance rate has since *gone down*.⁵

¹ See Affidavit of Rebecca Stovall at ¶12 (stating that 800-900 applications were received in 30-day period from April 13 to May 12, 2023); Omnibus Opposition to Plaintiffs Motion for Preliminary Injunction and Class Certification (hereinafter “Omnibus Opp.”) at Ex. A, p. 11 (showing an average of 571 – 1,033 APA applications each month between 2011 and 2022).

² *Moore v. Beirne*, 714 P.2d 1284, 1285 (Alaska 1986).

³ See 7 AAC 40.070.

⁴ Plaintiffs’ Motion for Class Certification at Ex.2, p.1.

⁵ Omnibus Opp. at Ex. D, p.1 (showing that, as of April 2023, only 32.9% of APA applications had been timely processed at that point in the 2023 state fiscal year).

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The State admits that this is a “crisis.”⁶ It admits to “serious failures in prompt processing of Adult Public Assistance applications,”⁷ and “readily admits that it suffered delays.”⁸ Starting with the class representative, Natilia Edwards, the State admits that she applied for APA benefits on December 20, 2022, yet her application was not processed and approved until April 20, 2023,⁹ taking four times as long as the 30-days mandated by state law.¹⁰

More broadly, the State cannot hide from its own raw data. The State says that “it internally and informally tracks what percentage of APA applications are approved or denied within thirty days, and in fiscal years 2018-2022 this percentage ranged between 65% and 85%.”¹¹ The State’s most recent data is much bleaker. It shows that its timely processing of APA applications has actually *regressed* since this lawsuit was filed and currently stands at only 32.9% of APA applications (down from 37.1% in February 2023) for the current fiscal year.¹²

Despite this admitted crisis and its abysmal compliance with 7 AAC 40.070, the State staunchly opposes a preliminary injunction and class

⁶ *Id.* at 11.

⁷ *Id.* at 1.

⁸ *Id.* at 22.

⁹ *Id.* at 19-20.

¹⁰ *See* 7 AAC 40.070.

¹¹ Omnibus Opp. at 10.

¹² *Id.* at Ex. D. (showing, as of April 2023, that the State timely processed only 32.9% of APA applications, down from 37.1% in February 2023).

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certification. The State begins its opposition with 19 pages of “facts” that are unsupported by any evidence, or distract from the actual issues in this case, or both. The State then makes a series of halfhearted legal arguments – on mootness, exhaustion, typicality, and even an alleged conflict of interest for class counsel based on a misapplied law review article – that quickly succumb to scrutiny.

When these arguments fade, only the State’s rhetorical appeals remain. And these are all over the place. At points, the State claims that this Court should just trust it to fix the crisis without oversight, or maybe the crisis is already fixed, or maybe fixing the crisis is too hard, or maybe the crisis cannot be fixed because the State created too many other crises that also have to be fixed at the same time.

One problem with these appeals is that they are mutually inconsistent. How can the State claim that it “has now significantly remediated the situation,”¹³ and also claim at the same time that compliance with 7 AAC 40.070 is an “unreasonable demand”?¹⁴ Which is it?

This Court should reject the State’s inconsistent appeals. No, this Court cannot just trust the State to fix this crisis without oversight, in light of the State’s data showing that the crisis has existed for many years and has only gotten worse over time. And, no, this crisis is not already fixed, as the State’s most recent data

¹³ *Id.* at 1.

¹⁴ *Id.* at 22.

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shows.¹⁵ And, no, it is not too hard for the State to comply with a basic regulation requiring it to evaluate APA applications within 30 days (and, if it is too hard, the State should turn to the legislature for additional resources, hire more competent staff and managers, or amend its regulation, not effectively ask this Court to ignore a regulation that has been on the books for many years). And, no, the State does not get a free pass from complying with the law by noting that it also has major problems processing SNAP applications on time. Ironically, these are all reasons to order relief, not deny it.

Despite the State trying to muddy things up, this case is clear. Ms. Edwards is a typical class representative and this Court should now certify a class. Meanwhile, she also satisfies all of the criteria for a preliminary injunction under either of the applicable standards. As such, this Court should enter an injunction requiring the State to comply with 7 AAC 40.070(a) by processing all APA applications within 30 days. Scores of vulnerable Alaskans, who will rely on APA for their very subsistence, are relying on this Court to do just that.

II. THE PLAINTIFF'S RESPONSE TO THE STATE'S "FACTS"

The State's opposition includes 19 pages of "factual background."¹⁶ Yet these "facts" largely talk around the central issue, which is the State's longstanding and systemic failure to comply with 7 AAC 40.070, and instead try to distract this Court

¹⁵ This most recent data is current as of May 2023. *See* Statewide Performance Measures, retrieved from http://dpaweb.hss.state.ak.us/files/reports/DPA_All_Measures_YTD.pdf on July 9, 2023 and attached hereto as Exhibit 1.

¹⁶ Omnibus Opp. at 2-20.

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with unsubstantiated or misleading tangents. In responding to these “facts,” Ms. Edwards re-focuses below on what matters—first, by reiterating how the State concedes its serial violations of 7 AAC 40.070, and then by methodically explaining why the State’s various other “factual” recitations are merely distractions.

A. The State *Concedes* Its Current and Historical Failure to Comply with the 30-day Deadline for Processing APA Applications.

The central issue before this Court concerns the State’s violation of the plain language of 7 AAC 40.070 by failing to render eligibility decisions on APA applications within 30 days. The State does not dispute these violations.

Starting with Ms. Edwards specifically, the State admits that she did not receive a timely determination of her APA application. Far from it: The State admits that she applied for APA benefits on December 20, 2022 and did not get her approval until April 20, 2023.¹⁷ The State is unable to provide a coherent explanation as to the reason(s) for this delay.¹⁸

As for the putative class members, the State admits that it “experienced serious failures in prompt processing of [APA] applications over the past fall and winter,”¹⁹ and “readily admits that it suffered delays,”²⁰ because of a “backlog crisis.”²¹ Undisputed data also shows that, for the 2023 state fiscal year, the State

¹⁷ *Id.* at 19.

¹⁸ *Id.* at 19-20.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 22.

²¹ *Id.* at 26.

timely processed 37.1% of APA applications as of February 2023,²² 32.9% as of April 2023,²³ and 33.9% as of May 2023.²⁴

The State's data also shows problems in prior state fiscal years, where APA applications were timely processed at 73.0% in 2018, 81.4% in 2019, 84.6% in 2020, 64.0% in 2021, and 78.8% in 2022.²⁵ Thus, while the current year's performance of 33.9% is an acute crisis, the State's failures to process applications in a timely manner are not new.

This crisis – wherein the State *concedes* that it has long failed to comply with the basic mandate of 7 AAC 40.070 and has long failed to help our most vulnerable neighbors on time – is what matters. The rest of the State's "facts," as shown below, are misleading distractions.

B. The State's Administration of Other Benefit Programs Is Irrelevant.

The State's first distraction is to note that it administers other benefit programs besides APA.²⁶ The State notes that such programs are governed by various laws, some federal, and that Alaskans often apply for multiple benefits at once.²⁷ This is true but irrelevant. The existence of other programs, with other

²² Plaintiffs' Motion for Preliminary Injunction at Ex.2, p.1.

²³ Omnibus Opp. at Ex. D, p.1.

²⁴ See Exhibit 1 hereto.

²⁵ Omnibus Opp. at Ex. D, p.2.

²⁶ *Id.* at 2-5.

²⁷ *Id.*

legal requirements, does not excuse the State from satisfying the legal requirements for the APA program. Nor are APA recipients second-class citizens.

C. The State's Practice of "Pending" APA Applications Does Not Explain or Excuse Its Violations of 7 AAC 40.070 and Is Not Even an Issue.

Another distraction is the State's practice of "pending" APA applications.²⁸ The State says that sometimes it cannot approve or deny an application in 30 days for reasons other than failing to work promptly.²⁹ It says that "pending" such an application is better for an applicant than denying the application outright and forcing them to reapply.³⁰ The State says that this practice explains why its own statistics show that it is not timely processing APA applications 100% of the time.³¹

There are many problems here. First, hidden in a footnote, the State admits that its practice of "pending" applications does not explain its "significant delays."³² Thus, even if "pends" lower the State's timely processing data to a figure somewhat less than 100%, that does not explain why the data is *so much* lower.³³

Second, the State does not track its "pends." DPA's Director affies that its

²⁸ *Id.* at 5-11.

²⁹ *Id.* As examples, the State says that it sometimes needs to wait more than 30 days to see if an applicant will qualify for federal disability benefits, or to see if the Division of Vocational Rehabilitation will issue a disability determination, or to get more documents from an applicant.

³⁰ *Id.* at 9.

³¹ *Id.* at 10-11.

³² *Id.* at n.44.

³³ For example, the State concedes that, between July 1, 2022 and February 28, 2023, it "approved or denied only 37.1% of APA applications within 30 days, *indicating significant delays beyond ordinary case pending rates.*" *Id.* (emphasis added).

“internal performance measures” are not audited or verified, and “do not explicitly track” applications that are “pending” past 30 days.³⁴ And the State is all over the place in trying to reverse-engineer data about “pends.” At one point, it suggests that about 22% of APA applicants are “pending.”³⁵ At another point, it says that between 15% and 35% of applications are “pending.”³⁶ It never explains these variations, or how it came up with these figures. Instead, it hints that its average “pend” rate is just the difference between 100% and whatever its historical performance was at processing APA applications on time.³⁷ This assumption, while convenient for the State, is wholly unsupported by any reliable data.³⁸

Regardless, Ms. Edwards is not challenging the State’s practice of “pending” applications. If an application can be approved in 30 days, the State must do so. Yet if the State cannot approve an application in 30 days for a valid reason, Ms. Edwards has no objection to the State “pending” the application

³⁴ Affidavit of Deb Etheridge at ¶10.

³⁵ *Id.*

³⁶ Omnibus Opp. at 10-11.

³⁷ *Id.*

³⁸ The State guesses that it “pends” around 22% of applications, just because it timely processed 78% of applications in the 2022 state fiscal year. The State’s “logic” is that its performance was otherwise perfect in 2022 and so it can reverse engineer this 22% figure by just subtracting 78% from 100%. Yet nothing actually supports the State’s performance being perfect in 2022. The State is making this up. In reality, years of data, across many programs, show that the State has consistently failed to process applications in a timely manner, even in programs without an alleged need to “pend” applications. *Id.* at Ex. D, p.2. In some programs, the State failed to timely process applications more than half the time. So, the idea that this Court should believe that 78% represents perfection in APA, just because the State says so, is silly, especially when the State has no way to track this.

instead of denying it. In that case, the State can still satisfy 7 AAC 40.070 by providing the applicant with a due process compliant notice of the application being “pending.” But, again, none of this can excuse or explain the State’s admitted “significant delays” in rendering eligibility decisions on thousands of applications that did not need to be pending, including Ms. Edwards’ application.

D. The State’s SNAP Crisis Does Not Excuse its APA Crisis.

The State also tries to distract this Court by focusing on how it also “suffered a backlog crisis in the SNAP program.”³⁹ It explains that, for many alleged reasons, its SNAP program crumbled, and it “fell significantly behind in processing public benefit applications over the fall and winter of 2022-23.”⁴⁰ It then talks about how it was also sued for this SNAP backlog, how it has entered a stipulation to try to fix it, and how it is now taking all sorts of steps to do so, some of which might incidentally impact APA.⁴¹

As an initial matter, it is disingenuous for the State to pretend that its SNAP crisis was confined to “the fall and winter of 2022-23.”⁴² This is simply not true. Indeed, the State has provided data showing that it failed to timely process 38.5% of SNAP applications and 46.3% of SNAP recertifications in the 2021 state

³⁹ Omnibus Opp. at 11-17.

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 11-17.

⁴² *Id.* at 11.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

fiscal year.⁴³ So, no, the SNAP backlog is not a new problem. And it is important for this Court to understand that the SNAP backlog is not a recent phenomenon, because the State makes the same false claims about the APA backlog crisis.

Regardless, this whole detour into the State's SNAP failings is improper. A failure of one State program does not excuse the failure of another program.⁴⁴ APA recipients are among the most vulnerable people in Alaska and, legally and morally, are not subordinated to second class citizens just because the State also fails to serve hungry people in another program. Alaska need not devolve into a place akin to a warzone where its vulnerable citizens need to be triaged; instead, the defendant is a 21st century state government in the most prosperous country in the world and should be able to walk and chew gum when serving the poor.

And if the State is now hinting that its SNAP stipulation somehow preempts relief in this APA case, that is wrong too. The State would surely object if plaintiffs tried to use the SNAP case to fix other government programs. (Otherwise, maybe this Court could use this APA case to also order relief as to the State timely processing only 36.8% of Medicaid applications or 37.0% of ATAP applications).⁴⁵ But that is not how things work; the relief in one case does not preclude relief in another.

⁴³ *Id.* at Ex. D, p.2.

⁴⁴ Imagine if this case was about the State's failure to timely issue fishing licenses, or to timely evaluate PFD applications. Would the State really argue that it would need to fix the SNAP backlog first? No. Instead, there would be mass outrage and prompt action. APA recipients deserve no less.

⁴⁵ Omnibus Opp. at Ex. D, p.2.

Finally, it is important to note that the State is *not* complying with the stipulation in the SNAP case. While the stipulation required the State to clear its backlog of recertification applications to fewer than 100 by June 1, 2023,⁴⁶ the State violated that condition.⁴⁷ Therefore, as discussed below, this Court should also question the State's unsupported assertions that "it has now significantly remedied the situation" in timely processing APA applications.⁴⁸

E. The State's "Facts" About Fair Hearings are Profoundly Misleading.

The State's opposition also focuses on the availability of fair hearings for APA applicants.⁴⁹ It claims that the State "automatically" sends a notice to all APA applicants,⁵⁰ and that the notice includes "a statement of fair hearing rights and a basic form to request a fair hearing."⁵¹ It also claims that fair hearings are often resolved in favor of applicants in an average time of 15 days.⁵²

The State is trying to pull a fast one. The State's automatically-generated "notice" does *not* advise applicants of the right to a fair hearing to challenge a delay in the processing of their applications. Instead, it states: "If you disagree with an

⁴⁶ *Id.* at Ex. G, p.5.

⁴⁷ Data from the State shows that its backlog of SNAP recertification applications rose above 100 in the weeks of June 22, 2022, and June 29, 2023, and July 6, 2023. *See* Affidavit of Nicholas Feronti at Exhibit 2.

⁴⁸ Omnibus Opp. at 1.

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

⁵² *Id.*

action taken by the Division of Public Assistance that affects the benefits or services you receive, you can ask for a fair hearing.”⁵³ This would not lead an applicant to believe that they can request a fair hearing to challenge inaction, like the failure to process an APA application within 30 days.

This Court should also take no comfort in the State’s reassurance that, of thousands of APA applicants who suffered delays, 28 resolved their issue in a fair hearing. If anything, this underscores how ineffectual this supposed remedy is.

Further still, fair hearings are not an effectual remedy because they inject even more delay into a process already marred by delays. The State admits that fair hearings add an average delay of 15 days onto a process that is only ever supposed to take a maximum of 30 days in the first place.

F. The State Has *Not* “Significantly Remediated” the APA Crisis.

Finally, and maybe most glaring, is a “fact” that the State repeats throughout its briefing, i.e., that it “has now significantly remediated the situation” and “has been processing new [APA] applications in a reasonably timely manner.”⁵⁴ It tells this Court that it has implemented various fixes and, from “mid-April through mid-May,” it only failed to process 180 of “the range of 800-900” APA applications that it received.⁵⁵

Again, there are many problems here. First, the State spends much of its

⁵³ *Id.* at Ex. C.

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 16-17; Affidavit of Rebecca Stovall at ¶12.

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406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

19 pages of facts trying to give reasons why it cannot comply with an injunction, yet it also claims that no injunction is needed as the problem is now fixed. This makes no sense, and the State cannot have it both ways.

Further, the State's intentionally vague statements should not be confused with proof of compliance with the law. The State says that it is processing applications in a "reasonably timely manner," but that is not the standard. Instead, 7 AAC 40.070 imposes a strict 30-day deadline.

And despite the State's conclusory claims, it gives no real evidence that it is meeting this deadline. The best that it musters, atop its admission that it lacks reliable data to track this problem in the first place,⁵⁶ is a claim that, last month, it only failed to process 180 out of a "range of 800-900" APA applications. This lack of precision is concerning enough, but perhaps more concerning is the idea that we should celebrate there being 180 unaddressed APA applications in a given month (which still equates to a 20-22.5% non-compliance rate). Not to mention that this limited sample size was taken from the month following the plaintiff's filing of this preliminary injunction motion. What will happen if the State knows that this Court is not watching its performance?

Worse, just after lauding this "data," the State admits that "new pressures on other programs may also affect the staffing plans and application processing rates" and that its performance will inevitably fall into "flux over the next several

⁵⁶ Affidavit of Deb Etheridge at ¶10.

months.”⁵⁷ That is, the State admits that any progress is temporary and fleeting.

Meanwhile, it is vital to re-focus on the undisputed, complete data. Namely, as of May 2023 – which includes the period in which the State is celebrating its failure to process 180 out of 800-900 APA applications – the State had timely processed just 37.1% of applications in the 2023 state fiscal year.⁵⁸ This is the most recent comprehensive data from the State, and it is inexcusable.

III. PRELIMINARY INJUNCTION

Ms. Edwards seeks a preliminary injunction requiring the State to comply with 7 AAC 40.070 by processing all APA applications within 30 days. She can obtain this relief if she can satisfy either standard for preliminary injunctive relief that applies under Alaska law: (1) the probable-success-on-the-merits standard, or (2) the balance of hardships standard.⁵⁹ She satisfies both standards.

A. Ms. Edwards Makes a Clear Showing of Probable Success on the Merits.

Under the probable-success-on-the-merits standard, this Court should grant the requested preliminary injunction – regardless of the balance of hardships – if Ms. Edwards makes “a clear showing of probable success on the merits” of her lawsuit.⁶⁰ Here, her motion rests on her cause of action under 7 AAC 40.070,⁶¹

⁵⁷ Omnibus Opp. at 17.

⁵⁸ See Exhibit 1 hereto.

⁵⁹ *State v. Galvin*, 491 P.3d 325, 332 (Alaska 2021).

⁶⁰ *Id.* at 333; see also *Alsworth v. Seybert*, 323 P.3d 47, 54 n.14 (Alaska 2014).

⁶¹ In her complaint, Ms. Edwards asserts other causes of action under AS 47.25.450 and AS 47.25.460. However, those causes of action are not addressed in the instant motion.

which requires the State to “render an eligibility decision on each identifiable application for assistance and . . . mail the applicant a written notice of that decision within 30 days after receipt of the application.”

The State does not dispute that it violated the requirements of this controlling regulation in processing the application for APA benefits that Ms. Edwards submitted in December 2020.⁶² The State also concedes that it “experienced serious failures in prompt processing of [APA] applications over the past fall and winter,”⁶³ which delayed the receipt of benefits for *thousands* of other needy Alaskans.⁶⁴ Thus, the State cannot seriously rebut that Ms. Edwards has made a clear showing that it violated its own regulation. Instead, it relies on the affirmative defenses of mootness and exhaustion of administrative remedies in arguing that Ms. Edwards has not met the probable-success-on-the-merits standard. As shown below, though, neither defense applies here.

1. The State admits that it has violated 7 AAC 40.070 for years.

For starters, the State “readily admits that it suffered delays in processing APA applications during the SNAP backlog crisis over this past fall and winter.”⁶⁵ In fact, it admits that it has been violating the governing regulation, 7 AAC 40.070,

⁶² Omnibus Opp. at 19-20.

⁶³ *Id.* at 1.

⁶⁴ The state acknowledges receiving an average of at least 830 APA applications per month in this state fiscal year. *See* Affidavit of Rebecca Stovall at ¶12.

⁶⁵ Omnibus Opp. at 22.

“for many years.”⁶⁶ Yet, the State musters several feeble arguments as to why this Court should not enter a preliminary injunction ordering it to timely process APA applications in compliance with the 30-day deadline imposed by the regulation.

For one, the State claims that it has “substantially remedied” its “serious failures” in the processing of APA applications, and is now processing applications “in a reasonably timely manner.”⁶⁷ Not only are these statements conspicuously vague – how many days exactly does the State consider to be “reasonably timely,” and what proportion of applications are being processed in such a manner? – they are not supported by actual evidence. To the contrary, the Director of DPA affies that its “internal performance measures” are not audited or verified, and “do not explicitly track” applications that are “pending” beyond the 30-day deadline.⁶⁸ Thus, the State apparently has no way of knowing the exact number of applicants who are not receiving timely eligibility determinations.⁶⁹

Also, despite the “dynamic process” allegedly implemented by the State in April 2023 and its assurances to this Court, the facts on the ground reveal that the State has not remedied its processing delays. Many APA applicants *continue* to

⁶⁶ *Id.* at 21.

⁶⁷ *Id.* at 1, 22.

⁶⁸ Affidavit of Deb Etheridge at ¶10.

⁶⁹ The State admits that, even “beyond ordinary case pending rates,” there have been “significant delays” in processing applications this past year. Omnibus Opp. at 11-12 n.44.

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Anchorage, AK 99501
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receive untimely eligibility determinations.⁷⁰ Indeed, recently, the share of APA applicants who received a timely eligibility determination in this fiscal year has *dropped*, from 37.1% as of February 2023 to 33.9% as of May 2023.⁷¹ Meanwhile, the State predicts that “new pressures on other programs” may affect its “staffing plans,” resulting in longer processing times for APA applications, unless the Court grants the requested injunction and orders it to comply with its own regulation.⁷²

The State also argues that the requested injunction unreasonably demands “complete perfection” in timely processing APA applications.⁷³ This is backwards: It is not Ms. Edwards who is demanding “complete perfection,” it is the regulation that demands that the State comply with a 30-day deadline for rendering eligibility determinations, *without exceptions*. The State perhaps *could* have promulgated a different regulation with a longer processing timeframe or demanding only substantial compliance with the 30-day deadline. But it chose to hold itself to a higher standard, which is commendable. And while the State says that it is now “aware that it needs to amend this regulation to conform to the practical reality of the APA program,”⁷⁴ it must still comply with the regulation that is still on the

⁷⁰ Affidavit of Rebecca Stovall at ¶12 (noting that, of around 900 APA applications received between April 13, 2023 through May 12, 2023, 180 remained unresolved as of June 22, 2023).

⁷¹ *Plaintiffs’ Motion for Preliminary Injunction* at Ex. 2: Statewide Performance Measures, attached as Exhibit 1.

⁷² Omnibus Opp. at 17.

⁷³ *Id.* at 23.

⁷⁴ *Id.* at 22.

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books, until such time that it takes public comment and amends the regulation pursuant to the requirements of the Administrative Procedures Act.

Finally, the State argues that “Ms. Edwards has not made a clear showing of probable success on the merits of her regulatory claim because the regulation on which she relies has been outdated for some time and needs to be amended to reflect the reality of the program.”⁷⁵ The States does not cite any legal support for its remarkable claim that a regulation becomes “outdated” or somehow void and unenforceable if an agency violates it for long enough with impunity. Or that an agency can stop complying with a regulation based on a future intent to amend or repeal it. Of course, such law does not exist, because these notions are preposterous under a system of laws.

No doubt realizing that it has no defense to Ms. Edwards’ regulatory claim, the State focuses instead on two affirmative defenses: mootness and exhaustion.

2. The State’s mootness defense fails.

The State’s first affirmative defense is that this case is now moot because Ms. Edwards’ application for APA benefits was belatedly approved on April 20, 2023 – after this case was filed and many months after the 30-day deadline under 7 AAC 40.070 – and she “is currently receiving APA benefits and has no live controversy with the State.”⁷⁶ Thus, according to the State, this case “will have no

⁷⁵ *Id.* at 32.

⁷⁶ *Id.* at 30.

practical impact on [Ms. Edwards] personally.”⁷⁷

The State is wrong. First, Ms. Edwards still has a personal stake in this lawsuit because her eligibility for benefits will have to be recertified at least once per year. Second, even if Ms. Edwards’ individual claim is technically moot, it presents a textbook example for application of the public interest exception to the mootness doctrine. And third, special mootness rules apply in the class action context that prevent the mooting of inherently transitory claims.

A case is moot “if it is no longer a present, live controversy, and the party bringing the action would not be entitled to relief, even if [she] prevails.”⁷⁸ This type of mootness typically occurs when a party “has already been given the remedy [she] seeks.”⁷⁹ Mootness can also occur “when a party no longer has a personal stake in the controversy and has, in essence, been divested of standing.”⁸⁰

Here, Ms. Edwards is seeking a permanent injunction requiring the State to process APA applications in a timely manner. While the State approved Ms. Edwards’ application for APA benefits on April 20, 2023, and while she is receiving benefits for now, her eligibility for APA benefits does not last forever. To the contrary, 7 AAC 40.450(b) provides:

At least annually, or more frequently as circumstances warrant, the division will redetermine each recipient’s eligibility. The division may

⁷⁷ *Id.*

⁷⁸ *Fairbanks Fire Fighters Ass’n v. City of Fairbanks*, 48 P.3d 1165, 1167 (Alaska 2002).

⁷⁹ *Id.*

⁸⁰ *Id.* (citation and internal quotation marks omitted).

require a recipient or the person acting on the recipient's behalf under 7 AAC 40.040 to complete a review application and furnish documentation to support it.

Meanwhile, the State concedes that the "severe backlog" that prompted this lawsuit affects *both* "new applications and recertification applications."⁸¹ Indeed, just 23.7% of APA recertification applications were timely processed by the State in this fiscal year as of May 2023.⁸² Thus, Ms. Edwards stands to benefit if the Court grants the requested injunction, because it will ensure that any future "review application" submitted under 7 AAC 40.450(b) is timely processed.

Even if this case were technically moot, it would fall squarely within the public interest exception to the mootness doctrine.⁸³ The public interest exception requires consideration of: (1) whether the disputed issues are capable of repetition; (2) whether the mootness doctrine, if applied, may cause review of the issues to be repeatedly circumvented; and (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.⁸⁴ "None of these factors is dispositive; each is an aspect of the question of whether the public interest dictates that a court review a moot issue. Ultimately, the determination of whether to review a moot question is left to the discretion of the court."⁸⁵

⁸¹ Affidavit of Deb Etheridge at ¶11.

⁸² See Exhibit 1.

⁸³ See, e.g., *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1196 (Alaska 1995).

⁸⁴ See *id.*

⁸⁵ *Id.*

Each of the above factors is present in this case. First, the disputed issues are not unique to Ms. Edwards and are certainly capable of repetition.⁸⁶ The State's own data shows that there are literally *hundreds* of Alaskans who submit initial applications every month for APA benefits.⁸⁷ Many of these individuals are likely to be impacted by the State's longstanding and systemic delays in processing APA applications. Second, the application of the mootness doctrine would repeatedly frustrate judicial review. According to the State, the average number of days in fiscal years 2018-2022 "between receipt of an APA application and an approval or denial ranged between 24 and 43 days."⁸⁸ This is obviously not enough time to allow for meaningful judicial review.⁸⁹ And third, it can hardly be questioned that this case raises an issue of public importance, i.e., ensuring that Alaska's most vulnerable citizens receive without unreasonable delay an essential government benefit that the legislature has decided is necessary for their "reasonable subsistence,"⁹⁰ and "to help them attain self-support or self-care."⁹¹

⁸⁶ See *E.P. v. Alaska Psychiatric Inst.*, 205 P.3d 1101, 1107 (Alaska 2009) ("[B]ecause the disputed issues in this case do not depend heavily on E.P.'s unique facts, they are capable of repetition. When disputed issues turn on unique facts unlikely to be repeated, we have refused to find an exception to mootness. But the questions E.P. raises depend on facts that may be repeated with regard to another in a similar situation.").

⁸⁷ Omnibus Opp. at Ex. A, p.11.

⁸⁸ *Id.* at 10-11.

⁸⁹ See *E.P.*, 205 P.3d at 1107 ("It is quite unlikely that an appeal from a 30-day or 90-day commitment, or even a 180-day commitment, could be completed before the commitment has expired.").

⁹⁰ *Moore v. Beirne*, 714 P.2d 1284, 1285 (Alaska 1986).

⁹¹ AS 47.25.590(b).

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

Finally, because this case was filed as a class action, different mootness rules apply.⁹² The U.S. Supreme Court has recognized a mootness exception for “inherently transitory” claims that are brought within a class action lawsuit.⁹³ This exception “was developed to address circumstances in which the challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in the suit long enough for litigation to run its course.”⁹⁴ Accordingly, the exception applies where, as here, “the pace of litigation and the inherently transitory nature of the claims at issue conspire to make [the requirement of having a live claim at the time of class certification] difficult to fulfill.”⁹⁵ In such cases, the procedural right to class certification, which the Supreme Court has

⁹² See, e.g., *Rosetti v. Shalala*, 12 F.3d 1216, 1226 (3d Cir. 1993) (“[A] named plaintiff who no longer suffers concrete and particularized harm resulting from challenged conduct, or who no longer stands to gain anything from a court’s judgment on the merits of a suit he has brought, nonetheless retains a less traditional, private-attorney-general-type interest in his ‘procedural claim’ that he is entitled to represent a class. Such a plaintiff, notwithstanding the mootness of his ‘substantive claim,’ has a continuing legal right to represent a class, provided he can meet the requirements of the Federal Rules; and that right gives such a plaintiff a surviving personal stake in the determination of whether he can act as a class representative.”); *Blankenship v. Secretary of Health, Education & Welfare*, 587 F.2d 329, 333 (6th Cir. 1978) (holding that class action challenging delays by Social Security Administration in scheduling hearings for applicants was not moot even though named plaintiffs had obtained hearings because “refusal to consider a class-wide remedy merely because individual class members no longer need relief would mean that no remedy could ever be provided for continuing abuses”); *Massachusetts Ass’n of Older Americans v. Spirito*, 92 F.R.D. 129, 132 (D. Mass. 1981) (holding that “capable of repetition yet evading review” exception to mootness doctrine applies to class action lawsuits “where the defendant’s pattern of activity continues but the controversy is resolved with respect to the named plaintiffs.”); *Custom v. Trainor*, 74 F.R.D. 409, 412 (N.D. Ill. 1977) (denying mootness argument where welfare applicants had “inherently short-lived claims that may be mooted at any time (and will be mooted relatively quickly) by the very officials whose conduct they seek to correct”).

⁹³ See *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013).

⁹⁴ *Id.*

⁹⁵ *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018).

noted is analogous to “the private attorney general concept,” satisfies the “personal stake” requirement for standing and prevents a putative class action from becoming moot even after the named plaintiff’s claim has expired.⁹⁶

Thus, even if this Court concludes that Ms. Edwards no longer has a live individual claim against the State, it should still allow this case to proceed on the merits under the public interest exception and/or the “inherently transitory claim” exception to the mootness doctrine.

3. Neither Ms. Edwards nor the class members were required to exhaust administrative remedies.

The State’s second affirmative defense “is that Ms. Edwards failed to exhaust the administrative remedies available to her.”⁹⁷ This defense also fails.

The State argues that if Ms. Edwards had exhausted her administrative remedies by requesting a fair hearing, its “failure to work her APA application at the same time as her expedited SNAP application would have been promptly caught and corrected in the fair hearing process.”⁹⁸ The problem with this argument is that DPA never told Ms. Edwards that she could request a fair hearing to challenge the delay in processing her application. The same is true of the putative class members, who all received the same form notice from DPA.⁹⁹

⁹⁶ *United States Parole Commission v. Geraghty*, 445 U.S. 388, 403-04 (1980).

⁹⁷ Omnibus Opp. at 30-31.

⁹⁸ *Id.* at 31.

⁹⁹ *Id.* at Ex. C.

The State points to 7 AAC 40.080, which gives an “applicant whose application is not acted upon within 30 working days after receipt by the division” the right to request a fair hearing. However, the statement of fair hearing rights that the State automatically generates and sends to all APA applicants does not actually notify the applicants of this right. Instead, it merely states: “If you disagree with an action taken by the Division of Public Assistance that affects the benefits or services you receive, you can ask for a fair hearing.”¹⁰⁰ There is nothing written anywhere on this notice that would lead an applicant to believe that they can request a fair hearing to challenge “inaction” by the State, i.e., the failure to process an application within 30 calendar days.¹⁰¹

It is no wonder then that Ms. Edwards did not request a fair hearing. Obviously, if she knew that the State would have “promptly caught” its error and awarded her benefits if she only asked for a fair hearing, she would have had done so. But the State’s notice did not inform her of this right. It is also telling that, of the *thousands* of APA applicants who have failed to receive a timely eligibility determination, only 31 individuals (who were likely represented or assisted by counsel) requested a fair hearing between January 1, 2023 and March 31, 2023.

¹⁰⁰ *Id.* The part of the notice that is specific to APA benefits further states: “You must report all changes, including changes in your medical insurance. You must also report if you will be absent from the State for more than 30 days.” *Id.*

¹⁰¹ Inexplicably, the right to a fair hearing under 7 AAC 40.080 does not attach until 30 “working days” have elapsed since DPA’s receipt of an application, whereas 7 AAC 40.070(a) requires DPA to process application within 30 calendar days.

In *Smart v. State*,¹⁰² the Alaska Supreme Court held that the duty to exhaust administrative remedies is not triggered until “the party has sufficient notice to challenge the decision.”¹⁰³ For a notice to be sufficient, it “must clearly identify the proposed agency action and the party’s right to seek administrative relief.”¹⁰⁴ Further, the notice must be “reasonably calculated, under all the circumstances, to inform interested parties of action affecting their property rights.”¹⁰⁵

Here, because the State never gave Ms. Edwards (or the putative class members) a notice that was reasonably calculated to alert her of the right to request a fair hearing to challenge the delay in processing her application, the duty to exhaust never arose. And, since the State has now approved her application, any further requirement to exhaust administrative remedies would be futile and nonsensical.¹⁰⁶

Furthermore, the policy considerations underlying the requirement for administrative exhaustion are not present in this case. Exhaustion of administrative remedies allows a public agency to develop a factual record, apply its special expertise, and make corrections to its own errors, thereby mooting

¹⁰² 237 P.3d 1010 (Alaska 2010).

¹⁰³ *Id.* at 1015.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *Matanuska Elec. Ass’n v. Chugach Elec. Ass’n*, 99 P.3d 553, 560 (Alaska 2004) (holding that exhaustion is not required where it is “futile or severely impractical”).

judicial controversies.¹⁰⁷ But exhaustion is not required where it does not serve these salutary purposes. For example, the Alaska Supreme Court has held that where a lawsuit “does not challenge any particular decision by an agency and instead calls upon the superior court to review only the validity of a statute, exhaustion of administrative remedies is not required.”¹⁰⁸ “[O]nly actions challenging administrative decisions give rise to the requirement that complainants exhaust their administrative remedies. If the complaint does not allege any error in an administrative action, the doctrine does not apply.”¹⁰⁹

Here, Ms. Edwards is not challenging any particular administrative decision by the State. Rather, she is challenging the State’s systemic inaction, i.e., the failure to process applications and make eligibility determinations in compliance with the 30-day deadline imposed by 7 AAC 40.070. Nor is this the type of case where the State needs to develop a factual record. To the contrary, it has already pinpointed the myriad reasons for the “backlog crisis” that led to this lawsuit.¹¹⁰ Among other reasons, the State points to a cyber-attack, antiquated IT systems, and the unwinding of the COVID-19 public health emergency.¹¹¹

Thus, administrative exhaustion would serve no purpose in this case except

¹⁰⁷ See *Dep’t of Revenue v. Andrade*, 23 P.3d 58, 66-67 (Alaska 2001).

¹⁰⁸ See *State v. Fairbanks North Star Borough*, 936 P.2d 1259, 1261 (Alaska 1997) (citing *Moore v. State*, 875 P.2d 765, 767 (Alaska 1994)).

¹⁰⁹ *Id.* at 1261-62.

¹¹⁰ Omnibus Opp. at 11.

¹¹¹ *Id.*

to delay relief for the class as a whole. Indeed, while the State tells this Court that it “has a good track record of promptly and effectively processing fair hearing requests related to delay in processing APA applications,”¹¹² in reality, the mere fact of requiring aggrieved applicants to jump through an extra hoop of requesting a fair hearing (assuming they have the wherewithal to even do so) merely adds to the delays and further harms the class members.¹¹³ That is why this Court needs to step in, now, and order the State to comply with its own regulation.

4. The public interest factor is discretionary and, to the extent this Court applies it, it weighs in favor of the requested injunction.

The State’s final argument concerning the probable-success-on-the-merits standard is to argue that this Court should deny an injunction based on the public interest.¹¹⁴ The State tries to support this argument by citing *State v. Galvin*,¹¹⁵ stating that the Alaska Supreme Court has “admonished” trial courts to consider the public interest under the probable-success-on-the-merits standard.¹¹⁶ The State contends that the requested injunction would harm the public interest.¹¹⁷

For starters, the State overreads *Galvin*. That case merely holds that a trial

¹¹² *Id.* at 18.

¹¹³ *Id.* (“The average processing time between DPA’s receipt of the fair hearing request and resolution in favor of the applicant was 15 days.”).

¹¹⁴ *Id.* at 32-35

¹¹⁵ 491 P.3d 325 (Alaska 2021).

¹¹⁶ Omnibus Opp. at 32-33.

¹¹⁷ *See id.*

court has the *discretion* "to deny the requested relief if granting it would imperil the public interest."¹¹⁸ *Galvin* further notes that public interest considerations are especially strong in election cases.¹¹⁹ But *Galvin* is inapposite in this case about public benefits. If anything, it highlights that consideration of the public interest is discretionary in this case.

At any rate, considering the public interest strongly favors an injunction. This Court can start with an undisputed interest: If someone qualifies for APA benefits, they are, by definition, an indigent Alaskan, who is either disabled or blind or elderly, and in need of financial assistance for their very subsistence.¹²⁰ And so, when the State flouts 7 AAC 40.070, it can be disastrous for an APA applicant awaiting relief, as going without benefits in that time of need is a harm that even back payments "cannot erase."¹²¹ This inevitable and irreparable harm is the undisputed acute public interest at stake.

Yet, the State's only response is inconsistent inuendo. It claims that maybe serving APA applicants as the law requires can divert resources in some way from other programs, or will cause it to violate a stipulation in a separate lawsuit about SNAP benefits.¹²² But the State offers no hard evidence in support of this parade

¹¹⁸ *Galvin*, 491 P.3d at 339.

¹¹⁹ *Id.* at 338.

¹²⁰ *Moore*, 714 P.2d at 1285.

¹²¹ *Kildare v. Saenz*, 325 F.3d 1078 (9th Cir. 2003).

¹²² Omnibus Opp. at 33. As noted above, the State is *already violating* this stipulation, regardless of the requested injunction in this case.

of horrors actually unfolding in real life. Instead, it just offers conjectures by counsel about “potential consequences” that *might* unfold.¹²³ And, of course, the State never squares any of this with its simultaneous claim that this Court need not worry because it has already fixed the APA crisis.

The State’s public interest argument also ignores the fact that the APA program is quite small in comparison to SNAP. For instance, the State received 830 APA applications in April 2023,¹²⁴ yet has provided SNAP benefits to an average of 95,000 Alaskans in a month.¹²⁵ Addressing the APA crisis thus involves a far smaller group and, even if there were some spillover effects on other programs,¹²⁶ they would be minimal in comparison to the harm that is caused by delayed benefits to an APA applicant.

Meanwhile, the State’s legal argument about the public interest is nonsensical. The State claims that Ms. Edwards “primarily relies” on *Haskins v. Stanton*, 794 F.2d 1273 (7th Cir. 1986), and then spends a page trying to distinguish the facts of that case.¹²⁷ However, Ms. Edwards cited that case for a completely

¹²³ *Id.*

¹²⁴ Affidavit of Rebecca Stovall at ¶12.

¹²⁵ Omnibus Opp. at 2.

¹²⁶ The existence and magnitude of any spillover effect is certainly never substantiated or quantified by the State.

¹²⁷ Omnibus Opp. at 34.

different purpose,¹²⁸ which the State fails to address. Nor does the State explain how this case helps its argument on the public interest, as it does not.

As the scare tactics fade, the State's argument is unfathomable. The State is essentially claiming that it would imperil the public interest to help the poorest people in Alaska in their greatest time of need, as the law already requires, due to unverified and undetailed speculation about how that might affect people in other benefit programs that the State has also let fall into crisis. This Court should not countenance the State's public interest argument, which would reward the State's incompetence and mismanagement across multiple public benefits programs.

B. The Balance of Hardships Favors Granting the Requested Injunction.

The balance of hardships standard requires that: (1) the plaintiff must face "irreparable harm"; (2) the defendant must be "adequately protected" if relief is granted; and (3) a plaintiff must raise serious and substantial questions that go to the merits of a case.¹²⁹ The State concedes that the third factor is satisfied,¹³⁰ but makes unavailing arguments about the first two. These are addressed in turn.

1. The plaintiffs face "irreparable harm" if relief is denied.

"Irreparable harm" is injury that, "because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard

¹²⁸ Ms. Edwards cited *Haskins* to explain that the State will be adequately protected if this Court issues relief under the separate balance of hardships standard. Plaintiffs' Motion for Preliminary Injunction at 6.

¹²⁹ See, e.g., *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

¹³⁰ Omnibus Opp. at n.102.

exists for the measurement of damages, cannot receive reasonable redress in a court of law.”¹³¹ Here, the plaintiffs face such harm, as delays in the processing of their APA applications leaves them without a vital benefit that is needed for their reasonable subsistence. This is supported by ample case law,¹³² which the plaintiffs cited in their primary motion, and which the State does not contest. Instead, the State argues against a finding of irreparable harm by repeating some of the same failed arguments that were already dispensed with above.

For one, the State repeats its claim that Ms. Edwards would not benefit from an injunction as she was approved for APA benefits after this case was filed.¹³³ However, again, Ms. Edwards will soon be forced to complete a “review application” for APA under 7 AAC 40.450, and the State itself concedes that its backlog crisis affects new and review applications alike.¹³⁴ Thus, an injunction would benefit her. Regardless, this argument improperly narrows in on irreparable harm as to Ms. Edwards instead of the class at large.

And when it comes to the class at large, the “State certainly agrees . . . that

¹³¹ *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 n.5 (Alaska 1992).

¹³² *See, e.g., Kildare v. Saenz*, 325 F.3d 1078 (9th Cir. 2009); *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994); *Paxton v. Sec’y of Health and Hum. Servs.* 856 F.2d 1352 (9th Cir. 1988); *Robertson v. Jackson*, 972 F.2d 529, 536 (4th Cir. 1992); *Haskins v. Stanton*, 794 F.2d 1273, 1276–77 (7th Cir. 1986) *Garnett v. Zelinger*, No. 17-cv-1757 (CRC), 2018 U.S. Dist. LEXIS 92554, at * 46 (D.D.C. May 31, 2018); *Briggs v. Bremby*, No. 3:12-cv 324 (VLB), 2012 U.S. Dist. LEXIS 172018, at *2 (D. Conn. Dec. 4, 2012), *aff’d*, 792 F.3d 239 (2d Cir. 2015); *Booth v. McManaman*, 830 F. Supp. 2d 1037, 1046 (D. Haw. 2011); *Robidoux v. Kitchel*, 876 F. Supp. 575, 579 (D. Vt. 1995); *Harley v. Lyng*, 653 F. Supp. 266, 277 (E.D. Pa. 1986).

¹³³ Omnibus Opp. at 25.

¹³⁴ Affidavit of Deb Etheridge at ¶11.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

unreasonable delays in receiving public benefits may impose irreparable harm on individuals in need.”¹³⁵ Yet to wiggle out of an adverse finding, the State returns to claiming that a “staffing plan” that is working “relatively well” will prevent any future harm.¹³⁶ Ms. Edwards already debunked this above. In short, the State’s assurances to this Court that it has already fixed the “backlog crisis” in the APA program are not supported by any actual evidence. As added insight, though, the State ends this argument by admitting that it is not sure that it can comply with 7 AAC 40.070.¹³⁷ This proves the point. If the State cannot comply with the regulation, irreparable harm will follow. Something that only works “relatively well” will not forestall irreparable harm for hundreds of people.

As a final lunge, the State resorts back to claiming that “irreparable harm to future APA applicants is significantly mitigated by the fair hearing process.”¹³⁸ This too was dispensed with above. The State’s notices do not even advise APA applicants that they can request a fair hearing if the State’s processing of an application is delayed. And very few of the thousands who have suffered harm have availed themselves of such hearings. Further, even if fair hearings were used and effective, they still add even more delay into a process already marred by delays, and causes even more irreparable harm to the class.

¹³⁵ Omnibus Opp. at 26.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 27.

2. The State is “adequately protected” if relief is granted.

A defendant is “adequately protected” if it “can be indemnified by a bond when financial harm is at stake; can be otherwise protected by some action; or, at a minimum, is facing only relatively slight harm compared to the potential harm facing the party seeking relief.”¹³⁹ Here, the State is adequately protected because the only thing the injunction would require is for it to follow its own regulation.

In her primary motion, Ms. Edwards cited *Haskins* as authority for why ordering compliance with the law does not impose any burden on a government agency.¹⁴⁰ *Haskins*, like the current case, involved a state agency’s administration of a public benefits program (SNAP).¹⁴¹ The State never addresses *Haskins* – or its logic – in the context of adequate protection.¹⁴²

Instead, the State relies on a recent election case, *State v. Corbisier ex rel. B.L.*,¹⁴³ to argue that “Ms. Edwards fails to recognize the potential harm to DPA – and applicants for other public benefits programs – that the proposed preliminary injunction could cause.”¹⁴⁴ *Corbisier* is actually a useful contrast. There, the State

¹³⁹ *Kluti Kaah*, 831 P.2d at 1273.

¹⁴⁰ Plaintiffs’ Motion for Preliminary Injunction at 6.

¹⁴¹ *Haskins*, 794 F.2d at 1274.

¹⁴² The State does note that *Haskins* condoned a trial court ordering compliance with the law, but using its equitable powers to not hold a “state in contempt for every minor, inadvertent infraction.” Omnibus Opp. at 34. Yet this is not controversial. The plaintiffs are not seeking to hold the State in contempt for “minor, inadvertent” violations. Instead, similar to *Haskins*, this is a case about serial, mass violations of 7 AAC 40.070.

¹⁴³ 522 P.3d 174, 180 (Alaska 2022)

¹⁴⁴ Omnibus Opp. at 27.

actually presented evidence and the trial court made findings that granting the requested injunction would throw the 2022 primary and general elections “into chaos.”¹⁴⁶

Yet here, beyond raw speculation – much of which is inconsistent with the State’s claims that it has “significantly remediated” the APA crisis – there is no evidence to support any such “chaos” arising from simply mandating that the State follow 7 AAC 40.070. Rather, the State’s entire discussion of harm rests on mere speculation and conjecture.

Finally, the State ends its argument on adequate protection by claiming that it might ultimately prevail on its mootness or exhaustion defenses, and that this Court must consider this.¹⁴⁶ For one, as detailed above in detail, the State cannot prevail on these defenses. Regardless, considering the strength of a defense is not a factor in considering the balance of hardships standard, especially since the State concedes that the plaintiffs have raised serious and substantial questions going to the merits of their claim under 7 AAC 40.070.¹⁴⁷

C. The Requested Injunction Includes the Backlog of APA Applications.

As a final note on the requested injunction, the State tries to claim that the requested injunction would be “prospective only” and “not address backlog

¹⁴⁶ *Corbisier*, 522 P.3d at 179-80.

¹⁴⁶ Omnibus Opp. at 26.

¹⁴⁷ *Id.* at n.102.

applications.”¹⁴⁸ Yet this misreads the proposed order, which calls for compliance with 7 AAC 40.070(a) for “every application for APA benefits that the State receives.”¹⁴⁹ This text does not limit the State to obeying the law only for applications that it receives after this Court enters an order, nor should it. Instead, an APA application that is already in the State’s “backlog” is in every bit of need of being timely processed as the applications that it receives going forward. As such, the plaintiffs respectfully request that this Court make clear to the State what should already be clear, i.e., that the State must immediately clear its backlog in addition to timely processing APA applications going forward.

IV. CLASS CERTIFICATION

The State devotes only a few pages at the end of its omnibus opposition to the question of class certification.¹⁵⁰ It argues that class certification should be denied because Ms. Edwards is not a typical class representative; the proposed class members are subject to exhaustion of their own administrative remedies; and class counsel has a conflict of interest.¹⁵¹ All of these arguments lack merit.

A. Ms. Edwards Is a Typical Class Representative.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” “Typicality does not

¹⁴⁸ *Id.* at n.91.

¹⁴⁹ Order Granting Plaintiff’s Motion for Preliminary Injunction at 2.

¹⁵⁰ *Id.* at 35-40.

¹⁵¹ *Id.* at 35.

require a complete identity of claims. Rather, the critical inquiry is whether the class representative's claims have the same essential characteristics as those of the putative class."¹⁵² "Because the claims need only share the same essential characteristics and need not be identical, courts have concluded that the typicality requirement is not highly demanding."¹⁵³

The State argues that Ms. Edwards is not a typical class representative because her "circumstances are not typical of delays caused by the SNAP backlog."¹⁵⁴ According to the State, the class should "consist only of applicants delayed due to the SNAP backlog crisis," and Ms. Edwards is not typical of this redefined class because her application was botched for different reasons that are "unclear" to this day.¹⁵⁵ The State misunderstands the typicality requirement.

Rule 23(a)(3) does not require the class representative to be an identical clone of the class members. Such a requirement is preposterous and would effectively preclude class certification in all cases, as minor factual differences among the individual class members can always be identified. Typicality becomes an issue only when these factual differences are somehow germane to the legal questions at hand and predominate over the common questions.¹⁵⁶

¹⁵² 5 Moore's Federal Practice - Civil § 23.24[3] (2023).

¹⁵³ *Id.* (citations omitted).

¹⁵⁴ Omnibus Opp. at 37.

¹⁵⁵ *Id.* at 36-37.

¹⁵⁶ 5 Moore's Federal Practice - Civil § 23.24[3] (2023).

For example, “[i]f a court must make highly fact-specific or individualized determinations in order to establish a defendant’s liability to class members, there is no typicality.”¹⁵⁷ On the other hand, courts routinely certify “class actions with class representatives whose personal characteristics [are] not identical to the characteristics of some class members, as long as *the essence* of their claims [are] in common.”¹⁵⁸

Thus, typicality is easily satisfied in class actions challenging governmental conduct.¹⁵⁹ “If all class members are subject to the same governmental practice, minor factual differences between the claims of the class representative and the other class members do not defeat typicality.”¹⁶⁰

Here, by definition, Ms. Edwards and the proposed class members were all impacted by the same governmental conduct, i.e., the State’s systemic failure to process APA applications within the 30-day deadline imposed by 7 AAC 40.070. The minor factual differences identified by the State are not germane to any of the

¹⁵⁷ *Id.*

¹⁵⁸ *Ortiz v. Eichler*, 616 F. Supp. 1046, 1056 (D. Del. 1985) (emphasis added), *aff’d*, 794 F.2d 889 (3d Cir. 1986).

¹⁵⁹ 5 Moore’s Federal Practice - Civil § 23.24[8][g] (2023).

¹⁶⁰ *Id.*; see also *Califano v. Yamaski*, 442 U.S. 682, 701 (1979) (involving challenge to method of distribution for Social Security Disability benefits); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223 (N.D. Ill. 1985) (involving challenge to evaluation process for federal SSI program); *Hodecker v. Blum*, 525 F. Supp. 867, 870 (N.D.N.Y. 1981) (challenging computation method for Medicaid assistance); *Massachusetts Ass’n of Older Americans v. Spirito*, 92 F.R.D. 129, 131 (D. Mass. 1981) (challenging delays in processing Medicaid applications and automatic termination of Medicaid benefits).

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

legal issues at hand,¹⁶¹ and do not preclude a finding of typicality.

The precise reasons why the State failed to process a class member's application within the 30-day deadline are irrelevant. The regulation requires the State to "render an eligibility decision on each identifiable application and . . . mail the applicant a written notice of that decision within 30 days after receipt of the application," without any exceptions. For purposes of establishing the State's liability, it does not matter if an application was delayed because of the "SNAP backlog crisis," DPA's general incompetence or mismanagement, or the mysterious issues that apparently delayed Ms. Edwards' application. Moreover, contrary to the State's suggestion, the systemic delays in processing APA applications predated the "SNAP backlog crisis" between September and March 2023,¹⁶² and have continued even after DPA changed its practices in mid-April of this year.¹⁶³

Therefore, this Court should find that Ms. Edwards satisfies the typicality requirement of Rule 23(a)(3).

B. Unnamed Class Members Are Not Required to Exhaust Administrative Remedies.

Next, the State argues that class certification is inappropriate because "the proposed class members are also subject to the exhaustion doctrine."¹⁶⁴ But

¹⁶¹ The State argues that Ms. Edwards "is not a suitable class representative" because she "lacks a live claim against DPA" and "failed to exhaust her own administrative remedies." Omnibus Opp. at 37-38. Both of these legal arguments were debunked above.

¹⁶² Omnibus Opp. at Ex. D, p.2.

¹⁶³ See Exhibit 1.

¹⁶⁴ Omnibus Opp. at 37.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

exhaustion of administrative remedies generally does not apply to the unnamed class members in a class action lawsuit.¹⁶⁵

In any event, Ms. Edwards addressed above why the exhaustion doctrine does not bar her individual claim against the State. The same reasoning also holds true for the putative class members.

C. There Is No Conflict of Interest.

Finally, the State argues that “Ms. Edwards is not a suitable class representative because her counsel face a conflict of interest between representation of this proposed class and the class of applicants for SNAP benefits that they already represent in federal court.”¹⁶⁶ In support of this novel argument, it relies on a law review article on “sibling class actions” written by attorneys from a large class action defense firm who confess to be “sympathetic” to the view that “class actions are bad for America, bad for business, or bad for consumers.”¹⁶⁷ According to this article, “sibling class actions” create a conflict of interest for class

¹⁶⁵ See *Andrade*, 23 P.3d at 66-67 (holding that individual class members in class action challenging constitutionality of a statute were not required to exhaust administrative remedies); see also *Bowen v. N.Y.*, 476 U.S. 467, 484-86 (1986) (holding that class members were not required to exhaust administrative remedies in lawsuit challenging “systemwide, unrevealed policy that was inconsistent in critically important ways with established regulations”); *Liberty Alliance of the Blind v. Califano*, 568 F.2d 333, 346 (3d Cir. 1977) (“No interest of the agency requires the multiple exhaustion of the same issue by blind class members, who are obviously in strained circumstances and unusually dependent upon the benefits in question. The plaintiffs’ interest in prompt resolution of the legal issue is clear. The judiciary’s interest in avoiding multiple applications for review is equally clear.”); *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 498-99 (5th Cir. 1968) (holding that exhaustion of remedies requirement is satisfied for class action if named plaintiff representing class exhausted remedies).

¹⁶⁶ Omnibus Opp. at 39.

¹⁶⁷ Richard G. Stuhan & Sean P. Costello, *Robbing Peter to Pay Paul: The Conflict of Interest Problem in Sibling Class Actions*, 21 Geo. J. Legal Ethics 1195, 1197 (Fall 2008).

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

counsel because “they engender rivalries among the various classes—sibling rivalries, to extend the analogy further.”¹⁶⁸

As an initial matter, the State’s reliance on this article is misplaced, because this case does not even meet the authors’ definition of a “sibling class action.” Per the article, “sibling class actions” share the following five characteristics:

First, there must be at least two class actions, each brought on behalf of different putative classes or on behalf of classes and individuals; these usually are brought in different jurisdictions but are sometimes brought in the same jurisdiction but on behalf of differently defined classes. Second, the cases must be brought against the same defendant. Third, the cases must be brought by the same attorney or firm. Fourth, usually (though not necessarily) the cases are based on similar factual allegations and similar legal theories. Finally, usually (though not necessarily) the cases involve substantial damages, running into the hundreds of millions or even billions of dollars.¹⁶⁹

Here, the instant lawsuit and the SNAP litigation in federal court do not qualify as “sibling class actions” for two reasons. First, the two cases concern different public benefits programs, governed by different statutory and regulatory schemes,¹⁷⁰ and are based on entirely different legal theories. Second, neither case is seeking any damages, much less “substantial damages, running into the hundreds of millions or even billions of dollars.” Thus, there is no danger that the two classes represented by the Northern Justice Project “are laying claim to the

¹⁶⁸ *Id.* at 1198.

¹⁶⁹ *Id.*

¹⁷⁰ As DPA notes in its opposition, SNAP is a federal program that receives federal funding and is “heavily regulated by federal law and monitored by federal agencies.” Omnibus Opp. at 3. APA, on the other hand, is “solely state-funded and state-regulated.” *Id.*

same monies on different theories of damages.”¹⁷¹

In any event, the novel theory espoused in the law review article regarding conflicts in “sibling class actions” has not gained much traction in the courts. Only a handful of cases have adopted the theory to find a conflict disqualifying class counsel.¹⁷² And those cases have all rested on *actual proof* substantiating a conflict. On the other hand, courts have rejected the argument where, as here, the alleged conflict is “speculative,”¹⁷³ or “rests on a string of suppositions.”¹⁷⁴

Here, the State speculates that this lawsuit *might* “divert DPA staff time away from processing SNAP applications to the detriment of that certified class.”¹⁷⁵ But notably, the State does not support the speculation of its lawyers with any actual proof. Notably, the current Director and Chief of Division Operations of DPA have both submitted extensive affidavits to this Court, and neither affidavit says anything at all about the diversion of staff time or any potential conflicts between the two lawsuits. And indeed, the State admits in its opposition that only “an extreme situation” would cause “DPA to default on its agreement already reached with the same counsel in the SNAP lawsuit.”¹⁷⁶ Absent

¹⁷¹ Compare *Moore v. Margiotta*, 581 F. Supp. 649, 653 (E.D.N.Y. 1984).

¹⁷² *Stuhan & Costello, supra*, 21 *Geo. J. Legal Ethics* at 1218-24.

¹⁷³ *Sheftelman v. Jones*, 667 F. Supp. 859, 865 (N.D. Ga. 1987).

¹⁷⁴ *In re BearingPoint, Inc. Sec. Litig.*, 232 F.R.D. 534, 541 (E.D. Va. 2006).

¹⁷⁵ Omnibus Opp. at 38.

¹⁷⁶ *Id.* at 39.

any actual proof, this Court should reject DPA's conflict argument.

Finally, it is important for this Court to consider that DPA administers many different "state benefit programs for Alaskans in need."¹⁷⁷ This includes Medicaid, food stamps (SNAP), APA, Senior Benefits, Temporary Assistance, Child Care Assistance, Heating Assistance, and General Relief Assistance.¹⁷⁸ It is also no secret that *many or all* of these programs have been in disarray, with rampant failures to comply with state and federal law.¹⁷⁹ At the same time, the Northern Justice Project is the *only* firm in Alaska that regularly files class action suits on behalf of the needy recipients of these program.¹⁸⁰ While it would certainly be convenient for DPA to limit the Northern Justice Project to handling one lawsuit at a time, it would harm the many thousands of recipients of DPA's other programs, who would be left with no one to help them hold the State accountable.

V. CONCLUSION

For the foregoing reasons, Ms. Edwards respectfully requests that the Court grant the *Plaintiffs' Motion for Class Certification* and the *Plaintiffs' Motion for Preliminary Injunction*.

///

¹⁷⁷ *Id.* at 2.

¹⁷⁸ *Id.* at 2-3.

¹⁷⁹ *See, e.g.*, Omnibus Opp. at Ex. D, p.2.

¹⁸⁰ Affidavit Of Nicholas Feronti Regarding Combined Reply Memorandum In Support Of Plaintiff's Motions For Preliminary Injunction And Class Certification at ¶3.

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

DATED this 17th day of July, 2023

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiffs

By: /s/ Goriune Dudukgian

James J. Davis, Jr., AK Bar No. 9412140
Goriune Dudukgian, AK Bar No. 0506051
Nicholas Feronti, AK Bar No. 2106069

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2023,
a true and correct copy of the foregoing
document was served via email to:

Lael Harrison
State of Alaska Department of Law
lael.harrison@alaska.gov

Justin D. Nelson
State of Alaska Department of Law
justin.nelson@alaska.gov

/s/ Nicholas Feronti

Northern Justice Project, LLC
 A Private Civil Rights Firm
 406 G Street, Suite 207
 Anchorage, AK 99501
 Phone: (907) 308-3395; Fax: (866) 813-8645

James J. Davis, Jr., AK Bar No. 9412140
 Goriune Dudukgian, AK Bar No. 0506051
 Nicholas Feronti, AK Bar No. 2106069
NORTHERN JUSTICE PROJECT, LLC
 406 G Street, Suite 207
 Anchorage, AK 99501
 (907) 308-3395 (telephone)
 (866) 813-8645 (fax)
 Email: jdavis@njp-law.com
 Email: gdudukgian@njp-law.com
 Email: nferonti@njp-law.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

NATILIA EDWARDS, on behalf of)
 herself and all those similarly)
 situated,)
)
 Plaintiffs,)
)
 vs.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF HEALTH, Heidi Hedberg, in her)
 official capacity as Commissioner of)
 the Department, DIVISION OF)
 PUBLIC ASSISTANCE, and Deb)
 Etheridge, in her official capacity)
 as Director of the Division,)
)
 Defendants.)

Case No. 3AN-23-05707 CI

**AFFIDAVIT OF NICHOLAS FERONTI REGARDING
 COMBINED REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S
 MOTIONS FOR PRELIMINARY INJUNCTION AND CLASS CERTIFICATION**

I, Nicholas Feronti, after being first duly sworn, upon oath depose and state:

AFFIDAVIT OF NICHOLAS FERONTI REGARDING
 COMBINED REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S
 MOTIONS FOR PRELIMINARY INJUNCTION AND CLASS CERTIFICATION
Natilia Edwards, et al. v. State of Alaska, et al.; Case No. 3AN-23-05707 CI
 Page 1 of 3

FILED
 JUDGE AS
 DISTRICT
 11:20
 DEPUTY CLERK

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

1. As an attorney with the Northern Justice Project, LLC, I am counsel for the plaintiffs in the above-entitled action. I am also co-counsel for the plaintiffs in *Kamkoff v. Hedberg*; Case No. 3:23-cv-00044-SLG (D. Alaska), which concerns in part the State of Alaska's delays in processing applications for the Supplemental Nutrition Assistance Program ("SNAP").

2. Per a stipulation that the State of Alaska agreed to in the *Kamkoff* litigation, it has been sending plaintiffs' counsel reports concerning its efforts to address its SNAP application backlog. Attached hereto as Exhibit 2 is a true and correct copy of the first page of the State of Alaska's report of data as of July 6, 2023.

3. The Northern Justice Project, LLC, is the only law firm in Alaska that regularly files class action law suits against the State of Alaska on behalf of the recipients of public benefit programs.

FURTHER AFFIANT SAYETH NAUGHT.



Nicholas Feronti

SUBSCRIBED AND SWORN to before me this 17th day of July, 2023 at Anchorage, Alaska.



Notary Public, State of Alaska

My Commission Expires: April 29, 2024

Northern Justice Project, LLC
A Private Civil Rights Firm
406 G Street, Suite 207
Anchorage, AK 99501
Phone: (907) 308-3395; Fax: (866) 813-8645

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2023,
a true and correct copy of the foregoing
document was served via email to:

Lael Harrison
State of Alaska Department of Law
lael.harrison@alaska.gov

Justin D. Nelson
State of Alaska Department of Law
justin.nelson@alaska.gov

/s/ Nicholas Feronti

**Alaska DHSS – Division of Public Assistance
Internal Performance Measures: Year-to-Date Performance**

Timely Application Actions – SFY23 YTD			
Program	Percent Timely	Target	Difference
SNAP Expedite applications	43.7%	95.5%	-51.8%
SNAP Initial applications	34.0%	97.0%	-63.0%
SNAP Recert applications	15.0%	99.7%	-84.7%
ATAP Initial applications	37.9%	90.0%	-52.1%
ATAP Review applications	74.7%	98.0%	-23.3%
Medicaid Initial applications	37.7%	92.0%	-54.3%
Medicaid Review applications	30.1%	92.0%	-61.9%
APA Initial applications	33.9%	70.0%	-36.1%
APA Review applications	23.7%	96.0%	-72.3%
GA Initial applications	55.1%	99.7%	-44.6%

Application Decision Cycle Time – SFY23 YTD			
Program	Average Days	Target	Difference
SNAP	60	17	-42.6%
ATAP	43	19	-24.2%
Medicaid without APA	87	13	-74.2%
Medicaid with APA	100	52	-48.0%
APA	65	68	2.6%
SB	52	30	-22.5%

Timely Benefit Issuance – SFY23 YTD			
Program	Percent Timely	Target	Difference
SNAP	83.5%	93.0%	-9.5%
Alaska Temporary Assistance Program	82.2%	91.0%	-8.8%
Medicaid	96.2%	94.0%	2.2%
Adult Public Assistance	98.5%	97.0%	1.5%

Work Services Performance Measures – SFY23 YTD			
Performance Measure	Percent Meeting		
	Measure	Target	Difference
Obtain employment within 90 days	28.0%	27.0%	1.0%
Cases closed with earnings	31.0%	51.0%	-20.0%
Cases closed and not returned	91.0%	90.0%	1.0%
All families work participation rate	33.0%	50.0%	-17.0%
Two-parent work participation rate	42.0%	90.0%	-48.0%
Job Development	6.0%	10.0%	-4.0%

<i>Timely Actions current through</i>	May-23
<i>Application Decision Cycle Time current through</i>	May-23
<i>Timely Benefit Issuance current through</i>	Apr-23
<i>Work Services Perf Measures current through</i>	Apr-23

**Alaska DH&SS – Division of Public Assistance
Internal Performance Measures: Historic Performance**

Timely Application Actions						
Program	SFY18	SFY19	SFY20	SFY21	SFY22	SFY23YTD
SNAP Expedite applications	79.7%	87.0%	92.9%	71.4%	82.6%	43.7%
SNAP Initial applications	86.9%	91.5%	92.6%	61.5%	78.9%	34.0%
SNAP Recert applications	68.4%	80.9%	92.0%	53.7%	68.0%	15.0%
ATAP Initial applications	87.6%	90.6%	94.1%	67.7%	83.9%	37.9%
ATAP Review applications	88.0%	91.6%	94.9%	65.1%	81.3%	74.7%
Medicaid Initial applications	53.7%	48.6%	70.6%	53.3%	55.9%	37.7%
Medicaid Review applications	83.5%	79.6%	88.5%	69.9%	62.0%	30.1%
APA Initial applications	73.0%	81.4%	84.6%	64.0%	78.8%	33.9%
APA Review applications	89.5%	93.7%	97.5%	60.7%	81.9%	23.7%
GA Initial applications	91.0%	95.1%	96.5%	77.4%	88.3%	55.1%

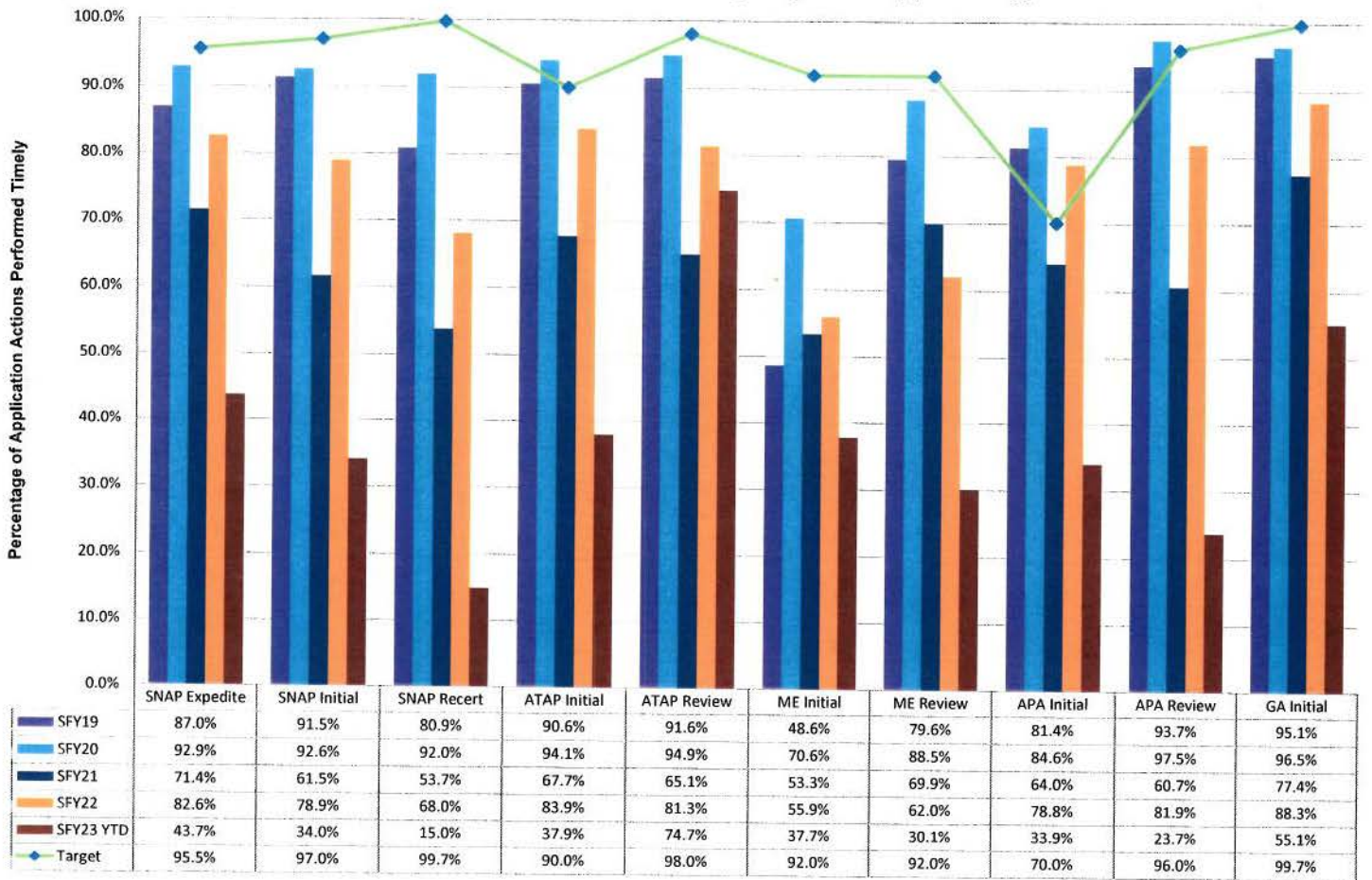
Application Decision Cycle Time (Days)						
Program	SFY18	SFY19	SFY20	SFY21	SFY22	SFY23YTD
SNAP	18	12	9	20	25	60
ATAP	19	12	14	23	20	43
Medicaid without APA	169	171	34	29	57	87
Medicaid with APA	65	62	60	59	79	100
APA	43	29	31	24	36	65
SB	-	20	28	35	30	52

Timely Ongoing Benefit Issuance						
Program	SFY18	SFY19	SFY20	SFY21	SFY22	SFY23 YTD
SNAP	93.7%	93.0%	95.3%	93.5%	98.4%	83.5%
ATAP	91.8%	92.2%	92.4%	91.3%	94.7%	82.2%
Medicaid	93.8%	94.6%	95.5%	94.4%	96.9%	96.2%
APA	97.2%	97.7%	97.9%	97.1%	98.9%	98.5%

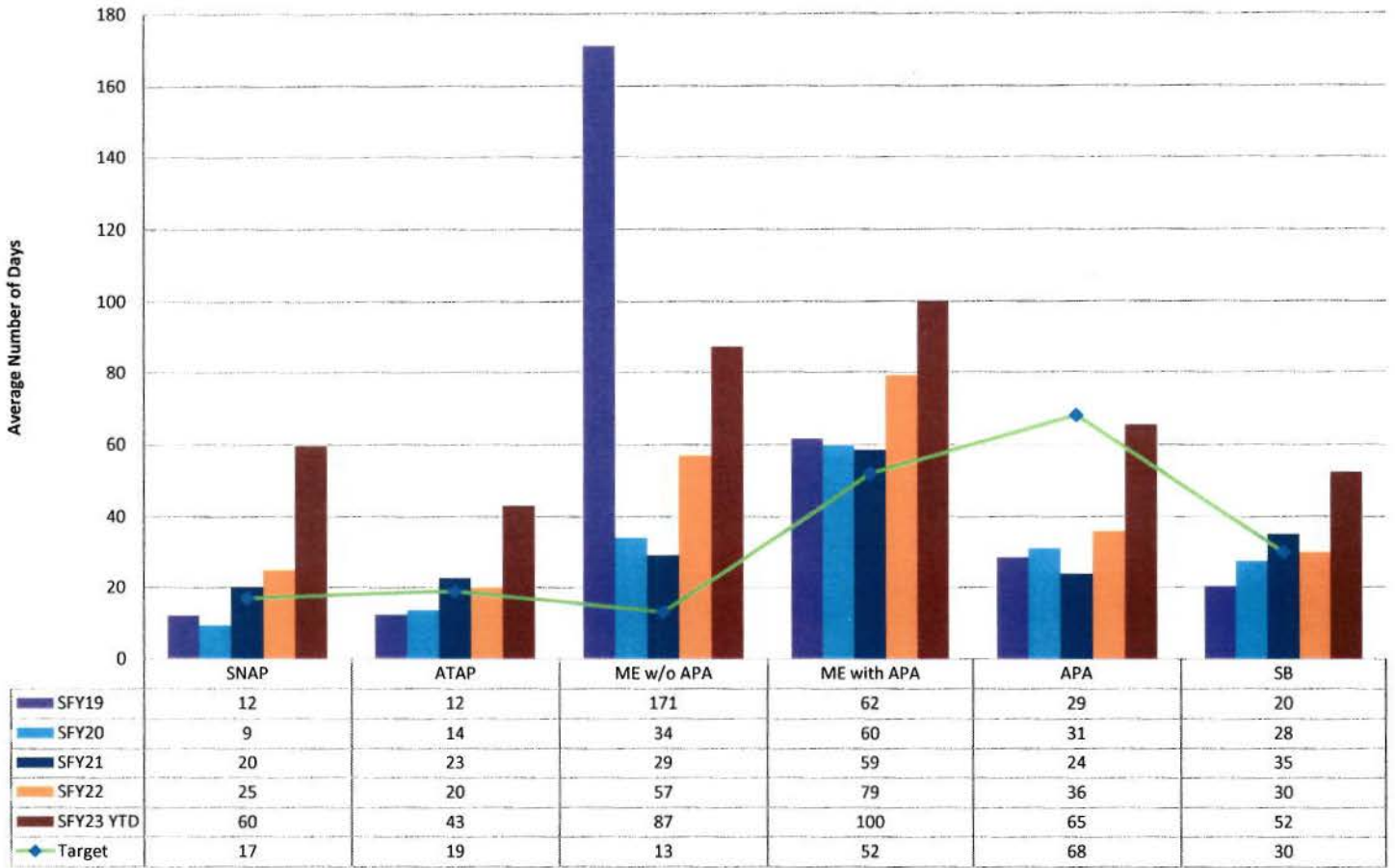
Work Services Performance Measures						
Performance Measure	SFY18	SFY19	SFY20	SFY21	SFY22	SFY23 YTD
Obtain employment within 90 days	32.0%	31.0%	27.0%	21.0%	23.0%	28.0%
Cases closed with earnings	44.0%	36.0%	37.0%	27.0%	25.0%	31.0%
Cases closed and not returned	85.0%	83.0%	83.0%	85.0%	95.0%	91.0%
All families work participation rate	42.0%	49.0%	43.0%	32.0%	29.0%	33.0%
Two-parent work participation rate	51.0%	62.0%	56.0%	42.0%	35.0%	42.0%
Job Development ^a	-	14.0%	14.0%	7.0%	4.0%	6.0%

^a This performance measure started in SFY19

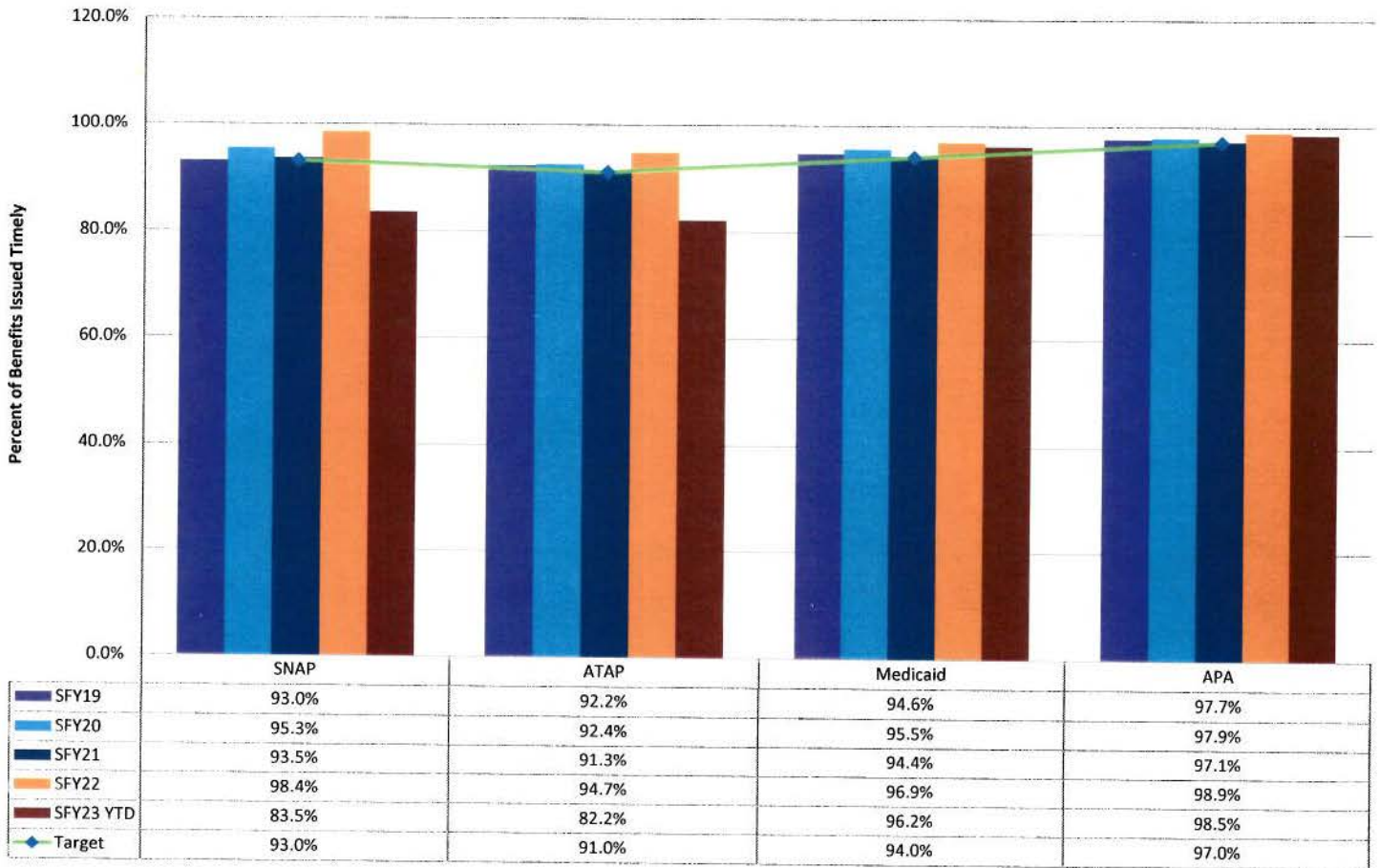
Timely Application Actions Performance by Program and Application Type



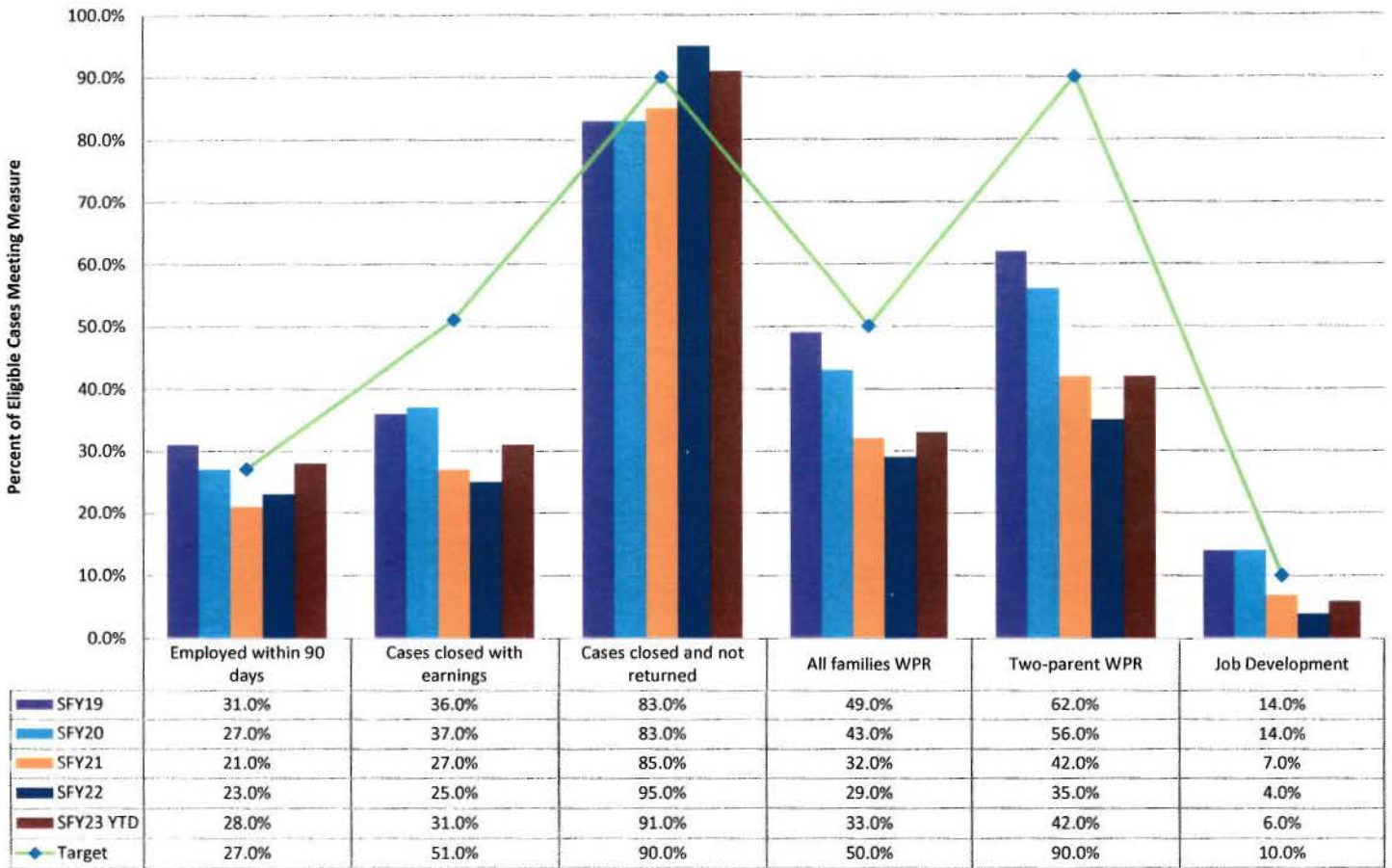
Application Cycle Time Performance



Timely Benefit Issuance Performance by Program



Work Services Performance Measure



Alaska SNAP Backlog Summary

	Overst % of Churn	% of change from Previous week	Total Backlog																								
			2023-07-08	2023-06-29	2023-06-22	2023-06-15	2023-06-08	2023-06-01	2023-05-25	2023-05-18	2023-05-11	2023-05-04	2023-04-27	2023-04-20	2023-04-13	2023-04-06	2023-03-30	2023-03-23	2023-03-16	2023-03-09	2023-03-02	2023-02-25	2023-02-18	2023-02-11	2023-02-04	2023-01-28	
Total SNAP Backlog	43%	7,214	7,184	7,414	7,642	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310	8,310
Recertification	41%	339	316	359	381	403	425	447	469	491	513	535	557	579	601	623	645	667	689	711	733	755	777	799	821	843	865
Application	17%	7,075	7,068	7,257	7,661	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309	8,309
Overall Recert		400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21
Overall Application		400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21	400-21