THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2021-CV-00423

Cassandra Caron, Brandon Deane, Alison Petrowski, and Aaron Shelton

v.

The State of New Hampshire, New Hampshire Employment Security and George Copadis, Commissioner, New Hampshire Employment Security

ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMIINARY INJUNCTION

The plaintiffs have brought this action against the defendants, the State of New Hampshire Department of Employment Security ("DES"), and its Commissioner, George Copadis (the "Commissioner"), seeking a writ of mandamus, declaratory relief, and injunctive relief. Contemporaneous with the filing of the complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction. (See Court Doc. 3.) The defendants object. (See Court Doc. 6.) The Court held a hearing on the plaintiffs' motion on September 3, 2021. After considering the record, the arguments, and the applicable law, the Court finds and rules as follows.

Background

In response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES" Act), effective March 27, 2020. Among other things, the CARES Act established several new unemployment benefit programs to aid workers affected by the pandemic. Relevant here, one of the new programs was entitled "Pandemic Unemployment Assistance" ("PUA"). PUA provided[1] benefits to workers who were "self-employed, [were] seeking part-time employment,

[1] Eligibility for PUA benefits ended on September 6, 2021. See 15 USC § 9021(c)(1)(A)(ii).

[did] not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or [other provisions of the CARES Act]." 15 U.S.C. § 9021(a)(3)(A)(ii)(II). Although the CARES Act directed that the United States Secretary of Labor "shall" provide PUA benefits "to any covered individual," 15 U.S.C. § 9021(b), it envisioned that the Secretary of Labor would carry out that obligation by entering into agreements with the States and then the States would administer PUA benefits to their citizens through their existing State-run unemployment insurance systems. See 15 U.S.C. § 9021(f)(1) ("The Secretary shall provide [PUA] . . . through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies.").[2] The States incurred no financial burden for agreeing to distribute PUA benefits; rather, the federal government funded the benefits themselves and paid the States for any associated administrative costs.

On March 28, 2020, Governor Sununu signed an agreement with the Department of Labor. As contemplated by 15 U.S.C. § 9021, the governor agreed that New Hampshire would administer PUA benefits to New Hampshire citizens through DES. DES thereafter administered and distributed PUA benefits to eligible New Hampshire citizens, including the plaintiffs. Beginning in 2021, several governors began terminating their agreements with the Department of Labor to administer PUA benefits. In May 2021, Governor Sununu announced that he too would be terminating his agreement with the Department of Labor. In compliance with a thirty-day cancellation

[2] The Act did not provide any other explicit mechanism for the Secretary of Labor to distribute PUA benefits in the event that a State refused to enter into an agreement, or, similarly, if the Secretary determined that the State did not have an adequate system for PUA benefit administration.

notice provision in the agreement,[3] Governor Sununu sent a letter to the Secretary of Labor on May 18, 2021 declaring his intent to terminate the agreement to distribute PUA benefits through DES effective June 19, 2021. The governor cited New Hampshire's labor shortage and the improving pandemic conditions as the bases for his decision. As the Act provided no other mechanism to distribute PUA benefits to eligible recipients, see supra n.1, Governor Sununu's decision to terminate the agreement essentially ended the availability of PUA benefits for New Hampshire citizens, including the plaintiffs. Thus, despite being eligible for PUA benefits under the terms of the CARES Act, the plaintiffs have not received them since June 2021.

As a result, the plaintiffs brought this action on August 27, 2021. The plaintiffs seek: (1) a writ of mandamus directing the defendants "to reinstate PUA benefits to covered individuals in New Hampshire, including back benefits"; (2) a declaratory judgment that the defendants are in violation of state and federal law; and (3) an injunction "enjoying the [d]efendants from abandoning PUA before it expires . . . and requiring [the] [d]efendants to reinstate PUA benefits to covered individuals in New Hampshire, including back benefits[.]" (Compl. Prs. for Relief ¶¶ A–D.) Citing their dire financial situations and the lack of any harm to the defendants should they resume administration of PUA benefits, the plaintiffs now move for a preliminary injunction requiring the defendants "to reinstate PUA" immediately. (Pls.' Mot. at 2.) For their part, the defendants maintain that preliminary injunctive relief is unwarranted primarily "because [the plaintiffs'] claims fail on the merits as a matter of law." (Defs.' Obj. at 11.)

[3] Specifically, the agreement stated that: "This Agreement with respect to [the PUA program] may be terminated by either party on thirty days' written notice." (Defs.' Obj. Ex. A-3-1 ¶ XI.)

Analysis

"The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy." Murphy v. McQuade, 122 N.H. 314, 316 (1982). A preliminary injunction generally should not issue unless the moving party demonstrates: (1) a likelihood of success on the merits; (2) that "there is an immediate danger of irreparable harm to the party seeking injunctive relief"; and (3) that "there is no adequate remedy at law." N.H. Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). As a practical matter, the first factor—the likelihood of success on the merits—is the "touchstone of the preliminary injunction inquiry." Maine Educ. Ass'n Benefits Trust v. Cioppa, 695 F.3d 145, 152 (1st Cir. 2012); see also Weaver v. Henderson, 984 F.2d 11, 12 (1st Cir. 1993) ("The sine qua non [of the preliminary injunction factors]. . . is whether the plaintiffs are likely to succeed on the merits."). That is, "[i]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." Cioppa, 695 F.3d at 152. "The logic behind this emphasis is obvious. If the moving party cannot show that it is likely to prevail at the end of the case, it makes little to sense to change the status quo on the assumption that the moving party will win." Ronzio v. Tannariello, No. 226-2019-CV-671, 2020 N.H. Super. LEXIS 24, at *13 (Dec. 11, 2020). Thus, "[i]n the ordinary course, plaintiffs who are unable to convince the trial court that they will probably succeed on the merits will not obtain interim injunctive relief." Weaver, 984 F.2d at 12.

Because of the importance of the likelihood-of-success-on-the-merits factor, the Court begins its analysis there. In support of that factor, the plaintiffs first argue that injunctive relief is warranted because "the plain language of RSA 282-A:127, I. . . do[es]

not give [DES] the discretion to cut off PUA early." (Pls.' Mot. at 6 (cleaned up).) That statute, entitled "State-Federal Cooperation," provides in pertinent part:

> In the administration of [RSA chapter 282-A], the commissioner of the department of employment security shall cooperate to the fullest extent consistent with the provisions of this chapter, with the United States Department of Labor, and is authorized and directed to take such action, through the adoption of appropriate rules, the adoption of administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act[.]

RSA 282-A:127, I (emphasis added). The plaintiffs contend that "PUA is one of the many [unemployment insurance] programs provided 'under' the Social Security Act," (Pls.' Mot. at 7), and therefore Commissioner Copadis is obligated to administer PUA benefits in order to fulfill the statutory directive "to secure to this state and its citizens all advantages" under the Social Security Act. In response, the defendants maintain that PUA is not part of the Social Security Act, but rather the CARES Act, and therefore Commissioner Copadis is under no statutory obligation to "secure" PUA benefits from the Department of Labor on behalf of New Hampshire citizens.

The resolution of this issue requires the Court to engage in statutory interpretation. In matters of statutory interpretation, the Court's goal is to discern "the intent of the legislature as expressed in the words of the statute considered as a whole." State v. Beattie, 173 N.H. 716, 720 (2020). The Court first looks "to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning." Id. The Court interprets "legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute

should be given effect." Id. The Court construes "all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. Moreover, the Court does "not consider words and phrases in isolation, but rather within the context of the statute as a whole." Id. "This enables [the Court] to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." Id.

Here, the plaintiffs' entire argument hinges on whether PUA benefits are "advantages available under the provisions of the Social Security Act." RSA 282-A:127, I. As an initial matter, the Court notes that it is undisputed that the PUA program was created by the CARES Act and is codified at 15 U.S.C. §§ 9021, whereas the Social Security Act is codified at 42 U.S.C. §§ 301–1397mm. Indeed, the plaintiffs admit that "PUA is part of the CARES Act," (compl. at 1), and they cannot point to any specific provision of the Social Security Act related to PUA benefits. These undisputed facts seem to foreclose the plaintiffs' argument. That is, because the PUA program was created by the CARES Act and is not found in the same section of the federal code as the Social Security Act, it is difficult to envision how PUA benefits could be considered "available under the provisions of the Social Security Act." RSA 282-A:127, I

To overcome this relatively straightforward interpretation, the plaintiffs posit that PUA benefits are provided "under" the Social Security Act because the Social Security Act "created an Unemployment Trust Fund through which [PUA] funds flow to the states[.]" (Pls.' Mot. at 7.) It is true that Congress directed that "[f]unds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by

section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make [PUA] payments to States[.]" 15 U.S.C. § 9021(g). By doing so, "Congress chose to use the existing accounting system, that was already in place to direct federal funds to the States for use in the area of unemployment, to efficiently distribute funds for the CARES Act benefits." Holcomb v. T.L., No. 21A-PL-1268, 2021 WL 3627270, at *5 (Ind. Ct. App. Aug. 17, 2021). However, simply because PUA "benefits are distributed by utilizing the same accounting systems used to fund the administrative costs of the state [unemployment insurance] programs" under the Social Security Act, id. at *6, it does not follow that the PUA benefits themselves are "advantages available under the Social Security Act," RSA 282-A:127, I. Rather, as noted above, "the CARES Act benefits [including PUA] are established and conferred by entirely different statutes than" the Social Security Act. Holcomb., 2021 WL 3627270, at *6. As succinctly put by one court in interpreting a South Carolina statute nearly identical to RSA 282-A:127, I:

> Plaintiffs, however, claim that benefits under the CARES Act—PUA, PEUC, and FPUC— are advantages under the provisions of the Social Security Act that relate to unemployment compensation. The Court disagrees. The benefits provided under the CARES Act are new benefits, never previously available to unemployed workers, and are provided by legislation separate and apart from the Social Security Act. Although the federal government chose to use the funding mechanisms available through the Social Security Administration, that does not mean these new benefits fall under the Social Security Act. It simply shows Congress used an existing mechanism to put PUA, PEUC, and FPCU into place quickly. . . . Because PUA, PEUC, and FPUC are not provisions of the Social Security Act, section 41-29-230(1) does not require Defendants to do anything related to those three programs

S.B. v. McMaster, No. 2021-CP-40-03774, 2021 WL 3699098, at *3–4 (S.C. Com. Pl. Aug. 13, 2021).

The plaintiffs' reliance on RSA 282-A:127, I may have had more force had Congress established PUA by amending the Social Security Act. However, that is not

what happened—Congress instead "adopted [the PUA] program[ ] in the CARES Act[ ] without amending the Social Security Act." Id. at *3. "In contrast with Congress's decision not to amend the Social Security Act for PUA, . . . Congress expressly amended the Social Security Act [through the CARES Act] to make changes regarding unemployment benefits for employees of governmental entities and nonprofits." Id. at *4 (citation omitted). This "shows Congress knew how to and very well could have amended the Social Security Act to provide that PUA . . . was part of the Social Security Act. But Congress decided not to do so." Id. (cleaned up). This suggests that Congress never intended for PUA to be part of the Social Security Act and supports the conclusion that PUA benefits are not "advantages" under the Social Security Act.

For these reasons, the Court rejects the plaintiffs' argument that PUA benefits are "advantages available under the provisions of the Social Security Act." RSA 282-A:127, I. Because RSA 282-A:127, I has no application to PUA benefits, the Court concludes that neither Commissioner Copadis nor DES has a legal obligation to secure those benefits from the Secretary of Labor or administer them on his behalf. It follows that the plaintiffs cannot show a likelihood of success on the merits of obtaining their requested relief based on that statute.

The plaintiffs alternatively argue that they are entitled to injunctive relief because the defendants have "defied the plain language of 15 U.S.C. § 9021(c)." (Pls.' Mot. at 8.) That statute provides, in pertinent part, that

> [T]he assistance authorized under subsection (b) shall be available to a covered individual . . . for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 . . . beginning on or after January 27, 2020 [and ending on or before September 6, 2021] as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

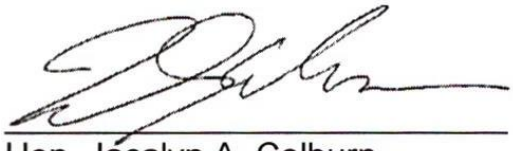
15 U.S.C. § 9021(c)(1) (emphasis added). Seizing on the phrase "shall be available," the plaintiffs contend that the defendants "do not have the discretion to end the [PUA] program early." (Pls.' Mot. at 8.) However, in making this argument, the plaintiffs overlook the preceding phrase in 15 U.S.C. § 9021(c)(1), which clarifies that only "the assistance authorized under subsection (b) shall be available . . . ." 15 U.S.C. § 9021(c)(1). Subsection (b), in turn, states that, "the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation . . . or waiting period credit." 15 U.S.C. § 9021(b) (emphasis added). Reading subsections (b) and (c) together, it is clear that the Secretary of Labor is the party responsible for making PUA assistance "available" to eligible individuals. Thus, if anyone has "defied the plain language of 15 U.S.C. 9021(c)" by not making PUA benefits available, (Pls.' Mot. at 8), it is the Secretary of Labor, not the defendants. Simply put, there is nothing in 15 U.S.C. § 9021 requiring either defendant to do anything regarding PUA benefits.[4] The Court therefore cannot find that the plaintiffs have shown a likelihood of success on the merits based on the provisions of that federal statute.

[4] Indeed, as the defendants point out in their objection, it seems that any such mandates would run afoul of the Tenth Amendment. See, e.g., Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 578 (2012) ("Permitting the Federal Government to force the States to implement a federal program would threaten the political accountability key to our federal system. Where the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision. Spending Clause programs do not pose this danger when a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds. In such a situation, state officials can fairly be held politically accountable for choosing to accept or refuse the federal offer." (cleaned up).)

Based on the foregoing analysis, the Court concludes that the plaintiffs have not demonstrated a likelihood of success on the merits of their claims because neither of the statutes on which they rely require the defendants to act. Having failed to make this vital showing, see Mottolo, 155 N.H. at 63, the plaintiffs' motion for a temporary restraining order and preliminary injunction is DENIED.[5] Moreover, because all of the plaintiffs' claims for relief are premised on flawed interpretations of RSA 282-A:127, I and 15 U.S.C. § 9021(c), the Court further finds that the plaintiffs cannot succeed on the merits of their claims as a matter of law. In other words, the plaintiffs have failed to state claims for which relief may be granted. The plaintiffs' complaint is therefore DISMISSED sua sponte. See Kennedy v. Titcomb, 131 N.H. 399, 402 (1989) (trial court may "dismiss an action sua sponte where the allegations contained in a writ do not state a claim upon which relief can be granted").[6]

So ordered.

Date: September 27, 2021



Hon. Jacalyn A. Colburn,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/27/2021

[5] Because the plaintiffs have failed to demonstrate a likelihood of success on the merits, the Court need not address the remaining preliminary injunction factors. See Cioppa, 695 F.3d at 152; Weaver, 984 F.2d at 12. In addition, the plaintiffs' motion to supplement the record, (see Court Doc. 11), is MOOT because the additional evidence the plaintiffs sought to submit with that motion has no bearing on the Court's interpretation of the two statutes at issue.

[6] It is not the Court's usual practice to dismiss an action sua sponte, particularly at this stage of the litigation. Here, however, there is no need to belabor this matter. The Court's decision to deny preliminary injunctive relief is premised entirely on the interpretation of the two statutes on which the plaintiffs stake their claims for relief. Because the interpretation of a statute is a question of law, the same analysis would apply if the Court were to consider whether the plaintiffs had stated claims for which relief may be granted under the typical motion to dismiss standard of review. Moreover, to the extent the plaintiffs disagree with the Court's statutory interpretation, they can now pursue an immediate appeal to the New Hampshire Supreme Court.