IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DORIS ANDERSON, by her guardian SUSAN LANCASTER, et al., Petitioners, vs. IDAHO DEPARTMENT OF HEALTH AND WELFARE, Respondent.	Case No. CV-OC-2011-24957 JUDGMENT

This Court having affirmed the decision of the agency on petition for judicial review,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the judgment is entered in favor of Idaho Department of Health and Welfare.

IT IS SO ORDERED.

Dated this 9th day of October 2013.

Kathryn A. Sticklen
Kathryn A. Sticklen
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of October 2013, I mailed (served) a true and correct copy of the within instrument to:

RICHARD ALAN EPPINK
HOWARD BELODOFF
IDAHO LEGAL AID SERVICES, INC.
310 NORTH FIFTH STREET
BOISE, ID 83702

CHARINA A. NEWELL
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CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DORIS ANDERSON, by her guardian SUSAN LANCASTER, et al.,	
Petitioners,	Case No. CV-OC-2011-24957
vs.	
IDAHO DEPARTMENT OF HEALTH AND WELFARE,	MEMORANDUM DECISION AND ORDER
Respondent.	

This is a petition seeking judicial review of a final order of the Idaho Department of Health and Welfare (the Department). For the reasons set forth hereinafter, the Department's decision will be affirmed.

FACTS AND PROCEDURAL BACKGROUND

The following factual summary is taken from the Department's (respondent's) brief and appears to be essentially undisputed:[1]

> The AABD [Aid to the Aged, Blind, and Disabled] program is a public assistance program, providing cash assistance for individuals who are sixty-five (65) or older, blind, or disabled. Eligible individuals receive a certain amount of cash each month to help pay for everyday living expenses. The

[1]Much of the same information is contained in the petitioners' opening brief. *See* Petitioners' Opening Brief, at 9-12 ("Background").

AABD cash benefits are an optional state supplementary payment,[2] and the program is funded solely with state general funds. In Idaho Code § 56-210,[3] the legislature authorized the Department to establish the benefit 'subject to the availability of funds for such assistance.' The program is governed by administrative rules promulgated by the Department, Division of Welfare. See IDAPA 16.03.05.500, *et seq.*

Due to a budget shortfall, the 2010 Idaho Legislature reduced the appropriation to the Division of Welfare by $45,738,500.00 for the 2011 fiscal year. As a result, the Department was forced to cut its operating expenses and personnel costs, however, those savings were not enough. The Department determined that a reduction in assistance paid for with state general funds was also necessary to meet its budget. The rules regarding the eligibility requirements for AABD benefits were modified so that all individuals who receive AABD benefits must also receive Social Security Income. The Department also capped the cash assistance for certain living arrangements and terminated the cash assistance for those who lived in a Certified Family Home (CFH). In summary, a single person meeting certain criteria may receive a maximum of $53 per month, a couple may receive a maximum of $20 per month, a resident of a semi-independent group home may receive a maximum of $169 per month and a person purchasing lodging and meals from someone who is not his or her parent, child or sibling may receive a maximum monthly payment of $198. For individuals living in a residential care or assisted living facility or in a CFH, AABD cash assistance is not available.

Prior to the rule change only some individuals living in CFHs were eligible for AABD cash. Individuals who received benefits under the Department's Aged and Disabled Waiver and lived in a CFH were not eligible to receive AABD cash assistance; however, individuals who received benefits under the Department's Home and Community Based Services Developmental Disability Waiver (DD Waiver) and lived in a CFH were eligible to receive AABD cash assistance. Other individuals who also receive benefits under the DD Waiver but live in other arrangements such as a supported living setting where they

[2]According to the Department, "[t]here is no federal funding for this program; it is something that the State of Idaho chose to provide. 'If a state chooses to administer such payment itself, it may establish its own criteria for determining eligibility requirements as well as the amounts." 20 CFR § 416.2005(c)." Respondent's Brief, at 1 n.2.

[3]"Amount of Assistance. (1) The amount of public assistance which any eligible person or family may receive shall be determined in accordance with the rules of the state department subject to the availability of funds for such assistance. (2) Old age assistance, aid to the blind and aid to the permanently and totally disabled shall be granted to a person who is needy as defined by the department and who meets the nonfinancial requirements of title XVI of the social security act. (3) The department may also increase or decrease the payment for groups of cases where the circumstances are specifically identified. The department shall be the single state agency for administration of public assistance programs or plans that receive federal funding." I.C. § 56-210.

live in their own home with support services coming to them, are not eligible for AABD cash assistance.

The Department took several steps in order to implement the rule change. In accordance with the Idaho Administrative Procedures Act, on May 4, 2010, the Division of Welfare published notice of temporary and proposed rules that change the eligibility requirements for the AABD cash assistance program in the State Administrative Bulletin. On June 2, 2010, the Department published the complete text and all related, pertinent information concerning its intent to change the AABD cash assistance rules in the latest publication of the state Administrative Bulletin.

The Department intended to implement the rule changes on July 1, 2010. In anticipation of that date, the Division of Welfare sent a letter to all CFH providers on April 29, 2010 explaining the upcoming changes to the AABD cash assistance program. On April 30, 2010, the Department issued a News Release explaining the changes. On or about May 10, 2010, the Department sent notices to recipients of AABD cash benefits explaining the reduction or termination of the cash assistance based on the rule changes. The Division of Welfare received a large number of questions about the notices and as a result determined it was necessary to provide recipients and, for the residents of CFHs, the CFH providers with a more detailed notice. Consequently, rather than implement the rule change on July 1, 2010, the Department decided to restore all AABD cash benefits and re-issue notices implementing the changes on September 1, 2010. A notice was sent to the AABD cash assistance recipients and a notice was sent to all CFH providers who had residents receiving benefits under the DD Waiver. The temporary rules were subsequently approved by the 2011 legislature, and as such, are now permanent rules.

On July 16, 2010, several individuals who were scheduled to have their AABD cash benefits terminated filed a Complaint against Dick Armstrong, the Director of the Department, in Federal District Court to challenge the Department's reduction of AABD benefits. The plaintiffs were seeking to represent others who had developmental disabilities, who lived in a CFH, and received AABD benefits under the old rule in a class action. The plaintiffs requested a temporary restraining order and preliminary injunction to prevent the Department from implementing the rule changes, alleging that the Department failed to provide actual and meaningful notice of the termination of benefits to members of the class. In his Order on Plaintiff's Motion for Temporary Restraining Order ('Order') entered on September 15, 2010, District Judge Lynn Winmill granted and denied the Plaintiff's motion in part. (Department's Combined Motions for Consolidation and Dismissal and Brief, Ex. A.) . . . The court held that individuals who lived with family-member CFH providers or those who had already filed an administrative appeal did receive adequate notice and thus, the court found no injunctive relief was

necessary for these individuals. Many of those individuals who were not subject to injunctive relief are part of this appeal.

In late August 2010, the Petitioners represented by Idaho Legal Aid Services ('Counsel') filed their motions for reversal and motion for release of petitioner names. On October 5, 2010, the Department filed its Combined Motions for Consolidation and Dismissal. Subsequently, the parties agreed upon a briefing schedule to address the Petitioner's motions for reversal. The motion to release the petitioner names was denied by the hearing officer after oral argument in an order entered March 17, 2011. Oral argument was held on the motions for reversal on April 12, 2011. These motions were denied by the hearing officer on May 4, 2011. After further briefing by both parties, the hearing officer heard oral argument in a live hearing on the Department's motion for consolidation and motion for dismissal on May 31, 2011. The hearing officer granted the motions for consolidation and dismissal on July 8, 2011. The request for review of preliminary order to the Director of the Department was filed on July 20, 2011.

After briefing by both the petitioners and the Department, the Director issued a Final Decision and Order upholding the cash benefit terminations. (A.R., p. 5865.) . . . he found that the petitioners' arguments regarding lack of personal jurisdiction were meritless. (A.R., p. 5868-69.) He also held that petitioner's objections to consolidation of their cases did not raise any constitutional issues regarding the right to coordinate legal strategy nor did petitioners cite any relevant authority for doing so. (A.R., p. 5869-70.) The Director also held that the notices were sufficient to apprise the petitioners of the nature of the Department's actions, and that the dismissals were appropriate. (A.R., p. 5870-71.)

Petitioners requested judicial review of the Final Decision and Order. (A.R., p. 5874.) After hearing the petitioners' motion for temporary stay of agency order, the district court entered an order requiring the cash benefits be paid to the petitioners pending the resolution of this judicial review. Respondent's Brief, at 1-5.

STANDARD OF REVIEW

The procedures concerning judicial review of Idaho state agency determinations are set forth in the Idaho Administrative Procedure Act, as noted hereinafter:

> (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279. I.C. § 67-5270.

In reviewing an agency's decision, an appellate court may not "substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Idaho Code § 67-5279(1). Instead, the court must defer "to the agency's findings of fact unless they are clearly erroneous." *Price v. Payette County Board of County Commissioners*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Bennett v. State*, 147 Idaho 141, 142, 206 P.3d 505, 506 (Ct. App. 2009).

Agency action must be affirmed on appeal unless the court determines that the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); *Bennett*, 147 Idaho at 142, 206 P.3d at 506. The party attacking the agency's decision bears the burden of demonstrating that the agency erred in a manner specified in section 67-5279(3) and that a substantial right has been prejudiced. *Price*, 131 Idaho at 429, 958 P.2d at 586; *Bennett*, 147 Idaho at 142, 206 P.3d at 506.

ANALYSIS

The petitioners assert the following contentions in this case: (1) due process requirements "set out in *Goldberg v. Kelly* . . . I.C. § 56-216, the Idaho Administrative Procedure Act, and IDAPA 16.05.03 . . . require a hearing before Idaho's AABD's public assistance payments can be terminated;" (2) the department ignored the constitutional and agency rules that place the burdens of production and proof on the State in AABD cash termination cases; (3) the department ignored

the rule that it "must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received;" (4) the department forced "assistance recipients into a catch-22 by ruling that filing an objection to a constitutionally inadequate notice amounts to waiver of that objection;"[4] and (5) contested cases cannot "be consolidated through a secret process by which the moving party does not have to tell the other party which cases are part of the motion." Petitioner's Opening Brief, at 8-9.

1. Hearing Requirement

The petitioners' first contention is "terminating assistance to the disabled without a hearing or any proof violates the Constitution, I.C. § 56-216, and IDHW rules . . . The Department dismissed these contested cases without giving the petitioners any opportunity to see the evidence against them, defend against that evidence, or submit any evidence of their own." *Id.*, at 14. The department asserts that the petitioners did not avail themselves of their opportunity for an evidentiary hearing concerning their individual eligibility status, per the new AABD eligibility rules.

In *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), "[t]he question [was] whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment." 90 S.Ct. at 1014.

Goldberg involved a proposed termination for cause of individual benefits based on allegations that the benefit recipients were not cooperating with the Department of Social Services. It does not involve a rule or statutory change that effects an across-the-board change in benefits, where due process is provided by the processes for amending or repealing rules or

[4]This appears to refer to the petitioners' "special appearance" contentions. (*See* pp. 15-16).

statutes, which is what happened here. The petitioners' sweeping interpretation of *Goldberg* and cases like it is unwarranted in the context of this case.

Even if the petitioners were entitled to the opportunity of a pre-termination evidentiary hearing, before their benefits were terminated, in compliance with procedural due process. However, as argued by the department, a review of the record reveals that they were afforded such an opportunity, but did not avail themselves of it.

The petitioners' case was before the Department for more than a year. The hearing officer specifically noted that "[a]lthough counsel for Legal Aid Services asserted a possibility existed that the Department may have erred in applying the rules to particular individuals, he did not confirm that there are actually instances, where this is the case. In fact, in a post-hearing submission, he did not comment on the Department's list[5] confirming the legal basis or rule applicability affecting each Petitioner he represents." Hearing Order Granting Department's Motion for Consolidation and Dismissal and Preliminary Order, at 5-6 (Agency Record, 5715-16 (Vol. XXIX)).[6]

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[5]The list is entitled "AABD Cash Fair Hearings Consolidation List (June 2, 2011) and provides the names of the petitioners and whether they were deemed ineligible for continued AABD benefits by the department due to "living arrangement," "no SSI," or "no SSI & living arrangement." Agency Record, at 6177-6178 (Vol. XXXI). Counsel for the petitioner did not assert, after receiving this list, as appeared to be the understanding at the hearing, that these determinations were incorrect and request an evidentiary hearing concerning this.

[6]The hearing officer dismissed the petitioners' appeal because "as the sole issue before the Hearing Officer was one regarding the changes in rules that affect the benefit amount or eligibility of these Petitioners, in accordance with IDAPA 16.05.03.205, the Petitioners' appeals will be dismissed." The hearing officer found that this was the sole issue because counsel for the petitioners failed to "comment on the Department's list confirming the legal basis or rule applicability affecting each Petitioner he represents." Hearing Order Granting Department's Motion for Consolidation and Dismissal and Preliminary Order, at 6 (Agency Record, 5716 (Vol. XXIX)).

Counsel for the petitioners argued during the hearing that there were individuals who might have been improperly terminated from receiving AABD benefits.[7] *See* Transcript of Hearing of May 31, 2011, at 8 ("This is a cut where specific individuals have specific factual circumstances . . . ."); 10 ("That's a factual issue for you . . . and that requires that the Department put on evidence and that my clients put on evidence, and so dismissing the case at this point leaves us without any of that evidence to determine those issues."); 11 ("[T]here will be folks up here testifying about very specific cases as to whether or not someone has received an SSI payment for a particular month . . . what living arrangements they were in . . .."); 12 ("I think there will be a significant number of cases where we will have factual issues related to a particular person's eligibility, whether they're eligibility is based on Rule 513 or 512, whether they received SSI in a particular month . . . we will need to have certain factual hearings in certain cases to determine whether or not there was an inadvertent eligibility determination by the Department.").

The Department was also amenable to holding such hearings. *See* Transcript of Hearing of May 31, 2011, 18-19 (Department's counsel's statements) ("So if there is some kind of dispute about living arrangements . . . it would be appropriate to have a hearing on that . . . I think he [counsel for the petitioner] would be in a position to know which of those clients are specifically challenging . . . if the Department made a mistake . . . that obviously should be corrected . . .."). *See also id.*, at 20 (petitioners' counsel's statements) ("I think we could probably get those lists together."); 21 (Department representative's statement) ("[W]e could do that in about 2 or 3 days

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[7]Pursuant to the new rule, "[o]nly a participant who receives an SSI payment for the month is eligible for an AABD cash payment in the same month. The AABD cash payment amount is based on the participant's living arrangement described in Subsections 514.01 through 514.04 of this rule." IDAPA 16.03.05.514. The rule goes on to set forth the maximum payment amounts for "single participants," "couple or participant living with essential person," "semi-independent group," and "room and board." "RALF and CFH. A participant described in Section 513 of these rules is not eligible for an AABD cash payment." IDAPA 16.03.05.514.05. The department notes, "[p]rior to this rule change, recipients living in a CFH could qualify for AABD cash benefits." Respondent's Brief, at 10. Consequently, in order to now be eligible for AABD cash payments, the prospective recipient must receive SSI payments for that month and must be in a qualifying living arrangement.

after today."); 21 (hearing officer "[t]hat sounds like that resolved the issue in terms of your question as those being identified. Does it not?") (counsel for the petitioners) ("It sounds like it."); 24 (hearing officer) ("Given that the Department has indicated that they can resolve and identify those particular cases that are . . . claiming that they are not in Certified Family Homes . . .").

The Department asserts that "[a]s a matter of strategy, counsel for petitioners chose not to challenge the evidence submitted by the Department at the time when it was appropriate for him to do so. (A.R. p. 6179)." Respondent's Brief, at 8. This references a June 7, 2011,[8] post-hearing, email in which counsel for the petitioner informs the hearing officer that he "had the chance to review the Department's allegations in the table . . . I have no objection to submission of the table into the record, but do want to make very clear that no petitioner is admitting or conceding any of the Department's allegations, or waiving the Department's burdens of production and proof, or making any other statement or act concerning those allegations at this time."[9] Agency Record, at 6179 (Vol. XXXI).

This case was before the Department for more than a year. The petitioners were afforded the opportunity to identify which individuals would be asserting their AABD benefits were being

[8]The hearing officer's decision was issued one month later, on July 7, 2011. *See* Hearing Order Granting Department's Motion for Consolidation and Dismissal and Preliminary Order, at 7 (Agency Record, at 5717 (Vol. XXIX)).

[9]Again, the hearing officer specifically stated, at the end of the hearing, "the Department has indicated that they can resolve and identify those particular cases that are . . . claiming . . . they are not in Certified Family Homes . . . you'll [the department] . . . disclose that to the Petitioners . . . once that submission is made . . . I'll issue a decision within thirty (30) days of that." Transcript of May 31, 2011 Hearing, at 24-25. Counsel for the petitioners then said "I would like an opportunity to go through that to make sure that we understand that and agree with the contentions. It wouldn't take that much longer . . . I would imagine I could get done by Tuesday . . .." *Id.*, at 25. The hearing officer then said "I've got the Department's submission, Friday the 3rd, and the 7th of June, Tuesday, for any clarifications from the Petitioners." *Id.*, at 26.

It appears, therefore, that the understanding of the parties and the hearing officer was that the Department would provide the list of the petitioners with the notations as to why they were deemed no longer eligible, by the department, to receive AABD benefits on June 3. The petitioners were then given until June 7 to submit the names of the individuals they wished to challenge as having been improperly deemed ineligible. The hearing officer would then issue her decision, thirty days later. The list was provided by the department. However, the petitioners did not provide the names of the individuals they believed were still eligible to receive benefits, nor did they request additional time to submit such a list. The hearing officer rendered her decision, thirty days later, as she said she would.

improperly terminated because they did not fit within the new eligibility requirements, when they actually did. The parties and the hearing officer all appeared to agree at the hearing that the petitioners would set forth the names of the individuals seeking "fair hearings," after receipt of the department's list. However, inexplicably, they did not do so, nor did they request additional time in which to do so.[10]

The petitioners also contend that they were entitled to a hearing prior to the termination of their benefits pursuant to I.C. § 56-216 and IDHW rules.

I.C. § 56-216 ("Appeal and Fair Hearing") states "[a]n applicant or recipient aggrieved because of the state department's decision or delay in making a decision shall be entitled to appeal to the state department in the manner prescribed by it and shall be afforded reasonable notice and opportunity for a fair hearing by the state department." As previously noted, the petitioners were afforded the opportunity for a hearing, but they did not fully avail themselves of the opportunity.

2. Burdens of Production and Proof

The petitioner next contends that "due process also places the burdens of production and proof entirely on the state, but IDHW was never required to prove anything." Petitioner's Opening Brief, at 18.

IDAPA 16.05.03.132 ("Burden of Proof – Individual Benefit Cases"), cited by the petitioners, along with other authority, provides that "the Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits . . .." However, the burden of proof is not relevant where, as here, the individual does not avail himself of the opportunity for an evidentiary hearing, in the first place.

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[10]The Court agrees with the Department "[i]f the petitioners disagreed with any of the information submitted to the hearing officer, they could have responded that the factual evidence was erroneous prior to the case dismissal and requested further evidentiary proceeding. Instead, they remained silent prior to the dismissals, which the hearing officer noted in her decision." Respondent's Brief, at 8.

3. 90 day Rule

The petitioners contend that "[t]he Department violated its own mandatory 90-day decision deadline." Petitioner's Opening Brief, at 20. Their argument is based upon IDAPA 16.05.03.204, which provides "[t]he Department must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received." However, the rule does not state what the remedy is for going past the deadline and the court also notes that this case, which involves some seventy named individuals, and thousands of pages of agency records, is not a simple case.

The petitioners assert that "these cases must be remanded to IDHW for further proceedings that ensure all petitioners are paid AABD Cash through the date that fair hearings are held . . .." Petitioner's Opening Brief, at 21. The rule provides for no such remedy. Rather, since there is no remedy specified for a violation of this rule and since the petitioners did receive a hearing and do not appear to have been prejudiced by any hearing delay,[11] the court finds that the petitioners are not entitled to the relief requested and it was certainly understandable that this case did not comply with these timelines, given its complexity.

4. Notice Rules[12]

The petitioners also contend that "[t]he Department did not comply with its own rules governing notice of termination. Those rules require that '(s)ervice of documents' in contested cases like these, 'will be made on the protection and advocacy system and the individual.' IDAPA

[11] *See* Respondent's Brief, at 12 n.3 ("Although the Department is entitled to recoupment of these additional payments, the Department will not be pursuing recoupment from the Petitioners in this matter . . . This was communicated to counsel during the underlying administrative proceedings."

[12] "Due process is not rigid, but should provide those procedures necessary to ensure meaningful notice and an opportunity to be heard, in light of the facts and circumstances." *Leitter v. Armstrong*, 2011 WL 573592, *2 (D. Id.) (citing *Mathews v. Eldridge*, 424 U.S. 319, 321, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Morrisey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)).

16.05.03.124.[13] They also require . . . that 'the Department will advise the individual or provider in writing of . . . the right to be represented.' IDAPA 16.05.03.100."[14] Petitioner's Opening Brief, at 21.[15]

The Department notes that the advocacy system that the petitioners contend should have received notice, but did not, is DisAbility Rights Idaho (DRI). The department also notes "DRI took the position in the *Leitter* federal case that it [was] unable to handle representation of the Petitioners." Respondent's Brief, at 13. *See Leitter v. Armstrong*, 2010 WL 3735674, *1 (D. Id.) ("Disability Rights Idaho (DRI) is Idaho's designated Protection and Advocacy System for people with disabilities . . . DRI is aware of the cuts to the AABD benefits, and has responded by referring affected individuals to legal aid."). The court agrees with the Department that is difficult to discern how this impacted petitioners' due process notice rights because the petitioners here were and are represented by counsel. The Court agrees that "[n]o harm has been shown by this omission" (Respondent's Brief, at 13) and this includes the petitioners' assertion that the Notices of Action failed to include a statement noting that they had a right to representation.

5. Special Appearances

The petitioners also contend that "[m]any of [them] entered special appearances, rather than general appeals, because they could not comprehend IDHW's deficient notice . . . [t]he special appearance is the conventional method . . . for contesting personal jurisdiction . . . [t]he

[13]"Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness are deemed to be represented by the state Protection and Advocacy System . . . and designated by the Governor . . .." IDAPA 16.05.03.124.

[14]"When a decision is appealable, the Department will advise the individual or provider in writing of the right and method to appeal and the right to be represented." IDAPA 16.05.03.100.

[15]The petitioners contend "[w]hen IDHW failed to provide notice according to its rules, it prejudiced [their] substantial right to access the federally established Protection and Advocacy System, funded for the petitioner's protection and vested with broad authority to enforce their rights . . . [l]ikewise, it prejudiced the petitioners' understanding of the rights afforded during this proceeding and the full opportunity to consider and select counsel. Accordingly, the dismissals must be set aside and the cases remanded to IDHW for issuance of adequate notice." Petitioner's Opening Brief, at 22-23.

hearing officer never decided those objections . . . because the special appearances identified jurisdictional problems, the hearing officer could not proceed to decide any other issues in the case without properly deciding the issues raised by the special appearances . . . these cases must be remanded to IDHW for proceedings to determine the petitioners' comprehension of the deficient notices." Petitioner's Opening Brief, at 23-25.

As noted by the Department, while the petitioners claim the hearing officer's statement was insufficiently reasoned, this assertion was also addressed in the department's final order, because the petitioners claimed that the hearing officer erred in her evaluation of their "special appearances."[16]

"Considering Petitioners themselves filed this action requesting relief from the Department and the Hearing Officer and then submitted, briefed, and argued substantive motions, it is difficult to understand how Petitioners would be entitled to relief under this argument. An objection to personal jurisdiction is typically raised by a defendant in a special appearance in civil litigation. Although Petitioners have glossed over their appeals as 'special appearances,' they have failed to articulate a legal theory was to why the Department or the Hearing Officer lacked jurisdiction over substantive motions they filed. Consequently, this finding by the Hearing Officer

[16]The hearing officer issued an "order denying petitioners' motions for reversal." In this order, the hearing officer found "[u]pon review of the notices and pleadings filed herein, pursuant to the U.S. Constitution, the Idaho Constitution, and Idaho Code § 56-216, this Hearing Officer hereby finds that the Department has provided reasonable notice, complying with the prerequisite conditions for the Hearing Officer to exercise Personal Jurisdiction over the Petitioners . . . The notices given by the Department to these Petitioners provided sufficient notice of the pending action, fairly advising the Petitioners of the subject matter and issue to be addressed, and sufficient to allow these Petitioners to prepare their defense to the action. These Petitioners all sought out and obtained Counsel, and will have representation throughout this process." Order, at 1-3 (Agency Record, at 6164-66) (Vol. XXXI). The hearing officer also noted the conclusion of the federal district court "that sufficient notice has been given to individuals who live with family members CFH providers, or who have already filed an appeal of the benefit reduction. As to these individuals, Plaintiffs are unlikely to prevail on the merits of the due process claim." *Id.*, at 3 (Agency Record, at 6166). "[B]y virtue of the fact that Petitioners have filed an administrative appeal, they have received sufficient notice." *Id.*, at 4 (*Id.*, at 6167). *See Leitter v. Armstrong*, 2010 WL 3735674, *3 (D. Id.) ("79 are reported to have filed appeals through the prescribed administrative process. By virtue of this fact, the Court finds that sufficient notice has been provided to these residents as well.").

does not require reversal." Final Decision and Order, at 4-5 (Agency Record, at 5868-69) (Vol. XXX).

The Court agrees that the petitioners' special appearance argument does not make a great deal of sense, under these circumstances. The federal court found the notices sufficient, as noted by the hearing officer. The petitioners initiated their action before the Department and they were represented by counsel, throughout that proceeding. The Court also notes that the administrative proceeding, concerning matters in which the petitioners contend they were deficiently notified about, generated more than six thousand pages of agency records.

6. Consolidation

The petitioners' final contention is "[t]he department asked to consolidate other cases with [their] cases for a single decision, but it refused to tell the petitioners which cases those were." Petitioner's Opening Brief, at 26. The petitioners assert that "[a]dequate notice of the nature of those cases is required to comport with Due Process." *Id.*[17]

Counsel for the petitioner asserts "[t]his consolidation procedure . . . resulted in almost constant ex parte communication between counsel and the hearing officer, as unrepresented

[17]The petitioners do not cite any authority for this proposition.

The petitioners also contend "[a] hearing on consolidation of unknown cases is not an opportunity to be heard in a 'meaningful manner.'" Petitioner's Opening Brief, at 26. However, in support of this proposition, they cite *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965), but that case is not directly applicable here. The other cases cited by the petitioners in support of their contentions here, *Teleglobe Communications Corp. v. BCE, Inc.*, 493 F.3d 345, 364 (3d Cir. 2007); *Matthews v. Harney County, Oregon, School District 4*, 819 F.2d 889, 893 (9th Cir. 1987); *Clark v. State*, 306 Md. 483, 510 A.2d 243, 245-46 (1986); and *Chahoon v. Commonwealth*, 21 Gratt. 822, 1871 WL 4931 (Va. 1871) and *Case v. Redfield*, 5 F.Cas. 258 (Ind. C.C.D. 1849), also are not cases which appear to be directly relevant to the circumstances here.

petitioners were excluded from, and given no notice of, prehearing conferences and email discussions involving the hearing officer." *Id.*[18]

It is not clear to the Court what counsel's basis for authority is to assert issues on behalf of "unrepresented petitioners." It is also unclear how consolidation "prejudiced all of the petitioners and prevented them from exercising their constitutional right to coordinate preparation of their cases."[19] The petitioners have not specified how they were prejudiced by any lack of coordination of these cases, nor have they demonstrated that they possess a constitutional right to coordination of cases. Petitioner's Opening Brief, at 26.[20] (*See, e.g.,* p. 16, n.18).

In addition, during the hearing, counsel for the petitioners argued that consolidation "makes a whole lot of sense . . . it would lessen the administrative burden on not only myself and my clients, and I'm sure [the department] . . . the Hearing Officer and everyone involved in this case as well, to consolidate certain aspects of this case . . . So, should we consolidate? Yes . . .." Transcript of May 31, 2011 Hearing, at 10-11.

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[18]In her decision, the hearing officer stated "[a]s part of the May 4, 2011 Order, Petitioners were given an opportunity to submit a written objection to the Department's October 5, 2010, Combined Motions for Consolidation and Dismissal. The only written objection to the Department's Motion received by this Hearing Officer was submitted by Idaho Legal Aid Services, on behalf of seventy (70) of the Petitioners. In accordance with this Hearing Officer's previous decision issued March 17, 2011, on May 23, 2011, this Hearing Officer sent a redacted copy of counsel's written objection to all of the forty (40) unrepresented Petitioners. On May 23, 2011, the Department submitted a written reply to this Hearing Officer." Hearing Order Granting Department's Motion for Consolidation and Dismissal and Preliminary Order, at 1-2 (Agency Record, at 5711) (Vol. XXIX).

[19]The petitioners also assert "consolidation in secret prejudiced the petitioners' substantial right to Due Process and to meaningfully respond to the State's motions in their cases, these cases must be remanded so that the consolidation motion can be reconsidered once all parties know its scope." Petitioners' Opening Brief, at 27. However, the department notes, pursuant to its "rules regarding disclosure of participant information, the Department is bound to keep health and other confidential information private unless a consent or authorization is given." Respondent's Brief, at 17 (citing IDAPA 16.05.01.75) ("Use and disclosure of confidential information.").

[20]In its motion, the department argued, for administrative economy reasons, for consolidation. The department cited IDAPA 16.05.03.108 ("Consolidated Hearing. When there are multiple appeals or a group appeal involving the same change in law, rules, or policy, the hearing officer will hold a consolidated hearing."), noting "the administrative appeals filed by Petitioners are all related to the change in rules regarding AABD cash benefits." Combined Motions for Consolidation and Dismissal and Brief in Support, at 5 (Agency Record, at 5973).

7. Attorney Fees

The petitioners have requested "an award of their costs. They also request an award of reasonable attorneys fees for the work of their counsel, under I.C. § 12-117(1) and (2)." Petitioner's Opening Brief, at 9. However, they are not the prevailing parties and, therefore, are not entitled to such an award.

CONCLUSION

In view of the foregoing, the court hereby affirms the department's final decision in this case.

SO ORDERED AND DATED THIS 9th day of October 2013.

Kathryn A. Sticklen
Kathryn A. Sticklen
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the parties of record in this cause in envelopes addressed as follows:

RICHARD ALAN EPPINK
HOWARD BELODOFF
IDAHO LEGAL AID SERVICES, INC.
310 NORTH FIFTH STREET
BOISE, ID 83702

CHARINA A. NEWELL
DEPUTY ATTORNEY GENERAL
CONTRACTS & ADMINISTRATIVE LAW DIVISION
450 WEST STATE STREET, 10TH FLOOR
PO BOX 83720
BOISE, ID 83720-0036

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: 10-10-13

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GARY JOHNSON, by his next friend BONNIE SCHERER, Petitioners, vs. IDAHO DEPARTMENT OF HEALTH AND WELFARE, Respondent.	Case No. CV-OC-2012-03565 JUDGMENT

This Court having affirmed the decision of the agency on petition for judicial review,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the judgment is entered in favor of Idaho Department of Health and Welfare.

IT IS SO ORDERED.

Dated this 9th day of October 2013.

Kathryn A. Sticklen

Kathryn A. Sticklen
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of October 2013, I mailed (served) a true and correct copy of the within instrument to:

RICHARD ALAN EPPINK
HOWARD BELODOFF
IDAHO LEGAL AID SERVICES, INC.
310 NORTH FIFTH STREET
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CHARINA A. NEWELL
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CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GARY JOHNSON, by his next friend BONNIE SCHERER, Petitioners, vs. IDAHO DEPARTMENT OF HEALTH AND WELFARE, Respondent.	Case No. CV-OC-2012-03565 MEMORANDUM DECISION AND ORDER

This is a petition seeking judicial review of a final order of the Idaho Department of Health and Welfare (the Department). For the reasons set forth hereinafter, the Department's decision will be affirmed.

FACTS AND PROCEDURAL BACKGROUND

The following factual summary is taken from the Department's (respondent's) brief and appears to be essentially undisputed (some internal citations omitted):[1]

> The AABD [Aid to the Aged, Blind, and Disabled] program is a public assistance program, providing cash assistance for individuals who are sixty-five (65) or older, blind, or disabled. Eligible individuals receive a certain amount of cash each month to help pay for everyday living expenses. The

[1]Much of the same information is contained in the petitioners' opening brief. *See* Petitioners' Opening Brief, at 9-12 ("Background").

AABD cash benefits are an optional state supplementary payment,[2] and the program is funded solely with state general funds. In Idaho Code § 56-210,[3] the legislature authorized the Department to establish the benefit 'subject to the availability of funds for such assistance.' The program is governed by administrative rules promulgated by the Department, Division of Welfare. *See* IDAPA 16.03.05.500, *et seq.*

Due to a budget shortfall, the 2010 Idaho Legislature reduced the appropriation to the Division of Welfare by $45,738,500.00 for the 2011 fiscal year. As a result, the Department was forced to cut its operating expenses and personnel costs, however, those savings were not enough. The Department determined that a reduction in assistance paid for with state general funds was also necessary to meet its budget. The rules regarding the eligibility requirements for AABD benefits were modified so that all individuals who receive AABD benefits must also receive Social Security Income. The Department also capped the cash assistance for certain living arrangements and terminated the cash assistance for those who lived in a Certified Family Home (CFH).[4] In summary, a single person meeting certain criteria may receive a maximum of $53 per month, a couple may receive a maximum of $20 per month, a resident of a semi-independent group home may receive a maximum of $169 per month and a person purchasing lodging and meals from someone who is not his or her parent, child or sibling may receive a maximum monthly payment of $198. For individuals living in a residential care or assisted living facility or in a CFH, AABD cash assistance is not available.

Prior to the rule change only some individuals living in CFHs were eligible for AABD cash. Individuals who received Medicaid benefits under the Department's Aged and Disabled Waiver and lived in a CFH were not eligible to receive AABD cash assistance; however, individuals who received benefits under the Department's Home and Community Based Services Developmental Disability Waiver (DD Waiver) and lived in a CFH were eligible to receive AABD cash assistance. Other individuals who also receive Medicaid benefits

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[2]According to the department, "[t]here is no federal funding for this program; it is something that the State of Idaho chose to provide. 'If a state chooses to administer such payment itself, it may establish its own criteria for determining eligibility requirements as well as the amounts." 20 CFR § 416.2005(c)." Respondent's Brief, at 1 n.2.

[3]"Amount of Assistance. (1) The amount of public assistance which any eligible person or family may receive shall be determined in accordance with the rules of the state department subject to the availability of funds for such assistance. (2) Old age assistance, aid to the blind and aid to the permanently and totally disabled shall be granted to a person who is needy as defined by the department and who meets the nonfinancial requirements of title XVI of the social security act. (3) The department may also increase or decrease the payment for groups of cases where the circumstances are specifically identified. The department shall be the single state agency for administration of public assistance programs or plans that receive federal funding." I.C. § 56-210.

[4]*See* IDAPA 16.03.19.010.07 ("Certified Family Home. A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence."). *See also Knapp v. Armstrong*, 2012 WL 640890 (D. Id.) (for a general explanation of the Certified Family Home provider program).

under the DD Waiver but live in other arrangements such as a supported living setting where they live in their own home with support services coming to them, are not eligible for AABD cash assistance.

The Department took several steps in order to implement the rule change. In accordance with the Idaho Administrative Procedures Act . . . on May 4, 2010, the Division of Welfare published notice of temporary and proposed rules that change the eligibility requirements for the AABD cash assistance program in the State Administrative Bulletin. On June 2, 2010, the Department published the complete text and all related, pertinent information concerning its intent to change the AABD cash assistance rules in the latest publication of the state Administrative Bulletin. The temporary rules were subsequently approved by the 2011 legislature, and as such, are now permanent rules.

The Department intended to implement the rule changes on July 1, 2010. In anticipation of that date, the Division of Welfare sent a letter to all CFH providers on April 29, 2010 explaining the upcoming changes to the AABD cash assistance program. On April 30, 2010, the Department issued a News Release explaining the changes. On or about May 10, 2010, the Department sent notices to recipients of AABD cash benefits explaining the reduction or termination of the cash assistance based on the rule changes. The Division of Welfare received a large number of questions about the notices and as a result determined it was necessary to provide recipients and, for the residents of CFHs, the CFH providers with a more detailed notice. Consequently, rather than implement the rule change on July 1, 2010, the Department decided to restore all AABD cash benefits and re-issue notices implementing the changes on September 1, 2010. A notice was sent to the AABD cash assistance recipients and a notice was sent to all CFH providers who had residents receiving benefits under the DD Waiver.

On July 16, 2010, several individuals who were scheduled to have their AABD cash benefits terminated filed a Complaint against Dick Armstrong, the Director of the Department, in Federal District Court to challenge the Department's reduction of AABD benefits. The plaintiffs were seeking to represent others who had developmental disabilities, who lived in a CFH, and received AABD benefits under the old rule in a class action. The plaintiffs requested a temporary restraining order and preliminary injunction to prevent the Department from implementing the rule changes, alleging that the Department failed to provide actual and meaningful notice of the termination of benefits to members of the class. In his Order on Plaintiff's Motion for Temporary Restraining Order ('Order') entered on September 15, 2010, District Judge Lynn Winmill granted and denied the Plaintiff's motion in part. . . . The court held that individuals who lived with family-member CFH providers or those who had already filed an administrative appeal did receive adequate notice and thus, the court found no injunctive relief was necessary for

these individuals. Once notice was sent out to these individuals, the appeals applicable to this matter were filed.

In July 2011, the hearing officer consolidated 39 appeals pursuant to IDAPA 16.05.03.108, because the appeals arose from a change in Rule 514 of IDAPA 16.03.05. The Department moved for dismissal of these appeals under IDAPA 16.05.03.205 on the ground that the sole issue was the amendment Rule 514. After the motion was briefed and argued and by the parties, the hearing officer granted and denied the motion in part. He dismissed 17 of the appeals, finding that the issues relevant on appeal were whether the appellants in a CFH and whether they were also receiving Supplemental Security Income (SSI) benefits. The 25 appeals that remained had raised factual dispute as to whether the rule change applied to them. On September 16, 2011, the hearing officer issued a decision granting the Department's motion for summary judgment and dismissing the appeals, finding that no material fact was in dispute. AR, 227.

After some of these petitioners appealed the preliminary decision, the Department issued a Final Decision and Order upholding the cash benefit terminations. (AR, 299). In a petition for review of a preliminary order issued by a hearing officer, the Director is required to exercise all decision-making power he would have had if he presided over the administrative proceedings. IDAPA 16.05.03.150. Here, the Final Decision and Order first held that the summary judgment proceedings were appropriate to resolve the underlying administrative appeals. (AR, 300). Furthermore, the Director held that the hearing officer had no authority to invalidate the changes to IDAPA 16.03.05.514. Finally, the Director held that the hearing officer correctly limited the evidence presented to him and that he had correctly interpreted IDAPA 16.03.05.514. (AR, 302).

Petitioners requested judicial review of the Final Decision and Order. (AR, 305). Respondent's Brief, at 2-6.

STANDARD OF REVIEW

The procedures concerning judicial review of Idaho state agency determinations are set forth in the Idaho Administrative Procedure Act, as noted hereinafter:

(1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.

> (3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279. I.C. § 67-5270.

In reviewing an agency's decision, an appellate court may not "substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Idaho Code § 67-5279(1). Instead, the court must defer "to the agency's findings of fact unless they are clearly erroneous." *Price v. Payette County Board of County Commissioners*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Bennett v. State*, 147 Idaho 141, 142, 206 P.3d 505, 506 (Ct. App. 2009).

Agency action must be affirmed on appeal unless the court determines that the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); *Bennett*, 147 Idaho at 142, 206 P.3d at 506. The party attacking the agency's decision bears the burden of demonstrating that the agency erred in a manner specified in section 67-5279(3) and that a substantial right has been prejudiced. *Price*, 131 Idaho at 429, 958 P.2d at 586; *Bennett*, 147 Idaho at 142, 206 P.3d at 506.

ANALYSIS

The petitioners assert the following contentions in this case: (1) "state agency rules do not preempt federal statutes;" (2) "because witness confrontation and oral presentation must be available in welfare termination cases, administrative 'summary judgment' procedures that eliminate those rights are improper;" and (3) "when an agency rule says that 'eligibility' is determined under a specific section, eligibility must be determined under that section." Petitioner's Opening Brief, at 2.

1. State Agency Rules/Preemption

The petitioners first contention is that "state agency rules do not preempt federal statutes." Id. Specifically, they assert that "IDHW [Idaho Department of Health and Welfare] would violate the federal Americans with Disabilities Act (ADA)[5] and Fair Housing Act, as well as I.C. §§ 66-401 through 66-417, by terminating AABD Cash payments to these especially vulnerable petitioners." *Id.*, at 10.[6]

The petitioners raised this assertion at the administrative level. There, the department found "[t]he hearing officer had no authority to determine that the rule changes violate the ADA and the FHA . . . IDAPA 16.05.03.131 provides, in relevant part, that . . . [n]o hearing officer has the jurisdiction to invalidate any federal or state statute, rule, regulations, or court order. The hearing officer must defer to the Department's interpretation of statutes, rules, regulations, or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion." Final Decision and Order, at 3 (Agency Record, at 301). "Based upon this rule, the Hearing Officer correctly determined that the ADA and FHA are not relevant to the Department's application of the rule change because they are not at all implicated by the AABD cash benefits eligibility requirements. One need only live in the required living arrangement and be receiving SSI payments. The ADA and FHA are irrelevant and Appellant's argument is an attempt to

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[5]The applicable portion of the ADA provides "'subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity . . . Title II's definition section states that 'public entity' includes 'any State or local government' and 'any department, agency, (or) special purpose district' . . . The same section defines 'qualified individual with a disability' as 'an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.'" *Olmstead v. Zimring*, 527 U.S. 581, 119 S.Ct. 2176, 2182, 144 L.Ed.2d 540 (1999).

[6]The petitioners have not specifically argued how the AABD benefits eligibility rule change violated I.C. §§ 66-401 – 66-417. In addition, they have not specifically explained here how the rules change violated the ADA and the FHA.

invalidate the rule itself, which, according to IDAPA 16.05.03.131, is not within the Hearing Officer's jurisdiction. *Wheeler v. IDHW*, 147 Idaho 257, 265 (2009)." *Id.*

As noted by the department, *Wheeler* supports its position and not the petitioners. In *Wheeler v. Idaho Department of Health and Welfare*, 147 Idaho 257, 207 P.3d 988 (2009), the Idaho Supreme Court reviewed the relevant language in IDAPA 16.05.03.131[7] and found that "Wheeler fails to perceive the difference between the hearing officer reviewing the Department's conduct under existing law versus the hearing officer invalidating the Department's authority to act altogether. Pursuant to IDAPA 16.05.03.131, a hearing officer may determine whether the Department misinterpreted a statute, rule, regulation, or policy, as written; and/or whether the Department exceeded its bounds of discretion under existing law. Neither of these functions requires a hearing officer to invalidate a statute, rule, regulation, or court order; thus, the provisions of IDAPA 16.05.03.131 are consistent." 147 Idaho at 265, 207 P.3d at 996.

The hearing officer specifically noted that while he "has authority to review the Department's 'interpretation' of rules and statutes to the extent that the 'interpretation' is 'contrary to statute or an abuse of discretion' . . . such authority is limited only to the 'Department's 'interpretations' of the law, not its enactment or amendment of administrative rules. The hearing officer is constrained to follow the administrative rules as they are enacted, and has no discretion to grant relief that is inconsistent with the rules." Decision & Preliminary Order Regarding Motion to Dismiss, at 4, (Agency Record, at 191).

Pursuant to IDAPA 16.05.03.131 and the Idaho Supreme Court's decision in *Wheeler*, the court finds that the hearing officer did not err in concluding that he was without authority to, as the petitioners sought, to invalidate the department's change in the AABD eligibility rules on the

[7]"No hearing officer has the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer must defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion."

basis that the rules change violates the ADA and the FHA.[8]

2. Summary Judgment

The petitioners next contend that "[b]ecause witness confrontation and oral presentation must be available in welfare termination cases, administrative 'summary judgment' procedures that eliminate those rights are improper," citing *Goldberg v. Kelly*.[9] Petitioner's Opening Brief, at

[8]The petitioners also note "[a]s an alternative ruling, which the Director affirmed, IDHW's hearing officer determined that he 'fail(ed) to see any incongruity with the Americans with Disabilities Act and the Fair Housing Act' in the AABD Cash terminations . . .." Petitioner's Opening Brief, at 15. The petitioners assert "to apply federal statutes, IDHW must actually take evidence on those issues." *Id.*

The court declines to address the hearing officer's alternative ruling, since it is unnecessary. The court does note, as it has previously, that the petitioners have failed to explain here how the rules change specifically violates either the ADA or the FHA.

[9]In *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970), "[t]he question [was] whether a State that terminates public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to termination denies the recipient procedural due process in violation of the Due Process Clause of the Fourteenth Amendment." 90 S.Ct. at 1014. The case was brought by New York City residents "receiving financial aid under the federally assisted program of Aid to Families with Dependent Children (AFDC) or under New York State's general Home Relief program. Their complaint alleged that the New York State and New York City officials administering these programs terminated, or were about to terminate, such aid without prior notice and hearing, thereby denying them due process of law." *Id.* The Court noted that public assistance "[b]enefits are a matter of statutory entitlement for persons qualified to receive them. Their termination involves state action that adjudicates important rights." *Id.*, at 1017. "[S]ome governmental benefits may be administratively terminated without affording the recipient a pre-termination evidentiary hearing . . . when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process." *Id.*, at 1018. This is because of "the crucial factor . . . not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended . . . that termination of aid pending resolution of a controversy over eligibility of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare." *Id.*, at 1018-19. "[I]mportant governmental interests are promoted by affording recipients by affording recipients a pre-termination evidentiary hearing." *Id.*, at 1019. "[T]he pre-termination hearing need not take the form of a judicial or quasi-judicial trial . . . the pre-termination hearing has one function only: to provide an initial determination of the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits." *Id.*, at 1020. "The hearing must be 'at a meaningful time and in a meaningful manner' . . . these principles require that a recipient have timely and adequate notice detailing the proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases." *Id.*, at 1020. "The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard . . . a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence . . . recipients must . . . be given an opportunity to confront and cross-examine the witnesses relied on by the department . . . the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing." *Id.*, at 1021-22.

16.

The petitioners raised this assertion before at the agency level. The hearing officer noted that "[t]he Department has enacted specific rules that govern contested cases, found at IDAPA 16.05.03. Section 105 of those rules specifically provides for the disposition of a case by summary judgment: 'Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction' . . . This hearing officer lacks any authority to declare that section 105 is invalid, and thus cannot conclude that summary judgment is not a proper tool in resolving a contested case . . . Summary judgment in contested cases is a means by which written evidence is presented to the hearing officer, which will expedite the resolution of the case . . . In this particular case, the presentation of written evidence will not prejudice the parties because there is no dispute over the material facts."[10] Decision Regarding Motion for Summary Judgment & Preliminary Order, at 7 (Agency Record, at 233).

The court finds that the hearing officer did not err in concluding that a summary judgment evidentiary hearing procedure was appropriate here. First, as was the case with the petitioners' ADA and FHA assertions, the hearing officer is without authority to decide that the IDAPA rule allowing for summary judgment procedures in contested cases (IDAPA 16.05.03.105) is invalid. Moreover, here, as noted by the hearing officer, there were no factual disputes and this was not a situation, such as in *Goldberg*, where there were factual issues involved. This is also not a situation involving termination of "the very means to live," which was the case in *Goldberg* (*see* n.9, supra). Rather, it is a situation where supplemental benefits were being cut. As noted by the department, "the *Goldberg* standard applies to actions affecting individual fact-based adverse

[10]"Appellants . . . assert that they have been denied their rights to confront and cross-examine witnesses relied upon by the Department. However, when given the opportunity to present evidence on their own behalf, none of them contested the fact that they live in a CFH." Final Decision and Order, at 300-301.

actions . . . *Goldberg* applies to cases in which recipients have challenged proposed terminations based on incorrect or on misapplication of rules or policies to the facts of the particular cases." *Ireson v. Chater*, 899 F.Supp. 446, 451 (N.D. Cal. 1995). *See also Eidson v. Pierce*, 745 F.2d 453, 461 (7th Cir. 1984) ("In *Goldberg* and numerous other public benefit cases . . . A hearing would . . . be an effective remedy for the individual because it would provide a reliable means for resolving disputed facts entitling the person to benefits . . . In addition, *Goldberg*-style hearings in public benefit programs are aimed in part at ensuring that benefits are distributed to the right people. The hearings thus protects both the interests of eligible beneficiaries and the public interest in implementing policies accurately . . . As the Supreme Court has applied *Goldberg*, '(h)earings are not to be conferred as a right unless they would have significant probability of enhancing accurate policy implementation.").

It appears that *Goldberg* is not even applicable in this case. *Goldberg* involved a proposed termination for cause of individual benefits based on allegations that the benefit recipients were not cooperating with the Department of Social Services. It does not involve a rule or statutory change that effects an across-the-board change in benefits, where due process is provided by the processes for amending or repealing rules or statutes, which is what happened here. The petitioners' sweeping interpretation of *Goldberg* and cases like it is unwarranted in the context of this case.

3. Eligibility Determination

The petitioners' final assertion is "when an agency rule says that 'eligibility' is determined under a specific section, eligibility must be determined under that section." Petitioner's Opening Brief, at 19. The petitioners' argument here is based upon the wording of the applicable administrative rules, at the time of their case before the department.

IDAPA 16.03.05.514.05 now provides "[a] participant residing in a RALF or CFH is not eligible for an AABD cash payment." Previously, the rule stated "[a] participant described in Section 513 of these rules residing in a RALF or CFH is not eligible for an AABD cash payment." *See* Idaho Administrative Bulletin, November 3, 2010 – Vol. 10-11, p. 87.

The petitioners' assertion was raised before the department. The hearing officer noted:

> [S]ubsection 514 .05 of IDAPA 16.03.05 expressly excludes from eligibility all participants who are 'described in Section 513 of these rules.' IDAPA 16.03.05.514.05. The Department contends that section 513 describes all participants who live in a CFH. Appellants argue that section 513 describes all participants who live in a CFH. Appellants argue that section 513 addresses only CFH residents who also require State Plan Personal Care Services (PSC) or who live in a CFH operated by a relative. The eligibility of other CFH residents, they argue, is governed by Section 512 . . .
>
> The conflicting interpretations of sections 513 and 514 require the hearing officer to review those rules and determine/construe their meaning . . .
>
> In this case, the hearing officer is presented with two conflicting interpretations of section 513 and subsection 514.05 of IDAPA 16.03.05 . . . On its face, subsection 514.05 does not appear to be susceptible to more than one reasonable construction. The Appellants impliedly argue that subsection 514 .05 should be understood to mean that a participant's eligibility for AABD benefits is determined in accordance with section 513. Such an interpretation of subsection 514.05 is not supported by the plain language of the rule. The rule merely requires that the participant be 'described' in section 513. If a participant is 'described in section 513,' then the participant cannot qualify for AABD cash benefits . . .
>
> Next, the hearing officer must consider the plain language of Section 513 to determine which participants it 'describes' . . .
>
> [S]ection 513 'describes' all participants who reside in a CFH, regardless of whether they receive PCS or whether the CFH is operated by a relative . . . Section 513 clearly 'describes' any participant who lives in a CFH, not only those who need PCS or those who live in a CFH operated by a family member . . . the Appellants are 'participants described in Section 513,' they fall within the category of participants who are disqualified from AABD cash payments by subsection 514.05. Decision Regarding Motion for Summary Judgment &

Preliminary Order, at 234-38.[11]

"Where an agency interprets a statute or rule, this Court applies a four-pronged test to determine the appropriate level of deference to the agency interpretation. This Court must determine whether: (1) the agency is responsible for administration of the rule in issue; (2) the agency's construction is reasonable; (3) the language of the rule does not expressly treat the matter at issue; and (4) any of the rationales underlying the rule of agency deference are present. There are five rationales underlying the rule of deference: (1) that a practical interpretation of the rule exists; (2) the presumption of legislative acquiescence; (3) reliance on the agency's expertise in interpretation of the rule; (4) the rationale of repose; and (5) the requirement of contemporaneous agency interpretation." *Duncan v. State Board of Accountancy*, 149 Idaho 1, 3, 232 P.3d 322, 324 (2010). (citations omitted).

The Court finds that the Department is responsible for administration of the rules at issue here and the department's construction of the relevant rules is reasonable and practical.[12] As noted by the hearing officer, it is reasonable to view the phrase "[a] participant described[13] in Section 513

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[11]"Appellants assert that the Hearing Officer misinterpreted the meaning of 'eligibility' and thus misapplied the rules to Appellants. This argument, however, lacks merit because IDAPA 16.03.05.513 and .514 are clear and unambiguous. According to those rules, a participant could be terminated from receiving AABD cash benefits based upon his or her living arrangement or for not receiving SSI, or both . . . Appellants' attenuated argument based upon Rule 513 subsections 01-03 is inapplicable because they are not factored in at all under the Rule 514 eligibility analysis. Rules 16.04.05.513 and .514 are clear and references to subsections 01-03 are irrelevant." Final Decision and Order, at 302.

[12]"The cardinal rule of statutory construction is that where a statute is plain, clear and unambiguous, we are constrained to follow that plain meaning and neither add to the statute nor take away by judicial construction. Statutory interpretation always begins with an examination of the literal words of the statute. Unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute. We must give the words their plain, usual and ordinary meaning, and there is no occasion for construction where the language of a statute is unambiguous. We furthermore must give every word, clause and sentence effect, if possible." *Poison Creek Publishing, Inc. v. Central Idaho Publishing, Inc.*, 134 Idaho 426, 429, 3 P.3d 1254, 1257 (2000).

[13]Describe is defined as "to represent or give an account of in words." http://www.merriam-webster.com/dictionary/describe

of these rules"[14] as "dependent only upon whether or not the participant is 'described' in section 513, not whether the participant is eligible for the separate allowances provided for in section 513," (Decision Regarding Motion for Summary Judgment & Preliminary Order, at 111) (Agency Record, at 237).[15] If this language was intended to mean, as the petitioners argue, that that only participants who were receiving the specific benefits (home allowances) or living in CFH operated by relatives set forth in section 513 were "not eligible for an AABD cash payment," it would have been easy enough for the language to have been more clearly worded to specify this, such as by stating "a participant receiving the allowances or living in a CFH operated by a relative set forth in Section 513 is not eligible for an AABD cash payment" or similar language. The petitioners' contention also fails to explain the preliminary language in 16.03.05.513 "describing" the "basic allowance" for "[a] participant living in a . . . RALF or a . . . CFH."

4. Attorney Fees

The petitioners have requested an award of their costs and attorney fees. However, that request is denied, since they are not the prevailing party.

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[14]*See* IDAPA 16.03.05.513 ("Residential Care or Assisted Living Facility and Certified Family Home Allowances. A participant living in a Residential Care or Assisted Living Facility (RALF) . . . or a Certified Family Home (CFH) . . . is budgeted a basic allowance of seventy-seven dollars ($77) monthly . . . A participant is budgeted a monthly allowance for care based on the level of acre received as described in Section 515 of these rules. If the participant does not require State Plan Personal Care Services (PCS), his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules . . . Table 513.02 – State Plan PCS Care Levels and Allowances as of 1-1-06 . . . CFH operated by relative . . .").

[15]The Court agrees with the Department, that "the subsections of Rule 513 . . . are not relevant to eligibility for Rule 514. These subsections simply describe the separate qualifications for the RALF and CFH home allowances; they are totally separate and apart from AABD cash benefits in Rule 514." Respondent's Brief, at 13.

CONCLUSION

In view of the foregoing, the court hereby affirms the Department's final decision in this case. The petitioners' request for attorney fees is denied.

IT IS SO ORDERED.

Dated this 9th day of October 2013.

Kathryn A. Sticklen
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the parties of record in this cause in envelopes addressed as follows:

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CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: 10-10-13

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY