

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

JONATHAN PAUL BOYD,)	
)	
Plaintiff,)	
)	Civil Action Number:
v.)	
)	2:10-cv-00688-MEF-TFM
CAROL H. STECKEL,)	
in her official capacity as Commissioner)	
of the Alabama Medicaid Agency,)	
)	
Defendant.)	

ANSWER TO PLAINTIFF’S AMENDED COMPLAINT (DOC. 14)

The Honorable Carol H. Steckel, in her official capacity as Commissioner of the Alabama Medicaid Agency, submits the following answer to the Plaintiff’s Amended Complaint (doc. 14):

Response to Numbered Paragraphs

1. Admitted.
2. Admitted.
3. Defendant admits that the Plaintiff lived at home with his mother and stepfather for a time after his accident, that he received certain waiver services at some point when he lived at home, and that he is now in a nursing home facility. Defendant does not have sufficient information to admit or deny any allegation concerning the reasons for which Plaintiff and/or his family chose that he would be admitted to the nursing home, and Defendant therefore denies the remaining allegations in paragraph 3.
4. Defendant admits that the Plaintiff wishes to receive services that would permit him to live outside the nursing home. Defendant denies that he is entitled to relief.

Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 4, and therefore denies those allegations.

5. Admitted.

6. Defendant admits that Medicaid pays for Plaintiff's care in a nursing home, that Plaintiff has requested waiver services, and that he is on the referral list for a specific waiver program (the "SAIL Waiver"). Defendant denies that there is a single "waiting list" for all the separate waiver programs operated in Alabama, denies that he is on the referral list for other waiver programs, and denies the remaining allegations in paragraph 6.

7. Denied.

8. Defendant admits that Plaintiff accurately quotes selected sections of the ADA. Defendant denies the remaining allegations in paragraph 8.

9. Defendant admits that Plaintiff seeks declaratory and injunctive relief. Defendant denies that Plaintiff is entitled to any relief and denies the balance of the allegations of paragraph 9.

10. Defendant contests subject-matter jurisdiction to the extent that Plaintiff lacks standing, his claims are moot, his claims are not yet ripe, or that he makes a claim pursuant to State law.

11. Admitted.

12. Defendant admits that she is the Commissioner of the Alabama Medicaid Agency; that she is sued in her official capacity; that the Alabama Medicaid Agency is responsible for administering Alabama's Medicaid program; that she is responsible for the oversight, supervision, and control of the Alabama Medicaid Agency and its

divisions; and, that she is ultimately responsible for ensuring that Alabama's Medicaid services are provided in conformity with federal law. Defendant denies the balance of the allegations of paragraph 12.

13. Admitted.

14. Admitted.

15. Admitted.

16. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 16; therefore, Defendant denies those allegations.

17. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 17; therefore, Defendant denies those allegations.

18. Admitted.

19. Defendant admits that waiver services and nursing home services are mutually exclusive, and so Plaintiff could not receive home-and-community based waiver services once he entered the nursing home. Defendant is without sufficient information to admit or deny the truth of the remaining allegations of paragraph 19; therefore, Defendant denies those allegations.

20. Admitted.

21. Admitted.

22. Defendant admits that Plaintiff receives the enumerated services in the nursing home but denies any suggestion that these are the only services he receives.

23. Defendant does not have sufficient information to admit or deny that the requested services are sufficient to meet all of Plaintiff's medical needs, and therefore denies the allegations in paragraph 23.

24. Denied.

25. Defendant admits that Plaintiff graduated from college in or around 2007 with a Bachelor's degree, but is without sufficient information to admit or deny the truth of the remaining allegations of paragraph 25; therefore, Defendant denies those allegations.

26. Admitted.

27. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 27; therefore, Defendant denies those allegations.

28. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 28; therefore, Defendant denies those allegations.

29. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 29; therefore, Defendant denies those allegations.

30. Defendant denies that a lack of transportation and Plaintiff's residence in a nursing home are barriers to Plaintiff's education goals. Defendant is without sufficient information to admit or deny the truth of the remaining allegations of paragraph 30; therefore, Defendant denies those allegations.

31. Denied.

32. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 32; therefore, Defendant denies those allegations.

33. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 33; therefore, Defendant denies those allegations.

34. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 34; therefore, Defendant denies those allegations.

35. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 35; therefore, Defendant denies those allegations.

36. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 36; therefore, Defendant denies those allegations.

37. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 37; therefore, Defendant denies those allegations.

38. Defendant is without sufficient information to admit or deny the truth of the allegations of paragraph 38; therefore, Defendant denies those allegations.

39. Defendant admits that Plaintiff has stated a desire to live in the community. Defendant denies the remaining allegations of paragraph 39.

40. Defendant admits that Plaintiff does not wish to live in a nursing home, and denies the remaining allegations in paragraph 40.

41. Defendant admits that Plaintiff applied for the SAIL Waiver in December, 2008, but denies that he applied for any other waiver program. Defendant denies the remaining allegations in paragraph 41.

42. Defendant admits that capacity is limited in the waiver programs. Defendant further admits that the Elderly & Disabled Waiver, one of Alabama's six waiver programs, has 9,205 slots, and that the number of slots has not been adjusted since Alabama last sought a renewal of this waiver in 2008. Defendant denies that Plaintiff has applied for the E&D Waiver, denies that he is on the referral list for the E&D Waiver, and denies the remaining allegations of paragraph 42.

43. Denied.

44. Defendant admits that Plaintiff is not receiving waiver services. Defendant denies the remaining allegations of paragraph 44.

45. Defendant admits that Plaintiff is not receiving waiver services. Defendant denies the remaining allegations of paragraph 45.

46. The laws and regulations cited in the Amended Complaint speak for themselves.

47. The laws and regulations cited in the Amended Complaint speak for themselves.

48. The laws and regulations cited in the Amended Complaint speak for themselves.

49. Defendant admits that the Alabama Medicaid Agency is a public entity as defined by Title II of the ADA. Defendant denies that the Alabama Medicaid Agency is a defendant in this litigation. Defendant denies any remaining allegations in paragraph 49.

50. The laws and regulations cited in the Amended Complaint speak for themselves.

51. The laws and regulations cited in the Amended Complaint speak for themselves.

52. The laws and regulations cited in the Amended Complaint speak for themselves.

53. Defendant admits that the federal government pays a portion of the costs of Alabama's Medicaid program.

54. Defendant admits that Plaintiff has physical disabilities. Defendant is without sufficient information to admit or deny the truth of the remaining allegations of paragraph 54; therefore, Defendant denies those allegations.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Defendant admits that Plaintiff is disabled and that he is eligible for Medicaid. Defendant denies the remaining allegations of paragraph 59.

60. Denied.

61. Denied.

Relief Requested

Defendant denies that Plaintiff is entitled to the relief he seeks.

ADDITIONAL DEFENSES

1. Defendant denies any allegation in Plaintiff's Amended Complaint that is not expressly admitted above.

2. Plaintiff lacks standing.

3. Defendant has not violated the private rights of the Plaintiff.

4. There is no justiciable controversy between the Plaintiff and the Defendant.

5. Plaintiff has failed to join one or more indispensable parties under Federal Rule of Civil Procedure 19.

6. Plaintiff's claims are not ripe.

7. Plaintiff's claims are moot.
8. Plaintiff has no private right of action to enforce federal regulations.
9. Plaintiff has no private right of action to enforce the State Medicaid Plan.
10. Defendant denies that Plaintiff is entitled to the relief requested in the Complaint.
11. Defendant reserves the right to contest the amount of any award of costs, expenses and/or attorney's fees.
12. The relief sought by the Plaintiff is barred by the Tenth Amendment to the United States Constitution.
13. Plaintiff's claims and/or the relief he seeks are barred by the Eleventh Amendment to the Constitution of the United States and the constitutional principles of federalism it embodies.
14. The Court lacks jurisdiction over the subject matter of the Plaintiff's complaint.
15. The Plaintiff's injuries are not fairly-traceable to the Defendant.
16. The Plaintiff's claims are barred by estoppel.
17. Plaintiff is not segregated.
18. Plaintiff is not unduly institutionalized.
19. This Court lacks jurisdiction to order the Defendant to comply with State law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 117 (1984).
20. Plaintiff seeks a fundamental alteration of the Alabama Medicaid program.
21. Plaintiff's requested modifications are not reasonable.

22. To grant the relief requested by the Plaintiff would impose an undue hardship on the Defendant.

23. Plaintiff is not a qualified individual with a disability,

24. Federal Medicaid law prohibits the relief Plaintiff seeks.

25. The balance of the equities does not favor the grant of injunctive relief.

26. The injunctive relief requested by the Plaintiff is not in the public interest.

27. Defendant did not violate the terms of any clearly-established statutory or constitutional right of the Plaintiff.

28. Deference must be given to the views of State treatment professionals.

29. The U.S. Department of Justice's interpretation of its regulations is not entitled to deference when that interpretation is unreasonable or when it raises constitutional concerns.

30. The ADA, the Rehab Act, and their implementing regulations should be interpreted in a constitutional manner.

31. The Complaint fails to state a claim upon which relief can be granted.

32. The harm to the Defendant of granting the injunctive relief requested by the Plaintiff outweighs the benefit to the Plaintiff of granting such relief.

33. The Court lacks jurisdiction to grant relief as to any past violations of federal law by the Defendant.

34. The ADA "does not require a public entity to provide individuals with disabilities . . . services of a personal nature including assistance in eating, toileting, or dressing." 28 C.F.R. § 35.135.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL
BY:

s/ James W. Davis
Margaret L. Fleming (FLE001)
James W. Davis (DAV103)
Misty S. Fairbanks (FAI005)
Assistant Attorneys General
OFFICE OF THE ATTORNEY GENERAL
500 Dexter Avenue
Montgomery, Alabama 36130
Telephone: 334.242.7300
Facsimile: 334.353.8440
mfleming@ago.state.al.us
jimdavis@ago.state.al.us
mfairbanks@ago.state.al.us

Stephanie McGee Azar
General Counsel
ALABAMA MEDICAID AGENCY
501 Dexter Avenue
Post Office Box 5624
Montgomery, Alabama 36103-5624
Telephone: 334.242.5126
Facsimile: 334.353.3907
stephanie.azar@medicaid.alabama.gov

Attorneys for Commissioner Steckel

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of October, 2010, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following: James A. Tucker (jtucker@adap.ua.edu), Lonnie J. Williams (lwilliams@adap.ua.edu), Steve Gold (stevegoldada@cs.com), and Anne S. Raish (Anne.Raish@usdoj.gov).

s/ James W. Davis
Assistant Attorney General