

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AG

FILED

FEB - 1 2005 WH

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

CHRISTOPHER BERTRAND, by and through)
his parents, Daniel and Inez Bertrand, **FRANK**)
PATTERSON, JR., by and through his parents,)
Frank and Janice Patterson, Sr., individually and)
on behalf of a class,)

Plaintiffs,)

vs.)

BARRY S. MARAM, in his official capacity)
as Director of the Illinois Department of Public)
Aid, **CAROL L. ADAMS**, in her official capacity)
as Secretary of the Illinois Department of Human)
Services, **JEROLENE JOHNSON**, in her official)
capacity as Director of the Office of Developmental)
Disabilities,)

Defendants.)

No. 05 C 0544

JUDGE COAR

MAGISTRATE KEYS

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Now comes the Plaintiffs, by and through his attorney, Robert H. Farley, Jr., Ltd., and files the following amended complaint against the Defendants as follows:

INTRODUCTION

1. Under Section 1915(c) of the Social Security Act, the State of Illinois provides funding for medicaid Home and Community-Based Services (HCBS) for adults with developmental disabilities or mental retardation. The HCBS program is provided as an alternative to institutional care, so that the developmentally disabled person does not have to

reside in an institution in order to receive needed services. The HCBS program offers a variety of services to the developmentally disabled person, which include non-residential (day programming / developmental training) services and residential services (habilitation services).. The residential services component in the HCBS program allows a developmentally disabled persons to live in a group home, called a Community-Integrated Living Arrangement (CILA) provided by a licensed community developmental disabilities services agency where eight or fewer persons with developmental disabilities reside under supervision of the agency. Individuals receive a customized array of flexible residential habilitation or personal care supports and services in the home and in other community locations under the direction of a community support team.

The HCBS program offers 10,000 developmentally disabled persons the right to receive community based (non-institutional) services and approximately 6,245 of the 10,000 persons enrolled in the HCBS program receive CILA residential services.

2. The Plaintiff, Christopher Bertrand, is an adult with developmental disabilities. The Plaintiff was found eligible by the Defendants to participate in the HCBS medicaid waiver program, and was accepted into the State of Illinois HCBS medicaid waiver program. The Plaintiff does receive funding for some services (non-residential) in the HCBS program, but not funding for all the services which are available in the HCBS program, specifically a CILA residential program. The Defendants refuse to authorize funding for the Plaintiff to receive funding for CILA services. The policy of the Defendants is to inform persons like the Plaintiff who are developmentally disabled, that if a person wants residential services then he or she can go live in an institution, which is called an Intermediate Care Facility for the Developmentally

Disabled (ICF/DD). (See Exhibit "A" - letter sent by DHS to the parent of a developmentally disabled similar person, described in paragraph 32 below). The Plaintiff does not want to live in an institution in order to receive residential services. The Plaintiff seeks funding for community based residential services in the HCBS medicaid waiver program and medicaid requires the State of Illinois to provide funding for all the services contained in the HCBS program with "reasonable promptness" and not just funding for some of the services.

3. The Plaintiff, Frank Patterson, Jr., is an adult with developmental disabilities. The Plaintiff was found eligible by the Defendants to participate in the HCBS medicaid waiver program, and was accepted into the State of Illinois HCBS medicaid waiver program. The Plaintiff does receive funding for some services (non-residential) in the HCBS program, but not funding for all the services which are available in the HCBS program, specifically a CILA residential program. The Defendants refuse to authorize funding for the Plaintiff to receive funding for CILA services. The policy of the Defendants is to inform persons like the Plaintiff who are developmentally disabled, that if a person wants residential services then he or she can go live in an institution, which is called an Intermediate Care Facility for the Developmentally Disabled (ICF/DD). (See Exhibit "A" - letter sent by DHS to the parent of a developmentally disabled similar person, described in paragraph 32 below). The Plaintiff does not want to live in an institution in order to receive residential services. The Plaintiff seeks funding for community based residential services in the HCBS medicaid waiver program and medicaid requires the State of Illinois to provide funding for all the services contained in the HCBS program with "reasonable promptness" and not just funding for some of the services.

4. This is a statewide class action brought on behalf of all developmentally disabled

persons who are eligible and who have been funded to receive medicaid waiver services in the Home and Community-Based Services (HCBS) program for adults with developmental disabilities and have been denied funding for additional waiver services offered in the HCBS program.

5. The Defendants failure to provide Medicaid services to the Plaintiff with “reasonable promptness” violates Plaintiff’s rights conferred by the Medicaid Act, 42 U.S.C. Sec. 1396(a) and implementing regulations. Plaintiff bring this action pursuant to 42 U.S.C. Section 1983 to enforce his federal statutory and constitutional rights. The Plaintiff seeks declaratory and injunctive relief to redress Defendants violation of the Medicaid Act.

JURISDICTION & VENUE

6. This Court has jurisdiction over plaintiffs’ federal law claims pursuant to 28 U.S.C. Sections 1331 and 1343. Venue is proper under 28 U.S.C. Sec. 1391(b).

PARTIES

7. (a) The Plaintiff, Christopher Bertrand, age 23, is developmentally disabled and lives with his parents, Daniel and Inez Bertrand. The family are residents of Dolton, Illinois.

(b) The Plaintiff was found eligible by the Defendants to participate in the HCBS medicaid waiver program. In order for the Plaintiff to be eligible to participate in the HCBS medicaid waiver program, the Plaintiffs was first found by Suburban Access, Inc., an Independent Service Coordination agency and an agent of the State of Illinois that the Plaintiff is eligible for an ICF/DD level of care funding which would also encompass a level of care funding for medicaid waiver services.

(c) The Plaintiff was accepted by the Defendants to receive funding for services in the

HCBS medicaid waiver program.

(d) Under the HCBS medicaid waiver program, the Plaintiff does receive funding for some services (non-residential) in the HCBS program. However, the Defendants refuse to authorize funding for the Plaintiff to receive funding for residential services (residential habilitation) which is provided for in the HCBS program, and which is called a Community-Integrated Living Arrangement (CILA).

(e) The Defendants, through Suburban Access, Inc., informed the Plaintiff on or about January 12, 2005, that "Christopher's placement in New Hope's CILA has been denied by the Department of Human Services (DHS)." (See Exhibit "B") DHS informed Suburban Access that "[Christohpher] does not appear to meet priority population criteria and thus we are unable to process the request for CILA funding." (See Exhibit "C") Prior to the denial of CILA funding, Suburban Access, Inc. informed the Defendants that Christopher is in the medicaid waiver program, Home Based Services." (See Exhibit "D").

(f) The Plaintiff does not want to live in an institution in order to receive residential services. The Plaintiff seeks funding for community based residential services in the HCBS medicaid waiver program for a CILA and medicaid requires the State of Illinois to provide funding for all the services contained in the HCBS program, which includes residential services (CILA) with "reasonable promptness" and not just funding for some of the services. The Plaintiff has a need for funding for CILA residential services and this need has been documented and found by Suburban Access, Inc., an agent of the State of Illinois.

(g) The Defendants have denied the Plaintiff funding for CILA residential services.

(h) The Defendants have not informed the Plaintiff nor his parents when or if he will

receive funding for residential medicaid waiver services (CILA) in the foreseeable future.

(i) The Plaintiff is entitled to funding for residential medicaid waiver services (CILA) with reasonable promptness.

8. (a) The Plaintiff, Frank Patterson, Jr., age 29, is developmentally disabled and lives with his parents, Frank and Janice Patterson, Sr. The family are residents of Oak Park, Illinois.

(b) The Plaintiff was found eligible by the Defendants to participate in the HCBS medicaid waiver program. In order for the Plaintiff to be eligible to participate in the HCBS medicaid waiver program, the Plaintiff was first found by Suburban Access, Inc., an Independent Service Coordination agency and an agent of the State of Illinois that the Plaintiff is eligible for an ICF/DD level of care funding which would also encompass a level of care funding for medicaid waiver services.

(c) The Plaintiff was accepted by the Defendants to receive funding for services in the HCBS medicaid waiver program.

(d) Under the HCBS medicaid waiver program, the Plaintiff does receive funding for some services (non-residential) in the HCBS program. However, the Defendants refuse to authorize funding for the Plaintiff to receive funding for residential services (residential habilitation) which is provided for in the HCBS program, and which is called a Community-Integrated Living Arrangement (CILA).

(e) The Defendants, through Suburban Access, Inc., informed the Plaintiff on or about the Summer of 2003, that the Plaintiff's placement in Oak-Leyden's CILA had been denied by the Department of Human Services (DHS). Suburban Access informed the Plaintiff that CILA funding was denied because he did not meet the priority or emergency criteria for a CILA

placement. Upon information and belief, prior to the denial of CILA funding, Suburban Access, Inc. informed the Defendants that the Plaintiff is in the medicaid waiver program, Home Based Services.

(f) The Plaintiff does not want to live in an institution in order to receive residential services. The Plaintiff seeks funding for community based residential services in the HCBS medicaid waiver program for a CILA and medicaid requires the State of Illinois to provide funding for all the services contained in the HCBS program, which includes residential services (CILA) with "reasonable promptness" and not just funding for some of the services. The Plaintiff has a need for funding for CILA residential services and this need has been documented and found by Suburban Access, Inc., an agent of the State of Illinois.

(g) The Defendants have denied the Plaintiff funding for CILA residential services.

(h) The Defendants have not informed the Plaintiff nor his parents when or if he will receive funding for residential medicaid waiver services (CILA) in the foreseeable future.

(i) The Plaintiff is entitled to funding for residential medicaid waiver services (CILA) with reasonable promptness.

9. The Defendant, Barry S. Maram, is the Director of the Illinois Department of Public Aid (DPA) and is being sued in his official capacity. The DPA is the designated Medical Assistance Single State Agency and is responsible for the oversight and the administration of the Medicaid program under Title XIX of the Social Security Act, which includes programs for persons with mental retardation or developmental disabilities.

10. The Defendant, Carol L. Adams, as Secretary of the Illinois Department of Human Services (DHS) is being sue in her official capacity.

(a) Pursuant to an interagency agreement with DPA, Defendant Adams office (DHS) is responsible for administering Illinois' State Medicaid Plan and the monitoring of Title XIX programs.

(b) DPA has delegated the day-to-day-administration of the waiver program to DHS via an interagency provider agreement which specifies the activities performed by each of the two agencies. Under the terms of this agreement, DHS is responsible for administering the waiver according to the rules, regulations and procedures established by the DPA. DHS acts as the fiscal agent of DPA. DHS has in turn contracted with community-based agencies throughout the State to provide services to individuals in the waiver. The point of entry into the program is the Pre-Admission Screening (PAS) Agency. A PAS Agent or Service Coordinator performs the initial functional assessment of the person seeking services, determines the person's needs, and finds appropriate placement. Services provided in the waiver include non-residential (day programming / developmental training) and residential services (group home).

11. The Defendant, Jerolene Johnson, is the Director of the Office of Developmental Disabilities (ODD) which is operated within DHS and she is being sue in her official capacity. The Office of Developmental Disabilities (ODD) is responsible for the control and administration of the developmental disabilities program and its related Medicaid program in Illinois.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

13. The Class consists of the following:

All developmentally disabled persons or mentally retarded persons aged eighteen and older who are enrolled and receiving services funded under the Illinois Medicaid Home and Community-Based Services (HCBS) program and who are seeking additional funding for more services offered in the HCBS program.

14. The Class is so numerous that joinder of all persons is impracticable. Plaintiffs believe that the class probably numbers well over hundreds and hundreds of persons. Of the approximately 10,000 persons who can be served in the HCBS program, approximately 6,245 persons receive CILA residential services, which also include day programming services.

Approximately 3,300 persons receive day programming services (developmental training) and are denied funding for CILA residential services unless they satisfy the Defendant's emergency or priority criteria for CILA. Of the 3,300 persons receiving day programming services, 2,850 persons receive limited funding for services and are denied funding for both CILA residential services and funding for other day programming services, such as physical therapy services, occupational therapy services, speech, hearing and language services; behavioral services, supported living services which includes personal/direct support, respite, skilled nursing, transportation and personal emergency response. Approximately 450 of the 3,300 persons receiving funding for day programming services, also receive more intensive day programming services as stated in the previous sentence.

Upon information and belief, approximately 400-500 funding slots remain open in the HCBS program as the Defendants have historically not served all the persons in the HCBS program and the Plaintiffs claim that all developmentally disabled persons are entitled to receive funding for services up to the cap limit of 10,000.

15. The Plaintiffs are adequate representatives of the class because they suffer from deprivations identical to those of the class members and have been denied the same federal rights that they seek to enforce on behalf of the other class members. The Plaintiffs will fairly and adequately represent the interests of the other class members, many of whom are unable to pursue claims on their own behalf as the result of their disabilities. Plaintiffs' interest in obtaining injunctive relief for the violations of constitutional rights and privileges are consistent with and not antagonistic to those of any person within the class.

16. The claims of the class members raise common questions of fact, including whether individuals eligible for Medicaid waiver services are being funded with all services offered in the HCBS program with reasonable promptness.

The claims of the class members also raise common questions of law, including the interpretations of the Medicaid Aid; and

a) Whether the class members, after being enrolled in the Illinois medicaid waiver program (HCBS) are entitled to receive funding for all the services which he or she needs in the program with reasonable promptness under 42 U.S.C. 1396(a)(8); and

b) Whether the class members, after being enrolled in the Illinois medicaid waiver program (HCBS) are entitled to his or her choices for Medicaid services ("freedom of choice") under the HCBS program under 42 U.S.C. 1396n(c)(2)(C).

The common questions of fact and law predominate over questions affecting only individual class members.

17. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:

- (i) A multiplicity of suits with consequent burden on the courts and defendants should be avoided.
- (ii) It would be virtually impossible for all class members to intervene as parties-plaintiffs in this action.

STATEMENT OF FACTS

State of Illinois Medicaid Plan

18. Title XIX of the Social Security Act of 1965, 42 U.S.C. Section 1396 *et. seq.* (The “Medicaid Act”), establishes Medicaid, a federal program administered by the States to provide health care to low-income individuals. State participation in the Medicaid program is optional. If the State elects to participate, it must submit a “State Plan” for approval by the Secretary of the United States Department of Health and Human Services (“HHS”).

19. The federal government reimburses a participating State for a portion of the cost of medical services provided under its Medicaid program. To receive federal funds, the State’s program must comply with the requirements set forth in the Medicaid Act and in federal implementing regulations.

20. The Medicaid Act requires participating States to provide certain services to individuals who qualify as “categorically needy” based on their eligibility for assistance under other federal programs. 42 U.S.C. Sections 1396a(a)(10)(A), 1396d(a); 42 C.F.R. Section 435.4. The Act offers States the option of providing -- and receiving federal Medicaid reimbursement for -- additional health care services for the categorically needy and for the “medically needy,” whose income and assets are limited but are too high to qualify for “categorically needy” status. 42 U.S.C. Sections 1396a(a)(10)(C); 42 C.F.R. Section 435.4.

21. One optional service that a participating State may provide is care for eligible

individuals in an “intermediate care facility for the mentally retarded (“ICF/MR”). 42 U.S.C. Sections 1396d(a)(15), (d). Once a state commits to provide optional services, it must provide them in compliance with the requirements of the Medicaid Act.

22. (a) The State of Illinois participates in the Medicaid program and has filed a State Plan with the federal government. In the State Plan, the State of Illinois has committed to provide Medicaid services to both the categorically needy and the medically needy.

(b) The State of Illinois Medicaid program includes ICF/MR or ICF/DD (“intermediate care facility for the developmentally disabled”) services for eligible individuals. ICF/DD’s provide residential, health, rehabilitative services and an active treatment program for individuals with developmental disabilities and mental retardation. The active treatment program includes habilitation, occupational therapy, speech therapy and physical therapy which is directed toward the acquisition of the behaviors for the person to function with as much self determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status. 42 U.S.C. Sec. 1396d(d); 42 C.F.R. Sec. 483.45; 42 C.F.R. Sec. 483.400(a)(1)(i)-(ii).

State of Illinois - Medicaid Waiver Plan for Adults with Developmental Disabilities

23. Alternatively, the State may provide — and receive federal reimbursement for -- Home and Community Based Services for the mentally retarded if the state obtains a “waiver” from the Secretary of HHS that permits the state to provide such services in place of ICF/MR care. *Id.* at Section 1396n(c)(1). Once a state commits to provide optional services, it must provide them in compliance with the requirements of the Medicaid Act.

24. (a) The State of Illinois was granted approval by the Secretary of HHS to operate

“Home and Community Based-Services (HCBS) for Adults with Developmental Disabilities under Section 1915(c) of the Social Security Act to operate a medicaid waiver program to provide services to individuals with mental retardation or developmental disabilities who would otherwise require an ICF/MR level of care. The use of the terms ICF/MR or ICF/DD are interchangeable.

(b) On June 17, 2002, the State of Illinois’ request to renew the HCBS program was granted for a five year period effective July 1, 2002 through June 30, 2007. On August 22, 2003, HHS through the Centers for Medicare and Medicaid Services (CMS) approved the State of Illinois (DHS) request to amend the HCBS waiver for Adults with Developmental Disabilities to increase the waiver capacity so that the State of Illinois can provide funding for up to 10,000 developmentally disabled persons. Since 2000 through the present, the Defendants have never provided funding for all the persons who can be served in the Illinois Medicaid Waiver Plan. For waiver year 2002 (7/1/01-6/30/02), the waiver capacity was 8,800 and 8,349 persons were served. For waiver year 2001, the waiver capacity was 8,250 and 8,000 persons were served. For waiver year 2000, the waiver capacity was 7,700 and 6,884 persons were served.

(c) The State of Illinois HCBS waiver program is to provide services to individuals who, but for the provision of such services, would require the level of care in an intermediate care facility for mentally retarded or persons with related conditions (ICF/MR).

(d) Pursuant to its waiver program, the State of Illinois was granted a waiver of section 1902(a)(10)(B) of the Act to target waiver services to the select group of “mentally retarded and developmentally disabled” individuals who would be otherwise eligible for waiver services.

(e) Pursuant to its waiver program, the State of Illinois was granted a waiver of section 1902(a)(10)(B) of the Act to impose the additional targeting restriction of limiting waiver services to persons aged eighteen and older.

(f) Pursuant to its waiver program, the State of Illinois will not refuse to offer home and community-based services to any person for whom it can be reasonably be expected that the cost of home and community-based services furnished to that individual would exceed the cost of a level of care in an intermediate care facility for mentally retarded or persons with related conditions (ICF/MR)

(g) Pursuant to its waiver program, the State did not request a waiver of the “statewideness” requirements set forth in section 1902(a)(1) of the Act.

(h) Pursuant to its waiver program, the State obtained a waiver of the amount, duration and scope of services requirement contained in section 1902(a)(10)(B) of the Act in order that services not otherwise available under the Illinois Medicaid State plan may be provided to individuals served on the waiver to the target group of persons who are mentally retarded and developmentally disabled and who are aged eighteen and older.

(i) Pursuant to its waiver program, persons accepted into the State of Illinois (HCBS) waiver program are entitled to receive the following services:

- (i) Adult day health (adult day care).
- (ii) Habilitation, which includes residential habilitation (CILA), day habilitation and supported employment services.
- (iii) Environmental accessibility adaptations.
- (iv) Specialized medical equipment and supplies.
- (v) Extended State plan services, which includes physical therapy services,

occupational therapy services, speech, hearing and language services.

(vi) Behavioral Services.

(vii) Supported Living Services, which includes SLS team leader, personal care/direct support, respite, skilled nursing, transportation and personal emergency response.

(i) Pursuant to its waiver program, the State of Illinois guarantees to mentally retarded and developmentally disabled individuals who are determined to be eligible for “waiver” services shall be given the choice of either institutional or home and community-based services.

(j) Pursuant to its waiver program, the State of Illinois guarantees that absent the waiver program, persons served in the waiver would receive the appropriate type of Medicaid-funded institutional care that they require.

25. Waiver services are a cost effective alternative to the higher cost, less integrated institutional care in an ICF/MR or ICF/DD.

26. Individuals who are eligible for “waiver” services are also guaranteed a choice between those services and ICF/MR or ICF/DD care by the Medicaid Act itself, 42 U.S.C. Section 1396n(c)(2)(C), and by other federal statutes and regulations. Eligible individuals are entitled to choose home and community-based services that are more “integrated” than institutional care.

27. The Plaintiffs have chosen to receive funding for home and community based waiver services as opposed to funding for institutional services.

28. As a participant in the federal Medicaid program and a recipient of federal funds, the State of Illinois is required to comply with the provisions of the Medicaid Act.

29. (a) Section 1396a(a)(8) of the Medicaid Act requires that a state Medicaid program provide that medical assistance “shall be furnished with *reasonable promptness* to all eligible individuals.” 42 U.S.C. Section 1396a(a)(8) (emphasis added).

(b) A corresponding regulation provides that the responsible state agency “must,” among other things, “[f]urnish Medicaid promptly to recipients without any delay caused by the agency’s administrative procedures,” and “[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 C.F.R. Sec. 435.930(a)-(b) (1996). Another regulation states that “[t]he agency must establish time standard for determining eligibility and inform the applicant of what they are.” 42 C.F.R. Sec. 435.911(a) (1996). These period are not to exceed “[n]inety days for applicants who apply for Medicaid on the basis of disability” or “[f]orty-five days for all other applicants.” 42 C.F.R. Sec. 435.911(a)(1)-(2) (1996). Moreover, the agency “must not use the time standards” as “a waiting period.” 42 C.F.R. Sec. 435.911(e)(1) 1996.

30. Despite the Medicaid Act’s clear command that eligible individuals receive funding for care and services with “reasonable promptness,” the Defendants have failed to provide the funding for all the services which the Plaintiff is eligible to receive under the HCBS program, specifically funding for a CILA residential program.

31. The Center for Medicaid and State Operations of HHS informed the State Medicaid Directors, including the State of Illinois, in a letter dated January 10, 2001 that once a person is enrolled in Home and Community-Based Services (HCBS) waivers under Section 1915(c) of the Social Security Act, that a State is obliged to provide all people enrolled in the waiver with the opportunity for access to all needed services covered by the waiver and the Medicaid State plan.

CMS informed the States that they cannot develop separate and distinct service packages for waiver population subgroups within a single waiver. The opportunity for access pertains to all services available under the waiver that an enrollee is determined to need. CMS informed the States that the denial of a needed and covered service within a waiver would have practical effect of: (a) undermining an assessment of need, (b) countermanding a plan of care/support based on such an assessment of need, (c) converting a feasible service into one that arbitrarily benefits some waiver participants but not others who may have an equal or greater need, and (d) jeopardizing an individual's health or welfare in some cases.

32. Since the Plaintiffs have been found eligible for medicaid waiver services, the Defendants have claimed to limit funding for CILA medicaid waiver residential services to only those persons who satisfy the following emergency or priority criteria: (a) individuals who are in crisis situations (e.g., including but not limited to, persons who have lost their care-givers, persons who are in abusive or neglectful situations, etc.); (b) individuals who are aging out of Division of DD funded children's residential programs; (c) individuals who are wards of the Department of Children and Family Services and are approaching age 18, and individuals who are aging out of children's residential services funded by the Division of Developmental Disabilities; (d) individuals who reside in state-operated developmental centers; (e) individuals with mental retardation who reside in state-operated mental health hospitals; (f) Bogard Class Members who requested to move to CILA during the concluding choice process; (g) individuals with aging care-givers, and (h) individuals who reside in private ICFs/DD.

33. In *Drzewicki v. Maram, et. al.*, No. 04 C 7154 (N.D. Illinois), the plaintiff was a 25 year old person with developmental disabilities enrolled and accepted in the State of Illinois

HCBS medicaid waiver program and filed suit against the same defendants in this case, seeking to obtain funding for CILA residential services developmentally disabled person. On January, 27, 2005, pursuant to the parties filing a stipulation to voluntarily dismiss the case with prejudice as the plaintiff, *Drzewicki*, was approved for CILA funding which mooted plaintiffs claims, the District Court voluntarily dismissed the case. That the Defendants approved funding for the plaintiff in *Drzewicki* without requiring that plaintiff to satisfy the State's emergency or priority criteria for CILA funding.

34. That the Defendants policies and practices of denying the Plaintiffs funding for CILA medicaid waiver residential services because they have not satisfied the emergency or priority criteria after the Plaintiff has been previously enrolled in the medicaid waiver program and when the Plaintiffs have a need for CILA residential services, violates the provisions of the Medicaid Act.

35. Each Defendant, acting in his official capacity, is responsible for the control, implementation and administration of the State of Illinois obligations to the mentally retarded and the developmentally disabled.

COUNT I

VIOLATION OF MEDICAID ACT, 42 U.S.C. SECTION 1396a(a), AND 42 U.S.C SECTION 1983

36. The Plaintiffs repeats and incorporates by reference as though fully set forth here the facts contained in paragraphs 1 through 35 above.

37. The Defendants, while acting under color of law, have violated and are violating Plaintiffs rights under 42 U.S.C. Section 1396(a)(8) and 42 U.S.C. Section 1983 by failing to provide funding for Medicaid waiver services to the Plaintiffs with reasonable promptness, even

though the Plaintiffs are eligible to receive such services.

38. The Plaintiffs have been accepted into the HCBS waiver program for funding for services and the Plaintiffs have satisfied all the criteria which is required under the waiver to receive funding for residential services, in that they are within the target group of persons to be served in that they are mentally retarded and developmentally disabled and are aged eighteen and older.

39. The Defendants, while acting under color of law, have violated and are violating Plaintiffs rights under 42 U.S.C. Section 1396n(c)(2)(C) by failing to implement their choices for Medicaid services (“freedom of choice”) under the HCBS program.

40. The Defendants, while acting under color of law, have violated and are violating Plaintiffs rights under 42 U.S.C. Section 1396n(c)(2)(C) by failing to implement their choices for Medicaid services (“freedom of choice”) under the HCBS program with reasonable promptness.

41. As a result of the acts and omissions of the Defendants, the Plaintiffs have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs will continue to suffer such deprivations in the future absent relief from this Court.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(a) Certify the Plaintiff class of “All developmentally disabled persons or mentally retarded persons aged eighteen and older who are enrolled and receiving services funded under the Illinois Medicaid Home and Community-Based Services (HCBS) program and who are

seeking additional funding for more services offered in the HCBS program.

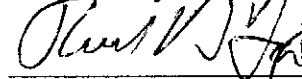
(b) Enter Judgment in favor of the Plaintiffs and hold that the Defendants' failure to provide funding for Medicaid services to the Plaintiff violates 42 U.S.C. Section 1983, and the Medicaid Act, 42 U.S.C. Section 1396a(a).

(c) Issue preliminary and permanent injunctive relief requiring the Defendants, their successors in office, agents, employees, and all persons acting in concert with them, to offer to provide funding to the Plaintiffs, the full range of Home and Community-Based waiver Services (HCBS) and other services for which they are eligible within 90 days or some other specifically-defined, reasonably prompt period;

(d) Award Plaintiffs the costs of this action, including reasonable attorneys fees, pursuant to 42 U.S.C. Section 1988; and

(e) Award such other relief as the Court deems just and appropriate.

Respectfully submitted,



Attorney for Plaintiffs

Robert H. Farley, Jr.
Robert H. Farley, Jr., Ltd.
1155 S. Washington Street
Naperville, IL 60540
Phone: 630-369-0103
Fax: 630-369-0195



George H. Ryan, Governor

Illinois Department of Human Services

Linda Reneé Baker, Secretary

100 South Grand Avenue, East • Springfield, Illinois 62762
401 South Clinton Street • Chicago, Illinois 60607

June 27, 2002

John F. and Carol A. Drzewicki
537 N. Redfield Court
Park Ridge, Illinois 60068

Dear Mr. and Mrs. Drzewicki:

I am responding to your letter of May 19, 2002, concerning your son Jason. You state that an Intermediate Care Facility for Individuals with Developmental Disabilities (ICFDD) is inappropriate for him and he needs placement in a Community Integrated Living Arrangement (CILA).

As we have indicated before, resources for the CILA program are extremely limited. CILA funding is only being provided to individuals in emergency situations.

At this time, I would suggest that you continue to explore ICFDDs. In the meantime, you may have heard that the Supported Living Program and the Home-Based Support Services Program are being consolidated as of July 1, 2002. The consolidated program will give Supported Living participants such as Jason considerably more flexibility than they have had in the past to fashion a service package that meets their needs. You can find out more about it from your caseworkers at Active Visions and Community Alternatives Unlimited.

Sincerely,

Melissa Wright
Associate Director
Office of Developmental Disabilities

MW:bc

cc: Linda Reneé Baker, Secretary

Exhibit "A"

825 W. 175th Street
Homewood, Illinois 60430

Phone: 708-799-9190
Fax: 708-799-9178
TDD: 708-799-9177

ET Technical Assistance/Monitoring
800-507-5057
708-799-8708
Fax: 708-799-5363

Suburban Access, Inc.

4415 W. Harrison Street, Suite 410
Hillside, Illinois 60162

Phone: 708-449-7257
Fax: 708-449-7228
TDD: 708-799-9177

Child & Family Connections (West)
888-566-8228
708-449-0625
Fax: 708-449-7071

January 12, 2005

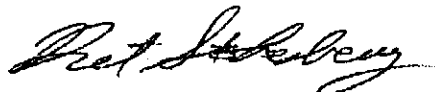
Inez Bertrand
15214 Blackstone
Dolton, IL 60419

Re: Christopher Bertand

Mrs. Bertrand,

As I mentioned over the phone, Christopher's placement in New Hope's CILA has been denied by the Department of Human Services (DHS). I am sending a copy of the letter sent to my office by DHS. Please feel free to contact me with any further questions.

Sincerely,



Bret Stokesberry,
QMRP, ISC

CC: T. Everett (New Hope)

Exhibit "B"

ACCREDITED BY CARF... THE REHABILITATION ACCREDITATION COMMISSION
for Community Support Casemanagement/Service Coordination

serving these suburban Cook County Townships:

Bloom • Bremen • Calumet • Lemont • Orland • Palos • Rich • Thornton • Worth
Berwyn • Cicero • Leyden • Lyons • Oak Park • Proviso • River Forest • Riverside • Stickney



Rod R. Blagojevich, Governor

100 W. Randolph • Chicago, Illinois 60601

RECEIVED

JAN 10 2005

SUBURBAN ACCESS, INC.

Carol L. Adams, Ph.D., Secretary

Deb Stanley
Suburban Access
925 W. 175th Street
Homewood, IL 60430

January 6, 2004

Re: Christopher Bertrand

Dear Deb

The enclosed funding request packet is being returned to Suburban Access for the following reason:

Based on the packet's cover letter, this individual does not appear to meet priority population criteria and thus we are unable to process the request for CILA funding. Should the individual's situation change in the future or if there is additional information which has not been currently provided, please feel free to resubmit the packet for consideration.

Should you have any questions or concerns regarding this request packet, please give me (312.814.3417) or Bruce Anderson (312.814.3394) a call. Thanks.

Sincerely,

Deborah Fullilove

South Suburban Network Facilitator

Exhibit C

925 W. 175th Street
Homewood, Illinois 80430

Phone: 708-789-9190
Fax: 708-789-9178
TDD: 708-789-9177

ET Technical Assistance/Monitoring
800-507-5057
708-789-8708
Fax: 708-789-5363

Suburban Access, Inc.

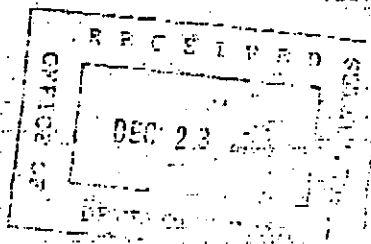
4415 W. Harrison Street, Suite 410
Hillside, Illinois 60162

Phone: 708-449-7257
Fax: 708-449-7228
TDD: 708-789-9177

Child & Family Connactions (West)
888-566-8278
708-449-0625
Fax: 708-449-7071

December 20, 2004

Deborah Fullilove
South Suburban Network Facilitator
DHS
100 W. Randolph, Suite 6-400
Chicago, IL 60601



Dear Deborah Fullilove:

Christopher Bertr nd, who is not a Bogard Classmember or Nathan v. Levitt Classmember, was introduced to and has chosen 24 hour CILA services from New Hope Center.

This provider has conditionally accepted Christopher and has submitted to us the completed rate determination worksheets with the appropriate attachments.

The following documentation is enclosed:

1. Signed CILA Individual Rate Worksheet
2. Client Income Information
3. Proposed Individual Service Plan
4. Psychological Evaluation
5. ICAP
6. Copy of Social Security Card
7. Medicaid Card Copy
8. Nursing Service Packet

Christopher will be moving into an existing vacancy. He currently resides with his parents, and he utilizes Home Based Services funding. His parents have had contact with New Hope as their Home Based Services Service-Facilitator for quite some time, and now that they are getting older, they decided both they and Christopher would benefit from a CILA placement. Christopher is a very social and capable young man who would likely flourish with the increased levels of independence, responsibility, and peer interaction that occur at a CILA. New Hope Center staff, Christopher, and his parents all feel that this would be an excellent match of needs with services.

If you have any questions or need additional information, please contact me.

Sincerely,

Bret Stokesberry,
QMRP, Individual Service Coordinator

Exhibit "D"

ACCREDITED BY CARF ... THE REHABILITATION ACCREDITATION COMMISSION
for Community Support Casemanagement/Service Coordination

... serving these suburban Cook County Townships:

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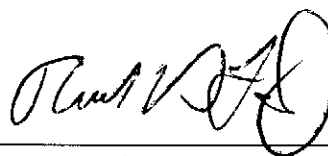
CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., Attorney for the Plaintiffs, deposes and states that he filed the Amended Complaint for Declaratory and Injunctive Relief with the Clerk of the U.S. District Court on February 1, 2005 and served a copy upon the Defendants offices as follows:

Barry S. Maram
Director of the Illinois Department of Public Aid
100 W. Randolph
10th Floor
Chicago, IL 60601

Carol L. Adams
Secretary of the Illinois Department of Human Services
100 W. Randolph
6th Floor
Chicago, IL 60601

Jerolene Johnson
Director of the Office of Developmental Disabilities
100 W. Randolph
6th Floor
Chicago, IL 60601



Attorney for the Plaintiff

Robert H. Farley, Jr.
Robert H. Farley, Jr., Ltd.
1155 S. Washington
Naperville, IL 60540
Phone: 630-369-0103
Fax: 630-369-0195