

2. Defendants administer a program, known as the “Act 150 Program,” to provide community-based attendant care services to individuals with significant physical disabilities.

3. Eligibility for the Act 150 Program is based solely on whether an individual needs attendant care services and is able to direct those services. There are no income or asset limits for eligibility, but Act 150 Program participants whose income exceeds 300% of the federal poverty level pay a weekly fee toward the cost of the services based on the amount of his or her income.

4. Plaintiff Gleason is eligible for the Act 150 Program, but it has a waiting list of 316 people, which has remained constant for two years.

5. Since Mr. Gleason cannot receive services under the Act 150 Program, he is forced to remain segregated in a nursing facility where he is provided with attendant care services.

6. Defendants pay more than \$8,000 monthly for Mr. Gleason’s nursing facility services through the Medical Assistance program, which on information and belief is more than they would pay if they funded community-based attendant care services for him through the Act 150 Program.

7. Mr. Gleason is not alone. Defendants only offer Pennsylvanians on the waiting list for the Act 150 Program attendant care services in segregated nursing facilities, not in the community which is the most integrated setting appropriate to their needs. This results in their unnecessary institutionalization or places them at serious risk of unnecessary institutionalization.

8. Defendants' failure to assure that Mr. Gleason and others similarly situated can access community-based attendant care services through the Act 150 Program violates the integration mandates of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act (RA), 29 U.S.C. §794.

9. Plaintiff Gleason seeks declaratory and injunctive relief which will allow him and others similarly situated to reside in the community and not be subject to unnecessary institutionalization.

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1343(a)(3) and (4).

11. Plaintiff's claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201-02 and Fed. R. Civ. P. 65. Plaintiff's

causes of action for disability discrimination are authorized by 42 U.S.C. § 12133 and 29 U.S.C. § 794a.

12. Venue is proper under 28 U.S.C. § 1391(b). Defendant has offices located in this district, and Defendants' actions in denying Plaintiff's request for attendant care services took place in this district.

III. **PARTIES**

13. Plaintiff Joseph Gleason is a 52-year-old man who resides in Philadelphia, Pennsylvania.

14. Defendant Department of Public Welfare (DPW) is the single-state agency that administers the Medical Assistance Program in Pennsylvania, 42 U.S.C. § 1396a(a)(5) and 55 Pa. Code § 101.1(e), which includes funding for nursing facilities, and has responsibility to establish and implement the Act 150 Program, 62 Pa.C.S. § 3054(a). DPW also has responsibility to assure that its programs, including the Medical Assistance Program and Act 150 Program, are administered in accordance with federal law, including the ADA and RA.

15. Defendant Beverly Mackereth is Secretary of Public Welfare of the Commonwealth of Pennsylvania. Defendant Mackereth is responsible to oversee and administer DPW and its programs, including Medical Assistance and the Act 150 Programs, and to assure that they comply with

federal law. Defendant Mackereth is sued in her official capacity only for actions and omissions under color of state law.

IV. CLASS ACTION

16. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named Plaintiff brings this action on behalf of himself and the following class of persons:

All Pennsylvanians who are or will be placed on the waiting list for the Act 150 Program.

17. The class is so numerous that joinder of all its members is impracticable. There are approximately 316 people who are on the Act 150 Program waiting list. Based on information and belief, many of these people either are institutionalized because or are at serious risk of institutionalization because they cannot access community-based attendant care services. Joinder is also impracticable because class members lack the knowledge and financial means to maintain individual actions.

18. There are questions of law or fact that are common to the named Plaintiff and putative class members, including whether: (a) Defendants violate the ADA and RA by offering attendant care services to them only in segregated, institutional settings rather than the community ; (b) Defendants have decreased the number of persons served by the Act 150 Program despite a waiting list; (c) Defendants have refused to request

additional funding to provide services to individuals on the Act 150 Program's waiting list or to use available funding to provide services to Plaintiff and class members; (d) whether Defendants' policies and practices – including decreasing the number of persons served by the Act 150 Program, maintaining a waiting list for the Act 150 Program, and refusing to use available funding to serve people on the waiting list – result in a lack of necessary community-based attendant care services so that Plaintiff and class members are unnecessarily institutionalized or at serious risk of unnecessary institutionalization; (e) whether Defendants fail to provide named Plaintiff and class members with meaningful choice of community-based long-term care alternatives to nursing facilities; and (f) whether Defendants fail to have any plan, with timelines and benchmarks, to move people off of the Act 150 Program waiting list at a reasonable pace.

19. Mr. Gleason's claims are typical of the claims of putative class members. Mr. Gleason, like all class members, is eligible for attendant care services in the Act 150 Program and has been placed on a waiting list for those services.

20. The named Plaintiff will fairly represent and adequately protect the interests of members of the class as a whole. The named Plaintiff does not have any interests antagonistic to those of other class members.

21. By filing this action, the named Plaintiff has displayed an interest in vindicating his rights, as well as the claims of others who are similarly situated.

22. The relief sought by the named Plaintiff will inure to the benefit of members of the class generally.

23. The named Plaintiff is represented by counsel who are skilled and knowledgeable about civil rights litigation, disability discrimination, practice and procedure in the federal courts and the prosecution and management of class action litigation.

24. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole under Fed. R. Civ. P. 23(b)(2).

V. FACTUAL ALLEGATIONS

25. Joseph Gleason is a 52-year-old man with cerebral palsy.

26. As a result of his disability, Mr. Gleason uses a motorized wheelchair for ambulation.

27. After Mr. Gleason graduated from high school, he attended the Bucks County Community College, from which he received his Associate Degree in 1985.

28. From 1987 to 2010, Plaintiff Gleason worked full-time in the admissions office of Bucks County Community College.

29. Until 2003, Mr. Gleason lived with in his family home. After his mother died, Mr. Gleason continued to live there with his brother and his brother's family.

30. In 2010, Mr. Gleason, who was then using a manual wheelchair, slipped on the snow and fell backwards in his wheelchair, resulting in serious injuries to his back.

31. Mr. Gleason was hospitalized for several months due to his back injuries.

32. When Mr. Gleason was ready to leave the hospital in 2011, he was unable to return to live with his brother and his brother's family because his physical impairments were too significant for his brother and his family to provide him the care he needed at home.

33. Because Mr. Gleason could not return to his family home and had no access to services to allow him to remain in the community, he was forced to enter a nursing facility in 2011, where he remains.

34. Mr. Gleason requires assistance with some activities of daily living, including transferring to and from his bed and his wheelchair, dressing, showering, cooking, and some house cleaning. He can and does

brush his teeth, comb his hair, eat (but he cannot cut the food), do his laundry, and toileting (but he cannot pull his pants up). He can also take his own medications and can shop for food.

35. If Mr. Gleason had access to attendant care services in the community to assist him with his daily living activities, he could live independently and contribute to and participate in society.

36. Mr. Gleason wants to move to the community so he can return to work, live alone, and be independent of institutional rules and procedures.

37. At the nursing facility, Mr. Gleason has no privacy. There is no toilet in his bedroom and he must use a toilet located in the shower room.

38. Mr. Gleason eats alone because he feels like cattle in the dining room at the nursing facility.

39. At the nursing facility, Mr. Gleason cannot even participate in "movie night" because it is scheduled on his shower night. He does not want to forego a shower because the nursing facility provides showers only twice a week. In his own apartment, Mr. Gleason would like to shower every day.

40. Mr. Gleason owns and uses a computer in his room.

41. Defendants' Medical Assistance Program pays \$8,082.72 per month for the services Mr. Gleason receives in his nursing facility. In addition to that sum, Mr. Gleason also must contribute toward his nursing facility care all but \$45 of his \$783.90 monthly Social Security Disability Income (SSDI) benefits and \$1,558.38 from private insurance.

42. Mr. Gleason uses the \$45 per month of the SSDI benefits he is permitted to keep to pay for paratransit services so he can leave the nursing facility periodically and to buy pizza and other incidentals.

43. On December 20, 2012, Mr. Gleason applied to receive services through Medical Assistance-funded Home and Community-based (HCBS) Waiver programs administered by DPW's Office of Long-Term Living (OLTL).

44. OLTL's HCBS Waiver programs include the "Attendant Care Waiver," which provides community-based attendant care services to individuals with physical disabilities, and the "Independence Waiver," which provides community-based attendant care and other services to individuals with physical disabilities. To be eligible for these or other HCBS Waiver programs, individuals' income and resources cannot exceed limits established by the Medical Assistance Program.

45. With access to HCBS Waiver services, Mr. Gleason could move from the nursing facility to the community.

46. After he applied for the HCBS Waiver program, Mr. Gleason was informed by Maximus, the Independent Enrollment Broker with which DPW contracts to take and help process applications for HCBS Waiver services, that he was eligible for HCBS Waiver services through Defendants' Independence Waiver that would enable him to receive community-based attendant care services.

47. Based on that information, Mr. Gleason located an accessible apartment in Philadelphia in late July 2013. He signed a lease to begin on August 1, 2013 and borrowed money from his brother and sister for a security deposit and two months' rent.

48. On September 6, 2013, DPW sent Mr. Gleason a notice that stated he was determined to be ineligible for HCBS Waiver services because his monthly income of \$2,342.28 exceeded the \$2,130 monthly income limit to qualify for Medical Assistance benefits, including HCBS Waivers.

49. Besides the HCBS Waiver programs, DPW's OLTL administers the Act 150 Program.

50. The Act 150 Program, created by the Attendant Care Services Act, 62 Pa.C.S. § 3051 *et seq.*, authorizes DPW to fund attendant care services for eligible individuals to provide them assistance with their activities of daily living and allow them to live independently in their own homes and communities rather than in institutions.

51. Unlike Medical Assistance programs, there are no income or asset requirements that limit eligibility for the Act 150 Program. Eligibility for the Act 150 Program is based solely on the applicant's need for attendant care services and ability to direct his or her services. Individuals whose income exceeds 300 percent of the federal poverty level, however, are required to contribute toward the cost of their services.

52. When DPW denied Mr. Gleason's application for the Medical Assistance HCBS Waiver services, it did not inform him that he could apply for the Act 150 Program to receive community-based attendant care services.

53. Mr. Gleason learned of the Act 150 Program through advocates who helped him to apply for that Program.

54. Although Mr. Gleason has applied for and is eligible to receive community-based attendant care services through the Act 150 Program, he

will not be able to secure those services because there is a waiting list for that program.

55. Since, at least, Fiscal Year 2007-08, DPW has decreased the number of persons who received attendant care services under the Act 150 Program. In Fiscal Year 2007-08, there were 2,479 budgeted slots available. In Fiscal Year 2011-12, there were budgeted slots for 2,277 individuals. In Fiscal Year 2012-13, there were budgeted slots to serve only 2,016 individuals.

56. As the number of budgeted slots for the Act 150 Program has decreased, the waiting list for the Program has grown. In December 2012, there were 294 individuals on the Act 150 Program waiting list. There currently are approximately 316 individuals on that waiting list.

57. DPW has stated that there is a two-year waiting list for the Act 150 Program.

58. DPW has stated that it will continue to serve individuals who currently participate in the Act 150 Program, but will not serve any additional individuals in the current Fiscal Year, 2013-14.

59. On information and belief, DPW knows or should know that there are individuals, like Mr. Gleason, on the Act 150 Program waiting list

who are institutionalized and could live in the community if they had access to attendant care services through the Act 150 Program.

60. On information and belief, DPW knows or should know that there are individuals on the Act 150 Program waiting list who are at serious risk of institutionalization if they cannot access attendant care services in the community through that program.

61. DPW has not sought funding to expand the Act 150 Program and, to the contrary, has decreased funding for it despite the waiting list and the fact that individuals on that waiting list are unnecessarily institutionalized or at risk of unnecessary institutionalization.

62. On information and belief, the cost of funding attendant care services through Act 150 to Mr. Gleason and putative class members would be less than the cost to DPW's Medical Assistance program of providing them with attendant care services in nursing facilities where they are unnecessarily segregated.

VI. CLAIMS

A. Count I - Violation of Title II of the ADA

63. Paragraphs 1 through 62 are incorporated by reference. This Count is brought solely against Defendant Mackereth in her official capacity for acts and omissions under color of state law.

64. Mr. Gleason and putative class members are individuals with physical impairments that substantially limit one or more major life activities, including walking and caring for themselves. As such, they are persons with disabilities protected by the ADA. 42 U.S.C. § 12102(1)(A).

65. Mr. Gleason and putative class members are eligible for the Act 150 Program and, as such, are qualified persons with disabilities under the ADA. 42 U.S.C. § 12131(2).

66. DPW, administered by Defendant Mackereth, is a public entity subject to the requirements of Title II of the ADA. 42 U.S.C. § 12131(1).

67. Defendant Mackereth violates Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(d), by failing to offer Mr. Gleason and putative class members attendant care services in the community, which is the most integrated setting appropriate to their needs, and, instead, offering them such services only in segregated institutions and by either subjecting them to unnecessary institutionalization or placing them at serious risk of unnecessary institutionalization.

68. Defendant Mackereth violates Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(3), by using methods of administration that subject Mr. Gleason and putative class members to discrimination through actual or serious risk of unnecessary segregation and

institutionalization, including, but not limited to: (a) failing to assess whether persons on the Act 150 Program waiting list are institutionalized or at serious risk of institutionalization; (b) failing to use available funding to provide services to Mr. Gleason and putative class members through the Act 150 Program ; (c) allowing the Act 150 Program to serve fewer and fewer people despite the increasing need for such services; and (d) failing to have a plan with specific and concrete benchmarks and timelines within which DPW will provide Mr. Gleason and putative class members with community-based attendant care services through the Act 150 Program.

B. Count II - Violation of Section 504 of the RA

69. Paragraphs 1 through 68 are incorporated by reference. This Count is brought solely against Defendant DPW.

70. Mr. Gleason and putative class members are individuals with physical impairments that substantially limit one or more major life activities, including walking and caring for themselves. As such, they are persons with disabilities protected by Section 504 of the RA, 29 U.S.C. § 705(20)(B).

71. Mr. Gleason and putative class members are eligible for the Act 150 Program and, as such, are qualified persons with disabilities under Section 504 of the RA.

72. Defendant DPW is a recipient of Federal financial assistance and, as such, is subject to the requirements of Section 504 of the RA. 29 U.S.C. § 794(b).

73. Defendant DPW violates Section 504 of the RA, 29 U.S.C. § 794 and 28 C.F.R. § 41.51(d), by failing to offer Mr. Gleason and putative class members attendant care services in the community, which is the most integrated setting appropriate to their needs, and, instead, offering them such services only in segregated institutions and by either subjecting them to unnecessary institutionalization or placing them at serious risk of unnecessary institutionalization.

74. Defendant DPW violates Section 504 of the RA, 29 U.S.C. § 794 and 28 C.F.R. § 41.51(b)(3), by using methods of administration that subject Mr. Gleason and putative class members to discrimination through actual or serious risk of unnecessary segregation and institutionalization, including, but not limited to: (a) failing to assess whether persons on the Act 150 Program waiting list are institutionalized or at serious risk of institutionalization; (b) failing to use available funding to provide services to Mr. Gleason and putative class members through the Act 150 Program; (c) allowing the Act 150 Program to serve fewer and fewer people despite the increasing need for such services; and (d) failing to have a plan with

specific and concrete benchmarks and timelines within which DPW will provide Mr. Gleason and putative class members with community-based attendant care services through the Act 150 Program.

VI. RELIEF REQUESTED

75. Plaintiff Gleason respectfully requests that the Court grant the following relief:

- a. exercise jurisdiction over this action;
- b. certify this case to proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2);
- c. issue appropriate declaratory and injunctive relief; and
- d. grant such other relief as may be appropriate, including awarding reasonable attorneys' fees, litigation expenses, and costs pursuant to 42 U.S.C. § 12205 and 29 U.S.C. § 794a(b).

Respectfully submitted,

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