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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

SIERRA OTT, on behalf of L.O., and)
 all those similarly situated,)

Plaintiffs,)

vs.)

STATE OF ALASKA, DEPARTMENT)
 OF HEALTH, Heidi Hedberg, in her)
 official capacity as Commissioner of)
 the Department, DIVISION OF)
 PUBLIC ASSISTANCE, and Deb)
 Etheridge, in her official capacity)
 as Director of the Division,)

Defendants.)

Case No. 3AN-24- 6861 CI

**CLASS ACTION COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The State of Alaska has long mismanaged many of its public benefit programs. This lawsuit concerns the state's failures with Medicaid.

2. Specifically, this class action lawsuit challenges the state’s systemic failure to timely process the Medicaid applications of, and to timely provide Medicaid benefits to, Alaskans who apply for Medicaid and who require a disability determination in order to establish their eligibility.

3. These systemic and unlawful delays, from the state failing to timely process Medicaid applications to the state failing to timely provide Medicaid benefits to eligible applicants, have harmed and continue to harm vulnerable Alaskans who have a dire need for healthcare coverage.

JURISDICTION

4. This Court has jurisdiction under AS 22.10.020(c) and (g).

5. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c).

PARTIES

6. Plaintiff L.O. and his mother, Sierra Ott, reside in Palmer, Alaska. They are members of a military family. L.O. is an infant and has serious medical needs.

7. Defendant Heidi Hedberg is the Commissioner of and oversees the Alaska Department of Health (“DOH”), which is the state agency that is responsible for, among other things, administering Alaska’s Medicaid program in accordance with federal and state statutes and regulations. Commissioner Hedberg is sued in her official capacity.

8. Defendant Deb Etheridge is the Director of and oversees the Division of Public Assistance (“DPA”), which is the division within DOH that is responsible for, among other things, accepting and processing Medicaid applications and

making eligibility determinations in accord with state and federal law. Director Etheridge is sued in her official capacity.

CLASS ALLEGATIONS

9. Plaintiff L.O. through his mother, Sierra Ott, brings this action on his own behalf and on behalf of all persons who are similarly situated, pursuant to Rule 23 of the Alaska Rules of Civil Procedure.

10. The class is defined as follows: All individuals who applied for Medicaid in Alaska within two years before the filing of this lawsuit, and all future applicants, who did not or do not receive a final eligibility determination and Medicaid coverage from the state within 90 days after submitting their application.

11. All requirements for class certification under Rule 23(a) are met in this case. Specifically,

- a. The class is so numerous that joinder of all members is impracticable. The number of individuals in the above-defined class, although presently unknown, is believed to exceed 40, and may number in the hundreds or the thousands.
- b. There are questions of law or fact common to the class, including but not limited to: Are the defendants violating 42 U.S.C. § 1396a(a)(8) by failing to ensure that all individuals wishing to apply for Medicaid shall have opportunity to do so, and that such Medicaid shall be furnished with reasonable promptness to all eligible individuals? Are the defendants violating 7 AAC 100.018 by failing to provide eligibility determinations

to Medicaid applicants, who require a disability determination in order to establish their eligibility, within 90 days of their receipt of an application?

- c. The claims of the representative party are typical of those of the putative class members.
- d. The representative party will fairly and adequately represent the class. Neither the representative plaintiff nor counsel have interests which might cause them not to vigorously pursue this action.

12. Certification of a class under Alaska R. Civ. P. 23(b)(2) is appropriate because the defendants at all times have acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

STATUTORY AND REGULATORY SCHEME

Overview

13. Congress created the Medicaid program in 1965 as a joint federal-state endeavor to provide medical assistance to eligible low-income individuals whose resources and income are insufficient to afford necessary medical services.

14. Through Medicaid, the federal government subsidizes a substantial portion of a participating state's expenditures in providing covered medical care.

15. Although state participation in Medicaid is optional, participating states, such as Alaska, must comply with the federal requirements of the Medicaid program.

Federal Timely Processing Requirements for Medicaid Applications

16. The Medicaid Act mandates that state Medicaid plans must provide “that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8).

17. Federal regulations implementing the Medicaid program similarly require states to make Medicaid eligibility determinations “promptly and without undue delay.” 42 C.F.R. § 435.912(b). The implementing regulations set two explicit caps on the length of time that states have in which to determine the eligibility of an applicant. First, per 42 C.F.R. § 435.912(c)(3)(i), for any applicant applying for Medicaid on the basis of a disability, an eligibility determination must be made within 90 days. Second, per 42 C.F.R. § 435.912(c)(3)(ii), for all other Medicaid applicants, an eligibility determination must be made within 45 days.

The State of Alaska's Medicaid Program

18. The State of Alaska participates in the Medicaid program. DOH is the “single state agency” administering Alaska's Medicaid state plan.

19. DOH has promulgated regulations for the processing of Medicaid applications.

20. 7 AAC 100.018(a) provides: “No later than 30 days after an application is received, or 90 days if a disability determination is required, a district office of the division handling public assistance matters in the department or the office of the department handling matters for children in the department’s protective

custody or supervision shall mail a notice to the applicant (1) indicating that the applicant is either eligible or ineligible for benefits; (2) requesting additional information or documentation if necessary to determine eligibility; or (3) confirming that the application was withdrawn as provided in 7 AAC 100.012.”

21. 7 AAC 100.018(b) provides: “If the department determines that the applicant is eligible for Medicaid under this chapter, the department will include in the notice under (a) of this section the date coverage begins. If the department determines that the applicant is ineligible the department will include in the notice under (a) of this section (1) the specific reason for the denial; (2) an explanation of the applicant’s right to request a hearing under 7 AAC 49; and (3) the statute or regulation that supports the reason the application was denied.

22. 7 AAC 100.018(c) provides: “The department will not delay a finding of eligibility, deny eligibility, or terminate benefits on the basis that it was unable to comply with the time limits established by this section.”

FACTUAL ALLEGATIONS

Facts Common to the Class

23. During all relevant times, defendants have failed to provide Medicaid eligibility decisions to Medicaid applicants with “reasonable promptness,” as that term is defined under federal and state law.

24. Defendants’ own data shows an ongoing and longstanding pattern of violating state and federal timeframes with regard to the processing of Medicaid applications and the provision of Medicaid benefits to eligible applicants.

25. For instance, a February 27, 2024 DOH report indicates that DOH timely processed just 38.9% of Medicaid initial applications in the 2023 state fiscal year; and just 47.6% of Medicaid initial applications in the 2024 state fiscal year (as of the end of 2023). These are the statistics for the entire Medicaid program, to say nothing of the failures for those who require a disability determination.

Facts of Individual Named Plaintiff

26. On October 9, 2023, Sierra Ott applied for Medicaid on behalf of L.O.

27. On October 9, 2023, DOH mailed Sierra Ott a notice indicating that L.O.'s Medicaid application was received.

28. As of June 6, 2024, almost eight months after submitting L.O.'s Medicaid application, Sierra Ott has still not received any notice from DOH that indicates whether or not L.O. is eligible for Medicaid.

STATEMENT OF CLAIMS

Count I – Violation of 42 U.S.C. § 1983

29. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

30. Defendants are “persons” subject to liability under 42 U.S.C. § 1983.

31. Defendants’ failure to provide to provide Medicaid coverage to the plaintiff and the putative class members with “reasonable promptness” violates the Medicaid Act, namely 42 U.S.C. § 1396a(a)(8).

32. Defendants have, under color of law, deprived the plaintiff and putative class members of the rights, privileges or immunities secured by federal law.

Count II – Violations of 7 AAC 100.018

33. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

34. As to the plaintiff and the putative class members, the defendants violated 7 AAC 100.018(a) which provides: “No later than 30 days after an application is received, or 90 days if a disability determination is required, a district office of the division handling public assistance matters in the department or the office of the department handling matters for children in the department’s protective custody or supervision shall mail a notice to the applicant (1) indicating that the applicant is either eligible or ineligible for benefits; (2) requesting additional information or documentation if necessary to determine eligibility; or (3) confirming that the application was withdrawn as provided in 7 AAC 100.012.

35. As to the plaintiff and the putative class members, the defendants violated 7 AAC 100.018(b) which provides: “If the department determines that the applicant is eligible for Medicaid under this chapter, the department will include in the notice under (a) of this section the date coverage begins. If the department determines that the applicant is ineligible the department will include in the notice under (a) of this section (1) the specific reason for the denial; (2) an explanation of the applicant’s right to request a hearing under 7 AAC 49; and (3) the statute or regulation that supports the reason the application was denied.

36. As to the plaintiff and the putative class members, the defendants violated 7 AAC 100.018(c) which provides: “The department will not delay a finding

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of eligibility, deny eligibility, or terminate benefits on the basis that it was unable to comply with the time limits established by this section.”

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully asks that this Court award the following relief:

1. Certification of the above-defined class;
2. A declaration that the defendants violated 42 U.S.C. § 1396a(a)(8);
3. A declaration that the defendants violated 7 AAC 100.018;
4. A preliminary and permanent injunction requiring defendants to comply with 42 U.S.C. § 1396a(a)(8) and 7 AAC 100.018;
5. The costs and expenses of litigation;
6. Full reasonable attorney's fees under 42 U.S.C. § 1988;
7. For such other and further compensatory or equitable relief as this Court may deem just under the circumstances.

DATED this 6th day of June, 2024

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiffs

By: /s/ James J. Davis, Jr.

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