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

00C 5392

JUDGE GRADY

MAGISTRATE JUDGE DENLOW

EDWARD BOUDREAU, by and through his parents, Edwin and Ann Boudreau, **BRIAN BRUGGEMAN,** by and through his parents, Kenneth and Carol Bruggeman, **FRANCES CORSELLO,** by and through her parents, Vincent and Agnes Corsello, **ANGELA MOORE,** by and through her parents, James and Brenda Moore, **LINDA SEMPREVIVO,** by and through her parents, Richard and Ruth Ann Semprevivo,	)	
Plaintiffs,	)	No.
vs.	)	JUDGE
	)	MAGISTRATE
GEORGE H. RYAN, in his official capacity as Governor of the State of Illinois, **ANN PATLA,** in her official capacity as Director of the Illinois Department of Public Aid, **LINDA RENEE BAKER,** in her official capacity as Secretary of the Illinois Department of Human Services, **MELISSA WRIGHT,** in her official capacity as Associate Director of the Office of Developmental Disabilities,	)	
Defendants.	)	

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U.S. DISTRICT COURT

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COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Now comes the Plaintiffs, by and through their attorney, Robert H. Farley, Jr., Ltd., and complains of the Defendants as follows:

INTRODUCTION

1. This is a complaint on behalf of five (5) persons who are mentally retarded and developmentally disabled and who have been determined by Suburban Access, Inc., a Pre-

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Admission Screening Agency ("PAS") to be eligible to receive Medicaid services, but who have not received such services. The Plaintiffs seek 24 hour per day residential Medicaid services in an appropriate community based setting.

2. The Plaintiffs are unable to care fully for themselves and require a range of care and treatment, from non-residential assistance with rehabilitative and vocational needs to full-time residential support services to assist them with the most basic aspects of daily life such as toileting, eating, and bathing. As the Plaintiffs fail to receive the services which they are entitled to under the law, they suffer physical and emotional setback and fail to develop to their fullest potential.

3. The Defendants failure to provide Medicaid services to the Plaintiffs with "reasonable promptness" violates Plaintiffs' rights conferred by the Medicaid Act, 42 U.S.C. Sec. 1396(a) and implementing regulations; the American with Disabilities Act (ADA), 42 U.S.C. Sec. 1201 *et. seq.* and implementing regulations; the Rehabilitation Act, 29 U.S.C. 794 and implementing regulatoins, as well as their federal constitutional rights to Due Process and Equal Protection. Plaintiffs bring this action pursuant to 42 U.S.C. Section 1983 to enforce their federal statutory and constitutional rights. They seek declaratory and injunctive relief to redress defendant's violation of the Medicaid Act, the ADA, the Rehabilitation Act and the federal constitution and to ensure that the receive the medical assistance and care to which they are entitled.

JURISDICTION & VENUE

4. 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

5. The Plaintiff, Edward Boudreau, is 43 years old and lives with his parents, Edwin and Anne Boudreau. The family are residents of South Chicago Heights, Illinois.

(a) Edward Boudreau has profound mental retardation. Edward Boudreau has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Mr. Boudreau needs continual support and supervision throughout his life.

(b) Edward Boudreau currently attends a day program at SouthStar Services.

(c) Edward Boudreau is Medicaid eligible and was found by Suburban Access, Inc. on November 17, 1994 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Edward Boudreau seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Edward Boudreau subject to Brian Boudreau obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability. (DHS/ODD).

(f) On August 14, 2000, the Plaintiff Bourdreau requested that DHS/ODD

approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or his parents when or if he will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Bourdeau is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

6. The Plaintiff, Brian Bruggeman is 33 years old and lives with his parents, Kenneth and Carol Bruggeman. The family are residents of Homewood, Illinois.

(a) Brian Bruggeman has mild mental retardation and Down's syndrome. Brian Bruggeman has a substantial functional limitation in self-care; learning; self-direction; language; and capacity for independent living. Brian Bruggeman needs continual support and supervision throughout his life.

(b) Brian Bruggeman currently attends a day program at SouthStar Services.

(c) Brian Bruggeman is Medicaid eligible and was found by Suburban Access, Inc. on September 9, 1994 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Brian Bruggeman seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Brian Bruggeman subject to Brian Bruggeman obtaining

funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Bruggeman requested that DHS/ODD approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or his parents when or if he will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Bruggeman is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

7. The Plaintiff, Frances Corsello, is 49 years old and lives with her parents, Vincent and Agnes Corsello. The family are residents of Homewood, Illinois.

(a) Frances Corsello has mild mental retardation. Frances Corsello has a substantial functional limitation in self-care; learning; self-direction; language and capacity for independent living. Frances Corsello requires on-going support and supervision throughout her life.

(b) Frances Corsello currently attends a day program at SouthStar Services.

(c) Frances Corsello is Medicaid eligible and was found by Suburban Access, Inc. on August 7, 2000 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Frances Corsello seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Frances Corsello subject to Frances Corsello obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Corsello requested that DHS/ODD approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Corsello is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

8. The Plaintiff, Angela Moore, is 29 years old and lives with her parents, James and Brenda Moore. The family are residents of Chicago Heights, Illinois.

(a) Angela Moore has severe mental retardation. Angela Moore has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Angela Moore needs continual support and supervision throughout her life.

(b) Angela Moore currently attends a day program at SouthStar Services.

(c) Angela Moore is Medicaid eligible and was found by Suburban Access, Inc. on September 18, 1998 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Angela Moore seeks 24 hour per day residential medicaid services in an

appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Angela Moore subject to Angela Moore obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Moore requested that DHS/ODD approve funding for her to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Moore is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

9. The Plaintiff, Linda Semprevivo, is 37 years old and lives with her parents, Richard and Ruth Ann Semprevivo. The family are residents of Chicago Heights, Illinois.

(a) Linda Semprevivo has severe mental retardation. Linda Semprevivo has a substantial functional limitation in self-care; learning; self-direction; language; and capacity for independent living. Linda Semprevivo needs continual support and supervision throughout her life.

(b) Linda Semprevivo currently attends a day program at SouthStar Services.

(c) Linda Semprevivo is Medicaid eligible and was found by Suburban Access, Inc. on June 23, 2000 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled

level of care funding.

(d) Linda Semprevivo seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Linda Semprevivo subject to Linda Semprevivo obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Semprevivo requested that DHS/ODD approve funding for her to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Semprevivo is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

10. Defendant George H. Ryan is the Governor of the State of Illinois and is being sued in his official capacity. His office is responsible for ensuring that the agencies of the State's Executive Branch, including the Illinois Department of Human Services (DHS) and the Illinois Department of Public Aid (DPA), act in compliance with the Constitution and the laws of the United States.

11 Defendant Ann Patla is the Director of the Illinois Department of Public Aid (DPA) and is being sued in her 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.

12. Defendant Linda Renee Baker, 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 Baker's 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 habilitation, personal care, adaptive equipment and minor modifications to the home.

13. Defendant Melssa Wright is the Associate 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.

STATEMENT OF FACTS

14. 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").

15. 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.

16. 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.

17. 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). 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.

18. (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/MR or ICF/DD 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).

19. The State of Illinois was granted approval by the Secretary of HHS to operate a "Home and Community Based-Service (HCBS) waiver program to provide services to individuals with mental retardation or developmental disabilities who would otherwise require ICF/MR level of care effective June 1, 1991. Waivers are approved for an initial three year period and can be renewed for five year periods. The State of Illinois' waiver has been renewed on July 1, 1994 and July 1, 1999. Pursuant to its waiver program, the State of Illinois guarantees to eligible mentally retarded and developmentally disabled individuals the choice between ICF/MR services and home or community-based care. Waiver services are a cost effective alternative to higher cost,

less integrated institutional care in an ICF/MR.

20. The State of Illinois' waiver plan provides that individuals who are determined to be eligible for "waiver"services shall be given the choice of either institutional or home and community-based services, and it provides for the opportunity for a fair hearing for eligible persons who are not given this choice. HHS reviews the State of Illinois waiver program to make sure that it provides for choice and a fair hearing.

21. 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. Both the Americans with Disabilities Act, 42 U.S.C. Section 12132, and the Rehabilitation Act, 29 U.S.C. Section 794, prohibit public entities and recipients of federal funds from discriminating against any individual by reason of disability. The implementing regulations for those statues require that public and federally-funded entities provide programs and activities "in the most integrated setting appropriate to the needs of the qualified" individual with a disability. 28 C.F.R. Sections 35.130(d), 41.51(d). Eligible individuals therefore are entitled to choose home and community-based services that are more "integrated" than institutional care.

22. 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.

23. (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.

24. Section 1396a(a)(3) further provides that a State plan must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness."

25. Despite the Medicaid Act's clear command that eligible individuals receive care and services with "reasonable promptness," the Defendants have failed to provide much-needed services to the Plaintiffs.

26. The Plaintiffs are eligible developmentally disabled and mentally retarded individuals and are currently denied residential Medicaid services to which they are entitled.

27. 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

28. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 27 above.

29. 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 Medicaid services to Plaintiffs with reasonable promptness, even though the Plaintiffs are eligible to receive such services.

30. Defendant, 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.

31. Defendant, while acting under color of law, have violated and are violating Plantiffs' 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.

32. Defendants, while acting under color of law, have violated and are violating Plaintiffs' rights under 42 U.S.C. Section 1396a(a)(3) and 42 U.S.C. Section 1983 by failing to provide a fair hearing for any individual whose claim for Medicaid services is not acted upon with reasonable promptness.

33. 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.

COUNT II

VIOLATION OF DUE PROCESS AND 42 U.S.C. SECTION 1983

34. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 27 above.

35. Because the Plaintiffs are eligible for Medicaid services, they have a property right that may not be abridged without due process of law. Moreover, section 1396a(a)(3) of the Medicaid Act specifically requires a fair hearing for any individual whose claim for Medicaid services is not acted upon with reasonable promptness.

36. Defendants, while acting under color of law, have violated and are violating plaintiffs' Due Process rights under the Fifth and Fourteenth Amendment of the Constitution and 42 U.S.C. Section 1983 by failing to provide Medicaid services for which the Plaintiffs are eligible without any hearing.

37. As a result of these arbitrary delays and denials of Medicaid services to which the Plaintiffs are entitled, 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 arbitrary deprivations in the future absent relief from this Court.

COUNT III

VIOLATION OF AMERICAN WITH DISABILITIES ACT (ADA) AND 42 U.S.C SECTION 1983

38. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 27 above.

39. Title II of the American with Disabilities Act (ADA) provides that no qualified person with a disability shall be subjected to discrimination by a public entity. 42 U.S.C. Sec. 42 U.S.C. Sec. 1201 *et. seq.* A public entitle shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. Sec. 35.130(d) (1998).

40. Plaintiffs are qualified individuals with disabilities and are eligible for residential Medicaid services but are not receiving services under the State plan. Plaintiffs are qualified for the Home and Community Based-Service (HCBS) waiver program. A community placement is the most integrated setting appropriate to Plaintiffs needs and Plaintiffs desire community-based treatment. The Plaintiffs community-based placements can be reasonably accommodated.

41. The Defendants failure to place Plaintiffs in a community-based program, after the Pre-Admission Screening (PAS) Agency or Service Coordinator found such placements appropriate and after the Plaintiffs desired such placements, violated Title II of the ADA.

42. That after Plaintiff has been found to be qualified for a community-based program, the failure of the Defendants to provide these services in the "most integrated setting appropriate" to her/his needs, violates the ADA.

43. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental disabilities and developmental disabilities in less restrictive

settings.

44. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities in less restrictive settings with reasonable promptness.

45. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities who are in need of residential medicaid services with reasonable promptness.

46. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

47. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in community based settings.

48. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation who are in need of residential Medicaid services.

49. Defendants, while acting under color of law, have violated and are violating Plaintiffs' right under Title II of the American with Disabilities Act and 42 U.S.C. Section 1983.

50. 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 arbitrary deprivations in the future absent relief from this Court.

COUNT IV

VIOLATION OF REHABILITATION ACT AND 42 U.S.C SECTION 1983

51. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 27 above.

52. The Rehabilitation Act, 29 U.S.C. Sec. 794, prohibits public entities and recipients of federal funds from discriminating against any individual by reason of disability. The implementing regulation for the statute requires that public and federally-funded entities provide programs and activities "in the most integrated setting appropriate to the needs of the qualified individual with a disability." 28 C.F.R. Section 41.51(d).

53. The Defendants fail to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

54. The Plaintiffs are entitled to choose home and community-based services that are more "integrated" than institutional care.

55. Plaintiffs are individuals with disability under the Rehabilitation Act. 29 U.S.C. Sec. 705(9).

56. Plaintiffs are qualified individuals with disabilities and are eligible for Medicaid services but are not receiving services under the State plan. Plaintiffs are qualified for the Home and Community Based-Service (HCBS) waiver program. A community placement is the most integrated setting appropriate to Plaintiffs needs and Plaintiffs desire community-based treatment. The Plaintiffs community-based placements can be reasonably accommodated.

57. The Defendants failure to place Plaintiffs in a community-based program, after the Pre-Admission Screening (PAS) Agency or Service Coordinator found such placements

appropriate and after the Plaintiffs desired such placements, violated the Rehabilitation Act.

58. That after Plaintiff has been found to be qualified for a community-based program, the failure of the Defendants to provide these services in the most integrated setting appropriate to her/his needs, violates the Rehabilitation Act.

59. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

60. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental disabilities and developmental disabilities in less restrictive settings.

61. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities in less restrictive settings with reasonable promptness.

62. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities who are in need of residential medicaid services with reasonable promptness.

63. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

64. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in community based settings.

65. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation who are in need of residential Medicaid services.

66. 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 arbitrary deprivations in the future absent relief from this Court.

COUNT V

VIOLATION OF EQUAL PROTECTION AND 42 U.S.C SECTION 1983

67. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 27 above.

68. The Plaintiffs have similar disabilities and needs to those of individuals who have received and are presently receiving all Medicaid services for which they are eligible. Defendants have no rational basis for denying the Plaintiffs Medicaid services and waiver services to which they are entitled, while providing such services to other similarly situated developmentally disabled and mentally retarded individuals.

69. Defendants, while acting under color of law, have violated and are violating Plaintiffs' right to Equal Protection of the laws guaranteed by the Fourteenth Amendment of the Constitution and 42 U.S.C. Section 1983.

70. As a result of this arbitrary, discriminatory treatment supported by no rational basis, 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 arbitrary deprivations in the future absent relief from this Court.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(a) Enter Judgment in favor of the Plaintiffs and hold that the Defendants' failure to provide Medicaid services to the Plaintiffs violate 42 U.S.C. Section 1983, the Medicaid Act, 42 U.S.C. Section 1396a(a), the Americans with Disabilities Act, the Rehabilitation Act, the Fifth and Fourteenth Amendments of the Federal Constitution;

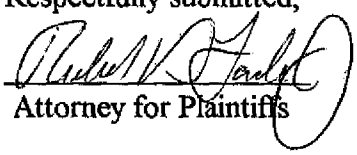
(b) Issue preliminary and permanent injunctive relief requiring the Defendants, their successors in office, agents, employees, and all persons acting in concert with them, to offer the Plaintiffs the full range of ICF/MR services or home and community-based waiver services and other services for which they are eligible within 90 days or some other specifically-defined, reasonably prompt period;

(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 the Plaintiffs who are eligible for "waiver" services the choice of receiving ICF/MR or home and community-based services that are suitable for their needs within 90 days or some other specifically-defined period — a choice that is required by the State of Illinois waiver program, by the Medicaid Act, 42 U.S.C. Section 1396n(c)(2)(C), and by federal statutes and regulations entitling disabled persons to services in the "most integrated setting" appropriate to their individual needs, see 42 U.S.C. Section 12132 (Americans With Disabilities Act); 29 U.S.C. Section 794 (Rehabilitation Act); 28 C.F.R. Sections 35,130(d), 41.51(d);

(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

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JS 44
(Rev. 12/96) Cat 2

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as requ by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS – Boudreau, Edward; Bruggeman, Brian; Corsello, Frances; Moore, Angela; and Semprevivo, Linda.

DEFENDANTS – Ryan, George H.; Patla, Ann; Baker, Linda Renee; and Wright Melissa

00C 5392

JUDGE GRADY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cook
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

MAGISTRATE JUDGE DENLOW

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Robert H. Farley, Jr.
Robert H. Farley, Jr., Ltd.
1155 S. Washington, Naperville, IL 60540
630-369-0103

ATTORNEYS (IF KNOWN)

DOCKETED
SEP - 5 2000

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINT AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PTF	DEF		PTF	DE
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to Distri Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury – Med. Malpractice
- ☐ 365 Personal Injury – Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

HABEAS CORPUS:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS – Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justic
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 U.S.C. 1396a(a) & 42 U.S.C. Sec. 1983 – Violation of Medicaid Act principle cause of action.

VII. REQUESTED IN COMPLAINT ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint
JURY DEMAND: ☐ YES ☒ NO

VIII. This case ☒ is not a refiling of a previously dismissed action.
☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE 9/1/2000

SIGNATURE OF ATTORNEY OF RECORD Robert H. Farley

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED
SEP - 5 2000

In the Matter of

Edward Boudreau, et. al.,
Plaintiffs,
v.
George H. Ryan, et. al.,
Defendants.

Case Number: 00C 5391
JUDGE GRADY
MAGISTRATE JUDGE DENLOW

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Edward Boudreau; Brian Bruggeman; Frances Corsello; Angela Moore and Linda Semprevivo.

FILED-E15
00 SEP -1 AM 8:37
CLERK
U.S. DISTRICT COURT

(A)		(B)	
SIGNATURE		SIGNATURE	
NAME Robert H. Farley, Jr.		NAME	
FIRM Robert H. Farley, Jr., Ltd.		FIRM	
STREET ADDRESS 1155 S. Washington		STREET ADDRESS	
CITY/STATE/ZIP Naperville, IL 60540		CITY/STATE/ZIP	
TELEPHONE NUMBER 630-369-0103	FAX NUMBER 630-369-0195	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS farleylaw@aol.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 3124293		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR?	YES [X] NO [ ]	MEMBER OF TRIAL BAR?	YES [ ] NO [ ]
TRIAL ATTORNEY?	YES [X] NO [ ]	TRIAL ATTORNEY?	YES [ ] NO [ ]
		DESIGNATED AS LOCAL COUNSEL?	YES [ ] NO [ ]

(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
E-MAIL ADDRESS		E-MAIL ADDRESS	
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