

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KARLA STEIMEL, on her own behalf and on)
behalf of three (3) classes of those similarly)
situated,)

Plaintiffs,)

v.)

DEBRA MINOTT, in her official capacity as)
Secretary of the Indiana Family and Social)
Services Administration; NICOLE NORVELL,)
in her official capacity as the Director of the)
Division of Disability and Rehabilitative Servs.)
of the Indiana Family and Social Services)
Administration; and FAITH LAIRD, in her)
official capacity as Director of the Division of)
Aging of the Indiana Family and Social Services)
Administration,)

Defendants.)

No. 1:13-cv-957

COMPLAINT – CLASS ACTION

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

Introductory Statement

1. Karla Steimel is an adult Medicaid recipient with cerebral palsy who, as a result of this condition, requires assistance in all aspects of daily living. In order to receive this assistance in a community setting, rather than in an institution, Ms. Steimel has sought placement on two (2) different Medicaid waiver programs operated by the Indiana Family and Social Services Administration (“the agency”): the Community Integration and Habilitation Waiver (“CIH Waiver”) and the Aged and Disabled Waiver (“A&D Waiver”). After being deemed eligible for both programs, Ms. Steimel was placed on a waiting list for the CIH Waiver for twelve (12) or fifteen (15) years, and in the interim was placed on the A&D Waiver. However, two (2) changes

in the agency's policies occurring in late 2012 and early 2013 have resulted in her inability to continue receiving services through either waiver program. First, the agency eliminated entirely the wait-list for the CIH Waiver and instead determined that only persons who meet certain "priority criteria" may receive placement on that waiver. And second, the agency determined that persons with developmental disabilities who do not require skilled nursing services (such as assistance with a ventilator or with medication administration) may not receive services through the A&D Waiver.

2. Rather, Ms. Steimel has been offered placement on a smaller waiver program, also operated by the agency, that does not provide sufficient services to ensure her health and safety in the community. She is therefore at risk for the first time in her life of requiring institutionalization. The agency's elimination of the wait-list for the CIH Waiver and its determination that persons who do not meet its "priority criteria" may not receive placement on that waiver, as well as its requirement that individuals with developmental disabilities require skilled nursing services for placement on the A&D Waiver, violates the "integration mandate" of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, and of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* Additionally, to the extent that Ms. Steimel was not offered a mechanism through which to appeal the elimination of her position on the wait-list for the CIH Waiver, that failure violates federal Medicaid law, 42 U.S.C. § 1396a(a)(3).

3. The agency's various policies each affect hundreds, if not thousands, of persons, and this case is therefore suitable for class treatment pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. Appropriate declaratory and injunctive relief must be entered on behalf of Ms. Steimel and the classes.

Jurisdiction, Venue, and Cause of Action

4. The Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
6. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
7. This action is brought pursuant to the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by federal law.

Parties

8. Karla Steimel is an adult resident of Knox County, Indiana. She brings this action on her own behalf and on behalf of three (3) classes of those similarly situated.
9. Debra Minott is the duly appointed Secretary of the Indiana Family and Social Services Administration, and is sued in her official capacity.
10. Nicole Norvell is the duly appointed Director of the Division of Disability and Rehabilitative Services of the Indiana Family and Social Services Administration, and is sued in her official capacity.
11. Faith Laird is the duly appointed Director of the Division of Aging of the Indiana Family and Social Services Administration, and is sued in her official capacity.

Class Action Allegations

12. Karla Steimel brings this action on her own behalf and on behalf of three (3) classes of those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

Class A

13. Class A is defined as follows:

Any and all persons on the waiting list for Indiana's Community Integration and Habilitation Medicaid Waiver Program (including its predecessor, the

Developmental Disabilities Medicaid Waiver Program) as of August 31, 2012, or who will be or would otherwise be on the wait-list for that program but for the elimination of that wait-list, and who do not meet Indiana's priority criteria for placement on that program (described in paragraph 33, *infra*).

14. As defined, Class A meets all requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. Class A is so numerous that the joinder of all members is impracticable. On information and belief, Class A is thought to number in the thousands, if not tens of thousands, of persons.
- b. There are questions of law or fact common to Class A, namely whether the challenged policy violates the Americans with Disabilities Act and the Rehabilitation Act.
- c. The claims of the representative party are typical of those of the class.
- d. The representative party will fairly and adequately represent the class.

15. Class A further meets the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure insofar as the party opposing certification has acted and/or refused to act on grounds generally applicable to the class.

16. Undersigned counsel is skilled and experienced in this type of class action litigation, and should therefore be appointed as counsel for Class A pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

Class B

17. Class B is defined as follows:

Any and all persons on the waiting list for Indiana's Community Integration and Habilitation Medicaid Waiver Program (including its predecessor, the Developmental Disabilities Medicaid Waiver Program) as of August 31, 2012.

18. As defined, Class B meets all requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. Class B is so numerous that the joinder of all members is impracticable. On information and belief, Class B is thought to number in the thousands, if not tens of thousands, of persons.
- b. There are questions of law or fact common to Class B, namely whether the failure to provide for an appeals process violates 42 U.S.C. § 1396a(a)(3).
- c. The claims of the representative party are typical of those of the class.
- d. The representative party will fairly and adequately represent the class.

19. Class B further meets the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure insofar as the party opposing certification has acted and/or refused to act on grounds generally applicable to the class.

20. Undersigned counsel is skilled and experienced in this type of class action litigation, and should therefore be appointed as counsel for Class B pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

Class C

21. Class C is defined as follows:

Any and all persons enrolled in, or who will be enrolled in, Indiana's Aged and Disabled Medicaid Waiver Program and/or its Traumatic Brain Injury Medicaid Waiver Program who (a) are developmentally disabled and/or under age eleven (11), (b) do not routinely require skilled nursing services for their conditions, (c) meet nursing facility level of care as determined through the use of Indiana's Eligibility Screen (State Form 45528), and (d) are also determined to be eligible for services through the Family Supports Medicaid Waiver Program.

22. As defined, Class C meets all requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically:

- a. Class C is so numerous that the joinder of all members is impracticable. On information and belief, Class C is thought to number in the hundreds, if not the thousands, of persons.
- b. There are questions of law or fact common to Class C, namely whether the challenged policy violates the Americans with Disabilities Act and the Rehabilitation Act.

c. The claims of the representative party are typical of those of the class.

d. The representative party will fairly and adequately represent the class.

23. Class C further meets the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure insofar as the party opposing certification has acted and/or refused to act on grounds generally applicable to the class.

24. Undersigned counsel is skilled and experienced in this type of class action litigation, and should therefore be appointed as counsel for Class C pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

Factual Allegations

Facts Concerning the Agency's Medicaid Waiver Programs

A. Introduction to the Agency's Medicaid Waiver Programs

25. The U.S. Department of Health and Human Services may waive certain requirements of the Medicaid program for states that include as “medical assistance” under their State plan home and community-based services that are provided to an individual who, but for such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded. *See* 42 U.S.C. § 1396n(c)(1).

26. The Indiana Family and Social Services Administration (“the agency”) currently operates four (4) such home and community-based Medicaid waiver programs, which are programs approved by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. § 1396n(c). Of these programs, two (2) are operated through the agency’s Division of Disability and Rehabilitative Services (“DDRS”) (the Community Integration and Habilitation Waiver [“CIH Waiver”] and the Family Supports Waiver [“FS Waiver”]) and two (2) are operated

through the agency's Division of Aging (the Aged and Disabled Waiver ["A&D Waiver"] and the Traumatic Brain Injury Waiver ["TBI Waiver"]).

27. Historically, the agency has operated five (5) home and community-based Medicaid waiver programs, three (3) through DDRS. The three (3) operated through DDRS were known as the Developmental Disabilities Waiver ("DD Waiver"), the Autism Waiver, and the Support Services Waiver ("SS Waiver"). However, on or around September 1, 2012, the DD Waiver and the Autism Waiver merged and became the CIH Waiver, and the SS Waiver became the FS Waiver. Persons enrolled in the previous waiver programs were automatically transitioned to the newly named programs. Therefore, throughout this complaint and for the purposes of simplicity, the current names of the waiver programs are utilized to refer both to the current waiver programs and their predecessors.

28. An individual enrolled in a Medicaid home and community-based waiver program in Indiana must demonstrate that, but for his or her enrollment in that program, he or she would require institutionalization, either through placement in an intermediate care facility for the mentally retarded (for the waiver programs operated by DDRS) or through placement in a nursing facility (for the waiver programs operated by the Division of Aging). This individual may receive, through that program, specified types of services in his or her home or other community setting in lieu of institutionalization.

29. Each Medicaid home and community-based waiver program in Indiana has an "enrollment cap"—that is, a total number of individuals that may receive services through that program. In 2013, the enrollment cap for the CIH Waiver is 7,370 persons; the enrollment cap for the A&D Waiver is 13,951 persons; and the enrollment cap for the FS Waiver is 5,267 persons. Historically, individuals who seek enrollment in a home and community-based waiver

program that has reached its capacity have been placed on a wait-list to receive such services (assuming they were otherwise eligible).

B. The Elimination of the Wait-List for the CIH Waiver

30. Historically, the CIH Waiver has maintained a lengthy wait-list, such that persons often do not receive services through that waiver program until ten (10) or fifteen (15) years after they initially seek placement on the program. On August 31, 2012, the wait-list for placement on the CIH Waiver contained many thousands, or perhaps even tens of thousands, of persons.

31. However, on or about September 1, 2012, the wait-list for enrollment in the CIH Waiver was eliminated entirely. Rather, persons who were previously on the wait-list for the CIH Waiver were sent a letter titled “Targeting Letter for DDRS’ Family Supports Waiver” (“Targeting Letter”). In pertinent part, this Targeting Letter informed persons on the wait-list for the CIH Waiver that the only way to access the CIH Waiver “is if an individual meets specific emergency priority criteria.” The Targeting Letter therefore required individuals to respond within thirty (30) days to accept a placement on the wait-list for the FS Waiver; if they did not so respond, their names “w[ould] be removed from the Medicaid Waiver wait list and th[e] slot w[ould] be offered to another individual on the waiting list.” A true and correct copy of the Targeting Letter is attached and incorporated herein as Exhibit 1. A true and correct summary of a “Webinar” provided by the agency explaining some of the changes in its policies is attached and incorporated herein as Exhibit 2.

32. The Targeting Letter did not inform persons that they could appeal the agency’s decisions or provide any details on the manner in which they might do so. Rather, no such appeals process was made available to persons, even if they believed that they met one or more of the “specific emergency priority criteria.”

33. The “specific emergency priority criteria” referenced in the letter whereby persons meeting such criteria may be eligible for the CIH Waiver are as follows:

- Otherwise eligible individuals transitioning to the community from a nursing facility, ESN, or SOF.
- Otherwise eligible individuals determined to no longer need/receive active treatment in an SGL.
- Otherwise eligible individuals transitioning from 100% state funded services.
- Otherwise eligible individuals aging out of certain services offered by the Department of Education, the Department of Child Services, or SGL.
- Otherwise eligible individuals requesting to leave a large private ICF/ID.
- Otherwise eligible individuals meeting the following emergency criteria:
 - Death of a Primary Caregiver where there is no other caregiver available.
 - Caregiver over 80 years of age where there is no other caregiver available.
 - Evidence of abuse or neglect in the current institution or SGL placement.
 - Extraordinary health and safety risk as reviewed and approved by the Director of DDRS.

34. As used in these criteria, “ESN” refers to “extensive support needs,” which are group homes designed and licensed to meet the needs of individuals with intensive behavioral and/or medical needs; “SOF” refers to a “state-operated facility,” which is the same as a state institution or state hospital; and “SGL” refers to “supervised group living,” which is a group home licensed under Indiana Code § 12-28-5-10, *et seq.* Finally, “ICF/ID” refers to an “intermediate care facility for the intellectually disabled,” which is or has in the past been also referenced as an intermediate care facility for the mentally retarded (ICF/MR) or an intermediate care facility for the developmentally disabled (ICF/DD).

35. Many persons who were previously on or were previously eligible for placement on the CIH Waiver wait-list will never meet these “specific emergency priority criteria.” For instance, persons institutionalized in an ICF/ID that does not qualify as a “large private ICF/ID” (or persons who may be placed in such a facility) are unlikely to ever be eligible for the CIH Waiver under these criteria.

36. Placement on the FS Waiver is not a complete or adequate substitute for placement on the CIH Waiver for many individuals who were previously on the wait-list for the CIH Waiver.

37. Many persons have applied for or otherwise sought services through the CIH Waiver because their disabling conditions cause them to require substantial care, supervision, and/or assistance in order for them to reside safely in the community, and in numerous instances these individuals possess disabling conditions that cause them to require constant (24/7) care and supervision. Accordingly, depending on their needs and other circumstances, persons may receive through the CIH Waiver services up to twenty-one (21) hours each day.

38. On the other hand, persons enrolled in the FS Waiver may receive no more than \$16,250 in services each year. This is an amount that equates to approximately forty (40) hours each month in care, supervision, and habilitation. This limit on services means that the FS Waiver is grossly inadequate as an alternative to placement on the CIH Waiver.

C. Transitioning Persons Away from the A&D Waiver and the TBI Waiver

39. In or around September of 2011, the agency (and its Division of Aging) issued a “Policy Change”—effective October 1, 2011—entitled “Nursing Facility Medicaid Waivers: Level of Care Policy Statement” (“2011 Policy Change”). A true and correct copy of this 2011 Policy Change is attached and incorporated herein as Exhibit 3.

40. This 2011 Policy Change rescinded an earlier Policy Statement, which had been in effect since September 12, 2006 (“2006 Policy Statement”). A true and correct copy of this 2006 Policy Statement is attached and incorporated herein as Exhibit 4.

41. According to the 2011 Policy Change, the 2006 Policy Statement had, in pertinent part, “announced that children under age eleven (11) and/or individuals with a MR/DD [mentally retarded/developmentally disabled] diagnosis could be eligible for the Aged and Disabled and

Traumatic Brain Injury waivers” provided that these individuals “meet nursing facility level of care requirements as outlined through the Eligibility Screen assessment tool, section 1 and/or section 2.”

42. As indicated, in order to receive services through the A&D Waiver or the TBI Waiver, an individual must meet “nursing facility level of care.” To determine whether an individual so qualifies, the agency completes a so-called “Eligibility Screen” (State Form 45528). A true and correct copy of this Eligibility Screen is attached and incorporated herein as Exhibit 5.

43. As is pertinent here, the Eligibility Screen contains two (2) sections relevant to determining whether an individual meets nursing facility level of care.

44. The first section (Section 1) of the Eligibility Screen is entitled “Severe Medical Conditions”: if one (1) or more of the conditions in this section exist, then that person is deemed to meet nursing facility level of care. The conditions in this section generally refer to needs requiring skilled assistance, such as the administration of medications or other injections, assistance with operating a ventilator, or suctioning or tube feeding.

45. The second section (Section 2A) is entitled “Substantial Medical Conditions Including Activities of Daily Living”: if three (3) or more of the conditions in this section exist, then that person is likewise deemed to meet nursing facility level of care. The conditions in this section generally refer to substantial needs that do not necessarily require assistance from a skilled caregiver, such as assistance in eating, transferring, bathing, or ambulating.

46. Numerous persons with developmental disabilities have been or are enrolled in the A&D Waiver and/or the TBI Waiver insofar as they meet nursing facility level of care under the requirements of Section 2A of the Eligibility Screen.

47. Nonetheless, the agency has interpreted and applied its 2011 Policy Change to require that children under age eleven (11) and developmentally disabled individuals require skilled nursing services—such as suctioning, ventilation, or tube feeding—in order to receive services through the A&D Waiver or the TBI Waiver. This is so even if these individuals meet nursing facility level of care requirements.

48. However, individuals who were approved for the A&D Waiver and/or the TBI Waiver prior to the 2011 Policy Change may continue to receive services through that program until they either voluntarily withdraw or transfer to another waiver program. Nonetheless, the agency has required and is requiring all persons enrolled in the A&D Waiver and/or the TBI Waiver to transfer to the FS Waiver if (a) they are developmentally disabled and/or under age eleven (11) and do not routinely require skilled nursing services and (b) they are otherwise eligible for the FS Waiver.

49. For the reasons described above, the FS Waiver is not an adequate alternative to placement on the A&D Waiver and/or the TBI Waiver.

50. Eligibility for the FS Waiver is determined by application of the definition of “persons with related conditions” contained within 42 C.F.R. § 435.1010. Specifically, an individual must meet the following requirements:

- He or she must have a severe, chronic disability that is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.
- His or her disability must have manifested before the person reached age 22.
- His or her disability must be likely to continue indefinitely.
- His or her disability must result in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care.
 - Understanding and use of language.

- Learning.
- Mobility
- Self-direction.
- Capacity for independent living.

51. Because of the nature of these requirements, nearly every individual with a developmental disability previously enrolled in or eligible for the A&D Waiver and/or the TBI Waiver to whom the 2011 Policy Change applies will also be eligible for services through the FS Waiver.

Facts Concerning Karla Steimel

52. Karla Steimel is an adult resident of Knox County, Indiana. She is currently twenty-seven (27) years old and is a Medicaid recipient.

53. Ms. Steimel is developmentally disabled. She has a primary diagnosis of cerebral palsy, and also has physical disabilities, including arthritis and incontinence.

54. As a result of her cerebral palsy, Ms. Steimel requires assistance in completing all aspects of her daily living. She cannot ambulate by herself and therefore is confined to a wheelchair at all times when she is not in bed. She requires complete assistance, for instance, in transferring, bathing, toileting, preparing meals, and running errands. She also requires an assistant to be present during all waking hours because she would be unable to ensure her safety in case of an emergency such as a fire or a fall.

55. Ms. Steimel resided with her parents until she was approximately twenty (20) years old. Since that time, she has been living by herself in the community, and has been renting a house at her current address for the past three (3) years.

56. Approximately twelve (12) or fifteen (15) years ago, Ms. Steimel applied for enrollment in the CIH Waiver (which was at the time known as the Developmental Disabilities Waiver).

She was accepted onto the wait-list for the CIH Waiver, and remained on that wait-list until approximately September 1, 2012.

57. While Ms. Steimel was on the wait-list to receive services through the CIH Waiver, she applied for and was offered a slot on the A&D Waiver. Ms. Steimel has therefore been receiving services through that waiver program for at least eight (8) years.

58. Through the A&D Waiver, Ms. Steimel currently receives approximately one hundred sixty (160) hours each month in so-called “attendant care” services. Attendant care services are those services provided through the waiver that primarily involve hands-on care and assistance for persons with disabilities (such as assistance in transferring, toileting, bathing, preparing meals, and running errands). They are provided to allow such individuals to remain in their homes while receiving assistance to carry out activities of daily living, self-care, and mobility. Through these services, Ms. Steimel also receives transportation to the Knox County ARC, where she is employed and receives employment-related services from approximately 8:30 a.m. to 2:00 p.m. five (5) days a week.

59. In addition to the services that she receives through the A&D Waiver, Ms. Steimel receives approximately thirty-eight (38) hours each week in services from a home health agency. *See* IND. ADMIN. CODE tit. 405, r. 5-16-1, *et seq.* (describing home health agency services). These are services that are provided through the traditional Medicaid program, rather than through a waiver program, and for which prior authorization has been sought and obtained pursuant to Title 405, Rule 5-3-1, *et seq.*, of the Indiana Administrative Code. However, these “home health” services cannot be provided to Ms. Steimel outside of her home, and she may therefore not utilize these services to run errands or engage in other community activities, or to

transport herself to work. Regardless, Ms. Steimel is not eligible to receive additional “home health” services beyond those that she is currently receiving.

60. On or about January 10, 2013, the agency sent to Ms. Steimel a copy of the letter titled “Targeting Letter for DDRS’ Family Supports Waiver” (Exhibit 1). As indicated, this letter informed Ms. Steimel that, notwithstanding the fact that she had spent over a decade on a waiting list to receive services through the CIH Waiver, there would no longer be a waiting list and she could not access services through this waiver unless she met certain “specific emergency priority criteria.” This letter did not inform Ms. Steimel that she could appeal the agency’s decision or provide any details on the manner in which she might do so. Rather, no such appeals process was made available to her, even though she believes the agency’s decision is erroneous and wishes to appeal it. A true and correct copy of the letter received by Ms. Steimel is attached and incorporated herein as Exhibit 6.

61. Further communications with representatives of the agency confirmed that Ms. Steimel was and is not considered to meet any of the agency’s priority criteria. Ms. Steimel agrees that she does not meet any of these criteria, with the possible exception that she believes that transitioning to the FS Waiver will present an “extraordinary health and safety risk.” However, she does not know the precise meaning of that term as employed by the agency, and she has not been reviewed and approved as having such a risk by the Director of DDRS.

62. Moreover, also in or around January of 2013, Ms. Steimel was informed that, as a result of the 2011 Policy Change described above, she could no longer receive services through the A&D Waiver insofar as she does not have any “skilled medical needs”—that is, that she does not routinely require skilled nursing services. However, she was informed that, if she did not meet

ICF/ID level of care, such that she would be eligible for placement on the FS Waiver, then she could continue receiving services through the A&D Waiver.

63. Ms. Steimel meets both nursing facility level of care (required for eligibility on the A&D Waiver) and ICF/ID level of care (required for eligibility on the CIH Waiver and the FS Waiver). A true and correct copy of the Eligibility Screen (completed in September of 2012) demonstrating that she meets nursing facility level of care is attached and incorporated herein as Exhibit 7. A true and correct copy of the letter from DDRS (completed in April of 2013) demonstrating that she meets ICF/ID level of care is attached and incorporated herein as Exhibit 8.

64. Accordingly, Ms. Steimel has been removed from the wait-list for the CIH Waiver as well as from placement on the A&D Waiver in favor of placement on the FS Waiver.

65. However, the services offered through the FS Waiver are inadequate to provide for Ms. Steimel's needs and will leave her without necessary care and supervision for much of every single day. Specifically, even though Ms. Steimel receives approximately forty (40) hours each week in attendant care services through the A&D Waiver presently, through the FS Waiver she would only be able to receive approximately forty (40) hours each *month* in services. Moreover, because of the limited amount of services available through the FS Waiver, Ms. Steimel would be required to utilize these services in order to perform necessary tasks at home rather than to transport her to her employment or other community activities.

66. If Ms. Steimel is transitioned to the FS Waiver, she will be at grave risk of immediate and irreparable harm in the community. She will therefore be required to, for the first time, consider placement in an institutional setting.

67. Ms. Steimel's needs, as well as the needs of the members of putative Class A and putative Class C, may be reasonably accommodated in the community without causing a fundamental alteration to the agency's services.

68. Ms. Steimel is not positive as to when she will be transitioned off of the A&D Waiver and on to the FS Waiver. However, as a result of her communications with her case manager, she believes that this is likely within a week or two.

Concluding Factual Allegations

69. The agency, DDRS, and the Division of Aging all receive federal funds, and are therefore subject to the requirements of the Rehabilitation Act of 1973.

70. As a result of the actions or inactions of the defendants, the plaintiff and the members of the putative classes are suffering irreparable harm for which there is no adequate remedy at law.

71. The defendants have, at all times, acted or refused to act under color of state law.

Legal Claims

72. The elimination of the wait-list for the CIH Waiver and the requirement that only those persons who meet the agency's "specific emergency priority criteria" may be considered for placement on this waiver violates the "integration mandate" of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. This claim is brought on behalf of Ms. Steimel and Class A.

73. The failure to provide persons eliminated from the wait-list for the CIH Waiver with notice and an opportunity to appeal that action violates 42 U.S.C. § 1396a(a)(3). This claim is brought on behalf of Ms. Steimel and Class B.

74. The elimination of persons with developmental disabilities who do not have skilled medical needs—that is, do not routinely require skilled nursing services—from the A&D Waiver

violates the “integration mandate” of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. This claim is brought on behalf of Ms. Steimel and Class C.

Request for Relief

WHEREFORE, the plaintiff and the putative classes respectfully request that this Court do the following:

1. Accept jurisdiction of this cause and set it for hearing.
2. Certify this case as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, with the classes as defined above.
3. Declare that the defendants have violated the rights of the plaintiff and the classes for the reasons described above.
4. Issue a preliminary injunction, later to be made permanent, requiring the defendants to:
 - a. Re-instate the wait-list for placement on the CIH Waiver for the plaintiff and the members of Class A, eliminate any requirement that persons meet the agency’s “specific emergency priority criteria” to be placed on this wait-list, and provide sufficient slots through this waiver for the wait-list to move at a reasonable pace.
 - b. Provide notice and an opportunity to appeal the elimination of their place on the wait-list for the CIH Waiver to the plaintiff and the members of Class B.
 - c. Continue providing services to the plaintiff and the members of Class C through the A&D Waiver.
5. Award the plaintiff and the classes their costs and attorneys’ fees pursuant to 29 U.S.C. § 794a, 42 U.S.C. § 12133, 42 U.S.C. § 1988, and any and all other applicable statutes.
6. Award all other proper relief.

Respectfully submitted,

/s/ Gavin M. Rose

Gavin M. Rose

ACLU OF INDIANA

1031 E. Washington St.

Indianapolis, IN 46202

317/635-4059, x106

<grose@aclu-in.org>

*Attorney for the plaintiff and the putative
classes*