

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS  
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U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS  
JUL 17 2003  
JAMES W. McCORMACK, CLERK  
By: JEL JAMES W. McCORMACK, CLERK  
DEP CLERK DEP CLERK

TESSA G., A MINOR, BY AND THROUGH  
HER FATHER AND NATURAL GUARDIAN,  
MARK G.

**PLAINTIFF**

VS.

CASE NO. 4:03CV00493 GTE

ARKANSAS DEPARTMENT OF HUMAN  
SERVICES, KURT KNICKREHM, IN HIS  
INDIVIDUAL CAPACITY AND IN HIS  
OFFICIAL CAPACITY AS DIRECTOR OF  
THE ARKANSAS DEPARTMENT OF  
HUMAN SERVICES, AND JAMES GREEN,  
PH.D., IN HIS INDIVIDUAL CAPACITY  
AND IN HIS OFFICIAL CAPACITY AS  
DIRECTOR OF THE DIVISION OF  
DEVELOPMENTAL DISABILITIES  
SERVICES OF THE ARKANSAS  
DEPARTMENT OF HUMAN SERVICES  
DEFENDANTS

**DEFENDANTS**

ANSWER

Come the Arkansas Department of Human Services, Kurt Knickrehm, in his individual capacity and in his official capacity as Director of the Arkansas Department of Human Services, and James Green, Ph.D., in his individual capacity and in his official capacity as Director of the Division of Developmental Disabilities Services of the Arkansas Department of Human Services, hereinafter "defendants," and for their Answer state:

1. Defendants admit the allegations contained in paragraphs 1 through 4 of plaintiff's complaint.

2. In response to paragraph 5 of plaintiff's complaint, defendants admit that plaintiff seeks declaratory and injunctive relief but deny that plaintiff is entitled to relief, and further deny that defendants have violated any of plaintiff's legally protected rights.

3. In response to paragraph 6 of plaintiff's complaint, defendants admit that 28 U.S.C. § 1331 vests the Court with federal question jurisdiction, but deny that this complaint gives rise to such jurisdiction.

4. In response to paragraph 7 of plaintiff's complaint, defendants admit that the Court has civil rights jurisdiction pursuant to 28 U.S.C. § 1343, but deny that this complaint gives rise to such jurisdiction.

5. Defendants admit the allegations contained in paragraphs 8 through 21 of plaintiff's complaint.

6. Defendants deny the allegations contained in paragraphs 22-24 of plaintiff's complaint.

7. Defendants admit the allegations contained in paragraphs 25 through 29 of plaintiff's complaint.

8. Defendants deny the allegations contained in paragraph 30 of the complaint as stated, and in response allege that ADHS sent an ACS waiver enrollment form to plaintiff's father, who completed and returned the form, thereby assuring plaintiff's position on the ACS waiver waiting list. ADHS has not sent an ACS application form to plaintiff or to plaintiff's father. Defendants deny that "there are nearly 1000 unfilled 'slots' under the ACS program."

9. Defendants admit the allegations contained in paragraphs 31 and 32 of plaintiff's complaint.

10. In response to paragraph 33 of plaintiff's complaint, defendants deny that the term "reasonable promptness" creates an enforceable federal right, and therefore deny the legal conclusions in paragraph 33. Defendants admit that ADHS sent no enrollment application to plaintiff, that plaintiff is on the ACS waiver waiting list, and that defendants do not know when an ACS waiver slot will become available to plaintiff.

11. In response to paragraph 34 of plaintiff's complaint, defendants admit that ADHS allowed the plaintiff's father to submit an ACS enrollment form on plaintiff's behalf, that plaintiff is on the ACS waiver waiting list, and that defendants do not know when an ACS waiver slot will become available to plaintiff. Defendants deny that plaintiff is eligible for one of the open ACS waiver slots.

12. In response to paragraph 35 of plaintiff's complaint, defendants admit that the Medicaid Act imposes certain obligations on the ADHS, but deny that plaintiff has not received appropriate consideration.

13. In response to paragraph 36 of plaintiff's complaint, defendants admit that the Medicaid Act imposes certain obligations on the ADHS, but deny that plaintiff is eligible for one of the open slots and deny that defendant failed to provide plaintiff with a meaningful opportunity to apply for ACS services.

14. Defendants admit the allegations contained in paragraph 37 of plaintiff's complaint.

15. Defendants admit that ADHS acted under color of state law but deny the remaining allegations contained in paragraph 38 of plaintiff's complaint.

16. Defendants admit the allegations contained in paragraph 39 of plaintiff's complaint.

17. In response to paragraph 40 of plaintiff's complaint, defendants admit that the Medicaid Act imposes obligations on the ADHS in connection with the determination of eligibility.

18. In response to paragraph 41 of plaintiff's complaint, defendants deny that any act or omission of ADHS has prejudiced any federally enforceable right plaintiff may have in connection with the ACS waiver program.

19. Defendants deny the allegations contained in paragraph 42 of plaintiff's complaint as stated, and affirmatively allege that 42 U.S.C. § 1396n (c)(2) affords Medicaid recipients the right to choose *available* waiver services.

20. In response to paragraph 43 of plaintiff's complaint, defendants deny that any act or omission of ADHS has prejudiced any federally enforceable right plaintiff may have in connection with the ACS waiver program.

21. Defendants deny the allegations contained in paragraph 44 of plaintiff's complaint, and affirmatively allege that ADHS has determined that plaintiff is not presently eligible for ACS services and is not entitled to one of the open slots.

22. Defendants deny the allegations contained in paragraph 45 of plaintiff's complaint as stated, and affirmatively allege that 42 U.S.C. § 1396n (c)(2) affords Medicaid recipients the right to choose *available* waiver services.

23. Defendants deny the allegations contained in paragraph 46 of plaintiff's complaint, and affirmatively allege that ADHS has determined that plaintiff is not presently eligible for ACS services, that plaintiff is not presently entitled to one of the open ACS waiver slots, and that plaintiff has not been deprived of the freedom to choose

available waiver services because there are no available ACS waiver slots to which she could be entitled.

24. Defendants admit the allegations contained in paragraph 47 of plaintiff's complaint.

25. In response to paragraph 48 of plaintiff's complaint, defendants admit that ADHS acted under color of state law, and admit that ADHS has not offered plaintiff an administrative adjudication in connection with plaintiff's request for ACS waiver services.

26. Defendants admit the allegations contained in paragraphs 49-51 of plaintiff's complaint.

27. In response to paragraph 52 of plaintiff's complaint, defendants admit that ADHS has not offered plaintiff an administrative adjudication in connection with plaintiff's request for ACS waiver services, but deny that plaintiff's placement on a waiting list violates any rights plaintiff may have in connection with an administrative adjudication.

28. Defendants deny the allegations in paragraph 53 of plaintiff's complaint, and affirmatively allege that in the absence of available waiver services for which plaintiff could be presently eligible or to which plaintiff could be presently entitled, there is no question of law or fact to adjudicate via an administrative hearing.

29. In response to paragraph 54 of plaintiff's complaint, defendants admit that ADHS acted under color of state law, but deny that any act or omission of ADHS has prejudiced any federally enforceable right plaintiff may have in connection with the ACS waiver program.

30. Defendants admit the allegations contained in paragraphs 55 and 56 of plaintiff's complaint.

31. Defendants deny the allegations contained in paragraph 57 of plaintiff's complaint, and affirmatively allege that in the absence of available waiver services for which plaintiff could be presently eligible or to which plaintiff could be presently entitled, there is no question of law or fact to adjudicate via an administrative hearing.

32. In response to paragraph 58 of plaintiff's complaint, defendants deny that any act or omission of ADHS has prejudiced any federally enforceable right plaintiff may have in connection with the ACS waiver program, and affirmatively allege that in the absence of available waiver services for which plaintiff could be presently eligible or to which plaintiff could be presently entitled, there is no question of law or fact to adjudicate via an administrative hearing.

33. Paragraph 59 of plaintiff's complaint requires no response.

34. Defendants deny each allegation contained in plaintiff's complaint that was not admitted above.

35. The complaint fails to state a cause of action.

36. ADHS and state officials sued in their official capacities are immune from suit under the United States Constitution, Amendment 11.

37. Kurt Knickrehm and Dr. James C. Green are entitled to qualified immunity in their individual capacities as Director of the Arkansas Department of Human Services and Director of the Division of Developmental Disabilities Services, respectively.

38. The Medicaid Act creates no privately enforceable rights.

39. Medicaid waiver services are not an entitlement.

40. Plaintiff lacks standing.

WHEREFORE, defendants pray that plaintiff's complaint be dismissed.

Respectfully submitted,

MIKE BEEBE  
Attorney General

By:



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ARKANSAS DEPARTMENT  
OF HUMAN SERVICES

By:



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**CERTIFICATE OF SERVICE**

I, Breck Hopkins, do hereby certify that a copy of the above and foregoing Answer was served upon Martin W. Bowen, Attorney at Law, 100 Morgan Keegan Drive, Suite 100, Little Rock, AR 72202, by placing a true and correct copy in the U. S. Mail, with sufficient postage, this 17 day of July, 2003.

  
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Breck Hopkins