

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JULIA M, on her behalf and on behalf of her minor
child, J.W.M., and all others similarly situated,

Plaintiffs,

v.

Case No. 07-4036-CV-C-NKL

DEBORAH E. SCOTT, as the
Director of the Missouri Department of Social
Services, JANEL R. LUCK, as the Interim Director of
the Missouri Family Support Division, and
STEVE RENNE, as the Interim Director of the
Missouri Division of Medical Services,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Julia M.'s severely disabled daughter, J.W., relies on Missouri's State Children's Health Insurance Program (SCHIP) to meet her extensive health care needs. Defendants recently terminated J.W.'s coverage for six months without informing her or her mother of their right to appeal, and without continuing J.W.'s benefits while she challenged the state's action. Ms. M brings this action pursuant to 42 U.S.C. § 1983 and Article VI of the United States Constitution on behalf of herself and her minor daughter and a class of needy Missouri children challenging defendants' policies and practices of discontinuing desperately-needed medical benefits without a) notifying them of their right to an appeal; b) notifying them of and providing the opportunity for continued enrollment and coverage pending the outcome of an appeal; and c) first determining whether they are otherwise eligible for medical assistance under another eligibility category, all in

violation of federal law.

2. Plaintiffs bring this action for declaratory and injunctive relief on behalf of themselves and a class of MC+ recipients who are subject to the SCHIP cost-sharing premium under Mo. Rev. Stat. § 208.640 and those who are subject to the six-month disenrollment penalty provisions under Mo. Rev. Stat. § 208.646, and for whom the defendants have failed to a) provide written notice of their right to an appeal upon termination from the program; b) provide notice of and aid paid pending that appeal; and c) first determine whether the recipients are otherwise eligible for medical assistance as required by federal law.

3. Plaintiffs seek preliminary and permanent injunctions enjoining the defendants to: a) notify all MC+ recipients who are disenrolled from MC+ health coverage for failure to meet premium requirements of their right to appeal; b) notice and provision of the opportunity for continued enrollment and aid paid pending a hearing; and c) first determine whether such MC+ recipients are otherwise eligible for medical assistance under another eligibility category.

4. Plaintiffs seek a declaratory judgment that the challenged policies and practices violate: a) 42 U.S.C. § 1396a(a)(3), its implementing regulations at 42 C.F.R. §§ 431.206(b) and 431.230, and the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, which, *inter alia*, require notice of fair hearing rights and aid continuing while the hearing is pending; b) 42 U.S.C. § 1397aa-jj and its implementing regulations at 42 C.F.R. § 457.1170, which, *inter alia*, require defendants to provide the opportunity for continued enrollment pending the completion of a review of disenrollment, including decisions to disenroll for failure to pay cost-sharing premiums; and c) 42 § U.S.C. 1396(a)(8) and its implementing regulation at 42 C.F.R. § 435.930(b), which prohibits discontinuing medical assistance benefits without first determining

whether the child is otherwise eligible for medical assistance.

JURISDICTION AND VENUE

5. This action is authorized by 42 U.S.C. § 1983 and Article VI of the U.S. Constitution (the Supremacy Clause) as an action seeking redress of the deprivation of statutory and constitutional rights under color of state law.

6. Jurisdiction over this action is conferred upon this court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts of civil actions arising under the Constitution, laws, or treaties of the United States.

7. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff J.W.M. resides in Farmington, Missouri.

9. Plaintiff Julia M. resides in Farmington, Missouri.

10. Defendant Deborah E. Scott is the Director of the Missouri Department of Social Services (DSS). She is responsible for the general administration and implementation of laws concerning the social welfare of the people of the State of Missouri, including the Medicaid program. Defendant Scott is designated the chief administrative officer of the Department and is charged with its ultimate control and administration. She is responsible for, *inter alia*, the administration of the State's Medicaid program and supervision of the administration of the Medicaid and SCHIP program by the local social services districts.

11. Defendant Janel R. Luck is the Interim Director of the Missouri Family Support Division (FSD), a division of DSS, and, as such, is responsible for the general administration of public welfare programs in the State of Missouri, including determinations of eligibility for the

Missouri SCHIP and Medicaid program. Defendant Luck is the designated chief administrative officer of the DFS and holds ultimate administrative power within DFS subject to the supervision of Defendant Scott.

12. Defendant Steve Renne is the Interim Director of the Missouri Division of Medical Services (DMS), a division of DSS, and, as such, is responsible for the administration of the Missouri SCHIP and Medicaid program, including disenrollment for failure to meet premium requirements. Defendant Renne is the designated Chief Executive Officer and holds ultimate administrative power within the DMS subject to the supervision of Defendant Scott.

STATUTORY AND REGULATORY FRAMEWORK

SCHIP Framework

13. SCHIP is a jointly funded state and federal program that provides health assistance to uninsured, low-income children whose family income is above the State's Medicaid income limits, but who cannot afford private health insurance. SCHIP, Title XXI of the Social Security Act, is codified at 42 U.S.C. § 1397aa-jj.

14. A state receiving federal matching funds for its SCHIP program must comply with the requirements of the federal SCHIP Act and its implementing regulations promulgated by the U.S. Department of Health and Human Services (HHS). 42 U.S.C. § 1397aa(a)(2).

15. Missouri operates SCHIP as part of its Medicaid program and accepts federal matching funds for its program expenditures. Missouri SCHIP recipients receive their medical coverage through Missouri's Medicaid/MC+ for Children category of assistance.

Missouri's 1115 Waiver

16. HHS can waive certain federal Medicaid requirements upon receipt and approval of a

waiver proposal related to the coverage and delivery of health care services. 42 U.S.C. § 1315. Commonly known as Section 1115 Research and Demonstration Waivers, they must be couched in terms of an “experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives” of the Act. § 1315(a). Such waivers can be granted for the period HHS finds necessary to enable the State to carry out the project, and are typically approved for five years and may be renewed upon completion. § 1315(a)(1).

17. In 1998, HHS approved Missouri’s request for a Section 1115 Demonstration Waiver extending medical assistance coverage to children under the age of nineteen whose family income is below 300 % of the federal poverty level (fpl) through the MC+ for Children program. *See* MO Medicaid Section 1115 Demonstration Managed Care Plus No. 11-W-00122/7. In August 2003, HHS approved Missouri’s request for an extension of its Section 1115 Waiver until March 2007. *See* Department of Health and Human Services, Extension Approval Letter, Aug. 25, 2003. In September 2006, HHS accepted Missouri’s amendment modifying its premium structure, which had the effect of expanding the number of recipients required to pay premiums. *See* Department of Health and Human Services, Award Letter, Sept. 20, 2006. The amendments were also approved until March 2007. *Id.*

18. Under the Terms and Conditions of Missouri’s 1115 Waiver, all requirements of the Medicaid program including 42 U.S.C. § 1396a, implementing regulations, and policy statements that are not expressly waived as not applicable, shall apply to the Medicaid/MC+ Program. *See* Missouri 1115 Demonstration - Managed Care Plus Special Terms and Conditions, last updated 9/15/06, Part III.

19. The statutes and regulations this complaint seeks to enforce have not been waived

through Missouri's 1115 Waiver. See Department of Health and Human Services, Award Letter, Sept. 20, 2006; Department of Health and Human Services Approved Waiver and Expenditure Authorities, Attachment 2.

Right to Notice of and Continuing Aid Pending an Administrative Fair Hearing

20. Defendants must give notice of every recipient's right to a fair hearing and the method for obtaining a fair hearing at the time of any action affecting her claim for benefits. 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. 431.206(b) and (c).

21. Defendants must grant the opportunity for a fair hearing to any individual whose claim for medical assistance is denied or terminated, and, when such a request has been made within ten days of the decision, defendants may not terminate or reduce services until a final determination after a hearing has been made. 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. § 431.230.

22. Defendants must ensure the opportunity for continuation of SCHIP enrollment pending the completion of review of a suspension or termination of enrollment, including a decision to disenroll for failure to pay cost sharing. 42 U.S.C. § 1397aa-jj and 42 C.F.R. § 457.1170. Cost sharing includes monthly premium charges that the enrollee is responsible for paying. 42 C.F.R. § 457.10.

23. 42 U.S.C. § U.S.C. 1396(a)(8) and 42 C.F.R. § 435.930(b) require defendants to determine a recipient's continuing eligibility for Medicaid under any alternative basis of eligibility before terminating Medicaid or SCHIP benefits because the recipient is no longer eligible under the original eligibility category.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

24. In Missouri, families with incomes between 151 % and 300 % of the fpl are required

to pay a premium for receipt of MC+ benefits. Mo. Rev. Stat. § 208.640. For families whose income is between 226 % and 300 % of fpl, any child who fails to pay a required premium in a timely manner is disenrolled from the MC+ program and is not eligible for MC+ coverage for six months after the department provides notice of such failure to the parent or guardian. Mo. Rev. Stat. § 208.646,

25. There are approximately 3,000 children in Missouri who receive MC+ coverage and whose family income is between 226 % and 300 % of fpl. *See* Missouri Family Support Division, Annual Report Data, Fiscal Year 2006, Page 16 (CHIP Premium Children).

26. Defendants fail and refuse to provide notification of the right to appeal and to provide MC+ benefits pending the outcome of an administrative fair hearing to those MC+ recipients who defendants seek to suspend from participation in MC+ for at least six months due to an alleged failure to timely pay the MC+ premium.

27. Missouri has the capacity to determine on an *ex parte* basis the eligibility of the plaintiffs, and the class they seek to represent, for continued enrollment in some other category of Medicaid assistance for those class members who are determined no longer eligible in the MC+ category and requires such reviews to be conducted. *See* Missouri Department of Social Services, Family Support Division, Income Maintenance Manual, Medical Assistance for Families, MC+ Health Care Coverage Manual, §§ 0905.025.16 MAF / MC+ Closing Review Procedures and 0905.025.16.05 Ex Parte Review.

CLASS ALLEGATIONS

28. The named plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, for certification of a class consisting of the

following members:

All children residing in Missouri and who are receiving or who will receive MC+ health coverage and are required to pay a premium under Mo. Rev. Stat. § 208.640.

29. The class is so numerous that joinder of all members is impracticable. Approximately 20,000 Missouri families are subject to the cost-sharing premium and approximately 3,000 are also subject to the six month penalty upon failure to timely pay the premium.

30. There are numerous questions of law and fact common to the class as a whole concerning defendants' policies and practices of disenrolling eligible MC+ beneficiaries. At issue are the policies and practices of defendants of: (1) failing to notify those families of their right to a fair hearing upon disenrollment from the program; (2) failing to provide those families with the opportunity for continued enrollment pending completion of a review of such disenrollment; and (3) failing to provide to those families an *ex parte* review to determine whether the MC+ beneficiary is otherwise eligible for medical assistance.

31. Declaratory and injunctive relief are appropriate with respect to the class as a whole because the defendants have acted on grounds applicable to the class.

32. The named plaintiffs' claims are typical of the claims of the class.

33. The named plaintiffs will fairly and adequately protect the interests of the class. Because of their indigence, the named plaintiffs are represented by the National Center for Law and Economic Justice and the National Health Law Program, whose attorneys have litigated numerous class actions, including three in this District. Plaintiffs know of no conflicts of interest among members of the class.

34. A class action is superior to other available methods for a fair and efficient adjudication

of this matter in that it will avoid numerous separate actions by class members.

FACTS OF INDIVIDUAL NAMED PLAINTIFFS

Background

35. Plaintiff Julia M. and her minor daughter J.W.M. live in Farmington, Missouri.

36. Since she was eight-years-old, after being involved in an accident, J.W. has suffered from numerous and severe medical and psychiatric conditions necessitating ongoing medical treatment.

37. Throughout the subsequent years, J.W. has needed constant medical attention, medicines, and therapies. Recently, she developed cysts on her face that require medication.

38. Due to her anxiety disorders, since Spring 2006, J.W. has not been able to attend school and has required home schooling.

Experiences with MC+ Program

39. In June 2006, Julia M. applied for J.W. to be enrolled in the MC+ program, which required a \$151 monthly premium. Thereafter, Julia M. received a letter dated June 20, 2006 stating that coverage could start on July 1, 2006 if the \$151 payment was made by that date and that if payment was received after that date, coverage would start on the date the payment was received.

40. Julia M. made the required premium payment by check on July 20, 2006.

41. On or about July 24, 2006, Julia M. received a notice stating that the premium payment had been received and had been applied to J.W.'s coverage for July 20, 2006 through August 19, 2006. This notice also advised that future payments could be made through an autowithdrawal by submitting an attached form and voided check.

42. On or about July 24, 2006, Julia M. received another notice stating that her monthly

premium was now \$156 and that payment was due on August 3, 2006 for next month's coverage. This notice also advised that future payments could be made through an autowithdrawal by submitting an attached form and voided check. This notice further stated that if payment was not received by August 23, 2006, coverage would stop and that, if her income was above 225% of the fpl, her child would not be eligible for coverage for six months.

43. Pursuant to the previous notices, on August 4, 2006, Julia M. chose to participate in the autowithdrawal where future premium payments would automatically be deducted from her account by providing defendants with a voided check and a completed autowithdrawal form.

44. On August 11, 2006, Missouri Social Services made a test run-through on Julia M.'s account, but did not withdraw the premium payment.

45. Over the next few days, Julia M. continuously called the defendants' toll-free number and was never able to get through. Julia M. then called her bank who informed her that normally, after a run-through, defendants would take the payment out in a few days.

46. Not being able to get through to defendants or hearing anything to the contrary, Julia M. thought her account would be debited and the payment would cover the August premium.

47. On August 22, 2006, a notice was sent to Julia M. which said that the \$156 premium would be taken out of her bank account on September 5, 2006 and, in bold, "Do not mail a check or money order to pay your premium."

48. In September 2006, Julia M. went to speak with J.W.'s caseworker who informed her that J.W.'s benefits had been canceled on August 24, 2006 because Julia M. had not paid the premium.

49. In late September 2006, Julia M. received a failure to pay notice dated August 3, 2006,

which stated that she must pay the premium before August 24, 2006 or J.W. would be disenrolled from MC+ for six months. The letter was received after the dates mentioned.

50. None of the notices referenced above, including the notice stating that J.W.'s coverage would be terminated for six months for failure to pay the premium, included a reference to the right to appeal.

51. Thereafter, Julia M. went to her local Family Support Division office to appeal J.W.'s termination. She was told by the supervisor in charge, Robin Nolan, that the rules had changed and there was no possibility of appeal from a termination for non-payment. Ms. Nolan refused to give Julia M. this statement in writing or a copy of the new rule.

52. Subsequently, Julia M. sent a letter requesting a hearing to the Premium Collections Unit at the Division of Medical Services in Jefferson City, Missouri.

53. Julia M. never received a final cancellation notice nor any notice including her right to appeal or to receive aid pending an appeal.

54. In early January 2007, Julia M. received a document entitled Missouri Medicaid Hearing Request. She immediately filled it out and returned it to the Recipient Hearings Unit in the Division of Medical Services. She has not heard anything since and a hearing date has not been set.

55. At the time of her disenrollment, defendants did not inform Julia M. that they had assessed whether J.W. could receive medical assistance under an alternative benefit category, such as Medical Assistance for Disabled Children, which provides medical assistance to children who meet the Social Security Income definition of disability and certain income requirements.

Actual Harm Necessitating a Preliminary Injunction

56. As a result of J.W.'s disenrollment, she has not been able to receive critical medicines

and medical services. Thus, she is no longer taking her eleven different anxiety and asthma medicines.

57. J.W. has been forced to cancel an appointment with a neurologist in St. Louis and to forgo needed therapies. She was also unable to attend her scheduled follow-up dermatologist appointments at St. Louis University's SLUCare program in order to deal with her cysts and facial scarring.

FIRST CLAIM FOR RELIEF

58. Defendants' policy and practice of failing to notify plaintiffs and plaintiff class members of their right to a fair hearing upon disenrollment from the MC+ health coverage program violates 42 U.S.C. § 1396a(a)(3) and its implementing regulation, 42 C.F.R. § 431.206(b) and (c).

SECOND CLAIM FOR RELIEF

59. Defendants' policy and practice of failing to notify plaintiffs and plaintiff class members of their right to a fair hearing upon disenrollment from the MC+ health coverage program violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

THIRD CLAIM FOR RELIEF

60. Defendants' policy and practice of failing to provide plaintiffs and plaintiff class members with MC+ pending an appeal violates 42 U.S.C. § 1396a(a)(3) and its implementing regulation, 42 C.F.R. § 431.230, and 42 U.S.C. § 1397aa-jj and its implementing regulation at 42 C.F.R. § 457.1170.

FOURTH CLAIM FOR RELIEF

61. Defendants' policy and practice of failing to provide plaintiffs and plaintiff class members with aid pending an appeal violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

FIFTH CLAIM FOR RELIEF

62. Defendants' policy and practice of failing to provide plaintiffs and plaintiff class members with MC+ pending an appeal stands in conflict with 42 U.S.C. § 1396a(a)(3) and its implementing regulation, 42 C.F.R. § 431.230, and in conflict with 42 U.S.C. § 1397aa-jj and its implementing regulation at 42 C.F.R. § 457.1170, and is thus preempted by the Supremacy Clause of the United States Constitution, art.VI.

SIXTH CLAIM FOR RELIEF

63. Defendants' policy and practice of disenrolling plaintiffs and plaintiff class members in the MC+ program without first determining whether they are eligible for other medical assistance, including engaging in *ex parte* determinations, violates 42 § U.S.C. 1396(a)(8) and and its implementing regulation, 42 C.F.R. § 435.930(b).

SEVENTH CLAIM FOR RELIEF

64. Defendants' policy and practice of disenrolling plaintiffs and plaintiff class members in the MC+ program without first determining whether they are eligible for other medical assistance, including engaging in *ex parte* determinations stands in conflict with 42 § U.S.C. 1396(a)(8) and and its implementing regulation, 42 C.F.R. § 435.930(b), and is thus preempted by the Supremacy Clause of the United States Constitution, art.VI.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court

- (a) Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class all children residing in Missouri and who are receiving or who will receive MC+ health coverage and are required to pay a premium under Mo. Rev. Stat. § 208.640;
- (b) Enter a declaration pursuant to 28 U.S.C. § 2202 that defendants' policy and practice of failing to notify recipients of their right to a fair hearing upon disenrollment from the MC+ health coverage program violates 42 U.S.C. § 1396a(a)(3) and its implementing regulation at 42 C.F.R. § 431.206(b) and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution;
- (c) Enter a declaration pursuant to 28 U.S.C. § 2202 that defendants' policy and practice of refusing to provide aid paid pending to eligible children who have been disenrolled from the MC+ program for failure to meet premium requirements violates 42 U.S.C. § 1396a(a)(3) and its implementing regulation at 42 C.F.R. § 431.230 and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution;
- (d) Enter a declaration pursuant to 28 U.S.C. § 2202 that defendants' policy and practice of refusing to provide the opportunity for continued enrollment to eligible children who have been disenrolled from the MC+ program for failure to meet premium requirements violates 42 U.S.C. §

1397aa-jj, and its implementing regulation at 42 C.F.R. § 457.1170 and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution;

- (e) Enter a declaration pursuant to 28 U.S.C. § 2202, that, in the alternative, defendants' policy and practice of refusing to provide aid paid pending to eligible children who have been disenrolled from the MC+ program for failure to pay a premium stands in conflict with 42 U.S.C. § 1396a(a)(3) and its implementing regulation at 42 C.F.R. § 431.230 and 42 U.S.C. § 1397aa-jj, and its implementing regulation at 42 C.F.R. § 457.1170, and is thus preempted by the Supremacy Clause of the United States Constitution, art. VI;
- (f) Enter a declaration pursuant to 28 U.S.C. § 2202 that defendants' policy and practice of disenrolling plaintiffs and plaintiff class members from the MC+ program without first determining whether they are eligible for other medical assistance violates 42 § U.S.C. 1396(a)(8) and its implementing regulation at 42 C.F.R. § 435.930(b);
- (g) Enter a declaration, in the alternative, that, pursuant to 28 U.S.C. § 2202, defendants' policy and practice of disenrolling plaintiffs and plaintiff class members from the MC+ program without first determining whether they are eligible for other medical assistance stands in conflict with 42 § U.S.C. 1396(a)(8) and its implementing regulation at 42 C.F.R. § 435.930(b), and is thus preempted by the Supremacy Clause of the

United States Constitution, art. VI;

- (e) Preliminarily and permanently enjoin defendants from refusing to notify plaintiffs and plaintiff class of their right to a fair hearing upon disenrollment from the MC+ health coverage program;
- (f) Preliminarily and permanently enjoin defendants from refusing to provide an opportunity for continued enrollment during review of the disenrollment to all children who have been disenrolled in the MC+ program for failure to meet premium requirements;
- (g) Preliminarily and permanently enjoin defendants from refusing to notify recipients of their right to the opportunity for aid paid pending an appeal and of the circumstances under which that assistance may be terminated;
- (h) Preliminarily and permanently enjoin defendants from disenrolling MC+ recipient children, unless and until the defendants have determined, in accordance with the declaration of this Court, that such children are not otherwise eligible for medical assistance;
- (I) Award plaintiffs their costs and reasonable attorneys' fees as provided for by 42 U.S.C. § 1988; and
- (j) Grant such other and further relief as the Court may deem just and proper.

DATED: February 15, 2007.

Respectfully submitted:

By: s/Petra T. Tasheff

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