

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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**BEN LEWIS, AARON NORRID, BILLY
JO QUISENBERRY and FRED ROMERO,**
by and through their legal guardian and next
friend **THE ARC OF NEW MEXICO,**
BREANNE LIDDELL, by and through her
parent and legal guardian **JUDY LIDDELL,**
MATTHEW ALLEN, by and through his
parents and legal guardians **JIM and
ANGELA ALLEN, FAY MORGAN,
DEBORAH EMINGER and PROTECTION
AND ADVOCACY SYSTEM, INC.,**

Plaintiffs,

vs.

No. CIV 99-0021 MV/JHG

**NEW MEXICO DEPARTMENT OF
HEALTH, NEW MEXICO DEPARTMENT
OF HUMAN SERVICES, J. ALEX VALDEZ,**
Secretary of the Department of Health and
Secretary Designee of the Department of
Human Services in his official capacities, and
GOVERNOR GARY JOHNSON in his
official capacity,

Defendants.

JUDGMENT

On August 5, 2003, the Court addressed the parties' cross-motions for summary judgment and entered its Memorandum Opinion and Order, granting Plaintiffs' Motion for Summary Judgment as to Counts I and II of the Amended Complaint and Defendant Governor Gary Johnson's Motion for Summary Judgment on Grounds of Legislative Immunity. Specifically, the Court found that based on 42 U.S.C. §1396(n)(1) and the implementing regulations, the reasonableness promptness provision, §1396a(a)(8), applied to individuals on the DD and D&E Central Registries to whom Defendants allocated an available unduplicated recipient slot and who Defendants determined were eligible for DD

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or D&E waiver services. The Court further found Defendants violated §1396a(a)(8) when they failed to fill available unduplicated recipient slots in a reasonably prompt manner and failed to provide waiver services after allocation in a reasonably prompt manner. The Court also found the State had failed to use all the funds appropriated for waiver services during the fiscal years in which the funds were appropriated. Finally, the Court found Governor Gary Johnson was entitled to legislative immunity.

NOW, THEREFORE,


IT IS HEREBY ORDERED that Defendants shall allocate to any of the appropriate registrants on the DD and D&E Central Registries any unduplicated recipient slots as soon as the slots become available. Defendants shall then determine an applicant's eligibility for its DD or D&E waiver services within ninety (90) days after allocation to the DD or D&E programs. *See* 42 C.F.R. § 435.911.

IT IS FURTHER ORDERED that after allocation to the DD or D&E programs and after eligibility is determined, Defendants shall provide the applicants waiver services within ninety (90) days.

IT IS FURTHER ORDERED that Defendants shall spend all funds appropriated by the State Legislature for DD and D&E waiver services in the fiscal year in which the funds are appropriated.

IT IS FURTHER ORDERED that Defendant Governor Bill Richardson, substituted pursuant to Fed.R.Civ.P. 25(d)(1), is dismissed with prejudice.

IT IS FURTHER ORDERED that Plaintiffs may file their motion for attorney fees pursuant to 42 U.S.C. § 1988, along with their supporting documentation. Defendants may respond in accordance with D.N.M.I.R.-Civ. 7.6.



MARTHA V. ROQUE
UNITED STATES DISTRICT JUDGE