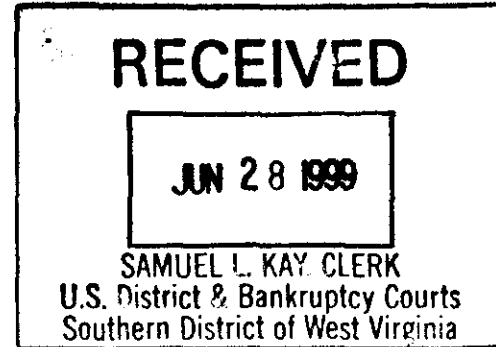


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

BENJAMIN H., by his next friend, Georgann H.,  
DAVID F., by his guardian, Carolyn B.,  
LORI BETH S., by her next friend, Janie J.,  
THOMAS V., by his next friend, Patricia V., and  
JUSTIN E., by his next friend, Sherry E.,  
Individually and on behalf of all others  
similarly situated,



Plaintiffs,

v.

CIVIL ACTION NO. 3:99-0338

JOAN OHL, Secretary of the Department  
of Health and Human Resources,

Defendant.

**Memorandum In Support of Defendant's  
Motion to Dismiss**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the defendant has filed a Motion to Dismiss the above-referenced action. The Motion to Dismiss should be granted for the following reasons.

I. **Count 1 - Medicaid Amount, Duration and Scope**

The Plaintiffs claim the defendant has violated 42 U.S.C.A. § 1396 a(a)(10)

and 42 CFR § 440.200, et. seq. While 42 USCA § 1396 a(a)(10)(B) does not provide that medical assistance made available to one individual shall not be less in amount, duration or scope, than that made available to another such individual, 42 USCA § 1396 n(c)(3) specifically allows a state's MR/DD Waiver Program to waive the requirements of 42 USCA § 1396 a(a)(B) relating to amount, duration or scope. In this case, West Virginian's MR/DD Waiver Program has waived that requirement. (See Plaintiff's Complaint Exhibit 2) Therefore, the defendant has not violated 42 USCA § 1396 a(a)(10)(B) and this count should be dismissed pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

**II. Count II - Medicaid Requirements for Informed Choice**

The Plaintiffs claim the defendant has violated 42 USCA Section 1396 (n)(c)(2)(C) which requires that "individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded."

Obviously, the Plaintiffs have been informed of the feasible alternatives, but currently the alternative is unavailable due to the fact demand for the slots exceeds

the budget for this optional program. However, the Plaintiffs continue to receive services while on the wait list.

Therefore, the Defendant has not violated 42 USCA § 1396 a(n)(c)(2)(G) and this count should be dismissed pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

**III. Count III - Medicaid Early Periodic Screening Diagnosis And Treatment**

Plaintiffs claim the Defendant has failed to provide services pursuant to the Early and Periodic Screening, Diagnosis and Treatment (hereafter, EPSDT) Services program. EPSDT is a well-child program. Under the program, eligible children receive services including, but limited to, dental services, vision services and hearing services. 42 USCA Section 1396 d(r). If anything is required beyond the preventive screen, the child is referred to a specialist under 42 USCA Section 1396 d(r)(5). The EPSDT program is meant only to provide a preventive screen. Additionally, this preventive screen has been provided to several of the Plaintiffs. Therefore, the defendant has not violated 42 U.S.C.A. 1396 d(r) and this count should be dismissed pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

**IV. Count IV - Medicaid Requirements for the Opportunity to Apply**

The Plaintiffs claim the Defendant has violated 42 U.S.C.A. § a (a)(8) by not accepting applications. USCA Section 1396 a(a)(8) requires a state plan to "provide that all individuals wishing to make application for medical assistance

under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals." In this case, all the Plaintiffs are currently receiving services. All Plaintiffs have applied to Medicaid and to the MR/DD Waiver Program.

This case is distinguishable from McMillan v. McCrimon in which the program refused to accept applications or fill slots. In the present case, the behavioral health centers are taking applications and the Office of Behavioral Health Services is filing slots. However, the demand for the slots continue to exceed the money available for this optional program and thus, a wait list is required. Therefore, this count should be dismissed pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

**V. Count V - Medicaid Reasonable Promptness**

The Plaintiffs claim the Defendant has not provided assistance with reasonable promptness.

Again, 42 USCA Section 1396 a(a)(8) requires a state plan to "provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals." In this case, all the Plaintiffs are currently receiving services. Medicaid has provided the plaintiffs with assistance with reasonable promptness.

Therefore, this count should be dismissed pursuant to Rule 12 (b)(6) of the

Federal Rules of Civil Procedure.

**VI. Count VI - Medicaid and Constitutional Due Process**

The Plaintiffs claim the defendant has violated their due process rights by use of a wait list. However, the wait list does not violate the due process clause as it is rational.

It is important to note the five named Plaintiffs are currently receiving medical assistance under the State Medicaid Plan. Thus, currently, they are not being denied assistance.

Unlike Goldberg v. Kelly, 397 US 254 90 S.Ct. 1011 (1970), this case does not involve termination of welfare benefits. Rather, they are simply having their services provided as they wait for placement on the Waiver Program. The process of placing individuals on a wait list is rationally related to a governmental interest.

The Court in Goldberg stated, "(C)onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." Goldberg, 397 US at 263, 90 S.Ct. At 1018 (1970) quoting Cafeteria & Restaurant workers Union, etc. v. McElroy, 367 US 886, 895, 81 S.Ct. 1743, 1748-1749 (1961)). In this case, DHHR must maintain a wait list simply because the number of individuals who would be like MR/DD waiver services exceeds the budgetary constraints of DHHR. The governmental interest involved is the agency's fiscal interests.

The individuals on the wait list have an interest in being placed on the waiver program. However, they are provided with services as they wait. Thus, the governmental interest in this case outweighs the private interest. The wait list is rationally related to a governmental interest. Therefore this count should be dismissed pursuant to 12 (b)(6) of the Federal Rules of Civil Procedure.

**VII. Count VII - Americans with Disabilities Act**

The Plaintiffs claim the defendant has violated 42 USCA § 12101 et. seq. DHHR has not violated the Americans with Disabilities Act. Individuals with disabilities are being integrated as required by 28 CFR Section 35.130 (d). The Plaintiffs claim by virtue of being placed on a wait list, they will be able to receive treatment only at a state psychiatric hospital. However, not one of the named parties has had to resort to that option because they have received services while on the wait list. Additionally, because the number of slots for the program have been limited due to finances, those individuals in a critical level who otherwise wouldn't be adequately served on the wait list have been placed on the program.

In a recent opinion, the US Supreme Court held the resources available to a state can be taken into account when determining whether a State is required to provide community-based services to persons with mental disabilities who reside in a psychiatric hospital. Olmstead v. L.C., 1999 WL 407-380 (U.S.) Specifically, under 28 CFR § 35.130 (b)(f), "[a] public entity shall make reasonable modification in policies, practices, or procedures when the modifications are necessary to avoid

discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity." Id. Therefore,

[U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

Id.

As the Court states,

[S]ensibly construed, the fundamental-alteration component of the reasonable-modification regulation would allow the State to show that, in the allocation of available resources, immediate relief for the Plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons both mental disabilities.

The Court also finds "a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its instructions fully populated the reasonable-modifications standard would be met."

In this case, the West Virginia Department of Health and Human Resources has made a budgetary decision to expand the MR/DD Waiver Program by twenty-five additional slots each year over the next five years.

This decision is a function of the other service programs the Department of Health and Human Resources provides. If DHHR is required to expand the MR/DD Waiver Program, the services and programs would be fundamentally altered.

Currently, DHHR funds numerous programs. For a break down of some of these financial allocations, please see Defendant's Exhibits 1 through 4.

Due to the commitment DHHR has to a variety of services and programs, expanding the MR/DD Waiver Program will fundamentally alter these services and thus, this count should be dismissed pursuant to Rule 12 (b)(6).

**VIII. Dismissal is Supported by Doctrine of Abstention**

This case is appropriate for dismissal by the doctrine of abstention.

Circumstances appropriate for abstention have been confined to three general categories: (a) cases presenting a federal constitutional issue which might be mooted or presented in a different posture by state court determination of pertinent state law, (b) cases where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar, and © cases where, absent bad faith, harassment or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings or state nuisance proceedings antecedent to a criminal prosecution, which are directed at obtaining the closure of places exhibiting obscene films or collection of state taxes.

Colorado River Water Conservation District v. United States, 424 U.S. 800, 800, 96 S.Ct. 1236, (1976) (Headnote 10).

In 1981, the Supreme Court of Appeals of West Virginia transferred E.H. v. Matin, 284 S.E.2d 232, back to the Circuit Court of Kanawha County with instructions. Since then, Judge Andrew MacQueen has overseen the reorganization of the mental health care delivery system in West Virginia. In fact, a court monitor, David Sudbeck, has been employed to assist the court in this responsibility. Daniel Hedges, one of the Plaintiffs' attorneys, has been the motivating force in that



process. Any issues the Plaintiffs may have with the mental health care delivery system should be taken before this state court.

In this case, abstention is appropriate as it satisfied the first category. Here, the Plaintiffs have raised a federal constitutional issue which might be mooted or presented in a different posture by state court determination of pertinent state law.

Abstention is particularly appropriate following the Olmstead v. L.C., 1999 WL 407-380(W.S) decision. Since the resources of the Department of Health and Human Resources can be taken into account in making decisions regarding placement in the MR/DD Waiver Program, the Kanawha County Circuit Court currently handling restructuring of the mental health delivery system in West Virginia is in a unique position to make determinations regarding the State's resources. The Circuit Court is already familiar with the other services and programs being provided by DHHR and thus knows where DHHR funding is committed and how other programs will be impacted by moving additional funds into the MR/DD Program.

Therefore, abstention is appropriate in this case and the case should be dismissed.

#### **Conclusion**

For the foregoing reasons the above-referenced action should be dismissed pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES,  
Bureau for Medical Services,  
By Counsel

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL



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**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

Cecil H. Underwood  
Governor

Joan E. Ohi  
Secretary

**Lena S. Hill  
Commissioner**

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**TO:** To Susan Perry, General Counsel  
**FROM:** H. M. Pendell Jr., Chief Financial Officer  
**DATE:** June 23, 1999  
**RE:** Requested Information

Pursuant to your request, the WV Legislature appropriated \$27,486,342 to the Bureau for Child Support Enforcement (BCSE) for the SFY 2000. Of this amount, \$5,819,139 is represented by general revenue funds. This equates to 21.17% of BCSE's total budget.

If I may be of further assistance or provide additional information, please feel free to contact Susan Harrah or me at your convenience.

HMP:sh

*cc : Susan Harrah*

**DEFENDANT'S  
EXHIBIT**

1

**MEDICAL SERVICES PROGRAM  
EXPENDITURES STATE FISCAL YEAR -1998**

SERVICES		ACTUAL SFY 1998
Inpatient Hospital		\$156,700,042
Mental Health Hospitals		25,470,619
Outpatient Hospitals		61,447,940
Clinics		26,269,237
Physicians		112,350,395
Labs		5,778,086
Drugs		153,026,734
Other Practitioners		12,350,321
Dentists		18,994,321
Nursing Homes		255,282,362
Group Homes		48,482,978
Other Care		104,157,106
EPSDT		7,563,509
Medicare Buy-In		34,546,334
Family Planning		1,262,240
Home Health		21,336,962
Rural Health		22,433,724
Home & Community Based Services		97,974,374
PASAAR		6,686
Personal Care		27,546,216
Targeted Case Management		14,497,251
Hospice		978,400
Group Health Plan		1,479
Managed Care		58,133,751
Sub-Total		1,266,591,067
Less: Drug Rebates		(26,451,123)
<b>TOTAL MEDICAL SERVICES</b>		<b>1,240,139,944</b>
DSH- Payments Private Institutions		60,500,000
DSH-Payments State Institutions		19,259,835
<b>TOTAL ALL PAYMENTS</b>		<b>1,319,899,779</b>

RECIPIENTS (1) 341,693

**NOTES:**

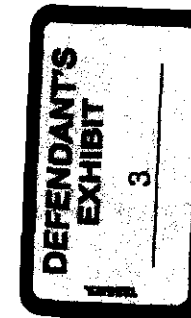
- 1 Clinic: Includes General Clinics, Behavioral Health Clinics, Birthing Centers, Ambulatory Surgical Centers, Health Dept. Clinics, and Handicapped Children's Clinics
- 2 Other Practitioners: Includes Chiropractors, Nurse Practitioners, Podiatry, Optometrists, Psychologists, Vision, Family Nurse Practitioner
- 3 Other Care: Includes Therapists, Opticians, Behavioral Health Rehabilitation Services, and Emergency Transportation

**FOOTNOTE:**

- 1 Recipients are from the HCFA 2082 Reports.



WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
EXPENDITURES FOR BEHAVIORAL HEALTH SERVICES



	SFY 1997	SFY 1998	SFY 1999 AS OF MARCH 31, 1999
<b>BUREAU FOR MEDICAL SERVICES</b>			
INPATIENT PSYCHIATRIC FACILITIES	\$19,708,461	\$25,470,619	\$15,847,439
MR/DD WIAVER SERVICES	\$43,659,534	\$57,670,666	\$52,607,126
BEHAVIORAL HEALTH CLINIC & REHABILITATION SERVICES	\$125,390,199	\$114,515,399	\$82,608,744
MEDLEY AT-RISK SERVICES	\$2,175,928	\$2,334,904	\$1,909,320
ICF/MR SERVICES	\$49,241,452	\$48,482,978	\$32,804,417
<b>TOTAL MEDICAID PAYMENTS</b>	<b>\$240,175,574</b>	<b>\$248,474,566</b>	<b>\$185,777,046</b>
<b>BUREAU FOR BEHAVIORAL HEALTH SERVICES</b>			
GENERAL REVENUE	\$12,037,671	\$15,527,328	\$14,678,864
SPECIAL REVENUE	\$2,267,392	\$3,400,702	\$1,036,003
FEDERAL REVENUE	\$9,303,069	\$9,656,041	\$6,460,550
<b>TOTAL BEHAVIORAL HEALTH PAYMENTS</b>	<b>\$23,608,132</b>	<b>\$28,584,071</b>	<b>\$22,175,417</b>
<b>TOTAL ALL PAYMENTS</b>	<b>\$263,783,706</b>	<b>\$277,058,637</b>	<b>\$207,952,463</b>

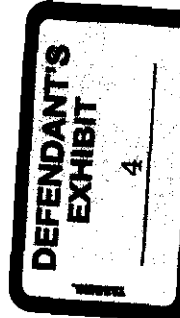
**NOTE:**

**Special Revenue:** Includes funds for the Colin Anderson Projects, and two Hospital Services Revenue Account funding for two residential substance abuse programs.

**Federal Revenue:** block grants for mental health and substance abuse services, homeless grant, and a grant for a specialized women's substance abuse program.

# PROGRAM REPORT

Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
Office of the Chief Medical Examiner (OCME)			Performs autopsies for statewide population		1,310,659	34,839	20	Statewide
OCRHS	Office of Rural Health Policy	Community Based Initiative Program	Supports provision of new primary care services with emphasis on prevention, health promotion and health education.	12,061	2,869 305,471		1.5	105,162 Persons Served
OCRHS	Public Health Nursing and Administration	State Aid Funding to Local Boards of Health	State Aid: Aid to county health departments to support their functions (per capita basis).		7,880,684			55 Local Health Departments
OCHRS	Primary Care	Primary Care Uncompensated Care & Technical Assistance	Uncompensated care funding for primary care centers.		5,290,000 100,049 137,312		4.5	43 Clinics Funded
OCRHS	Primary Care	School-Based Health Centers	School-Based Health Centers. Funding of school-based health centers linked with primary care centers.		700,000			7,000 Persons, 12 Clinics
OCRHS	Primary Care	Black Lung Clinics Program	Black Lung Clinic Program: Support to clinics providing black lung services.	789,627	200,000		2	3,952; 8 clinics; 10 sites
OEHP	Health Promotion	Diabetes	The Diabetes Control Program works with individuals, government agencies, coalitions and the private sector to provide support and innovation in reducing the burden of diabetes in the state.	280,020	20,338		3.5	Serves the total population.
OEHP	Health Promotion	Work-Site Wellness	The "Pathways to Wellness" program (formally known as Health-Styles) provides employee health promotion and prevention to public employees in the Kanawha County area of the state. The program is funded through a contract with the Public Employees Insurance Agency (PEIA)	9,100	16,443	97,000	1.8	Public employees and teachers in Kanawha County.



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Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
OEHP	Health Promotion	Osteoporosis	The Osteoporosis Program works through the Osteoporosis Interagency Council and the Osteoporosis Advisory Committee to coordinate education, prevention and treatment initiatives statewide in the area of osteoporosis. The goal of the program is to increase awareness of the disease and promote prevention strategies.	23,460	6,560		8	Serves the total population
OEHP	Division of Surveillance and Disease Control	Tuberculosis	The TB Control Program provides comprehensive TB screening and treatment activities statewide through cooperation with local health departments	455,096	466,735		8	4,266 X-Rays 2,834 Clinical Evaluations 70,769 Skin Tests 1,020 Patients Received Drug Therapy
OEHP	Division of Surveillance and Disease Control	Immunization	The Immunization Program provides vaccines against communicable diseases as well as providing technical assistance and education to agencies statewide.	3,710,423	680,487	250,000	18	28,703 Children 61,606 Adults By maintaining high immunization levels, the total state population is protected
OEHP	Division of Surveillance and Disease Control	Sexually Transmitted Disease	Maintains a confidential registry on sexually transmitted diseases, provides technical assistance to private and public medical community, supports a comprehensive STD surveillance program, provides confidential and professional sex partner consultations and notification services, operates a statewide hotline to provide the medical community and general public with information about symptoms, treatment and services, supports educational services and provides current treatment to local health departments.	618,509	299,455		14	65,000 Tests 3,000 Positive Patients 4,500 Contacts Services are available to total population

Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
OEHP	Division of Surveillance and Disease Control	AIDS Program	Maintains a confidential registry of AIDS and HIV infection, supports a disease surveillance program, supports statewide HIV counseling, testing and epidemiologic follow-up. Conducts education and risk reduction programs, operates a statewide 24 hour hotline. Case management treatment of HIV infected individuals.	2,566,389	298,033	200,090	18.5	8,500 Tests 350 Case Management & Treatment 40,000 Education Hotline accessible by total population
OEHP	Division of Surveillance and Disease Control	Infectious Disease Epidemiology Program	Assists in managing potential communicable disease threats to the public's health through provision of technical assistance, investigations, education, and prevention programs. Also maintains the state reportable disease data system.	722,528	262,643		5.67	Statewide
OEHP	Division of Surveillance and Disease Control	Hemophilia Program	In addition to operating a registry of hemophilia cases in the state, the Program distributes clotting factors and provides medical support services for individuals affected by hemophilia.			1,866,100	2	113 persons taking advantage of program. Available to all persons who need it.
OLS	Division of Environmental and Newborn Lab Services	Newborn Screening	Tests newborn infants for PKU, Galactosemia, Hypothyroidism and sickle cell disease. Monitors treatment of PKU children.		36,655	(A) 233,088 (B) 51,000	6.25	Statewide
OLS	Division of Microbiology Lab Services	Public Health Microbiology	Provides microbiological and serological lab testing of human and animal body fluids and tissues for state and local health agencies, other government agencies and medical professions. Tests food suspected in food borne illness or contamination and provides reference and surveillance microbiology testing to state and local health care facilities.		119,283	(A) 320,509 (B) 36,000	19.25	Statewide



Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
OMCH	Infant, Child and Adolescent Health	Early and Periodic Screening, Diagnosis and Treatment (Family Outreach Component)	Educates Medicaid eligible families about preventive health care for children and encourages their participation in the program. Ensures: 1) children are screened according to standards of the American Academy of Pediatrics, 2) medical problems identified are treated or referred, 3) children/families receive transportation assistance and help with appointment scheduling. All families of Medicaid approved children are contacted to encourage program participation.			2,496,236	80.8	76,060 Served 51,046 Home Visits 64,064 contacts 75% accepting services EPSDT - 83,055 kids 102,474 screens PHS - 18,277 kids 36,666 visits- Direct Patient Contact More than 70,000 home visits occur yearly
OMCH	Infant, Child and Adolescent Health	Pediatric Health Program (PHS)	Arranges for routine preventive health care, screening services and limited sick care for population age 0 through 20 who are low income, medically indigent with family income at or below 150% of Federal Poverty Level.	540,268	704,300	24,500	10	18,277 Patient Visits Services provided by community-based network
OMCH	Infant, Child and Adolescent Health	Children's Dentistry Services	Dentistry works in concert with other OMCH programs to promote dental health as an integral part of preventive, primary health services. Sponsors a limited number of dental clinics throughout West Virginia for low income, medically indigent children.	(A) 137,430 (B) 41,812	438,100	(C) 20,000	3	90,339 Direct patient care provided by community-based network.
OMCH	Children's Specialty Care	Children with Special Health Care Needs (a.k.a. Handicapped Children's Program)	Provides specialty medical care, diagnosis and treatment for handicapped children and those who may be at risk of handicapping conditions. Staff provides care coordination, develops and monitors treatment plans, and assists families with scheduling and transportation for medical care. Title V funds are used as payor of last resort.	(A) 2,051,207	800,250	2,000- Donations 1,697,269 Human Services Accounts	42.08	5,000 persons served

Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
OMCH	Children's Specialty Care	Early Intervention Program	Provides therapeutic and educational services for children age 0-3 years and their families who have established, diagnosed handicaps, developmental delays, or are at risk due to biological factors. Goal is to prevent disabilities, lessen effects of existing impairments, and improve developmental outcomes. Maintenance of effort required.	3,597,396	2,018,357		4	2,400 Services provided by community-based providers
OMCH	Children's Specialty Care	Children's Reportable Diseases (Lead Screening, SIDS)	Provides screening of all infants born in WV for Phenylketonuria (PKU), Hypothyroidism and Galactosemia (mandated) and screening for Sickle Cell Disease and certain other hemoglobinopathies. Tracks and reports incidences of lead poisoning, and SIDS deaths.	(A) 60,378 (B)198,500	118,300		3	Every child born in WV has screening tests. Limited direct contact. Provides PKU special foods.
OMCH	Children's Specialty Care	Genetics Project	Provides clinical genetic services for patients at 8 satellite locations under the auspices of WVU, Department of Pediatrics. Services include diagnosis, counseling and management of genetically determined disease, prenatal diagnosis and counseling, and evaluation of teratogen exposure.		196,819		Provider Contract	1,110 patients served Direct patient care arranged through contract.
OMCH	Children's Specialty Care	State Systems Development Initiative	Coordinates services for children with special health care needs by building upon the existing direct service systems. Identifies service gaps and advocates for intra-agency coordination.	100,000			3	100-200 Yearly Limited direct patient contact.

Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
OMCH	Women's Services	Administration	Develops policy and procedures including medical protocols, for perinatal and family planning services; develops systems of care to identify and serve high risk populations; arranges obstetrical and pediatric care for low-income populations. Recruits physicians and other practitioners to care for pregnant women, infants under age one, and men and women of childbearing age; gathers data; produces reports; maintains community-based network of providers; links primary care and tertiary services; and provides administrative support to the medical advisory serving this unit.	267,981	11,250		7.5	Statewide Operates statewide toll-free lines handling approximately 12,000 calls per year. No direct patient care.
OMCH	Women's Services	Right From The Start	Arranges care for government sponsored obstetrical populations and children up to age one meeting pre-established medical criteria; develops and disseminates care protocols; recruits providers.	(A)220,712	363,850	(B) 20,000 744,238 Human Services Accounts	8	15,100 State office has limited patient contact. Services provided via contracts to community-based agencies.
OMCH	Women's Services	Family Planning Program	Comprehensive physical examination, lab tests, counseling, education, and contraceptive services to persons of childbearing age.	(A)1,802,796 (B)1,679,232	2,038,674	(C) 1,280,000	9	71,491 Services provided via contracts to community-based providers.
OMCH	Women's Services	Breast & Cervical Cancer Screening Program	Promotes early detection of breast and cervical cancer through screening, follow-up services and education to low-income women.	(A) 25,200 (B)3,000,000	250,000		10	20,067 Contracts with 132 sites.

Office	Division	Program Name	Brief Description	Funding			Number of staff FTE's	Population Served
				Federal	State	Other		
Office of Nutrition Services (ONS)	WIC Administrative Grant	Women's, Infants and Children's	Assess income and nutrition risk eligibility of pregnant and breastfeeding women, infants and children. Provide nutrition education, breastfeeding support and promotion for the WIC participants. Also, provide for prenatal and pediatric health care referrals, and provide other mandated or necessary client services.	9,142,509	15,000		27.5	56,000
ONS	WIC Food Grant	Women's, Infants and Children's	Provide eligible WIC participants with supplemental USDA approved nutritional foods through use of coupons redeemable at local WIC vendors (grocery stores).	20,873,733		9,000,000 est. rebate back to 8802	0	56,000
ONS	Farmers Market	Farmers Market Nutrition Program	Promotion of fruits and vegetable to WIC participants through use of coupons redeemable to local Farmers Markets.	70,000	30,000		.1	5,000

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

BENJAMIN H., by his next friend, Georgann H.,  
DAVID F., by his guardian, Carolyn B.,  
LORI BETH S., by her next friend, Janie J.,  
THOMAS V., by his next friend, Patricia V., and  
JUSTIN E., by his next friend, Sherry E.,  
Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 3:99-0338

JOAN OHL, Secretary of the Department  
of Health and Human Resources,

Defendant.

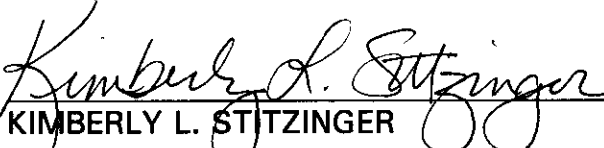
**CERTIFICATE OF SERVICE**

I, Kimberly L. Stitzinger, Assistant Attorney General and counsel for the Department of Health and Human Resources, do certify that on this 28<sup>th</sup> day of June, 1999, I served a true copy of the foregoing **Defendant's Motion to Dismiss and Memorandum in Support of Defendant's Motion to Dismiss** upon the following individuals by United States Mail, postage prepaid and addressed as follows:

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