

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

Teresa Charles, 5226 N. 84th Street,
Milwaukee, WI, 53225, and Susan Wagner,
808 N. 24th Street #200, Milwaukee,
WI, 53233,

2012 JUN -1 AM 8:02

CIRCUIT COURT
DANE COUNTY, WI

Plaintiffs,

Case No. 12CV2181

vs.

Department of Health Services, 1 W. Wilson Street
Madison, WI 53707, Dennis G. Smith,
in his official capacity as Secretary of the
Wisconsin Department of the Health Services,
1 W. Wilson Street, Madison, WI 53707, and
Brett Davis in his official capacity as
Administrator of the Division of Health Care Access and
Accountability of the Wisconsin Department of Health
Services, 1 W. Wilson Street, Madison, WI 53707
and THEIR AGENTS, EMPLOYEES, SUCCESSORS,
IN OFFICE, ASSISTANTS AND ALL OTHERS
ACTING IN CONCERT OR COOPERATION OR
UNDER THEIR CONTROL,

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Other Injunction:
31704

Defendants.

FILED AND ENTERED AS COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESPOSITO
CLERK OF CIRCUIT COURT

I. PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief brought under the Medical Assistance-Badgercare Plus Core program, 42 U.S.C. §§1396, et. seq., and Wis. Stat. §49.45(23) (2009-10). Plaintiffs are residents of the state of Wisconsin who are eligible for the Badgercare Plus Core program but who are not receiving medical services because they have been placed on a waiting list. The defendants are in violation of federal and state law by failing to enroll plaintiffs and other eligible persons in the Badgercare Plus Core program and by failing to provide them with medical services.

2. Plaintiffs' claim for injunctive relief is brought pursuant to Wis. Stat. §813.01 (2009-10). Declaratory relief is sought pursuant to Wis. Stat. §806.04 (2009-10). This action is also brought pursuant to 42 U.S.C. §1983.

II. PARTIES

3. Plaintiff Teresa Charles is a resident of Milwaukee County. She is eligible for the Badgercare Plus Core program. She has been on a waiting list for medical services under the Badgercare Plus Core program for over two years. Plaintiff Charles suffers from chronic lung problems and is in need of regular and ongoing medical treatment.

4. Plaintiff Susan Wagner is a resident of Milwaukee County. She is eligible for the Badgercare Plus Core program. She has been on a waiting list for medical services under the Badgercare Plus Core program for over two years. Plaintiff Wagner suffers from a seizure disorder and is in need of regular and ongoing medical treatment.

5. Defendant Department of Health Services is the agency that is charged with the administration of the Medical Assistance- Badgercare Plus Core programs in the state of Wisconsin including ensuring conformity with federal and state law.

6. Defendant Dennis Smith is an adult resident of the state of Wisconsin. He is the Secretary of the Department of Health Services (hereafter DHS) and in that capacity is charged with the administration of the Medical Assistance- Badgercare Plus Core programs in the state of Wisconsin including ensuring conformity with federal and state law.

7. Defendant Brett Davis is an adult resident of the state of Wisconsin. He is the Administrator of the Division of Health Care Access and Accountability within DHS and in that capacity is responsible for the administration of the Medical Assistance-Badgercare Plus Core

programs in the state of Wisconsin including ensuring conformity with federal and state law.

8. Defendants are sued in their official capacities. Relief is also sought against their agents, employees, successors in office, assistants, and all other persons acting in concert or cooperation with them or at their direction or under their control.

9. Defendants, individually and in concert, have acted under color of state law of the state of Wisconsin in administering the Medical Assistance -Badgercare Plus Core programs.

III. BACKGROUND

10. The Medical Assistance program is a joint federal-state program authorized under Title 19 of the Social Security Act which provides medical insurance to elderly, blind, disabled and low income individuals and families. 42 U.S.C. §1396 et.seq. States that choose to participate in the program must submit a state plan to the federal Department of Health and Human Services detailing the coverage and benefits they will provide and must comply the requirements of federal law and implementing regulations. 42 U.S.C. §1396a.

11. The state of Wisconsin has chosen to participate in the federal Medical Assistance program. Wis. Stats. §§ 49.45, 49.46, 49.47 and 49.471 (2009-10).

12. Federal law requires participating states, such as Wisconsin, to provide medical assistance to all eligible individuals applying for assistance with reasonable promptness. 42 U.S.C. §1396a(8).

13. Reasonable promptness is defined in federal regulations as requiring states to establish time standards for determining eligibility that do not exceed 90 days for individuals applying for assistance on the basis of disability and 45 days for all other individuals. 42 C.F.R.

§435.911(a). Federal regulations also require medical assistance to be provided promptly to eligible individuals without any delay caused by the state agency's administrative procedures. 42 C.F.R. §435.930(a).

14. Wisconsin has established standards for reasonable promptness as 60 days for individuals applying for assistance on the basis of disability and 30 days for all other individuals. Wis. Admin. Code HFS §102.04(1).

15. In addition to funding for medical coverage for eligible individuals the federal Medical Assistance program also provides funds known as Disproportionate Share Hospital or DSH payments to states to provide financial assistance to hospitals that serve a large number of low-income patients including the uninsured. 42 U.S.C. §§1396a(13)(A)(iv) and 1396r-4.

16. In certain circumstances the Secretary of the federal Department of Health and Human Services may waive requirements of the Medical Assistance program to allow a state to implement and test projects that deliver medical assistance benefits in different ways and/or to different groups of individuals so long as the project promotes the objectives of the Medical Assistance program and is cost neutral. 42 U.S.C. §1315(a).

17. In the 2007-08 Budget Bill the Wisconsin state legislature directed DHS to request a waiver from the federal Department of Health and Human Services to permit DHS to implement a demonstration project to provide health care coverage for basic primary and preventive care to adults under the age of 65 who have family incomes that do not exceed 200 percent of the poverty level and who are not otherwise eligible for a publicly funded medical program. 2009 Wisconsin Act 20, Section 1546; Wis. Stat. §49.45(23) (2009-10).

18. This demonstration or waiver project, known as the Badgercare Plus Core Program for Childless Adults (hereafter Core program), was designed to replace the general relief medical program (Wis.Stat. §§49.02-49.027), commonly known as GAMP, that operated in 27 counties, including Milwaukee, and to expand medical coverage to childless adults in all counties.

19. In September 2008 DHS submitted its waiver request to the federal Department of Health and Human Services detailing the operation and coverage of the Core program and requesting waivers of certain federal requirements. The waiver request notes that low-income childless adults ages 19-64, more than half of whom are employed, are the most chronically uninsured individuals in the state and that their care places fiscal demands on hospitals and other health care providers for which there is little or no reimbursement.

20. The terms of the DHS waiver request require eligible individuals enrolling in the Core program to complete a health needs assessment, an annual physical examination and pay an annual fee not to exceed \$75. Individuals are only eligible for the Core program if they are not eligible for, and do not have access to, any other publicly or privately sponsored health insurance plan.

21. In order to fund the Core program and maintain cost neutrality, DHS in its waiver proposal requested to use its Disproportionate Share Hospital or DSH payments. This reduces the medical assistance funds paid directly to hospitals eligible for disproportionate share payments.

22. In December 2008 the federal Department of Health and Human Services approved DHS' waiver request to operate the Core program and fund that program with the state's DSH payments . The approval allows DHS to impose an enrollment cap upon the eligible

Core population in order to remain under the budget neutrality limit/ceiling for expenditures under the waiver project. Prior to establishing an enrollment cap DHS is required to provide notice and certain information to the federal department.

23. The waiver approval waives the federal requirement found in 42 U.S.C. §1396a(8) that states provide medical assistance to all eligible individuals with reasonable promptness but only to the extent necessary to enable DHS to cap enrollment. Eligible individuals are entitled to the protection of the reasonable promptness requirement until the enrollment cap is reached.

IV. FACTUAL ALLEGATIONS

24. In January 2009 DHS began to transition those individuals enrolled in Milwaukee County's GAMP program and those enrolled in general relief medical programs in the other 26 counties to the Core program. Approximately 12,500 individuals were transitioned from these general relief medical programs to the Core program. In July 2009 DHS began to enroll other eligible individuals in the Core program.

25. In July 2009 DHS submitted a request to the federal Department of Health and Human Services for permission to impose an enrollment cap of 48,500 individuals for the Core program. That cap was approved effective October 2009.

26. DHS implemented the enrollment cap and established a waiting list for the Core program in October 2009.

27. At the time the cap was implemented there were 46,488 individuals enrolled in the Core program. That number rose to 65,265 persons in January 2010 after all applications pending at the time the enrollment cap was implemented were processed.

28. Since January 2010, the number of individuals enrolled in the Core program has steadily dropped. At the present time, only approximately 26, 000 individuals are enrolled in the Core program.

29. The number of individuals enrolled in the Core program has been under the enrollment cap of 48, 500 since December 2010. Despite the drop in enrollment DHS has failed and continues to fail to enroll eligible individuals in the Core program.

30. There are over 130,000 individuals who are currently on the waiting list for the Core program.

31. Under the Milwaukee County GAMP -general relief medical program there was no waiting list for enrollment and medical services.

32. Plaintiff Teresa Charles is eligible for the Core program and has been on the waiting list for enrollment for over two years. She suffers from a chronic lung condition and because of the lack of health insurance is not able to receive the medical care she needs. She has been informed that her position on the waiting list is between 1000 and 1500. If DHS began to enroll eligible individuals on the Core waiting list, plaintiff Charles would be enrolled and could receive needed medical services.

33. Plaintiff Susan Wagner is eligible for the Core program and has been on the waiting list for enrollment for over two years. She suffers from a seizure disorder and because of the lack of health insurance is not able to receive the medical care she needs. She is not certain what her place is on the waiting list. If DHS began to enroll eligible individuals on the Core waiting list, plaintiff Wagner would be enrolled and could receive needed medical services.

V. CLAIMS FOR RELIEF

34. By failing to enroll eligible individuals on the waiting list in the Core program and provide medical services to these individuals with reasonable promptness and until the 48,500 enrollment cap is reached, the defendants are in violation of federal law and implementing regulations, the terms of the Badgercare Plus Core waiver, and state law. 42 U.S.C. §1396a(8); 42 C.F.R. §435.911(a); 42 C.F.R. §435.930(a); and Wis.Stat. §49.45(23) (2009-10).

VI. EXTRAORDINARY RELIEF

35. Plaintiffs are without adequate administrative remedies and remedies at law and will continue to suffer irreparable harm if the defendants are not enjoined from failing to comply with federal and state law, implementing regulations, and the Badgercare Plus Core waiver.

VII. PRAAYER FOR RELIEF

Wherefore, plaintiffs respectfully request that this Court:

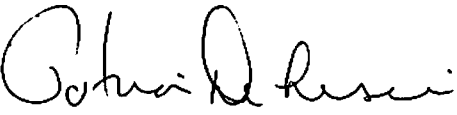
1. Enter a declaratory judgment pursuant to Wis.Stat. §806.04 (2009-10) declaring that the defendants are in violation of federal and state law, 42 U.S.C. §1396a(8) and Wis.Stat. §49.45(23) (2009-10), federal regulations, 42 C.F.R. §435.911(a) and 42 C.F.R. §435.930(a), and the terms of the Badgercare Plus Core waiver, by failing to enroll eligible individuals on the waiting list in the Core program and provide medical assistance to them with reasonable promptness until the 48,500 cap on enrollment is reached.

2. Enter an injunction pursuant to Wis. Stat. §813.01(2009-10), requiring the defendants to enroll plaintiffs in the Core program and provide medical assistance to them with

reasonable promptness until the cap on enrollment of 48,500 is reached.

3. Enter a judgment requiring the defendants to provide plaintiffs' counsel with reports detailing compliance with the terms of the Court's final order.
4. Award plaintiffs their reasonable costs and attorney fees under 42 U.S.C. §1988.
5. Award plaintiffs such other relief as is just and equitable.

Dated at Milwaukee, Wisconsin this 31st day of May, 2012.

By: 

PATRICIA DeLESSIO
State Bar No. 1014289
HAROLD MENENDEZ
State Bar No. 1011668
Legal Action of Wisconsin, Inc.
230 West Wells Street, Room 800
Milwaukee, WI 53203
(414) 278-7722
Email: pdl@legalaction.org