IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EDWARD BOUDREAU, by and through his parents, Edwin and Ann Boudreau, **BRIAN BRUGGEMAN,** by and through his parents, Kenneth and Carol Bruggeman, **FRANCES CORSELLO,** by and through her parents, Vincent and Agnes Corsello, **ANGELA MOORE,** by and through her parents, James and Brenda Moore, **LINDA SEMPREVIVO,** by and through her parents, Richard and Ruth Ann Semprevivo, **GREG BLANEY, JR.,** by and through his parent, Yolanda Duncan, **MELISSA COLE,** by and through her parents, Frank and Annie Cole, **JEFFREY FALCONE,** by and through his parents Salvatore and Frances Falcone, **SEAN STEELE,** by and through his parents, Gregory and Lee Pionke, **DAVID STIMAN,** by and through his parents, Tony and Tammy Goodman, **CHRISTINE AUER,** by and through her parents, Alfred and Patricia Auer, **DOUGLAS WILSMAN,** by and through his parent, Loretta Holme, **SHARON LOWREY,** by and through her parents, Owen and Susan Lowrey, **LEAH JONES,** by and through her parents, Lawrence and Kathy Jones, individually and on behalf of a class

Plaintiffs,

vs.

GEORGE H. RYAN, in his official capacity as Governor of the State of Illinois, **ANN PATLA,** in her official capacity as Director of the Illinois Department of Public Aid, **LINDA RENEE BAKER,** in her official capacity as Secretary of the Illinois Department of Human Services, **MELISSA WRIGHT,** in her official capacity as Associate Director of the Office of

No. 00 C 5392

JUDGE GRADY

MAGISTRATE DENLOW

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Developmental Disabilities,)
)
Defendants.)

FOURTH AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now comes the Plaintiffs, by and through their attorneys, Robert H. Farley, Jr., Ltd. and Thomas G. Morrissey, Ltd. and files the following fourth amended complaint against the Defendants as follows:

INTRODUCTION

1. This is a statewide class action brought on behalf of hundreds and hundreds of mentally retarded and developmentally disabled persons who are eligible to receive Medicaid services, but who have not received such services.

2. The named Plaintiffs and other class members are unable to care fully for themselves and require a range of care and treatment, from non-residential assistance with rehabilitative and vocational needs to full-time residential support services to assist them with the most basic aspects of daily life such as toileting, eating, and bathing. As the Plaintiffs fail to receive the services which they are entitled to under the law, they suffer physical and emotional setback and fail to develop to their fullest potential.

3. The Defendants failure to provide Medicaid services to the Plaintiffs with "reasonable promptness" violates Plaintiffs' rights conferred by the Medicaid Act, 42 U.S.C. Sec. 1396(a) and implementing regulations; the American with Disabilities Act (ADA), 42 U.S.C. Sec. 1201 *et. seq.* and implementing regulations; the Rehabilitation Act, 29 U.S.C. 794 and implementing regulations, as well as their federal constitutional rights to Due Process and Equal Protection.

Plaintiffs bring this action pursuant to 42 U.S.C. Section 1983 to enforce their federal statutory and constitutional rights. They seek declaratory and injunctive relief to redress defendant's violation of the Medicaid Act, the ADA, the Rehabilitation Act and the federal constitution and to ensure that the receive the medical assistance and care to which they are entitled.

JURISDICTION & VENUE

4. This Court has jurisdiction over plaintiffs' federal law claims pursuant to 28 U.S.C. Sections 1331 and 1343. Venue is proper under 28 U.S.C. Sec. 1391(b).

PARTIES

5. The Plaintiff, Edward Boudreau, is 43 years old and lives with his parents, Edwin and Anne Boudreau. The family are residents of South Chicago Heights, Illinois.

(a) Edward Boudreau has profound mental retardation. Edward Boudreau has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Mr. Boudreau needs continual support and supervision throughout his life.

(b) Edward Boudreau currently attends a day program at SouthStar Services.

(c) Edward Boudreau is Medicaid eligible and was found by Suburban Access, Inc. on November 17, 1994 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Edward Boudreau seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Edward Boudreau subject to Brian Boudreau obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability. (DHS/ODD).

(f) On August 14, 2000, the Plaintiff Bourdreau requested that DHS/ODD approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or his parents when or if he will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Bourdeau is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

6. The Plaintiff, Brian Bruggeman is 33 years old and lives with his parents, Kenneth and Carol Bruggeman. The family are residents of Homewood, Illinois.

(a) Brian Bruggeman has mild mental retardation and Down's syndrome. Brian Bruggeman has a substantial functional limitation in self-care; learning; self-direction; language; and capacity for independent living. Brian Bruggeman needs continual support and supervision throughout his life.

(b) Brian Bruggeman currently attends a day program at SouthStar Services.

(c) Brian Bruggeman is Medicaid eligible and was found by Suburban Access, Inc. on September 9, 1994 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally

disabled level of care funding.

(d) Brian Bruggeman seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Brian Bruggeman subject to Brian Bruggeman obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Bruggeman requested that DHS/ODD approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or his parents when or if he will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Bruggeman is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

7. The Plaintiff, Frances Corsello, is 49 years old and lives with her parents, Vincent and Agnes Corsello. The family are residents of Homewood, Illinois.

(a) Frances Corsello has mild mental retardation. Frances Corsello has a substantial functional limitation in self-care; learning; self-direction; language and capacity for independent living. Frances Corsello requires on-going support and supervision throughout her life.

(b) Frances Corsello currently attends a day program at SouthStar Services.

(c) Frances Corsello is Medicaid eligible and was found by Suburban Access, Inc.

on August 7, 2000 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Frances Corsello seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Frances Corsello subject to Frances Corsello obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Corsello requested that DHS/ODD approve funding for himself to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Corsello is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

8. The Plaintiff, Angela Moore, is 29 years old and lives with her parents, James and Brenda Moore. The family are residents of Chicago Heights, Illinois.

(a) Angela Moore has severe mental retardation. Angela Moore has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Angela Moore needs continual support and supervision throughout her life.

(b) Angela Moore currently attends a day program at SouthStar Services.

(c) Angela Moore is Medicaid eligible and was found by Suburban Access, Inc. on September 18, 1998 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Angela Moore seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Angela Moore subject to Angela Moore obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Moore requested that DHS/ODD approve funding for her to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Moore is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

9. The Plaintiff, Linda Semprevivo, is 37 years old and lives with her parents, Richard and Ruth Ann Semprevivo. The family are residents of Chicago Heights, Illinois.

(a) Linda Semprevivo has severe mental retardation. Linda Semprevivo has a substantial functional limitation in self-care; learning; self-direction; language; and capacity for independent living. Linda Semprevivo needs continual support and supervision throughout her

life.

(b) Linda Semprevivo currently attends a day program at SouthStar Services.

(c) Linda Semprevivo is Medicaid eligible and was found by Suburban Access, Inc. on June 23, 2000 to be eligible for medicaid waiver funding; eligible for community integrated living arrangement (CILA); and eligible for intermediate care facility/ developmentally disabled level of care funding.

(d) Linda Semprevivo seeks 24 hour per day residential medicaid services in an appropriate community based setting.

(e) SouthStar Services provides residential medicaid services and offered to provide residential medicaid services to Linda Semprevivo subject to Linda Semprevivo obtaining funding from the Illinois Department of Human Services / Office of Developmental Disability.

(f) On August 14, 2000, the Plaintiff Semprevivo requested that DHS/ODD approve funding for her to receive residential Medicaid services from SouthStar services.

(g) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(h) Plaintiff is entitled to Medicaid services with reasonable promptness.

(i) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Semprevivo is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

10. The Plaintiff, Greg Blaney, Jr. will be 22 years old this month and lives with his mother, Yolanda Duncan. The family are residents of Park Forest, Illinois.

(a) Greg Blaney, Jr. is developmentally disabled and has Down's syndrome. Jeffrey Falcone has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living.) Mr. Blaney, Jr. needs continual support and supervision throughout his life.

(b) Greg Blaney, Jr. is currently receiving no services. Mr. Blaney, Jr's. special education services terminated in June, 2000 when he graduated.

(c) Greg Blaney, Jr. seeks day programming Medicaid services and applied for Supported Living Services (SLS) in November, 2000.

(d) In January, 2001, the mother of Greg Blaney, Jr., Yolanda Duncan was informed by Suburban Access, Inc., the Pre-Admission Screening Agency that their was no funds for day programming services for Greg Blaney, Jr.

(e) DHS/ODD has not informed Plaintiff or his mother when or if he will receive day programming Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide day programming Medicaid services to Plaintiff, the Plaintiff Blaney, Jr. is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

11. The Plaintiff, Melissa Cole is 23 years old and lives with her parents, Frank and Annie Cole. The family are residents of Chicago Heights, Illinois.

(a) Melissa Cole is developmentally disabled. Melissa Cole has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Ms. Cole needs continual support and supervision throughout her life.

(b) Melissa Cole is currently receiving no day programming services. The only services provided to Ms. Cole is day care (babysitting services).

(c) Melissa Cole seeks day programming Medicaid services and applied for Supported Living Services (SLS) in February, 2001.

(d) In February, 2001, the mother of Melissa Cole, Annie Cole was informed by Suburban Access, Inc., the Pre-Admission Screening Agency that their was no funds for day programming services for Melissa Cole.

(e) DHS/ODD has not informed Plaintiff or her parents when or if she will receive day programming Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide day programming Medicaid services to Plaintiff, the Plaintiff Cole is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

12. The Plaintiff, Jeffrey Falcone, is 21 years old and lives with his parents, Salvatore and Frances Falcone. The family are residents of Schaumburg, Illinois.

(a) Jeffrey Falcone is developmentally disabled and has Down's syndrome. Jeffrey Falcone has a substantial functional limitation in self-care; learning; self-direction; mobility; and capacity for independent living. Mr. Falcone needs continual support and supervision throughout his life.

(b) Jeffrey Falcone is currently receiving special education services at Kirk School in Palatine and will graduate in June, 2001.

(c) Jeffrey Falcone seeks day programming Medicaid services and applied for

Supported Living Services (SLS) in February, 2001.

(d) In April, 2001, the mother of Jeffrey Falcone, Frances Falcone, was informed by a representative from the Illinois Department of Human Services / Office of Developmental Disabilities that their was no funds for day programming services for Jeffrey Falcone.

(e) DHS/ODD has not informed Plaintiff or his parents when or if he will receive day programming Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide day programming Medicaid services to Plaintiff, the Plaintiff Falcone is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

13. The Plaintiff, Sean Steele, is 20 years old and lives with his parents, Gregory and Lee Pionke. The family are residents of Deer Park, Illinois.

(a) Sean Steele is developmentally disabled. Sean Steele has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Mr. Steele needs continual support and supervision throughout his life.

(b) Sean Steele is currently receiving special education services at Kirk School in Palatine and will graduate in June, 2001.

(c) Sean Steele seeks day programming Medicaid services and applied for Supported Living Services (SLS) in January, 2001.

(d) In April, 2001, the mother of Sean Steele, Lee Pionke was informed by a representative from the Illinois Department of Human Services / Office of Developmental Disabilities that their was no funds for day programming services for Sean Steele.

(e) DHS/ODD has not informed Plaintiff or his parents when or if he will receive day programming Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide day programming Medicaid services to Plaintiff, the Plaintiff Steele is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

14. The Plaintiff, David Stiman, is 21 years old and lives with his parents, Tony and Tammy Goodman. The family are residents of Arlington Heights, Illinois.

(a) David Stiman is developmentally disabled. David Stiman has a substantial functional limitation in self-care; learning; self-direction; mobility; language; and capacity for independent living. Mr. Stiman needs continual support and supervision throughout his life.

(b) David Stiman is currently receiving special education services at Kirk School in Palatine and will graduate in June, 2001.

(c) David Stiman seeks day programming Medicaid services and applied for Supported Living Services (SLS) in February, 2001.

(d) On or about April 25, 2001, the mother of David Stiman, Tammy Goodman was informed that their was no funds for day programming services for David Stiman. Ms. Goodman spoke with persons from the Illinois Department of Human Services / Office of Developmental Disabilities without success in obtaining funding approval for David Stiman.

(e) DHS/ODD has not informed Plaintiff or his parents when or if he will receive day programming Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide day programming Medicaid services to Plaintiff, the Plaintiff Stiman is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

15. The Plaintiff, Christine Auer is 33 years old and lives with her parents, Alfred and Patricia Auer. The family are residents of West Chicago, Illinois.

(a) Christine Auer is developmentally disabled and is wheelchair bound. She needs close supervision and assistance with many activities of daily living throughout her life. Christine Auer has a substantial functional limitation in self-care; learning; mobility; and capacity for independent living.

(b) Christine Auer was found on November 14, **1994** to be Medicaid eligible by the Pre-Admission Screening Agency, Kane-Kendall Case Coordination Services and to need active treatment / specialized services.

(c) Christine Auer seeks 24 hour per day residential medicaid services in either an appropriate ICF/DD or alternatively, a CILA placement.

(d) Since **1992**, Christine has sought both **ICF/DD** and **CILA** placement without success from the following agencies:

(i) Ray Graham Association on September 1, **1992** declined to accept Christine into their residential program. Ray Graham Association provides both **ICF/DD** and **CILA** services. (See Group Exhibit A-1) In **1995**, Ray Graham stated that they still had no openings for Christine. (See Group Exhibit A-8) In the Spring of **2000**, Ray Graham was still unable to provide residential services to Christine.

(ii) Bethesda Lutheran Home on January 28, **1993** declined to accept

Christine into their **ICF/DD** program as she does not meet their criteria for their ICF/DD service. (See Group Exhibit A-2)

(iii) Little Friends, a **CILA** provider, acknowledged on September 2, **1993**, that Christine has been on their **referral (pre-waiting) list** since August 28, **1992.** That Christine will not move up to their formal waiting list until the agency has some reasonable expectation that they would be able to offer her services. (See Group Exhibit A-3)

(iv) Avenues to Independence on October 27, **1995**, declined to accept Christine into their **CILA** program. (See Group Exhibit A-4)

(v) The Association for Individual Development on November 20, **1995**, declined to accept Christine into their **ICF/DD** and other residential programs due to extensive waiting lists. (See Group Exhibit A-5) In **2001,** The Association for Individual Development again declined to accept Christine into their **ICF/DD** program due to lack of vacancies and that there were no vacancies in the foreseeable future. (See Group Exhibit A-1)

(vi) Little City Foundation, an **ICF/DD** provider and other residential provider, on November 30, **1995** declined to accept her into their residential program due to the lack of any openings. (See Group Exhibit A-6)

(vii) Opportunity House on December 12, **1995** had no openings to provide residential services for Christine and placed her on their **CILA waiting list.** (See Group Exhibit A-7)

(viii) Ray Graham Association on December 13, **1995** declined to accept Christine into their residential program there were no openings. Ray Graham Association provides both **ICF/DD** and **CILA** services. (See Group Exhibit A-8)

(ix) Open Door, a **CILA** provider, in **1995** declined to accept Christine into their residential program as there were no openings. (See Group Exhibit A-9)

(x) Helping Hands Rehabilitation Center, a **CILA** provider, on February 2, **1996** declined to accept Christine into their residential program as they had no openings. The waiting list for Helping Hands is extensive and a minimum of 5 years plus in length of time. (See Group Exhibit A-10)

(xi) In the Spring of **2000**, Ray Graham, a **CILA** and **ICF/DD** provider was still unable to provide residential services to Christine.

(xii) The Association for Individual Development on July 1, **2001**, declined to accept Christine into their **ICF/DD** program and other residential programs due to lack of vacancies and that there were no vacancies in the foreseeable future. (See Group Exhibit A-11)

(e) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Auer is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

16. The Plaintiff, Douglas Wilsman is 21 years old and lives with his mother (Loretta Holme) and step-father. The family are residents of Wonder Lake, Illinois.

(a) Douglas Wilsman is developmentally disabled. He needs supervision and assistance with many activities of daily living throughout his life. Douglas Wilsman has a

substantial functional limitation in self-care; learning; mobility; and capacity for independent living.

(b) Douglas Wilsman was found on November 20, **2000** to be Medicaid eligible by the Pre-Admission Screening Agency, Options & Advocacy for McHenry County, Inc. to be eligible for an intermediate care facility for the / developmentally disabled (ICF/DD) and eligible for a community integrated living arrangement (CILA).

(c) Douglas Wilsman seeks residential medicaid services in either an appropriate ICF/DD or alternatively, a CILA placement.

(d) Since **2000**, Douglas has sought both **ICF/DD** and **CILA** placement without success from the following agencies:

(i) **CILA** services are not available to Douglas as the Department of Human Services has stated in writing that Douglas is not eligible for CILA services because of the "[State] finite resources, your son does not meet our emergency definition. (See Group Exhibit B-1)

(ii) **ICF/DD** services are not available to Douglas, as Sheltered Village, an **ICF/DD** provider, refused to provide ICF/DD services as they could not meet his needs, as he requires an environment where he could live more independently than would be allowed under their license. (See Group Exhibit B-2)

(iii) The Pre-Admission Screening Agency, Options & Advocacy for McHenry County, informed DHS/ODD that the Plaintiff could not locate an appropriate **ICF/DD** and DHS still refused to authorize a **CILA** placement. (See Group Exhibit B-3, B-4)

(iv) Plaintiff is on a waiting list with Pioneer Center, a **CILA** provider

for residential services, and he is number 35 on a list of 68 persons and two individuals on the list have been waiting for services since 1987. (See Group Exhibit B-6) Even if Pioneer Center moved the Plaintiff to the top of the waiting list and offered to provide CILA services, DHS/ODD would still not fund the CILA placement. (See Group Exhibit B-1, B-4)

(e) The Plaintiff has enlisted the support of Illinois State Representative Jack Franks without success to obtain residential services. State Rep. Franks acknowledges that there is a "funding shortage for the CILA program." (See Group Exhibit B-5)

(f) DHS/ODD has not informed Plaintiff or his parent when or if he will receive residential Medicaid services at any time in the foreseeable future.

(g) Plaintiff is entitled to Medicaid services with reasonable promptness.

(h) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Wilsman is not receiving the therapies, training and other active treatment to which he is entitled by virtue of his eligibility for Medicaid services.

17. The Plaintiff, Sharon Lowrey is 25 years old and lives with her parents, Owen and Susan Lowrey. The family are residents of Elgin, Illinois.

(a) Sharon Lowrey is developmentally disabled. She needs close supervision and assistance with many activities of daily living throughout her life. Sharon Lowrey has a substantial functional limitation in self-care; self-direction; and capacity for independent living.

(b) Sharon Lowrey was found on August 12, **1994** to be Medicaid eligible by the Pre-Admission Screening Agency, Kane-Kendall Case Coordination Services, and to eligible for an intermediate care facility for the / developmentally disabled (ICF/DD) and eligible for a community integrated living arrangement (CILA).

(c) Sharon Lowrey seeks residential medicaid services in either an appropriate ICF/DD or alternatively, a CILA placement.

(d) Since **1994**, Sharon has sought both **ICF/DD** and **CILA** placement without success from the following agencies:

(i) In **1995,** Misericirdia, a **ICF/DD** provider was unable to provide residential services to Sharon and she was placed on their referral list. (See Group Exhibit C-1)

(ii) In **1996,** Lambs Farm, an **ICF/DD** provider and other residential provider was unable to provide residential services to Sharon and she was placed on their waiting list. (See Group Exhibit C-2, C-3)

(iii) In **1996,** Little City, an **ICF/DD** provider and other residential provider was unable to provide residential services to Sharon due to lack of vacancies and lack of residential funding sources. She was placed on their waiting list. (See Group Exhibit C-4) In **1998,** Little City stated that they were still unable to predict when an opening would occur. (See Group Exhibit C-6)

(iv) In **1996,** The Association for Individual Development, a provider of **ICF/DD** and **CILA** services was unable to provide residential services to Sharon and placed her on their waiting list. (See Group Exhibit C-5)

(v) In **1996,** Glenkirk, a **CILA** and former **ICF/DD** provider (ICF/DD closed approximately 1996) was unable to provide residential services to Sharon and she was placed on their waiting list.

(vi) In **1996,** Clearbrook, an **ICF/DD** and **CILA** provider was unable to provide residential services to Sharon and she was placed on their waiting list.

(vii) In **1997,** Meadows (Zachary House) an **ICF/DD** provider was unable to provide residential services to Sharon and she was placed on their waiting list.

(viii) In **1998,** Little City, an **ICF/DD** provider and other residential provider was unable to provide residential services to Sharon due to lack of vacancies. (See Group Exhibit C-6)

(ix) In **2001,** The Association for Individual Development, a provider of **ICF/DD** and **CILA** services, informed Sharon that there were no openings for **ICF/DD** services.

(e) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Lowrey is not receiving the therapies, training and other active treatment to which she is entitled by virtue of her eligibility for Medicaid services.

18. The Plaintiff, Leah Jones is 20 years old and lives with her parents, Lawrence and Kathy Jones. The family are residents of West Dundee, Illinois.

(a) Leah Jones is developmentally disabled. She needs close supervision and assistance with many activities of daily living throughout her life. Leah Jones has a substantial functional limitation in self-care; self-direction; mobility and capacity for independent living.

(b) Leah Jones was found on March 27, **1999** to be Medicaid eligible by Kane-Kendall Case Coordination Services, and to eligible for an intermediate care facility for the / developmentally disabled (ICF/DD) and eligible for a community integrated living arrangement (CILA).

(c) Leah Jones seeks residential medicaid services in either an appropriate ICF/DD or alternatively, a CILA placement.

(d) Since **1999**, Leah has sought both **ICF/DD** and **CILA** placement without success from the following agencies:

(i) In **1999**, Misericordia, an **ICF/DD** provider was unable to provide residential services to Leah due to no vacancies and the parents were told that the **waiting list** was **10 - 15 years.**.

(ii) In **1999,** Lambs Farm, an **ICF/DD** provider was unable to provide residential services to Leah and they placed her on their waiting list.

(iii) In August, **2000,** Clearbrook Center, a provider of **ICF/DD** and **CILA** was unable to accept Leah into their residential program and placed her on their waiting list.

(iv) In August, **2000,** Little Friends, a provider of **CILA** services was unable to accept Leah into their residential program and placed her on their waiting list.

(v) In **2001,** The Association for Individual Development, a provider of **ICF/DD** and **CILA** services was unable to accept Leah her into their residential programs due to extensive waiting lists and Leah has been placed on their waiting list.

(e) DHS/ODD has not informed Plaintiff or her parents when or if she will receive residential Medicaid services at any time in the foreseeable future.

(f) Plaintiff is entitled to Medicaid services with reasonable promptness.

(g) As the result of the failure of DHS/ODD to provide residential Medicaid services to Plaintiff, the Plaintiff Jones is not receiving the therapies, training and other active

treatment to which she is entitled by virtue of her eligibility for Medicaid services.

19. Defendant George H. Ryan is the Governor of the State of Illinois and is being sued in his official capacity. His office is responsible for ensuring that the agencies of the State's Executive Branch, including the Illinois Department of Human Services (DHS) and the Illinois Department of Public Aid (DPA), act in compliance with the Constitution and the laws of the United States.

20. Defendant Ann Patla is the Director of the Illinois Department of Public Aid (DPA) and is being sued in her official capacity. The DPA is the designated Medical Assistance Single State Agency and is responsible for the oversight and the administration of the Medicaid program under Title XIX of the Social Security Act, which includes programs for persons with mental retardation or developmental disabilities.

21. Defendant Linda Renee Baker, as Secretary of the Illinois Department of Human Services (DHS) is being sue in her official capacity.

(a) Pursuant to an interagency agreement with DPA, Defendant Baker's office (DHS) is responsible for administering Illinois' State Medicaid Plan and the monitoring of Title XIX programs.

(b) DPA has delegated the day-to-day-administration of the waiver program to DHS via an interagency provider agreement which specifies the activities performed by each of the two agencies. Under the terms of this agreement, DHS is responsible for administering the waiver according to the rules, regulations and procedures established by the DPA. DHS acts as the fiscal agent of DPA. DHS has in turn contracted with community-based agencies throughout the State to provide services to individuals in the waiver. The point of entry into the program is

the Pre-Admission Screening (PAS) Agency. A PAS Agent or Service Coordinator performs the initial functional assessment of the person seeking services, determines the person's needs, and finds appropriate placement. Services provided in the waiver include habilitation, personal care, adaptive equipment and minor modifications to the home.

22. Defendant Melssa Wright is the Associate Director of the Office of Developmental Disabilities (ODD) which is operated within DHS and she is being sue in her official capacity. The Office of Developmental Disabilities (ODD) is responsible for the control and administration of the developmental disabilities program and its related Medicaid program in Illinois.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

24. The Class consists of "All developmentally disabled or mentally retarded individuals residing in the Counties of McHenry, Lake, Kane, Cook, DuPage, Kendall, Grundy, Will and Kankakee, in the State of Illinois, who are eligible to receive Medicaid services and who have not promptly received either Intermediate Care Facility for the Developmentally Disabled (ICF/DD) or Community Integrated Living Arrangement (CILA) placement."

25. The Class is so numerous that joinder of all persons is impracticable. Plaintiffs believe that the class probably numbers well over hundreds and hundreds of persons.

26. Plaintiffs are adequate representatives of the class because they suffer from deprivations identical to those of the class members and have been denied the same federal rights

that they seek to enforce on behalf of the other class members. The Plaintiffs will fairly and adequately represent the interests of the other class members, many of whom are unable to pursue claims on their own behalf as the result of their disabilities. Plaintiffs' interest in obtaining injunctive relief for the violations of constitutional rights and privileges are consistent with and not antagonistic to those of any person within the class.

27. The claims of the class members raise common questions of fact, including whether individuals eligible for Medicaid services are being provided such services with reasonable promptness. The claims of the class members also raise common questions of law, including the interpretations of the Medicaid Aid. The common questions of fact and law predominate over questions affecting only individual class members.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:

(i) A multiplicity of suits with consequent burden on the courts and defendants should be avoided.

(ii) It would be virtually impossible for all class members to intervene as parties-plaintiffs in this action.

STATEMENT OF FACTS

29. Title XIX of the Social Security Act of 1965, 42 U.S.C. Section 1396 *et. seq.* (The "Medicaid Act"), establishes Medicaid, a federal program administered by the states to provide health care to low-income individuals. State participation in the Medicaid program is optional. If the state elects to participate, it must submit a "state plan" for approval by the Secretary of the

United States Department of Health and Human Services ("HHS").

30. The federal government reimburses a participating state for a portion of the cost of medical services provided under its Medicaid program. To receive federal funds, the state's program must comply with the requirements set forth in the Medicaid Act and in federal implementing regulations.

31. The Medicaid Act requires participating states to provide certain services to individuals who qualify as "categorically needy" based on their eligibility for assistance under other federal programs. 42 U.S.C. Sections 1396a(a)(10)(A), 1396d(a); 42 C.F.R. Section 435.4. The Act offers states the option of providing -- and receiving federal Medicaid reimbursement for -- additional health care services for the categorically needy and for the "medically needy," whose income and assets are limited but are too high to qualify for "categorically needy" status. 42 U.S.C. Sections 1396a(a)(10)(C); 42 C.F.R. Section 435.4.

32. One optional service that a participating state may provide is care for eligible individuals in an "intermediate care facility for the mentally retarded ("ICF/MR"). 42 U.S.C. Sections 1396d(a)(15), (d). Alternatively, the state may provide — and receive federal reimbursement for -- home and community based services for the mentally retarded if the state obtains a "waiver" from the Secretary of HHS that permits the state to provide such services in place of ICF/MR care. Id. at Section 1396n(c)(1). Once a state commits to provide optional services, it must provide them in compliance with the requirements of the Medicaid Act.

33. (a) The State of Illinois participates in the Medicaid program and has filed a State Plan with the federal government. In the State Plan, the State of Illinois has committed to provide Medicaid services to both the categorically needy and the medically needy.

(b) The State of Illinois Medicaid program includes ICF/MR or ICF/DD ("intermediate care facility for the developmentally disabled") services for eligible individuals. ICF/MR or ICF/DD provide residential, health, rehabilitative services and an active treatment program for individuals with developmental disabilities and mental retardation. The active treatment program includes habilitation, occupational therapy, speech therapy and physical therapy which is directed toward the acquisition of the behaviors for the person to function with as much self determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status. 42 U.S.C. Sec. 1396d(d); 42 C.F.R. Sec. 483.45; 42 C.F.R. Sec. 483.400(a)(1)(i)-(ii).

34. The State of Illinois was granted approval by the Secretary of HHS to operate a "Home and Community Based-Service (HCBS) waiver program to provide services to individuals with mental retardation or developmental disabilities who would otherwise require ICF/MR level of care effective June 1, 1991. Waivers are approved for an initial three year period and can be renewed for five year periods. The State of Illinois' waiver has been renewed on July 1, 1994 and July 1, 1999. Pursuant to its waiver program, the State of Illinois guarantees to eligible mentally retarded and developmentally disabled individuals the choice between ICF/MR services and home or community-based care. Waiver services are a cost effective alternative to higher cost, less integrated institutional care in an ICF/MR.

35. The State of Illinois' waiver plan provides that individuals who are determined to be eligible for "waiver"services shall be given the choice of either institutional or home and community-based services, and it provides for the opportunity for a fair hearing for eligible persons who are not given this choice. HHS reviews the State of Illinois waiver program to

make sure that it provides for choice and a fair hearing.

36. Individuals who are eligible for "waiver"services are also guaranteed a choice between those services and ICF/MR or ICF/DD care by the Medicaid Act itself, 42 U.S.C. Section 1396n(c)(2)(C), and by other federal statutes and regulations. Both the Americans with Disabilities Act, 42 U.S.C. Section 12132, and the Rehabilitation Act, 29 U.S.C. Section 794, prohibit public entities and recipients of federal funds from discriminating against any individual by reason of disability. The implementing regulations for those statues require that public and federally-funded entities provide programs and activities "in the most integrated setting appropriate to the needs of the qualified" individual with a disability. 28 C.F.R. Sections 35.130(d), 41.51(d). Eligible individuals therefore are entitled to choose home and community-based services that are more "integrated" than institutional care.

37. As a participant in the federal Medicaid program and a recipient of federal funds, the State of Illinois is required to comply with the provisions of the Medicaid Act.

38. (a) Section 1396a(a)(8) of the Medicaid Act requires that a state Medicaid program provide that medical assistance "shall be furnished with *reasonable promptness* to all eligible individuals." 42 U.S.C. Section 1396a(a)(8) (emphasis added).

(b) A corresponding regulation provides that the responsible state agency "must," among other things, "[f]urnish Medicaid promptly to recipients without any delay caused by the agency's administrative procedures," and "[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 C.F.R. Sec. 435.930(a)-(b) (1996). Another regulation states that "[t]he agency must establish time standard for determining eligibility and inform the applicant of what they are." 42 C.F.R. Sec. 435.911(a) (1996). These period are not

to exceed "[n]inety days for applicants who apply for Medicaid on the basis of disability" or "[f]orty-five days for all other applicants." 42 C.F.R. Sec. 435.911(a)(1)-)(2) (1996). Moreover, the agency "must not use the time standards" as "a waiting period." 42 C.F.R. Sec. 435.911(e)(1) 1996.

39. Section 1396a(a)(3) further provides that a State plan must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness."

40. Despite the Medicaid Act's clear command that eligible individuals receive care and services with "reasonable promptness," the Defendants have failed to provide much-needed services to the hundreds and hundreds members of the Plaintiff class.

41. ICF/DD services are not readily available in Counties of McHenry, Lake, Kane, Cook, DuPage, Kendall, Grundy, Will and Kankakee, in the State of Illinois.

42. Appropriate ICF/DD services are not readily available in Counties of McHenry, Lake, Kane, Cook, DuPage, Kendall, Grundy, Will and Kankakee, in the State of Illinois.

43. Appropriate ICF/DD services are not readily available throughout the State of Illinois.

44. The Plaintiffs are eligible developmentally disabled and mentally retarded individuals and are currently denied Medicaid services to which they are entitled.

45. Each Defendant, acting in his official capacity, is responsible for the control, implementation and administration of the State of Illinois obligations to the mentally retarded and the developmentally disabled.

COUNT I

VIOLATION OF MEDICAID ACT, 42 U.S.C. SECTION 1396a(a), AND 42 U.S.C SECTION 1983

46. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 45 above.

47. Defendants, while acting under color of law, have violated and are violating Plaintiffs' rights under 42 U.S.C. Section 1396(a)(8) and 42 U.S.C. Section 1983 by failing to provide Medicaid services to Plaintiffs with reasonable promptness, even though the Plaintiffs are eligible to receive such services.

48. Defendant, while acting under color of law, have violated and are violating Plaintiffs' rights under 42 U.S.C. Section 1396n(c)(2)(C) by failing to implement their choices for Medicaid services ("freedom of choice") under the HCBS program.

49. Defendant, while acting under color of law, have violated and are violating Plantiffs' rights under 42 U.S.C. Section 1396n(c)(2)(C) by failing to implement their choices for Medicaid services ("freedom of choice") under the HCBS program with reasonable promptness.

50(A). Defendant, while acting under color of law, have violated and are violating Plaintiffs rights to provide Medicaid services "in all political subdivisions of the state," 42 U.S.C. Sec. 1396a(a)(1), and the provision of said services ["shall not be less in amount, duration or scope than the medical assistance made available to any other such individual 42 U.S.C. Sec. 1396a(a)(10)(B)(i).

50(B). Defendant, while acting under color of law, have violated and are violating Plaintiffs rights to provide Medicaid services in a manner consistent with the best interest of the recipients, 42 U.S.C. Sec. 1396a(a)(19).

50(C) Defendant, while acting under color of law, have violated and are violating Plaintiffs rights to have medical assistance under the Medicaid Act be available to eligible recipients from qualified providers of their choice, 42 U.S.C. Sec. 1396a(a)(23).

51. Defendants, while acting under color of law, have violated and are violating Plaintiffs' rights under 42 U.S.C. Section 1396a(a)(3) and 42 U.S.C. Section 1983 by failing to provide a fair hearing for any individual whose claim for Medicaid services is not acted upon with reasonable promptness.

52. As a result of the acts and omissions of the Defendants, the named Plaintiffs and other class members have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs and other class members will continue to suffer such deprivations in the future absent relief from this Court.

COUNT II

VIOLATION OF DUE PROCESS AND 42 U.S.C. SECTION 1983

53. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 45 above.

54. Because the Plaintiffs are eligible for Medicaid services, they have a property right that may not be abridged without due process of law. Moreover, section 1396a(a)(3) of the Medicaid Act specifically requires a fair hearing for any individual whose claim for Medicaid services is not acted upon with reasonable promptness.

55. Defendants, while acting under color of law, have violated and are violating plaintiffs' Due Process rights under the Fifth and Fourteenth Amendment of the Constitution and 42 U.S.C. Section 1983 by failing to provide Medicaid services for which the Plaintiffs are eligible without any hearing.

56. As a result of these arbitrary delays and denials of Medicaid services to which the named Plaintiffs and other class members are entitled, they have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs and other class members will continue to suffer such arbitrary deprivations in the future absent relief from this Court.

COUNT III

VIOLATION OF AMERICAN WITH DISABILITIES ACT (ADA) AND 42 U.S.C SECTION 1983

57. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 45 above.

58. Title II of the American with Disabilities Act (ADA) provides that no qualified person with a disability shall be subjected to discrimination by a public entity. 42 U.S.C. Sec. 42 U.S.C. Sec. 1201 *et. seq.* A public entitle shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. Sec. 35.130(d) (1998).

59. Plaintiffs are qualified individuals with disabilities and are eligible for residential and non-residential Medicaid services but are not receiving all services under the State plan.

Plaintiffs are qualified for the Home and Community Based-Service (HCBS) waiver program. A community placement or community services are the most integrated setting appropriate to Plaintiffs needs and Plaintiffs desire community-based treatment / services. The Plaintiffs community-based placements / services can be reasonably accommodated.

60. The Defendants failure to place Plaintiffs in a community-based program, after the Pre-Admission Screening (PAS) Agency or Service Coordinator found such placements appropriate and after the Plaintiffs desired such placements, violated Title II of the ADA.

61. That after Plaintiff has been found to be qualified for a community-based program, the failure of the Defendants to provide these services in the "most integrated setting appropriate" to her/his needs, violates the ADA.

62. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental disabilities and developmental disabilities in less restrictive settings.

63. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities in less restrictive settings with reasonable promptness.

64. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities who are in need of residential medicaid services with reasonable promptness.

65. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities who are in need of nonresidential (day programming) medicaid services with reasonable promptness.

66. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

67. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in community based settings.

68. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation who are in need of residential Medicaid services.

69. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation who are in need of nonresidential (day programming) Medicaid services.

70. Defendants, while acting under color of law, have violated and are violating Plaintiffs' right under Title II of the American with Disabilities Act and 42 U.S.C. Section 1983.

71. As a result of the acts and omissions of the Defendants, the named Plaintiffs and other class members have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs and other class members will continue to suffer such arbitrary deprivations in the future absent relief from this Court.

COUNT IV

VIOLATION OF REHABILITATION ACT AND 42 U.S.C SECTION 1983

72. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 45 above.

73. The Rehabilitation Act, 29 U.S.C. Sec. 794, prohibits public entities and recipients of

federal funds from discriminating against any individual by reason of disability. The implementing regulation for the statute requires that public and federally-funded entities provide programs and activities "in the most integrated setting appropriate to the needs of the qualified individual with a disability." 28 C.F.R. Section 41.51(d).

74. The Defendants fail to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

75. The Plaintiffs are entitled to choose home and community-based services that are more "integrated" than institutional care.

76. Plaintiffs are individuals with disability under the Rehabilitation Act. 29 U.S.C. Sec. 705(9).

77. Plaintiffs are qualified individuals with disabilities and are eligible for Medicaid services but are not receiving services under the State plan. Plaintiffs are qualified for the Home and Community Based-Service (HCBS) waiver program. A community placement is the most integrated setting appropriate to Plaintiffs needs and Plaintiffs desire community-based treatment. The Plaintiffs community-based placements can be reasonably accommodated.

78. The Defendants failure to place Plaintiffs in a community-based program, after the Pre-Admission Screening (PAS) Agency or Service Coordinator found such placements appropriate and after the Plaintiffs desired such placements, violated the Rehabilitation Act.

79. That after Plaintiff has been found to be qualified for a community-based program, the failure of the Defendants to provide these services in the most integrated setting appropriate to her/his needs, violates the Rehabilitation Act.

80. The State of Illinois does not have a comprehensive, effectively working plan for

placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

81. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental disabilities and developmental disabilities in less restrictive settings.

82. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities in less restrictive settings with reasonable promptness.

83. The State of Illinois does not have a comprehensive, effectively working plan for placing qualified persons with mental retardation and developmental disabilities who are in need of residential medicaid services with reasonable promptness.

84. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in less restrictive settings.

85. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation in community based settings.

86. The State of Illinois does not have a waiting list for placing qualified persons with developmental disabilities or mental retardation who are in need of residential Medicaid services.

87. As a result of the acts and omissions of the Defendants, the named Plaintiffs and other class members have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs and other class members will continue to suffer such arbitrary deprivations in the

future absent relief from this Court.

COUNT V

VIOLATION OF EQUAL PROTECTION AND 42 U.S.C SECTION 1983

88. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 45 above.

89. The Plaintiffs have similar disabilities and needs to those of individuals who have received and are presently receiving all Medicaid services for which they are eligible. Defendants have no rational basis for denying the Plaintiffs Medicaid services and waiver services to which they are entitled, while providing such services to other similarly situated developmentally disabled and mentally retarded individuals.

90. Defendants, while acting under color of law, have violated and are violating Plaintiffs' right to Equal Protection of the laws guaranteed by the Fourteenth Amendment of the Constitution and 42 U.S.C. Section 1983.

91. As a result of this arbitrary, discriminatory treatment supported by no rational basis, the named Plaintiffs and other class members have suffered and continue to suffer physical, mental and emotional deprivation, including but not limited to the loss of skills, the loss of opportunities to develop to their fullest potential, and the aggravation of existing physical, mental and emotional conditions. The Plaintiffs and other class members will continue to suffer such arbitrary deprivations in the future absent relief from this Court.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff class respectfully requests that this Court:

(a) Certify the Plaintiff class of "All developmentally disabled or mentally retarded individuals residing in the Counties of McHenry, Lake, Kane, Cook, DuPage, Kendall, Grundy, Will and Kankakee, in the State of Illinois, who are eligible to receive Medicaid services and who have not promptly received either Intermediate Care Facility for the Developmentally Disabled (ICF/DD) or Community Integrated Living Arrangement (CILA) placement" and order that Plaintiffs may maintain this action as a class action pursuant to Fed. R. Civ. P. 23;

(b) Enter Judgment in favor of the Plaintiffs and hold that the Defendants' failure to provide Medicaid services to the Plaintiffs violate 42 U.S.C. Section 1983, the Medicaid Act, 42 U.S.C. Section 1396a(a), the Americans with Disabilities Act, the Rehabilitation Act, the Fifth and Fourteenth Amendments of the Federal Constitution;

(c) Issue preliminary and permanent injunctive relief requiring the Defendants, their successors in office, agents, employees, and all persons acting in concert with them, to offer the Plaintiffs the full range of ICF/MR services or home and community-based waiver services and other services for which they are eligible within 90 days or some other specifically-defined, reasonably prompt period;

(d) Issue preliminary and permanent injunctive relief requiring the Defendants, their successors in office, agents, employees, and all persons acting in concert with them, to offer the Plaintiffs who are eligible for "waiver" services the choice of receiving ICF/MR or home and community-based services that are suitable for their needs within 90 days or some other specifically-defined period — a choice that is required by the State of Illinois waiver program,

by the Medicaid Act, 42 U.S.C. Section 1396n(c)(2)(C), and by federal statutes and regulations entitling disabled persons to services in the "most integrated setting" appropriate to their individual needs, see 42 U.S.C. Section 12132 (Americans With Disabilities Act); 29 U.S.C. Section 794 (Rehabilitation Act); 28 C.F.R. Sections 35,130(d), 41.51(d);

(e) Award Plaintiffs the costs of this action, including reasonable attorneys fees, pursuant to 42 U.S.C. Section 1988; and

(f) Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

One of the Attorneys for Plaintiffs

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