

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ERNAST HERMANSON, et al.	)	Civ. No. 00-CV-30156 MAP
Plaintiffs	)	
v.	)	STIPULATION OF SETTLEMENT
	)	
COMMONWEALTH OF	)	
MASSACHUSETTS, et al.	)	
Defendants	)	
	)	

Whereas the plaintiffs commenced this action challenging certain of the defendant's MassHealth financial eligibility rules which plaintiffs claimed discriminated against disabled elders in need of personal care services;

Whereas the defendants have promulgated new MassHealth financial eligibility rules for elders in need of personal care services (130 C.M.R. §520.013(B)) which significantly expand the financial eligibility of elders in need of personal care services;

Whereas the defendants have implemented the new rules through the development of a new MassHealth application form; consumer information booklet; staff instructions and staff training; and

Whereas the plaintiffs believe that the newly implemented rules constitute a fair resolution of plaintiffs claims;

Therefore, the parties hereby stipulate and agree that this action be dismissed upon the following terms and conditions:

1. The defendants will provide the plaintiffs with quarterly monitoring reports over a 12 month period, due on April 1, 2003; July 1, 2003; October 1, 2003; and January 1, 2004. These reports will contain the following information:

- A) How many elders completed and submitted a PCA supplement? Of these:
1. How many of these qualified for the PCA disregard?
 2. How many were denied the disregard?
 3. How many appealed the denial and their appeal status?
- B) How many total elders are coded “H”? Those coded “H” are elders who, regardless of income, have been identified as receiving PCA services and also those who qualified for the disregard by submitting a PCA supplement. Those coded “H” will receive the PCA disregard whenever their incomes exceed 100% FPL. Of these (after being coded “H”):
1. How many were authorized to receive all requested PCA services?
 2. How many were authorized to received modified services (fewer than requested)?
 3. How many were denied authorization for all requested PCA services?
 4. How many were approved for day PCA but denied for night PCA?
 5. How many were approved for night PCA but denied for day PCA?
 6. How many appeals and their appeal status?
 7. How many have not applied for authorization yet?
- C) Number of those coded “H” broken down by income:
1. income up to 100%
 2. income between 100 and 133%
 3. income over 133%
- D) Number of those coded “H” with deductibles (spenddowns)—
1. less that \$250
 2. \$250 - \$750
 3. \$750 – \$1500
 4. \$1500 – \$2500
 5. \$2500 - \$3500
 6. over \$3500
- E) How many coded “H” lost this coding and were denied eligibility due to their failure to apply for PCA authorization within the 90 days prescribed in the regulations?

2. Upon receipt of such reports by plaintiffs, DMA agrees to discuss with plaintiffs any issues raised by such reports. In the event of a delay in the provision of the agreed upon monitoring information, the date for the dismissal of this action will be extended until all of the information has been provided. The parties will notify the Court in the event of any such extension.

3. The parties have also reached agreement regarding plaintiffs' claim for attorneys fees and costs, as reflected in a separate agreement on fees. The attorneys fees agreement will remain in effect until satisfied and is not superseded by this agreement.

4. Upon execution of this Agreement, the parties shall promptly request that the Court place the case on inactive status during the monitoring period. Within 30 days after the conclusion of the monitoring period, the parties shall voluntarily dismiss the Action by filing a stipulation of dismissal with prejudice, absent any intervening issues regarding the implementation and operation of the changes in the PCA rules or the provision of the monitoring information as specified above.

5. This Agreement is the entire agreement between the parties concerning the subject matters hereof and supersedes all prior oral and written agreements and discussions as to the matters addressed herein.

6. This Agreement shall not be enforceable by contempt or by a breach of contract action. In the event of a dispute regarding compliance with this agreement or the implementation and operation of the PCA rule changes upon which this agreement is predicated, the aggrieved party's exclusive remedy shall be to move this Court for an order restoring the action to the Court's active calendar.

7. Nothing in this Agreement is intended, nor should it be construed, to constitute an admission of liability by any party or a waiver of any sovereign immunity the Commonwealth may have. This Agreement is not intended nor shall it be construed to preclude DMA from promulgating or amending regulations or field operations memoranda, policies, or other sub-regulatory materials as DMA deems appropriate. However, in the event plaintiffs determine that such changes in policies or procedures

constitute a material change in the implementation or operation of the PCA program changes upon which this agreement is predicated, plaintiffs may move to have the case restored to the active calendar for disposition on its merits.

8. Each party represents that it has not relied upon any statement of any other party except those statements set forth in this Agreement. This Agreement may be amended only by an agreement in writing, signed by the parties or their counsel.

9. The parties represent that each of them has cooperated in the drafting and preparation of this Agreement. Hence, no ambiguity in this Agreement shall be construed against any of them. This Agreement is executed as, and shall have the effect of, an instrument under seal. It shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

For all Plaintiffs,

For all Defendants,

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So Ordered:

Michael A. Ponsor
U.S. District Judge

Entered: _____