

the campus of the University of Montevallo. He has located and intends to rent accessible housing for this purpose.

5. Mr. Boyd is eligible for and receives Medicaid which pays for his nursing home services.
6. Defendant has or could readily develop Medicaid-funded services, through its waivers, a combination of waivers, or reasonable modifications of waivers, that would permit Mr. Boyd to live in the community. Mr. Boyd has requested Defendant do so. Mr. Boyd has been on the waiting list for Defendant's waiver services since October 2008. Mr. Boyd, through his attorneys, recently renewed his request for necessary and appropriate community based services, identifying to Defendant the specific services he will need Defendant to provide in order to allow him to live in the community. Defendant has not granted Mr. Boyd's request and has used its funds to pay only for Mr. Boyd's services in a nursing facility.
7. Defendant's refusal to provide necessary and appropriate services for Mr. Boyd in the community violates:
 - 1.) the Americans with Disabilities Act (ADA), Title II, 42 U.S.C. § 12132, and its implementing regulations, and
 - 2.) Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), and its implementing regulations.
8. In enacting the ADA in 1990, Congress stated that

Discrimination against individuals with disabilities persists in such critical areas as ... *institutionalization*... [and]
Individuals with disabilities continually encounter various forms of discrimination, including ... *segregation*....

42 U.S.C. §§12101(a)(3) and (5) (emphases added). Defendant's failure to administer her agency's services and programs, including Medicaid, "in the most integrated setting

appropriate” to the needs of the individual with disabilities perpetuates Mr. Boyd’s unnecessary institutionalization and his segregation in a nursing facility in violation of the ADA and Section 504.

9. Plaintiff seeks declaratory and injunctive relief to end Defendant’s discrimination against him in violation of the ADA and Section 504 so he will receive Medicaid services that allow him to reside in the community, and not require him to live segregated in a nursing facility.

JURISDICTION AND VENUE

10. The Court has jurisdiction over Plaintiff’s claims under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 65. Plaintiff’s causes of action for disability discrimination are authorized by 42 U.S.C. § 12133 and 29 U.S.C. § 794(a).
11. Venue is proper because the Defendant, in her official capacity, resides in this District. 28 U.S.C. § 1391(b).

DEFENDANT

12. Carol H. Steckel is the Commissioner of the Alabama Medicaid Agency, and she is sued in her official capacity. The Alabama Medicaid Agency is the chief health policy and planning entity for the state and is responsible for administering Alabama’s Medicaid program. The Alabama Medicaid Agency is the “single state agency” that operates Alabama’s Medicaid program, *see* 42 U.S.C. § 1396(a)(5), and is the state agency responsible for administering Alabama’s nursing home and community-based long term care system for people with disabilities. Commissioner Steckel is responsible for the oversight, supervision, and control of the Alabama Medicaid Agency and its divisions,

and she is ultimately responsible for ensuring that the Alabama Medicaid Agency's services for people with disabilities are provided in conformance with federal law.

PLAINTIFF

13. Jonathan Paul Boyd was born on January 20, 1976, and is thirty-four years old.
14. In 1995, while a sophomore at Troy State University and when Mr. Boyd was nineteen years old, he was in an accident when he fell off a balcony in his home.
15. Mr. Boyd broke his spine as a result of the accident and is paralyzed below his collar bone. He cannot use his arms or legs.
16. After months of hospitalization in the Lakeshore Rehabilitation Center in Birmingham, Mr. Boyd returned home and lived with his mother, stepfather and sister.
17. For eleven years after his accident Mr. Boyd lived at home with his mother and stepfather. His mother was his primary caregiver.
18. When he lived at home, Mr. Boyd was eligible for and received some community-based Medicaid waiver services to complement the care his mother provided.
19. In December 2006 Mr. Boyd had to enter a nursing home because his mother no longer could provide the care he required to supplement the waiver services that were insufficient without the family's informal supports. These community-based Medicaid waiver services were discontinued when he entered the nursing facility.
20. Mr. Boyd is eligible for and receives Medicaid which pays for his nursing home services.
21. Mr. Boyd uses a motorized wheelchair for ambulation, which he controls and directs with a "sip and puff" device.
22. In the nursing home, Mr. Boyd receives assistance with his activities of daily living, including assistance with taking medications, bathing, dressing, toileting, feeding, and

- transferring from and to his bed and into and out of his wheelchair. He receives assistance with basic household chores. He receives assistance twice weekly for his bowel program. He receives assistance twice monthly for changing his catheter.
23. In order to live in the community, Mr. Boyd needs Defendant to provide him with community-based services including ten hours per day of assistance with activities of daily living, assistance with his bowel program twice per week, assistance with changing his catheter twice per month and necessary equipment and care supplies.
24. These services could be provided to Mr. Boyd in the community by the Defendant's Medicaid program through a waiver, a combination of waivers, or reasonable modification of waivers.
25. Eventually after his accident, Mr. Boyd returned to college and graduated in 2007 with a bachelor of fine arts degree from the University of Montevallo. While in college he organized several programs, including one to feed low-income persons at Christmas, one to raise funds to help make businesses more accessible and, as a member of Pi Kappa Alpha, he organized other community services.
26. Earlier this year, Mr. Boyd was admitted to a graduate program at the University of Montevallo to seek his Master's degree in community counseling. He recently began that program in September 2010.
27. Mr. Boyd's nursing home is 13 miles away from the University of Montevallo. While traveling to Montevallo from the nursing home for his undergraduate degree Mr. Boyd was able to take public transportation (ClasTran) to and from the campus. His undergraduate classes were taught in the day and public transportation, though

inconsistent, was available. However, public transportation ceases at 3:30 p.m. and his graduate classes are only offered at night.

28. The two classes Mr. Boyd is currently taking are from 5 p.m to 8 p.m. on Mondays and Tuesdays. As such, in attending his graduate classes, Mr. Boyd is forced to rely upon and pay a nursing home maintenance worker all of his scholarship funds (\$500 for the semester) to transport him to and from campus for his classes.
29. Additionally, Mr. Boyd is required to make six additional trips to and from campus during the semester in order to complete required assignments. Mr. Boyd is forced to rely upon and pay others \$20 per trip to provide him with transportation to and from campus to complete those assignments. His brother is currently lending him the money to pay for these trips to campus for required assignments.
30. Because Mr. Boyd lives in the nursing home, rather than living in the community near campus as he prefers, he cannot travel to campus readily and independently. For this reason, he is taking only two classes this semester rather than four classes and he is not attending other University functions that he would like to attend, such as athletic events, author readings, theatrical performances and musical performances.
31. As a result of his living situation, Mr. Boyd is experiencing an increase in the time, effort and expense required for him to complete his graduate degree and is being prevented from participating in aspects of college life enjoyed by other graduate students.
32. Mr. Boyd has located rental housing near campus which meets his accessibility needs. This housing will be available for occupancy in January 2011, in time for the beginning of his next semester. However, until he knows that he will have necessary services to allow him to live in the community, he cannot secure rental of that housing. Accessible

rental housing is difficult to locate and secure, so he needs to act as soon as possible in order to secure rental housing.

33. Once he completes his Master's degree Mr. Boyd wants to work and establish a foundation for people with disabilities to obtain technology to assist them in school or at work. He wishes to leave the nursing facility as soon as possible, live in the community near the University, and receive services near the University, so he may travel readily and independently to his classes, assignments, and other University activities.
34. Throughout the eleven years Mr. Boyd resided at home, between the time of his accident and when he moved to a nursing facility, he had only one decubitus ulcer ("pressure sore"). Since December 2006 when he moved into a nursing facility, he has had five.
35. Mr. Boyd visits his family and friends as often as he can. He tries to leave the nursing facility as often as possible so he can eat out with friends and join them at the movies. As a resident of the nursing facility, however, he must return to the facility by a specific time in the evening, which limits his socializing with friends and having overnight stays with friends. As a Medicaid resident in the nursing home, only \$30 of his monthly Social Security Disability check of \$897 is available to Mr. Boyd for his personal expenses. With such limited financial resources, Mr. Boyd's ability to go to the movies, eat out, or have snacks is very limited.
36. In the nursing facility, Mr. Boyd must eat when and what the facility provides and must transfer to and from his bed, shower, toilet, and dress on the staff's schedule. His morning nursing facility routine is frequently pushed back until 11 a.m. or later to accommodate other people who reside on his unit with their morning routines. As a

result, he is unable at times to get out of bed until 11 a.m. unless he schedules his activities a few days in advance. The same limitations apply to his evening routine.

37. In the nursing facility, virtually all residents are disabled and most are much older than Mr. Boyd. Living in a nursing facility deprives Mr. Boyd of the simple pleasure of being around people his own age who have similar interest and activities. He does not take part in most scheduled nursing facility activities because they are geared toward octogenarians. Since he has been a resident in the nursing facility, he has taken part in a half dozen activities that centered around meals or ice cream.
38. There is little or no privacy in Mr. Boyd's nursing facility. There is constant noise, screaming and crying. Residents in the nursing facility often are not dressed and are exposed. There is a pervasive unpleasant disinfectant odor.
39. Mr. Boyd does not want to live in a nursing facility. Instead he wants to reside in the community where he can enjoy an active life.
40. Without community-based Medicaid waiver services, Mr. Boyd will continue to be unnecessarily institutionalized, even though he desperately does not want to reside in a nursing facility.
41. Despite Defendant's knowing that Mr. Boyd has been unnecessarily institutionalized for more than three years, she has not offered him the Medicaid services necessary to allow him to reside in the community. Mr. Boyd applied for Defendant's Medicaid waiver program in October 2008 and has been on a waiting list for services since that time. Mr. Boyd, through his attorneys, recently renewed his request for services by asking the Defendant to make reasonable modifications to her waiver programs and provide him with waiver services including ten hours per day of assistance with activities of daily

living, assistance with his bowel program twice per week, assistance with changing his catheter twice per month and necessary equipment and care supplies. Defendant has not granted Mr. Boyd's request.

42. Defendant has community-based Medicaid waivers but its capacity is limited, providing 9,205 slots, which has not been increased since 2008 despite a waiting list far in excess of the number of slots. According to the Kaiser Commission, there were 7,094 people on the waiting list for these community-based services.
43. Defendant has certified to the federal Medicaid agency, the Centers for Medicare and Medicaid Services, that for each person Alabama diverts from a nursing facility and provides waiver services in the community, the State and Federal government save approximately \$22,000 a year by providing community-based services instead of the same services in a nursing facility.
44. Despite these savings Defendant has refused to provide Mr. Boyd with services in the community. To obtain necessary services, Defendant requires that Mr. Boyd continue to reside in a Medicaid –funded nursing facility instead of the community. Defendant's Medicaid program will provide the services he requires only by paying for his institutionalization in a nursing facility.
45. Mr. Boyd has no option other than to remain in a nursing facility in order to receive the services he needs.

THE AMERICANS WITH DISABILITIES ACT

46. Title II of the Americans with Disabilities Act (ADA) provides that “no qualified individual with a disability shall, by reason of disability, be excluded from participation

in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

47. Such discrimination includes unnecessary institutionalization and segregation.

Regulations implementing Title II of the ADA require that a public entity administer its services, programs, and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).

48. Regulations implementing Title II also provide that

a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity’s program with respect to individuals with disabilities....

28 C.F.R. § 35.130(b)(3).

49. Defendant’s agency is a public entity under Title II of the ADA and its implementing regulations.

SECTION 504 OF THE REHABILITATION ACT

50. Section 504 of the Rehabilitation Act of 1973 provides,

No otherwise qualified individual with a disability in the United States..., shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...

29 U.S.C. § 794(a).

51. Regulations implementing Section 504 require a recipient of federal financial assistance to administer its services, programs and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

52. Regulations implementing Section 504 prohibit recipients of Federal financial assistance from

[u]tiliz[ing] criteria or methods of administration... (i) [t]hat have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap [or] (ii) [t]hat have the...effect of substantially impairing accomplishment of the recipients' program with respect to handicapped persons.

45 C.F.R. § 8404(b)(4).

53. Defendant's agency receives federal financial assistance under Section 504 and its implementing regulations. Federal Medicaid funds pay for approximately 68.54% of the cost of Alabama's Medicaid program, increasing as an enhanced federal match of approximately 77.91% effective October 1, 2010.

FIRST CLAIM FOR RELIEF

Title II of the Americans with Disabilities Act

54. Mr. Boyd is an individual with disabilities in that he has physical and other impairments that substantially limit one or more of his major life activities, including but not limited to eating, breathing, walking (mobility in wheelchair), bathing, speaking and standing.
55. Mr. Boyd is a qualified person with disabilities in that he is capable of safely living in the community with necessary services and he meets the essential eligibility requirements for receipt of services from and participation in the State Medicaid program with reasonable modification to the rules, policies, and practices of that program. *See* 42 U.S.C. § 12131(2).
56. As a result of Defendant's refusal to make reasonable modification(s) of the rules, policies, and procedures governing Alabama's Medicaid program, Mr. Boyd is forced to be isolated and segregated in an institutional setting against his will.

57. Defendant's denial of Medicaid funding for the in-home attendant care and health services that Mr. Boyd requires to avoid segregation in an institution, and return to an integrated home setting, constitutes unlawful discrimination in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, and its implementing regulation, 28 C.F.R. § 130.51(d).
58. Defendant has utilized criteria and methods of administration that subject Mr. Boyd to discrimination on the basis of disability, including unnecessary institutionalization, by (1) failing to assess properly the services and supports that would enable Mr. Boyd to live in the community, and (2) failing to ensure that Plaintiff has access to Medicaid-covered services that will meet his needs in the community, in violation of Title II of the ADA and its implementing regulations.

SECOND CLAIM FOR RELIEF

Section 504 of the Rehabilitation Act

59. Mr. Boyd is a "qualified person with disabilities" within the meaning of Section 504, because he has physical and/or mental impairments that substantially limit one or more major life activities, and he meets the essential eligibility requirements for long-term care under Alabama's Medicaid program.
60. Defendant's denial of Medicaid funding for the in-home health services that are appropriate to Mr. Boyd's needs, and that Mr. Boyd requires to avoid segregation in an institution and to return to an integrated home setting, constitutes unlawful discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), and its implementing regulation, 28 C.F.R. §41.51(d).

61. Defendant has also utilized criteria and methods of administration that subject Mr. Boyd to discrimination on the basis of disability, including risk of unnecessary institutionalization by: (1) failing to assess properly the services and supports that would enable Mr. Boyd to live in the community, and (2) failing to ensure that Mr. Boyd has access to Medicaid-covered services that will meet his needs in the community, in violation of Section 504 and its implementing regulations.

RELIEF REQUESTED

WHEREFORE, Plaintiff Jonathan Paul Boyd respectfully requests that the Court grant the following relief:

- A. Declare that the Defendant's denial of funding for Mr. Boyd's necessary and appropriate Medicaid community-based services constitutes unlawful discrimination in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.
- B. Grant preliminary and permanent injunctions enjoining the Defendant, her officers, agents, employees, attorneys, and all persons who are in active concert or participation with them from denying Mr. Boyd necessary and appropriate Medicaid community-based services, including the extent to which Mr. Boyd's service needs can and will be met by enrolling him in Defendant's existing community-based waiver programs, a combination of waivers, or waivers with modifications thereto.
- C. Waive the requirement for the posting of a bond as security for the entry of preliminary relief.
- D. Award the Plaintiff the costs of this action and reasonable attorney's fees pursuant to 29 U.S.C. §794a and 42 U.S.C. § 12133 and any other applicable provision of law.
- E. All such other and further relief as the Court deems to be just and equitable.

Respectfully Submitted,

s/Lonnie J. Williams

Lonnie J. Williams (ASB-2866-I35W)

E-mail: lwilliams@adap.ua.edu

Alabama Disabilities Advocacy Program

Box 870395

Tuscaloosa, AL 35487-0395

Telephone: (205)348-4928

Facsimile: (205)348-3909

James A. Tucker (ASB-6986-T39J)

E-mail: jtucker@adap.ua.edu

Alabama Disabilities Advocacy Program

Box 870395

Tuscaloosa, AL 35487-0395

Telephone: (205)348-4928

Facsimile: (205)348-3909

Stephen F. Gold (PA Bar No. 09880)

Email: stevegoldada@cs.com

1709 Benjamin Franklin Parkway

Second Floor,

Philadelphia, PA 19103

Telephone: (215)627-7100, ext. 227

Facsimile: (215)627-3183

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of September, 2010, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following: Stephanie McGee Azar (stephanie.azar@medicaid.alabama.gov), Margaret L. Fleming (mfleming@ago.state.al.us), James W. Davis (jimdavis@ago.state.al.us), and Misty S. Fairbanks (mfairbanks@ago.state.al.us).

s/Lonnie J. Williams

Lonnie J. Williams