

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

JONATHAN PAUL BOYD,

Plaintiff,

v.

CAROL H. STECKEL, in her
official capacity as Commissioner of the
Alabama Medicaid Agency,

Defendant.

Case No.: 2:10cv688-TFM

**PLAINTIFF'S AMENDED MOTION FOR PRELIMINARY
INJUNCTION AND EXPEDITED HEARING**

Pursuant to Fed. R. Civ. P. 65, Plaintiff Jonathan Paul Boyd, through his counsel, moves for a preliminary injunction to enjoin Defendant, her officers, agents, employees, attorneys, and all other persons who are in active concert or participation with them from denying Plaintiff Boyd necessary and appropriate Medicaid community-based services, including the extent to which Plaintiff 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. Due to the nature of his situation, Plaintiff Boyd further moves for an expedited hearing. As grounds therefore, Plaintiff Boyd states:

1. This action is brought on behalf of Jonathan Paul Boyd, an Alabama resident who has tetraplegia as a result of an accident. Mr. Boyd is eligible for and receives Medicaid. For eleven years after his accident, Mr. Boyd lived in the community with his family until they could no longer provide adequate informal support. He desires to reside in the community instead of in a nursing facility where he has resided for more than three years.

He could reside in the community with appropriate services provided with Medicaid funds, but he is unnecessarily institutionalized because of Defendant's failure to administer her agency's Medicaid services, programs and activities in an appropriate, integrated community setting.

2. Mr. Boyd was born on January 20, 1976 and is thirty-four years old.
3. In 1995, while a sophomore at Troy State University and when Mr. Boyd was nineteen years old, he was in an accident, falling off a balcony in his home. He broke his spine as a result of the accident and is paralyzed below his collar bone. He cannot use his arms or legs.
4. After months of hospitalization in the Lakeshore Rehabilitation Center in Birmingham, Mr. Boyd returned home and lived with his mother, stepfather, and sister. For eleven years after his accident he lived at home with his mother and stepfather. His mother was his primary care giver.
5. When Mr. Boyd lived at home, he was eligible for and received some community-based Medicaid waiver services to complement the care his mother provided. In December 2006, Mr. Boyd had to enter a nursing home because his mother could no longer provide the care he required to supplement the Medicaid waiver services, which were insufficient without informal support from his family. These Medicaid waiver services were discontinued when he had to enter the nursing facility. Mr. Boyd is eligible for and receives Medicaid coverage, which pays for his nursing home services.
6. Mr. Boyd uses a motorized wheelchair for ambulation, which he controls and directs with a "sip and puff" device.

7. In the nursing home, Mr. Boyd receives assistance with his activities of daily living, including assistance with taking medication, bathing, dressing, toileting, feeding, transferring from and to his bed and into and out of his wheelchair. Mr. Boyd also receives assistance with some basic household chores. He receives assistance twice weekly for his bowel program and twice monthly for changing his catheter.
8. In order to live in the community, Mr. Boyd needs community-based Medicaid 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.
9. These services could be provided to Mr. Boyd in the community by Defendant's Medicaid program through a waiver, a combination of waivers, or reasonable modification of waivers.
10. 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. In college, he organized several programs, including one to feed low-income persons at Christmas, an accessibility program to raise funds to help make businesses accessible, and, as a member of Pi Kappa Alpha, he organized other community services.
11. Earlier this year, Mr. Boyd was accepted to a graduate program at the University of Montevallo to seek his master's degree in community counseling. He began that program in September 2010.
12. The University is 13 miles from his nursing facility. While Mr. Boyd was attending classes from the nursing home for his undergraduate degree, he was able to use public

transportation (ClasTran) to and from campus. His undergraduate classes were day classes and public transportation, though terribly inconsistent, was applicable. However, public transportation shuts down at 3:30 p.m. and his graduate studies classes are only offered at night.

13. The two graduate classes Mr. Boyd is currently taking are on Mondays and Tuesdays from 5 p.m. to 8 p.m. He is being 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 the University for those classes for the semester.
14. Mr. Boyd is also required to travel to and from campus on six occasions this semester to complete required assignments. He is being forced to rely upon and pay others \$20 per trip to transport him to and from the University to complete those required assignments. His brother is currently lending him the money to pay for these trips to campus for required assignments.
15. 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.
16. 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.

17. 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 housing.

18. With his Master's Degree, Mr. Boyd wants to work and to 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 to live in the community and to receive services near the University so he can make it to his classes readily and independently.

19. Throughout the eleven years Mr. Boyd resided in the community, between the time of his accident and when he moved into a nursing facility, he had only one decubitus ulcer (pressure sore). Since December of 2006, when he moved into a nursing facility, he has had five.

20. Mr. Boyd visits his family and friends as often as he can. He also tries to eat out of the nursing home with friends and join them at the movies. As a resident of the nursing home he must, however, 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, he receives only \$30 of his monthly Social Security Disability check of \$897. With such limited financial resources, he is extremely limited in going to the movies, eating out, or having snacks.

21. In the nursing home, all the residents are disabled and most are much older than Mr. Boyd. Living in a nursing home, he is deprived of the simple pleasure of being around people his own age and with similar interests and activities. He does not take part in the activities that the nursing home's activities department holds multiple times daily because they are geared towards octogenarians. Since he has been a resident in the nursing home, he has taken part in a half dozen activities and they centered around meals or ice cream.
22. There is no privacy in Mr. Boyd's nursing facility. People come and go as they like, and there is constant noise and people screaming.
23. Mr. Boyd does not want to live in a nursing home; instead, he wants to reside in the community, where he can have an active life. Without community-based services from Medicaid, Mr. Boyd will continue to be unnecessarily institutionalized, even though he desperately does not want to reside in a nursing facility.
24. Despite Defendant 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. He applied for community-based waiver services in 2008 and has been on a waiting list for services since that time. Recently, Mr. Boyd's attorneys renewed his request for services by asking the Defendant to make reasonable modifications to its waiver programs and provide him with waiver services including ten hours per day of assistance with activities of daily living, assistance with bowel program twice per week, assistance with changing catheter twice per month, necessary equipment and care supplies. Defendant has not granted Mr. Boyd's request.

25. Alabama's Medicaid nursing home reimbursement is approximately \$33,700 a year.

Medicaid's reimbursement for home and community-based services is approximately \$10,365. 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 services in a nursing facility.

26. Defendant has community-based Medicaid waivers but its capacity is limited, providing approximately 9,205 slots, which has not been increased since 2008 despite a waiting list far in excess of the number of slots. The Kaiser Commission estimates there is a waiting list of approximately 7,094 people.

27. Despite these savings Defendant has refused to provide Mr. Boyd with services he needs in the community. To obtain the necessary services, Defendant requires that Plaintiff Boyd continue to reside in a Medicaid-funded nursing facility setting. Defendant's Medicaid program will only provide the services he requires by paying for his institutionalization in a nursing facility.

28. Plaintiff Boyd has no option other than to remain in a nursing home where Defendant's Medicaid program will pay for the services he requires.

29. Defendant refuses to offer Mr. Boyd the services he needs in the community and instead is requiring him to remain in a nursing facility to receive those services, in violation of both the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504"), and their implementing

regulations, in particular the “integration mandate,” which requires that “a public entity shall administer 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).

WHEREFORE Plaintiff Jonathan Paul Boyd seeks a preliminary injunction to enjoin Defendant, her officers, agents, employees, attorneys, and all other 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. Due to the nature of his situation, Plaintiff Boyd further moves for an expedited hearing.

Respectfully Submitted,

s/Lonnie J. Williams

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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
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