IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

KENNETH ROMAN, RICKII AINEY, and ELIZABETH FOSTER on behalf of themselves and all others similarly situated,	*	CA. NO. 3:10-cv-00635-JJB-SCR
Plaintiffs,	*	JUDGE BRADY
v.	*	
BRUCE GREENSTEIN, in his official capacity as Secretary of the Louisiana Department of Health and Hospitals, and LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS,	*	MAGISTRATE JUDGE RIEDLINGER
Defendants	*	CLASS ACTION

COMPLAINT IN INTERVENTION

INTRODUCTION

1. This civil rights action seeks to prevent hundreds of low-income people with severe disabilities from losing services that they have been receiving to live in the community and to prevent them from being institutionalized in nursing facilities. Defendants have assessed each of these people, have determined that each meets the Louisiana nursing facility level of care, and have identified their specific needs for support to conduct their activities of daily living in the community.

2. Plaintiffs Kenneth Roman, 47, Rickii Ainey, 31, and Elizabeth Foster, 84, have severe disabilities and multiple chronic conditions, including paralyses, strokes, chronic heart failures, arthritis, multiple sclerosis, as well as other impairments as enumerated below.

3. The Plaintiffs all require assistance with activities of daily living, including but not limited to assistance with bathing, dressing, toileting, eating, bowel and bladder care, meal preparation and clean up, shopping, and laundry, and have been receiving such assistance in their homes as part of Defendants' Medicaid-funded Long Term-Personal Care Services Program ("LT-PCS"). Plaintiffs are active in their communities.

4. The named and class Plaintiffs are all low-income and are recipients of Medicaid-funded services, including those services that they currently receive in the community and whose reductions are the subject of their lawsuit.

5. None of them wants to leave their homes, friends, and families and to go into a nursing home in order to receive the same Medicaid-funded services that they presently receive in the community. They are all at risk of institutionalization if their Long Term-Personal Care Services are reduced and capped as defendants propose.

JURISDICTION AND VENUE

6. This action for declaratory and injunctive relief arises under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 ("ADA") and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504").

7. The Court has jurisdiction over Plaintiffs' 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. Plaintiffs' causes of action for disability discrimination are authorized by 42 U.S.C. § 12133 and 29 U.S.C. § 794(a).

8. Venue is proper because a substantial part of the actions and omissions of which Plaintiffs allege occurred in this District. 28 U.S.C. § 1391(b).

PLAINTIFFS

9. Kenneth Roman is a 47 year old resident of Jeanerette, Louisiana. He is a recipient of Medicaid benefits from the State of Louisiana. He has a disability as defined in § 12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

10. Rickii Ainey is a 30 year old resident of New Orleans, Louisiana. She is a recipient of Medicaid benefits from the State of Louisiana. She has a disability as defined in § 12102(2)(A) of the ADA and a "handicap" as defined in Section 504.

11. Elizabeth Foster is an 84 year old resident of New Orleans, Louisiana. She is a recipient of Medicaid benefits from the State of Louisiana. She has a disability as defined in § 12102(2)(A) of the ADA and a "handicap" as defined in Section 504. Her daughter, Donna Zeno, has Ms. Foster's power of attorney and brings this action as her next friend.

DEFENDANTS

12. Bruce Greenstein is the Secretary of the Louisiana Department of Health and Hospitals ("DHH"). He is sued in his official capacity. The Secretary of DHH is responsible for the oversight, supervision and control of the DHH and its divisions, and is ultimately responsible for ensuring that the DHH's services for people with disabilities are provided in conformance with federal laws, including the ADA and Section 504, as well as Medicaid.

13. DHH is the chief health policy and planning entity for the state. It receives federal financial assistance and is responsible for administering Louisiana's Medicaid Program. DHH is the "single state agency" that operates Louisiana's Medicaid program, see 42 U.S.C. § 1396a(a)(5). It licenses, certifies, and approves Medicaid payments to Louisiana's Medicaid nursing homes, and administers its home- and community-based

programs, including the Elderly and Disabled Adult Waiver and Long-Term Personal Care Services programs for people with disabilities.

THE AMERICANS WITH DISABILITIES ACT

14. 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.

15. Under the ADA, institutionalization and segregation are prohibited forms of discrimination against individuals with disabilities, 42 U.S.C. §12101(a)(3) and (5). The ADA therefore requires 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).

16. The ADA prohibits "exclusionary qualifications standards and criteria" and "relegation to lesser services, programs, … benefits, or other opportunities," 42 U.S.C. §12101(a)(5), and therefore the regulations implementing Title II 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).

17. Defendant DHH is a public entity under Title II of the ADA and its implementing regulations.

SECTION 504 OF THE REHABILITATION ACT

18. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, 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….

19. 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).

20. 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 defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons. 45 C.F.R. § 84.4(b)(4); 28 C.F.R. § 41.51(b)(3)(i) and (ii).

21. Defendants' Medicaid program receives Federal financial assistance and must comply with Section 504 and its implementing regulations. Federal Medicaid funds make up 81.48% of Louisiana Medicaid payments, including LT-PCS.

THE LONG TERM PERSONAL SERVICES PROGRAM

22. The Medicaid program, authorized by Title XIX of the Social Security Act, 42 U.S.C. §1396 *et seq*., is a joint federal-state program. Medicaid is a cost-sharing arrangement under which the federal government reimburses a portion of the expenditures incurred by states that elect to furnish medical assistance to individuals

whose income and resources are insufficient to cover the costs of their medical care. The purpose of Medicaid is to furnish, as far as practicable, "medical assistance on behalf of...aged, blind or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services" and "to help such families and individuals to attain or retain capability for independence or self-care...." 42 U.S.C. § 1396.

23. States are not required to participate in the Medicaid program, but, if they choose to do so, they must operate their programs within federal statutory and regulatory provisions. They must adopt a State Plan that delineates the standards for determining eligibility and identifies the extent of Medicaid benefits. Louisiana has chosen to participate in the Medicaid program and has adopted a State Plan.

24. The Secretary of the United States Department of Health and Human Services administers the Medicaid program at the federal level through the Centers for Medicare and Medicaid Services ("CMS"), which has urged states pursuant to the ADA to avoid unnecessary institutionalization of person with disabilities in nursing facilities.

25. One of the programs available through Louisiana's State Medicaid Plan is LT-PCS. The Medicaid Act authorizes states to provide attendant care services under the federal Personal Care Option, 42 U.S.C. §1396d(a)(24).

26. The services of a personal care worker include assistance with basic personal care, toileting and grooming activities; assistance with bladder and/or bowel requirements or problems; assistance with eating and food preparation; performance of incidental household chores; accompanying to medical appointments; and grocery shopping. Personal care services are normally provided in the recipient's home, though they can be

delivered in another location outside of the recipient's home if the provision of these services allows the recipient to participate in community activities.

27. To qualify for LT-PCS in Louisiana, a person must meet the requirements for a nursing facility level of care, and must also meet one of the following eligibility criteria: (1) be residing in a nursing facility and could be discharged if community-based services were available; (2) be likely to require nursing facility admission within the next 120 days; (3) have a primary care-giver who has a disability or is over the age of 70; or (4) face a substantial possibility of deterioration in mental or physical condition or functioning if either home and community-based services or nursing facility services are not provided in less than 120 days. *Louisiana Administrative Code* 50:XV.Chapter 129, §12505(A); *Louisiana Register* V. 29 No. 6 (June 20, 2003) pp. 911-13.

28. LT-PCS must be prior authorized by DHH after an annual assessment to ensure the person continues to meet eligibility criteria. As a person's needs change, the amount of LT-PCS services he or she receives in the community can change accordingly.

29. Defendants' annual review of each LT-PCS recipient determines the specific amount of services in hours that the person requires.

30. Since the inception of the LT-PCS program in 2003, DHH has used an assessment tool called the Minimum Data Set-Home Care ("MDS-HC") to assess the need for LT-PCS. Until March 1, 2009, the maximum amount of LT-PCS that a person could receive was 56 hours per week. The actual allocation of service hours was based on the person's level of need for assistance on each of seven activities of daily living (bed mobility, transferring, locomotion (in and out of the home), dressing (upper and lower body), eating, toileting, personal hygiene and bathing) and eight "instrumental activities of daily

living" (meal preparation, ordinary housework, managing finances, managing medication, phone use, shopping and transportation).

31. Beginning March 1, 2009, DHH, while it continued to use the MDS-HC, began using a different scoring system called the "RUG III/HC" to assign LT-PCS recipients a maximum number of hours of LT-PCS. The maximum number of hours that any LT-PCS recipient could receive was reduced from 56 to 42 hours per week.

32. In August 2010, DHH announced that it was again changing the method of deciding the number of hours allocated and reducing the maximum number of hours of LT-PCS service that recipients could receive, from 42 to 32 hours a week.

33. DHH has announced that the number of hours that an individual can receive will be based on the individual's score using an "ADL index." The "ADL index" is a composite of scores as to how much assistance individuals need with only four activities of daily living: eating, toileting, transferring, and moving around in bed. The maximum number of LT-PCS hours that an LT-PCS recipient will be able to receive varies with the person's score on the ADL index, from a low of 18 hours to a high of 32 hours, regardless of a person's actual need for more hours.

34. Nationally, the mean number of hours of personal assistance services that persons who require assistance for four ADLs receive per week is 85.9 hours, and the mean number of hours persons who require assistance for five ADLs receive per week is 118.5 hours.

35. The reduction in maximum hours that Defendants are imposing on the LT-PCS program will be implemented for assessments of new LT-PCS recipients and for the annual reassessments of current recipients that take place after September 5, 2010.

36. The reduction in maximum hours that Defendants are imposing on the LT-PCS program is being imposed for purely budgetary reasons and is not based on the needs of the persons who have been receiving LT-PCS services.

37. This budgetary reduction will deprive LT-PCS recipients of critical services that are necessary to permit these individuals to remain safely in their homes. At the present time, Kenneth Roman receives 39 hours a week; Rickii Ainey, 41 hours of LT-PCS a week; and Elizabeth Foster, 39 hours a week.

38. In deciding how many hours of LT-PCS will be allowed to each recipient, Defendants have not assessed or considered the amount of services that each needs, including such considerations as the unavailability of unpaid supports.

39. Defendants have estimated that the reduction in maximum LT-PCS hours from 42 to 32 will impose an average reduction of three hours of service to LT-PCS recipients. The reduction thus falls disproportionately on recipients with the most severe disabilities and service needs, who receive more than 35 hours a week of services.

40. The reduction in LT-PCS hours results in the systematic provision of amounts of LT-PCS that are inadequate to allow plaintiffs and class members to live in integrated settings.

41. The cost of providing care to plaintiffs in a nursing facility is higher than the cost of providing them with 42 hours a week of LT-PCS.

42. The reduction in LT-PCS hours violates the Americans with Disabilities Act, 42 U.S.C. § 12132 ("ADA") and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) ("Section 504"), and the federal regulations implementing these statutes, by placing LT-PCS recipients at risk of unnecessary institutionalization in nursing homes.

NAMED PLAINTIFFS' NEEDS FOR PERSONAL CARE

Kenneth Roman

43. Plaintiff Kenneth Roman is 47 years old and has lived in Jeanerette, Louisiana for most of his life. He worked as a hairdresser and as a cook until 2002, when his health problems forced him to retire.

44. Mr. Roman was determined eligible for Social Security Disability benefits in 2002. He $52 per month in Social Security Disability Insurance and $640 per month in Supplemental Security Income.

45. Kenneth Roman has had several strokes. As a result of the strokes, Mr. Roman has left side hemiparesis. He also has diabetes, congestive heart failure, peripheral vascular disease, hypertension, coronary artery disease, renal failure and irritable bowel syndrome.

46. Plaintiff Roman has also had several heart attacks, the most recent of which was in 2009.

47. Mr. Roman uses a four-pronged cane for support and mobility. However, he often falls while using the cane due to his left side hemiparesis

48. Plaintiff Kenneth Roman is Medicaid eligible and receives LT-PCS services. He lives alone in a trailer. His parents live nearby, but both of are elderly and are themselves disabled. They are unable to assist him.

49. Mr. Roman is currently separated from his wife. One of the primary reasons they are separated is because his wife did not want to be his caregiver any longer.

50. Due to his impairments, Plaintiff Roman needs assistance with all of his activities of daily living. He is incontinent and needs assistance cleaning after an incontinence

episode. This is even more important when his irritable bowel syndrome occurs. He is often incontinent of bowel and bladder at night and often must wait until his personal care worker arrives in the morning to assist with cleaning.

51. Plaintiff Roman needs assistance changing to a standing position from a sitting position. He needs help bathing, washing his face and brushing his teeth. He has difficulty moving in bed and often is not able to move in bed when he has no assistance. Not moving during the night causes him severe pain. As a result of the pain, he often falls in the morning when he tries to walk.

52. When Mr. Roman was first determined eligible for the LT-PCS program in 2008, he was assessed and determined to need 47 hours per week of personal care services. In 2009, Mr. Roman was reassessed and his LT-PCS services were reduced 39 hours per week.

53. The reduction of LT-PCS to 39 hours per week has been very difficult for him. For example, because his physical care needs are great, his shopping, laundry and household chores (such as washing bed linens soiled in incontinence episodes) are not done promptly. In addition, he must wait longer periods of time to be cleaned if he has a bowel or bladder accident when his caregiver is not present.

54. Kenneth Roman is active in his church, where his father has been the pastor. He has several friends that are part of the church with whom he prays.

55. Mr. Roman can safely live at home with 39 hours of LT-PCS services. If his LT-PCS hours are reduced, he believes that he would be forced to seek care in a nursing home. Mr. Roman wants to stay home where he can continue to be part of his community.

Rickii Ainey

56. Plaintiff Rickii Ainey is 30 years old. She lives alone in New Orleans, Louisiana, where she has lived all of her life.

57. Ms. Ainey has arthrogryposis, a congenital form of arthritis. She is paralyzed from the waist up and has limited mobility in her legs. She has limited range of motion in her legs and the range of motion is deteriorating.

58. Because this impairment is progressive, she has required an increasing amount of care as she has aged.

59. Ms. Ainey has received Medicaid since she was a child.

60. Ms. Ainey needs assistance with all activities of daily living, including but not limited to bathing her upper body, including her face, arms and torso, and washing her hair; dressing in the morning and undressing when she goes to bed; adjusting her clothing before and after toileting; getting on and off the toilet and cleaning herself after toileting; feminine hygiene; eating and drinking; transferring from any surface to a standing position; and moving once in bed.

61. Ms. Ainey cannot prepare meals and cannot shop without assistance. In addition, she requires assistance to do all household chores and laundry.

62. Ms. Ainey can use the phone by placing it on her bed or other flat surface and using her knuckle to dial. She then bends at the waist and put her ear to the phone using the bed or other surface for support. To stand again, she must perform a rolling motion until she shifts her body to a standing position. If Ms. Ainey falls, which happens from time to time, she cannot stand again without assistance and must wait for someone to come and help her.

63. Ms. Ainey's mother lives nearby but refuses to assist her daughter. Ms. Ainey has a sister who lives in Arkansas and four brothers who live in New Orleans. Her brothers cannot provide the intimate personal care she needs, and Ms. Ainey does not believe they are responsible enough to help her on a regular basis.

64. Ms. Ainey attempted suicide in December of 2006. The primary reason for the suicide attempt was the fact that she had no personal care assistance.

65. Ms. Ainey learned about the LT-PCS program and began receiving LT-PCS services in October of 2007. At that time Ms. Ainey was awarded 37.5 hours per week of assistance.

66. In 2008, Ms. Ainey had surgery on her right knee. She was reassessed and was awarded 55 hours per week of LT-PCS services.

67. Upon her reassessment in late 2009, Ms. Ainey was told by the assessor that she would receive only 30 hours per week of LT-PCS. She immediately appealed. When she received her official notice, it turned out that she had in fact been allocated 41 hours per week of LT-PCS, which is the number of hours she is currently approved to receive. Ms. Ainey has no assistance other than the 41 hours per week provided by her LT-PCS worker.

68. A reduction of LT-PCS hours to 32 a week will not provide her with adequate assistance. Ms. Ainey does not want, at the age of thirty, to be forced to live in a nursing home. She is active in her community, and wants to continue to receive services in her own home.

Elizabeth Foster

69. Elizabeth Foster is 84 years old and has a history of strokes, arthritis, and cognitive impairment. She lives alone in New Orleans, Louisiana, next door to her daughter, Donna Zeno.

70. Due to Ms. Fosters' medical conditions, she has no ability to perform her own personal care. Ms. Foster cannot use her left arm. She cannot stand or put any weight on her legs. She is unable to reposition her body in bed.

71. Ms. Foster requires total assistance with transferring, toileting, bathing, personal hygiene tasks, and dressing. She often needs to be fed by hand, as she sometimes cannot feed herself with a spoon.

72. Ms. Foster is incontinent of bowel and bladder and needs to be promptly cleaned and changed after her frequent incontinent episodes, to make sure that she does not develop pressure sores or other health problems.

73. Ms. Foster cannot do her own shopping, use a telephone, prepare a meal or perform any housekeeping chores, including laundry. Ms. Foster receives 39 hours a week of LT-PCS. In addition, she receives services from 8:00 a.m. to 3:00 p.m., five days a week, at an Adult Day Health Care Center.

74. Ms. Foster's LT-PCS worker takes care of Ms. Foster at home in the morning prior to going to the ADHC, in the evenings after she returns home from the ADHC, and on weekends, as well as accompanying her to medical appointments and grocery shopping for her.

75. Ms. Foster's daughter, Elizabeth Zeno, lives next door to her mother and sees her daily. However, due to her own disabilities, Ms. Zeno cannot assist her mother with her

activities of daily living, and cannot dependably assist with her with her household needs, including meal preparation.

76. Ms. Foster's other children live in other states and are not available to assist her.

77. Ms. Foster resides in the New Orleans "double" she purchased with her husband over 40 years ago. For many years, she worked peeling shrimp and cleaning fish in the seafood industry in New Orleans. She worked until she was in her late sixties, when she decided to retire. Ms. Foster was active in church most of her life and still enjoys going to church when she can.

78. Based on her treating physician's declaration, if Ms. Foster's hours of LT-PCS were to be reduced to 32 per week, she would deteriorate physically and cognitively, and would require institutionalization in a nursing facility.

79. Ms. Foster does not want to go into a nursing home. She enjoys attending Kingsley House Adult Day Health Care Center Mondays through Fridays. She has a close-knit group of friends there, who have been attending the Center together for a several years. She enjoys participating in games and field trips with her group from the Center, and sharing meals with them. Ms. Foster also enjoys going out to eat and to church. If she were to be institutionalized in a nursing home, her mental and physical condition would deteriorate rapidly and unnecessarily.

CLASS ACTION ALLEGATIONS

80. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), the named Plaintiffs bring this action on behalf of themselves and all other persons similarly situated.

81. The proposed class consists of Louisiana residents with disabilities who are recipients or prospective recipients of Medicaid-funded services through the LT-PCS

program; who desire to continue to reside in the community instead of in a nursing facility; who can reside in the community with appropriate Medicaid-funded LT-PCS services; and who are at risk of being forced to enter a nursing home because Defendants plan to reduce the level of community-based services.

82. The Plaintiff class is so numerous that joinder of all its members is impracticable. As of October 21, 2101, of the approximately 12,000 individuals receiving LT-PCS services, 28% received services in excess of 32 hours per week.

83. These people want to continue living in the community. A substantial number of them are or will be at risk of institutionalization if they do not receive adequate Medicaid LT-PCS community-based services. Joinder is also impracticable because class members lack the knowledge and financial means to maintain individual actions. Future recipients of LT-PCS are also included in the class.

84. The questions of law or fact common to the class include whether Defendants violate the ADA and Section 504 statutory "integration mandate" and the "methods of administration" prohibition, by requiring named Plaintiffs and class members to enter a nursing facilities in order to receive long-term care services, rather than providing those services in appropriate settings in Plaintiffs' homes and communities;

85. The claims of the named Plaintiffs are typical of the claims of the class as a whole, in that the named Plaintiffs and purported class are Medicaid recipients of LT-PCS services who are at risk of being forced to enter a nursing facility to receive the same services they receive in the community, and who desire to and who could live in the community with the same, appropriate LT-PCS services that they have been receiving.

86. The named Plaintiffs will fairly represent and adequately protect the interests of members of the class as a whole. The named Plaintiffs do not have any interests antagonistic to those of other class members. By filing this action, the named Plaintiffs have displayed an interest in vindicating their rights, as well as the claims of others who are similarly situated. The relief sought by the named Plaintiffs will inure to the benefit of members of the class generally. The named Plaintiffs are represented by counsel are skilled and knowledgeable about civil rights litigation, disability discrimination, Medicaid law, practice and procedure in the federal courts and the prosecution and management of class action litigation.

87. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole under Fed. R. Civ. P. 23(b)(2).

FIRST CLAIM FOR RELIEF - TITLE II OF THE AMERICANS WITH DISABILITIES ACT

88. Plaintiffs and class members are individuals with disabilities in that they have physical and other impairments that substantially limit one or more of their major life activities.

89. Plaintiffs and the class are qualified persons with disabilities in that they are capable of safely living at home with necessary services. They meet the essential eligibility requirements for the receipt of services from and participation in the State Medicaid program, 42 U.S.C. §12131(2).

90. Without reasonable modification of the rules, policies, and procedures governing Louisiana's Medicaid program, Plaintiffs are at risk of being isolated and segregated into

an institutional setting. This would be against their will. They do not want to be placed in nursing homes.

91. Defendants' denial of Medicaid funding for the LT-PCS services that Plaintiffs require to avoid segregation in an institution and remain in the integrated home settings that are appropriate to their needs, 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. § 35.130(d).

92. Defendants have utilized criteria and methods of administration that subject Plaintiffs to discrimination on the basis of disability, including unnecessary institutionalization, by (1) failing to properly consider the services and supports that would enable Plaintiffs to remain in the community; (2) by imposing the cuts in such a manner that they fall disproportionately on recipients with the most severe disabilities and service needs; (3) by systematically failing to provide the amount of LT-PCS that is adequate to allow plaintiffs and class members to live in integrated settings; and (4) by providing additional funding for services only if plaintiffs will enter nursing homes for care, all in violation of Title II of the ADA and implementing regulations.

93. Defendant DHH has failed to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, in violation of the ADA and its implementing regulations. DHH cannot demonstrate that making such modifications in its programs that would afford Plaintiffs the ability in their homes with adequate services and supports would fundamentally alter the nature of the service, program, or activity.

SECOND CLAIM FOR RELIEF - SECTION 504 OF THE REHABILITATION ACT

94. Plaintiffs are "qualified person with disabilities" within the meaning of Section 504. They have physical and/or mental impairments that substantially limit one or more major life activities, and they meet the essential eligibility requirements for long term care under Louisiana's Medicaid program.

95. Defendant DHH's denial of Medicaid funding for the LT-PCS services that Plaintiffs require to avoid segregation in an institution and remain in the integrated home settings that is appropriate to their needs 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).

96. Defendant DHH has also utilized criteria and methods of administration that subject Plaintiffs to discrimination on the basis of disability, including risk of unnecessary institutionalization, by (1) failing to properly consider the services and supports that would enable Plaintiffs to remain in the community; (2) by imposing the cuts in such a manner that they fall disproportionately on recipients with the most severe disabilities and service needs; (3) by systematically failing to provide the amount of LT-PCS that is adequate to allow plaintiffs and class members to live in integrated settings; and (4) by providing additional funding for services only if plaintiffs will enter nursing homes for care, thereby violating Section 504 and its implementing regulations.

97. Defendant DHH has failed to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, in violation of Section 504 and its implementing regulations. DHH cannot demonstrate that making such modifications in its programs that would afford

Plaintiffs the ability in their homes with adequate services and supports would fundamentally alter the nature of the service, program, or activity.

RELIEF REQUESTED

WHEREFORE, named Plaintiffs and the class respectfully request that the Court grant the following relief:

A. Declare that the Defendants' denial of necessary and appropriately adequate Medicaid in-home community-based LT-PCS services for Plaintiffs constitutes unlawful discrimination in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

B. Grant temporary, preliminary and permanent injunctions enjoining the Defendants, their officers, agents, employees, attorneys, and all persons who are in active concert or participation with them from denying Plaintiffs' Medicaid necessary and appropriate LT-PCS services "in the most integrated setting" so they can reside in their homes, or from reducing Plaintiffs' LT-PCS services that they currently receive in the LT-PCS program which had been determined medically necessary and the minimal amount of services the Plaintiffs required to avoid institutionalization in nursing facilities.

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.

Dated: June 1, 2011.

Respectfully submitted,

/s/ Nell Hahn

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2011, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/EDF system. Notice of this filing will be sent to all counsel by operation of the court's electronic filing system.

/s/ Nell Hahn