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

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| **WILLIAM R. HAMPE,** by and through his mother / guardian Jill Hampe, **RICHARD L. WINFREY, III,** and **ADAM CALE,** individually and on behalf of a class, Plaintiffs, | ) | |
| vs. | ) | No. 10-3121 |
| **JULIE HAMOS**, in her official capacity as Director of the Illinois Department of Healthcare and Family Services, Defendant. | ) | Judge: William J. Hibbler<br>Magistrate: Arlander Keys |

**SECOND AMENDED COMPLAINT FOR**
**DECLARATORY AND INJUNCTIVE RELIEF**

Now comes the Plaintiffs, by and through their attorney, Robert H. Farley, Jr., Ltd., and files the following second amended complaint against the Defendant as follows:

## I. INTRODUCTION

1. The Plaintiffs, William R. Hampe (William), Richard L. Winfrey III (Richard) and Adam Cale (Adam) are medically fragile disabled persons who currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at their home at a cost of approximately $18,000 per month, so that they do not have to be institutionalized or hospitalized for their entire life at a rate of approximately $55,000 per month. William's, Richard's and Adam's funding from the Defendant comes from the State of Illinois "Medicaid Home and Community-Based Services (HCBS) Waiver for Children that are Medically Fragile, Technology Dependent" program (MF/TD) and Medicaid.

2. William's, Richard's and Adam's enrollment in the MF/TD program is only available to persons under the age of 21 and William will turn 21 on June 18, 2010; Richard will turn 21 on August 16, 2010; and Adam will turn 21 on August 29, 2010. When William or Richard or Adam or any disabled person turns 21 in the MF/TD program, the Defendant's policy and practice is to reduce the existing medical funding by approximately 50% based solely on the fact that the person is now 21. The reduction in funding is not due to a change in William's or Richard's or Adam's medical needs but on the fact that William's, Richard's and Adam's funding at age 21 comes from a different State program, which has significant caps on funding. The reduction in funding will either result in William, Richard and Adam becoming institutionalized (hospitalized) or if they remain in their family home without sufficient skilled nursing care, then they face a strong possibility of imminent death.

3. Prior to the filing of this lawsuit by William, Richard and Adam, the Defendant has been successfully challenged by individual plaintiffs in 5 separate lawsuits over its practice and policy of reducing medical funding which results in a reduction of medical services when the disabled person turns 21 years of age.[1] Despite the fact that the Defendant has not prevailed to provide reduce medical funding in these 5 separate federal and state lawsuits brought by similarly situated persons like the Plaintiff who were turning 21 and aging out of the MF/TD program, the Defendant continues the same practice to date to reduce medical funding at age 21 as evidence by William's, Richard's and Adam's case. Accordingly, William, Richard and Adam brings this

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[1] See *Radaszewski v. Maram,* 2008 U.S. Dist. LEXIS 24923 (N.D. Ill.); *Grooms v. Maram,* 563 F.Supp.2d 840 (N.D.Ill. 2008); *Jones v. Maram,* 373 Ill.App.3d 184, 867 N.E.2d 563 (3rd Dist. 2007); *Sidell v. Maram,* 05 cv 1001 (C.D. Ill.) and *Fisher v. Maram,* 06 C 4405 (N.D. Ill.).

lawsuit, individually and on behalf of a class, seeking injunctive relief to prevent the Defendant from reducing the level of medical care currently provided to William, Richard and Adam and the putative class, which are necessary to prevent institutionalization (hospitilization), which is a more costly and a more restrictive setting than the current home placement.

4. This class action lawsuit is necessary in order to stop the Defendant from continuing to systematically violate the Americans with Disabilities Act and the Rehabilitation Act for persons aging out of the "MF/TD" program. (See prior successful litigation by plaintiffs against the State of Illinois over the "MF/TD" program where the State was required to continue to fund the same level of medical services which existed prior to the age of 21 years: *Radaszewski v. Maram,* 2008 U.S. Dist. LEXIS 24923 (N.D. Ill.)(March 26, 2008); *Grooms v. Maram,* 563 F.Supp.2d 840 (N.D.Ill. 2008); *Jones v. Maram,* 373 Ill.App.3d 184 (3rd Dist. 2007); *Sidell v. Maram,* 05 cv 1001 (C.D. Ill.)(January 14, 2009); and *Fisher v. Maram,* 06 C 4405 (N.D. Ill.)(January 8, 2009)).

## II. JURISDICTION & VENUE

5. This is an action for declaratory and injunctive relieve to enforce the rights of the Plaintiff and the class he seeks to represent under the Americans with Disabilities Act, 42 U.S.C. Sec. 12132 and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a).

6. This Court has jurisdiction over Plaintiffs federal law claims pursuant to 28 U.S.C. Sections 1331 and 1343. Plaintiffs claim for declaratory and injunctive relief are authorized under 28 U.S.C. Sec. 2201-02 and 42 U.S.C. Sec. 1983.

7. Venue is proper in the Northern District of Illinois under 28 U.S.C. Sec. 1391(b).

## III. PARTIES

8(a). The Plaintiff, William R. Hampe (William) will be 21 years old on June 18, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (112 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN).

8(b). William is severely and profoundly developmentally disabled. He is blind, non-verbal and wheelchair bound. William is completely dependent on someone for all of his care.

8(c). William is diagnosed with reactive airway disease, cerebral palsy, intractable epilepsy, developmental delay and microcephaly. He remains on BiPap (a ventilatory support system) and continues to require frequent suctioning of his tracheostomy. William gets all his nutrition via a j-tube.

8(d). A skilled nursing level of care is required for William.

8(e). The alternative to William's skilled nursing care at his residence is inpatient hospitalization. Dr. Keith Veselik, William's treating physician has stated that William's alternative to medical home care is admission to a hospital.

8(f). Willaim resides with his mother / guardian, Jill Hampe in Wheaton, Illinois.

9(a). The Plaintiff, Richard L. Winfrey, III (Richard) will be 21 years old on August 16, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (126 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN).

9(b). Richard is severely disabled. He has quadriplegia. Richard is completely

dependent on others for all activities of daily living. Richard has a tracheostomy and an implanted phrenic pacemaker.

9(c). Richard is continuing his education at Waubaunsee College. When he attends class he has technology support and a nurse accompanies him to class.

9(d). A skilled nursing level of care is required for Richard.

9(e). The alternative to Richard's skilled nursing care at his residence is inpatient hospitalization. Dr. Gregory Milania has stated that Richard's alternative to medical home care is admission to a hospital.

9(f). Richard resides with his mother, father and brother in Aurora, Illinois.

10(a). The Plaintiff, Adam Cale (Adam) will be 21 years old on August 29, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (116.5 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN). Adam also receives funding for 51.5 hours of personal assistant services per week.

10(b). Adam is severely disabled and medically fragile. He has quadriplegia secondary to a cervical cord injury during infancy. Due to his quadriplegia, his respiratory system has been compromised and he remains on C-pap at night. He has multiple medical factors that complicate his condition, thus necessitating increased needs in assisting of his care. He has a neurogenic bladder, tracheostomy and feeding tube that requires more care than he is able to provide. He is wheelchair dependent. His disability is permanent. Adam is completely dependent on someone for all his care.

10(c). A skilled nursing level of care is required for Adam.

10(d). The alternative to Adam's skilled nursing level of care at his residence or dormitory is inpatient hospitalization. Dr. David L. Miller, Adam's treating physician has stated that Adam's alternative to medical home care is admission to a hospital.

10(e). Adam is enrolled at Western Illinois University and will be a senior when school commences in August, 2010 and is a double major and resides in the dormitory and currently receives skilled and unskilled nursing services so he can remain in the community.

11. The Defendant, Julie Hamos, is the Director of the Illinois Department of Healthcare and Family Services (HFS) and is being sued in her official capacity.

## IV. CLASS ACTION ALLEGATIONS

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

13. The Class consists of the following:

> All persons who are enrolled or will be enrolled or were enrolled in the State of Illinois Medically Fragile, Technology Dependent Medicaid Waiver Program (MF/TD) or Medicaid and when they obtain the age of 21 years are subjected to reduce Medicaid funding which reduces the medical level of care which they had been receiving prior to obtaining 21 years.

14. The Class is so numerous that joinder of all persons is impracticable. The Illinois Department of Healthcare and Family Services "Report of Medicaid Services for Persons who are Medically Fragile, Technology Dependent" dated December, 2009 stated that as of September 1, 2009, 504 children were receiving services in the MF/TD program on that specific date. The report further states that from July 1, 2007 through June 30, 2008, 606 children had

received services in the MF/TD program and for the period of July 1, 2007 through December, 2009, 37 individuals aged out of the waiver. In *Jones v. Maram,* 373 Ill.App.3d 184 (3rd Dist. 2007), Barbara Ginder from the State of Illinois stated in an affidavit "there were 34 active cases of 18 to 20-year-old individuals, 19 of whom were ventilator dependent" in the MFTDC program. *Id.,* at 192. "Ginder stated these individuals are likely to transition from MF/TD to HSP [Home Services Program] (if they select) at age 21." *Id.* The class members have limited financial resources and are unlikely to institute individual actions.

15. The claims of the class members raise common questions of law and fact. These include:

(a) Whether the Defendant violated the ADA and Rehabilitation Act by reducing the level of funding for persons enrolled in the Illinois Medically Fragile, Technology Dependent Medicaid Waiver Program which resulted in a reduction of medical services.

(b) Whether the ADA and Rehabilitation Act permits the Defendant to reduce the level of funding which results in a reduction of medical services for disabled persons after the age of 21, even though there has been no change in their medical needs.

(c) Whether a fundamental alteration of the Illinois disability programs would occur if the Defendant provided funding to continue the same level of services for the Plaintiff and the putative class when they turn the age of 21 years.

(d) Whether compelling an increase in the "exceptional care rate" for persons exiting the MF/TD program into the Illinois Home Services Program is unreasonable under the ADA and Rehabilitation Act.

(e) Whether the Illinois disability programs can reasonable accommodate a

modification to their existing programs to allow the Plaintiff and putative class to continue to receive the same level of care in the community when they turn 21 years of age.

The common questions of fact and law predominate over questions affecting only individual class members.

16. The Plaintiffs claims are typical of the class members' claims.

17. The Plaintiffs are an adequate representative of the class because they suffer from deprivations identical to those of the class members and has 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. Plaintiffs counsel is qualified, experienced and able to conduct the proposed litigation.

18. 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.

19. The Defendant has acted or refused to act on grounds applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

## V. STATEMENT OF FACTS

### A. Plaintiff William R. Hampe

20(a). The Plaintiff, William R. Hampe (William) will be 21 years old on June 18, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (112 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN).

20(b). William is severely and profoundly developmentally disabled. He is blind, non-verbal and wheelchair bound. William is completely dependent on someone for all his care.

20(c). William is medically fragile and has a complex medical history including diagnoses reactive airway disease, cerebral palsy, intractable epilepsy, developmental delay and microcephaly. He remains on BiPap (a ventilatory support system) and continues to require frequent suctioning of his tracheostomy. William gets all his nutrition via a j-tube.

20(d). A skilled nursing level of care is required for William.

20(e). The alternative to William's skilled nursing care at his residence is inpatient hospitalization. Dr. Keith Veselik, William's treating physician has stated that William's alternative to medical home care is admission to a hospital.

20(f). William resides with his mother / guardian, Jill Hampe in Wheaton, Illinois.

21. William's current funding from the Defendant comes from the "Medicaid Home and Community-Based Services (HCBS) Waiver for Children that are Medically Fragile, Technology Dependent." (MF/TD) and Medicaid. William receives funding from the Defendant for skilled nursing level of care at his home at a cost of approximately $18,000 per month, so that he does not have to be institutionalized or hospitalized for his entire life at a rate of approximately $55,000 per month.

22. William's enrollment in the MF/TD program is only available to persons under the age of 21 and William will turn 21 on June 18, 2010. When William or any disabled person turns 21 in the MF/TD program, the Defendant's policy and practice is to reduce continuing medical funding by approximately 50% based solely on the fact that the person is now 21. The reduction in funding is not due to a change in William's medical needs but on the fact that William's funding at age 21 comes from a different State program, which has significant caps on funding. The reduction in funding will either result in William becoming institutionalized (hospitalized) or if he remains in his family home without skilled nursing care, then he faces a strong possibility of imminent death.

23. William has been informed by the Defendant that when he turns 21 years of age on June 18, 2010, he will be subjected to reduce funding at approximately 50% of his current rate and that William will be unable to maintain the same level of intensive skilled nursing care which he needs. The State of Illinois has informed William through his mother, that once William turns 21, he will only be entitled to receive an "exceptional care rate" of $9,426 per month in funding to address his medical needs if he wishes to remain living in the family home. This monthly rate of $9,426 is completely inadequate to provide William the current skilled nursing level of care in his home which he requires due to his medical condition. Accepting the rate of $9,426 and remaining in his home would likely result in the death of William. This State policy of paying only an 'exceptional care rate' of $9,426 per month is in conflict with 5 recent Federal and State court cases, where the Defendant was not permitted to reduce funding when a person ages out of the MFTDC program. (See cases listed in paragraph 4 above)

24. If William was unable to receive the current level of skilled nursing care in his home,

then he would be forced to be institutionalized and obtain medical care in a hospital setting at a rate of approximately $55,000 per month, which costs more than his current level of funding in the family home.

25. William is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of skilled nursing care which he receives in order that he may remain in the community and not be institutionalized or hospitalized for his entire life. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a).

26. William is an individual with a disability.

27. William is a recipient of Medical Assistance, commonly known as Medicaid.

**B. Plaintiff Richard L. Winfrey, III**

28(a). The Plaintiff, Richard L. Winfrey, III (Richard) will be 21 years old on August 16, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (126 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN).

28(b). Richard is severely disabled. He has quadriplegia. Richard is completely dependent on others for all activities of daily living. Richard has a tracheostomy and an implanted phrenic pacemaker.

28(c). Richard is continuing his education at Waubaunsee College. When he attends class he has technology support and a nurse accompanies him to class.

28(d). A skilled nursing level of care is required for Richard.

28(e). The alternative to Richard's skilled nursing care at his residence is inpatient hospitalization. Dr. Gregory Milania has stated that Richard's alternative to medical home care is admission to a hospital.

28(f). Richard resides with his mother, father and brother in Aurora, Illinois.

29. Richard's current funding from the Defendant comes from the "Medicaid Home and Community-Based Services (HCBS) Waiver for Children that are Medically Fragile, Technology Dependent." (MF/TD) and Medicaid. Richard receives funding from the Defendant for skilled nursing level of care at his home at a cost of approximately $18,000 per month, so that he does not have to be institutionalized or hospitalized for his entire life at a rate of approximately $55,000 per month.

30. Richard's enrollment in the MF/TD program is only available to persons under the age of 21 and Richard will turn 21 on August 16, 2010. When Richard or any disabled person turns 21 in the MF/TD program, the Defendant's policy and practice is to reduce continuing medical funding by approximately 50% based solely on the fact that the person is now 21. The reduction in funding is not due to a change in Richard's medical needs but on the fact that Richard's funding at age 21 comes from a different State program, which has significant caps on funding. The reduction in funding will either result in Richard becoming institutionalized (hospitalized) or if he remains in his family home without skilled nursing care, then he faces a strong possibility of imminent death.

31. Richard has been informed that when he turns 21 years of age on August 16, 2010, he will be subjected to reduce funding at approximately 50% of his current rate and that William

will be unable to maintain the same level of intensive skilled nursing care which he needs.

32. If Richard was unable to receive the current level of skilled nursing care in his home, then he would be forced to be institutionalized and obtain medical care in a hospital setting at a rate of approximately $55,000 per month, which costs more than his current level of funding in the family home.

33. Richard is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of skilled nursing care which he receives in order that he may remain in the community and not be institutionalized or hospitalized for his entire life. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a).

34. Richard is an individual with a disability.

35. Richard is a recipient of Medical Assistance, commonly known as Medicaid.

**C. Plaintiff Adam Cale**

36(a). The Plaintiff, Adam Cale (Adam) will be 21 years old on August 29, 2010, is medically fragile and currently receives funding from the Defendant for approximately 16 hours a day skilled nursing level of care at his home (116,5 hours per week) plus he is eligible for 336 respite skilled nursing hours per year. These nursing services are either provided by a registered nurse (RN) or a licensed practical nurse (LPN). Adam also receives funding for 51.5 hours of personal assistant services per week.

36(b). Adam is severely disabled. He has quadriplegia secondary to a cervical cord injury during infancy. Due to his quadriplegia, his respiratory system has been compromised and

he remains on C-pap at night. He has multiple medical factors that complicate his condition, thus necessitating increased needs in assisting of his care. He has a neurogenic bladder, tracheostomy and feeding tube that requires more care than he is able to provide. He is wheelchair dependent. His disability is permanent. Adam is completely dependent on someone for all his care.

36(c). Adam is continuing his education at Western Illinois University and will be a senior when school commences in August, 2010 and is a double major and resides in the dormitory and currently receives skilled and unskilled nursing services so he can remain in the community.

36(d). A skilled nursing level of care is required for Adam.

36(e). The alternative to Adam's skilled nursing level of care at his residence or dormitory is inpatient hospitalization. Dr. David L. Miller, Adam's treating physician has stated that Adam's alternative to medical home care is admission to a hospital.

37. Adam's current funding from the Defendant comes from the "Medicaid Home and Community-Based Services (HCBS) Waiver for Children that are Medically Fragile, Technology Dependent." (MF/TD) and Medicaid. Adam receives funding from the Defendant for skilled nursing level of care at his home at a cost of approximately $18,000 per month, so that he does not have to be institutionalized or hospitalized for his entire life at a rate of approximately $55,000 per month.

38. Adam's enrollment in the MF/TD program is only available to persons under the age of 21 and Adam will turn 21 on August 29, 2010. When Adam or any disabled person turns 21 in the MF/TD program, the Defendant's policy and practice is to reduce continuing medical

funding by approximately 50% based solely on the fact that the person is now 21. The reduction in funding is not due to a change in Adam's medical needs but on the fact that Adam's funding at age 21 comes from a different State program, which has significant caps on funding. The reduction in funding will either result in Adam becoming institutionalized (hospitalized) or if he remains in his family home without skilled nursing care, then he faces a strong possibility of imminent death.

39. Adam has been informed that when he turns 21 years of age on August 29, 2010, he will be subjected to reduce funding of approximately 50% of his current rate. Karen Engrstrom, the Supervisor at the Division of Rehabilitation Services in Macomb, Illinois initially told Adam and/ or his mother, that Adam would only receive funding of approximately $3,300 per month. On August 6, 2010, Karen Engrstrom of DRS told Adam and his mother that he would receive funding of $8,000 per month based on an exceptional care rate. Adam will be unable to maintain the same level of intensive skilled nursing care which he needs at the rate of $8,000 per month.

40. If Adam was unable to receive the current level of skilled nursing care in his home, then he would be forced to be institutionalized and obtain medical care in a hospital setting at a rate of approximately $55,000 per month, which costs more than his current level of funding in the family home.

41. Adam is requesting injunctive relief to require the Defendant to provide funding to maintain the current level of skilled nursing care which he receives in order that he may remain in the community and not be institutionalized or hospitalized for his entire life. The actions of the Defendant constitute unlawful discrimination under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Section 504 of the Rehabilitation Act, 29

U.S.C. Sec. 794(a).

42. Adam is an individual with a disability.

43. Adam is a recipient of Medical Assistance, commonly known as Medicaid.

**D. The Federal/State Medical Assistance Program**

44. Medical Assistance, commonly known as Medicaid, is a joint federal and stated funded program enacted to provide necessary medical assistance to needy aged or disabled persons and families with dependent children, whose income and resources are insufficient to meet the cost of care. 42 U.S.C. Sec. 1396. States choosing to participate in the Medicaid program must operate the program in conformity with federal statutory and regulatory requirements. 42 U.S.C. Sec. 1396a.

45. Each State participating in the Medicaid program must submit a Medicaid plan to the Secretary of Health and Human Services (HHS) for approval. 42 U.S.C. Sec. 1396.

46. Each State must designate a single state agency to administer and / or supervise the administration of the state's Medicaid plan. 42 U.S.C. Sec. 1396a(a)(5).

47. In Illinois, the Department of Healthcare and Family Services (HFS) is the single state agency responsible for administering the Medicaid program.

48. States have the option of covering persons needing home-and-community-based services, if these persons would otherwise require institutional care that would be paid for by Medicaid. 42 U.S.C. Sec. 1396n(c)(1). Under this waiver authority, the Secretary of HHS may grant waivers of specified requirements like service limitations that are otherwise applicable to the State's Medicaid plan. 42 U.S.C. Sec. 1396n(c)(3). Waiver programs must be cost-neutral in that the average cost of providing care for program participants in the home or community based

setting must not exceed the estimated average cost of providing care in the institutional setting they would require. 42 U.S.C. Sec. 1396n(c)(2)(D); 42 C.F.R. Sec. 441.302(e).

49. Illinois has implemented a total of nine (9) federally approved home-and-community-based care waiver programs in its Medicaid program which were approved by the Secretary of Health & Human Services (HHS). Two of the nine waiver programs are as follows:

- Children that are Technology Dependent / Medically Fragile (MF/TD

- Persons with Disabilities (Home Services for Adults with Disabilities) (HSP)

**E. Medically Fragile / Technology Dependent Program (MF/TD).**

50. Under the waiver program for Medically Fragile, Technology Dependent Children, Illinois pays for home-based care for children under age 21 who have exceptional medical needs. The Illinois Department of Healthcare and Family Services (HFS) administers this waiver program with participation of the University of Illinois' Division of Specialized Services for Children (DSCC) under an agreement with HFS.

51. The Illinois Medicaid Home and Community-Based Services ("HCBS") waiver program, which includes the MF/TD program, allows the State of Illinois to provide services to persons, like the Plaintiffs, in an individual's home or community as long as those services prevent the individual from being institutionalized or hospitalized.

52. The MF/TD waiver for children serves persons under 21 years of age who would require institutional care in a hospital or nursing facility, if nursing and waiver services were not provided in the home. Cost-effectiveness for eligibility is compared to service costs in a hospital or nursing facility. The primary expenditure for children in the MF/TD waiver is skilled nursing.

**F. Persons with Disabilities** (Home Services Program) (HSP)

53. Under the Home Services waiver program (HSP), Illinois funds services to enable disabled adults to remain in their homes or in a community setting. The Illinois Department of Healthcare and Family Services (HFS) administers the HSP program with the participation of the Division of Rehabilitative Services (DRS) of the Illinois Department of Human Services (DHS) through an agreement with HFS.

**G. William's Current Medical Plan**

54. Currently, HFS provides a medical plan for William that is medically necessary and a cost-effective alternative to care in the institutional setting that HFS determined William would otherwise require.

55. HFS has determined that William has a hospital need for care.

56 Through the MF/TD waiver program and Medicaid, HFS pays for skilled nursing care which William needs in his home.

57. HFS approved and pays for approximately $18,000.00 of monthly medical services provided by a registered nurse and a licensed practical nurse. This plan allows William to meet the costs for the salaries and benefits of the skilled nursing services that he requires.

58. William's current level of services is based upon a determination made by DSCC, after a full evaluation of William, that he needed that level of care to avoid institutionalization (hospitilization). DSCC's concluded that William would require hospitilization at an annual cost that would far exceed the amount he was awarded.

59. As William approached his 21st birthday, DSCC staff discussed William's transition into the Office of Rehabilitation Services Home Services (HSP) program and "aging out" of the

MF/TD waiver program.

60. William, through his mother, was advised by the Home Services Program (HSP) operated by the Illinois Department of Human Services (DHS) in April, 2010, that William was entitled to an "exceptional care rate" for his in home care at a rate of $9,429 per month. DHS advised William, through his mother that this rate was the "maximum" which could be offered.

61. The exceptional care rate for William's medical care set forth in the above paragraph is not sufficient to meet the costs of the skilled nursing services which William requires.

62. The proposed reduction in funding / services by the Defendant is based solely on the fact that William will reach 21 years of age on June 18, 2010. The reduction in funding / services is not due to a change in William's medical needs, which in fact have remained unchanged.

63. William's strong bond to his mother is threatened by isolation in an institution.

64. William's physicians have determined that William can be cared for at home safely and appropriately.

65. Under the laws governing the Home Services Program, HFS has discretion to set funding for services for persons whose needs cannot be met by otherwise applicable caps, provided that the program is cost neutral.

66. With no modifications in its regulations, and little modifications in its practices, HFS could continue to fund the level of nursing care that William requires in order to remain at home at a cost that is less than would be required to serve him in an appropriate institutional setting for the care he needs.

67. If allowed to go into effect, the proposed reduction in funding for William's medical

care will ultimately force William into an institutional setting (hospital), isolating him from home and community, or alternatively, will likely result in his imminent death if he remains in his home.

68. The Defendant has informed the Plaintiff, through his mother, that the reduced funding will take effect on William's birthday, June 18, 2010.

**H. Richard's Current Medical Plan**

69. Currently, HFS provides a medical plan for Richard that is medically necessary and a cost-effective alternative to care in the institutional setting that HFS determined Richard would otherwise require.

70. HFS has determined that Richard has a hospital need for care.

71 Through the MF/TD waiver program and Medicaid, HFS pays for skilled nursing care which Richard needs in his home.

72. HFS approved and pays for approximately $18,000.00 of monthly medical services provided by a registered nurse and a licensed practical nurse. This plan allows Richard to meet the costs for the salaries and benefits of the skilled nursing services that he requires.

73. Richard's current level of services is based upon a determination made by DSCC, after a full evaluation of Richard, that he needed that level of care to avoid institutionalization (hospitilization). DSCC's concluded that Richard would require hospitilization at an annual cost that would far exceed the amount he was awarded.

74. As Richard approached his 21st birthday, DSCC staff discussed Richard's transition into the Office of Rehabilitation Services Home Services (HSP) program and "aging out" of the MF/TD waiver program.

75. Richard has been advised under the HSP program, he is only entitled to an "exceptional care rate" for his in home care at a rate of approximately $9,429 per month.

76. The exceptional care rate for Richard's medical care set forth in the above paragraph is not sufficient to meet the costs of the skilled nursing services which Richard requires.

77. The proposed reduction in funding / services by the Defendant is based solely on the fact that Richard will reach 21 years of age on August 16, 2010. The reduction in funding / services is not due to a change in Richard's medical needs, which in fact have remained unchanged.

78. Richard does not desire to be isolated in an institution and away from his home / community.

79. Richard's physician, Dr. Gregory Milani, has determined that Richard can be cared for at home safely and appropriately.

80. Under the laws governing the Home Services Program, HFS has discretion to set funding for services for persons whose needs cannot be met by otherwise applicable caps, provided that the program is cost neutral.

81. With no modifications in its regulations, and little modifications in its practices, HFS could continue to fund the level of nursing care that Richard requires in order to remain at home at a cost that is less than would be required to serve him in an appropriate institutional setting for the care he needs.

82. If allowed to go into effect, the proposed reduction in funding for Richard's medical care will ultimately force Richard into an institutional setting (hospital), isolating him from home and community, or alternatively, will likely result in his imminent death if he remains in his

home.

83. The Plaintiff has been informed that the reduced funding will take effect on his birthday, August 16, 2010.

**I. Adam's Current Medical Plan**

84. Currently, HFS provides a medical plan for Adam that is medically necessary and a cost-effective alternative to care in the institutional setting that HFS determined Adam would otherwise require.

85. HFS has determined that Adam has a hospital need for care.

86 Through the MF/TD waiver program and Medicaid, HFS pays for skilled nursing care which Adam needs in his home or community.

87. HFS approved and pays for approximately $18,000.00 of monthly medical services provided by a registered nurse and a licensed practical nurse and unskilled nursing services. This plan allows Adam to meet the costs for the salaries and benefits of the skilled and unskilled nursing services that he requires.

88. Adam's current level of services is based upon a determination made by DSCC, after a full evaluation of William, that he needed that level of care to avoid institutionalization (hospitilization). DSCC's concluded that Ada would require hospitilization at an annual cost that would far exceed the amount he was awarded.

89. As William approached his 21st birthday, DSCC staff discussed Adam's transition into the Office of Rehabilitation Services Home Services (HSP) program and "aging out" of the MF/TD waiver program.

90. Adam and/or his mother, was advised by the Home Services Program (HSP) operated

by the Illinois Department of Human Services (DHS) in July, 2010, that Adam was entitled to funding for his in home care at a rate of approximately $3,300 per month. On August 6, 2010, Karen Engstrom of DRS advised Adam and his mother, that Adam would be funded at an exceptional care rate of $8,000 per month.

91. The care rate for Adam's medical care set forth in the above paragraph is not sufficient to meet the costs of the skilled and unskilled nursing services which Adam requires.

92. The proposed reduction in funding / services by the Defendant is based solely on the fact that Adam will reach 21 years of age on August 29, 2010. The reduction in funding / services is not due to a change in Adam's medical needs, which in fact have remained unchanged.

93. Adam's strong bond to his mother is threatened by isolation in an institution.

94. Adam's physicians have determined that Adam can be cared for at home safely and appropriately.

95. Under the laws governing the Home Services Program, HFS has discretion to set funding for services for persons whose needs cannot be met by otherwise applicable caps, provided that the program is cost neutral.

96. With no modifications in its regulations, and little modifications in its practices, HFS could continue to fund the level of nursing care that Adam requires in order to remain at home or in the community at a cost that is less than would be required to serve him in an appropriate institutional setting for the care he needs.

97. If allowed to go into effect, the proposed reduction in funding for Adam's medical care will ultimately force Adam into an institutional setting (hospital), isolating him from home

and community, or alternatively, will likely result in his imminent death if he remains in his home or community.

98. The Defendant has informed the Plaintiff and his mother, that the reduced funding will take effect on Adam's birthday, August 29, 2010.

## VI. CAUSES Of ACTION

### COUNT I

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

99. The Plaintiffs repeats and incorporates by reference as though fully set forth here the facts contained in paragraphs 1 through 98 above.

100. 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. 12132. 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). Policies and practices that have the effects of unjustifiably segregating persons with disabilities in institutions constitute prohibited discrimination under the ADA.

101. The Plaintiffs are qualified individuals with disabilities within the meaning of Title II of the ADA.

102. The Illinois Department of Healthcare and Family Services of which Defendant Hamos is Director is a "public entity" within the meaning of Title II of the ADA.

103. The actions by HFS constitute unlawful discrimination under 42 U.S.C. Sec. 12132

and violate the integration mandate of the regulations implementing this statutory prohibitions. 28 C.F.R. Sec. 35.130(d).

104. The Defendant's planned reduced funding of the home nursing and other services which William, Richard and Adam needs in order to avoid institutionalization, violates Title II of the ADA, 42 U.S.C. Sec. 12132 and its implementing regulation. 28 C.F.R. Sec. 35.130(d).

105. The Plaintiffs and the putative class will suffer irreparable injury if the Defendant is not enjoined from reducing the funding when a person turns the age of 21 years, as the reduced level of funding will force the Plaintiff and the putative class into an institution, where they will not receive the most integrated setting appropriate to their needs, or alternatively, the reduced level of funding and remaining at home may lead to their death or serious injury.

106. The Plaintiffs and putative class have no adequate remedy at law.

107. The Plaintiffs are indigent and unable to post bond.

## COUNT II

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

108. The Plaintiffs repeat and incorporate by reference as though fully set forth here the facts contained in paragraphs 1 through 107 above.

109. 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). Policies and practices that have the

effects of unjustifiably segregating persons with disabilities in institutions constitute prohibited discrimination under the RA.

110. The Illinois Department of Healthcare and Family Services is a recipients of federal funds under the Rehabilitation Act..

111. The Plaintiffs are qualified individuals with a disability under Section 504 of the Rehabilitation Act.

112. The actions by HFS constitute unlawful discrimination under 29 U.S.C. Sec. 794(a) and violate the integration mandate of the regulations implementing this statutory prohibition. 28 C.F.R. Sec. 41.51(d).

113. The Defendant's planned reduced funding of the home nursing and other services which William, Richard and Adam needs in order to avoid institutionalization, violates Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794(a) and its implementing regulation. 28 C.F.R. Sec. 41.51(d).

114. The Plaintiffs and the putative class will suffer irreparable injury if the Defendant is not enjoined from reducing refunding when they turn the age of 21 years, as the reduced level of funding will force the Plaintiffs and the putative class into an institution, where they will not receive the most integrated setting appropriate to his needs, or alternatively, the reduced level of funding and remaining at home may lead to their death or serious injury.

115. The Plaintiffs and putative class have no adequate remedy at law.

116. The Plaintiffs are indigent and unable to post bond.

## VII. REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

(a) Certify this case to proceed as a class action.

(b) Issue a Declaratory Judgment in favor of the Plaintiff and the Class and that the Defendant's reduction in funding which results in a reduction of medical services when aging out of the State of Illinois Medically Fragile, Technology Dependent program (MF/TD) violates the Americans with Disabilities Act, 42 U.S.C. Sec. 12132 and Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794(a) and their implementing regulations, 28 C.F.R. Sec. 35.130(d), 41.51(d).

(c) Issue Preliminary and Permanent Injunctive relief requiring the Defendant to restore the level of funding to maintain the existing medical services for the Plaintiffs and putative class prior to aging out of the State of Illinois Medically Fragile, Technology Dependent program (MF/TD).

(d) Award Plaintiffs and the Class the costs of this action, including reasonable attorneys fees, pursuant to 42 U.S.C. Section 12205; Section 504 of the Rehabilitation Act, and 42 U.S.C. Section 1988; and

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

Respectfully submitted,

*/s/ Robert H. Farley, Jr.*
Attorney for Plaintiffs

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**CERTIFICATE OF SERVICE**

I, Robert H. Farley, Jr., Attorney for the Plaintiff, deposes and states that he caused the foregoing Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 11th day of August, 2010.

*/s/ Robert H. Farley, Jr.*