Ball v. Biedess

United States District Court for the District of Arizona
August 12, 2004, Decided ; August 13, 2004, Filed
No. CIV 00-0067-TUC-EHC

Reporter: 2004 U.S. Dist. LEXIS 27044

Peg Ball, et al., Plaintiffs, v. Phyllis Biedess, Director of Arizona Health Care Cost Containment System, et al., Defendants.

Subsequent History: Affirmed in part and reversed in part by, Remanded by Ball v. Rodgers, 492 F.3d 1094, 2007 U.S. App. LEXIS 16939 (9th Cir. Ariz., 2007)
Modified by, Summary judgment denied by, Motion granted by Ball v. Rodgers, 2009 U.S. Dist. LEXIS 45331 (D. Ariz., Apr. 24, 2009)
Modified by, Motion to vacate denied by, Motion denied by, Motion to strike denied by Ball v. Rodgers, 2010 U.S. Dist. LEXIS 28941 (D. Ariz., Mar. 5, 2010)

Disposition: Findings of fact and conclusions of law entered by the court.

Counsel: [*1] For PEG BALL, BENNIE JAMES, as grandfather & guardian of Cree James, a minor person, JEANNE SPINKA, as an individual and a representative of a class of persons similarly situated, plaintiffs: Jennifer Lynne Nye, Southern Arizona Legal Aid Inc, Tucson, AZ; Tami Lynne Johnson, Arizona Ctr for Disability Law, Phoenix, AZ; Anne C Ronan, Esq, Arizona Ctr for Law In The Public Interest, Phoenix, AZ; Bruce B Vignery, Sarah Lenz Lock, AARP Foundation Litigation, Washington, DC; Sally Hart, Steven Frederick Palevitz, Arizona Ctr for Disability Law, Tucson, AZ; Therese E Yanan, Esq, Native American Protection & Advocacy Project, Farmington, MN.

For PHYLLIS BIEDESS, Director for the Arizona Health Care cost Containment System, AHCCCS, defendants: Logan T. Johnston, III, Esq, Johnston Law Offices PLC, Phoenix, AZ.

For ARIZONA, STATE OF, defendant: Anne Cecile Longo, Esq, Office of the Attorney General, Phoenix, AZ; Logan T. Johnston, III, Esq, Johnston Law Offices PLC, Phoenix, AZ.

For VENETTA GRAHAM, KIM BOWMAN, mother, on behalf of a minor person Collin Phelan, intervenors-plaintiffs: Jennifer Lynne Nye, Southern Arizona Legal Aid Inc, Tucson, AZ; Anne C Ronan, Esq, Arizona Ctr [*2] for Law In The Public Interest, Phoenix, AZ; Bruce B Vignery, AARP Foundation Litigation, Washington, DC; Sally Hart, Arizona Ctr for Disability
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For JUDETH HINTON, VIRGINIA HASKELL, intervenors-plaintiffs: Jennifer Lynne Nye, Southern Arizona Legal Aid Inc, Tucson, AZ; Anne C Ronan, Esq, Arizona Ctr for Law In The Public Interest, Phoenix, AZ; Bruce B Vignery, AARP Foundation Litigation, Washington, DC; Sally Hart, Arizona Ctr for Disability [*3] Law, Tucson, AZ; Therese E Yanan, Esq, Native American Protection & Advocacy Project, Farmington, MN.

For LARRY WILLIAMS, intervenor-plaintiff: Jennifer Lynne Nye, Southern Arizona Legal Aid Inc, Tucson, AZ.

Judges: Earl H. Carroll, United States District Judge.

Opinion by: Earl H. Carroll

Opinion

FINDINGS OF FACT; CONCLUSION OF LAW; AND ORDER

FINDINGS OF FACT

1. The Arizona Health Care Cost Containment System (AHCCCS) is the state agency which receives federal

funding in order to ensure provision of health care services to Arizona's Medicaid clients. [1] [Exh. 203, p. i; Stip. [2] 14].

2. AHCCCS provides Medicaid long term care benefits to persons who are elderly or disabled through its program, the Arizona Long-Term Care System (ALTCS). [Exh. 219, p. 14].

3. ALTCS is responsible for providing eligible persons an array of health care services, including primarily institutional services and home and community based services (HCBS), and acute care and behavioral health services. [Exh. 219, p. 14].

4. Plaintiffs are persons eligible for ALTCS medical care. [Exh. 219; Stip. 1].

5. Persons who are either elderly, physically disabled, or developmentally disabled are eligible for ALTCS if they pass both a financial screen and medical screen. [Exh. 219, p. 15; Stip. 9].

6. The financial eligibility requirement is based on a Supplemental Security Income (SSI) limit of $ 1,593.00 per month for an individual as of August 2001. [Exh. 219, p. 15].

7. The medical requirement is that the individual be "at risk of institutionalization." [Dkt. 219, p. 15].

8. HCBS is designed [*5] as an alternative to services provided in institutions, such as nursing facilities and hospitals. [Stip. 2].

9. HCBS services can be provided in the member's home, adult foster care residences, assisted living homes, assisted living centers, hospice and group homes. [Stip. 3].

10. As of October 2001, the ALTCS program served 32,720 beneficiaries: 12,570 were persons with developmental disabilities and 20,150 were persons who are elderly or physically disabled. [Exh. 219, p.14; Stip. 10].

11. The total number of elderly or physically disabled persons receiving ALTCS services in their own home in 2001 was 7,319. [Exh. 268, p. 14].

12. Members who need attendant care vary in need and independence. [Tran. at 205-06].

13. Some members are more difficult to match up with attendants than others, for a variety of reasons. Some of those reasons include, but are not limited to, the personality of the member or attendant, the needs of the member, and the independence level of the member. [Tran. at 205-06, 391].

14. ALTCS is primarily a capitated managed care program whereby AHCCCS pays a Program Contractor an up-front dollar amount per client, regardless of the number [*6] or type of services provided. [Exh. 203].

15. ALTCS is funded by federal (Medicaid program, S.S.A. Title XIX), state and county funds. [Exh. 219, p.19].

16. Three (3%) of ALTCS HCBS beneficiaries, mostly living on Native American Reservations, are in the fee-for-service system in which AHCCCS pays the service provider directly. [Tran. at 282-83].

17. AHCCCS provides HCBS services primarily through managed care organizations called Program Contractors. Each county of the state has its own Program Contractors, such as Pima Health Systems in Pima County, Arizona. [Stip. 4].

18. ALTCS services are delivered by eight (8) Program Contractors in the State of Arizona who agree to deliver a specific package of health care to beneficiaries in return for a monthly capitation payment from AHCCCS. [Stip. 11].

19. The Program Contractors receive a monthly capitation payment from AHCCCS for every eligible individual it serves. [Stip. 6].

20. The monthly capitation payment is a blended rate including weighted costs of nursing facility, HCBS, acute medical care, behavioral health, and case management services. [Exh. 219, p. 18-19; Stip. 6].

21. There is one (1) Program Contractor [*7] in each Arizona county except for Maricopa County, which has three (3) Program Contractors. [Stip. 12].

22. The Program Contractor for developmentally disabled beneficiaries is the Division of Developmental Disabilities (DDD) in the Department of Economic Security (DES). [Stip. 13].

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[1] "Congress established the Medicaid program under Title XIX of the Social Security Act. This Act authorizes a state's participation in a cooperative federal-state Medicaid program to provide medical assistance to low-income persons. To be eligible for federal financial assistance, states such as Arizona must administer their programs in accordance with federal guidelines. Arizona adopted its plan through the waiver program known as AHCCCS." Perry v. Chen, 985 F. Supp. 1197, 1198-99 (D.Ariz. 1996)(internal citations omitted).

[2] The Stipulations were filed on August 9, 2002, in the parties' Proposed Joint Pretrial Order.

23. The Program Contractor assigns each member a Case Manager, who prescribes a specific package of services based on the individual's medical needs.

24. The Program Contractors often subcontract with provider agencies to supply the home care workers, at negotiated hourly rates. The provider agencies then hire and pay workers to provide the actual services in the home.

25. If the ALTCS member is eligible for HCBS services, a Case Manager specifies, in a case management plan, the particular HCBS services to be received. Ariz. Admin. Code § R9-28-510(B)(3).

26. The case management plan also includes the amount and frequency of each such HCBS service. Ariz. Admin. Code § R9-28-510(B)(3).

27. All HCBS services in the member's plan have been determined by the Program Contractor to be medically necessary. Ariz. Admin. Code § R9-28-201(1).

28. Services can include 1) personal care (bathing, [*8] toileting, dressing, etc.); 2) homemaker (cleaning, laundry, shopping, etc.); 3) attendant care (bathing, toileting, dressing, plus cleaning - collectively known as "attendant care services"); and 4) respite care (short term care to give primary caregiver time off).

29. Attendant care services constitute the vast majority of ALTCS and HCBS costs, often around 60% of all services. [Exh. 159; Tran. at 329].

30. Attendant care workers deliver attendant care services.

31. Training requirements for attendant care workers are minimal. For example, Pima County requires just twelve (12) hours of training, and a score of 75% on a written exam, before an attendant care worker can be assigned to a beneficiary. [Exh. 236, p. 4].

32. In November 1999, wages for attendant care workers ranged from $ 6.25 to $ 7.50 per hour. [Exh. 75, p.4; Tran. at 369-70].

33. There was difficulty recruiting attendant care workers due to low wages. [Tran. at 369-72].

34. The shortage of ALTCS HCBS workers was community wide during the relevant time period, according to Mary Ann Meyer, Executive Director of Direct Center for Independence in Tucson, Arizona. [Tran. at 228].

35. Both of the ALTCS [*9] program contractors, Pima Health System and Maricopa Long Term Care, had extensive waiting lists of beneficiaries who qualified for attendant care workers. [Exh. 75; 234; 235; 236; Stip. 46, 47, 49].

36. DDD also had a waiting list for attendant care workers. [Exh. 265].

37. The waiting lists were due to a shortage of attendant care workers.

38. A statewide Community Based Report in 1998 found that the State was "already experiencing problems in the HCBS delivery. If left unresolved, the demand for these services may not be met." [Exh 131, p. 24].

39. The Community Based Report suggested "expanding paraprofessional networks, ensuring wages are competitive, ensuring quality of services, supporting the client and family, and revising public policy to limit barriers to care." [Exh. 131, p. vi].

40. In 1999, the Auditor General advised AHCCCS that its contractors were failing to provide necessary services resulting in quality of care problems. [Exh. 203].

41. In 2000, the Director of AHCCCS acknowledged that it was "researching strategies to continue to hire paraprofessionals to meet the consumer demand.". [Exh. 132, p. 14].

42. Multiple studies and reports indicated [*10] a shortage of attendant care workers in Arizona. [See , *e.g.* , Exh. 63, 66, 131, 132, 195, 196, 198, 235].

43. AHCCCS does not require its agencies to have a contingency plan for beneficiaries when attendant care workers are unavailable or do not show up as scheduled. [Tran. at 615].

44. Rates for ALTCS attendant care workers historically were lower than those who work for Medicare or for private paying clients. [Tr. at 235, 370].

45. Most rates for ALTCS attendant care workers ranged from $ 6.50 per hour to $ 8.50 per hour during the relevant time period. As of April 26, 1999, Maricopa County paid regular attendants $ 7.15 per hour. [Exh. 80, p. 2; Tr. at 414, 417].

46. Private paying clients typically paid between $ 10.00 and $ 12.00 for providers of home care services in Maricopa County. [Trap. at 370].

47. Dr. Dorie Seavey ("Dr. Seavey"), an expert labor economist and researcher, testified that the payment rates for home health care workers was too low to garner the

needed number of home health care workers. The needed workers, were available, but would not work for the pay offered. [Tran.at 442-44].

48. Dr. Seavey found that "when the compensation [*11] rates start to get into the 9 and 10 dollar range. . . labor shortage phenomenons really begin to abate. . ." [Tr. at 4221.

49. "There is serious evidence that there are people who have care hours authorized who are not receiving them and that there are not methods and procedures in place to measure that gap in services." [Tr. at 408].

50. Defendants failed to offer a high enough hourly pay to meet the needs of their beneficiaries. [Tr. at 369-70, 408].

51. San Francisco, California experienced a 47% increase in its work force when the. City of San Francisco increased wages from approximately $ 6.00 to near $ 9.00. [Tr. at 433].

52. Program Contractors can increase their profit by paying a less hourly wage to providers. [Tran. at 281].

53. Maricopa County made in excess of $ 10 million in profit in the contract year ending in 2000. [Tran. at 342].

54. In order to determine the appropriate hourly wage, Defendants should collect data on whether beneficiaries are receiving the authorized care and monitor any care gaps. [Tran. at 426-271.

55. Defendants' actuary admitted that data regarding whether services were being provided would have been helpful in determining [*12] "actuarially sound capitation rates" and "where rates might be going in the future." [Tran. at 340, 353].

56. ALTCS does not collect data from Program Contractors showing the difference between those HCBS services authorized in beneficiaries' care plans and the services actually delivered by Program Contractors. AHCCCS does collect such data for the 3% of HCBS beneficiaries in the fee-for-service rather than managed care systems. [Stip. 57].

57. The Member Handbooks given to HCBS recipients do not provide for a grievance process regarding gaps in services. Beneficiaries are instructed to contact their case managers, who work for the Program Contractors. [Exh. 151; 152; 153; 154].

58. Defendants failed to adequately gather information regarding, or monitor, gaps in services. [See , *e.g.* , Stip. 54].

59. Surveys to recipients did not always ask recipients if they were receiving their prescribed services. [See , *e.g.* , Stip. 54].

60. No penalty or poor performance rating for failure to fill care plans has been given to a program contractor by ALTCS between at least November 1999, the earliest date for which information about penalties and performance [*13] rating was sought and discovery and February 2002. [Stip. 55].

61. It is the policy of AHCCCS that an HCBS beneficiary assumes the risk, by choosing to remain at home rather than be institutionalized, that services he or she is dependant upon will not be delivered. [Tran. at 535; 613; Exh. 2].

62. AHCCCS was aware that not all of its beneficiaries were receiving their prescribed services. [Tran. at 539; 587; 614; Stip. 49].

63. Gaps in service were often caused by home health, care workers quitting without notice, refusing to show up without notice, or personality conflicts with patients.

64. Representative class members Plaintiffs Peggy Ann Ball, Melissa Richardson, Jeanne Spinka, and Judeth Hinton testified at trial that, on numerous occasions, each was left with no home health care attendant to care for them. [3] Such a gap in service caused each Representative Plaintiff to suffer grave consequences, such as complete immobility, hunger, thirst, muscle aches, and other physical and mental distresses. [4]

CONCLUSIONS OF LAW

1. This is a certified class action. [Dkt. 31].

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[3] The Court is troubled and touched by the testimony of the representative class members. Each of them testified to being trapped in bed unable to change position or care for personal hygiene, abandoned for hours in a bathroom, left without food or water, or similar experiences, due to the lack or absence of health care providers. It is the intent of the Court to do whatever is available to prevent any AHCCCS recipients from experiencing the kind of frustration, embarrassment, and discomfort experienced by the representative class members of this class action. The Court does note the efforts that the State has made in curing some of these failures and has taken those efforts into consideration.

[4] The personal commitment of each of the Plaintiffs, some of whom testified at trial, to have a meaningful, independent existence insofar as possible, was remarkable. The disabilities they experience are extraordinary. Each of the disabilities is a challenge to those committed to care for themselves.

2. "Once a state voluntarily chooses to participate in Medicaid, the State must comply with the requirements of Title XIX and applicable regulations." Alexander v. Choate, 469 U.S. 287, 290 n.1, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985). Defendants, state agencies, having elected to participate in the Medicaid programs, must comply with the provisions of the Medicaid Act.

3. Plaintiffs have a property right in the health care benefits for which they qualify. Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Svcs., 364 F.3d 925, 929 (8th Cir. 2004)(citing Goldberg v. Kelly, 397 U.S. 254 at 263 n.8, 25 L. Ed. 2d 287, 90 S. Ct. 1011); see Arkansas Medical Soc., Inc., v.Reynolds, 6 F.3d 519 (8th Cir. 1993)(finding [*15] that Congress unambiguously conferred a right to equal access for beneficiaries via 42 U.S.C. § 1396a(a)(30)(A), 42 C.F.R. 447.204, and H.R. Rep. No. 101-247, 10151 Cong., 1st Sess. 390 (1989)). [5]

[*16] 4. The recipient of benefits from the state "must have 'timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.'" Perry v. Chen, 985 F. Supp. 1197, 1202 (D. Ariz. 1996) (quoting Goldberg v.Kelly, 397 U.S. 254, 267-68, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970)).

5. "A state plan for medical assistance must provide… such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan … as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. . ." 42 U.S.C. § 1396a(a)(30)(A). This particular section is known as the "equal access provision." Children's Hosp. and Health Ctr. v.Belshe, 188 F.3d 1090, 1103 (9th Cir. 1999); [*17] Pediatric Specialty Care, Inc. v. Ark. Dept.of Human Svcs., 364 F.3d at 929; Arkansas Medical, 6 F.3d at 522.

6. "The agency's payments must be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population." 42 C.F.R. 447.204.

7. "The equal access provision is indisputably intended to benefit the recipients by allowing them equivalent access to health care services." Arkansas Medical, 6 F.3d at 526.

8. Congress placed the equal access provision directly into the legislation. ArkansasMedical, 6 F.3d at 526; see42 U.S.C. § 1396a. "The Committee Bill would codify, with one clarification, the current regulation, 42 C.F.R. 447.204, *requiring* adequate payments levels. Specifically, the Committee bill would *require* that Medicaid payments for all practitioners be sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic [*18] area." Arkansas Medical, 6 F.3d at 526 (quoting H.R. Rep. No. 101-247, 101st Cong., 1st Sess. 390 (1989))(emphasis in original).

9. "This decision to place the equal access provision in the text of the Medicaid statute to highlight its importance not only reinforces our conclusion that the provision is mandatory in nature, it also helps to indicate Congress's unambiguous conferring of a right to the beneficiaries." Arkansas Medical, 6 F.3d at 526.

10. Defendants must pay a wage sufficient to attract enough health care workers to meet the Medicaid requirements. See42 U.S.C. § 1396a(a)(30)(A).

11. "The relevant factors that [Defendants are] obliged to consider in its rate-making decisions are the factors outlined in 42 U.S.C. § 1396a(a)(30)(A)." Arkansas Medical, 6 F.3d at 530.

12. Factors to consider in rate-making are 1) efficiency; 2) economy; and 3) quality of care. 42 U.S.C § 1396a(a)(30)(A); Orthopaedic Hosp. v. Belshe, 103 F.3d

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[5] Recently, the First Circuit held that health care *providers*, such as pharmacies, do not have a private right of action under 42 U.S.C. § 1396a(a)(30)(A), and suggested that Congress had "no 'intent to confer rights on *a particular class* of persons…'" Long TermCare Pharmacy Alliance, v. Ferguson, 362 F.3d 50, 57 (1st Cir. 2004)(quoting Alexander v.Sandoval, 532 U.S. 275, 289, 149 L. Ed. 2d 517, 121 S. Ct. 1511 (2001)(emphasis added)). The Ferguson Court noted that the Supreme Court has held that "nothing short of 'an unambiguously conferred right' could support a claim under *section 1983* based on a federal funding statute." Id. (quoting GonzagaUniv. v. Doe, 536 U.S. 273, 282-83, 153 L. Ed. 2d 309, 122 S. Ct. 2268 (2002)). The Ferguson Court also noted that the Ninth Circuit, in Orthopaedic Hosp. v. Belshe, 103 F.3d 1491, 1492 (9th Cir. 1997), "assumed a right of action but the issue was apparently not raised." Id. at 59. Recently, the Eighth Circuit held that "Plaintiffs have a property right in the health care benefits for which they qualify." Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Svcs., 364 F.3d 925, 929 (8th Cir. 2004)(citing Goldberg v. Kelly, 397 U.S. 254, 263 n.8, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970)); see 42 .U.S.C. § 1396a(a)(30)(A). The Court finds that the equal access provision, namely 42 U.S.C. § 1396a(a)(30)(A), confers an unambiguous right on Plaintiffs in this action to the benefits for which they qualify.

1491, 1492 (9th Cir. 1997); Arkansas Medical, 6 F.3d at 530.

13. "The statute [*19] provides that *payments* for services must be consistent with efficiency, economy, and quality of care, and that those *payments* must be sufficient to enlist enough providers to provide access to Medicaid recipients." Orthopaedic, 103 F.3d at 1496 (emphasis in original).

14. The rate of pay must be "high enough to provide for quality care and to ensure access to services." See Orthopaedic, 103 F.3d at 1497.

15. Defendants "cannot know that [they are] setting rates that are consistent with efficiency, economy, quality of care and access without considering the costs of providing such services." Orthopaedic, 103 F.3d at 1496.

16. Defendants' inadequate payment rates, in addition to the methodologies employed by its Program Contractors in enlisting sufficient providers, were not consistent with quality of care and access. [6]

[*20] 17. Congress intended "that Medicaid recipients are entitled to access equal to that of the insured population." Arkansas Medical, 6 F.3d at 527; seeEvergreen PresbyterianMinistries. Inc. v. Hood, 235 F.3d 908, 927-28 (5th Cir. 2000).

18. Institutionalization is not a viable "choice" for patients who qualify for AHCCCS programs but do not receive the services to which they are entitled. Recipients must not be forced to choose between adequate health care and institutionalization. See 42 U.S.C. § 1396n(c)(2)(C), 42 U.S.C. § 1396n(d)(2)(C).

19. Based on the foregoing, Defendants had, and continue to have, a duty. to monitor and manage the AHCCCS program to ensure compliance with quality of care, equal access, and freedom of choice requirements.

20. Defendants failed to provide the representative class members with the equal access, quality of care, and freedom of choice to which they are entitled. Accordingly,

IT IS ORDERED that the AHCCCS program must provide each individual who qualifies for its services with those services for which the individual qualifies without gaps in [*21] service.

IT IS FURTHER ORDERED that the AHCCCS program must develop adequate alternative or contingency plans for instances when a service is unable to be provided.

IT IS FURTHER ORDERED that the AHCCCS program must offer a rate of pay to health care workers so as to deliver adequately those services for which each individual qualifies; that is, to attract enough health care workers to deliver all of the services for which an individual qualifies.

IT IS FURTHER ORDERED that AHCCCS program need not offer a particular rate of pay *(i.e.,* a minimum), just a rate of pay which guarantees that each individual will receive the services for which he or she qualifies.

IT IS FURTHER ORDERED that AHCCCS must monitor its entire program such that any services that are not being provided will be detected as a gap in service in enough time to implement the alternative or contingency plan and eliminate the gap in service in less than four (4) hours. [7]

[*22] **IT IS FURTHER ORDERED** that AHCCCS implement a grievance process whereby each individual 1) may call a phone number and speak with a live operator to report any gap in service; 2) is provided with a standardized form to complete and mail to report any gap in service; and 3) receives a response, via telephone or the mails, acknowledging the gap in service and providing a detailed explanation as to a) the reason for the gap in service; and b) the alternative plan being created to rectify the particular gap in service and any possible future gaps in service.

IT IS FURTHER ORDERED that AHCCCS inform each of its members as to his or her rights pursuant to this Order.

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[6] The Court notes, however, that the equal access provision "requires each state to produce *a result*, not to employ any particular methodology for getting there." MethodistHospitals, Inc. v. Sullivan, 91 F.3d 1026, 1030 (7th Cir. 1996)(emphasis in original).

[7] Defendants note that some recipients have a list of characteristics they seek to find in a home health care provider. Defendants shall make every effort to satisfy the recipients' requests, but are not required by this Order to send out a "perfect" home health care worker after a recipient's refusal of a home health care worker sent by Defendants. In other words, a "refusal" situation is not the type of gap in service contemplated by the Court unless the rejected home health care worker's characteristic(s) significantly impede(s) the accomplishment of his or her duties.

IT IS FURTHER ORDERED that the parties file schedules by **September 30, 2004** , outlining the proposed deadlines for carrying out the directives of this Order. [8]

Dated this 12th day of August, 2004.

Earl H. Carroll

United States District Judge

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[8] "Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in this case presents problems of considerable complexity." Brown v. Board of Ed. of Topeka, ShawneeCounty, Kansas, et al., 347 U.S. 483, 495, 74 S. Ct. 686, 692, 98 L. Ed. 873 (1954). **[*23]** "In order that we may have the full assistance of the parties in formulating decrees. . .," the Court will set the matter for further hearing to determine the effective dates for carrying out the directives of this Order. See id.