UNITED STATES DISTRICT COURT
Eastern District of North Carolina
Southern Division

DEVON TYLER MCCARTNEY,
a minor child, by his mother
Penny McCartney, individually
and on behalf of all others
similarly situated,

Plaintiff,

v. No. _________________

DEMPSEY BENTON, Secretary,
North Carolina
Department of Health and Human
Services, in his official capacity,

Defendant.

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This case challenges the lack of basic due process protections for Medicaid recipients when their providers' requests for behavioral health and developmental disability services are denied, reduced, or terminated by the North Carolina Department of Health and Human Services (DHHS) or its agent, ValueOptions. ValueOptions is a private company with which DHHS has contracted to administer behavioral health and developmental disability services for North Carolina's Medicaid recipients. Plaintiff is a Medicaid-eligible child who has been diagnosed with behavioral, emotional, and developmental conditions which urgently require behavioral health treatment. Essential treatment services that Plaintiff was receiving through the Medicaid program have been terminated by the Defendant as a result of multiple violations of the Due Process Clause and the federal Medicaid Act. The violations of law and illegal termination of

services suffered by Plaintiff are typical of similar violations suffered by numerous other North Carolina Medicaid recipients, as Defendant and his agents have engaged in a pattern and practice of serious due process violations in the provision of Medicaid behavioral health and developmental disability services. Plaintiff therefore brings this suit both individually and on behalf of all other affected North Carolina Medicaid recipients.

2. In 2006, DHHS selected and contracted with ValueOptions, Inc. (VO) to be its statewide agent responsible for prior authorization of behavioral health services (including Medicaid funded services for persons with developmental disabilities) under the Medicaid program. These affected services include the range of services that North Carolina Medicaid recipients with behavioral health problems need, such as community support services, intensive in-home services, residential treatment, psychologist's services, and inpatient psychiatric care. Since 2006, VO and DHHS have denied, reduced, and terminated coverage of medically necessary services to thousands of N.C. Medicaid recipients under practices and procedures that clearly violate federal law. These practices and procedures were either dictated or ratified by DHHS.

3. Defendant's illegal policies and practices are denying Plaintiff and the Plaintiff class coverage of behavioral health services as prescribed by their treating providers and as required under federal law. These illegal policies and practices also imminently threaten Plaintiff and the Plaintiff class with further illegal denials, reductions, and terminations of coverage in the future. Moreover, they are causing and threaten to cause irreparable harm to Plaintiff and the Plaintiff class. For example, Plaintiff has been excluded from public school because Defendant illegally terminated coverage of his community support services. Plaintiff and the class he represents have no adequate remedy at law.

4. Defendant's policies and practices used to reduce and terminate services violate the procedural due process rights of Plaintiff and Plaintiff class that are guaranteed to them by the U.S. Constitution and also violate their rights under the Medicaid Act. By depriving them coverage of essential health services to which they are entitled without due process or statutory authority, defendant leaves many of the most vulnerable children and adults in North Carolina without adequate health care services, even though such services are critical to their health, safety, and development.

5. Plaintiff seeks prospective declaratory and injunctive relief against the Defendant to enjoin the Defendant from continuing to deny, terminate or reduce coverage of behavioral health and developmental disability services and to reinstate services that were illegally reduced or terminated until Defendant has brought his practices and procedures into compliance with Due Process requirements and the Medicaid Act.

II. JURISDICTION AND VENUE

6. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, which provides for original jurisdiction over all civil suits involving questions of federal law, and 28 U.S.C. §§ 1343(3) and (4), which grant this Court original jurisdiction in all actions authorized by 42 U.S.C. § 1983 to redress the deprivation under color of State law of any rights, privileges, or immunities guaranteed by the United States Constitution and Acts of Congress.

7. Plaintiff seeks declaratory, injunctive and other appropriate relief, pursuant to 28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. 23, 57, and 65, and 42 U.S.C. § 1983.

8. Venue for this action lies in this District pursuant to 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to Plaintiff's claims occurred here and the Defendants may be found here.

III. PARTIES

9. Devon "Tyler" McCartney is a twelve-year-old resident of Robeson County, North Carolina, who is qualified for Medicaid services. He does not have a guardian or other duly appointed representative and appears in this proceeding through his mother and next friend, Penny McCartney. Tyler has been and remains unable to obtain necessary and appropriate behavioral health services needed for him to attend school because Defendants illegally terminated coverage of those services. As a result, Tyler is suffering damage to his health and education.

10. Defendant Dempsey Benton is the Director of the North Carolina Department of Health and Human Services. He is charged with overall responsibility for the administration of the N.C. Department of Health and Human Services, which administers the Medicaid program in North Carolina and has been designated as the "single state agency" with responsibility for administration of the state Medicaid plan. *See* 42 U.S.C. § 1396a(a)(5); N.C. Gen. Stat. § 108A-54 *et seq.* As such, Defendant Benton is charged with the overall responsibility for implementing the program as required by the U.S. Constitution and federal Medicaid laws, regulations, and guidelines. He is sued in his official capacity.

IV. CLASS ACTION ALLEGATIONS

11. This action is brought as a statewide class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2) on behalf of all persons in North Carolina who are or will be eligible for Medicaid benefits and who have, or will have, coverage of their behavioral health or developmental disability services denied, delayed, terminated, or reduced by the North Carolina Department of Health and Human Services directly or through its agent Value Options.

12. The class is so numerous that joinder of all members is impracticable.

13. There are questions of law and fact as to the permissibility of the Defendant's policies and practices with respect to denying, reducing, and terminating behavioral health services to Medicaid beneficiaries that are common to all members of the class.

14. The claims of the class representative Plaintiff are typical of the claims of the class.

15. Plaintiff will fairly and adequately represent the interests of all members of the class.

16. Prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for the party opposing the class or could as a practical matter be dispositive of the interests of the other members or substantially impair or impede their ability to protect their interests.

17. Defendant's actions and omissions have affected and will affect the class generally, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V. STATUTORY AND REGULATORY FRAMEWORK

18. In 1965, Congress enacted Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, establishing Medicaid, a medical assistance program cooperatively funded by the federal and state governments.

19. The Medicaid program typically does not directly provide health care services to eligible individuals, nor does it provide beneficiaries with money to purchase health care directly. Rather, Medicaid is a vendor payment program, wherein Medicaid-participating providers—including providers of behavioral health and developmental disabilities services—are reimbursed by the program for the services they provide to recipients.

20. The Centers for Medicare & Medicaid Services (CMS) of the United States Department of Health and Human Services is the agency which administers Medicaid at the federal level, including publishing rules and guidelines. These rules and regulations are set forth in 42 C.F.R. Part 430, and in the CMS *State Medicaid Manual*. These rules and regulations are binding on all states that participate in Medicaid.

21. A state's participation in Medicaid is voluntary. Once a state elects to participate, it must adhere to the federal legal requirements, as provided by the United States Constitution, the Medicaid Act, and the rules promulgated by CMS. North Carolina has elected to participate in the Medicaid program. N.C. Gen. Stat. 108A-54 *et seq.*

22. Federal law permits states to obtain federal financial assistance for certain mandatory and optional services, including reimbursement for appropriate behavioral health services and services for the developmentally disabled. States must follow the minimum requirements of federal law with respect to all Medicaid services. 42 U.S.C. § 1396a.

23. The state must adopt a plan which is consistent with the requirements of the Medicaid Act. The provisions of the state Medicaid plan become mandatory upon and must be in effect in all political subdivisions of the state. 42 U.S.C. § 1396a(a)(1); 42 C.F.R. § 431.50. The state must designate a "single state agency" with responsibility for administration of the state Medicaid plan. 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10.

24. When a state accepts Medicaid funds, federal law mandates that the state must ensure that Medicaid beneficiaries be provided with the opportunity for a fair hearing whenever their claims for medical assistance are denied or not acted upon with reasonable promptness. 42 U.S.C. § 1396a(a)(3). The regulations which implement this statutory requirement define the process that is due Medicaid recipients pursuant to *Goldberg v. Kelly*, 397 U.S. 254 (1970). *See*

42 C.F.R. § 431.205(d). Recipients are entitled to receive timely and adequate written notice of their hearing rights when an action affects their claim for health services. 42 U.S.C. § 1396a(a)(3); 42 C.F.R. §§ 431.200-431.246.

25. The Due Process Clause of the Fourteenth Amendment prohibits states from denying, reducing, or terminating Medicaid services without due process of law. The Constitutional right includes the right to meaningful notice prior to the termination or reduction of Medicaid benefits, continued benefits pending a pre-termination hearing, and a fair and impartial pre-termination hearing. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Federal Medicaid regulations explicitly implement the due process requirements set forth in *Goldberg*. *See* 42 C.F.R. §§ 431.200-431.246. As set forth in *Goldberg* and incorporated in the Medicaid regulations, notice must be adequate and understandable, the hearing must be fair and impartial and held at a meaningful time, and coverage of services must be continued at the prior approved level until a final hearing decision based upon a *de novo* hearing if: (a) a Medicaid recipient requests a fair hearing before the date that the services are to be stopped or reduced; (b) the recipient requests the hearing within 10 days of the mailing of the notice; or (c) the requisite notice is not sent. 42 C.F.R. § 431.231.

26. In North Carolina, most behavioral health and developmental disability services funded by Medicaid require prior approval by ValueOptions (VO), a contractor for DHHS. If a request to begin providing a service is denied by VO or if continuation of a service is reduced or terminated by VO, North Carolina state regulations provide the recipient with the right to appeal. The recipient may request an "informal hearing" prior to the "formal" fair hearing mandated under *Goldberg*. 10A NCAC 22H. However, the informal hearing process does not meet due process requirements under *Goldberg* because no cross examination is permitted, no record of

the hearing is kept, and the hearing officers are not impartial.

VI. STATEMENT OF FACTS

A. Named Plaintiff

27. Devon "Tyler" McCartney is a twelve-year-old child who is eligible for Medicaid. Tyler was diagnosed with Fragile X syndrome in June of 1999, when he was three years old. He became a patient at the Fragile X Program of the Child Development Unit at Duke University Medical Center soon after receiving that diagnosis and has continued to be evaluated and treated by doctors at Duke's Fragile X program multiple times per year. At the age of four, Tyler was also diagnosed with autism by the Division for Treatment and Education of Autistic and Related Communication-Handicapped Children (TEACCH) after exhibiting some aggressive behaviors at his preschool.

28. In July 2004, at the age of eight, Tyler began having seizures. He was diagnosed with epilepsy and began treatment with Dr. Michael Tennison, a pediatric neurologist in the neurology department of the University of North Carolina medical school. Dr. Tennison prescribed multiple medications for Tyler's seizures and has met with Tyler concerning his seizures as recently as January 14, 2008. On that date, Dr. Tennison recommended: "the child needs help with the following activities of daily living: bathing, using toilet, dressing."

29. At least since August 25, 2005, when he was nine years old, Tyler has received Medicaid community support services in the form of one-on-one aide from a trained professional who helps him meet various goals, including reducing temper tantrums, learning to interact with peers, following directions, and remaining on task. On August 25, 2005, Defendant authorized between 32.5 and 33.5 hours per week of one-on-one community support services for Tyler.

Beginning in March 2006, Defendant authorized 28 hours per week of community support services, in the form of a one-on-one aide, for Tyler.

30. At least since November 2006 and continuing until January 2008 when Tyler lost these services due to Defendant's actions, the same community support services worker came to school with Tyler every day and helped him remain in the community and in school by working with him on goals such as following directions, respecting others' space, remaining on task, interacting with his peers, and reducing temper tantrums.

31. On May 11, 2007, Tyler's case manager at that time, Alice Locklear, completed a prior approval request form, requesting that Tyler continue to receive 28 hours per week of community support services for the next 90 days, beginning May 18, 2007 and continuing until August 16, 2007. This form was sent to VO via facsimile transmission and received by VO on May 11, 2007.

32. On June 28, 2007, after repeated telephone calls to VO inquiring about the status of this request for a continuation of the 28 hours per week for Tyler, Ms. Locklear received a telephone call from VO informing her that Tyler would be authorized for only 21 hours per week of community support services from June 9, 2007 until July 27, 2007. VO did not issue a written authorization to the provider for 21 hours per week, for the period from June 9 through July 27 2007, until July 5, 2007, and no notice was sent to Ms. McCartney or to Tyler concerning the reduction of hours from 28 per week to 21 per week for that period of time.

33. On June 28, 2007, the same day verbal reauthorization was given for only 21 hours of services per week, VO received Tyler's most current Person-Centered Plan, which was signed on June 20, 2007, and which requested 32.5 hours per week of community support services.

34. On August 13, 2007, Value Options sent a notice to Devon T. McCartney and to Primary Health Choice, the provider with whom his case manager is employed, stating that Medicaid, as of July 28, 2007, had denied 28 hours per week of CSS for Tyler. The notice claimed that 21 hours per week were more appropriate for Tyler, and that only 21 hours per week would be approved from July 28, 2007 until September 21, 2007.

35. The notice sent on August 13, 2007 falsely stated that 28 hours per week of CSS had originally been requested on July 25, 2007, when continuation of this level of service had actually been requested on May 11, 2007. The notice dated August 13, 2007 also was late: Tyler's mother should have been notified of the proposed reduction of services and of her right to appeal at least ten days before June 9, 2007 when the reduction took effect. Even if the reduction had not begun until July 28, 2007 (as the letter from VO claims), the notice would have been mailed at least two weeks late, thus denying Tyler the opportunity to appeal before his services were reduced. The August 21 notice also failed to provide a meaningful explanation for the decision to reduce services. The notice was addressed to Tyler, not to his mother. The notice is from VO but does not indicate that VO is the agent of DHHS. The notice does not indicate who the respondent should be if the recipient wishes to file a formal appeal.

36. Ms. McCartney timely filed an informal appeal of the August 13 notice reducing Tyler's services from 28 hours per week to 21 hours per week. Her notice of appeal was filed with DHHS on August 21, 2007.

37. No hearing was held by Defendant on Tyler's appeal. Ms. McCartney and her case manager at that time, Nicole Cummings, participated on December 7, 2007 in a telephone conference with a hearing officer for the Respondent, Ms. Jane Plaskie, at which time Ms. Plaskie informed Ms. McCartney and the case manager that, if a hearing were to occur, the only

issue at the hearing would be whether Medicaid had made the correct decision in reducing Tyler's hours from 28 to 21 per week during the weeks between July 28 and September 21, 2007. Ms. Plaskie emphasized that the hearing would not address Tyler's current or future needs for this service**.** Based on this information, Ms. McCartney agreed to a dismissal of the appeal. A letter sent by Ms. Plaskie to Ms. McCartney on December 7, 2007 confirmed this conversation.

38. On or about January 23, 2008, because of the dismissal of the appeal, the provider notified Ms. McCartney that community support services for Tyler would have to be terminated. Since that date Tyler has not received any service from a one-on-one aide covered by Medicaid.

39. Since Tyler lost his one-to-one aide worker at school due to nonpayment from Medicaid, his behavior has worsened considerably, which his treating clinicians say is to be expected from an autistic child who is unable to cope with such a major change. He throws multiple tantrums per day at school and his mother has been on many occasions telephoned by the school and told to pick him up from school before 10:00 a.m. because the school cannot handle him.

40. On February 4, 2008*,* Tyler was put into handcuffs by a police officer at the school because the teachers in the classroom did not know how to calm him.

41. One of Tyler's tantrums, on March 5, 2008, led to a decision on that date by the school authorities to immediately exclude Tyler from attending school.

42. On March 13, 2008, after Tyler had been out of school completely for six days, the school decided that Tyler would not be allowed to come back unless he was accompanied by his community support services worker or by his mother. Tyler's mother is the sole breadwinner for her family, is employed full-time, and cannot attend school every day with her son.

43. There is an ongoing dispute between the McCartneys and the school about Tyler's right to attend school. Pending a hearing at the school, Tyler is now again permitted to attend school but continues to be removed from the school almost every day because of his behavior.

44. On December 21, 2007, Tyler's case manager submitted to VO a new request for community support services, along with a supporting letter from Tyler's doctors. To this date there has been no decision on that request by VO.

45. A second request for these services for Tyler was sent to VO by the case manager on February 28, 2008. In response, the case manager, Marcella Clement, received a telephone call from VO on or about April 1, 2008, informing her that the December 21, 2007 request for services was still pending at VO for a decision, but that the February 28, 2008 request would be denied. Ms. Clement was told VO would instead approve five hours per week of the service in order to make appointments for Tyler for evaluations (even though Tyler has already had the recommended evaluations), but that no hours of an aide in the school would be approved. To date, no written notice has been issued by VO to permit an appeal of this decision.

B. Class allegations

46. Defendant, through its agent VO, has engaged in numerous practices that violate the Medicaid Act and the Due Process Clause of the U.S. Constitution. On information and belief, Defendant, through its agent VO has a practice of instructing Medicaid-participating providers of behavioral health services to apply arbitrary and improper limits on how many hours of a service may be requested. For example, where the recipient is appealing the denial or termination of a service, VO has informed providers in some cases that the provider may not request more in services than were previously approved by VO. Thus, Medicaid services are being denied,

reduced, or terminated verbally by Defendant's agent without providing written notice or hearing rights to the recipient.

47. On information and belief, DHHS, through its staff and agent VO, has engaged in a practice of discouraging requests for services and discouraging appeals of its decisions to reduce or terminate services, for example by improperly threatening providers with unfair audits and repayment requests, even for services required to be provided pending the outcome of an appeal.

48. On information and belief, DHHS, through its agent VO, has engaged in a practice of telephoning behavioral health care providers to insist or strongly encourage that the provider and/or recipient withdraw or modify an initial or reauthorization request for prior approval of services. Defendant thus has engaged in a practice of verbally denying, reducing, and terminating services without issuing a written notice and without permitting any appeal of the decision.

49. Defendant, through its agent VO, informal hearing officers, legal representatives, and final agency decision-makers, has engaged in a practice of failing to seek information from or give appropriate weight to the opinion of the treating clinician in determining medical necessity for the service, thus failing to provide a fair and unbiased decision-making process.

50. Defendant, through its agent VO, has engaged in a practice of failing to ask for, and even instructing providers not to send, the information needed to determine medical necessity for the requested service prior to making its decision, and then denying those requests for failure to provide that information.

51. Defendant, through its agent VO, has engaged in a practice of reducing or terminating a service despite the absence of any material change in circumstances or medical improvement since the same level of service was previously approved, without giving any explanation for the change in its decision.

52. Defendant, through its agent VO and through its informal hearing officers, has engaged in a practice of failing to consider evidence of necessity for the requested service unless the evidence was provided to VO by using a particular form.

53. Defendant, through its agent VO, has engaged in a practice of failing to make medical necessity decisions based on the individual facts of the case and controlling law but rather based upon unpromulgated guidelines about how many hours are permitted for the requested service or what requirements must be met to qualify for the service.

54. Defendant, through its agent VO, has engaged in a practice of failure to issue timely and adequate written notices when requests for services are denied, reduced or terminated.

55. On information and belief, Defendant through its agent VO has engaged in a practice of waiting up to thirty days after verbally denying services in a telephone call to the provider before issuing written notice of the denial, reduction, or termination of services to the recipient.

56. Defendant, through its agent VO, has engaged in a practice of mailing notices to the recipient after the effective date of the termination or reduction of services, thus denying them their right to continued benefits.

57. Defendant, through its agent VO, has engaged in a practice of mailing notices days or weeks after the date appearing on the notice, but computing appeal deadlines based on the date appearing on the notice. In some cases, defendant has dismissed appeals based on an appeal deadline that expired before the date the notice was actually mailed to the recipient.

58. Defendant, through its agent VO, has engaged in a practice of failing to mail written notice to the legal guardian where VO knows that an adult recipient has a legal guardian and VO knows the address of that guardian.

59. Defendant, through its agent VO, has engaged in a practice of addressing and mailing notices to minor recipients instead of to the parent or legal guardian of the minor recipient.

60. Defendant, through its agent VO, has engaged in a practice of failing to mail written notice to the most recent known address of the recipient listed on the request for prior approval of services.

61. Defendant, through its agent VO, has engaged in a practice of issuing written notices that fail to identify what services are being denied, reduced, or terminated, and the extent to which coverage of a service has been approved.

62. Defendant, through its agent VO, has engaged in a practice of failing to cite the relevant legal authority, policy or regulations in its denial notices.

63. Defendant, through its agent VO, has engaged in a practice of failing to provide an adequate explanation of the reasons for its decision in the written notice to the recipient.

64. Defendant, through its agent VO, has engaged in a practice of using VO's letterhead on its notices but failing to identify on its notices that VO is the agent of DHHS or who the proper respondent should be if the recipient wishes to file a formal appeal.

65. Defendant has engaged in a practice of improperly dismissing appeals as untimely and terminating or reducing services despite its failure to provide proper written notice to the recipient.

66. Defendant, through its agent VO, has engaged in a practice of refusing or failing to permit access by the recipient to all records and internal policies used in making the decision prior to an informal or formal hearing.

67. Defendant, through its informal hearing officers, has engaged in a practice of failing to assist unrepresented, indigent, poorly educated, and mentally disabled recipients in fully

developing the factual record concerning their appeal, and has in some cases misled recipients and given them misinformation during the appeal process.

68. Defendant has engaged in a practice of failing to decide appeals in a reasonably timely manner as required by the Medicaid Act and due process.

69. Defendant, through its informal hearing officers, legal representatives, and final agency decision-makers, has engaged in a practice of failing to permit a *de novo* fair hearing at either the informal or formal hearing, by refusing to consider on appeal facts which occur and evidence which is provided after the date of the initial VO decision.

70. Defendant through its informal hearing officers, legal representatives, and final agency decision-makers, has engaged in a practice of failing to permit a *de novo* fair hearing by refusing to consider any period of time at the hearing other than the period of time covered by the initial request for services. Because of Defendant's substantial hearing backlog, recipients are likely to wait several months for a formal hearing that meets *Goldberg* requirements. Nonetheless, Defendant's legal position is that the formal hearing can only consider whether the recipient was entitled to the service for a *past* period of time, i.e. the period for which the service was initially requested, which is limited by Defendant to no more than three months for many behavioral health services. Defendant thus by denying recipients a *de novo* hearing renders an appeal almost inherently meaningless. Defendant has persisted in this position despite informing providers not to submit new requests for the same service while an appeal is pending.

71. Defendant has engaged in a practice of improperly dismissing appeals as moot because of Defendant's failure to provide a *de novo* fair hearing and because of Defendant's failure to decide appeals within a reasonable time.

72. Defendant’s practice of failing to permit a *de novo* hearing is particularly harmful to recipients whose initial request for Medicaid services is denied by VO. Because Medicaid recipients are indigent, they generally cannot afford to advance the cost of the service pending appeal. Because it is a denial of an initial request for coverage of services, the coverage is not provided by Defendant pending the outcome of the appeal. Even if the recipient wins the appeal, Defendant’s failure to allow a *de novo* hearing means the decision can only entitle the recipient to coverage of services for a period that has already ended. Such a recipient could win a dozen appeals on the same service and never actually be able to obtain the service.

73. Defendant has engaged in a practice of improperly denying the right to continued services until ten days after VO mails notice to the recipient proposing to reduce or terminate the service.

74. Defendant has engaged in a practice of terminating coverage of services before the end of a prior approved period, without any written notice, simply because the recipient changes from one Medicaid-participating provider to another Medicaid provider of the same service, thus violating due process.

75. Defendant has engaged in a practice of improperly denying the right to continued services pending appeal if the recipient switches providers during a period for which a service has been authorized, the new provider requests continuation of the same service before the end of the authorization period, that request is denied by VO, and that denial is appealed.

76. Defendant has engaged in a practice of denying continued services pending appeal where the recipient changes providers after VO sends notice reducing or terminating the service and the recipient appeals that notice.

77. Defendant has engaged in a practice through its informal hearing officers of failing to notify the recipient in the informal hearing decision of the right to continued services pending the formal appeal when the informal hearing decision upholds the reduction or termination of services.

VII. CAUSES OF ACTION

First Cause of Action: Due Process

78. Plaintiff incorporates and re-alleges paragraphs 1 through 77, as if fully set forth herein.

79. Defendant's practices and procedures alleged herein violate the Due Process clause of the Fourteenth Amendment to the U.S. Constitution by, among other things, denying the Plaintiff and Plaintiff class a fair and non-arbitrary decision-making process, denying meaningful notice, denying a meaningful opportunity for a fair hearing, and denying advance notice and the opportunity for a fair hearing prior to suspension or termination of services previously authorized by the state.

80. These violations, which have been repeated and knowing, entitle the Plaintiff and Plaintiff class to relief under 42 U.S.C. § 1983 and under the Fourteenth Amendment to the United States Constitution.

Second Cause of Action: Violations of the Medicaid Act

81. Plaintiff incorporates and re-alleges paragraphs 1 through 80, as if fully set forth herein.

82. Defendant's practices and procedures alleged herein violate the Medicaid Act, by failing to provide beneficiaries with the proper rights when their claims for assistance are denied or not acted on with reasonable promptness. 42 U.S.C. § 1396a(a)(3).

83. These violations, which have been repeated and knowing, entitle the Plaintiff and Plaintiff class to relief under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Certify this action as a class action pursuant to Fed. R. Civ. P. 23;

2. Issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 that Defendant's failure to provide behavioral health and developmental disability services under Medicaid due to the practices and procedures alleged herein violates Plaintiff's and the Plaintiff class's rights under the Due Process Clause of the Fourteenth Amendment and the Social Security Act, 42 U.S.C. § 1396a(a)(3);

3. Grant a preliminary and permanent injunction requiring the Defendant, his agents, successors, and employees to:

(a) continue to provide behavioral health and developmental disability services to all persons who have been receiving them, until Defendant corrects the practices and procedures alleged herein;

(b) prospectively reinstate behavioral health and developmental disability services previously provided to the named Plaintiff and members of the Plaintiff class that were improperly reduced or terminated under the illegal practices and procedures alleged herein;

(c) comply with the Due Process Clause of the U.S. Constitution, the Medicaid Act, and the implementing regulations outlined above;

4. Retain jurisdiction over this action to insure Defendant's compliance with the mandates of the Court's Orders;

5. Award to the Plaintiff costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988; and

6. Order such other relief as this Court deems just and equitable.

Dated: April 7, 2008

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF AND PLAINTIFF CLASS

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