

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 14 2019

JAMES W. McCORMACK, CLERK
By: *JW* DEP CLERK

SOUTH ARKANSAS DEVELOPMENTAL
CENTER FOR CHILDREN AND
FAMILIES, INC., C.B. KING MEMORIAL
SCHOOL, INC., PATTILLO CENTER-
SCHOOL, INC., CHARLES AND TERRAN
HENDERSON, AS PARENTS AND
NATURAL GUARDIANS OF OWEN
HENDERSON, A MINOR; WILBERT AND
WENDY EASTERLING, AS PARENTS
AND NATURAL GUARDIANS OF
JOSHUA EASTERLING, A MINOR;
MARIA HEGWOOD, AS PARENT AND
NATURAL GUARDIAN OF JUSTIN ROSS,
A MINOR; MANDY WATSON, AS
PARENT AND NATURAL GUARDIAN OF
ALEX GREEN, A MINOR; DEANDRE
AND ELISHA SHEPPARD, AS PARENTS
AND NATURAL GUARDIANS OF
BRYSON SHEPPARD, A MINOR, AND
RIGO AND PERLA VALENCIA, PARENTS
AND NATURAL GUARDIANS OF RYAN
VALENCIA, A MINOR

This case assigned to District Judge *Baker*
and to Magistrate Judge *Kearney*

PLAINTIFFS

VS.

CASE NO. 4:19-cv-417-KGB

CINDY GILLESPIE, IN HER OFFICIAL
CAPACITY AS DIRECTOR OF THE
ARKANSAS DEPARTMENT OF HUMAN
SERVICES, AND MELISSA STONE, IN
HER OFFICIAL CAPACITY AS DIRECTOR
OF THE DIVISION OF DEVELOPMENTAL
DISABILITIES SERVICES OF THE
ARKANSAS DEPARTMENT OF HUMAN
SERVICES

DEFENDANTS

COMPLAINT

The plaintiffs, South Arkansas Developmental Center for Children and Families, Inc.,
C.B. King Memorial School, Inc., Pattillo Center-School, Inc., Charles and Terran Henderson, as
parents and natural guardians of Owen Henderson, a minor, Wilbert and Wendy Easterling, as

parents and natural guardians of Joshua Easterling, a minor, Maria Hegwood, as parent and natural guardian of Justin Ross, a minor; Mandy Watson, as parent and natural guardian of Alex Green, a minor, Deandre and Elisha Sheppard, as parents and natural guardians of Bryson Sheppard, a minor, and Rigo and Perla Valencia, as parents and natural guardians of Ryan Valencia, a minor, respectfully come before this Court, by and through their attorney, Martin W. Bowen, and for their Complaint against the defendants, Cindy Gillespie, in her official capacity as Director of the Arkansas Department of Human Services, and Melissa Stone, in her official capacity as Director of the Division of Developmental Disabilities Services of the Arkansas Department of Human Services, state and allege as follows:

INTRODUCTION

1. Thousands of Medicaid-eligible children in Arkansas suffer developmental disabilities and delays. These children are eligible for services designed to treat their disabilities and delays under the early and periodic screening, diagnosis, and treatment (“EPSDT”) provisions of the Medicaid Act. *See* 42 U.S.C. §§ 1396a(a)(10 (A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(a)(13)(C)), and 1396d(r).

2. EPSDT services include any medical or remedial services . . . recommended by a physician or other licensed practitioner . . . for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.” 42 U.S.C. 1396d(a)(13)(C).

3. If a physician determines that a service is necessary for a child, it must be covered to the extent needed. *Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services*, 293 F.3d 472 (8th Cir. 2002).

4. The peer-reviewed science underlying the treatment of developmental disabilities in children from birth to age six demonstrates that such disabilities are effectively treated with early intervention day treatment services, such as those available to Medicaid-eligible children in Arkansas under the Early Intervention Day Treatment (“EIDT”) program.

5. The EIDT program is the only Medicaid program in Arkansas that provides early intervention day treatment services for the treatment of developmental disabilities and delays in children from birth to age six. These services -- called “day habilitation” services under the EIDT program -- result in the maximum reduction of developmental disabilities and delays in children from birth to age six and restoration to their best-possible functional level.

6. When prescribed by physicians for the treatment of developmental disabilities or delays in children from birth to age six, day habilitation services are mandated by the EPSDT provisions of the Medicaid Act.

7. The Arkansas Department of Human Services (“ADHS”) has enacted a rule that denies eligibility for day habilitation services prescribed for children unless they are also prescribed occupational therapy, physical therapy, speech therapy, or nursing services by their primary care physicians (the “Rule”). The Rule is commonly referred to as the “one therapy” rule, meaning that a child must be prescribed at least one of these additional therapies in order to access day habilitation services prescribed for treatment of his or her developmental disabilities.

8. Many children who qualify for day habilitation services have not been prescribed occupational therapy, physical therapy, speech therapy, or nursing services. The Rule deprives these children of the day habilitation they need to obtain the maximum reduction of their developmental disabilities and restoration to their best-possible functional level.

9. Children may not be denied mandatory services simply because they fail to qualify for other services, which, for the reasons set forth below, is why the Rule not only violates the EPSDT provisions of the Medicaid Act but the Medicaid comparability statute as well. *See* 42 § U.S.C. 1396a(a)(10)(B).

10. In addition, ADHS has publicly stated that children who only qualify for day habilitation services can get services from other sources, including local school districts, Arkansas Better Chance (“ABC”), and Head Start programs. However, those programs are not Medicaid programs and, even if they were, do not provide early intervention day treatment services.

11. For these reasons, the defendants and all other officers and employees of ADHS should be ordered to immediately stop making such statements and immediately start notifying families of all Medicaid-eligible children in Arkansas that day habilitation services are available under the EIDT program for the treatment of developmental disabilities and delays in children from birth to age six if prescribed by a physician, whether or not the child has been prescribed occupational therapy, physical therapy, speech therapy, or nursing services.

STATEMENT OF JURISDICTION AND VENUE

12. Plaintiff South Arkansas Developmental Center for Children and Families, Inc. (“SADC”) is an Arkansas non-profit corporation. Its primary place of business is located in El Dorado, Union County, Arkansas. SADC is a duly-licensed clinic authorized by ADHS to provide services to children with developmental disabilities under the EIDT program. SADC believes that approximately 140 children with developmental disabilities have been denied eligibility for day habilitation services because of the Rule and that many more children will be

denied or lose eligibility for such services in the future if the Rule is not declared unlawful and enjoined.

13. Plaintiff C.B. King Memorial School, Inc. (“CBK”) is an Arkansas non-profit corporation. Its primary place of business is located in McGehee, Desha County, Arkansas. CBK is a duly-licensed clinic authorized by ADHS to provide services to children with developmental disabilities under the EIDT program. CBK believes that approximately 110 children with developmental disabilities have been denied eligibility for day habilitation services because of the Rule and that many more children will be denied or lose eligibility for such services in the future if the Rule is not declared unlawful and enjoined.

14. Plaintiff Pattillo Center-School, Inc. (“PCS”) is an Arkansas non-profit corporation. Its primary place of business is located in Dewitt, Arkansas County, Arkansas. PCS is a duly-licensed clinic authorized by ADHS to provide services to children with developmental disabilities under the EIDT program. PCS believes that approximately 26 children with developmental disabilities have been denied eligibility for day habilitation services because of the Rule and that many more children will be denied or lose eligibility for such services in the future if the Rule is not declared unlawful and enjoined.

15. Plaintiffs Charles and Terran Henderson are the parents and natural guardians of Owen Henderson, a minor. Owen is currently three years old and has a diagnosis of cerebral palsy, which affects his body movement, muscle control, muscle coordination, muscle tone, reflex, posture, and balance. He has a diagnosed developmental disability and entered the EIDT program prior to July 1, 2018, with a prescription for day habilitation services and occupational therapy. Owen was reevaluated for services on May 6, 2019, and qualified for day habilitation services at that time. However, he tested out of occupational therapy at that time and his primary

care physician has not prescribed evaluation for physical therapy or speech therapy. Because of the Rule, Owen will lose eligibility for the day habilitation services he needs starting July 1, 2019.

16. Plaintiffs Wilbert and Wendy Easterling are the parents and natural guardians of Joshua Easterling, a minor. Joshua is currently six months old. He qualifies for day habilitation services under the EIDT program and his primary care physician has written a prescription for those services. Despite his developmental disability, Joshua does not need nursing services and does not qualify for occupational therapy, physical therapy, or speech therapy at this time. Because of the Rule, Joshua is already being deprived of the day habilitation services he needs.

17. Plaintiff Maria Hegwood is the mother and natural guardian of Justin Ross, a minor. Justin is currently two years old and qualifies for day habilitation services under the EIDT program. Despite his developmental disability and prescription for day habilitation services, Justin does not need nursing services and does not qualify for occupational therapy, physical therapy, or speech therapy at this time. Because of the Rule, Justin is already being deprived of the day habilitation services he needs.

18. Plaintiff Mandy Watson is the mother and natural guardian of Alex Green, a minor. Alex is currently two years old and has a diagnosis of asthma. He qualifies for day habilitation services under the EIDT program and his primary care physician has written a prescription for those services. Despite his developmental disability, Alex does not need nursing services and does not qualify for occupational therapy, physical therapy, or speech therapy at this time. Because of the Rule, Alex is already being deprived of the day habilitation services he needs.

19. Plaintiffs Deandre and Elisha Sheppard are the parents and natural guardians of Bryson Sheppard, a minor. Bryson is currently three years old. He was born at 31.5 weeks gestation with a birth weight of 3 pounds, 8 ounces. Bryson qualifies for day habilitation services under the EIDT program and his primary care physician has written a prescription for those services. Despite his developmental disability, Bryson does not need nursing services and does not qualify for occupational therapy, physical therapy, or speech therapy at this time. Because of the Rule, Bryson is already being deprived of the day habilitation services he needs.

20. Plaintiffs Rigo and Perla Valencia are the parents and natural guardians of Ryan Valencia, a minor. Ryan is currently three old. He qualifies for day habilitation services under the EIDT program and his primary care physician has written a prescription for those services. Despite his developmental disability, Ryan does not need nursing services and does not qualify for occupational therapy, physical therapy, or speech therapy at this time. Because of the Rule, Ryan is already being deprived of the day habilitation services he needs.

21. Based on information and reasonable belief, defendant Cindy Gillespie is a citizen of Pulaski County, Arkansas. Ms. Gillespie is the current Director of ADHS and is being sued for declaratory and injunctive relief in her official capacity.

22. Based on information and reasonable belief, defendant Melissa Stone is a citizen of Pulaski County, Arkansas. Ms. Stone is the current Director of the Division of Developmental Disabilities Services (“DDS”) at ADHS and is being sued for declaratory and injunctive relief in her official capacity.

23. The plaintiffs seek declaratory and injunctive relief against the defendants pursuant to 42 U.S.C. § 1983 and allege, as described in more detail below, that the Rule will

violate their federal statutory rights under the Medicaid Act and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (“IDEA”), if not declared unlawful and enjoined.

24. This Court has federal-question jurisdiction over the plaintiffs’ claims pursuant to 28 U.S.C. § 1331, as well as civil rights jurisdiction over the plaintiffs’ claims pursuant to 28 U.S.C. § 1343, personal jurisdiction over the defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure and the Arkansas long-arm statute, Ark. Code Ann. § 16-4-101, and venue pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

25. Title XIX of the Social Security Act, 42 U.S.C. 1396, *et seq.*, commonly referred to as the Medicaid Act, is a joint federal and state program designed to provide “medical assistance” to qualified beneficiaries.

26. Under the Medicaid Act, if a state agrees to establish a Medicaid plan that satisfies the requirements of Title XIX, the federal government will pay a specified percentage of the total amount expended as “medical assistance” under the plan.

27. Participation in the Medicaid program is voluntary, but if a state decides to participate it must do so in accordance with federal law.

28. The Centers for Medicare & Medicaid Services (“CMS”) is the federal agency charged with administration of the Medicaid program at the federal level.

29. Arkansas participates in the Medicaid program and ADHS is the state agency charged with its administration at the state level. Defendant Cindy Gillespie controls and directs the actions of ADHS.

30. The Medicaid Act defines “medical assistance” as “payment of part or all of the cost of [enumerated] care and services or the care and services themselves, or both . . . for

individuals who are . . . under the age of 21, or, the option of the State, under the age of 20, 19, or 18 as the State may choose” *See* 42 U.S.C. § 1396d(a).

31. Enumerated care and services includes, among other things, “other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.” *See* 42 U.S.C. § 1396d(a)(13)(C).

32. The EIDT program is the only program under the Arkansas Medicaid Plan that provides services for the treatment of developmental disabilities in children from birth to age six. These services are called “day habilitation” services under the EIDT program and are identical to the early intervention day treatment services provided under the former Child Health Management Services (“CHMS”) program at issue in *Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services*, 293 F.3d 472 (8th Cir. 2002).

33. When prescribed by a physician for the treatment of developmental disabilities in children from birth to age six, day habilitation services provided under the EIDT program result in the maximum reduction of physical and mental disability in such children and restore them to their best-possible functional level.

34. ADHS implemented the EIDT program in July of 2018 as the successor program to the former CHMS program and the former Developmental Day Treatment Clinic Services (“DDTCS”) program for children. *See* Ark. Code Ann. § 20-48-108.

35. The EIDT program is administered by DDS within the overall structure of ADHS. Defendant Melissa Stone controls and directs the actions of DDS including its administration of the EIDT program.

36. ADHS published a provider manual when it created the EIDT program. According to § 101.000 of the EIDT Provider Manual, “[p]rovider manuals contain the policies and procedures of the Arkansas Medicaid Program.”

COUNT ONE: VIOLATION OF THE EPSDT MANDATE OF THE MEDICAID ACT

37. Plaintiffs are eligible for services designed to treat their disabilities and delays under the EPSDT provisions of the Medicaid Act. *See* 42 U.S.C. §§ 1396a(a)(10 (A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(a)(13)(C)), and 1396d(r).

38. EPSDT requires coverage of “necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions” 42 U.S.C. § 1396d(r)(5). The state must ensure the provision of all such services to children as identified in the EPSDT process. 42 U.S.C. 1396a(a)(43)(A).

39. Medicaid-eligible children are entitled to all mandatory and optional services the state can cover under Medicaid, whether or not such services are covered for adults. 42 U.S.C. § 1396d(a) (listing services). This includes any medical or remedial services . . . recommended by a physician or other licensed practitioner . . . for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.” 42 U.S.C. 1396d(a)(13)(C).

40. The purpose behind EPSDT is to provide preventive care and to “[a]ssure that health problems found are diagnosed and treated early, ***before they become more complex and their treatment more costly.***” Centers for Medicare and Medicaid (CMS) State Medicaid

Manual § 5010.B (emphasis added). “EPSDT was ... added to expand coverage for children beyond adult limits and to ensure availability of treatments for conditions affecting growth and development.” EPSDT: An Overview, Commonwealth Fund, at page 1 (emphasis added), <http://www.commonwealthfund.org/publications/data-briefs/2005/sep/epsdt--an-overview>.

41. The Rule establishing eligibility for EIDT services is set forth in § 212.000 of the EIDT Provider Manual and states, in pertinent part, that “[r]eimbursement for covered services will be approved only when the beneficiary’s physician has determined that EIDT services are medically necessary. The physician must identify the individual’s medical needs that EIDT services can address. To initiate EIDT services, the physician must issue a written prescription. The prescription for EIDT services is valid for one (1) year, unless a shorter period is specified. The prescription must be renewed at least once a year for EIDT services to continue.” (internal formatting removed).

42. Section 212.100 of the EIDT Provider Manual establishes eligibility criteria for EIDT services. The first paragraph of the Rule deals specifically with eligibility criteria for day habilitation services and states:

To receive EIDT day habilitation services, the beneficiary must have a documented developmental disability or delay, as shown on the results of an annual comprehensive developmental evaluation.

Central to the claim set forth herein, subsection B of the Rule states that:

In addition to having a documented developmental disability or delay, the beneficiary must have a documented need for at least one of the following, as shown on a full evaluation for that service:

1. Physical therapy,
2. Occupational therapy,
3. Speech therapy, or

4. Nursing services.

Physical, Occupational and Speech Therapy evaluations must meet qualifying scores as written in the Medicaid Occupational, Physical and Speech Therapy Provider manual. (emphasis added).

43. The EIDT program consists of two former programs that were combined on August 1, 2018; Child Health Management Services (“CHMS”) and the Developmental Day Treatment Clinic Services (“DDTCS”).

44. First-time applicants to EIDT have been subjected to the Rule since August 1, 2018. However, children already in the program but who had not been prescribed occupational therapy, physical therapy, speech therapy, or nursing services were “grandfathered” in for one year. This delay reduced the harm temporarily and made it easier for DHS to pass the Rule through legislative review but is now coming to pass and threatening treatment for hundreds of children -- indeed, thousands of children as time goes on.

45. The Rule violates EPSDT in that it denies a service prescribed by a physician -- day habilitation -- to children who require the service to correct or ameliorate defects and physical and mental illnesses and conditions. These services must be provided to the children for whom they have been prescribed so that they may achieve the maximum reduction of their developmental disabilities and be restored to their best-possible functional level.

46. If the Rule is not enjoined prior to July 1, 2019, hundreds of children with developmental disabilities will lose access to day habilitation services under the EIDT program simply because they do not have a physical disability that results in the need for occupational therapy, physical therapy, speech therapy, or nursing services. This harm will grow exponentially in the coming years as all children without the need for therapy or nursing will be barred from entering the program.

47. These children will suffer direct and immediate harm if they lose access to day habilitation services because of the Rule. They will not receive the maximum reduction of their developmental disabilities and will not be restored to their best-possible functional level.

48. The Rule also places at risk every other child currently enrolled in the EIDT program -- and every child who may be enrolled in the EIDT program in the future -- who gets caught in a "revolving door" of treatment. Their condition may improve with day habilitation services and at least one form of therapy until he or she no longer qualifies for anything other than day habilitation services and is kicked out of the program -- even though the need for day habilitation still exists. This happened when the same rule was applied to the CHMS program and it will surely happen here. Children will get better with services then test out of their need for anything other than day habilitations services. Their abilities will deteriorate without services until they later test back in.

49. Such interruptions in treatment are harmful to children with developmental disabilities, prevent them from achieving the maximum reduction of their disabilities, and keep them from being restored to their best-possible functional level.

50. For these reasons, the plaintiffs seek a declaratory ruling from the Court stating that EIDT day habilitation services are mandated by EPSDT and that the Rule, on its face and as applied, violates this section of the Medicaid Act.

51. In addition, the plaintiffs seek emergency, preliminary, and permanent injunctive relief ordering the defendants and all other officers and employees of ADHS to not implement or otherwise apply the Rule against any child or provider.

**COUNT TWO: VIOLATION OF THE MEDICAID
COMPARABILITY REQUIREMENT**

52. Under the Medicaid Act, a state cannot make a service available to some individuals in the program that is not made available to other individuals. 42 § U.S.C. 1396a(a)(10)(B). This law is known as the “comparability” requirement.

53. Specifically, the comparability requirement prohibits states from offering some individuals a service that is less in “amount, duration, or scope” than is offered to other individuals.

54. CMS has interpreted the statute through regulation at 42 C.F.R. 440.230, which states:

The Medicaid agency may not arbitrarily deny or reduce the amount, duration or scope of a required service under §§ 440.210 and 440.220 to an otherwise eligible beneficiary solely because of the *diagnosis, type of illness, or condition*. (emphasis added).

55. Under the Rule, Arkansas will pay for day habilitation only if a child’s disability results in a need for occupational therapy, physical therapy, speech therapy, or nursing services. Children whose needs are primarily cognitive or social/emotional and thus not requiring occupational therapy, physical therapy, speech therapy, or nursing services will be denied EIDT services.

56. In cases dating back four decades, courts across this country have rejected attempts by states to restrict Medicaid services by deciding one group is more deserving than another.

57. The defendants cannot get around the comparability requirement by simply redefining eligibility for day habilitation to require occupational therapy, physical therapy, speech therapy, or nursing services.

58. The Rule also contradicts ADHS's own policy of defining eligibility for services, which looks to a child's scores on nationally-recognized standardized tests and not to whether they need therapy or nursing services. *See* DDS Policy 1035.

59. The Rule is an arbitrary attempt to save money by restricting eligibility for treatment based on the type of disability or delay a child has.

60. For these reasons, the plaintiffs seek a declaratory ruling from the Court stating that EIDT day habilitation services are mandated under the Medicaid comparability statute, 42 § U.S.C. 1396a(a)(10)(B), and that the Rule, on its face and as applied, violates this section of the Medicaid Act.

61. In addition, the plaintiffs seek emergency, preliminary, and permanent injunctive relief ordering the defendants and all other officers and employees of ADHS to not implement or otherwise apply the Rule against any child or provider.

**COUNT THREE: VIOLATION OF THE MEDICAID ACT, 42 U.S.C. § 1396a(a)(43),
AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C. §
1411(e)(3)(H) AND 34 C.F.R. § 300.154(b)(1)(ii)**

62. ADHS has a duty under 42 U.S.C. § 1396a(a)(43) to inform Medicaid recipients about the EPSDT services that are available to them and must arrange for the corrective treatments prescribed by physicians. *See Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services*, 293 F.3d 472 (8th Cir. 2002).

63. This duty requires ADHS to inform "all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) of this title and the need for age-appropriate immunizations against vaccine-preventable diseases, . . . providing or

arranging for the provision of such screening services in all cases where they are requested, [and] . . . arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services” 42 U.S.C. § 1396a(a)(43).

64. ADHS has publicly stated that children who only require day habilitation services can get them from other sources, including local school districts, Arkansas Better Chance (“ABC”), and Head Start programs. 44. However, these are non-Medicaid programs and ADHS must provide them under the Arkansas Medicaid Plan.

65. In addition, these programs do not provide day habilitation services in a manner that result in the maximum reduction of developmental disabilities in children from birth to age six and restore them to their best-possible functional level.

66. The Medicaid Act requires ADHS to treat these children and prohibits it from sending them off to non-Medicaid programs.

67. In telling families of children with developmental disabilities to get their services from school districts, ADHS is forcing school districts to pay for services in violation of the IDEA, which states, among other things, that disbursements for services provided to disabled children “shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State Medicaid program under Title XIX of the Social Security Act.” 20 U.S.C. § 1411(e)(3)(H).

68. Moreover, ADHS is violating regulations promulgated by the Secretary of Education under the IDEA, which prohibit ADHS from disqualifying an eligible service for Medicaid reimbursement simply because it is provided in a school context. 34 C.F.R. § 300.154(b)(1)(ii).

69. School districts have an obligation to provide a Free and Public Education (“FAPE”) under the IDEA -- including treatment services for children with disabilities -- but that obligation “may not be construed to permit a State to reduce medical and other assistance available, or to alter eligibility, under [the Medicaid Act] with respect to the provision of FAPE for children with disabilities in the State.” 20 C.F.R. § 300.186.

70. For these reasons, the defendants and all other officers and employees of ADHS should be ordered to immediately stop telling families of children with developmental disabilities to get their day habilitation services from school districts or other non-Medicaid programs and immediately start notifying families of all Medicaid-eligible children in Arkansas that day habilitation services are available under the EIDT program for the treatment of developmental disabilities, whether they qualify for some other form of therapy or not.

WHEREFORE, the plaintiffs, South Arkansas Developmental Center for Children and Families, Inc., C.B. King Memorial School, Inc., Pattillo Center-School, Inc., Charles and Terran Henderson, as parents and natural guardians of Owen Henderson, a minor, Wilbert and Wendy Easterling, as parents and natural guardians of Joshua Easterling, a minor, Maria Hegwood, as parent and natural guardian of Justin Ross, a minor; Mandy Watson, as parent and natural guardian of Alex Green, a minor, Deandre and Elisha Sheppard, as parents and natural guardians of Bryson Sheppard, a minor, and Rigo and Perla Valencia, as parents and natural guardians of Ryan Valencia, a minor, pray for the following relief:

A. A declaratory ruling from the Court stating that EIDT day habilitation services are mandated by 42 U.S.C. § 1396d(a)(13)(C) and that the Rule, on its face and as applied to children with developmental disabilities and delays, violates this section of the Medicaid Act;

B. A declaratory ruling from the Court stating that the Rule, on its face and as applied to children with developmental disabilities and delays, violates the comparability requirement of the Medicaid Act, 42 § U.S.C. 1396a(a)(10)(B);

C. Emergency, preliminary, and permanent injunctive relief ordering the defendants and all other officers and employees of ADHS to not implement or otherwise apply the Rule against any child or provider;

D. A declaratory ruling from the Court stating that 42 U.S.C. § 1396a(a)(43), 20 U.S.C. § 1411(e)(3)(H), and 34 C.F.R. § 300.154(b)(1)(ii) make it unlawful for the defendants and other officers and employees of ADHS to tell families that their children will no longer be eligible for day habilitation services under the EIDT program starting July 1, 2019, if they fail to qualify for occupational therapy, physical therapy, speech therapy, or nursing services in addition to day habilitations services and that their children may get services from non-Medicaid programs, including local school districts and Head Start programs;

E. Emergency, preliminary, and permanent injunctive relief directing the defendants to immediately stop telling families that their children will no longer be eligible for day habilitation services under the EIDT program starting July 1, 2019, and must get services from non-Medicaid programs, including local school districts and Head Start programs, and immediately start notifying families of all Medicaid-eligible children in Arkansas that day habilitation services are available under the EIDT program for the treatment of their developmental disabilities, whether they qualify for some other form of therapy or not;

F. Their costs and attorney's fees; and

G. All other relief to which they may be entitled.

Respectfully submitted,

SOUTH ARKANSAS DEVELOPMENTAL
CENTER FOR CHILDREN AND FAMILIES,
INC., C.B. KING MEMORIAL SCHOOL,
INC., PATTILLO CENTER-SCHOOL, INC.,
CHARLES AND TERRAN HENDERSON, AS
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AND NATURAL GUARDIAN OF ALEX
GREEN, A MINOR; DEANDRE AND
ELISHA SHEPPARD, AS PARENTS AND
NATURAL GUARDIANS OF BRYSON
SHEPPARD, A MINOR, AND RIGO AND
PERLA VALENCIA, PARENTS AND
NATURAL GUARDIANS OF RYAN
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