

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CARMEN MERCED,

*Plaintiff,*

-against-

The ALBANY COUNTY DEPARTMENT OF SOCIAL SERVICES; DAVID KIRCHER, individually and in his official capacity as Deputy Commissioner of the ALBANY COUNTY DEPARTMENT OF SOCIAL SERVICES; MARY BETH RUTOWSKI, individually and in her official capacity as Vice President/Director of Patient Services at the THE EDDY VISITING NURSE ASSOCIATION; the EDDY VISITING NURSE ASSOCIATION; RICHARD F. DAINES, in his official capacity as Commissioner of the NEW YORK STATE DEPARTMENT OF HEALTH; THE NEW YORK STATE DEPARTMENT OF HEALTH; DAVID A. HANSELL, in his official capacity as Commissioner of the NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE; and the NEW YORK STATE OFFICE OF TEMPORARY and DISABILITY ASSISTANCE,

*Defendants.*

**STIPULATION OF  
SETTLEMENT AND  
ORDER OF  
DISCONTINUANCE  
PURSUANT TO RULE  
41(A)**

07-CV-1348

GLS/DRH

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for Plaintiff and Defendants Richard F. Daines in his official capacity as Commissioner of the New York State Department of Health, the New York State Department of Health ("NYSDOH"), David A. Hansell in his official capacity as Commissioner of the New York State Office of Temporary and Disability Assistance, and the New York State Office of Temporary and Disability Assistance ("OTDA") (collectively "Defendants"), parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been

appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions:

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases Defendants, including their agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future except as specifically provided in paragraph 5 of this Stipulation of Settlement and Order.

5. Following the execution of this stipulation, and its being ordered by the Court and in resolution of the Plaintiff's claims regarding Plaintiff's receipt and the reduction, change, and discontinuance of her Medicaid AIDS Long Term Home Health Care (ALTHHCP) Services, Defendant NYSDOH will issue the directive, or a substantially similar directive that is appended to this stipulation as Exhibit A. Defendant NYSDOH will issue such document to all Social Services Districts and AIDS Home Care Program providers. Defendant NYSDOH will also post such document on the NYSDOH website, or make its best efforts to do so. Defendant OTDA will distribute transmittal No. 92-OAH-FH-4, appended as Exhibit B, to its Hearing officers and relevant staff. Such actions will be completed within one hundred and twenty (120) days from when the Court approves this settlement.

6. Counsel for the Plaintiff herein affirmatively states that at the time of execution of the instant stipulation, Plaintiff is competent to settle this matter. Plaintiff has discussed with her Counsel the ramifications of settling this lawsuit and any or all related claims arising in this or any other forum. Plaintiff understands the impact of this settlement on the Plaintiff's respective rights and obligations, if any, and the respective rights and obligations of the Defendants, if any, arising out of the transactions and occurrences set forth in the Complaint. Plaintiff agrees to the terms and conditions embodied in this stipulation.

7. The Court shall retain jurisdiction over this action for the purposes of enforcing this stipulation for a period of four (4) months after it is "so-ordered" by the Court. In the event of an alleged breach of the terms of this Stipulation, Plaintiff's counsel shall give 30 days prior written notice to defendants' counsel before making any application before the Court to enforce the terms of this Stipulation.

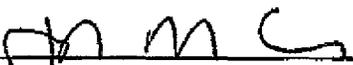
8. It is acknowledged by the Plaintiff and Defendants that the action against the defendants Eddy Visiting Nurse Association and Mary Beth Rutkowski has been settled by stipulation which has been filed with the court on May 14, 2009.

9. It is also acknowledged by Plaintiff and Defendants that the action against defendant Albany County Department of Social Services and David Kircher has been settled by stipulation which has been filed with the court on May 20, 2009.

10. The foregoing constitutes the entire agreement between the Plaintiff and the Defendants.

Dated: Albany, New York

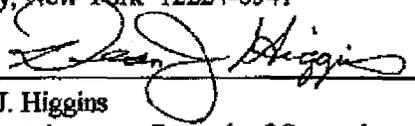
June 16 2009

  
Joseph M. Connors, Esq., BAR 103892  
Albany Law School Clinic  
Attorney for Plaintiff  
80 New Scotland Avenue  
Albany, NY 12208

Dated: Albany, New York  
June 18<sup>th</sup>, 2009

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By:   
Dean J. Higgins  
Assistant Attorney General, of Counsel  
Bar Roll No. 505663

Dated: Albany, New York  
June 19, 2009

SO ORDERED:

  
HON. GARY L. SHARPE  
UNITED STATES DISTRICT COURT JUDGE