

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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NEIL FISHMAN, by his legal guardian, SELMA
FISHMAN, and SURUJ SIRIKESHUN, individually :
and on behalf of all others similarly
situated, :

Plaintiffs, : **STIPULATION**

- against -

: Index No:
09-CV-5248

RICHARD F. DAINES, M.D., as Commissioner of :
the New York State Department of Health, :
and JOHN PAOLUCCI, as Deputy Commissioner :
of the Office of Temporary and Disability :
Assistance of the New York State Department :
of Family Assistance, :

: Bianco, J.
Lindsay, M.J.

Defendants. :

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WHEREAS, this action was commenced on behalf of a certain class of Medicaid applicants and recipients in New York State; and

WHEREAS, plaintiffs have moved for the certification of a plaintiff class of such Medicaid applicants and recipients and the issuance of a classwide preliminary injunction in relation to this proposed class; and

WHEREAS, the parties desire to settle this motion on terms and conditions just and fair to all parties, and

WHEREAS, counsel for plaintiffs and the proposed plaintiff class and defendants have prepared this stipulation to settle a portion of the aforementioned motion, it is

ORDERED:

1. There shall be certified a plaintiff class defined as

All past, present and future applicants and recipients of Medical Assistance ("Medicaid appellants") in New York State who:

(a) requested or will request an administrative fair hearing from defendants to contest the adequacy, denial, reduction, restriction or termination of Medicaid benefits, and

(b) failed or will fail to appear in-person or by representative at any fair hearing scheduled on or after December 1, 2006 in response to such request, and

(c) suffered or will suffer dismissal of their administrative appeal without defendants' prior written inquiry, to ascertain whether the administrative appeal has been abandoned.

2. Pending the final determination of the merits of this litigation, defendants shall reschedule the fair hearings of the named plaintiffs as specified in the Class Action Complaint.

3. Pending the final determination of the merits of this litigation:

(a) defendants shall retain a listing of all such class members whose administrative appeals would have otherwise been dismissed as abandoned pursuant to 18 N.Y.C.R.R. § 358-5.5.

(b) upon the failure of a prospective class member to appear in-person or by representative at any fair hearing scheduled on or after the date of execution of this stipulation in response to such request for a fair hearing by the prospective class member, the defendants shall issue a default letter to the address of record for such prospective class member asking if the fair hearing request has been abandoned and advising that if the prospective class member is requesting a rescheduled hearing date, he/she must provide a good cause reason for defaulting their hearing. The default letter shall advise the prospective class member that if the defendants do not receive a response from the prospective class

member postmarked within 10 days of the mailing date of the default letter, the hearing request will be deemed abandoned.

(c) if within ten days of the mailing date of the default letter the defendants receive a response from the prospective class member, postmarked within 10 days of the mailing date of the default letter, requesting a rescheduled hearing date, such hearing date shall be rescheduled. At the rescheduled hearing, the good cause explanation for the failure to appear at the original hearing date will be addressed by the administrative law judge and, if necessary, the merits of the subject hearing request can thereafter be addressed by the administrative law judge.

(d) The claimed inability of a prospective class member to get through by phone to the OTDA phone line may be considered by the administrative law judge in determining good cause for the failure to appear for the initial fair hearing.

(e) The extent to which class members will prospectively be entitled to a continuation of Medicaid coverage ("aid-continuing") following their initial fair hearing default shall be determined by the Court upon its disposition of the pending motion.

(f) The provisions of 16 NYCRR §§ 358-5.5 shall not apply to prospective class members.

(g) The terms of this Stipulation shall not, in any manner, be construed as determinative of the accuracy of factual or legal allegations raised in this action, or given precedential effect or any other effect with regard to any final resolution of this action. Nothing contained in this stipulation shall be deemed to be

a finding or an admission that defendants have in any manner violated the rights of the plaintiff class.

(h) Within 30 days of this Court's disposition of this motion, the defendants shall implement the procedures contemplated by this stipulation.

4. The individuals executing this stipulation represent that they are authorized to sign for and bind the party or parties for whom they execute this stipulation. The individual signing on behalf of Defendants represents and warrants that execution and delivery of this stipulation has been duly authorized and approved.


5. This stipulation contains all the terms and conditions agreed upon by the parties hereto.

6. This stipulation may not be modified except as ordered by the Court, and with good cause shown. A party may seek a modification of this stipulation only upon thirty days' written notice to counsel for the other party.

7. This stipulation is final and binding upon defendants, their successors and assigns.

Dated: Sea Cliff, New York Law Office of Peter Vollmer, P.C.
~~December~~ 17, 2010 By:

January


Peter Vollmer, Esq. (PV-2749)
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(516) 277-1156
Attorney for Plaintiffs and Proposed
Plaintiff Class

Dated: Hauppauge, New York
December , 2010

February 20

Andrew M. Cuomo
New York State Attorney General
By:

Susan Connolly
Susan Connolly, Of Counsel
300 Motor Parkway, Suite 205
Hauppauge, New York 11788-5127
(631) 231-2424
Attorney for Defendants Daines and
Paolucci

SO ORDERED:

Dated: Central Islip, New York
~~December , 2010~~

April 6, 2011

Hon. Joseph F. Bianco