

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
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LONG ISLAND OFFICE

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LESLIE LISNITZER, individually and on behalf :
of all others similarly situated, :
 :
Plaintiff, :
 :
- against - :
 :
HOWARD ZUCKER, M.D., as Commissioner of the :
New York State Department of Health, and :
SAMUEL D. ROBERTS, as Commissioner of the :
Office of Temporary and Disability :
Assistance of the New York State Department :
of Family Assistance, :
 :
Defendants. :
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JUDGMENT

11-CV-4641
Bianco, J.
Lindsay, M.J.

Based upon the findings of fact and conclusions of law, entered on January 26, 2018,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. A plaintiff class is certified as follows:

All past, present and future Medicaid appellants in New York State
who since September 23, 2008:

- (a) requested or will request a fair hearing to contest the denial or adequacy of Medicaid benefits, and
- (b) participated or will participate directly or by representative in a fair hearing during which the hearing officer failed to develop a complete record upon which to base a final and definitive administrative decision, and
- (c) received or will receive a fair hearing decision which
 - (i) remands the contested action to the local social services district

for further consideration, and

(ii) fails to direct final and definitive corrective action when the contested action is reversed.

2. Defendants' challenged policy and practice of terminating fair hearing appeals of local social service district determinations denying Medicaid benefits by reversing and remanding those matters back to the local social services districts rather than rendering final determinations of Medicaid eligibility based upon the development of complete fair hearing records within 90 days of the hearing requests violates 42 U.S.C. § 1396a(a)(3) and implementing federal regulations and policy issuances.

3. Defendants are permanently enjoined from conducting Medicaid fair hearings in a manner that results in decisions remanding the matters back to the local social services districts without rendering final determinations of eligibility based upon the development of complete fair hearing records within 90 days of the hearing requests exclusive of adjournments requested by appellants. If a Medicaid appellant requests an adjournment during the fair hearing process, the 90-day deadline to render a final determination of eligibility shall be extended by the duration of any such adjournment. The 90-day deadline set forth herein shall not apply to members of the certified class in Varshavsky v Perales, 202 A.D.2d 155 (1st Dept. 1994), who have been awarded aid-continuing Medicaid benefits pending the outcome of their fair hearing appeals.

4. Within 90 days of the date hereof, Defendants, in collaboration with counsel for the plaintiff and the plaintiff class ("Plaintiffs' Counsel"), shall submit for approval to the Court, or any Magistrate so designated by the Court, an implementation plan which

ensures that

(a) hearing officers and Commissioner's Designees are timely notified of this Court's Judgment and the requisite changes in policy which are mandated by the Judgment; and

(b) class members whose remanded fair hearings took place on or after November 1, 2010, within 30 days of the approval of the implementation plan, are identified and notified of their rights pursuant to this Judgment by means of a written notice in English and Spanish versions; and

(c) class members whose remanded fair hearings took place between September 23, 2008 and October 31, 2010, within 90 days of the approval of the implementation plan, are identified and notified of their rights pursuant to this Judgment by means of a written notice in English and Spanish versions; and

(d) Defendants shall not be held in violation of this Judgment for the over or under inclusion of class members based upon their good faith implementation of the methodology agreed upon by Defendants and Plaintiffs' Counsel for the identification of such class members; and

(e) Plaintiffs' Counsel shall sign and be bound by a confidentiality agreement regarding any information related to class members as well as individuals who may be incorrectly identified as class members; and.

(f) Should the Defendants determine that issues pertaining to implementation are likely to cause a violation of the time lines imposed by the Court, they will advise Plaintiffs' Counsel and the Court of those issues and seek

additional time accordingly.

5. The Court shall retain jurisdiction for the purpose of enforcing compliance with this Judgment. If there is a claim of material breach of this Judgment, the parties shall attempt to resolve such claim through negotiations. Such attempts shall be a prerequisite to either party's request for relief from the Court for an alleged material breach of this Judgment. A material breach, for the purpose of this Judgment, is defined as the failure by either party, without substantial justification, to perform a specific duty imposed by this Judgment, including without limitation the obligation of defendants to proceed expeditiously.

6. The submission of this Judgment and the implementation plan shall not be construed by the Courts as an acceptance by Defendants of the Findings of Fact and Conclusions of Law issued by this Court, or constitute a waiver of any of Defendants' rights to contest or appeal the decision of the Court or this Judgment.

7. Any application by plaintiffs for reasonable attorneys' fees and expenses shall be served and filed within 90 days of the date hereto, or within 90 days of the disposition of any appeal thereof.

8. This Judgment shall take effect thirty (30) days after the date hereof.

The Clerk is directed to furnish a filed copy of the within to all parties.

SO ORDERED.

Dated: Central Islip, New York

~~January 31, 2019~~

Feb. 1, 2019

s/ Joseph F. Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

ENTER,

Douglas C. Palmer
Clerk of Court

By: _____
Deputy Clerk