

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

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JAN 09 1987

JOHN DOE, by next friend Mary Doe, )  
and MARY DOE, on their own behalf and )  
on behalf of all other persons )  
similarly situated, )

Plaintiffs, )

CATHERIN ROE; and )  
SAMUEL LEE DEW, by his next friend )  
Clyde Dew, on their own behalf and )  
on behalf of all other persons )  
similarly situated, )

Plaintiff-Intervenors, )

vs. )

JAMES WORD, Commissioner, et al., )

Defendants/Third Party Plaintiffs, )

vs. )

E.D.S. FEDERAL CORPORATION, )

Third Party Defendants. )

*2:00 P*  
*J.P. [unclear]*  
*A. Lewis [unclear]*

Civ. Action #3-84-1260

Judge Nixon  
Judge Sandidge

ORDER

This case is before the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for review of a proposed compromise and settlement of the claims made on behalf of the plaintiff class previously certified by the Court. From a review of the terms of the settlement, which are set out below, it appears to the Court that the settlement is just and proper and should be approved. Specifically, the Court finds that the terms of this order adequately protect the due process rights of applicants and their sureties, seeking Medicaid coverage for nursing home care.

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It is, therefore, ORDERED as follows:

The Pre-Admission Evaluation (hereafter "PAE") process for determining whether Tennessee Medicaid coverage will be provided for nursing home care shall be attended by due process safeguards which are sufficient to ensure reasonable notice to recipients, a meaningful opportunity to be heard in the case of a denial and timely processing of all cases. Specifically, the defendants shall implement the following procedural safeguards:

(1) Parties Entitled to Notice

(a) All PAE application forms will be required to designate a person, in addition to the potential Medicaid recipient, to receive copies of all materials and correspondence pertaining to the PAE application. This requirement shall be waived only where a competent recipient signifies in writing that he wants notices to be sent only to himself. If the recipient has been adjudged incompetent, this correspondent will be the appointed guardian. In the absence of such a waiver, if the recipient is unable or fails to designate a correspondent, the PAE application shall designate as correspondent the relative, friend or advocate who has been acting on the recipient's behalf to establish Medicaid eligibility or to otherwise manage the recipient's affairs. Whenever notice or other documentation regarding the PAE process must be provided to the recipient under the terms of this order or any state or federal law or regulation, such notice or documentation shall be simultaneously provided to the correspondent designated pursuant to this paragraph.

(b) If the party submitting a PAE is a person or entity other than the recipient, the recipient and the recipient's designated correspondent shall, in addition to the applicant, receive copies of all correspondence or notices pertaining to the PAE application.

(c) All notices or other documentation required to be sent to the recipient and the recipient's designated correspondent shall be accompanied by notice of the recipient's right to communicate, either directly or through a representative, with the Bureau of Medicaid regarding the PAE application without regard to the identity of the original applicant. These notices will include information regarding the address to which written correspondence can be directed as well as a toll-free phone number for use in such communications.

(2) Processing the PAE Application

(a) Written notice of the Bureau of Medicaid's decision to approve or deny coverage for nursing home care shall be mailed to the applicant, the recipient and the designated correspondent within eight (8) working days of the Bureau's receipt of a PAE application. Notification of approval shall include the effective date of the approval.

(b) PAE applications will be processed without requiring the recipient to first establish financial eligibility for Medicaid. However, unless and until financial eligibility is established no Medicaid reimbursement for nursing home care shall be provided. The Bureau of Medicaid, acting in cooperation with the Tennessee Department of Human Services ("TDHS"), shall encourage simultaneous submission of Medicaid financial eligibility and PAE

applications whenever there is reason to believe that an individual is medically indigent and in need of nursing home care.

(c) If, following an initial denial, additional information is submitted to the Bureau of Medicaid supporting the PAE application, such submission shall be treated as a new PAE application requiring the issuance of a new approval or denial decision within eight (8) working days of receipt. The pendency of an appeal from an original denial shall not preclude submission of new information supporting approval of the PAE.

(3) Contents of Notices of Denial

Notices of denial of PAE applications shall:

(a) include a list of the evidence reviewed in reaching the decision;

(b) recite the exact language of each specific medical criteria rule upon which the agency bases its denial and which the agency believes that the recipient has failed to satisfy;

(c) recite the particular facts shown in the total administrative record then known which the Bureau finds support its legal conclusion that the recipient does not meet the regulatory medical care criteria. If information needed to reach a decision on the PAE application is missing and can be specifically identified, its absence will be cited as a reason for the denial;

(d) explain that additional information can be submitted in support of the PAE application, and that the Bureau of Medicaid will reconsider the denial in light of such additional information and the record as a whole. It will be noted that the submission of such additional information does not toll the time for requesting or processing an appeal, and that submission of additional information does not affect the recipient's right to simultaneously request an appeal;

(e) inform the applicant, the recipient and the designated correspondent of the right to request an appeal within thirty (30) days. The notice shall include specific information as to how and where a written request for such appeal is to be submitted;

(f) inform the reader of a toll-free phone number which can be used for obtaining further information from the Bureau of Medicaid regarding the Bureau's decision and the recipient's right to appeal that decision and/or submit additional information for purposes of obtaining reconsideration of the denial;

(g) make it clear that the denial of the PAE affects only the recipient's right to Medicaid reimbursement for nursing home care. If the recipient has been certified as financially eligible for Medicaid, the notice shall reaffirm his right to Medicaid coverage for non-nursing home services.

(4) Administrative Appeals

(a) Except when evidence has been newly discovered, the Tennessee Department of Health and Environment ("TDHE") will be bound on appeal by the legal reasons cited in the notice of denial. When new evidence is discovered subsequent to the issuance of the denial, but before the administrative hearing, and when such evidence in the opinion of TDHE supports a new legal basis for the denial, TDHE will so advise, in writing, the applicant, the recipient, the designated correspondent, the recipient's advocate and the Administrative Judge presiding over the case. Such notification of newly discovered evidence will occur at the earliest possible opportunity, but no later than 10 days before the case is scheduled to be heard. When new evidence, supporting another legal basis for the denial, is first and unexpectedly discovered during the course of the hearing or during the 10 days immediately before the hearing, TDHE will be allowed to rely upon such new grounds only upon motion to amend the notice of denial. Such motion shall be granted only upon a finding by the Administrative Judge of good cause for TDHE's delay in discovering or citing the new grounds, and only where the Administrative Judge makes a finding that the recipient's right to be heard will not be prejudiced by the amendment.

(b) If a final administrative order is not issued by the 90th day following TDHE's receipt of a request for a hearing, the Bureau of Medicaid will contingently authorize payment, despite the pendency of the case and without the issuance of a judicial order. The application will be automatically granted, effective

on the date shown on its face, and appropriate notice shall be provided to the applicant, the recipient, the designated correspondent, the recipient's advocate and the nursing home, if any, in which the recipient resides. If the recipient resides in a nursing home and has been certified as Medicaid eligible, upon its submission of a claim the facility shall be reimbursed for nursing home care retroactive to the first day of residence or the date of submission of the PAE application, whichever date is the latter. This approval and the dependent reimbursement of the facility will continue until a final order issues to deny the application and the period to request reconsideration of the final order has expired. If the PAE application is denied by the final order, there will be no recoupment of monies paid under this provision. The contingent approval upon the 90th day will neither moot the pending case nor be evidence of satisfaction of the medical criteria to be considered in disposing of the case, but is simply self-executing relief to ensure compliance with timelines standards for disposing of appeals. Such relief shall be withheld to the extent that delays in disposing of the appeal within 90 days are the consequence of a continuance of the hearing granted at the request of the recipient or applicant, or to the extent that the Administrative Judge finds that the delay is otherwise attributable to the recipient's inaction.

(5) Access to the PAE System

In order to implement the due process rights recognized in this order and to preserve the recipient's opportunity to be heard, the following safeguards shall be observed:

(a) Whenever an applicant for admission to a nursing home who has chosen to participate in the Medicaid program, or a current resident of such a nursing home, has applied for PAE approval of reimbursement for their medical care, then the following prohibitions shall be observed to maintain the integrity of the PAE application;

1) No prepayment or deposit can be required for services covered under the state Medicaid plan from, or on behalf of, an applicant or resident who is already certified or is potentially eligible for other Medicaid services, and

(2) No such resident may be discharged because TDHE initially denied the PAE application after administrative review until any appeal is resolved or the time during which an appeal may be requested has passed without action.

(b) All notices to recipients, their designated correspondents and their advocates regarding the disposition of a PAE application shall incorporate, or be accompanied by, a statement by the Tennessee Commission on Aging advising recipients of available advocacy services for the elderly and legal services agencies with addresses and telephone numbers.

(c) Whenever a PAE application is denied, the Bureau of Medicaid will advise TDHE's Patient Care Advocacy Unit, which will monitor any transfer arrangements.

(d) All notices required by the terms of this order shall be drafted in a manner which reasonably guarantees their readability by the recipients to whom they are directed.

#### 6. Additional Provisions

(a) The "TDHE Doe v. Word Settlement Implementation Plan," reflects the agreement of the parties as to the manner in which the terms of this order shall be implemented. It is therefore appended hereto as a guide to the intent of the parties and as an aid to the interpretation of this order. TDHE retains the discretion and the authority to modify such plan so long as such modifications continue to ensure compliance with the terms of this order.

(b) Pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, the Court finds that the members of the plaintiff class bound by this order are described as follows:

All persons who are or will themselves be eligible, or who are or will be sureties for those who are eligible for medical assistance benefits under the Tennessee Medicaid program, pursuant to Title XIX of the Social Security Act, and who seek Medicaid coverage for care in an intermediate care or skilled nursing facility.

The class is thus redefined to exclude those individuals, previously included in the plaintiff class identified by the order of June 17, 1986, who have been, but are no longer, either Medicaid eligible themselves, or surety for others who have been Medicaid eligible. Regulatory time limits within which recipients (including these excluded individuals) can seek review of past or present denials of PAE applications shall not begin to run unless and until they receive notices of denial which contain the

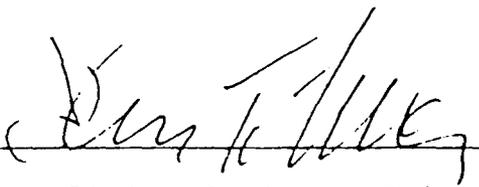
elements required by § 3 of this order. Recertification to exclude previous members of the plaintiff class therefore does not prejudice any claim which they might assert against the defendants.

(c) In light of the Court's determination that the compromise set forth in this consent decree adequately protects the rights of the plaintiff class thus defined, the Court further determines that no notice of the terms of the compromise need be given the class prior to the entry of this decree.

(d) The provisions of this consent decree set forth above shall be fully implemented by TDHE no later than ninety (90) days after the entry of this order.

(e) The named plaintiffs' claims for damages, and the defendants'/third party plaintiffs' corresponding damage claims over against the third party defendant, EDS Federal, are hereby dismissed with prejudice.

(f) All matters relating to plaintiffs' claim for an award of attorneys fees pursuant to 42 USC § 1988 are reserved.

  
United States District Judge

Approved for entry:

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