

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

M.A. by and through his parents MIGUEL)
AVILA, SR. and HERMINA AVILA,)
F.L. by and through his mother, JACQUETTA)
PEARSON, Y.R. by and through her mother)
CAROLINA BARRANCO, H.S. by and through)
his parents RICARDO SORIA and GEORGINA)
RIVERA, individually and on behalf of a class,)

Plaintiffs,)

vs.)

PATRICIA R. BELLOCK, in her official capacity)
As Director of the Illinois Department of)
Healthcare and Family Services,)

Defendant.)

No. 15-3116

Judge: Joan H. Lefkow

Magistrate: Sheila M. Finnegan

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND HEARING**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY

A SETTLEMENT HAS BEEN PROPOSED THAT MAY AFFECT THE RIGHTS OF MEDICAID- ELIGIBLE PERSONS IN THE STATE OF ILLINOIS WHO ARE UNDER THE AGE OF 21, RECEIVE IN-HOME SHIFT NURSING SERVICES, OR HAVE APPLIED FOR IN-HOME SHIFT NURSING SERVICES (DATES) AND RECEIVED NOTICES FROM THE ILLINOIS DEPARTMENT THAT YOUR REQUEST FOR IN-HOME SHIFT NURSING SERVICES HAVE BEEN DENIED, REDUCED, APPROVED AT A LOWER LEVEL THAN REQUESTED OR TERMINATED.

A Settlement Agreement has been proposed in this case, which may affect the rights of persons who are under the age of 21, Medicaid-eligible in the State of Illinois, and receive in-home shift nursing services or have applied for in-home shift nursing services (dates) and received notices from the Illinois Department that your request for in-home shift nursing services have been denied, or reduced, approved at a lower level than requested, or terminated.

This Notice explains the lawsuit and the key terms of the Settlement Agreement, tells you how to obtain more information, explains how to determine whether an individual is a Class Member in the lawsuit, and explains how Class Members (and/or their legal representatives) can tell the Court whether they disagree with the Settlement Agreement or

some part of it.

The Settlement Agreement described in this Notice is subject to Court approval, and thus has not yet been made final. The Court has scheduled a hearing to determine the fairness, adequacy and reasonableness of the Settlement Agreement and to consider any objections Class Members may have to the Settlement Agreement.

1. WHAT IS THIS LAWSUIT ABOUT?

The Court in charge of the lawsuit is the United States District Court for the Northern District of Illinois, and the case is known as *M.A. v. Bellock*, No. 15 C 3116. The people who sued are called the Plaintiffs, and the individual they sued is called the Defendant.

Plaintiffs filed this lawsuit on April 9, 2015, seeking to compel the State to comply with due process requirements under the U.S. Constitution and the federal Medicaid Act. The named Plaintiffs are children who receive or applied for in-home shift nursing services. The named Defendant is: Patricia R. Bellock, Director of the Illinois Department of Healthcare and Family Services. The Defendant is responsible for administering the State of Illinois' Medicaid Program. The lawsuit seeks to compel the State of Illinois (through the Defendant) to comply with federal law by halting use of the prior approval process in place at the time of the lawsuit and by providing adequate notice of prior approval decisions to Class Members.

2. WHAT IS A SETTLEMENT AGREEMENT AND WHY IS IT BEING PROPOSED HERE?

The Court in this case did not decide in favor of either Plaintiffs or Defendant. There was no trial or dispositive court ruling in the case. Instead, the Plaintiffs and Defendant negotiated a settlement of this dispute that is set out in the Settlement Agreement. Plaintiffs and Defendant have asked the Court to approve the Settlement Agreement. By settling this lawsuit, the parties avoid having to face the uncertainty of the outcome of a trial as well as the substantial cost of a trial. In addition, children who need in-home shift nursing will get relief from Defendant much sooner than if they had to wait for the resolution of the lawsuit through a trial and expected appeals. That process could take many years. The Plaintiffs who filed the lawsuit and their attorneys think the Settlement Agreement is the best outcome for the people who are Class Members.

3. WHO IS A CLASS MEMBER?

The Court has certified the lawsuit as a class action and decided that everyone who fits this description is a Class Member: All Medicaid-eligible children under the age of 21 in the State of Illinois, including children who are enrolled in a Medicaid waiver program: (1) who receive in-home shift nursing or (2) who applied for in-home shift nursing and received notices from the Illinois Department of Healthcare and Family Services that their requests for in-home shift nursing services had been denied, or reduced, or approved at a lower level than requested or terminated.

4. WHAT DOES THE SETTLEMENT AGREEMENT IN THIS CASE PROVIDE?

The Settlement Agreement in this case, if approved by the Court, would provide certain rights and benefits to eligible Class Members as defined above. If the Settlement Agreement is not approved, it will be withdrawn and the lawsuit will continue. A copy of the entire Settlement Agreement is available on the following websites: www.illinois.gov/hfs; www.farley1.com; and www.legalcouncil.org.

Plaintiffs and Defendant in this case believe that the Settlement Agreement is fair, reasonable and provides adequate and appropriate relief to all eligible Class Members. The parties believe the Settlement Agreement provides eligible Class Members due process protections in their efforts to seek and obtain prior approval for in-home shift nursing services.

The following is a brief summary of key terms in the Settlement Agreement:

A. Development and Delivery of Services

The Settlement Agreement requires Defendant to comply with due process requirements for notices of decisions regarding prior approval of in-home shift nursing services to Class Members and to use the process described in the Settlement Agreement to evaluate medical necessity of in-home shift nursing services unless and until an alternative process is approved by Plaintiffs' counsel. Specifically, the Settlement Agreement requires that:

- Defendant shall use the templates substantially similar to those attached to the Settlement Agreement to provide notice of prior approval decisions on in-home shift nursing services to Plaintiffs and Class Members. Defendant shall submit any future, proposed revisions to Class Counsel prior to adopting the revised form and Counsel will attempt to resolve any disputes about them and turn to the court for unresolved disputes.
- Defendant shall revise its existing processes for reviewing medical necessity and granting prior approval for in-home shift nursing services as provided below:
 - HFS's reviews of the medical necessity of in-home shift nursing requests for determinations of prior approval of in-home shift nursing services for Class Members shall be done by one or more Illinois-licensed physicians experienced in pediatrics ("reviewing physician").
 - Based on the information reviewed by the HFS reviewing physician, the HFS reviewing physician shall make a written recommendation that identifies the hours of skilled in-home shift nursing to be allocated to the child and the reasons for that recommendation.
 - After the HFS reviewing physician provides his or her recommendation, the Department shall promptly issue a notice of the decision, using the notice templates authorized under this agreement. If the Family or Guardian is dissatisfied with the recommendation of the reviewing physician described in the notice, the Family or Guardian may appeal the decision through existing administrative appeal process and, if appropriate, seek judicial review of any final administrative decision in accordance with State law.

- Defendant's processes for reviewing medical necessity and granting prior approval for in-home shift nursing services shall focus on meeting the child's identified clinical needs for skilled nursing interventions. Medical necessity of skilled nursing services shall not be based upon a particular medical diagnosis. Defendant shall consider all available relevant evidence and opinion submitted on the medical necessity of in-home nursing services for Class members (including but not limited to evidence and opinion provided by the Class Member's treating physician).
- Defendant shall incorporate a reference to the current process to determine when to grant (i) a temporary increase to the prior authorization resource allocation; or (ii) an upward adjustment of the resource allocation or budget based on changes in needs of a Class Member into introductory program materials provided to parents by DCSS when a child becomes eligible for in-home shift nursing.
- Defendant shall publish any manuals, guides, standards, forms, professional or other guidance documents, scoring methodologies, and resource allocation ranges related to the Department's process or the processes used by any entities with whom the Defendant contracts to perform such actions for reviewing medical necessity and granting prior approval for in-home shift nursing services to children under the age of 21. The publication shall be in the formats used to make such information available to the general public, including by posting it on the Department's web page.
- If Defendant utilizes or contracts with MCOs or other entities to conduct prior approvals of in-home shift nursing services, Defendant shall ensure any such entities substantially comply with the terms of this Settlement Agreement.
- Defendant shall submit any proposed substantial revisions to the process described in this Settlement Agreement, whether proposed by the Defendant or by any entities with whom the Defendant contracts to perform such actions, to Class Counsel solely for review of compliance with this Settlement Agreement.
 - If a dispute cannot be resolved, the parties shall bring the matter to the court for resolution.
 - If no objection is made by Class Counsel after 30 days, Defendant may adopt and implement the revised process 60 days after it was initially submitted to Class Counsel.

B. Monitoring and Compliance

Under the Settlement Agreement, every six months until the settlement terminates, Defendant will provide Class Counsel with a report with information necessary for Class Counsel to evaluate Defendant's compliance with the terms of the Settlement Agreement. The Settlement Agreement also provides a dispute resolution mechanism to allow the parties and, if necessary, the court to resolve any issues of alleged non-compliance with the Settlement Agreement.

C. Attorneys' Fees and Costs

The Settlement Agreement requires the State of Illinois to pay class counsel the total amount of \$550,000 for their fees and costs associated with all litigation related to this Settlement Agreement and for compliance with the Settlement Agreement.

5. WILL CLASS MEMBERS RECEIVE MONEY FROM THE SETTLEMENT AGREEMENT?

No. There is no money awarded to any Class Member as part of the Settlement Agreement.

6. HOW DO YOU TELL THE COURT THAT YOU AGREE OR DISAGREE WITH ALL OR PART OF THE SETTLEMENT AGREEMENT?

All Class Members have the right to state any objection they may have to the Settlement Agreement and to give reasons why they believe the Court should not approve it. All Class Members have the right to state their approval of the Settlement Agreement, although they are under no obligation to do so.

The Court and the Parties will consider those opinions submitted by Class Members in the following manner:

- The statement must include the name and number of the case (*M.A. v. Bellock*, Case No. 15-3116);
- The statement must include a statement of the reasons why the Court should or should not approve the Settlement Agreement;
- The statement must be no longer than 15 pages in length;
- The statement must include the name, address, telephone number, and signature of the individual submitting it; and
- The statement must be submitted by U.S. Mail and postmarked no later than December 3, 2018, to

Thomas Yates
Legal Council for Health Justice
17 N. State Street, Suite 900
Chicago, IL 60602

Attorney Thomas Yates, co-counsel for the Class, will provide the Court and other counsel for the Plaintiffs and Defendant with the statements that he receives and that Class Members want presented to the Court. Please note that it is not sufficient to simply state that you object. Objections must state the reasons why the Settlement Agreement should not be approved.

7. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT AGREEMENT?

The Fairness Hearing will be held before the Honorable Joan H. Lefkow, United States District Judge, in the Dirksen Federal Building, 219 S. Dearborn Street, Room 2201, Chicago, Illinois 60604, on December 18, 2018, at 10 a.m. At this hearing, the Court will consider whether the Settlement Agreement is fair, reasonable, and adequate. The Court will consider any objections made according to the procedures described above.

8. DO YOU HAVE TO COME TO THE HEARING?

All Class Members are welcome to attend the Fairness Hearing if they choose to do so, but no one is required to attend the Fairness Hearing. Plaintiffs' and Defendant's lawyers will be available to answer questions Judge Lefkow may have. If you submit a statement or objection in accordance with the procedures described in paragraph 7 above, you are not required to come to Court to talk about it. As long as you mailed your written statement or objection in accordance with the procedures described in paragraph 7 above, the Court will consider it.

9. WHO CAN SPEAK AT THE FAIRNESS HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. The Judge will decide whether you are permitted to do so. To request permission to speak at the Fairness Hearing, you must send a request to Class Counsel as directed below. Class Counsel will provide the necessary documents to the Court.

- The request must be entitled: "Notice of Intention to Appear in M.A. v. *Bellock*, Case No. 15-3116"
- You must send one copy of your "Notice of Intention to Appear" to the attorney listed below via U.S. mail, postmarked no later than December 3, 2018:

Thomas Yates
Legal Council for Health Justice
17 N. State Street, Suite 900
Chicago, IL 60602

- Be sure to include your name, address, telephone number, and your signature on your "Notice of Intention to Appear."
- If you file a statement or objection and also want to ask for permission to speak at the Fairness Hearing, you can include the "Notice of Intention to Appear" in the same document as the statement/objection that is sent to Mr. Yates. Mr. Yates will provide copies of these "Notices of Intention to Appear" to the Court and to other counsel for the parties.

10. WHO ARE THE CLASS MEMBERS' LAWYERS IN THE CASE?

The Court ordered that the following attorneys represent the Class Members. These lawyers are called "Class Counsel."

Robert H. Farley, Jr.
Robert H. Farley, Jr. Ltd.
1155 S. Washington St., Suite 201
Naperville, IL 60540
Tel: 630-369-0103
Email: faleylaw@aol.com

Thomas Yates
Caroline Chapman
Legal Council for Health Justice
17 N. State Street, Suite 900
Chicago, IL 60602
Tel: 312-605-1958
Email: tyates@legalcouncil.org

Class Members will not be charged for these lawyers' fees or expenses.

11. HOW DO YOU GET MORE INFORMATION ABOUT THE SETTLEMENT AGREEMENT?

A copy of the entire Settlement Agreement is available on the following websites:
<https://www.illinois.gov/hfs/info/legal/PublicNotices>; and www.legalcouncil.org.

If you have any questions for Plaintiffs' lawyers or want to request that a copy of the Settlement Agreement be mailed to you, you may contact Attorney Thomas Yates at Thomas tyates@legalcouncil.org or 312-605-1958.