

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

BLAKE DONEGAN, by and through his mother,)
ANGELA DONEGAN, **ANTONIO CAMPBELL**,)
by and through his mother, SHANEATHA ROLLING,)
JANELLE EATON, by and through her mother,)
JACQUELINE EATON and **KINA WINES**, by)
and through her mother, SHARON QUINN,)
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. 16-11178
Judge: Robert M. Dow, Jr.
Magistrate: Sheila 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 RECEIVE FUNDING FOR IN-HOME SHIFT NURSING SERVICES THROUGH ITS NON-WAIVER MEDICAID PROGRAM COMMONLY KNOWN AS THE NURSING AND PERSONAL CARE SERVICES (NPCS) PROGRAM, AND WHO, UPON ATTAINING 21 YEARS OF AGE, WERE NO LONGER ELIGIBLE FOR THE NPCS PROGRAM AND WERE ALLEGEDLY SUBJECTED TO REDUCED MEDICAID FUNDING FOR IN-HOME SHIFT NURSING SERVICES.

A Settlement Agreement has been proposed in this case, which may affect the rights of persons who receive funding for in-home shift nursing services through its non-waiver Medicaid program commonly known as the Nursing and Personal Care Services (NPCS) program, and who, upon attaining 21 years of age, were no longer eligible for the NPCS program and were allegedly subjected to reduced Medicaid funding for in-home shift nursing services.

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 *Donegan v. Bellock*, No. 16 C 11178. The people who sued are called the Plaintiffs, and the individual they sued is called the Defendant.

Plaintiffs filed this lawsuit on December 8, 2016, seeking to compel the State to stop discriminating between disabled persons aging out of the NPCCS program and disabled persons aging out of the State of Illinois' Medically Fragile, Technolog Dependent (MFTD) program, as disabled persons in the MFTD program continue to receive in-home shift nursing services based on medical necessity after they reach the age of 21 while disabled persons in the NPCCS program do not. The named Plaintiffs are persons who have received in-home shift nursing services in the NPCCS program. 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 Title II of the Americans with Disabilities Act and the Rehabilitation Act.

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, Class Members who need in-home shift nursing services after the age of 21 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 persons in the state of Illinois who have been approved by Defendant for in-home shift nursing services when they were Medicaid-eligible children under the age of 21 through the nonwaiver Medicaid program, formerly known as the Nursing and Personal Care Services (NPCS) program, and who are currently receiving such services. This class definition does not include those persons who are enrolled in the State of Illinois’ Medically Fragile Technology Dependent (MFTD) Medicaid Waiver program.”

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 and www.farley1.com

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 the opportunity to continue in-home shift nursing services after the age of 21.

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 ensure the availability of in-home shift nursing services to meet her obligations under the Settlement Agreement. More specifically, the Settlement Agreement requires Defendant to do the following:

a) For all Class Members under the age of 21 years, HFS will evaluate such individuals for the Medically Fragile Technology Dependent Children (“MFTD”)’s waiver program, in accordance with existing standards and requirements, either (a) upon the request of this individual, his or her family, or other person authorized to make such a request at any time prior to six months before this individual reaches the age of 21 years; or (b) with the permission of this individual, his or her family, or other person authorized to make such a decision, at any time prior to six months before this individual reaches the age of 21 years.

b) For the named Plaintiffs and Class Members who had been participating in the NPCCS program prior to reaching the age of 21 years, but whose in-home shift nursing services were continued past the age of 21 per the agreement(s) filed with the Court in this litigation, HFS will agree to evaluate these individuals for the MFTD program, in accordance with existing standards and requirements. Each such individual or other authorized person shall have thirty (30) days from the date this settlement agreement has

been given final approval by the Court, to notify Defendant that he or she seeks an evaluation and HFS shall have ninety (90) days after the request to complete the evaluation.

c) If a request for an evaluation, or permission for an evaluation, is not made or provided as described in Paragraphs (a) or (b), HFS shall not be required to evaluate, determine, approve, or grant that individual in-home shift nursing services or any further relief in or pursuant to this Settlement Agreement.

d) If any Class Member evaluated for in-home shift nursing services pursuant to this Settlement Agreement is denied eligibility for the MFTD waiver program or, after such eligibility is established, is approved for in-home nursing services in an amount that is disputed by the individual, the individual's sole recourse to challenge the denial or amount of services shall be through the existing rules, provisions, and procedures for an administrative hearing, and if appropriate, judicial review in the State courts pursuant to applicable law.

e) Any Plaintiff or Class Member may choose to forego the relief provided in paragraphs (a) and (b) of this Settlement Agreement and instead make application to and participate in the Home Services Program (HSP) operated by the Department of Human Services. Any individual may choose to forego any services that Defendants offers as a result of an MFTD program evaluation and instead make application to and participate in the HSP. Any individual who participates in the HSP after foregoing the relief and/or services provided in this Settlement Agreement, including but not limited to availing the Class Member of the process for an evaluation for the MFTD program in accordance with paragraphs (a) or (b), shall be required to comply with all rules and requirements of the HSP, and this Settlement Agreement shall not require any particular amount or type of service to be provided to any individual who chooses to participate in the HSP.

f) Nothing in this Settlement Agreement shall prohibit any named Plaintiff or Class member who has been denied eligibility for the MFTD waiver program pursuant to an evaluation for the MFTD program conducted pursuant to paragraphs (a) or (b) from seeking application to, and services under, the HSP. Defendant agrees that, for any named Plaintiff or Class Member eligible for and participating in the HSP who was denied MFTD eligibility after an evaluation conducted pursuant to paragraphs (a) or (b), DHS will be allowed to authorize, through a request by DHS to HFS, an increase to an individual Service Cost Maximum or Exceptional Care Rate by a reasonable amount if DHS has determined that the increase is appropriate and necessary to cover in-home nursing services needed to maintain the Class Member in the community within the parameters of the existing program. The authorization of any DHS request for such an increase for class members shall not change or modify any eligibility, operational, financial, or other programmatic requirements or provisions in the existing HCBS waiver of the Home Services Program. The terms of this paragraph create no obligation on the Defendant or DHS with regard to any Plaintiff or Class Member who foregoes an

evaluation for the MFTD, or foregoes any services that Defendant offers under MFTD, pursuant to paragraphs (a) or (b) above.

g) Nothing in this Settlement Agreement shall require or permit any individual to (1) participate in both the MFTD program and the HSP at the same time, and/or (2) participate in the NPCCS program after turning 21 years old. Further, nothing in this Settlement Agreement shall require any particular amount or level of services to be provided, or continue to be provided, to any Plaintiff or Class Member who participates in the MFTD program, the HSP, or any other program.

h) Plaintiffs and Class members who are dissatisfied with any eligible service planning issue shall have the right to appeal under the administrative processes set forth in the applicable state administrative rules. Plaintiffs and Class Members shall retain all applicable State appeal rights for any disputes over amount, level, need, or eligibility for services or programs.

i) At the time of any Class Member's annual redetermination, following the Class Member's 19th and 20th birthdays, the class members will be notified of the terms and obligations set forth in paragraphs (a)-(h) of this Settlement Agreement.

B. Monitoring and Compliance

Under the Settlement Agreement, Defendant shall provide to Plaintiffs' counsel, upon a reasonable request and within a reasonable time frame, evidence of compliance with 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 \$140,000 for their fees and costs associated with all litigation related to this Settlement Agreement, with the exception that class counsel may seek additional fees and costs limited to a prevailing action (enforcement of the Settlement Agreement) pursuant to paragraph 39 of this Settlement Agreement.

D. Termination of Settlement Agreement

The Settlement Agreement shall be terminated after three years following the Approval Date.

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 (*Donegan v. Bellock*, Case No. 16-11178);
- 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 Friday, March 29, 2019, to

Robert H. Farley, Jr.
Robert H. Farley, Jr. Ltd.
1155 S. Washington St., Suite 201
Naperville, IL 60540

Attorney Robert Farley, 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 Robert M. Dow, Jr., United States District Judge, in the Dirksen Federal Building, 219 S. Dearborn Street, Room 2303, Chicago, Illinois 60604, on April 17, 2019, at 9:00 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 Dow 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 *Donegan v. Bellock*, Case No. 16-11178"
- 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 Friday, April 5, 2019:

Robert H. Farley, Jr.
Robert H. Farley, Jr. Ltd.
1155 S. Washington St., Suite 201
Naperville, IL 60540.

- 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. Farley. Mr. Farley 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

Mary Denise Cahill
Cahill & Associates Law Group LLC
1155 S. Washington St., Suite 106
Naperville, IL 60540

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.farley1.com.

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 Robert H. Farley, Jr. at farleylaw@aol.com or 630-369-0103.

Dated: 1/28/2019



The Honorable Robert M. Dow, Jr.
United States District Court Judge