

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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APRIL WEST, SHENITA  
HORTON, NATALIE ESPINOZA,  
SHIRA RAYMOND, AWILDA  
BOSQUE, BOBBIE PRESCOTT,  
JULETTE MURPHY, ELIZABETH  
TORRES, CAROLINE WESLEY,  
MARY RANSON, ANGELA  
CLEMENTS, CLARA TRUJILLO,  
JEFFREY POLINSKE, RAFAEL  
GARCIA, JR. and DESIREE  
SEAMSTER, individually  
and on behalf of all other similarly  
situated persons,

Plaintiffs,

v.

Case No. 08-CV-0670

KAREN TIMBERLAKE, JASON  
HELGERSON, COREY HOZE, and  
FELICE RILEY,

Defendants.

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**SETTLEMENT AGREEMENT  
BETWEEN ALL PLAINTIFFS AND DEFENDANTS  
KAREN TIMBERLAKE AND JASON HELGERSON**

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**WHEREAS**, this lawsuit was initiated by the filing of a complaint on July 7, 2008, in Milwaukee County Circuit Court Case No. 08-CV-9216 seeking declaratory and injunctive relief against the following defendants: Karen Timberlake and Jason Helgerson (hereinafter the "State Defendants") and Corey Hoze and Felice Riley (hereinafter the "County Defendants"); and

**WHEREAS**, the State Defendants, with the consent of the County Defendants, removed Milwaukee County Circuit Case No. 08-CV-9216 to federal court by notice of removal filed August 6, 2008; and

**WHEREAS**, an amended complaint was filed on October 31, 2008, adding plaintiffs and seeking certification of a class of plaintiffs, and approved by the Court on April 8, 2009; and

**WHEREAS**, this action alleges claims arising under 42 U.S.C. § 1983, the Food Stamp Act, 7 U.S.C. § 2011 *et seq.*, the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, and 1397aa, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and § 504 of the Rehabilitation Act, 29 U.S.C. § 794 and further asserts failures in the administration of the Food Share, Medical Assistance and BadgerCare Plus programs (“hereinafter Milwaukee County income maintenance programs”) in Milwaukee County; and

**WHEREAS**, Plaintiffs and State Defendants now want to resolve this controversy on mutually satisfactory terms by compromising disputed claims;

**NOW THEREFORE**, in consideration of the undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed to by the Plaintiffs and the State Defendants, represented by their undersigned counsel, that all of Plaintiffs’ claims for relief which were asserted in this action against State Defendants shall be fully resolved on the following terms as set forth in this Settlement Agreement.

**I. CERTIFICATION OF THE PLAINTIFF CLASS AND CLASS NOTICE**

A. By an order dated April 8, 2009, the Court certified a class under Fed. R. Civ. P. 23(b)(2) using a definition that assumed ongoing administration of the Milwaukee County income maintenance programs by Milwaukee County. With respect to all claims asserted in the amended complaint, the Plaintiffs and State Defendants do hereby agree that the class definition in the Court's order should be amended to describe the class as follows:

All eligible applicants for, and recipients of, Food Share, Medical Assistance (MA), and Badger Care Plus who reside in Milwaukee County with the exception of: MA recipients who also receive Supplemental Security Income (SSI) or foster care; and, applicants for, and recipients of, Katie Beckett MA, SeniorCare, BadgerCare Plus Core Plan for Childless Adults, Family Care, or a home and community-based waivers program under section 1915 of the Social Security Act.

B. The parties agree that notice to the class is not mandatory pursuant to Fed. R. Civ. P. 23(c)(2)(A) at this time. The parties further agree that notice to the class of this Settlement Agreement should be made at the time of dismissal of the action as to the State Defendants, with notice to be accomplished by a one-time mailing to class member "case heads" (otherwise called "heads of households") or authorized representatives, and through publication of the notice in the newspaper of record, here, the Milwaukee Journal Sentinel. Such notice will outline the terms of this settlement and the compliance achieved by the Department of Health Services (hereinafter "the Department"). The State Defendants shall bear the cost of notice.

## **II. STATE OF WISCONSIN ASSUMPTION OF RESPONSIBILITY FOR PROGRAMS.**

A. The Department will assume direct responsibility for the administration of the Milwaukee County income maintenance programs. The Department's purpose is to improve services to residents of Milwaukee County for the programs at issue.

B. The Department has executed a transition plan, with the goal that the Department will assume direct responsibility for the administration of the Milwaukee County income maintenance programs no later than January 1, 2010.

C. The Department will create a Community Advisory Group that will provide input to the Department on the Milwaukee County income maintenance programs.

D. The Department will process applications, reviews, Six Month Review Forms ("SMRFs"), and verification in accordance with procedures and timelines as set forth in 7 C.F.R. § 273.2(g) and (h), 7 C.F.R. § 273.2(i), 7 C.F.R. § 273.12(c), 7 C.F.R. § 273.14(d) and (e), 42 C.F.R. § 435.911, 42 C.F.R. § 435.916, and 42 C.F.R. § 457.340 as implemented by Wis. Admin. Code § DHS 102.04.

E. The Department will revise the verification letter that is now used to request verification in order to comply with the requirements set forth in 7 C.F.R. § 273.2(c)(5), and will draft a new letter advising clients if the verification received is inadequate.

### **III. MONITORING AND MONTHLY REPORTS.**

A. During calendar year 2009, the Department agrees to provide Plaintiffs' counsel with reports in June and November summarizing the progress of the transition plan described in section II of this Settlement Agreement.

B. Beginning in calendar year 2010, through dismissal of this action as to the State Defendants, the Department agrees to provide Plaintiffs' counsel with monthly Milwaukee County Enrollment Services reports in the form set out in Attachment A. The first report will be due on or before February 28, 2010.

### **IV. STAY AND DISMISSAL**

A. Because the Plaintiffs and State Defendants believe that the Department's assumption of direct responsibility for the administration of Milwaukee County income maintenance programs will correct the problems raised in the amended complaint, Plaintiffs and State Defendants agree to request a court order staying this litigation to provide time for the transition of responsibility for the administration of Milwaukee County income maintenance programs from Milwaukee County to the Department.

B. If the Court does not stay the litigation pursuant to this stipulation, the terms of this Settlement Agreement are not binding on the parties.

C. On or about November 16, 2010, the State Defendants and Plaintiffs' counsel will meet to discuss the Department's compliance with the timeliness standards detailed in Section II.D. of this Settlement Agreement over the first ten months of 2010. If the Department has not achieved at least 75% compliance with timely processing of

applications (excluding disability determination cases) and reviews as demonstrated by the monthly Milwaukee County Enrollment Services Reports averaged over the months of August, September, and October, 2010, then Plaintiffs' counsel may request that the Court lift the stay for the purpose of resuming litigation. Before such motion may be filed, Plaintiffs' counsel will provide the State Defendants with a minimum two-week period in which to formulate a corrective action plan to further improve timeliness.

D. The Plaintiffs and State Defendants stipulate and agree to the following terms under which this litigation will be dismissed as to the State Defendants:

1. Within thirty days of receipt by Plaintiffs' counsel of the Department's Milwaukee County Enrollment Services report (see paragraph III.B.) for January 2011, the Plaintiffs shall sign a release and request that the Court dismiss the action as to State Defendants with prejudice, subject to the hearing required by Fed. R. Civ. P. 23(c)(2), unless Plaintiffs have filed a motion seeking to delay dismissal of this action as to State Defendants.

2. A motion to delay dismissal of this action as to State Defendants may only be made if the Department has not (a) complied with paragraph II. E. above (revised verification letters); or (b) the Milwaukee County Enrollment Services reports demonstrate that the Department has failed to meet the following standards averaged over the months of November 2010, December 2010, and January 2011:

i. 90% of applications for Food Share, Medical Assistance and BadgerCare Plus processed timely (excluding disability determination cases);

ii. 90% of reviews for Food Share, Medical Assistance and BadgerCare Plus processed timely;

iii. 90% of Food Share Six Month Report Forms (SMRFs) processed timely;

iv. 90% of verification documents requested as a result of a reported change processed timely.

E. Should litigation continue, it is understood that Plaintiffs may pursue only injunctive relief.

**V. ATTORNEY FEES.**

A. For purposes of attorneys fees, Plaintiffs shall be considered prevailing parties.

B. After the litigation has been stayed pursuant to this Settlement Agreement, the State of Wisconsin will pay to Plaintiffs' attorneys a negotiated amount in full and final settlement of all claims against State Defendants that Plaintiffs or their counsel may have for attorneys fees, disbursements and costs arising from this litigation through the date of the Court's order staying this litigation.

C. Following approval of this Settlement Agreement and dismissal of this action, the Plaintiffs may seek reimbursement from the State Defendants for reasonable attorneys fees and costs necessary for monitoring and enforcement of this agreement through final dismissal of this lawsuit as to the State Defendants.

D. The total amount of requested fees shall not exceed \$100,000 unless this action is not dismissed as to the State Defendants on or before March 31, 2011. Any disputes as to attorneys fees and costs will be resolved by hearing before the Court pursuant to Fed. R. Civ. P. 23(h)(4), and no party waives its rights to assert or contest fees as reasonable and necessary to the litigation.

**NOW THEREFORE IT IS UNDERSTOOD THAT** this Settlement Agreement is a full, final and complete compromise and settlement of claims, actual, doubtful or disputed, as to questions of liability, damage and remedy for the claims raised in this action as to the State Defendants, and is not to be construed as an admission of liability by the State Defendants, their respective agents, their respective officers or their respective employees.

**IT IS FURTHER UNDERSTOOD THAT** this Settlement Agreement shall be presumed to have been jointly prepared by Plaintiffs, the State Defendants, and their counsel. To the extent that any term is found to be ambiguous, such ambiguity will not be construed against any party as the drafter of this Settlement Agreement.



FOR PLAINTIFFS:

Dated this 16<sup>th</sup> day of April, 2009.

By:



ANNE L. De LEO  
State Bar #1016948

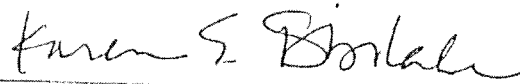
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FOR THE STATE DEFENDANTS:


Dated this 16<sup>th</sup> day of April, 2009.


By:



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Wisconsin Department of Health Services

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Attachment A - Milwaukee County Enrollment Services Report (Month) 2010 (created mm/dd/yyyy)

Programs Open (confirmed)	Cases
BadgerCare Plus Only	
Medicaid EBD Only	
Medicaid LTC Only	
Medicaid Other Only	
BadgerCare Plus/FoodShare	
Medicaid EBD & LTC/FoodShare	
Medicaid Other/FoodShare	
FoodShare Only	
Total Cases	

Timeliness	
Applications Processed in Month	
% Applications Processed Timely	
Reviews Processed in Month	
% Reviews Processed Timely	
SMRFs Processed In Month:	
Received by 5 <sup>th</sup> day of Month	
% Processed Timely	
Received after 5 <sup>th</sup> day but within Month	
%Processed Timely	
Change Report – Verifications:	
Number not processed timely	
% not processed timely	

Verification-Related	
Number of Cases Pending Due to Verification	
Number of Cases Pending Beyond Timely Processing due to Verification	
Earliest Filing Date with Verification Pending	

Churning	
Number of Cases Closed in Last 60 Days and Reopened This Month	

Change/Call Center	
Total Phone Calls to Milwaukee Change/Call Center	
Percentage Answered	
Average Hold Time	

## **Timeliness Definitions for Medicaid, BadgerCare Plus, and FoodShare**

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For purposes of monthly reporting and the standards for a continued stay and stipulated dismissal under section IV of the Settlement Agreement, the following definitions for timeliness will be used. However, in the event that prior to dismissal of the action as to the State Defendants the federal government amends the standards for timeliness, the definitions herein may be amended to be consistent with the revised standards.

### **1. Applications**

An application is timely processed if it is processed within 30 calendar days following the date the application was *filed*, or, if new or additional information is requested, the application is processed by the 30<sup>th</sup> calendar day following the application date or 10 days from the date additional information was requested, whichever is later.

- An application is *filed* the day the agency receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative.
- The *filing* date on an ACCESS application is the date the application is electronically submitted or the next business day if submitted after the agency's regularly scheduled business hours.

### **Expedited FoodShare Applications**

An expedited benefits application will be considered timely processed if it is processed so that the applicant receives benefits by the seventh calendar day following the date the application is filed.

### **2. Reviews**

A review will be considered timely processed if it is processed within the calendar month for which the review is due, or 10 days from the date additional information was requested, whichever is later.

### **3. FoodShare Six-Month Report Forms Received by the 5th of the Report Month.**

A *complete* SMRF returned by the 5<sup>th</sup> day of the report month that is processed by the end of the report month will be considered timely processed.

A *complete* SMRF contains the signature of an adult household member and verification of:

- Current gross earned and unearned income received by all household members including self-employment.
- Changes in household composition.
- Address change resulting in changes in shelter and utility expenses
- Change in legal obligation to pay child support

An *incomplete* SMRF will be considered timely processed if it is processed within 10 days of receipt of required verification or by the end of the report month, whichever is later.

**4. FoodShare Six-Month Report Forms Received after the 5th, but Before the End of the Report Month.**

A complete SMRF returned after the 5<sup>th</sup> but prior to the end of the report month will be considered timely processed if it is processed within 10 days of receipt of the SMRF or by the end of the report month, whichever is later. If verification is requested, it will be considered timely processed if it is processed within 10 days of the date verification is provided or by the end of the report month, whichever is later.

An *incomplete* SMRF that is processed within 10 days of receipt of required information, verification or both, or by the end of report month, whichever is later, will be considered timely processed.

**5. Verification Documents for Change Reports**

Verification that is processed within 10 calendar days of receipt will be considered timely processed.

**Tracking:**

The processing of all applications, reviews and SMRFs will be tracked. Data from the CARES eligibility system will be used and will be reported as of the last day of each calendar month.

Tracking of timeliness of verification documents for all change reports will be done manually by Income Maintenance agency managers.

*NB:* If the last day on which to act falls on a weekend or government holiday, action taken the next business day will be considered timely.