



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

ROLAND MOSLEY, LINDA McCOY,  
CHARLES MORGAN, TRACEY MELIA,  
LINDA REED, THOMAS DOE, and  
CENTER FOR INDEPENDENT LIVING OF  
CENTRAL PENNSYLVANIA, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

GARY ALEXANDER, in his official capacity as  
Acting Secretary of Public Welfare for the  
Commonwealth of Pennsylvania,

Defendant.

**11 2615**

Civil Action No. \_\_\_\_\_

Class Action

COMPLAINT

**I. Introduction**

1. The individual Plaintiffs have applied for Medical Assistance home and community-based waiver programs for individuals under age 60 that are administered by the Pennsylvania Department of Public Welfare's Office of Long Term Living (OLTL Waivers). OLTL Waivers provide essential services to individuals with physical, sensory, and neurological disabilities, traumatic brain injury, AIDS, and HIV disease that enable them to continue living in their own homes and communities and to avoid unnecessary institutionalization.

2. Defendant has refused to allow some individuals with disabilities and chronic disabilities even to apply for OLTL Waivers, determining after brief telephone

interviews that they are not eligible. Others, who are allowed to apply for OLTL Waivers, do not receive from the Defendant timely determinations as to their eligibility, leaving them struggling without necessary personal care and other services they need to live in their own homes and communities.

3. Defendant also has not provided individuals with written notice and an opportunity to appeal when they are not permitted to apply for OLTL Waivers or when their eligibility is not determined with reasonable promptness.

4. Defendant violates 42 U.S.C. § 1983 and Title XIX of the Social Security Act, 42 U.S.C. § 1396a(a)(8) by: (a) refusing to allow individuals to apply for the OLTL Waivers; and (b) failing to make eligibility determinations for OLTL Waivers with reasonable promptness. Defendant also violates 42 U.S.C. § 1983, Title XIX of the Social Security Act, 42 U.S.C. § 1396a(a)(3), and the Due Process Clause of the Fourteenth Amendment to the Constitution by failing to provide written notice and the right to appeal to individuals who are denied the right to apply for OLTL Waivers and to individuals whose eligibility is not determined with reasonable promptness. Plaintiffs seek appropriate declaratory and injunctive relief.

## **II. Jurisdiction and Venue**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

6. Plaintiffs' claims are authorized by 42 U.S.C. §§ 1396 and 1983 and 28 U.S.C. §§ 2201 and 2202.

7. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) since a substantial part of the events that gave rise to these claims arose in this District.

### **III. Parties**

8. Plaintiff Roland Mosley is a 56-year-old resident of Philadelphia, Pennsylvania.

9. Plaintiff Linda McCoy is a 44-year-old resident of Montgomery County, Pennsylvania.

10. Plaintiff Charles Morgan is a 58-year-old resident of Chester County, Pennsylvania.

11. Plaintiff Tracey Melia is a 50-year-old resident of Chester County, Pennsylvania.

12. Plaintiff Linda Reed is a 49-year-old resident of Philadelphia, Pennsylvania.

13. Plaintiff Thomas Doe is a 63-year-old resident of Westmoreland County, Pennsylvania. Plaintiff Doe proceeds under a pseudonym due to his diagnosis with HIV disease.

14. Plaintiff Center for Independent Living of Central Pennsylvania (CILCP) is a non-profit, community-based organization that seeks to empower people with disabilities in Cumberland, Dauphin, Perry, Mifflin, and Juniata Counties to enjoy self-directed, personally meaningful lives.

a. CILCP is a designated "Center for Independent Living" under federal law. Congress requires CILCP "to increase the availability and improve the

quality of community options for independent living" and "to provide independent living core services," which include "individual and systems advocacy" for people with disabilities. 29 U.S.C. §§ 796f-4(b)(4) and (5) (incorporating 29 U.S.C. § 705(17)). In accordance with its mandate, CILCP: (a) provides information and referral services to persons with disabilities about home and community-based services, including OLTL Waivers; and (b) advocates to eliminate barriers to services for people with disabilities.

b. CILCP's Board and staff are comprised primarily of persons with disabilities.

c. CILCP provides information and advocacy services to people with disabilities, including information and advocacy services to people who experience difficulty applying for OLTL Waiver services.

d. CILCP and its constituents have been directly and concretely injured by Defendant's actions and inactions underlying this case.

(1) Defendant's actions and inactions have deterred or delayed CILCP constituents from applying for OLTL Waiver services for which they may be eligible and which they need to remain safely in their homes and communities.

(2) Defendant's actions and inactions underlying this lawsuit have caused CILCP to expend time, money, and resources to provide assistance to its constituents who have been denied the right to apply for OLTL Waivers by MAXIMUS or whose eligibility determinations have been subject to lengthy delays. CILCP provided information and advocacy services to people whose applications for OLTL Waivers have been denied or delayed by MAXIMUS. In addition to this individual assistance, CILCP

has engaged in systemic advocacy to bring issues related to MAXIMUS to the attention of the Department of Public Welfare so that they can be remedied. Absent Defendant's unlawful actions, CILCP could have devoted these resources to assisting other constituents and to working on other pressing advocacy issues, such as access to housing and nursing home transition.

15. Defendant, Gary Alexander, is the Acting Secretary of Public Welfare of the Commonwealth of Pennsylvania. Mr. Alexander administers the Pennsylvania Department of Public Welfare (DPW), which is the single state agency that has responsibility to implement Pennsylvania's Medical Assistance Program. 42 U.S.C. § 1396a(a)(5); 55 Pa. Code § 101.1(e). As such, Mr. Alexander is responsible to assure that Pennsylvania's Medical Assistance program is operated in compliance with federal statutory and constitutional law. Mr. Alexander is sued in his official capacity only for actions and omissions under color of state law.

#### **IV. Class Action Allegations**

16. Plaintiffs bring this action on their own behalf and on behalf of a class comprised of all Pennsylvanians who: (a) have been or will be denied the right to apply for OLTL Waivers; (b) have not had or will not have their eligibility for OLTL Waivers determined within 90 days of the date they sought to apply for services; or (c) have not received or will not receive written notice and the opportunity to appeal when they were denied the right to apply for OLTL Waivers or when their eligibility for OLTL Waiver services was not determined within 90 days of the date they sought to apply for services.

17. The action satisfies the prerequisites of Federal Rule of Civil Procedure 23(a):

a. The size of the class is so numerous as to make joinder of all class members impracticable. On information and belief, there are at least several hundred, and perhaps more than 1,000, individuals who are putative class members. Factors in addition to class size exacerbate the impracticability of joinder. Class members are dispersed throughout the Commonwealth, have disabilities, and have limited incomes that make it unlikely that they will pursue individual litigation.

b. There are questions of fact and law common to all class members, including, but not limited to: (1) whether Defendant has refused to allow some individuals to apply for OLTL Waivers and, if so, whether he has violated 42 U.S.C. §§ 1396a(a)(8) and 1983; (2) whether Defendant has not made eligibility determinations for OLTL Waivers with reasonable promptness and, if so, whether he has violated 42 U.S.C. §§ 1396a(a)(8) and 1983; and (3) whether Defendant has failed to provide written notice and the opportunity to appeal to individuals who were denied the right to apply for OLTL Waivers or whose applications were not processed with reasonable promptness and, if so, whether he has violated 42 U.S.C. §§ 1396a(a)(3) and 1983 and the Due Process Clause of the Fourteenth Amendment to the Constitution.

c. Plaintiffs' claims are typical of the claims of class members.

d. Plaintiffs will fairly and adequately protect the interests of class members. Plaintiffs have no interests that are adverse to or in conflict with those of class

members. Plaintiffs' counsel has extensive experience in civil rights, disability law, class actions, and Medical Assistance litigation.

18. This action can proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2). Defendant has acted or refused to act on grounds generally applicable to all members of the class, making final declaratory and injunctive relief appropriate with respect to the class as a whole.

## V. Factual Background

### A. Medical Assistance and HCBS Waivers

19. Title XIX of the Social Security Act (Title XIX), 42 U.S.C. § 1396 *et seq.*, establishes the federal Medical Assistance program.

20. Medical Assistance is a cost-sharing arrangement under which the federal government reimburses more than 50 percent of the expenditures incurred by states that elect to furnish Medical Assistance to individuals whose income and resources are insufficient to cover the costs of their medical care.

21. The purpose of Medical Assistance is to provide medical services to eligible individuals, including services to help such individuals "attain or retain capability for independence or self-care ...." 42 U.S.C. § 1396.

22. States are not required to participate in the Medical Assistance program, but, if they choose to do so, they must adopt a "state plan" that delineates the standards for determining eligibility and identifies the extent of Medical Assistance benefits.

23. Pennsylvania has chosen to participate in the Medical Assistance program and has adopted a State Medical Assistance Plan.

24. Title XIX delineates the types of medical services that can be funded under a state's Medical Assistance plan. See 42 U.S.C. § 1396d. Certain types of services are mandatory (e.g., inpatient hospital services, physicians' services, and nursing facilities) and must be included in every state's Medical Assistance plan. Other types of services are optional (e.g., hospice care, dental care, and medications), and each state has discretion to choose whether to cover any particular optional service.

25. Many home and community-based services for people with disabilities (such as, home and vehicle modifications, habilitation, and community integration) cannot be covered either as mandatory or optional services under Title XIX.

26. Title XIX permits a state to obtain a home and community-based services (HCBS) waiver from the Centers for Medicare and Medicaid Services (CMS). 42 U.S.C. § 1396n(c). HCBS waivers allow states to include in their state plans as "Medical Assistance" home and community-based services for individuals who, without such care, would require institutionalization in an intermediate care facility for persons with mental retardation, nursing facilities, or hospitals.

27. HCBS waivers allow states to "waive" three specific Title XIX requirements that apply to mandatory and optional services -- the statewide requirement (which requires the state to assure the availability of services in all geographic areas); the comparability requirement (which requires the state to assure that all eligible persons have access to services in the same amount, duration, and scope); and income and resource rules. 42 U.S.C. § 1396n(c)(3).

28. By waiving the "comparability" requirement, states can limit the number of persons who will be allowed to participate in an HCBS waiver and can establish qualifications for eligibility based on age, disability, or other criteria. Waiver of the comparability requirement also allows states to provide Medical Assistance services to HCBS waiver participants in a different amount, duration, or scope than is available to other Medical Assistance participants.

29. A state can provide services in HCBS waivers that are not identified in Title XIX as approved mandatory or optional services (*e.g.*, habilitation, home and vehicle modifications, personal emergency systems). 42 U.S.C. § 1396n(c)(4)(B); 42 C.F.R. § 440.180.

30. In sum, the purpose of Title XIX's HCBS waivers is to encourage states to provide services to assist individuals with disabilities to avoid institutionalization. 42 C.F.R. § 441.300. As long as community-based services vis-à-vis institutional services are cost-neutral, *see* 42 U.S.C. § 1396n(c)(2)(D), the preference is to provide services in the community.

**B. Pennsylvania's OLTL Waivers**

31. Pennsylvania has received authorization from CMS to operate multiple HCBS Waivers.

32. DPW, the single state agency designated by Pennsylvania to administer its Medical Assistance program, has delegated to its Office of Long Term Living (OLTL) responsibility to administer several of Pennsylvania's HCBS Waivers, including: the

Independence Waiver, the OBRA Waiver, the Attendant Care Waiver, the Commcare Waiver, and the AIDS Waiver (collectively, OLTL Waivers).

33. The Independence Waiver provides services to individuals who: are between the ages of 18 and 60; have physical disabilities that are likely to continue indefinitely and result in substantial functional limitations in three or more major life activities (such as self-care, learning, mobility, capacity for independent living, and communication); need the level of care provided by a nursing facility; and meet the financial eligibility requirements.

a. For eligible individuals, the Independence Waiver offers a number of services depending on their needs, including: personal assistance services; home health services; community integration and transition services; supported employment services; environment and vehicle accessibility adaptations; specialized medical equipment and assistive technology; and a personal emergency response system.

b. The Independence Waiver can provide services to approximately 4,800 people in FY 2010-2011 and 4,900 in FY 2011-2012.

c. The Independence Waiver currently is not filled, and there is no waiting list.

34. The OBRA Waiver provides services for individuals who: are between the ages of 18 and 60; have severe physical, sensory, or neurological disabilities that arose prior to age 22 and that result in substantial functional limitations in three or more identified life activities (including mobility, communication, and self care); need the level of care provided by an intermediate care facility for persons with other related conditions;

and meet the financial eligibility requirements. The OBRA Waiver also serves a small number of individuals with autism who meet the other criteria.

a. For eligible individuals, the OBRA Waiver offers a number of services depending on their individual needs, including: personal assistance services; home and vehicle adaptations; specialized medical equipment and assistive technology; community integration and transition services; prevocational and supported employment services; adult day services; and therapies beyond those covered by the State Plan.

b. The OBRA Waiver can serve approximately 1,400 people in Fiscal Year 2010-2011.

c. At this point, the OBRA Waiver is filled, and there is a waiting list. However, individuals are still permitted to apply and, if found eligible, they can be placed on a waiting list.

35. The Attendant Care Waiver provides services to individuals who: are between the ages of 18 and 59; have physical impairments that are expected to last a continuous period of not less than one year or that may result in death; are "mentally alert" (*i.e.*, able to direct their own care; hire, fire, and supervise attendant care workers; and manage their own legal and financial affairs); need the level of care provided by a nursing facility; and meet the financial eligibility requirements.

a. For eligible individuals, the Attendant Care Waiver offers various services depending on their needs, including: personal assistance services (formerly called "attendant care"); supports coordination; community transition services; and a personal emergency response system.

b. The Attendant Care Waiver can serve approximately 6,900 individuals at any point in time during Fiscal Year 2010-2011 and approximately 7,600 in Fiscal Year 2011-2012.

c. The Attendant Care Waiver currently is not filled, and there is no waiting list.

36. The Commcare Waiver provides services to individuals who: are ages 21 or older; have traumatic brain injuries; need the level of care provided by a special rehabilitation facility; and meet the financial eligibility requirements.

a. For eligible persons, the Commcare Waiver offers a number of services depending on the individuals' needs, including: habilitation; night supervision; non-medical personal care services; prevocational or supported employment services; structured day programs; chore services; cognitive therapy; coaching/cuing; community integration and transition services; environmental adaptations; and specialized medical equipment and assistive technology.

b. The Commcare Waiver can serve up to 685 unduplicated recipients in Fiscal Year 2010-2011 and up to 706 in Fiscal Year 2011-2012.

c. Although the Commcare Waiver is not filled, DPW has put additional enrollment on hold temporarily pending the resolution of certain administrative issues. Individuals may continue to apply for the Commcare Waiver and, if determined to be eligible, will be placed on a waiting list.

37. The AIDS Waiver provides services to individuals who: are age 21 and older; have AIDS or HIV disease; need the level of care of a hospital, skilled nursing facility, or a rehabilitation facility; and meet the financial eligibility requirements.

a. For eligible individuals, the AIDS Waiver offers a number of services depending on their individual needs, including: skilled nursing visits and home health aide visits (beyond those otherwise authorized by the State Plan); personal assistance services; homemaker services, nutritional consultations; specialized medical equipment and supplies; and community transition services.

b. The AIDS Waiver can serve up to 800 people in Fiscal Year 2010-2011 and 800 people in Fiscal Year 2011-2012.

c. The AIDS Waiver is not filled, and there is no waiting list.

38. The OLTL Waivers all provide essential services to enable eligible individuals with disabilities to live in their own homes and participate to the maximum extent feasible in community life.

**C. The Application and Enrollment Process for OLTL Waivers**

39. DPW's OLTL is responsible to determine whether an individual is eligible for one of the OLTL Waivers.

40. The following steps must be taken for DPW's OLTL to determine whether an applicant is eligible for one of the OLTL Waivers:

a. DPW's OLTL must receive documentation from the applicant's primary care physician (usually a prescription or MA-51 form).

b. DPW's OLTL must receive a completed level of care assessment (LOCA) to determine if the individual meets the relevant institutional level of care need for each Waiver. For the Attendant Care, Commcare, and Independence Waivers, the LOCA is completed by the Area Agency on Aging (AAA) in the applicant's county. For the AIDS and OBRA Waivers, the LOCA usually is completed by a physician.

c. DPW's OLTL must receive documentation from the applicant's County Assistance Office (CAO) that the applicant meets the financial eligibility requirements for the Waiver.

41. Until December 1, 2010, DPW and OLTL contracted with several private agencies to act as "enrollment brokers" in different geographic regions of the Commonwealth.

42. The enrollment brokers were responsible to take applications by individuals in their regions who wanted to receive services available under the OLTL Waivers. This required them to conduct "intake visits," usually at the individual's home, where the enrollment broker worked with the applicant to complete the necessary forms and secure the required documentation.

43. The enrollment brokers were responsible to assist applicants to secure the medical documentation, LOCA, and financial approval necessary for OLTL to make an eligibility determination.

44. Because these enrollment brokers also provided services under the OLTL Waivers, CMS expressed concerns that there might be conflicts of interest. CMS also expressed concerns about disparities in the application process among the different

enrollment brokers. Due to these concerns, CMS advised DPW to use an independent enrollment broker (IEB) for the OLTL Waivers.

45. In September 2010, DPW entered into a two-year contract for nearly \$9 million with MAXIMUS, a private corporation, to serve as the IEB for the OLTL Waivers.

46. Beginning December 1, 2010, all individuals who want to apply for OLTL Waivers must apply through MAXIMUS.

47. DPW has advised the pre-MAXIMUS enrollment brokers that they are responsible to continue to facilitate the applications of individuals who had applied for OLTL Waivers prior to December 1, 2010 and whose eligibility had not yet been determined and that those applications should be completed and submitted to OLTL by March 31, 2011.

48. Under its contract with DPW's OLTL, MAXIMUS is responsible for the following activities:

a. *Receiving Referrals* -- MAXIMUS must maintain a toll-free telephone line that can be used as the point of contact. Individuals who want services can contact MAXIMUS, or MAXIMUS can receive referrals from third-parties, such as family members, services providers, or others.

b. *Screening Callers* -- Once MAXIMUS receives a referral call, it screens the individual to determine whether they are likely to be eligible for OLTL Waivers, provides information to the caller about the services available and the intake process, and offers them the opportunity to apply for services. Even if MAXIMUS

concludes that the individual is not likely to be eligible for OLTL Waiver services, it must offer the individual the opportunity to apply for Waiver services.

c. *Scheduling Initial In-Home Intake Visits* -- After receiving a referral, DPW's OLTL requires MAXIMUS to contact the individual to schedule an initial intake visit in his or her home. DPW's OLTL expects MAXIMUS to make at least 95 percent of those contacts within 24 hours after receipt of the referrals. DPW's OLTL further expects that MAXIMUS will conduct 95 percent of the initial intake visits within 7 business days after receipt of the referrals.

d. *Conducting Initial In-Home Intake Visits* -- During the initial in-home intake visits, MAXIMUS must work with the individual to complete the application and all required forms, to gather documentation needed to process the application, and to provide the individual with information about timeframes for the process.

e. *Facilitating the Waiver Eligibility Determination Process* -- MAXIMUS must assist the applicants to assure that they receive the necessary functional and financial determinations necessary for OLTL to make an eligibility determination (*i.e.*, that they secure the necessary physician's documentation, LOCA, and financial eligibility determination).

**D. Plaintiffs and Class Members Have Been Excluded from the Application Process for OLTL Waivers or Subjected to Unreasonable Delays in Receiving Determinations of their Eligibility for OLTL Waivers**

49. Since beginning as the IEB for OLTL Waivers, MAXIMUS has refused to allow some individuals even to apply for OLTL Waiver services.

a. Plaintiff Melia contacted MAXIMUS on February 7, 2010 to apply for an OLTL Waiver. Ms. Melia has cerebral palsy and needs assistance with personal care and with caring for her home. After MAXIMUS staff asked Ms. Melia a few questions on the phone, she was told that she was not eligible for any OLTL Waiver. Ms. Melia subsequently contacted an advocacy organization, United Cerebral Palsy of Chester County (UCP-Chester). After UCP-Chester intervened, MAXIMUS agreed to schedule an intake interview with Ms. Melia, which occurred on March 28, 2011 -- 7 weeks after she requested services.

b. Plaintiff CILCP has received complaints from its constituents that MAXIMUS refused to allow them to apply for OLTL Waiver services based on brief telephone interviews.

(1) MAXIMUS informed R.G. over the phone that he is not eligible for OLTL Waivers because he cannot cook for himself.

(2) MAXIMUS informed K.H.H. over the phone that she was not eligible for OLTL Waivers. When a CILCP advocate subsequently called MAXIMUS with K.H.H., MAXIMUS repeated that K.H.H. was not eligible and explained that this was because she does not need assistance with bathing or dressing. A CILCP advocate

and K.H.H. made a second call to MAXIMUS, explaining that K.H.H. needs assistance with meal preparation and organizing medications and that this constitutes personal assistance for which OLTL Waiver services may be available. At that point, MAXIMUS agreed to schedule an intake visit with K.H.H.

(3) MAXIMUS informed R.R. over the phone that he was not eligible for OLTL Waivers after he indicated that he had an intellectual as well as a physical disability.

(4) On or about April 6, 2011, MAXIMUS informed G.F. over the phone that he was not eligible for OLTL Waivers after he stated that he had an intellectual disability and mental health issues in addition to having a physical disability that results in his use of a motorized wheelchair. MAXIMUS did not even take his name or phone number.

c. MAXIMUS has denied other individuals -- who are not aware of the availability of assistance through CILCP and similar advocacy groups -- the right to apply for OLTL Waiver services. Without intervention from an advocacy group, these individuals remain excluded from the application process and without essential services that they need for self-care in their own homes.

d. DPW admits that some individuals who contact MAXIMUS to apply for OLTL Waivers are not offered intake visits, depending on how they respond to the screening questions.

50. MAXIMUS was not prepared to handle the volume of applicants for OLTL Waivers even though it received information from DPW that indicated that between

October 2008 and January 2009, the enrollment brokers received between 200 and 400 intakes each month were received for OLTL Waiver services.

51. Since MAXIMUS became the IEB, the majority of applicants have not been scheduled for intake visits within 7 business days of their referrals, as required by its contract with DPW. Many individuals were given appointments that were weeks, and in some cases months, after they contacted or were referred to MAXIMUS. For example:

a. Plaintiff Mosley was referred to MAXIMUS on December 16, 2010. MAXIMUS conducted his intake interview on January 21, 2011, more than one month later.

b. Plaintiff McCoy was referred to MAXIMUS on December 3, 2010. MAXIMUS conducted her intake interview on December 30, 2010, nearly four weeks later.

c. Advocates and agencies, including CILCP, have received calls from individuals who were given appointments by MAXIMUS to apply for OLTL Waivers weeks or months after they contacted MAXIMUS. MAXIMUS sometimes accelerated the appointments when advocates intervened, but individuals without advocates were forced to wait unreasonably lengthy times.

52. MAXIMUS's delays in scheduling intake visits are compounded by delays in securing LOCAs and financial eligibility determinations. These various delays result in OLTL's failure to issue eligibility determinations promptly.

a. Plaintiff Mosley was referred to MAXIMUS on December 16, 2010, seeking to apply for the Independence or Attendant Care Waiver. MAXIMUS conducted

his intake interview on January 21, 2011 in his home. Mr. Mosley secured his physician's certification before that interview and provided it to MAXIMUS. The Philadelphia AAA, Philadelphia Corporation for the Aging, conducted his LOCA assessment on March 7, 2011 and submitted it to MAXIMUS on March 30, 2011. To date, the CAO appears not to have made any determination of Mr. Mosley's financial eligibility. As a result, nearly four months after he applied for OLTL Waiver services, Mr. Mosley's application has not even been referred to OLTL. OLTL accordingly has not determined whether Mr. Mosley is eligible for OLTL Waiver services and, thus, he cannot receive services. Mr. Mosley had a stroke, resulting in right-side paralysis. He desperately needs the services the Independence or Attendant Care Waiver can provide, particularly personal care services.

b. Plaintiff McCoy was referred to MAXIMUS on December 3, 2010 to apply for the Independence Waiver or Attendant Care Waiver. MAXIMUS conducted its in-home intake interview of her on December 30, 2010. MAXIMUS has received her physician's certification and the LOCA from the Montgomery County AAA. MAXIMUS appears not to have received a certification of Ms. McCoy's financial eligibility from the CAO. As a result, more than four months after she initially applied for OLTL Waiver services, Ms. McCoy's application has not even been referred to OLTL. OLTL accordingly has not determined whether Ms. McCoy is eligible for OLTL Waiver services and, thus, she cannot receive services. Ms. McCoy has bi-lateral below-the-knee amputations due to spinal meningitis 19 years ago. Due to swelling and other issues, it is difficult for her to use her prosthetic limbs. Ms. McCoy also has back injuries. Ms.

McCoy's multiple disabilities prevent her from bathing independently, getting out of bed, cooking, and cleaning. Ms. McCoy currently depends on a volunteer to assist her. Ms. McCoy desperately needs the personal care services the Independence or Attendant Care Waiver could provide.

c. Plaintiff Morgan was referred to MAXIMUS to apply for services under the Independence or Attendant Care Waiver. MAXIMUS conducted an in-home intake interview of Mr. Morgan on January 13, 2011. MAXIMUS has received Mr. Morgan's physician's certification and completed LOCA. The CAO informed MAXIMUS that, because Mr. Morgan is a new applicant for Medical Assistance, he must complete and sign certain forms. MAXIMUS, however, has made no effort to return to Mr. Morgan's home to have him complete the necessary documentation. As a result, three months after he applied for OLTL Waiver services, Mr. Morgan's application has not even been referred to OLTL. OLTL accordingly has not determined whether Mr. Morgan is eligible for OLTL Waiver services and, thus, he cannot receive services. Mr. Morgan has chronic illnesses that cause him to use a motorized scooter to ambulate and that make it difficult for him to breathe and perform activities of daily living. Mr. Morgan urgently needs the personal care services the Independence or Attendant Care Waiver can provide.

d. Plaintiff Melia, as noted above, contacted MAXIMUS on February 7, 2011 to apply for an OLTL Waiver and was informed that she was not eligible and could not apply. After an advocate from UCP-Chester intervened on her behalf, MAXIMUS scheduled an in-home intake interview with her for April 5, 2011.

MAXIMUS subsequently re-scheduled and conducted the in-home intake interview on March 28, 2011. Ms. Melia has provided MAXIMUS with a copy of the necessary physician's certification but, as of this date, no time has been scheduled for a LOCA assessment by her county AAA, and she has received no word on her financial eligibility. Ms. Melia's application accordingly has not yet been referred to OLTL. Thus, it is extremely unlikely that Ms. Melia will receive an eligibility determination within 90 days of the date she sought to apply, February 7, 2011. Ms. Melia has cerebral palsy and, as a result, needs assistance with personal care and activities of daily living that an OLTL Waiver can provide.

e. CILCP clients G.G., R.F., and E.W. applied to MAXIMUS for services more than 90 days ago, but have yet to receive eligibility determinations.

f. There are other individuals who have applied for OLTL Waiver services through MAXIMUS but, due to excessive delays in the application process, they have not or will not receive eligibility determinations within 90 days, causing them undue hardship.

g. On information and belief, fewer than 10 individuals have been enrolled in the OLTL Waivers since December 1, 2010. Given that MAXIMUS likely received at least 200 applications prior to January 1, 2011, it would appear that as of this date there are several hundred applicants who have not received eligibility determinations within 90 days of the date of their application.

53. There are individuals who applied for OLTL services through the pre-MAXIMUS enrollment brokers prior to December 1, 2010 who are still awaiting eligibility determinations from DPW's OLTL months after they applied.

a. Plaintiff Reed contacted a pre-MAXIMUS enrollment broker to apply for OLTL Waiver services. The enrollment broker took her application for the Independence Waiver on September 15, 2010 and conducted an in-home intake interview on October 13, 2010. Ms. Reed's LOCA assessment was also conducted on October 13, 2010. Ms. Reed's LOCA assessment was not finalized and provided to her enrollment broker until on or around March 30, 2011, at which time the enrollment broker forwarded her completed application to OLTL. Nearly seven months after Ms. Reed applied for services, she still has not received an eligibility determination from OLTL. Ms. Reed has a brain injury that results in memory loss, communication deficits, tunnel vision, and poor social and housekeeping skills. The Independence Waiver can provide community integration services as well as assistance with her incidental activities of daily living.

b. Plaintiff Doe has HIV disease and venous insufficiency of the lower extremities. Mr. Doe applied for the AIDS Waiver on May 28, 2010. Mr. Doe submitted the physician's certification necessary. No one took Mr. Doe's financial application for until December 20, 2010. Nearly eleven months after he applied for the AIDS Waiver, Mr. Doe still has not received any determination of his eligibility for that Waiver. Mr. Doe needs the nutritional consultations available under the AIDS Waiver to maintain his health. Mr. Doe also needs other necessary medical services for chronic illnesses. He cannot now afford such care, but, on information and belief, such medical services would

be available to him through Medical Assistance if he is determined to be eligible for the AIDS Waiver.

c. On information and belief, OLTL has not processed completed applications for the AIDS Waiver in months. OLTL has offered no reasons for this delay and has stated that the AIDS Waiver is not filled.

d. DPW publicly stated in February 2011 that approximately 1,700 individuals who applied to the pre-MAXIMUS enrollment brokers are awaiting eligibility determinations.

**E. DPW's Failure to Provide Written Notices and Opportunities to Appeal**

54. OLTL Waiver applicants have not been afforded written notice and the opportunity to appeal when they are not permitted to apply for OLTL Waiver services.

a. Plaintiff Melia was informed by MAXIMUS that she was not eligible for OLTL Waiver services and was not permitted to apply for such services until UCP-Chester intervened on her behalf. At the time she was denied services, neither DPW nor MAXIMUS provided Ms. Melia with written notice that stated the basis for the decision and advised her of the right to appeal the decision.

b. Plaintiff CILCP's constituents R.G., K.H.H., R.R., and G.F., were informed by MAXIMUS that they were not eligible for OLTL Waiver services. Neither DPW nor MAXIMUS provided them with written notice that stated the basis for the decision and advised them of their right to appeal.

c. On information and belief, MAXIMUS has informed other would-be applicants for OLTL Waiver services that they are not eligible for services and did not allow them the option of applying and, when they did so, they did not provide them with written notice of the bases for the decisions and inform them of their right to appeal.

55. OLTL Waiver applicants have not been afforded written notice and the opportunity to appeal when DPW fails to make eligibility determinations with reasonable promptness.

a. Plaintiffs Mosley, McCoy, Morgan, Melia, Reed, and Doe and CILCP constituents such as G.G., R.F., and E.W., applied or sought to apply for OLTL Waiver services more than 90 days ago and have not received eligibility determinations from OLTL. Due to delays in the application process, these Plaintiffs have not or will not have their eligibility determined with reasonable promptness. Neither DPW's OLTL nor MAXIMUS provided these Plaintiffs with written notice that they will not receive eligibility determinations with reasonable promptness, the reasons for the delays, and the opportunity to appeal. Neither DPW's OLTL nor MAXIMUS even provided them with written information when they applied for the OLTL Waivers stating that they had a right to receive eligibility determinations within 90 days and that they could seek a fair hearing if they did not receive eligibility determinations within that time period.

b. On information and belief, there are numerous other individuals who applied for OLTL Waiver services more than 90 days ago and who have not received eligibility determinations. Neither DPW's OLTL nor MAXIMUS provided these putative class members with written notice that they will not receive eligibility determinations

with reasonable promptness, the reasons for the delays, and the opportunity to appeal. Neither DPW's OLTL nor MAXIMUS even provided them with written information when they applied for the OLTL Waivers stating that they had a right to receive eligibility determinations within 90 days and that they could seek a fair hearing if they did not receive eligibility determinations within that time period.

c. DPW admits that it does not send notices to OLTL Waiver applicants when there are unreasonable delays.

**F. Irreparable Harm**

56. Plaintiffs and class members have suffered irreparable harm as a result of Defendant's actions and inactions that give rise to this case.

57. The individual Plaintiffs and class members are struggling to meet their minimum care needs in their homes and communities without the personal assistance and other OLTL Waiver-funded services that they need and for which they are likely eligible.

58. Some individuals have died while waiting for OLTL to issue eligibility determinations for Waiver services.

**VI. Claims**

**A. Count I - Violation of 42 U.S.C. §§ 1396a(a)(8) and 1983**

59. Paragraphs 1 through 58 are incorporated by reference as if fully set forth herein.

60. Title XIX of the Social Security Act, the federal Medical Assistance law, mandates that states which participate in the Medical Assistance program must "provide that all individuals wishing to make application for medical assistance under the plan

shall have the opportunity to do so, and that all such assistance shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8).

61. To comply with Title XIX's reasonable promptness mandate, states must establish reasonable time standards for determining eligibility for Medical Assistance services, but those standards may not exceed 90 days. 42 C.F.R. § 435.911(a)(1).

62. Plaintiff Melia and CILCP's constituents R.G., K.H.H., R.R., and G.F., and others similarly situated were told by MAXIMUS that they could not apply for OLTL Waiver services, a Medical Assistance benefit.

63. Plaintiffs Mosley, McCoy, Morgan, Melia, Reed, and Doe, CILCP constituents such as G.G., R.F., J.S., I.A., and E.W., and others similarly situated have not or will not receive determinations of whether they are eligible for OLTL Waiver services within 90 days.

64. Defendant Alexander's acts and omissions under color of state law violate 42 U.S.C. §§ 1396a(a)(8) and 1983.

**B. Count II -- Violation of 42 U.S.C. §§ 1396a(a)(3) and 1983**

65. Paragraphs 1 through 64 are incorporated by reference as if fully set forth herein.

66. Title XIX of the Social Security Act, mandates that states which participate in the Medical Assistance program must "provide for an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or not acted upon with reasonable promptness." 42 U.S.C. § 1396a(a)(3).

67. Title XIX's fair hearing mandate *a fortiori* requires that states: (a) inform individuals of their right to a fair hearing when they apply for Medical Assistance benefits; (b) provide notice to Medical Assistance recipients when they deny benefits or fail to act upon requests for benefits with reasonable promptness; and (c) afford them the opportunity to be heard when they are denied benefits or when their requests for benefits are not acted upon with reasonable promptness. 42 C.F.R. §§ 431.206, 431.210, 431.220.

68. When MAXIMUS refused to allow Plaintiff Melia and CILCP constituents R.G., K.H.H., R.R., and G.F., and others similarly situated to apply for OLTL Waiver services, effectively denying them Medical Assistance benefits, Defendant Alexander did not provide them with written notice that stated the bases for the decisions and informed them of their right to appeal the denial of services.

69. When DPW's OLTL did not determine with reasonable promptness whether Plaintiffs Mosley, McCoy, Morgan, Melia, Reed, and Doe, CILCP constituents such as G.G., R.F., and E.W., and others similarly situated were eligible for OLTL Waiver services, Defendant Alexander did not provide them with written notice that stated the bases for the delays and that informed them of their right to appeal. Defendant Alexander did not even provide these individuals with written notice when they applied for OLTL Waivers that they were entitled to receive eligibility determinations within 90 days and that, if they did not, they could pursue a fair hearing.

70. Defendant Alexander's acts and omissions under color of state law violate 42 U.S.C. §§ 1396a(a)(3) and 1983.

**C. Count III -- Violation of the Due Process Clause**

71. Paragraphs 1 through 70 are incorporated by reference as if fully set forth herein.

72. The Due Process Clause of the Fourteenth Amendment mandates that the state provide meaningful notice and an opportunity to be heard when it deprives an individual of a property interest.

73. Plaintiffs and putative class members have a property interest in their right to apply for and, if eligible, receive Medical Assistance benefits, including services through the OLTL Waivers.

74. When MAXIMUS refused to allow Plaintiff Melia and CILCP constituents R.G., K.H.H., R.R., and G.F., and others similarly situated to apply for OLTL Waiver services, effectively denying them Medical Assistance benefits, Defendant Alexander did not provide them with written notice that stated the bases for the decisions and informed them of their right to appeal the denial of services.

75. When DPW's OLTL did not determine with reasonable promptness whether Plaintiffs Mosley, McCoy, Morgan, Melia, Reed, and Doe, CILCP constituents such as G.G., R.F., and E.W., and others similarly situated were eligible for OLTL Waiver services, Defendant Alexander did not provide them with written notice that stated the bases for the delays and that informed them of their right to appeal. Defendant Alexander did not even provide these individuals with written notice when they applied for OLTL Waivers that they were entitled to receive eligibility determinations within 90 days and that, if they did not, they could pursue a fair hearing.

76. Defendant Alexander's acts and omissions under color of state law violate the Fourteenth Amendment of the Constitution and 42 U.S.C. § 1983.

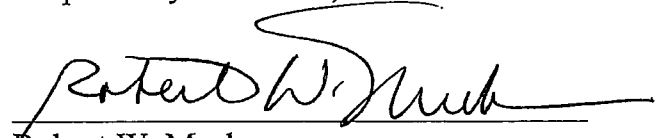
**VII. Relief Requested**

77. Plaintiffs respectfully request that the Court:
- a. retain jurisdiction over this action;
  - b. certify this case to proceed as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2);
  - c. declare that Defendant's actions and inactions violate 42 U.S.C. § 1983, Title XIX of the Social Security Act, and the Fourteenth Amendment of the Constitution;
  - d. issue appropriate classwide injunctive relief to enjoin Defendant from continuing to violate 42 U.S.C. § 1983, Title XIX of the Social Security Act, and the Fourteenth Amendment of the Constitution, and to take appropriate steps to remedy his violations;
  - e. issue such other relief as may be just, equitable, and appropriate, including an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

Dated: April 18, 2011

By:



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