

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

LEVI TOWNSEND,

Plaintiff,

v.

ROBIN ARNOLD-WILLIAMS,
Secretary of the State of Washington
Department of Social and Health
Services,

Defendant.

NO. C 00-0944Z

JOINT STATUS REPORT AND
STIPULATION FOR ORDER OF
DISMISSAL WITHOUT
PREJUDICE

Pursuant to the Stipulated Agreement and Order Staying Proceedings, entered by the Court on January 20, 2004, the parties submit the following Joint Status Report.

1. Stay of Proceedings

By minute order of June 25, 2004, the Court stayed further proceedings herein until June 1, 2006, pursuant to a stipulated agreement by the parties dated June 23, 2004. Paragraph 10 of the stipulated agreement provided, *inter alia*, as follows:

On or before June 1, 2006, the parties shall assess the status of the existing programs and advise the court whether they believe the case should be set for trial, whether the stay should be continued, or whether the case should be dismissed. With no action by either party, the case shall be dismissed by the court without prejudice.

Pursuant to an agreement of the parties, the stay was further extended until June 30, 2006, by a minute order dated June 6, 2006.

2. New Programs Now Available to Class Members

The Defendant Secretary established new programs affording benefits to the members of the plaintiff class while this litigation has been pending. The Medically Needy In-Home Waiver (MNIH) program was established on or about May 1, 2004, was approved by the federal Centers for Medicare and Medicaid Services (CMS), and has been funded by the State Legislature. Program rules have been adopted and published in the Washington State Register. The in-home waiver program was fully operational by June 1, 2004.

In addition, prior to the entry of the stay, the Defendant Secretary had established a medically needy residential waiver program. Further, the Defendant Secretary is in the process of implementing a state-funded program to be effective July 1, 2006, that will allow for personal needs allowance for medically needy clients who are enrolled in the MNIH waiver in an amount equal to the allowance retained by participants in the Community Options Entry System (COPES) program available to categorically needy Medicaid recipients.

Collectively, these programs provide a substantial portion of the relief that the Plaintiff sought to accomplish through this litigation. The parties expect that in the future these programs will continue to operate as they do now, subject, of course, to the authority of the state legislature and the Congress to amend substantive law and appropriate funds. Accordingly, the parties agree that this matter should be dismissed without prejudice.

3. Designation of Parties

Because of the change in circumstances of the existing class representative, the parties agree that he is no longer an appropriate representative for the class. Further, Robin Arnold-Williams should be substituted as Secretary of the Department of Social and Health Services pursuant to FRCP 25(d)(1).

1 **4. Attorneys' Fees**

2 Defendant agrees to reimburse class counsel for their attorneys' fees and expenses, up
3 to a maximum of five thousand (\$5,000.00) dollars, subject to submission of a detailed
4 statement of attorneys' fees incurred between January 17, 2004, and the entry of the final
5 order of dismissal. Payment of attorneys' fees shall be made no later than 30 days of the
6 entry of a final order dismissing the lawsuit, or upon submission of a fully itemized statement
7 of attorneys' fees, costs, and expenses, whichever happens last.

8 **5. Parties Reserve Legal Arguments**

9 Nothing in this joint status report should be read as constituting a waiver by either
10 party of any legal claim or defense that exists now or could exist in the future respecting the
11 subject matter of this lawsuit. Notwithstanding the foregoing, Defendant agrees that she will
12 waive any claim on behalf of the State of Washington, Department of Social and Health
13 Services, for reimbursement from Plaintiff Townsend for recovery of the costs of COPES
14 services provided to him during the pendency of this lawsuit, *provided* that the foregoing
15 waiver does not preclude possible recovery from Mr. Townsend's estate of the costs of
16 medical assistance provided to him by the Department pursuant to RCW 43.20B.080(2).

17 **6. Court Approval**

18 Because this matter was certified as a class action subject to FRCP 23, the Court's
19 approval is required before the matter can be dismissed. FRCP 23(e)(1)(A). However,
20 because the agreed dismissal is to be without prejudice, and therefore no class member will
21 be bound by the resolution of this case, neither notice to the class of the dismissal nor a
22 hearing prior to approval by the Court is required under FRCP 23(e)(1)(B) or (C).

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