

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

KERIM and ADVIJE MEMISOVSKI )  
by their mother THERESA )  
MEMISOVSKI, )

Plaintiffs, )

5. )

ANN PATLA, Director of the Illinois )  
Department of Public Aid; and )  
LINDA RENEE BAKER, Secretary of )  
the Illinois Department of Human )  
Services, )

Defendants. )

RECEIVED

AUG 13 2001

NATIONAL CENTER  
ON POVERTY LAW

No. 92C 1982

Judge Joan Humphrey Lefkow

THIRD AMENDED COMPLAINT

I. INTRODUCTION

1(a). This is a class action brought pursuant to 42 U.S.C. § 1983. Plaintiffs are all women and children in Cook County, Illinois who are eligible for Medicaid, a federal-state medical assistance program that provides medical assistance to, among others, needy children and pregnant women. See 42 U.S.C. § 1396a. The defendants are Ann Patla, the Director of the Illinois Department of Public Aid ("IDPA"), which sets policy for and administers, in part, the Medicaid program in Illinois; and Linda Renee Baker, the Secretary of the Illinois Department of Human Services ("IDHS"), which administers, in part, the Medicaid program in Illinois.

(b) Plaintiffs claim that the defendants have violated the federal Medicaid Act by, inter alia: (1) failing to ensure that plaintiffs-Medicaid-enrolled women and children in Cook County-  
-have access to obstetrical and pediatric care and services at least to the extent that such care and

services are available to the general population in Cook County, Illinois; and (2) by failing to ensure the provision of screening services and immunizations for plaintiff children, by arranging the provision of such services through medical providers participating in Medicaid. Plaintiffs seek declaratory and injunctive relief.

## **II. JURISDICTION**

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1343(3).

Declaratory relief is authorized by 28 U.S.C. § 2201 and Fed.R.Civ.P. 57.

## **III. PARTIES**

3. The named plaintiffs are:

(a) Michael Sampson, by his mother Susan Sampson, pursuant to Fed.R.Civ.P. 17(c).

Ms. Sampson and her son are citizens of the United States and residents of Chicago, Cook County, Illinois. Michael Sampson is among the named class representatives for Class B, as defined below.

(b) Joseph Hassan and Adam Hassan by their mother Michelle Hassan, pursuant to Fed.R.Civ.P. 17(c). Joseph and Adam Hassan are citizens of the United States and residents of Chicago, Cook County, Illinois. Joseph and Adam Hassan are among the named class representatives for Class B, as defined below.

(c) Loretta Sturdivant, who is a citizen of the United States and a resident of Chicago, Cook County, Illinois. Loretta Sturdivant is the named class representative for Class A, as defined below

4. The named plaintiffs bring this action on their own **behaves** and on behalf of two separate plaintiff classes, pursuant to Fed.R.Civ.P. 23(a) and (b)(2). The two classes are defined

as follows:

**Class A**

All women in Cook County, Illinois who, on or after July 1, 1990: (a) have been, are, or will be eligible for the Medical Assistance Program (“Medicaid”) established under Title XIX of the Social Security Act; and (b) have been, are, or will be pregnant and therefore have required, do require, or will require obstetrical services from a licensed medical provider.

**Class B**

All children (persons under the age of 18) in Cook County, Illinois who, on or after July 1, 1990 have been, are, or will be eligible for the Medical Assistance Program (“Medicaid”) established under Title XIX of the Social Security Act.

Class A and Class B are both so numerous that joinder of all members in each class is impracticable; there are questions of law and fact common to each class; the claims of the representative parties are typical of the claims of each class; and the representative parties of each class will fairly and adequately protect the interests of the class. The defendant has acted or refused to act on grounds generally applicable to each class, thereby making appropriate final declaratory and injunctive relief with respect to each class as a whole.

5. Defendant Ann Patla is the Director of the IDPA. She administers the Medicaid program in the State of Illinois. Her duties include adopting and implementing policies, rules, and regulations for the IDPA that conform to applicable federal laws and regulations.

6. Defendant Linda Renee Baker is the Secretary of the IDHS. She implements policies concerning the Medicaid program in Illinois that conform to applicable federal rules and regulations.

**IV. FEDERAL STATUTORY AND REGULATORY BACKGROUND**

**A. The Medicaid Program**

7. Congress established the Medicaid program in 1965 by enacting Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (“Medicaid Act”). Medicaid is a cooperative federal-state public assistance program that provides payment for “necessary medical services.” 42 U.S.C. § 1396, for, *inter alia*, children and pregnant women whose income and resources are deemed to be insufficient to meet the costs of necessary medical services.

8. Pursuant to 42 U.S.C. §§ 1302 and 1396, the U.S. Department of Health and Human Services (“HHS”) is empowered to make and publish such rules and regulations as necessary for the efficient administration of the Medicaid program. The Health Care Financing Administration (“HCFA”) of the HHS administers the Medicaid program.

9. States that elect to participate in the Medicaid program (“participating states”), must, among other things:

(a) formulate a State Medicaid Plan that conforms with the requirements of the Medicaid Act and implementing federal regulations and rules, 42 U.S.C. §§ 1396, 1396a;

(b) have this plan in effect in all political subdivisions of the state, 42 U.S.C. § 1396(a)(1); and

(c) operate its Medicaid program in conformity with the Medicaid Act and implementing regulations and rules, 42 U.S.C. § 1396a(a).

10. In return for compliance with federal law, the state is entitled to reimbursement by the federal government, called “federal financial participation” (“FFP”) for half or more of the costs of its payments to providers furnishing services to Medicaid recipients. 42 U.S.C. § 1396b(a).

11. Illinois has elected to participate in the Medicaid program. In return, Illinois

receives FFP to cover approximately half the costs of payments to health care providers furnishing services to Illinois Medicaid recipients. IDPA is the “single state agency” that administers the Medicaid program in Illinois. 42 U.S.C. § 1396a(a)(5).

12. The Medicaid Act divides children and pregnant women, among others, who are eligible for Medicaid into three groups: the mandatory categorically needy, 42 U.S.C. § 1396a(a)(10)(A)(i); the optional categorically needy, 42 U.S.C. § 1396a(a)(10)(A)(ii); and the medically needy, 42 U.S.C. § 1396a(a)(10)(E). Federal law requires states to provide Medicaid coverage to the mandatory categorically needy. States may choose whether or not to cover the optional categorically needy and the medically needy. If a state determines to provide coverage to the optional categorically needy and the medically needy, individuals in those groups are entitled to all services and have all protections that are provided to the mandatory categorically needy.

13. Illinois has chosen to provide Medicaid eligibility to all children under age 19 and pregnant women in the following groups if they apply and meet all other eligibility criteria:

(a) Effective April 14, 1998, to children whose countable family incomes are equal to or less than 133% of the Federal Poverty Level Income Guidelines as published annually in the Federal Register (prior to April 14, 1998, income levels were lower for children from age 6 through 18); and

(b) Effective April 14, 1998, to women who are pregnant and babies for the first year of life if their mothers were Medicaid-eligible at their birth whose countable family incomes are equal to or less than 200% of the FPL (prior to April 14, 1998, the countable income level was set at 133% of the FPL).

**B. Health Care Provider Participation In Medicaid**

14. Persons who are eligible for Medicaid receive a medical card for each month that they are eligible. Health care providers provide health care and services to persons enrolled in Medicaid and then bill the Medicaid program to obtain reimbursement.

15. Each state sets the reimbursement rates that it will pay health care providers for services provided to persons on Medicaid.

16. Health care providers decide whether they will accept patients who are Medicaid-enrolled. Most medical providers are not required to participate in the Medicaid program and they may decide not to treat an individual because he or she has Medicaid as the source of payment for care.

**C. Provision of Obstetrical and Pediatric Services Under the Medicaid Program.**

17. The Medicaid Act requires participating states to have in effect State Medicaid Plans that are consistent with, and to operate their Medicaid programs consistently with the requirements that they must provide such methods and procedures relating to the . . . payment for . . . care and services [under the Medicaid program] . . . as may be necessary . . . to assure that payments are . . . sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. 42 U.S.C. § 1396a(a)(30)(A). See 42 C.F.R. § 447.204. This requirement, called the “equal access” requirement, mandates that states use economic incentives and other state initiatives to assure provider acceptance of Medicaid patients.

18. Under the Early and Periodic Screening, Diagnostic, and Treatment component of the Medicaid program, participating states must cover early and periodic screening, diagnostic,

and treatment services (“EPSDT services”), as defined in 42 U.S.C. § 1396d(r), for individuals under the age of twenty-one eligible for Medicaid, 42 U.S.C. § 1396d(a)(4)(B).

19. EPSDT services must include screening services (which include comprehensive health and developmental history, comprehensive unclothed physical exam, appropriate immunizations, and laboratory tests including lead blood level assessments appropriate for age and risk factors), vision services, dental services, and hearing services that are provided “at intervals which meet reasonable standards of medical and dental practice as determined by the State after consultation with recognized medical and dental organizations involved in child health and, with respect to immunizations . . . in accordance the schedule referred to in section 1396s(c)(2)(B)(i) of [the Medicaid Act] for pediatric vaccines . . . .” 42 U.S.C. § 1396d(r).

20. Under EPSDT, the Secretary [of the Department of Health and Human Services] shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State Plan under this subchapter in [EPSDT] services. 42 U.S.C. § 1396d(r).

21. Under the Medicaid program, participating states must:

(a) “Inform[] all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance . . . of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) and the need for age-appropriate immunizations against vaccine-preventable diseases;”

(b) “provid[e] or arrang[e] for the provision of... screening services (as defined in 42 U.S.C. § 1396d(r)) in all cases where they are requested”;

(c) “arrang[e] for (directly or through referral to appropriate agencies, organizations, or

individuals) corrective treatment the need for which is disclosed by such child health screening services;” and

(d) report[] to the Secretary on a yearly basis information showing, *inter alia*, the number of children provided child health screening services, the number of children receiving dental services, and the State’s results in attaining the participation goals set for the State under section 1396d(r) of the Medicaid Act. 42 U.S.C. S 1396a(a)(43).

**V. CUSTOMS AND PRACTICES RESPECTING ILLINOIS’ STATE MEDICAID PLAN AND PROGRAM**

---

22. IDPA does not, in Cook County, Illinois, have in effect a state Medicaid plan that enlists, and does not operate its Medicaid program in a manner that enlists, and does not provide methods and procedures relating to the payment for care and services under its Medicaid plan, sufficient to enlist enough providers of obstetrical care and services to eligible Medicaid recipients such that care and services are available (to Class A plaintiff class members) under the plan and program at least to the extent that they are available to the general population in Cook County, Illinois.

23. IDPA does not, in Cook County, Illinois, have in effect a state Medicaid plan that enlists, and does not operate its Medicaid program in a manner that enlists, and does not provide methods and procedures relating to the payment for care and services under its Medicaid plan, sufficient to enlist enough providers of pediatric care and services to eligible Medicaid recipients such that care and services are available (to Class B plaintiff class members) under the plan and program at least to the extent that they are available to the general population in Cook County, Illinois.

24. IDPA does not have in effect in Cook County, Illinois a state Medicaid plan that provides, and does not operate its Medicaid program in Cook County in a manner that:

(a) provision of screening services and immunizations to Class B members as required by the Medicaid Act and implementing rules and regulations;

(b) notice to Class B members of the availability of EPSDT services as required by the Medicaid Act and implementing rules and regulations;

(c) assistance with scheduling appointments for such EPSDT services as required by the Medicaid Act and implementing rules and regulations.

25. At all times relevant to this complaint, it has been the custom and practice of defendant and her predecessors, by IDPA, to implement (or fail to implement) its Medicaid plan in Cook County, Illinois, and to operate its Medicaid program in Cook County in the manner described in ¶¶ 22-24.

## **VI. FACTUAL ALLEGATIONS OF NAMED PLAINTIFFS**

### **A. Susan Sampson for Michael Sampson**

26. Susan Sampson lives with her husband and son, Michael, age 6, on the South Side of Chicago in Cook County. Ms. Sampson and her son began receiving Medicaid from IDPA in September, 1993.

27. Ms. Sampson and Michael were covered by private health insurance through Ms. Sampson's employer until she lost her job in August, 1992. She and her son had no health insurance coverage during the following year while she received unemployment insurance benefits because she could not afford the cost of private insurance premiums and she and Michael were not eligible for Medicaid.

28. Since birth, Michael has suffered from several unexplained conditions involving high fevers and weakness which have required emergency hospitalizations. He has also needed scrotal surgery and eye surgery and has an eye condition called exotropia. Michael has been treated by Dr. Andrews, a pediatrician affiliated with Children's Memorial Hospital, for his medical care. An ophthalmologist at Children's Memorial Hospital treats Michael Michael for his eye condition.

29. In December, 1993, Ms. Sampson took Michael to Dr. Andrews for immunization shots. It was the first time Michael had seen Dr. Andrews since the family became enrolled in Medicaid. Dr. Andrews explained to Ms. Sampson that he did not accept Medicaid for payment of his services.

30. When Ms. Sampson applied for Medicaid she enrolled in the Healthy Moms/Healthy Kids program at her Public Aid office. Under the Healthy Moms/Healthy Kids Program, which IDPA began in May 1993 to address the problem of access to care for pregnant women and children on Medicaid in Chicago (and, to a limited extent, elsewhere in Cook County), IDPA required certain children on Medicaid to choose a primary care provider to be responsible for managing all of the children's medical care.

31. Ms. Sampson told the enrollment worker that she wanted to be assigned to a doctor affiliated with Children's Memorial Hospital because Michael had required several hospitalizations at Children's for unexplained high fevers and she wanted to be assured of the same quality care as Michael received before, if his hospitalization was again necessary.

32. The worker gave Ms.Sampson a list of doctors affiliated with Children's Memorial Hospital who participate in the Healthy Moms/Healthy Kids program. The doctors' offices were

in the North and Northwest suburbs. The closest doctor was located in Evanston, and Ms. Sampson would have difficulty traveling there for Michael's medical care. Ms. Sampson was not referred to a doctor in Chicago.

33. IDPA did no follow-up on Ms. Sampson to determine if Michael's pediatrician needs were met. When Ms. Sampson went in to the Public Aid office to check up on her Healthy Mom/Healthy Kids enrollment, she was told by a worker to call an 800 number. She called the number and was told that IDPA had no record of her enrollment in the Healthy Moms/Healthy Kids program. Ms. Sampson has not found a pediatrician for Michael in Chicago who will accept Medicaid.

34. Michael Sampson does not have access to pediatric care to the same extent that such services are available to the general population in Cook County, Illinois. <sup>[</sup>This lack of access to care results from defendants' violations of federal statutes and regulations that require defendants to enlist an adequate number of providers of pediatric services.

35. IDPA has failed adequately to assist Ms. Sampson in locating a doctor for her son who will accept Medicaid as reimbursement, in violation of Medicaid law.

36. IDPA has failed to ensure that Michael Sampson received all medically necessary screening examinations and immunizations, in violation of Medicaid law. <sup>]</sup>

37. Michael Sampson is at risk medically because of his inability to find a pediatrician in Chicago who will accept Medicaid.

**B. Michelle Hassan for Joseph and Adam Hassan**

38. Michelle Hassan lives with her two sons, Joseph, age 10, and Adam, age 8 on the North Side of Chicago in Cook County. Ms. Hassan receives Medicaid from IDPA for herself

and her two children. Ms.Hassan receives AFDC benefits for herself and Adam from IDPA, and receives SSI (Supplemental Security Income) benefits from the Social Security Administration for Joseph because he is disabled.

39. Joseph suffers from psychological disabilities. Until March, 1994, Joseph Hassan was a member of Chicago HMO, and was treated by a psychiatrist at Hartgrove Hospital, Dr. Goldstein. In March,1994, Joseph began receiving SSI benefits.As a result, he is no longer eligible to be a member of Chicago HMO because IDPA only allows recipients of AFDC benefits to be members of an HMO.

40. Dr. Goldstein does not accept patients on Medicaid who do not belong to Chicago HMO unless the patient can pay \$30.00 per visit. Ms. Hassan cannot afford to pay \$30.00 per visit for Dr. Goldstein to treat Joseph. Joseph no longer receives psychiatric treatment because Ms. Hassan cannot find a psychiatrist who will accept her Medicaid card to treat him. Ms. Hassan has called several doctors and hospitals to find psychiatric treatment for Joseph and has been told there are no appointments available for Medicaid recipients.

41. Joseph also previously was treated by a pediatrician, Dr. Shaw, as a Chicago HMO member. Now that Joseph is no longer an HMO member, he cannot continue to see Dr. Shaw with his Medicaid card.

42. Ms. Hassan has not been able to find another pediatrician for Joseph. Prior to becoming members of Chicago HMO, Ms. Hassan searched for doctors who would accept Medicaid to treat her children. She called several doctors from the phone book and Prologue, a doctor referral service, but could not find a doctor for her children who would accept Medicaid.

43. Joseph and Adam Hassan do not have access to pediatric care to the same extent

that such services are available to the general population in Cook County. This lack of access to care results from defendant's violations of federal statutes and regulations that require defendant to enlist adequate numbers of providers of pediatric services.

44. IDPA has failed to adequately assist Ms. Hassan in locating a doctor for her children who will accept Medicaid as reimbursement, in violation of Medicaid law.

45. Joseph and Adam Hassan are at risk medically because of their inability to find a pediatrician who will accept Medicaid.

C. **Loretta Sturdivant**

46. Loretta Sturdivant lives on the West Side of Chicago in Cook County. Ms. Sturdivant receives Supplemental Security Insurance (SSI) cash benefits and Medicaid. IDPA administers the Medicaid program.

47. Ms. Sturdivant became pregnant in late September 1991. She was a high risk patient because she had a past addiction to cocaine and alcohol.

48. When Ms. Sturdivant became pregnant, she was living on the North Side of Chicago. She went to the health clinic she had been attending for gynecological services at the corner of Granville and Broadway for the pregnancy test. This is the only health clinic Ms. Sturdivant was aware of on the North Side of Chicago which would accept her Medicaid card. The clinic performed the pregnancy test but told Ms. Sturdivant that they did not provide prenatal or obstetrical services.

49. Ms. Sturdivant moved to her mother's house on the West Side of Chicago in early November, 1991. She called the Cicero Lake Clinic and asked for an appointment for prenatal care. She was told that it would be approximately a four week wait for a prenatal appointment.

50. In the first week of December, 1991, Ms. Sturdivant walked into the Healthfirst Clinic at Division and Kostner. She was given an appointment with a general practitioner. He gave her prenatal vitamins and told her that she could not see an obstetrician for six weeks. He told her that the first obstetrical appointment available was the third week in January. She made an appointment for the third week in January to see the obstetrician. She was also given a referral to a clinic on North Avenue and Western Avenue to have a ultrasound test and an appointment was set for December 31, 1991.

51. On December 31, 1991, Ms. Sturdivant went to the clinic at North Avenue and Western for the ultrasound test. She was told when she arrived that they would not see her because her Medicaid card had expired the day before. Ms. Sturdivant explained to the clinic that she had a temporary card because she had recently been approved for SSI benefits and that her new medical card would retroactively cover all medical expenses for the prior three months. She also told the nurse that the clinic could call her caseworker at IDPA to confirm that she was currently covered by Medicaid. However, the clinic refused to see her.

52. During the month of January, 1992, Ms. Sturdivant did not have a current medical card because her case worker at IDPA was not able to issue one to her due to a bureaucratic mistake. However, Ms. Sturdivant was receiving SSI benefits and was due to have a permanent Medicaid card issued to her on February 1, 1992.

53. In the first week of January 1992, Ms. Sturdivant called the Bethany Hospital Family Health Center on Van Buren and explained her current medical card situation to the nurse. She was told to come in for a prenatal appointment. when she arrived, the nurse told her that they would not see her because her medical card was not current.

54. On February 2, 1992, when Ms. Sturdivant received her medical card, she called the Healthfirst Clinic to reschedule her appointment with the obstetrician. She was told that the doctor would no longer see her because she was past the first trimester of her pregnancy and that the clinic did not see patients for a first . obstetrical examination if they were past the first trimester of pregnancy.

55. Ms. Sturdivant did not know of any other doctors in her area that accepted Medicaid. In the first week of February, 1992, she called Prologue, a physician referral service she had seen advertised on television. She told the operator that she was 5 and one-half months pregnant, that she wanted a referral to an obstetrician, and that she was on Medicaid. The operator told her that “most of our doctors are private doctors and do not accept that kind of insurance.” However, the operator did refer Ms. Sturdivant to a private doctor based at Oak Park Hospital who the operator indicated might take Medicaid. Ms. Sturdivant promptly called the doctor and was told by his nurse that they did not accept Medicaid payment.

56. In March, 1992, Ms. Sturdivant was referred by a community organization to the University of Illinois Hospital. She began receiving prenatal care from this hospital.

57. Loretta Sturdivant did not have access to obstetrical care to the same extent that such services were available to the general population in Cook County.

58. IDPA failed to adequately assist Ms. Sturdivant in locating a doctor who would accept Medicaid as reimbursement.

59. Ms. Sturdivant was at risk medically because of her inability to find a doctor who would accept Medicaid.

**F. Other Claimants**

60. The customs and practices described in ¶¶ 22-24 have injured the members of the plaintiff classes in substantially the same way as they have injured the named plaintiffs, as described in ¶¶ 26-59.

## **VII. IRREPARABLE INJURY**

61. The members of the plaintiff class have suffered, are suffering, and will continue to suffer irreparable injury as a result of the customs and practices described in ¶¶ 22-24.

62. There is no adequate remedy at law.

## **VIII. STATEMENT OF CLAIMS**

63. The customs and practices described in ¶¶ 22-24 have violated and continue to violate plaintiffs' rights under the Medicaid Act and implementing federal rules and regulations.

(a) The customs and practices described in ¶ 22 have violated and continue to violate the Class A plaintiffs' rights under 42 U.S.C. § 1396a(a)(30)(A), and 42 C.F.R. § 447.204.

(b) The customs and practices described in ¶ 23 have violated and continue to violate the Class B plaintiffs' rights under 42 U.S.C. § 1396a(a)(30)(A), and 42 C.F.R. § 447.204.

(c) The customs and practices described in ¶¶ 24 have violated and continue to violate the Class B plaintiffs' rights under 42 U.S.C. §§ 1396a(a)(43), 42 U.S.C. § 1396d(r), 42 C.F.R. §§ 441.50-.62.

## **IX. PRAYER FOR RELIEF**

WHEREFORE, plaintiffs request that this Court:

A. Declare that defendants Patla and Baker, by the customs and practices described in ¶¶ 22-24, have violated and are violating the rights of plaintiff class members under 42 U.S.C. § 1396a(a)(30)(A); 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(r) and implementing federal

regulations and rules;

B. Enjoin defendants Patla and Baker from maintaining customs and practices declared to violate the Medicaid Act or implementing regulations;

C. Direct defendants Patla and Baker to submit to the court a revised state Medicaid plan that ensures full compliance with the Medicaid Act and implementing federal regulations, and to put this plan into effect in Cook County, Illinois;

D. Award plaintiffs their costs and reasonable attorneys' fees; and

E. Grant such other relief as the Court deems fit

---

One of Plaintiffs' Attorneys

John M. Bouman  
National Center for Poverty Law  
205 W. Monroe, 2<sup>nd</sup> Floor  
Chicago, IL 60606  
3 12-263-3830

Stephanie F. Altman  
Thomas Yates  
SSI Coalition for a Responsible Safety Net  
205 W. Monroe, 3<sup>rd</sup> Floor  
Chicago, IL 60606-5013  
3 12-223-9600

ADD GOLDBERG KOHN ?  
Attorneys for Plaintiffs