

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Flor Perez
By her father and next friend,
Fidel Perez
8739 Carroll Avenue
Silver Spring, MD 20903,

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Civil Case No. _____

Ana Perez
By her father and next friend,
Fidel Perez
8739 Carroll Avenue
Silver Spring, MD 20903,

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Brayan Herrera
By his mother and next friend,
Martha Herrera
2704 Hawthorne Terrace
Hyattsville, MD 20785,

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Oswaldo Herrera
By his mother and next friend,
Martha Herrera
2704 Hawthorne Terrace
Hyattsville, MD 20785,

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Leslie Herrera
By her mother and next friend,
Martha Herrera
2704 Hawthorne Terrace
Hyattsville, MD 20785,

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Gabriel Ntitebem
By his mother and next friend,
Ajong Pamela Nkahnjo
6700 Sunset Terrace
New Carrollton, MD 20784,

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Henry Anu
By his mother and next friend,
Ajong Pamela Nkahnjo
6700 Sunset Terrace
New Carrollton, MD 20784,

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and

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Anthony McCann, and Treasurer Nancy Kopp, jointly and severally, and respectfully represent as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are legal immigrants who, until July 1, 2005, received Medical Assistance from the State of Maryland (the “State”) to provide for their medical needs. In his 2005 budget, Defendant Governor Robert L. Ehrlich, Jr. eliminated funding because of purported budgetary constraints for Medical Assistance for legal immigrant children and pregnant women, who have resided in the United States for fewer than five (5) years. As a result of this cut, Plaintiffs are unable to receive financial assistance to provide for their health care needs solely because of their alienage. By targeting Plaintiffs solely because of alienage, Defendants have denied them the equal protection of the law, in violation of Article 24 of Maryland’s Declaration of Rights.

2. Plaintiffs are seeking a declaration from this Court that the Defendants’ discriminatory act is unconstitutional.

3. Plaintiffs are also seeking, pursuant to Maryland Rules 15-501 and 15-505, preliminary and permanent injunctive relief to restore their health care coverage.

PARTIES

4. Plaintiff Flor Perez (“Flor”) is the sixteen year old daughter of Fidel Perez, who brings this action as her next friend. Flor is a permanent legal resident of the United States who has resided in the United States since August 4, 2003, after immigrating from El Salvador.

5. Plaintiff Ana Perez (“Ana”) is the eight year old daughter of Fidel Perez, who brings this action as her next friend. Ana is a permanent legal resident of the United States who has resided in the United States since August 4, 2003, after immigrating from El Salvador.

6. Plaintiff Brayan Herrera (“Brayan”) is the seven year old son of Martha Herrera, who brings this action as his next friend. Brayan is a permanent legal resident of the United States who has resided in the United States since December 29, 2003, after immigrating from Mexico.

7. Plaintiff Osvaldo Herrera (“Osvaldo”) is the fifteen year old son of Martha Herrera, who brings this action as his next friend. Osvaldo is a permanent legal resident of the United States, who has resided in the United States since December 29, 2003, after immigrating from Mexico.

8. Plaintiff Leslie Herrera (“Leslie”) is the eleven year old daughter of Martha Herrera, who brings this action as her next friend. Leslie is a permanent legal resident of the United States, who has resided in the United States since December 29, 2003, after immigrating from Mexico.

9. Plaintiff Gabriel Ntitebem (“Gabriel”) is the three year old son of Ajong Pamela Nkahnjo, who brings this action as his next friend. Gabriel is a permanent legal resident of the United States, who has resided in the United States since February 6, 2004, after immigrating from Cameroon.

10. Plaintiff Henry Anu (“Henry”) is the five year old son of Ajong Pamela Nkahnjo, who brings this action as his next friend. Henry is a permanent legal resident of the United States, who has resided in the United States since February 6, 2004, after immigrating from Cameroon.

11. Plaintiff Vitalis Atemafac (“Vitalis”) is the thirteen year old son of Ajong Pamela Nkahnjo, who brings this action as his next friend. Vitalis is a permanent legal resident of the

United States who has resided in the United States since February 6, 2004, after immigrating from Cameroon.

12. Defendant Robert L. Ehrlich Jr. (“Governor Ehrlich”) is the Governor of the State of Maryland. He is sued in his official capacity.

13. Defendant S. Anthony McCann (“Secretary McCann”) is the Secretary of the Department of Health and Mental Hygiene (“DHMH”) and is charged with the duty to regulate and oversee health care services provided pursuant to Maryland’s Medical Assistance program. He is sued in his official capacity.

14. Defendant Nancy Kopp (“Treasurer Kopp”) is the Treasurer for the State of Maryland. She is sued in her official capacity.

FACTS

The State’s Action and Impact on Plaintiffs

15. Plaintiffs are low-income legal immigrant children who have resided in the United States for fewer than five years. Until July 1, 2005, they received Medical Assistance from the State that covered the cost of their medical care. Among these Plaintiffs, two children have serious medical conditions, requiring on-going treatment, and all of the Plaintiffs require regular health screenings and immunizations, which their families cannot afford. Plaintiffs and their families are financially unable to pay for the cost of care without Medical Assistance.

16. Governor Ehrlich’s budget (“H.B. 150” or the “Budget Bill”) terminated funding for the 2006 fiscal year for Medical Assistance for legal immigrant children and legal immigrant pregnant women who have resided in the United States for fewer than five years. This budget cut resulted in the termination of benefits for Plaintiffs (who are among approximately 3,718 children and pregnant women in Maryland affected by the cut, according to figures released by

the State). As a result of the Defendants' decision to eliminate Medical Assistance funding for legal immigrant pregnant women and children, Plaintiffs are no longer able to obtain the health care that they require.

17. Flor, sixteen years old, suffers from the West Nile virus, a serious condition that requires extensive medical treatment. Flor was diagnosed with the West Nile virus in August of 2005, after being misdiagnosed with epilepsy. Following her diagnosis in August, Flor was in Children's Hospital for a week. Thereafter, she was sent to the National Rehabilitation Hospital. She began to experience mental confusion. On September 8, 2005, Flor had a series of seizures and went back to Children's Hospital, where she remained until September 17, 2005. Currently, Flor is having difficulty communicating, and her doctor has indicated that she needs speech therapy. Flor requires follow-up treatment and monitoring, and must take seizure and tuberculosis medication (for nine months). Flor's family received multiple bills from Children's Hospital, totaling over \$137,500, for which they cannot afford to pay.

18. Ana, eight years old, received regular medical check-ups, including immunizations and early screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. Ana's family is financially unable to pay for well-child care, preventive screenings, immunizations, and other ongoing care that children typically require. Also, Ana requires dental work and eye glasses, for which her family cannot afford to pay

19. Seven year old Brayon has been diagnosed with Histiocytosis, an immune system disorder which results in the formation of tumors. This disease is typically treated by radiation, among other treatments. While Brayon's disease is currently in remission, his condition needs constant medical monitoring because Histiocytosis is an illness which commonly reoccurs. Prior

to July 1, 2005, Brayan had been monitored at Children's National Medical Center in Washington, D.C., where he was receiving ongoing treatment, including examinations and blood work every few months. Recently, Brayan has been experiencing symptoms that raise serious concerns regarding his health. He has recurrent nose bleeds, weakness, and dark patches have formed on his skin. He has not returned to Children's Hospital since his Medical Assistance was terminated, as his family cannot afford the necessary medical treatment. He has received limited care related to a cold from his family doctor, for which his mother paid out of pocket. However, his family cannot afford to pay for the comprehensive treatment that his condition requires. Due to frequent nose bleeds and other troubling symptoms, Brayan's doctors believe that he also has a condition known as vonWillebrand Disease, a blood clotting disorder which results in excessive bleeding. Initial tests were inconclusive, and medical protocol requires additional investigatory tests. In fact, these tests were ordered; however, the tests have not been performed because Brayan's medical coverage was terminated, and his family cannot afford to pay for these tests.

20. Osvaldo, fifteen years old, received regular medical check-ups, including screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. Osvaldo's family is financially unable to pay for well-child care, preventive screenings, immunizations, and other ongoing care that children require.

21. Leslie, eleven years old, received regular medical check-ups, including screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. Leslie's family is financially unable to pay for well-child care, preventive screenings, immunizations, and other ongoing care that children require.

22. Gabriel, three years old, received regular medical check-ups, including immunizations and early screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. On July 20, 2005, Gabriel experienced a persistent high fever that did not respond to Tylenol. When his fever did not respond to over-the-counter medications, Gabriel's parents took him to the Children's National Medical Center Emergency Room for treatment. Gabriel was treated in the Emergency Room and released later that day. His parents have a significant outstanding bill for this medical care, which they are financially unable to pay. The costs of his medications and emergency room treatment would have been covered by Medical Assistance, had defendants not eliminated his Medical Assistance coverage. Gabriel's family cannot afford to pay for all of the well-child care, preventive screenings, immunizations, and other ongoing care that children require.

23. Henry, five years old, received regular medical check-ups, including immunizations and early screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. Henry's family is financially unable to pay for all of the well-child care, preventive screenings, immunizations, and other ongoing care that children require.

24. Vitalis, thirteen years old, has received regular medical check-ups, including immunizations and early screening for illnesses and developmental problems through the Medical Assistance program prior to July 1, 2005. Vitalis' family is financially unable to pay for all of the well-child care, preventive screenings, immunizations, and other ongoing care that children require.

Maryland's History of Providing Health Care Coverage For Immigrant Residents

25. Maryland's Medical Assistance program, established in 1945, provided that the "Bureau of Medical Services, under the direction of the Director of Health, shall (1) administer a program of medical care in the State for indigent and medically indigent persons..." 1945 Md. Laws Ch. 91. From its inception, Maryland's Medical Assistance program did not distinguish between citizens and non-citizens.

26. In 1967, Maryland chose to participate in the Medicaid Program established by Title XIX of the Social Security Act of 1965. After opting into the program, Maryland began to receive federal money for providing certain services to medically and financially needy persons. Federal funds matched state contributions for the costs of medical assistance for legal immigrants, including pregnant women and children, until 1996.

27. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "PRWORA") eliminated federal Medicaid funding for most lawful permanent residents who had resided in the United States for fewer than five years and had entered the United States on or after August 22, 1996. *See* 8 U.S.C. § 1612.

28. Maryland responded to the PRWORA limits on federal funding by continuing its long-standing tradition of providing health coverage to legal immigrants by affirmatively including Medical Assistance eligibility for legal immigrant children and pregnant women residing in the United States for fewer than five years in the solely state-funded Medical Assistance program. *See* MD. CODE ANN., HEALTH-GEN. § 15-301(a)(2)(viii).

29. Under the Medical Assistance program, recipients (including Plaintiffs) were entitled to no-cost health care to include: (a) Screening Services, involving comprehensive health and developmental histories, comprehensive unclothed physical exams, appropriate

immunizations, and laboratory tests (including appropriate lead blood level assessments); (b) Vision Services, including diagnosis and treatment for vision defects; (c) Dental Services, including relief of pain and infections, restoration of teeth, and maintenance of dental health; and (d) Hearing Services, including diagnosis and treatment for defects in hearing and such other necessary health care to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening process. Further, under the Medical Assistance program, ancillary services, such as transportation to medical appointments and services, were also covered

30. Until July 1, 2005, the State's program funded Medical Assistance for legal immigrant pregnant women and children residing in the United States for fewer than five years. However, the State did not receive federal matching funds for this expenditure after 1996.

31. In January of 2005, Governor Ehrlich submitted to the Maryland General Assembly his proposed budget for fiscal year 2006. This proposed budget eliminated state funding for Medical Assistance for legal immigrant pregnant women and children.

32. The only justification offered for eliminating this particular category of residents from receiving Medical Assistance coverage was to save the State money.

33. The cost of Maryland's entire Medical Assistance program for fiscal year 2006 was estimated to be approximately \$4 billion. However, only approximately \$7 million of Maryland's overall Medical Assistance budget (or 0.0875%) was attributable to Medical Assistance for legal immigrant pregnant women and children.

34. In April 2005, the Department of Legislative Services issued new fiscal projections for Maryland's overall budget for the 2006 fiscal year. These estimates projected an additional \$260 million in revenue above previous general fund revenue estimates, and an

increase of 4.5 percent over fiscal year 2004. See MD. GENERAL ASSEMBLY, THE 90 DAY REPORT: REVIEW OF THE 2005 LEGISLATIVE SESSION PART A, 4 (2005). As a result, new estimates showed that the State would have a 1 Billion Dollar surplus for fiscal year 2006.

35. On May 26, 2005, the Maryland General Assembly passed the Budget Bill. The budget, as passed, eliminated Medical Assistance coverage for legal immigrant children and pregnant women who sought Medical Assistance coverage after July 1, 2005. While legal immigrant pregnant women who had already applied to coverage prior to July 1, 2005 were entitled to receive some care, no money was set aside for coverage of legal immigrant children, leaving this group wholly without health care coverage.

36. On June 15, 2005, DHMH (the State agency responsible for the administration of the Medical Assistance program) sent notices to all children who were eliminated from receiving Medical Assistance coverage as a result of the budget cut. This notice informed them that their “category of Medical Assistance” was no longer funded in the State’s budget and that, therefore, effective June 30, 2005, their eligibility for reimbursement for their medical expenses under the Medical Assistance program would end.

37. According to the State’s estimates, this cut resulted in termination of benefits for approximately 3,718 children and pregnant women in Maryland. *See* Medical Assistance Eligibility, Md. Reg. (Sept. 2, 2005).

COUNT I
(Violation of Maryland Declaration of Rights)

38. Paragraphs one (1) through thirty-seven (37) are incorporated herein by reference.

39. Article 24 of the Declaration of Rights guarantees the right to equal protection under the law.

40. The State's cuts to its Medical Assistance program targeted legal immigrants, including Plaintiffs, solely on the basis of alienage. Elimination of funding for health care coverage for Plaintiffs solely because of their alienage constitutes a discriminatory State action, depriving Plaintiffs of equal protection under the law.

41. As the State's action discriminates against a suspect class, *i.e.* aliens, it must pass strict scrutiny review, which requires the State to show that the act was narrowly tailored to serve a compelling state interest. Defendants' discriminatory action is not based on a compelling state interest.

42. Because Defendants have discriminated against Plaintiffs on the basis of alienage, and Defendants' discriminatory action is not justified by a compelling state interest, Defendants' actions violate Article 24 of the Declaration of Rights. Plaintiffs are seeking a declaratory judgment to this effect.

43. Plaintiffs are also seeking injunctive relief. First, there is a strong likelihood that Plaintiffs will succeed on the merits of their claim. Second, unless the State is ordered by this Court to immediately restore healthcare coverage to Plaintiffs, Plaintiffs will suffer immediate, substantial, and irreparable injury. Third, the benefits to Plaintiffs in obtaining injunctive relief are equal to or outweigh the potential harm which Defendants will incur if this Court grants the requested injunctive relief. Finally, the public interest is best served by granting the injunction.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) issue a declaratory judgment declaring that the Defendants' elimination of funding for Medical Assistance for legal immigrant children who have resided in the United States for fewer than five years is unconstitutional and unlawful under Article 24 of the Declaration of Rights;

(b) issue a preliminary and permanent injunction ordering Defendants to restore, retroactive to July 1, 2005, the Medical Assistance benefits that Plaintiffs were entitled to receive and had enjoyed prior to the State's discriminatory action, which would include payment by the State for the costs of the medications and medical care for which Plaintiffs' families have paid or have been billed as a result of the wrongful termination of their Medical Assistance;

(c) issue a preliminary and permanent injunction ordering Defendants to locate applicants or prior beneficiaries who have been wrongfully terminated from the Medical Assistance program and notify these individuals of the invalidity of that termination, and establish a process whereby these individuals can be enrolled in the program; and

(d) award attorneys' fees, costs, and such other and further relief to Plaintiffs as this Court may deem just and proper.

Respectfully submitted,

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