

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

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|---------------------------------------------------------|---|----------------------------|
| Ruby Bell; Robert Patterson; Eddie Mae Binion; |) | |
| Alocia Brown, by her legal guardian Robert F. |) | |
| Harris; Kevin Harris, by his legal guardian |) | |
| Robert F. Harris; George Crawford, by his |) | |
| trustee Art Huenkemeier; A.L., by her mother |) | |
| and next friend, Diane Bauknight; Ruby |) | |
| Trammell; Della Otis; Mary West; Betty Jo |) | No. 06 C 3520 |
| Watkins; T. W., Jo. N. and Ja. N., by their next |) | |
| friend Janie Cook; Jerome Windley, individually |) | Judge Ronald Guzman |
| and on behalf of all similarly situated persons, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | |
| |) | |
| Michael Leavitt, Secretary of the United States |) | |
| Department of Health and Human Services, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS' AMENDED MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The named plaintiffs, Ruby Bell; Robert Patterson; Eddie Mae Binon; Alocia Brown, by her legal guardian Robert F. Harris; Kevin Harris, by his legal guardian Robert F. Harris; George Crawford, by his trustee Art Huenkemeier; A.L., by her mother and next friend, Diane Bauknight; Ruby Trammell; Della Otis; Mary West; Betty Jo Watkins; T.W., Jo.N. and Ja.N., by their grandmother and next friend Janice Cook; and Jerome Windley, on behalf of three classes of Medicaid recipients and applicants ("Plaintiffs"), hereby move this Court for entry of a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting the defendant Secretary Michael Leavitt ("Secretary") of the United States Department of Health and Human Services ("DHHS")

from implementing interim final regulations issued on July 6, 2006 regarding the implementation of Section 6036 of the Deficit Reduction Act of 2005 ("the interim regulations") until this court rules on the merits of this case and to not apply the interim regulations retroactively after such ruling. In support of this Motion, Plaintiffs state the following:

1. Plaintiffs are poor Americans who are current recipients of and applicants for Medicaid benefits. Many are extremely ill and have significant health problems requiring full-time medical services, while others need timely maintenance and preventative and diagnostic care. Because each of the Plaintiffs lives in poverty, each one is dependent upon Medicaid for health care coverage.

2. Section 6036 of the Deficit Reduction Act of 2005 ("Section 6036") went into effect July 1, 2006. Section 6036 amended the Medicaid Act to change the process by which states establish the U.S. citizenship of Medicaid recipients and applicants. The amendment mandates states to require Medicaid recipients and applicants to present satisfactory documentary evidence of citizenship or nationality as outlined in the amendment or such other documents as the Secretary of DHHS may specify by regulation. 42 U.S.C. §§ 1396b(x)(3)(A-D).

3. Secretary Leavitt issued, through the Centers for Medicare and Medicaid Services ("CMS"), interim regulations severely limiting the types of documents states are allowed to accept as satisfactory documentary evidence of citizenship and nationality, making it impossible for some individuals to meet the requirements and thereby attain or maintain Medicaid coverage.

4. If the interim regulations are allowed to be enforced, approximately 50 million Medicaid recipients and approximately two million Medicaid applicants will be forced to obtain and produce these new documents. It is estimated that approximately five million of these individuals will lose their Medicaid benefits because they have never had or cannot obtain the new specified documents, even though these individuals are eligible for and entitled to these benefits.

5. The named plaintiffs will experience significant financial, and emotional harm just going through the process for meeting these documentation requirements. Many of the named plaintiffs and their relatives and guardians have already been attempting to gather the necessary documentation to no avail. Family members, guardians, trustees and nursing home administrators have already been trying to obtain certified copies of original birth certificates and photo identification cards for the named plaintiffs in anticipation of this new requirement to no avail.

6. Attached hereto are Declarations from the named plaintiffs:

(a) Ruby Bell was born in Arkansas in 1911 and does not have a United States passport. Her daughter contacted Little Rock, Arkansas seeking a birth certificate, but was told that they only have birth certificates going back to 1914. No one is alive that witnessed Bell's birth. Bell cannot care for herself and is unable to assist others in obtaining the required documents for her. She is dependent on Medicaid to cover her medical care, medications, and nursing home bills.

(b) Robert Patterson believes he was born in a farmhouse in Jackson, Mississippi. He does not know if a birth certificate exists for him, nor is he certain of his birth date. He is not aware of anyone who knows the circumstances of his birth. He

does not have a United States passport. He does have state issued photo identification. Patterson depends on Medicaid to care for his various health problems, including a bad leg for which he has undergone a number of operations. He has high blood pressure and requires numerous medications every day. He is elderly and lacks the energy to search for further evidence documenting his birth.

(c) Eddie Mae Binion believes she was born in 1934, and does not have a United States passport. She does not know the location of her birth, her mother's name at the time of her birth, or her own name at the time of her birth. She does not know if a birth certificate exists for her. When she applied for benefits from the Social Security Administration, the agency searched for a birth certificate for her but was unable to locate one. Binion was recently hospitalized following several mini-strokes and requires dialysis. She relies on Medicaid to cover these medical expenses.

(d) Alocia Brown, appearing in this case through her legal guardian, Robert F. Harris, Public Guardian of Cook County, Illinois, is uncertain of her exact date of birth or her maiden name, and does not have a United States passport. The Public Guardian has requested her birth certificate from Little Rock, Arkansas where Brown's niece believes she was born in 1930 or 1931. The Public Guardian received a reply indicating that the Arkansas Department of Health, Division of Vital Records has no birth certificate on file for Brown. The Division of Vital Records indicated that they searched surrounding years and other birth locations and were still unable to locate a birth record. Brown also lacks current government issued photo identification. Brown depends on Medicaid to cover the costs associated with her severe dementia and Alzheimer's disease. She is unable to care for herself or assist in securing the required documentation.

(e) Kevin Harris, appearing in this case through his legal guardian, Robert F. Harris (no relation), Public Guardian of Cook County, Illinois, believes he was born in 1964 and does not have a United States passport. He was adopted in a sealed adoption in Illinois in 1964, and does not know the location of his birth. His cousin and former guardian is also unaware of where Kevin Harris was born. Kevin Harris requested a birth certificate from the Cook County and State of Illinois Bureaus of Vital Statistics but they responded that they have no record of his birth. Kevin Harris had an identification card at one point, but it was stolen during a robbery and he currently has no government issued photo identification. He depends on Medicaid to cover the costs of his health care and living facility. He is legally blind and mentally impaired, and unable to assist in securing the required documentation.

(f) George Crawford was born in 1926 and does not have a United States passport. He does not have a birth certificate nor does he know if one recording his birth exists. His Trustee has looked through all of his belongings but could not find a birth certificate or photo identification care. Crawford depends on Medicaid to pay for his nursing home care and other necessary health care. He has had two strokes and cannot communicate verbally, and is therefore unable to care for himself or assist in obtaining the required documentation.

(g) A.L. was born in North Carolina in 1989 and adopted in 1999, and does not have a United States passport. Her adoptive parents once had a photocopy of a birth certificate issued when she was born, but it has since been lost. They do not have any documentation for A.L. meeting the current requirements. A.L. does not have a driver's license or any other form of photo identification. A.L. depends on Medicaid to cover the

treatment for her various disorders, including rage disorder, Fetal Alcohol Syndrome, bipolar disorder, and post traumatic stress disorder. She requires 24 hour a day crisis intervention and stabilization service, and resides in a psychiatric residential treatment facility.

(h) Ruby Trammell was born in 1920 in a home in Bluff City, Arkansas and does not have a United States passport. She does not have a birth certificate or know if one was ever issued for her. She knows of no living witnesses to her birth. Trammell depends on Medicaid to cover her health care, medication, and living costs at the nursing home where she resides. She is legally blind and cannot care for herself, and therefore is unable to assist in obtaining the required documents.

(i) Della Otis was born in South Carolina and does not have a United States passport. She does not have a birth certificate nor know if one exists for her. She wrote to South Carolina Vital Records requesting a birth certificate, but received a reply indicating that the only record they had was for a different date, different name, and different county than the information she sent on her request. Otis does not know if that is her birth record and has been unable to obtain a copy of that record. The only person Otis knows that is aware of the circumstances of her birth is her aunt who is in a coma and cannot communicate. Otis requires Medicaid to cover necessary health care costs associated with pancreatitis, hypertension, diabetes, and other health problems.

(j) Mary West was born in Georgia on August 8, 1935. However, she does not have a birth certificate or a U.S. passport. Her son has requested a birth certificate on her behalf from the county clerk in Louisville, Georgia, under both her married name, and her maiden name, but the county clerk has informed West and her son that there is no record of her birth. She knows of no one alive who was a witness to her birth and she has

no written evidence of her place of birth. West has applied for Medicaid to cover the costs of necessary health care, including medicine and hospital bills. She does not receive SSI or Medicare.

(k) Betty Jo Watkins was born in Baltimore, Maryland in 1950. She has applied for Medicaid to cover her medical costs. She does not have a birth certificate or a U.S. Passport. She has requested a birth certificate from the City of Baltimore and the State of Maryland, but has not been able to obtain one. She has requested school records from Brooklyn Park High School and the City of Baltimore Board of Education, but cannot obtain any. Watkins was raised by Ed and Hazel Brooks, who were not her birth parents. She does not know whether she was adopted by the Brooks and she does not have legal adoption papers. Watkins knows of no one alive who was a witness to her birth and she has no written evidence of her birth. She does not receive SSI or Medicare

(l) Jerome Windley believes he was born in Kings County, New York in 1954. He has lost his birth certificate, does not know how to obtain another one, and lacks the money to replace it. Both of Windley's parents are dead and there is no other living family members who were present at the time of his birth. Windley does not have a U.S. passport or a state issued photo I.D. from North Carolina, where he currently resides. Windley does not receive SSI or Medicare. Windley receives Medicaid to cover the cost of necessary health services.

7. Medicaid recipients, their family members, their guardians, their nursing home providers and even federal and county government agencies have searched for documentation of citizenship and failed. The burden of providing this documentation is significant if not impossible for many to meet. See Declarations, attached in Plaintiffs'

Appendix, of Robert F. Harris, Public Guardian of Cook County, Illinois; Laura J. Miller of Equip for Equality; Larry Klowden, Resource Coordinator, Northwestern Memorial Hospital; and Diane Coleman, Executive Director Progress Center for Independent Living.

8. As explained in more detail in the Memorandum of Law in Support of Plaintiffs' Amended Motion for a Temporary Restraining Order and Preliminary Injunction filed contemporaneously herewith, a temporary restraining order as well as a preliminary injunction are necessary and appropriate in this case because the implementation of the interim regulations will cause Plaintiffs immediate and irreparable harm.

9. First, Plaintiffs have a likelihood of success on the merits. The Secretary's interim regulations violate the Due Process Clause of the Fifth Amendment to the United States Constitution and exceed the scope of his statutory authority in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq. The Secretary also has violated the equal protection of law guaranteed by the Due Process Clause for members of Class B by denying them Medicaid benefits during the "reasonable opportunity" period for providing documentation, while providing those benefits to non-citizen applicants during that same time period. The Secretary has violated Section 6036, the Medicaid Act, 42 U.S.C. § 1396a(a)(10)(A)(i), and the Administrative Procedure Act by requiring members of Class C to provide documentation of citizenship, even though their eligibility for Medicaid is derived from the Foster Care and Adoption Assistance Program under the Title IV-E of the Social Security Act or from one of the other programs listed under §1396a(a)(10)(A)(i)(I) and (II). Finally, the Secretary has implemented Section 6036 prior to establishing an outreach and education program, in violation of Section 6036(c) and the Administrative Procedure Act.

10. Second, Plaintiffs will suffer irreparable harm if injunctive relief is not granted. Plaintiffs will suffer significant financial, administrative and emotional harm in attempting to meet these new document procedures. Also, Plaintiffs' only access to health care is through the Medicaid program. Without Medicaid benefits, Plaintiffs will not be able to obtain necessary medications, required medical treatments, or life-supporting medical care. The risk of potential injury to Plaintiffs is significant, for it is all too likely that Plaintiffs would have no health care at all without Medicaid.

11. Third, Plaintiffs have no adequate remedy at law. The serious and irreversible harms to Plaintiffs' personal health if a temporary restraining order and preliminary injunction are not entered cannot be remedied by a permanent injunction entered months or even years from now, after full litigation of the case.

12. Fourth, the balance of harms weigh heavily in favor of Plaintiffs. While Plaintiffs will suffer lasting and permanent injuries if not granted injunctive relief, Defendant will suffer little to no harm by a delay in implementation of the interim regulations. Not only is there no substantial evidence that non-U.S. citizens are obtaining Medicaid by falsely claiming citizenship, the administrative costs of implementing the interim regulations will be great on both federal and state governments. An injunction will save the defendant money.

13. Fifth, the public interest will be served by granting injunctive relief. The interim regulations will affect the health care of over 50 million individuals. Without a temporary restraining order and a preliminary injunction, these individuals are at risk of losing their health coverage with dire consequences to their health. Also, the public interest is served by vindicating the language erected by Congress and the Due Process Clause of the United States Constitution.

14. Plaintiffs have provided notice of this Motion to the Attorney General of the United States, counsel for the Defendant.

15. No bond is necessary in this case, for Defendant will not suffer any monetary harm from the entry of a temporary restraining order.

16. Because the interim regulations have gone into effect on July 6, 2006, and Secretary Leavitt has directed states to immediately begin enforcing the new documentation procedures, it is critical that Defendant be restrained and enjoined from implementing the interim regulations between the date that Section 6036 went into effect and the date the Court rules on Plaintiffs' Amended Motion for a Temporary Restraining Order and Preliminary Injunction. Since it is the threat of the loss of federal funds that will motivate the states to implement the interim regulations, the injunction must clearly prevent retroactive application of those policies after this court rules on the merits in any way that would affect federal matching funds otherwise payable to states during the period of the injunction. Therefore, the Plaintiffs respectfully request the immediate entry of a temporary restraining order and the scheduling of an evidentiary hearing on a preliminary injunction within 10 days of the entry of the temporary restraining order.

WHEREFORE, Plaintiffs respectfully requests entry of two orders granting:

a. a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting Defendant Secretary Michael Leavitt of DHHS from implementing the interim regulations until this court rules on the merits of this case and prohibiting the application of the interim regulations retroactively after such ruling;

b. a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting Defendant Secretary Michael Leavitt from implementing the interim regulations;

c. other and further relief as this Court deems just and equitable.

Dated: July 21, 2006

RUBY BELL, et al.

By /s/ John M. Bouman
One of Their Attorneys

Attorneys for Plaintiff:

John M. Bouman
Margaret Stapleton
SARGENT SHRIVER NATIONAL CENTER ON
POVERTY LAW
50 E. Washington, Suite 500
Chicago, IL 60602
312-263-3830

David E. Morrison
Mary E. Anderson
GOLDBERG KOHN BELL BLACK
ROSENBLOOM & MORITZ, LTD.
55 East Monroe Street
Suite 3700
Chicago, Illinois 60603
312-201-4000

Stephanie Altman
Thomas Yates
HEALTH & DISABILITY ADVOCATES
205 W. Monroe, Third Floor
Chicago, IL 60606-5013
312-223-9600

Sarah Somers
NATIONAL HEALTH LAW PROGRAM
211 N. Columbia Street
Chapel Hill, NC 27514
919-968-6771

Gene Coffey
NATIONAL SENIOR CITIZENS LAW CENTER
1101 14th Street, NW, Suite 400
Washington, DC 20005
202-289-6976