

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

RICHARD P. CARO, a State of Illinois  
Taxpayer on Behalf of and for the Benefit of  
the State of Illinois, RONALD GIDWITZ,  
and GREGORY BAISE,

*Plaintiff and  
Plaintiff-Intervenors-Appellees,*

v.

HON. ROD BLAGOJEVICH, Governor of  
the State of Illinois; THE  
ILLINOIS DEPARTMENT OF  
HEALTHCARE AND FAMILY SERVICES;  
and BARRY S. MARAM, Director of IDHFS,

*Defendants-Appellants*

GREGORY JACAWAY, *et al.*, individually  
and on behalf of all similarly situated people,

*Defendant-Intervenors,*

STATE OF ILLINOIS,

*Intervenor.*

---

Appeal from the Circuit Court of Cook County, Illinois  
County Department, Chancery Division  
Court No. 07 CH 34353  
The Honorable James R. Epstein, Judge Presiding

---

**DEFENDANTS-APPELLANTS' PETITION FOR REHEARING**

---

Larry D. Blust  
Marc S. Silver  
Katarzyna K. Dygas  
**BARNES & THORNBURG LLP**  
One North Wacker Drive, Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313

*Attorneys for Defendants-Appellants*

FILED APPELLATE COURT  
1ST DIST.  
08/09 15 PM 3:34  
SEEM N. RAYD  
CLERK OF COURT

**POINTS AND AUTHORITIES**

**ARGUMENT**.....4

**I. Section 5-2(2)(b) is ambiguous and susceptible to several interpretations**.....4

*People v. Jameson*, 162 Ill. 2d 282, 288 (1994).....5

305 ILCS 5/4-1.7-1.10.....5

305 ILCS 5/4-1.5a.....5

*Northwest Airlines, Inc. v. Dep't of Revenue*, 295 Ill. App. 3d 889, 893 (1st Dist. 1998).....6

*Niven v. Siqueira*, 109 Ill. 2d 357, 367 (1985).....6

305 ILCS 5/9A-1 *et seq*.....6

89 Ill. Adm. Code § 112.79.....7

42 U.S.C. § 1396u-1(b)(1) (2000).....7

**II. Defendants' construction of section 5-2(2)(b) is the proper reading of that provision**..... 7

**A. The General Assembly did not intend to precondition receipt of medical assistance on satisfaction of the non-economic TANF requirements**.....8

Illinois: Federal and State Share of Medicaid Spending, FY2006, *available at*  
<http://www.statehealthfacts.org/profileind.jsp?ind=636&cat=4&rgn=15>...8

Ill. Dep't of Healthcare and Family Servs. Medicaid Advisory Comm. Minutes, at 6 (Jan. 18, 2008), *available at*  
<http://www.hfs.illinois.gov/assets/011808minutes.pdf>.....8

Facts about TANF,” Ill. Dep't of Human Serv., Dec. 2007, *available at*  
<http://www.dhs.state.il.us/page.aspx?item+31771>.....8

Minutes, Illinois Joint Committee on Administrative Rules, at 15 (Feb. 13, 2008), *available at*  
<http://www.ilga.gov/commission/jcar/minutes/0208.pdf>.....9

Minutes, Illinois Joint Committee on Administrative Rules, at 2 (Nov. 13, 2007), *available at*  
<http://www.ilga.gov/commission/jcar/minutes/1107.pdf>.....9

	31 Ill. Reg. 16060 (Nov. 30, 2007).....	9
<b>B.</b>	<b>CMS and HFS have consistently recognized that eligibility for Medicaid is delinked from TANF eligibility requirements.....</b>	<b>9</b>
	<i>Poindexter v. People</i> , 372 Ill. App. 3d 1021, 1033 (4th Dist. 2007).....	10
	Ill. Dep't of Human Servs., Manual Release 00.9 (Jan. 24, 2000), at 1...	10
	Ill. Dep't of Human Servs., Manual Release 99.99 (Dec. 21, 1999), at 1.10	
	<i>Cook County State's Attorney v. Illinois State Labor Relations Bd.</i> , 292 Ill. App. 3d 1, 6 (1st Dist. 1997).....	10
<b>C.</b>	<b>Defendants' construction of section 5-2(2)(b) must be in harmony with federal law thereby enabling Illinois to continue to participate in the federal Medicaid program and to receive federal funding, as intended by the General Assembly.....</b>	<b>10</b>
	<i>Bethania Ass'n v. Jackson</i> , 262 Ill. App. 3d 773, 777 (1st Dist. 1994)....	10
	<i>State Dep't. of Human Serv. v. Hudson County</i> , 390 A.2d 720, 730 (N.J. Super. Ct. 1978).....	11
	42 U.S.C. § 1396u-1.....	11
	305 ILCS 5/4-1.5(a); 4-1.7-1.10.....	12
	<i>Poindexter v. People</i> , 372 Ill. App. 3d 1021, 1027 (4th Dist. 2007).....	13
	<i>Midwest Emergency Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.</i> , 382 Ill. App. 3d 973, 975 (1st Dist. 2008).....	13
<b>D.</b>	<b>This Court's interpretation of section 5-2(2)(b) violates fundamental constructs of statutory construction by rendering other provisions of the Public Aid Code meaningless.....</b>	<b>13</b>
	<i>In re Annexation of Territory to City of Park Ridge</i> , 260 Ill. App. 3d 384, 389 (1st Dist. 1994).....	13
	<i>Northwest Airlines v. Dep't of Revenue</i> , 295 Ill. App. 3d 889, 893 (1st Dist. 1998).....	13
	<i>Hirschfield v. Barrett</i> , 40 Ill. 2d 224 (Ill. 1968).....	13
	<i>Chestnut Corp. v. Pestine, Brinati, Gamer, Ltd.</i> , 281 Ill. App. 3d 719, 724 (1st Dist. 1996).....	14

305 ILCS 5/9A-1 *et seq.*.....14

**III. This Court seems to have arrived at its interpretation of the ambiguous language because of a mistaken belief as to the purpose of Medicaid and the extent of HFS' discretionary power..... 15**

**A. Medicaid is not a temporary and transitional program.....15**

*Midwest Emergency Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 974-75 (1st Dist. 2008).....15

Joel Ferber & Theresa Steed, *The Impact of Welfare Reform on Access to Medicaid: Curing Systemic Violations of Medicaid De-Linking Requirements*, 45 St. Louis U. L.J. 145, 145-46 (2001).....16

305 ILCS 5/4-0.5..... 16

305 ILCS 5/4-1.12..... 16

305 ILCS 5/5-1..... 16

**B. Defendants do not have unbridled power to set the income eligibility level of the FamilyCare Program.....17**

305 ILCS 5/5-2(2)(b).....17

Ill. Dep't of Healthcare and Family Servs. Medicaid Advisory Comm. Minutes, at 6 (Jan. 18, 2008), *available at* <http://www.hfs.illinois.gov/assets/011808minutes.pdf> .....17

## Introduction

*To the Honorable Justices of the Illinois Appellate Court:*

Pursuant to Illinois Supreme Court Rule 367, Defendants-Appellants, the Department of Healthcare and Family Services (“HFS”) and Barry S. Maram, respectfully petition this Court for rehearing of its Opinion, issued September 26, 2008 (the “Opinion”), affirming the trial court’s April 15, 2008, Memorandum Opinion and Order (“Trial Order”), which preliminarily enjoined Defendants from “enforcing the Emergency Rule or expanding any public funds related to the FamilyCare Program created by the Emergency Rule.” (Trial Order, R. C06345.)

This Court affirmed the trial court’s order based on its determination that section 5-2(2)(b) is unambiguous and that the FamilyCare Program did not satisfy the requirements under its interpretation of that provision. (Opinion at 10.) Section 5-2(2)(b), however, is susceptible to several interpretations. Defendants urge this Court to adopt an alternative interpretation because it gives effect to the General Assembly’s intent, deference to the agency, and creates coherence between federal Medicaid law and related provisions of state law. Additionally, this Court was under a misconception as to the purpose of Medicaid and the extent of Defendants’ discretionary power, which likely influenced its construction of the enabling legislation.

## Argument

### **I. Section 5-2(2)(b) is ambiguous and susceptible to several interpretations.**

This Court erred in determining that the language of section 5-2(2)(b) is plain and unambiguous. (Opinion at 10.) The words “otherwise eligible” in section 5-2(2) and “[a]ll persons who would be determined eligible” in section 5-2(2)(b) may be interpreted

in various ways leading to an ambiguity as to how the statute should be construed<sup>1</sup>. A statute is ambiguous if “it is capable of being understood by reasonably well-informed persons in two or more different senses.” *People v. Jameson*, 162 Ill. 2d 282, 288 (1994).

This Court has adopted one of several possible readings of that statute. This Court has determined that medical assistance under section 5-2(2)(b) is available only to those individuals who meet the TANF non-economic eligibility requirements of sections 4-1.7-1.10 and 4-1.5a. 305 ILCS 5/4-1.7-1.10; 305 ILCS 5/4-1.5a. This Court therefore interpreted “otherwise eligible” and “who would be determined eligible” as requiring that medical assistance be limited to those that are “eligible for basic maintenance under the requirements of TANF, with the only exception being their ‘earned income,’ which is not to be considered.” (Opinion at 10.) Under this construction, an individual must always satisfy all of the requirements for TANF, not just the ones for initial eligibility, save for the income requirement.

Defendants, however, contend that there is a different way to interpret “otherwise eligible” and “who would be determined eligible.” Defendants posit that “otherwise eligible” means that medical assistance recipients must only meet the TANF requirements for initial receipt of cash grants, which are certain federal AFDC cash grant eligibility criteria that were in place on July 16, 1996. The TANF non-economic requirements are not initial eligibility requirements for receipt of cash grants under the AFDC. Rather, they are utilized as a means to terminate cash grants to those already

---

<sup>1</sup> Defendant-Intervenors, in their Petition for Rehearing, cite additional ways that the statute is ambiguous. Defendants generally agree with those arguments.

receiving them and, therefore, they are not eligibility requirements for receipt of medical assistance under section 5-2(2)(b) but are mere sanctions.

Defendants' interpretation stems from the statutory construction principle that the General Assembly intended to enact effective law when it promulgated Article IXA of the Illinois Public Aid Code. See *Northwest Airlines, Inc. v. Dep't of Revenue*, 295 Ill. App. 3d 889, 893 (1st Dist. 1998); *Niven v. Siqueira*, 109 Ill. 2d 357, 367 (1985). Satisfaction of the employment requirements under sections 4-1.8 to 4-1.10 requires compliance with Article IXA. The provisions of Article IXA, however, are applicable only to those who are already receiving cash assistance. 305 ILCS 5/9A-1; 5/9A-2. Therefore, by the express language of these provisions, employment requirements are imposed only after one has become a cash grant recipient. Article IXA would be meaningless if employment requirements are an initial eligibility requirement for receipt of cash grants because one cannot participate in the vocational and educational training programs of Article IXA unless one is already a cash grant recipient. *Id.*

If this reasoning is extended to medical assistance further surplusage occurs. Since Article IXA programs are available only to cash grant recipients, requiring non-cash grant recipients to satisfy employment requirements and therefore Article IXA as a precondition to receipt of medical assistance would mean that non-cash grant recipients could never qualify for medical assistance under section 5-2(2)(b). The only individuals who could qualify would be cash grant recipients. Medical assistance, however, is already available to cash grant recipients under section 5-2(1). Section 5-2(2)(b) therefore becomes meaningless surplusage.

This Court itself agreed with Defendants' reading of the statute in its discussion of section 89 Ill. Admin. Code § 112.79 (the "Sanctions Provision"). This Court acknowledged that the Sanctions Provision applies not to those attempting to become eligible to receive TANF but to those who are already receiving it. (Opinion at 14.) The Court therefore agrees that the employment requirements are not an initial eligibility criteria for receipt of cash grants but are only applicable after one is a cash grant recipient.

Federal Medicaid law provides another way to construe the statute. Federal law provides that parents who meet the 1996 AFDC specified relative requirements are to be "treated as receiving cash assistance" for Medicaid eligibility purposes. 42 U.S.C. § 1396 u-1(b)(1)(2000). Under the federal definition of a "recipient of cash assistance," individuals who are not cash recipients are deemed as such for Medicaid purposes. *Id.*

There are therefore a number of ways to read section 5-2(2)(b). Defendants' interpretation, however, is preferred over the Court's interpretation because it is consistent with Federal Medicaid law and other provisions of the Illinois Public Aid Code and gives effect to legislative intent.

**II. Defendants' construction of section 5-2(2)(b) is the proper reading of that provision.**

The construction of section 5-2(2)(b) urged by Defendants is the proper reading of that statute because it gives effect to legislative intent and deference to the agency's longstanding interpretation. Moreover, it is the only reading that harmonizes federal and state law.

**A. The General Assembly did not intend to precondition receipt of medical assistance on satisfaction of the non-economic TANF requirements.**

This Court's interpretation that receipt of medical assistance under section 5-2 is limited to those who meet the non-economic TANF eligibility requirements is contrary to the intent of the General Assembly. Budgetary appropriations are indicative of the General Assembly's intent and the General Assembly has consistently appropriated billions of dollars for the provision of medical assistance to approximately half a million individuals, who would not qualify for such assistance under this Court's interpretation of section 5-2. *See* Illinois: Federal and State Share of Medicaid Spending, FY2006, available at <http://www.statehealthfacts.org/profileind.jsp?ind=636&cat=4&rgn=15>.

Section 5-2 is the statutory authority for the provision of medical assistance to approximately 531,659 individuals who received medical assistance prior to the transfer of the FamilyCare Program from the expiring CHIPA waiver program to medical assistance. *See* Ill. Dep't of Healthcare and Family Servs. Medicaid Advisory Comm. Minutes, at 6 (Jan. 18, 2008) available at <http://www.hfs.illinois.gov/assets/011808minutes.pdf>. At the time of the expiration of the CHIPA waiver, there were approximately 373,832 parents already covered pursuant to sections 5-2(1) and (2) of the Public Aid Code with incomes below 35% of the Federal Poverty Level ("FPL") and approximately 157,857 parents covered in the FamilyCare program who were on the CHIPA waiver with incomes from 35% FPL to 185% FPL. *Id.* Of these 531,659 adults, however, only approximately 11,220 received medical assistance because they were receiving TANF grants as of December 2007. *See* "Facts about TANF," Ill. Dep't of Human Serv., Dec. 2007, available at <http://www.dhs.state.il.us/page.aspx?item+31771>. The General Assembly has been

continually appropriating billions of dollars to fund medical assistance to this population despite the fact that all but approximately 11,220 individuals are not on TANF and are not required to comply with the TANF requirements articulated by this Court. If the General Assembly intended this Court's construction of section 5-2, there would be no need for such large budgetary appropriations.

Furthermore, the Joint Committee on Administrative Rules ("JCAR"), a subset of the General Assembly, has affirmed that the legislature intended for medical assistance to be provided to the FamilyCare population with incomes from 133% to 185% of the FPL pursuant to section 5-2(2)(b). JCAR explained that it had no objection to the provision of medical assistance to those "formerly receiving medical coverage under the federal SCHIP waiver" and urged HFS to adopt a rule limited to that population. Minutes, Illinois Joint Committee on Administrative Rules at 15 (Feb. 13, 2008) *available at* <http://www.ilga.gov/commission/jcar/minutes/0208.pdf>; *see also* Minutes, Illinois Joint Committee on Administrative Rules at 2 (Nov. 13, 2007) *available at* <http://www.ilga.gov/commission/jcar/minutes/1107.pdf>. Indeed, JCAR did not claim that section 5-2(2)(b) wouldn't validly cover the expansion population, but merely said that such an expansion should have legislative approval. 31 Ill. Reg. 16060 (Nov. 30, 2007). JCAR therefore interprets section 5-2(2)(b) consistently with Defendants.

**B. CMS and HFS have consistently recognized that eligibility for Medicaid is delinked from TANF eligibility requirements.**

Illinois courts have recognized that substantial deference must be awarded to an agency's interpretation of its own regulations and that such broad deference is especially warranted when the legislation at issue involves a complex and highly technical

regulatory program, such as the Illinois medical assistance program. *Poindexter v. People*, 372 Ill. App. 3d 1021, 1033 (4th Dist. 2007).

The Department has historically and consistently interpreted section 5-2(2)(b) as not requiring the application of TANF eligibility requirements to medical assistance programs. “For example, if a person fails to cooperate with a work activity, the person is sanctioned for TANF Cash. However, since cooperation with a work activity is not a requirement for Medicaid, the family remains eligible for Medicaid.” Ill. Dep’t of Human Servs., Manual Release 00.9 (Jan. 24, 2000), at 1; *see also* Ill. Dep’t of Human Servs., Manual Release 99.99 (Dec. 21, 1999), at 1 (explaining that eligibility for medical assistance is not predicated on satisfaction of TANF non-economic eligibility criteria). The agency’s longstanding interpretation of these provisions is entitled to deference because it flows from its expertise. *See Cook County State’s Attorney v. Illinois State Labor Relations Bd.*, 292 Ill. App. 3d 1, 6 (1st Dist. 1997).

**C. Defendants’ construction of section 5-2(2)(b) is in harmony with federal law thereby enabling Illinois to continue to participate in the federal Medicaid Program and to receive federal funding, as intended by the General Assembly.**

In accordance with laws governing statutory construction, this Court should adopt Defendants’ alternative reading of section 5-2(2)(b) so that Illinois’ medical assistance law is consistent with the federal Medicaid framework. When federal and state statutes are two parts of a single scheme, as is the case here, “the construction of State law should be consistent with that of its Federal counterpart.” *Bethania Ass’n v. Jackson*, 262 Ill. App. 3d 773, 777 (1st Dist. 1994). Particularly where federal funding programs are involved, state statutes and regulations must be read consistently with the federal

provisions. *State Dep't. of Human Serv. v. Hudson County*, 390 A.2d 720, 730 (N.J. Super. Ct. 1978).

Defendants' construction of section 5-2(2)(b) is congruous with section 1931 of the Social Security Act, the federal counterpart which sets the eligibility criteria for receipt of Medicaid. Social Security Act § 1931, 42 U.S.C. § 1396u-1. Section 1931 prescribes that Medicaid eligibility criteria for families with children cannot be more restrictive than the income and resource standards and eligibility requirements in effect on July 16, 1996, under the Aid to Families with Dependent Children program ("AFDC"). *Id.* The AFDC eligibility requirements in effect on that date set forth requirements for receipt of cash grants, mainly limiting who qualifies as a dependent child and what constitutes aid to families with dependent children ("Household Composition Requirements"). Section 1931 therefore foreclosed a State's ability to impose any other initial eligibility criteria for receipt of benefits under Medicaid.

Under subsection (b)(3) of section 1931, Congress permitted States to, at their option, use the AFDC employment and job search requirements not as an initial criteria for eligibility for medical assistance, but as a means to terminate medical assistance to those individuals who received cash grants but whose right to cash grants had been terminated because of their refusal to work. Under federal law, a State can only use non-compliance with work requirements as a sanction and a tool to terminate medical assistance for those already receiving it.

Defendants' reading of section 5-2(2)(b) is consistent with the directive of section 1931 because it bases eligibility for medical assistance only on the AFDC financial need and Household Composition requirements as they existed on July 16, 1996. This Court's

construction of section 5-2(2)(b), however, expands the eligibility requirements beyond those permitted under section 1931 to include those pertaining to work and job search requirements (305 ILCS 5/4-1.8-4-1.10), enforcement of parental child support obligations (305 ILCS 5/4-1.7) and multiple convictions for public aid fraud (305 ILCS 5/4-1.5a). This Court's interpretation also ignores the fact that under subsection (b)(3) of section 1931 state legislation is required before job search and employment requirements may be used as a means to terminate medical assistance and the General Assembly has not enacted such a law.

Furthermore, notably absent from this Court's analysis of section 5-2(2)(b) and the multiple conviction for public aid fraud requirement of section 4-1.5a is the fact that section 4-1.5a is applicable only "to the extent permitted by federal law" and consideration of the second to last paragraph of section 5-2 (the "Provision"), which provides "[t]o the extent permitted under federal law, any person found guilty of a second violation of Article VIII A shall be ineligible for medical assistance under this Article, as provided in Section 8A-8." (emphasis supplied). The Provision applies to all subparagraphs of section 5-2, including section 5-2(2) and mirrors section 4-1.5a. Therefore, the use of conviction for public aid fraud as a barrier to receipt of medical assistance to the extent permitted by federal law is not a TANF specific requirement but a general provision under the Public Aid Code. Since this Provision is a part of the enabling legislation for the FamilyCare Program this requirement need not be duplicated in the FamilyCare Program regulations.

A disregard of federal law in a reading of section 5-2(2)(b) may have significant implications. While Illinois manages and administers its medical assistance program,

Congress and the Centers for Medicare and Medicaid Services (“CMS”) sets the main rules under which Medicaid operates and the basic framework within which all participating States must operate. *Poindexter v. People*, 372 Ill. App. 3d 1021, 1027 (4th Dist. 2007) (“While states enjoy wide discretion in administering their Medicaid programs, that discretion is qualified with the mandate to adhere to applicable federal laws.”) Illinois decided to participate in 1967, with the enactment of Article V of the Illinois Public Aid Code, which implemented the federal Medicaid program. As a result, Illinois must comply with federal requirements as a precondition to receipt of federal funding. *Midwest Emergency Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 975 (1st Dist. 2008). Illinois may forego hundreds of millions of federal Medicaid dollars unless section 5-2(2)(b) is harmonized with federal law. Defendants have adopted a construction that achieves just that.

**D. This Court’s interpretation of section 5-2(2)(b) violates fundamental constructs of statutory construction by rendering other provisions of the Public Aid Code meaningless.**

In accordance with principles governing statutory construction, this Court should adopt Defendants’ alternative reading of section 5-2(2)(b) so that other sections of the Public Aid Code may be given their full effect.

When construing statutes, courts assume that the legislature intended to enact an effective law. *In re Annexation of Territory to City of Park Ridge*, 260 Ill. App. 3d 384, 389 (1st Dist. 1994); *Northwest Airlines*, 295 Ill. App. 3d at 893. A fundamental rule of statutory construction therefore disfavors finding surplusage and requires courts to give each provision some meaning, if possible. *Hirschfield v. Barrett*, 40 Ill. 2d 224 (Ill. 1968). “Courts avoid interpretations which would render part of a statute meaningless or

void.” *Chestnut Corp. v. Pestine, Brinati, Gamer, Ltd.*, 281 Ill. App. 3d 719, 724 (1st Dist. 1996).

This Court’s reading of section 5-2(2)(b) runs contrary to these principles of statutory construction by rendering other sections of the Illinois Public Aid Code meaningless or at least by creating irreconcilable conflicts between statutory provisions. Despite federal law, this Court has determined that job search and employment requirements are an eligibility criteria for initial receipt of TANF cash grants and for initial receipt of medical assistance. (Opinion at 14.) That finding, however, creates a conflict with Article IXA of the Public Aid Code. Satisfaction of the employment requirements under sections 4-1.8 to 4-1.10 requires compliance with Article IXA. The provisions of Article IXA, however, are applicable only to those who are already receiving cash assistance. 305 ILCS 5/9A-1; 5/9A-2. Therefore, by the express language of these provisions, employment requirements are imposed only after one has become a cash grant recipient. This Court’s conclusion that employment requirements are an initial eligibility requirement for receipt of cash grants is irreconcilable with express legislation that one cannot participate in the vocational and educational training programs unless one is already a cash grant recipient. This Court’s interpretation voids Article IXA.

When the Court’s reasoning is extended to medical assistance, the same circularity and surplusage occurs. Since Article IXA programs are available only to cash grant recipients, requiring non-cash grant recipients to satisfy employment requirements and therefore Article IXA as a precondition to receipt of medical assistance would mean that non-cash grant recipients could never qualify for medical assistance under section 5-2(2)(b). The only individuals who could qualify would be cash grant recipients. Medical

assistance, however, is already available to cash grant recipients under section 5-2(1). Section 5-2(2)(b) therefore becomes meaningless surplusage under this Court's ruling.

If, however, Defendants' construction is adopted, Article IXA and Section 5-2(1), can be given meaning, as intended by the General Assembly. More importantly, all the Medicaid laws, whether state or federal, become a comprehensive scheme.

**III. This Court seems to have arrived at its interpretation of the ambiguous language because of a mistaken belief as to the purpose of Medicaid and the extent of HFS' discretionary power.**

This Court's construction of the enabling legislation appears partially predicated on the Court's belief that Medicaid was intended to be a transitional program and out of concern that there is no limit to the scope of the FamilyCare Program. Because both of these beliefs are erroneous, this Court should abandon its initial construction and adopt the alternative posited by Defendants.

**A. Medicaid is not a temporary and transitional program.**

This Court determined that "receipt of Medicaid has always been intended to be temporary and transitional" and that therefore section 5-2(2)(b) cannot authorize the FamilyCare Program because it is not temporary. Medicaid or medical assistance at the State level, however, is not and has never been a transitional program like TAN, as evidenced by a comparison of the implementing legislation of the respective programs.

"Medicaid is a joint federal and state government entitlement program." *Midwest Emergency Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 974-75 (1st Dist. 2008). In fact, the purpose of the enactment of the 1996 welfare reform law entitled "Personal Responsibility and Work Opportunity Reconciliation Act," which

included section 1931, was to move families from welfare to work while preserving entitlement to Medicaid so that poor families retained access to health care coverage regardless of whether they qualified for receipt of cash assistance. See Joel Ferber & Theresa Steed, *The Impact of Welfare Reform on Access to Medicaid: Curing Systemic Violations of Medicaid De-Linking Requirements*, 45 St. Louis U. L.J. 145, 145-46 (2001). Although Congress intended TANF to be transitional, it enacted section 1931 to ensure that those who entered the workforce and were no longer entitled to cash grants were still eligible for Medicaid. *Id.* at 147-48.

At the State level, the differing purposes of TANF and medical assistance are clear as well. TANF is defined as the “provision of transitional assistance” to families in the form of one time payments or “temporary assistance” while searching for or being trained for work. 305 ILCS 5/4-0.5. TANF is not an entitlement program, as proclaimed in section 4-1 and participation or receipt of cash grants is limited to five years. 305 ILCS 5/4-1.12. No such temporary limitation exists in Illinois’ medical assistance legislation. In stark contrast to TANF, the purpose of medical assistance is to provide benefits for “persons who are medically indigent but otherwise able to provide for themselves with a livelihood, [and to] maintain their incentives for continued independence and preserve their limited resources for ordinary maintenance needed to prevent their total or substantial dependency.” 305 ILCS 5/5-1. There is no provision in Article IV of the Public Aid Code, and this Court cites none, to suggest that the General Assembly intended receipt of medical assistance to be temporary or transitional. Because Medicaid and medical assistance are not transitional programs, this Court’s apparent reasoning for adopting its interpretation of section 5-2(2)(b) is removed.

**B. Defendants do not have unbridled power to set the income eligibility level of the FamilyCare Program.**

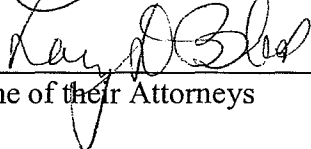
This Court also appears to have adopted its reading of section 5-2(2)(b) out of concern that there is no limit to the scope of the program or the level of income if this interpretation is not adopted. (Opinion at 16.) That concern is unfounded. Defendants' discretion to set the income level is limited and bound by the standard in the enabling legislation. Section 5-2(2)(b) permits the provision of medical assistance to those "who have insufficient income and resources to meet the costs of necessary medical care." 305 ILCS 5/5-2(2)(b). As has been recognized by Congress, by the bi-partisan Adequate Health Care Task Force, and by other States, families with incomes at 400% of the FPL satisfy that standard. Indeed, to ensure that such is the case, participation in the most recent expansion of the FamilyCare Program is limited to individuals who establish that they have been without insurance for the previous 12 months and participants are required to pay substantial premiums, which they would avoid if alternative sources of coverage were available. That benefits are extended to those who are truly needed is evidenced by the enrollment numbers. The number of new enrollees added with each expansion of the FamilyCare Program has decreased. The expansion from 90% FPL to 133% FPL added less than 62,000 participants while the expansion from 133% to 185% FPL added only 20,000 participants. Therefore, statutory standards and safeguards are in place that prevent the occurrence of the abuses imagined by this Court. *See Ill. Dep't of Healthcare and Family Servs. Medicaid Advisory Comm. Minutes, at 6 (Jan. 18, 2008), available at <http://www.hfs.illinois.gov/assets/011808minutes.pdf>.*

**CONCLUSION**

For the reasons stated herein, Defendants respectfully petition this Court for a rehearing and request reversal of the trial court's issuance of the preliminary injunction with respect to the FamilyCare Program and the granting of such other and further relief as this Court deems proper.

Respectfully submitted,

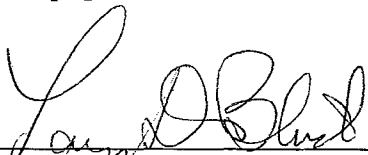
**HON. ROD R. BLAGOJEVICH, THE ILLINOIS  
DEPARTMENT OF HEALTHCARE AND  
FAMILY SERVICES, and BARRY S. MARAM,**

By:   
\_\_\_\_\_  
One of their Attorneys

Larry D. Blust  
Marc S. Silver  
Katarzyna K. Dygas  
BARNES & THORNBURG LLP  
One North Wacker Drive, Suite 4400  
Chicago, Illinois 60606  
Telephone: (312) 357-1313  
Firm ID: 32715

**Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix, is 18 pages.

  
\_\_\_\_\_  
Attorney for Defendants-Appellants