

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Marina Pantchenko, SB 293014 Bay Area Legal Aid 1735 Telegraph Ave, Oakland, CA 94612 TELEPHONE NO: (510)250-5283 FAX NO: (510)663-4740 ATTORNEY FOR (Name): Nooraldeen Kathem and Llal Tluang		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY APR 01 2015 CLERK OF THE SUPERIOR COURT By Louis Staley, Jr.	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street, MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse		CASE NUMBER: RG15764567 JUDGE: DEPT: Writs Department	
CASE NAME: Kathem et. al. v. Cal. Dept. Soc. Serv., Cal. Dept. Health Care Serv. et. al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 3
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 1, 2015

Marina Pantchenko

(TYPE OR PRINT NAME)

► *Marina Pantchenko*

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach-Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

1 BAY AREA LEGAL AID
MARINA PANTCHENKO, SBN 293014
2 mpantchenko@baylegal.org
STEPHEN RONFELDT, SBN 41044
3 (Of Counsel)
sronfeldt@baylegal.org
4 AMY CHEN, SBN 245771
achen@baylegal.org
5 1735 Telegraph Avenue
Oakland, California 94612
6 Telephone: (510) 250 5283
Facsimile: (510) 663 4740

HANSON BRIDGETT LLP
KATHRYN E. DOI, SBN 121979
kdoi@hansonbridgett.com
500 Capitol Mall, Suite 1500
Sacramento, California 95814
Telephone: (916) 442-3333
Facsimile: (916) 442-2348

7 BAY AREA LEGAL AID
8 MICHAEL KEYS, SBN 133815
mkeys@baylegal.org
9 1035 Market Street, 6th Floor
San Francisco, California 94103
10 Telephone: (415) 982-1300
Facsimile: (415) 982-4243

NATIONAL HEALTH LAW PROGRAM
KIMBERLY LEWIS, SBN 144879
lewis@healthlaw.org
JANE PERKINS, SBN 104784
perkins@healthlaw.org
3701 Wilshire Blvd, Suite 750
Los Angeles, California 90010
Telephone: (310) 736-1653
Facsimile: (310) 368-0774

11
12
13 Attorneys for Petitioners and Plaintiffs
NOORALDEEN KATHEM and LLAL
14 TLUANG

RECEIVED
FILED
ALAMEDA COUNTY

APR 01 2015

CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA
18

19 NOORALDEEN KATHEM AND LLAL
20 TLUANG,

21 Petitioners,

22 v.

23 WILL LIGHTBOURNE, Director Of The
State of California Department Of Social
24 Services; THE STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES;
JENNIFER KENT, Director of the State of
25 California Department of Health Care
Services; the STATE OF CALIFORNIA
26 DEPARTMENT OF HEALTH CARE
SERVICES; and DOES 1 through 20,

27 Respondents
28

CASE NO. **RG15764567**

PETITION FOR WRIT OF MANDATE

[Code of Civil Procedure §1085]

1 I. INTRODUCTION

2 1. Petitioners Nooraldeen Kathem and Llal Tluang (collectively, the
3 "Unaccompanied Refugee Minors") submit this Petition for Writ of Mandate against
4 Respondents the State Department of Health Care Services (DHCS) and its Director,
5 Jennifer Kent, and Respondents State Department of Social Services (CDSS) and its
6 Director, Will Lightbourne, (collectively, "Respondents") seeking orders of the Court
7 (1) compelling the Respondents to comply with their ministerial duty to provide
8 Unaccompanied Refugee Minor ("URM") youth with full-scope Medi-Cal benefits as are
9 provided to other foster care and former foster care youth in the state, as required by
10 law¹; and (2) enjoining Respondents from proceeding with a rehearing of Petitioner
11 Kathem's final hearing decision and requiring that decision to be fully and promptly
12 enforced.

13 2. The URM program, administered through the Office of Refugee
14 Resettlement, resettles refugee children from abroad who do not have a parent or relative
15 who can care for them. The URM program ensures that these refugee youth receive
16 federal foster care benefits, as well as the full range of assistance, care, and services
17 which are available to all foster children in the State.² That includes Medi-Cal coverage.
18 There are approximately 300 URM youth residing in the State of California.

19 3. Respondent CDSS is responsible for administering California's URM
20 program and contracts with private agencies to provide foster care, independent living,
21 and other services to refugee youth. Consistent with federal regulations, CDSS has a
22 legal duty to ensure that each URM child receives the full range of child welfare benefits

23
24 ¹ Cal. Dept. Social Services, *California's State Plan for Refugee Assistance and Services*
25 *Federal Fiscal Year 2013/14* (2014)
<http://www.cdss.ca.gov/refugeeprogram/res/pdf/StatePlans/2014_CA_State_Plan_2013_2014.pdf> (hereinafter CA Refugee State Plan).

26 ² Off. Refugee Resettlement, U.S. Dept. Health & Human Services, *Unaccompanied*
27 *Refugee Minors* (Aug. 16, 2012).
<<http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-refugee-minors>> (as of
28 Mar. 10, 2015) (hereinafter Unaccompanied Refugee Minors).

1 and services as are provided to children in foster care in the State. These services,
2 among others, include medical assistance through California's Medi-Cal program.³

3 4. Respondent DHCS is the single state agency responsible for administering
4 California's Medi-Cal Program. (Welf. & Instit. Code § 14100.1). In coordination with
5 CDSS, Respondent DHCS is responsible for administering Medi-Cal benefits to the URM
6 youth and other refugees.⁴

7 5. In administering Medi-Cal benefits to URM youth, DHCS has adopted a
8 policy of failing to place URM youth in the Medi-Cal program to which they are entitled by
9 law. Under the law, URM youth are entitled to Medi-Cal that affords them fee for service
10 coverage in almost all counties, through age 18, and through age 26, if they are in foster
11 care on their 18th birthday, regardless of their income.

12 6. Instead of requiring that URM youth be placed into the correct Medi-Cal
13 program, DHCS has instructed counties to place all URM youth into Medi-Cal programs that
14 do not confer the same benefits as those into which foster care children, or former foster
15 care children are placed. The Medi-Cal programs in which Respondents are placing
16 these children and youth have an income test, and also require the youth to enroll in a
17 Medi-Cal managed care plan to obtain their benefits, thus limiting the health care
18 providers the youth may see to obtain medically necessary services. In addition, because
19 Medi-Cal managed care plans are geographically limited in who they serve, URM youth who
20 relocate to another county can experience delays in obtaining needed services during
21 relocation while they are required to change health and mental health plans. When URM
22 youth are subject to income eligibility requirements, they often experience terminations in
23 Medi-Cal coverage for failure to submit required income verification paperwork.

24
25
26 _____
27 ³ CA Refugee State Plan, *supra*.

28 ⁴ *Ibid*.

1 7. DHCS' policy directing counties to place URM youth into the wrong Medi-
2 Cal programs has resulted in URM youth being wrongfully delayed in obtaining and even
3 losing access to critical mental health services, primary and specialty care, prescription
4 medications, and dental benefits.

5 8. As a result of not being placed in the proper Medi-Cal program, Petitioner
6 Kathem's Medi-Cal eligibility was wrongfully terminated in April of 2014. After requesting
7 a Medi-Cal state fair hearing but before the hearing occurred, Petitioner Kathem was still
8 not placed in the proper Medi-Cal program.

9 9. Following the loss of Medi-Cal, Petitioner Kathem experienced severe pain
10 in his back, hamstrings and quads, and deterioration of his dental health conditions for
11 which he was unable to obtain medical treatment. As a low-income individual without
12 health insurance, Petitioner Kathem could not afford the costs of treating these health
13 problems and so was forced to forego necessary health care and endure pain.

14 10. Petitioner Kathem challenged the termination of his Medi-Cal eligibility,
15 including the failure of Respondents to place him in the correct Medi-Cal program, in a
16 state fair hearing. That hearing resulted in a final hearing decision, dated October 20,
17 2014 requiring Respondent DHCS to provide Petitioner Kathem with Medi-Cal benefits
18 under the correct Medi-Cal program. A copy of that hearing decision is attached hereto
19 as Exhibit "A" and incorporated by reference.

20 11. On January 22, 2015, Respondent CDSS, the state agency which
21 oversees Medi-Cal state fair hearings, granted a request by Respondent DHCS for a
22 rehearing of Petitioner Kathem's Medi-Cal state fair hearing decision.

23 12. Such a rehearing was improperly granted for the following reasons:
24 Respondent DHCS lacks standing under the Welf. and Inst. Code §10960, the state law
25 governing rehearing requests; even if, *arguendo*, the request was proper, it was not
26 requested within the time required by law and thus, by law, must be deemed to have
27 been denied; and the rehearing request was granted without providing Petitioner Kathem
28 proper notice and an opportunity to be heard, as required by State statute.

13. Petitioner Tluang, also a participant of the URM program, was terminated from Medi-Cal on several occasions after turning 18 instead of being placed into the proper Medi-Cal program where eligibility should have continued uninterrupted until age 26. As a result, Petitioner Tluang had to reapply for Medi-Cal benefits on multiple occasions. When Petitioner Tluang requested a Medi-Cal state fair hearing, her Medi-Cal eligibility was processed for the Modified Adjusted Gross Income (MAGI) Medi-Cal program and not the Medi-Cal program in which foster youth and former foster youth should be placed, including fee-for-service coverage. As a result of the terminations of her Medi-Cal coverage, Petitioner Tluang has been unable to access critically necessary mental, dental health services and prescription medications.

II. PARTIES

14. Petitioner Nooraldeen Kathem is a 20 year old refugee and is eligible for and a participant of the Catholic Charities of Santa Clara County URM program. Petitioner Kathem seeks to maintain the coverage in the Medi-Cal program that other foster care and former foster youth are entitled to and receive. These benefits have been granted by the final state hearing decision number 2014287069. See Exhibit A.

15. Petitioner Llal Tluang is a 21 year old refugee and is eligible for and a participant of the Catholic Charities of Santa Clara County's URM program. Petitioner Tluang seeks, and has been denied, Medi-Cal benefits to which she is legally entitled.

16. Respondent Will Lightbourne is the Director of Respondent CDSS. CDSS is the state agency responsible for administering the URM program and the State Hearings Division, which administers all of the Medi-Cal state fair hearings in conformity with the requirements of law. Respondent Lightbourne is sued in his official capacity.

17. Respondent Jennifer Kent is the Director of Respondent DHCS, the State agency responsible for administering the State Medi-Cal program. Respondent Kent is sued in her official capacity.

1 18. Does 1 through 20 are individuals and entities whose true names are
2 unknown to Petitioners at this time. Petitioners will seek leave of this court to amend their
3 true names and capacities when they have been ascertained.

4 III. STATUTORY FRAMEWORK

5 A. The Unaccompanied Refugee Minor Program

6 19. The federal URM program is administered through the Office of Refugee
7 Resettlement, a subsidiary agency of the U.S. Department of Health & Human Services,
8 Office of Administration for Children & Families. The URM program helps unaccompanied
9 minor refugees develop self-sufficiency by providing them with refugee foster care
10 services and benefits.⁵

11 20. The URM program was originally developed in the 1980's to address the
12 needs of Southeast Asian children without parents or guardians.⁶ It establishes legal
13 responsibility to ensure that URM's receive all of the care and services available to all
14 foster children in the State. This includes financial support, housing, food, medical care,
15 case management, educational support and other services.⁷

16 21. In California, Respondent CDSS has been designated by the Governor of
17 California to be the agency responsible for developing the State Plan for Refugee
18 Assistance and Services consistent with 45 C.F.R. Section 400.5.⁸ The program
19 provides child welfare, foster care, independent living and other supportive services to
20 refugee youth that include refugees, asylees, Cuban/Haitian entrants, and victims of
21 severe form of human trafficking.⁹

22
23
24 ⁵ Off. Refugee Resettlement, U.S. Dept. Health & Human Services
<<http://www.acf.hhs.gov/office-of-refugee-resettlement>> (as of Mar. 10, 2015).

25 ⁶ *Ibid.*

26 ⁷ Unaccompanied Refugee Minors, *supra*.

27 ⁸ See CA Refugee State Plan, *supra*.

28 ⁹ *Ibid.*

1 22. As a condition of receiving federal funding, Respondent CDSS must
2 develop an annual State Plan for Refugee Assistance and Services ("CA State Refugee
3 Plan"). The CA State Refugee Plan governs California's Refugee Resettlement Program
4 ("RRP") and how it plans to provide and assist unaccompanied refugee minors.
5 Respondent CDSS has a ministerial duty to ensure that the requirements of the State
6 Plan are fully implemented for all URM.

7 23. Respondent CDSS operates the URM program and contracts with licensed
8 foster family agencies to provide services to URM.¹⁰ Respondents CDSS and
9 Lightbourne, in his official capacity, are responsible in ensuring that each URM child
10 receives the full range of child welfare benefits and services as provided to children in
11 mainstream foster care in the state.¹¹

12 24. Respondents CDSS and Lightbourne, in his official capacity, are
13 responsible for ensuring that appropriate services are being to URM for which they are
14 eligible.¹²

15 25. Respondents DHCS and Kent, in her official capacity, are charged with the
16 operational responsibility for the medical assistance portion of the RRP.¹³

17 **B. Medi-Cal Benefits for URM Youth**

18 26. The Medicaid program was established by Congress in 1965 at Title XIX of
19 the Social Security Act. The purpose of the Medicaid program is to enable states "as far
20 as practicable under the conditions [of each] state, to furnish...(1) medical assistance on
21 behalf of families with dependent children and of aged, blind or disabled individuals
22

23 ¹⁰ *Ibid.*

24 ¹¹ *Ibid.*

25 ¹² *Ibid.*

26 ¹³ Cal. Dept. Social Services, California State Plan for Refugee Assistance, created
27 pursuant to 45 C.F.R. Section 400.5. The plan governs the state's supervision of the
28 Refugee Resettlement Program (RRP). The RRP was established by the Refugee Act of
1980, 8 U.S.C. § 1521 et seq.

1 whose income and resources are insufficient to meet the costs of necessary medical
2 services..." (42 U.S.C. § 1396).

3 27. Each State's Medicaid program must be administered by a single State
4 agency which is responsible for ensuring that the program complies with all relevant laws
5 and regulations. 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 430.10.

6 28. California has elected to participate in the federal Medicaid program. Its
7 Medicaid program, known as "Medi-Cal", is codified at Welfare & Institutions Code
8 ("W&IC") § 14000 *et seq.* Respondent DHCS is the agency charged with overseeing
9 California's Medi-Cal program. (W&IC §14100.1).

10 29. The Legislature's intent in adopting the Medi-Cal program was to provide
11 "for the health care for those aged and other persons, including family persons who lack
12 sufficient annual incomes to meet the costs of health care, and whose other assets are
13 so limited that their application toward the costs of such care would jeopardize the person
14 or family's future minimum self-maintenance and security" and "to afford qualifying
15 individuals health care and related remedial or preventative services." (W&IC § 14000).
16 The fundamental purpose of the program is "to afford qualifying individuals health care
17 and related remedial or preventative services, including related social services which are
18 necessary for those receiving health care under this program." *Ibid.*

19 30. Respondents DHCS and Kent, in her official capacity, have a mandatory
20 ministerial duty under Welfare & Institutions Code section 11000 to administer California's
21 public social services programs, including its Medi-Cal program, fairly and equitably so as
22 to effectuate the stated objectives of the program.

23 31. The Legislature has mandated that the Medi-Cal program be administered
24 in such a manner "so as to secure for every person the amount of aid to which he is
25 entitled" (W&IC § 10500) and that Medi-Cal benefits must be provided "promptly and
26 humanely" (W&IC § 10000).

1 32. In providing child welfare services to refugee children in the State, a State
2 must provide the same child welfare services and benefits to the same extent as are
3 provided to other children of the same age in the State under a State's title IV-B plan.¹⁴
4 These benefits may include foster care maintenance payments, medical assistance,
5 support services, and other services identified in the State plans for title IV-B and IV-E of
6 the Social Security Act.¹⁵

7 33. Respondents DHCS and Kent, in her official capacity, have a legal duty to
8 determine Medicaid eligibility under the State Medicaid plan and provide medical
9 assistance to all refugees eligible under its State plan, including URM youth.¹⁶

10 34. Under the State Plan, Respondents DHCS and Kent, in her official capacity,
11 have a duty to provide foster care youth the following Medi-Cal benefits:

- 12 a. full scope Medi-Cal benefits until age 26;¹⁷
- 13 b. waived income and assets tests until age 26;¹⁸
- 14 c. fee for service coverage;¹⁹

18 ¹⁴ 45 C.F.R. § 400.112; *see also* 8 U.S.C. §15229(a)(9).

19 ¹⁵ 45 C.F.R. § 400.116.

20 ¹⁶ *Id.* § 400.94.

21 ¹⁷ Welf. & Inst. Code § 14005.28(a); *see also* Off. Refugee Resettlement, U.S. Dept.
22 Health & Human Services, State Letter No. 11-01, (Dec. 2010)
23 <http://www.acf.hhs.gov/programs/orr/resource/state-letter-11-01> (where ORR mandates
24 "effective 2014, states must extend Medicaid coverage up to age 26 for young adults who
25 have aged out of the foster care system, including those aging out of the Unaccompanied
26 Refugee Minors program.").

27 ¹⁸ MEDIL I 14-05 (Jan. 17, 2014) p. 2; Centers for Medicare & Medicaid Services, U.S.
28 Dept. Health & Human Services, *Medicaid and CHIP FAQs: Funding for the New Adult
Group, Coverage of Former Foster Care Children and CHIP Financing* (Dec. 2013)
<<http://medicaid.gov/Federal-Policy-Guidance/Downloads/FAQ-12-27-13-FMAP-Foster-Care-CHIP.pdf>>.

¹⁹ Welf. & Inst. Code § 14093.09; ACWD 00-61 (Nov. 22, 2000) p. 2; ACWD 00-41 (Aug.
14, 2000) p.2.

d. automatic enrollment in Former Foster Care Children Medi-Cal program if the youth is in foster care at age 18, without a new application and without interruption in coverage.²⁰

C. Right to a State Fair Hearing Regarding Eligibility for Benefits

35. Any applicant or recipient of public social services – including any and all types of Medi-Cal – who are "dissatisfied with any action of the county department relating to his or her application for or receipt of public social services" shall have the right seek review of that action through a state fair hearing with the California Department of Social Services. (W&IC § 10950. *See also* California Department of Social Services Manual of Policy & Procedures ("MPP") § 22-003.)

36. A state fair hearing that is requested pursuant to 22 C.C.R. section 50951 shall be governed by the procedures set forth at Welfare & Institutions Code sections 10950 - 10965. (22 C.C.R. § 50951(b). *See also* MPP § 22-001 et seq.)

37. State fair hearings are the forum established by law for administrative resolution of disputes relating to Medi-Cal eligibility and the provision of Medi-Cal covered services. (W&IC § 10950.)

38. Hearings are to be conducted in an impartial manner and the administrative law judge who presides over the state hearing must "prepare a fair, impartial, and independent proposed decision." (W&IC § 10958.) "After approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director [of DHCS in the case of Medi-Cal hearings]." *Ibid.*

39. Within 30 days after receiving the copy of the proposed decision, "the director may adopt the decision in its entirety; decide the matter himself or herself on the record . . . or order a further hearing to be conducted." (W&IC § 10959; MPP §22-062.1.)

²⁰ Welf. & Inst. Code § 14005.28(a)(1); MEDIL I 14-05 (Jan. 17, 2014) p.2. *See* Cal. Dept. Social Services, *2015-2019 Child and Family Services Plan* (2014) <http://www.childsworld.ca.gov/res/TitleIV-B/CFSP_2015-2019.pdf>.

1 Where the director takes no action on the proposed decision with in the 30 day time
2 period, this "shall be deemed an affirmation of the proposed decision." (W&IC § 10959;
3 MPP § 22-062.2.)

4 40. "The affected county or applicant or recipient" may request a rehearing
5 within 30 days after receiving the hearing decision. (W&IC § 10960(a); MPP § 22-065.1.)

6 41. State law requires that the director "shall immediately serve a copy of the
7 [rehearing] request on the other party to the hearing." (W&IC § 10960(a); MPP § 22-
8 065.2.

9 42. The party that did not request the rehearing "may within five days of the
10 service file with the director a written statement supporting or objecting to the request."
11 (W&IC § 10960(a); MPP § 22-065.21.)

12 43. California's Welfare & Institutions Code § 10960(a) requires that the director
13 "shall grant or deny" the rehearing request no later than the 35th working day after it is
14 made." The California Department of Social Services Manual of Policy & Procedures
15 § 22-065.3 has the more narrow requirement that the director grant or deny the request
16 "no earlier than five nor later than 15 working days after it is received by the State
17 Hearings Division." If the director does not act within the time specified, "the request for
18 rehearing shall be deemed denied." (MPP § 22-065.31.)

19 IV. Statement of Facts

20 A. **Petitioner Kathem has been determined eligible for Medi-Cal benefits in the**
21 **proper Medi-Cal program by a final hearing decision.**

22 44. Petitioner Kathem is a refugee pursuant to Section 207 of the Immigration
23 and Naturalization Act codified in 8 U.S.C. § 1157 and a participant of the URM program
24 through Catholic Charities of Santa Clara County, a sub-contractor of CDSS.

25 45. On April 23, 2014, Petitioner Kathem received written notification that his
26 Medi-Cal benefits would be discontinued on April 30, 2014 because he was no longer
27 living in a foster home. In June of 2014, Petitioner Kathem was informed by a health clinic
28 that his Medi-Cal benefits were no longer active.

1 46. On July 23, 2014, Petitioner Kathem requested a state fair hearing
2 challenging Respondent DHCS's termination of his Medi-Cal coverage.

3 47. Subsequent to Petitioner Kathem's hearing request, Respondent DHCS
4 issued written instructions to the county that, due to his URM status, Petitioner Kathem
5 should be placed into the Medically Indigent (MI) Medi-Cal Program.

6 48. The MI Medi-Cal program provides full scope Medi-Cal benefits to children
7 until the age 21 and mandates yearly income verifications and redeterminations and
8 requires mandatory enrollment in a Medi-Cal a managed care plan. The Former Foster
9 Care Medi-Cal Program provides former foster youth with fee-for-service Medi-Cal
10 coverage, without any income test, and continuous Medi-Cal coverage regardless of
11 income through age 26.

12 49. A state fair hearing was held on September 10, 2014, before Administrative
13 Law Judge ("ALJ") Julise M. Johanson. ALJ Johanson issued a proposed decision
14 finding Petitioner Kathem to be eligible for Medi-Cal benefits as a former foster care
15 youth, i.e. Former Foster Care Medi-Cal program. See Exhibit A.

16 50. The Director of Respondent DHCS adopted the ALJ's proposed decision on
17 October 20, 2014 (the "October 20, 2014 Decision"). See Exhibit A.

18 51. In a letter dated November 19, 2014, to CDSS, Respondent DHCS
19 requested to reopen Petitioner Kathem's final hearing decision for the purpose of
20 obtaining a new hearing. Neither Petitioner Kathem nor his legal representative at the
21 state fair hearing, Bay Area Legal Aid, were served with a copy of the request for
22 rehearing at the time it was submitted. A copy of DHCS's November 19, 2014
23 memorandum requesting a rehearing is attached hereto as Exhibit "B".

24 52. On January 22, 2015, CDSS Chief Administrative Law Judge Manuel
25 Romero provided Bay Area Legal Aid with a copy of the request to Petitioner Kathem
26 advising that CDSS had "carefully reviewed" the request for rehearing and had
27 "determined that a rehearing should be held." In the letter, Chief ALJ Romero stated that
28 "a rehearing is necessary to reverse the decision ordering the county to rescind its

1 April 23, 2014 notice of action discontinuing Medi-Cal benefits for the claimant, effective
2 April 30, 2014, and restore full scope Medi-Cal benefits, with zero share of cost, under
3 aid code 45." A copy of Chief ALJ Romero's January 22, 2015 letter granting a rehearing
4 is attached hereto as Exhibit "C".

5 53. Respondents' request for a rehearing of Petitioner's Kathem's hearing
6 decision is an attempt to rehear the identical issue that was fully heard at the
7 September 10, 2014 fair hearing and finally decided in the October 20, 2014 hearing
8 decision that was affirmed by Respondents Kent and DHCS 30 days after the proposed
9 decision as issued.

10 54. Respondents' request for and granting of a rehearing in this case seeks to
11 undo a favorable final hearing decision that resulted in Petitioner Kathem being able to
12 regain eligibility for Medi-Cal coverage and gain critical access to mental health services,
13 primary and specialty care, prescription medications, and dental benefits under the
14 Former Foster Care program. Without Medi-Cal coverage, Petitioner Kathem will be left
15 uninsured because he cannot afford to pay for private insurance plans out of pocket. In
16 addition, losing Medi-Cal coverage would further exacerbate Petitioner Kathem's
17 untreated injuries, which include pain in his back, hamstrings, quads and wrists, dental
18 and mental health problems. It would also prevent him from accessing needed
19 prescription medications.

20 55. Respondents' request for and granting of a rehearing was not made by a
21 party that is allowed to request a rehearing under the applicable law. Respondents'
22 request for a rehearing was not "immediately served" on the other party to the hearing as
23 required by law in order to allow the party that did not request the rehearing to file with
24 the director a written statement supporting or objecting to the request. And the granting of
25 the rehearing request was after both the 15th and 35th working day after it is made."

26 56. As a URM youth, it is important for Petitioner Kathem to have Medi-Cal
27 through the Former Foster Care program that provides full scope Medi-Cal eligibility to
28 age 26 without consideration of income, allows for him to access any Medi-Cal health

1 care providers on a fee-for-service basis instead of only through the managed care plan
2 and be able to have continuity of coverage without having to report and fill out a
3 redetermination paperwork.

4 57. Petitioner Kathem requests that the Court issue a Preliminary Injunction
5 and Writ of Mandamus compelling the State to comply with the October 20, 2014
6 Decision and to provide Petitioner Kathem Medi-Cal benefits pursuant to Medi-Cal's
7 Former Foster Care program.

8 **B. Petitioner Tluang Has Been Denied Medi-Cal Covered Services Through The**
9 **Former Foster Care Program.**

10 58. Petitioner Tluang is a refugee pursuant to Section 207 of the Immigration
11 and Naturalization Act codified in 8 U.S.C. §1157 and is a participant of the URM
12 program through Catholic Charities of Santa Clara County, a state sub-contractor of the
13 program.

14 59. Petitioner Tluang was terminated from her Medi-Cal benefits on multiple
15 occasions after turning 18. When attempting to reinstate her benefits she was required to
16 submit a new Medi-Cal application, which resulted in a long interruption of coverage.
17 Petitioner Tluang has been placed onto MAGI Medi-Cal without evaluation for any other
18 Medi-Cal programs, including the Former Foster Care program that would entitle her to
19 Medi-Cal with fee-for-service coverage, regardless of income, until age 26.

20 60. Proceeding to a state fair hearing in order to challenge Respondents'
21 failure to place Petitioner Tluang into the appropriate Medi-Cal program would be futile
22 given the Respondents' illegal policies and recent attempt to reverse favorable
23 administrative decisions.

24 **V. CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**

26 **(Mandamus – California Code of Civil Procedure Section §1085 -**
27 **Respondents have a ministerial duty to ensure that URM's are placed in the proper**
28 **Medi-Cal program).**

1 61. Petitioners reallege and incorporate by reference each of the previous
2 allegations set forth in this petition and complaint as if set forth in full herein.

3 62. Pursuant to California Code of Civil Procedure section 1085, a writ of
4 mandate may be issued by any court to any inferior tribunal, corporation, board, or
5 person, to compel the performance of an act which the law specifically enjoins, as a duty
6 resulting from an office, trust, or station.

7 63. Respondents CDSS and Lightbourne have a clear and present ministerial
8 duty to administer the CA Refugee State Plan in conformity with the requirements of the
9 law.

10 64. Respondents DHCS and Kent have a clear and present ministerial duty to
11 administer the Medi-Cal program in such a manner "so as to secure for every person the
12 amount of aid to which he is entitled" (W&IC § 10500) and that Medi-Cal benefits must be
13 provided "promptly and humanely" (W&IC § 10000).

14 65. The CA Refugee State Plan requires that URM youth be provided "the full
15 range of child welfare services as provided to children in mainstream foster care in the
16 state." Further, it also guarantees that "these services may include foster care
17 maintenance payments, medical assistance, support services, and any services identified
18 as allowable in Title IV-B State Plan (Foster Care Services)."²¹

19 66. Respondents have a clear ministerial duty to ensure that all URM youth
20 promptly and humanely receive the full amount of benefits to which they are entitled.

21 67. In California, former foster care children are entitled to receive full scope
22 Medi-Cal benefits with no income or assets eligibility requirements upon reaching 18
23 years of age in foster care until the youths' 26th birthday, without interruption.²²

24 _____
25 ²¹ See CA Refugee State Plan, *supra*.

26 ²² Welf. & Instit. Code 14005.28(a); *see also* Off. Refugee Resettlement, U.S. Dept.
27 Health & Human Services, State Letter No. 11-01, (Dec. 2010)
28 <http://www.acf.hhs.gov/programs/orr/resource/state-letter-11-01> (where ORR mandates
"effective 2014, states must extend Medicaid coverage up to age 26 for young adults who
(footnote continued)

1 Respondents are failing to comply with their duty to provide URM youth with Medi-Cal
2 program benefits to which they are entitled, consistent with the CA Refugee State Plan
3 and state law.

4 68. Foster care children transitioning into the Former Foster Care Youth
5 Program (FFCP) are also entitled to receive fee-for-service Medi-Cal coverage instead of
6 having to join a Medi-Cal managed care plan in order to receive Medi-Cal health care
7 benefits. (W&IC §14093.09(a)).

8 69. Respondents' policy of denying URM's the proper Medi-Cal program is a
9 violation of their ministerial duties. As a result of Respondents' policy, URM's are illegally
10 denied fee-for-service coverage, are forced to comply with inapplicable income tests and
11 reporting requirements, and are not transitioned into the proper Former Foster Care
12 Medi-Cal program on their 18th birthday without interruption in coverage.

13 70. Accordingly, Petitioners seek issuance of a preliminary injunction and writ
14 compelling Respondents to provide URM's, including these Petitioners, with full scope,
15 fee for service Medi-Cal benefits under the FFCP, regardless of income, until age 26.

16 **SECOND CAUSE OF ACTION**
17 **(California Code of Civil Procedure 1085 – Respondents have a ministerial**
18 **duty to administer the state hearing system in conformity with the**
19 **requirements of law).**

20 71. Petitioners reallege and incorporate by reference each of the previous
21 allegations set forth in this petition and complaint as if set forth in full herein.

22 72. Respondent CDSS has a ministerial duty to administer the state fair hearing
23 system in conformity with the requirements of law.

24 73. As set out above, Respondents' CDSS and Lightbourne granting of the
25 request by Respondents DHCS and Kent for a rehearing is contrary to the requirements
26 of Welf. and Inst. Code §§10959, 10960 and MPP §22-062-65.

27 have aged out of the foster care system, including those aging out of the Unaccompanied
28 Refugee Minors program.").

74. Petitioners seek issuance of a writ compelling Respondents CDSS and Lightbourne to comply with their ministerial duty to deny the request for rehearing, as required by the governing law.

75. Further, that the writ command DHCS and Kent to comply with their ministerial duty to fully implement the requirements and terms of Petitioner's Kathem's hearing decision.

**THIRD CAUSE OF ACTION
(Respondent DHCS Is Collaterally Estopped From Rehearing Its Final Hearing
Decision).**

76. Petitioners reallege and incorporate by reference each of the previous allegations set forth in this petition and complaint as if set forth in full herein.

77. Respondent DHCS is the single state agency charged by law with administering the Medi-Cal program and ensuring that it complies with all requirements of law.

78. Respondent DHCS and Kent administer the Medi-Cal program by delegating to the Counties the duty to make eligibility determination for Medi-Cal. As such, the counties act as DHCS's agent for purposes of the program, including representing the program in state fair hearings.

79. Respondents DHCS' and Kent's request for a rehearing of Petitioner Kathem's final fair hearing decision seeks to reopen and re-try the identical issue that was previously addressed in a state fair hearing on September 10, 2014 and decided in hearing decision number 2014203381. Specifically, that issue is whether Petitioner Kathem, as an URM, is eligible for full scope Medi-Cal benefits with no share of cost, regardless of income, until age 26.

80. Subsequent to the September 10, 2014 state fair hearing, the administrative law judge who presided over that hearing issued a Proposed Decision which was adopted as a final decision by Respondents DHCS and Kent on October 20, 2014. See Exhibit A. That decision ordered the county to rescind its notice discontinuing medical

1 benefits for Petitioner Kathem and to restore full scope Medi-Cal benefits with zero share
2 of cost.

3 81. Respondents DHCS and Kent are the parties who adopted the October 20,
4 2014 hearing decision as a final decision pursuant to their authority under W&IC section
5 10959.

6 82. In addition, the statutory scheme governing the Medi-Cal program results in
7 Respondents DHCS and Kent adopting the proposed decision as final Respondents'
8 request for a re-hearing of Petitioner Kathem's hearing decision is an improper attempt to
9 rehear the identical issue that was fully heard at the September 10, 2014 fair hearing and
10 finally decided in the October 20, 2014 hearing decision. See Exhibit A. As such,
11 Respondents DHCS and Kent should be collaterally estopped from going forward with
12 their rehearing.

13 83. Petitioners have no administrative remedy, and lack any plain, speedy, or
14 adequate remedy at law except by way of a Writ of Mandate requiring Respondents to
15 provide URM's with the Medi-Cal benefits to which they are entitled and enjoining
16 Respondents from rehearing or failing to fully enforce the final state hearing decision for
17 Petitioner Kathem (Ex. A).

18 84. Petitioners request recovery of attorneys' fees pursuant to Code of Civil
19 Procedure section 1021.5.

20 IV. PRAYER FOR RELIEF

21 For the reasons stated above, Petitioners respectfully request that the Court grant
22 the following relief:

23 1. For a Preliminary Injunction and Peremptory Writ of Mandate prohibiting
24 Respondents from refusing to provide full scope, fee-for service, Medi-Cal benefits,
25 regardless of income, until age 26 to URM youth as required by law.

1 2. For a Preliminary Injunction and Peremptory Writ of Mandate prohibiting
2 Respondents from rehearing the final state hearing decision for Petitioner Kathem as
3 described herein.

4 3. For a Preliminary Injunction and Peremptory Writ of Mandate prohibiting
5 Respondents from failing to fully and promptly implement the final state fair hearing
6 decision for Petitioner Kathem Exhibit A.

7 4. For the costs of this action and reasonable attorney fees as permitted under
8 California Code of Civil Procedure section 1021.5.

9 5. For such other and further relief as this Court may deem just and proper.
10

11
12 DATED: April 1, 2015

BAY AREA LEGAL AID
HANSON BRIDGETT LLP
NATIONAL HEALTH LAW PROGRAM

13
14
15 By: Elaine Patch
16 Attorneys for Petitioners
17
18
19
20
21
22
23
24
25
26
27
28

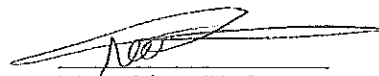
Verification of Nooraldeen Kathem

I, the undersigned, declare:

That I am a petitioner in the above-entitled action; I have reviewed the foregoing Petition for Writ of Mandate; and that, I certify that the factual allegations contained therein are true to the best of my knowledge.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on March 11, 2015 at San Jose, California.


Nooraldeen Kathem

Verification of Llal Tuang

I, the undersigned, declare:

That I am a petitioner in the above-entitled action; I have reviewed the foregoing Petition for Writ of Mandate; and that, I certify that the factual allegations contained therein are true to the best of my knowledge.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on March 16, 2015 at Oakland, California.



Llal Tuang

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

Hearing No. 2014203381

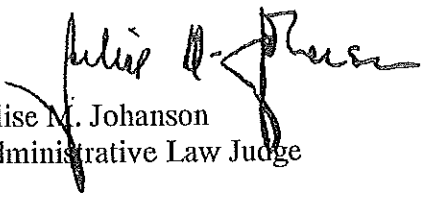
In the Matter of Claimant(s):

Nooraldeen Kathem
2625 Zanker Road
San Jose, CA 95134

PROPOSED DECISION

Adopted by the Director
October 20, 2014
California Department of Health Care Services

I submit the attached proposed decision
for review and recommend its adoption.


Julise M. Johanson
Administrative Law Judge

Cert Date: October 19, 2014

State Hearing Record

Hearing Date:	September 10, 2014	Release Date:	October 20, 2014
Aid Pending:	Yes	Issue Codes:	[446-1]
Agency:	Santa Clara County	Agency Representative:	Ngan Nguyen
Agency:		Agency Representative:	
Authorized Rep. Organization:		Authorized Rep:	Celine Janelle
SSN:		SSN:	
AKA:		AKA:	
Case Name:	Nooraldeen Kathem	Language:	English
LA District/Case:		Companion Case:	

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

Santa Clara County (County) shall provide the Claimant with California Medical Assistance Program (Medi-Cal) benefits equivalent to those received by mainstream foster care youth, effective immediately, under aid code 45. [446-1]

FACTS

By Notice of Action (NOA) dated April 23, 2014, the County sent the Claimant notification that his California Medical Assistance Program (Medi-Cal) was being discontinued on April 30, 2014, because he was no longer living in the home. The NOA also informed him he may be eligible for benefits in his own case. The NOA was sent to a mailing address that was four years old, and the Claimant never received the NOA. In June 2014, the Claimant was informed by his health clinic that his Medi-Cal benefits were inactive. On July 22, 2014, the Claimant requested a hearing on this NOA.

The state hearing was held on September 10, 2012. The Claimant appeared and was represented by an attorney from Bay Area Legal Aid. The Claimant's attorney submitted a Statement of Position, including exhibits to support her contentions. A County hearing representative was present and represented the County at the hearing, along with the County's position statement with attached exhibits.

It is undisputed between the parties that the Claimant came to the United States as a minor refugee from Iraq with his mother. He was voluntarily placed within nonrelative caretaker and received AFDC foster care benefits starting from March 8, 2012. When the voluntary placement ended on June 28, 2012, five days before his 18th birthday, his AFDC-FC benefits were also terminated. The Claimant has been enrolled as a foster youth with the Refugee Foster Care program of Catholic Charities of Santa Clara County since July 2, 2012. On the same date, he also became eligible for the Unaccompanied Refugee Minors program as designated by the Office of Refugee Resettlement (ORR). The Claimant remains in Extended Foster Care under AB-12 as a non-minor dependent. He continues to be eligible for the Refugee Foster Care program through his 24th birthday. He is now 20 years of age and will turn 21 on July 3, 2015.

At the hearing, the County representative stated that, upon receipt of the hearing request, the County immediately restored the Claimant's Medi-Cal benefits effective May 1, 2014. However, for some unknown reasons, the Claimant's Medi-Cal benefits were terminated again on August 31, 2014. The County representative stated that he has done his best to restore the Claimant's Medi-Cal benefits effective September 1, 2014 under the Medically Indigent Child program (aid code 82). The County representative testified that the Claimant's Medi-Cal benefits would be restored only until March 2015, at which time he would be required to go through a redetermination process. The record was left open until September 11, 2014 for the County to provide documentation in the form of a MEDS' screen showing the Claimant's Medi-Cal was restored until March 2015. The County did not provide this evidence.

The Claimant's AR argued that the Claimant's Medi-Cal benefits are still inactive and, when the benefits are restored, they should be restored under aid code 42 or 45 for foster care youth until they turn 21 years of age. After that, the Claimant's aid code should be 4M, which is the designation for former foster care youth. The Claimant's AR argued that, under federal regulations, states must treat unaccompanied refugee minors (URMs) in the same manner as mainstream domestic foster youth. Specifically:

"...a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV-B plan." 45 Code of Federal Regulations (CFR) § 400.112(a); and

"A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State." 45 CFR § 400.116(a).

The Claimant's attorney provided a copy of the California Department of Social Services (CDSS) Fact Sheet entitled Unaccompanied Refugee Minors Program dated September 2013 showing that on page 2 of this Fact Sheet, CDSS agrees that URM's in California must be provided services that are equivalent to mainstream foster care. She argued that under the Claimant's current aid code 82, he is only entitled to managed care health benefits, not fee for service, and he has to keep reapplying for medical benefits, as opposed to being entitled to automatic enrollment. Further, she argued that domestic foster youth are entitled to full-scope benefits, with zero share of cost, with all income and asset tests waived until his/her 26th birthday.

The Claimant's attorney testified that aid code 42 is code used for foster care youth under the federal program, and aid code 45 is for foster care in general. She argued that the Claimant should receive medical benefits under aid code 45. She provided page 34-11 from the Foster Care Handbook revised on March 11, 2014 stating:

"A Foster Care child may be eligible to full scope, no share-of-cost Medi-Cal benefits under aid code 45 Medi-Cal when: The child is not living with a parent or relative, and a public agency is assuming financial responsibility in whole or in part and the child is not eligible to Foster care under aid codes 40, 42 or 5K."

The County representative stated that the County is aware of the problem and that the aid code 82 is a temporary aid code until this problem is resolved. He acknowledged that the Claimant is a URM and entitled to the same benefits as other foster care youth. He indicated that the aid code designation has to be changed at the state level with the Department of Health Care Services (DHCS) and so far, DHCS has not instructed the Counties on what aid code to use. He argued that the County cannot change the aid code.

The Claimant testified that he has back problems, hamstring and quad problems, and he has not been able to go to the doctor since the system shows he has no coverage. Further, he stated that he needs dental work and physical therapy for his wrist where he had surgery.

LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted. For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code. The California Department of Health Care Services (CDHCS) issues Medi-Cal regulations and these regulations are found in Title 22, California Code of Regulations (CCR). All further references, unless otherwise noted, are from the CCR. (§50005.)

Refugee Medical Assistance/Entrant Medical Assistance (RMA/EMA) program is a special program that provides full-scope medical assistance through the Medi-Cal program but is not a Medi-Cal program.

A State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV-B plan." 45 Code of Federal Regulations (CFR) § 400.112(a).

A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State." 45 CFR § 400.116(a).

CONCLUSION

The facts of this case are undisputed: the Claimant is a URM and is entitled, under federal regulations, to full scope fee for service medical benefits, with no new application, and waived income and asset tests until his 26th birthday. The County has denied this coverage arguing that the DHCS has provided no guidelines or new aid codes for URM's. However, the problem with the County's argument is it appears that the County has, arbitrarily, assigned aid code 82 with no direction from the DHCS, when it could just as arbitrarily assigned aid code 45, which seems to be the appropriate aid code on the basis of the Foster Care Handbook page 34-11.

It is undisputed that the Claimant is a foster youth with the Refugee Foster Care program of Catholic Charities of Santa Clara County and has been with this program since July 2, 2012. He does not live with a parent or relative and receives some financial assistance through Catholic Charities of Santa Clara County, which is collaboration between CDSS and the federal Office of Refugee Resettlement, both public agencies. Therefore, it is found that the appropriate temporary aid code, under which the Claimant should receive Medi-Cal benefits, is aid code 45, and that his Medi-Cal benefits should be restored immediately.

ORDER

The claim is granted.

Santa Clara County is ordered to rescind its April 23, 2014 NOA discontinuing California Medical Assistance Program benefits for the Claimant effective April 30, 2014 and restore full scope Medi-Cal benefits with zero share of cost under aid code 45.



Department of Health Care Services
MEMORANDUM

RECEIVED

NOV 15 2014

STATE HEARINGS

DATE: November 19, 2014

TO: Manuel Romero, Chief Administrative Law Judge
Rehearing Unit
744 P Street MS9-17-37
Sacramento, CA 95814

RECEIVED

NOV 19 2014

STATE HEARINGS

FROM: Tara Naisbitt, Chief
Medi-Cal Eligibility Division

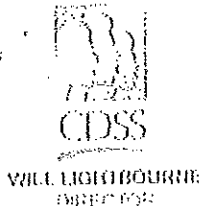
SUBJECT: Request for Rehearing of Hearing Number 2014203381

The purpose of this memorandum is to request a rehearing of hearing number 2014203381 based on an error of law; as discussed below, we believe the applicable law was not provided to the hearing officer and, therefore, was not considered in the decision. Santa Clara County (contrary to the above referenced fair hearing decision) must not provide Medi-Cal in aid code 45 to a claimant who has been designated by the Office of Refugee Resettlement (ORR) as an Unaccompanied Refugee Minor (URM) because those children are not eligible for federal foster care benefits under Title IV-E of the Social Security Act.

All care for URM children must be funded with 100% federal funds provided through the Office of Refugee Resettlement (ORR) to CDSS and then to the two private agencies who administer the URM program at the local level. These children do not enter the county foster care system and their cases are not administered by the counties. As such, these children are not categorically Medi-Cal eligible as "foster care children".

According to federal law and the CDSS Refugee Assistance State Plan, the private agency responsible for the child (that is, who has taken legal guardianship of the child) must provide for the same range of medical services given to a state's Title IV-E foster children. (8 U.S.C. §§1522(2)(B)(i-iii); 45 C.F.R. §400.112.) This is required of the private agency by federal law and our state plan for refugee services. Therefore, it is CDSS and the private agency (which has taken legal guardianship of the child) that must ensure URM children receive the same range of medical services given to Title IV-E foster children and paid for in full by the federal URM program. Because these children are not eligible for Title IV-E federal foster care benefits funded by the Social Security Act (due to their URM status), they must not be placed in aid code 45 which requires federal foster care eligibility.

Therefore, the Department of Health Care Services requests a rehearing of this case. Please contact John Zapata at (916) 552-9451 or via-email John.Zapata@dhcs.ca.gov if you would like to discuss this request further. I appreciate your consideration of this request.



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

January 22, 2015

Marissa Calma
Santa Clara County Social Services Agency
333 W. Julian Street, Bldg. 1
San Jose CA 95110

Re: Nooraldeen Kathem; Rehearing request; Case Name: KATHEM, NOORALDEEN
Rehearing No.: 2015022324Hearing No.: 2014203381

The request for rehearing in this matter has been carefully reviewed and we have determined that a rehearing should be held. The request for rehearing was granted on January 22, 2015.

The adopted decision is inconsistent with the law.

All care for Unaccompanied Refugee Minor (URM) children must be funded with 100% federal funds provided through the Office of Refugee Resettlement (ORR) to CDSS and then to the two private agencies who administer the URM program at the local level. These children do not enter the county foster care system and their cases are not administered by the counties. As such, these children are not categorically Medi-Cal eligible as "foster care children."

Therefore, where URM children are not eligible for Title IV-E federal foster care benefits funded by the Social Security Act due to their URM status, they cannot be placed in aid code 45 which requires federal foster care eligibility.

A rehearing is deemed necessary to reverse the decision ordering the county to rescind its April 23, 2014 notice of action discontinuing Medi-Cal benefits for the claimant, effective April 30, 2014, and restore full scope Medi-Cal benefits, with zero share of cost, under aid code 45.

The scope of the rehearing shall also include determining which Medi-Cal aid code, if any, is appropriate for the claimant as an URM.

You will be notified later of the exact time and place of the rehearing.

The evidence which was presented at the first hearing and the tape recording of that hearing will be considered at the rehearing. You should be prepared to submit any additional arguments or evidence you may have concerning the issues involved. If you do not appear at the rehearing, the rehearing will nonetheless take place and a decision will be based on the available record.

RECEIVED

JAN 23 2015

SANTACLARAAPPEALS

Sincerely,

A handwritten signature in cursive script, appearing to read 'Manuel A. Romero'.

Manuel A. Romero
Chief Administrative Law Judge

cc. Nooraldeen Kathem
Celine Janelle, Authorized Representative

RECEIVED

JAN 23 2015

SANTA CLARA APPEALS