

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

J.E.M., et al.,)
)
Plaintiff,)
)
v.) Case No. 16-04273-CV-C-SRB
)
JENNIFER TIDBALL, et al.,)
)
Defendants.)

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Defendants Jennifer Tidball and Jay Ludlam, by and through counsel, state for their Answer to Plaintiffs' Complaint (Doc. 1) as follows:

I. PRELIMINARY STATEMENT

1. Defendants deny the allegations in paragraph 1.
2. Defendants deny the allegations in paragraph 2.

II. JURISDICTION AND VENUE

3. Defendants neither admit nor deny the allegations in paragraph 3 as they constitute the legal conclusions of Plaintiffs. To the extent further response is deemed necessary, Defendants deny the allegations in paragraph 3.
4. Defendants neither admit nor deny the allegations in paragraph 4 as they constitute the legal conclusions of Plaintiffs. To the extent further

response is deemed necessary, Defendants deny the allegations in paragraph 4.

5. Defendants neither admit nor deny the allegations in paragraph 5 as they constitute the legal conclusions of Plaintiffs. To the extent further response is deemed necessary, Defendants deny the allegations in paragraph 5.

III. PARTIES

Plaintiffs

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and therefore, deny the allegations in paragraph 6.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and therefore, deny the allegations in paragraph 7.

Defendants

8. Defendants admit Jennifer Tidball, Acting Director of the Department of Social Services (DSS), is the chief administrative officer of DSS and is responsible for administration of the single state agency for the Missouri Medicaid program. Defendants further admit the Director of DSS is charged with the administration of DSS, including the duty to administer the

Missouri Medicaid program in compliance with the Medicaid Act and with the laws of the State of Missouri. Defendants admit the principal office of the Director of DSS is located in Jefferson City, Missouri. Defendants deny all remaining allegations in paragraph 8 that are not specifically admitted herein.

9. Defendants admit Jay Ludlum, Acting Director of MO HealthNet Division (MHD), is responsible for the administration of MHD as provided in state law, subject to the supervision of the Director of DSS. Defendants admit the principal office of the Director of MHD is located in Jefferson City, Missouri. Defendants deny all remaining allegations in paragraph 9 that are not specifically admitted herein.

IV. TREATMENT STANDARDS OF CARE FOR HEPATITIS C

10. Defendants admit the Department Social Services has estimated that approximately 13,000 Missouri Medicaid beneficiaries are infected with HCV. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 and therefore, deny the remaining allegations in paragraph 10.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and therefore, deny the allegations in paragraph 11.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 and therefore, deny the allegations in paragraph 12.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and therefore, deny the allegations in paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and therefore, deny the allegations in paragraph 14.

15. Defendants deny the allegations in the first and last sentence of paragraph 15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 15 and therefore, deny the remaining allegations in paragraph 15.

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and therefore, deny the allegations in paragraph 16.

17. Defendants admit the allegations in the first sentence of paragraph 17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 and therefore, deny the remaining allegations in paragraph 17.

V. STATUTORY AND REGULATORY FRAMEWORK

Medicaid

18. Defendants neither admit nor deny the allegations in paragraph 18 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 18.

19. Defendants neither admit nor deny the allegations in paragraph 19 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 19.

20. Defendants neither admit nor deny the allegations in paragraph 20 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 20.

21. Defendants neither admit nor deny the allegations in paragraph 21 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 21.

22. Defendants neither admit nor deny the allegations in paragraph 22 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 22.

23. Defendants neither admit nor deny the allegations in paragraph 23 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 23.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore, deny the allegations in paragraph 24.

25. Defendants neither admit nor deny the allegations in paragraph 25 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 25.

26. Defendants admit the Centers for Medicare & Medicaid Services (“CMS”) issued a Medicaid Drug Rebate Program Notice, Release No. 172, on November 5, 2015 and that the document speaks for itself. Defendants deny the remaining allegations in paragraph 26.

27. Defendants admit prescriptions for direct-acting anti-virals (DAAs), including Harvoni and Epclusa, are approved for some Missouri Medicaid beneficiaries. Defendants deny the remaining allegations in the first and second sentences of paragraph 27. Defendants neither admit nor deny the allegations in the last sentence of paragraph 27 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in the last sentence of paragraph 27.

28. Defendants neither admit nor deny the allegations in paragraph 28 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 28.

29. Defendants neither admit nor deny the allegations in paragraph 29 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 29.

30. Defendants neither admit nor deny the allegations in paragraph 30 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 30.

31. Defendants neither admit nor deny the allegations in paragraph 31 as they constitute legal conclusions. To the extent that further answer is deemed necessary, Defendants deny the allegations in paragraph 31.

VI. MISSOURI'S COVERAGE CRITERIA FOR HEPATITIS C

32. Defendants admit the allegations in paragraph 32.

33. Defendants admit the allegations in the first sentence of paragraph 33. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of paragraph 33 and therefore, deny the allegations in the last sentence of paragraph 33.

34. Defendants admit the MO HealthNet Division issued a letter dated June 23, 2016 regarding Authorization Criteria for Hepatitis C Drugs and the document speaks for itself. Defendants deny the remaining allegations in paragraph 34.

35. Defendants deny the allegations in paragraph 35.

36. Defendants have presented prior authorization criteria to the MO HealthNet Oversight Committee. Defendants deny the remaining allegations in paragraph 36.

37. Defendants admit prescriptions for DAAs are approved for some Missouri Medicaid beneficiaries. Defendants deny the remaining allegations in paragraph 37.

38. Defendants admit prescriptions for DAAs are approved for some Missouri Medicaid beneficiaries. Defendants deny the remaining allegations in paragraph 38.

39. Defendants admit prescriptions for DAAs for Plaintiffs were not approved. Defendants deny the remaining allegations in paragraph 39.

40. Defendants admit prescriptions for DAAs are approved for some Missouri Medicaid beneficiaries. Defendants deny the remaining allegations in paragraph 40.

41. Defendants deny the allegations in the first and second sentences of paragraph 41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 41 and therefore, deny the remaining allegations in paragraph 41.

42. Defendants are without knowledge or information sufficient to

form a belief as to the truth of the allegations in paragraph 42 and therefore, deny the allegations in paragraph 42.

43. Defendants admit there is a document that sets forth prior authorization criteria for DAAs and the document speaks for itself.

Defendants deny the remaining allegations in paragraph 43.

44. Defendants admit there is a document that sets forth prior authorization criteria for DAAs and the document speaks for itself.

Defendants deny the remaining allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

Plaintiffs Require DAAs to Treat Their HCV

46. Defendants admit that at the time the Complaint was filed Plaintiffs were enrolled in the MoHealthnet program. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 46 and therefore, deny the remaining allegations in paragraph 46.

47. Defendants admit Plaintiffs have been diagnosed with HCV. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 47 and therefore, deny the remaining allegations in paragraph 47.

Plaintiff J.E.M.

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and therefore, deny the allegations in paragraph 48.

49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and therefore, deny the allegations in paragraph 49.

50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and therefore, deny the allegations in paragraph 50.

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and therefore, deny the allegations in paragraph 51.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 52 and therefore, deny the allegations in the first sentence of paragraph 52. Defendants deny MHD policy requires Plaintiff J.E.M.'s liver to incur more damage before treatment with DAAs will be approved. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 52 and therefore, deny the remaining allegations in paragraph 52.

53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and therefore, deny the allegations in paragraph 53.

54. Defendants admit the allegations in the first sentence of paragraph 54. Defendants deny the allegations in the last sentence of paragraph 54.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 and therefore, deny the allegations in paragraph 55.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and therefore, deny the allegations in paragraph 56.

57. Defendants admit receiving a document purportedly submitted by Premier and the document speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57 and therefore, deny the remaining allegations in paragraph 57.

58. Defendants admit the allegations in paragraph 58.

59. Defendants admit sending a denial letter to J.E.M. and the document speaks for itself. Defendants deny the remaining allegations in paragraph 59.

60. Defendants admit sending a denial notice to J.E.M's doctor and the document speaks for itself. Defendants deny the remaining allegations in paragraph 60.

61. Defendants admit the allegations in paragraph 61.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 and therefore, deny the allegations in paragraph 62.

Plaintiff J.L.M.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 and therefore, deny the allegations in paragraph 63.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and therefore, deny the allegations in paragraph 64.

65. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 and therefore, deny the allegations in paragraph 65.

66. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 and therefore, deny the allegations in paragraph 66.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and therefore, deny the allegations in paragraph 67.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 and therefore, deny the allegations in paragraph 68.

69. Defendants admit the allegations in the first sentence of paragraph 69. Defendants admit receiving a document purportedly submitted by Walgreens and the document speaks for itself. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 69 and therefore, deny the remaining allegations in paragraph 69.

70. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 and therefore, deny the allegations in paragraph 70.

71. Defendants admit the allegations in paragraph 71.

72. Defendants are without knowledge or information sufficient to

form a belief as to the truth of the allegations in paragraph 72 and therefore, deny the allegations in paragraph 72.

73. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 and therefore, deny the allegations in paragraph 73.

74. Defendants admit a denial notice was sent to J.L.M's nurse practitioner and the document speaks for itself. Defendants deny the remaining allegations in paragraph 74.

75. Defendants admit the allegations in paragraph 75.

76. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 and therefore, deny the allegations in paragraph 76.

Other Plaintiff Facts

77. Defendants deny the allegations in paragraph 77 stated as to Plaintiffs. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 as to "others" and therefore, deny the allegations in paragraph 77 as to "others."

78. Defendants deny the allegations in paragraph 78.

79. Defendants neither admit nor deny the allegations in paragraph 79 as they constitute the legal conclusions of Plaintiffs. To the extent that

further response is deemed necessary, Defendants deny the allegations in paragraph 79.

80. Defendants deny they have failed to provide coverage of medically necessary drugs and neither admit nor deny the remaining allegations of paragraph 80 as they constitute the legal conclusions of Plaintiffs. To the extent further response is deemed necessary, Defendants deny the allegations in paragraph 80.

81. Defendants deny the allegations in paragraph 81.

VII. CLAIMS FOR RELIEF

First Claim for Relief: Violations of Medicaid Entitlement to Appropriate Amount, Duration, and Scope of Treatment

82. Defendants restate and incorporate by reference their responses to paragraphs 1 through 81 above.

83. Defendants deny the allegations in paragraph 83.

Second Claim for Relief: Violations of Medicaid Comparability

84. Defendants restate and incorporate by reference their responses to paragraphs 1 through 83 above.

85. Defendants deny the allegations in paragraph 85.

Third Claim for Relief: Violations of Reasonable Promptness

86. Defendants restate and incorporate by reference their responses

to paragraphs 1 through 85 above.

87. Defendants deny the allegations in paragraph 87.

REQUEST FOR RELIEF

A. Defendants deny Plaintiffs are entitled to the relief requested in paragraph A.

B. Defendants deny Plaintiffs are entitled to the relief requested in paragraph B.

C. Defendants deny Plaintiffs are entitled to the relief requested in paragraph C.

D. Defendants deny Plaintiffs are entitled to the relief requested in paragraph D.

E. Defendants deny Plaintiffs are entitled to the relief requested in paragraph E.

F. Defendants deny Plaintiffs are entitled to the relief requested in paragraph F.

JURY DEMAND

Defendants demand a jury trial on all issues triable to a jury.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and should be dismissed under FED.R.CIV.P. 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

To the extent that Plaintiffs have sued Defendants in their official capacity, they are not a "person" within the meaning of 42 U.S.C. § 1983.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust their administrative remedies and failed to pursue such remedies in the time period and manner required by the MO HealthNet appeals procedure.

FOURTH AFFIRMATIVE DEFENSE

The Court cannot properly issue an injunction against the named Defendants as the record contains no evidence that they have authority to alter the prior authorization criteria or its application to Plaintiffs. Issuing a mandatory injunction against these defendants would be a nullity: they are incapable of implementing the relief that any injunction would necessarily require.

FIFTH AFFIRMATIVE DEFENSE

In further defense, Defendants incorporate by reference each and every additional affirmative defense that may be uncovered or made known during

the investigation and discovery of this case. Defendants specifically reserve the right to amend their answer to include affirmative defenses at the time they are discovered.

WHEREFORE, based on the foregoing, Defendants respectfully requests this Court issue an order dismissing with prejudice the Complaint, for costs and attorneys' fees, and for such other relief as the Court deems just and proper.

Respectfully submitted,

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Missouri Attorney General

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Clerk of Court on February 21, 2017 to be served by operation of the Court's electronic filing system upon all parties.

/s/ Colleen Joern Vetter
COLLEEN JOERN VETTER
Assistant Attorney General