

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR
LEON COUNTY, FLORIDA**

Nancy E. Wright,

Plaintiff,

vs.

CASE NO.:

DIVISION:

Agency for Health Care
Administration,

Defendant.

_____ /

Complaint for Declaratory and Injunctive Relief

I. Preliminary Statement

1. When Medicaid-covered services or benefits are denied, delayed, terminated, or reduced, Florida Medicaid recipients are entitled to an administrative hearing before the Office of Fair Hearings, a division of Florida's Agency for Healthcare Administration (AHCA). At the conclusion of the hearing, an AHCA Hearing Officer must render a final order.

2. Florida's Administrative Procedure Act (APA) under Ch. 120, Fla. Stat. requires state agencies to transmit their final administrative orders to the Division of Administrative Hearings (DOAH) for posting on a publicly searchable database.¹

3. Plaintiff, attorney Nancy Wright, has dedicated her career to representing Medicaid recipients at fair hearings to safeguard their access to critical health services and related benefits. To carry out that role, it is critical that Plaintiff be able to access AHCA final orders regarding coverage of services for Medicaid recipients.

¹ <https://www.doah.state.fl.us/FLAIO/default.asp?pb=1&#other>

4. Based on an erroneous interpretation of Fla. Stat. § 409.285(2)(b), the statutory provision which grants AHCA's Office of Fair Hearings its jurisdiction over disputes regarding coverage of Medicaid services, AHCA does not transmit the final orders issued by its Office of Fair Hearings to DOAH for publication as Fla. Stat. § 120.53 requires, claiming incorrectly that those orders are exempt from transmittal.

5. Rather than making its Office of Fair Hearing Medicaid final orders publicly available on DOAH's website, Defendant requires members of the public seeking those decisions, like Plaintiff, to request the final orders and then pay for the cost of redacting them. On July 29, 2020, Plaintiff requested from AHCA only a small portion of its Medicaid fair hearing final orders to prepare for an administrative hearing and AHCA sought to charge her \$606.00.

6. This action seeks declaratory and injunctive relief to require AHCA to (1) fulfill its obligation under the APA, Fla. Stat. § 120.53(1) to "electronically transmit a certified text-searchable copy of each agency final order...to a centralized electronic database of agency final orders maintained by the...[Division of Administrative Hearings or 'DOAH']" and (2) cease the unlawful practice of charging Plaintiff the cost of redacting final orders requested under Chapter 119, Fla. Stat. that should be available free of charge when appropriately posted to DOAH's centralized database.

II. Jurisdiction

7. Jurisdiction is conferred on this Court by Fla. Stat. § 86.021, Fla. Stat. § 119.01 & Fla. Stat. § 26.012(2)-(3).

8. Pursuant to Fla. Stat. § 47.011, venue is proper as Defendant resides in the circuit, a substantial part of the events or omissions giving rise to the claim accrued in the circuit, and Defendant enjoys a home venue privilege.

9. Pursuant to Fla. Stat. § 284.30, a copy of this Complaint, which includes a request for attorneys' fees, is being served on the Florida Department of Financial Services.

III. Parties

10. Plaintiff, Nancy Wright, is an attorney who, since 2007, has represented individuals in challenging denials, reductions, delays, and terminations of Florida Medicaid services. Ms. Wright has represented over 500 clients in that regard, many of them on a *pro bono* basis.

11. Defendant, AHCA, is the single state agency charged with administration of Florida's Medicaid program. Fla. Stat. §§ 20.42(3), 409.902(1), 409.962(1) & 409.963; 42 C.F.R. § 431.10. AHCA is an agency as defined by both Fla. Stat. § 119.011(2) and Fla. Stat. § 120.52(1) and is headquartered in Tallahassee, Leon County, Florida.

IV. Facts and Allegations

A. Overview of Florida's Medicaid Program

12. Medicaid is a cooperative, jointly funded program between the federal and state governments that provides medical assistance, rehabilitation, and other medically necessary services to low-income people. 42 U.S.C. § 1396a. Florida Medicaid offers a wide range of programs for different populations, using varied payment and management models, and with assorted benefits.

13. In Florida, Medicaid recipients are some of the most vulnerable low-income residents in the State. They include children, pregnant women, parents/caretakers, and people

over 65 or with disabilities. Each of these coverage groups has varying income eligibility thresholds, which are based on the poverty level set forth by the United States Department of Health and Human Services. For example, the household income of children under age 18 cannot exceed 138% of the federal poverty level – about \$36,000 for a family of four – in order for the child to receive Medicaid, while a parent or caretaker’s household income can be no greater than 31% of the federal poverty level – about \$8,100 – in order for the parent/caretaker to qualify.²

14. AHCA often contracts with public or private entities to meet various Medicaid responsibilities, including its responsibility to determine whether a particular service or benefit is covered by Florida’s Medicaid program. *See Fla. Stat. §§ 409.905 & .906.* For example, under its managed care model, AHCA contracts with private health insurance plans, also known as managed care plans or managed care organizations, to pay for services and benefits to Medicaid recipients enrolled in the plans. *See Fla. Stat. § 409.971.* Under this model, managed care organizations are the “gatekeepers” for authorization of services and benefits under Medicaid.

15. Regardless of the contracting arrangement, AHCA remains Florida’s single state agency and is ultimately responsible for the administration of all Medicaid programs and services. *See Fla. Stat. §§ 409.962(10), .963-.964, .971; see also 42 C.F.R. §§ 431.10, 438.2.*

16. All Medicaid beneficiaries are entitled to notice and an opportunity for a hearing when a request for eligibility or services is denied or not acted upon with reasonable promptness. 42 U.S.C. § 1396a(a)(3).

17. When AHCA, or one of its contracted agents, decides that a Medicaid recipient is not entitled to coverage of a particular medical or related service or benefit, the recipient may

² HealthCare.gov, Federal Poverty Level, [healthcare.gov/glossary/federal-poverty-level.fpl/](https://www.healthcare.gov/glossary/federal-poverty-level.fpl/).

challenge that determination through an administrative hearing. *See* Fla. Stat. § 409.285(2); 42 C.F.R. §§ 431.220, 438.402, 438.403, 438.408.

18. A Medicaid recipient's request for an administrative hearing to appeal an AHCA decision, or the decision of an AHCA contractor (including a managed care plan), regarding Medicaid's coverage of a medical or related service must be directed to AHCA and, more specifically, AHCA's Office of Fair Hearings. Fla. Stat. § 409.285(2); Fla. Admin. Code R. 59G-1.100.

19. The parties to the administrative hearing are the recipient and AHCA or, if the recipient is enrolled in a managed care plan, the recipient and the plan. *See* Fla. Admin. Code R. 59G-1.100(4).

20. AHCA "is responsible for a final administrative decision in the name of the agency on all issues that have been subject of a hearing." Fla. Stat. § 409.285(2)(a).

21. AHCA's administrative decision or order "is final and binding on the agency...[and]...[t]he agency is responsible for ensuring that the decision is promptly carried out." *Id.*; *see also*, Fla. Admin. Code 59G-1.100(2)(1) (defining "final order" in a Medicaid fair hearing as a "written order rendered by...[AHCA]...constituting final agency action in a fair hearing.").

B. AHCA's Statutory Obligation to Transmit Medicaid Fair Hearing Final Orders to DOAH

22. AHCA is a state agency as defined by Fla. Stat. § 120.52(1). As a result, AHCA is bound by Florida's Administrative Procedure Act under Chapter 120, Fla. Stat. ("APA" or "Chapter 120").

23. Fla. Stat. § 120.53(1) provides that “each agency shall transmit a certified text searchable copy of each agency final order listed in subsection 2 rendered on or after July 1, 2015 to a centralized electronic database of agency final orders maintained by [DOAH].”

24. Under Subsection 2 of Fla. Stat. § 120.53, all agencies that enter final orders resulting from a proceeding under Fla. Stat. § 120.57 must transmit those final orders to DOAH for posting to a centralized electronic, searchable database.³

25. Proceedings that fall under the provisions of Fla. Stat. § 120.57 are those hearings “in which the substantial interests of a party are determined by an agency” with the added component that the hearings involve disputed issues of fact. *See* Fla. Stat. § 120.569(1) (“[T]he provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency...s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact.”); *see also* Fla. Stat. § 120.57(1).

26. Final orders rendered at the conclusion of an AHCA Medicaid fair hearing (as described in Fla. Stat. § 409.285 & Fla. Admin. Code R. 59G-1.100) are final orders that result from a proceeding under Fla. Stat. § 120.57 because Medicaid fair hearings are proceedings wherein a state agency, AHCA, determines the “substantial interests” of a Medicaid recipient and the proceeding involves disputed issues of fact. *See* §§ 120.569(1) & 120.57(1).

³ “...each agency shall also electronically transmit a certified text-searchable copy of each agency final order listed in subsection (2), to a centralized electronic database of agency final orders maintained by the division. The database must allow users to research and retrieve the full texts of agency final orders by:

- (a) The name of the agency that issued the final order.
- (b) The date the final order was issued.
- (c) The type of final order.
- (d) The subject of the final order.
- (e) Terms contained in the text of the final order.

(2) The agency final orders that must be electronically transmitted to the centralized electronic database include:

- (a) Each final order resulting from a proceeding under s. 120.57 or s. 120.573...

27. When, at the conclusion of the Medicaid fair hearing, AHCA determines whether a Medicaid recipient's medical or related service will be covered by Medicaid, it is a determination of the recipient's substantial interests, namely, whether the recipient will be granted coverage under Medicaid for a requested service or benefit. Fla. Stat. § 120.569(1).

28. Furthermore, Medicaid fair hearings involve disputed issues of fact, including whether a medical or related service has been erroneously denied, reduced, delayed, or terminated based on the needs of the recipient. *See* Fla. Admin. Code. R. 59G-1.100(3)(a); Fla. Stat. §§ 120.569(1) & 120.57.

29. AHCA does not abide by its obligation under Fla. Stat. § 120.53 to transmit certified text searchable copies of its Medicaid hearing final orders to DOAH.

30. AHCA does not transmit these final orders to DOAH because it erroneously interprets Fla. Stat. § 409.285(2)(b) to exempt Medicaid fair hearings from Fla. Stat. §§ 120.569 & 120.57.

31. Contrary to AHCA's interpretation, Fla. Stat. § 409.285(2)(b) states that Fla. Stat. §§ 120.569 & 57 apply to Medicaid fair hearings but for three express statutory exemptions. The three express exemptions are: (a) where requirements under Fla. Stat. §§ 120.569 & 120.57 would conflict with federal Medicaid regulations and requirements; (b) where Fla. Stat. §§ 120.569 & 120.57 requires that the Uniform Rules of Procedure apply in certain agency proceedings; and (c) where Fla. Stat. § 120.57(1)(a) requires that a hearing be conducted by an administrative law judge. Otherwise, the requirements of Fla. Stat. § 120.57 apply to AHCA Medicaid fair hearings.

32. Regarding the first exemption in Fla. Stat. § 409.285(2)(b), federal regulations and requirements relating to Medicaid appeals *require* that states provide public access to all

Medicaid agency hearing decisions. *See* 42 C.F.R. § 431.244 (discussed *infra* at Part IV(C) of this Complaint). Since federal regulations and requirements mandate that AHCA make final orders publicly available, and AHCA can meet this obligation by transmitting Medicaid fair hearing final order to DOAH for publication, the first exemption under Fla. Stat. § 409.285(2)(b) does not apply.

33. Regarding the second exemption, although Fla. Stat. § 409.285 exempts AHCA from the Uniform Rules of Procedure (“Uniform Rules”), AHCA is bound by the requirement in the APA that it publish final orders in DOAH’s centralized electronic database. This is because the mandate that agencies publish final orders is a statutory mandate, not a uniform rule. Compare Fla. Stat. § 120.54(5) with the Uniform Rules at Fla. Admin. Code Chapters 28-101 through 28-110 and 28-112. The Uniform Rules are rules adopted by the Administration Commission governing the procedures that state agencies must follow to comply with the APA, such as scheduling and conducting public hearings and workshops, and do not address publication of final orders.

34. The third exemption simply authorizes AHCA to hold its Medicaid hearings in front of a hearing officer instead of an Administrative Law Judge at DOAH and does not address or in any way discuss publication of final orders. Therefore, the third exemption also does not apply.

35. AHCA cannot unilaterally declare itself or its actions exempt from the APA or any specific provision thereof without authority from the Florida Legislature.

C. Public Interest in Access to AHCA's Medicaid Fair Hearing Final Orders

36. 42 C.F.R. § 431.244(g) mandates that “[t]he public must have access to all agency hearing decisions, subject to the requirements of subpart F of this part for safeguarding of information.”⁴

37. The following states make redacted Medicaid fair hearing decisions publicly available online: Alaska, Connecticut, Michigan, Montana, New Jersey, New York, Rhode Island, West Virginia, and Wisconsin.⁵ No charges are imposed for accessing these online redacted decisions.

38. By not fulfilling its obligation under Fla. Stat. § 120.53 to transmit Medicaid fair hearing final orders to DOAH for publication on its website, and instead levying an excessive and unwarranted special charge to disclose final orders to Plaintiff, AHCA violates its obligation under 42 C.F.R. § 431.244(g) to ensure public access to all agency hearing decisions.

39. Fla. Stat. § 119.021(3) indicates the importance that state agencies maintain all records, including final orders, that hold precedential value.

40. Florida Department of Children and Families, which has jurisdiction under Fla. Stat. §409.285(1) to preside over administrative hearings as they relate to financial eligibility for the Medicaid program (but not eligibility for services which is the subject of this complaint),

⁴ The requirements of 42 C.F.R. § 431 Subpart F are met through the redaction of personal identifying and protected health information which is completed by the agencies prior to transmitting the final orders to DOAH.

⁵ Alaska's hearing decisions can be accessed at: <https://aws.state.ak.us/OAH/Category/Item?cat=59>;
Connecticut: <https://portal.ct.gov/DSS/Lists/Administrative-Hearings-Decisions/Medical-Services>;
Michigan: https://www.michigan.gov/lara/0,4601,7-154-89334_10576_61718_96229-511396--,00.html
Montana: <http://web.hhs.mt.gov/fairhearings/decisions/index.php>;
New Jersey: <https://www.state.nj.us/oal/decisions/admin/index.html>;
New York: https://www.health.ny.gov/health_care/medicaid/decisions/;
Rhode Island: <http://www.eohhs.ri.gov/ReferenceCenter/EOHHSAppealsOffice.aspx>;
West Virginia: <https://www.wvdhhr.org/oig/borHearingDecision.html>;
Wisconsin: <https://doa-dha.wisconsin.gov/shared%20documents/forms/2017%20decisions.aspx>

forwards their Medicaid final orders to DOAH, which it posts on the centralized electronic database.

41. AHCA's Medicaid fair hearing final orders contain explicit analysis about how AHCA and its contractors interpret and implement policies regarding authorizations for Medicaid covered services or benefits. Thus, the final orders are a roadmap for understanding the standards used by AHCA and its contractors to authorize Medicaid coverage of services and benefits.

42. The final orders also show whether AHCA and its contractors are acting in accordance with their obligations under state and federal law or, if instead, they are arbitrarily denying or limiting care to low-income and disabled persons based on unlawful standards and without regard to requisite due process.

43. Public access to Medicaid fair hearing final orders ensures transparency and oversight of AHCA and its contractors in their expenditure of Medicaid funds.

D. Plaintiff Facts

44. Plaintiff is an attorney whose primary practice involves representation of individuals enrolled in the Florida Medicaid program who seek to challenge Medicaid service denials, delays, terminations, and reductions. Many of these challenges are heard by AHCA's Office of Fair Hearings.

45. Plaintiff has extensive experience representing individuals in federal courts for violations of federal statutory and constitutional rights related to the provision of Medicaid services.

46. Clients have retained Plaintiff in this capacity as a solo practitioner since 2011. Prior to that, Plaintiff represented individuals in Medicaid cases as a legal aid attorney.

47. On July 29, 2020, Plaintiff requested certain AHCA Medicaid fair hearing final orders pursuant to Fla. Stat. §120.53 and Chapter 119, Fla. Stat., to assist with preparation of an individual client's pending AHCA Medicaid fair hearing. Specifically, Plaintiff requested:

copies of Medicaid Fair Hearing final orders from 2017 to the present regarding Personal Care, Adult Companion Care, and Homemaker services covered under the SMMC Long-Term Care Coverage Policy (Rule 59G-4.192, F.A.C.) that are required to be retained and disclosed under Sections 120.53 and 119.021(3), Fla. Stat.

48. On August 4, 2020, AHCA responded to Plaintiff's request with a quote of \$819.75 for review, redaction, and disclosure of 356 responsive records; a breakdown of 54.65 hours at \$15.00 per hour for review.

49. On that same day, Plaintiff requested that AHCA determine whether it previously redacted the records requested to prevent duplication of charges.

50. On August 6, 2020, AHCA complied and determined that, of the 356 records, 95 had been redacted, but 261 still required redaction with an estimate of 39.15 hours needed for redaction purposes. AHCA quoted Plaintiff a revised cost estimate of \$606.00.

51. On August 18, 2020, Plaintiff responded that she could not afford \$606.00, but asked AHCA to send her the already redacted final orders.

52. In response, on August 24, 2020, AHCA stated that it had compiled 72 responsive final orders that were already redacted and quoted Plaintiff a cost of \$26.25 (1.75 hours at \$15.00 per hour) to send the redacted records.

53. On August 29, 2020, since AHCA previously represented on August 6th that it found 95 responsive records already redacted, Plaintiff asked for clarification of AHCA's August 24th statement that there were only 72 responsive previously redacted records.

54. On August 31, 2020, AHCA answered Plaintiff's request for clarification as follows:

Per the Unit that is handling your request: The total number of responsive cases is 356. However, because some cases are consolidated, the total number of responsive orders is 280, of which 72 of those orders have been previously redacted. The number of orders that would still need to be redacted is 208. The orders searched for reflect the following service types: Personal Care, Adult Companion Care, or Homemaker. The orders may contain 1 or more services types, and the search was not limited to orders with only all 3 named services types. The time spent on this request reflects the time searching for, identifying, and compiling the requested records. Any additional time spent due to miscommunications on our part was not included.

55. Plaintiff paid AHCA \$26.25 to obtain the 72 previously redacted final orders.

56. Plaintiff cannot afford to pay \$579.75 (\$606.00 minus \$26.25) for the remaining, unredacted 208 responsive final orders.

57. Plaintiff, a solo practitioner, purposefully seeks to keep litigation expenses low so that individuals with a range of incomes can afford her services. This practice is known as *low bono*.

58. Additionally, Plaintiff accepts a laudable amount of *pro bono* work and has previously won awards recognizing her important work with low-income Medicaid clients.

59. Plaintiff's small, low bono practice cannot afford to pay hundreds of dollars to access the Medicaid fair hearing final orders she needs to represent her clients.

60. Since AHCA Medicaid fair hearings occur quickly, Plaintiff also cannot wait months to request and obtain past final orders. In addition, each time Plaintiff requests final orders, to limit expenses she must try to guess at the final orders that will relate to the issues in the case at hand rather than conduct her own searches using a text-searchable format.

61. Without final orders to prepare for her pending fair hearings or any fair hearing in which she undertakes representation, Plaintiff is unable to fully counsel her clients about the best case strategy and potential outcomes of an AHCA decision, including, for example, the wisdom of continuing to pursue a challenge.

62. Plaintiff is denied the right to locate precedent, have it apply in the hearings in which she acts as counsel, and use it to understand the factual basis and policy reasons for agency action.

63. Plaintiff and her low-income vulnerable clients are put at a disadvantage in comparison to her attorney colleagues who represent clients against other state administrative agencies and who can more easily access agency final orders and precedent on DOAH's website without charge.

64. Additionally, Plaintiff's law practice is not limited to individual Medicaid case work. Plaintiff also tracks and analyzes potential system-wide violations of federal Medicaid rights and violations of the state's obligation to maintain Medicaid recipients in the least restrictive setting as required by the Americans with Disabilities Act. Access to Medicaid fair hearing final orders allows Plaintiff (and the public at large) to monitor whether AHCA and its contractors – in administering Florida's 28.3 billion dollar Medicaid program – consistently and fairly apply state and federal Medicaid law to all Florida residents and are otherwise held accountable in their administration of taxpayer dollars.

VIII. Causes of Action

First Cause of Action: Declaratory Judgment under Fla. Stat. § 86.011 Et. Seq. that AHCA Comply with Fla. Stat. § 120.53.

65. Plaintiffs re-allege and incorporate herein by reference each and every allegation and paragraph set forth previously.

66. Medicaid fair hearing final orders result from proceedings under Fla. Stat. §§ 120.569 & 120.57.

67. Since Medicaid fair hearing final orders result from proceedings that fall under Fla. Stat. § 120.57, Defendant, pursuant to Fla. Stat. § 120.53, must transmit those final orders to DOAH for publication.

68. Defendant does not abide by its obligations under Fla. Stat. § 120.53, causing Plaintiff irreparable harm.

69. There is a bona fide, actual, present, and practical need for a declaration as to Defendant's violation of Fla. Stat. § 120.53.

70. There is no adequate remedy at law.

Second Cause of Action: Defendant Violates Chapter 119, Fla. Stat.

71. Plaintiffs re-allege and incorporate herein by reference each and every allegation and paragraph set forth previously.

72. Defendant, in refusing to abide by its obligation under Fla. Stat. § 120.53 to transmit Medicaid fair hearing final orders to DOAH for publication and, instead, charging Plaintiff hundreds of dollars to access those same documents constitutes an unreasonable, unwarranted, and excessive special charge for public records.

73. Defendant unlawfully denies access to public records where, as here, it charges the Plaintiff and, generally, the public with unreasonable, unwarranted, and excessive special service charges for the records requested.

74. Defendant's action in charging an unreasonable, unwarranted, and excessive special charges for disclosure of its Medicaid fair hearing final orders to Plaintiff and the public generally demonstrates a pattern of noncompliance with Chapter 119, Fla. Stat., and a likelihood

of future harm in the denial of public records to Plaintiff and the public generally that warrants injunctive relief.

75. Plaintiff has been irreparably injured. Because Chapter 119, Fla. Stat. exists, in part, to protect the public, violation of its provisions also constitutes irreparable injury to the public generally. Thus, the public interest will be served by granting an injunction in furtherance of the provisions of Chapter 119, Fla. Stat.

76. There is no adequate remedy at law.

77. There is a bona fide, actual, present, and practical need for a declaration as to Defendant's violation of Chapter 119, Fla. Stat., and Article I, Section 24 of the Florida Constitution.

IX. Request for Relief

WHEREFORE, Plaintiff respectfully requests that this Court issue:

- A. Declaration that: (a) Defendant is obligated under Fla. Stat. § 120.53 to transmit Medicaid fair hearing final orders to DOAH for publication; and (b) Defendant's decision to charge Plaintiff or any member of the public a special fee for Medicaid fair hearing final orders where Defendant is otherwise obligated under Fla. Stat. § 120.53 to transmit those final orders to DOAH for publication violates Chapter 119, Fla. Stat. in that the special fee is unreasonable, excessive, and unwarranted.
- B. A permanent injunction: (a) mandating that Defendant electronically transmit certified text-searchable copies of Medicaid fair hearing final orders rendered on or after July 1, 2015, to a centralized electronic database of agency final orders maintained by DOAH; and, (b) ordering Defendant to notify Plaintiff when her requested records have been transmitted to DOAH so that she may access them without cost.

- C. An award of attorney's fees and costs under Fla. Stat. § 119.21 & Fla. Stat. § 86.081.
- D. Other relief as the Court may find necessary and proper.

Respectfully submitted this 1st day of December, 2020.

Plaintiff by her Attorneys,

/s/ Katy DeBriere

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*Pursuant to Fla. R. Jud. Admin. 2.510, a Motion to Appear Pro Hac Vice will be filed to request the court's permission to appear.