

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19TH JUDICIAL CIRCUIT**

STEPHANIE DOYLE,)
)
MELINDA HILLE,)
)
and)
)
AUTUMN STULTZ,)
)
Plaintiffs,)
)
vs.)
)
JENNIFER TIDBALL, in her official)
capacity as Acting Director of the)
Missouri Department of Social Services)
Serve: Jennifer Tidball, Acting Director)
Missouri Department of Social Services)
221 W. High St., #230)
Jefferson City, MO 65101 (573/751-4815),)
)
MISSOURI DEPARTMENT OF)
SOCIAL SERVICES,)
Serve: Missouri Department of Social Services)
221 W. High St., #230)
Jefferson City, MO 65101 (573/751-4815),)
)
KIRK MATHEWS, in his official capacity)
as Acting Director of the MO HealthNet Division,)
Serve: Kirk Mathews, Acting Director)
MO HealthNet Division)
615 Howerton Ct.)
Jefferson City, MO 65109 (573/751-3425),)
)
MO HEALTHNET DIVISION,)
Serve. MO HealthNet Division)
615 Howerton Ct.)
Jefferson City, MO 65109 (573/751-3425),)
)
KIM EVANS, in her official capacity)
as Director of the Family Support Division,)
Serve: Kim Evans, Director)
Family Support Division)
615 Howerton Ct.)

Case No.:

Jefferson City, MO 65109 (855/373-4636),)
)
 and)
)
 FAMILY SUPPORT DIVISION,)
 Serve: Family Support Division)
 615 Howerton Court)
 Jefferson City, MO 65109 (855/373-4636))
)
 Defendants.)

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

At the August 2020 election, Missouri voters amended the state Constitution to expand access to healthcare through the MO HealthNet program. Under the amendment (otherwise known as Medicaid Expansion), Missourians ages 19 to under 65 who have incomes up to 138% of the federal poverty level now qualify to participate in MO HealthNet. Before this constitutional amendment, Missouri was one of a small handful of States that had not yet provided Medicaid benefits to this population.

Despite the clear directive from voters to implement Medicaid Expansion, the Department of Social Services (“DSS”), the MO HealthNet Division, and the Family Support Division have declared their intention to exclude from MO HealthNet those individuals granted coverage by the Constitution. The agencies claim that they lack the authority to implement Medicaid Expansion because the General Assembly did not include a specific appropriations line item funding services for the newly eligible population.

This position has no merit. The DSS appropriations bill does not limit any MO HealthNet funding for coverage of particular categories of eligible individuals. Nothing in the DSS appropriations bill prevents the agencies from using appropriated funds to cover individuals whose eligibility arises under the Constitution. In other words, DSS, the MO HealthNet Division, and the

Family Support Division have full authority to implement Medicaid Expansion as directed by the Missouri Constitution.

Plaintiffs are individuals who face serious and often chronic medical challenges. Prior to the passage of Amendment 2, Plaintiffs lacked access to healthcare that, in some cases, is a question of life and death. But with the passage of Medicaid Expansion, Plaintiffs and more than 275,000 other Missourians gained the promise of health care benefits under the MO HealthNet program. The Department of Social Services, the MO HealthNet Division, and the Family Support Division have broken that promise.

This Petition for Declaratory Judgment and Injunctive relief seeks this Court's ruling that the Defendants' decision to refuse to extend benefits under the MO HealthNet program to the newly eligible population is unlawful because there is an authorizing constitutional amendment and an appropriation for this program. Additionally, Plaintiffs seek a determination that the decision to refuse to implement Medicaid Expansion violates the requirement in Article IV, Section 36(c) that the Department of Social Services maximize federal funding for the program. Plaintiffs also request the Court require Defendants allow Plaintiffs and similarly situated individuals to enroll in the MO HealthNet program and receive the same benefits as any other MO HealthNet beneficiaries. Further, Plaintiffs seek an injunction prohibiting the Defendants from refusing to enroll newly eligible individuals in MO HealthNet and from treating any individual eligible pursuant to Article IV, Section 36(c) differently than any other MO HealthNet beneficiary.

PARTIES

1. Plaintiff Autumn Stultz is a Missouri resident who is eligible to enroll in and receive benefits from the MO HealthNet program as part of the newly eligible category of individuals pursuant to Article IV, Section 36(c) of the Missouri Constitution.

2. Plaintiff Melinda Hille is a Missouri resident who is eligible to enroll in and receive benefits from the MO HealthNet program as part of the newly eligible category of individuals pursuant to Article IV, Section 36(c) of the Missouri Constitution.

3. Plaintiff Stephanie Doyle is a Missouri resident who is eligible to enroll in and receive benefits from the MO HealthNet program as part of the newly eligible category of individuals pursuant to Article IV, Section 36(c) of the Missouri Constitution.

4. Defendant Missouri Department of Social Services ("DSS") is a state agency created by the Missouri Constitution "charged with promoting improved health and other social services to the citizens of the state as provided by law [.]" Mo. Const. Art. IV, § 37; *see also* § 666.010, RSMo.

5. DSS is the single state agency charged with the administration of Missouri's Medicaid program. 42 U.S.C. § 1396(a)(5).

6. Defendant Jennifer Tidball is the Acting Director of the Department of Social Services. She is sued in her official capacity.

7. Defendant Tidball is responsible for the administration and implementation of the laws concerning social welfare of the people of the State of Missouri.

8. Defendant Tidball is the chief administrative officer of DSS and is responsible for the administration of the single state agency for the Missouri Medicaid program. She has a duty to administer the Missouri Medicaid program in compliance with the Medicaid Act.

9. Defendant MO HealthNet Division is a division within DSS created by state statute responsible for administering MO HealthNet, with the exception of determining eligibility for the program. *See* § 208.001, RSMo.

10. MO HealthNet is a state health insurance program that provides access to healthcare for many of the State's neediest residents.

11. The State participates in and administers the federal Medicaid program through MO HealthNet.

12. Defendant Kirk Mathews is the Acting Director of the MO HealthNet Division. He is sued in his official capacity.

13. Defendant Family Support Division is a Division within DSS that is responsible for the general administration of public welfare programs in the State of Missouri, including determinations of eligibility for the MO HealthNet program.

14. Kim Evans is the Director of the Family Support Division. She is sued in her official capacity.

JURISDICTION AND VENUE

15. Venue is proper in this court. § 508.010, RSMo.

16. Plaintiffs seek a declaration of rights, status, and other legal relations. § 527.010, RSMo.

FACTUAL ALLEGATIONS

17. On August 4, 2020, voters approved Constitutional Amendment No. 2, adding a new category of individuals eligible for the MO HealthNet program.

18. Amendment 2 directs that beginning July 1, 2021, individuals between 19 and under 65 years of age with an income at or below 138% of the federal poverty level "shall be eligible for medical assistance under MO HealthNet and shall receive coverage for the health benefits service package." Mo. Const. Art. IV, § 36(c).

19. Amendment 2 required DSS and the MO HealthNet Division to "submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services" by March 1, 2021. *Id.*

20. Amendment 2 also requires DSS and the MO HealthNet Division to "take all actions necessary to maximize federal financial participation in funding medical assistance[.]" *Id.*

21. The federal government will reimburse Missouri for ninety percent of the cost of the Medicaid expansion required by Amendment 2, in contrast to the approximately 66% match that Missouri receives to cover the remaining Medicaid population. *See* 42 U.S.C. § 1396d(y)(1(E); 85 Fed. Reg. 76,586, 76,588 (Nov. 30,2020) (Federal Matching Shares for Medicaid and CHIP for Oct. 1, 2021 through Sept. 30, 2022).

22. Defendants have estimated that this ninety percent match will amount to more than \$11 billion in federal funds over the next five years. **Exhibit A.**

23. Approximately 275,000 Missourians are eligible to enroll in the MO HealthNet program on July 1, 2021 pursuant to Article IV, Section 36(c).

The Missouri Medicaid program (MO HealthNet).

24. "Medicaid is a cooperative program under which the federal government reimburses state governments for a portion of the costs of providing medical assistance to low income recipients." *Vaughn v. Missouri Dep't of Soc. Servs.*, 323 S.W.3d 44, 47 (Mo. App. 2010)(internal quotations omitted).

25. In order to receive federal funds, the state must agree to comply with federal Medicaid requirements. *See Gee v. Dep't of Soc. Servs., Fam. Support Div.*, 207 S.W.3d 715, 717-18 (Mo. App. 2006)("Participation in the program is voluntary, but in exchange for federal

funding, participating states must comply with the requirements imposed by the [Medicaid] Act and with regulations promulgated by the Secretary of Health and Human Services.").

26. The agreement between the state and federal government is embodied in a State Plan. *See Vaughn*, 323 S.W.3d at 47. ("Each participating State develops a plan containing reasonable standards...for determining eligibility for and the extent of medical assistance within boundaries set by the Medicaid statute and the Secretary of Health and Human Services.")(internal citations omitted).

27. Missouri participates in the Medicaid program through MO HealthNet. § 208.001, RSMo.

28. Via its State Plan, Missouri agrees to comply with federal requirements in exchange for receiving federal Medicaid funds.

29. Only certain populations are eligible for benefits under the MO HealthNet program.

30. Prior to the enactment of Amendment 2, childless adults aged 19 to under 65 years of age were generally not eligible for benefits under the MO HealthNet program unless they were aged, blind, disabled, or pregnant.

31. Prior to the enactment of Amendment 2, parents and caretakers of children receiving benefits under the MO HealthNet program were generally not eligible for MO HealthNet benefits unless their incomes were below 22% of the federal poverty level or \$393 per month for a family of three.

The MO HealthNet program is funded for fiscal year 2022.

32. The MO HealthNet program is funded by the General Assembly in the appropriation bill for DSS.

33. The appropriation bill for DSS is either numbered House Bill 11 or House Bill 2011.

34. During the 2021 legislative session, the General Assembly passed House Bill 11 ("HB 11"), appropriating funds for DSS. **Exhibit B.**

35. HB 11 contains the appropriation authority for DSS, the MO HealthNet Division, and the Family Support Division to implement the MO HealthNet program.

36. HB 11 does not contain any language prohibiting the use of appropriated funds to provide coverage for individuals who became eligible for MO HealthNet under Amendment 2.

37. Sections 11.700, 11.715, and 11.760 of HB 11 are three of the sections that provide appropriation authority for the MO HealthNet program for the 2022 fiscal year. **Ex. B.**

38. Sections 11.700, 11.715, and 11.760 do not include any language restricting the use of the funds to certain MO HealthNet program eligibility categories. *Id.*

39. The Constitutional requirement to expand eligibility for the MO HealthNet program is not subject to appropriation and therefore does not require a specific appropriation by the General Assembly. *McNeil-Terry v. Roling*, 142 S.W.3d 828 (Mo. banc 2004).

40. In most years, the DSS appropriations bill does not include sufficient appropriation authority for the MO HealthNet program for the entire fiscal year.

41. The General Assembly cannot predict with certainty the number of individuals who will enroll in MO HealthNet during the next fiscal year or the health needs that those individuals will have during the next fiscal year. Thus, it is impossible for the General Assembly to appropriate precisely the amount of funds needed to fund MO HealthNet for the entirety of the next fiscal year.

42. In the past, the General Assembly has handled this situation by making an initial appropriation for MO HealthNet in the DSS appropriations bill and then passing a supplemental

appropriation bill to provide the additional funding necessary for the MO HealthNet program for the fiscal year. **Exhibit C.**

43. On information and belief, the General Assembly will have to pass a supplemental appropriation bill in order to fund the MO HealthNet program for the 2022 fiscal year regardless of whether MO HealthNet covers individuals whose eligibility arises under Amendment 2.

44. In the recently passed American Rescue Plan, Congress also provided that states that expand Medicaid, including Missouri, will receive a five percent increase in federal Medicaid matching funds over the next two years. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9814, 135 Stat. 4, 215. SEC. 9814.

45. On information and belief, Missouri will receive in excess of \$1 billion in additional federal funds that it would not otherwise receive if Defendants implement Medicaid Expansion as required by Amendment 2.

46. It is estimated that these additional federal funds are sufficient to cover the state share of the cost of Medicaid Expansion for the next five years. Manatt Health, *Assessing the Fiscal Impact of Medicaid Expansion Following the American Rescue Plan Act of 2021*, April 28, 2021. <https://www.manatt.com/insights/newsletters/covid-19-update/assessing-the-fiscal-impact-of-medicaid-expansion>.

47. House Bill 11 contains appropriation authority to receive and expend additional federal funds if the state implements Medicaid Expansion. Section 11.702 of **Ex. B.**

The State submits and withdraws State Plan Amendments for Medicaid Expansion.

48. Each State has a State Plan that governs the Medicaid program.

49. In order to make changes to the State Plan, a State must submit a state plan amendment to the federal government for approval.

50. In February 2021, DSS submitted three State Plan Amendments (SPAs) to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services in order to amend Missouri's State Plan to allow for implementation of Medicaid Expansion. **Exhibit D.**

51. A SPA amending the State Plan to include the newly eligible population under Medicaid Expansion is a prerequisite to receiving payment from the federal government for these beneficiaries.

52. On May 13, 2021, DSS submitted a letter to the Centers for Medicare and Medicaid Services withdrawing the SPAs. **Ex. D.**

53. DSS claimed it is required to withdraw the SPAs because there is no funding to implement Medicaid Expansion.

54. DSS asserted that: "[b]ecause the initiative petition was not self-funding and the General Assembly declined to appropriate any funding, the DSS lacks the authority to proceed with implementing [Medicaid Expansion] at this time." **Ex. D.**

55. Governor Mike Parson announced that Medicaid Expansion would not be moving forward.

56. Governor Parson stated: "[h]owever, without a revenue source or funding authority from the General Assembly, we are unable to proceed with expansion at this time and must withdraw our state plan amendments to ensure Missouri's existing MO HealthNet programs remain solvent." Kurt Erickson, *Missouri Governor Scuttles Medicaid Expansion After Lawmakers Provide No Money*, ST. LOUIS POST-DISPATCH (May 13, 2021), <https://www.stltoday.com/news/local/govt-and-politics/missouri-governor-scuttles-medicaid->

expansion-after-lawmakers-provide-no-money/article_e7307b7c-a466-5939-878d-c563a449098b.html.

57. By withdrawing Missouri's Medicaid State Plan Amendments, Defendants are denying coverage under the MO HealthNet program to individuals eligible for Medicaid Expansion on July 1, 2021.

58. Defendants are also failing to take all actions necessary to maximize federal financial participation in the MO HealthNet program as required by Amendment 2.

Without access to benefits under the MO HealthNet program, Plaintiffs face significant health consequences.

59. Plaintiff Autumn Stultz is a single mother working part-time for minimum wage.

60. Plaintiff Stultz's daughter is enrolled in the MO HealthNet program.

61. She claims her daughter as a tax dependent.

62. Plaintiff Stultz's income is below 100% and above 22% of the federal poverty level.

63. Plaintiff Stultz did not qualify for health coverage under the MO HealthNet program until the passage of Amendment 2.

64. Because she lacks comprehensive health coverage, Plaintiff Stultz cannot afford the cost of a doctor visit, leaving her chronic asthma untreated.

65. Plaintiff Stultz also suffers from tonsil stones but cannot have them removed because she cannot afford the cost of the surgery and requisite hospital stay.

66. Plaintiff Melinda Hille is unable to work due to her medical conditions and has no income.

67. Plaintiff Hille's income is below 100% of the federal poverty level.

68. Plaintiff Hille did not qualify for health coverage under the MO HealthNet program until the passage of Amendment 2.

69. She suffers from Type 1 diabetes, thyroid disease, pernicious anemia and a pre-cancerous growth on her colon.

70. Due to the cost of treatment for her medical conditions, Plaintiff Hille and her partner have to choose between Plaintiff's treatments and purchasing food.

71. Plaintiff Stephanie Doyle is a single mother working full-time for \$12 an hour.

72. Plaintiff Doyle's three children are enrolled in the MO HealthNet program.

73. She claims her three children as tax dependents.

74. Plaintiff Doyle's income is below 100% and above 22% of the federal poverty level.

75. She suffers from severe eczema and has been hospitalized for flare-ups.

76. Plaintiff Doyle requires two medications to manage her eczema, but is unable to afford them without health coverage.

77. On information and belief, because of the final decision by the Governor and the Defendants, Plaintiffs will be denied benefits under the MO HealthNet program on July 1, 2021.

78. The conduct and public statements by the Governor and Defendants make it futile for Plaintiffs to apply for benefits under the MO HealthNet program.

79. On information and belief, the Family Support Division will refuse to enroll individuals whose eligibility for the MO HealthNet program arises solely under Amendment 2.

80. On information and belief, individuals newly eligible for the MO HealthNet program pursuant to Amendment 2 will be denied benefits under the MO HealthNet program.

81. On information and belief, DSS and the MO HealthNet Division will refuse to reimburse providers for services provided to individuals newly eligible for the MO HealthNet program under Amendment 2.

COUNT I- Defendants' refusal to enroll and provide benefits under the MO HealthNet program to newly eligible individuals is unlawful because the Constitution requires Medicaid Expansion to be implemented on July 1, 2021 and there is appropriation authority to implement the program.

82. Plaintiffs incorporate by reference all preceding paragraphs.

83. Plaintiffs are entitled to enroll in the MO HealthNet program beginning July 1, 2021. *See* Mo. Const. Art. IV, § 36(c).

84. Defendants are refusing to implement Medicaid Expansion because of a purported lack of appropriation authority in HB 11.

85. HB 11 includes appropriations for the MO HealthNet program. *See e.g.* Section 11.700, Section 11.715 and Section 11.760 of **Ex. B**.

86. Defendants' refusal to implement Medicaid Expansion is unlawful because there is appropriation authority to fund the implementation of Medicaid Expansion. *See McNeil-Terry v. Roling*, 142 S.W.3d 828 (Mo. banc 2004)(stating if there is an appropriation for Medicaid services, the state must pay unless the statute for the particular service states it is "subject to appropriation").

87. Plaintiffs face imminent, irreparable harm if they are unable to access MO HealthNet benefits due to the Defendants' decision to not implement Medicaid Expansion.

88. Plaintiff Stultz has a history of strokes, high blood pressure, heart attacks, and thyroid conditions in her family.

89. Plaintiff Stultz also suffers from chronic asthma and tonsil stones.

90. Without access to the MO HealthNet program, Plaintiff Stultz's asthma and tonsil stones will continue to go untreated.

91. Further, Plaintiff Stultz will not have access to life-saving, preventative health care that is necessary considering the history of serious medical conditions in her family.

92. In addition to caring for her nine-year-old daughter, Plaintiff Stultz cares for her mother, her cousin, and other individuals.

93. Plaintiff Stultz, her family, and those who depend on her will suffer imminent, irreparable harm if she is unable to enroll in the MO HealthNet program and access the medical care she requires.

94. Plaintiff Hille was misdiagnosed as a Type II diabetic and given medications that harmed her pancreas and other organs.

95. Plaintiff Hille is a Type I diabetic and suffers from thyroid disease, pernicious anemia, and pre-cancerous growths on her colon.

96. She is unable to work due to her severe health conditions.

97. Plaintiff Hille has to choose between affording treatment and paying for food.

98. Without access to benefits under the MO HealthNet program, Plaintiff Hille's medical conditions will continue to persist and she may have to forego treatment because it is unaffordable.

99. Plaintiff Hille will suffer imminent, irreparable harm if she is unable to enroll in the MO HealthNet program and access the medical care she requires.

100. Plaintiff Doyle suffers from severe eczema.

101. She is hospitalized for bad flare-ups because she does not have access to regular medical care.

102. Plaintiff Doyle requires two different medications to manage her eczema but cannot afford them without medical coverage.

103. Plaintiff Doyle cares for her three children.

104. Without access to benefits under the MO HealthNet program, Plaintiff Doyle will continue to be needlessly hospitalized for her uncontrolled eczema.

105. Plaintiff Doyle and her family will suffer imminent, irreparable harm if she is unable to enroll in the MO HealthNet program and access the medications she requires to manage her eczema.

106. Plaintiffs' diminished health and reduced quality of life are irreparable injuries that are not compensable with monetary damages.

107. Defendants face no harm if required to implement Medicaid Expansion and provide coverage to all eligible individuals who enroll in the MO HealthNet program because there are adequate funds to pay for the program and Missouri would receive significant additional federal reimbursement for implementing Medicaid Expansion.

108. The public interest favors an injunction prohibiting the Defendants from refusing to enroll eligible individuals in the MO HealthNet program.

109. An injunction ensures the Article IV, Section 36(c) of the Constitution is properly enforced and individuals have access to life-saving medical treatments.

110. Plaintiffs have no adequate remedy at law.

COUNT II- Defendants' refusal to implement Medicaid Expansion is unlawful because DSS and the MO HealthNet Division are not maximizing federal funding as directed by Article IV, Section 36(c).

111. Plaintiffs incorporate by reference all preceding paragraphs.

112. As part of Medicaid Expansion implementation, Defendants are obligated to maximize federal reimbursement for Medicaid.

113. "The Department of Social Services and the MO HealthNet Division shall take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to this section." Mo. Const. Art. IV, § 36(c).

114. Defendants' refusal to implement Medicaid Expansion is unlawful because DSS and the MO HealthNet Division are not maximizing federal reimbursement for Medicaid.

115. By refusing to implement Medicaid Expansion, Defendants are depriving the State of over \$11 billion in federal matching funds for covering the expansion population over the next five years.

116. In fact, the Defendants' refusal to implement Medicaid Expansion means the State will not receive an additional over \$1 billion in federal Medicaid matching funds for the remaining Medicaid population in Missouri.

117. This refusal violates the directive in Article IV, Section 36(c).

Prayer for Relief

WHEREFORE, for the foregoing reasons, Plaintiffs pray for a judgment:

- a. that the Defendants' refusal to implement Medicaid Expansion is unlawful;
- b. that the Defendants' refusal to implement Medicaid Expansion and thereby maximize federal funding violates Article IV, Section 36(c);
- c. that there is sufficient appropriation authority in House Bill 11 to implement Medicaid Expansion;
- d. that Plaintiffs and similarly situated individuals be allowed to enroll in the MO HealthNet program beginning July 1, 2021;
- e. that Plaintiffs and similarly situated individuals be treated the same as all other MO HealthNet beneficiaries;

- f. that Plaintiffs and similarly situated individuals be provided the MO HealthNet benefits described in Article IV, Section 36(c);
- g. that the Defendants have sufficient appropriation authority to pay for claims for services rendered to Plaintiffs and similarly situated individuals and other enrolled MO HealthNet beneficiaries;
- h. that the Department of Social Services and the MO HealthNet Division shall file all State Plan Amendments necessary to implement Medicaid Expansion;
- i. that the Defendants shall maximize federal funding for the MO HealthNet program;
- j. that the Defendants are temporarily, preliminarily, and permanently enjoined from prohibiting Plaintiffs and similarly situated individuals from enrolling in the MO HealthNet program;
- k. that the Defendants are temporarily, preliminarily, and permanently enjoined from treating Plaintiffs and similarly situated individuals differently than any other individual eligible for MO HealthNet benefits; and
- l. such other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully submitted,

STINSON LLP

By: /s/ Charles W. Hatfield

Charles W. Hatfield, No. 40363

Alixandra S. Cossette, No. 681114

230 W. McCarty Street

Jefferson City, Missouri 65101

Phone: (573) 636-6263

Fax: (573) 636-6231

chuck.hatfield@stinson.com

alixandra.cossette@stinson.com

HUSCH BLACKWELL LLP

By: /s/ Lowell D. Pearson

LOWELL D. PEARSON #46217

R. RYAN HARDING #52155

MICHAEL MARTINICH-SAUTER #66065

235 East High Street, Suite 200

P.O. Box 1251

Jefferson City, MO 65102

Telephone: (573) 635-9118

Facsimile: (573) 634-7854

Email: lowell.pearson@huschblackwell.com

ryan.harding@huschblackwell.com

michael.martinich-sauter@huschblackwell.com

LEGAL SERVICES OF EASTERN MISSOURI

By: /s/ Joel Ferber

Joel Ferber # 35165

4232 Forest Park Avenue

St. Louis, Missouri 63108

Telephone: (314) 534-4200

jdferber@lsem.org

Attorneys for Plaintiffs