

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

G.D.)	
By and through his parent S.D.)	
<i>and</i>)	Case No. 2:05cv980
)	
M.D.)	
By and through his parent S.D.)	
<i>and</i>)	
)	Judge: Holschuh
G.B.)	Magistrate Judge: King
By and through his parent S.B.)	
<i>and</i>)	
)	
A.S.)	
By and through his parent C.H.)	
<i>and</i>)	
)	
D.L.)	
By and through his parent M.L.,)	
)	
Plaintiffs,)	
)	
Z.H.)	
By and through his parent C.H.)	
<i>and</i>)	
)	
J.H.)	
By and through her parent C.H.)	
<i>and</i>)	
)	
D.G.)	
By and through his parent T.G.)	
)	
Intervenor Plaintiffs,)	
)	
vs.)	
)	
DOUGLAS LUMPKIN¹ , in his capacity as)	
Director of the Ohio Department of Job and)	
Family Services,)	
)	
Defendant.)	

¹ Douglas Lumpkin is the current director of the Ohio Department of Job and Family Services and is substituted as Defendant in his official capacity.

**INTERVENORS' CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

INTRODUCTION

1. The Intervenor Plaintiffs are two children who are Medicaid eligible and who live in Elida, Allen County, Ohio, and one child who is Medicaid eligible and who lives in Columbus, Franklin County, Ohio. They bring this class action on behalf of themselves and all children who are Medicaid eligible who have been denied access to medically necessary services that should have been provided through Ohio's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

2. Intervenor Plaintiff Z.H. is a twelve year old boy who has a significant over bite, misaligned jaw, and teeth which affect his speech and appearance. He has suffered psychological sequelae as well as functional difficulties resulting from orthodontic problems.

3. Intervenor Plaintiff Z.H was evaluated by his treating orthodontist, Dr. Baker. After reviewing x-rays, conducting a thorough examination, taking a plaster mold of Z.H.'s mouth and obtaining a detailed history from Z.H. and his mother, C.H., Dr. Baker determined that the orthodontia treatment that Z.H. needed was medically necessary and submitted a request for services to Buckeye Community Health Plan (Buckeye), the Medicaid Managed Care Plan (MCP) to which he had been assigned. The claim was initially denied by Buckeye, and Z.H. appealed. The ODJFS hearing officer upheld Buckeye's decision to deny services. Z.H. filed an administrative appeal which resulted in the reversal of the hearing officer's decision upholding the denial of services and a determination that the denial failed to apply the requirements of

EPSDT (known as "Healthchek" in Ohio). As a result, Z.H. was approved for 18 months of orthodontia treatment, including braces and a retainer.

4. Z.H. has been receiving orthodontia treatment since January 2009. However he has only recently had braces put on, and only on his upper teeth. He has been told, by Dr. Baker, that his jaw is still misaligned and, until it is in the proper position, placing braces on his lower teeth will have to wait. Z.H. and his parent C.H. believe that his orthodontia treatment will not be completed within the 18 months for which he had been authorized to receive services and that he will need to go through the same process, including the initial denials and administrative appeals in order to receive the continuing orthodontia treatment that he needs. Buckeye has not changed its policies or procedure, regarding requests for orthodontia treatment and will require the same prior authorization and medical necessity procedure already found to be in error and in violation of applicable Medicaid statutes and regulations including EPSDT.

5. Intervening Plaintiff J.H. is a one-and-one-half year-old girl who suffers from hydrocephalus.

6. As a result of her condition, Intervening Plaintiff J.H.'s treating neurologist has ordered frequent and routine therapy.

7. Intervening Plaintiff J.H. initially was assigned to Buckeye Community Health Plan, a MCP, by the state. Buckeye placed a limit on the number of therapy appointments that it would approve within a six-month period in violation of EPSDT requirements. When J.H. reached that arbitrary number, Buckeye would not authorize or pay for additional therapy appointments until a prescribed period of time had lapsed between therapy appointments, even though J.H.'s neurologist, Dr. Kumar, continued to indicate that the therapies were medically necessary and improved J.H.'s condition.

8. Intervening Plaintiff J.H. requested and was granted an exception from participating in a managed care plan (Buckeye) to which she had been assigned and currently receives continuing and ongoing therapy, as long as her neurologist determines that it is medically necessary and J.H. gets approval through Defendant's prior authorization process. J.H. and her parent, C.H., are fearful that they will be required to return to a managed care plan, that the limitations previously placed on her therapy will be reinstated, and that this will have a detrimental affect on her medical condition.

9. Intervening Plaintiff D.G. is a 13-year old boy who suffers from idiopathic short stature. He wears braces on his teeth as a result of an underdeveloped jaw.

10. Because of his visibly apparent short stature, his mother took him to an endocrinologist, Dr. Dara Schuster, at the Ohio State University Medical Center in February 2008. Dr. Schuster conducted a number of tests. These tests revealed that Intervening Plaintiff D.G. was several standard deviations away from the 5th percentile in both weight and height. His growth velocity for the past two years had been approximately 2.5 centimeters per year. In addition, laboratory analysis indicated a bone age of 5 years, despite his chronological age of 11 years, 10 months. A bone age study of Intervening Plaintiff D.G.'s wrist and hand found a skeletal age of 5 years for the hand, and a skeletal age of 3-3.5 months for the wrist – consistent with severe delayed skeletal maturity.

11. Upon completing this evaluation, Dr. Schuster determined that growth hormone injection treatment was necessary to address D.G.'s idiopathic short stature and submitted a prior authorization request to D.G.'s Medicaid Managed Care Plan (MCP), CareSource. This request was denied by the CareSource MCP, and D.G. appealed. The ODJFS hearing officer sustained the appeal, finding that the MCP's internal policy underlying its decision to deny services was

inconsistent with Medicaid rules. The hearing officer ordered the MCP to review the EPSDT rules and issue a new eligibility determination.

12. At no time prior to the hearing decision, did any ODJFS or Franklin County Department of Job and Family Services personnel inform D.G. or his mother, T.G., that D.G. might be entitled to the medically necessary services he sought under EPSDT.

13. CareSource conducted its review, applied the same internal policy to D.G.'s request for prior authorization, and again denied his request for growth hormone injection treatment. D.G. appealed again, and in April 2009, an ODJFS hearing officer again sustained the appeal, ordering CareSource to approve the treatment and finding that CareSource had not applied appropriate Medicaid and EPSDT standards to the review.

14. D.G.'s treatment was approved for a twelve-month period. However, given D.G.'s extreme short stature, it is likely that he will need treatment for more than 12 months and will need to go through the same process, including the initial denials and administrative appeals in order to receive the continuing growth hormone treatment that he needs. CareSource has not changed its policies or procedure regarding requests for growth hormone injection treatment and will require the same prior authorization and medical necessity procedure already found to be in error and in violation of applicable Medicaid statutes and regulations including EPSDT.

NATURE OF THE CASE

15. The Intervenor Plaintiffs hereby incorporate Paragraphs 1 through 8 of the Class Action Complaint in G.D. et al. v. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

PARTIES

16. The Intervenor Plaintiffs hereby incorporate Paragraphs 9 through 18 of the Class Action Complaint in G.D. et al. v. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

JURISDICTION

17. The Intervenor Plaintiffs hereby incorporate Paragraphs 19 through 21 of the Class Action Complaint in G.D. et al. v. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

CLASS ACTION ALLEGATIONS

18. The Intervenor Plaintiffs hereby incorporate Paragraphs 22 through 23 of the Class Action Complaint in G.D. et al. v. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

STATEMENT OF FACTS

19. The Intervenor Plaintiffs hereby incorporate Paragraphs 24 through 50 of the Class Action Complaint in G.D. et al., vs. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

CAUSES OF ACTION

20. The Intervenor Plaintiffs hereby incorporate Paragraphs 51 through 58, and paragraphs 216 through 223 of the Class Action Complaint in G.D. et al., vs. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

REQUEST FOR RELIEF

21. The Intervenor Plaintiffs hereby incorporate Paragraphs 59 through 64 of the Class Action Complaint in G.D. et al., vs. Barbara Riley, Case No. 2:05 CV 980, United States District Court for the Southern District of Ohio, Eastern Division.

Respectfully submitted,

s/Kristin E. Hildebrant

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Of Counsel for Plaintiffs

² Robert A. Cole and W. David Koeninger are members in good standing of the bar of the United States District Court for the Northern District of Ohio, and will seek permanent admission to the bar of this Court.

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2009, a copy of the foregoing Intervenors' Class Action Complaint For Injunctive And Declaratory Relief was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Kristin E. Hildebrant
Kristin E. Hildebrant (0042086)