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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF CAMDEN

ALMA GALLETTA, ESTHER STOLLER, OPAL BOVA, and ROSALIE BARBAGALLO, individually and on behalf of themselves and all others similarly situated, Plaintiffs, v. JENNIFER VELEZ, COMMISSIONER, NEW JERSEY DEPARTMENT OF HUMAN SERVICES; VALERIE HARR, DIRECTOR, NEW JERSEY DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES; BERGEN COUNTY BOARD OF SOCIAL SERVICES; MONMOUTH COUNTY BOARD OF SOCIAL SERVICES; OCEAN COUNTY BOARD OF SOCIAL SERVICES; and MORRIS COUNTY BOARD OF SOCIAL SERVICES, Defendants.	DOCUMENT ELECTRONICALLY FILED Hon. Robert B. Kugler, U.S.D.J. Hon. Ann Marie Donio, U.S.M.J. Civil Action Docket No. 1:13-cv-00532 CONSENT ORDER

This matter having been opened to the Court by way of a Complaint filed by Plaintiffs on January 28, 2013, and amended on February 24, 2014, and Plaintiffs and Defendants (the Parties) having amicably settled the matters in dispute, and the Court having reviewed this proposed Consent Order;

IT IS on this 10th day of February, 2015,

ORDERED as follows:

1. The Parties agree that this Consent Order is intended to be a final resolution of all issues arising out of the Complaint and Amended Complaint filed in this action.

2. The Division of Medical Assistance and Health Services (DMAHS) agrees that a Veterans Administration Improved Pension (VAIP) shall not be included as countable income during the Medicaid eligibility determination process when the applicant can demonstrate that the VAIP is received as a result of "unusual medical expenses" (UMEs), as the term is defined in 38 C.F.R. § 3.262(l). Applicants may demonstrate this fact by providing the county welfare agency (CWA) with a letter issued by the Veterans Administration (VA) stating that the entire VAIP is classified as aid and attendance. Applicant may also provide a decision letter from the VA, or other documentation from the VA reflecting the amounts of countable income and UMEs used to determine VAIP eligibility.

3. Within three months of the date this Consent Order is signed by the Court, DMAHS shall issue a Medicaid Communication and will distribute it to all CWAs, stating that a VAIP will not be included as countable income during the Medicaid eligibility determination process when the applicant can demonstrate that the VAIP is received as a result of UMEs that reduce the applicant's income to $0.

4. The Medicaid Communication will also state that DMAHS will consider income eligibility on a case-by-case basis for situations in which an applicant receives the VAIP as a result of UMEs that reduce the applicant's countable income to an amount that is greater than $0.00. Examples of acceptable documentation demonstrating that the applicant's VAIP benefit resulted from UMEs will be provided by DMAHS to the CWAs along with the Medicaid Communication.

5. DMAHS shall publish the Medicaid Communication described in paragraph 3 on its website, and shall furnish a copy of that Medicaid Communication to the following: (a) the VA Regional Benefit Offices in Newark, New Jersey, and in Philadelphia, Pennsylvania; (b) each of the New Jersey County Veterans Service Offices; and (c) each of the approximately 215 assisted living facilities in New Jersey.

6. DMAHS agrees to pay $100,000 in attorney fees and costs within sixty days of the entry of this consent order by the Court.

No party may recover or charge continuing fees or costs, except upon an order of the Court pursuant to an application to enforce this consent order.

7. Plaintiff Alma Galletta's Medicaid eligibility effective date will be changed from March 13, 2013 to August 1, 2012. The Parties acknowledge that during the period from August 1, 2012 to March 13, 2013, Mrs. Galletta was privately paying for her nursing care by making payments directly to the provider, Bayada Home Health Care ("Bayada"). The Parties agree that in response to Bayada's submission of a reimbursement claim through the Molina Medicaid Reimbursement System for the period of August 1, 2012 through March 13, 2013 that DMAHS shall not reject the claim as time-barred and that DMAHS will consider the claim in the normal course. The Parties understand that Bayada will issue reimbursement to Mrs. Galletta directly in accordance with its obligations as Medicaid provider. The Parties agree to take all reasonable steps to facilitate and effectuate the terms of this paragraph. Furthermore, nothing in this paragraph or subsequent paragraphs is intended to limit or impair in any way the Parties' rights to administratively appeal or otherwise challenge in the normal course any amount paid by DMAHS to Bayada in response to the reimbursement claim described herein.

8. It is expressly understood and agreed by each of the Parties that, by signing this Consent Order, the Parties agree to

release one another, including any of the Parties' former and present employees, directors, officers, trustees, administrators, representatives and agents, as well as any successors, from any and all actual or potential claims, demands, actions, costs, attorney fees, causes of action or liabilities of any kind or nature in connection with or arising out of this matter, whether known or unknown, at any time up to and including the date that this Consent Order is signed by the Court, provided that nothing herein shall release any obligations of a Party pursuant to this Consent Order.

9. Nothing herein shall constitute or be construed as an acknowledgment, admission, concession, or evidence of liability regarding any claim by any party, including but not limited to, the Medicaid Act, 42 U.S.C. §1396 et seq., the federal or State Constitution, or federal or State law, regulations, rules, or policies; and this Consent Order may not be used as evidence that any of the Parties was liable to another Party in the above-captioned case.

10. This matter shall be dismissed without prejudice as to all Defendants pursuant to Fed. R. Civ. P. 41 (a)(2).

11. The Court will retain jurisdiction over enforcement of this Consent Order.

12. Nothing in this Consent Order shall be construed to limit the Defendants' defenses in the event of a motion by any or all of the Plaintiffs to enforce the Consent Order.

13. This Consent Order is enforceable only by and is binding upon the Parties, by and through their officials, agents, employees, and successors. The Parties do not intend that this Consent Order shall create a private right of action in any civil, criminal, or administrative action in any third person. And accordingly, no person or entity other than the Parties may assert any claim or right as a beneficiary or protected class under this Order in any civil, criminal, or administrative action.

14. By their signatures, each Party signing this Consent Order represents and warrants that they have reviewed each and every term of this Consent Order, agree to each term, and that they are authorized to execute this Consent Order on behalf of their clients.

/s/ Alan H. Sklarsky
Alan H. Sklarsky, Esq.
Attorney for Plaintiffs
Dated: 2/2/15

/s/ Donald D. Vanarelli
Donald D. Vanarelli, Esq.
Attorney for Plaintiffs
Dated: 2/2/15

/s/ Frederick Niemann
Frederick Niemann, Esq.
Attorney for Plaintiffs
Dated: 2/2/15

/s/ Christopher D. Olszak
Christopher D. Olszak, Esq.
Attorney for Plaintiffs
Dated: 2/2/15

/s/ *Donald M. McHugh*
Donald M. McHugh, Esq. Dated: 2/2/15
Attorney for Plaintiffs

/s/ Kay R. Ehrenkrantz
Kay R. Ehrenkrantz, DAG Dated: 2/6/15
Attorney for Defendants,
Jennifer Velez and Valerie Harr

/s/ Jennifer Simons
Jennifer Simons, DAG Dated: 2/6/15
Attorney for Defendants,
Jennifer Velez and Valerie Harr

/s/ Louis M. Flora
Louis M. Flora, Esq. Dated: 2/5/15
Attorney for Defendant,
Bergen County Board of Social Services

/s/ Patrick James Boyle
Patrick James Boyle, Esq. Dated: 2/6/15
Attorney for Defendant,
Monmouth County Board of Social Services

/s/ Christian Erich Schlegel
Christian Erich Schlegel, Esq. Dated: 2/3/15
Attorney for Defendant,
Ocean County Board of Social Services

/s/ William G. Johnson
William G. Johnson, Esq. Dated: 2/3/15
Attorney for Defendant,
Morris County Board of Social Services

Hon. Robert B. Kugler, U.S.D.J. Dated: 2/6/2015