

STATE OF MINNESOTA

JUN 20 2011

DISTRICT COURT

COUNTY OF RAMSEY

By BK Deputy

SECOND JUDICIAL DISTRICT

Case Type: 14 Other Civil

In Re Temporary Funding of Core Functions of  
the Executive Branch of the State of Minnesota

Court File No. 62-cv-11-5203

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**MEMORANDUM OF INTERVENORS THE ASSOCIATION OF RESIDENTIAL  
RESOURCES IN MINNESOTA, THE MINNESOTA DEVELOPMENT ACHIEVEMENT  
CENTER ASSOCIATION AND THE MINNESOTA HABILITATION COALITION,  
INC. FOR TEMPORARY FUNDING FOR GOVERNMENT ASSISTANCE PROGRAMS  
FOR PERSONS WITH DISABILITIES**

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**I. INTRODUCTION**

Intervenors, The Association of Residential Resources in Minnesota (“ARRM”), The Minnesota Development Achievement Center Association (“MnDACA”), and The Minnesota Habilitation Coalition, Inc. (“MHC”) (collectively “Intervenors”), are composed of Minnesota non-profit organizations that provide critical services to Minnesota citizens with mental and developmental disabilities. These services are funded almost entirely by government programs – primarily Medical Assistance. The current state budget impasse presents the very real possibility that Minnesota’s executive branch will completely shut down resulting in the termination of benefits provided by Medical Assistance and other government programs. If that happens, the vulnerable citizens served by Intervenors’ members will be deprived of the medical care and other services vital to ensure their life, health, and safety.

This Court has twice held that the termination of such government programs as the result of a budget impasse constitutes an infringement of rights guaranteed under both the Minnesota and United States Constitutions. Intervenors ask the Court to once again enter such a holding and order temporary funding of Medical Assistance and other government programs in order to

ensure that core services and the payments to organizations providing those core services -- including Intervenor's members - continue in the event of a government shutdown.

## **II. FACTUAL BACKGROUND**

The Intervenor's are three Minnesota non-profit corporations whose combined membership consists of nearly 300 providers that serve thousands of Minnesotans who struggle with mental, physical, and developmental disabilities.

### **A. The Association of Residential Resources in Minnesota ("ARRM").**

ARRM is an association comprised of 150 organizations that provide residential and/or program services to thousands of Minnesotans afflicted with brain injuries, autism, mental illness, and developmental and physical disabilities. ARRM's members provide 24-hour care services to disabled Minnesotans through intermediate care facilities for developmental disabilities ("ICFs/DD") and four disability waivers from the Minnesota Department of Human Services ("DHS").<sup>1</sup> ICFs/DD are residential facilities licensed to provide services, including room and board, to persons who have development disabilities or related conditions.<sup>2</sup> There are ICFs/DD in sixty-two counties in the State and each facility serves between four to sixty-four persons.<sup>3</sup> In its most recent forecast, DHS estimates that there will be an average of 1,732 Minnesotans receiving ICFs/DD services on a monthly basis in fiscal year 2012.<sup>4</sup>

DHS has set forth certain criteria to determine whether a person is eligible for ICFs/DD services.<sup>5</sup> Among other things, the person must have a developmental disability or related condition as well as substantial limitations in present functioning manifested as significantly sub-

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<sup>1</sup> *Affidavit of Bruce H. Nelson in Support of Intervenor's Petition for Temporary Funding of Government Assistance Programs for Persons With Disabilities ("Nelson Aff.")*, ¶¶ 3 – 4.

<sup>2</sup> *Nelson Aff.* at ¶ 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at ¶ 6.

average intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior.<sup>6</sup> The person must also require a 24-hour plan of care.<sup>7</sup> ICFs/DD are required to provide a continuous active treatment program that includes outcome-based services in response to the specific and identified needs of each person, as set forth in an individual service plan.<sup>8</sup> At a minimum, services must be based upon the needs, preferences and personal goals of the disabled individual; be consistent with the principles of the least restrictive environment and self-determination; provide opportunities for the disabled individual to participate in the community; and provide functional skill development, reduced dependency on care providers and opportunities for the disabled individual to develop decision-making skills.<sup>9</sup>

As stated, ARRM's members also provide services under four disability waiver programs through DHS. The waiver programs provide funding for home and community-based services for disabled individuals.<sup>10</sup> Persons are eligible to receive services through one of the waiver programs if they are eligible for Medical Assistance and meet the criteria for ICFs/DD services or other institutional levels of care, such as nursing homes or hospitals, and have the ability to make an informed decision for home and community based services instead of ICFs/DD services or other institutional care.<sup>11</sup> The four waiver programs are:

1. Community Alternates for Disabled Individuals ("CADI") Waiver. These waiver services are for individuals with disabilities who require the level of care provided by a nursing facility. DHS estimates that there will be an average of 17,380 Minnesotans receiving CADI waiver services on a monthly basis in fiscal year 2012.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at ¶ 7.

<sup>11</sup> *Id.*

2. Developmental Disabilities (“DD”) Waiver. These waiver services are for individuals with developmental disabilities or a related condition who need the level of care provided by an ICF/DD. DHS estimates that there will be an average of 15,435 Minnesotans receiving DD waiver services on a monthly basis in fiscal year 2012.
3. Traumatic Brain Injury (“TBI”) Waiver. These waiver services are for individuals with acquired or traumatic brain injuries who need the level of care provided in a nursing facility that provides specialized services (such as cognitive and behavioral supports) for individuals with brain injuries or who require a neurobehavioral hospital level of care. DHS estimates that there will be an average of 1,441 Minnesotans receiving TBI waiver services on a monthly basis in fiscal year 2012.
4. Community Alternative Care (“CAC”) Waiver. These waiver services are for individuals who are chronically ill or medically fragile and thus require the level of care provided by a hospital. DHS estimates that there will be an average of 344 Minnesotans receiving CAC waiver services on a monthly basis in fiscal year 2012.<sup>12</sup>

The services provided by ARRM’s members through ICFs/DD and the waiver programs are wide-ranging. Some clients require help with basic physical care needs such as dressing, bathing and toileting, and/or other day-to-day activities, such as community integration or meal preparation.<sup>13</sup> However, a large number of ARRM’s members’ clients are medically fragile or have significant behavioral issues that require constant supervision.<sup>14</sup> For example, a person dependent on a ventilator or with a tracheotomy for oxygen must have a caregiver, who is able to

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at ¶ 8.

<sup>14</sup> *Id.*

respond within one-to-two minutes in the event of an airway plug or mechanical failure.<sup>15</sup> Lack of staff or a staff shortage would be life threatening in these instances.<sup>16</sup> In addition, a large number of clients require immediate behavioral intervention to prevent them from injuring themselves or others.<sup>17</sup> An inability to maintain the level of supervision required, which would result from a lack of funding, would put the client and others at serious risk of physical harm.<sup>18</sup>

State government (with federal Medicaid participation) is the primary, and in almost all cases, the only source of funds for payment for the services provided by ARRM's members.<sup>19</sup> With rare exception, every cent of funding for ICFs/DD is provided by Medical Assistance and virtually every cent for waiver services is also covered by Medical Assistance.<sup>20</sup> The funding needed for room and board under the waiver programs is provided by the State of Minnesota under the Group Residential Housing program.<sup>21</sup>

ARRM's members have evaluated the options available to continue to operate in the event of an immediate cessation of Medical Assistance and Group Residential Housing payments if a loss of funding results from a government shutdown and none of them are viable.<sup>22</sup> ARRM's members are dependent upon Medical Assistance and the Group Residential Housing payments to provide their programs and services. If the government shutdown were to occur, they would not have the funds necessary to pay for staff to provide services to the thousands of disabled Minnesotans who depend upon these services for their care and livelihood.<sup>23</sup> Very few of ARRM's members have sufficient cash reserves to continue paying caregivers (such payments

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at ¶ 9.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at ¶ 11.

<sup>23</sup> *Id.*

account for 75 percent of all member expenditures) beyond one payroll period.<sup>24</sup> ARRM's members are also concerned that a shutdown would affect receipt of payment for June billings, as well, which if true adds to the dire financial situation a government shut-down would create.<sup>25</sup>

In the event of a government shutdown, ARRM's members would initially look to lenders for assistance, but few would likely be able to secure any sort of bridge financing from a lender given the credit markets and the fact that they would not have a stream of payments from Medical Assistance to secure the financing request.<sup>26</sup> Members would also look to family members to care for their loved ones, but few families have the resources and time needed to provide the appropriate level of care.<sup>27</sup> Members would look to nursing homes, hospitals and other institutions to maintain the needed services for their clients, but nursing homes are likely to be similarly affected by a cessation in Medical Assistance payments and hospitals, typically, do not have the capacity to taken on these individuals as patients.<sup>28</sup> Given these facts, ARRM's members would be forced to look back to the counties and the State of Minnesota to directly provide the necessary care to clients in lieu of paying for the provision of these services, as they are required by the federal Medicaid program to assure the protection and provision of services and programs to clients.<sup>29</sup> It is almost certain that neither DHS nor the counties have the necessary infrastructure to ensure the direct provision of these services and programs.

Simply put, without the funding provided through Medical Assistance and the Group Residential Housing program, ARRM's members would be forced to close their intermediate care facilities and other group homes, as well as suspend all home and community-based services

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶ 12.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

operated under the disability waiver programs.<sup>30</sup> ARRM's members would be forced to suspend all life support and care programs and other services, thereby putting their clients in the real risk of life-threatening danger.<sup>31</sup> ARRM's members have explored every conceivable option in the event the government shutdown were to affect the provision of the services to the state's most vulnerable citizens.<sup>32</sup> There are no realistic or viable options. If no provision is made for continued payment of these programs and services in the event of a government shutdown, it is very likely that these programs and services will end, at least until funding is reinstated.<sup>33</sup> As a result, thousands of Minnesotans relying upon these services and programs would be irreparably harmed.<sup>34</sup>

**B. The Minnesota Habilitation Coalition, Inc. ("MHC").**

MHC is a Minnesota non-profit corporation comprised of thirty-four non-profit organizations that are licensed by DHS and provide support services to disabled individuals to help them develop and maintain life skills, participate in community life, and engage in proactive and satisfying activities of their own choosing.<sup>35</sup> The services provided by MHC's members include supported employment and work-related activities; community integrated activities (including the use of leisure and recreation time); supervision, training and assistance in the areas of self-care, communication, socialization and behavior management; training in community survival skills, money management and therapeutic activities that increase adaptive living skills of a person; and transportation services for non-medical purposes to enable persons to participate

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<sup>30</sup> *Id.* at ¶ 13.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Affidavit of Lynne Megan In Support of Intervenors' Petition for Temporary Funding Of Government Assistance Programs for Persons With Disabilities ("Megan Aff.")*, ¶¶ 2 – 4.

in these services.<sup>36</sup> These services are commonly referred to as day training and habilitation services or “DTH Services.”<sup>37</sup> DTH Services are provided pursuant to the waiver programs discussed previously.<sup>38</sup>

MHC’s members serve clients ranging from individuals requiring personal care assistance for their very basic needs to those who are quite capable of living semi-independently with appropriate support services.<sup>39</sup> For example, MHC’s members assist clients in finding and keeping jobs through individualized job placement assistance, on-the-job training, employer education, training to use public transportation, ongoing follow-up supports and supervision.<sup>40</sup> For some clients, members assist with various activities of daily living, including eating, toileting, medication management, skin care, mobility, communication, and behavioral support.<sup>41</sup>

According to a 2006 survey conducted by DHS of the DTH Services provided by MHC and Minnesota Development Achievement Center Association (“MnDACA”) members, more than 6,000 businesses provided employment opportunities to more than 13,800 disabled Minnesotans.<sup>42</sup> These Minnesotans have earned over \$46 million in wages as a result of those positions.<sup>43</sup>

The Minnesota State government (with federal Medicaid participation) is the primary source of payment for the services provided by MHC members - either through DHS waiver services or as a pass-through of Medical Assistance dollars that intermediate care facilities for the developmentally disabled receive for their clients, who then participate in our MHC’s

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<sup>36</sup> *Megan Aff.* at ¶ 4.

<sup>37</sup> *Id.*

<sup>38</sup> *See Infra* at 4.

<sup>39</sup> *Megan Aff.* at ¶ 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at ¶ 7.

<sup>43</sup> *Id.*



members' programs.<sup>44</sup> MHC members have explored all viable options available to continue operations in the event of an immediate cessation of Medical Assistance and other government payments as a result of a government shutdown and none of them are feasible.<sup>45</sup>

If a government shutdown were to occur, MHC members would not have the funds necessary to pay staff, rent, utilities and other operating expenses required to provide their services and programs to the thousands of disabled Minnesotans, who depend upon these services for their care, employment and livelihood.<sup>46</sup> Very few MHC members have sufficient cash reserves to continue paying operating expenses beyond two weeks.<sup>47</sup> In the event of a government shutdown, MHC members would initially look to lenders for assistance, but few, if any, would be able to secure any sort of bridge financing from a lender given the credit markets and the fact that our members would not have a stream of payments from Medical Assistance to secure the financing request.<sup>48</sup>

Loss of the funding provided through Medical Assistance would require MHC members to lay-off staff and suspend their operations.<sup>49</sup> Without the critical services provided by MHC members, many clients will lose their jobs and, thus, will no longer be earning any income to pay for their basic daily needs or to pay state and federal income taxes.<sup>50</sup> They will no longer have day training and other skills development programs to attend, meaning they will be forced to remain in their homes or group homes and intermediate care facilities, with limited and, in some cases, no social or community interaction.<sup>51</sup> The group homes and intermediate care facilities,

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<sup>44</sup> *Id.* at ¶ 8.

<sup>45</sup> *Id.* at ¶ 10

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at ¶ 11.

<sup>49</sup> *Id.* at ¶ 12.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

that would also be affected by the government shutdown, would be required to staff an additional 30 hours of care per week in the absence of funding.<sup>52</sup>

In addition, if MHC members are unable to provide the support and training services required by employers in connection with the job placement of members' clients, employers will fill the position with another person, who does not require additional support or services to do these jobs.<sup>53</sup> Further, the government shutdown and the lack of temporary funding for these services could irreparably threaten the relationships with employers that MHC members have spent years fostering.<sup>54</sup> Employers cannot wait for MHC's members' programs to restart and, given this uncertainty, may be unwilling to offer disabled individuals employment opportunities through MHC's members' programs in the future.<sup>55</sup>

In every instance, the programs and services provided by MHC members (along with those provided by the members of MnDACA as described below) provide thousands of Minnesotans with disabilities the opportunity to work in meaningful jobs, be actively engaged in their communities, build relationships, enhance their personal skills and pursue life with dignity.<sup>56</sup>

**C. Minnesota Development Achievement Center Association (“MnDACA”).**

MnDACA is an association comprised of 65 non-profit, DHS-licensed organizations and state-operated programs that provide day training and habilitation services (“DTH”), supported employment services (“SES”), and adult day services (“ADS”) to adults with developmental disabilities to help them develop and maintain life skills, participate in community life, and

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at ¶ 13.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at ¶ 14.

engage in proactive and satisfying activities of their own choosing.<sup>57</sup> The majority of MnDACA members are located outside of the Twin Cities metropolitan area.<sup>58</sup> Specific services provided by MnDACA members include supported employment and work-related activities (such as on-site, work-crew and competitive environment) and non-vocational supports (such as adult day services, habilitation and retirement); community integrated activities, including the use of leisure and recreation time, discovering connections and volunteering; supervision, training and assistance in the areas of self-care, communication, socialization and behavior management; training in community survival skills, money management and therapeutic activities and empower other choice-making skills that increase adaptive living skills of a person; and transportation services for non-medical purposes to enable persons to participate in the services listed above.<sup>59</sup> MnDACA members provide services pursuant to the waiver services discussed *infra*.

There are nearly 14,000 Minnesotans working through DT&H programs at 6,000 businesses in the State and earning \$46 million in wages according to a 2006 DHS survey.<sup>60</sup> Individuals are hired by businesses as employees or work as part of a crew at a business location, or assemble components outsourced by a business to be sold in the market.<sup>61</sup> Like other employees, they earn wages and pay state and federal income taxes.<sup>62</sup> Employment in these positions is critical to the disabled individual's self-esteem as a person of value and his/her ability to earn discretionary income to purchase those things that define his/her quality of life.<sup>63</sup>

The Minnesota State government (with federal Medicaid participation) is the primary,

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<sup>57</sup> *Affidavit of Jerry Mueller In Support of Intervenors' Petition for Temporary Funding of Government Assistance Programs for Vulnerable Persons* ("Mueller Aff."), ¶ 2, 4.

<sup>58</sup> *Id.* at ¶ 2.

<sup>59</sup> *Id.* at ¶ 4.

<sup>60</sup> *Id.* at ¶ 6.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

and in almost all cases, the only source of funds for payment of the services provided by MnDACA Members.<sup>64</sup> With rare exception, Medical Assistance payments cover all services provided by MnDACA members under the waiver programs.<sup>65</sup> MnDACA's members have explored all viable options available in the event an immediate cessation of Medical Assistance and other government payments results from a government shutdown and none of them are feasible.<sup>66</sup> If the government shutdown were to occur, MnDACA members would not have the funds necessary to pay for staff, rent, utilities and other operating expenses required to provide services and programs to the thousands of Minnesotans with disabilities, who depend upon these services for their care, employment and livelihood.<sup>67</sup> Very few MnDACA members have sufficient cash reserves to continue paying operating expenses beyond a week to ten days.<sup>68</sup>

In the event of a government shutdown, MnDACA members would initially look to lenders for assistance, but it is likely that only a handful would be able to secure any sort of bridge financing from a lender given the credit markets and the fact that they would not have a stream of payments from Medical Assistance to secure the financing request.<sup>69</sup> Without Medical Assistance funding, MnDACA members will be forced to lay-off staff and suspend their operations.<sup>70</sup> Without these services, many clients will lose their jobs and, thus, will no longer be earning any income for their discretionary expenses or paying state and federal income taxes.<sup>71</sup> Clients will no longer have DTH, SES, or ADS programs to attend, meaning they will be forced to remain in their family homes or group residential homes with limited and, in some

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<sup>64</sup> *Id.* at ¶ 7.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at ¶ 9.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at ¶ 10.

<sup>70</sup> *Id.* at ¶ 11.

<sup>71</sup> *Id.* at ¶ 11.

cases, no social or community interaction.<sup>72</sup> In cases involving family homes, parents and/or siblings may not be able to continue working because they need to stay home to care for their loved one and group residential providers would need to add an additional 30 hours of staffing per week to supervise clients during the day without any additional funding.<sup>73</sup>

If MnDACA members are unable to provide the support and training services required by businesses in connection with client job placements, businesses will be forced to fill these positions to maintain their operations and the lack of temporary funding for these services could irreparably threaten the relationships forged by MnDACA with employers over many years.<sup>74</sup> Employers cannot wait for programs to restart and, given this uncertainty, may be unwilling to offer citizens with disabilities employment opportunities through the programs offered by MnDACA's members in the future.<sup>75</sup>

### **III. ARGUMENT IN SUPPORT OF TEMPORARY FUNDING**

The legal arguments supporting continued funding for government programs enabling medical and other critical services for Minnesota's vulnerable citizens – most notably Medical Assistance – have already been briefed extensively before this Court in this matter. In the interest of judicial economy, Intervenors will simply highlight two arguments put forth by the Minnesota Attorney General that support the temporary funding Intervenors seek.

A. **CESSATION OF PAYMENTS FOR CORE SERVICES UNDER MEDICAL ASSISTANCE AND OTHER GOVERNMENT PROGRAMS DEPRIVES VULNERABLE MINNESOTA CITIZENS OF THEIR CONSTITUTIONAL RIGHTS.**

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at ¶ 12.

<sup>75</sup> *Id.*

As the Attorney General points out in her Memorandum in Support of Motion for Relief, citizens of Minnesota are entitled to certain rights and privileges under both the United States and Minnesota Constitutions that must be protected by the executive branch.<sup>76</sup> She also points out that states cannot abridge or ignore the constitutional rights of their citizens because funding has not been appropriated to fund core functions to meet those constitutional obligations.<sup>77</sup> This Court has also previously recognized that those constitutional rights are infringed “if the executive branch agencies do not have sufficient funding to [continue to] discharge their core functions.”<sup>78</sup>

This Court has previously held that core functions of the executive branch include the provision of healthcare and the funding of patient care and services in private facilities or programs such as nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services.<sup>79</sup> These are exactly the types of services provided by the Intervenor’s members. In fact, Medical Assistance payments to the Intervenor’s members were approved as critical core government operations in 2005:

Payments to the following MA providers: personal care attendants (PCAs), private duty nursing services; home health agencies; special transportation providers, pharmacy services, **waiver services, including CAC, CADI, MR/RC, TBI, Elderly and Alternative Care; day training and habilitation (DT&H);** nursing homes (SNF/ICF); volume purchasing for oxygen; durable medical equipment; children’s therapeutic support services (CTSS); adult residential mental health services (ARMHS); mental health crisis services;

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<sup>76</sup> *Petitioner’s Memorandum In Support of Motion for Relief (“Petitioner’s Memo.”)*, pp. 6 -7.

<sup>77</sup> *Id.* at 9 (citing *Watson v. City of Memphis*, 373 U.S. 526 (1963)).

<sup>78</sup> *Id.* at 8 (citing *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. CP-01-5725, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 29, 2001) Concl. Of Law 6, at 7 (“*Executive Branch Core Functions 2001*”); and *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, No. C0-05-5928, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (Ramsey Co. D. Ct., June 23, 2005 (“*Executive Branch Core Functions 2005*”)) Concl. Of Law 6, at 7.

<sup>79</sup> *Executive Branch Core Functions 2001*, Concl. Of Law 10 at 8.

intensive residential treatment services (IRTS); rural health clinics; Indian Health Services and tribal providers; and Federally Qualified Health Clinics.<sup>80</sup>

This determination is firmly grounded in prior legislative enactments memorializing Minnesota's public policy. For example, the legislature made clear the critical nature of Medical Assistance when it declared that providing payment for the cost of care for persons who cannot afford it is a "matter of state concern."<sup>81</sup> The legislature has also defined a Medical Assistance beneficiary who receives services from certain providers – including the Intervenors' members – as "vulnerable" and requiring special laws to protect them for maltreatment:

The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide a safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.<sup>82</sup>

Consequently, both the prior determinations of this Court as well as legislatively-memorialized public policy of the State of Minnesota require temporary funding of the services provided by the Intervenors' members in the event a government shutdown becomes a reality.

**B. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRES THE STATE TO ADMINISTER AND FUND FEDERAL PROGRAMS MANDATED BY CONGRESS.**

Minnesota has entered into a variety of agreements with the federal government pursuant to which, federal programs are carried out by the State and local governments.<sup>83</sup> Such programs include those providing public and medical assistance to needy persons designed to

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<sup>80</sup> Petitioner's Petition, Exhibit 4, Attachment B at 7. (emphasis added).

<sup>81</sup> Minn. Stat. § 256B.01.

<sup>82</sup> Minn. Stat. § 626.557, subd. 1.

<sup>83</sup> *Petitioner's Memo*. At 10.

assure the health, safety, and welfare of Minnesota citizens.<sup>84</sup> These programs require a certain level of state funding under the federal laws enacting those programs.<sup>85</sup> Under the Supremacy Clause of the United States Constitution, payments must be made and such programs continued pursuant to the applicable federal laws regardless whether any state appropriation has been made for those programs.<sup>86</sup>

Failure to approve temporary funding for the programs and services provided by Intervenor's members would, in effect, cause a shutdown of the critical and essential services to thousands of disabled Minnesotans who rely upon these services for their care and livelihood. Consequently, failure to provide temporary funding for the Medical Assistance program and payments to service providers under that program violates the requirements of the United States constitution.

### **CONCLUSION**

For the foregoing reasons, the Intervenor respectfully request that the Court enter an Order as follows:

a. Directing that the executive branch of the Minnesota State government and its executive officers must undertake the core functions required by the United States and Minnesota Constitutions, and by the federal government.

b. Directing that the services provided by ARRM, MnDACA, and MHC under the state waiver programs and through intermediate care facilities are core functions.

c. Directing that the State of Minnesota shall timely pay for service provided by ARRM, MnDACA, and MHC under the state waiver programs facilities, through intermediate

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 11

<sup>86</sup> *Id.*



care facilities or otherwise paid by Medical Assistance and Group Residential Housing, until a budget funding these programs is in effect.

d. Awarding any other relief the Court deems just and equitable.

Respectfully submitted,

HALLELAND HABICHT PA

Dated: 20 June 2011

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#### ACKNOWLEDGMENT

Movants, through their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties under Minn. Stat. § 549.211, subd. 3.

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