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Court Administrator

JUN 23 2011

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

By jt Deputy

SECOND JUDICIAL DISTRICT

Court File No. 62-cv-11-5203

Judge: Kathleen Gearin

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

**MOTION OF JENNI TAYLOR, A  
MEDICAL ASSISTANCE RECIPIENT,  
FOR LEAVE TO PARTICIPATE AS  
AMICUS CURIAE OR TO INTERVENE**

Jenni Taylor is a recipient of Medical Assistance in the State of Minnesota. She files this Motion as a representative of all recipients of Medical Assistance. Jenni Taylor seeks to participate to express her support for the Attorney General's Petition, and to ensure that vulnerable Minnesota citizens who are recipients of Medical Assistance are not deprived of their rights under the Minnesota and United States Constitutions.

**FACTS**

Jenni Taylor is a 24 year old college student, motivational speaker and artist. Jenni lives in Minnetonka, Minnesota with her mom and has a 21 year old sister. Currently, Jenni attends Normandale Community College and is pursuing a degree in communications. Jenni enjoys motivational speaking, volunteering, and advocating for others with disabilities. Her additional hobbies include painting, writing, blogging and reading. On November 1, 2002 she was in a horrible car accident and her neck broke at the C1, C2 level. She is now a quadriplegic who is dependent on a ventilator.

Jenni was crowned Miss Wheelchair Minnesota on April 11, 2011. In this capacity Jenni speaks around the state for the more than 50 million Americans living with disabilities. Jenni will be competing for the Ms. Wheelchair America pageant in Grand Rapids in August. As part

of her duties, she desires to be an advocate in this proceeding and to share concerns and issues that people with disabilities face.

Jenni is a strong, beautiful person who feels honored to now be an advocate for people who have limitations because of a disability. As stated by Jenni “life is not measured by the number of breaths we take, but by the moments that take our breath away.” This quote has two meanings for Jenni. The first is exactly how it is stated, that we need to appreciate the excitement of life. The second, a more literal and personal meaning, is that Jenni cannot breathe on her own because of the location of the break in her spinal cord. She must have a ventilator working at all times; she must have services and supplies to be able to survive.

Jenni is a recipient of Medical Assistance in the State of Minnesota. Last week Jenni, along with hundreds of thousands of other Medical Assistance recipients, was notified by the Department of Human Services that Medical Assistance was being interrupted on July 1, 2011, and that“...We may not be able to pay for all health care services.” This notice, horrific for Jenni and thousands of other Minnesotans, made her feel like a pawn in a game of political brinkmanship being played by elected officials in St. Paul.

The notice was unnecessary. It was cruel. And, for the reasons set forth below, it was Unconstitutional.

## **LAW AND ARGUMENT**

**The Federal Medical Assistance Program.** States participating in the Medical Assistance program (sometimes called Medicaid or MA) must provide benefits to all individuals who meet the eligibility requirements established by Federal Law. 41 U.S.C. §1396a(a)(10) Further, States must structure and administer the program in compliance with various Federal

requirements. 42 U.S.C. §1396a. The States may not deviate from these Federal statutory and regulatory requirements unless granted a federal waiver. 42 U.S.C. §1396n(b)

Once a State chooses to participate in the Medical Assistance program, it must submit to the federal government a Plan for approval. As part of the application the State agrees to comply with all provisions of the Medical Assistance Act. *Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services*, 293 F.3<sup>rd</sup> 472, 478 (8<sup>th</sup> Cir. 2002). It is believed that all states participate in the Medical Assistance program.

The Medical Assistance Act provides that a participating State must accept all applicants who qualify and must provide such assistance with reasonable promptness. 42 U.S.C. §1396a(a)(8). The federal law requires the State: 1.) to furnish Medicaid promptly to recipients, 2.) to not allow the agency's administrative procedures to delay assistance, and 3.) to continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 C.F.R. §435.930. Insufficient funding is not an excuse to delay the determination of eligibility or the payment of benefits. *Sobky v. Smoley*, 855 F.Supp. 1123, 1149 (E.D. Cal. 1994). Indeed, an attempt by the State to suspend processing of a Medical Assistance application is a violation of law for which the Center for Medicare/Medicaid Services could withhold all Medical Assistance payments. 42 U.S.C. §1396c.

**The Pre-emption Doctrine of the United States Constitution.** The Supremacy Clause of the United States Constitution provides that the laws of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding. *Article VI, Clause 2, United States Constitution*. Pursuant to this Supremacy Clause, the Minnesota courts have recognized that

Federal Medicaid law preempts State law. *Care Providers of Minnesota v. Gomez*, 545 NW2d, 45 (Minn. Ct. App. 1996) See also Minn. Stat. §256B.41, Subd.2.

Federal Medicaid law preempts the failure of the state to appropriate funding. Governor Dayton states that he supports the proposition that Medical Assistance funding shall continue after July 1, 2011, even if the legislature has failed to appropriate funds for it. Indeed, Governor Dayton recently announced that the Medical Assistance program will be available to new applicants, and that the State will make timely payments. An examination of the myriad of the pleadings filed in this matter seems to indicate that the only objection to continuation of Medical Assistance is raised by four taxpayers who are members of the Minnesota State Senate. They apparently argue that Article 11, Section 1 of the Minnesota Constitution, which requires that no money shall be paid from the treasury except pursuant to an appropriation of law, prevails over the Federal Medicaid law. This turns the concept of federal pre-emption on its head. Indeed, the Supremacy Clause specifically refers to the subordination of a State's Constitution to federal law.

The Judicial Branch has consistently stepped in and ordered that the Constitutional rights of the American people be protected when the executive and legislative branches fail to appropriate funds to protect them. Two months ago, in *Brown v. Plata*, 563 U.S. 32 (2011), the United States Supreme Court ordered that the State of California either appropriate sufficient funds to eliminate prison conditions which constitute cruel and unusual punishment or that it release prisoners so that its prisons are humanely able to provide care for the sick and mentally ill. Justice Kennedy noted:

“The common thread connecting the state’s proposed remedial effort is that they would require the state to expend large amounts of money absent a reduction in overcrowding. The court cannot ignore the political and fiscal reality behind this case. California’s legislature has not been willing or able to allocate the resources necessary to meet this crisis absent a reduction

on overcrowding. There is no reason to believe it will begin to do so now, when the state of California is facing an unprecedented budgetary shortfall. As noted above, the legislature recently failed to allocate funds for planned new construction. Without reduction and overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill in California's prisons."

The federal courts have specifically rejected the proposition that Article 11 of the Minnesota Constitution can interfere with the Constitutional rights of Minnesotans. In *Welsch v. Likins*, 550 F.2d 1122 (8<sup>th</sup> Cir. 1977) the Federal court ordered that the State of Minnesota provide sufficient funds to take care of the mentally ill and the developmentally challenged. The court noted the following:

"It was recognized by all concerns, including the trial judge, the compliance with the Cambridge Order would require that funds be provided to the Department of Public Welfare over and above what the Minnesota legislature would normally be expected to appropriate for the operation of the Cambridge Institution... Had the legislature responded with an appropriation sufficient to enable the defendants to comply with the Cambridge Order fully, this case would probably not be here. Unfortunately, for one or more reasons the legislative response was inadequate and the defendants were not able to comply fully with the requirements of the District Court."

The court then went on to state the following:

"The obligation of the state to eliminate existing unconstitutionality does not depend upon what the legislature may do, or upon what the Governor may do, or, indeed, upon what the defendants may be able to accomplish with means available to them. As stated, if Minnesota is going to operate institutions like Cambridge, their operation is going to have to be consistent with the Constitution of the United States."

The court noted that it is the function of State Government to determine whether it is going to operate a system of hospitals, and if it does so, they must comply with Constitutional standards. The Court also noted that it is the function of the courts to determine whether the actions taken by the State satisfy those Constitutional requirements.

Based upon the above Law and Argument, Petitioner Jenni Taylor requests that Court approve of the Petition of Attorney General Swanson and that it issue an order as proposed by

the Attorney General. In the event that the order is not issued, Jenni Taylor requests that she be permitted to intervene in this matter as a party, or that in the alternative she be permitted to file an *Amicus Brief*.

Dated: June 23, 2011



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Michael A. Hatch # 42125  
BLACKWELL BURKE P.A.  
431 South Seventh Street  
Suite 2500  
Minneapolis, MN 55415  
Tel: (612) 343-3289