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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

THOMAS C. CAVER, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT

WILLIE MAE HARRIS, LINDA PATTON, )  
TAENIKA PATTON, JOHN PATTON, )  
TOMMY GORDON, AND BERTHA J., )  
individually and on behalf of all others )  
similarly situated, )

Plaintiffs, )

vs. )

GOVERNOR JAMES FOLSOM, and )  
DAVID TONEY, COMMISSIONER OF )  
THE ALABAMA MEDICAID AGENCY, )

Defendants. )

COMPLAINT

Case No. 94-A-1422-N

PRELIMINARY STATEMENT

1. This is a civil action brought to enforce the plaintiffs' rights under the Social Security Act and 42 U.S.C. § 1983. Plaintiffs seek injunctive relief to require the State of Alabama to ensure necessary medical transportation to Medicaid recipients as mandated by federal law. Because of defendants' failure to offer non-emergency medical transportation and their failure to ensure its availability, the named plaintiffs and others similarly situated are forced to delay or forgo needed medical services and treatment, subjecting them to deterioration in their medical conditions and the risk of death.

JURISDICTION

2. This action arises under 42 U.S.C. §§ 1396 and 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

3. This Court has jurisdiction over plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

#### PARTIES

4. Plaintiffs Willie Mae Harris, Linda Patton, Taenika Patton, John Patton, Tommy Gordon, and Bertha J. are citizens of the United States and residents of Alabama. Each is a recipient of Medicaid.

5. Plaintiffs Taenika Patton and John Patton are ages five and six, respectively. They sue by their next friend, Linda Patton, their mother.

6. Plaintiff Tommy Gordon sues by his next friend, his sister Bessie Ross, who cares for him.

7. Plaintiff Bertha J. sues under a fictitious name in order to protect her privacy and that of her family.

8. Defendant James Folsom is Governor of the State of Alabama and, as such, heads the Office of the Governor, the "single state agency" for operation of the Medicaid program in Alabama. He is sued in his official capacity.

9. Defendant David Toney is Commissioner of the Alabama Medicaid Agency. As such, he is charged with administration of the Medicaid program in Alabama, and he is responsible for ensuring that the program operates in accordance with federal law. Defendant Toney is sued in his official capacity.

#### CLASS ACTION

10. The plaintiffs bring this suit on their own behalf and on behalf of the class of all present and future Medicaid recipients who need or will need non-emergency medical transportation.

11. The individual plaintiffs sue on their own behalf and as class representatives pursuant to Rule 23 of the Federal Rules of Civil Procedure. The prerequisites of Rule 23(a) and of Rule 23(b)(2) are satisfied.

## STATEMENT OF FACTS

### A. The State Plan for Transportation

12. Title XIX of the Social Security Act created "Medicaid," a cooperative federal-state program designed to provide necessary medical services to eligible low-income persons. In order to obtain federal funds, states must formulate a "state plan" for administering their Medicaid program.

13. As part of its state plan for administering Medicaid, a state Medicaid agency must certify that it will ensure necessary transportation to recipients to and from health care providers and must describe how it will meet this requirement.

14. Alabama's state plan for transportation is limited to providing emergency and, in some narrow circumstances, non-emergency ambulance services to recipients.

15. Defendants provide non-emergency ambulance services only when a doctor or nurse certifies that ambulance travel is warranted for a stretcher-bound recipient who is being transported within the recipient's county or metropolitan area.

16. A recipient who does not meet defendants' restrictive standards for ambulance travel receives no transportation assistance under the state plan, even when his or her condition would become life-threatening if the recipient were unable to obtain treatment.

17. There is no coordinated system in Alabama for transporting recipients to medical care. Recipients are forced to rely on an inadequate volunteer system for their transportation needs.

18. Defendants do not take steps to make recipients aware of the inadequate volunteer system that exists and do not offer recipients either transportation or assistance in obtaining transportation.

19. Defendants take no steps to provide or assist recipients in obtaining transportation to needed medical care by other less cumbersome and less expensive means than ambulance, such as by private car, taxicab, public bus or handicapped accessible van.

20. Defendants do not reimburse recipients who pay for transportation to needed medical care by other less cumbersome and less expensive means than ambulance, such as by private car, taxicab, public bus or handicapped accessible van.

21. Although any of several possible alternative plans for providing necessary non-emergency transportation could remedy the deficiencies outlined in this complaint, defendants continue to adhere to a state plan that, in form and operation, ensures practically no necessary non-emergency medical transportation to its Medicaid recipients.

22. Defendants have acted and continue to act under color of state law.

23. Plaintiffs do not have an adequate remedy at law.

B. Factual Allegations as to the Named Plaintiffs

Willie Mae Harris

24. Willie Mae Harris has end stage renal disease. She depends upon hemodialysis to live. Ms. Harris must travel forty miles each way three times weekly from her home in Marion to her treatments in Selma.

25. Ms. Harris' son borrows a car to drive her to treatments. When the car is unavailable, there is no vehicle to transport Ms. Harris to Selma. She regularly misses dialysis treatments once or twice a month because of the lack of available transportation.

26. Defendants have neither offered nor provided transportation assistance to Ms. Harris.

27. Even when Ms. Harris has been able to get to her dialysis treatments in Selma, she has sometimes been unable to remain for the entire three hour dialysis

treatment. Instead, she has been forced to leave after only two hours because of transportation problems.

28. These missed and shortened treatments have harmed Ms. Harris' health. She has been admitted to the hospital several times due to her weakened state.

Linda Patton

29. Linda Patton is legally blind. A resident of Birmingham, she suffers from a variety of health problems. Ms. Patton must see doctors about once each month.

30. Ms. Patton cannot drive. She has no family who can assist her with transportation. Ms. Patton relies on inadequate specialized public transportation to reach her doctor's appointments. The service she uses is frequently full, and, consequently, it refuses to take her to all of her medical appointments. She cannot travel to the doctor by taxi, since she cannot afford to pay the sixty dollars it would cost her in round trip fare.

31. Defendants have neither offered nor provided transportation assistance to Ms. Patton.

32. Ms. Patton is often forced to cancel her medical appointments because she has no transportation to them. The lack of transportation harms her health.

Taenika Patton

33. Taenika Patton is the daughter of Linda Patton. Five years old, she has had recurrent problems with transportation to necessary medical care. These problems have forced her to miss numerous appointments with her pediatrician and dentist, as well as general medical check-ups.

34. Defendants have neither offered nor provided transportation assistance to Taenika.

35. In 1991, Taenika needed eye surgery to remove cataracts. Her mother could find no affordable means of taking Taenika to the surgery. Faced with the

possibility of Taenika missing the surgery, her mother was forced to borrow money to pay for her daughter's transportation to the doctor.

36. The lack of necessary medical transportation has threatened and will continue to threaten Taenika's health.

John Patton

37. John Patton is the son of Linda Patton. Six years old, he frequently has no transportation to necessary medical care. The lack of available transportation has forced him to miss and reschedule numerous dental and pediatric appointments, as well as general medical check-ups.

38. Defendants have neither offered nor provided transportation assistance to John.

39. The lack of transportation to necessary medical care has threatened and will continue to threaten John's health.

Tommy Gordon

40. Tommy Gordon is handicapped and mentally retarded. Sixty-two years old, he suffers from high blood pressure and a hiatal hernia. Mr. Gordon must go to doctor's appointments at least once each month.

41. Because of his mental retardation and health problems, Mr. Gordon cannot travel anywhere alone. His sister accompanies him to all of his medical appointments.

42. Mr. Gordon's sister cannot drive and must find persons willing to take him to medical care for a fee that Mr. Gordon can afford to pay. When she cannot locate such persons, the only transportation alternative is travel by taxi. The cost of a taxicab for Mr. Gordon and his sister is sixteen dollars, which they cannot afford to pay.

43. Defendants have neither offered nor provided transportation assistance to Mr. Gordon.

44. Mr. Gordon frequently misses doctor's appointments because he has no transportation to them.

45. After missing medical appointments, Mr. Gordon sometimes becomes ill. On two or three occasions this year, he has become so ill that he had to be taken by ambulance to the emergency room. Defendants have paid for the ambulance.

Bertha J.

46. Bertha J. has end stage renal disease. She must travel fifty miles to Montgomery for hemodialysis treatments three times a week.

47. Bertha J. can only reach her treatments by paying drivers fifteen dollars per trip to drive her in their cars.

48. Bertha J. called the Department of Human Resources in 1992 to ask for transportation assistance and was told that they had no transportation program. Defendants have neither offered nor provided transportation assistance to Bertha J.

49. Although the Alabama Kidney Foundation subsidizes her travel, Bertha J. must still pay about one-hundred and fifty dollars in transportation costs monthly. Her total monthly income is \$466. Thus, she spends roughly one-third of her income getting to medical care.

50. By the end of each month, Bertha J. runs out of money to pay her transportation costs. Consequently, she regularly misses one or two appointments monthly. Transportation problems have imposed financial hardships on Bertha J. and harmed her health.

CAUSES OF ACTION

51. The failure of defendants to develop, implement and maintain an adequate state plan that ensures non-emergency transportation for recipients and offers such transportation to them has violated and will continue to violate plaintiffs' rights to transportation guaranteed by 42 U.S.C. § 1396a and the regulations adopted thereunder, and further interferes with their rights to have

medical assistance that is: available in all political subdivisions of the State; provided with reasonable promptness; furnished in the same amount, duration and scope to all individuals similarly situated; provided in a manner consistent with both the best interests of recipients and with efficient operation of the program; and available from qualified providers of the recipients' choice.

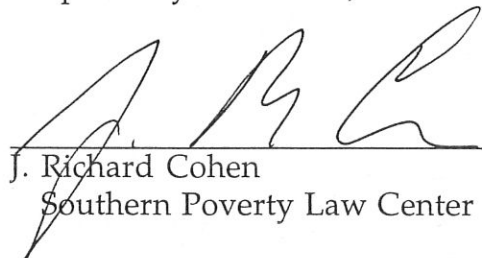
52. The failure of the defendants to develop, implement and maintain an adequate state plan that ensures non-emergency transportation for recipients and offers them such transportation has also violated and will continue to violate the plaintiffs' rights under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Honorable Court grant the following relief:


1. Certify the plaintiff class in this action;
2. Declare that the Alabama state plan for administering Medicaid violates plaintiffs' rights guaranteed by 42 U.S.C. § 1396a and the regulations adopted thereunder, as well as plaintiffs' rights under 42 U.S.C. § 1983;
3. Order the defendants to develop, implement and maintain a state plan for transportation that will protect plaintiffs' rights guaranteed by 42 U.S.C. § 1396a and the regulations adopted thereunder, as well as plaintiffs' rights under 42 U.S.C. §1983;
4. Award plaintiffs reasonable costs and attorneys' fees and
5. Grant plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,

  
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