

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WILLIAM T., et al.,

Plaintiffs,

versus

WILLIAM R. TAYLOR, M.D., et  
al.,

Defendants.

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: CIVIL ACTION NO.  
: 1:95-CV-2901-JEC  
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FILED IN CHAMBERS  
8/3/00  
Luther D. Thomas, Clerk  
By: [Signature]  
Deputy Clerk

STIPULATION OF SETTLEMENT AND DISMISSAL

This action was brought by plaintiffs to challenge the refusal by the Georgia Department of Community Health(hereafter, "the Department") to cover and provide augmentative and alternative communication ("AAC") devices. This Court issued an Order addressing numerous pending motions on March 1, 2000, and pursuant to discussions among counsel for Plaintiffs and Defendants subsequent to that Order, the parties have determined that further litigation is not in the best interests of either party and is not necessary, and that all remaining issues in this matter can be resolved by mutual agreement.

This Stipulation of Settlement and Dismissal will resolve all remaining issues in this litigation, with the exception of a request for attorney's fees by plaintiffs' attorneys, which shall be addressed separately.

This Stipulation of Settlement and Dismissal reflects the intent of the parties to lay aside the differences that led to this action, and to establish a procedural and substantive

framework for consistent, as well as professionally and programmatically sound decision making for Medicaid funding for AAC devices.

THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY PLAINTIFFS AND DEFENDANTS THAT:

I. AAC Device Coverage

1. The Department will cover AAC devices, including AAC device accessories and supplies, within the durable medical equipment benefit.

a) For the purposes of this Stipulation of Settlement and Dismissal, the term "AAC device(s)" includes AAC devices, accessories and supplies.

II. Adoption of AAC Device Coverage Criteria

2. The Department will adopt and implement the AAC device coverage criteria attached as Appendix A to this Stipulation of Settlement and Dismissal. These coverage criteria will be effective beginning the day following the date this Stipulation of Settlement and Dismissal is signed by the Court.

3. The Department will amend its Policies and Procedures Manual for Durable Medical Equipment to include the AAC device coverage criteria set forth in the attached Policies and Procedures as soon as practical.

4. Pending the modification of the Policies and Procedures Manual for Durable Medical Equipment, the Department shall announce in the remittance advice forms sent out to all Medicaid providers that AAC devices, accessories and services are now

covered under the Durable Medical Equipment program. The Department will post the Policies and Procedures for AAC devices on its Web-site which is located at [www.communityhealth.state.ga.us](http://www.communityhealth.state.ga.us). Providers who do not have access to the Internet may obtain a copy of the AAC device coverage criteria by contacting Teresa Milline, at 404-298-1228 or 800.766.4456.

### III. AAC Device Coverage for Specific Medicaid Sub-Populations

5. All eligible Georgia Medicaid recipients (including dually eligible Medicare and Medicaid recipients, Early Intervention recipients, recipients in nursing facilities or Intermediate Care facilities, and recipients with third party coverage) who seek funding for an AAC device, accessory and/or service will have their claims reviewed according to the relevant policies and procedures, including the Policies and Procedures for AAC device coverage which is attached hereto. Medicaid recipients seeking funding for AAC devices, accessories and/or services will be treated the same way as any other eligible recipient seeking Medicaid funding for a medically necessary service.

a) Medicare-Medicaid Dually Eligible Recipients. The Department may pursue Medicare reimbursement for its coverage of an AAC device, accessory or service as permitted by federal regulations. Dually eligible Medicaid recipients provided AAC devices, accessories or services by the Department will cooperate

with any reasonable requests made by the Department's representatives in such appeals.

b) On April 26, 2000, Medicare announced a change in its AAC device coverage guidance, effective January 1, 2001. The Medicare announcement stated that additional steps will be taken during this interim period regarding issuance of administrative instructions and/or issuance of a new national coverage decision for AAC devices. The Department may amend the procedures applicable to AAC device funding requests for dually eligible Medicaid recipients for AAC device vendors that agree to "accept Medicare assignment" with regard to AAC devices. However, such procedures will not authorize the Department to refuse to provide prior approval for AAC devices based on any action or failure to act by the Medicare program.

c) Recipients with Third Party Coverage. Recipients who seek funding for an AAC device, accessory or service and who have third party coverage, must submit written evidence of non-coverage with their claim for an AAC device. The denial of coverage must come from the third party provider. Recipients are not required to pursue or exhaust any available appeals offered by the third party provider before seeking Medicaid funding for an AAC device.

d) The Department may pursue reimbursement for its outlays from Third Party providers for Medicaid recipients' AAC devices, as permitted by federal Medicaid regulations. Medicaid recipients with Third Party health benefits coverage who are

provided AAC devices funded by the Department will cooperate with reasonable requests made by the Department's representatives in such appeals.

IV. Use of a Speech-Language Pathologist With AAC Experience To Decide AAC Device Funding Requests

6. The Department will utilize one or more Georgia licensed speech-language pathologists who have clinical experience providing evaluation and treatment services to individuals who require and use AAC devices, or a panel of speech-language pathologists with such qualifications and experience, to review and decide AAC device funding requests. The speech-language pathologists may be employed by the Department or the services of such individuals may be obtained on a consultant or contractual basis, such as with the Georgia Medical Care Foundation.

V. AAC Device Funding Request Procedures

7. Submission of Funding Requests for AAC Devices

a) Complete requests for prior approval from the Department for AAC devices will be submitted to the Department by the evaluating speech-language pathologist.

b) Requests for prior approval from the Department for AAC devices and written information to supplement and/or update an AAC device prior approval request will be addressed and submitted to:

Ms. Vangie McKenzie  
Georgia Medical Care Foundation  
57 Executive Park South, NE  
Suite 200  
Atlanta, Georgia 30329-2224  
telephone: 404-982-7851  
facsimile: 404-982-7593

8. Requests for Additional Information

a) Georgia Medicaid recipients who seek funding for AAC devices must submit the information described in Appendix A, the Department's AAC device coverage criteria.

b) When AAC device funding requests are not complete, the speech-language pathologist(s) described in paragraph 6 will pursue additional information necessary to make an informed decision consistent with the AAC device coverage criteria.

Requests for additional information will be made by the fastest and most direct means of contact that will be effective.

c) The Medicaid recipient will be notified of all requests for additional information.

VI. Relief To Be Provided To Specific Medicaid Recipients

9. Relief for Named Plaintiffs, Intervenor and Proposed Intervenor. The AAC device funding requests for the named plaintiffs, intervenors and proposed intervenors: Addie P., Wayne G., and Vernie Clifford H., have been approved.

10. Re-Review of AAC Device Funding Requests

a) Creation of a Master List of AAC Device Funding Requests: Within sixty (60) days of the date the Stipulation of Settlement and Dismissal is signed by the Court, the Department and Plaintiffs will jointly prepare a master list of all AAC device claims filed during the pendency of this action. The list shall contain the name of the recipient, the recipient's speech-language pathologist, whether the request was approved or denied, and if denied, the current status of the request.

b. AAC device funding requests for which a decision to approve or deny the requested AAC device has not been made (e.g., because the individual is dually eligible, a participant in the Early Intervention Program or a student with disabilities, or, a nursing facility or ICF or ICF/MR-DD facility resident), will be re-reviewed by the Department. The re-review will follow the following procedure:

i) the re-review procedure will commence upon the identification of the Medicaid recipient;

ii) the first step of the re-review will be a screening of the file by the Department's SLP(s) who conduct reviews of AAC device funding requests. The purpose of this screening will be to identify additional information the SLP reviewer believes is necessary to make an appropriate decision on the funding request.

iii) after the SLP file screening, notice will be given to the Medicaid recipient, speech-language pathologist and plaintiffs' counsel that a new review of the funding request will be made. The notice will be given by the most direct and expeditious means of communication that will be effective under the circumstances (e.g., telephone, facsimile);

iv) the notice will request all additional and/or updated information, if any, that the SLP reviewer identifies as being necessary to issue an informed decision, as well as any other information the recipients of the notice wish to submit for consideration;



v) the notice will state that all additional and/or updated information should be submitted within three (3) weeks of the date of the notice, and that a final decision to approve or deny the funding request will be made within two weeks after all the information is due. The notice will provide a telephone number for questions about additional information being requested to be discussed; a telephone number that will enable such information to be submitted by facsimile; and the specific address to which such information may be delivered by courier or by hand;

vi) the notice will state that delays of final decision making may be requested on behalf of the Medicaid recipient when additional and/or updated information cannot be provided within the allotted time; and

vii) written notice of the decision to approve or deny the funding request will be issued to the Medicaid beneficiary, the speech-language pathologist, and to plaintiffs' counsel.

c) For all AAC device funding requests for which a final denial decision was issued, for any reason, and for which an administrative appeal has been filed but has not yet been decided, the following procedures will be followed:

i) the funding request as well as any additional information submitted in support of the appeal will be re-reviewed by the Department's SLP reviewers not later than five (5) days after the date on which the funding request is identified by the parties;

ii) the SLP reviewers will determine whether the information in the file and any additional information submitted in support



of the appeal is sufficient to warrant the approval of the requested AAC device. For the purposes of this review, it will not be relevant that the speech-language pathology report is not current, as long as it was current when it was initially submitted to Georgia Medicaid;

iii) while conducting this file review, the SLP reviewer may seek additional and/or updated information, by the most direct and expeditious means possible;

iv) if the conclusion by the SLP reviewer is that the requested AAC device should be approved, notice of the approval will be provided, on the date the approval decision is made, to the Medicaid recipient, the speech-language pathologist, plaintiffs' counsel, and to the Administrative Law Judge;

v) the file review described herein will not affect the status of the pending appeal.

d) For AAC device funding requests that were denied, but not appealed, the Department will send written notice to the recipient as well as the evaluating speech-language pathologist, informing them that the Department now covers AAC devices and that if the recipient indicates that he or she still needs an AAC device, the original funding request will be re-reviewed under the AAC device coverage criteria adopted by the Department. The Department also will send a copy of the AAC device coverage criteria to the speech-language pathologist. Alternately, the notice will state that if the recipient needs a different AAC device that a new funding request, completed pursuant to the AAC

device coverage criteria, may be submitted on the recipient's behalf.

e) The time periods described in Paragraph 10 for the Department to complete specific actions may be extended for good cause (such as the reviewing speech-language pathologists' illness or other leave).

#### VII. Miscellaneous Provisions

11. Ongoing Oversight of AAC Device Decision Making. For a period of six (6) months after the date on which the Court signs the Stipulation of Settlement and Dismissal, the Department shall provide to Plaintiffs' counsel a copy of all correspondence to the recipient and information sources, including decisions, regarding AAC device funding requests.

12. Attorneys' Fees and Costs. The parties expressly reserve for further discussions and, as necessary, future resolution by this Court, whether plaintiffs' attorneys are entitled to any reimbursement of their attorneys' fees and costs arising in the course of this action, and if so, the appropriate manner of calculation and total amount of those fees and costs.

Dated: Ithaca, New York  
August 30, 2000

Dated: Atlanta, Georgia  
August   , 2000

Lewis Golink  
Lewis Golink  
202 East State Street  
Suite 507  
Ithaca, NY 14850  
607-277-7286

P. Brian Campbell  
P. Brian Campbell  
630 Colonial Park Dr  
Suite 120  
Roswell, GA 30075  
770-642-7975

Naomi Walker  
Georgia Advocacy Office  
100 Crescent Center Parkway  
Suite 520  
Tucker, GA 30084  
404-885-1234

Attorneys for Plaintiffs

Attorney for  
Defendants

IT IS SO ORDERED, THIS 31<sup>st</sup> DAY OF Aug, 2000.

Julie E. Carnes  
Julie E. Carnes  
United States District Judge