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(continued on next page)

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

19 Maria Marquez, Maricella Rivera,  
20 Robert Planthold,  
21 Petitioners  
22 vs.  
23 CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICES; DAVID  
24 MAXWELL-JOLLY, Director, California  
Department of Health Care Services;  
25 DOES 1 -20.  
26

27 Petition for Writ of Mandate (CCP §1085)  
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ENROBSED  
FILED  
San Francisco County Superior Court  
SEP 25 2009  
GORDON PARK-LI, Clerk  
BY: CRISTINA E. BAUTISTA  
Deputy Clerk

Case No. 09F-09-509847  
Petition for Writ of Mandate (CCP §1085)

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1 INTRODUCTION

2 1. This action challenges respondents' failure to ensure that Medi-Cal eligible  
3 individuals ("recipients") who have Other Health Coverage ("OHC") are able to obtain critical  
4 health care services through Medi-Cal, as required by law.

5 2. The Legislature established the Medi-Cal program to provide "for the health care for  
6 those aged and other persons, including family persons who lack sufficient annual incomes to  
7 meet the costs of health care, and whose other assets are so limited that their application toward  
8 the costs of such care would jeopardize the person or family's future minimum self-maintenance  
9 and security." The fundamental purpose of the program is "to afford qualifying individuals  
10 health care and remedial or preventative services, including related social services which are  
11 necessary for those receiving health care under this program." Welfare and Institutions Code  
12 (W&IC) §14000.

13 3. The Medi-Cal program pays for medically necessary health care services, including  
14 physician and hospital services, mental health services, durable medical goods, and prescription  
15 medications, among others. W&IC §14132.

16 4. Medi-Cal applicants and recipients must apply for and retain any available OHC when  
17 "no cost is involved." 22 California Code of Regulations (CCR) §50763(a)(1). Where the  
18 "same" benefit is available through OHC, it must be exhausted before Medi-Cal will cover that  
19 benefit or service. 22 CCR §§50761; 50763(a); 51005(a).

20 5. If an applicant or recipient must travel more than 60 miles or 60 minutes to obtain the  
21 benefit through the OHC or does not live within the required OHC service area, the OHC is  
22 considered "unavailable." Medi-Cal Eligibility Procedures Manual, 15A-4(h)(1) (1/16/1996). If  
23 the applicant/recipient is required to pay a deductible or co-payment in order to receive a service  
24 under OHC, that service is not considered "available" for purposes of the Medi-Cal program  
25 unless the state Medicaid agency, respondent here, makes those payments on behalf of the

1 applicant/recipient. Health Care Financing Administration (HCFA) Program Issuance,  
2 Transmittal Notice Region IV, Third Party Liability, August 6, 1986.

3 6. Respondents have a responsibility to determine whether OHC is actually available to  
4 an individual Medi-Cal recipient before denying, reducing, terminating or otherwise modifying  
5 her/his Medi-Cal benefits. 22 CCR §50765(a)(1); (a)(3); 42 USC §1396a(a)(25)(A); *see also*,  
6 W&IC §14124.90.

7 7. Respondents have failed to adopt and implement policies and procedures necessary to  
8 ensure that the same health care services to which a person is entitled under Medi-Cal are  
9 actually available through OHC before denying Medi-Cal coverage of such services. When  
10 determining whether to deny Medi-Cal coverage of a health care service for recipients who have  
11 OHC, respondents do not determine whether transportation time and/or distance make the OHC  
12 unavailable, whether co-payments or other required charges make the OHC unavailable, or  
13 whether the same benefit or scope of service is available under the OHC. As a result, Medi-Cal  
14 recipients are being illegally denied critical health and mental health care services and/or being  
15 forced to incur out-of-pocket costs for these services far in excess of that allowed under the  
16 Medi-Cal program and which they cannot afford to pay.

17 8. Petitioner Maria Marquez's eight year old son, JO, has been determined to need  
18 individual mental health psychotherapy and psycho-tropic prescription medications. Because of  
19 the family's low-income, JO is eligible for Medi-Cal benefits. JO has OHC with Kaiser  
20 Permanente ("Kaiser") through his father's employment. That OHC requires high out-of-pocket  
21 payments for the mental health services and prescription medications JO needs and also does not  
22 cover the same frequency of psychotherapy visits that JO has been determined to require to treat  
23 his mental diagnosis.

24 9. During November 2008, JO began receiving individual psychotherapy through the  
25 Medi-Cal program. In January 2009, Ms. Marquez was verbally informed that JO's Medi-Cal

1 covered mental health individual psychotherapy services were being terminated because he has  
2 OHC. Neither Ms. Marquez nor JO received a written notice, as required by law, explaining the  
3 determination of available OHC and the right to contest that determination through a state  
4 hearing prior to the termination of Medi-Cal coverage, including the right to receive continued  
5 aid pending a decision on the appeal of that termination (“aid paid pending”).

6 10. JO’s OHC is unavailable to cover the mental health services he needs because it:

- 7 • requires travel time of over 60 minutes for JO to reach the facility where OHC
- 8 mental health services are provided;
- 9 • requires co-payments for services and medications which are in excess of that
- 10 allowed under the Medi-Cal program and which JO’s family cannot afford; and
- 11 • does not provide the same frequency of therapy visits that he had been receiving
- 12 through Medi-Cal.

13 11. As a result of respondents’ abrupt and illegal termination of JO’s Medi-Cal mental  
14 health services, he lost the individual therapy that he was diagnosed as needing and his family  
15 was unable to afford the prescription medications prescribed by his mental health provider.

16 12. Petitioner Maricella Rivera is eligible for Medi-Cal based upon her status as a foster  
17 child in a low-income family. She also has OHC with Kaiser through her father’s employment.

18 13. In August 2009, Maricella’s only pair of eyeglasses was badly damaged. Eyeglasses  
19 are not a covered benefit under Maricella’s Kaiser OHC.

20 14. Eyeglasses are a covered benefit under the Medi-Cal program. When Kaiser initially  
21 referred Maricella to an outside optometrist who accepts Medi-Cal, that optometrist initially  
22 refused to bill Medi-Cal for replacement glasses because Kaiser OHC appeared in the Medi-Cal  
23 eligibility system. Maricella was never informed by respondents of her right to appeal the denial  
24 of eyeglasses or other benefits covered by Medi-Cal but not by her OHC. She was also not  
25 informed of the state policy allowing foster care children to be removed from the requirement to

1 use the OHC prior to Medi-Cal when specified barriers to accessing the OHC render it  
2 unavailable. *See*, All County Welfare Directors Letter (ACWDL) 01-61; see also, Provider  
3 Manual other z01, page 4 (August 2007).

4 15. As a result of respondents' failure to provide prompt replacement of prescription  
5 glasses through Medi-Cal, Maricella has been forced to begin the 2009 school year with a set of  
6 makeshift glasses, constructed by inserting the lenses from her broken prescription glasses into  
7 the frames of a pair of sunglasses purchased at Walmart.

8 16. This action seeks to ensure that Medi-Cal recipients are required to utilize OHC only  
9 where the same health care services are available through the OHC at no additional cost to the  
10 recipient; that recipients are provided with written notice at the time an OHC designation is  
11 entered into their Medi-Cal eligibility record explaining the OHC and when Medi-Cal covered  
12 services may still be received notwithstanding OHC; that recipients are provided a proper Notice  
13 of Action whenever a Medi-Cal benefit is denied, reduced, terminated or otherwise modified  
14 based upon OHC; that counties are able to promptly modify an OHC designation in the Medi-Cal  
15 eligibility system where necessary; and that JO's Medi-Cal mental health services are reinstated  
16 at the same amount, duration, and scope as were approved by Medi-Cal before the above-  
17 described unlawful termination of services.

#### 18 PARTIES

19 17. Petitioner Maria Marquez is a resident of San Francisco, California. She is the  
20 mother of the minor child JO, described herein, and as such has a direct beneficial interest in  
21 respondents' performance of their legal duties, as described herein.

22 18. Petitioner Maricella Rivera is a resident of Littlerock, California. She is 18 years old  
23 and is eligible for full scope Medi-Cal benefits based upon her status as a foster child in a low-  
24 income family. As such, Maricella has a direct beneficial interest in respondents' performance of  
25 their legal duties, as described herein.

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1 19. Petitioner Robert Planthold is a low-income resident of San Francisco, California.  
2 Mr. Planthold is a Medi-Cal recipient who is actively involved in low-income health issues. He  
3 was a long-time board member of a local non-profit health clinic as well as a member of the local  
4 ethics commission. While a Medi-Cal recipient, Mr. Planthold has held part-time employment  
5 which provided private OHC.

6 20. Respondent David Maxwell-Jolly is the director of respondent California Department  
7 of Health Care Services (DHCS) and in that capacity is responsible for ensuring the lawful  
8 administration of California's Medi-Cal program. Respondent Maxwell-Jolly is sued in his  
9 official capacity as director of DHCS. Respondent DHCS is the state agency charged with  
10 supervising the administration of California's Medi-Cal program (W&IC §14100.1) and ensuring  
11 that the Medi-Cal program is operated in conformity with all state and federal laws (W&IC §  
12 14154(d)).

13 21. DOES 1-20 are individuals and entities whose true names are unknown to petitioner  
14 at this time. Petitioner will seek leave of this Court to amend to state their true names and  
15 capacities when they have been ascertained.

#### 16 STATUTORY FRAMEWORK

17 22. The Medicaid program was established by Congress in 1965 at Title XIX of the  
18 Social Security Act. The purpose of the Medicaid program is to enable states "as far as  
19 practicable under the conditions [of each] state, to furnish...(1) medical assistance on behalf of  
20 families with dependent children and of aged, blind or disabled individuals whose income and  
21 resources are insufficient to meet the costs of necessary medical services..." 42 U.S.C. §1396.

22 23. Medicaid is a cooperative federal-state program. Participation by states in this  
23 program is voluntary; however, once a state elects to participate, it must comply with all  
24 requirements of the federal Medicaid Act and its implementing federal regulations. *Pottgieser v.*  
25 *Kiser* 906 F.2d 1319 (9th Cir. 1990).

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1           24. Each state's Medicaid program must be administered by a single state agency which  
2 is responsible for ensuring that the program complies with all relevant laws and regulations. 42  
3 U.S.C. §1396a(a)(5); 42 Code of Federal Regulations (CFR) §430.10.

4           25. California has elected to participate in the federal Medicaid program. Its Medicaid  
5 program, known as "Medi-Cal", is codified at Welfare & Institutions Code (W&IC) section  
6 14000 *et seq.*

7           26. Respondent DHCS is the single state agency charged with supervising the  
8 administration of California's Medi-Cal program. W&IC §14100.1 ("the department shall be the  
9 single state agency for purposes of Title XIX of the federal Social Security Act")

10           27. Respondent DHCS is the agency designated by the Legislature to ensure that the  
11 Medi-Cal program is operated in conformity with all state and federal laws. W&IC § 14154(d)  
12 (the "department is responsible for the Medi-Cal program in accordance with state and federal  
13 law.")

14           28. Respondents administer the Medi-Cal program through the counties. W&IC  
15 §14100.

16           29. In establishing Medi-Cal, the California Legislature declared its "intent...to provide,  
17 to the extent practicable,...for the health care for those aged and other persons, including family  
18 persons who lack sufficient annual incomes to meet the costs of health care, and whose other  
19 assets are so limited that their application toward the costs of such care would jeopardize the  
20 person or family's future minimum self-maintenance and security." W&IC §14000. The  
21 fundamental purpose of the program is "to afford qualifying individuals health care and related  
22 remedial or preventative services, including related social services which are necessary for those  
23 receiving health care under this program." *Id.*

24           30. The Legislature has mandated that the Medi-Cal program be administered in such a  
25 manner "so as to secure for every person the amount of aid to which he is entitled" (W&IC



1 10500) and that Medi-Cal benefits must be provided "promptly and humanely" (W&IC §10000).  
2 See also, 42 U.S.C. §1396a(a)(8) and 42 C.F.R. §435.930 (requiring that states which participate  
3 in the Medicaid program must ensure that all covered health care services are furnished with  
4 reasonable promptness to all eligible recipients); 42 U.S.C. §1396a(a)(10)(B), 42 C.F.R.  
5 §§440.230 and 440.240 (health care services made available to any recipient may not be less in  
6 amount, duration or scope than the services made available to any other eligible recipient).

7 31. California's Medi-Cal program provides coverage for a variety of health care  
8 services, including physician, hospital, dental, prescription medication, mental health services  
9 and durable medical goods. *See*, W&IC §14132 *et seq.*; 22 Cal. Code of Regs. ("CCR") §51301  
10 *et seq.*

11 32. Medi-Cal eligible recipients may not be charged co-payments for Medi-Cal covered  
12 services in excess of those charges authorized by federal and state law. W&IC §14134(a)-(g).

13 33. Medi-Cal recipients may not be denied covered services due to inability to pay a co-  
14 payment. W&IC §14134(h).

15 34. Medi-Cal recipients must be notified in writing by means of a Notice of Action  
16 ("NOA") of any action being taken that would affect their Medi-Cal eligibility or scope of  
17 benefits. This notice must include the nature of the action, the reason for the action, the right to a  
18 state hearing if dissatisfied with the action, and the circumstances under which benefits will  
19 continue if a hearing is requested. 22 CCR §§50179; 51041.1(c).

20 35. Any recipient of public social services - including Medi-Cal benefits - who is  
21 dissatisfied with any action relating to his/her receipt of benefits has the right to seek review of  
22 the action through a state administrative hearing. W&IC §10950. The hearing must be held  
23 within 30 days of a request; be conducted by a state administrative law judge ("ALJ"); and allow  
24 the recipient the opportunity to present testimony and evidence on her/his behalf and question  
25 opposing witnesses. *See, Id.* at §§ 10952, 10953, 10955. The ALJ shall issue a written hearing

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1 decision, explaining the basis for the decision. *Id.* at §10958. *See also*, 22 CCR §§50951-  
2 50953.

3 36. Recipients who appeal an action affecting their receipt of benefits within 10 days of  
4 receiving written notice of the proposed action or before the effective date of the action are  
5 entitled to continued receipt of benefits until such time as a hearing decision is issued. 22 CCR  
6 §51014.2(a)&(b). *See also*, 42 CFR §§431.210(e), 431.230, 435.930(b).

7 • **Other Health Coverage**

8 37. To receive Medi-Cal benefits, applicants and recipients must apply for and retain any  
9 available OHC when “no cost is involved.” 22 CCR §50763(a)(1). Where the same OHC  
10 service is available, it must be exhausted before Medi-Cal covered benefits will be provided. 22  
11 CCR §§50761; 50763(a); 51005(a); W&IC §14124.90..

12 38. Respondents have directed that the OHC designation may be removed from the  
13 Medi-Cal eligibility information for foster children in certain specified circumstances upon the  
14 request of a duly authorized party. A “duly authorized party” means a county welfare eligibility  
15 worker, a foster care worker, or an enrolled Medi-Cal provider. *See*, All County Welfare  
16 Directors Letter (ACWDL) 01-61; *see also*, Provider Manual other z01 (August 2007).

17 39. Medi-Cal applicants and recipients must assign their rights to third party payments,  
18 including OHC, to respondents. 42 USC §1396a(a)(25)(H); 42 USC §1396k(a)(1)(A). Through  
19 the counties, respondents have a responsibility to determine whether OHC is available. 22 CCR  
20 §§50765(a)(1); (a)(3); 42 USC §1396a(a)(25)(A). *See*, 22 CCR §50769 (providing that  
21 respondents may remove the OHC designation from a recipient’s Medi-Cal eligibility status upon  
22 receipt from the provider of a notice of denial of service by OHC.)

23 40. Where the State determines that a liable third party/OHC exists, the State must either  
24 “cost avoid” or “pay and chase.” *See* 42 USC § 1396a(a)(25); 42 CFR § 433.139. Cost  
25 avoidance is when Medicaid/Medi-Cal does not pay the medical expense and the provider of

1 services bills and collects from the liable third party. 42 USC § 1396a(a)(25)(A); 42 CFR §  
2 433.139(b)(1); *see also* U.S. Dep't of Health and Human Services ("HHS"), Centers for  
3 Medicare and Medicaid Services ("CMS"), The State Medicaid Manual, Publication # 45, 3901,  
4 3-10-5, *available at*  
5 [http://www.cms.hhs.gov/Manuals/PBM/itemdetail.asp?filterType=none&filterByDID=-](http://www.cms.hhs.gov/Manuals/PBM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS021927&intNumPerPage=10)  
6 [99&sortByDID=1&sortOrder=ascending&itemID=CMS021927&intNumPerPage=10](http://www.cms.hhs.gov/Manuals/PBM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS021927&intNumPerPage=10)  
7 [hereinafter, "State Medicaid Manual"]. Pay and chase is when the State pays the medical bill  
8 and then attempts to recover the payment from the liable third party. 42 USC §§  
9 1396a(a)(25)(B), 1396a(a)(25)(H); 42 CFR §§ 433.139(b)(2) & (3), 433.139(d); *see also* State  
10 Medicaid Manual, 3901 at 3-10-5.

11 41. Where a state determines that a potential OHC exists, the "same" services at issue  
12 must be "available" at no cost to the recipient in order for the state to deny Medi-Cal payment.  
13 22 CCR §§50763(a)(1); 51005(a); HCFA Program Issuance, Transmittal Notice Region IV,  
14 Third Party Liability, August 6, 1986; 42 USC §1396a(a)(17)(B).

15 42. Medi-Cal recipients are required to use OHC prior to Medi-Cal only if the OHC is  
16 available. Respondents cannot deny Medi-Cal coverage based upon OHC services that are  
17 unavailable. 22 CCR §50763(a)(1) & (3) (recipients must utilize "available" OHC prior to  
18 utilizing Medi-Cal coverage.)

19 43. OHC is considered unavailable where:

- 20 • the individual lives outside of the health plan's specified geographic service area
- 21 or the plan requires the use of specified health care providers and the individual
- 22 lives more than 60 miles or 60 minutes travel time from the specified provider(s);
- 23 • a parent or guardian refuses to provide the necessary information concerning a
- 24 child's OHC due to "good cause," as set out at 22 CCR §50771.5.

25 Medi-Cal Eligibility Procedures Manual, 15A-3 (1/16/1996). *See also*, HCFA Program Issuance,

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1 Transmittal Notice Region IV, Third Party Liability, August 6, 1986. (If geographic distance and  
2 extenuating circumstances related to transportation prevent an individual from accessing the  
3 OHC services, those services are considered unavailable for Medicaid/Medi-Cal purposes.)

4 44. Nevertheless, respondents do not determine whether OHC is actually available to  
5 cover the health care services a Medi-Cal recipient needs. Respondents' determination is limited  
6 to whether a type of coverage is included in the OHC, e.g. whether the OHC provides coverage  
7 for prescription drugs/medical supplies, long term care, hospital in-patient, hospital out-patient,  
8 medical and allied services, vision care services, Medicare Part D, and dental services.

9 Respondents do not determine whether OHC is actually available to the recipient in the amount  
10 and scope necessary to provide the specific services the recipient needs or whether a covered  
11 service is unavailable due to travel time/travel distance or required out-of-pocket costs that the  
12 recipient cannot afford. *See*, respondents' Other Health Coverage Code Chart, at 6 (May 2007);  
13 Department of Health Care Services 6155, Question 10 (2/10).

#### 14 STATEMENT OF FACTS

15 45. As a minor child in a low-income family, Petitioner Marquez's son, JO, is eligible  
16 for full-scope Medi-Cal benefits.

17 46. In addition to qualifying for Medi-Cal benefits, JO has OHC through his father's  
18 employment.

19 47. During 2008, JO received individual psychotherapy through the San Francisco  
20 General Hospital Child and Adolescent Support, Advocacy, and Resource Center (CASARC)  
21 program. CASARC provides services, including therapy, to children and adolescents who have  
22 been physically or sexually abused or who have witnessed severe violence.

23 48. In October 2008, JO's CASARC psychotherapy services ended. His CASARC  
24 therapist diagnosed that he continued to need individual weekly psychotherapy and referred him  
25 to the San Francisco Community Behavioral Health Services' Access ("Access") program for

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1 Medi-Cal covered mental health services, including individual psychotherapy.

2 49. On or about November 2008, Access authorized Medi-Cal mental health services for  
3 JO. From December 2008 - January 2009, JO received Medi-Cal covered mental health services,  
4 including weekly individual therapy sessions, through Access.

5 50. On or about January 2009, petitioner was verbally informed by JO's Medi-Cal  
6 provider, his therapist, that Medi-Cal would no longer cover JO's mental health services because  
7 he had OHC through his father's employment. Neither petitioner nor JO received any written  
8 notice about the termination of Medi-Cal covered mental health services, as required by law,  
9 including his option to continue to receive aid paid pending the outcome of any appeal.

10 51. Prior to terminating his Medi-Cal covered services, the county failed to determine  
11 whether the OHC would be available to provide JO with the same amount of mental health  
12 services as available through Medi-Cal; what out-of-pocket costs would be charged by the OHC;  
13 and what travel time is required to reach the OHC.

14 52. JO's OHC is unavailable as a result of the travel time required to utilize the services  
15 it covers. The travel time from JO's home to the OHC location where mental health services are  
16 provided is over 60 minutes by public transportation, the only means available to JO and his  
17 family. Due to their low income, petitioner cannot afford to pay for taxi transportation.

18 53. JO's OHC is unavailable because of the out-of-pocket costs that are charged.  
19 Petitioner must pay a co-payment of \$5 per therapy session as a condition of receiving OHC  
20 service, contrary to the laws governing the Medi-Cal program.

21 54. The OHC also requires out-of-pocket payment costs for prescription medications that  
22 have ranged from \$50 - \$115 per medication. These costs are a condition for receiving services  
23 and are far in excess of that allowed under the Medi-Cal program. Because Ms. Marquez cannot  
24 afford these charges, she has been forced to skip some of JO's medications.

25 55. JO's OHC does not cover the same weekly individual therapy he had been receiving

1 previously. The OHC offers a maximum of two individual sessions per month.

2 56. As a result of the termination of JO's Medi-Cal covered mental health services, he  
3 has not been able to continue the weekly individual psychotherapy. Over the course of  
4 approximately six months, OHC provided about four individual psychotherapy sessions in  
5 addition to some group therapy sessions.

6 57. Because of the illegal termination of Medi-Cal covered services, JO has been denied  
7 treatment for serious mental health conditions. As a result, JO's health has deteriorated and his  
8 mental health condition has worsened.

9 58. Petitioner Marquez filed a written grievance and appeal with the San Francisco  
10 Mental Health Board concerning the termination of JO's Medi-Cal covered mental health  
11 services. No response was ever received.

12 59. On September 3, 2009, in response to a written demand from petitioners' counsel,  
13 respondents notified JO's counsel that his OHC designation was being removed from his Medi-  
14 Cal eligibility file. As of this filing, petitioners' counsel has been informed that JO will be  
15 authorized for Medi-Cal covered individual psychotherapy. Neither petitioner nor JO have been  
16 provided with a notice of action explaining that the OHC designation was removed or how to  
17 resume Medi-Cal covered individual psychotherapy.

18 60. Based upon her receipt of foster care benefits, Maricella Rivera is eligible for full-  
19 scope Medi-Cal benefits.

20 61. In addition to qualifying for Medi-Cal benefits, Maricella has OHC through her  
21 father's employment.

22 62. In August 2009, Maricella's only pair of eyeglasses were badly damaged and  
23 unwearable. The lenses had already been badly scratched.

24 63. When Maricella attempted to get replacement glasses through the OHC, Kaiser, she  
25 was told that her Kaiser coverage only provided eye examinations, not the eyeglasses. Medi-Cal

1 provides coverage for replacement eyeglasses. Kaiser stated that it could only provide eyeglasses  
2 to Maricella through Medi-Cal if the OHC code was removed by respondents or if her Medi-Cal  
3 was assigned to Kaiser.

4 64. Kaiser referred Maricella to an outside optometrist who accepts Medi-Cal; however,  
5 that optometrist stated that he was unable to bill Medi-Cal for the glasses due to the presence of  
6 the OHC designation.

7 65. Eventually, Virginia Ochoa, Maricella's grandmother/foster mother, contacted the  
8 Health Consumer Center at Neighborhood Legal Services of Los Angeles County for assistance  
9 with getting Medi-Cal coverage for Maricella's eyeglasses. With counsel's assistance, Ms.  
10 Ochoa obtained a letter from Kaiser stating that it does not cover eyeglasses. Ms. Ochoa took the  
11 letter to the optometrist who agreed to submit the claim to Medi-Cal.

12 66. On September 3, 2009, in response to a written demand from petitioners' counsel,  
13 respondents notified counsel that Maricella's OHC designation was being removed from her  
14 Medi-Cal eligibility file. As of this filing, respondents have not issued a decision approving  
15 Medi-Cal coverage for Maricella's glasses.

16 67. As a result of the delay in getting Medi-Cal to cover replacement eyeglasses,  
17 Maricella has been forced to start the 2009 school year with makeshift glasses. She bought a pair  
18 of over the counter sunglasses at Walmart with a similar size frame as her eyeglasses and fitted  
19 her lenses into the sunglasses frame.

20 68. In January 2009, Maricella's brother, Mario, had the same problem getting his  
21 eyeglasses covered by Medi-Cal. Ms. Ochoa took Mario to a Medi-Cal accepting optometrist for  
22 a pair of eyeglasses but was informed that because his Medi-Cal eligibility file showed that he  
23 had OHC through Kaiser, the optometrist could not bill Medi-Cal. As is the case with Maricella,  
24 Mario's OHC/Kaiser coverage did not cover the necessary eyeglasses. Because Mario was  
25 getting headaches due to his immediate need for eyeglasses, Ms. Ochoa paid \$160 out-of-pocket

1 for Mario's eyeglasses.

2 **CAUSES OF ACTION**

3 **First Cause of Action**  
4 **(Violation of 22 CCR §50763(a)(1))**

5 69. Petitioners reallege and incorporate by reference each and every allegation contained  
6 within paragraphs 1 - 68, inclusive.

7 70. A Medi-Cal benefit can be denied based upon OHC only where that same benefit is  
8 available through the OHC. 22 CCR §50763(a)(1).

9 71. OHC must be considered unavailable where the individual lives outside of the health  
10 plan's specified geographic service area or the plan requires the use of specified health care  
11 providers and the individual lives more than 60 miles or 60 minutes travel time from the  
12 specified provider(s). Medi-Cal Eligibility Procedures Manual, 15A-3 (1/16/1996).

13 72. Respondents are failing to comply with their legal duty to ensure that Medi-Cal  
14 recipients have access to Medi-Cal covered benefits when the recipient's OHC services are not  
15 the same, are not actually available and/or when there is additional cost to the applicant or  
16 recipient. Respondents' actions violate the requirements of 22 CCR §50763(a)(1).

17 **Second Cause of Action**  
18 **(Violation of 22 CCR §51005(a) & Welf. & Inst. Code §14124.90)**

19 73. Petitioners reallege and incorporate by reference each and every allegation contained  
20 within paragraphs 1 - 72, inclusive.

21 74. Respondents shall require that recipients utilize OHC where duplicate coverage  
22 results in the "same benefits" being available as under the Medi-Cal program. 22 CCR  
23 §51005(a); W&IC §14124.90.

24 75. Respondents are failing to comply with their duty to ensure that the same benefits are  
25 available under OHC before denying Medi-Cal coverage. Respondents actions violate the  
26 requirements of 22 CCR §51005(a).

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1 **Fifth Cause of Action**  
2 **(Violation of 22 CCR §50179)**

3 84. Petitioners reallege and incorporate by reference each and every allegation contained  
4 within paragraphs 1 - 83, inclusive.

5 85. Respondents have a legal duty to ensure that recipients are notified by means of a  
6 lawful prior written "notice of action" (NOA) with an opportunity for aid paid pending whenever  
7 it is determined that Medi-Cal coverage will be denied based upon a determination that OHC is  
8 available.

9 86. Respondents are failing in their legal duty to ensure that all recipients are provided  
10 with a proper written NOA prior to denying or terminating Medi-Cal covered services based  
11 upon available OHC in violation of CCR §50179.

12 **Sixth Cause of Action**  
13 **(Violation of 22 CCR §51014.1(c))**

14 87. Petitioners reallege and incorporate by reference each and every allegation contained  
15 within paragraphs 1 - 86, inclusive.

16 88. Pursuant to 22 CCR §51014.1(c), a NOA to reduce or terminate authorization for a  
17 medical service prior to expiration of the period covered by the authorization must be mailed by  
18 the Department or by the Medi-Cal managed care plan to the recipient at least 10 days before the  
19 effective date of the action. The notice must include the reason for the intended action, an  
20 explanation of the right to contest the action through a state hearing and how to request a state  
21 hearing, that the recipient may be represented by legal counsel, and the circumstances under  
22 which the medical service will continue pending a decision on the hearing.

23 89. Respondents have a legal duty to ensure that the Medi-Cal program is operated in  
24 conformity with all governing laws and regulations. W&IC §§14100.1; 14154(d). Respondents  
25 are failing in their legal duty to ensure that Medi-Cal recipients who are denied Medi-Cal  
26 coverage based upon OHC are provided with a written notice which complies with the

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1 requirements of 22 CCR §51014.1(c).

2 **Seventh Cause of Action**  
3 **(Violation of 9 CCR §1850.210(a)-(g))**

4 90. Petitioners reallege and incorporate by reference each and every allegation contained  
5 within paragraphs 1 - 89, inclusive.

6 91. Pursuant to 9 CCR §1850.210, respondents have a legal duty to ensure that a Medi-  
7 Cal Mental Health Plan (MHP) recipient/beneficiary is provided with a prior written NOA when  
8 the MHP denies or modifies a Medi-Cal MHP payment authorization request from a provider for  
9 a specialty mental health service to the recipient/beneficiary. The NOA must include the reason  
10 for the action, a citation of the regulations or procedures supporting the action, the right to  
11 challenge the action through a state hearing or expedited hearing, how to request a hearing, the  
12 right to be represented at the hearing, and an explanation of the circumstances under which a  
13 specialty mental health service will be continued if a hearing is requested.

14 92. Respondents have a legal duty to ensure that the Medi-Cal program is operated in  
15 conformity with all governing laws and regulations. W&IC §§14100.1; 14154(d). Respondents  
16 are failing in their legal duty to ensure that Medi-Cal recipients who are denied Medi-Cal  
17 coverage of a specialty mental health service based upon OHC are provided with written notice  
18 which complies with the requirements of 9 CCR §1850.210(a)-(g).

19 **Eighth Cause of Action**  
20 **(Violation of Welf. and Inst. Code §§10950, 10952, 10953, 10955, 10958)**

21 93. Petitioners reallege and incorporate by reference each and every allegation contained  
22 within paragraphs 1 - 92, inclusive.

23 94. Respondents have a legal duty to ensure that any recipient of public social services -  
24 including Medi-Cal benefits - who is dissatisfied with any action relating to his/her receipt of  
25 benefits shall have the right to seek review of the action through a state administrative hearing.

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28

1 W&IC §10950. The hearing shall be held within 30 days of a request; be conducted by a state  
2 administrative law judge (“ALJ”); and allow the recipient the opportunity to present testimony  
3 and evidence on her/his behalf and question opposing witnesses. *See, Id.* at §§ 10952, 10953,  
4 10955. The ALJ shall issue a written hearing decision, explaining the basis for the decision. *Id.*  
5 at §10958.

6 95. Respondents have a legal duty to ensure that the Medi-Cal program is operated in  
7 conformity with all governing laws and regulations. W&IC §14100.1; W&IC § 14154(d).  
8 Respondents are failing to ensure that recipients who are dissatisfied with a denial or termination  
9 of Medi-Cal covered services based upon OHC are able to challenge such an action by means of  
10 a state administrative hearing in violation of W&IC §§10950, 10952, 10953, 10955 and 10958.

11 **Ninth Cause of Action**  
12 **(Violation of 22 CCR §§50951- 50953)**

13 96. Petitioners reallege and incorporate by reference each and every allegation contained  
14 within paragraphs 1 - 95, inclusive.

15 97. Medi-Cal applicants and recipients have the right to a state hearing if dissatisfied  
16 with any action of respondents themselves or the county, acting on behalf of respondents. 22  
17 CCR §§50951- 50953.

18 98. Respondents have a legal duty to ensure that the Medi-Cal program is operated in  
19 conformity with all governing laws and regulations. W&IC §§14100.1; 14154(d). Respondents  
20 are failing in their legal duty to ensure that all recipients who are dissatisfied with a  
21 determination that OHC is available and/or provides the same benefits are able to seek review of  
22 that determination through a state administrative hearing in violation of 22 CCR §§50951-50953.

23 **Tenth Cause of Action**  
24 **(Violation of Welf. and Inst. Code §10000)**

25 99. Petitioners reallege and incorporate by reference each and every allegation contained  
26 within paragraphs 1 - 98, inclusive.

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1 100. The California Legislature has mandated that all state public social service  
2 programs be "...administered and services provided promptly and humanely..." W&IC §10000.

3 101. Respondents' denial of Medi-Cal covered benefits based upon OHC where the same  
4 health care service is not available through the OHC at no cost creates needless and illegal  
5 delays, pain, and suffering, in violation of the mandates of W&IC §10000.

6 **Eleventh Cause of Action**  
7 **(Violation of Welf. and Inst. Code §10500)**

8 102. Petitioners reallege and incorporate by reference each and every allegation  
9 contained within paragraphs 1 - 100, inclusive.

10 103. The California Legislature has mandated that respondents ensure "[e]very person  
11 administering aid under any public assistance program...shall endeavor at all times to perform his  
12 duties in such a manner as to secure for every person the amount of aid to which he is entitled..."  
13 W&IC §10500.

14 104. Respondents' denial of a Medi-Cal covered benefit based upon OHC where the  
15 same benefit is not available through the OHC at no cost violates the requirements of W&IC  
16 §10500.

17 **Twelfth Cause of Action**  
18 **(Violation of Due Process of Law)**

19 105. Petitioners reallege and incorporate by reference each and every allegation  
20 contained within paragraphs 1 - 104, inclusive.

21 106. Under state law, a "person may not be deprived of life, liberty, or property without  
22 due process of law." Cal. Const. Art. I, §7.

23 107. Medi-Cal recipients have a property interest in the lawful provision of Medi-Cal  
24 benefits. Respondents' denial of the opportunity to contest through a state administrative hearing  
25 the denial of a Medi-Cal covered benefit based upon OHC is a violation of due process of law, as  
26 secured by the California Constitution.

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1 Thirteenth Cause of Action  
2 (Mandamus - CCP §1085)

3 108. Petitioners reallege and incorporate by reference each and every allegation  
4 contained within paragraphs 1 - 107, inclusive.

5 109. Respondents have a clear and present duty to administer the Medi-Cal program in  
6 conformity with all relevant laws and to ensure that all beneficiaries promptly receive all benefits  
7 for which they are eligible. As described above, respondents' denial of a Medi-Cal covered  
8 benefit based upon OHC where the same benefit is not available at no cost through the OHC  
9 constitutes a breach of this duty.

10 110. As the mother of a minor child who is a Medi-Cal recipient, petitioner Maria  
11 Marquez has a direct interest in ensuring that the Medi-Cal program is administered in a lawful  
12 manner. As a Medi-Cal eligible individual, petitioner Maricella Rivera has a direct interest in  
13 ensuring that the Medi-Cal program is administered in a lawful manner. Petitioner Robert  
14 Planthold has an interest in the Medi-Cal program being administered in a lawful manner.

15 111. Petitioners lack a plain, speedy and adequate remedy at law except by way of  
16 peremptory writ of mandate pursuant to CCP §1085.

17 WHEREFORE, petitioners pray as follows:

18 1. For a temporary restraining order, preliminary injunction, and writ of ordinary  
19 mandate pursuant to California Code of Civil Procedure (CCP) §1085 enjoining respondents  
20 from failing to take those actions necessary to ensure that:

21 A. A Medi-Cal covered benefit is denied, reduced, terminated or otherwise modified  
22 based upon OHC only when the same benefit is available at no additional cost to the recipient  
23 through the OHC;

24 B. Medi-Cal recipients whose Medi-Cal benefits are denied, reduced, terminated or  
25 otherwise modified based upon a determination that they have OHC are provided with a prior

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1 written Notice of Action, as set out above;

2 C. Medi-Cal applicants and recipients whose Medi-Cal covered benefits are denied,  
3 reduced, terminated, or otherwise modified based upon a determination that they have OHC are  
4 provided with the opportunity to contest such a determination through a state administrative  
5 hearing with aid paid pending, as set out above;

6 D. Medi-Cal recipients who incur unlawful out-of-pocket costs as a result of having their  
7 Medi-Cal covered benefits denied, reduced, terminated or otherwise modified based upon a  
8 determination of OHC are provided with a full and complete reimbursement of these out-of-  
9 pocket costs;

10 E. All Medi-Cal recipients who are determined to have OHC are provided with a written  
11 informational notice from respondents at the time OHC is entered into their Medi-Cal eligibility  
12 records, explaining the circumstances in which Medi-Cal covered benefits may still be received  
13 notwithstanding OHC and how recipients may appeal denials, reductions, terminations or other  
14 modifications to their Medi-Cal benefits based upon OHC;

15 F. Medi-Cal providers are adequately about when Medi-Cal benefits must be provided  
16 notwithstanding OHC and the providers' responsibilities to act to have OHC removed where  
17 OHC is not available for necessary services or would result in increased costs to the recipient;

18 G. ensure that counties are able to promptly modify an OHC designation in the Medi-Cal  
19 eligibility system where appropriate; and

20 H. JO's Medi-Cal covered mental health services and prescription medications are  
21 reinstated at the same amount, duration, and scope as were approved by Medi-Cal before the  
22 above-described unlawful termination of services;

23 2. For an order to respondents to pay for costs for this lawsuit;

24 3. For an order for respondents to pay for attorney' fees as allowed by law. Bay Area  
25 Legal Aid and Neighborhood Legal Services of Los Angeles County do not seek attorneys' fees;

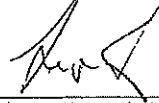
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1 and

2 4. For an award of any other relief that the Court deems just and necessary.

3

4 Date: September 25, 2009



5 Bay Area Legal Aid  
6 Youth Law Center  
7 Western Center on Law & Poverty  
8 Lucy Quacinella, Esq.  
9 Neighborhood Legal Services of Los Angeles County

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