

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**R.H.; M.L.; and H.J.,**

**Plaintiffs,**

**v.**

**BOBBY D. CAGLE**, in his official capacity as Director of the Division of Family and Children Services of the Georgia Department of Human Services;

**ROBYN A. CRITTENDEN**, in her official capacity as Commissioner of the Georgia Department of Human Services;

and

**FRANK BERRY**, in his official capacity as Commissioner of the Georgia Department of Community Health,

**Defendants.**

**Civil Action No.**

**COMPLAINT**

## PRELIMINARY STATEMENT

1. Plaintiffs are indigent individuals with physical and mental disabilities that, without reasonable accommodations, make it difficult, if not impossible, to comply with the procedural rules required to establish and maintain eligibility for Medicaid and (ii) Supplemental Nutrition Assistance Program (“SNAP” or “Food Stamps”) benefits<sup>1</sup> provided by the Division of Family and Children Services (“DFCS”) of the Georgia Department of Human Services (“DHS”).

2. Plaintiffs, who are current recipients, have lost benefits in the past because of Defendants’ failure to provide them with reasonable accommodations. They are at imminent risk of losing future benefits during the required benefit renewal process because of Defendants’ continuing failure to have adequate system-wide policies and procedures designed to ensure the provision of reasonable accommodations to public benefits applicants and recipients with disabilities. Defendants’ failure violates federal law.

3. In November, 2015, there were 255,266 blind or disabled enrollees in Georgia Medicaid, constituting 14% of all enrollees, according to Georgia data.

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<sup>1</sup> Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Pub. L. No. 110-246, §§ 4001-02. In Georgia, SNAP benefits are commonly known as “Food Stamps.” This Complaint will refer to “SNAP” and “Food Stamp” benefits synonymously.

4. In fiscal year 2014, approximately 17% of Georgia SNAP households (140,000 households) included non-elderly individuals with a disability, as defined by SNAP. Many seniors are also disabled.

5. As a result of Defendants' longstanding failure, Plaintiffs and thousands of other individuals with disabilities face a risk of the imminent loss of critical, subsistence-level benefits when—without the reasonable accommodations that DHS and DFCS are required, but fails, to provide—they cannot comply with Defendants' application and procedural rules.

6. Defendants' longstanding policies and practices result in discrimination against individuals with disabilities in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*; and implementing federal regulations.

7. Accordingly, Plaintiffs seek preliminary and permanent declaratory and injunctive relief to compel the Defendants to: (a) provide reasonable accommodations to Plaintiffs that they need to access and maintain their SNAP and/or Medicaid benefits; (b) enact, implement, and enforce statewide, systemic policies to ensure that DHS and DFCS regularly provide ongoing reasonable accommodations to Plaintiffs to ensure their meaningful access to SNAP and

Medicaid benefits; and (c) cease utilizing methods of administration that screen out Plaintiffs from obtaining and retaining Medicaid and SNAP benefits.

### **JURISDICTION AND VENUE**

8. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331.

9. Declaratory relief is authorized by 28 U.S.C. §§ 2201(a) and 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

10. Venue properly lies with this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

#### **I. Plaintiffs.**

11. R.H. is a resident of Lithonia, Georgia and is disabled by macular degeneration and, as a result, is visually impaired and cannot read small font documents, drive, or easily navigate public transportation. Yet R.H. has had Medicaid and Food Stamp benefits terminated by DFCS when DFCS failed to provide R.H. with reasonable accommodations for R.H. to renew Medicaid and Food Stamp eligibility.

12. M.L. is a resident of Atlanta, Georgia and is disabled by mental health impairments, including schizophrenia and anxiety that hinder M.L.'s judgment and

make it difficult for M.L. to understand written documents. Yet M.L. has had Food Stamp benefits terminated by DFCS when DFCS failed to provide M.L. with reasonable accommodations to help submit eligibility renewal paperwork.

13. H.J. is a resident of Savannah, Georgia, was born deaf, and requires an American Sign Language interpreter to communicate. H.J. also does not speak English well and, at times, has difficulty understanding written English. Yet H.J. has had Food Stamp benefits terminated by DFCS when DFCS failed to provide H.J. with reasonable accommodations to renew Food Stamp eligibility.

## **II. Defendants.**

14. Defendant Bobby D. Cagle, sued in his official capacity, is the Director of DFCS of the Georgia DHS and is responsible for the direct administration and issuance of Food Stamp benefits and for determining Medicaid eligibility for individuals.

15. Defendant Robyn A. Crittenden, sued in her official capacity, is the Commissioner of the Georgia DHS and is responsible for the overall operation and administration of Georgia's Food Stamp program. As Commissioner of DHS, she is also responsible for the Division of Family and Children Services which directly administers the Food Stamp program and determines eligibility for Medicaid.

16. Defendant Frank W. Berry, sued in his official capacity, is the Commissioner of the Georgia Department of Community Health (“DCH”) and is the single state agency responsible for administration of the Medicaid program in Georgia. 42 U.S.C. § 1396a(a)(5).

### **FACTUAL BACKGROUND**

#### **I. Plaintiffs’ Disabilities and Defendants’ Failure to Provide Plaintiffs’ With Reasonable Accommodations.**

##### **A. Plaintiff R.H.**

17. Plaintiff R.H is a resident of Lithonia, Georgia and receives Medicaid and Food Stamps.

18. In 2015 and 2016, Defendants terminated R.H.’s benefits despite her requests for reasonable accommodations and she reasonably fears that DFCS will continue to deny her requests for accommodation, which will lead to future terminations of her benefits.

19. R.H. is on a low-income budget and Food Stamps are important to her survival and meeting her nutritional needs. The loss of her benefits in 2015 was the first time that she had gone hungry.

20. R.H. has macular degeneration in her left eye, which causes visual impairment. Her eyesight began deteriorating approximately seven or eight years ago and she is now substantially limited in daily activities due to her loss of

eyesight. Because of her disability, R.H. cannot drive or easily navigate public transportation.

21. Because of her macular degeneration, she receives Social Security Disability Insurance (“SSDI”). Before she received SSDI, she received Supplemental Security Insurance (“SSI”).

22. R.H. has a “magnifier” or “enlarger,” a machine that she uses at home to help magnify documents, but documents can still look blurry and be difficult to read even under magnification. Further, the enlarger is backlit which puts a strain on her eyes if she uses it for long periods of time. She needs documents in at least 14 point font in order for the enlarger to function adequately. Even with the enlarger, it is difficult for R.H. to read, and especially fill out, forms. Without the enlarger, R.H. has trouble reading a font size that is less than 18-point type.

23. R.H. is required to renew her eligibility for Food Stamps and Medicaid every twelve months.

24. Since at least 2013, R.H. has repeatedly told DFCS workers about her disabling condition and requested that DFCS send her documents in a font size that she can read.

25. On information and belief, DFCS does not provide any of its Medicaid and Food Stamp eligibility documents in a large (greater than 12-point)

font, and has never sent R.H. documents in a large font. DFCS has never agreed to provide documents in large font, nor has it indicated its willingness to do so.

26. In early 2015, R.H. received a renewal letter from DFCS that R.H. could not read.

27. As an alternative to her large font document request, in March 2015, R.H. informed DFCS that she may be able to complete her renewal by telephone. She also explained that when she called DFCS, she could never get through to an employee that could assist her and that her phone calls frequently went unreturned.

28. DFCS did not respond to R.H.'s March 2015 request for a reasonable accommodations in completing her SNAP and Medicaid renewals, nor did it provide any accommodation to R.H.

29. In April 2015, DFCS sent R.H. a notice terminating her SNAP and Medicaid benefits, due to her purported failure to "cooperate" in the renewal process for these benefits.

30. In May 2015, R.H. administratively appealed the decision to terminate her benefits. DFCS forwarded her appeal request to the Office of State Administrative Hearings.

31. After R.H. administratively appealed, a DFCS eligibility worker called her and told her that she should dismiss her appeal and that she would need

to reapply for benefits, in order to establish her eligibility for benefits. R.H. reluctantly agreed to dismiss the appeal and reapply because she believed the DFCS worker when they told her that there was nothing that she could do to receive an accommodation.

32. In June 2015, an attorney filed a motion to reinstate R.H.'s appeal and requested additional accommodations on her behalf. The additional accommodations requested were (i) an extension of time for her renewal and (ii) assistance with the renewal process. DFCS finally called R.H. to complete her renewal a week before the scheduled June administrative hearing. This resulted in restoration of her benefits.

33. In a narrative report, the DFCS agent described R.H. as "in tears" while she explained that she was visually impaired and that DFCS continued to close her cases without regard to her disability.

34. In February 2016, R.H. was again required to renew her eligibility for Food Stamps and Medicaid.

35. DFCS again sent R.H. a renewal form in a font size that she was unable to read.

36. R.H. informed DFCS that she could not complete the form it sent her, due to her inability to read the document. She again requested a reasonable accommodation to enable her to complete the form.

37. A DFCS eligibility worker told her that they could not assist her with completing the paperwork over the phone. No DFCS worker offered to provide her with forms in large font. Instead, the agent told her that she would need to ask a friend to become her authorized representative.

38. R.H. found a friend to assist her and turned her renewal form, which was received by DFCS on March 7, 2016.

39. DFCS still withheld her benefits for the month of April 2016 until an attorney contacted DFCS about the problem on her behalf.

40. In March 2017, her renewal period was again coming up. On March 13, 2017, R.H. again called DFCS. After leaving a message, an eligibility worker called her back. R.H. informed the operator that she was visually impaired and could not fill out the required paperwork, and requested a phone interview instead.

41. The operator informed R.H. that she needed to speak with the Senior SNAP office, and gave R.H. both the number to the main office, and also the direct line of Mr. Brakefield, saying that it would be easier to have someone's direct

contact information. That same day R.H. called Mr. Brakefield at the number given, but the number had been disconnected.

42. Upon information and belief, Mr. Brakefield retired from DCFS in November 2016.

43. That same day, R.H. called the main number for the Senior SNAP office. She got a recorded message which said to leave a message and someone would call back that afternoon.

44. R.H. did not receive a call back until March 16, 2017, the day before R.H.'s renewal form was due. When an operator called her on March 16, R.H. again stated that she is visually impaired and requested a phone interview, but the operator said that DCFS did not offer phone interviews anymore. The operator told R.H. that she would send the renewal papers for R.H. to fill out, but they would be late. R.H. requested that the operator highlight in yellow the areas that she had to fill out, and the operator agreed to do so.

45. R.H. subsequently received highlighted renewal papers. Though caseworker had highlighted the areas that R.H. needed to complete, the documents were still in small print and R.H. had to seek the help of family members to complete and send back her renewal. Had DFCS provided the assistance she requested to complete the renewal form over the phone and to provide her with

communications in large font, R.H. could have completed her renewal independent of family or friends.

46. DFCS has not provided R.H. with any meaningful, sustained accommodations as requested by Plaintiff to assist her with renewing her eligibility for benefits. Without a record of her disability and reasonable accommodations, R.H. will have to go through this entire process when she needs to renew her benefits again in twelve months. R.H. reasonably fears, future interruptions to her benefits due to Defendants' failure to provide her with accommodations.

**B. Plaintiff M.L.**

47. Plaintiff M.L. is a resident of Atlanta, Georgia and receives Food Stamps and SSI, based on disability. M.L. suffers from generalized anxiety and schizophrenia symptoms. His disability substantially limits his ability to think, read, and care for himself.

48. M.L. lost benefits in three consecutive years because of Defendants' failure to provide him with a reasonable accommodation. The last time, he lost benefits for nearly three months. M.L. reasonably fears that Defendants will continue to fail to provide him with a reasonable accommodation and that, as a consequence of that failure, he will lose benefits in the future.

49. M.L. has had mental health impairments his whole life, and attended special education classes as a child. He has received treatment since at least 2005. His condition impairs his judgment and causes him to be anxious, easily-influenced, and taken advantage of financially. It is difficult for M.L. to read and respond to important documents, for example, because the “fine print” causes him to become obsessed with warnings and notices. Because of these issues, M.L. needs help and guidance to manage and organize affairs involving complicated paperwork, such as the renewal forms for his Food Stamps benefits.

50. The SSI M.L. receives is his only source of income, and he uses it for rent payments, water bills, and electricity bills. As a result, M.L. needs Food Stamps to buy food.

51. M.L. lives by himself in a one-bedroom apartment. He has no family or friends that visit or check in on him. He has no one on to help him with shopping, paying bills, or managing his affairs. M.L. does not have a relationship with any of his neighbors.

52. Moreover, M.L. lacks the self-awareness to express the difficulties he has to DFCS or others because of his mental health impairments. M.L. does not like to talk about or acknowledge his impairments.

53. M.L. has received Food Stamps for at least ten years. DFCS is reasonably on notice of his disability because he consistently reports, and DFCS verifies, that his main source of income is SSI, which he has received for at least ten years.

54. In September 2014, DFCS terminated M.L.'s Food Stamps because he purportedly did not complete the renewal process.

55. Prior to that termination, M.L. made every effort to complete the renewal process to the best of his abilities and understanding.

56. Because the renewal letter indicated that he could renew over the Internet, M.L. believed that he was required to do so. Because M.L. does not have a computer, he had to walk to the closest library and use a public computer to get on-line for his renewal. M.L. tried his best to fill out the on-line application, but he had difficulty understanding what it was asking, and ultimately was unable to complete it.

57. M.L. received a second letter stating that his Food Stamps would be cancelled the next month if he did not complete his renewal. In response, M.L. mailed a letter to DFCS in an attempt to provide the information he thought was required. He also attempted to call DFCS to complete his renewal. In spite of his efforts, M.L.'s Food Stamps were cancelled the following month.

58. The termination letter from DFCS included standard language below the stated “reason for termination,” that referenced a recipient’s ongoing obligation to repay overpayments under certain circumstances. Because of this language, M.L. believed he had received an overpayment and that DFCS was accusing him of fraud.

59. In October 2014, M.L. talked with an attorney and paralegal who helped him file an administrative fair hearing request and complete renewal new application online.

60. In November 2014, the paralegal who assisted M.L., informed DFCS that M.L. had mental health impairments that made the renewal process difficult for him.

61. DFCS requested paperwork showing the monthly SSI benefits for M.L., as well as his rent and the amount he pays for utilities. Despite being on notice of the disability of M.L., DFCS made no effort to recommend or seek to find a reasonable accommodation to assist M.L. with future renewals of his Food Stamp benefits.

62. In late November 2014, DFCS approved M.L.’s Food Stamp benefits after the paralegal helped him complete the paperwork and provide all of the documents requested by DFCS to verify his income.

63. Prior to the approval of his Food Stamp benefits, M.L. was forced to use his SSI to buy food, which made it very difficult for him to make ends meet.

64. In August 2015, M.L. received a renewal notice from DFCS that was just like the one he received the previous year. He again attempted to renew on-line, and made the same walk to the library to use the public computer. Just as before, M.L. had difficulty understanding the on-line application and was unable to complete it.

65. Because he was very concerned about losing his benefits again, M.L. typed and sent his own letter to DFCS explaining that he had tried to renew on-line but was unable to do so. In his letter, M.L. included all of the income information he believed was required and also provided his phone number, to make sure that DFCS had the right number call him for his interview. DFCS received this letter on September 3, 2015.

66. On September 14, 2015, M.L. DFCS mailed a letter to M.L. indicating that he had not completed his renewal or had his phone interview, and that his Food Stamps would be cancelled at the end of the month as a result.

67. Upon receiving this information, and being confused by DFCS's response to his letter, he decided to personally visit the DFCS office in Bankhead to speak with someone and to try to get his renewal completed.

68. M.L. does not have a car and paid to take MARTA to the DFCS Bankhead office. Once there, he waited in line for several hours to be helped. When it was finally his turn, a worker helped M.L. complete the on-line application.

69. Notwithstanding all of these efforts, DFCS terminated M.L.'s benefits via letter dated October 30, 2015, again citing his failure to complete the required review process.

70. According to the October 30 letter, the effective date of the termination was September 30, 2015, about a week after he completed the online renewal application.

71. As a result of the termination, M.L. did not receive Food Stamps in October 2015. During this time, M.L. had to use his SSI benefits to pay for food.

72. In November 2015, M.L. again talked with an attorney about the loss of his Food Stamps. On his behalf, an attorney sent a letter to DHS to obtain a copy of his DFCS file in order to assist M.L. in requesting a reasonable accommodation to assist him with renewing his benefits.

73. DFCS responded in writing to the attorney's letter on December 1, 2015, stating that it approved M.L.'s Food Stamp benefits retroactively to October 1, 2015.

74. On January 7, 2016, M.L., through his attorney, sent a request for reasonable accommodation to DFCS asking DFCS to: (1) provide M.L. with assistance in completing the application and obtaining third party verifications, and (2) provide M.L. with extra time to complete the renewal process. The letter notified that M.L. would need more than a single phone call to complete an interview. In addition, the letter asked that the accommodation request be referenced in M.L.'s DFCS case file in such a way as to ensure that the next person handling his renewal would know that M.L. had requested and was entitled to an accommodation.

75. On January 21, 2016, DFCS responded that the office staff was aware of the disability and could provide him with an accommodation by either assisting him with (i) understanding notices and/or (ii) completing forms and gathering verifications, but only if he specifically requested the accommodation at the time of his next Food Stamp renewal. The letter also identified two DFCS workers at the Bankhead office who were assigned to his case: Ms. Tiffany Verdell and Mr. Cedrick Marshall.

76. When it was time to renew in 2016, M.L. again took MARTA to the Bankhead DFCS office to get help with his paperwork and to see his case workers, who M.L. understood were supposed to help him with the renewal. M.L. was not

referred to either of his assigned case workers, and instead waited in line with everyone else for general assistance. A staff worker helped M.L. complete the paper work form, but the staff worker did not complete his interview and he never saw either of his assigned case workers.

77. Instead of providing M.L. with an interview, the staff worker said he would have to return the following day. When M.L. got home that day, he realized he did not have enough money to buy the fare for the return trip the next day. Once he realized this, he called Mr. Marshall, his caseworker, and left his name, case number, and telephone number where he could be reached.

78. M.L. called Mr. Marshall several times and left several more messages, but was never able to reach him. In making every effort to speak with his caseworker, M.L. even tried calling Mr. Marshall's supervisor, Carolyn Parker, but he could not reach her either. Moreover, he could not leave her a message because her voicemail was full. During this entire time, Mr. Marshall only called M.L. one time, leaving one voicemail.

79. On October 31, 2016, DFCS mailed a letter informing M.L. that his benefits had been terminated again for failing to complete the renewal process.

80. M.L. went without Food Stamps in October, November, and through December 21, 2016.

81. During this extended period without Food Stamps, M.L. had great difficulty being able to both afford food and to pay his other bills.

82. DFCS only agreed to complete M.L.'s review in December after his attorney requested an administrative Fair Hearing and reiterated M.L.'s earlier request for extra time and assistance.

83. DFCS ultimately provided M.L. with retroactive benefits. His next renewal is September 2017. DFCS has not given any assurances to M.L. or his counsel that it would provide any reasonable accommodations to M.L. in future renewals in order to help prevent the interruption of his benefits.

84. DFCS has not provided M.L. with an adequate or timely accommodation in completing his annual renewal form. As a result, M.L. fears this pattern of confusion that repeatedly leads to the termination of his Food Stamps will only continue. M.L. is on a low-income budget and Food Stamps are important to his survival and meeting his nutritional needs.

**C. Plaintiff H.J.**

85. Plaintiff H.J. is a resident of Savannah, Georgia. She has received Food Stamps for approximately one year.

86. H.J. lost benefits in in June, 2016, because of Defendants' failure to provide her with a reasonable accommodation. H.J. reasonably fears that

Defendants will continue to fail to provide her with a reasonable accommodation and that, as a consequence of that failure, she will lose benefits in the future.

87. H.J. was born deaf, and requires an American Sign Language interpreter to communicate. She does not speak English well and cannot reliably understand written English. ASL is her first language and she has difficulty communicating in English because of her strong accent and limited English proficiency. She can read lips if someone speaks very clearly and slowly, and has limited understanding of written English, but requires an interpreter for anything beyond simple communication. She communicates via video phone for most of her needs.

88. H.J.'s source of income is SSDI and SSI, based on disability, since 1990.

89. H.J. applied for Food Stamps on January 7, 2016 with the assistance of a legal advocate.

90. The legal advocate filled out an application for H.J. online. In the application, she notified DFCS that H.J. was hearing-impaired and needed an interpreter for her interview. She requested assistance in the application for H.J. in the form of a sign-language interpreter. The legal advocate indicated on the application that H.J. uses a relay phone service.

91. DFCS called H.J. and told her that they needed verification for her case and specified the documents they needed. A DFCS worker came out to her home without an interpreter. H.J. handed her the documents they had previously discussed via phone. The worker copied them at the apartment complex's office and left. H.J. was approved for Food Stamps for six months.

92. When the time came for H.J.'s Food Stamp renewal in May 2016, DFCS sent the standard renewal notice.

93. H.J. understood from the renewal notice that she would need to take action to renew her benefits and called DFCS for help. She informed DFCS that she would like to come to the DFCS office to complete her renewal but that she would need an American Sign Language interpreter.

94. DFCS informed H.J. they could have an interpreter available at the DFCS office on June 16, 2016 at 10:15am. H.J. could not make that appointment, so it was rescheduled for June 27, 2016 at 2:00pm.

95. On June 27, 2016 a friend gave H.J. and her fiancé a ride to the Chatham County DFCS office for her appointment.

96. When H.J. was at the DFCS office, she went to get a number to be called for her appointment, but she was intercepted by a DFCS employee who asked her what she needed. She told the employee that she was there to meet with

an interpreter. The DFCS employee asked why she needed an interpreter because the employee understood her. H.J. told the employee that she needed an interpreter to help her communicate and that she had an appointment. The DFCS employee told her to wait and brought her the renewal forms to fill out.

97. H.J. filled out the forms the best she could, but was unable to complete them because she did not understand them due to the fact that she needed to talk in person with an eligibility worker through an ASL interpreter to discuss what was required.

98. She took the forms to the DFCS employee who had provided them, and the employee then brought H.J. to a line and indicated that she should wait there for the computer room, where customers can use COMPASS with the assistance of a DFCS worker.

99. When she was waiting in line, she made eye contact with another DFCS employee who came over to her. H.J. told the DFCS employee that she needed an interpreter.

100. Instead of providing H.J. with the requested interpreter, the DFCS employee took her application and indicated that the blank spaces, where H.J. was unable to complete the application absent assistance, needed to be filled in.

101. H.J. tried to tell the DFCS employee verbally that she was not comfortable completing the form because she did not understand the portions she left blank.

102. H.J. again asked the DFCS employee for an interpreter, pointing to the sign that tells DFCS customers that they are entitled to an interpreter. The DFCS worker refused the request because she claimed that she was able to adequately understand H.J.

103. The DFCS worker then indicated H.J. should sign the renewal form, which H.J. did. H.J. left her renewal forms with that DFCS worker, but waited to see if an interpreter would show up. None did, so H.J. left the DFCS office. No one from DFCS ever contacted H.J. to follow up or request additional information.

104. H.J. received a notice on June 30, 2016, from DFCS denying her Food Stamps renewal because she “did not complete the required review process.”

105. With the help of a legal advocate, H.J. administratively appealed the denial and requested a fair hearing. DFCS then reinstated her benefits.

106. While waiting for DFCS to reinstate her benefits, H.J. went without food. She had to rely on her fiancé’s family for assistance, which was limited.

107. DFCS has never offered H.J. interpretive services despite knowing of the nature of her disability. H.J. did not understand from her DFCS notices that

DFCS would provide assistance because the language in the notices is confusing to her.

108. DFCS has given H.J. no assurance or indication that it will provide her with the services of an ASL interpreter, or will conduct a home visit, with respect to her upcoming renewal for Food Stamps, which is due in June 2017. H.J. is on a low-income budget and Food Stamps are important to her survival and meeting her nutritional needs.

## **II. Applicable Statutes and Regulations.**

109. The following section reviews federal disability rights statutes and implementing regulations.

### **A. The Americans with Disabilities Act.**

110. Congress enacted the ADA to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Congress specifically found that “discrimination against individuals with disabilities persists in such critical areas as . . . access to public services.” 42 U.S.C. § 12101(a)(3).

111. Congress further declared that individuals with disabilities “continually encounter various forms of discrimination, including outright intentional exclusion . . . failure to make modifications to existing facilities and

practices, exclusionary qualification standards and criteria . . . and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.” 42 U.S.C. § 12101(a)(5).

112. The ADA provides “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1), (2).

113. The ADA defines “disability” as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(1).

114. The ADA contains express statutory rules of construction, including: “The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.” 42 U.S.C. § 12102(4)(A).

115. Title II of the ADA, which applies to state and local governments and their departments, agencies, and instrumentalities as “public entities,” 42 U.S.C. § 12131(1), specifically bars discrimination against individuals with disabilities,

with respect to access to public programs, activities, benefits, and other services.  
42 U.S.C. §§ 12131 – 12134.

116. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

117. United States Department of Justice (“DOJ”) regulations implement Subtitle A of Title II of the ADA, applicable to all programs, benefits, activities, and services provided or made available by public entities, including Defendants (with the exception of specified transportation activities). 28 C.F.R. §§ 35.101, 35.102.

118. Congress directed the DOJ regulations to be consistent with the ADA and with the coordination regulations promulgated by the former U.S. Department of Health, Education and Welfare, pursuant to Section 504 of the Rehabilitation Act of 1973. 42 U.S.C. § 12134(b).

119. The implementing DOJ regulations, 28 C.F.R. § 35.130(b)(1)(i)-(ii), specify: “A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability -- (i) Deny a qualified individual with a disability the opportunity to

participate in or benefit from the aid, benefit, or service; [or] (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others . . . .”

120. Implementing DOJ regulations further require: “A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities . . . .” 28 C.F.R. § 35.130(b)(3)(i)-(ii).

121. Implementing DOJ regulations further require public entities to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

122. Implementing DOJ regulations also mandate: “A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as

communications with others.” 28 C.F.R. § 35.160(a)(1). To achieve this mandate, public entities must “furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R. § 35.160(b)(1).

123. The type of auxiliary aid or service necessary to ensure the mandate of effective communication “will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.” 28 C.F.R. § 35.160(b)(2).

124. To ensure they are effective, public entities must provide auxiliary aids and services in a timely manner, in accessible formats, and in a way that protects the privacy and independence of the person with a disability. The public entity must also give “primary consideration” to the requests of persons with disabilities. 28 C.F.R. § 35.160(b)(2).

125. A public entity must not require a person with a disability, such as deafness, to bring another individual to interpret for him or her, 28 C.F.R.

§ 35.160(c)(1), and must not rely on a minor child to interpret or facilitate communication, except in specified emergency circumstances.

126. Implementing DOJ regulations require public entities with more than 50 employees to designate at least one person to coordinate its compliance responsibilities under the Act, and to “adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited” by the ADA. 28 C.F.R. § 35.107.

127. Implementing DOJ regulations, at 28 C.F.R. § 35.106, require public entities to make available to “applicants, participants, beneficiaries, and other interested persons information regarding the provisions of” the ADA and its applicability to the services, programs, or activities of the public entity, and further make this information available in a manner found necessary to apprise such persons of the protections against discrimination assured them by the Act.

**B. Section 504 of the Rehabilitation Act of 1973.**

128. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) provides that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under

any program or activity receiving Federal financial assistance . . . .” 29 U.S.C. § 794(a).

129. Section 504 defines the scope of “program or activity” as including “all of the operations of – a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government . . . .” 29 U.S.C. § 794(b)(1).

130. The DOJ has been charged by Executive Order with coordinating the implementation of Section 504. Its implementing regulations apply to each federal department or agency empowered to extend federal financial assistance. 28 C.F.R. §§ 41.1, 41.2.

131. The United States Department of Health and Human Services (“HHS”) regulations implementing Section 504 apply to each recipient of federal financial assistance from HHS, including Medicaid funding, and to each program or activity that receives or benefits from such assistance. 45 C.F.R. §§ 84.1, 84.2.

132. The DOJ regulations implementing Section 504 provide that “No qualified handicapped person, shall, on the basis of handicap, be excluded from

participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance,” 28 C.F.R. § 41.51(a); see also, 45 C.F.R. § 84.4(b)(1)(i) (HHS Section 504 regulations); 7 C.F.R. § 15e.130(a) (Section 504 regulations governing SNAP of the Food and Nutrition Service (“FNS”) of the U.S. Dept. of Agriculture).

133. A “recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap: (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service . . . .” 28 C.F.R. § 41.51(b)(1)(i); see also 7 C.F.R. § 15e.130(b)(1)(i) – (ii) (FNS Section 504 regulations).

134. The HHS Section 504 regulations further state that a recipient of HHS funding “may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons . . . .” 45 C.F.R. § 84.4(b)(4); 7 C.F.R. § 15e.130(b)(3) (FNS Section 504 regulations).

135. FNS Section 504 regulations further specify, as to state SNAP agencies: “State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of . . . disability. . . .”<sup>7</sup> 45 C.F.R. § 272.6(a).

136. A recipient of funding from HHS employing fifteen or more persons must designate at least one person to coordinate its compliance responsibilities under Section 504, and must “adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited” by Section 504. 45 C.F.R. § 84.7.

### **C. The Food Stamp Program.**

137. Georgia participates in the federally-funded, state administered SNAP Food Stamp program which provides food assistance benefits to needy households whose net income falls below the federal poverty line and who meet other eligibility requirements.<sup>2</sup> 7 U.S.C. § 2011 *et seq.*

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<sup>2</sup> The 2017 federal poverty guideline, published by the U.S. Department of Health and Human Services, is an annual income of \$20,420 for a family of three. 82 Fed. Reg. 8831, 8832 (Jan. 31, 2017).

138. The DHS administers the Food Stamp program in Georgia and is responsible for complying with federal Food Stamp requirements, including the certification and issuance of benefits to eligible households. 7 U.S.C. § 2020 (a) (1), (d) and (e).

139. To establish eligibility SNAP applicants must verify various eligibility factors and have a face-to-face or telephone interview with the agency. 7 C.F.R. § 273.2.

140. SNAP households may supply documentary verification in person, through the mail, by facsimile or other electronic device, or through an authorized representative.

141. The state agency must certify eligible households for a specified period, and in the case of households whose members are all aged or disabled, for a period of up to 24 months. 7 C.F.R. § 273.10 (f).

142. To receive SNAP beyond the expiration of its certification period, a household must apply for recertification (or “renewal”); provide verification; have an interview, if required; and be found eligible. 7 C.F.R. § 273.10(f), 273.14 (a).

143. In between certification reviews, Georgia SNAP recipients must report specified changes in household circumstances that affect their continuing eligibility for benefits. 7 C.F.R. § 273.12.

**D. The Medicaid Program.**

144. Georgia participates in the Medicaid program, a federal and state funded program to provide health coverage to specific categories of low-income individuals. 42 U.S.C. § 1396 *et seq.*

145. The Georgia Department of Community Health is responsible for administering Medicaid in Georgia and for complying with federal Medicaid law.

146. Georgia provides Medicaid to (i) mandatory categorically needy and (ii) certain optional categorically needy and medically needy groups as defined by federal law, including children ages one through five in families with income below 152% of the federal poverty line; children ages 6 through 18 in families with income below 138% of the poverty line; pregnant women with income below 225% of the poverty line; parents whose income is within specified eligibility limits; seniors and those with disabilities who receive SSI; individuals in institutions and some in community alternatives to institutions with incomes below 300% of the SSI benefit rate; and medically needy seniors, people with disabilities, pregnant women and children; and individuals eligible for assistance with Medicare cost-sharing. 42 U.S.C. § 1396a(a)(10)(A)(i); 42 U.S.C. § 1396a(a)(10)(A)(ii); 42 U.S.C. § 1396a(a)(10)(C); 42 U.S.C. § 1396a(a)(10)(E).

147. Medicaid provides critical health care coverage to eligible individuals through a range of federally mandated services, including physician and hospital services; laboratory and x-ray services; and nursing home services for adults over age 21, and at State option, other services such as prescription drugs, adult emergency dental care, durable medical equipment and orthotics and prosthetics. 42 U.S.C. §§ 1396a, 1396d.

148. To qualify for Medicaid, individuals must meet complex eligibility rules, including financial eligibility standards that vary by eligibility category; status requirements, such as those relating to residency and citizenship and immigration status; and procedural rules, such as eligibility verification. 42 C.F.R. §§ 435.403; 435.601; § 435.907 (Medicaid regulations of Centers for Medicare and Medicaid Services of HHS).

149. The state agency must accept applications in person, via mail or telephone, or electronically, and must assist persons seeking help with the application or renewal process. 42 C.F.R. § 435.907(a).

150. Medicaid recipients must renew their eligibility at least annually and provide verification, if required by the state agency. 42 C.F.R. § 435.935(a), (b).

151. Medicaid recipients must comply with agency requirements to timely report changes in circumstances that affect their eligibility. 45 C.F.R. § 925.916 (c).

### **III. Systemic Allegations Regarding Defendants' Administration of SNAP and Medicaid**

152. DFCS uses various access points for SNAP and Medicaid applicants and recipients to apply, submit documentation, and interact with the agency as required to establish and maintain eligibility. These access points include: (a) physical offices; (b) an online system (<https://compass.ga.gov/selfservice/>) through which applicants and recipients can get information about their benefits through online accounts, provide information, and apply for and renew benefits (with some limits); (c) a centralized telephone call center system that uses a toll-free 877 number; (d) telephone systems in local offices; and (e) acceptance of client documents sent by mail or fax.

153. DFCS operates a centralized call center for applicants and recipients to apply for and renew benefits, conduct required telephone eligibility interviews, and make inquiries regarding their case and eligibility.

154. This statewide call center number, 877-423-4746, is provided on the application form for individuals to request “help” with an application. On information and belief, the 877 number procedures continue to change.

155. Defendants' call center system has had longstanding problems providing adequate telephone access to applicants and recipients, stemming from the inability to handle high volumes of calls. This continues to result in long wait times for client service, as well as unanswered and abandoned calls.

156. On information and belief, when the call volume to the 877 number is high, callers get only an automated message to call back later and are then disconnected. They will not be called back and they cannot leave a message.

157. Applicants and recipients can visit local DFCS offices, which can accept their eligibility documents in person, by mail, or by fax.

158. Local DFCS offices have limited telephone capacity for incoming calls from applicants and recipients, who, as a result, often cannot get through or leave messages.

159. Inefficient DFCS document management processes also can often result in denial of initial or renewal applications when workers incorrectly claim that individuals did not properly or timely provide the required information.

160. DFCS primarily uses computer-generated written notices to communicate with applicants and recipients, and such notices are the only form of communication that many receive from the agency.

161. The complex content and format of many DFCS notices render them inaccessible to individuals with learning, cognitive, or behavioral disabilities.

162. Applicants and recipients with disabilities are adversely impacted by the aforementioned access issues regarding: (i) the inability to get through to the call center; (ii) the inability to reach individual workers; (iii) the incorrect contentions by DFCS workers that clients have not properly or timely submitted eligibility documentation; and (iv) the complex content and format of DFCS notices, which is compounded for individuals with disabilities.

**IV. Impact of Defendants' Policies, Procedures, and Practices on Restriction of Access of Applicants and Recipients with Disabilities to Food Stamp and Medicaid Program Benefits.**

**A. Accommodation Requirements for Benefit Applicants and Recipients with Disabilities**

163. Individuals with disabilities, including Plaintiffs, frequently have difficulty navigating DFCS procedures for applying for Food Stamps and Medicaid and verifying and maintaining eligibility. As a result, individuals with disabilities are at continuing, imminent risk of suffering delayed or lost benefits and improper denials and terminations.

164. As illustrated by the situation of Plaintiff M.L., benefits applicants and recipients with cognitive or emotional disabilities often have difficulty with the following tasks related to accessing and maintaining eligibility for Food Stamps

and Medicaid, which require that Defendants afford them reasonable accommodations:

- a. Understanding written notices related to eligibility for benefits, which requires explanation of the contents;
- b. Obtaining third-party verification documentation, and completing applications and renewal forms, which requires assistance and extension of related deadlines;
- c. Remembering or understanding the eligibility-related tasks DFCS requires of them, which requires assistance with oral and/or written explanations and reminders of and flexibility in scheduling appointments, requirements, and deadlines;
- d. Interacting with others in public, including taking public transportation and being in public settings, which requires being allowed to timely and effectively transact case-related activities by telephone, mail, facsimile, email, or through home visits.

165. As illustrated by Plaintiffs H.J. and R.H., individuals with physical disabilities frequently have difficulty with the following tasks related to accessing and maintaining eligibility for Food Stamps and Medicaid, which require that Defendants afford them reasonable accommodations:

- a. Traveling to the local DFCS office due to mobility impairments, which requires being allowed to transact case-related activities by telephone, mail, facsimile, email, or through home visits;
- b. Obtaining third-party verification documentation, which requires assistance with notifying third party sources and compiling relevant documentation;
- c. Reading or completing written forms due to blindness or serious visual impairment, which requires conversion of written materials into alternate formats, such as Braille, large font, audio recordings, or electronic formats that are compatible with assistive reading technology;
- d. Communicating orally by telephone or in person due to deafness or being hard of hearing, which requires communication through the use of American Sign Language or other interpreters, or assistive listening technology such as captioning or third-party relay operators.

166. As illustrated by the case of H.J., Defendants have failed to provide ASL interpreters when requested by deaf clients to assist them in accessing and maintaining their benefits.

167. Defendants regularly fail to provide these, and other reasonable accommodations, to assist SNAP and Medicaid applicants and recipients with disabilities to access and maintain eligibility for benefits.

168. As illustrated by Plaintiffs' experiences, Defendants' policies, procedures, and practices for administering Medicaid and Food Stamps impose barriers to accessibility and operate to screen out individuals with disabilities, thereby denying equal access to program benefits.

**B. The Impact of Georgia's Dysfunctional Administration of Food Stamp and Medicaid Eligibility Procedures on Applicants and Recipients with Disabilities.**

169. Defendants' dysfunctional administration of eligibility procedures adversely impacts benefits applicants and recipients with disabilities, including Plaintiffs, and operates to restrict or deny their access to Food Stamp and Medicaid program benefits.

170. Applicants and recipients with disabilities are adversely impacted by the aforementioned access issues regarding: (i) the inability to get through to the call center; (ii) the inability to reach individual workers; (iii) the incorrect contentions by DFCS workers that clients have not properly or timely submitted eligibility documentation; and (iv) the complex content and format of DFCS notices, which is compounded for individuals with disabilities.

171. The difficulties of applicants and recipients with disabilities that they encounter in attempting to contact DFCS by telephone, either locally or via the toll-free 877 number, restrict their ability to request accommodations and otherwise effectively communicate with the agency regarding accessing and maintaining benefits.

172. The complex content and format of many DFCS notices render them inaccessible to individuals with learning, cognitive, or behavioral disabilities who attempt to understand or use them in order to access and maintain eligibility for benefits.

173. The failure or refusal of Defendants to convert individual written notices or other written publications, forms, applications, or other communications issued to applicants and recipients into alternate formats, such as Braille, large font, audio recordings, or electronic formats that are compatible with assistive reading technology, results in denials of access to individuals who are blind or seriously visually impaired, because they cannot otherwise read these written documents.

174. These adverse impacts result in continuing, imminent risk of applicants and recipients with disabilities being denied or terminated from Food Stamp and Medicaid benefits, unless they are given reasonable accommodations

that will assist them in circumventing these access issues to establish or maintain their eligibility for benefits.

**C. Defendants' Lack of ADA Compliance Policies, Procedures, and Practices.**

175. Defendants lack implementation protocols, guidelines, or policies to operationalize and ensure their compliance with the reasonable accommodation and meaningful and equal access requirements of the ADA and Section 504.

**1. Defendants Do Not Provide Adequate Notice of Rights to Reasonable Accommodations.**

176. Defendants do not provide adequate written information to Medicaid or Food Stamps applicants, recipients, or members of the public about ADA and Section 504 rights and protections, including the right to request and obtain reasonable accommodations and receive meaningful and equal access to Medicaid and Food Stamps.

177. On information and belief, Defendants provide generic notice on several forms regarding the potential availability of assistance to Medicaid and food stamps applicants and recipients with disabilities and their right to file complaints of discrimination with federal and state agencies, including the DHS's joint "Application for Benefits," Form 297, the "Rights and Responsibilities" Form

297A, the Medicaid-only application Form 94, and the “Food Stamp/Medicaid/TANF Renewal Form” Form 508.

178. The DFCS website at [dfcs.georgia.gov](http://dfcs.georgia.gov) for Food Stamp applications has a version of Form 297 dated June, 2016. The DFCS website to apply for Medicaid has a version of Form 297 dated February, 2015, and Form 297A dated April, 2014.

179. Form 94 as revised in October 2012 is available on DHS’ On-line Directives Information System (“ODIS”) under Medicaid Forms. ODIS’s Medicaid Forms also have a version of Form 508 that is dated July, 2014. The Food Stamp Forms on ODIS include a Form 508 dated November, 2015.

180. Forms 297, 297A, 94, and 508 do not provide any specific information about the rights of individuals with disabilities to obtain reasonable accommodations to assist with applying for or retaining benefits, how to request them, how to challenge disputes regarding accommodation requests, or in otherwise obtaining equal and meaningful access to Medicaid and Food Stamps.

181. DHS’s Medicaid-only application (Form 94) generically states: “We will consider this application without regard to . . . disability....” It further states that DFCS staff will provide “assistance” if the applicant cannot “understand or complete” the application.

182. Both versions of Form 297 and Form 508 include the question “[d]oes the applicant or person applying on behalf of the applicant need assistance when communicating with us?” There are options to check including Braille, Large Print and Sign Language Interpreter.

183. Beyond basic statements of persons with disabilities simply being able to “ask” for “help” or to check a box concerning communication assistance, Form 508 does not provide specific information about the rights of individuals with disabilities to obtain reasonable accommodations to assist with applying for or retaining benefits, how to request them, how to challenge disputes regarding accommodation requests, or in otherwise obtaining equal and meaningful access to Medicaid and Food Stamps. Form 508 does not use the term “reasonable accommodation.”

184. On information and belief, Defendants’ SNAP and Medicaid notices sent individually to applicants and recipients typically and generically state: “In accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) the Department of Human Services (DHS) provides reasonable accommodations to persons with disabilities. This includes help with explaining letters and forms. If you would like a reasonable accommodation or need help with this form, please contact us at 1-877-423-4746 [the statewide call

center]. If you have a hearing impairment, call GA Relay at 1-800-255-0135, for free assistance.”

185. 10. Defendants have begun sending new notices under a pilot of its new computer system, GATEWAY, with different language, but not to all applicants or recipients of Food Stamps and Medicaid.

186. On information and belief, Defendants do not individually provide to applicants, recipients, or members of the public sufficiently adequate specific notice or information in written form about the right to request reasonable accommodations to assist in applying for or retaining benefits, how to raise disputes regarding accommodation requests, or how to otherwise obtain equal and meaningful access to Medicaid and Food Stamps.

**2. Defendants Do Not Systematically Ensure Compliance with the ADA.**

187. Defendants’ eligibility workers and case managers do not routinely use any form, procedure, protocol, or system to document, track, or confirm the disabilities of Medicaid or SNAP applicants or recipients, or to allow them to request reasonable accommodations.

188. Defendants have no uniform, written instructions or procedures for workers regarding: (a) what to do if individuals with disabilities request reasonable accommodations; (b) what types of accommodations can be requested and granted;

(c) how to respond to or decide whether to grant requests for accommodations; (d) which agency staff have authority to decide accommodation requests; (e) the standards for deciding accommodation requests; or (f) how disputes concerning accommodation requests are to be resolved.

189. Although Defendants' eligibility workers and case managers have access to SSI records indicating whether SNAP and Medicaid applicants and recipients receive disability benefits from the Social Security Administration, Defendants do not use this information to determine whether these individuals may need reasonable accommodations due to their disabilities.

190. Defendants do not routinely provide adequate training to eligibility workers, case managers, or supervisors about their responsibilities to comply with the reasonable accommodation and meaningful and equal access requirements of the ADA as they apply to Medicaid and SNAP applicants and recipients with disabilities.

191. Defendants have not routinely designated staff who have effectively coordinated agency ADA compliance responsibilities regarding Food Stamp and Medicaid applicants and recipients with disabilities." They have, at times, designed staff, but on information and belief staff has not aided Plaintiffs, with respect to their Food Stamp and Medicaid applications or renewals.

192. Defendants have not adopted and published grievance procedures providing for prompt and equitable resolution of complaints by benefits applicants and recipients with disabilities who allege and challenge actions, including the failure or refusal to grant reasonable accommodations, that would be prohibited by the ADA.

### **CLAIMS FOR RELIEF**

#### **I. First Claim: Violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Discriminatory Denial of Access Due to Exclusion and Denial of Participation**

193. The allegations in Paragraphs 1-192 of this Complaint are incorporated by reference as if set forth in their entirety.

194. Each individual Plaintiff is a “qualified individual with a disability” under the meaning of Title II of the ADA, 42 U.S.C. § 12102(1) and 28 C.F.R. § 35.104, and Section 504 of the Rehabilitation Act of 1973, at 29 U.S.C. § 705(9)(B), (20)(B) as an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by DFCS.

195. Defendants Cagle, Crittenden, and Berry are each a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1)(A), (B) and 28 C.F.R. § 35.104.

196. Defendants Cagle, Crittenden, and Berry each run a “program or activity” and are “recipients” who is extended “Federal financial assistance,” as defined by Section 504 of the Rehabilitation Act of 1973 and implementing regulations, thereby rendering Defendants subject to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d), (e); 45 C.F.R. § 84.3(f), (h), (k); 7 C.F.R. § 15b.3(f), (g).

197. Defendants’ administration of the Medicaid and Food Stamp programs further constitutes “programs or activities” which are funded in part with “Federal financial assistance,” subject to Section 504, 29 U.S.C. § 794(b)(1), and implementing regulations.

198. Through the acts and omissions alleged herein, the Defendants have, by reason of Plaintiffs’ disabilities, excluded Plaintiffs from participation in the programs, services and activities of the Medicaid and Food Stamp programs; denied Plaintiffs the benefits of the programs, services and activities; and subjected Plaintiffs to discrimination in violation of Title II of the ADA, 42 U.S.C. §12132.

199. The Defendants' acts and omissions are in violation of the equal access and nondiscrimination requirements of Title II of the ADA, and the regulations promulgated thereunder, and have resulted in injury to Plaintiffs.

200. By failing to implement a system to ensure that the Plaintiffs' rights to be free from discrimination are upheld, DFCS denies equal access to eligible applicants and recipients in violation of Title II of the ADA and implementing regulations.

**II. Second Claim: Violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Failure or Refusal to Make Reasonable Modifications**

201. The allegations in Paragraphs 1-200 of this Complaint are incorporated by reference as if set forth in their entirety.

202. Regulations implementing Title II of the ADA provide that a "public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

203. The Defendants are violating regulations implementing Title II of the ADA, 28 C.F.R. § 35.130(b)(7), by failing to make reasonable accommodations to

the known physical and mental limitations of the Plaintiffs and have not demonstrated that any required accommodations would impose an undue hardship in the operation of the Food Stamp or Medicaid programs, in violation of regulations implementing Section 504. 28 C.F.R. §§ 41.53; 42.511 (DOJ); 45 C.F.R. § 84.12 (HHS).

204. The Defendants' failure to make modifications to its policies, practices and procedures has caused harm to the Plaintiffs through the denial of benefits and services.

**III. Third Claim: Violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Discriminatory Utilization of Criteria or Methods of Administration**

205. The allegations in Paragraphs 1-204 of this Complaint are incorporated by reference as if set forth in their entirety.

206. The Defendants are using and have adopted criteria and methods of administration that have the effect of subjecting the Plaintiffs to discrimination based on disability and have defeated or substantially impaired the accomplishment of the objectives of the Defendants' Medicaid and Food Stamp programs, with respect to the Plaintiffs in violation of regulations implementing Title II of the ADA, 28 C.F.R. § 35.130(b)(3)(i) – (ii).

207. The Defendants use and have adopted criteria and methods of administration that have the effect of subjecting the Plaintiffs to discrimination based on disability and have defeated or substantially impaired the accomplishment of the objectives of the Medicaid and Food Stamp programs with respect to the Plaintiffs, in violation of 28 C.F.R. § 41.51(b)(3)(i) – (ii) (DOJ); 7 C.F.R. §§ 15b.4(b)(4)(i) – (ii); 15e.130(b)(3) (FNS); 45 C.F.R. §§ 84.4(b)(4)(i) – (ii); 84.52(a)(1) – (5) (HHS).

**IV. Fourth Claim: Violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Failure or Refusal to Provide Notice of Rights**

208. The allegations in Paragraphs 1-207 of this Complaint are incorporated by reference as if set forth in their entirety.

209. In violation of 28 C.F.R. § 35.106, Defendants fail or refuse to make information regarding Title II of the ADA and its applicability to the Food Stamps and Medicaid programs available to Plaintiffs and other individuals with disabilities, thereby preventing them from effectively exercising their rights as disabled persons to meaningful access to benefits, programs and services.

210. In violation of 45 C.F.R. § 84.52(b) (HHS) and 7 C.F.R. § 15b.7 (FNS), which implement Section 504, Defendants have continued to fail or refuse to make information regarding Section 504 and its applicability to the Medicaid

and Food Stamp programs available to Plaintiffs and other individuals with handicaps, thereby preventing them from effectively exercising their rights to meaningful access to benefits, programs and services.

**V. Fifth Claim: Violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Failure or Refusal to Provide Grievance Procedure**

211. The allegations in Paragraphs 1-210 of this Complaint are incorporated by reference as if set forth in their entirety.

212. In violation of the ADA regulations, 28 C.F.R. § 35.107(b), Defendants, who each employ 50 or more persons, have failed or refused to adopt and publish appropriate and adequate ADA grievance procedures that would reasonably allow Plaintiffs and others to file grievances and obtain prompt and equitable relief upholding their rights to be free of discrimination based on their disabilities, thereby preventing them from having the opportunity to effectively exercise their rights as persons with disabilities to meaningful and equal access, with or without reasonable modifications, to benefits, programs, and services with respect to the Food Stamps and Medicaid programs.

213. In violation of 28 C.F.R. § 35.107(b); 45 C.F.R. § 84.7(b) (HHS); 7 C.F.R. § 15b.6(b) (FNS), which implement Section 504, Defendants, who each employ 15 or more persons, have failed or refused to adopt and publish appropriate

and adequate Section 504 grievance procedures that would reasonably allow Plaintiffs and other applicants and recipients to file grievances and obtain prompt and equitable relief upholding violations of their rights to be free of discrimination based on their disabilities, thereby preventing them from having the opportunity to effectively exercise their rights as persons with handicaps to meaningful and equal access, with or without reasonable accommodations, to benefits, programs, and services with respect to the Food Stamp and Medicaid programs.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Assume jurisdiction and venue regarding this matter;
- B. Enter a declaratory judgment, in accordance with 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring that the Defendants' actions and failures or refusals to act violate federal statutes and regulations as follows:
  - 1) By excluding Plaintiffs from participation in the benefits, programs, services, and activities of Defendants, and denying Plaintiffs the benefits of these benefits, programs, services, and activities due to their disabilities and handicaps, thereby subjecting Plaintiffs to discrimination in violation of Title II of the ADA and implementing regulations and Section 504 and implementing regulations;

- 2) By failing or refusing to make reasonable modifications and accommodations to their policies, practices and procedures where necessary to avoid discrimination against the Plaintiffs on the basis of disability and handicap, with respect to accessing and maintaining eligibility for benefits, programs, and services of Defendants and failing to demonstrate that any required modifications necessary to avoid discrimination against Plaintiffs would fundamentally alter the nature of the Defendants' services, programs or activities, in violation of Title II of the ADA and implementing regulations and Section 504 of the Rehabilitation Act and implementing regulations;
- 3) By utilizing and adopting criteria and methods of administration that have the effect of subjecting the Plaintiffs to discrimination based on disability and handicap and defeating or substantially impairing the accomplishment of the objectives of the Defendants' Medicaid and Food Stamp programs, with respect to the Plaintiffs, in violation of Title II of the ADA and implementing regulations and Section 504 and implementing regulations;
- 4) By failing or refusing to make notice and information regarding Title II of the ADA and Section 504 and their applicability to the Defendants'

Food Stamp or Medicaid programs available to Plaintiffs and other individuals with disabilities, thereby preventing them from effectively exercising their rights as disabled persons with disabilities and handicaps to meaningful access to benefits, programs and services, in violation of Title II of the ADA and implementing regulations and Section 504 of the Rehabilitation Act and implementing regulations;

- 5) By failing or refusing to adopt appropriate and adequate ADA and Section 504 grievance procedures that reasonably would allow Plaintiffs and other individuals with disabilities and handicaps to file grievances and obtain relief when their rights under the ADA and Section 504 are violated, thereby preventing them from effectively having the opportunity to uphold their rights as persons with disabilities and handicaps to meaningful access, with or without reasonable modifications and accommodations, to the Food Stamp and Medicaid programs in violation of Title II of the ADA and implementing regulations and Section 504 and implementing regulations;

- C. Enter temporary, preliminary and permanent injunctive relief, pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, requiring Defendants to comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act

and the implementing federal regulations of both Acts, including the following:

- 1) Provide reasonable accommodations to Plaintiffs to enable them to comply with SNAP and Medicaid program requirements, and access and maintain their eligibility for these benefits;
- 2) Adopt, implement, and monitor statewide and systemic policies and procedures to ensure that applicants and recipients with disabilities are routinely provided with appropriate identification or screening as individuals with disabilities requiring reasonable accommodations to meaningfully access to the Medicaid and Food Stamp programs, and that they are consequently provided with such reasonable accommodations, as needed and as appropriate;
- 3) Adopt, implement, and monitor statewide and systemic policies and procedures to ensure that Plaintiffs and other applicants and recipients with disabilities are not excluded from participation in the Food Stamp and Medicaid programs or the services and activities administered by Defendants, and denied the benefits of these benefits, programs, services, and activities due to their disabilities, in violation of Title II of the ADA and implementing regulations and Section 504 and

implementing regulations;

- 4) Adopt, implement and monitor statewide and systemic policies and procedures to prevent Defendants from utilizing and adopting criteria and methods of administration that have the effect of subjecting the Plaintiffs and other individuals to discrimination based on disability and defeating or substantially impairing the accomplishment of the objectives of the Defendants' Food Stamp and Medicaid programs, with respect to the Plaintiffs and other individuals with disabilities;
- 5) Adopt, implement and monitor statewide and systemic policies and procedures designed to notify Food Stamp and Medicaid applicants and recipients, with respect to the nondiscrimination requirements of Title II of the ADA and Section 504 and their applicability to these programs;
- 6) Adopt, implement and monitor an appropriate and adequate grievance procedure providing for prompt and equitable resolution of complaints of ADA Title II violations and Section 504 violations and provide adequate, reasonable notice to applicants for and recipients of DFCS-administered benefits, programs and services of their right to file grievances;

D. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42

U.S.C. § 12205 (ADA); and 29 U.S.C. § 794(a) (Section 504); and

E. Order such other, further, or different relief as the Court deems equitable and just.

Respectfully submitted, this 24th day of April, 2017.

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**CERTIFICATE OF COMPLIANCE WITH LR 5.1**

I hereby certify that the foregoing document is written in 14 point Times New Roman font in accordance with Local Rule 5.1.

*/s/ Matthew W. Howell*

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