

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

VIRGINIA GRANT, ALANTRIS )  
MUHAMMAD, CYNTHIA SYLVIA, and )  
SERVICE EMPLOYEES )  
INTERNATIONAL UNION )  
HEALTHCARE ILLINOIS & INDIANA, )

Plaintiffs, )

v. )

JAMES T. DIMAS, in his official capacity as )  
SECRETARY OF THE STATE OF )  
ILLINOIS DEPARTMENT OF HUMAN )  
SERVICES, and MICHAEL M. HOFFMAN, )  
in his official capacity as ACTING )  
DIRECTOR OF THE STATE OF ILLINOIS )  
DEPARTMENT OF CENTRAL )  
MANAGEMENT SERVICES, )

Defendants. )

No. \_\_\_\_\_

IN CHANCERY  
FOR CLASS ACTION & INJUNCTION /  
TEMPORARY RESTRAINING ORDER

**CLASS ACTION COMPLAINT FOR MANDAMUS**

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Virginia Grant, Alantris Muhammad, Cynthia Sylvia,  
and Service Employees International Union,  
Healthcare Illinois and Indiana

Plaintiffs Virginia Grant, Alantris Muhammad, Cynthia Sylvia, and Service Employees International Union, Healthcare Illinois and Indiana (“SEIU” or the “Union”) state as their complaint against Defendants James T. Dimas, in his official capacity as Secretary of the State of Illinois Department of Human Services (the “DHS Secretary”) and Michael M. Hoffman in his official capacity as Acting Director of the Illinois Department of Central Management Services (the “CMS Director”):

1. Plaintiffs seek a writ of mandamus to compel defendants to implement a \$0.48 wage increase mandated by Illinois Public Act (“P.A.”) 100-0023. Plaintiffs are State of Illinois Department of Human Services (“DHS”) Home Services Program (“HSP”) personal assistants and individual maintenance home health workers, and their exclusive bargaining representative, SEIU. P.A. 100-0023, Article 30, Section 30-20 (effective July 6, 2017) stated unequivocally that “Within 30 days after the effective date of this amendatory Act of the 100th General Assembly, the hourly wage paid to personal assistants and individual maintenance home health workers [in the DHS Home Services Program] *shall* be increased by \$0.48 per hour” (emphasis added). Thirty days after the effective date of P.A. 100-0023 was August 5, 2017. Nonetheless, and contrary to Illinois statute, the DHS Secretary and CMS Director have failed and refused to implement that wage increase. As a result of defendants’ unlawful actions, some of the State of Illinois’ lowest paid employees (personal assistants currently make only \$13 an hour), who provide the vital service of assisting people with disabilities to live safely and independently in their homes, have been denied a needed raise to which they have a legal right.

2. Plaintiff Virginia Grant is a personal assistant in the DHS Home Services Program. She has worked as an HSP personal assistant since in or about 2003. She has continued to provide HSP service hours for her HSP customers since August 5, 2017. She intends to

continue to provide HSP service hours in the future. She has submitted her timesheet to the DHS Home Service Program for the pay period covering on or about August 1, 2017 through August 15, 2017.

3. Plaintiff Alantris Muhammad is a personal assistant in the DHS Home Services Program. She has worked as an HSP personal assistant since in or about 2006. She has continued to provide HSP service hours for her HSP customer since August 5, 2017. She intends to continue to provide HSP service hours in the future. She has submitted her timesheet to the DHS Home Service Program for the pay period covering on or about August 1, 2017 through August 15, 2017.

4. Plaintiff Cynthia Sylvia a licensed practical nurse (“LPN”) individual maintenance home health worker in the DHS Home Services Program (“HSP”). She has worked as an HSP individual maintenance home health worker or personal assistant for approximately 4 or 5 years. She has continued to provide HSP service hours for her HSP customer since August 5, 2017. She intends to continue to provide HSP service hours in the future. She has submitted her timesheet to the DHS Home Service Program for the pay period covering on or about August 1, 2017 through August 15, 2017.

5. Plaintiff Service Employees International Union, Healthcare Illinois and Indiana (“SEIU” or the “Union”) is a labor organization and the exclusive bargaining representative (as referenced in Section 3(f) of the Illinois Public Labor Relations Act (5 ILCS 315/3(f)) and Section 3(f) of the Rehabilitation of Persons with Disabilities Act (20 ILCS 2405/3(f))) of the personal assistants and individual maintenance home health workers in the DHS Home Services Program. DHS Home Services Program personal assistants and individual maintenance home

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health workers are collectively referred to in this Complaint as “Individual Providers.” SEIU brings this action on behalf of the HSP Individual Providers it represents.

6. Defendant James T. Dimas (the “DHS Secretary”) is the Secretary of the State of Illinois Department of Human Services (“DHS”) and is charged with administering its programs, including the Home Services Program, established under Section 3(f) of the Rehabilitation of Persons with Disabilities Act (20 ILCS 2405/3(f)), in conformance with Illinois statutes.

7. Defendant Michael M. Hoffman (the “CMS Director”) is the Acting Director of the State of Illinois Department of Central Management Services (“CMS”) and is charged generally with administering State of Illinois labor relations, collective bargaining agreements, and employment policies in conformance with Illinois statutes.

8. The DHS Secretary and the CMS Director maintain offices and conduct business in Cook County, Illinois.

9. Section 3 of the Rehabilitation of Persons with Disabilities Act (20 ILCS 2405/3(f)) gives DHS the authority to “establish a program of services to prevent the unnecessary institutionalization of persons in need of long term care and who meet the criteria for blindness or disability as defined by the Social Security Act, thereby enabling them to remain in their own homes.” The program of services established by DHS under this authority is known as the Home Services Program (“HSP”).

10. The Home Services Program provides home care services to individuals with severe disabilities so they can remain in their homes and be as independent as possible. Such individuals are referred to by DHS as “Customers.”

11. DHS regulations provide that the Home Services Program is “a State and federally funded program designed to allow Illinois residents, who are at risk of unnecessary or

premature institutionalization, to receive necessary care and services in their homes, as opposed to being placed in an institution.” 89 Ill. Admin. Code 676.30(j).

12. HSP personal assistants provide Customers assistance with activities of daily living, which are defined in regulations as “those tasks an individual must do, or that an individual must have provided for him/her, in order to prevent institutionalization (i.e., bathing, dressing, shopping, cooking, housekeeping, etc.)” 89 Ill. Admin. Code 676.30(a).

13. HSP individual maintenance home health workers include licensed health workers, such as registered nurses, licensed practical nurses, certified nursing assistants, or physical, occupational, or speech therapists. HSP individual maintenance home health workers provide HSP customers care that is prescribed or recommended by a physician or other health care professional. *See* 89 Ill. Admin. Code § 676.40(d).

14. In any given week there are approximately 28,000 or more Individual Providers represented by SEIU working hours in the Home Services Program. HSP personal assistants make up the substantial majority of Individual Providers.

15. Home Services Program Customers hire their own Individual Providers who are paid by DHS.

16. DHS is responsible for paying the hourly wages of Home Services Program Individual Providers.

17. Home Services Program Individual Providers are paid semimonthly based on timesheets they submit to DHS certifying the HSP service hours worked by the Individual Provider during the period of time covered by the timesheet.

18. The hourly wages of HSP Individual Providers effective December 1, 2014 was as set forth in the collective bargaining agreement between SEIU and the State of Illinois

Departments of Human Services and Central Management Services with a term of July 1, 2012 to June 30, 2015, as modified by the Memorandum of Understanding on Maintenance Home Health Providers, collectively referred to as the "2012-2015 CBA." A true and correct copy of the 2012-2015 CBA, with the Memorandum of Understanding on Maintenance Home Health Providers at the end of the document, is attached as Exhibit A.

19. For example, under the 2012-2015 CBA, effective December 1, 2014, the wage for HSP personal assistants was \$13.00 per hour. On information and belief, HSP personal assistants have the lowest hourly wage of any State employees.

20. SEIU, DHS and CMS are currently in negotiations for a successor to the 2012-2015 CBA, and the wage rates set forth in the 2012-2015 CBA have remained in effect.

21. Illinois Public Act ("P.A.") 100-0023, Article 30, Section 30-20, amended Section 3(f) of the Rehabilitation of Persons with Disabilities Act adding the following sentence: "Within 30 days after the effective date of this amendatory Act of the 100th General Assembly, the hourly wage paid to personal assistants and individual maintenance home health workers shall be increased by \$0.48 per hour." P.A. 100-0023 became effective on July 6, 2017, after both houses of the General Assembly voted to override the Governor's veto of the bill. Thirty days after the effective date of P.A. 100-0023 was August 5, 2017. A true and correct copy of an excerpt of P.A. 100-0023, including Article 30, Section 30-20, is attached as Exhibit B.

22. For State of Illinois fiscal year 2018 (July 1, 2017 through June 30, 2018), Illinois P.A. 100-0021, Article 100, Section 45, appropriated \$612,774,500 to DHS for Home Services Program services. On information and belief, DHS has the legal authority to pay Individual Providers' wages from this appropriation. P.A. 100-0021 also became effective on July 6, 2017, after both houses of the General Assembly voted to override the Governor's veto of the bill. A

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true and correct copy of an excerpt of P.A. 100-0021, including Article 100, Section 45, is attached as Exhibit C.

23. Illinois P.A. 100-0021 also appropriated \$12,695,800 for fiscal year 2018 for the \$0.48 Individual Provider wage increase mandated by P.A. 100-0023. On information and belief, DHS has the legal authority to pay the cost of the \$0.48 wage increase from this appropriation.

24. According to the website of the Illinois Office of the Comptroller as viewed on September 5, 2017, the Illinois General Revenue Fund had approximately \$611,729,410 in the fund at close of business on September 1, 2017. A true and correct copy of a printout of the Illinois Office of the Comptroller website ([ledger.illinoiscomptroller.gov/printer\\_friendly/pf.cfm?cbfund=0001&Page=balance](http://ledger.illinoiscomptroller.gov/printer_friendly/pf.cfm?cbfund=0001&Page=balance)), viewed on September 5, 2017, is attached as Exhibit D.

25. On or about July 14, 2017, the attorney for SEIU sent an email to the attorney representing DHS and CMS in the negotiations for the successor to the 2012-2015 CBA, stating as follows (emphasis in original):

The newly-enacted Illinois budget (SB42 PA 100-0023) contains a mandatory \$.48/hr. increase for personal assistants and maintenance home health workers, which by law must be paid within 30 days of the bill's effective date. I calculate the deadline to be August 5, 2017.

I am attaching a copy of the bill, and the key language can be found on page 512. It reads:

**“Within 30 days after the effective date of this amendatory Act of the 100th General Assembly, the hourly wage paid to personal assistants and individual maintenance home health workers shall be increased by \$0.48 per hour.”**

The Union consents to the implementation of this statutory increase, subject to the completion of bargaining on the PA labor contract. Please confirm that the State will be timely paying the increases.

26. At a bargaining session for a successor to the 2012-2015 CBA on or about August 21, 2017, SEIU again requested DHS and CMS to implement the \$0.48 wage increase from P.A. 100-0023 for HSP Individual Providers effective August 5, 2017.

27. At the bargaining session on or about August 21, 2017, the representative for DHS and CMS informed SEIU that DHS and CMS would not implement the \$0.48 wage increase from P.A. 100-0023 effective August 5, 2017, and instead DHS and CMS would only implement the wage increase after bargaining with SEIU.

28. At the bargaining session on or about August 21, 2017, SEIU responded to the DHS and CMS representative's refusal to implement the wage increase by stating that bargaining was not necessary for DHS and CMS to implement the \$0.48 wage increase and that SEIU consented to the immediate implementation of the wage increase consistent with the mandate in P.A. 100-0023.

29. Just as with other statutory increases in minimum labor standards, such as a statutory minimum wage increase, DHS and CMS are not obligated to bargain with SEIU before implementing the \$0.48 wage increase for personal assistants and individual maintenance home health workers in P.A. 100-0023. Alternatively, to the extent such a duty to bargain exists under the Illinois Public Labor Relations Act, such duty was fulfilled when SEIU, the exclusive representative for collective bargaining purposes of HSP personal assistants and individual maintenance home health workers, consented to DHS and CMS implementing the wage increase effective August 5, 2017.

30. On information and belief, to date, DHS and CMS have not implemented the \$0.48 wage increase from P.A. 100-0023 for Individual Providers.



31. Each pay period that DHS and CMS continue to refuse to implement the \$0.48 wage increase mandated in P.A. 100-0023, Individual Providers, including plaintiffs Grant, Muhammad, and Sylvia, lose money that they are entitled to pursuant to Illinois statute.

32. Plaintiffs propose to represent a class of all HSP personal assistants and individual maintenance home health workers who have worked or will work hours in HSP since August 5, 2017.

33. The proposed class is so numerous that joinder of all members is impracticable. On information and belief, the proposed class includes more than 28,000 HSP personal assistants and individual maintenance home health workers.

34. Common questions of law and fact exist as to all proposed class members and predominate over any questions affecting only individual members of the proposed class. Plaintiffs seek a writ of mandamus premised on the common legal question of whether the defendants have the clear duty and authority to implement the \$0.48 wage increase mandated by P.A. 100-0023 for all HSP personal assistants and individual maintenance home health workers effective August 5, 2017.

35. Plaintiffs' claims are typical of the claims of the other members of the proposed class in that the \$0.48 wage increase mandated by P.A. 100-0023 applies to all HSP personal assistants and individual maintenance home health workers who work hours in HSP on August 5, 2017 or later.

36. Plaintiffs do not have interests antagonistic to, or in conflict with, the other members of the proposed class.

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37. Plaintiffs will fairly and adequately protect the interests of the other members of the proposed class, and they have retained competent counsel experienced in class action litigation to prosecute this action.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**COUNT I**  
**WRIT OF MANDAMUS**

39. Plaintiffs reallege and incorporate paragraphs 1 through 38 as this paragraph.

40. Under the plain language of P.A. 100-0023, the DHS Secretary and CMS Director have a clear duty to increase the hourly wages paid to Home Services Program personal assistants and individual maintenance home health workers by \$0.48 per hour within 30 days after the act's effective date, July 6, 2017. August 5, 2017 was thirty days after the effective date of P.A. 100-0023.

41. The DHS Secretary and CMS Director do not have the discretion to refuse to implement or to delay the \$0.48 wage increase mandated by P.A. 100-0023.

42. The DHS Secretary and CMS Director have the authority to implement the \$0.48 wage increase for Home Services Program personal assistants and individual maintenance home health workers mandated by P.A. 100-0023.

43. The General Assembly, through P.A. 100-0021, appropriated funds to DHS for Home Services Program services generally and specifically for the personal assistant and individual maintenance home health worker wage increase mandated by P.A. 100-0023.

44. On information and belief, the State of Illinois has sufficient funds to comply with a writ of mandamus, compelling the DHS Secretary and CMS Director to implement the \$0.48 wage increase mandated by P.A. 100-0023 effective August 5, 2017.

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45. The DHS Secretary and CMS Director have failed and refused to implement the \$0.48 wage increase for Home Services Program personal assistants and individual maintenance home health workers mandated by P.A. 100-0023, effective August 5, 2017.

46. The individual plaintiffs, and all similarly situated Individual Providers, have a clear and affirmative right to relief, namely a writ of mandamus ordering the DHS Secretary and CMS Director to implement the \$0.48 wage increase mandated by P.A. 100-0023 for all hours worked beginning August 5, 2017.

47. On behalf of the HSP Individual Providers it represents who have or will work hours since August 5, 2017, SEIU has a clear and affirmative right to relief, namely a writ of mandamus ordering the DHS Secretary and CMS Director to implement the \$0.48 wage increase mandated by P.A. 100-0023 for all hours worked beginning August 5, 2017.

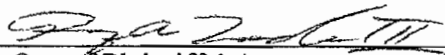
WHEREFORE, plaintiffs pray for the following relief:

- a. That the Court certify a class of all Home Services Program personal assistants and individual maintenance home health workers who have worked or will work hours in the Home Service Program since August 5, 2017, and designate the individual plaintiffs as class representatives and plaintiffs' counsel as class counsel.
- b. That the Court issue a writ of mandamus ordering the DHS Secretary and CMS Director to implement the \$0.48 per hour wage increase in P.A. 100-0023 for all Home Services Program personal assistants and individual maintenance home health workers for all hours worked beginning August 5, 2017.
- c. That the Court award plaintiffs such other relief as the Court deems equitable and just.

Respectfully submitted,

Virginia Grant, Alantris Muhammad, Cynthia,  
Sylvia, and Service Employees International  
Union, Healthcare Illinois & Indiana

Dated: September 6, 2017

  
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One of Plaintiffs' Attorneys

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