

EXHIBIT 1

D.B., et al v. Arnold-Williams, et al
U.S. District Court, Western District of Washington,
Case No. 11-cv-2017-RBL

SETTLEMENT AGREEMENT

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I. PURPOSE

1. The purpose of this Settlement Agreement (“Agreement”) is to resolve all claims raised in Plaintiffs’ Third Amended Complaint in *D.B., et al. v. Robin Arnold-Williams, et al.* (U.S. District Court, Western District of Washington, Case No. 2:11-cv-02017-RBL) (“the Action”), to terminate the Action, and to dismiss the case with prejudice.

II. PARTIES

2. This Agreement is made by and between Charles Wilen through his legal guardian Janice Wilen, and Tia Meckle through her legal guardian Cleo Meckle (together “Plaintiffs”); and Kevin Quigley in his official capacity as Secretary of the Washington State Department of Social and Health Services (“DSHS”), and Dorothy F. Teeter in her official capacity as Director of the Washington State Health Care Authority (“HCA”) (together “Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties”).

III. BACKGROUND

3. HCA administers Washington State’s Medicaid program (Social Security Act, Title XIX) in coordination with DSHS. As relevant to this Action, DSHS is charged by state law and by agreement with HCA with administering Washington’s Medicaid personal care services program.

4. “Personal care services” are services that provide physical or verbal assistance with individuals’ activities of daily living (such as dressing, bathing, and eating) and instrumental activities of daily living (such as shopping, cooking, and housekeeping).

5. DSHS authorizes paid personal care services to clients who meet functional and financial eligibility requirements under state and federal law. DSHS authorizes personal care services using an assessment known as the Comprehensive Assessment Reporting Evaluation (“CARE”),

described in Washington Administrative Code (WAC) chapter 388-106. DSHS has discretion to authorize additional hours under its Exception to Rule (ETR) process, described in WAC chapter 388-440.

6. Effective Nov. 17, 2011, DSHS adopted an emergency regulation (Wash. St. Reg. 11-23-082) changing how it calculates personal care services for individuals under age twenty-one.

7. Plaintiffs initiated this Action on December 6, 2011, alleging that by adopting Wash. St. Reg. 11-23-082, Defendants had violated federal Medicaid requirements to provide Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services (42 U.S.C. § 1396d(a)(4)(B), 1396d(r); 42 C.F.R. § 441.56). Plaintiffs subsequently alleged that Defendants' processes for authorizing Medicaid personal care services violate federal due process requirements (42 C.F.R. §§ 431.205, 431.206, 431.210). Defendants deny those allegations.

8. Shortly after the complaint was filed in this Action, Plaintiffs filed a motion for class certification, a motion for temporary restraining order, and a motion for preliminary injunction. Those motions were denied by the district court. The Parties entered into settlement negotiations shortly thereafter.

IV. JURISDICTION AND AUTHORITY OF THE COURT

9. The United States District Court has jurisdiction over the claims against all Defendants pursuant to 28 U.S.C. §§ 1331, 1343(a). Venue is proper in the Western District of Washington pursuant to 28 U.S.C. § 1391(b).

V. AGREEMENTS OF THE PARTIES

10. The Parties have reached agreement on a new "Limitation Extension" process by which individuals under age twenty-one who are eligible for Medicaid personal care services may seek additional hours of personal care services than are available through current DSHS rules.

Through the Limitation Extension process, where additional personal care assistance is necessary to correct, improve, or prevent further deterioration of a recipient's condition, DSHS will authorize additional hours in the amount required to fully complete the recipient's personal care tasks. Recipients will have the opportunity for an administrative hearing to challenge determinations DSHS makes pursuant to the Limitation Extension process.

11. The Parties have reached agreement on draft amendments to WAC 388-106 reflecting the Limitation Extension process, attached to this Agreement as Exhibit A (the "Proposed Rules"). Defendants agree to adopt and implement a Limitation Extension process substantially conforming to the process described in the Proposed Rules.

12. DSHS will initiate a rule-making process under the Administrative Procedure Act, RCW 34.05.310–395, to propose adoption of the Proposed Rules. Defendants will initiate a CR 102 process for the Proposed Rules within four weeks of the date of this Agreement.

13. The Parties recognize that DSHS has a duty under the Administrative Procedure Act to collect, consider, and respond to public comments regarding the Proposed Rules. Accordingly, Defendants cannot guarantee that the final amended rules will be identical to the Proposed Rules. DSHS agrees to discuss with Plaintiffs any modifications to the Proposed Rules DSHS is considering based on comments received in the rule-making process, prior to making any changes or filing any supplemental notice as described in RCW 34.05.340.

14. Defendants will complete the final rule adoption process expeditiously by adopting the Limitation Extension rules in final form no later than six months after initiation of the CR 102 process. The final rules will become effective 30 days after the filing of the CR 103 final rules.

15. The Limitation Extension process, as described in the rules adopted per paragraphs 11 through 14, will be available to recipients no later than the date the rules become effective.

16. Defendants will develop a notice, or update existing notice forms, to inform each recipient under age twenty-one about the availability of the Limitation Extension process. Such notices will be provided to recipients under age twenty-one at the time of each CARE assessment or post-assessment service summary, beginning no later than the effective date of the rules per paragraph 14.

17. Without waiving its authority to determine how to implement its rules and programs, DSHS agrees to provide Plaintiffs' counsel with the opportunity to review any draft notices, forms, or announcements pertaining to the Limitation Extension process prior to implementation of the new rules. DSHS will give careful consideration to Plaintiffs' counsel's comments regarding the practicality, clarity, and accuracy of those documents. The Parties will work in good faith to develop mutually acceptable documents, but DSHS will remain responsible for making the final approving decision.

18. Defendants will work in good faith to meet the various deadlines noted above. If unforeseen circumstances require a delay in this process beyond those time frames, Defendants will immediately notify Plaintiffs to explain the delay. Defendants will not be in violation of this Agreement if the reason for delay is a circumstance beyond Defendants' control or an impediment to implementation that could not have been reasonably foreseen at the date of this Agreement.

19. For two years following adoption of the final rules, Defendants will collect data regarding the usage and functioning of the Limitation Extension process. Such data will include: the number of clients who request a Limitation Extension; the number of those clients who submit documentation for consideration by the Limitation Extension committee; the number of Limitation Extension requests that are denied; the number of clients who are awarded additional

personal care services through the Limitation Extension process; the average Limitation Extension award for those clients who receive additional personal care hours through that process; the number of clients who appeal a denial of a Limitation Extension request; and the outcomes of those appeals. Reports on such data collected by Defendants will be produced semi-annually to Plaintiffs' counsel for two years following adoption of the final rules. At Plaintiffs' counsel's request, DSHS staff will meet with Plaintiffs' counsel to discuss the reports. At the same semi-annual intervals for two years following adoption of the final rules, Defendants will provide Plaintiffs' counsel with de-individualized redacted copies of all Planned Action Notices, Office of Administrative Hearings Initial Decisions, and Board of Appeals Final Decisions that deny in whole or in part requests for additional hours of personal care services pursuant to the Limitation Extension process. In the event that either Party discovers that any such document or documents are not properly redacted, Plaintiffs will promptly sequester or return such document(s), or destroy the specified document(s) or portions of a document, information, or record(s) and any copies thereof; and Defendants will reproduce such documents in properly redacted form.

VI. WAIVERS AND RELEASES

20. Defendants deny any liability or wrongdoing associated with the claims alleged in this Action, and further contend that this Action is not appropriate for class treatment. Defendants contend, among other things, that they have complied at all times with all applicable laws and waive no defenses to the claims stated in this Action.

21. Within five business days of the date of this Agreement, the Parties will jointly move the district court to enter an order dismissing this Action with prejudice under Fed. R. Civ. Proc. 41(a)(2) while retaining enforcement jurisdiction over this Agreement after the date that the

Action is dismissed. An order of dismissal retaining jurisdiction over this Agreement disposes of Plaintiffs' claims in the Action.

22. It is the intention of the Parties to fully, finally and forever settle, compromise and discharge all disputes and claims stated in the Action. It is the intention of the Parties that satisfaction of this Agreement shall result in a full and final release of DSHS and HCA and their respective agency heads; affiliated agencies including but not limited to the DSHS Developmental Disabilities Administration; their respective officers, directors, agents, employees, partners, attorneys, insurers; and their respective predecessors, successors, and assigns (the "Released Parties"), from any and all claims, complaints, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each Plaintiff had, now has, or may hereinafter claim to have against the Released Parties arising out of, or relating in any way to the adoption, implementation, and enforcement of Wash. St. Reg. 11-23-082 as to each Plaintiff and all claims that were asserted in the Third Amended Complaint filed by Plaintiffs that relate to this Action, or relating in any way to, or in any way based on the facts and circumstances alleged in the Third Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, and inclusive of any and all claims for public services, damages, all other statutory penalties and damages, including liquidated damages, all claims for failure to indemnify expenses, and all other forms of relief, including equitable relief, and all other claims alleged in this case, including claims for declaratory judgment, injunctive relief, and attorneys' fees and costs. In order to achieve a full and complete release of Defendants, each Plaintiff acknowledges that this Agreement is intended to include and is effective as to all their claims stated in this Action.

23. This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

24. Plaintiffs will not pursue any further legal action related to the facts that gave rise to this Action, so long as Defendants abide by the negotiated terms of this Agreement.

VII. OTHER PROVISIONS

25. The parties have participated and had an equal opportunity to participate in the drafting and approval of drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that the party drafted the ambiguous language.

26. Signors of this Agreement represent and warrant they have full power and authority to enter into this Agreement and to carry out all actions required of them to the extent allowed by law. Each of the signors warrants that he/she has fully read and agrees to all the terms and conditions contained herein.

27. The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions of this Agreement.

28. This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor(s) of Plaintiffs and Defendants.

29. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

Settlement Agreement, *D.B. v. Arnold-Williams*, W.D.Wa. No. 11-cv-2017-RBL

VIII. SIGNATURES

PLAINTIFFS' LEGAL GUARDIANS:

By: 
JANICE WILEN
For Charles Wilen, An Incapacitated Person

Dated: 10/17/13

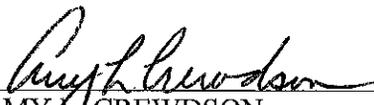
By: 
CLEO MECKLE
For Tia Meckle, An Incapacitated Person

Dated: 10/29/13

COUNSEL FOR PLAINTIFFS:

By: 
GREGORY D. PROVENZANO
Columbia Legal Services
WSBA NO. 12794

Dated: 10/31/2013

By: 
AMY L. CREWDSON
Columbia Legal Services
WSBA NO. 9468

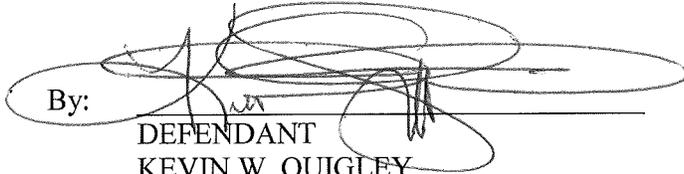
Dated: 10/29/2013

By: 
SUSAN KAS
Disability Rights Washington
WSBA NO. 36592

Dated: 10/17/13

Settlement Agreement, *D.B. v. Arnold-Williams*, W.D.Wa. No. 11-cv-2017-RBL

FOR THE STATE OF WASHINGTON:

By: 
DEFENDANT
KEVIN W. QUIGLEY
Secretary, Washington State Department of Social and Health Services

Dated: Oct 28, 2013

By: _____
DEFENDANT
DOROTHY F. TEETER, MHA
Director, Washington State Health Care Authority

Dated: _____

COUNSEL FOR DEFENDANTS:

By: _____
WILLIAM BRUCE WORK
Assistant Attorney General
WSBA NO. 33824

Dated: _____

By: _____
JONATHON BASHFORD
Assistant Attorney General
WSBA NO. 39299

Dated: _____

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FOR THE STATE OF WASHINGTON:

By: _____ Dated: _____
DEFENDANT
KEVIN W. QUIGLEY
Secretary, Washington State Department of Social and Health Services

By: *Dorothy F. Teeter* Dated: *October 21, 2013*
DEFENDANT
DOROTHY F. TEETER, MHA
Director, Washington State Health Care Authority

COUNSEL FOR DEFENDANTS:

By: *Bruce Work* Dated: *10/29/2013*
WILLIAM BRUCE WORK
Assistant Attorney General
WSBA NO. 33824

By: *Jonathon Bashford* Dated: *10/29/2013*
JONATHON BASHFORD
Assistant Attorney General
WSBA NO. 39299

EXHIBIT A

Exhibit A to Settlement Agreement, *D.B. v. Arnold-Williams*, W.D.Wa. No. 11-cv-2017-RBL

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0135 What is the maximum number of hours of personal care services that I can receive for in-home services?

1. If you are age 21 or older, ((The))the maximum number of hours that you may receive is the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized through an exception to rule per WAC 388-440-0001. For chore program clients, the maximum personal care hours per month the department will ((pay))authorize is one hundred sixteen (116).

2. If you are under age twenty-one:

a. The maximum number of hours that you may receive will be the base hours assigned to your classification group and adjusted per WAC 388-106-0130, unless additional hours are authorized under parts (2)(b) or (3) below.

b. Additional hours may be authorized at the department's discretion through an exception to rule per WAC 388-440-0001. You may request additional hours of personal care services through an exception to rule by contacting your case manager and explaining why you do not believe the authorized hours provide adequate assistance with your personal care tasks. The case manager will document your request and forward the request for review per WAC 388-440-0001. You will be notified in writing of the decision.

3. If you are under age twenty-one, the department will authorize additional hours of personal care services beyond those authorized under section (2) according to the limitation extension process described below. If the evidence shows that additional personal care assistance is necessary to correct, improve, or prevent further deterioration of your condition, the department will authorize additional hours in the amount required to fully complete your ADLs or IADLs.

a. You may request a limitation extension in writing within 90 days after you have received the department's written

Exhibit A to Settlement Agreement, *D.B. v. Arnold-Williams*, W.D.Wa. No. 11-cv-2017-RBL

decision under subsection (2)(b); or if 30 days have passed since you requested an exception to rule under subsection (2)(b) and you have not yet received a written decision from DSHS.

b. You may submit any evidence to show that additional hours of personal care are necessary. The following evidence should be provided:

- i. An explanation of the hours necessary to complete your ADLs and IADLs;
- ii. Documentation of the supports available to you over the course of a week; and,
- iii. An explanation of why informal supports are unavailable to provide the additional assistance you are requesting. When you are living with your legally responsible parent, the considerations described in WAC 388-106-0130(8)(d) apply to the determination of availability of informal supports.

c. If requested by the department, you must also provide additional documentation of your situation. If requested documents are not reasonably available to you without cost and/or if you need assistance from the department to obtain the requested documents, you must provide written permission to the department to obtain the documents on your behalf. Documents that the department may ask for include the following:

- i. Your most recent Individualized Educational Plan (IEP), if you are still in school.
- ii. Treatment plans for clinically recommended treatments relevant to your personal care services, such as active range of motion, passive range of motion, bowel program, etc.
- iii. Documents indicating residential time with your non-custodial parent or the availability of a non-custodial parent to provide assistance, such as parenting plans or child support orders. If those documents do not accurately reflect the supports currently available to you, you may also submit information or documents describing the support actually provided by your non-custodial parent.

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- d. The department may also require a further review of your functional ability to perform specific ADLs and IADLs, to be conducted at the department's expense. The review must be completed under WAC 182-551-2110 by a qualified occupational therapist. If a qualified occupational therapist is not available to complete the review, the department will designate another qualified healthcare professional to complete the review.
- e. Upon receiving your request for a limitation extension and any additional supporting information you choose to submit under subsection (3)(b), the department will make a decision according to the timeline below.
- i. The department will make a decision under subsection (3) within 30 days unless additional information is required under subsections (3)(c) and/or (3)(d).
 - ii. If additional information is required under subsections (3)(c) and/or (3)(d), the department will notify you of what additional information is required within 30 days of the date the department received your request and supporting information, if any. The department will then make a determination under subsection (3) within 15 days of either of the following, whichever comes first:
 1. The date that the department receives all of the requested information, including a report of any review of your functional ability conducted under subsection (3)(d); or,
 2. The date that you notify the department that you will not be providing any additional information.
- f. Additional hours will not be approved to substitute for the duties of legally responsible adults, replace childcare or school, replace recommended equipment available through Medicaid, or provide supervision other than task-specific supervision necessary for you to perform an ADL or IADL.

NEW SECTION

WAC 388-106-XXXX What if I disagree with the result of the Limitation Extension decision regarding personal care?

(1) In addition to your right to contest the result of your CARE assessment under WAC 388-106-1305, if you are under the age of twenty-one you have the right to an administrative hearing to contest the number of personal care hours authorized pursuant to WAC 388-106-0135(3).

(2) The department will notify you in writing of your right to an administrative hearing under sub-section (1) and will provide you with information about how to request a hearing.