

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CHRISTOPHER SCHERWITZ AND JOHN E. FIGURIED, on behalf of themselves and all others similarly situated

v.

ERIC BEANE in his official capacity as Secretary of the R.I. Executive Office of Health & Human Services,

Defendant.

CLASS ACTION COMPLAINT

Preliminary Statement

1. Plaintiffs are low-income individuals who have received an important Medicaid benefit, payment by Rhode Island Medicaid of their Part B Supplemental Medicare Insurance, and continue to be eligible for this benefit. This program is called the Medicare Payment Program (MPP). They have received inadequate written notice of MPP termination or had (or will have) their MPP benefits terminated without adequate advance notice in violation of federal law.
2. Defendant's termination of MPP benefits without adequate advance notice has caused many households to suffer as these low-income individuals are required to pay the Medicare Part B Supplement, which may be as much as \$134, out of their Social Security benefits. For low-income individuals, such a loss of income puts them at

risk of losing their homes and their utilities and deprives them of funds needed for their daily living expenses, including food.

3. Accordingly, Plaintiffs bring this action on behalf of themselves and a proposed class of similarly situated low-income individuals challenging Defendant's policies and practices of failing to provide adequate notice of terminating MPP benefits.
4. Plaintiffs seek preliminary and permanent injunctive relief enjoining Defendant (1) from terminating any MPP benefits without first providing adequate advance written notice of the reason for the termination of benefits, including the basis in regulation or statute for the termination, and (2) requiring Defendant to immediately restore individuals who have been terminated without adequate advance notice to their MPP benefits, with retroactive payment to the month of termination.

JURISDICTION

5. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts over civil actions arising under the Constitution, laws, or treaties of the United States.
6. This action is brought under 42 U.S.C. § 1983 to redress the deprivation of federal statutory and constitutional rights.

CLASS ALLEGATIONS

7. Plaintiffs bring this action under Federal Rule of Civil Procedure Rule 23(a) and (b)(2) on behalf of a class defined as follows:

All Rhode Island residents who now or in the future have received inadequate written notice of Medicare Premium Payment termination or who had (or will have) Medicare Premium Payment benefits terminated without adequate advance written notice.

8. The class is so numerous that joinder of all members is impracticable. More than a thousand Rhode Island residents receive MPP benefits. Many have had their MPP benefits terminated without adequate advance written notice, and all are at risk of having their MPP benefits terminated without adequate advance written notice.
9. There are numerous questions of fact and law common to the class concerning whether Defendant fails to provide adequate advance written notice of termination to MPP recipients.
10. The individual Plaintiffs seeking to represent the class present claims that are typical of the claims of the class. Both the named Plaintiffs and absent members of the class were terminated from MPP benefits without adequate advance written notice or have received inadequate advance notice of pending termination of their MPP benefits or are at risk of having their MPP benefits terminated without adequate advance written notice.
11. Declaratory and injunctive relief are appropriate with respect to the class as a whole, because Defendant has acted on grounds applicable to the class.
12. The named Plaintiffs and the proposed class are represented by Ellen Saideman, who is experienced in class action litigation and Medicaid litigation in federal court. She will adequately represent the class.

PARTIES

13. Plaintiff Christopher Scherwitz resides in Johnston, Rhode Island.
14. Plaintiff John Figuri resides in Cranston, Rhode Island.
15. Defendant Eric Beane is the Secretary of the Rhode Island Executive Office of Health and Human Services (EOHHS), the state agency responsible for administering the

Medicaid program in Rhode Island and ensuring compliance with federal law relating to Medicaid. R.I. Gen. Laws § 42-7.2-2(6). He is sued in his official capacity.

STATUTORY AND REGULATORY SCHEME

16. Medicaid is a joint federal and state program that provides health care coverage for low-income individuals. Medicaid is administered by states according to federal requirements set out in both statutes and regulations.
17. Among other benefits, Medicaid provides the MPP program for certain individuals who are elderly or have disabilities and are also eligible to receive Medicare benefits. The MPP program provides significant financial assistance to those who qualify: the state pays eligible recipients' monthly Medicare Part B premiums and (in some cases) Part A premiums. In 2017, the monthly Part B premium ran from \$104 to \$134 per month. The amount of an individual's monthly Medicare premium depends on several factors, including how recently s/he became eligible for Medicare and/or MPP. For eligible recipients whose countable income is no greater than 100% of the federal poverty limit, MPP benefits include both the premium payment and the elimination of Medicare cost-sharing (payment of Medicare copayments and deductibles). The MPP program has also been called the "Medicare buy-in program."
18. Rhode Island participates in both Medicaid and MPP.
19. There are thousands of low-income individuals in Rhode Island who participate in the MPP program.
20. Rhode Islanders may qualify for MPP benefits if they are eligible for Medicare, have countable income up to 135% of the Federal Poverty Level, and have resources

within federally-specified limits. Many MPP recipients live on a fixed income, generally a monthly Social Security benefit received due to age or disability.

FACTUAL ALLEGATIONS

A. Facts Common to the Class

21. Prior to September 2016, the state used a computer system called InRhodes to determine Medicaid eligibility, including MPP eligibility, and to generate MPP notices of denial or termination. Rhode Island decided to replace InRhodes with a single integrated electronic eligibility system, which would determine eligibility for all public assistance programs and for the health insurance programs, administered through the state-run health benefits exchange under the Affordable Care Act. The project was called the Unified Health Infrastructure Project, or UHIP. UHIP went live in September 2016.
22. Every month EOHHS submits a report to the federal government with a list of the individuals to be accreted to (added) or deleted from the MPP program.
23. Thus, when their accretion (addition) is effective, the SSA stops withholding the Medicare Part B Supplement from their Social Security benefits. When their terminations are effective, the SSA starts withholding the Medicare Part B Supplement from their Social Security benefits.
24. Because it takes time for the accretions and deletions to be communicated to the Social Security Administration and become effective, typically it takes several months for the changes to be effective.
25. Once the accretion is accepted, Social Security refunds the beneficiary all premiums he or she paid from the month of eligibility for MPP to the month of correction

(reinstatement) and stops deducting the monthly premium from the beneficiary's Social Security in the following month.

26. Once a deletion is effective, Social Security starts deducting the monthly premium from the beneficiary's Social Security in the following month and also deducts up to two months of premiums (one month in advance) from the beneficiary's Social Security because of the delays in communicating and implementing the deletion.
27. After UHIP went live, Rhode Island Legal Services (RILS) began getting calls from multiple clients who received notices from the Social Security Administration (SSA) saying that R.I. had stopped paying their Medicare premiums and informing them that SSA had deducted two months of premiums from their monthly Social Security benefit. The fact pattern in each case was the same: the clients reported not receiving any advance notice from EOHHS that MPP was to be terminated and that they did not know that their MPP benefits were terminated until they received the SSA notices.
28. Defendant's implementation of the UHIP program led to termination of MPP benefits without any written notice at all at least through June 2017 for a significant number of individuals who receive MPP benefits. Although EOHHS has agreed to reinstate MPP benefits for numerous individuals, it has failed to fix the problem systemically and reinstate every individual whose MPP benefits were terminated and ensure that each individual received all the retroactive benefits that were due. Thus, there are still a number of individuals whose MPP benefits were terminated without notice who still have not had their benefits reinstated, with all retroactive payments.
29. More recently, RILS has been contacted by clients who had been receiving MPP benefits with a new problem: they received a written notice from EOHHS saying that

their MPP benefits would end; the notices identified the date MPP benefits would end but did not explain why benefits were ending and contained no citation to a regulation. Each notice had the same format: the place for inserting a reason for termination (“why benefits are ending”) was left blank and “NA” was inserted into the space for inserting a citation to the relevant regulation.

30. Rhode Island is failing to provide adequate advance written notice before terminating MPP benefits.
31. In some cases, Rhode Island fails to provide any advance written notice at all before terminating MPP benefits.
32. In other cases, Rhode Island provides advance written notice that MPP benefits will be terminated but does not provide any reason for the termination.

B. Facts of Individual Named Plaintiffs

33. Christopher Scherwitz, who is 30 years old, receives Social Security Disability because of his disabilities. He began receiving SSDI in about 2014, and, at about the same time, began receiving Medicare benefits and also MPP benefits.
34. In June 2017, Mr. Scherwitz’s MPP benefits stopped, and the Social Security Administration began taking \$134 out of his benefit check every month.
35. As of January 2018, he will be receiving \$889 each month in SSDI, and \$134 will be subtracted to pay for the Medicare Part B Supplement, leaving him with \$755 in income.
36. He never received any advance written notice from the State of Rhode Island or any of its state agencies that his MPP benefits would stop.
37. The reduction of \$134 in his monthly income has been a substantial hardship. He has

had to borrow money from his mother, and, as a result, she has fallen behind in her utility payments. Both Mr. Scherwitz and his mother worry that their utilities will be shut off because she has been unable to make the payments.

38. John Figuriel is 82 years old, and he receives Social Security benefits because of his age. He began receiving Social Security benefits when he was 62 years old. He has received Medicare benefits and MPP benefits for many years.

39. In October, Mr. Figuriel received a notice from the State of Rhode Island. It stated that his MPP benefits would be ending as of October 31, 2017. The spot on the notice for the reasons why his benefits were ending was blank. No reason for the termination was given at all.

STATEMENT OF CLAIMS

FIRST CLAIM (MEDICAID)

1. The Medicaid statute requires that a State provide for procedural due process, including a fair hearing, whenever Medicaid benefits are denied. 42 U.S.C. § 1396a(a)(3).
2. The pertinent federal regulation regarding the content of the notice that must be provided when a state agency takes action terminating Medicaid services provides that a notice terminating Medicaid services must include, among other things, “[a] clear statement of the specific reasons supporting the intended action,” 42 C.F.R. § 431.210(b), and “[t]he specific regulations that support, or the change in Federal or State law that requires the action.” 42 C.F.R. § 431.210(c). *See also* 42 C.F.R. § 431.206(c)(2).
3. Defendant has either failed to provide any notice at all or has provided notice that

does not include the specific reasons for its action nor the specific regulations or change in Federal or State law that requires the action.

4. Defendant's policies, practices, and procedures of failing to provide adequate advance written notice prior to terminating individuals from the MPP program thereby violate the requirements of 42 U.S.C. § 1983, 42 U.S.C. § 1396a, 42 C.F.R. § 431.206(c)(2), and 42 C.F.R. § 431.210.

SECOND CLAIM (DUE PROCESS)

5. Defendant's policies, practices, and procedures of failing to provide adequate advance written notice and opportunity to request a fair hearing to MPP recipients violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that this Court enter judgment in favor of

Plaintiffs and the class they represent, as follows:

- A. Assume jurisdiction of this matter;
- B. Certify this action as a class action under Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure with respect to the proposed class identified herein;
- C. Declare that Defendant's policies and practices of failing to provide an adequate advance written notice and opportunity to request a fair hearing to MPP recipients prior to terminating their MPP benefits violates (1) the Medicaid statute, 42 U.S.C. § 1396a(a)(3), and regulations, 42 C.F.R. § § 431.206(c) & 431.210, and (2) the Due Process Clause of the Fourteenth Amendment to the United States

- Constitution;
- D. Preliminarily and permanently enjoin Defendant: (1) from terminating MPP benefits without adequate advance notice and (2) to reinstate individuals who were terminated from MPP benefits without adequate advance notice and instruct SSA to provide them with full retroactive benefits;
- E. Award Plaintiffs litigation costs and reasonable attorney's fees, pursuant to 42 U.S.C. § 1988; and
- F. Grant such other, further, or different relief as the Court may deem just and proper.

Respectfully submitted by:

/s/ Ellen Saideman
Ellen Saideman, Esq.
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Barrington, RI 02806
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fax 401.709.0213
esaideman@yahoo.com

Cooperating Attorney
American Civil Liberties Union Foundation
of Rhode Island

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Christopher Scherwitz and John E. Figuriel

(b) County of Residence of First Listed Plaintiff Providence (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ellen Saideman, Law office of Ellen Saideman
7 Henry Drive,
Providence, RI 02906

DEFENDANTS

Eric Beane, in his official capacity as Secretary of RI Executive Office of Health and Human Services

County of Residence of First Listed Defendant Providence (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983, 42 U.S.C. Section 1396 & 1396a

Brief description of cause:

violation of procedural due process by terminating Medicaid MPP benefits without adequate notice

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

January 2, 2018

Ellen Saideman

FOR OFFICE USE ONLY

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT
for the
District of Rhode Island

Christopher Scherwitz and John Figuriel
Plaintiff
v.
Eric Beane, in his official capacity, as Sec'y of EOHHS
Defendant
Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: Eric Beane
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from January 2, 2018, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Rhode Island Sec. of Health & Human Services Facing Lawsuit Over Shuttering of Medicare Payment Program](#)
