

APPENDIX

APPENDIX A - ORDER OF THE SUPREME COURT
OF THE STATE OF OREGON, JUNE 29, 2023

IN THE SUPREME COURT OF THE STATE OF OREGON

SHIRLEY CARTER,
Plaintiff-Appellant,
Petitioner on Review,

v.

COMMUNITY LIVING CASE MANAGEMENT, an Oregon
nonprofit corporation;
OREGON DEPARTMENT OF HUMAN SERVICES, Office
of Developmental Disabilities Services,
Defendants-Respondents,
Respondents on Review

Court of Appeals
A177519

S070181

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders
that it be denied.

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Appendix A

Meagan A. Flynn
Chief Justice, Supreme Court
6/29/2023 8:19AM

APPENDIX B – OPINION OF THE COURT OF APPEALS
OF THE STATE OF OREGON, MARCH 15, 2023

FILED: March 15, 2023

IN THE COURT OF APPEALS OF THE STATE OF
OREGON

SHIRLEY CARTER,
Plaintiff-Appellant,

v.

COMMUNITY LIVING CASE MANAGEMENT, an Oregon
nonprofit corporation;
OREGON DEPARTMENT OF HUMAN SERVICES, Office
of Developmental Disabilities Services,
Defendants-Respondents

Coos County Circuit Court
20CV44439

A177519

Megan Jacquot, Judge.

Submitted on February 03, 2023.

Before Shorr, Presiding Judge, and Mooney, Judge, and
Pagan, Judge.

Attorney for Appellant: Shirley A. Carter *pro se*.

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Attorney for Respondent Community Living Case
Management: Jacqueline Tokiko Mitchson.

Attorney for Respondent Department of Human Services:
Jeff J. Payne.

AFFIRMED WITHOUT OPINION

APPENDIX C – ORDER OF THE COURT OF APPEALS
OF THE STATE OF OREGON, APRIL 5, 2022

IN THE COURT OF APPEALS OF THE STATE OF
OREGON

SHIRLEY CARTER,
Plaintiff-Appellant,

v.

COMMUNITY LIVING CASE MANAGEMENT, an Oregon
nonprofit corporation;
OREGON DEPARTMENT OF HUMAN SERVICES, Office
of Developmental Disabilities Services,
Defendants-Respondents

Coos County Circuit Court No. 20CV44439

Court of Appeals No. A177519

ORDER REACTIVATING CASE

On January 20, 2022, the court held this appeal in
abeyance pending the trial court re-entering the general
judgment and appellant filing an amended notice of appeal.
The trial court re-entered the general judgment on
February 23, 2022, and appellant filed an amended appeal
on March 4, 2022.

Appendix C

Therefore, the court on its own motion reactivates this case.

The certificate of preparation and service of the transcript is due 30 days from the date of this order.

Theresa M. Kidd
Appellate Commissioner
4/5/2022 12:52PM

APPENDIX D – GENERAL JUDGMENT OF THE
CIRCUIT COURT OF THE STATE OF OREGON FOR
COUNTY OF COOS, FEBRUARY 23, 2022

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COOS

SHIRLEY CARTER,
Plaintiff,

v.

COMMUNITY LIVING CASE MANAGEMENT, an Oregon
nonprofit corporation;
OREGON DEPARTMENT OF HUMAN SERVICES, Office
of Developmental Disabilities Services,
Defendants.

No. 20CV44439 SECOND AMENDED
GENERAL JUDGMENT

THIS MATTER came before the court upon the parties' cross-motions for summary judgment. All parties appeared through their respective counsel and the Court, having reviewed all Motions and any responses and replies thereto with supporting papers, and having held hearing for oral argument on November 3, 2021, entered an order granting Defendant Community Living Case Management's and Defendant Oregon Department of Human Services, Office of Developmental Disabilities Services' Motions for

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Summary Judgment and denying Plaintiff's Motion for Summary Judgment. The Court also made certain findings

of fact upon the record which are reflected in the Court's Order attached hereto as Exhibit 1.

Based upon the Court's Order on summary judgment in favor of both Defendants, IT IS HEREBY ORDERED AND ADJUDGED:

That Defendant Community Living case Management and Defendant Oregon Department of Human Services, Office of Developmental Disabilities Services shall have judgment against the Plaintiff as to all claims alleged in this matter, and that all claims alleged by Plaintiff against both Defendants in this matter are hereby dismissed with prejudice. THE FIRST AMENDED GENERAL JUDGMENT ENTERED 1/31/2022 IS VACATED

This court is re-entering this Judgment in accordance with the appellate commissioner's order dated 1/20/2022. All parties are to be served with a copy of the second amended general judgment.

2/18/2022 12:05:40 PM

Circuit Court Judge Megan L. Jacquot

**APPENDIX E – ORDER OF THE CIRCUIT COURT OF
THE STATE OF OREGON FOR COUNTY OF COOS,
FEBRUARY 23, 2022**

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COOS**

**SHIRLEY CARTER,
Plaintiff,**

v.

**COMMUNITY LIVING CASE MANAGEMENT, an Oregon
nonprofit corporation;
OREGON DEPARTMENT OF HUMAN SERVICES, Office
of Developmental Disabilities Services,
Defendants.**

No. 20CV44439 SECOND AMENDED

THIS MATTER came before the Court on cross-motions for summary judgment including the following: (A) Defendant Community Living Case Management’s (“CLCM”) Motion for Summary Judgment and Joiner; (B) Defendant Oregon Department of Human Services, Office of Developmental Disabilities Services’ (“DHS”) Motion for Summary Judgment and Joiner; and (C) Plaintiff Shirley Carter’s (“Plaintiff”) Motion for Summary Judgment. Hearing and oral argument were held November 3, 2021, before Judge Megan L. Jacquot. The Court, having reviewed all legal memoranda, responses and oppositions,

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replies, declarations, affidavits, and supporting papers submitted by the parties, having considered oral argument from the respective counsel for each party, and otherwise being fully advised in the premises:

The Court finds the following:

1. Prior to 2013, DHS waived a limitation on payment for services while Plaintiff was “snowbirding” in Arizona;
2. Subsequently, DHS notified Plaintiff that she was not in compliance with the rules controlling payment for services while “snowbirding” in Arizona, but allowed Plaintiff to “snowbird” in 2014;
3. DHS then provided multiple notices to Plaintiff that payment for services while “snowbirding” in Arizona would be limited to a maximum of 45 days;
4. In 2015, Plaintiff was invited to and participated in the rulemaking process for “the 45-Day Rule”;
5. The 45-Day Rule was executed and issued by DHS;
6. The 45-Day Rule was not in accord with Plaintiff’s wishes;
7. The 45-Day Rule was clear to Plaintiff as of 2015 and did not allow payment for services while “snowbirding” in Arizona for more than 45 days and

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any services exceeding the 45 days of “snowbirding” would be unpaid;

8. DHS’s notice for payment restrictions as to the 45-Day Rule was reasonable;
9. CLCM had no role in the process of Notification of Planned Action (“NOPA”);
10. Services that are not listed as “unpaid” in an Individual Support Plan (“ISP”) are not required to be paid if those services are contrary to the controlling Oregon Administrative Rules;
11. DHS provided express notice of intent to apply the 45-Day Rule multiple times over several years;
12. The 45-Day Rule and other controlling Oregon Administrative Rules apply to Plaintiff;
13. Plaintiff cannot claim confusion about the 45-Day Rule and she simply did not agree with DHS’s decision to promulgate and institute the 45-Day Rule.

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that CLCM’s Motion for Summary Judgment and Joiner and DHS’s Motion for Summary Judgment and Joiner are GRANTED.

IT IS FURTHER HEREBY ORDERED that Plaintiff’s Motion for Summary Judgment is DENIED.

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11/16/2021 3:32:18 PM

Circuit Court Judge Megan L. Jacquot

APPENDIX F – LIST OF STATUTORY PROVISIONS
INVOLVED

42 U.S.C. §1396n(c)

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as “medical assistance” under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such service the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term “room and board” shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that-

- (A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of

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individuals provided services under the waiver
and to assure financial accountability for

funds expended with respect to such services;

B) The State will provide, with respect to
individuals who-

(i) are entitled to medical assistance for
inpatient hospital services, nursing facility
services, or services in an intermediate care
facility for the mentally retarded under the
State plan.

(ii) may require such services, and

(iii) may be eligible for such home or
community-based care under such waiver, For
an evaluation of the need for inpatient
hospital services, nursing facility services, or
services in an intermediate care facility for the
mentally retarded.

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42 U.S.C. §1396n(k)

(1) IN GENERAL

Subject to the succeeding provisions of this subsection, beginning October 1, 2011, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based attendant services and supports for individuals who are eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 1397jj(c)(5) of this title) or, if greater, the income level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the State plan and with respect to whom there has been a determination that, but for the provision of such services, the individuals would require the level of care provided in a hospital, a nursing facility an intermediate care facility for the mentally retarded or an institution for mental diseases the cost of which could be reimbursed under the State plan, but only if the individual chooses to receive such home and community-based attendant services and supports, and only if the State meets the following requirements:

(A) Availability

The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—

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- (i) under a person-centered plan of services and supports that is based on an assessment of functional need and that is agreed to in writing by the individual or, as appropriate, the individual's representative

(3) STATE REQUIREMENTS

In order for a State plan amendment to be approved under this subsection, the State shall-

- (B) provide consumer controlled home and community-based attendant services and supports to the individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual's needs, and without regard to the individual's age, type or nature of disability, severity of disability, or the form of home and community-based attendant services and supports that the individual requires in order to lead an independent life;

- (D) establish and maintain a comprehensive, continuous quality assurance system with respect to community-based attendant services and supports that-

- (i) includes standards for agency-based and other delivery models with respect to training, appeals for denials and

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reconsideration procedures of an individual plan, and other factors as determined by the Secretary.

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42 U.S.C. §1396a(a)(30)

(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

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29 U.S.C. §158

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the purposed modifications.

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29 U.S.C. §218c

(a) No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has –

(5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

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42 U.S.C. §12132

Subject to the provisions of this subchapter, 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.

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29 U.S.C. §794

(A) No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, 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 or under the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

**APPENDIX G - 2019-2021 Oregon DAS Collective
Bargaining Agreement for Adult Foster Home
Providers, July 1, 2019, Article 9.5(c)**

For DD only: Payment for AFH Providers is paid through the eXPRS payment system, Providers will be required to submit a claim via the web-based system for the days the service was provided and the individual was in the home overnight. Payments for approved claims will be processed within (2) working days. When an individual does not sleep in the Adult Foster Home overnight, the Adult Foster Home (AFH) Provider may still file a claim for that day when one (1) of the following is true, can be documented and the individual intends to return to the home: Within an accumulated period of at least eight (8) hours in a twenty-four (24) hour period (12:00AM – 11:59P), the Provider was responsible for the primary care, support, safety and wellbeing of a the individual including, but limited to the following: Providing intermittent physical support or care; Providing stand-by support with the ability to respond in person within the ISP team agreed upon response times as outlined in the most current ISP. Being responsible to communicate reciprocally within the response times agreed upon by the ISP team and based on an individual's identified support issue and documented within the most current ISP. The AFH Provider is not eligible to file a claim for the day (12:00am – 11:59PM) when the individual is: - admitted to a hospital, - admitted to a nursing facility, - outside the United States – held in detention or jail, AFH Providers are not required to remain with an individual to provide unpaid supports once an individual is “admitted” to the hospital or nursing facility. All services not directly

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provided by the AFH Provider or the care giver, must be billed by the rendering AFH Licensed Provider. Examples of this are behavioral consultants, nursing Providers and employment Providers.

