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Court Administrator

MAR 04 2010

By Deputy

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
OTHER CIVIL

Robert Fischer, Gabriella Raspa, and James
Beede, on behalf of themselves and all others
similarly situated,

Civil File No. 62CV-101-1830
Judge _____

Plaintiffs,

SUMMONS

and

Tim Pawlenty, Governor of the State of
Minnesota, Thomas Hanson, Commissioner,
Minnesota Department of Management and
Budget, and Cal Ludeman, Minnesota
Department of Human Services.,

Defendants.

**TO: Tim Pawlenty, Governor of the State of Minnesota by and through his attorney
Patrick Robben, 130 State Capitol, Saint Paul, Minnesota 55155, Thomas Hanson,
Commissioner, Minnesota Department of Management and Budget, Cal Ludeman,
Minnesota Department of Human Services, by and through their attorney Alan
Gilbert, Solicitor General for State of Minnesota, 445 Minnesota St., #1100, St. Paul,
Minnesota 55101-2134.**

You are hereby summoned and required to serve upon Plaintiffs' attorney an answer to
the complaint which is herewith served upon you within 20 days after service of this summons
upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken
against you for the relief demanded in the complaint.

MID-MINNESOTA LEGAL ASSISTANCE

Date: March 4, 2010

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Attorneys for Plaintiffs

STATE OF MINNESOTA

COUNTY OF RAMSEY

Robert Fischer, Gabriella Raspa, and James
Beede, on behalf of themselves and all others
similarly situated,

Plaintiffs,

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Tim Pawlenty, Governor of the State of
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Defendants.

**DISTRICT COURT
SECOND JUDICIAL DISTRICT
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**COMPLAINT
CLASS ACTION**

SUMMARY STATEMENT

1. Plaintiffs are eligible for and are receiving General Assistance Medical Care (GAMC). GAMC provides essential medical services to the poorest of the poor in Minnesota. Defendants propose to defund and terminate the GAMC program effective April 1, 2010. But for the Governor's unilateral decision to unallot \$15,879,000 from the GAMC appropriation for fiscal year 2010, the GAMC program has an appropriation sufficient to operate at least through the month of April, 2010. Plaintiffs seek declaratory and injunctive relief to prevent the defunding of the program on April 1, 2010.

2. Although Defendant Department of Human Services does propose to transition GAMC recipients to another state-operated medical program, the proposed transition leaves so many gaps in coverage that the named plaintiffs and other GAMC recipients will be irreparably harmed unless the Court enjoins both the April 1 terminations and the notices being sent to effect the terminations.

3. The present litigation does not challenge the termination of funding for the GAMC program caused by the Governor's line-item veto of GAMC funding for fiscal year 2011. The present litigation relates only to the accelerated termination of GAMC program benefits during fiscal year 2010, since the early termination of the program on April 1, 2010, is due to the illegal unallotment of funds for the present fiscal year.

JURISDICTION

4. Plaintiffs bring this action pursuant to Article I, Section 8, of the Minnesota Constitution and pursuant to Minn. Stat. Ch. 555 permitting actions seeking declaratory and injunctive relief.

DESCRIPTION OF THE PROGRAM AT ISSUE **General Assistance Medical Care**

5. General Assistance Medical Care is a benefit program that has been established in Minnesota law since January 1, 1976. It provides medical benefits to the very poorest of Minnesota residents, with over 90% of the individuals receiving GAMC subsisting on incomes of less than 25% of the federal poverty guideline, which is \$226 per month for an individual. In 2010, over 30,000 poor Minnesotans receive GAMC each month.

6. Minnesota residents who receive cash payments through General Assistance are automatically eligible for General Assistance Medical Care. Minn. Stat. § 256D.03 subdiv. 3(1). The maximum cash assistance payment for an individual through General Assistance is currently \$203 per month. About half of all GAMC recipients are eligible due to receiving General Assistance.

7. Minnesota residents in Group Residential Housing (GRH) who are not on Medical Assistance are also automatically eligible for GAMC. Minn. Stat. § 256D.03 subdiv. 3(1).

8. In addition to automatic coverage of GRH residents and of other poor people who are living on \$203 per month from General Assistance, GAMC may also provide health benefits to individuals with income less than 75% of the poverty guideline. Minn. Stat. § 256D.03 subdiv. 3. Although the GAMC statute sets eligibility for GAMC at 75% of the federal poverty guideline (currently \$677 per month), the large majority of GAMC recipients are actually at or below 25% of the poverty guideline.

9. Of the individuals on GAMC in a given month, about 60% have a diagnosed mental illness and about 30% have some chronic physical illness.

10. GAMC provides essential medical services to eligible Minnesota residents. It does not provide coverage to undocumented immigrants.

11. Given the income levels of the people being served, co-pays in GAMC are not generally imposed. The co-pays that do exist for some medications are modest. The medication co-pay is capped at a maximum of \$7.00 per month, and there is generally no co-pay for anti-psychotic medications. Minn. Stat. § 256D.03 subdiv. 4(f)(2). Moreover, a medical provider may not withhold care to a recipient of GAMC on the grounds that a required co-payment is not made. Minn. Stat. § 256D.03 subdiv. 4(h).

12. Hospital care is generally covered under GAMC without a co-payment. (An exception to this general rule exists when there is a non-emergency medical need for which treatment is sought in an emergency room. A co-pay of \$25 is imposed to deter this practice. Minn. Stat. § 256D.03 subdiv. 4(f)(1).)

13. Necessary medical services for recipients of GAMC are covered through one of three methods: (1) enrollment in a pre-paid health plan; (2) payment through a County-based purchasing initiative; (3) payment by the State on a fee-for-services process in which the medical

provider bills the State Department of Human Services. In 2009, the majority of GAMC recipients received services through the pre-paid health plans.

14. For fiscal year 2010, GAMC was funded through an appropriation of \$345,233,000, which appropriation the Governor signed into law on May 14, 2009.

PARTIES

15. Plaintiff Robert Fischer is a 51-year-old resident of Hennepin County and is enrolled in GAMC through the Minnesota Department of Human Services. His monthly income is \$203. If he were to lose GAMC on April 1, he would be unable to afford his medications and doctor's visits.

16. Plaintiff Gabriella Raspa is a 21-year-old resident of Hennepin County and is enrolled in GAMC through the Minnesota Department of Human Services. She is diabetic. She would be unable to afford her prescribed insulin if she were to lose GAMC on April 1.

17. Plaintiff James Beede is a resident of Ramsey County and is enrolled in GAMC through the Minnesota Department of Human Services. He is a Vietnam veteran. His monthly income is \$203. If he were to lose GAMC on April 1, his ability to pay for dental and other medical needs would be at risk.

18. Defendant Tim Pawlenty is the Governor of the State of Minnesota. Governor Pawlenty is sued in his official capacity. Pursuant to Minnesota Constitution, article V, section 3, he has the duty to ensure that the laws of the State are faithfully executed.

19. Defendant Thomas Hanson is the Commissioner of the Minnesota Department of Management and Budget. Commissioner Hanson is sued in his official capacity. Among other duties, Commissioner Hanson is responsible for managing the State's financial affairs pursuant to Minn. Stat. Ch. 16A. Included among his duties are the following:

- a. Requiring executive agencies to prepare financial reports so the Legislature and the Governor can compare spending plans with appropriations for state programs, Minn. Stat. § 16A.06;
- b. Obtaining and preparing budget information from state agencies, Minn. Stat. § 16A.10;
- c. Forecasting revenue and expenditures, Minn. Stat. § 16A.103.

20. Defendant Cal Ludeman is the Commissioner of the Minnesota Department of Human Services. He is sued in his official capacity. Among his duties, he is responsible for the administration of the General Assistance Act, Minn. Stat. §§ 256D.01-21, which includes payment for medical care for individuals eligible for GAMC pursuant to Minn. Stat. § 256D.03 subdiv. 3.

CLASS ALLEGATIONS

21. The individual plaintiffs bring this action pursuant to Rules 23.01 and 23.02(b) of the Minnesota Rules of Civil Procedure.

22. The class of persons whom the plaintiffs seek to represent includes all Minnesota residents who will be denied General Assistance Medical Care during fiscal year 2010 as a result of the defendants' actions to reduce allotments.

23. The class of persons whom the plaintiffs seek to represent includes more than 30,000 GAMC recipients. The class members are geographically dispersed throughout the state, have limited financial resources, and are unlikely to institute individual actions.

24. Questions of law or fact common to the plaintiffs and members of the class dominate. These include whether Defendants' unallotment of \$15,879,000 from General Assistance Medical Care for fiscal year 2010 violates Minn. Stat. § 16A.152 and the Minnesota Constitution.

25. The claims of the named plaintiffs are typical of the claims of all members of the class.

26. The named plaintiffs will fairly and adequately protect the interests of the class.

27. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief for the class as a whole.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

28. Pursuant to article III, section 1 of the Constitution of the State of Minnesota, no branch of government can exercise powers belonging to another branch of government.

29. Pursuant to article IV of the Constitution of the State of Minnesota, the Legislature is granted the power to pass bills and forward them to the Governor for approval or veto. Legislative bills become law if signed by the Governor.

30. Pursuant to article IV, section 23 of the Constitution of the State of Minnesota, the Governor is granted the authority to veto one or more items within an appropriation bill while still approving the remainder of the bill. However, the Legislature has the authority to reconsider separately each vetoed item. The vetoed item may still become law upon vote by two thirds of the members elected in each house.

31. Pursuant to article V, section 3 of the Constitution of the State of Minnesota, the Governor has a constitutional duty to take care that the laws of Minnesota are faithfully executed. The Governor's power with respect to passage of laws of the State is limited to the power granted him in article IV to either sign or veto laws passed by the Legislature.

32. Pursuant to Minn. Stat. § 16A.14 subdiv. 3, agencies must submit spending plans to the Commissioner of Management and Budget by July 31 of each year. The spending plans must certify that the amount required for each activity is accurate and is consistent with legislative intent.

33. Pursuant to Minn. Stat. § 16A.14 subdiv. 4, the Commissioner of Management and Budget must approve the estimated amount for expenditure if the spending plan is within the amount and purpose of the appropriation.

34. The Commissioner of Management and Budget, with the approval of the Governor, can *reduce unexpended allotments* if and only if three conditions are met:

- a. The probable *receipts* for the general fund *will be less than anticipated*;
- b. The amount available *for the remainder* of the biennium will be less than needed; and
- c. There is no money remaining in the budget reserve account.

This process is commonly referred to as “unallotment.” See Minn. Stat. § 16A.152 subdiv. 4.

FACTS
The line-item veto

35. On May 14, 2009, the Governor exercised his power to line-item veto and eliminated the entire appropriation, \$381,981,000, for GAMC in fiscal year 2011 (H.F. #1362; Laws 2009, Ch. 79). An attempt by the Legislature to override this veto was unsuccessful.

36. On May 14, 2009, the Governor also signed into law the legislative appropriation of \$345,233,000 to fund GAMC during fiscal year 2010, which ends on June 30, 2010. He did not exercise his line-item veto for GAMC funding applicable to fiscal year 2010.

37. On May 14, 2009, the day on which the appropriation bill was signed into law, the Governor announced that he would unallot a portion of the appropriation that he had just signed into law.

38. The present litigation does not challenge the Governor’s exercise of his constitutional authority to use the line-item veto to eliminate GAMC funding for fiscal year 2011, which commences on July 1, 2010.

THE UNALLOTMENT

39. In February and November of each year, the Commissioner of Management and Budget is required to prepare a forecast of revenue and expenditures for the state. Minn. Stat. § 16A.103 subdiv. 1.

40. In February of 2009, a forecast was released by Commissioner Hanson estimating total revenues for the general fund for the coming biennium to be \$30.7 billion. This forecast anticipated a state budget shortfall of \$4.847 billion. Minnesota Management & Budget Office, *Minnesota Financial Report*, February 2009.

41. Based upon the February 2009 forecast, Governor Pawlenty issued a revised FY 2010-11 budget on March 17, 2009. The revised budget continued to recognize the potential budget deficit projected in February of 2009. Minnesota Management & Budget Office, *Letter and Attachment to Letter from Governor Pawlenty*, March 17, 2009.

42. On May 11, 2009, the State Legislature approved and sent the Health and Human Services appropriations bill, HF 1362, to Governor Pawlenty. This bill contained the state budget appropriations for Human Services programs for the 2010/2011 biennium. Included in this bill were appropriations to fund GAMC. At this time, the anticipated revenues for the coming biennium remained at \$30.7 billion.

43. Pursuant to article IV, section 23 of the Minnesota Constitution, Governor Pawlenty has the authority either to accept or to reject a bill presented by the Legislature. If the bill is a funding bill, the Governor has authority to reject specific appropriations contained within the bill while otherwise accepting the remainder of the bill. This is known as a line-item veto. The Governor can exercise his right to a line-item veto only for budget appropriations.

44. On May 18, 2009, the Legislature approved and sent HF 2323 to Governor Pawlenty. This bill, the “revenue bill,” contained provisions for increased revenue needed to pay for the appropriations which had already been signed into law by Governor Pawlenty and balance the budget for the 2010/2011 biennium.

45. On May 18, the 2009 legislative session ended. The Legislature does not have authority to extend its session beyond the first Monday following the third Saturday in May. Minn. Const. art. IV, § 12.

46. On May 21, 2009, Governor Pawlenty vetoed HF 2323, the revenue bill. At the time he vetoed HF 2323, Governor Pawlenty knew that state revenues were still anticipated to be the \$30.7 forecast in the February 2009 budget projection from Commissioner Hanson. His veto created a deficit in the budget, based upon the anticipated revenues.

47. The Governor has the authority to call the Legislature into special session on extraordinary occasions. Minn. Const. art. IV, § 12. The Governor allowed the legislative session to end without a balanced budget. He chose not to call the Legislature back into special session for the purpose of resolving the budget imbalance.

48. On June 4, 2009, Commissioner Hanson authored a letter to Governor Pawlenty in which he advised the Governor that the State’s revenues were not sufficient to support the planned spending during the 2010/2011 biennium.

49. On June 16, 2009, Commissioner Hanson sent Governor Pawlenty a letter stating “[T]he enacted budget spends a projected \$2.676 billion more than available for fiscal years 2010-11. No budget reserve remains to help mitigate this shortfall.” Commissioner Hanson proposed a series of spending reductions including a \$236 million reduction in human services spending.

50. The appropriations for the Department of Human Services passed by the Legislature and signed into law by the Governor on May 14, 2009, included an allotment of \$345,223,000 for GAMC during the fiscal year 2010, covering the period from July 1, 2009 through June 30, 2010.

51. As promised in his May 14, 2009, letter, the Governor in June of 2009 unallotted \$15,879,000 from the GAMC appropriation that he had signed into law on May 14, thereby reducing available funding for the 2010 fiscal year from the more than \$345 million appropriated by law down to less than \$330 million.

52. Based on fiscal projections described by the Department of Human Services on February 24, 2010, DHS announced that the February 2010 budget forecast includes at the end of March, 2010, unexpended funding for GAMC in the amount of \$26,659,000.

53. Although more than \$26 million explicitly appropriated by the Legislature for GAMC in 2010 will remain at the end of March, Commissioner Hanson's February 2010 financial report states that this money will be used for a different purpose.

54. If the \$15,789,000 illegally unallotted from GAMC for fiscal year 2010 were to be restored, the funds remaining from the statutory appropriation for GAMC in fiscal year 2010 as of April 1 would be more than \$42 million.

55. Based upon the fiscal projections by DHS as stated on February 24, the current monthly cost of operating GAMC is less than \$35 million. The \$42 million remaining as of April 1 from money legally appropriated to fund GAMC in 2010 will be more than enough to continue the program through the month of April.

FIRST CLAIM FOR RELIEF
MINN. STAT. §§ 16A.14 and 16A.152

56. Defendant Hanson's failure to allot funds up to the level of their appropriation at the beginning of a biennium pursuant to Minn. Stat. § 16A.14 violates his duty to allot funds as appropriated at the beginning of a biennium.

57. Defendant Hanson's unallotment of funds before making an initial allotment violates Minn. Stat. § 16A.14.

58. Defendants' use of Minn. Stat. § 16A.152 to reduce funds appropriated and signed into law is not permitted by the statute because the probable receipts of \$30.7 billion for the general fund were anticipated at the time of the February 2009 budget forecast, and also at the time of the May 2009 signing of the appropriation bill by the Governor, and also at the time of the defendants' June 2009 unallotment. At the time of unallotment in June of 2009, the probable receipts for the remainder of the biennium were never less than anticipated in the February 2009 forecast. Likewise, the amounts needed to fund the appropriations that the Governor signed into law in May of 2009 were known both to the Legislature and to the Governor before the biennium began.

59. Defendant Ludeman proposes to send a notice to GAMC recipients on or about Saturday, March 6, 2010, advising them that funding for GAMC will end on April 1, 2010. Defendant Ludeman's proposed notice violates the law by terminating GAMC benefits based upon an impermissible unallotment of funds by the Governor at a time when legally appropriated funds are available to pay for the GAMC program.

60. Plaintiffs and the class of people whom they represent are entitled to an order enjoining the illegal termination of funding for GAMC on April 1 and enjoining the notices that

effect this termination, because the plaintiffs and their class will be irreparably harmed by the illegal termination of funding and they have no adequate remedy at law for this violation.

**SECOND CLAIM FOR RELIEF
VIOLATION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

61. If Minn. Stat. § 16A.152 is interpreted to grant authority to the Commissioner of Management and Budget and the Governor to unallot funds in order to balance the state budget at the beginning of a biennium, the statute is an unconstitutional delegation of authority from the legislative to the executive branch of government.

62. Plaintiffs and the class of people whom they represent are entitled to an order enjoining the illegal termination of funding for GAMC on April 1 and enjoining the notices that effect this termination, because the plaintiffs and their class will be irreparably harmed by the illegal termination of funding and they have no adequate remedy at law for this violation.

**THIRD CLAIM FOR RELIEF
VIOLATION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

63. The Governor's use of unallotment at the beginning of the biennium violates the separation of powers as established in the Minnesota Constitution.

64. The Governor's failure to use the line-item veto to balance the state budget unlawfully deprived the Legislature of its constitutional right in article IV, section 23 to attempt to override any proposed veto of an appropriation.

65. Plaintiffs and the class of people whom they represent are entitled to an order enjoining the illegal termination of funding for GAMC on April 1 and enjoining the notices that effect this termination, because the plaintiffs and their class will be irreparably harmed by the illegal termination of funding and they have no adequate remedy at law for this violation.

**FOURTH CLAIM FOR RELIEF
VIOLATION OF SEPARATION OF POWERS DOCTRINE
MINNESOTA CONSTITUTION ARTICLE III**

66. Minn. Stat. § 16A.152 subdiv. 4 is unconstitutional as written. It provides so little guidance to the Governor with respect to the scope and focus of unallotment that it becomes an unconstitutional delegation to the executive branch of government of the power to legislate that is reserved to the Minnesota Legislature.

67. Plaintiffs and the class of people whom they represent are entitled to an order enjoining the illegal termination of funding for GAMC on April 1 and enjoining the notices that effect this termination, because the plaintiffs and their class will be irreparably harmed by the illegal termination of funding and they have no adequate remedy at law for this violation.

PRAYER FOR RELIEF

Wherefore, Plaintiffs ask that the Court:

1. Certify this case as a class action.
2. Issue a declaratory judgment providing that:
 - A. Minn. Stat. § 16A.152 does not grant the defendants the power to reduce allotments at the beginning of a biennium when the probable receipts for the general fund were known, and therefore not “less than anticipated.”
 - B. Defendants’ use of Minn. Stat. § 16A.152 to reduce appropriations signed into law at a time when the amounts needed for those appropriations were known is contrary to authority delegated to them pursuant to the plain meaning of the statute.
 - C. Minn. Stat. § 16A.152 does not grant the defendants the power to reduce allotments at the beginning of the biennium when there are sufficient funds available in the

general fund to fully fund all appropriations until such time as the Legislature reconvenes and can address any future budget shortfalls.

D. Pursuant to article III of the Minnesota Constitution, Minn. Stat.

§ 16A.152 is an unconstitutional delegation of powers from the legislative to the executive branch of government.

E. Defendant Governor Pawlenty's failure to veto individual appropriations that he disagreed with, and instead to employ Minn. Stat. 16A.152 to reduce appropriations already signed into law is an unconstitutional usurpation of the Legislature's constitutional right to attempt to override the Governor's decision with respect to individual appropriations and as such is a violation of the separation of powers doctrine.

3. Grant injunctive relief as follows:

A. Prohibit the Commissioner of Management and Budget from reducing allotments to the Department of Human Services below the amount of funds appropriated by HF 1362 as signed into law by Governor Pawlenty.

B. Prohibit the Commissioner of Health and Human services from taking any action to reduce or terminate Plaintiffs' GAMC assistance payments based on the unconstitutional unallotment of GAMC funding.

C. Order the Commissioner of Health and Human Services to make or to reinstate as needed all GAMC benefits that are currently to be terminated effective April 1, 2010, due to the unconstitutional unallotment.

D. Order the Commissioner of Management and Budget to restore and allot funds as appropriated by the Legislature and signed into law by the Governor.

4. Grant such other relief, including costs and disbursements, as the Court finds to be just and equitable.

MID-MINNESOTA LEGAL ASSISTANCE

March 4, 2010

By: *M. Fargione*
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Attorneys for Plaintiffs

Acknowledgement:

Pursuant to Minn. Stat. §549.211, Plaintiffs by their undersigned attorney acknowledge that sanctions may be imposed for failing to comply with the requirements of this statute.

March 4, 2010

M Fargione
Michael Fargione

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