

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

AUGUST DEKKER, et al.,

Plaintiffs,

v.

Case No. 4:22-CV-00325-RH-MAF

JASON WEIDA, et al.,

Defendants.

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**FLORIDA POLICY INSTITUTE & FLORIDA VOICES FOR HEALTH
AMICI CURIAE BRIEF IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

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Fla. Admin. Code Ann. r. 65A-1.7075

N.M. Code § 8.295.500.10.....8

Regulations

Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023) (notice).....4

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Alex Montero, et al., *Americans’ Challenges with Health Care Costs*, Figure 2 (Jul. 14, 2022), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>3

Amy K. Glasmeier, *Living Wage Calculator*, <https://livingwage.mit.edu> (last visited Apr. 27, 2023)6, 8

Amy K. Glasmeier, *Living Wage Calculator, User’s Guide / Technical Notes, 2022-2023 Update*, <https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2023-02-01.pdf> (last visited Apr. 27, 2023).....6

Fla. Dep’t of Agric. & Consumer Servs, *COVID-19: Unveiling Its Impact on Food Insecurity in Fla.*, <https://www.fdacs.gov/content/download/94403/file/COVID-FoodInsecurityImpact-Infographic.pdf> (last visited Apr. 27, 2023)6

Fla. Dep’t of Children & Families, *ESS Program Policy Manual, Appendix A-7 Family-Related Medicaid Income Limit Chart*, <https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-program-manual> (last visited Apr. 27, 2023)4, 5

Mo. Dep't of Soc. Serv., *Family MO HealthNet (MAGI) Manual*,
1830.010.05, <https://dssmanuals.mo.gov/family-mo-healthnet-magi/1830-000-00/1830-010-00/1830-010-05/> (last visited Apr. 27, 2023)8

Nev. Dep't of Health & Human Servs. Div. of Welfare & Supportive Servs.,
Medical Assistance Manual, B-100 - Modified Adjusted Gross Income, <https://dwss.nv.gov/Medical/Medical-Manual-3-CONT/> (last visited Apr. 27, 2023)8

U.S. Bureau of Economic Analysis, *Table 4. Per Capita Personal Consumption Expenditures, by State and Region for Select Categories, 2021* (Oct. 6, 2022), available at https://www.bea.gov/sites/default/files/2022-10/pce1022_0_0.pdf.....5, 8

U.S. Bureau of Labor Statistics, *Consumer Price Index, Tampa-St. Petersburg-Clearwater - March 2023*, https://www.bls.gov/regions/southeast/news-release/consumerpriceindex_tampa.htm (last visited Apr. 27, 2023)7

INTERESTS OF AMICI CURIAE

Amici Curiae are Florida Policy Institute (“FPI”) and Florida Voices for Health (“FVH”).

FPI is an independent, non-partisan, and non-profit organization dedicated to advancing policies and budgets that improve the economic mobility and quality of life for all Floridians. FPI conducts research, strategic outreach, coalition building, and policy advocacy relating to the state policies affecting Floridians’ economic opportunity.

FVH is a coalition of community organizations, businesses, and individuals working to create a health care system that works for every Floridian.

Both FPI and FVH assist the most vulnerable Floridians to access limited, critical resources, including Medicaid coverage.

FPI and FVH submit this brief in support of the Plaintiffs and their fundamental well-being, so that they continue to receive the medically necessary healthcare that they so desperately need and which they cannot obtain without Medicaid. Indeed, the income of Medicaid beneficiaries, including Plaintiffs, is so low that it is exceedingly difficult for those individuals to cover their most fundamental expenses, like modest rent and basic nutrition, let alone pay for medically necessary healthcare.

Accordingly, Amici Curiae hereby hope to facilitate the Court's understanding of low-income Floridians and the struggles that they experience as they try to access medically necessary healthcare through Medicaid in Florida.

ARGUMENT

Introduction

Medicaid covers millions of Floridians, most of whom are children, and many of whom are disabled or in foster care. Amici Curiae submit this brief to raise awareness concerning the important role that Medicaid plays to ensure that the lowest income Floridians have access to medically necessary healthcare.

Indeed, but for Medicaid, too many Floridians would be forced to delay, if not forego entirely, medically necessary treatment that they require. Even with insurance, 48% of insured adults under the age of 65 in America said they have postponed getting health care they needed due to cost. Alex Montero, et al., *Americans' Challenges with Health Care Costs*, Figure 2 (Jul. 14, 2022), <https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/>. Worse yet, 37% of such insured adults reported they have skipped recommended tests or treatment due to cost. *See id.*

Unquestionably, delayed treatment routinely leads to more serious, more expensive conditions. And, in many tragic situations, the inability to access prompt medically necessary care can lead to increased morbidity and mortality rates (*i.e.*, otherwise preventable death). For example, a person with untreated diabetes may develop complications that require more expensive and invasive treatments, such as amputations or dialysis. As another example, delaying certain care like cancer

screenings can result in more advanced cancer diagnoses, which are more difficult and expensive to treat. This fundamental concept that delayed medically necessary care often leads to more expensive and severe outcomes applies with equal force to other conditions, including but not limited to gender dysphoria.

The Floridians Who Need Medicaid

As reflected in detail below, Floridians who receive medically necessary care through Medicaid live very modestly. Indeed, without Medicaid coverage, they simply cannot afford to receive medically necessary treatment.

To qualify for state Medicaid under mandatory or optional coverage, individuals and families must meet applicable income requirements. The U.S. Department of Health and Human Services (“HHS”) annually updates the federal poverty guidelines (commonly referred to as the federal poverty level or “FPL”). In 2023, the FPL for a single person is only \$14,580, and the FPL for a family of three is only modestly more at \$24,860. *See* Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023) (notice).

For children to qualify for full Medicaid coverage in Florida, the income of a family with a child between ages one and eighteen must be less than or equal to 133% of FPL.¹ Fla. Admin. Code Ann. r. 65A-1.703(2)(a); *see also* Fla. Dep’t of

¹ The income of a family with a child younger than one year-old must be less than or equal to 200% of the FPL.

Children & Families, *ESS Program Policy Manual, Appendix A-7 Family-Related Medicaid Income Limit Chart*, <https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-program-manual> (last visited Apr. 27, 2023).

Adults are generally ineligible for Medicaid, and they may receive Medicaid coverage only if they meet extraordinarily low-income thresholds and are part of a family with children or qualify by age or disability. The household income limit for parents or caregivers who receive Medicaid coverage through their minor child is only \$590 per month for a family of three. *See* Fla. Admin. Code R. 65A-1.703(2)(a)(4), 65A-1.707(2); *see also* Fla. Dep't of Children & Families, *ESS Program Policy Manual*.

Florida's High Cost of Living Puts an Extra Squeeze on Low-Income Floridians

In juxtaposition with Florida's stringent income limitations for Medicaid eligibility, the cost of living in Florida is rising rapidly. As an indicator that reflects the cost of living, the total personal consumption expenditures for Florida in 2021 was \$50,689 per person. *See* U.S. Bureau of Economic Analysis, *Table 4. Per Capita Personal Consumption Expenditures, by State and Region for Select Categories, 2021* (Oct. 6, 2022), available at https://www.bea.gov/sites/default/files/2022-10/pce1022_0_0.pdf. A recent study from the Massachusetts Institute of Technology indicates that a household of three

in Florida, with one working adult and one child, must earn a minimum of \$71,281.60 annually to meet the family's basic needs under its "living wage"² standard. See Amy K. Glasmeier, *Living Wage Calculator*, <https://livingwage.mit.edu/states/12> (last visited Apr. 27, 2023).

Facing a cost of living that is several times higher than the levels of income that qualify them for Medicaid, many Floridians have struggled to cover their living expenses such as housing food, and other essentials. In fact, 3.4 million Floridians recently reported experiencing food insecurity. Fla. Dep't of Agric. & Consumer Servs, *COVID-19: Unveiling Its Impact on Food Insecurity in Fla.*, <https://www.fdacs.gov/content/download/94403/file/COVID-FoodInsecurityImpact-Infographic.pdf> (last visited Apr. 27, 2023). Without Medicaid, these working Floridians have no viable means to cover their necessary medical expenses.

² The researchers at the Department of Urban Studies and Planning of Massachusetts Institute of Technology have developed this living wage calculator as an alternative measure of basic needs. The living wage model is a "market-based approach that draws upon geographically specific expenditure data related to a family's likely minimum food, childcare, health insurance, housing, transportation, and other basic necessities (e.g. clothing, personal care items, etc.) costs. The living wage draws on these cost elements and the rough effects of income and payroll taxes to determine the minimum employment earnings necessary to meet a family's basic needs while also maintaining self-sufficiency." Furthermore, the wage calculator assumes that the working adult is working full-time at 2,080 hours annually. Amy K. Glasmeier, *Living Wage Calculator, User's Guide / Technical Notes, 2022-2023 Update*, <https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2023-02-01.pdf> (last visited Apr. 27, 2023).

Furthermore, the March 2023 consumer price index (“CPI”) for Florida’s Tampa-St. Petersburg-Clearwater areas indicates that the over-all cost of consumer goods and services such as food, housing, and medical expenses increased by 7.7% during the period of March 2022 to March 2023. U.S. Bureau of Labor Statistics, *Consumer Price Index, Tampa-St. Petersburg-Clearwater — March 2023*, https://www.bls.gov/regions/southeast/news-release/consumerpriceindex_tampa.htm (last visited Apr. 27, 2023). These increases are typical of those seen throughout the State of Florida. With the increase in consumer price inflation, the Floridians who qualify and need Medicaid coverage will have even more difficulty keeping pace with the cost of living this year compared with last year.

The Importance of Medicaid to Floridians

Florida’s relatively high cost of living compared to many other states makes Medicaid coverage all the more critical to ensure that low-income Floridians can access medically necessary healthcare. Unsurprisingly, those living at or near the poverty level must dedicate essentially all their limited income to cover their most basic expenses (*e.g.*, housing, food, transportation). Consequently, but for Medicaid coverage, Floridians living at or near the poverty level generally must forego receiving necessary medical care because they simply cannot afford it.

Many states, including New Mexico³, Missouri⁴, and Nevada⁵, have a lower cost of living compared to Florida, yet they ensure that a smaller ratio of their low-income residents are not forced to choose between covering housing and food expenses and receiving medical care. With the relative higher cost of living in Florida, along with its more restrictive income eligibility criteria, Florida's Medicaid program is exceedingly important for many Floridians. Medicaid coverage is especially important for the lowest income Floridians because it provides access to

³ The CPE for New Mexico in 2021 was \$40,028 per person. *See* U.S. Bureau of Econ. Analysis, *Table 4*. The living wage standard for a family of three with one working adult and one child in 2023 is \$68,057.60. *See* Amy K. Glasmeier, *Living Wage Calculator*, <https://livingwage.mit.edu/states/35> (last visited Apr. 27, 2023). For a child between ages six to nineteen to qualify Medicaid, the household income must be less than 240% of FPL. N.M. Code § 8.295.500.10.

⁴ The CPE for Missouri was \$44,990 per person. *See* U.S. Bureau of Econ. Analysis, *Table 4*. The living wage standard for a family of three with one working adult and one child in 2023 is \$67,412.80. *See* Living Wage Calculator, <https://livingwage.mit.edu/states/29> (last visited Apr. 27, 2023). For a child between ages one to eighteen to qualify Medicaid, the household income must be less than 148% of FPL. Mo. Dep't of Soc. Serv., *Family MO HealthNet (MAGI) Manual*, 1830.010.05, <https://dssmanuals.mo.gov/family-mo-healthnet-magi/1830-000-00/1830-010-00/1830-010-05/> (last visited Apr. 27, 2023).

⁵ The CPE for Nevada in 2021 was \$44,831 per person. *See* U.S. Bureau of Econ. Analysis, *Table 4*. The living wage standard for a family of three with one working adult and one child in 2023 is \$70,886.40. *See* Living Wage Calculator, <https://livingwage.mit.edu/states/32> (last visited Apr. 27, 2023). For a child to qualify for Medicaid in Nevada, the household income for a child under age six must be less than 165% of FPL. Nev. Dep't of Health & Human Servs. Div. of Welfare & Supportive Servs., *Medical Assistance Manual, B-100 - Modified Adjusted Gross Income*, <https://dwss.nv.gov/Medical/Medical-Manual-3-CONT/> (last visited Apr. 27, 2023).

a wide range of health care services, including preventive care, primary care, specialist care, hospital care, prescription drugs, and mental health services. Medicaid also covers many long-term care services, such as nursing home care and home health care, which can be very expensive for families to pay for out-of-pocket. And, until very recently, Medicaid in Florida covered medically necessary care for gender dysphoria.

As others in this case have explained in detail, access to gender-affirming care can help improve mental health and reduce the risk of suicide among transgender individuals. Accordingly, for those who are eligible for Medicaid, Medicaid coverage for gender dysphoria treatment is crucial for improving health outcomes and reducing health disparities for Medicaid-eligible transgender and gender-nonconforming individuals.

CONCLUSION

For the reasons set forth in this brief, Amici Curiae urge this court to deny Defendants' Motion for Summary Judgment.

Dated: April 28, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.1(F), the counsel for Amici Curiae certifies that this brief contains 1,565 words.

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**CERTIFICATE OF SATISFACTION OF ATTORNEY-CONFERENCE
REQUIREMENT**

Pursuant to Local Rule 7.1(C), the counsel for Amici Curiae certifies that it conferred with counsel for Plaintiffs and counsel for Defendants on April 19, 2023 regarding filing this brief. Counsel for all parties indicated that they did not object.

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