

Hello Tennessee Justice Center,
Hello Arnold & Porter,

Hello Megan Killion and Tricia Herzfeld, [addendum 9.7.2024, sent to many other law firms and organizations]

I'm trying to find a lawyer that understands how to sue TennCare for violating the civil and constitutional rights of a disabled adult plan beneficiary for over six years.

I believe my case has merit and is something that needs to happen so that I and many other disabled adults and children throughout Tennessee can receive needed care and have our rights protected. I want to defend my rights and get care, then use the case's success to convince the legal community in Tennessee to pay more attention to and litigate against the illegal activities of TennCare and its Managed Care Organizations (MCO).

Case Summary:

My underdeveloped jaws compromise my airway which disorders my breathing during the day and during sleep. My nervous system tries to compensate for this jaws-airway issue by trying to posture my head, neck, jaws, and body to maximize airway patency and respiratory efficiency. This causes sleep bruxism, a jaw disorder (TMD/TMJ), musculoskeletal dysfunction (MSK dysfunction), pediatric and adult Obstructive Sleep Apnea, neurological injury and dysfunction, dysautonomia, Mast Cell Activation Syndrome, severe psychiatric disorders, severe cognitive impairment, and chronic pain. My jaws-airway issues cause multiple health conditions that cause my physical and mental disabilities.

I've been on SSI and had TennCare since about 2005. Through many hundreds of hours of self-education (CE materials, research publications, consultations, clinical case studies, etc), I have personally known since 2017-2018 that I can be effectively treated, even cured. Such knowledge amongst jaws-airway specialists has been part of comprehensive Continuing Education since *at least* 2014. My written submissions to my health plans in 2019 and 2023 conveyed that there is no care more medically indicated and necessary to treat my life-long disability than rehabilitative care for my jaws-airway. As part of writing my 2023 complaint-appeal (C-A) I reread over 580 pages of research articles that I had referenced in my 2019 C-A to excerpt pertinent quotes. I also reexamined and communicated my hundreds of pages of medical records going back to childhood. Jaws-airway issues are an underrecognized but established cause of many forms of disability, such as neurological conditions like epilepsy and dysautonomia, severe psychiatric illness (the prevalence of OSA in persons with severe psych illness is as high as 84.4%, 80-90% of whom are not diagnosed), immunologic diseases, and chronic pain conditions.

I made TennCare and its MCO Unitedhealthcare Community Plan (UHCCP) aware of this through extensive communications. I submitted exhaustive explanations and pleas for assistance in my 2019 and 2023 C-A's. UHCCP-TennCare did not provide full and fair review. TennCare denied my appeals for rehabilitative care for my jaws-airway-disability, fallaciously asserting they were requests for "outpatient physical therapy". In my 2023 C-A I preemptively requested a fair hearing. TennCare denied me a fair hearing for my 2023 C-A claiming that it

was "too late to appeal your request for outpatient physical therapy". TennCare violated multiple federal and state laws prior to my C-A submission, during my C-A 'review', and then blatantly deprived me of due process.

TennCare and its MCO UHCCP knowingly operate an inadequate provider network that cannot properly diagnose and treat plan beneficiaries with jaws-airway issues. The provider network has an inadequacy of both PCPs to provide proper case management, and specialists to provide diagnostics and treatment options.

UHCCP-TennCare's decisions and actions are limiting my access to "medical assistance", to the point it is inaccessible, which is illegal [42 U.S.C. § 1396a(a)(10)(A)]. Such "medical assistance" which is defined as being "rehabilitative services" that provide "for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level" [42 U.S.C. § 1396d(a)(13)(C)], for which it is their inherent agency and fiduciary duty to facilitate [42 U.S.C. §§ 1396-1, 1396a(a)(19)].

TennCare's illegal activities have violated my civil and constitutional rights, including my rights as a beneficiary [42 CFR § 438.100(b)(2)(i-iv);(3);(c-d)], including my rights to receive "such" "rehabilitative services" to "attain or retain capability for independence" with "reasonable promptness" [42 U.S.C. §§ 1396-1, 1396a(a)(8);(10)(A), 1396d(a)(13)(C)], which are rights I can privately enforce [National Health Law Program. (2022). Fact Sheet: Private Enforcement of the Medicaid Act Under 42 U.S.C. § 1983 pg. 7].

UHCCP-TennCare have intentionally represented to me that by entrusting my property-asset 'medicaid health plans benefits' to them and investing my time, effort, and energy in exercising my rights and fulfilling my responsibilities as a health plan beneficiary, I would in turn receive medically necessary rehabilitative care and services with "reasonable promptness". TennCare has been making unlawful agency decisions which have limited and prevented me from receiving rehabilitative care and services with "reasonable promptness". UHCCP-TennCare have effectively seized my property-asset 'Medicaid health plan benefits' without due process or just compensation, and reappropriated it. A property-asset which is "very important" to disabled adults as without it they can "never hope to integrate themselves into the community" City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 438 (1985)].

This unlawful seizure of my property-asset has caused me to sustain numerous physical, mental, financial, and social injuries. These injuries and disability related impairments impose physical, mental, and financial restraints upon my ability to function and perform my activities of daily living and integrate into my community, making me more severely disabled and further excluded from participation in society. These imposed injuries, restraints, and restrictions on autonomy causing more severe disability destroys/deprives me of Life, Liberty, Property, Independence, The Pursuit of Happiness, fully participating in society, etc [U.S. Const. Amend. 1, 5, 14; TN Const. art. 1 sec. 8]. Mental Anguish and Physical Suffering have dominated my daily existence for over six years.

"Mr. Smith has become aware that for him and many others there is a better answer. Freedom from that tyranny is possible. Independence is possible. One need not be alienated from "Life, Liberty, and the pursuit of happiness" by fully treatable, even curable, health conditions. But these things have remained withheld from Mr. Smith. The misconduct of the Named Entities is a barrier between those in need of care and solutions;" [2023 Complaint-Appeal pg. 65 ¶ 1]

"If Mr. Smith was enabled to start getting needed care right now, in ~~July-August~~
~~September-October-November of 2020~~ November of 2023, it would be 4-6 years later
until treatment was complete and he could expect to have been reasonably indemnified
for physical and psychological damages. Mr. Smith would be 41-43 years old. It is
disturbing, indeed it is very disturbing, to contemplate that one's ability to live life without
disabling injury or disease cannot be expected to start until 41 years old." [Id. pg. 74 ¶ 1].

TennCare knowingly and illegally makes the agency decision to operate an inadequate
provider network that cannot provide the required PCP and Specialist services for my disabilities
which are caused by or related to my jaws-airway. This prevents plan beneficiaries from getting
their jaws-airway issues diagnosed and being provided information about their health condition
and the treatments for it. This inadequate provider network made me ignorant of my health
conditions and the treatments for it, whereby UHCCP-TennCare had effectively decided for me
what decisions I could make about my health and body, causing me "to become injured and
experience more severe disability" from fully treatable, even curable health conditions. This is
also an agency decision to operate a provider network which discriminates against my
disabilities. All performed in service of a fraudulent scheme.

I believe that as a medicaid beneficiary under managed care, my unenumerated right to
make decisions about my health and body has been violated. As a Medicaid beneficiary I have
a statutory and constitutional right "to acquire useful knowledge" from the provider network in
order to make decisions about my health and body [42 CFR § 438.100(b)(2)(iii-iv), U.S. Const.
Amend. 9] [Meyer v. Nebraska, 262 U.S. 399 (1923)]. TennCare's inadequate discriminatory
provider network limited and prevented me from receiving medical assistance with physicians
who could inform me of how my jaws-airway issues caused my disability and could be treated,
even potentially cured with early intervention. Thus the decision was made for me whether or
not I remained disabled by those jaws-airway issues and suffered numerous serious injuries
over the course of several years related to not getting the information about and access to the
medically necessary rehabilitative care I am statutorily entitled to receive with reasonable
promptness.

In 2016 I paid out of pocket to see an out-of-network jaws-airway specialist who
diagnosed me, provided basic patient education, and informed me of treatment options, which
my disability and indigency prevented me from accessing. After my diagnosis and education,
UHCCP-TennCare and its provider network were still unable and/or unwilling to properly discuss
my health condition and the options to treat it, let alone provide rehabilitative "medical
assistance". UHCCP-TennCare refused to provide full and fair review of my verbal and written
pleas for assistance, and complaints-appeals in which I sought to be afforded access to
rehabilitative care with out-of-network jaws-airway specialists.

UHCCP-TennCare have been and are engaged in a fraudulent scheme which violates
my civil and constitutional rights and has caused me to sustain several years of physical,
mental, financial, and social injuries in the knowledge that doing so would place my "health in
jeopardy." [medical record:"Dr. Rice Vivos Dx Tx.pdf"].

Other rights of mine have been violated. This summary is only a basic overview of how
TennCare's violation of medicaid statutes leads to violations of civil and constitutional laws, and
thereby provides a private right of action [42 U.S.C. § 12101, 42 U.S.C. §§ 1983, 1985(3), 1986;

29 U.S.C. § 794; 45 CFR §§ 164.502, 164.512(j)(1)(i)(A), T.C.A. 71-6-120(b)] [U.S. & TN Constitutions].

Claim of Fraud Summary:

The Social Security Administration is an institution that manages the provision of social welfare benefits to qualifying individuals. TennCare is an institution providing qualified individuals access to Medicaid health plan benefits. These Medicaid health plan benefits are the property-asset of the disabled adults who are qualified individuals [Goldberg v. Kelly].

As a qualified individual my property-asset 'medicaid health plan benefits' were provided to UHCCP-TennCare to be held in trust based upon their "intentional misrepresentation" [Dobbs v. Guenther, 846 S.W.2d 270, 274 (Tenn. Ct. App. 1993)] of material facts. UHCCP-TennCare represented to me that I had rights [UHCCP TennCare Member Handbook 2023 pg. 161-163]. Particularly a right to: 1) get rehabilitative "medically necessary care that is right for you, when you need it.", 2) "Be told in an easy-to-understand way about your care and all the different kinds of treatment that could work for you, no matter what they cost or even if they aren't covered.", 3) get "Help to make decisions about your health care".

TennCare has intentionally represented to myself and others that they would construct, implement, operate, and maintain a health plan which will manage and coordinate care via Managed Care Organizations to facilitate rehabilitation with reasonable promptness [42 U.S.C. §§ 1396-1, 1396d(a)(13)(C), 1396a(a)(8);(10)(A), 1396d(t)(2-3), 42 CFR §§ 440.50;168-169, 441.18(a)] in a manner that serves the best interests of recipients and the simplicity of administration [42 U.S.C. § 1396a(a)(19)] by providing full and fair review of complaints and appeals and affording due process via fair hearings [42 U.S.C. §§ 1396a(a)(3);(19), 42 CFR §§ 431.200-250, 438.210(b-d);228;406(b)(2)(iii)], operating an adequate provider network [42 U.S.C. § 1396a(a)(30)(A); 1396d(t)(3)(C), 42 CFR §§ 431.200;205;220;221, 438.68;206;207;210, 440.230(b-c)];240;260;262.], use and provide our health information lawfully [45 CFR § 164.524, 42 CFR §§ 438.224;406(b)(5)], identify and stop abuse [T.C.A. § 71-6-101], and will assist their beneficiaries pursuit of the Nation's Proper Goals for people with disabilities [42 U.S.C. § 12101] [29 U.S.C. § 794] (from TennCare Denial letter: "We do not allow unfair treatment in our program", "we obey federal and state civil rights laws"), and otherwise fulfill their duties and obligations "faithfully" with "fidelity" "in support" of our Constitutions [TennCare Deputy Director's Oath of Office].

Medicaid beneficiaries are led to believe that by entrusting our property-asset 'health plan benefits' to UHCCP-TennCare and investing our time and resources in exercising our rights and fulfilling our responsibilities as medicaid beneficiaries we will in exchange receive medically necessary rehabilitative care. Through such rehabilitative care we will be afforded the opportunity to be 'able' to Live Life, Exercise Liberty, Pursue Happiness, to have a chance to have Independence and fully participate in society. UHCCP-TennCare knowingly deprive me of those rights and prevent me from fulfilling those responsibilities, and thereby deny to me without due process the role and benefits that I am entitled to as a medicaid beneficiary which would afford me the opportunity to be a full participant in society [42 U.S.C. § 12101(7);(8)].

UHCCP-TennCare chooses to operate in a manner which makes it impossible for providers who can help or want to help to be enabled by health plans to help disabled adults with jaws-airway issues. Which is in violation of [42 U.S.C. § 1396a(19);(30)(A)] [42 CFR § 438.66(b);(c)] [42 CFR § 438.100].

UHCCP-TennCare's deficit in jaws-airway care within their provider network prevents plan members like me from being properly diagnosed and told about their care options. UHCCP-TennCare incentivizes, reinforces, and uses the ignorance and indifference of their providers and plan members as an instrument of control to prevent needed specialized care. Thereby they try to reduce care costs by implementing this short-sighted and destructive strategy to maximize profit through a capitated payment model.

"In capitated payment models, such as the model used in Medicaid managed care, insurance companies receive a fixed amount of money per enrollee regardless of the number of services provided to the enrollee. Thus, a concern about capitated payment models is the potential incentive for insurers to inappropriately deny access to covered services and payments to increase profits." [Footnote1].

The MCO attempts to profit and TennCare attempts to reduce costs by maintaining provider and plan member ignorance of the rehabilitative therapies available from specialized physicians for their health conditions. UHCCP-TennCare have provided to myself and those like me "a promise of future action with no present intent to perform" [Dobbs v. Guenther, 846 S.W.2d 270, 274 (Tenn. Ct. App. 1993)].

By contract and agreement TennCare's plan administrators and MCOs operate in a fiduciary capacity "to act as a trustee of such property" so that we may get medically necessary care to "attain or retain the capability for independence" and be able to exercise our "right to fully participate in all aspects of society" [42 U.S.C. §§ 1396-1, 1396a(a)(19), 12101]. UHCCP-TennCare act as trustees of a property-asset which is "necessary to maintain the health and welfare of an adult" in "a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare" [T.C.A. § 71-6-102(1)(A)]. A property-asset that UHCCP-TennCare have seized through "deception" and withheld proper access to by "exercising control over" the property-asset for their own "appropriation" [T.C.A. § 39-15-501(7)]. A property-asset that a reasonable person would consider essential for the well-being of an elderly or vulnerable adult" [Id. (8)(A)(ii)]. And have thereby caused me, a vulnerable disabled adult, to suffer "prolonged pain", "suffering", and "incapacity" from the "infliction" of "serious" "physical harm" and "psychological injury" which normally requires "medical treatment" [T.C.A. 39-15-501(2);(9);(11-12)].

TennCare's agency decisions have been "repugnant" to the federal laws creating the TennCare program [42 U.S.C. §§ 1396-1, 1396a(a)(3);(19);(30)(A)] and to the Constitution that Congress enacted those laws in support of.

"It is a situation wherein the resources one is supposed to have access to are being withheld - a cookie jar, full of cookies, with the people in stewardship of the cookies saying they want to give you cookies, but the cookies are locked in a safe. How does it open? What's the combination? Submit a request. Get denied or receive no response and upon confrontation with the cookie-stewards receive more declarations about how they have so many cookies and they want to give them to you. All while one slowly starves and becomes emaciated while trying to get the cookies." [2023 Complaint-Appeal pg. 70 ¶ 3]

UHCCP-TennCare's fraud and violation of my civil and constitutional rights causing them to neglect, abuse, and exploit me, a disabled adult [T.C.A. § 39-15-501(7), 71-6-102(8)], gives me a "right of recovery in civil action" which is "In addition to other remedies provided by law" [T.C.A. § 71-6-120(b-c)]. Meaning, it is in addition to the right of action I have through 42 U.S.C. §§ 1983, 12132, 29 U.S.C. § 794. The U.S. Supreme Court has declared that "the §1983 remedy . . . is, in all events, supplementary", not substitutional, "to any remedy any State might have." [Health and Hospital Corp. of Marion County v. Talevski, 599 U.S. ____ (2023)].

Footnote:

1. HHS OIG. (July 2023). High Rates of Prior Authorization Denials by Some Plans and Limited State Oversight Raise Concerns About Access to Care in Medicaid Managed Care. Retrieved: <https://oig.hhs.gov/oei/reports/OEI-09-19-00350.pdf>

Sincerely,

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