

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

FILED

2024 APR 25 PM 12:53

CLERK & MASTER
DAVIDSON CO. CHANCERY CT

CV

P.C.S.M.

Sean P. Smith,)
Petitioner,)
v.)
TENNESSEE DEPARTMENT OF FINANCE &) Case No. 24-0074-I
ADMINISTRATION, DIVISION OF)
TENNCARE; and) Chancellor Patricia Moskal
STEPHEN SMITH, DIRECTOR OF)
TENNCARE, in his official capacity,)
Respondents.)

**Petitioners' Motion for Accessible Justice - When Are the Burdens of Litigation
Discriminatory Against Disabled Adults?**

ARGUMENT AND ANALYSIS.....	2
1 - Justice Has Been Disabled for the Disabled by the Able.....	2
2 - What Burdens Are Discriminatory Against the Disabled.....	12
3 - Realizing The Nation's Proper Goals Requires Accessible Justice.....	16
4 - Constitutional Violations.....	22
POSSIBLE REMEDIES.....	25
A QUANDARY FOR MY CASE AND THE COURT.....	25
REQUESTED RELIEF:.....	27
Affidavit of Motion for Accessible Justice's Informational Accuracy.....	28

**THE MOTION FOR ACCOMODATIONS IS TO BE HEARD ON FRIDAY, May 10TH, 2024, at
11:00 a.m OR AS SOON THEREAFTER AS THE MOTION MAY BE HEARD via ZoomGoV
Video Conference. FAILURE TO TIMELY FILE AND PERSONALLY SERVE A RESPONSE
TO THE MOTION, IN ACCORDANCE WITH RULE 26 OF THE DAVIDSON COUNTY LOCAL
RULES OF PRACTICE, WILL RESULT IN THE MOTION BEING GRANTED WITHOUT
FURTHER HEARING.**

ARGUMENT AND ANALYSIS

1 - Justice Has Been Disabled for the Disabled by the Able

The Court stated in its March 7th 2024 Order that as a pro se litigant I am "entitled to fair and equal treatment by the Court, and the Court will grant him [Mr. Smith] some leeway in reading his pleading and other papers. See *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003) (citations omitted). At the same time, Mr. Smith must follow the same rules that attorneys and other self-represented parties are required [sic] follow, and he may not "shift the burden of the litigation" to Respondents or the Court. *Id.* at 903-04." The Court reiterated this point in its March 19th 2024 Order, stating "the Court must "be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary." *Hessmer v. Hessmer*, 138 S.W.3d 901, 903."

Unexamined in *Hessmer v. Hessmer* and not directly addressed in the Court's March 7th and 19th Orders, is a question of great relevance to my case:

For disabled adults who must engage in pro se litigation as a last desperate means by which to plead for assistance in order to protect their health, well-being, and fundamental human rights, at what point are the burdens of litigation to be considered discriminatory against their disabilities or in violation of their constitutional rights?

This is a question that seems worthy of careful examination by the Courts. One that I believe I need to extend to the Court at this time. I need the Chancellor and the Attorney General and any parties that might in the future read through this case to be cognizant of this concern. Perhaps not even just for my sake, but for all the disabled adults throughout Tennessee who the legal community currently refuses or neglects to provide adequate legal assistance to.

Disabled adults who in order to attempt to access justice are limited to attempting the seemingly impossible task of performing successful pro se litigation against the Attorney General of Tennessee and TennCare, State agencies that respectively receive \$70 million and \$15.4 billion dollars in annual funding¹, have an army of lawyers, no shortage of political capital, a long list of corporate allies, receive limited public scrutiny or regulatory oversight, and retain many other resources and forms of support. TennCare and the Attorney General fight from a position so advantaged, so biased towards their success, that full fledged medical doctors and

¹State of Tennessee. The Budget Fiscal Year 2024-2025. Retrieved: <https://www.tn.gov/content/dam/tn/finance/budget/documents/2025BudgetDocumentVol1.pdf>

attorneys, large medical practices and law firms, nonprofits that title themselves "Disability Rights TN" and "Tennessee Justice Center" deem it too difficult to fight against them for these issues that I have placed before the Court with my case, and here is the Court insisting that I, a disabled adult pro se plaintiff whose request for relief is essentially asking the Court to make my health plans stop abusing me so that I don't suffer further physical, mental, financial, and social injuries, or get killed, and can have the opportunity to be 'able' to fully participate in society, I Must Shoulder More Burdens, because it would be considered an unfair imposition for TennCare, the Attorney General, or the Court to shoulder some of these burdens on my behalf.

I asked the Tennessee Administrative Office of the Courts ADA Coordinator via Email to explain the "Basis for not providing attorneys to disabled adults?" and the explanation provided to me was that, "generally there is no constitutional right to counsel unless fundamental constitutional rights are involved" and that "although a litigant may qualify for an accommodation under the ADA, the ADA itself does not provide an inherent or absolute right to counsel.". [Exhibit A4].

As a disabled adult I am dependent upon State and Federal programs for my income, my healthcare, and many other basic necessities. What I can afford and access is largely and at times entirely dictated by the resources I am granted, be it through direct aid such as SSI and Medicaid, or indirect aid through nonprofit organizations provided grants and state agencies funded to provide services. It has been dictated to disabled adults that we shall not be allowed to obtain the financial resources required to hire attorneys or be able to afford to pay for the specialized healthcare services required to rehabilitate us.² If we accrue more than \$2000 we incur penalties to our income. If we get a job the income from that job reduces our SSI income \$1 for every 2\$ we earn over \$65. The money earned at a \$10 hr job then 'pays' at \$5 hr, making one work more than twice as hard for half the pay³.

More than twice as hard because not only is our income reduced, but our disabilities generally make tasks at jobs more challenging to complete. This type of income adjustment for disabled adults is a way to discriminate against people with disabilities while trying to make it seem nondiscriminatory. Were a place of business, like a grocery store, to pay disabled adults seeking part time positions 50% below the minimum wage while those without disabilities got full

² While SSI is a federal program, States can supplement the SSI payment, and thus a disabled adults net SSI related income is ultimately determined by the State. Tennessee is one of 7 states that do not supplement the SSI payment. <https://www.ssa.gov/ssi/text-benefits-ussi.htm>

³ <https://www.ssa.gov/ssi/text-work-ussi.htm> "EARNED INCOME EXCLUSION We do not count the first \$65 of earned income plus one-half of the amount over \$65. Therefore, we reduce your SSI benefit only \$1 for every \$2 you earn over \$65."

pay, that would be viewed as outright discriminatory. The net result is that quite often the resources gained are not sufficient to warrant spending that time engaging in gainful employment rather than investing it in *working* on self-care of one's disabilities or seeking rehabilitative care or attending to the many other seemingly insurmountable problems that disabled adults face due to a lack of resources or assistance.

Sometimes the benefit of avoiding the risk of injury that is present from attempting to work outweighs any potential benefits from the slight increase in total income one could obtain from working. Especially when one's health plan is engaged in misconduct which limits or prevents needed care, as after sustaining further injury the health plan can be expected to continue to limit or prevent needed care. As a direct example, my attempts to attend college and work in 2011-2013 resulted in repeated orthopedic injuries and complications [Exhibit B4, 14 Tabor Ortho, Results PT, Oral Surg CT&MRI TMJ.pdf] and then compounding those injuries was a 2014 head injury [Exhibit B4, 5 St. Francis ER 5.30.2014.pdf] and in 2016 I learned these injuries were directly related, even caused, by my jaw-airway issues [Exhibit B4, 8 Dr. Melody Barron DDS TMD & SRDB evaul.pdf]. Each of those records just referenced were submitted to my health plans with my 2019 Medical Appeal. The impairments from those and many subsequent injuries were additive to the impairments I already had from my existing disabilities. One should keep in mind that the severity of my disability has qualified me to receive SSI since ~2005.

To date the misconduct of private and state operated health plans limits or prevents me from receiving appropriate care for those jaw-airway issues and the lingering effects of those and other injuries. Instead of the risks that some disabled adults incur from attempting to work being recognized and accommodated with something akin to Hazard Pay, our pay is reduced by 50%.

"SSI benefits are reduced by 50 cents for every \$1 of wages in excess of \$65 each month and by a full \$1 for every \$1 of "unearned income" after the first \$20 each month".

"The \$20 unearned and \$65 earned income disregards have remained fixed since SSI was first created in 1974.¹⁹⁹ Had these thresholds risen in line with inflation, they would be \$127 and \$414, respectively, today.²⁰⁰ And had the income disregards risen in line with average wage growth, as measured by the SSA, they would have been \$151 and \$490, respectively, as of 2021.²⁰¹"

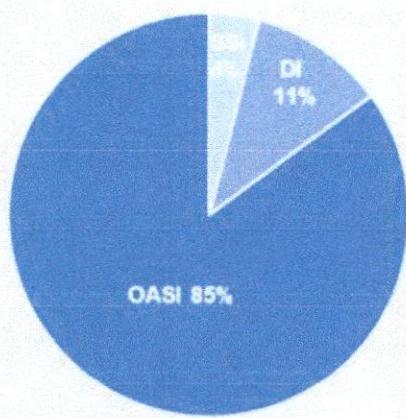
"SSI asset limits have only been raised once since the program's creation in 1972—in 1989—and that did not even make up for inflation at the time. To keep up with inflation today, limits would need to be more than four times as high as they were in 1972."

One of the primary goals of the Americans with Disabilities Act was to better include people with disabilities in the workforce by preventing disability discrimination and requiring reasonable accommodations [42 U.S. Code § 12101]. In contrast are these rules for the SSI program which discourage disabled adults from fully participating in the workforce. Even more curious is that were an employer to implement rules like this in adjusting the pay of people with disabilities it would be regarded as an intolerable instance of disability discrimination. These SSI rules not only compromise the pursuit of The Nations Proper Goals for people with disabilities, but also create costly inefficiencies in the SSA's administration of SSI:

"SSI is expensive to administer because its complex rules require SSA staff to continually monitor recipients' living arrangements, incomes, savings, support from family and friends, marital status, and more. SSI benefits make up only 5 percent of the payments that SSA makes, but the program requires 35 percent of the agency's budget to administer.[12] In contrast, SSA spends 20 percent of its budget to administer SSDI, even though it has 1.5 million more beneficiaries than SSI."

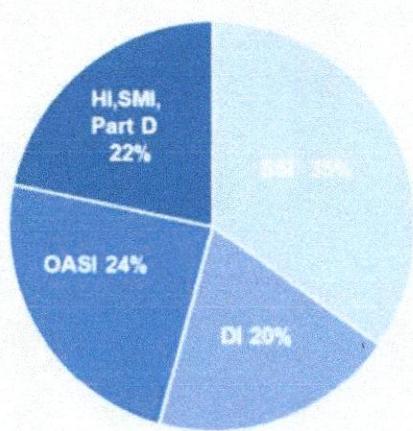
Benefits And Administrative Budget By Program⁴:

**FY 2023
Distribution of Benefit Payments**



The source is the FY 2023 President's Budget.

**FY 2023
LAE Budget Authority by Program**



Totals do not add to 100 percent due to rounding.

Medical Hospital Insurance (HI), Supplementary Medical Insurance (SMI), and Part D Prescription Drug Benefit

And if those problems weren't bad enough:

⁴ Social Security Administration. (March 2022). FY 2023 Congressional Justification. Pg. 7

“.. it is expensive to be disabled.¹⁹^[5] Households with disabled adults need 28 percent more income, on average, to achieve the same standard of living as adults without a disability.²⁰^[6] Moreover, the added costs of medicines and medical procedures, accessibility accommodations in homes and transportation, and many other regular expenses are exacerbated by the fact that disabled workers—if they are able to work and are employed—earn just 74 cents for every dollar earned by their nondisabled counterparts;” “The extra cost of living for disabled people is often referred to as the “disability tax.²²^[7]”⁸

The State of Tennessee could acknowledge that the cost of living for disabled adults is greater than it is for able bodied persons by supplementing SSI payments to adjust for cost of living, but chooses not to.

“In recognizing that there were variations in living costs across the Nation, Congress added section 1618 to the Social Security Act to encourage States to supplement the Federal payment. This ensured that SSI recipients received the full benefit of each cost-of-living adjustment. States may administer their own State supplement programs or have us administer the programs on their behalf.” ⁹

The assistance granted to disabled adults by the State of Tennessee and U.S. Government is structured to make it impossible for us to afford attorneys and makes it exceedingly difficult or impossible to perform the tasks that are part of the “burdens of litigation”. That the hardships and needs of disabled adults are generally neglected by the State of Tennessee is compounded by its agencies whose conduct creates additive undue hardships, such as physical or psychological injuries, that can further increase the cost of living for a disabled adult. The State

⁵ Sarah Hawthorne, “7 Hidden Costs of Disability,” Medium, August 22, 2021, available at <https://medium.com/@sarahhawthorne/7-hidden-costs-of-disability-f2756645723f>; Zachary Morris, Nanette Goodman, and Stephen McGarity, “Living with a disability is very expensive – even with government assistance,” The Conversation, March 23, 2021, available at <https://theconversation.com/living-with-a-disability-is-very-expensive-even-with-government-assistance-157283>; Sophie Mitra and others, “The hidden extra costs of living with a disability,” The Conversation, July 25, 2017, available at <https://theconversation.com/the-hidden-extra-costs-of-living-with-a-disability-78001>.

⁶ Nanette Goodman and others, “The Extra Costs of Living with a Disability in the U.S. — Resetting the Policy Table” (Washington: National Disability Institute, 2020), available at <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2020/10/extra-costs-living-with-disability-brief.pdf>.

⁷ Jasmine E. Harris, “Taking Disability Public,” *University of Pennsylvania Law Review* 169 (9) (2021): 1681–1749, available at https://scholarship.law.upenn.edu/faculty_scholarship/2743.

⁸ Justin Schweitzer, Emily DiMatteo, Nice Buffie, Mia Ives-Rublee. (Dec, 5, 2022). How Dehumanizing Administrative Burdens Harm Disabled People. Retrieved: <https://www.americanprogress.org/article/how-dehumanizing-administrative-burdens-harm-disabled-people/>

⁹ Social Security Administration. (March 2022). FY 2023 Congressional Justification. Pg. 127.

of Tennessee stacks the deck against us, gaining an advantage so unfair and unjust it is comical to think that there might be any way to level the playing field let alone disadvantage the State and its agencies against a disabled adult pro se litigant. It's like trying to referee a fair fight between a professional boxer and a two year old child, and if the child manages to get a hit in award penalties because their strikes land below the belt, and that is against the rules.

The burdens of litigation are more challenging than the employment that a great many 'able' Americans engage in, as the existence of the profession of the Lawyer and their \$350-\$750 an hour fees necessitates this to be. Disabled adults can't function well enough to work, but are being required to do tasks that are the purview of lawyers and doctors to try to receive the rehabilitative care they need in order to be able to work. The demands of these legal-medical tasks exceed my ability, exceed the ability of most disabled adults, and in my attempt to perform those tasks I have suffered injuries and as I continue to try to perform them can be expected to continue to suffer such injuries.

This creates a paradox. In order for some Disabled Adults in Tennessee to try to access rehabilitative care they have to engage in a pro se litigation process which discriminates against their disabilities and creates burdens that are injurious because of those disabilities. A disabled adult's ability to have the autonomy to exercise liberty and be independent becomes further compromised by sustaining injuries that cause one's disabilities to become more severe. The State of Tennessee's discriminatory procedures of due process causes the State of Tennessee to deprive disabled adults of their health, wellbeing, and limited resources¹⁰ by the State without due process.

The reason there are Fair Hearings and Petitions for Judicial Review about Fair Hearings related to TennCare's administrative decisions is that the State is not permitted to deprive its citizens of their property without due process [5th & 14th Amend. U.S. Const., Goldberg v. Kelly, 397 U.S. 254 (1970)]. By making it impossible for disabled adults to afford attorneys, and making the burdens of litigation so demanding that they exceed the ability of most disabled adults to safely meet them as pro se litigants, the State of Tennessee defeats the intended protective purpose of Fair Hearings and Petitions for Judicial Review. One of the

¹⁰ A Disabled adults capacity to work is already compromised, so it seems safe to assert that there is *definitely* no chance of trying to engage in gainful employment while trying to pro se litigate while disabled. Further, the costs of litigation hurt the meager resources disabled adults have, which are already inadequate to allow disabled adults to meet their existing disability needs, and therefore, by further depriving a disabled adult of their existing resources they further deprive them of being able to accommodate their disabilities, which then leads to further inability to conduct themselves in society (which is the exercise of liberty) and meet the burdens of litigation; the burdens of litigation can become a discriminatory deprivation that compounds itself.

primary Causes of Action in my case involves the State of Tennessee Department of Finance and Administration through its division TennCare depriving me of the due process of a fair hearing [Am. Pet. Rev. pg. 12 ¶ 5]. TennCare, the State of Tennessee, has already acted to circumvent the process of due process. That in Tennessee the burdens of litigation created by the procedures of due process could itself further circumvent the process of due process is, well, it is quite remarkable.

States are specifically prohibited from depriving its citizens of life, liberty, or property without due process [14th Amend U.S. Const.].

My being a Disabled Adult on SSI, having TennCare, means it has been established that I am already burdened beyond my capacity to bear and require assistance from the State in order to meet my most basic needs. Under such circumstances, imposing additional burdens is adding salt to an open wound. There is nothing reasonable or fair about being disabled and suffering repeated injuries from treatable, even curable, health conditions simply because health insurance plans skirt the law because the legal community and the justice system conduct themselves in a manner that makes justice inaccessible to disabled adults with certain disabilities and legal complaints.

As I have struggled to meet the burdens of litigation I have pondered the question of what is an appropriate burden and what is a discriminatory burden; what is justice for disabled adults in Tennessee. On March 15th 2024 I wrote:

"The Law should protect me and other disabled adults from being physically and psychologically tortured by the abuse and exploitation of health insurance plans, but the people of Tennessee refuse to take the actions required for those laws to be enforced.

I've come to a conclusion that:

Requiring indigent disabled adults to hire a lawyer or find pro bono representation to be able to access justice is like requiring a person in a wheelchair to hire or find a person to carry them in order to access a court house. And if by some miracle they manage to crawl up the stairs on their own, penalize them for showing up late.

The impairments I have due to the health conditions causing my disabilities makes it an impossible task to do the job of a lawyer. My job isn't really to win this lawsuit against TennCare. It's to communicate that I'm a disabled adult, I'm being abused and exploited, I need assistance, I need someone to protect me, and if the Attorney General and TennCare and Deputy Director Stephen Smith decide to use legal process like a

baseball bat to beat me 6ft under the ground, I just need to make sure all of them knew what it is that they were doing, so that when it's done, any sane, moral, prudent person will understand how wrong it was, and law or not, find cause that they should be held accountable."

I read and reread the rules, the orders, the laws, the case law I can find, my notes, my filings, over and over. I keep forgetting things, having to reread things. My physical and mental disabilities, my health conditions unmet due to health plan misconduct, they are known to cause brain injury; dysautonomia; psychiatric conditions; cognitive and emotional disabilities; musculoskeletal related neurological impairments to cognition, mood, digestion, and motor control of my hands and legs; they cause further impairment the more I sit at a computer trying to work towards getting care and justice. I read and I work until I can't function well enough to even understand what I'm reading, then I keep reading and rereading the same paragraph, or the same sentence, and write and rewrite and then read and reread what I wrote, and keep at it until my efforts become so unproductive or harmful that I have to stop. And then when I stop to lick my wounds and try to recover, my mind then no longer occupied with the demands of those tasks, it is in that pause that my mind finds its way to wondering:

What is the point of all of this?

Why do I keep trying to get care?

Why haven't I killed myself?

These questions have been in my mind for over a decade. I used to have answers to these questions. As a child and adolescent I told myself I just needed to hold on while medicine advanced and my doctors figured out how to fix me. In my late twenties when it became clear that my doctors weren't going to figure things out on their own, I answered that I owed it to myself to do everything I could on my own to try to understand what was causing my disability. And when I figured out the causes of my disabilities, then the answer was that I owed it to myself to try to get care for those causes of disability. And then the answer became that I owed it to myself to understand why I was not being allowed to get the care that I needed. And upon figuring out that the reason I could not get needed care was due to health plan misconduct and that people refuse to take the necessary actions to curtail that misconduct, I stopped having an answer.

It is with that process and with those questions that I researched my health conditions, figured out the causes of my disabilities, the treatments required, the doctors who provide such care, and why those doctors were not and would not be expected to become in-network, all while my health plans prevented or limited me and others like me from being able to see the

doctors who possess the specialization required to diagnose and treat the health conditions causing our disabilities. That's how I wrote my medical appeals. That's how I studied the law. That's how things are for me in a society that shifts the burden of holding accountable private and state operated health plans to the disabled adults that they are abusing and exploiting.

My process for working on my 88 page complaint-appeal sent to my health plans in November of 2023, which is central to this case, was to read the entire main body of the text on those 88 pages and additional sections and resources contained in the drafting document. The drafting document at its largest was 196 pages long [Exhibit C4]. The original drafting document dates back to 2020, as evidenced by the Google Documents version history [Exhibit C4]. It took 50.6 hours for me to transcribe the Cigna-Fedex Conference Call referenced in the complaint-appeal according to the work time record at the start of the document [Pet. Jud. Rev. Ex. B Digital References, Cigna-Fedex Conf. Call Transcript]. Corroborating my record of work time is the file properties of the transcripts .odt file show the editing time to have been 45:24:57. Listening to the conference call to create the transcription continually provoked my PTSD, and the time I spent managing my PTSD flares and related suicidal ideation is not included in that work time tally. The excerpted quotations of the scientific publications referenced throughout my 2023 complaint-appeal, particularly pages 51-63, were obtained by reading through each of the 50 referenced articles, which in total have over 580 pages and include references of their own many of which I read through and decided not to include in my complaint-appeal.

I would read my complaint-appeal draft and make changes as I read it, then read it again, and make more changes, do research and rewrite things, include more references and supplementary documentation, reread articles I'd read and referenced to double check information, and do that over and over, month after month. And after having spent an extensive number of hours reading and rereading it, I can't remember a lot of what I wrote, but retain now mostly a generalized remembrance of what things it contains. That's what I have to do to work on things. I try until I become too dysfunctional to try any more, and then try hard to manage my disabilities, and then try again to work on things, and repeat that process over and over. And in so doing I suffer injuries, I get more impaired, I get more disabled, and I try harder, because you all require that of disabled adults in Tennessee; you burden us with that. And for my efforts I am denied with no more justification than a single sentence claiming, "It's too late to appeal your request for OUTPATIENT PHYSICAL THERAPY". You all place my obtaining of my health and my rights at the top of a staircase I can't climb, and from that superior position, then lob rocks at me, and call it fair and equal treatment.



Image Title: Crawling to Justice.

The court easily understands that it would be discriminatory to hold a hearing in which a deaf pro se plaintiff was without a real-time video transcription or sign language interpreter. Or to require a person in a wheelchair to attend a hearing in a building without wheelchair access. I concede that it is not a simple or easy thing to understand how my health conditions impair me and cause my disabilities and therefore it is even more difficult to understand what must be done to avoid discriminating against my disabilities. Compounding that is the fact I have been prevented or limited from working with the healthcare specialists and/or an attorney which could help explain matters on my behalf. Complicating matters further is that as a disabled adult pro se litigant I don't have the education or experience necessary to fully understand what the burdens of litigation are or how to meet them. That my disabilities impair me so much that they compromise my ability to discern and communicate my claims, the abuse I've suffered, and what disability related accommodations I might need in order to be able to meet the burdens of pro se litigation further exacerbates these compounded and complicated matters.

It is difficult to find a justification for it to be the burden of disabled adults to educate a health insurance plans administrators and its doctors or the Court and its staff so that they can comprehend our disabilities well enough to avoid discriminating against us and depriving us of

our fundamental rights. Yet, that burden is imposed upon me by health plan misconduct, by the Respondents, the Courts requirements, and societies inattention and inaction to the plight of disabled adults in their community. This is a full-time job that I don't receive compensation for doing. A job that when I do it I am often subjected to more abuse, discrimination, and injuries that I receive no workers comp for. It is a burden in addition to already overwhelming burdens. I've had to try harder in the last decade than most people have to during their entire lifetime, and despite trying so hard, and gaining the hard-won experience that comes with such persistent diligent effort, I still fail and get injured because I am a disabled adult - Because I Am Not Able.

2 - What Burdens Are Discriminatory Against the Disabled

The question of what burdens are discriminatory against a person with disabilities is a complex one and it warrants consideration at every stage in my case and the cases of any other disabled adult pro se litigants.

I asked myself this question throughout January to March of 2024 as I struggled to learn and meet the demands of the Tennessee Rules for Civil Procedure and Local Rules for service of process, notarizing affidavits, and filing procedures. I ponder this question even more intensely as the Court's April 22nd 2024 Order denied my *Motion for Accommodations* and I find myself unable to understand the Order's reasons to deny. I wrestle with this question as I seek to understand and respond to the *Respondents' Motion to Dismiss*, wondering if my *Motion for Accessible Justice* will even be heard if I managed to get it filed in time, or will I lose my case because my disabilities impaired me so much I couldn't understand how to argue and complete my Motion for Accessible Justice until it was too late?

My Petition for Judicial Review included what I thought to be competent evidence supporting my allegations. My Motions included Exhibits which presented even more documentation that I thought would be competent evidence further supporting the allegations in my Petition and in my 2023 complaint-appeal. The court's ruling seems to suggest to me that it considers what I've presented so far are allegations absent competent evidence.

Am I so cognitively impaired by my disabilities that I can't figure out what is and is not competent evidence? Or did I present competent evidence but my cognitive impairments prevent me from properly communicating that evidence? Is there a Rule about evidence that my mental disabilities are once again preventing me from understanding?

As I write this paragraph on April 22nd I am confused, distraught, and walking around my neighborhood in circles trying unsuccessfully to get my brain to stop thinking about committing suicide. I am reading through the Courts April 22nd Order, reading the case law in it, reading Rules for Evidence, reading through Tenn. R. Civ. P. 65.03 Restraining Order and trying to understand why my Petition, Motion, and Exhibits aren't enough to warrant an injunction against the Respondents ongoing abuse. Why does a disabled adult with severe mental disabilities have to be able enough to understand what is competent evidence and be able enough to competently present that evidence? Why do I have to do that just to stop the abuse that occurs because of the incompetence of the able persons who are failing to prevent the abuse?

I keep wondering how I can stop being abused by my health plans. I don't know. I don't understand. It doesn't make sense. As I try to make sense of it all my suicidal ideation gets stronger because I know if I go kill myself the abuse will definitely stop. My mental disabilities don't stop me from understanding that. In fact my mental disabilities help me understand how helpful suicide really can be to this situation. So much so that it often seems the best solution because it appears to be the only solution the State of Tennessee and the citizens therein will make accessible to me and other disabled adults.

Is my last paragraph competent evidence? Or just allegations of having experienced anguish? Is the potential of self-harm too hypothetical for the court to address? Is my opinion not expert enough? Every other state agency in Tennessee I have complained to about my health plans has said it's not their job to deal with, so why then should it be the courts?¹¹

Rules by which an individual's disability can be determined have been set forth within the Americans with Disabilities Act (ADA) [42 U.S.C. 12102] and its related Code of Federal Regulations (CFR) [28 CFR § 35.108]. These define disability as, "A physical or mental impairment that substantially limits one or more of the major life activities of such individual". An impairment is regarded as a disability when it "substantially limits the ability of an individual to perform a major life activity"¹² as compared to most people in the general population." and

¹¹ Exhibit B from the Petition for Judicial Review and Exhibit A3 from Reply to Respondents Response In Opposition to Plaintiffs Motions for Accommodation has documents which are competent evidence that corroborates the allegation made. I don't understand why disabled adults should be required to be able to do more than I have been able to do to evidence I am being abused and that the people that should take action to stop this abuse are not.

¹²42 U.S.C. §12102

(2) Major life activities

(A) In general

"whether an impairment substantially limits a major life activity requires an individualized assessment." [28 CFR § 35.108(a), (d)(v)-(vi)]

I have communicated to my health plans and the Court that I have multiple health conditions that cause multiple impairments that substantially limit multiple major life activities in my 2019 Appeal [Am. Pet. Rev. Ex. B. Digital Refs., 2019 Med. App., file: "Sean Smith's 2019 Medical Appeal (redacted for court 2024).pdf", pg. 53-58, see also pg. 12-13, 18-23, 25, 27, 29, 33-36], November 2023 Complaint-Appeal [Am. Pet. Rev. Ex. B pg 2, 8, 12, 15-16, 22-24, 31, 36, 37, 41, 47-49, 50-61, 63, 68-69, 73-75], Email to Deirdra at FedEx HR [Am. Pet. Rev. Ex. B. Digital Refs, file: "Email to Deirdra at Fedex HR Apr-May 2020.pdf" pg. 2-4, 7], Amended Petition for Judicial Review [pg 1-3], Motion for Accommodations [ran out of time], Reply to Respondents Response in Opposition to Petitioners Motion for Accommodation [ran out of time], and in this Motion for Accessible Justice [ran out of time]. Medical records submitted to my health plans alongside my 2019 Appeal provided extensive proof of how long-standing my symptoms of jaw-airway issues were [Exhibit B4]. Three of my declared health conditions (Major Depressive Disorder, Bipolar Disorder, PTSD) are specifically mentioned in the CFR as substantially limiting brain function [28 CFR § 35.108(d)(2)(iii)(K)].

It is worth noting that I developed PTSD because of the abuse perpetrated by my health plans and parties that my health plans and their in-network providers involved in healthcare operations. That same abuse is understood to worsen Bipolar Disorder and Major Depressive Disorder, which further exacerbates the PTSD. I also have my other health conditions, which include but are not limited to, Mast Cell Activation Syndrome, Dysautonomia, Obstructive Sleep Apnea, TMD, MSK Dysfunction, neurological issues, chronic pain, etc, which cause substantially limiting impairments that are additive to those understood to be related to my psychiatric diagnoses, even as many of my psychiatric diagnoses can be understood to be as a result my other health conditions.

My development of PTSD can be understood per the publications I referenced to have occurred not merely because I was abused, but because my existing disabilities disposed me to

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." (emphasis added to highlight my disabilities) [see also, 28 CFR § 35.108(b)(1)(I)]

developing the PTSD when being abused. Which was communicated in my 2019 medical appeal [Ex. B4 2019 Med. App. pg 17-19, 22, 27-28], and once again communicated in sections of my 2023 complaint-appeal which quoted excerpts from the scientific literature that I referenced in the 2019 appeal [Am. Pet. Rev. Ex. B. pg 54-61, 69] which the Court and Respondents were supplied digital copies of as part of the Petition for Judicial Review's Exhibit B¹³.

The work of Dr. Krakow highlights that while sleep breathing disorders can make it more likely one develops PTSD, PTSD can also worsen sleep disordered breathing (SDB). In the references section of both the 2019 and 2023 appeal at "87. Barry J. Krakow, et al. (2015)" is an excerpt from that article by Krakow, which states, "...among more recent reviews, there is a growing indication that individuals with PTSD suffer a disproportionately higher rate of SDB compared to the general population." . The information from articles referenced in the 2019 appeal - these same articles also being extensively quoted with excerpts in the 2023 complaint-appeal - communicate how sleep breathing disorders can cause and worsen mood disorders like Major Depressive Disorder and Bipolar Disorder. On page 50 of the 2023 complaint-appeal is communicated that, "Indeed some authors note, "Once thought to be relatively rare, there is increasing evidence that obstructive sleep apnea (OSA) is both common and associated with significant medical and psychiatric comorbidities." [Christopher A. Baker et al., 2016], with some studies observing rates of OSA prevalence as high as 84% in psychiatric populations [Knechtle et al., 2019]."

The adversary I face in my case isn't limited to the Attorney General acting as the Respondents counsel, or even the process of due process imposed by Tennessee's Judicial Branch which discriminates against disabled adults with mental and cognitive disabilities, but my own mind, my neurological and psychological injuries and impairments, my diseases disordering my mood and deficitting my cognition. My mental disabilities file their own Motions to Dismiss Me from existence. Motions I must argue in a 'Court' in which its rules operate with indifference and absolute tyranny, enacting dictates that are both capricious and arbitrary and seek to serve no party or common good. A place without compromise, accommodation, agendas, reasoned argument, good or bad, just or unjust, only actions and outcomes transpiring in accordance with rules dictated by natural laws. The Cosmos Doesn't Care, It Just Is, And Will Be.

In order to defend one's rights one must be able to perform with minimal impairment multiple major life activities such that one may either acquire the resources to hire legal

¹³ A USB with the files was mailed with the Petition for Judicial Review filed on 1.26.2024. An email delivering those same files within a .zip archive was supplied to Respondents counsel on April 6th 2024.

representation or to perform pro se litigation. A process by which one can determine if an individual is substantially limited in performing the major life activities required of pro se litigation against the State is delineated in 28 CFR § 35.108(d)(3)(i)-(ii).

3 - Realizing The Nation's Proper Goals Requires Accessible Justice

My mental and cognitive disabilities impair my ability to do mentally demanding tasks and even some cognitively simple tasks. It takes me longer to perform tasks based upon how severely impairing my disabilities are at a given time. I've been trying to learn to perform pro se litigation. It takes me a long time to try to figure out what to do and longer to try to do it. Sometimes it takes me a long time just to discover I'm not able to do something the court requires me to do and even longer to try to figure out how to correct the mistakes I made while trying to perform those initial tasks. So by the time I learn enough to understand I needed accommodations and what those accommodations needed to be in order for me to be 'able' to do something it's often too late - Is my Motion for Accessible Justice too late? I then have to try to figure out a new set of problems caused by my mistakes and don't know what accommodations I might need to be able to meet the demands of those new problems. While affording me more time to litigate might seem a reasonable accommodation, more time spent litigating increases the time I spend without rehabilitative care and subjected to these abusive and injurious conditions.

The misconduct of TennCare and Unitedhealthcare Community Plan (UHCCP) has played a central role in limiting and preventing me from receiving needed care. One should note that UHCCP and TennCare have been operating as secondary health insurance plans, and one might thereby reason that their role could not have been central. However, were TennCare and its MCO UHCCP to operate in compliance with the laws, to provide full and fair review of appeals and grievances, upon discovering that my primary private health insurance plan was engaged in misconduct and willful noncompliance, as any prudent person would, I as a disabled adult would designate TennCare and UHCCP as the primary insurance so that I would get full and fair review of my care requests and thereby access the medical assistance necessary to facilitate my rehabilitation. I would be able to use my medicaid health program benefits, my property, to achieve the intended purpose of the medicaid program [42 U.S.C. § 1396-1].

The misconduct of TennCare and UHC:CP has deprived me needed care just-as-much as the misconduct of Cigna and Fedex, and arguably even more so, as designating

Cigna-Fedex as a primary insurance then requires myself and my parents to meet a costly annual deductible which we would not have to pay if UHCCP-TennCare were my primary insurance plan. UHCCP and TennCare limiting and preventing care has caused me to suffer numerous physical, mental, and financial injuries which increased the severity of my already severe disabilities. That causes me greater impairment, and those undue impairments and more severe disability act as an imposed restraint on my ability to function. TennCare imposes this restraint on my function which is limiting or preventing me from being 'able' to meet the burdens of litigation; to act as my own lawyer, to be a witness, to present and communicate evidence. TennCare's imposed restraint is obstructing justice [18 U.S.C. 1503]. "The United States Supreme Court appears to favor a broad reading of the omnibus clause."¹⁴

The burdens of litigation that the Court demands disabled adult pro se litigants with mental and cognitive disabilities meet becomes even more of a discriminatory requirement given the restraints on function imposed on disabled adult pro se litigants by TennCare's misconduct. The State of Tennessee and the U.S Government limit the resources of disabled adults to prevent us from affording attorneys or needed care. The State of Tennessee creates restraints that further impair disabled adults by engaging in misconduct to prevent us from receiving rehabilitative care. And then the State of Tennessee requires us to meet litigation burdens our disabilities prevent us from meeting.

How the Davidson County Chancery Court handles my case and accommodates my disability needs is a slippery slope to traverse. Especially when allegations and evidence indicate TennCare and other State agencies have acted to defeat or neglected to uphold the administrative processes, rules, and laws intended to protect disabled adults from discrimination, neglect, abuse, and exploitation.

Were the Attorney General to assist TennCare in a manner which enables them to continue engaging in discriminatory practices which then perpetuate the neglect, abuse, and exploitation of disabled adults, or were the Chancery Court to conduct its operations in a manner which discriminates against my disabilities and further obfuscates my Access To

¹⁴

<https://www.justice.gov/archives/jm/criminal-resource-manual-1724-protection-government-processes-omnibus-clause-18-usc-1503>

See also:

<https://www.justice.gov/archives/jm/criminal-resource-manual-1721-protection-government-processes-obstruction-justice-scope-18-usc>

Justice, that would be a problem as such conduct is specifically prohibited by federal laws. It is clearly the intent of Congress that State's not find ways to defeat the protections of the ADA:

28 CFR § 35.130

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
- (iii) **That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.**

(emphasis added)

There is also a disturbing similarity between the burdens of my health plans appeals process and the burdens of litigation being placed upon disabled adults by the Tennessee Courts, as can be observed by my statements at the 2019 TennCare Block Grant hearing:

"[UHCCP-TennCare] essentially torture people who can barely function by requiring them to navigate one obstacle after another, and when I have asked for assistance with the appeals process I get told that there is no one to assist." [Am. Pet. Rev. Ex. B, pg 33]

Earlier in my case, even though I read through the sections of the Tennessee Rules for Civil Procedure and Local Rules related to initiating a civil suit and service of process multiple times, I failed to understand and completely follow the rules. The arguments set forth by the Respondents in their April 22nd *Motion to Dismiss* reaffirms that my ability to function is too impaired to understand and effectively communicate my situation. That my disabilities are largely why I have had such failures doesn't change that my prior failures cause me to question what other legal matters I'm not understanding. Yet, as I doubt the validity of my perception of what access to justice should be for disabled adults in Tennessee, I remind myself why the Americans with Disabilities Act was passed in 1990, and that even after passing it the courts failed to interpret it as Congress intended, which is why the 2008 amendments were made, and why ADA related CFR makes repeated mention of "broad" coverage and states "The primary purpose of the ADA Amendments Act is to make it easier for people with disabilities to obtain protection under the ADA." [28 CFR § 35.101(b)].

The failure of State courts to interpret and apply the ADA as intended are manifested in instances where States, such as Tennessee, resisted compliance, arguing exemption via 11th Amendment immunity, a sovereignty to conduct itself as it pleased, seeking to perpetuate its existing discriminatory practices, reinforcing the fact the State didn't view people with disabilities as being worthy of inclusion in society, worthy of accessing justice, requiring them to argue their

case in federal court all the way to the U.S. Supreme Court, just so that they didn't have to literally crawl on their bellies to get to a court hearing in Tennessee Courts. The 2004 Supreme Court case Tennessee v. Lane and the cases cited in it reminds me that I can't let my doubts yield my perceived rights to State agencies that have such a long track record of holding to discriminatory prejudiced perceived certainties regarding whether disabled adults have a right to Justice and other fundamental rights:

"Difficult and intractable problems often require powerful remedies, and this Court has never held that § 5 precludes Congress from enacting reasonably prophylactic legislation. One means by which the Court has determined the difference between a statute that constitutes an appropriate remedy and one that attempts to substantively redefine the States' legal obligations is by examining the legislative record containing the reasons for Congress' action." Kimel, 528 U. S., at 88

"It is not difficult to perceive the harm that Title II is designed to address. Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights."

"The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination. Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this "difficult and intractable proble[m]" warranted "added prophylactic measures in response."

"Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility. 42 U. S. C. §12131(2)."

"Whether Title II validly enforces these constitutional rights is a question that "must be judged with reference to the historical experience which it reflects." South Carolina v. Katzenbach, 383 U. S. 301, 308 (1966). See also Florida Prepaid, 527 U. S., at 639–640; Boerne, 521 U. S., at 530."

"This duty to accommodate is perfectly consistent with the well-established due process principle that, "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. Boddie, 401 U. S., at 379" [Tennessee v. Lane, 541 U.S. 509, 2004]

I want to live in a Society, a State, a Nation where disabled adults can access justice and rehabilitative care. I want fair and equal treatment and the opportunity to fully participate in all aspects of society. At this time I do not expect the Court to fully understand how to provide non-discriminatory access to justice for disabled adults. But I would like the Court to

be made aware that I believe it is obligated to try. At Least As Much As I Am Trying To Shoulder The Burdens of Litigation. And perhaps when we both fail at our respective tasks we can try to be forgiving of each other in order to focus upon succeeding in our shared pursuit of Justice.

"Even though the courts cannot create claims or defenses for pro se litigants where none exist, *Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 198 (Tenn. Ct. App. 1994), **they should give effect to the substance**, rather than the form or terminology, of a pro se litigant's papers." *Hessmer v. Hessmer*, (Tenn. Ct. App. 2003). (emphasis added)

The Courts have been required to be made physically accessible to people whose disability limits their ambulation. The Courts have been required to be made accessible to those whose indigency prevents paying for Court costs. The Court should likewise endeavour to allow justice to be accessible to disabled adults whose disabilities impair, limit, or prevent them from securing legal representation or representing oneself effectively. Such a requirement is in keeping with Congress's intent for persons with disabilities, as declared in 42 U.S. Code § 12101(a), which states:

"The Congress finds that

- (1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- (8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and

nonproductivity."

In order to have human rights one must be able to defend one's rights from violations. To defend one's rights one must utilize the law to take private legal actions. If the accommodations required to allow a disabled adult pro se litigant to defend their rights, to make justice accessible to them, are deemed unreasonable, by proxy the Court is declaring that it is not reasonable for those disabled adults to have civil and constitutional rights. Which would subvert the notion that disabled adults are entitled to and being afforded the due process that can provide equal protection of the law.

42 USC § 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."

42 USC § 12131:

"(1) Public entity

The term "public entity" means—

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and"

"(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity."

Many disabled adults who rely upon a wheelchair have as equal an opportunity to climb stairs as a person with functioning legs. In fact, one might even point towards the Capitol Crawl Protest¹⁵, and point out that people in wheelchairs proved that they could crawl up the stairs. It takes them longer, and some could 'hypothetically'¹⁶ get hurt in their

¹⁵ "Shortly before the act [Americans with Disabilities Act] was passed, disability rights activists with physical disabilities coalesced in front of the Capitol Building, shed their crutches, wheelchairs, powerchairs and other assistive devices, and immediately proceeded to crawl and pull their bodies up all 100 of the Capitol's front steps, without warning."

https://en.wikipedia.org/wiki/Americans_with_Disabilities_Act_of_1990 "Capitol Crawl".

¹⁶ Congress passed the ADA due to pervasive instances of disability discrimination dictating a need for prophylactic measures to prevent future hypothetical instances of discrimination and harm through deterrence. And when those deterrent measures prove inadequate, the ADA provides remedies. The ADA

attempt, but they can 'do' it. Yet, the thing to which they are to have equal opportunity to access isn't the climbing of stairs, or the rooms inside the building atop the stairs, it is to access and fully participate in the proceedings in those rooms wherein members of free society congregate to engage in activities such as a court hearing where they and their fellows can defend and thereby obtain their rights through judicial processes providing equal protection of the law [42 U.S.C. §§ 12131(2), 12132]. Likewise, having an equal opportunity to file lawsuits and attend hearings isn't the same as having an equal opportunity to Access Justice.

"A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." [28 CFR § 35.150(a)].

And because the burdens of litigation can make justice inaccessible to a great many disabled adults with disabilities impairing their mental, cognitive, and physical function, essentially excluding this class of individuals from being 'able' to *effectively* pursue private action against parties that violate their rights, the appropriate regulatory action of private legal actions cannot be applied to State agencies. As a result, when TennCare and its MCOs fail to do the job they're funded to do, there are no meaningful consequences to them. This is what makes it possible for TennCare and its Managed Care Organizations to engage in extensive fraud against taxpayers, and directly contribute to that "billions of dollars in unnecessary expenses" that our Congress has so expressly condemned. Until justice is made accessible to disabled adults, the intent of Congress as it relates to persons with disabilities will remain defeated by the misconduct of private and state operated health plans. The Courts will, in effect, fail to achieve what Congress has defined as being The Nations Proper Goals.

4 - Constitutional Violations

A. 1st Amendment of the U.S. Constitution:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people

is in effect a Restraining Order from Congress upon the States due to the States past history of disability discrimination and abuse. My Motion for Accomodations sought a similar form of Restraining Order against the Respondents, but the Court denied my request as it deemed my situation does not warrant any prophylactic protection from the Respondents activities causing me further injury.

peaceably to assemble, and to petition the Government for a redress of grievances."

The current environment created by the State of Tennessee and U.S. Government prevents disabled adults from obtaining adequate legal representation or engaging in pro se litigation in an effective manner. The functional capacity of many disabled adults is so limited that it is a challenge for us, for me, to even figure out how to submit complaints. To figure out how to submit a complaint one must 1) be 'able' enough to become aware that there is a procedural process to submit a complaint; 2) to be 'able' enough to review that procedural process and understand the actions required to perform it; 3) to be 'able' enough to perform the procedure in its *entirety*. These requirements can be exceptionally challenging and injurious, and at times impossible, for persons with mental, cognitive, and certain physical disabilities which substantially limit their ability to perform the major activities of living required of the actions that are part of the procedural process.

Even when a complaint is submitted the task of keeping on top of things is very demanding. Those demands can easily exceed the capability of disabled adults because their disabilities prohibit them from being able to meet them. The current system of petitioning the State of Tennessee for redress of grievances discriminates against disabled adults with mental, cognitive, and certain physical disabilities. With most disabled adults being unable to engage in effective litigation against State agencies, there are no meaningful consequences to those agencies when they do not attend to appeals, complaints, grievances, and other disputes in good faith with conformity to the law. Thereby disabled adults are deprived from being 'able' to *effectively* petition for an equitable resolution of a dispute with the State of Tennessee. This violation of the First Amendment rights of disabled adults in Tennessee then leads to violations of other civil and constitutional rights.

B. 5th Amendment of the U.S. Constitution:

"nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Medicaid health plan benefits are the property of qualifying disabled adults. When TennCare and its MCOs deprive their disabled adult plan beneficiaries from accessing and benefiting from their benefits, the State and its contractors have effectively seized that property, reappropriating it for their own agendas. TennCare depriving me of full and fair review of my requests for care, my complaints and grievances, depriving me of the due process of a fair hearing, depriving me of being able to access my benefits to receive rehabilitative care, has caused numerous physical and psychological injuries and a multitude of other damages, for which no offer of just compensation has ever been made.

The process of engaging in litigation is itself an exercise of liberty. That the State of Tennessee has created and maintains a judicial environment where disabled adults are being excluded from being able to effectively engage in litigation due to restrictions, rules, and burdens that discriminate against their disabilities violates the Fifth Amendment rights of these disabled adults. Compounding that offense is that TennCare and other parties, that the State of Tennessee and U.S. Government are required to regulate, are preventing disabled adults from meeting their disability needs and as a result the State of Tennessee and U.S. Government are imposing undue impairments upon these disabled adults.

These unmet health needs causing disabled adults to suffer more severe disability related impairments act as physical and mental restraints that further compromise a disabled adults already limited ability to conduct themselves in society. In the State of Tennessee the misconduct of private and state operated health insurance plans, the state's prohibition against disabled adults having enough resources to afford attorneys, the neglect of the legal community to provide pro bono representation for these legal complaints, and the discriminatory nature of the judicial systems pro se litigation process, is depriving disabled adults of their Liberty, Property, access to Justice, the opportunity to achieve Independence and pursue Happiness, and at times even their Life. As previously argued, the discriminatory process of due process in Tennessee is itself circumventing due process, and thereby these deprivations of constitutional rights occur without due process.

C. 14th Amendment of the U.S. Constitution:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The privileges and immunities conferred to disabled adults by the Americans with Disabilities Act and other laws serve to protect their fundamental rights, such as exercising liberty, achieving independence, protecting their property, preserving their life, engaging in gainful employment, the pursuit of happiness, etc. When the Tennessee Rules for Civil Procedure and other TN laws that are part of the burdens of litigation are enforced in a manner that abridge those privileges and immunities so conferred by the ADA and other laws enacted to protect disabled adults, then it is in violation of the 14th Amendment of the U.S. Constitution.

The State of Tennessee's abridging of those conferred legal protections creates a process of due process that does not provide due process to disabled adults with mental and cognitive disabilities and certain physical disabilities. The State of Tennessee's current practices

making justice inaccessible to most disabled adults has been preventing disabled adults from having the opportunity to obtain equal protection of the law.

POSSIBLE REMEDIES

1.) A Constitutional Remedy:

The 6th amendment of the Constitution might be interpreted to suggest a remedy to providing due process for disputes between the State and citizens in which a citizen's fundamental rights are at stake. One could thereby infer that it would be a reasonable accommodation for the Court to provide disabled adults whose fundamental rights are being violated by the State a competent attorney whose legal practice includes an area of focus for the issues involved in the complaint. This is arguably the simplest and most complete remedy to level the playing field for indigent disabled adults whose adversary is the State.

2.) Established Practices in Other States:

An alternative remedy to appointing an attorney that has been adopted in some States, and is argued in detail by Chelsea Marx in the article "Accommodations for All - The importance of Meaningful Access to Courts for Pro Se Litigants with Mental Disabilities" [Exhibit D4], is to appoint a "suitable representative", which is an individual who has "the "knowledge of or the ability to attain knowledge of" procedural rules and substantive issues, the "experience and training in advocating for people with disabilities", and the "individual's availability to meet the timelines and duration of the particular adjudicative proceeding.".

A QUANDARY FOR MY CASE AND THE COURT

Given the extent to which I have sought legal counsel and determined that throughout the State of Tennessee there appears to be no attorneys who are willing or able to practice this specific area of law related to the misconduct of private and state operated health plans that neglect, abuse, exploit, and injure disabled adults, it begs the question as to whether or not the court can appoint an attorney who would possess the experience and expertise required to be able to competently litigate my complaint. In my perception it seems to be that the only reason I am having to engage in pro se litigation at all is due to a collective failure on the

part of the legal community within the State of Tennessee.

In example, I contacted the Nashville Bar Association (NBA) on Jan 3-4 2024 to use their attorney referral service. The NBA didn't know of any attorney throughout the entire state of Tennessee who handles cases like this. NBA office manager Vicki Shoulders opted to refund the attorney service referral fee I had paid. I think those events aptly corroborate that there appears to be no attorneys in Tennessee who actively practice this area of law. Further demonstrating this would be that of the many attorneys who declined my case I would ask if they could refer me to an attorney who could help or know of someone who could help. I would often be directed to contact legal aid societies or private attorneys who would eventually direct me to the Tennessee Justice Center (TJC). I was directed to TJC by professionals in related fields, such as social workers, disability rights advocates, disability nonprofit organizations (empower TN, others], PhDs in health policy, and the non-profit organization Disability Rights Tennessee.

At one point I looked through past lawsuits filed against TennCare to try to find private attorneys who might help and tried to contact them. The attorney I was able to get in contact with said that the only reason she was able to litigate the complaint over a decade ago is because she got assistance from Tennessee Justice Center attorneys who walked her through the process. My contact with TJC resulted in being told that they only help people with the application process to get on or stay on TennCare. That once people are on TennCare and experiencing wrongful service denials or other problems the Tennessee Justice Center does not provide assistance [Exhibit E4, digital files, TJC Call Notes and Recording].

The question I must ask of myself and the court is can I or the court find an attorney who has the education, expertise, and experience needed to be able to improve my access to justice?

I don't know what the right answer is here, other than to conclude that an effective remedy is needed. Finding the right answer requires more than just my mind to analyze this problem and explore possible solutions. Perhaps what my request for relief needs to be is that the court commits to making justice accessible on an ongoing basis by addressing each problem that is anticipated or encountered that limits or prevents my access to justice throughout this case.

REQUESTED RELIEF:

1. For the Court to provide the relief required to make Justice Accessible to Mr. Smith and other disabled adults in Tennessee with mental, cognitive, and physical disabilities compromising their ability to meet the burdens of litigation.
2. DEFEND THE DISABLED

Dated April 24th 2024.

Sincerely,
Sean Smith

Sean P. Smith 4.24.2024
6402 Baird lane
Bartlett TN, 38135
(901) 522-5775
TheLastQuery@gmail.com
DefendTheDisabled.org

Affidavit of Motion for Accessible Justice's Informational Accuracy

I Sean Smith, duly sworn, do hereby affirm that the information I present in my Motion for Justice is to the best of my knowledge and ability true and correct and representative of past events per my memory of past events and/or documentation of those events, and submit my Motion for Accessible Justice as both a Motion and a Testimony, as at this time I am too impaired to gather, examine, analyze, and present all of the evidence I have or know of within the time limits I have to complete and submit this Motion.

Dated April 24th 2024.

Sincerely,

Sean Smith

6402 Baird lane

4,25,2024

Bartlett TN, 38135

(901) 522-5775

TheLastQuery@gmail.com

DefendTheDisabled.org



State of Tennessee County of Shelby

Subscribed and sworn to (or affirmed) before me

this 25 day of APRIL, 20 24

Robert H. Brown
Notary

My Commission Expires May 17, 2026

Certificate of Service

I Sean Smith hereby certify that a true and correct copy of *Motion for Accessible Justice - When Are the Burdens of Litigation Discriminatory Against Disabled Adults?* and the *Affidavit of Motion for Accessible Justice's Informational Accuracy* is being forwarded via email and USPS certified mail to the following:

Respondents Counsel
HAYLIE C. ROBBINS (BPR# 038980)
Assistant Attorney General
Office of the Tennessee Attorney General
Haylie.Robbins@ag.tn.gov

Dated April 24th 2024.

Sincerely,
Sean Smith *Sean P. Smith 4.24.2024*
6402 Baird Lane
Bartlett TN, 38135
(901) 522-5775
TheLastQuery@gmail.com
DefendTheDisabled.org