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dropped and grievances I filed on the matter not investigated in good faith, and at one point while on the phone with a UHC-TennCare representative my mind snaps and I'm simultaneously crying and laughing hysterically on the floor of my kitchen. Such experiences worsened my TMD and MSK issues and the neurological issues they provoke, while simultaneously causing a lot of stress provoking my psychiatric diagnoses, whose pathophysiologies are known to cause significant physical, neurological, and psychological damage, and at the same time, the experience is just fundamentally psychologically injurious to a person. I think I have those call recordings archived, if the Court would like proof I can go dig for it.

These are very real events. There's nothing hypothetical about them. There's nothing to question except, what degree of proof does the Court need, will I as a disabled adult be 'able' to provide it, and how badly will I have to hurt myself trying to provide what I am required to produce? A primary reason that I haven't worked to review, analyze, produce reports on, and file all the evidence I have in my holding, is that I know from experience, from making my 2023 complaint-appeal, specifically the transcript of the Cigna-Fedex conference call, that relistening to those calls severely provokes my PTSD, and the intensity of my suicidal ideation becomes a dangerous and emotionally burdensome distraction. It causes my cognitive function to become severely impaired and my physical health gets compromised, as the PTSD response isn't merely a psychological issue, but physiological, and my other disorders, like Mast Cell Activation Syndrome and Dysautonomia, get provoked by both psychological and physiologic stressors, and then once provoked the MCAS, dysautonomia, etc further exacerbate the psychological and physiological issues. I avoid digging through that mess, because if I do dig I will be hurt and might end up digging my own grave at the same time. What the Respondents counsel might refer to as Discovery, might end up being a game of Russian Roulette for me. But that's not the biggest reason why I avoid it. Having to listen to all those phone calls, make transcriptions, take notes, write articles using those materials, to not just have to relive but pay close critical attention to all the events of trauma my mind wants to forget, has about as much appeal as placing my hand in boiling water.

The misconduct of my health plans creating conditions that cause incapacitation has occurred repeatedly, as far back as 2014, but the more recent and well-documented examples include the events between 2019-2020 which led to years of incapacitation which delayed my finishing and sending my Nov 2023 complaint-appeal, as communicated in the Nov 2023 Complaint-Appeal [Petition for Judicial Review, Exhibit B pg 2-3], and again as recently as March 2023-August 2023 I suffered incapacitation while trying to consult with specialists in St.

Louis that my parents had to pay out of pocket for, as communicated on page 9 of my *Motion for Accommodations*.

That my efforts to try to function lead to injuries that have incapacitated me due to my not being able to get the care that I need is not a hypothetical, but a fact. While some aspects of my Motion for Accommodations involve a hypothetical premise, it would be more appropriate to consider these hypothetical premises in another context, which the April 12th 2024 *Respondent's Response In Opposition to Petitioner's Motion for Accommodation* did not consider.

Consider now that I am a disabled adult and that TennCare's misconduct has neglected, abused, and exploited me for over six years, of which evidence has been supplied in my past filings, and much more can be supplied should the Court or the Respondents find the evidence so far submitted to be inadequate. As a result of my health plans neglect, abuse, and exploitation I have suffered repeated instances of incapacitation varying in their severity and duration. And from those past instances of health plan misconduct causing me to suffer incapacitating injuries, it would be prudent to form an expectation that I am likely to suffer additional instances of incapacitation or death. The things that dispose me to suffering such injuries are the very things I will be required to endure in order to attempt to meet the burdens of litigation for this pro se case.

The Respondents asserted that:

"Tennessee courts "may not render advisory opinions based on hypothetical facts."

Colonial Pipeline Co. v. Morgan, 263 S.W.3d 827, 838 (Tenn. 2008)."

"An issue is not ripe when it "involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all." B & B Enters. of Wilson Cnty., LLC v. City of 3 Lebanon, 318 S.W.3d 839, 848 (Tenn. 2010)"

Noted in the Respondents cited source, State v. Price, 579 S.W.3d 332, 339 (Tenn. 2019), is stated:

"...the issue must be "based on an existing legal controversy." Id. (citing Texas, 523 U.S. at 300)."

"[A] legal controversy exists 'when the disputed issue is real and existing, and not theoretical or abstract, and when the dispute is between parties with real and adverse interests.'"

"The justiciability doctrine of ripeness "requires a court to answer the question of 'whether the dispute has matured to the point that it warrants a judicial decision.'" Id. (quoting B & B Enters. of Wilson Cnty. v. City of Lebanon, 318 S.W.3d 839, 848 (Tenn. 2010)). Thus, "ripeness is peculiarly a question of timing."

"The basic rationale of the ripeness doctrine "is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements"

Id. at 490-91 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967))."

The courts are known to provide some form of relief to victims of neglect and abuse to prevent their incapacitation or death from 'hypothetical' and 'abstract' future occurrences of neglect and abuse. The law is applied to afford prophylactic protections, and especially so for instances of ongoing neglect and abuse, and even more so is this the case as it pertains to Vulnerable Persons¹, such as disabled adults, which the Plaintiff is. When one can understand that neglect and abuse has been occurring and should be expected to continue to occur absent an intervention, the hypothetical abstract nature of the ongoing neglect and abuse causing injury or death in the future does not limit the Courts purview to order relief to prevent further neglect and abuse related injury or death from occurring.

Even the common citizen can explain what a restraining order is and what it is for and why it is ordered against an abuser. Despite that any such future occurrence of abuse by the abuser is based entirely upon "uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all." [*State v. Price*, 579 S.W.3d 332, 339 (Tenn. 2019)], does not limit the Court from providing relief to the victim from those hypothetical future offenses. This is because the past instances of abuse that have occurred established a pattern of abusive behavior. Similarly, if a dog makes unprovoked and unjustifiable attacks on a person that causes serious injury or death, the dog gets put down, because the dog is understood to be likely to attack people again because it has done so before. The Court should not refrain judgment on the matters set forth in my Motion for Accommodations as it would enable the Respondents to continue in their pattern of abuse and perpetrate further serious injuries and even death upon me. And to be frank, I think TennCare and its MCO Unitedhealthcare Community Plan have been conducting themselves as if they are vicious dogs, and it is long past time that the Judicial branch yanked their leash.

The respondents argue that the "Petitioner Has Not Filed a Motion for Summary Judgment" and "This Case is Not in a Procedural Posture for a Summary Judgment Motion". Should I be incapacitated or killed, there would be no one to file any motion for summary judgment on my behalf. Moreover, under the conditions defined in the Motion for Accommodations there would be no possibility of discovery between a the Plaintiff and the

¹ T.C.A. § 39-15-501(14), "Vulnerable adult" means a person eighteen (18) years of age or older who, because of intellectual disability or physical dysfunction, is unable to fully manage the person's own resources, carry out all or a portion of the activities of daily living, or fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others.

Defendant, as the Plaintiff would be incapacitated or dead. So it is, that I believed it reasonable then that should the arguments and evidence filed by the Plaintiff be adequate in the Courts opinion to lead to a summary judgment favorable to the Plaintiff, that such summary judgment should be granted under conditions in which the judicial process can no longer occur due to the absence of the Plaintiff or counsel representing the Plaintiff. Perhaps greater consideration needs to be offered with respect to the Respondent's right to defend themselves. Yet, I trusted that the Court would be fit to determine what accommodations the Respondents should be offered in order to maintain fairness between the incapacitated and/or killed disabled adult plaintiff who is a victim of years of abuse, versus the Goliath state agency that did the abusing.

Furthermore, if the conditions required to trigger the Motion for Accommodations' subsumed conditional request for Summary Judgment were met, the judgment required at that time would not be based upon any hypothetical, but only the facts so far established. It is my hope that if the Court could not perform an investigation it could at least order an investigation be performed in accordance with the criteria I delineated in my Motion for Accommodations so that my incapacitation or death could be included in those facts.

The Respondents argue that were the Court to refuse my request for conditional Summary Judgment in my Motion for Accommodations it would not cause me hardship at this time. Which seems a bit strange to argue, as the only way judgment on this matter now could cause hardship to any party is IF I am incapacitated or killed at a later date. If this, then that. No one will experience any hardship whatsoever by the Court granting all the relief requested in my Motion for Accommodations UNLESS, I experience the hardship of incapacitation or death, which are very severe hardships. Also consider that the Respondents can appeal any adverse ruling of this Court, but there is no method by which I can petition disease or death for reconsideration; they have a sort of finality to them.

Also worth considering, is the excessive degree of the misconduct committed by the Respondents, and more broadly occurring throughout the State of Tennessee - this is a problem encompassing multiple State agencies even though this suit is limited to TennCare - which has created these exceptional circumstances in which a disabled adult suffering ongoing neglect, abuse, and exploitation is being required to engage in pro se litigation to stop that neglect, abuse, and exploitation even though performing that pro se litigation is understood to be likely to cause further injury and even death. I would not consider my situation prototypical, but atypical, and as such my case of hardship would warrant a more careful individualized examination.

A situation I explained in a letter titled, "The Commoditization, Discrimination, and Abuse of Vulnerable Patients, Particularly the Medically Disabled", sent on Sept 19th 2019 to Governor

of Tennessee Bill Lee, Dept. Commerce and Insurance Commissioner Carter Lawrence, TennCare Deputy Commissioner Gabe Roberts, and The National Academy of Medicine, in which I communicate some of the problems and lack of assistance for those problems that I'd been encountering with my health plans and state agencies:

"Who assists the disabled? It's supposed to be the Social Security Administration and TennCare. "Supposed to be" and yet that's not what happens. Social Security says it's the responsibility of doctors and insurers, most doctors dance around the topic to ultimately blame insurers, Cigna says it's Unitedhealthcare's responsibility, United Healthcare says it's TennCare's responsibility, TennCare says it's Unitedhealthcare's responsibility, and then on some days Unitedhealthcare says it's TennCare's and on others Unitedhealthcare says it's Cigna's, and in the midst of that I get told to talk to the Department of Commerce and Insurance who tells me I have to speak to the Department of Labor, and the Department of Labor tells me to speak with Commerce and Insurance, who then directs me to the Medical Board Unit, who tells me to speak with the Office of Investigations, who tells me to speak with the office of the Insurance Commissioner, who tells me to speak with the Office of Investigations, who say they really don't deal with this and it sucks that I keep getting bounced around and perhaps I should just contact the Governor's office, and the Governor's office tells me to send in a brief letter which summarizes this complex issue when it takes a paragraph just to describe the several months of nonsense one endures trying to figure out who to talk to about the discrimination and abuse of medically disabled persons; a process that, ironically, is in itself both discriminatory and abusive.

I am instructed to write a letter which I don't know how to find the time to write properly as I'm overwhelmed with the tasks insurers, doctors, and society has placed upon persons who are medically disabled. To think, all of these people over the phone at these offices are employed to engage in these behaviors. Incompetence from top to bottom. Broken programs that fail to fulfill their primary mandates. **This problem is a state and federal fiscal disaster costing human lives.** It's a meat grinder; it's Soylent Green *in situ*." [Exhibit A3, 2019 Emails to TN Agencies]

Honestly, the reason I don't have a long list of complaints from HHS and other agencies is because I couldn't even figure out who I'm supposed to submit complaints to as over and over government agencies and nonprofit organizations would point the finger over to somebody else. Even Adult Protective Services (APS) did that.

Transcript of phone call with APS rep. on May 26th 2020:

00:10:23 Sean: ...I'm sitting here in immense mental anguish, you know, worse than it's ever

been, to where it's like, I'm just so tired of all this. I'm really like....

Adult Protective Services. Technically your mandate to intervene here. But, I delayed calling you cause everyone's passed the buck on this. I just want to get a straight answer.

00:10:47 Candace: I understand. I understand sir. And I'm sorry I have other calls I have to take, which is why I've been trying to give you the resources. I have to move along. But when it comes to mental health, unfortunately APS doesn't do, we don't involve, we don't investigate mental health.

00:11:17 Sean: So let me get this straight, um, people can come here and psychologically torture me and Adult Protective Services won't do anything?

00:11:25 Candace: Unfortunately, nope, when it comes to mental health, we do for children, but not for adults. The State doesn't do that unfortunately.

Transcript of phone call with APS program supervisor Linda Rice on June 2nd 2020:

00:05:31 Sean: There's no pretending that these people are anything other than criminals. And that's what I'm trying to get across to APS is these people are engaged in criminal activity that is hurting disabled adults and nobody is doing anything about it. And from my eyes, because of that, if you wanted to go psychologically and physically torture a disabled adult you could do so. And unless a police officer decides to do anything about formal assault charges nothing is going to happen. That's the reality I live in right now because it has happened repeatedly [to me]. And I can't seem to convince other people what's happened because nobody wants to review the evidences. It's as simple as I can prove it and nobody is even bothering to look at the proof."

00:06:39 Linda Rice: You know I wish I could give you the correct information that you need but, you know, this, that, again this would not be an issue that Adult Protective Services would intervene in.

"Tennessee law provides that "any person having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made" [T.C.A.

71-6-103(b)] giving such information to the Department."

[<https://reportadultabuse.dhs.tn.gov/>, accessed 4.13.2024]

"Abuse (physical, sexual, and emotional) generally involves more extreme forms of harm to the adult, including the infliction of pain, injury, mental anguish, unreasonable confinement, or other cruel treatment."

Fundamental to my case is the claim that my health plans have been neglecting, abusing, exploiting, and injuring me for over six years and I have been unable to find assistance to stop these ongoing harms. I am experiencing hardship on a daily basis because of that, and that same pattern of abusive behavior I have encountered and documented and presented to the court can be expected to be causing significant hardship for disabled adults throughout Tennessee. Anything that delays stopping the neglect, abuse, and exploitation perpetrated by these health plans creates additional hardship for me, and delays the actions that could be commenced to stop the neglect, abuse, and exploitation of other disabled adults throughout Tennessee.

I'm experiencing hardship just trying to reply to the Respondent's response as I try to read through the cited case law to understand the Respondent's position and form a reply. I spent the last two days prior to April 12th employing more extreme measures to get myself functional and productive again. I spent all day on the 11th, starting my morning with having needles stabbed into my jaw muscles (it's about as fun as it sounds), followed by errands for food, attending to miscellaneous tasks, cooking and eating, and then spending the rest of the day dedicated to managing my head, neck, jaws, and body to the exclusion of attending to other tasks. All afternoon and evening and throughout the night, slowly, methodically, using manual therapies and physical therapy techniques.

It was all done as part of a plan to work on researching and writing my court case over the weekend, but then I received the Respondent's Response, which replying to is a greater priority than completing the tasks I had planned to attend to. The effort of sitting at my computer reading and writing this reply is causing my head, neck, and jaws to become tense, misaligned, with pain radiating down my head and back and jaws, particularly at the right pterygoid and posterior masseter, the right occipital (back of of the upper neck), the fascia around my scalp and back of the head tight like a vise, and the upper right and lower right trapezius; especially that spot between the right shoulder blade and spine, and at my right hip right by my lumbar spine. I got off schedule as I had to delay eating to have more time to function without the impairment of digestion compromising my functionality, and eating late in turn delays when I'll be able to get to bed, which in turn dysregulates my circadian biology, which in turn adversely affects my sleep, neuropsychiatric, dysautonomia, and cognitive issues, which worsen my TMD MSK pain issues, and then tomorrow I'll wake up less cognitively able to finish working on things.

I'd need at least another day to recover before applying myself again, but I don't have that time now, I'm not able to be able enough to finish this document properly, and on and on the cascade goes, where quite likely, something I'm doing right now, or not doing, or doing improperly without realizing it, is going to cause me problems later, and I'll have to work hard to function well enough to try to address those problems, only to have another unanticipated problem take up what little time and ability I have.

I feel like I'm beating a dead horse here trying to explain that disabled adults with mental, cognitive, and physical disabilities are vulnerable and suffer significant hardships trying to do things that able of mind and body people can do without hardship. And thereby, what is and is not a hardship to the Plaintiff, needs to be determined with metrics that can be adjusted to account for the differences between a disabled adult pro se litigant and able of mind and body litigants.

Integral to my request for relief in my Motion for Accommodations is that I am seeking to deprive the Respondents of being able to benefit from engaging in misconduct to cause my incapacitation and/or death. My Motion for Accommodations, in effect, seeks an injunction against the Respondents ongoing neglect, abuse, and exploitation as a means to assure that I have a chance to Access Justice, which is a fundamental constitutional right, which the Respondents misconduct causing my incapacitation or death would Obstruct by further depriving me of the 'ability' to exercise that right.

TennCare and its MCO Unitedhealthcare Community Plan have been neglecting, abusing, and exploiting me. I would like the court to make them stop. But until my case is fully heard and a final order made I don't understand how that matter can be fully resolved. So, in the interim, I made a Motion requesting relief that will act as a deterrent and would cause no immediate hardship to the Plaintiff or Respondents. I thought such a request would be reasonable and fair to both parties and thus likely to be granted by the Court at this preliminary stage in my case.

However, I admit, if it is the Respondents intent to incapacitate or kill me, it would indeed be a hardship to them to have the Motion for Accommodations serve as an effective instrument against their agenda to cause me further harm. Or put another way, if the Respondents are not engaged in misconduct that neglects, abuses, and exploits me, then there can be no risk that I would be incapacitated or killed by the Respondents neglect, abuse, and exploitation, and no possible hardship could be endured by the Respondents if the Motion for Accommodations is fully granted. And if the Respondents have been neglecting, abusing, and exploiting me, and have no intention to stop, the Court can therefore expect them to continue, and the hardships

the Respondents would sustain by triggering the conditions described in the Motion for Accommodations would be well-deserved. The Respondent's past and future compliance with the laws will entirely determine whether or not they can suffer any hardship with respect to the relief requested in the Motion for Accommodations.

I know my disabilities make it hard for me to understand things, but I am finding the Respondents arguments quite difficult to comprehend. For example, the respondents argue:

"Accordingly, "a court should decline to rule 'where the refusal to act will not prevent the parties from raising the issue at a more appropriate time.'" State v. Price, 579 S.W.3d 332, 339 (Tenn. 2019) (quoting B & B Enters., 318 S.W.3d at 849. Here, there is no prejudice to Plaintiff if the presented issues are adjudicated at a later time."

If I am incapacitated or killed, well, I don't know about you, but to me those words mean "I" would not be around to raise any issue at a more appropriate time. Therefore, the only appropriate time for "I" to raise these issues is while "I" am functional enough to raise issue to prevent the injuries which would incapacitate or kill the "I". As was noted earlier, "ripeness is peculiarly a question of timing." State v. Price, 579 S.W.3d 332, 339 (Tenn. 2019). Once the administrative record is filed I must begin doing all that I can to try to function, so that I can try to litigate this matter to the best of my ability. It's not a matter of if I'll get injured, but when, and how badly. I mean, you want to talk about hardship... That I have to plan to hurt myself to be able to 'try' to access justice, how can someone not see a problem with that? Isn't that a form of cruelty?

That I will get hurt, get injured, isn't a mere hypothetical, it is necessitated by past actual events where injuries occurred, and at times caused me to become incapacitated. Per prior actual events my hypothetical incapacitation can be expected to be at least as severe as those incurred in those past events of incapacitation, and perhaps, hypothetically, severe enough that recovery would not be possible. Not that I ever really recovered from those injuries causing past events of incapacitation, which make the hypothesis that I might recover from my incapacitation already null; if I manage to regain function, I won't be as functional as I am now.

So much that is presumed to be known, is really just a hypothetical. The famed philosopher known as the father of modern philosophy, Rene Descartes posited, "I think, therefore, I am" and thereafter delineated the argument that pretty much everything else we think we know is really just a hypothesis. Afterall, if you push someone off a ladder, you don't 'know' their legs will break, you just expect their legs to break, because, you know, like gravity, and stuff. It's hypothetical, until it happens, and then, per Descartes observation, it is still technically hypothetical, because you can't really know external objects exist. All we have is

sensory data; perception; an abstraction of the reality we infer to exist. Ultimately, what the Court needs to determine isn't if something is hypothetical, because between ages of philosophers and genius physicists, we still can not figure out if the Universe is or is not a simulation in which God is really just a systems administrator of some long forgotten academic project left to run endless cycles on a quantum computer. No, what the Court must decide is if what I describe and present should be believed to be credible and warrant the Courts action to grant relief. The court must weigh the hypotheticals presented to it by the external objects Plaintiff and Defendant.

In medicine there's a joke about when it is that you really need 'evidence' to support a practice. There's no randomized placebo controlled trial proving parachutes stop orthopedic injury, therefore, the medical evidence is inadequate to prove parachutes are an effective intervention. [Smith, G. C., & Pell, J. P. (2003). Parachute use to prevent death and major trauma related to gravitational challenge: systematic review of randomised controlled trials. *BMJ (Clinical research ed.)*, 327(7429), 1459–1461. <https://doi.org/10.1136/bmj.327.7429.1459>]

"It is a truth universally acknowledged that a medical intervention justified by observational data must be in want of verification through a randomised controlled trial. *Observational studies have been tainted by accusations of data dredging, confounding, and bias.*"⁷

"...medical interventions based solely on observational data should be carefully scrutinised, and the parachute is no exception."

"Only two options exist. The first is that we accept that, under exceptional circumstances, common sense might be applied when considering the potential risks and benefits of interventions. The second is that we continue our quest for the holy grail of exclusively evidence based interventions and preclude parachute use outside the context of a properly conducted trial. The dependency we have created in our population may make recruitment of the unenlightened masses to such a trial difficult. If so, we feel assured that those who advocate evidence based medicine and criticise use of interventions that lack an evidence base will not hesitate to demonstrate their commitment by volunteering for a double blind, randomised, placebo controlled, crossover trial."

I believe the circumstances of my case merit the court to rule on all the matters presented in my Motion for Accommodations at a time it is still possible for such a ruling to provide any meaningful protective benefit to me, the disabled adult Plaintiff. At this time a favorable ruling can serve to prevent further abuse, but at a later date, it cannot. Should I

suffer incapacitation or death due to the misconduct of my health plans causing further neglect, abuse, and exploitation, to delay adjudication now would be to forestall adjudication forever. Such an understanding is arrived at as being common sense, as despite all of my complaints, grievances, and appeals to their better nature, UHC:CP and TennCare have proved themselves determined to persist in their established patterns of neglect, abuse, and exploitation of their disabled adult plan beneficiary. I am being required to jump from this airplane, I entreat the court to use common sense to supply me with a parachute.

Dated April 13th 2024.

Sincerely,  4, 13, 2024
Sean Smith

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DefendTheDisabled.org

Certificate of Service

I Sean Smith hereby certify that a true and correct copy of *Plaintiff's Reply to Respondent's Response In Opposition to Petitioner's Motion for Accommodations* is being forwarded via email 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 13th 2024.

Sincerely,

Sean Smith



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