

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

In the Matter of _____,

Petitioner

Case No.
Honorable

v.

OAKLAND COUNTY COMMUNITY MENTAL HEALTH AUTHORITY
& THE MICHIGAN DEPARTMENT OF HUMAN SERVICES

Respondent

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PETITIONER'S BRIEF FOR JUDICIAL REVIEW

ORAL ARGUMENT REQUESTED

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_____’S (HEREINAFTER “_____”) MEDICAID-FUNDED SELF DETERMINATION BUDGET MAY BE UTILIZED FOR COSTS TO MOVE _____ FROM MICHIGAN TO ILLINOIS UNTIL _____ ESTABLISHES RESIDENCY AND BECOMES ELIGIBLE FOR MEDICAID IN ILLINOIS AND THE OCCMHA AND THE MICHIGAN DEPARTMENT OF HUMAN SERVICES REFUSAL TO DO SO VIOLATES MCL § 24.306(1)(a) AND SO MUST BE REMEDIED	4
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- a. Administrative Law Judge (hereinafter “ALJ”) _____’s Application of Federal Law and the Medicaid Provider Manual Violates Petitioner’s Fundamental Right of a United States Citizen to Interstate Travel Under the Privileges and Immunities Clause of Article IV and the Fourteenth Amendment of the United States Constitution and so Should be Overturned by This Honorable Court Pursuant to MCL § 24.306(1)(a).
- b. Neither the Existence of the State of Michigan’s Residency Rule nor the Federal Medicaid Residency Rule does not Justify Respondent’s Violation of the Fourteenth Amendment, the Violation of Which Gives This Honorable Court Cause to Overturn the Decision Pursuant to MCL § 24.306(1)(a)
- c. _____’s Civil Rights were Violated by the OCCMHA and the Michigan Department of Human Services which is a Violation of 42 USC § 1983 and so ALJ _____’s Decision Must be overturned pursuant to MCL § 24.306(1)(a) Because the Decision violates a Statute
- d. _____’s Fundamental Right to Freedom of Association, as Guaranteed by the First and Fourteenth Amendment of the

Constitution, were Violated by the ALJ's Decision and so Must
be Overturned Pursuant to MCL § 24.306(1)(a)

ALJ _____'S DECISION WAS BASED ON A SUBSTANTIAL
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- a. ALJ _____'s Reliance on 42 CFR § 431.52(b) as a Reason
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Therefore the Decision is Affected by a Substantial or Material
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ALJ _____'S DECISION IS NOT SUPPORTED BY
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- a. ALJ _____ Relied on Numerous Incorrect Facts, None of
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STATEMENT OF ISSUES INVOLVED

1. WAS _____ DENIED HIS BASIC CONSTITUTIONAL RIGHTS BY ALJ _____'S DETERMINATION THAT HE MAY NOT USE HIS MEDICAID-FUNDED SELF-DETERMINATION BUDGET TO MOVE TO ILLINOIS WHICH THEREFORE REQUIRES THIS HONORABLE COURT TO REVERSE THE DECISION PURSUANT TO MCL § 24.301(1)(a) BECAUSE IT VIOLATES THE CONSTITUTION OR A STATUTE?
 - a. Whether ALJ _____'s Application of Federal Law and the Medicaid Provider Manual Violates Petitioner's Fundamental Right of a United States Citizen to Interstate Travel Under the Privileges and Immunities Clause of Article IV and the Fourteenth Amendment of the United States Constitution, and Therefore Requires that this Honorable Court Overturn the Decision Pursuant to MCL § 24.306(1)(a) because it Violates the Constitution?
 - b. Whether the Existence of the State of Michigan's Residency Rule or the Federal Medicaid Residency Rule Justifies Respondent's Violation of the Fourteenth Amendment Privileges and Immunities Clause and Therefore Requires that this Honorable Court Overturn the Decision Pursuant to MCL § 24.306(1)(a) because it Violates the Constitution?
 - c. Whether _____'s Civil Rights were Violated by the OCCMHA and the Michigan Department of Human Services, a Violation of 42 USC § 1983, and so must ALJ _____'s Decision be Overturned Pursuant to MCL § 24.306(1)(a) Because the Decision violates a Statute?
 - d. Whether _____'s Fundamental Right to Freedom of Association, as Guaranteed by the First and Fourteenth Amendment of the Constitution, were Violated by the ALJ's Decision and so Must be Overturned Pursuant to MCL § 24.306(1)(a)?
2. WAS ALJ _____'S DECISION BASED ON A SUBSTANTIAL OR MATERIAL ERROR OF LAW THAT WARRANTS REVERSAL BY THIS HONORABLE COURT PURSUANT TO MCL § 24.306(1)(f)?
 - a. Is ALJ _____'s Reliance on 42 CFR § 431.52(b) as a Reason to Deny _____'s Request to Move Wrong, and Therefore the Decision is Affected by a Substantial or Material Error of Law Which Must be Reversed Pursuant to MCL § 24.306(1)(f)?
 - b. Is the Expenditure of Medicaid Funds for the Purpose of Supporting Petitioner's Move to Illinois Sanctioned by the State Plan and Therefore ALJ _____'s Decision Must be Overturned Pursuant to MCL § 24.306(1)(f) Because it is Affected by Substantial or Material Errors in Law?
3. Was ALJ _____'S DECISION SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD AND IF NOT MUST BE OVERTURNED PURSUANT TO MCL § 24.3406(1)(d)?

- a. Did ALJ _____ Rely on Numerous Incorrect Facts, None of Which are Supported by the Whole Record and so the Decision Must be Overturned Pursuant to MCL § 24.3406(1)(d)?
4. WAS ALJ _____'S DECISION IS ARBITRARY AND CAPRICIOUS AND SO THE DECISION SHOULD BE OVERRULED PURSUANT TO MCL § 24.3406(1)(e)?

STANDARD OF REVIEW

Article Six, section 28, of the Michigan Constitution provides:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law. Const 1963, art 6, § 28, *emphasis added*.

An agency's findings of fact are to be given deference, *VanZandt v State Emp Retirement Sys*, 266 Mich App 579, 588; 701 NW2d 214 (2005). However, an agency's decision that "is in violation of statute [or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious," is a decision that is not authorized by law. *Brandon School Dist v Michigan Ed Special Services Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991). This determination mirrors the standard of review detailed in the Administrative Procedures Act (APA). 1969 PA 306, MCL § 24.306(1). The APA states that a court shall set aside a decision of an agency if it (a) violates the constitution or a statute, (b) exceeds statutory authority or the agency's jurisdiction, (c) was made upon unlawful procedure, (d) is not supported by competent, material and substantial evidence on the whole record, (e) is arbitrary, capricious, or an abuse of discretion, or (f) is affected by any other substantial or material error of law. *Id.* Further, the reviewing court may "reverse or modify the decision or order [of the administrative agency] or remand the case for further proceedings." MCL § 24.306(2).

There are multiple grounds for this Honorable Court to overrule the ALJ _____'s decision. The first is that the decision is clearly unconstitutional, as it violates _____'s fundamental right to interstate travel and the Supremacy Clause. "Legal rulings of an administrative agency [must be] set aside if they are in violation of the constitution or a statute or are affected by a substantial and material error of law." *Goolsby v City of Detroit*, 211 Mich App 214, 220-221, 535 NW2d 568 (1995). "Legal rulings of administrative agencies are not given the deference accorded factual findings. Legal rulings of an administrative agency are set aside if

they are in violation of the constitution or a statute, or affected by a substantial and material error of law.” *Amalgamated Transit Union, Local 1564, AFL-CIO v. Southeastern Michigan Transp. Authority*, 437 Mich 441 450, 473 NW2d 249 (1991).

In reviewing whether an agency's decision is supported by competent, material, and substantial evidence on the whole record, a court must review the entire record. *Great Lakes Sales, Inc v State Tax Comm*, 194 Mich App 271, 280; 486 NW2d 367 (1992). Substantial evidence is “the amount of evidence that a reasonable person would accept as sufficient to support a conclusion,” which is less than a preponderance of the evidence, but is more than a mere scintilla. *In re Payne*, 444 Mich 679, 692 (1994). “What the drafters of the Constitution intended [when considering substantial evidence] was a thorough judicial review of administrative decision, a review which considers the whole record—that is, both sides of the record—not just those portions of the record supporting the findings of the administrative agency. Although such a review does not attain the status of De novo review, it necessarily entails a degree of qualitative and quantitative evaluation of evidence considered by an agency. Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views. Cognizant of these concerns, the courts must walk the tightrope of duty which requires judges to provide the prescribed meaningful review.” *Michigan Employment Relations Commission v. Detroit Symphony Orchestra, Inc.*, 393 Mich 116, 124; 223 NW2d 283 (1974).

Finally, a court must overturn an agency’s decision if it was affected by a substantial or material error of law. MCL § 24.306(1)(f). A court must do so even if there is substantial evidence to support the agency’s findings. *Detroit Police Officers Ass'n v. City of Detroit*, 212 Mich App 383, 388; 538 NW2d 37 (1995); *Dignan v. Michigan Public School Employees Retirement Bd.*, 253 Mich App 571, 576; 659 NW2d 629 (2002). The ALJ’s decision has so negatively affected _____ by several substantial and material errors of law and facts that it meets or exceeds this standard of review.

FACTS

1. _____ (hereinafter “_____”) is a thirty-eight-year-old Medicaid Beneficiary born with developmental disabilities including, Cerebral Palsy, mild mental retardation, and other cognitive impairments. He is also a person with mental illness including Bi-Polar Disorder. The ALJ ignored this diagnosis and instead incorrectly classified him as “higher functioning.”
2. _____ currently resides in Oakland County, Michigan, where he is supposed to receive housing assistance, vocational services, and seventy (70) hours per week of Personal Support Services. See Exhibit A. He has no property interest in this living arrangement, and the lease is in the provider’s name, not _____’s.
3. _____ currently receives services by and through Oakland County Community Mental Health Authority (OCCMHA) and its contract agency Macomb Oakland Regional Center (MORC, Inc.) through the Michigan Department of Community Health (MDCH), but through the person centered planning process _____ has repeatedly begged to move to Chicago, Illinois, so that he may reside near his brother and relatives and receive the same services through the same Medicaid provider as his brother does, Little City Foundation (hereinafter “Little City”) . This will facilitate _____’s ability to access natural family supports which according to the Michigan Department of Community Health is a priority. See Exhibits B, C. The ALJ ignores this.
4. _____ has no living relatives in the State of Michigan, and but for his Guardian and providers employed by service organizations for individuals with disabilities, he has no one to provide companionship, support, and advocacy to him. This is restrictive on his ability to maximize his independence. This makes Michigan more restrictive for _____ than his requested change in residency and service providers.
5. _____ has specifically requested in his person centered plan that he receive services from Little City in Chicago, Illinois. He has not requested that he live “on campus.” He requested an apartment. See *Exhibit B*.
6. _____ is prevented from moving to Illinois as he desires and where his brother and relatives reside, because of the unconstitutional refusal of OCCMHA and MORC, Inc. to provide services suited to his condition in accordance with his person centered plan (PCP). _____ cannot simply pack his bags and move to Chicago on his own, as both agencies are forcing him to do. The nature and severity of _____’s complex disabilities require that he receive 24-hour supervision and assistance with daily living skills. These services are not only necessary for _____ to function, but they are necessary to ensure that he is able to live a full and meaningful life, and to grow as an individual. They are clearly identified in his plan of service. This arbitrary denial of his fundamental constitutional right to travel cannot be supported.
7. _____’s fundamental constitutional right to interstate travel has been denied by the denial of his request to use his Medicaid-funded self determination budget to move to

Illinois, to live near his brother and cousin. In essence, Michigan is holding _____ hostage because he is a person with both developmental disabilities and mental illness who is dependent on these Medicaid Waiver services to live independently and safely in the community. But for his dependence on these services and his disabilities he would not be discriminated against.

8. An administrative hearing was held on February 21, 2008 and April 3, 2008, in Auburn Hills, Michigan before ALJ _____. Not only did ALJ _____ uphold the actions of OCCMHA, he made light of _____'s constitutional concerns. ALJ _____ stated that "he simply desires to be closer to his family in the Chicago area . . . I am not at liberty to arbitrarily ignore either law or policy." Decision and Order, page 5, Exhibit D. However, he does ignore constitutional law directly on point, in addition to federal and state Medicaid law. He also derided _____'s attorney for making these constitutional claims. Decision and Order, page 8.
9. On July 11, 2008, Administrative Law Judge _____ issued a written Decision and Order upholding OCCMHA's denial of _____'s request to use his Medicaid-funded budget to move to Illinois. See Exhibit D.
10. On August 11, 2008 _____ requested this Judicial Review of the ALJ's decision.
11. On August 11, 2008 _____ petitioned the Oakland County Probate Court for a Placement Order pursuant to MCL § 330.1521, See Exhibit E.

ARGUMENT

- I. _____'S MEDICAID-FUNDED SELF DETERMINATION BUDGET MAY BE UTILIZED FOR COSTS TO MOVE HIM FROM MICHIGAN TO ILLINOIS UNTIL HE ESTABLISHES RESIDENCY AND BECOMES ELIGIBLE FOR MEDICAID IN ILLINOIS AND THE OCCMHA AND THE MICHIGAN DEPARTMENT OF HUMAN SERVICES REFUSAL TO DO SO VIOLATES MCL § 24.306(1)(a) AND SO MUST BE REMEDIED

- a. ALJ _____'s Application of Federal Law and the Medicaid Provider Manual Violates Petitioner's Fundamental Right of a United States Citizen to Interstate Travel Under the Privileges and Immunities Clause of Article IV and the Fourteenth Amendment of the United States Constitution and so Should be Overturned by This Honorable Court Pursuant to MCL § 24.306(1)(a).

ALJ _____ ignores the simple fact that the constitutional right to travel is a fundamental personal right that has repeatedly been recognized and is guaranteed to all United States citizens. *Saenz v. Roe*, 526 US 489, 498. _____ is permitted to exercise this right even though he has developmental disabilities and mental illness and is dependent on Medicaid

services. In 2007, the Federal District Court of Delaware held that the State of Delaware's residency requirements to qualify for Medicaid violate an individual's fundamental right to interstate travel. *Duffy v. Meconi*, 508 F. Supp. 2d 399, 407 (2007). Ms. Duffy was a 33 year old Medicaid beneficiary who resides in an intermediate care facility for mental retardation in North Carolina. *Id.* at 402. Ms. Duffy was diagnosed with mental retardation, autism and blindness; she was also non-verbal, and suffered from seizures. *Id.* Due to the severity of her condition, she required 24-hour supervision similar to _____. *Id.* In 2001, Ms. Duffy's parents moved from North Carolina to Delaware. *Id.* at 401. Because her disabilities were so complex, Ms. Duffy's parents were unable to take care of her for any long period of time. *Id.* Upon moving, Ms. Duffy's parents immediately applied to obtain a similar placement for her in Delaware through Medicaid. *Id.* The State of Delaware determined that because she was not yet a resident, and she did not have "urgent needs," she would not receive community placement in Delaware. *Id.* at 402. The Duffys brought suit on behalf of their daughter and alleged that the State's refusal to provide her with services violated the Privileges and Immunities Clause of Article IV of the Constitution, the Privileges and Immunities Clause of the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment by restricting her right to interstate travel. *Id.* at 402. "A state law implicates the constitutional right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right." *Id.* at 403, quoting *Attorney General of New York v. Soto-Lopez*, 476 US 898, 903 (1986). The ALJ's decision penalizes _____ with the loss of all of his Medicaid services if he uses his right to travel.

The Federal District Court of Delaware examined whether "by requiring Ms. Duffy--who cannot afford private care--to first physically move to Delaware at her own expense, before the

State determines her Medicaid eligibility, the State is violating her Constitutional right to travel.” *Id.* at 404. Further, the court held that Delaware violated Ms. Duffy’s right to travel under the Equal Protection Clause of the 14th Amendment, and granted summary judgment for Ms. Duffy. *Id.* at 407. The court determined that the residency requirement treated individuals who did not have sufficient funds to move from one state to another on their own differently than it did those with the means to establish residency with their own finances, and the distinction was neither warranted nor justifiable. *Id.* The court further stated that Delaware deterred Ms. Duffy, and those similarly situated to her, from crossing state lines. *Id.* _____ is in the exact same factual situation now. _____ has been denied his right to exercise the fundamental constitutional right to travel by OCCMHA’s unconstitutional requirement that he will lose his Medicaid Waiver services by moving. Other people on the Medicaid waiver administered by the states in partnership with the Center for Medicare and Medicaid Services (CMS) are in the same situation. They lose services if they move, and cannot move safely if services are not in place. It is a classic catch-22 or a no-win situation.

Carol Novak, a member of the National Council on Disability testified before a US Senate Committee regarding Strategies to Improve Access to Medicaid Home and Community Based Services:

The separate administrative structures for each of the States' Medicaid Home and Community Based waivers and for institutional Long-Term Services and Supports absorb an excessive amount of funding that would be better spent on direct services. The parallel bureaucracies also make it challenging and confusing for beneficiaries and their families to transition from one model of Medicaid long term service to another.... In our efforts to empower Americans with disabilities, we need to recognize and act on those opportunities for change that could enhance peoples' lives. Currently, people who rely on Medicaid Home and Community Based waiver services do not have the freedom to move from one state to another because there is no portability from one state's Medicaid program to another. If people do take the risk of moving to another state, they lose all Personal Assistance Services and have no idea how long they will have to wait for services

in another state. They also have to contend with the disparity of Home and Community Based waiver services among states because each state designs its own waivers with different target populations and service menus. The notion of transforming Medicaid Long Term Care into a coordinated program administered by a single agency that is responsible for all models of long term services and supports, including Personal Assistance Services, could give people the freedom to move from one state to another, eliminate the disparity in services between states and the difficulty in transitioning from one model of Medicaid Long Term Care to another, reduce the number of bureaucracies, and make it easier to establish Personal Assistance Services as a viable career. It could also make coordination with housing and transportation entities easier to achieve. See Exhibit G 10-11

The Court's decision in *Duffy* reunited a family that had been apart for six long years; hopefully such a decision can be made in this case to reunite _____ with his family in Chicago. Like the *Duffy* case, _____'s brother wants to be near him, but _____ does not have the resources to move to Chicago without the support and assistance of his Medicaid services. See See Exhibit F. Accordingly, _____ is unable to simply pack his belongings and move to Chicago. He cannot afford this, nor does he not have services to assist him in moving, he will not even have the simple assurance that he will arrive in Chicago safely. It is imperative that _____ have his Medicaid services to assist him in his move; without these services, he must remain in Michigan alone and dependent on the long-term care system for help. _____ has struggled with the stress of having his constitutional rights denied him. As a result, he has made poor decisions. A guardian had to be appointed to protect him. _____ asserts that allowing him to have the full rights afforded all other citizens and allowing him to re-establish family connections may facilitate him to be his own guardian at some point as his cousin could act as his agent under a Durable Power of Attorney.

_____’s catch-22 is also similar to *Shapiro v. Thompson*, 394 US 618 (1969), overruled in part by *Edelman v. Jordan*, 415 US 651 (1974)¹, where the Supreme Court struck down a state requirement that denied welfare assistance to individuals who had not lived within the state for a certain period of time preceding their application for assistance. The State argued that the waiting period requirement was utilized to preserve the fiscal integrity of the welfare program. The Supreme Court held that the true purpose of the time period regulation was to inhibit migration into the state, which is unconstitutional. “We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of citizens.” *Id.* at 633. This is exactly what is happening to _____ because OCCMHA and Michigan are spending large sums of money to keep him in their Medicaid system. They are not even attempting to preserve the financial integrity of the developmental disability waiver program. They have already spent more money in legal fees and staff time to deny _____ his constitutional right than it would have cost to allow _____ to relocate and secure waiver services in Illinois. See Exhibit G, *Id.* 8. There is no rational basis for this unconstitutional behavior, and the ALJ’s decision that supports it must be overturned.

Similarly, in 1997, the Seventh Circuit Court of Appeals held that a private long term care facility in Wisconsin may not deny admission to individuals who are not already residents of Wisconsin. *Bethesda Lutheran Homes and Services Inc. v. Leean et al.*, 122 F.3d 443 (7th Cir. 1997). In *Bethesda Lutheran*, three current residents of the facility and four out-of-state individuals who wanted to move to the facility brought suit under 42 USC § 1983. *Id.* at 444.

¹ In *Edelman*, the Supreme Court overruled *Shapiro* to the extent that it awarded retroactive damages to the plaintiff. *Edelman* does not apply to _____’s case because he is not seeking retroactive damages.

The plaintiffs alleged that the defendants were violating their constitutional right to travel by imposing certain state and federal Medicaid regulations. *Id.* Bethesda Lutheran was a long-term care facility that provided care for individuals with severe developmental disabilities. *Id.* The three plaintiffs who were residents of Bethesda Lutheran brought suit based on the fact that they were ineligible for Medicaid. *Id.* Since all three plaintiffs' parents were residents of Illinois when they were admitted into the Wisconsin facility, they were considered residents of Illinois in the eyes of the Wisconsin government. *Id.* Conversely, the three individuals who were considered Illinois residents were not entitled to Medicaid benefits from Illinois either. *Id.* The other four plaintiffs were developmentally disabled individuals who lived outside of Wisconsin and challenged the Wisconsin laws that prevented them from relocating to the Bethesda Lutheran facility. *Id.*

The Seventh Circuit concluded that the Wisconsin residency requirement in the case was a baseless interference with an individual's constitutional right to interstate mobility, and that the state was unable to communicate any plausible justification for such a requirement. *Id.* at 447. The court reasoned that it was virtually impossible for the four non residents to establish residency under the current Wisconsin regulations. *Id.* "Since anyone who is approved for protective placement is by definition incapable of living outside the Watertown facility or its equivalent in restrictiveness, it is unclear where in Wisconsin the applicant for admission to the facility is supposed to live while being processed." *Id.* at 446. The same factual situation is at play here. Where is _____ is supposed to secure development disability waiver services while being processed into Illinois' waiver program? Michigan's position is that he cannot receive services from them, so he cannot access services and travel.

As for the three individuals who already lived in the facility and were in need of Medicaid benefits to remain there, the court determined that the Medicaid regulations prohibiting them from becoming residents of Wisconsin were also unconstitutional. *Id.* at 449. The Wisconsin government argued that if there was no residency rule, then disabled individuals would simply flock to the states with the best care which would have major economic ramifications in those states. *Id.* The court agreed that while Wisconsin's arguments were substantial, *Shapiro* controlled and so the arguments were unconstitutional. *Bethesda Lutheran* at 449. The court held that both the state and federal provisions that the plaintiffs challenged violated the constitutional right to travel. *Id.* Little City will have to work with _____ to secure services consistent with *Bethesda Lutheran*.

In contrast to the individuals in *Bethesda Lutheran* and *Duffy*, _____ has no immediate family left in Michigan to fight for what is in his best interest. _____'s dream is to move to Chicago, Illinois to live near his brother, Scott, who is severally developmentally disabled and has received services through Little City Foundation since he was a toddler. _____'s brother requires 24-hour care and is unable to move to Michigan or assist _____ in moving to Chicago. Where as the plaintiff's parents in *Duffy* brought suit on her behalf and who spoke up for her best interests, _____'s parents are both deceased and he does not have the benefit of a close family member who would be able to accompany him in moving out-of-state. Like Ms. Duffy's parents, _____ wants _____ to be near him, but neither have the resources to get _____ to Chicago without the support system provided by the Medicaid waiver.

The Michigan Department of Community Health has recognized the importance that family relationships and natural supports play in the development of an individual's plan of service. The Person Centered Planning Guidelines state:

“The Michigan Department of Community Health (MDCH) has advocated and supported a family approach to service delivery for children and their families, “This approach recognizes the importance of the family and the fact that supports and services impact the entire family. Therefore, in the case of minors, the child/family is the focus of service planning, and family members are an integral to the planning process and its success. The wants and needs of the child/family are considered in development of the Individual plan of services. See Exhibit C, *Id* 1. .

In addition, the Person Centered Planning Guidelines contain a chart showing the elements and strategies that can be used by the person representing a Community Mental Health Services Program during the Person Centered Planning process. The specifically enumerated elements/strategies contain the following provision:

“Exploration of the potential resources for supports and services to be included in an individual's plan are to be considered in this order: The individual, family, friends, guardian and significant others, Resources in the neighborhood and community, Publicly funded supports and services available for all citizens, Publicly funded supports and services provided under the auspices of the Department of Community Health and Community Mental Health Services Programs *Id* 6.”

The MDCH Self Determination Policy & Practice Guidelines states the elements of Self-Determination including Freedom, defined as:

“The ability for individuals, with assistance from significant others (e.g. chosen family and/or friends), to plan a life based on acquiring necessary supports in desirable ways, rather than purchasing a programs. This includes the freedom to choose where and with whom one lives, who and how to connect to in one's community, the opportunity to contribute in one's own ways, and the development of a personal lifestyle..” See Exhibit C.

The actions of the OCCMH and Michigan Department of Human Services have deprived _____ of these essential family supports and have severely limited his ability to engage in self-determination.

_____ is unable to simply pack his belongings and move to Chicago. _____ does not have the ability to handle all of the details that go into moving from one state to another nor does he have the ability to privately pay for these service. See Exhibit F. All _____ is able to do on his own at this point is communicate what he wants, where he wants to live, use his voice during his Person Centered Planning meetings, and hope that someone hears him and follows the constitution. Not allowing _____ to use his current Medicaid services to assist him in moving completely denies _____'s fundamental right to any interstate travel. _____ cannot leave Michigan for Illinois to receive Medicaid services there without the assistance of his Michigan Medicaid services. Michigan is holding _____ hostage with its waiver program, and others dependent on the Medicaid waiver are similarly held hostage by their state Medicaid waivers.

- b. Neither the Existence of the State of Michigan's Residency Rule nor the Federal Medicaid Residency Rule does not Justify Respondent's Violation of the Fourteenth Amendment, the Violation of Which Gives This Honorable Court Cause to Overturn the Decision Pursuant to MCL § 24.306(1)(a) .

The United States Constitution says that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." US Const Art IV, § 2. The application of Michigan's residency rule and the Federal out-of-state placement rule to _____ in this instance clearly violates the Constitution. _____ is guaranteed the right to move to Illinois and receive all of the benefits of an Illinois citizen. "[O]ur cases have not identified any acceptable reason for qualifying the protection afforded by the Clause for 'the 'citizen of State A who ventures into State B' to settle there and establish a home.'" *Saenz* at 502, quoting *Zobel v Williams*, 457 US 55, 74 (1982) (O'CONNOR, J., concurring in judgment). "The right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State . . . is protected not only by the new arrival's status as a state citizen,

but also by her status as a citizen of the United States.” *Saenz* at 502. “That newly arrived citizens “have two political capacities, one state and one federal,” adds special force to their claim that they have the same rights as others who share their citizenship.” *Id* at 504. Clearly, no matter the position of the Michigan residency rule and the Federal out-of-state placement rule, the United States Constitution guarantees _____ the right to move to Illinois and to receive the same treatment that a long-time Illinois resident receives. He should also be able to move with Michigan Medicaid services in place until Illinois Medicaid waiver services are secured. But for his need for services and his disability, his fundamental right to travel would not be denied. Therefore, he is being treated differently because he is disabled and poor.

- c. _____’s Civil Rights were Violated by the OCCMHA and the Michigan Department of Human Services which is a Violation of 42 USC § 1983 and so ALJ _____’s Decision Must be overturned pursuant to MCL § 24.306(1)(a) Because the Decision Violates a Statute

42 USC § 1983 allows for a citizen to redress wrongs committed by the government. It “creates a cause of action against any person who under color of state law deprives an individual of “any right, privileges, or immunities secured by the Constitution and laws” of the United States also allows for the individual’s right to enforce the Medicaid statutes in a proper and constitutional matter.” *Westside Mothers v Haveman*, 289 F.3d 852 (6th Cir. 2002) (quoting 42 USC § 1983). Not allowing _____ to use his Self-Determination budget to move to Chicago not only effectively impedes his right to interstate travel, it holds him effectively hostage in Michigan and violates his right to Equal Protection, Freedom of Association, and his civil rights under § 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA). It also denies him the covered services included in this waiver, specifically the use of a fiscal intermediary, and one-time only housing assistance. Holding _____ hostage to Michigan Medicaid Waiver Services used only in Michigan violates _____’s right to

Reasonable Accommodations under §504 and the ADA and so merits a claim for attorney fees under 42 USC § 1983. He is only asking for the same services already identified in his plan of services at the same amount, duration, and scope articulated in his plan. He then requests one-time only, temporary housing assistance, and fiscal intermediary services to facilitate his move in a least restrictive setting. Denying _____'s fundamental constitutional right to move to Illinois as allowed by the Medicaid statutes creates a cause of action for attorney fees pursuant to 42 USC § 1983. ALJ _____'s decision must therefore be overturned pursuant to MCL § 24.306(1)(a) because the decision is in violation of a statute.

- d. _____’s Fundamental Right to Freedom of Association, as Guaranteed by the First and Fourteenth Amendment of the Constitution, were Violated by the ALJ’s Decision and so Must be Overturned Pursuant to MCL § 24.306(1)(a)

“[The] Court has recognized the vital relationship between freedom to associate and privacy in one's associations.” *National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 US 449, 462 (1958). With these words, the Supreme Court laid out definitively that citizens have the right to associate with others, and that governmental interference with that right violates the First and Fourteenth Amendments. *Id.* at 460. The OCCMHA and the Michigan Department of Human Services are effectively denying _____'s freedom to associate with those he wishes, namely, his family in Chicago, Illinois. This Honorable Court must overturn ALJ _____'s decision based on MCL § 24.306(1)(a) because the violation of _____'s fundamental right to freedom of association and so is unconstitutional.

II. ALJ _____'S DECISION WAS BASED ON A SUBSTANTIAL OR MATERIAL ERROR OF LAW WARRANTING THE REVERSAL OF THE DECISION PURSUANT TO MCL § 24.306(1)(f)

- a. ALJ _____'s Reliance on 42 CFR § 431.52(b) as a Reason to Deny _____'s Request to Move is Wrong, and Therefore the Decision is Affected by a Substantial or Material Error of Law Which Must be Reversed Pursuant to MCL § 24.306(1)(f).

On page 5 of the Decision and Order in question here, the ALJ found that 42 CFR § 431.52(b) would not allow _____ to transfer to Illinois because he does not meet the requirements for any of the listed exceptions. Regarding the medical exception, the ALJ stated that “[a]ppellant has not produced medical evidence of his need for services at Little City or any other out-of-state facility; rather, he simply desires to be closer to his family in Chicago.” Decision and Order, page 5. However, as stated above, the ALJ's reliance on this statute is contrary to the United States Constitution. _____ has a constitutional right to move to Illinois and be treated the same as an Illinois resident. The Supremacy Clause of the Constitution, found at Article VI, Clause 2, holds that the Constitution, federal statutes, and U.S. treaties are the supreme law of the land, with the Constitution being the highest form of law in the American legal system. Judges are required to uphold it, even if state laws or constitutions conflict with it. “Where rights are secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them.” *Miranda v Arizona*, 384 US 436, 491 (1966). The ALJ's reliance on this statute over the holdings of the Constitution shows that his decision was affected by a substantial or material error of law warranting reversal. Further, ALJ _____'s reliance on 42 CFR § 431.52(b) is mistaken as that statute applies to medical emergencies. Because _____'s waiver services are at issue here, it is not even clear that 42 CFR § 431.52(b) applies to someone who receives the developmental disability waiver. In any event, the constitutional concerns override that statute, making the ALJ's reliance on it moot.

ALJ _____ completely ignored other relevant law while focusing solely on 42 CFR § 431.52(b). MCL § 330.1307 provides what is known as a “307 transfer” from county to

county. Michigan, along with Illinois and many other states, have enacted and entered into the Interstate Compact on Mental Health. MCL § 330.1920 provides that: “[t]he party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.” Emphasis added. As a result of the OCCMHA and the Michigan Department of Human Services unreasonable and unlawful refusal to provide services pursuant to MCL §§ 330.1208(1) and 330.1708, _____’s right to the person-centered-planning process as guaranteed by MCL § 330.1712 continues to be violated. As a person with a disability, _____ qualifies for reasonable accommodation under the law. *See* 29 USC § 794; MCL § 37.1101 *et seq.*, and 42 USC § 12101 *et seq.* MCL § 330.1515 provides that a court may order the admission of an individual 18 years of age or older who meets both of the following requirements: been diagnosed with mental retardation; and can reasonably be expected within the near future to intentionally or unintentionally injury himself or another person, and has overtly acted in a manner substantially supportive of that expectation. _____ has been diagnosed with developmental disabilities and bipolar disorder and such diagnosis has been confirmed with the Oakland County Probate

Court's finding that he is in need of a partial guardian. Pursuant to MCL § 330.1602, a "guardianship for individuals with developmental disabilities should only be utilized only as necessary to promote and protect the well-being of the individual, including protection from neglect, exploitation, and abuse; shall take into account the individual's abilities; shall be designed to encourage the development of maximum self-reliance and independence in the individual; and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. . . . partial guardianship is the preferred form of guardianship."

_____ would not be at such a great risk for exploitation if he had access to his natural family supports that is present in Illinois. Further, _____ can be reasonably expected within the near future to intentionally or unintentionally injure himself or another, especially due to his recent growing frustration due to being held hostage in Michigan against his will. MCL § 330.1521 provides that the preference shall be given to the facility that can appropriately meet the individual's needs in the least restrictive environment and that is located nearest to the individual's residence, and Little City Foundation is a "private facility" defined by MCL § 330.1500(d) which receives Medicaid funding and as such, is a facility to which _____ may be judicially admitted. See Exhibit H.

The myriad of state and federal law just quoted shows that ALJ _____ inappropriately relied on a single statute to summarily dismiss _____'s claim. The ALJ's ruling is therefore affected by a substantial and material error of law and so must be overturned pursuant to MCL § 24.306(1)(f).

III. ALJ _____'S DECISION IS NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD AND SO MUST BE OVERTURNED PURSUANT TO MCL § 24.3406(1)(d)

- a. ALJ _____ Relied on Numerous Incorrect Facts, None of Which are Supported by the Whole Record and so the Decision Must be Overturned Pursuant to MCL § 24.3406(1)(d).

As stated above, "substantial evidence is "the amount of evidence that a reasonable person would accept as sufficient to support a conclusion," which is less than a preponderance of the evidence, but is more than a mere scintilla." *In re Payne* at 692. ALJ _____ made multiple errors and relied on incorrect facts. ALJ _____ raised two issues in the Decision and Order, page 1-2. Exhibit D. Both issues are stated incorrectly, however. Nothing in the record supports a finding that Little City is a "specialized mental health residential community" in terms of the restrictiveness of service.

ALJ _____ also laid out eight findings of fact In the Decision and Order, pages 2-3, and most are incorrect. Contrary to the ALJ's assertion that _____ "functions at a higher than average level" in point 1, he did not address the evidence submitted of dual diagnosis of mental illness and developmental disability. He completely ignored the finding of the Oakland County Probate Court which had earlier approved a guardian for him pursuant to MCL §§ 330.1600-1644. See Exhibit I.

In point two, it should be noted that _____ requires twenty-four on call support that is provided by the staff who live in the lower level of the duplex. The ALJ's finding of fact here makes it seem that _____ can almost live independently and only needs support every once in a while.

Contrary to point three, _____ receives not only community living supports but also vocational supports from the Waiver and MRS. Further, he does not work "independently." The ALJ relied on _____'s biased statement as fact over the actual plan of services. See Transcript, pages 31-38.

Point four is not supported by the evidence. In his findings of fact, The ALJ stated that Little City is a closed campus. However, _____'s brother Scott, who has severe disabilities, does not even live on the Little City campus. Again, the ALJ relied on _____'s testimony over both _____ and _____, the only folks who have been to Little City. See Transcript, pages 9-11. Further, _____ currently lives in a setting where the lease is not even in his own name because the duplex is owned and operated by an agency. Little City has all kinds of living arrangements, and _____ is asking to live in the less-restrictive setting which will facilitate a lease interest in the property. Little City offers a living environment and support services where _____ will be able to spend time with his brother, and also have an opportunity to make friends and grow as a person. *Id.* This is certainly less restrictive than all of the settings in the past where he was evicted due to conflicts with staff. See Exhibit G at 2-5, Exhibit I _____'s position in point five, that his self-determination budget be utilized for relocation expenses to Little City, is supported by the requests made for housing assistance for a down payment of an apartment.

Point seven needs to be clarified because not only does _____'s brother reside in Illinois, his cousin also lives in Chicago. His cousin is willing to act as his agent and advocate to help _____ achieve independence without the need for a court-appointed guardian..

Finally, ALJ _____ again asserted in point 8 that _____'s medical status is stable, when in reality, the medical status is not stable whatsoever. There have been three prior placements where a guardianship was required due to mental health issues. These issues have only been aggravated due to _____'s current state. He is languishing in Michigan, away from his family.

Because of the above errors of fact are not supported by competent, material, and substantial evidence on the whole record, this Honorable Court must overturn the ALJ's decision pursuant to MCL § 24.3406(1)(d).

IV. ALJ _____'S DECISION IS ARBITRARY AND CAPRICIOUS AND SO MUST BE OVERRULED PURSUANT TO MCL § 24.3406(1)(e).

MCL § 24.3406(1)(e) allows a circuit court to overturn the decision of an agency if the decision is arbitrary, capricious or an unwarranted exercise or abuse of discretion. In this case, ALJ' _____'s decision is arbitrary and capricious because he made an assumption related to Little City, reflected in his biased statement of the issues in his decision. As explained above, he completely ignored the evidence presented at the Medicaid Fair Hearing relating to facts of the case. Instead, he relied almost solely on the statements of _____ over the evidence. See Transcript, pages 32-38. He also ignored the application of the Supremacy Clause to statutes which clearly cannot control over that Clause of the Constitution.

RELIEF REQUESTED

_____ begs this Honorable Court overturn the arbitrary and erroneous decision by ALJ _____. First, the decision denies _____ his fundamental constitutional right to interstate travel and violates the Privileges and Immunities Clause of the United States Constitution. The decision also violates _____'s rights as afforded by 42 USC § 1983. Because the decision violates the constitution and statutes, this Honorable Court is authorized by MCL § 24.306(1)(a) to overturn the decision. Second, ALJ _____'s decision is affected by a substantial or material error of law for two reasons. It erroneously relies on 42 CFR § 431.52(b) over the Constitution. The decision also improperly made an analysis of whether _____'s trust should support his move to Illinois. Therefore, pursuant in to MCL §

24.306(1)(f), this Honorable Court should overturn the decision. Finally, ALJ _____ relied on incorrect facts that are not supported by competent, material, and substantial evidence on the whole record, and so this Honorable Court must overturn the ALJ's decision pursuant to MCL § 24.3406(1)(d).

Respectfully submitted,

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