

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN THE MATTER OF THOMAS  
MITCHELL, A PERSON  
WITH DEVELOPMENTAL  
DISABILITIES, BY AND  
THROUGH HIS GUARDIAN,  
JOHN MITCHELL,

Case No. 16-11605

HON. DAVID M. LAWSON

Plaintiff,

v

MICHIGAN DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
COMMUNITY MENTAL HEALTH  
OF CENTRAL MICHIGAN, NICK  
LYON, DIRECTOR OF THE  
MICHIGAN DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
RICK SNYDER, MICHIGAN GOVERNOR,

Defendants.

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IN THE MATTER OF JACOB  
HARTSHORNE, A PERSON  
WITH DEVELOPMENTAL  
DISABILITIES, BY AND  
THROUGH HIS GUARDIANS,  
NANCY AND THOMAS  
HARTSHORNE,

Case No. 16-11607

HON. DAVID M. LAWSON

Plaintiff,

v

COMMUNITY MENTAL HEALTH  
OF CENTRAL MICHIGAN,  
MICHIGAN DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
NICK LYON, DIRECTOR OF THE  
MICHIGAN DEPARTMENT OF HEALTH  
AND HUMAN SERVICES, MICHIGAN  
GOVERNOR RICK SNYDER,

Defendants.

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Patricia E. Kefalas Dudek (P46408)  
Attorney for Plaintiff  
30445 Northwestern Hwy, Suite 130  
Farmington Hills, MI 48334  
(248) 254-3462

Timothy M. Perrone (P37940)  
Cohl Stoker & Toskey, PC  
Attorney for Defendant CMHCM  
601 N. Capitol Ave.  
Lansing, MI 48933  
(517) 372-9000

Kristin M. Heyse (P64353)  
William R. Morris (P31957)  
Assistant Attorneys General  
Attorney for Defendants  
525 W. Ottawa, Ste. 338  
P.O. Box 30758  
Lansing, MI 48933  
(517) 373-7700

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### **STIPULATION TO DISMISS**

The parties stipulate to dismiss these cases on the following basis:

1. The Michigan Department of Health and Human Services,  
f/k/a the Michigan Department of Community Health  
(Department) agrees that Prepaid Inpatient Health Plans  
(PIHPs) and Community Mental Health (CMH) agencies

need to make services available for individuals while sleeping, including supervision, when shown to be medically necessary.

2. In the Department's reading of policy, such services do not properly fall under its definition of "Community Living Supports" (CLS). But the Department recognizes that some CMHs and some Administrative Law Judges have allowed payment for those services under CLS.
3. To clarify this confusion going forward, the Department is developing a new service, intended to address specific sleep-time and medically necessary supervision issues, such as those raised in this case.
4. During development of this new service/policy, the Department anticipates needing to secure approval – in the form of a waiver or a State Plan Amendment – from the Centers for Medicare and Medicaid Services (CMS). Although the Department anticipates that this will be accomplished by the beginning of the next fiscal year

(October 1, 2017), it cannot predict how long CMS will need to make its decision. The Department will assure that people with disabilities continue to be represented in the development of this new service/policy.

5. Once approved and implemented, the Department's agents will be bound by this policy. The Department will provide guidance to those entities to assure that they apply this policy as uniformly as possible. Such guidance will, as necessary, include assistance with drafting notices to the affected individuals. The Department will also provide guidance to the persons with disabilities that may need this service and their advocates.
  
6. During the policy development process, the Department agrees that medically necessary supervision is needed for the Plaintiffs while they are sleeping. Therefore, the Department is willing to provide this support under the title of CLS services to Plaintiffs pending the Department's creation of a new service that will address their need.

7. Overnight supervision services for Plaintiff Hartshorne will be immediately reinstated. Plaintiffs will continue with existing coverage, including overnight supervision, subject to any changes that may arise from their normal personal planning process. The new service/policy as referenced in paragraph 4 will not unilaterally impact services.
8. Community Mental Health of Central Michigan (CMHCM) and Plaintiffs agree that Plaintiffs' claims for past CLS services related to this case will be resolved by CMHCM and the Department each paying the following: \$8,300 to Plaintiff Mitchell and \$2,600 to Plaintiff Hartshorne.
9. Plaintiff has documented a claim for attorney fees that this Court might award to him as a prevailing party under 42 U.S.C. § 1988. Without conceding the strengths or weaknesses of this claim, the parties agree that the Department and the CMHCM will each pay the following: \$18,700 to Plaintiff Hartshorne and \$15,850 Plaintiff Mitchell in full settlement of such claim.

10. Upon the filing of this stipulation, the Court may  
dismiss these matters with prejudice.

/s/ Patricia E. Kefalas Dudek  
Patricia E. Kefalas Dudek (P46408)  
Attorney for Plaintiffs  
Hartshorne & Mitchell

/s/ Timothy M. Perrone  
Timothy M. Perrone (P37940)  
Attorney for Defendant CMHCM

Dated: May 16, 2017

Dated: May 16, 2017

/s/ Kristin M. Heyse  
Kristin M. Heyse (P64353)  
Attorney for Defendants  
MDHHS, Nick Lyon, and  
Rick Snyder

Dated: May 16, 2017

**ORDER OF DISMISSAL**

Pursuant to the parties' stipulation, this Court hereby ORDERS  
that the above-captioned matters are hereby dismissed with prejudice.

IT IS SO ORDERED.

/s/ Hon. David M. Lawson  
United States District Judge