

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, COUNTY DIVISION

LAMONT WILLINGHAM, on behalf)
of himself and all other similarly situated)
individuals,)
Plaintiff,)
v.) No. 96 CO 00120
JESS MCDONALD, Director, Illinois)
Department of Children and Family)
Services, and DANA L. CORMAN,)
Guardianship Administrator, Illinois)
Department of Children and Family)
Services,)
Defendants.)

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Lamont Willingham (APlaintiff@) is a mentally disabled minor under the legal responsibility of the Illinois Department of Children and Family Services (ADCFS@). As with many children under the legal responsibility of DCFS, Plaintiff=s disability qualifies him for Supplemental Security Income (ASSI@). In July 1994, the Social Security Administration granted Plaintiff=s application for SSI, awarding him back benefits in excess of \$34,000, for which DCFS assumed responsibility as Plaintiff=s guardian and representative payee. In derogation of its fiduciary and statutory responsibilities to Plaintiff, DCFS has squandered Plaintiff=s benefits, misappropriated his funds and used them for purposes unrelated to his welfare, rendered him ineligible for continued SSI as a result of financial mismanagement, and left him without the resources necessary to secure an appropriate living arrangement when he

reaches his majority and is released from the care and custody of DCFS. Moreover, the injuries sustained by Plaintiff result from the same systemic practices applied by DCFS to the approximately 2,500 disabled children who receive SSI, and for whom DCFS is legally responsible.

2. Plaintiff brings this suit as a class action, pursuant to 42 U.S.C. ' 1983, seeking declaratory and equitable relief against DCFS, its Director and its Guardianship Administrator, who, while acting in the capacity of guardian and representative payee for Plaintiff and other similarly situated disabled individuals, misappropriated SSI benefits paid to Defendants on Plaintiff=s behalf, in violation of federal and state law.

PARTIES

3. Plaintiff Lamont Willingham is 19 years old, mentally disabled, and a resident and citizen of Chicago, Illinois. He is a recipient of mental health services, within the meaning of the Illinois Mental Health Code, 405 ILCS 5/1-123. From 1990 until the present, he has been a ward of the Circuit Court of Cook County, Juvenile Department, Child Protection Division (AJuvenile Court@) and under the legal responsibility of DCFS.

4. DCFS is a state agency, authorized under law to act as guardian or temporary legal custodian for minors under the jurisdiction of the juvenile courts of Illinois. 20 ILCS 505/5(a)(1); 705 ILCS 405/2-10; 705 ILCS 405/2-27(d), and to provide foster care for children for whom it is legally responsible. 20 ILCS 505/5(a)(3). DCFS is also an agency that acts under section 1383(a)(1)(ii) of the Social Security Act, 42 U.S.C. ' 1383(a)(1)(ii), and section 505/5(q) of the Children and Family Services Act, 20 ILCS 505/5(q), as representative payee for children for whom it is legally responsible and who are recipients of SSI. Finally, DCFS is a mental

health services provider, within the meaning of the Illinois Mental Health Code, 405 ILCS 5/1-127.

5. Defendant Jess McDonald is the Director of DCFS, and is sued here in his official capacity. As Director of DCFS, he is responsible for ensuring that the employees and agents of DCFS conform their conduct with the requirements of state and federal law.

6. Defendant Dana L. Corman is the Guardianship Administrator of DCFS, and is sued here in her official capacity. As Guardianship Administrator, she was the representative payee for Plaintiff=s SSI until his benefits were terminated, and she regularly acts as representative payee for children under the legal responsibility of DCFS who receive SSI.

CLASS ALLEGATIONS

7. Plaintiff brings this action on behalf of himself and all other similarly situated individuals who: (1) are currently receiving Supplemental Security Income (ASSI@) benefits or who will receive SSI benefits in the future; (2) who are or will be placed under the legal temporary custody or guardianship of DCFS; and (3) for whom DCFS is acting or seeking to act, or will act or seek to act, as representative payee for the individual=s SSI.

8. With respect to Plaintiff=s claim under the Mental Health Code (Count I), Plaintiff brings this action on behalf of himself and a subclass of individuals, who, in addition to the characteristics of the class, are mentally disabled and are recipients of mental health services within the meaning of the Illinois Mental Health Code, 405 ILCS 5/1-123.

9. The class and subclass of individuals on whose behalf Plaintiff brings this action are both so numerous that joinder of all members is impracticable. On information and belief, DCFS is currently legally responsible for approximately 2,500 children who are recipients of SSI, the

substantial majority of whom suffer from mental health disabilities and are recipients of mental health services, within the meaning of the Illinois Mental Health Code, 405 ILCS 5/1-123.

10. There are questions of fact and law common to the class, which common questions predominate over any questions affecting only individual members.

11. The representative party will fairly and adequately protect the interests of the class and subclass.

12. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

FACTUAL ALLEGATIONS

A. The SSI Program

13. Pursuant to Title XVI of the Social Security Act, 42 U.S.C. ' 1382, *et seq.*, eligible children who suffer from disabilities may receive SSI benefits, including cash assistance and, in most cases, medical coverage through the Medicaid program.

14. Whenever the Social Security Administration (ASSA@), which administers the SSI program, determines that the interests of a recipient of SSI are best served by designating another person to manage the recipient=s cash benefits, it may appoint a representative payee to receive SSI payments and use them for the benefit of the beneficiary. 42 U.S.C. ' 1383(a)(1)(ii).

15. When SSA selects a representative payee for a child under 18, federal regulations provide that it will consider, in a defined order of preference, seven options, beginning with custodial and non-custodial parents. Last and least-favored among these is an authorized social agency or custodial institution, such as DCFS. *See* 20 C.F.R. ' 416.621(b)(7).

16. All representative payees, whether individuals or institutions, have a fiduciary duty to act in the best interests of the beneficiaries they serve. Consistent with this fiduciary duty, applicable federal regulations impose limits on the purposes for which a representative payee may use a beneficiary's SSI: A representative payee has a responsibility to ... use the payments he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interests of the beneficiary. @ 20 C.F.R. ' 416.635.

17. Federal regulations further circumscribe the uses to which a payee may put a beneficiary's SSI. A payee's legitimate uses of a foster child's SSI generally fall within one of two categories: *current maintenance* (20 C.F.R. ' 416.640(a)) and *claims of creditors* (*id.*, ' 416.640(d)).

18. A payee may generally spend a beneficiary's SSI on reasonable expenses arising in the month for which a particular SSI payment is made, to the extent that such expenses fall within the definition of *current maintenance*. @ *Id.*, ' 416.640(a). Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care and personal comfort items. *Id.*

19. When a payee seeks to use a beneficiary's SSI for claims of creditors -- arising from expenses outside the month for which a particular payment is made -- additional restrictions apply. Federal regulations bar a representative payee from using a beneficiary's SSI to pay off creditors' claims, arising from expenses incurred on behalf of the beneficiary prior to the first month for which payments are certified to a payee, unless the payee has first determined that all of the beneficiary's current and reasonably foreseeable needs have been met. 20 C.F.R. ' 416.640(d).

20. Because the SSI program is a welfare program intended to assist low-income individuals who are aged, blind, or disabled, the Social Security Act places limits on the income and resources a recipient may have and remain eligible for the program, prohibiting the payment of SSI benefits to any individual whose countable assets exceed a statutory ceiling of \$2,000. *See* 42 U.S.C. ' 1382(a)(3)(B); 20 C.F.R. ' 416.1323.

21. When SSA grants an application for SSI, the award of benefits normally dates back to the date of the beneficiary=s application, or eligibility date. If the time between the eligibility date and the award date is lengthy, the amount of the back benefit award may be substantial.

22. Because the application of the asset ceiling would otherwise render many children who receive back benefit awards ineligible for continued benefits, SSA does not include back benefit awards in its calculation of countable assets for six months after they are made. This grace period provides recipients with an opportunity to use back benefit awards in a manner that will allow for their continuing receipt of benefits, notwithstanding application of the asset ceiling.

23. For certain categories of beneficiaries, when SSA grants an application for SSI that includes a back benefit award, the notice of award it typically provides to the applicant (or the applicant=s representative) includes specific instructions as to how to shelter or use back benefits in a manner so as to ensure that the application of SSA=s asset ceiling will not render the beneficiary ineligible for continued receipt of benefits. (*See* 6/23/94 Notice of Award from SSA to DCFS, pp. 2-3, attached as Exhibit A.) In particular, SSA advises DCFS that back benefit awards in excess of \$2000 may be placed in a special trust fund for the beneficiary, and that any back benefit awards so sheltered within six months of receipt will not be applied toward the asset ceiling. *Id.*

24. SSA will terminate eligibility for benefits of any recipient whose benefits are suspended for 12 consecutive months, requiring a full reapplication for benefits. *See* 20 C.F.R. ' 416.1335.

B. Facts Relating to DCFS= Mismanagement of SSI Funds

25. Abused, neglected and dependent children who come under the jurisdiction of the juvenile courts of Illinois, and who are required to be removed from the care and custody of their parents, are regularly assigned to the legal guardianship or temporary custody of DCFS. *See* 705 ILCS 405/2-10, 405/2-27(d).

26. By virtue of its role as a court-appointed guardian, DCFS owes a fiduciary duty to the children for whom it is legally responsible, including recipients of SSI.

27. Many of the children for whom DCFS assumes legal responsibility are mentally and/or physically disabled, and as a result are eligible to receive SSI. In some cases, children who are already receiving SSI come under the legal responsibility of DCFS. In other cases, where DCFS determines that children are potentially eligible for SSI, it assumes responsibility for processing applications for SSI.

28. On information and belief, when DCFS assumes legal responsibility for a child who is awarded SSI, its policy and practice is to request, in its capacity as legal guardian or temporary custodian for the child, that SSA select the DCFS Guardianship Administrator as the representative payee for the child=s benefits. On information and belief, it is the policy and practice of SSA, in turn, to select DCFS= Guardianship Administrator as the representative payee for children under DCFS= legal responsibility.

29. DCFS= role as representative payee regularly places it in situations where it has an inherent conflict of interest between its own financial interests and the fiduciary duty it owes to beneficiaries, as described below:

A. DCFS typically places children for whom it is legally responsible in substitute care, including foster care, group homes, and other institutional settings. DCFS regularly incurs costs of supporting children in substitute care, including board payments to foster parents, payments for special services to foster children, and administrative and overhead costs.

B. Thus, for SSI recipients who are under its legal responsibility, DCFS acts not only as representative payee, but also contemporaneously as creditor. In its capacity as creditor, DCFS regularly pays itself back from the child=s account for costs it incurs in supporting the child from his or her SSI.

C. In many cases, the typical SSI payment of \$470, which DCFS receives as representative payee, exceeds the foster care payments made by DCFS to support a child in foster care, leaving a monthly balance which DCFS is required either to use for the benefit of the child in accordance with its fiduciary responsibilities, or to hold in trust for the child. *See* 20 C.F.R. " 416.640, 416.645; 89 Ill. Admin. Code ' 353.5.

D. When DCFS makes judgments about whether and when to reimburse itself for its costs, its own financial interests compete with the interests of the children for whom DCFS acts as representative payee.

30. When DCFS is acting in the dual capacities of representative payee and creditor, its fiduciary obligations to the child require it to ensure that decisions to reimburse itself for

expenses incurred in supporting children in substitute care are made in the interests of the child, rather than in its own financial self-interest.

31. To guard against an institution acting out of self-interest rather than in the interest of a beneficiary, federal and state laws and rules place specific limits on the authority of an institution acting as both payee and creditor to use a beneficiary's SSI funds to serve the financial interests of the payee. These limits go beyond the general obligations imposed on a representative payee by virtue of his or her fiduciary duty to the beneficiary:

A. SSA requires that whenever DCFS reimburses itself for past money the agency itself has spent in caring for a foster child who receives SSI, it must seek independent approval for such reimbursement from SSA. POMS, GN ' 00602.030 (Claims of creditors) (requiring authorization from SSA whenever a payee acting as creditor seeks to reimburse itself for past debts).

B. State law prohibits a creditor from acting as payee for a recipient of mental health services, except with the informed consent of the beneficiary. Section 2-105 of the Illinois Mental Health Code, 405 ILCS 5/2-105, provides that A[e]xcept where a recipient has given informed consent, no service provider nor any of its employees shall be made representative payee for his social security, pension, annuity, trust fund, or any other form of direct payment or assistance.@

32. On information and belief, when DCFS secures appointment as representative payee for SSI recipients, in no case does it ever seek the informed consent or approval for such appointments from the child, a juvenile court, a guardian *ad litem*, or any other disinterested

party capable of guarding against DCFS managing a child's financial affairs in its own interest, rather than in the interest of the child.

33. In at least six different respects, DCFS regularly violates its fiduciary obligation to manage the financial affairs of SSI recipients for whom it is legally responsible in the best interests of the beneficiary:

A. First, DCFS regularly expends SSI recipients' benefits in a manner that is not for the use and benefit of the beneficiary. On information and belief, the costs which DCFS regularly charges to SSI beneficiaries' accounts include not only costs related to the current maintenance of the child, but also administrative, overhead and other costs that do not fall within the definitions of expenses for which a payee may legitimately use a beneficiary's SSI set forth in applicable federal regulations.

B. Second, on information and belief, when DCFS arranges for services for which SSI beneficiaries are ultimately obligated to pay, as a matter of policy and practice it does not consider whether such services warrant their cost to the beneficiary. Caseworkers who arrange for such services typically do so without the knowledge that they will result in the depletion of assets belonging to the beneficiary, and indeed may even be unaware that the beneficiary is a recipient of SSI. As a result, caseworkers have no opportunity to exercise their fiduciary responsibility to determine whether or not the purchase of particular services by the child is consistent with the child's best interests.

C. Third, for other expenses that fall within the definition of current maintenance, DCFS regularly fails to consider whether other sources of funding could be secured for such expenses. Many of the expenses DCFS incurs for supporting a child in foster care are Medicaid-eligible

expenses, for which DCFS could seek reimbursement through the Medicaid program if it selected an appropriate service provider with a Medicaid provider agreement. However, on information and belief, when DCFS selects providers of services for children receiving SSI, it does not consider whether the service provider is authorized to charge eligible expenses to Medicaid. As a result, DCFS regularly arranges for Medicaid-eligible services for children through service providers who cannot bill Medicaid. In such circumstances, DCFS charges expenses against the accounts containing the beneficiary=s SSI, thereby reducing the funds that would otherwise be available to support the needs of the disabled child.

D. Fourth, on information and belief, DCFS regularly expends SSI benefits to pay for past debts, without considering first whether the current and reasonably foreseeable future needs of the child have been met, as required by federal regulations. *See* 20 C.F.R. ' 416.640(d); *supra*, & 19. Despite the clear requirement of these regulations, when DCFS reimburses itself for costs of supporting children in foster care directly from SSI benefits kept in a child=s account, at no point do defendants, or any other representatives of DCFS, make individualized determinations as to whether or not such reimbursements are consistent with the interests of the child, or with DCFS= fiduciary obligations as guardian and representative payee to ensure that the current and reasonably foreseeable needs of the beneficiary are met.

E. Fifth, when DCFS reimburses itself for past expenses incurred in supporting a child in foster care, it regularly fails to seek approval for such reimbursements, as required by SSA, in violation of its fiduciary duty to guard against the exercise of financial self-interest.

F. Sixth, when DCFS receives benefits from SSA for an SSI applicant, it regularly fails to take reasonable steps to guard against the termination of benefits as a result of the application of

the asset ceiling. SSA regularly provides DCFS with notices of awards that include specific instructions as to how to use awards so as to ensure that the application of SSA=s asset ceiling will not render the beneficiary ineligible for continued receipt of benefits, *e.g.* through the establishment of a special trust fund for the beneficiary. However, on information and belief, DCFS regularly fails to place back benefit or other awards in sheltered trust accounts, to use such benefits in a manner so as to avoid having them applied to the calculation of countable assets, or to take other reasonable steps to guard against the termination of benefits for disabled children whose assets exceed the statutory asset ceiling solely by virtue of an award of back benefits. Thus, children who are otherwise eligible for SSI are regularly terminated from the SSI program because DCFS fails to discharge its fiduciary responsibility to conduct basic financial planning for its wards.

34. In each of the above manners, DCFS regularly fails to discharge its fiduciary obligations to SSI beneficiaries for whom it is legally responsible and to whom it is financially accountable.

C. Facts Relating to Plaintiff Lamont Willingham

1. Plaintiff=s Application for and Receipt of SSI Benefits

35. On or about June 24, 1987, Plaintiff=s mother, Ms. Betty Willingham, applied for SSI on Plaintiff=s behalf. On or about July 1, 1987, the Social Security Administration ("SSA") denied this application.

36. In or about January 1990, a petition was filed in the Juvenile Court, alleging that Plaintiff was a neglected minor under section 2-3 of the Illinois Juvenile Court Act, 705 ILCS 405/2-3. In or about January 1990, pursuant to the Juvenile Court Act, 705 ILCS 405/2-10, the Juvenile Court assigned temporary legal custody of Plaintiff to Gary T. Morgan, then Guardianship

Administrator of DCFS and the predecessor in interest to Defendant Dana L. Corman. The Juvenile Court subsequently appointed Gary T. Morgan as Plaintiff=s guardian pursuant to 705 ILCS 405/2-27, and DCFS has acted as the permanent legal guardian for Plaintiff since that time.

37. On or about March 16, 1994, DCFS, acting as Plaintiff's legal guardian, filed a second application for SSI benefits on Plaintiff's behalf.

38. On or about June 23, 1994, SSA approved Plaintiff's application for SSI benefits and certified SSI payments to Plaintiff. At the same time, in conjunction with its award of SSI benefits to Plaintiff, SSA appointed DCFS= Guardianship Administrator to act as representative payee for Plaintiff.

39. Pursuant to the opinion of the U.S. Supreme Court in Sullivan v. Zebley, 493 U.S. 521 (1990), when SSA determined Plaintiff to be eligible for SSI in 1994, it awarded benefits retroactive to the date of his original application for SSI filed with SSA in 1987, in the amount of \$34,275.55. SSA transmitted this award of back benefits to DCFS, which in turn placed the award in an individual account maintained in Plaintiff=s name.

40. From July 1994 through February 1995, Defendants received monthly SSI checks for Plaintiff totaling \$3,146. From July 1994 through the present, Plaintiff=s account was also credited for periodic interest payments totaling \$610.45.

41. Thus, Defendants= total receipts into the account it has maintained on Plaintiff=s behalf amount to \$38,032.

2. DCFS= Improper Use of Plaintiff=s SSI Benefits

42. As of May 1, 1996, the individual account maintained by DCFS for Plaintiff's benefit contained one (1) dollar.

43. Because of its roles as Plaintiff=s guardian and representative payee, DCFS exercises full control over Plaintiff=s financial affairs.

44. DCFS has violated its fiduciary and related statutory duties to Plaintiff in the following respects:

A. First, on information and belief, the money appropriated by DCFS from Plaintiff=s account for current maintenance significantly exceeds the costs of Plaintiff=s current maintenance incurred by DCFS for which it was legally entitled to reimburse itself under federal and state law.

B. Second, on information and belief, DCFS has charged Plaintiff exorbitant amounts for services from which he has derived no benefit whatsoever. For example, DCFS charged Plaintiff \$1,622.49 for Acase management services@ that were canceled because they were duplicative of services already being provided to Plaintiff by DCFS. In addition, DCFS charged Plaintiff \$2,857.40 to attend a basic life skills training program that proved wholly unsuited to Plaintiff=s needs and circumstances. Moreover, on information and belief, for the \$50 Avoucher@ awarded to Plaintiff upon his completion of this program, DCFS charged Plaintiff \$78. The caseworkers who arranged for these services for Plaintiff were completely unaware that he was ultimately required to pay for them from his account, and they therefore lacked even the opportunity to consider whether such services were worth their cost to Plaintiff.

C. Third, on information and belief, DCFS has reimbursed itself from Plaintiff=s SSI benefits for numerous Medicaid-eligible expenses, thereby unnecessarily reducing the funds that would otherwise be available to support Plaintiff=s needs. For example, beginning in October 1994 and continuing through March 1996 -- more than a year after causing the termination of

Plaintiff=s SSI (*see infra*, & 44F) -- DCFS deducted from Plaintiff=s account more than \$6500 for counseling that could have been recovered through the Medicaid program, had DCFS considered Medicaid as a possible source of reimbursement when it selected a counselor for Lamont.

D. Fourth, DCFS has reimbursed itself for expenses incurred in supporting Plaintiff in foster care prior to June 1994, the first month for which payments were certified to Plaintiff, without considering whether his current and reasonably foreseeable needs were met as required by 20 C.F.R. ' 416.640(d). For example, in February 1995, without considering in any way whether or not his current and reasonably foreseeable needs were met, DCFS deducted from Plaintiff=s account \$16,461.92 for expenses relating to the approximately four years Plaintiff was in foster care before SSA determined that he was eligible for SSI.

E. Fifth, DCFS has reimbursed itself as a creditor from Plaintiff=s account for expenses other than current maintenance incurred in caring for Plaintiff, without seeking the requisite approval from SSA.

F. Sixth, by failing to take reasonable steps to plan for Plaintiff=s financial security, DCFS has rendered him ineligible for receipt of continued benefits, as described below. Upon transmittal of Plaintiff's back benefit award to DCFS, SSA informed DCFS in the notice of award that it would not consider the amount of back benefits in its calculation of Plaintiff's countable assets for six months. SSA also instructed that in the meantime, DCFS should take certain enumerated steps to assure that the application of the asset ceiling would not render Plaintiff ineligible for continued benefits. (*See* 6/23/94 Notice of Award from SSA to DCFS, attached as Exhibit A.) Despite SSA=s notice regarding the potential application of its asset

ceiling to Plaintiff, DCFS took no steps to protect Plaintiff from termination of his SSI benefits due to application of the asset ceiling. As a direct result of DCFS= failure to take steps to protect Plaintiff from losing his benefits due to application of SSA=s asset ceiling, on or about January 23, 1995, SSA suspended payment of Plaintiff's benefits in accordance with 20 C.F.R. ' 416.1324 because his assets exceeded the \$2000 limit set by federal law. Because Defendants= acts and omissions caused Plaintiff's account to contain assets above the \$2000 asset ceiling for each of the 12 months following January 1995, Plaintiff is ineligible for SSI benefits and will remain so unless and until a reapplication is granted.

45. Plaintiff is in immediate need of an appropriate placement. He is currently in a foster home which cannot continue to meet his needs.

46. Subsequent to the cancellation of Plaintiff=s SSI, DCFS referred Plaintiff to Transsteps, a program which offers supported independent living arrangements for young adults whose specialized needs require that they live in a structured environment.

47. On information and belief, Transsteps declined to accept Plaintiff into its program, in whole or in part because he had no source of income available to him following his expected release from DCFS= custody.

48. As a direct result of DCFS= failure to plan for Plaintiff=s financial future, Plaintiff has been unable to secure a placement in an appropriate independent living program.

FIRST CAUSE OF ACTION
(Claim for declaratory and injunctive relief
based on violation of Mental Health Code)

49. Plaintiff realleges and incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. Plaintiff brings this count on behalf of himself and the subclass of individuals identified in paragraph 8, *supra*.

51. When DCFS nominated Defendant Dana L. Corman as representative payee for Plaintiff=s SSI in 1994, it did not seek the informed consent of Plaintiff, the Juvenile Court, Plaintiff=s Guardian *ad litem*, or any other disinterested party capable of guarding against DCFS managing a child=s financial affairs in its own interest, rather than in the interest of the child. In fact, the only consent given to SSA=s appointment of DCFS as Plaintiff=s representative payee was that of DCFS itself, acting in its capacity as legal guardian and without regard to the inherent conflict of interest which 2-105 was designed to guard against.

52. By nominating Defendant Dana L. Corman as representative payee for Plaintiff=s SSI without Plaintiff=s informed consent, or without the consent of an unbiased person capable of guarding Plaintiff against DCFS= exercise of financial self-interest, Defendants violated section 2-105 of the Illinois Mental Health Code, 405 ILCS 5/2-105.

SECOND CAUSE OF ACTION
(Claim for declaratory and injunctive relief
based on violations of DCFS Act)

53. Plaintiff realleges and incorporates by reference paragraphs 1 through 52 as if fully set forth herein.

54. Plaintiff brings this claim on behalf of himself and on behalf of members of the class defined in paragraph 7, *supra*.

55. The Department of Children and Family Services Act prohibits DCFS from reimbursing itself, from individual accounts maintained on behalf of children receiving SSI or other benefits,

for anything other than the child's board and care, medical care not covered under Medicaid, and social services for the benefit of the child/beneficiary. See 20 ILCS 505/5(q).

56. By reimbursing itself for expenses not permitted under section 505/5(q), Defendants violated their fiduciary duty to Plaintiff as his guardian and their obligations to Plaintiff under 20 ILCS 505/5(q).

THIRD CAUSE OF ACTION
(Claim for declaratory and injunctive relief
based on violations of common law fiduciary duty)

57. Plaintiff realleges and incorporates by reference paragraphs 1 through 56 as if fully set forth herein.

58. Plaintiff brings this claim on behalf of himself and on behalf of members of the class defined in paragraph 7, *supra*.

59. DCFS owes a common law fiduciary duty to Plaintiff by virtue of its appointment as his legal guardian pursuant to 20 ILCS 505/5(a)(1) and 705 ILCS 405/2-27(d).

60. By nominating Defendant Dana L. Corman as representative payee for Plaintiff's SSI without Plaintiff's informed consent, or without the consent of an unbiased person capable of guarding Plaintiff against DCFS' exercise of financial self-interest, Defendants violated their common law fiduciary duty to Plaintiff.

61. By expropriating Plaintiff's money for reasons unrelated to his welfare and not for his benefit, Defendants violated their common law fiduciary duty to Plaintiff.

62. By failing to consider the relative costs and benefits of services for which Plaintiff was ultimately required to pay, prior to obligating Plaintiff to pay for such services, Defendants violated their common law fiduciary duty to Plaintiff.

63. By failing to consider whether Medicaid or other alternative sources of funding might be secured to pay for services ultimately charged to Plaintiff, Defendants violated their common law fiduciary duty to Plaintiff.

64. By failing in any way to consider whether or not Plaintiff=s current and reasonably foreseeable needs were met before deducting from Plaintiff=s account costs of past debts, Defendants violated their common law fiduciary duty to Plaintiff.

65. By failing to secure permission from SSA prior to reimbursing itself for its own costs incurred in providing care for Plaintiff, Defendants violated their common law fiduciary duty to Plaintiff.

66. By failing to take reasonable steps to protect Plaintiff from termination of his SSI benefits resulting from application of SSA=s asset ceiling, or to take other reasonable steps to plan for Plaintiff=s financial future, DCFS caused Plaintiff to be rendered ineligible for continued receipt of SSI benefits, in violation of its common law fiduciary duty to Plaintiff.

FOURTH CAUSE OF ACTION
(Claim for declaratory and injunctive relief based on
violations of Social Security Act)

67. Plaintiff realleges and incorporates by reference paragraphs 1 through 66 as if fully set forth herein.

68. Plaintiff brings this claim on behalf of himself and on behalf of members of the class defined in paragraph 7, *supra*. Plaintiff brings this count pursuant to 42 U.S.C. '1983, insofar as Defendants, under color of state statute, regulation, custom, and usage, have caused a deprivation of rights, privileges, or immunities secured to Plaintiff by the Constitution and laws of the United States.

69. DCFS owes a fiduciary duty to Plaintiff by virtue of its appointment as his representative payee pursuant to 42 U.S.C. ' 1383(a)(1)(ii).

70. By spending Plaintiff=s money on things other than current maintenance, institutional care, or debt to creditors, Defendants violated their fiduciary duty to Plaintiff as his representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii) and 20 C.F.R. " 416.635 and 416.640(a).

71. By failing to consider the relative costs and benefits of services for which Plaintiff was ultimately obligated to pay, prior to obligating Plaintiff to pay for such services, Defendants violated their fiduciary duty to Plaintiff as his representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii) and 20 C.F.R. ' 416.635.

72. By failing to consider whether Medicaid or other alternative sources of funding might be secured to pay for services ultimately charged to Plaintiff, Defendants violated their fiduciary duty to Plaintiff as his representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii) and 20 C.F.R. ' 416.635.

73. By failing in any way to consider whether or not Plaintiff=s current and reasonably foreseeable needs were met before reimbursing itself for past debts incurred prior to the first month for which payments were certified by SSA, Defendants violated their fiduciary duty to Plaintiff as his representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii) and 20 C.F.R. " 416.635 and 416.640(d).

74. By failing to secure permission from SSA prior to reimbursing itself for past debts incurred in providing care for Plaintiff, Defendants violated their fiduciary duty to Plaintiff as his

representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii), 20 C.F.R. " 416.635 and 416.640, and POMS ' GN 00602.030.

75. By failing to take reasonable steps to protect Plaintiff from termination of his SSI benefits resulting from application of SSA=s asset ceiling, or to take other reasonable steps to plan for Plaintiff=s financial future, DCFS caused Plaintiff to be rendered ineligible for continued receipt of SSI benefits, in violation of its fiduciary duty to Plaintiff as his representative payee and their obligations to Plaintiff under 42 U.S.C. ' 1383(a)(1)(ii).

FIFTH CAUSE OF ACTION
(Claim for declaratory and injunctive relief
based on violation of Due Process)

76. Plaintiff realleges and incorporates by reference paragraphs 1 through 75 as if fully set forth herein.

77. Plaintiff brings this claim on behalf of himself and on behalf of members of the class defined in paragraph 7, *supra*. Plaintiff brings this count pursuant to 42 U.S.C. '1983, insofar as Defendants, under color of state statute, regulation, custom, and usage, have caused a deprivation of rights, privileges, or immunities secured to Plaintiff by the Constitution and laws of the United States.

78. Plaintiff has an interest in not being deprived of his property by Defendants without substantive rationale or adequate procedural protections, which interest is protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

79. By expropriating Plaintiff=s money for reasons unrelated to his welfare and not for his benefit, DCFS violated Plaintiff=s right to due process of law under the Fourteenth Amendment.

80. By failing to consider the relative costs and benefits of services for which Plaintiff was ultimately obligated to pay, prior to obligating Plaintiff to pay for such services, Defendants violated Plaintiff's right to due process of law under the Fourteenth Amendment.

81. By failing to consider whether Medicaid or other alternative sources of funding might be secured to pay for services ultimately charged to Plaintiff, Defendants violated Plaintiff's right to due process of law under the Fourteenth Amendment.

82. By failing in any way to consider whether or not Plaintiff's current and reasonably foreseeable needs were met before reimbursing itself for past debts incurred prior to the first month for which payments were certified by SSA, Defendants violated Plaintiff's right to due process of law under the Fourteenth Amendment.

83. By failing to secure permission from SSA prior to reimbursing itself for past debts incurred in providing care for Plaintiff, Defendants violated Plaintiff's right to due process of law under the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Declare that DCFS' practice of nominating itself as representative payee for mentally disabled children for whom it is legally responsible, in the absence of the informed consent of either the child or an unbiased representative of the child's interests, is in violation of section 2-105 of the Illinois Mental Health Code, 405 ILCS 5/2-105 and DCFS' fiduciary duties to SSI recipients for whom it is acting as guardian;

B. Declare that Defendants' practice of expending, from the accounts maintained by DCFS on behalf of disabled children receiving SSI, funds for costs that are not for the children's

benefit and are unrelated to the children's current maintenance, is in violation of Defendant's fiduciary and other obligations under the Fourteenth Amendment of the United States Constitution; 42 U.S.C. ' 1383(a)(1)(ii); 20 C.F.R. " 416.635 and 416.640; and 20 ILCS 505/5(q);

C. Declare that in making decisions about whether to refer SSI recipients for whom DCFS is legally responsible for particular services, DCFS' failure to make individualized judgments about whether the value of such services outweighs their costs to the SSI beneficiaries who must pay for them is in violation of Defendant's fiduciary and other obligations under the Fourteenth Amendment of the United States Constitution; 42 U.S.C. ' 1383(a)(1)(ii); 20 C.F.R. ' 416.635; and 20 ILCS 505/5(q);

D. Declare that Defendant's practice of failing to take reasonable steps to secure Medicaid or other alternate sources of funding for eligible services before obligating beneficiaries' SSI for such services is in violation of Defendant's fiduciary and other obligations under the Fourteenth Amendment of the United States Constitution; 42 U.S.C. ' 1383(a)(1)(ii); 20 C.F.R. ' 416.635; and 20 ILCS 505/5(q);

E. Declare that when DCFS is acting as both creditor and representative payee, its practice of failing to consider whether the current and reasonably foreseeable needs of the beneficiary have been met before reimbursing itself for past debts is in violation of its fiduciary and other obligations under the Fourteenth Amendment of the United States Constitution; 42 U.S.C. ' 1383(a)(1)(ii); 20 C.F.R. " 416.635 and 416.640; and 20 ILCS 505/5(q);

F. Declare that when DCFS is acting as both creditor and representative payee, its practice of failing to seek approval from SSA before reimbursing itself for past debts is in violation of its

fiduciary and other obligations under the Fourteenth Amendment of the United States Constitution; 42 U.S.C. ' 1383(a)(1)(ii); 20 C.F.R. ' 416.635; and 20 ILCS 505/5(q);

G. Declare that the Defendants' practice of failing to take reasonable steps to plan for the financial future of disabled children under its legal responsibility, including their failure to take reasonable steps to protect such children from the application of the income asset ceiling set by 42 U.S.C. ' 1382(a)(3)(B), and the termination of his SSI benefits pursuant thereto, is in violation of Defendants' fiduciary duties under federal and state law;

H. Grant such injunctive relief as is necessary to cure Defendants' continuing violations of state and federal law, including the following specific injunctive relief:

i. Order that whenever DCFS seeks to act as representative payee for a child who is awarded SSI, it must first secure permission to nominate itself as representative payee from the juvenile court that assigned to it legal responsibility for the minor, or from such other representative of the child as is designated by the juvenile court;

ii. Enjoin DCFS from reimbursing itself from children's SSI accounts for administrative costs, overhead, and other costs unrelated to the current maintenance or welfare of the child;

iii. Direct DCFS to make individualized judgments before referring children who are SSI beneficiaries for services, as to whether such services warrant the expense that the children will incur;

iv. Direct DCFS to take reasonable steps to secure Medicaid or other alternate sources of funding for eligible services before obligating beneficiaries' SSI for such services;

v. Direct that before it charges past debts to an SSI beneficiary's account, DCFS take such steps as are necessary on a case by case basis to ensure that the current and reasonable foreseeable needs of the child have been met, and that such reimbursement is consistent with the best interests of the child;

vi. Direct that whenever DCFS reimburses itself for expenses it has incurred as a creditor, DCFS secure prior approval from SSA; and

vii. Direct that whenever DCFS assumes responsibility as a representative payee, it take reasonable steps to ensure that a beneficiary is not rendered ineligible for continued benefits, including, in appropriate circumstances, the establishment of trust accounts to protect assets from the application of SSA's asset ceiling;

I. Direct Defendants to provide notice to all class members, or their legal representatives, informing them that they may have a cause of action for damages arising from Defendants' illegal practices, and of the method or methods by which class members may seek redress for such damages;

J. Award Plaintiff his costs and reasonable attorney's fees; and

K. Grant such other and further relief as this Court may deem just, proper and equitable.

Respectfully submitted,

LAMONT WILLINGHAM

By: _____
ATTORNEY FOR PLAINTIFF

Bruce A. Boyer
NORTHWESTERN UNIVERSITY LEGAL CLINIC
357 East Chicago Avenue
Chicago, IL 60611
Telephone: (312) 503-8576
Attorney # 15245

Dated: June 6, 1996