

Settlement Agreement

A.G.C. v. Washington State Health Care Authority
Thurston County Superior Court No. 21-2-00479-34

This Settlement Agreement (“Agreement”) is between Petitioner, A.G.C., and Respondent, the Washington State Health Care Authority (“HCA”). The Petitioner and HCA are hereinafter referred to collectively as “the Parties.” This Agreement is a full expression of the agreements between the Parties.

RECITALS

1. Petitioner is a fourteen-year-old child, who is income-eligible for HCA’s Apple Health State Funded MAGI Children’s Medical program. Petitioner is not eligible for federally funded Medicaid, however.
2. Wraparound with Intensive Services (WISE), is an HCA service delivery model that provides comprehensive behavioral health services and support to Medicaid-eligible children with complex behavioral health needs and their families.
3. Petitioner has been diagnosed with Post-Traumatic Stress Disorder (PTSD). Petitioner’s therapist, Lutheran Health Services, referred him to receive WISE, to address the symptoms of his PTSD.
4. Petitioner’s request for WISE was denied, because he is not Medicaid eligible. HCA’s formal denial came through a letter dated September 17, 2020.
5. Petitioner appealed HCA’s denial; the denial was upheld through review of HCA’s decision, and a Final Order dated December 21, 2020.
6. Petitioner filed a Petition for Judicial Review in this Court on March 26, 2021.
7. The Parties wish to enter this Settlement Agreement, to resolve the claims at issue in the Petition for Judicial Review.

AGREEMENT

1 Definitions

- 1.1 “*Parties*” shall mean: Petitioner and HCA.
- 1.2 “*Petition*” shall mean: Petitioner’s Petition for Judicial Review filed in Thurston County Superior Court on March 26, 2021, under Cause No. 21-2-00479-34.

1.3 “*Petitioner’s Counsel*” shall mean: SUSAN KAS and BLAKE MARKS DIAS.

1.4 “*Settlement*” shall mean: the settlement to be consummated under this Agreement.

2 *Representations and Warranties.* The Parties represent and warrant that they are voluntarily entering into this Agreement as a result of arm’s-length negotiations. In executing this Agreement the Parties are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter addressed in the Petition. The Parties represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement and all of the matters related as they deem necessary; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other person does hereby represent and warrant to the other Parties that he or she has the authority to do so.

3 *No Admission of Liability.* The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any wrongdoing by any Party, nor any admission of any liability as to such claims. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement.

4 *Terms of Release.* Petitioner agrees to dismiss his claims against HCA and release HCA from liability for all alleged past actions or inactions set forth in his Petition in exchange for the terms set forth below in this section.

4.1 Within sixty (60) days of the Effective Date of Settlement, HCA shall amend WAC 182-501-0215 through emergency rule to remove the restriction that this program only applies to Medicaid clients and update provider billing guides to reflect this change.

4.1.1. Specifically, WAC 182-501-0215(1)(a) shall be amended to state: “~~Medicaid-eligible~~ clients age twenty or younger with complex behavioral health needs who are eligible for coverage under WAC 182-505-0210; and...”

- 4.2. Within fifteen (15) days of the Effective Date of Settlement, HCA shall begin to reimburse medically necessary WISE services for Apple Health State Funded MAGI Children’s Medical clients, when receiving services from a HCA WISE approved provider.

4.2.1. Once Respondent has revised its WAC 182-501-0215 according to Section 4.1 of this Agreement, Petitioner’s future eligibility for WISE services will be subject to HCA’s revised rule and current Provider Billing Guides, rather than this agreement.

4.3. Respondent agrees to settle Petitioner's claims for costs and fees in the amount of \$15,000.00 for work completed and costs incurred prior to the Effective Date of Settlement. The payment shall be made within thirty (30) business days following the Effective Date of Settlement in accordance with instructions to be provided by Petitioner's counsel. Petitioner acknowledges that this is a complete and final release of such claims.

4.4. *Duration of the Agreement.*

4.4.1. Jurisdiction. Until HCA's WAC 182-501-0215 is modified in accord with section 4.1 of this Agreement, the Parties agree the Thurston County Superior Court shall retain jurisdiction to enforce the terms of this Agreement.

4.4.2. Termination. Once HCA's WAC 182-501-0215 is modified in accord with section 4.1 of this Agreement the Action herein will be dismissed.

4.4.3. Noncompliance. If Respondent has not demonstrated compliance with the criteria in paragraphs 4.1. – 4.2. within sixty (60) days of the Effective Date of Settlement, the parties will invoke the dispute resolution process as set forth below in Section 6 to negotiate a plan for Respondent to demonstrate substantial compliance with the terms of this Agreement.

5 *Effective Date of Settlement.* The "Effective Date of Settlement" will be the date the last signature is dated on this Agreement.

6 *Dispute Resolution.* Any claim, dispute, or other matter in controversy (dispute) arising out of or related to this Agreement, or the breach, implementation, or performance thereof, shall be resolved according to the procedure set forth below.

6.1. *Good Faith Direct Negotiation.* The Parties agree to convene, at a mutually agreeable time and place, and use their good-faith, best efforts to discuss and resolve the dispute. This initial meeting will be a direct negotiation between the Parties without the assistance of a mediator or other non-party.

6.2. *Mediator.* If the Parties are unable to resolve the dispute within thirty (30) days, or such other time frame upon which the Parties mutually agree, they may engage the mediation services of a mutually agreeable mediator for the purpose of mediating a resolution to the dispute.

6.3. *Motion.* Any Party may file an appropriate motion with the Superior Court in this matter after participating in the meeting described in Section 6.1. The moving party's counsel shall provide the appropriate notice to the opposing party's counsel of such action.

6.4. *Venue.* If any action is necessary to enforce the provisions of this Agreement, venue shall be the Thurston County Superior Court.

7 *Severability.* The provisions of this Agreement are not severable.

- 8 Amendment.** This Agreement may be modified or amended only by written agreement signed on behalf of all Parties.
- 9 Waiver.** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
- 10 Construction.** This Agreement has been jointly drafted and shall be construed according to the fair intent of the language as a whole and not for or against any party. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.
- 11 Further Assurances.** Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter of this Agreement.
- 12 Changes to Applicable Laws.** In the event federal or state law relevant to the items in this Agreement change, or Respondent's waiver(s) is/are modified, Respondent may revise the rules and policies referenced in this Agreement consistent with such changes. Provided, however, if such revisions are made before this Action is dismissed and are not consistent with the terms in Section 4.1, then Respondent shall provide Petitioner's counsel with thirty (30) days' advance written notice of the changes. Nothing in this Agreement prohibits Respondent from implementing immediate changes necessary to conform to federal and state law.
- 13 Frustration of Purpose/Force Majeure.** If the Respondent is unable to accomplish any of its obligations or meet timeframes under this Agreement due to events beyond their reasonable control (such as natural disaster, labor disputes, war, acts of God, or governmental action beyond state control), Respondent shall notify Petitioner's counsel within ten (10) business days of the date upon which Respondent becomes aware of the event and describe the event and its effect on performance. If performance is expected to be delayed or the event frustrates the purpose of the Agreement, the Parties shall negotiate in good faith to amend the Agreement.
- 14 Entire Agreement.** This Agreement contains the entire agreement among the Parties relating to this Settlement. No agreements, representations, oral statements, understandings, or courses of conduct that are not expressly set forth in this Agreement shall be implied or will be binding on the Parties unless made in writing and signed by all of the Parties.
- 15 Counterparts.** This Agreement may be executed by exchange of executed faxed or digital signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

16 Binding Effect. This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.

17 Release and Discharge. Upon the Effective Date of Settlement, each party hereby releases and forever unconditionally and irrevocably discharges each other party of and from any and all claims, actions, demands, causes of action, complaints, agreements, promises (express or implied), contracts, undertakings, covenants, guarantees, grievances, damages (including, without limitation, actual, compensatory, consequential, exemplary, treble, punitive or otherwise), attorneys' fees and legal costs, injunctive relief and declaratory relief, whether known or unknown, of whatsoever kind or nature that each had, now has, or hereafter can, shall, or may have related to or arising out of claims that are asserted, or that could have been asserted in the Petition. This release shall be binding on Petitioner and his lawful guardians, heirs, beneficiaries, representatives, assigns, attorneys, and agents.

APPROVED:

COUNSEL FOR PETITIONER:



SUSAN KAS, WSBA NO. 36592
Disability Rights Washington

10/22/2021

Date

Blake Marks-Dias

BLAKE MARKS DIAS, WSBA NO. 28169
Corr Cronin LLP

10/22/2021

Date

FOR RESPONDENT:



CHARISSA FOTINOS, M.D.
Medicaid Director (Acting)
Washington State Health Care Authority

10/22/21

Date



MARKO PAVELA, WSBA NO. 49160
Assistant Attorney General
Attorney for Washington State Health Care Authority

10/22/2021

Date