

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

URSULA BATTLE, *et al.*,

\*

*Plaintiffs,*

\*

v.

\*

Civil Action No.: 8:25-CV-03495-DLB

MARYLAND DEPARTMENT OF  
HEALTH, *et al.*,

\*

\*

*Defendants.*

\*

\* \* \* \* \*

**DEFENDANTS MARYLAND DEPARTMENT OF HEALTH,  
SECRETARY MEENA SESHAMANI, AND STATE OF MARYLAND’S  
REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendants, the Maryland Department of Health (“Department”), Meena Seshamani in her official capacity as Secretary of the Department, and the State of Maryland, by and through their undersigned counsel, Anthony G. Brown, Attorney General of Maryland, and Benjamin A. Bor, Sarah P. Belardi, and Christopher Gozdor, Assistant Attorneys General, hereby file this Reply Memorandum in response to Plaintiffs’ Opposition to Defendants’ Motion to Dismiss (“Opposition” or “Opp.”), respectfully stating the following:

**INTRODUCTION**

In its Response in Opposition, Plaintiffs conversely argue that Named Plaintiffs do not seek retroactive enrollment that would afford immunity to Defendants, despite the Prayer for Relief expressly seeking vacation of the disenrollment notices issued since through March 2023 (i.e. retroactive enrollment), as well as compensation for services

rendered during the disputed retroactive period. Moreover, Plaintiff The Arc seeks to litigate recipient enrollment rights through a breach of contract claim premised on a contract that is void of reference to the Department's obligations to recipients.

As stated in Defendants' Memorandum in Support of Motion to Dismiss ("Mot. Mem."), and further explained here, all of the counts against Defendants should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. Moreover, Counts I, II, and III, should be dismissed as the Defendants have Sovereign Immunity. Plaintiffs' Response in Opposition offers this Court no basis upon which to deny Defendants' Motion to Dismiss; therefore, the motion should be granted and the Complaint should be dismissed in its entirety.

### REPLY ARGUMENT

**I. Named Plaintiffs Either Improperly Seek Retroactive Enrollment in the DDA Waiver or They Concede that the Instant Complaint Seeks Only Prospective Enrollment with No Medicaid Coverage for Benefits Rendered During the Intervening Period.**

The Opposition argues that Named Plaintiffs do not seek retroactive relief, contrary to the terms of the Complaint's Prayer for Relief. Opp., p. 11. However, the requested injunction contains retrospective relief and is therefore barred by the Eleventh Amendment. Plaintiffs ask the Court to grant a preliminary and permanent injunction requiring

Defendants, their agents, successors, and employees to *rescind all DDA waiver program disenrollment decisions issued after the Public Health Emergency ended on May 11, 2023*, and conduct redeterminations for all individuals enrolled in DDA waiver programs since May 11, 2023, in accordance with the due process requirements of the United States

Constitution, the Medicaid Act, Article 24 of the Declaration of Rights, and federal and state law.

Compl., Prayer for Relief, at ¶ d (emphasis added). While a court order enjoining a state from future rights violations that would result in “a direct and substantial impact on the state treasury” does not necessarily violate *Ex parte Young*, it does violate that exception when a State is required to undo already accomplished actions. *Albert v. Lierman*, 152 F.4th 554, 560 (4th Cir. 2025); *Republic of Paraguay v. Allen*, 134 F.3d 622, 628 (4th Cir. 1998).

If the Court were to direct the Department to rescind all DDA waiver disenrollment decisions issued after May 11, 2023, that would necessarily mean that those decisions were null and void, and that those individuals were authorized to receive waiver services since that time. In turn, that would require the Department to *retroactively* restore benefits to the affected individual Plaintiffs and potentially pay The Arc for the disputed services on behalf of the individual Plaintiffs, which is what The Arc is seeking by way of its breach of contract claim in this very case. This results in compensating Plaintiffs for alleged past injuries, *i.e.*, damages.<sup>1</sup> To the extent that Plaintiffs ask that *future* redeterminations—not past redeterminations that were or should have been performed—be conducted in

---

<sup>1</sup> If Named Plaintiffs’ eligibility was retroactively reinstated, then Named Plaintiffs would not be personally liable for services rendered by The Arc as non-participants and The Arc would receive full payment from Medicaid for supposed services rendered. *See* COMAR 10.09.36.03D & E (prohibiting providers, as a condition for participation, from seeking reimbursement for covered services from a participant); *see also* COMAR 10.09.36.03A(11) (requiring providers, as a “condition for participation” in the Program, to “[a]ccept payment by the Program as payment in full for covered services rendered and make no additional charge to any person for covered services,” including the participant).

accordance with the due process requirements of the United States Constitution, the Medicaid Act, Article 24 of the Declaration of Rights, and federal and state law, that relief would not be barred by the Eleventh Amendment’s prohibition on retrospective, monetary relief. However, Plaintiffs now seem to disavow the retroactive relief requested in their Complaint, as they expressly state that they are seeking “prospective injunctive relief.” Opp., p. 11.

## **II. Plaintiffs’ Arguments Concerning the Exhaustion Requirement Oversimplify the Defects with the Complaint.**

In its Opposition, Named Plaintiffs argue that failure to exhaust administrative remedies is not a bar to their federal and state constitutional or statutory claims (Opp., p. 14.), relying, in part, on *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021). Whilst the *Pakdel* Court affirmed the general principle that exhaustion is not a prerequisite for claims brought under 42 U.S.C. § 1983, it also affirmed the principle that “a plaintiff’s failure to properly pursue administrative procedures may render a claim unripe *if* avenues still remain for the government to clarify or change its decision.” *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. at 480 (citations omitted). Named Plaintiffs Battle and Lee pled that they requested administrative hearings but have not yet completed the process. Compl. ¶¶ 64, 84. In the Complaint, Named Plaintiffs Farrell and Puzzo fail to plead whether or not they sought administrative review of their disenrollment, nor whether they were unaware of the administrative process afforded to applicants of the waiver. Therefore, based on the four corners of the Complaint, Named Plaintiffs’ claims under § 1983 are not ripe for the Court’s review.

For the same reasons, Named Plaintiffs' mandamus claims are likewise not ripe for the Court's review. The *Hughes* case relied upon by Named Plaintiffs is markedly different from the circumstances described by Battle and Lee. *Hughes v. Moyer*, 452 Md. 77 (2017). Per their own admission, Battle and Lee are in the midst of the administrative process, *see* Compl. ¶¶ 64, 84, whereas the Plaintiff in *Hughes* had completed the administrative process or failed to receive notice of the opportunity of the secondary portion of the administrative process. That is not the case with Plaintiffs Battle and Lee, who, per the Complaint, requested fair hearings and are still in the process of exhausting their administrative remedies. *Id.* As stated above, the Complaint is devoid of facts sufficient to establish that the mandamus claims by Named Plaintiffs Farrell and Puzzo are ripe pursuant to the *Hughes* decision.

**III. Plaintiff The Arc Has Failed to Establish that it Pled Sufficient Facts to Proceed on its Breach of Contract Claim.**

In its Opposition, Plaintiff The Arc argues that the Department is required to “comply with ... applicable laws and regulations,” HCBS Agreement § 3, and to “reimburse the [The Arc] for medically necessary services provided to Recipients that are covered by the Maryland Medical Assistance Program at the time of service,” Provider Agreement § II.A. Opp. pp. 22. Conveniently, The Arc left out an important portion of the subject language in the HCBS Agreement, which requires the Department to “comply with *its requirements and obligations set forth in the Medicaid Program's Provider Agreement and applicable laws and regulations.*” HCBS Agreement § 3, Compl. Ex. A (emphasis added). The term “applicable laws and regulations” relates directly back to the

Medicaid Program’s Provider Agreement—not to all Maryland Department of Health laws and regulations writ large on any topic or issue, whether related to the Department’s obligations under the Provider Agreement or not. *Id.* Notably, nothing in the Provider Agreement references the Department’s statutory and regulatory obligations to Medicaid recipients. *See generally* Provider Agreement, Compl., Ex. B. The regulations governing provider enrollment in the Medicaid Program are delineated in COMAR 10.09.36, whereas the regulations concerning recipient eligibility and the fair hearings process are found in COMAR 10.09.24 and COMAR 10.01.04, respectively. The Arc’s erroneous reading of the “applicable laws and regulations” provision would seemingly allow The Arc to bring a breach of contract claim against the Department for any perceived violation of state or federal law, Title 10 of the Code of Maryland Regulations, or the like, regardless of whether it is actually related to the Department’s obligations to The Arc under either the HCBS or Provider Agreements.

As explained in Defendants’ Motion to Dismiss, the first two theories of breach advanced in the Complaint necessarily concern the Department’s constitutional and statutory obligations to enrolled Medicaid participants (or Medicaid recipients), not the contractual, statutory, or regulatory obligations entailed to Providers participating in the Medicaid Program. *See* Compl. The Arc has no procedural due process right, or contractual right, to relief on behalf of the Named Plaintiffs or the asserted class and, therefore, lacks the standing to enforce it through a contract claim in the courts. Accordingly, Defendant’s alleged failings in its duties and obligations towards its recipients cannot form the basis of

a breach of contract action for the provider and, as such, Count V must be dismissed to the extent that it concerns those alleged breaches.

The Arc likewise skirts around the deficiency concerning the third alleged breach, wherein The Arc asserts that the Department was bound to reimburse it for services properly rendered to disenrolled participants. However, nowhere in its Complaint does The Arc plead that it submitted any claims to the Department for those services rendered to the Medicaid recipients at issue in the case, and that those claims were subsequently denied or rejected by the Department—nor does it adequately address this in the Opposition. Compl. 141. *See also generally* Compl; Opp. Specifically, the Provider Agreement requires The Arc to “submit[] accurate, complete and timely claims” as a condition of payment under the contract. Provider Agreement, Compl. Ex. B, § I.A. The Complaint itself is bereft of any pled facts demonstrating that The Arc complied with that obligation prior to seeking payment, and that its claims were either denied or rejected. *See, generally*, Comp. Rather, the allegation in the Complaint is merely that The Arc provided services to individuals whom were disenrolled and deemed ineligible for participation in the Waiver and, unsurprisingly, The Arc has not been paid for those services. *See* Comp. ¶¶ 138-142.

While The Arc states in its Opposition that “MDH well knows [that] The Arc consistently submits its claims for reimbursement” and that “[r]ecords of those submissions are in Defendants’ possession, as would have been revealed by a basic pre-filing investigation,” Opp., p. 25, it is notable that The Arc does not specifically state in its Complaint that it submitted claims for the particular disenrolled participants at issue in this lawsuit for the periods of time that they were disenrolled. Rather, the statement is to their

pattern of claims submission, generally. More importantly for this Court's consideration of the instant Motion to Dismiss, this allegation is *nowhere* to be found in the underlying Complaint. *See generally* Compl. A motion to dismiss under Rule 12(b)(6) for failure to state a claim tests the sufficiency of the Complaint itself, and the non-moving party is prohibited from adding facts in an Opposition to such a motion in an effort to escape a motion to dismiss. *Guerrero v. Ollie's Bargain Outlet, Inc.*, 115 F. 4<sup>th</sup> 349, 356 (2024) (in ruling on a motion to dismiss for failure to state a claim, "courts are limited to considering the four corners of the complaint and the documents attached or incorporated thereto.").

It confounds reason to assert that the Department breached the Provider Agreement by failing to pay Plaintiff The Arc for claims that were never submitted as required by said contract and governing regulations. *See, e.g.* Provider Agreement, Compl. Ex. B, § II.A; COMAR 10.09.36.03; COMAR 10.09.36.04. Although no "magic words" are required, Opp., p. 24, Count V is nonetheless defective because the bare minimum premise-level facts are missing from Plaintiff The Arc's pleading concerning the Department's supposed breach of contract.

## CONCLUSION

For the foregoing reasons, Defendants the Maryland Department of Health, Meena Seshamani, Secretary of the Maryland Department of Health, and the State of Maryland respectfully request that this Court dismiss the Plaintiffs' Complaint in its entirety.

Respectfully submitted,

ANTHONY G. BROWN  
Attorney General of Maryland

/s/ Sarah P. Belardi

BENJAMIN A. BOR (Bar# 30633)  
SARAH P. BELARDI (Bar# 20464)  
CHRISTOPHER GOZDOR (Bar# 16136)

Assistant Attorneys General  
Office of the Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201

benjamin.bor@maryland.gov

sarah.belardi1@maryland.gov

christopher.gozdor@maryland.gov

(410) 767-1358 (Ms. Belardi)

*Attorneys for Defendants Maryland  
Department of Health, Meena Seshamani,  
and State of Maryland*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of December, 2025 a copy of Defendants' Reply Memorandum in Support of Motion to Dismiss was served on the following via the Court's electronic filing system, or via electronic mail to the extent that service via the electronic filing system is not possible:

Kevin D. Docherty  
Joshua N. Auerbach  
Neel K. Lalchandani  
BROWN GOLDSTEIN & LEVY, LLP  
120 East Baltimore Street, Suite 2500  
Baltimore, Maryland 21202  
Tel.: (410) 962-1030  
kdocherty@browngold.com  
jauerbach@browngold.com  
nkl@browngold.com

*Counsel for Plaintiffs Ursula Battle; Constance Farrell;  
Frank Lee; Yolanda Puzzo and The Arc Montgomery County, Inc.*

*/s/ Sarah P. Belardi*

\_\_\_\_\_  
Sarah P. Belardi