

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DEREK WASKUL, *et al.*,

Plaintiffs,

v.

WASHTENAW COUNTY COMMUNITY
MENTAL HEALTH, *et al.*,

Defendants.

No. 2:16-cv-10936-PDB-EAS
Hon. Linda V. Parker
Hon. Elizabeth A. Stafford

**PLAINTIFF WACA'S MOTION FOR AN ORDER THAT
DEFENDANT WCCMH SHOW CAUSE WHY IT SHOULD NOT
BE HELD IN CIVIL CONTEMPT AND, IN THE ALTERNATIVE,
FOR WRIT OF MANDAMUS**

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MOTION

It is the law of this case that Local Defendants must “abide by” the Consent Decree (“Decree”) in this action “by following whatever rules, regulations, and policies MDHHS enacts to satisfy those terms. Plaintiff Washtenaw Association for Community Advocacy (“WACA”) hereby moves for an order:

1. Requiring Defendant WCCMH to show cause why it should not be held in civil contempt of court for refusing to abide by the “costing out” policies in MPM Bulletins 25-31 (Exhibit 1 hereto) and 25-41 (Exhibit 2 hereto), which are policies MDHHS enacted to satisfy the terms of the Decree;

2. Requiring Defendant WCCMH to purge its contempt by

(a) proceeding promptly to “cost out” the CLS budgets of all WACA members who are HSW SD CLS beneficiaries (“affected WACA members”) and

(i) whose IPOSs are up for annual review, or

(ii) who request a revised IPOS,

in each case in accordance with Exhibits 1 and 2; and

(b) pending such costing out, immediately adjusting the H2015 CLS rate in the budgets of all affected WACA members from \$5.92/unit to \$6.18/unit, retroactive to October 1, 2025, to account for the

impact of the Michigan Earned Sick Time Act (“ESTA”), which became effective for affected WACA members on October 1, 2025.

3. Awarding WACA the reasonable attorney fees and costs incurred bringing this contempt motion; and

4. In the alternative, and only if the Court determines that the Consent Decree is not directly enforceable against WCCMH, issuing a writ of mandamus compelling WCCMH to comply with the costing out policies in Exhibits 1 and 2.

Meet and Confer

5. *Earned Sick Time Act*

(a) On September 17, 2025, counsel for WACA wrote to counsel for the Local Defendants (Exhibit 3), giving notice of non-compliance under ¶ 26(a)(1) of the Decree on the basis that ESTA correspondence from Community Living Network (“CLN”), a subcontractor of Local Defendants, would cause Local Defendants to be in violation of ¶¶ 15(c), 23, 26(c) of the Consent Decree as of October 1 and requesting that Local Defendants take prompt measures to ensure that did not happen.

(b) Counsel for WCCMH responded on September 24 (Exhibit 4), and counsel for WACA replied on September 25 (Exhibit 5).

- (c) On October 3, 2025, MDHHS issued guidance on treatment of ESTA in SD programs (Exhibit 6).
- (d) On October 4, 2025, counsel for WACA e-mailed counsel for WCCMH (Exhibit 7) as follows:

I assume you've seen the ESTA guidance. Since the accrual is basically 1.033333 (1 day for each 30), we suggest that WCCMH increase the basic H2015 rate from \$5.92/unit to \$6.18/unit effective 10/1 and let all the EoRs and FIs know that you have done so. That way, there will be no need for mass reopenings of IPOSs. Reopenings will come, perhaps, as a result of the 10/1 policy change, but one thing at a time. Any individual adjustments can be made as part of the costing-out process in each participant's next PCP meeting.

What say you?

- (e) Counsel for WCCMH responded that he would check with his client, never followed up, and ignored a follow up email. At no point has WCCMH stated or otherwise indicated that WCCMH would come into compliance vis-à-vis ESTA with the requirement of Exhibit 2 that budgets be sufficient to implement the IPOS.

6. ***General Non-Compliance:***

- (a) On October 17, 2025, counsel for WACA wrote to counsel for WCCMH (Exhibit 8), giving a separate notice of non-compliance, this time on the basis that WCCMH was refusing to "cost out"

IPOSs and thus was in violation of its obligation to “abide by” Bulletins 25-31 and 25-41.

- (b) The parties exchanged correspondence and e-mails on this subject over the course of the next six weeks (Exhibits 9-16).
- (c) On December 4, 2025, counsel for WACA sought WCCMH’s concurrence to issuance of a writ of mandamus, which is effectively the same relief to which WCCMH had already declined to agree. By December 8, WCCMH had neither concurred nor declined to concur in the that part of the motion.

7. The current status is as follows:

- (a) As to ESTA, WCCMH is doing nothing, is not committed to do anything and, in particular, is not taking any steps to ensure that WACA members’ budgets are sufficient to implement their IPOSs taking the newly imposed ESTA obligations into account.
- (b) As to general compliance with Attachment C/costing out, WCCMH has refused to proceed with setting of budgets until MDHHS issues the “non-binding guidance” provided for in ¶ 17 of the Decree.

8. The policies (Exhibits 1 and 2) are currently effective and currently binding on WCCMH. There is no basis on which to assert that WCCMH may suspend compliance until issuance of the “non-binding guidance.”

9. This motion is supported by Exhibits 1-21 annexed hereto, which include the Declarations of Michelle McCarthy, Katherine White, and Katherine Fisk.

Background

10. On January 28, 2025, this Court entered the Consent Decree incorporating the terms of Plaintiffs' Settlement with the State Defendants (ECF#401).

11. Defendant CMHPSM did not sign a new Medicaid contract with MDHHS by the "Drop Dead Date" under the Decree. Accordingly, Contingencies D(1) and D(2) under the Decree failed, and

(a) The minimum fee schedules set forth in the Consent Decree did not take effect, and

(b) The "costing out" provisions of Attachment C of the Consent Decree did take effect.

12. Pursuant to the Decree, MDHHS was required to revise certain sections of the Medicaid Provider Manual ("MPM") governing the conduct of Local Defendants.

13. MDHHS issued Policy Bulletins MMP 25-31 (Exhibit 1 hereto) and MMP 25-41 (Exhibit 2 hereto) to effect those revisions. The new MPM policies took effect on October 1, 2025. Pending release of a full, revised MPM, the Policy Bulletins are as effective and binding on Medicaid providers as the MPM itself (Exhibit 17 hereto).

14. The MPM's new "costing out" provisions require, *inter alia*, that for HSW beneficiaries who self-direct their services,

- (a) "both the Individual Plan of Service (IPOS) and the individual budget are developed in conjunction with one another through the person-centered planning (PCP) process." (Ex. 2, p. 1 of 3);
- (b) "[t]he PCP process must . . . [i]nclude discussion with the beneficiary regarding all components of services (i.e., for HSW SD CLS, this includes components such as transportation, activities, staff wages, employer costs, training time) as well as the amount, scope, and duration of each such component that may be medically necessary for the beneficiary." (Ex. 1, p. 7 of 7);
- (c) the recipient's CLS budgets must be "determined by costing out the medically necessary services and supports set forth in the IPOS," with CLS staffing costs, activity costs, and transportation costs separately accounted for in the budget (Ex. 2, p. 2 of 3); and
- (d) the budget must be "sufficient to implement the IPOS" (*id.*).

15. Defendant WCCMH is the entity responsible for costing out Plaintiffs' CLS budgets, and Paragraph 26(c) of the Decree expressly grants Plaintiffs the right to "seek enforcement of Attachment C, including without limitation the costing out and sufficiency provisions thereof, against WCCMH or CMHPSM."

JACOB MCCARTHY

16. Michelle McCarthy and her son Jacob are WACA members. Jacob's annual PCP meeting was scheduled for August 29, 2025 (Ex. 18, McCarthy Decl. ¶¶ 1, 6).

17. Because McCarthy was aware of the impending implementation of the costing out policies, McCarthy and Jacob's Supports Coordinator agreed to meet again after October 1 to discuss and develop Jacob's CLS budget (*id.* at ¶¶ 7-11).

18. The continued PCP meeting was scheduled for October 14, 2025. Prior to the meeting, McCarthy prepared a detailed written statement concerning medically necessary staff wages, transportation costs, and activity costs, and she sent the statement to her Supports Coordinator (Ex. 1 to Ex. 18).

19. The morning of the October 14 meeting, McCarthy received a message from the Supports Coordinator stating that she had "not been able to find answers" to McCarthy's budgetary questions (Ex. 18 at ¶¶ 14-15). The Supports Coordinator asked whether McCarthy wished to cancel the meeting, adding that her questions might be better answered by the fiscal intermediary (*Id.*).

20. This response was disingenuous at best, as McCarthy had not posed any "questions" to the Supports Coordinator. In accordance with her rights under the new costing out policies, she had simply sent a prefatory email with budget considerations to facilitate the upcoming discussion at the PCP meeting—a discussion in

which the Supports Coordinator, not the fiscal intermediary, was required to participate.

21. At the October 14 PCP meeting, the Supports Coordinator, Ashley Podczervinski, categorically refused to engage in *any* discussion about the CLS budget (*id.* at ¶¶ 16-18).

22. The Supports Coordinator asserted at the meeting that Krista DeWeese, WCCMH’s Program Director for Intellectual and Developmental Disability services, had reached out to MDHHS for “clarification” about the new policies, and that the Supports Coordinator was “not able to implement anything” or “share anything regarding it” until Ms. DeWeese heard back from the State (*id.*).

23. As set forth above,

- (a) the costing out policies were in effect as of the date of the meeting, and
- (b) their implementation was not contingent on any guidance or clarifications from MDHHS.

24. The Supports Coordinator stated: “I let you know that there is nothing that we can do about that right now, because we have not heard from DHS. I’ve spoke[n] to . . . Krista directly about this today. She told me the same thing.”¹

¹ As noted in the Declaration, the meeting was recorded and an AI-generated transcript can be produced upon request.

25. Accordingly, the refusal to engage on costing out was not a random or unauthorized act of a single Supports Coordinator but was an affirmative policy decision made by WCCMH's most senior executive in charge of I/DD services.

26. When McCarthy and Kristen Columbus, the President/CEO of WACA, requested that the Supports Coordinator document in writing their inability to agree to a budget, the Supports Coordinator continued to assert that she was "not able to implement anything" (Ex. 18 at ¶ 18).

27. McCarthy left the meeting with neither a new IPOS nor a budget. She then heard nothing from WCCMH for a full month (*id.* at ¶ 19).

28. On November 12, WCCMH issued a "memo" to some² HSW CLS SD recipients (Ex. 19) asserting, *inter alia*:

WCCMH is working with MDHHS to further understand how these changes will be fully implemented and operationalized. On October 27, 2025, MDHHS stated that it is still drafting the guidance. While WCCMH waits for that implementation guidance from MDHHS, we will discuss with each individual their budget during the person-centered planning (PCP) process at the time an individual's plan of service renews.

29. Given WCCMH's insistence in the memo that it was doing exactly what it had just refused to do in Jacob's October 14 PCP meeting, McCarthy again emailed her Supports Coordinator to request that WCCMH discuss Jacob's CLS budget (Ex. 18 at ¶ 21 and Ex. 2 to Exhibit 18).

² Not all HSW CLS SD recipients received the memo.

30. On November 24, McCarthy met with Jacob's Supports Coordinator, Danielle Hoover (Supervisor), Cody Chatfield (Independent Supports Broker), Kristen Columbus (President of WACA), and Jacob (*id.* at ¶ 23).

31. At the meeting, Jacob's Supports Coordinator stated that WCCMH was still waiting for guidance from the State and that the only thing it could do at the meeting was discuss the budget (*id.* at ¶ 24).

32. In addition, the Supports Coordinator stated that there would be "no decisions" about the budget and "no adding anything into the IPOS regarding it" (*id.*).

33. McCarthy brought a budget worksheet to the meeting, which included estimated costs for activities and associated mileage costs, payroll taxes, overtime, staff wages, and staff training (*id.* at ¶ 25).

34. Despite the Supports Coordinator's statement that WCCMH would engage in budgetary discussions, the Supports Coordinator declined to do so when McCarthy tried to review the budget worksheet and ask for feedback, stating "we're still uncertain of what the process looks like" (*id.* at ¶¶ 25-26).

35. McCarthy left the meeting without a new budget, without a new IPOS, and without any idea as to when she would receive a budget in accordance with the costing out policies (*id.* at ¶¶ 27-28).

DANIELLE WHITE

36. Katherine White and her daughter Danielle are WACA members. Danielle's annual PCP meeting was scheduled for October 15, 2025 (Ex. 20, White Decl. ¶¶ 1, 6).

37. Prior to the meeting, White read the policy bulletin and spoke with CLN to gather information on how to calculate her daughter's budget in accordance with the new policies (*id.* at ¶ 7).

38. On October 8, White spoke with Danielle's Supports Coordinator, Cheryl Petty. Cheryl said she did not know much about the new costing out policies, but that she did know that WCCMH was waiting for guidance from the State (*id.* at ¶ 8).

39. This statement concerned White. She decided to reschedule the October 15 meeting for October 24 to give herself, and WCCMH, more time to prepare (*id.* at ¶ 9).

40. Before the meeting, White developed a proposed CLS budget for Danielle, which included medically necessary CLS hours and wages, transportation costs, and activity costs (*id.* at ¶ 10).

41. During the PCP meeting, Danielle's Supports Coordinator asked about the activities in the proposed budget, and she and White discussed adding them to Danielle's IPOS (*id.* at ¶ 11).

42. Unlike in McCarthy's case, the Supports Coordinator engaged in a discussion about the budget. Ultimately, however, she told White that she did not have authority for financial decisions, and that she did not know how to put any additional information into the budget (*id.*).

43. The Supports Coordinator, like McCarthy's Supports Coordinator, said that she had been told to tell parents that she was waiting for guidance from the State (*id.*; McCarthy Del. ¶¶ 16-18).

44. The Supports Coordinator agreed to scan White's proposed budget and attach it to the IPOS, and she and White wrote in the IPOS that the budget with its seven attachments was included in the IPOS (Ex. 20 at ¶ 12).

45. White followed up with the Supports Coordinator on October 31, the day Danielle's budget was set to expire, stating that she needed an approved budget to pay Danielle's CLS workers. The Supports Coordinator did not respond (*id.* at ¶ 13).

46. Danielle's CLS budget expired on October 31, and the new budget did not take effect. WCCMH did not set the budget at the preceding level pending a hearing as required by MMP 25-41 (Ex. 2, p. 2 of 3). Nor did WCCMH notify White of her right to appeal (*id.*).

47. On November 6, White called the Supports Coordinator to again ask about the budget. The Supports Coordinator told White that there was nothing she could

do about the budget until WCCMH received guidance from the State. She told White that she was going to submit the old budget (*id.* at ¶ 14).

48. Given the urgent need to pay staff, White agreed to reinstate Danielle's prior CLS budget. WCCMH again failed to provide notice of White's hearing rights (*id.* at ¶ 16-17).

ANTHONY FISK

49. Anthony Fisk is a CLS SD HSW recipient and a member of Plaintiff WACA (Ex. Decl. of Katherine Fisk, Ex. 21, ¶¶ 1-2).

50. Anthony is 22 years old and currently receives 46 hours per week of CLS (*id.* at ¶ 3).

51. During Anthony's annual PCP meeting on August 20, 2025, Anthony's mother and independent supports broker attempted to specify the activities in Anthony's IPOS and the mileage associated with those activities so they could be "costed out" once the policies took effect. (*id.* at ¶¶ 5-6). They also discussed how Anthony's father's intention to cut back on his CLS hours would necessitate hiring new staff (*id.* at ¶ 8).

52. Anthony's mother has been trying to hire new staff since the PCP meeting, but the budget resulting from that meeting has yet to be shared and the preceding budget is insufficient (*id.* at ¶¶ 9-10).

53. Moreover, costs associated with Michigan's Earned Sick Time Act have further limited the wages Anthony can offer CLS staff (*id.* at ¶ 11).

54. On November 24, Anthony's mother sent an email "requesting a person-centered planning meeting to adjust [Anthony's] plan and budget according to the new 'costing out' policy" to Cheryl Cardiel (Anthony's supports coordinator), Joshua Schramm (Cheryl's supervisor), Angela Persinger, Sara Hungerford (Network Management Manager at WCCMH), Anthony Fisk, and Mark Fisk. (Ex. 1 to Exhibit 21)

55. Her email contained information regarding medically necessary SD CLS staff wages, the costs of Anthony's CLS activities, and the related cost of transportation to and from those CLS activities (Ex. 21 at ¶ 13).

56. Anthony's mother attached a CLS budget worksheet and two wage request emails that she had received while trying to hire CLS staff for Anthony, which were intended to demonstrate her inability to hire staff at the current CLS rate (*id.* at ¶ 14).

57. On November 25, Cheryl replied, stating: "I spoke with my supervisor, Josh, and we are still working on the 'roll-out' for this and inquiring about more information and will get back with you sometime next week" (Ex. 2 to Exhibit 21).

58. On December 1, Anthony's mother submitted a new employee packet to Community Living Network ("CLN") with requests for Anthony's current

employees. She was told by someone at CLN that she was way over budget and was given a budget dated “11/15/2024” (Ex. 21 at ¶ 16). CLN advised her to go to WCCMH to establish funding for the new employee (Ex. 3 to Exhibit 21).

59. On December 3, Anthony’s mother followed up with Cheryl about her request for a PCP meeting. In her email to Cheryl, she emphasized that a budget adjustment was needed to move forward with onboarding Anthony’s new staff member (Ex. 4 to Exhibit 21)

60. To date, she has yet to hear back from WCCMH (Ex. 21 at ¶ 19), and Anthony’s budget remains insufficient to implement his plan of service.

Mandamus

61. Assuming the Court holds, as Plaintiff WACA submits it already did (ECF#399 at 30, PageID15239), that the Consent Decree is enforceable against Local Defendants, then the Court can hold WCCMH in civil contempt pursuant to its inherent power to enforce the Decree.

62. Only if the Court holds that the Decree is *not* enforceable against Local Defendants does Plaintiff WACA move in the alternative for issuance of a writ of mandamus under Michigan law compelling Defendant WCCMH to comply with the costing out policies created pursuant to the Decree.

63. Under Michigan law, an “appropriate motion in a pending action may be brought to obtain . . . mandamus.” MCR 3.301(A)(1)(c).

64. The remedy of mandamus is available in federal court if the conditions to application of the remedy are met and the Court otherwise has jurisdiction. *Riv-eredge Dentistry Partnership v. City of Cleveland*, 2024 WL 639689, at *24-25 (N.D. Ohio, Feb. 15, 2024) (collecting cases); *Martinez v. City of Cleveland*, 700 Fed.Appx. 521, 523 (6th Cir. 2017).

65. To establish its “entitlement” to a writ of mandamus, Plaintiff WACA must demonstrate (1) a clear, legal right to performance of a specific duty, (2) a corresponding clear legal duty on the part of the defendant to perform that duty, (3) that the act is ministerial, and (4) that no other adequate legal or equitable remedy exists that could achieve the same result. *Christenson v. Secretary of State*, 336 Mich.App. 411, 419 (2021).

66. As set forth above (¶¶ 21-22, 24, 26, 27, 34-35, 47, 57 and Ex. 18 at ¶¶ 16-18, 19, 25-28 and Ex. 20 at ¶ 14, 16 and Ex. 2 to Exhibit 21), WCCMH is refusing to cost out WACA members’ CLS budgets, despite the members’ clear legal right to have their budgets costed out in accordance with the new MPM policies created pursuant to the Decree.

67. WCCMH has a corresponding clear legal duty to cost out the members’ CLS SD budgets in accordance with those MPM policies.

68. These legal duties are ministerial because they leave nothing to WCCMH’s discretion: while WCCMH assuredly exercises certain discretion in

determining the final CLS budget, it must abide by the costing out policies in creating the budget. The MPM policies at issue dictate procedure, not the result.

69. There is no adequate alternative legal or equitable remedy that could achieve the same result:

- (a) The Court will have determined that Plaintiffs cannot enforce the Decree directly against Local Defendants;
- (b) Plaintiff WACA's members are suffering harm each day that WCCMH refuses to cost out their plans of service and cannot wait for Medicaid Fair Hearings to run their course, putting aside the very real possibility that WCCMH could refuse to implement any favorable decisions;
- (c) Plaintiff WACA has no Fair Hearing remedy at all on behalf of its members at large; and
- (d) Administrative Law Judges' express authority under the Decree to order specific relief is limited to budget determinations. Here, WCCMH is categorically refusing to implement the costing out policies, and it is doubtful whether ALJs could or would affirmatively order compliance with those policies.

WHEREFORE, Plaintiff WACA respectfully requests that the Court grant its motion and issue an order granting the relief set forth in Paragraphs 1-4 herein.

BRIEF

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STATEMENT OF QUESTIONS PRESENTED

1. Whether Defendant WCCMH should be ordered to show cause why it should not be held in civil contempt of court for refusing to abide by the “costing out” policies in MPM Bulletins 25-31 and 25-41, which are policies MDHHS enacted to satisfy the terms of the Decree?

- Plaintiff WACA answers, “yes.”
- Defendant WCCMH answers, “no.”

2. Whether, in the alternative and only in the event that the Court holds that the Decree is unenforceable against WCCMH, the Court should issue a writ of mandamus compelling WCCMH to abide by the “costing out” policies in MPM Bulletins 25-31 and 25-41?

- Plaintiff WACA answers, “yes.”
- Defendant WCCMH answers, “no.”

MOST APPROPRIATE AUTHORITY

Electrical Workers Pension Trust Fund of Local Union 58, IBEW v. Gary's Elec. Service Co., 340 F.3d 373 (6th Cir. 2003).

Teasel v. Dep't of Mental Health, 419 Mich. 390 (1984)

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MCR 3.301(A)(1)(c)

INTRODUCTION

On January 28, 2025, this Court entered the Consent Decree incorporating the terms of Plaintiffs' Settlement with the State Defendants (ECF#401). The Decree contains two primary, alternative forms of relief: minimum fee schedules and the "costing out" provisions of Attachment C. When Defendant CMHPSM did not sign a new Medicaid contract with MDHHS by the "Drop Dead Date" under the Decree, Contingencies D(1) and D(2) under the Decree failed, and Attachment C's "costing out" provisions took effect instead of the minimum fee schedules.

The Decree thus required MDHHS to revise sections of the Medicaid Provider Manual ("MPM") governing the conduct of Defendants CMHPSM and WCCMH to effect (1) the "costing out" policies embodied in Attachment C to the Decree, and (2) a number of person-centered-planning ("PCP") and self-determination policies designed to ensure the effective implementation of Attachment C (§§ 23, 10, 13, 15(a)-(d), (f), and (g)). The costing out policies effectively require WCCMH to return to its predecessor's pre-May 2015 CLS budgeting methodology, which is the primary relief Plaintiffs have sought in this action for the past ten years.

All of the new MPM policies required by the Decree have been in full effect since October 1, 2025 and are binding on Local Defendants (Exhibits 1 and 2). WCCMH, however, consistent with its track record of ignoring MDHHS directives and policies (*see* ECF#316 PageID9430-32), has refused to implement the new

policies. At present, WCCMH is neither costing out the budgets of Plaintiff Washtenaw Association for Community Advocacy' ("WACA") members³ nor abiding by the new PCP policies, and WACA members are consequently unable to receive CLS budgets sufficient to implement their plans of service.

After several months of unsuccessful attempts to urge WCCMH into compliance (Exhibits 3-16), Plaintiff WACA now moves for WCCMH to show cause why it should not be held in civil contempt. The Motion lays out the basis for a contempt holding, with the expectation that further briefing will be required if and when the Court enters a show cause order.

Plaintiffs also move for a writ of mandamus compelling WCCMH to comply with the new MPM policies. Federal courts have the authority to issue a writ of mandamus where mandamus is available under state law and the federal court otherwise has subject matter jurisdiction, as the Court does here. *Riveredge Dentistry Partnership v. City of Cleveland*, 2024 WL 639689, at *24-25 (N.D. Ohio, Feb. 15, 2024) (collecting cases); *Martinez v. City of Cleveland*, 700 Fed.Appx. 521, 523 (6th Cir. 2017).

The mandamus portion of the motion is solely in the alternative and applies only if this Court concludes that Plaintiffs cannot enforce the Decree directly against

³ The individual Plaintiffs continue to receive interim payments pursuant to ¶ 6 of the Consent Decree.

WCCMH. Plaintiffs believe that the Decree *is* directly enforceable against WCCMH under ¶¶ 1, 26(c) of the Decree, under Fed.R.Civ.P. 65(d)(2), and under *Tenn. Ass’n of Health Maint. Orgs. v. Grier*, 262 F.3d 559, 565-67 (6th Cir. 2001). Plaintiffs further submit that this Court effectively so held when it wrote that WCCMH must “abide by” the terms of the Decree by “following” the policies enacted pursuant to it (ECF#399 at 30, PageID15239). Local Defendants, however, disagree, and that dispute is the subject of the parties’ pending attorneys’ fees and mootness motions (ECF##413, 417, 420). Only if Plaintiffs are incorrect as to the Decree’s enforceability against WCCMH does the mandamus motion come into play.

ARGUMENT

I. Civil Contempt is Necessary to Force WCCMH to Comply With the Costing Out Policies

A. Standard and Procedure

“It is well-settled that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them.” *United States v. Bd. of Cnty. Commissioners of Hamilton Cnty., Ohio*, 937 F.3d 679, 688 (6th Cir. 2019). The court has “broad equitable and remedial powers” and “[t]he court’s choice of remedies is reviewed for an abuse of discretion.” *Shy v. Navistar Int’l Corp.*, 701 F.3d 523, 533 (6th Cir. 2012).

One of those remedies is contempt of court. Civil contempt may be properly used to “to coerce the defendant into compliance with the court’s order,” and

decisions on contempt petitions rest “within the sound discretion of the trial court.” *Electrical Workers Pension Trust Fund of Local Union 58, IBEW v. Gary’s Elec. Service Co.*, 340 F.3d 373, 378-79 (6th Cir. 2003).

In this District, the procedure for bringing on a request to find a party in civil contempt is by a motion for an Order to Show Cause. *See, e.g., Hooker v. Goldstein & Associates, LLC*, 2013 WL 6163638 (E.D. Mich. Nov. 20, 2013). Once the Order to Show Cause issues and the defendant attempts to show cause, the parties engage on the substance of the defendant’s response, and the Court rules. The burden is on the party seeking the contempt citation (here, WACA) to show by clear and convincing evidence that defendant is currently refusing to abide by its Court-ordered obligations. *Electrical Workers Pension Trust Fund*, 340 F.3d at 379. The civil contempt remedy is coercive and remedial: it is focused on obtaining compliance and remedying the effects of past non-compliance. It is *not* a form of punishment. *U.S. v. Bayshore Associates, Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991).

This Court has interpreted WCCMH’s obligation, as an agent under the Decree, as one of “abiding” by the MPM policies enacted pursuant to it. That binding interpretation of the Decree is the law of the case. Accordingly, to comply with the Decree, WCCMH must follow the new costing out policies enacted pursuant to the Decree. As set forth below, however, WCCMH is knowingly refusing to comply with those policies.

B. Defendant WCCMH is Knowingly Refusing to Cost Out WACA Members' ESTA Obligations

Michigan's new Earned Sick Time Act ("ESTA") requires Michigan employers, including self-determination employers of record, to provide at least one hour of paid sick leave for every thirty hours worked. Employers with fewer than ten employees must provide forty hours of leave per year, and employers with more than ten employees must provide seventy-two hours. MCL 408.963. The ESTA's requirements became effective for small employers on October 1, the day the Consent Decree's costing out policies became effective.⁴

The new costing out policies (Ex. 2) provide in relevant part that

- "[t]he amount of the beneficiary's CLS budget [must be] determined by costing out the medically necessary services and supports set forth in the IPOS," and
- the staff wages component of the budget must consist of
 - "staff wages in an amount sufficient to provide the medically necessary services identified in the beneficiary's IPOS," and

⁴ For employers with 11 or more individuals working for compensation during a given week, ESTA took effect on February 21, 2025. MCL 408.963.

- “[i]nclude Worker’s Compensation, Unemployment Insurance, *benefits (such as health insurance* and retirement contributions) . . . and taxes.”⁵

To comply with both ESTA and the costing out provision, therefore, paid sick leave—like taxes and unemployment costs—must be budgeted *in addition to* hourly staff wages to build up the staffing component of recipients’ CLS budgets.

Defendant WCCMH, however, has categorically refused to cost out the budgets of WACA’s members to ensure that the members’ budgets are sufficient to implement their IPOSs while taking the newly imposed ESTA obligations into account. It thus stands in knowing violation of its obligation to “abide by” the Consent Decree in this action “by following” the costing out policies enacted pursuant to it.

C. Defendant WCCMH is Generally Refusing to Cost Out WACA Members’ Budgets

WCCMH’s refusal to comply with the new policies goes beyond its refusal to cost out WACA members’ ESTA obligations. WCCMH has refused to cost out WACA members’ budgets in general, falsely asserting that it needs guidance from MDHHS before it can do so (Motion at ¶¶ 22, 24, 31, 38, 43, 47, 57 and Ex. 18 at ¶¶ 16-18, 24 and Ex. 20 at ¶¶ 8, 11, 14 and Ex. 2 to Exhibit 21).

⁵ “[T]here is no distinction in the enforceability and application of a new policy between the time the new policy is still located in a Policy Bulletin and the next quarter when it is placed into the [MPM] itself” (Ex. 17).

MDHHS's obligation under the Decree to issue non-binding guidance exists entirely independently of its obligation to revise the MPM to effectuate the costing out policies, which took full effect on October 1, 2025. The non-binding guidance provision (ECF#401, ¶ 17) stands on its own; its only express link to the costing out policies is MDHHS's obligation to issue the guidance within 90 days of Attachment C taking effect. Nothing in the Decree conditions the timing or effectiveness of the costing out policies on the issuance of the guidance, whose purpose is merely to "illustrate" the operation of the new policies (ECF#401, ¶ (17)(a)).

WCCMH has indisputably refused on multiple occasions to engage in detailed budget discussions during the PCP meetings and to cost out a sufficient budget (Motion at ¶¶ 21-22, 34, 47 and Ex. 18 at ¶¶ 16-18, 25-26 and Ex. 20 at ¶ 14). As set forth above, two WACA members were told in annual IPOS renewal meetings, by different supports coordinators based on direction from above, that the new costing out policies could not be implemented until WCCMH received guidance from MDHHS (Motion at ¶¶ 22, 24, 31, 38, 43, 47 and Ex. 18 at ¶¶ 16-18, 25-26 and Ex. 20 at ¶¶ 11, 14). In the case of McCarthy, WCCMH refused to engage *twice*, both times after the costing out policies had taken effect (Ex. 18 at ¶¶ 16-18, 23-25). WCCMH has also refused to cost out the IPOSs of WACA members who requested PCP meetings to reopen current plans of service, as set forth above in the Motion at ¶¶ 49-60 and in the Declaration of Katherine Fisk (Ex. 2 to Exhibit 21).

II. In the Alternative, the Court Should Issue a Writ of Mandamus Ordering WCCMH to Comply With the Costing Out Policies

A. Standard

Only in the event that this Court holds that the Decree is *not* enforceable against Defendant WCCMH does Plaintiff WACA move in the alternative for issuance of a writ of mandamus compelling WCCMH to comply with the costing out policies created pursuant to the Decree. The remedy of mandamus may be obtained by filing an “appropriate motion in a pending action.” MCR 3.301(A)(1)(c). Although mandamus under MCR 3.301(A) is a state-created remedy, it is available in federal court if the conditions to application of the remedy are met and the federal court otherwise has subject matter jurisdiction. *Riveredge Dentistry Partnership v. City of Cleveland*, 2024 WL 639689, at *24-25 (N.D. Ohio, Feb. 15, 2024) (collecting cases); *Martinez v. City of Cleveland*, 700 Fed.Appx. 521, 523 (6th Cir. 2017).

To establish its entitlement to the writ, Plaintiff WACA must demonstrate that its members have a clear legal right to performance of a clear legal duty that WCCMH must perform, that the action sought is ministerial, and that no other adequate legal or equitable remedy exists that might achieve the same result. *Christenson v. Secretary of State*, 336 Mich.App. 411, 419 (2021).

1. Plaintiff WACA’s Members Have a Clear Legal Right to Have Their Budgets Costed Out in Accordance With the New Policies

A clear legal right is “one clearly founded in, or granted by, law,” “which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.” *Christenson*, 336 Mich.App. at 419.

Pursuant to the Decree, MDHHS has revised the MPM to implement Attachment C’s costing out requirements. Those revisions took effect on October 1, 2025, and they establish, *inter alia*, the right of WACA’s HSW CLS SD members to have their budgets developed in conjunction with their IPOS; the right to a discussion during the PCP process regarding all components of their services and the amount, scope, and duration of each service component; and the right to a sufficient budget determined by costing out the IPOS (Exs. 1 and 2).

These are rights for which Plaintiff WACA bargained for its members in settling this litigation; as the MDHHS Policy Bulletins themselves announce, the policies are “issued for settlement-related action items identified in [*Waskul*]” (Exs. 1 and 2). These policies are unambiguously rights-conferring, and they directly benefit Plaintiff WACA’s HSW CLS SD members by correcting the specific behaviors of WCCMH challenged in this action.

2. WCCMH Has a Clear Legal Duty to Cost Out WACA Members' Budgets

On the other side of the coin, WCCMH has a clear legal duty to comply with the new policies by costing out WACA members' CLS budgets. It is the law of this case that WCCMH must "abide by" the Decree "by following whatever rules, regulations, and policies MDHHS enacts to satisfy those terms" (ECF#399 at 30, PageID15239), and MDHHS has enacted the costing out policies to satisfy the terms of the Decree. WCCMH, as the entity directly tasked with carrying out the Decree's policies, thus has a clear legal duty pursuant to the Decree to cost out WACA members' CLS budgets.

In addition to its legal duty under the Decree, WCCMH is contractually obligated to MDHHS, via its contract with Defendant CMHPSM, to "implement any necessary changes in policies and procedures as required by the State" (*see* ECF#316 PageID9416 and ECF#301-5 PageID7270). It accordingly also has a clear contractual legal duty to cost out WACA members' CLS budgets.

The language of the policies themselves leaves no doubt as to their mandate. The budget *is* determined by costing out the services and supports in the IPOS, and the budget *shall* separately cost out staffing, activity, and transportation costs (Ex. 2 p. 1). The budget *shall* be sufficient to implement the IPOS (*id.*), and the PCP process *must* include discussion with the beneficiary of all components of the service

(Ex. 1 p 7). “Shall” is mandatory language establishing a clear legal duty. *Barrow v. Wayne Cnty. Bd. of Canvassers*, 341 Mich.App. 473, 485 (2022).

3. The Acts at Issue Leave Nothing to WCCMH’s Discretion

“A ministerial act is one in which the law prescribes and defines the duty to be performed with such prevision and certainty as to leave nothing to the exercise of discretion or judgment.” *Berry v. Garrett*, 316 Mich.App. 37, 42 (2016) (quoting *Hillsdale Co. Senior Servs., Inc. v. Hillsdale Co.*, 494 Mich. 46, 58 n. 11 (2013)). That is exactly the situation here. While WCCMH has a role to play in determining CLS recipients’ budgets, the new MPM policies strictly define the budgeting procedures that it must follow: WCCMH must cost out the various components of the budget as part of the PCP process, it must engage in a detailed discussion with recipients about the budget, and it must create a budget that is sufficient to implement the IPOS.

Teasel v. Dep’t of Mental Health, 419 Mich. 390, 408-12 (1984) is directly analogous and controlling. There, mandamus was appropriate to compel state officials to make patient discharge decisions pursuant to procedures established by the Michigan Mental Health Code. As here, while the *outcome* (there, whether to discharge a patient, here the final budget amount) was discretionary, the *procedures* followed to reach that outcome were not. Here, the MPM’s CLS budgeting procedures are strictly prescribed and leave nothing to WCCMH’s discretion: WCCMH

must cost out WACA members' budgets in accordance with the new policies, even if it retains some discretion in establishing the final budget amount.

4. Plaintiff WACA Has No Adequate Alternative Legal or Equitable Remedy

If the Court determines that Plaintiffs are unable to enforce the Decree against WCCMH, the only other potential remedy left to Plaintiff WACA is the Medicaid Fair Hearing system. The administrative hearing system is an inadequate remedy.

First, Plaintiff WACA's members are suffering harm each day that WCCMH refuses to cost out their plans of service and cannot wait for Medicaid Fair Hearings to run their course. MDHHS has 90 days from the date of the hearing request to take "final administrative action" on hearing requests, 42 C.F.R. § 431.244,⁶ and WACA's members are being harmed each day by WCCMH's refusal to cost out their budgets. *City of Detroit v. Detroit Police Officers Ass'n*, 174 Mich.App. 388, 394 (1989); *Garner v. Michigan State University*, 185 Mich.App. 750, 764 (1990).⁷

Second, even if WACA's members could timely obtain favorable decisions through the administrative hearing process, there is a very real possibility that

⁶ It is unclear whether "final administrative action" encompasses implementation of the hearing decision. *See Lisnitzer v. Zucker*, 983 F.3d 578 (2d Cir. 2020) (holding final administrative action only means issuance of the decision). Implementation could take significantly longer.

⁷ *See also Hazel Park Racing Ass'n v. Inglis*, 336 Mich. 508, 518 (1953) ("[i]t is the inadequacy, and not mere absence, of all other legal remedies, and the danger of a failure of justice without it, that must usually determine the propriety of this writ.").

Defendant WCCMH would refuse to implement the decision, as it did in the case of Plaintiff Kevin Wiesner (ECF#316 PageID9431).⁸ The obligation of Local Defendants to implement administrative hearing decisions was the only Decree provision to not become policy when Defendant CMHPSM refused to sign a new Medicaid contract.

Third, Administrative Law Judges' express authority under the Decree to order specific relief is limited to budget determinations. Here, WCCMH is categorically refusing to implement the costing out policies, and it is doubtful whether an administrative law judge could or would affirmatively order compliance with those policies.

Finally, WACA has no Fair Hearing remedy on its members' behalf. Only Medicaid "enrollees" can request hearings, 42 C.F.R. § 438.402, and, unlike associational standing for this action overall and for this contempt motion, individual member participation would be required in a Fair Hearing.

CONCLUSION AND RELIEF REQUESTED

Plaintiff WACA respectfully requests that the Court grant the relief requested herein.

⁸ As does Livingston CMH, another CMHSP in Defendant CMHPSM's service region (*see* ECF#316, n. 31, PageID9432 and *C.B. v. Livingston County Community Mental Health*, 349 Mich.App 253 (2023)).

Respectfully submitted,

/s/ Nicholas A. Gable (P79069)

/s/ Edward P. Krugman

December 8, 2025

CERTIFICATE OF SERVICE

This 8th day of December, 2025, I filed the foregoing in the Court's electronic filing system, which will effect service on all counsel of record in this action.

Dated: December 8, 2025

/s/ Nicholas A. Gable
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Disability Rights Michigan
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