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-LVP-EAS Hon. Linda V. Parker Hon. Elizabeth A. Stafford

PLAINTIFFS WASKUL, SCHNEIDER, AND WACA'S REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR AN ORDER THAT WCCMH SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CIVIL CONTEMPT AND, IN THE ALTERNATIVE, FOR WRIT OF MANDAMUS (ECF#423)

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1. WCCMH Is in Contempt of Court

(a) This Court's Binding Interpretation of the Consent Decree Is That WCCMH Must "Follow" the Policies MDHHS Has Enacted to Implement the Decree

As it has previously (ECF#416 PageID16587-88), WCCMH seeks to evade its obligations under the Consent Decree by separating those obligations from its pre-existing obligations—under state law and the Medicaid single-state-agency statute—to follow MDHHS's policy directives. Civil contempt, it says, "is designed to coerce compliance with an *order*," not with WCCMH's "independent legal obligations" (Br. at 13). But the Consent Decree/Settlement Agreement ***is*** an "order," of course,[1] and as the Court expressly held, ***no such separation is possible here***:

> *Grier* and *Shipman* confirm that the law already requires MDHHS' subcontractors to abide by the terms of the Settlement Agreement by following whatever rules, regulations, and policies MDHHS enacts to satisfy those terms. (ECF#399 PageID15239).

The "law" that *Grier* and *Shipman* "confirm[ed]" included not only Medicaid single-state-agency law but also ***Rule 65(d) of the Federal Rules of Civil Procedure***. Both *Grier* and *Shipman* relied heavily on the Rule,[2] and the Court's discussion of the two cases in the paragraph leading up to its quoted holding was centered on

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[1] We say again, as we have before, that the "Settlement Agreement" and the "Consent Decree" are synonyms for these purposes. Even WCCMH does not suggest that anything turns on which is referred to in a particular instance.

[2] *Tenn. Ass'n of Health Maint. Orgs. v. Grier*, 262 F.3d 559, 565 (6th Cir. 2001); *K.C. ex rel. Africa H. v. Shipman*, 716 F.3d 107, 115-16 (4th Cir. 2013).

compliance with injunctions (PageID15238-39). The Court did not "distinguish" *Grier*); it ***followed*** it. The "abide by" holding says that, if WCCMH fails to follow the policies enacted to satisfy the Decree, it is, ***by definition***, not "abiding by" the terms of the Decree. That is, WCCMH is in contempt.

WCCMH's "agency" argument (Br. at 14-15) ignores *Grier*'s holding that "agents of the State . . . are bound by the Consent Decree to which the [S]tate was a party." 262 F.3d at 565. The section of *Wright & Miller* cited by WCCMH (Br. at 14) expressly acknowledges *Grier*,[3] and the treatise's corporate "aid and abet" language cannot help WCCMH here. Michigan's Medicaid structure requires the Defendants to "***work together*** to ensure that CLS services are supplied to qualifying recipients." *Waskul v. WCCMH*, 979 F.3d 426, 437 (6th Cir. 2020) (emphasis added), and the Consent Decree prescribes WCCMH's role in that joint effort. WCCMH's intentional refusal to fulfill its allotted role is a contempt of court.

(b) WCCMH Acknowledges It Is Not Doing That

WCCMH's Response is a lengthy admission that it has not complied with the new policies, and thus with the Decree. WCCMH must engage in detailed budget

[3] Indeed, *Grier* is the ***first*** example *Wright & Miller* cites for the proposition that "Rule 65(d)(2)(B) specifically makes an injunction or restraining order binding upon a named party's 'officers, agents, servants, employees, and attorneys' when any of these persons are acting in their designated capacities." 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Fed. Prac. & Proc. Civ. § 2956, n. 42 (3d ed. 2024).

discussions during the PCP process, and it must cost out a budget as part of that process (Policy Bulletins MMP 25-31 and 25-41; filed at ECF#423-2 and -3). WCCMH ***admits*** it has not costed out a single CLS recipient's budget, and the Motion sets forth three detailed and unrebutted examples of its refusal to do so (ECF#423 PageID16825-16833 and 16847). Its refusal is ongoing.

Even WCCMH's assertions as to what it *has* done (all set forth in unsworn letters from counsel and its Response) are flatly contradicted by the record. For instance, the two futile McCarthy PCP meetings (both of which were recorded), put the lie to its assertion that WCCMH has engaged in an "iterative process" with recipients (Br. at 2; *see* ECF#423 PageID16825-16828). And even if WCCMH had begun implementing the policies "barely two months ago" (Br. at 12), it has known that costing out was coming since at least mid-summer, when Defendant CMHPSM refused to sign a new contract, and has had more than sufficient time to prepare for and implement the new policies.

Disputes ***within*** the costing out process would lead to individual Medicaid Fair Hearings, but WCCMH's ***categorical*** refusal, based on directives from its leadership (ECF#423 PageID16826-27, ¶¶ 24-25), to engage ***at all*** in the process mandated by the Consent Decree is a contempt of court. Plaintiff WACA is the movant here; not its individual non-party members. It has standing to enforce the Consent Decree for the same reason it had standing to bring the claims originally: The

prospective relief granted by the Consent Decree benefits each of WACA's members equally and thus can be enforced by the Association.[4] Because Plaintiff WACA has standing to enforce, WCCMH's "non-party" argument (Br. at 24) would never get out of the starting blocks even if individual Plaintiffs Derek Waskul and Cory Schneider had not by now joined WACA's motion (ECF##426, 428).

"Flagrant defiance" (Br. at 12) is not the standard. But even if it were, WCCMH would meet it. WCCMH is knowingly choosing not to comply with its obligations under the Decree, and that is all the law requires for this Court to hold WCCMH in contempt. *Electrical Workers Pension Trust Fund of Local Union |58, IBEW v. Gary's Elec. Service Co.*, 340 F.3d 373, 379 (6th Cir. 2003).

2. The Supposed Quest for "Guidance" Does not Excuse the Acknowledged Failure to Do What the Decree Commands

The only justification WCCMH offers for its refusal to comply with its obligations is its purported quest for guidance from MDHHS. This is no justification at all.

MDHHS's obligation under ¶ 23 of the Decree is prior to and distinct from its obligation to issue "non-binding guidance" under ¶ 17(b). MDHHS complied with its ¶ 23 obligations by issuing Bulletins MMP 25-31 and 25-41—which, as Medicaid

[4] As the Sixth Circuit held, individual participation of WACA's members "is not necessary to determining whether a methodology commonly applied to all members is valid." *Waskul v. WCCMH*, 979 F.3d 426, 442 (6th Cir. 2020); *see United Auto., Aerospace, and Agric. Implement Workers*, 477 U.S. 274, 288 (1986) ("'the remedy, if granted, will inure to the benefit of those members of the association actually injured'").

Provider Manual Amendments, are fully binding on all affected parties (including WCCMH) and have been since October 1, 2025. The "guidance" specified in ¶ 17(b), in contrast

- is expressly stated to be "non-binding";
- was not even required to be issued until 90 days after the effective date of the Bulletins; and
- is merely to provide "examples illustrating the operation of Attachment C."

Nothing in the Decree even hints at suspension of the binding Policy (a defined term in the Decree) pending issuance three months later of the expressly non-binding examples of its operation.

WCCMH asserts that, because the costing out policies are "high level," it was justified in refusing to implement them absent guidance from MDHHS (Br. at 4-5). Bulletins 25-31 and 25-41, however, are the ***opposite*** of "high level" policy directives. They are ***menus***, specific directives governing the minutiae of HSW CLS SD recipients' interactions with their CMH. They leave nothing to chance, expressly regulating every opportunity a recalcitrant CMH (and WCCMH in particular) might seize to avoid its obligations. They govern everything from the scope of CLS services to the mechanics of costing out the various components of CLS; they establish numerous procedural safeguards; and they create new hearing rights when the process breaks down. They identify the individual components of CLS costs (such as payroll expenses, non-payroll expenses, activity expenses, and transportation); they

require each component to be separately costed out from the recipient's IPOS, which is in turn based on enumerated medical necessity criteria; they provide specific criteria to consider when determining hourly staff wages; they require the individual components to be added together to create an individualized total budget; and they require that the budget so-created must be "sufficient to implement the IPOS."

WCCMH's assertion that "[a]ssistance was particularly necessary because this was the first time CMHSPs like WCCMH have undertaken the budgeting process" (Br. at 6) is false. This whole lawsuit exists because WCCMH's predecessor ***costed out CLS budgets as part of the PCP process*** before affirmatively deciding to no longer do so in May 2015. *Waskul v. WCCMH*, 979 F.3d at 438. The return to costing out has been the principal relief sought in this action since it was filed in March 2016. It beggars belief that WCCMH could have the least doubt as to what "costing out" means.

WCCMH, of course, has no such doubts. Its quest for guidance is not merely an obvious attempt to delay, nor even an effort to seek bureaucratic cover. In asking questions such as whether $31/hour can be used as a maximum rate; whether the existing PIHP agency provider rate can be a "factor" in SD rate determinations; whether it can confine SD rates to "tiers/ranges/parameters"; and whether it may use "averages" for community costs (ECF#424-1), it also sought to lure MDHHS into

providing a basis to thwart the new policies. Each of these questions reflects an intent to cap or limit budgets and to do so in a non-individualized way.

The policy bulletins are a complete answer to WCCMH's queries. They expressly require ***individualized*** determinations of each CLS component based on each ***individual's*** hiring experience and activities; they mandate that each resulting budget be sufficient to fully implement the ***individual's*** IPOS. So, too, the Decree's Attachment A and its implementing policies, which comprehensively describe the scope of CLS, are a complete answer to WCCMH's purported confusion (ECF#424-1 PageID16974)) over the limitations of CLS.

Regrettably, WCCMH's efforts (and those of others who opposed entry of the Consent Decree and are now seeking to undermine it) temporarily bore fruit in a December 12, 2025 e-mail from an MDHHS employee (ECF#424-4). That email ***is not and never was MDHHS Policy***. MDHHS has authorized us to inform the Court that the e-mail is in the process of being formally disavowed and retracted (ECF #430).[5]

3. The Assertion that ESTA is Already Accounted For Is False

WCCMH asserts that it adjusted its all-inclusive SD CLS rate in October 2024 to account for ESTA (Br. at 9 and Ex. 5). Any adjustments that WCCMH made to

[5] Because the e-mail is not Policy and is being disavowed, a substantive response to it as irrelevant as the e-mail itself. In an excess of caution, we attach as Exhibit 1 a PowerPoint laying out the e-mail's errors.

its all-inclusive rate, however, have no bearing on its obligation a full year later to account for mandatory sick leave under the new costing-out regime.

Under Bulletin 25-41, the "staff wages and compensation" component of the CLS budget must include, among other things, "benefits" and "Human Resources (HR) requirements." Mandatory paid sick leave under ESTA is unambiguously both a benefit and an HR requirement and must therefore be budgeted ***in addition*** to hourly staff wages.[6] WCCMH's assertion that "[n]othing in these provisions addresses ESTA or prescribes how to account for it" (Br. at 16) is ludicrous.

This is not merely a theoretical point. Because WCCMH's all-inclusive rate has always insufficiently accounted for recipients' CLS expenses, any increase that WCCMH made to that rate in 2024 to account for *future* ESTA obligations was immediately consumed by *present* staffing or other costs. For example, Anthony Fisk's current budget does not even permit him to account for activity costs, much less ESTA; and Danielle White's budget allows for neither transportation nor activity expenses (Exs. 2 and 3). This is why the fiscal intermediary CLN warned recipients

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[6] "Double billing" (Br. at 17) was conclusively sunk long ago with respect to the all-inclusive rate, not merely by MDHHS's repeated assertions that the 2012 methodology was proper, but also by Local Defendants' own witnesses' agreement that the prior CLS methodology—as a methodology and without regard to the particular staff wage component figure used—is proper (*see* ECF#364-2-6). That was respect to the former all-inclusive rate; double billing is completely irrelevant under the new costing out regime, where each CLS component must be separately considered and built up.

in its September 9, 2025 letter that their CLS budgets would likely need to be reduced to account for ESTA (Ex. 4). WCCMH's refusal to include ESTA's mandatory employer obligations as an element of costing out is a separate and distinct contempt of court.

4. Each Requirement for Mandamus Under Michigan Law Has Been Met

WCCMH's extended discussion of the federal common law writ of mandamus (Br. at 18-19) is irrelevant. Only mandamus under Michigan law is sought on this motion. Where, as here, a federal court has subject-matter jurisdiction independently of the request for mandamus, the state-law remedy ***is*** available. *Riveredge Dentistry Partnership v. City of Cleveland*, 2024 WL 639689, at *24-25 (N.D.Ohio, Feb. 15, 2024); *see also Martinez v. City of Cleveland*, 700 F.App'x 521, 523 (6th Cir. 2017).

WCCMH does not dispute that state law mandamus can be available, but it asserts that the Court lacks jurisdiction because Plaintiffs' claims are moot (Br. at 19). This argument is doomed from the start: for this Court even to reach mandamus, it must first hold (contrary to Plaintiffs' view) that Plaintiffs cannot enforce the Decree directly against WCCMH. In that case, Plaintiffs will have obtained ***no*** relief against WCCMH, so their claims ***cannot*** be moot (*see* ECF#420 PageID16687-90).

The lack of a mandamus *claim* in Plaintiffs' Complaint (Br. at 19) is of no matter; under Michigan law, mandamus can be made by claim ***or*** by "appropriate motion in a pending action." MCR 3.301(A)(1)(c). WCCMH fails to address this

unambiguous court rule, and *Martinez* and *Riveredge Dentistry*, which dealt with mandamus under Ohio law, are not to the contrary.

Applying the four Michigan mandamus factors to Plaintiffs' claim for direct enforcement of the costing out policies in the Medicaid Provider Manual (MPM) is straightforward:

- WCCMH ***concedes*** that it must follow MPM policies (Br. at 21), so its "costing out" obligation is a "clear legal duty."
- WCCMH's bald assertion that the rights at issue are possessed by citizens generally (Br. at 20) is nonsense. The rights at issue here are not held by the public at large; they are rights of specific individuals (SD CLS recipients) receiving services under a specific waiver program (the HSW) that is part of a specific federal/state partnership (the Medicaid program). ***Only*** those individuals have those rights.
- WCCMH's attempt to distinguish *Teasel v. Dept. of Mental Health*, 419 Mich. 390 (1984), ignores *Teasel*'s holding (for which it has continued to be cited[7]) that, where procedures are dictated, those procedures must be followed even if the ultimate decision is discretionary. *Id*. at 408-12. WCCMH's obligation to follow the costing out policies—which, as set forth above at 5-6, are minutely prescribed—leaves nothing to its discretion, even if its ultimate budget decision is somewhat discretionary.[8]

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[7] *See, e.g., Adams v. Parole Board*, 340 Mich.App. 251, 263-64 (2022) (citing *Teasel* and finding mandamus appropriate where "[p]laintiff did not request an order requiring parole to be granted. Rather, plaintiff requested that defendant comply with the applicable statute in undertaking its decision and conduct a new parole interview at which the acquitted conduct is not considered.").

[8] WCCMH is wrong to assert (Br. at 22) that "Michigan Courts have recognized" that *Teasel* "turned on" the Defendant's contention that he had unbridled discretion. WCCMH cites only one (unpublished) case in support, *Caldwell v. Parole Board*, 2000 WL 33519711, at *1 (Mich. App. 2000), but *Caldwell* had nothing to do with the ministerial/discretionary prong of the

- The assertion that Plaintiffs have an adequate Fair Hearing remedy (Br. at 22) is made without supporting argument and without so much as mentioning Plaintiffs' numerous arguments to the contrary. (ECF#423 PageID16852-53).

Accordingly, should the Court hold the Decree unenforceable directly against WCCMH, Plaintiffs have "demonstrated [their] entitlement to mandamus relief." *Christenson v. Secretary of State*, 336 Mich. App. 411, 425 (2021).

CONCLUSION

Plaintiffs' Motion should be granted.

Respectfully submitted,

/s/ Nicholas A. Gable (P79069) /s/ Edward P. Krugman

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mandamus test, with the comparison to *Teasel* arising only because the Plaintiff asserted that *Teasel* controlled simply because it too was a parole case.

CERTIFICATE OF SERVICE

This 13th day of January, 2026, I filed the foregoing in the Court's electronic filing system, which will effect service on all counsel of record in this action.

Dated: January 13, 2026

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