

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of August 22, 2013 by and among Kerry Growdon, through her conservators, Robert T. Foister and Gregory D. Willett (hereinafter collectively referred to as “Plaintiff”) and Patti Killingsworth, Assistant Commissioner and Chief of Long Term Services and Supports, Bureau of TennCare; Darin Gordon, Deputy Commissioner and Director of the Bureau of TennCare; Larry Martin, Interim Commissioner, Tennessee Department of Finance and Administration; and Raquel Hatter, Commissioner, Tennessee Department of Human Services, in their official capacities (“Defendants”) (collectively referred to herein as the “Parties”), in the action filed on May 17, 2013 in the United States District Court for the Eastern District of Tennessee, Southern Division, captioned *Growdon v. Killingsworth, et al.*, Civil Action No. 1:13-cv-00163, in which the Plaintiff has brought claims concerning the Tennessee Medicaid program (“TennCare”).

WHEREAS that lawsuit concerns whether 42 U.S.C. § 1396a(r)(1)(A) and 42 C.F.R. § 435.725 require the Defendants to deduct from Plaintiff’s post-eligibility income certain non-covered medical expenses, incurred by Plaintiff before she became eligible for TennCare, to reduce the calculated amount of Plaintiff’s obligation to contribute to the cost of her nursing home care under TennCare (her “patient liability”).

WHEREAS Plaintiff incurred and continues to owe Orange Grove Center in Chattanooga, Tennessee, expenses totaling \$21,723.66 for nursing home care she received in July and August, 2010, during which time she was not eligible for TennCare. Plaintiff asserts that Orange Grove has not written off or forgiven those expenses, for the payment of which Plaintiff remains solely responsible.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

1. The Defendants have taken all necessary actions to deduct Plaintiff's pre-eligibility medical expenses, incurred in July and August 2010 in the total amount of \$21,723.66 for care received by Plaintiff in the nursing facility section of Orange Grove Center, from her post-eligibility income and adjust her patient liability accordingly. Such adjustment shall begin and be effective as of May 2013, upon submission by Orange Grove Center of adjusted claims for the retroactive period.

2. The Bureau of TennCare has issued a revised policy memorandum eliminating any reference to a requirement that allowable medical expenses may be deducted to reduce patient liability only if "the person would have been income and resource eligible [for Medicaid] at the time the expense was incurred" and clarifying that allowable medical expenses may be deducted as an Item D expense "*regardless* of whether the person would have been income and resource eligible at the time the expenses were incurred." In addition, the Department of Human Services (DHS) has issued a policy bulletin advising staff of this change in the Item D policy. These revised policies shall remain in effect to the extent they remain consistent with controlling federal statutes and/or regulations, the terms of any applicable Tennessee State Plan amendment or TennCare Waiver provision approved by the Centers for Medicare and Medicaid Services ("CMS"), any governing interpretation by CMS, and controlling legal precedent. By entering into this Agreement, the Defendants are in no way restricting their authority and discretion to seek CMS approval of amendments to Tennessee's Medicaid State Plan.

3. Contemporaneously with the execution of this Agreement by all Parties, Plaintiff will file a notice of voluntary dismissal, without prejudice, in *Growdon v. Killingsworth, et al.*, U.S. Dist. Ct., E.D., No. 1:13-cv-00163 (“Settling Action”).

4. Neither the Defendants’ act of entering into this Agreement nor any of the Agreement’s terms is an admission of liability, duty, or wrongdoing or an admission that any policy, practice, or procedure of the Defendants or the State of Tennessee at any time or in any way violated federal or state law. The Defendants deny all liability in the Settling Action. This Agreement may not be introduced as evidence in any future proceeding.

5. In exchange for the actions of Defendants set out herein, Plaintiff, for herself and her heirs, successors, executors, administrators, assigns, and representatives, agrees to forever discharge, acquit, and release all Defendants, and all of their respective past, present, and future successors, assigns, representatives, administrators, officials, employees, and agents, in their individual and official capacities, from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits, of whatever character, in law or in equity, known or unknown, matured or not matured, now existing or having ever existed, which pertain to the Defendants’ policies and practices relating to the treatment of non-covered medical expenses to reduce post-eligibility patient liability that were asserted or could have been asserted by Plaintiff or any person claiming by, through, or on behalf of Plaintiff in the Settling Action or in any other proceeding or forum.

6. Within 60 days of the execution of this Agreement the Defendants will cause to be paid Plaintiff’s attorneys’ fees and costs in the total amount of \$ 22,690.18, allocated as follows: \$16,288.58 to Chambliss, Bahner & Stophel, P.C.; \$1,745.85 to Woods Oviatt Gilman LLP; \$4,655.75 to Ron M. Landsman, P.A.

7. This Agreement creates no obligations or duties on the part of the Parties other than as stated specifically in this Agreement. The Parties agree and acknowledge that nothing in this Agreement may be used by any person or entity for any purpose in any legal proceeding other than as stated specifically in this Agreement. An alleged violation of this Agreement shall not create a new, independent private right of action for anyone other than the Parties hereto. The Parties agree and acknowledge that this Agreement is not intended to create any third party beneficiaries.

8. The Parties agree that, to the extent permitted by law, the terms of this Agreement shall be maintained in confidence.

9. This Agreement constitutes the entire understanding between the Parties hereto and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements and negotiations. This Agreement shall be modified only by an agreement in writing signed by all Parties.

10. The Parties acknowledge that they have had equal opportunity to negotiate the terms of this Agreement and that this Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

11. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Agreement and to make such Agreement fully and legally binding upon and enforceable against the Party on whose behalf they have executed this Agreement.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies

of this Agreement may be delivered by facsimile or email transmission. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required.

FOR PLAINTIFF:

By:



Stephen D. Baham
D. Aaron Love
CHAMBLISS, BAHNER & STOPHEL, P.C.
Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450

Date: 8/20/13

Rene H. Reixach
WOODS OVIATT GILMAN LLP
2 State Street
Rochester, NY 14614

Date: _____

Ron M. Landsman
RON M. LANDSMAN, P.A.
200-A Monroe Street, Suite 110
Rockville, MD 20850


Date: _____

of this Agreement may be delivered by facsimile or email transmission. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required.

FOR PLAINTIFF:

By: _____
Stephen D. Barham
D. Aaron Love
CHAMBLISS, BAHNER & STOPHEL, P.C.
Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450

Date: _____


Rene H. Reixach
WOODS OVIATT GILMAN LLP
2 State Street
Rochester, NY 14614

Date: 8/21/13

Ron M. Landsman
RON M. LANDSMAN, P.A.
200-A Monroe Street, Suite 110
Rockville, MD 20850

Date: _____

of this Agreement may be delivered by facsimile or email transmission. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required.

FOR PLAINTIFF:

By: _____

Stephen D. Barham
D. Aaron Love
CHAMBLISS, BAHNER & STOPHEL, P.C.
Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450

Date: _____

Rene H. Reixach
WOODS OVIATT GILMAN LLP
2 State Street
Rochester, NY 14614

Date: _____



Ron M. Landsman
RON M. LANDSMAN, P.A.
200-A Monroe Street, Suite 110
Rockville, MD 20850

Date: 8/20/13

FOR DEFENDANTS:

ROBERT E. COOPER, JR.
Attorney General and Reporter

By: Linda A. Ross

Linda A. Ross
Deputy Attorney General
Shayna Abrams
Senior Counsel
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202

Date: 8/22/13