

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

Jeanette Delacerda,  
n/k/a Jeanette Sanderson,  
On Behalf of Herself and All  
Others Similarly Situated,

Plaintiffs,

vs.

North Dakota Department of Human  
Services; Carol Olson, Individually and  
as Director of the North Dakota  
Department of Human Services;  
Annette Bendish and Galen Hanson,  
in their individual and official capacities,

Defendants.

**ANSWER**

**Civil No. 1:08-cv-00046**

Defendants answer Plaintiff's Class Action Complaint (Complaint) as follows:

1. Except as specifically admitted or qualified, defendants deny each and every allegation of the Complaint.
2. Defendants deny paragraphs 1, 2, 4, 16, 17, 18, 19, 32, 33, 34, 41, 42, 43, 45, 46, 47, 49, 50, 51, 52, 56, 57, 60, 61, and 62.
3. With regard to paragraphs 3, 21, 22, 23, 24, 25, 26, 27, 28, 29, 37, and 54, the law speaks for itself.
4. With regard to paragraph 5, Defendants admit Plaintiff is attempting to bring a class action. Defendants deny that Plaintiff's Complaint states a claim or that the prerequisites for class certification are met.
5. Defendants admit paragraphs 6, 11, and 12.
6. With regard to paragraph 7, Defendants admit the North Dakota Department of Human Services is an agency of the State of North Dakota. The Department's authority and duties are provided by law.

7. With regard to paragraph 8, Defendants admit Carol Olson is the Director of the North Dakota Department of Human Services. The Director's authority and duties are provided by law.

8. With regard to paragraph 9, Defendants admit Galen Hanson is an employee of the North Dakota Department of Human Services and that his title is Third Party Liability Administrator. Defendants further admit Mr. Hanson is involved in the decision-making process pertaining to third party liability recovery.

9. With regard to paragraph 10, Defendants admit Annette Bendish was an employee of the North Dakota Department of Human Services. Defendants further admit Ms. Bendish was involved in the decision-making process pertaining to third party liability recovery.

10. With regard to paragraph 13, Defendants admit Plaintiff is attempting to bring a class action. Defendants deny that the prerequisites for class certification are met.

11. With regard to paragraph 14, Defendants admit that some of the proposed class members could be identified through records in the control of the North Dakota Department of Human Services. Defendants deny that the prerequisites for class certification are met.

12. With regard to paragraph 15, Defendants admit the precise number of potential class members is unknown to Plaintiff. Defendants deny the remaining allegations of paragraph 15.

13. No response is required to paragraph 20.

14. Defendants lack sufficient knowledge and information to admit or deny the allegations in paragraph 30 and, therefore, deny those allegations.

15. With regard to Paragraph 31, Defendants admit the North Dakota Department of Human Services has informed recipients' attorneys that if no documentation is produced indicating what portion of the settlement amount is for medical care, the Department's position is that the whole settlement amount represents the amount that was for medical care. The Department denies the remaining allegations of paragraph 31.

16. With regard to Paragraph 35, Defendants incorporate their responses to Paragraphs 1 through 34.

17. With regard to paragraphs 36 and 58, the paragraphs make legal, not factual, assertions and do not require a response.

18. No response is required to paragraph 38. Defendants deny Plaintiff is entitled to the requested relief.

19. With regard to Paragraph 39, Defendants incorporate their responses to Paragraphs 1 through 38.

20. With regard to paragraph 40, Defendants admit Plaintiff is a person within the meaning of 42 U.S.C. § 1983 and has the capacity to sue. Defendants deny that the prerequisites for class certification are met.

21. With regard to paragraph 44, Defendants admit their actions were under the color of state law. Defendants deny the remaining allegations of a paragraph 44.

22. With regard to Paragraph 48, Defendants incorporate their responses to Paragraphs 1 through 47.

23. With regard to Paragraph 53, Defendants incorporate their responses to Paragraphs 1 through 52.

24. With regard to Paragraph 55, Defendants admit that the Application for Health Care Coverage For Children, Families, and Pregnant Women (SFN 502) states

that the applicant understands “that when a person receives Medicaid, that person gives the state the right to payments from a third party for medical services received and must report within 10 days of receiving payment, any third party payments (example: accident settlement) received for medical services.” The law regarding Medicaid recipients assigning third party recovery rights speaks for itself.

25. With regard to Paragraph 59, Defendants incorporate their responses to Paragraphs 1 through 58.

26. Defendants deny Plaintiff is entitled to the requested relief or any relief.

**AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

1. Defendants affirmatively allege that Plaintiff lacks standing.

2. Defendants affirmatively allege the Complaint fails to state a claim against them upon which relief can be granted.

3. Defendants affirmatively allege that all or some of the claims are barred by Eleventh Amendment immunity.

4. Defendants affirmatively allege that the North Dakota Department of Human Services and the individual Defendants in their official capacities are not persons under 42 U.S.C. § 1983.

5. Defendants affirmatively allege that all or some of the claims are barred by the doctrine of qualified immunity.

6. Defendants affirmatively allege that all or some of claims against them are barred by the doctrine of discretionary immunity.

7. Defendants affirmatively allege that all or some of claims against them are barred by the doctrine of quasi-judicial immunity.

8. Defendants affirmatively allege the court lacks subject matter jurisdiction over Plaintiff’s state law claims under N.D.C.C. § 32-12.2-04(1).

9. Defendants affirmatively allege the court lacks subject matter jurisdiction over Plaintiff's state law contract claim under N.D.C.C. § 32-12-03.

10. Defendants affirmatively allege that the state law claims against the individual Defendants are barred by N.D.C.C. § 32-12.2-03(1).

11. Defendants affirmatively allege that all or some of Plaintiff's state law claims are barred by the doctrine of discretionary immunity and N.D.C.C. § 32-12.2-02(3)(b).

12. Defendants affirmatively allege that all or some of Plaintiff's state law claims are barred by the doctrine of quasi-judicial immunity and N.D.C.C. § 32-12.2-02(3)(d).

13. Defendants affirmatively allege that all or some of Plaintiff's state law claims are barred by the public duty doctrine and N.D.C.C. § 32-12.2-02(3)(f).

14. Defendants affirmatively allege that Plaintiff has not suffered any injuries as a result of Defendants' actions.

15. Defendants affirmatively allege that the injuries or damages allegedly suffered or incurred by Plaintiff, if any, were not in the nature or to the extent alleged.

16. Defendants affirmatively allege Plaintiff's claims are barred or limited by Plaintiff's own conduct or the conduct of her agents.

17. Defendants affirmatively allege Plaintiff has failed to mitigate her alleged damages.

18. Defendants affirmatively allege that Plaintiff is not entitled to damages in any amount.

19. Defendants affirmatively allege Plaintiff's Complaint violates Rule 11(b), Fed. R. Civ. P.



**CERTIFICATE OF SERVICE**

**CASE NO. 1:08-cv-00046**

I hereby certify that on September 8, 2008, the following document: **ANSWER** was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to Thomas A. Dickson and Jeffrey S. Weikum.

/s/ Douglas A. Bahr  
Douglas A. Bahr  
Solicitor General