

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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; and Annette Bendish )  
and Galen Hanson, in their individual and )  
official capacities, )

Defendants. )

**ORDER PRELIMINARILY  
APPROVING CLASS SETTLEMENT**

Case No. 1:08-cv-046

This matter came on for hearing on December 10, 2009, on motion under Rule 23(e) of the Federal Rules of Civil Procedure for preliminary approval of the proposed settlement (Proposed Settlement) of this action as set forth in a Settlement Agreement signed by the parties.

Plaintiffs are represented by their counsel Craig A. Boeckel, Jeffrey S. Weikum, and Thomas A. Dickson (Class Counsel). Defendants are represented by Douglas A. Bahr.

The Court having heard arguments of counsel, having reviewed the Settlement Agreement, its attachments, and other submissions of the parties, having considered all of the files, records, and pleadings in the action, and being otherwise fully advised,

**IT IS HEREBY ORDERED**, under Rule 23(e) of the Federal Rules of Civil Procedure, that:

1. The representations, agreements, terms, and conditions of the parties' Proposed Settlement, as embodied in the Settlement Agreement and attachments, are preliminarily approved

as within the range of reasonableness required for ultimate approval, pending a final hearing on the Proposed Settlement as provided herein.

2. The Court conditionally certifies the following Settlement Class:

(1) Recipients of Medicaid who, (2) during the Class Settlement Period from February 9, 2005, through February 13, 2009, (3) received third-party settlement payments (4) where the settlement did not identify the amount allocated to medical care and services and (5) the Medicaid recipient remitted a portion of the settlement to the Department.

3. Having reviewed the proposed Notice of Class Action Settlement (Notice), the Court approves the Notice and directs the North Dakota Department of Human Services (Department) to mail, or cause to be mailed, the Notice to Class Members as provided in paragraph D(2) of the Settlement Agreement.

4. The Court finds the Notice constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to receive notice, and fully satisfies the requirements of due process and of Rule 23 of the Federal Rules of Civil Procedure.

5. Any Class Member who desires to request exclusion from the Settlement Class must return an opt-out statement to the claims administrator in accordance with paragraph D(5) of the Settlement Agreement.

6. A hearing will be held before the Honorable Daniel L. Hovland, United States District Judge, at the William Guy Federal Building, 220 East Rosser Avenue, Bismarck, ND 58502, at 10:00 a.m. on February 12, 2010 ("Fairness Hearing"), to determine: (a) whether the Proposed Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (b) whether there should be final approval of certification of the Settlement Class, designation of Jeanette Delacerda as the Class Representative, and designation of Class Counsel as

counsel for the Settlement Class; (c) whether a final judgment should be entered dismissing Plaintiffs' claims and claims of Class Members, with prejudice and on the merits, as required by the Settlement Agreement; and (d) any other rulings contemplated by the Proposed Settlement. The Fairness Hearing is subject to continuation or adjournment by the Court without further notice.

7. Prior to the Fairness Hearing, the claims administrator will file an affidavit with the Court certifying that the Notices have been mailed to the Settlement Class as directed in this Order.

8. Any Settlement Class Member who wishes to object to the Proposed Settlement, or to appear at the Fairness Hearing and show cause, if any, why the Proposed Settlement should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a final judgment should not be entered, may serve and file the written objections as provided in paragraph 12 of the Notice of Class Action Settlement or attend the Fairness Hearing. Any written objections must be addressed to the Court Administrator, must refer to the title and file number of the Action that involves the Class Member, must be filed with, and received by, the Court Administrator by February 5, 2010, must provide a statement of the person's specific objections and the grounds therefore, and must include all documents and other writings the person wishes the Court to consider. Copies of all materials must be served upon the following counsel on or before that same date:

Class Counsel

Craig A. Boeckel  
Pagel Weikum Law Firm  
1715 Burnt Boat Drive, Madison Suite  
Bismarck, ND 58503

Defense Counsel

Douglas A. Bahr  
ND Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501

9. Having reviewed the proposed Proof of Claim Form (Claim Form), the Court approves the Claim Form. The Court directs the Department to mail, or cause to be mailed, the

Claim Form at the same time, in the same manner, and to the same persons as provided in paragraph 3 of this Order with respect to the Notice.

10. To receive a partial refund of the third-party settlement payment amount remitted to the Department, a Class Member must submit to the Department a valid and timely Claim Form in the manner provided in paragraph 8 of the Notice and paragraph D(3) of the Settlement Agreement.

11. The Status Reports provided by the Department to Class Counsel will include confidential information under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations, 45 C.F.R. § 164.512(e), and N.D.C.C. § 50-06-15. It is ORDERED that:

- a. Class Counsel discloses the Status Reports and information in the Status Reports only to individuals certified by Class Counsel as employed by or assisting Class Counsel in monitoring compliance with the Settlement Agreement.
- b. Class Counsel uses the Status Reports and information in the Status Reports only for the purpose of monitoring compliance with the Settlement Agreement.
- c. If this Court does not enter an order finally approving the Settlement Agreement, Class Counsel must immediately return all copies of the Status Reports to the attorney representing Defendants and not use the information contained in the Status Reports except as the information is obtained through proper discovery channels.
- d. After the Settlement Agreement has been fully implemented, including refunds paid on all valid claims, Class Counsel must return all copies of the Status Reports to the attorney representing Defendants or provide the attorney representing Defendants with satisfactory assurances that all copies of the Status Reports have been destroyed.

12. Upon the entry of final judgment after the Fairness Hearing, the Class Representative and all Settlement Class Members (as defined in paragraph A(26) of the Settlement Agreement) will be forever barred from asserting claims arising out of or related to the Department's recovery of third-party payments between February 9, 2005, through February 13, 2009, and the Class Representative and all Settlement Class Members (as defined in paragraph A(26) of the Settlement Agreement) will be conclusively deemed to have released any and all such claims in accordance with section F of the Settlement Agreement.

13. After the entry of final judgment after the Fairness Hearing, and within 30 days of the Effective Date as defined in paragraph A(15) of the Settlement Agreement, the Department will mail refund checks to Class Members who submitted Valid Claims. If a Class Member timely submits a Valid Claim after the Effective Date, the Department will mail a refund check to the Class Member within 30 days of receiving the Valid Claim.

14. The Court may adjourn or continue the Fairness Hearing, and any adjournment or continuance may be without further notice of any kind other than oral announcement at the Fairness Hearing or at any later hearing.

**IT IS SO ORDERED.**

Dated this 10th day of December, 2009.

*/s/ Daniel L. Hovland*  
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Daniel L. Hovland, District Judge  
United States District Court