

## COMPLAINT

This Complaint is filed on behalf of IJ, a three-year-old cancer patient, and his mother and guardian, CJ; and MM, an eleven year old cancer patient and his father and guardian, BM, against the Connecticut Department of Social Services and LogistiCare Solutions L.L.C. for their ongoing violations of the Americans with Disabilities Act. These violations are flagrant and jeopardize the health and well-being of these children.

### I. PARTIES

1. IJ is a resident of Waterbury, Connecticut where he resides with his mother and infant sister. IJ has a diagnosis of T-cell Acute Lymphoblastic Leukemia and therefore is a person with a disability as contemplated by the Americans with Disabilities Act 42 USC 12131-12134.

2. MM is a resident of Hartford, Connecticut where he resides with his father. MM has a diagnosis of medulloblastoma (brain cancer) and is blind, and therefore is a person with a disability as contemplated by the Americans with Disabilities Act, 42 USC 12131-12134.

3. The Connecticut Department of Social Services (“DSS”) is an agency of the State of Connecticut. As such, under Title II of the Americans with Disabilities Act (“ADA”) they are prohibited from discriminating against any individual with a disability, on the basis of that disability, by excluding such individual from participating in or denying such individual the benefits of the services, programs, or activities of the public entity. 42 USC 12132; 28 CFR 35.130(a). Further, Title II of the ADA requires state and local governments to make reasonable modifications in policies, practices and procedures as necessary to avoid discrimination on the basis of disability. 42 USC 12132; 28 CFR 35.130(b)(7).

4. LogistiCare Solutions, LLC (“LogistiCare”) is a private company providing transportation services in the State of Connecticut. Title III of the ADA requires that they refrain from discriminating against anyone on the basis of their disability and further that they make certain that disabled persons have access to equal and full enjoyment of the goods and services that they provide. 42 USC 12181. LogistiCare contracts directly with DSS and in that capacity acts as a transportation broker.

#### A. Background

1. IJ’s and MM’s health insurance is provided through the Medicaid program, 42 CRF 430.0. A required component of Medicaid is Non-Emergency Medical Transportation (“NEMT”), 42 CFR 431.53. This benefit is further delineated in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) regulations - 42 CFR 441.56. Said regulations require transportation and scheduling assistance for Medicaid recipients under the age of twenty-one.

2. The Connecticut Medicaid program is administered by DSS (Regulations, Sec. 17b-262-1040). DSS has hired a broker, LogistiCare, to administer its NEMT program. As broker,

LogistiCare serves as the intermediary of the NEMT program. LogistiCare contracts with livery companies (“taxi”) to provide the actual transportation.

3. LogistiCare is paid \$6.5 million per year to administer the NEMT contract for the State of Connecticut. The total paid to LogistiCare over the four year contract will have been in an amount in excess of \$26 million. The contract also contemplates a \$7.5% performance bonus. This sum does not represent the cost of the taxi service. The cost of the taxi service is a separate expense paid by the State.

4. The NEMT program must provide accommodations as required by Titles II and III of the ADA. The State contract allows LogistiCare to transport more than one patient group to a medical location. The NEMT contract also provides, however, that medical providers or patients can request exceptions to transportation protocol as an accommodation to a disability. One of the exceptions is to certify that the patient must ride in taxi without other unrelated passengers.

## **B. Facts**

1. IJ is four years old and receives ongoing chemotherapy at Connecticut Children’s Medical Center. IJ’s treatment protocol requires that he attend treatment sessions in a consistent and timely manner. He is eligible for NEMT services and his physicians have notified DSS and LogistiCare per their required form that based on his disability Isaiah cannot be exposed to other unrelated riders. DSS and LogistiCare have refused and failed to ensure compliance with this directive and therefore IJ’s rights under the ADA were, and continue to be, violated. The history of the violations to date is as follows:

a. July of 2014: transportation requested for IJ by Connecticut Children’s Medical Center (“CCMC”). Hospital informs DSS and LogistiCare that IJ had a cancer diagnosis, was undergoing chemotherapy, had a high risk of infection and could not be exposed to unrelated riders during transportation to the hospital.

b. July, 26, 2014: the NEMT taxi arrived at IJ’s home with other unrelated passengers. On July 28, 2014 DSS states “...Because of the incident that you brought to our attention, the PTR (Physician’s Transportation Request) and CPC (Closest Provider Certification) forms that are used to designate exemptions to standard modes of transportation for special circumstances will be revised. Improved communications will greatly reduce if not alleviate a circumstance such as this from arising in the future...” (Exhibit A). (NOTE: The forms were not changed until November of 2015. The revised form fails to note the ADA accommodation requirement and, on its face, rejects certain medical diagnoses (Exhibit B).

c. October 22, 2014: LogistiCare taxi arrived to escort IJ and his mother to a chemotherapy appointment at Connecticut Children’s Medical Center. Another passenger was in the taxi. The passenger was sick and coughing. IJ’s mother could not refuse the ride because IJ’s chemotherapy treatment is very regimented.

d. November 4, 2014: IJ had a similar chemotherapy appointment at Connecticut Children’s Medical Center. Again, the taxi arrived at Isaiah’s house with another passenger. Ms. J refused the ride. Logisticare initially refused to send another taxi. The oncologist personally called Logisticare as the interruption of the chemotherapy regime was life threatening for IJ.

e. December 4, 2014: Medicaid transportation was arranged for IJ on a return trip from chemotherapy treatment at Connecticut Children's Medical Center. The taxi arrived with another passenger. Ms. J refused the ride. IJ had to wait over two hours for another taxi to transport him home.

f. December 3, 2015: NEMT transportation arrived at IJ's home with another unrelated passenger. Ms. J advised the driver that it was not permissible for other unrelated passengers to be in the taxi. The driver ignored Ms. J. IJ had an appointment at the hospital for cancer treatment and had no other transportation and therefore had to accept the ride.

2. MM is an eleven year old resident of Hartford, Connecticut who is undergoing chemotherapy treatment for his cancer. MM is a Medicaid recipient and he and his father rely on NEMT services for their transportation to the hospital. MM is blind, medically fragile and his medical providers have certified that, based on his disability, it is medically inappropriate for him to travel in a taxi with unrelated passengers. The medical providers have notified DSS and LogistiCare and have submitted the required "Physician's Transportation Request" that verifies in writing that MM should not be traveling with other unrelated passengers. On an ongoing basis, the "no shared ride" order has been violated. The latest incident occurred on March 9, 2016. During a return ride from CCMC, the taxi picked up several unrelated additional passengers. MM and his father had no other available transportation so they remained in the taxi.

## **I.I. ADDITIONAL VIOLATIONS**

Medicaid recipients with disabilities have experienced additional ongoing issues with NEMT services. This includes but is not limited to failure and refusal to accommodate timeframes for transportation reservations and failure and refusal to provide accommodations for designation of appropriate modes of transportation.

1. Pursuant to the NEMT contract, LogistiCare can require Medicaid recipients to provide two days notice for the scheduling of medical transportation. The contract also provides that if an individual with a disability must be transported to a medical appointment is less than two days, as accommodation, transportation must be provided on a more expeditious schedule. The request for the accommodation can be made by the recipient or by the medical provider. DSS and LogistiCare continually fail to provide this accommodation. Requests by medical providers and patients are routinely denied and recipients with disabilities are denied access to medical care.

2. The NEMT contract also requires that each Medicaid recipient be provided with a complete assessment of their medical needs in order to determine the most medically appropriate form of transportation. A recipient's disability may mandate that the individual be provided with taxi service rather than bus service as an accommodation to their disability.

3. DSS and LogistiCare routinely fail to provide this accommodation. In 2014, DSS commissioned Mercer, Inc to evaluate the NEMT program ("the Mercer Report") (Attachment C). The Mercer report found that these assessments are not appropriately performed. Further, LogistiCare and DSS routinely fail and refuse to provide requisite modes of transportation requested by medical providers and by recipients.

### III. ANALYSIS

1. The failure of DSS and LogistiCare to provide requisite accommodations puts disabled children and adults at risk and is a violation of federal law. DSS and LogistiCare are aware that they are violating the ADA. Persons with disabilities, medical providers, advocates and community agencies have been notifying DSS and LogistiCare of the violation since shortly after the inception of the contract in 2013. These communications have been in the form of phone calls, emails, and meetings that continue through today.

2. In 2014, DSS commissioned an evaluation of the NEMT program. The Mercer Report issued that evaluation on June 26, 2014. Among other ADA violations, the report found that appropriate forms of transportation were not necessarily being provided because requisite screening for disabilities was not being conducted. The report further articulated concerns over ADA compliance – provision of rides in less than 48 hours, inappropriate assessments of multi-loading (placing more than one family in a cab), and failure to provide the appropriate assessment of medical need so the proper determination can be made relative to requisite mode of transportation. That report was never circulated by the Department and its recommendations were not followed. It was not until the late winter of 2015 that this report was released, and only after a request was made under the Connecticut Freedom of Information Act.

3. On November 23, 2015, a letter was sent to DSS Commissioner Bremby formally requesting that he issue a Request for Proposal (“RFP”) for the next NEMT contract. (Exhibit D). This letter was based on continuing concerns regarding ADA violations and performance. The letter was signed by 31 agencies, advocates and individuals. Commissioner Bremby would not commit to the issuance of an RFP and instead stated, “As with all of our contractors, the Department actively monitors LogistiCare’s performance.” The letter goes on to suggest that DSS would enhance oversight (Exhibit E).

4. Enhanced oversight by DSS has been promised since 2014 however, if they in fact have pursued a program, it has not been effective. The failure and refusal of DSS to put successful remedies in place clearly shows that they are not committed to remedying these ongoing ADA violations. As of this date, DSS refuses to take a systemic approach to addressing the ongoing issues.

5. On March 10, 2016, undersigned attorney e-mailed DSS and informed them that they had once again violated MM’s ADA rights. DSS fully admitted the violation. Their only resolution was to lay blame on the taxi company. There was no commitment to address or resolve the larger issue of DSS and LogistiCare failing to comply with the ADA. There was no commitment to change practices and procedures to ensure that MM’s and other patients’ ADA rights would be protected. (Exhibit E).

## **CONCLUSION**

Immediate changes must be made to the NEMT system to ensure ADA compliance. Effective remedies may include immediate training of DSS and LogistiCare staff, immediate expansion of monitoring, dramatically increased oversight of LogistiCare, enhanced reporting, the appointment of a monitor, etc.

The rights of children like IJ and MM must be protected. Failure to immediately address the violations listed above results in unnecessary and unconscionable risk to the health and well-being of our most vulnerable citizens.

Respectfully submitted,

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