



April 1, 2025

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VIA ECF

Honorable Frederic Block
United States District Court
Eastern District of New York
225 Cadman Plaza
Brooklyn, NY 11201

Re: ***Engesser et al. v. McDonald,***
Civil Action No. 25-cv-01689 (FB) (LKE)

Dear Judge Block:

We represent Plaintiffs in the above-captioned matter. Regrettably, we write to inform the Court of significant factual developments subsequent to the Court's entry of the temporary restraining order ("TRO") yesterday. Defendant Commissioner McDonald and the New York Department of Health (together with Defendant, "DOH") have advanced an erroneous interpretation of the TRO that renders it meaningless for tens of thousands if not more of the CDPAP consumers in our class. Starting early this morning and continuing into the afternoon, we have heard widespread reports that Personal Assistants cannot log in to their work accounts—either with PPL or with the Fiscal Intermediaries ("FIs") they previously used. This means they cannot report hours worked, which means they will not be paid for their services. As of 3:00 p.m. today, Plaintiffs' Counsel has received dozens of calls and emails from CDPAP participants whose CDPAP services ended today, without notice or an opportunity to be heard. DOH is in contempt of the Court's TRO.

A. The Court's March 31, 2025 TRO

The Court's TRO was intended to ensure that all CDPAP recipients can continue to receive essential home care services during the pendency of the State's transition to a single fiscal intermediary—even those CDPAP recipients whose "registration is still pending." See ECF No. 50, March 31, 2025 Transcript, 21:14-22:2, 25:12-25:21 (noting that under TRO, DOH would "have the discretion to do what they think is appropriate to protect people").

Pursuant to the TRO, CDPAP consumers who have completed enrollment with PPL and whose Personal Assistants are fully registered with PPL and received confirmation that they can begin work, can use the PPL system and will be paid by PPL.

Honorable Frederic Block
April 1, 2025
Page 2

For all other CDPAP consumers — those who have not yet enrolled with PPL, those who are in the middle of the enrollment process, and those who have themselves enrolled, but whose Personal Assistants are not fully registered and confirmed to begin work with PPL — the TRO maintains the status quo. All those consumers and Personal Assistants can continue to use their former FI's systems and the Personal Assistants will be paid by the FI.

B. DOH Is Disregarding the Requirements of the TRO

Based on reports from clients and other advocates today, DOH is defying the TRO's requirements in at least the following ways:

- *First*, for those consumers who have not yet begun enrollment with PPL, many of their Personal Assistants cannot clock in with their existing FIs. Based on this, Plaintiffs' counsel believes that DOH has not ordered Managed Care Organizations ("MCOs") or Local Departments of Social Services ("LDSS") to take the steps necessary to actually provide CDPAP services to these individuals. For instance, upon information and belief, DOH has not ordered MCOs or LDSS to reinstate their contracts with the FIs, to enable the FIs to continue paying CDPAP Personal Assistants and therefore, continue the care for this group of consumers. Nor has DOH ordered the MCOs or LDSS to send authorizations to the FIs to allow them to provide services. As we shared during oral argument yesterday, we estimate this group numbers approximately 20,000-35,000 CDPAP consumers.
- *Second*, according to MCOs' communications with FIs, DOH believes the TRO's preservation of the status quo only extends to CDPAP consumers who have not started the enrollment process. According to these communications, the TRO "does not apply to consumers who have already started or completed their registration in PPL," which represents "the vast majority of our members." Exhibit A. Upon information and belief, this is the largest group of affected CDPAP consumers. Pursuant to explicit instructions from DOH, as of midnight tonight, MCOs are directing FIs to stop processing payments for anyone who has taken any action to initiate enrollment with PPL—even if they or their Personal Assistants have not completed the process and are not set up to be paid. *Id.* ("Our plan will NOT be legally able to pay for dates of services starting 12:00AM 4/1/2025 for any CDPAP services to any FI besides PPL – unless that member is [in the group of consumers who have not started enrollment].")¹ Consequently, DOH has excluded from continuing care the large number of consumers who have *begun* enrollment with PPL but have not *completed* enrollment, or whose Personal Assistants are not fully registered. These consumers are in limbo—their Personal Assistants cannot be paid

¹ Similarly, PPL has instructed its FI-Facilitators that "[a]ny action by a facilitator to retain or somehow redirect the registration of a consumer with PPL will be considered a blatant violation of our agreement and of the scope and intent of the TRO." Exhibit B.

Honorable Frederic Block
April 1, 2025
Page 3

by their old FIs, and because they or their Personal Assistants are not fully registered with PPL, they also cannot be paid by PPL. According to DOH, they are out of luck, notwithstanding that Your Honor issued a TRO yesterday specifically to ensure payment and continuing care for these individuals as well as for those who have not yet started the process.

- *Third*, upon information and belief, DOH is not taking the necessary steps to protect even the CDPAP consumers who are fully registered with PPL. That is, even those consumers (1) who are themselves fully enrolled with PPL, (2) whose Personal Assistants are fully registered with PPL, and (3) who have and whose Personal Assistants have been confirmed as fully registered and ready to clock in on the PPL app, cannot receive services. These consumers report that their Personal Assistants are unable to log in for a wide variety of reasons, including allegedly missing authorizations, missing documents, and the fact that previously approved Personal Assistants are labeled "returned" in the system. Additionally, Personal Assistants who had submitted all forms and signed contracts are unable to clock in to begin work without clicking an acknowledgement that **they are not an employee of PPL and will only receive payment retroactively before they are permitted to clock in for work today**. See Exhibit C. Among other things, this expressly violates the prompt payment provisions of New York Labor Law § 191.

The TRO requires more. It preserves the status quo by enjoining implementation of the CDPAP Amendment's ban on non-PPL FIs. Part and parcel of that order is restoring the contractual arrangements between MCOs or LDSS and still-existing FIs, so that those FIs can operate and pay the Personal Assistants for consumers who have not yet started or not yet finished registration.

DOH is defying the Court's TRO to serve their overarching goal of punishing the existing FIs at the expense of CDPAP consumers—our clients in this litigation who need the critical support of Personal Assistants to stay in their homes and avoid hospitalizations, nursing homes or other congregate care restricted living arrangements. Yesterday, Your Honor made clear that it was up to the State to figure out how to delay implementation of the portion of the CDPAP Amendment that requires the existing FIs to close so that CDPAP Personal Assistants can continue to be paid—and provide care—in compliance with applicable labor and employment law until the preliminary injunction hearing on Friday. Instead, DOH is causing *more* people to be harmed.

We ask the Court to explicitly order DOH to reinstate the contracts with the existing FIs in a manner that covers consumers who have not yet begun enrollment with PPL, or who have started but they or their Personal Assistants have not yet completed it, in compliance with applicable law, so that the services they are legally entitled to receive are not abruptly cut off because DOH is refusing to provide a mechanism for the prompt payment of wages to their Personal Assistants.

Honorable Frederic Block
April 1, 2025
Page 4

This submission is made on an expedited basis given the harm that occurs each hour as tens of thousands of CDPAP consumers in all stages of the transition process encounter roadblocks to receiving care, despite the Court's TRO. Plaintiffs respectfully request that the Court hold an expedited hearing or a telephone conference as soon as possible to ensure that the scope of the TRO is honored expressly by DOH and to prevent additional harm to CDPAP consumers, or in the alternative, issue an order clarifying DOH's obligations under the TRO that the Court issued yesterday.

Respectfully yours,

/s/ Lisa E. Cleary
Lisa E. Cleary

cc (by email or ECF)
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