

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

09-1-2022-08

GWB 0

MANUEL D. SOUND and THOMPSON  
PHILLIP, on behalf of themselves and  
all similarly situated persons,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT  
OF HUMAN SERVICES; LILLIAN B.  
KOLLER, in her capacity as Director  
of the State of Hawai'i, Department of  
Human Services; STATE OF HAWAII,  
DEPARTMENT OF HUMAN  
SERVICES, MED-QUEST DIVISION;  
DR. KENNETH FINK, in his capacity  
as State of Hawai'i, Department of  
Human Services, Med-Quest Division  
Administrator,

Defendants.

Civil No. \_\_\_\_\_  
(Other Civil Action)

**COMPLAINT; SUMMONS**

## **COMPLAINT**

1. Plaintiff MANUEL D. SOUND ("Sound") is a citizen of the Federal States of Micronesia, a country with a Compact of Free Association (COFA) with the United States. He is 69 years old, and has resided in Hawai'i since 2002. Sound has diabetes, high-blood pressure and kidney disease. The State of Hawai'i, Department of Human Services ("DHS") had been providing insurance coverage for Sound's dialysis treatment, but because of DHS's sudden rule change, Sound will be disenrolled from this coverage, effective September 1, 2009, and will no longer be eligible for insurance that covers this treatment.

2. Plaintiff THOMPSON PHILLIP ("Phillip") is a citizen of the Marshall Islands, a country which also has a COFA agreement with the United States. He has lived in Hawai'i for four years. Phillip is 50 years old and suffers from kidney disease. DHS had been providing insurance coverage for Phillip's dialysis treatment, but because of DHS's sudden rule change, Phillip will be disenrolled from this coverage effective September 1, 2009, and will no longer be eligible for insurance that covers this treatment.

## **DEFENDANTS**

3. Defendant State of Hawai'i, Department of Human Services, is the State agency responsible for administering public assistance and public benefits in the State of Hawai'i, including medical benefits.

4. Defendant Lillian B. Koller is the Director of the State of Hawai'i, Department of Human Services and is sued in her official capacity.

5. Defendant State of Hawai'i, Department of Human Services, Med-Quest Division ("MQD") is the division of DHS that is directly responsible for the administration of public medical benefits in the State of Hawai'i.

6. Defendant Dr. Kenneth Fink is the Administrator of the State of Hawai'i, Department of Human Services, Med-Quest Division.

### **CLASS ACTION ALLEGATIONS**

7. Plaintiffs bring this class action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2) and (b)(3) of the Hawai'i Rules of Civil Procedure.

8. Plaintiffs seek to represent the class of persons who are over 19 and not pregnant who are being deprived of medical benefits by the DHS's sudden rule change. These are (1) those persons residing in Hawai'i after being admitted to residence in the U.S. under the COFA between the U.S. and the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia ("COFA Residents") and other non-citizen residents ineligible for Federal Medicaid ("Other Residents") who have been receiving health insurance coverage and other medical benefits under the State of Hawai'i's QUEST, QExA, QUEST-NET, QUEST-ACT, SHOTT, or fee-for-service programs, but who will now be ineligible to receive those benefits because of their status as COFA Residents or Other Residents; (2) COFA Residents and Other Residents who are being denied health care under all programs administered by the State of Hawai'i because they are COFA Residents or Other Residents.

9. The class is so numerous that joinder of all members is impractical. There are an estimated 7,500 class members, although the exact size is unknown.

10. There are common questions of law and fact, including but not limited to whether Defendants' new policy of treating this class of Hawai'i residents differently than other residents of Hawai'i violates the Hawai'i Constitution, whether Defendants' sudden rule change will deprive Plaintiffs of their constitutionally protected right to life, and whether Defendants' rulemaking without notice or a formal process violates the Hawai'i Administrative Procedures Act.

11. The claims of the named Plaintiffs are typical of the claims of the other putative class members. All putative class members are: (a) COFA Residents or Other Residents; (b) were previously receiving health insurance coverage or other medical benefits under the State of Hawai'i's QUEST, QExA, QUEST-NET, QUEST-ACT, SHOTT, or fee-for-service programs, or would have been entitled to receive such benefits; and, (c) will now no longer be entitled to receive health insurance coverage or medical benefits under these particular programs.

12. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action vigorously in order to secure remedies for the entire class. Lead counsel for the Plaintiffs is experienced in civil rights litigation and class action, including systemic litigation against State Defendants.

13. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

14. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole under Hawai'i Rule of Civil Procedure 23(b)(2).

**FIRST CAUSE OF ACTION**  
**Violation of Constitution of the State of Hawai'i**

15. Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1-15 of the Complaint.

16. From approximately 1997 until the present, the State of Hawai'i, Department of Human Services provided health insurance coverage and other medical benefits to COFA Residents and Other Residents under the State of Hawai'i's QUEST, QExA, QUEST-NET, QUEST-ACT, SHOTT, and fee-for-service programs (collectively, the "Medical Benefit Programs") without regard for their alienage.

17. On or about July 28, 2009, the State of Hawai'i, Department of Human Services announced that effective September 1, 2009, all COFA

Residents and Other Residents who were over 19 and not pregnant would be disenrolled from the Medical Benefit Programs based on their status as noncitizens, and placed in a newly created program called Basic Health Hawai'i.

18. Effective August 1, 2009, the State of Hawai'i, Department of Human Services ceased enrolling non-pregnant adult COFA Residents and Other Residents in the Medical Benefit Programs.

19. The coverage to be provided Plaintiffs under the Basic Health Hawai'i program will be far inferior to the coverage they previously received under the Medical Benefit Programs. Dialysis, chemotherapy, and other critical medical treatments will not be covered under Basic Health Hawai'i plans.

20. Plaintiffs who do not receive dialysis, chemotherapy, and other critical treatments will die or suffer serious health problems that could be prevented with proper treatment.

21. Defendants' actions have violated Article I, Section 5 of the Hawai'i Constitution by treating Plaintiffs differently than other similarly situated residents on the basis of their status as aliens.

22. Defendants' actions have violated Article I, Section 2 of the Hawai'i Constitution by depriving critically ill Plaintiffs of their right to life.

**SECOND CAUSE OF ACTION**  
**Violation of the Hawai'i Administrative Procedures Act**

23. Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1-23 of the Complaint.

24. Defendants' new rules denying eligibility to Plaintiffs was promulgated in violation of Haw. Rev. Stat. § 91-3.

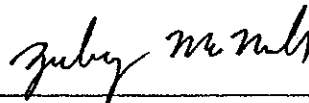
25. Plaintiffs have already been harmed by this policy, and will be further harmed by its full enactment on September 1, 2009.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all persons similarly situated, respectfully request that this Court:

- (a) Assume jurisdiction over this action;
- (b) Issue a declaratory judgment stating that Defendants have violated the equal protection and right to life clauses of the Constitution of the State of Hawai'i, and that Defendants change in policy toward Plaintiffs is an invalid rule under the Hawai'i Administrative Procedures Act;
- (c) Grant all injunctive relief necessary to return Plaintiffs' to the level of benefits they received prior to Defendants' change in policy;
- (d) Grant such other declaratory and injunctive relief as may be appropriate;
- (e) Award Plaintiffs reasonable attorney's fees, costs, and expenses under any applicable law.

DATED: Honolulu, Hawai'i, August 31, 2009.



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PAUL ALSTON  
J. BLAINE ROGERS  
ZACHARY A. MCNISH  
VICTOR GEMINIANI  
Attorneys for Plaintiffs

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SERVICES, MED-QUEST DIVISION;  
DR. KENNETH FINK, in his capacity  
as State of Hawai'i, Department of  
Human Services, Med-Quest Division  
Administrator,

Defendants.

Civil No.

**SUMMONS**

**SUMMONS**

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon ALSTON  
HUNT FLOYD & ING, attorneys for Plaintiff, whose address is 1001 Bishop  
Street, 18th Floor, Honolulu, Hawaii 96813, an answer to the Complaint which  
is herewith served upon you, within twenty (20) days after service of this  
Summons upon you, exclusive of the day of service. If you fail to do so,  
judgment by default will be taken against you for the relief demanded in the  
Complaint.



This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a Judge of the above-entitled Court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

AUG 31 2009

DATED: Honolulu, Hawai'i, \_\_\_\_\_

E. ALAGAO



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CLERK OF THE ABOVE ENTITLED COURT