

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>COLORADO CROSS-DISABILITY COALITION, A COLORADO CORPORATION, AND CARRIE ANN LUCAS,</p> <p>Plaintiff(s),</p> <p>v.</p> <p>JOAN HENNEBERRY, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, IN HER OFFICIAL CAPACITY, AND COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING,</p> <p>Defendant(s).</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JENNIFER L. WEAVER*, Assistant Attorney General JOAN E. SMITH*, Assistant Attorney General 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: 303-866-5136/5279 FAX: 303-866-5671 E-Mail: jennifer.weaver@state.co.us joan.smith@state.co.us Registration Numbers: 28882/34605 *Counsel of Record</p>	<p>Case No.: 2009CV11661</p> <p>Courtroom: 6</p>
<p>ANSWER</p>	

The Defendants, by and through counsel, the Office of the Attorney General, submit the following Answer to Plaintiffs' Complaint.

1. Paragraph 1 of the Complaint is a description of the Plaintiffs and Plaintiffs' characterization of the action and does not contain allegations of fact which require an answer.
2. Defendants admit the allegation in paragraph 2 of the Complaint that Ms. Lucas has received Medicaid funded services in her home, but have insufficient information to either admit or deny any other allegations included in paragraph 2 of the Complaint.

3. Defendants have insufficient information to either admit or deny the allegations in paragraphs 3 and 4 of the Complaint.
4. Defendants deny the allegations in paragraphs 5 and 6 of the Complaint.
5. Defendants admit the allegations in the first sentence in paragraph 7 of the Complaint but deny the allegations in the second sentence in the same paragraph.
6. Defendants deny the allegations in paragraph 8 of the Complaint.
7. Defendants deny the allegations in paragraph 9 of the Complaint. Plaintiff Lucas is seeking approximately \$17,000 per month for in-home attendant care which exceeds the cost of institutional care.
8. Paragraph 10 of the Complaint is a description of Plaintiffs' request for relief and therefore does not require an admission or denial by Defendants.
9. Defendants admit the allegations in paragraph 11 of the Complaint.
10. Paragraph 12 is Plaintiffs' description of this action and does not require an admission or denial.
11. Colorado Statutes and Rules of Civil Procedure speak for themselves and thus paragraphs 13 and 14 do not contain allegations of fact that require an admission or denial.
12. Defendants admit the allegations in paragraph 15 of the Complaint.
13. Defendants have insufficient information to either admit or deny the allegations in paragraph 16 of the Complaint.
14. Defendants admit the allegations in paragraphs 17, 18, and 19 of the Complaint.
15. Defendants have insufficient information to either admit or deny the allegations in paragraph 20 of the Complaint.
16. Defendants deny the allegations in paragraph 21 of the Complaint, but affirmatively state that Plaintiff Lucas has been receiving Colorado Medicaid services since 1998.
17. Defendants have insufficient information to either admit or deny the allegations in paragraphs 22 and 23 of the Complaint.
18. Defendants admit the allegations in paragraphs 24 and 25 of the Complaint.

19. Defendants have insufficient information to either admit or deny the allegations in paragraph 26 of the Complaint.
20. Defendants admit all but the last sentence of paragraph 27 of the Complaint. Defendants have inadequate information to either admit or deny the allegation in the last sentence of paragraph 27.
21. Defendants have insufficient information to either admit or deny the allegations in paragraphs 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Complaint.
22. Defendants deny the allegations in paragraph 37 of the Complaint.
23. Defendants admit the allegations in paragraph 38 of the Complaint.
24. Defendants have insufficient information to either admit or deny the allegations in paragraphs 39, 40, 41, and 42 of the Complaint.
25. Defendants deny the allegations in paragraphs 43, 44, and 45 of the Complaint.
26. Defendants admit the allegations in paragraphs 46, 47, and 48 of the Complaint.
27. Defendants deny the allegations in paragraphs 49 and 50 of the Complaint.
28. Defendants have insufficient information to either admit or deny the allegations in paragraphs 51, 52, 53, and 54 of the Complaint.
29. Defendants deny the allegations in paragraphs 55 and 56 of the Complaint.
30. Defendants have insufficient information to either admit or deny the allegations in paragraphs 57, 58, and 59 of the Complaint.
31. Defendants deny the allegations in paragraph 60 of the Complaint.
32. Defendants have insufficient information to either admit or deny the allegations in paragraphs 61 and 62 of the Complaint.
33. Defendants deny the allegations in paragraphs 63, 66, and 67 of the Complaint.
34. Defendants deny all allegations of injury to the Plaintiffs and any discrimination by the Department in paragraphs 64, 65, and 68 of the Complaint and have insufficient information to either admit or deny all other allegations in these paragraphs.

35. Defendants have insufficient information to either admit or deny the allegations in paragraph 69 of the Complaint.
36. Defendants deny the allegations in paragraphs 70, 71, and 72 of the Complaint.
37. Defendants have previously admitted, denied, or explained their position as to all allegations referred to in paragraph 73 of the Complaint.
38. An admission or denial is unnecessary in response to Plaintiffs citations to the legal authorities referenced in paragraphs 74, 75, 76 and 77 of the Complaint, as they speak for themselves.
39. Defendants deny the allegations in paragraphs 78, 79 and 80 of the Complaint.
40. Defendants have insufficient information to either admit or deny the allegations in paragraphs 81 and 82 of the Complaint.
41. Defendants deny the allegations in paragraph 83 of the Complaint.
42. Defendants have previously admitted, denied, or provided their position as to all allegations referred to in paragraph 84 of the Complaint.
43. An admission or denial is unnecessary in response to Plaintiffs' citation to the legal authority referenced in paragraph 85 of the Complaint, as it speaks for itself.
44. Defendants deny the allegations in paragraph 86 of the Complaint.
45. Defendants admit the allegations in paragraph 87 of the Complaint.
46. Defendants admit the allegations in paragraph 88 of the Complaint. Defendants note that the citation to C.R.S § 26-4-105 should be C.R.S. § 25.5-4-106.
47. Defendants deny the allegations in paragraph 89. Defendants note the citation to 42 C.F.R. § 431.70(a) should be 42 C.F.R. § 440.70(b).
48. Defendants have insufficient information to either admit or deny the allegations in paragraph 90 of the Complaint.
49. Defendants deny the allegations in paragraph 91 of the Complaint. Defendants note that the citation to 42 U.S.C. § 440.70(b) (1) should be 42 C.F.R. § 440.70(b) (1).
50. Defendants have insufficient information to either admit or deny the allegations in paragraph 92 of the Complaint.

51. Defendants deny the allegations in paragraph 93 of the Complaint. Defendants note that the citation to 42 U.S.C. § 440.80 should be to 42 C.F.R. § 440.80.
52. Defendants have insufficient information to either admit or deny the allegations in paragraph 94 of the Complaint.
53. Defendants admit that the Centers for Medicare and Medicaid Services ("CMS") is the federal agency that administers the Medicaid program. Defendants deny all other allegations contained in paragraph 95 of the Complaint.
54. Defendants admit the allegations in paragraph 96 of the Complaint.
55. Defendants deny the allegations in paragraphs 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 and 107 of the Complaint.
56. Any allegation not specifically admitted is hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Defendants did not deprive Plaintiffs of any rights, privileges or immunities under color of state law.
3. Defendants' actions were not in excess of statutory jurisdiction, authority purposes or limitations, were not an abuse or clearly unwarranted exercise of discretion, and were not unsupported by substantial evidence when the record is taken as a whole.
4. Plaintiffs may lack standing to prosecute or bring any claims under 42 U.S.C. § 1983 or claims alleging violations of constitutionally protected rights, privileges or immunities.
5. Plaintiff Colorado Cross-Disability Coalition is not a real party in interest.
6. Plaintiff Colorado Cross-Disability Coalition lacks standing.
7. Defendants may be entitled to qualified immunity from Plaintiffs' claims.
8. Defendants reserve the right to add additional defenses that are or may become applicable to this case.

9. Plaintiffs are not entitled to costs against the state of Colorado. C.R.C.P 54(d). Absent specific legislative direction, costs cannot be assessed against the state. *McFarland v. Gunther*, 829 P.2d 510, 511 (Colo. App. 1992).

Respectfully submitted this 18th day of February, 2010.

JOHN W. SUTHERS
Attorney General

S/Jennifer L. Weaver
(original signature on file with the Office of the
Attorney General)

JENNIFER L. WEAVER, 28882*
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Medicaid and Public Assistance Unit
State Services Section
Attorneys for Defendants
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER upon all parties herein via Lexis-Nexis/Courtlink/File and Serve on this 18th day of February, 2010, on the following:

Kevin W. Williams
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, CO 80203

S/Connie Risser

(Original signature on file with the
Office of the Attorney General)
