DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	
COLORADO CROSS-DISABILITY COALITION, et al., Plaintiffs, v. COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, et al., Defendants.	Case No. 09CV11761 COURTROOM 280
ORDER	

For the reasons articulated below, Plaintiffs' "Motion to Enforce Settlement Agreement," filed October 18, 2010, is GRANTED.

This putative class action was brought by Plaintiffs alleging that Defendants violated state and federal law in implementing a Medicaid-funded state program called the Consumer Directed Attendant Support Services ("CDASS"). All Plaintiffs are individuals with disabilities or parents of individuals with disabilities who receive home health care and services under CDASS. Plaintiffs claimed that in implementing state-wide budget cuts mandated by Governor Ritter, Defendants cut Plaintiffs' CDASS services in differing and inconsistent amounts, and did so without providing adequate notice to Plaintiffs. Plaintiffs claimed these actions violated the Due Process Clause of the Fifth Amendment to the federal Constitution, 42 U.S.C.§ 1983, various provisions of the federal Medicaid Act, 42 U.S.C. §1396, and state law regarding Defendants' obligations with respect to

Medicaid services. Plaintiffs sought injunctive relief enjoining Defendants from implementing and maintaining the cuts, requiring Defendants to restore services already cut, damages and attorney fees.

After I denied Defendants' motion to dismiss, the parties entered into mediation with Judge Barr at JAG, and eventually settled the case, entering into a Settlement Agreement on September 15, 2010, attached as Exhibit 6 to the motion. They settled everything except the amount of the attorney fees. Paragraph 6 of the Settlement Agreement addresses that issue, and provides the following:

> By September 15, 2010, Plaintiffs' counsel will provide itemized billing records reflecting time spent in the representation. The Department will respond by September 27, 2010. If the parties cannot agree on an award of attorney fees on September 27, 2010, Parties will return to mediation with Judge Barr to determine fees. If the Parties do agree on an award of attorney fees on September 27, 2010 a check in the agreed-upon amount will be delivered to CCDC on before October 27, 2010.

Plaintiffs' counsel timely provided Defendants with the billing records, and Defendants timely responded. But the parties were unable to agree on an amount of the fees. They therefore returned to Judge Barr, as provided in this paragraph, for mediation on the amount of the fees, and were again unable to reach a mediated agreement.

Defendants now take the position that because they were unable to agree with Plaintiffs on the amount of the fees, they are not obligated under the Settlement Agreement to pay any fees, since ¶ 12 of that agreement provides that unless otherwise agreed, each side is to pay its own costs and fees. Defendants also argue that I am without authority to award fees outside the Settlement Agreement because Plaintiffs never "prevailed" within the meaning of 42 U.S.C. § 1983. Because I reject Defendants' contract argument, I need not reach their § 1983 argument.

The clear and unambiguous meaning of ¶ 6 of the Settlement Agreement is that the parties have reached an agreement that Defendants would pay Plaintiffs' attorney fees, but were in disagreement about the reasonable amount of those fees. It twice uses the phrase "an award of attorney fees," and refers to the second mediation session with Judge Barr as a process by which the parties would attempt to "determine fees." The plain and unforced meaning of this language is that the parties had not yet agreed to the *amount* of the fees to be awarded, but had agreed that Plaintiffs would be entitled to their reasonable fees as part of the overall settlement. It is equally clear to me that this paragraph means that if the parties are unable to reach a mediated agreement on the amount of fees, that inability will have no impact on the balance of the settlement, and it will devolve to me to resolve the amount of those reasonable fees. This was the bargained agreement, and Plaintiffs are entitled to the benefit of that bargain.[1]

Briefs on the reasonable amount of the fees, including supporting billing records, shall be filed as follows:

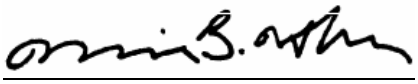
Plaintiffs' motion:	February 7, 2011
Defendants' response:	February 21, 2011
Plaintiffs' reply:	February 28, 2011

These briefs shall include an indication as to whether either side is requesting a reasonableness hearing, as well as a discussion of whether Defendants' position on the motion to enforce was itself groundless and frivolous such that Plaintiffs should also recover the fees they incurred in briefing that motion. If Plaintiffs are requesting those fees, the billing records for them should also be included.

[1] By the way, ¶ 6 of the Settlement Agreement addresses only fees, not costs, and I see nothing anywhere else in the Settlement Agreement that provides, or even suggests, that the parties have agreed that Defendants would pay Plaintiffs' costs. Since there is nothing providing otherwise, under ¶ 12, each side is to pay its own costs.

DONE THIS 17TH DAY OF JANUARY, 2011.

BY THE COURT:



Morris B. Hoffman
District Court Judge

cc: All counsel