

# Client Alert

## March 31, 2025

### **CDPAP TEMPORARY RESTRAINING ORDER GRANTED**

Judge Frederic Block, the judge in United States District Court for the Eastern District of New York presiding over the *Engesser et. al v. James V. McDonald* Class Action litigation has granted a Temporary Restraining Order (TRO) restraining the Department of Health (DOH) from implementing certain amendments to the NYS Social Services Law related to the Single Statewide Fiscal Intermediary (SFI). Specifically, the Order restrains DOH from implementing the section of the Social Services Law that states that “Except for the statewide fiscal intermediary and its subcontractors, as of April 1, 2025, no entity shall provide, directly or through contract, fiscal intermediary services.”

The Order restrains DOH from disallowing Fiscal Intermediaries (other than the SFI, Public Partnerships Limited, LLC (PPL)) from servicing those Consumer Directed Personal Assistant Program (CDPAP) participants who have not yet registered with PPL.

Plaintiffs are seeking a preliminary injunction:

- Enjoining DOH from implementing the SFI until at least September 30, 2025;
- Requiring CDPAP consumers be first provided with notice and an opportunity for a Fair Hearing, as well as aid continuing before their services are suspended or terminated;
- Ensuring that payments to CDPAP PAs continue uninterrupted while CDPAP Consumers have a longer time to make the transition to PPL; and
- That a status update be provided to Plaintiff’s counsel every thirty (30) days detailing the number of CDPAP Consumers and PAs that have completed their enrollment with PPL, and confirming that payments to CDPAP PAs continue uninterrupted.

A hearing on the preliminary injunction will be held at 11am this Friday, April 4<sup>th</sup>.

Notably, the Order does not prevent PPL from operating, processing applications, servicing and paying CDPAP participants who have already registered with PPL. The Order raises many critical questions, with not enough time to get answers. For example:

- What will the reimbursement rates be for MLTC/LDSS contracts with current FIs who were terminated for the ongoing FI services?
- Will current FIs get new authorizations?
- Can current FIs provide services if the Consumer registered with PPL, but their PA has not?
- What if a Consumer who registered with PPL wants to continue to work with its current FI?

The plaintiffs in this case are a group of CDPAP consumers, who have not completed enrollment with PPL, or whose Personal Assistant(s) (PA) have not completed registration and received confirmation from PPL that the Personal Assistant has been approved to continue providing services.

Plaintiffs allege that the Defendant violated the Medicaid Act and the Due Process Clause of the Fourteenth Amendment by utilizing a transition plan to the SFI that does not permit or ensure that plaintiffs will have their CDPAP services continued at their current level, without a gap in care, until and unless they either enroll with PPL or receive a timely and adequate notice of their right to aid continuing and an opportunity for a Fair Hearing at which to challenge any proposed termination or suspension, before the suspension of their services.

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