

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

DEBORAH CARR, BRENDA MOORE,  
MARY ELLEN WILSON, MARY SHAW,  
and CAROL KATZ, on behalf of themselves  
and those similarly situated,

Plaintiffs,

v.

XAVIER BECERRA, SECRETARY,  
UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Defendant.

Civil Action No. 3:22-cv-988 (MPS)

September 19, 2022

**SECOND DECLARATION OF SHELDON V. TOUBMAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION  
AND APPOINTMENT OF CLASS COUNSEL**

I, SHELDON V. TOUBMAN, declare as follows:

1. I am one of the attorneys representing Named Plaintiffs and the putative class in the above-captioned action and I am submitting this Declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel (Docket No. 44).

2. I am over the age of eighteen, have personal knowledge of the matters in this declaration, and am competent to testify about them.

3. In my Declaration in Support of Plaintiffs' Motion for Class Certification (Docket No. 44-5), I stated that documents related to the numbers of individuals affected by the implementation of the Defendant's Interim Final Rule had been requested and were expected shortly from the Connecticut Department of Social Services ("DSS"), in the form of a

transcript from the June 22, 2022 administrative hearing for Named Plaintiff Deborah Carr in her appeal of the termination of full benefit Medicaid coverage (under “HUSKY D”), and a response to my August 12, 2022 request for documents concerning such data under the Connecticut Freedom of Information Act (“FOIA”).

4. I also stated in that Declaration that my recollection was that the testimony at the administrative hearing from DSS’s witness, Marjori Kapsis, was that about 6,600 people had been terminated in the initial implementation period by DSS from full benefit Medicaid for the reason that they were on a Medicare Savings Program (“MSP”), and that additional individuals were being cut off each month because they newly turned 65 or newly qualified for Medicare and thus for an MSP.

5. Attached as Exhibit 1 are true and correct copies of pages 1-4 and 93-101 of the transcript of the June 22, 2002 hearing, received on September 13, 2022, confirming that the total number of individuals initially cut off of full benefit Medicaid for the reason of being 65 or over and eligible for Medicare and an MSP was about 2,400, and for the reason of qualifying for Medicare and an MSP under 65 was about 4,200 (Ex. 1 at 93-96), and that varying numbers of additional individuals are being cut off each month for the same reasons (Ex. 1 at 98-101).

6. Attached as Exhibit 2 is a true and correct copy of my August 12, 2022 request under the FOIA for documents containing data regarding the numbers of individuals terminated from Medicaid coverage for reasons newly authorized under the Defendant’s Interim Final Rule.

7. Attached as Exhibit 3 is a true and correct copy of the letter from David Seifel, DSS FOIA Officer and Legislative Liaison, dated September 12, 2022, explaining an attached spreadsheet regarding numbers of individuals whose HUSKY D Medicaid cases were closed initially in June 2021 and January 2022, and every week thereafter, for the reasons of being: (1)

65 or over or (2) under 65, and on Medicare and an MSP, showing approximately 11,650 total closures for these two groups as of August 22, 2022. The provided spreadsheet also is included in Exhibit 3.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: September 19, 2022

/s/Sheldon V. Toubman  
SHELDON V. TOUBMAN  
Fed Bar No. ct08533  
Phone: (475)345-3169  
E-mail: [sheldon.toubman@disrightsct.org](mailto:sheldon.toubman@disrightsct.org)  
Disability Rights Connecticut  
846 Wethersfield Avenue  
Hartford, CT 06114

**Certificate of Service**

I hereby certify that on September 19, 2022, a copy of the foregoing document was filed electronically and served by overnight delivery to anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by overnight delivery to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/Sheldon V. Toubman  
Sheldon V. Toubman

# EXHIBIT 1

JUNE 22, 2022 HEARING TRANSCRIPT

Pages 1-4, 93-101

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS AND  
ADMINISTRATIVE HEARINGS

----- x  
In RE: :  
:   
DEBORAH CARR, : Case No. 100641958  
: RN 190840  
Appellant. :  
: June 22, 2022  
-----x

Venue: 66 Orange Steet, Apt 301  
New Haven, Connecticut

ADMINISTRATIVE HEARING

(Transcription from Electronic Recording)

Held Before:

SYBIL HARDY, Hearing Officer

Transcription Services of  
FALZARANO COURT REPORTERS, LLC  
4 Somerset Lane  
Simsbury, CT 06070  
860.651.0258  
www.falzaranocourtreporters.com

A P P E A R A N C E S:

For the Appellant:

DISABILITY RIGHTS of CONNECTICUT  
846 Wethersfield  
Hartford, Connecticut 06114  
BY: SHELDON TOUBMAN, ESQ.

For the Department of Social Services:

DEPARTMENT OF SOCIAL SERVICES  
55 Farmington Avenue - 11<sup>th</sup> Floor  
Hartford, Connecticut 06105  
BY: MELANIE DILLON, ESQ.

Also Present:

DEBORAH CARR, Appellant

DONALD DEMMITT, Care Partner

MARJORI KAPSIS, DSS, Public Assistance  
Consultant

1 (Proceedings commenced.)

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HEARING OFFICER HARDY: The hearing record for Deborah Carr is now open. Although this is an informal hearing all those present who are going to testify must take an oath. Everyone please raise their right hand. If you could raise your right hand?

(Whereupon, the parties were duly sworn by Hearing Officer Hardy.)

HEARING OFFICER: Thank you. And for the record everyone present must state his or her name, address and in what capacity he or she is at this hearing.

My name is Sybil Hardy, I am the Hearing Officer with the Department of Social Services, Office of Legal Counsel, Regulations and Administrative hearings assigned to preside at this hearing. So if we could start with Ms. Carr please, if you could state your full name and address for the record.

MS. CARR: My name is Deborah Carr. The address is 66 Orange Street, Apartment

1 301, New Haven, Connecticut 06510.

2 HEARING OFFICER: Okay. And your  
3 witness?

4 MR. DEMMITT: My name is Donald  
5 Demmitt, 66 Orange Street, Apartment 301,  
6 New Haven, Connecticut. I am her care  
7 partner as I like to call it.

8 HEARING OFFICER: Okay.

9 MS. KAPSIS: I'm Marjori Kapsis. I  
10 work at the Department of Social Services.  
11 I'm a Public Assistance Consultant.

12 HEARING OFFICER: Okay.

13 MS. DILLON: I'm Melanie Dillon, I am  
14 attorney in the Office of Legal Counsel at  
15 the Department of Social Services.

16 MR. TOUBMAN: I am Sheldon Toubman,  
17 that's spelled T-o-u-b-m-a-n. I'm an  
18 attorney at Disability Rights Connecticut.  
19 Do you want the address?

20 HEARING OFFICER: Yes.

21 MR. TOUBMAN: 846 Wethersfield Avenue,  
22 Hartford, Connecticut. I think it's 06114,  
23 and I'm representing Ms. Carr today.

24 HEARING OFFICER: Thank you.

25 Okay, Ms. Carr, the Office of Legal



1 -- right, after changes announced by CMS. What about  
2 people who are non-citizens and who would otherwise be  
3 subject to what's known as the 5-year bar? Can you  
4 talk about that?

5 MS. DILLON: I'm going to object just  
6 to relevance to the present hearing because  
7 this is really limited to the determination  
8 of --

9 MR. TOUBMAN: Right. But I'm just  
10 trying to understand how the Department  
11 reacts in general to see if it is across the  
12 board, whether they imposed this change  
13 across the board. And just have a couple of  
14 questions to ask about it.

15 A I actually didn't work on the non-citizen  
16 aspect of it.

17 BY MR. TOUBMAN:

18 Q Okay, all right. All right, I'm sorry. But  
19 are you aware that there were people who were affected  
20 who were non-citizens by the change from CMS?

21 A You know, I'm not really aware. I don't --  
22 didn't work on it.

23 Q All right. So can you tell me about how  
24 many people roughly were affected the change -- when  
25 you did ultimately implement the change which you said

1 was in March of 2011? And let me ask you in two  
2 groups. I'm going to ask you about the people who you  
3 said aged out of Husky D and then got Medicare and  
4 Medicare Savings Program. So how many people were in  
5 that group?

6 A Okay, and just to clarify, I'm not sure how  
7 I stated it before but it was around that timeframe of  
8 March 2021 and April 2021 where we started to plan to  
9 make the changes, but we didn't implement them, you  
10 know, until a little bit later on, so -- because it  
11 was in the planning.

12 Q Okay.

13 A So the first group we did was the 65 and  
14 over with MEC that were extended on Husky D and that  
15 was 20 -- no, 30 -- approximately 2,400 people.

16 Q 2,400 people affected by that group. And  
17 was that the first group? You said that -- okay.

18 A Yep, yes.

19 Q So what was the next group?

20 A It was the under 65.

21 Q Just to clarify it, under 65 who qualified  
22 for Medicare and then Medicare Savings Program.

23 A Correct.

24 Q And about how many were there?

25 A That was about 4,200.

1 Q Okay. So about 2,400 were over 65 and about  
2 4,200 were under 65, with the same basic facts which  
3 are that they qualified, newly qualified for Medicare  
4 and then for MSP. Do I have that correct?

5 A I'm not sure when they qualified for it.  
6 They might not have been newly qualified.

7 Q Strike newly. I shouldn't have said that.  
8 I apologize. I should have said that they were  
9 getting cut off because they qualified for Medicare  
10 and MSP.

11 A And actually they were enrolled in it as  
12 well so they may have qualified but they were enrolled  
13 in Medicare and MSP. They were beneficiaries of those  
14 programs and so --

15 Q Okay.

16 A Yeah.

17 Q For people over -- just so I understand, for  
18 people over 65 were they cut off even if they weren't  
19 actually enrolled in Medicare?

20 A No.

21 Q They have to actually be enrolled.

22 A That's what we did. We only did people with  
23 -- somebody who had MSP that means they have Medicare  
24 so, yeah, that's how we identified them.

25 Q Okay. So that between those two groups

1 that's like 6,600 people, 2,400 and -- roughly 6,400.

2 But there were other groups as well, right?

3 A There were other groups, yep.

4 Q Do you have the numbers on those groups?

5 A I don't. I mean it's a few a month.

6 Q I'd like only to talk about them, I asked  
7 you about going forward but I'm just really asking  
8 only about initially when you finally implement you  
9 said you started the process in March/April 2021 but  
10 then it took a while to actually get to it.

11 A Um-hum.

12 Q Took several months. Was that -- the  
13 numbers I was asking about were about those people  
14 done at that time sort of en masse so that -- right?

15 A These were done en masse.

16 Q Okay. The 2,400 and the 4,200. In terms of  
17 people who were also done en masse where there any  
18 significant numbers there?

19 A Actually, the other ones weren't done en  
20 masse because the way the system is we just started to  
21 keep an individual, just not extend the individual  
22 again. We didn't have to -- wait, let's see how to  
23 put this. Hold on one second. We would just -- we  
24 would identify those who maybe became over income, you  
25 know, a certain month that had MSP and went into an

1 S99 and those people weren't extended anymore. So it  
2 was monthly, it wasn't something that was done en  
3 masse, it was just like a --

4 Q You mean at the normal redetermination point  
5 is when this would happen?

6 A Yes. So that it would just be stopped --  
7 like if they had an income increase and then the  
8 redetermination they would go ahead and they would  
9 cascade to say -- we use the term cascade which means  
10 like move into another group -- when they had MEC then  
11 we would no longer say, you know, keep the previous  
12 coverage group, we would like the cascade happen.

13 So that kind of didn't happen en masse.  
14 There was no like all at one time of those. It kind  
15 of happened as the person changed.

16 Q So like over -- let me ask you in terms of  
17 last year, like 2021. How many people do you think  
18 there were in those other groups?

19 A You know, I'm sorry, I didn't really look at  
20 those numbers before this, so --

21 Q Just hundreds, thousands?

22 MS. DILLON: Objection. She was asked  
23 and answered.

24 BY MR. TOUBMAN:

25 Q Okay, but do you have any sense about that,

1 whether it's hundreds or thousands?

2 A I mean it wasn't a lot every month.

3 Q It was not.

4 A Yeah, it was something that could work, yep.

5 Q Something what? I'm sorry.

6 A I mean something that I knew that we could,  
7 you know, was manageable to work. I don't -- I really  
8 don't -- couldn't tell you the numbers.

9 Q Okay.

10 A It wasn't like overwhelming or anything,  
11 near a thousand or anything like that, I know that.

12 Q So it was less than a thousand fair to say.

13 What about going forward? How many people  
14 are being cut off, you know, each month there are  
15 people who -- I think this is where you use the  
16 "newly," people who newly qualified for Medicare and  
17 MSP, correct?

18 A Correct, yep.

19 Q And those people under this new  
20 interpretation from CMS for so-called MEC regulation  
21 you're talking about, so there's people newly being  
22 cut off each month; is that accurate?

23 A Those individuals if they have MEC we just  
24 follow the normal Husky C transition process, so yes,  
25 so we would just be using the business process of

1 that.

2 Q And I'm just asking how many do you think  
3 that is each month?

4 A I'm sorry, I don't have those numbers  
5 either. I didn't review any of that, the figures --

6 Q Okay.

7 A -- except related to like the Husky D  
8 before.

9 Q Again I'm only asking this from your  
10 knowledge, you really don't know.

11 A Right.

12 Q Would you have a sense that that's in the  
13 hundreds every month?

14 MS. DILLON: I'm just going to object  
15 to the extent that she's already said she  
16 didn't look at the numbers so she doesn't  
17 know.

18 BY MR. TOUBMAN:

19 Q Right. But you might have a sense even  
20 though you didn't look at the numbers.

21 MR. DEMMITT: I -- sorry.

22 MS. KAPSIS: No, it's okay. I'm sorry.

23 MR. DEMMITT: I just have a silly  
24 question. She's never worked a day in her  
25 life but why wasn't she given new recipient

1 status?

2 MR. TOUBMAN: Don, can we -- like tell  
3 us (indiscernible) --

4 MR. DEMMITT: Sorry.

5 MR. TOUBMAN: I'm sorry.

6 BY MR. TOUBMAN:

7 Q I was just asking you if you had any sense  
8 of the numbers. Is it in the hundreds per month?

9 MS. DILLON: Only answer if you know.

10 MR. TOUBMAN: Yeah.

11 A You know, I remember looking at one month at  
12 one time and it was like 200 and something.

13 BY MR. TOUBMAN:

14 Q In a given month (indiscernible).

15 A In a given month but that was one month that  
16 I remember looking at and it probably was in the past,  
17 you know, 8 months. But other than that I don't  
18 regularly, you know, look at those numbers. So I  
19 couldn't tell you a figure.

20 Q Was there something unusual about that month  
21 that you looked at or it just happened to be a random  
22 month you looked at?

23 A I don't usually cover any of those reports  
24 and probably when somebody was out that, you know, I  
25 received a copy or something. Nothing unusual, no.



1 Q Okay. So anyway, that one month you looked  
2 at in the last 8 months was about 200 and something.

3 A Yes. Yep.

4 Q Okay. And that's in addition to the 6,600  
5 initially and then however many in the other  
6 categories that you did initially, not en masse, but  
7 that you did initially as they came up.

8 A Yes.

9 Q So just rough ballpark, as of this point  
10 would you say it's fair -- is it fair to say there's  
11 been somewhere in the range of 8, 9, 10,000 people  
12 who've been cut off?

13 MS. DILLON: I'm going to object to  
14 that because I think since she doesn't know  
15 specific numbers for the other population  
16 you were asking about she really can't  
17 testify to anything more than the 6,600.

18 MR. TOUBMAN: Okay. All right. A  
19 minimum of 6,600 for sure, but I'm just  
20 trying to get some other figures.

21 BY MR. TOUBMAN:

22 Q And you haven't heard of anybody talking  
23 about a global figure.

24 A No. I have not really.

25 Q Okay. Is there any data that you know of on

# EXHIBIT 2

SHELDON V. TOUBMAN'S FOIA REQUEST  
TO DEPARTMENT OF SOCIAL SERVICES  
Submitted August 12, 2022



**Disability Rights Connecticut**  
"Connecticut's protection and advocacy system"

**846 Wethersfield Avenue  
Hartford, CT 06114**

August 12, 2022

**By E-mail**

foia.dss@ct.gov  
Freedom of Information Act Officer  
Department of Social Services  
55 Farmington Avenue  
Hartford, CT 06105

**Re: Freedom of Information Act Request Regarding Medicaid Termination/Reductions under Families First Coronavirus Response Act**

Dear Sir or Madam:

I am writing to request, under the Freedom of Information Act, Conn. Gen. Stat. § 1-200 et seq., copies of all documents in the possession of your agency, from November 6, 2020 until the date of your response to this request, referring or relating to the numbers of people who have been terminated from Medicaid, or who have had their Medicaid benefits reduced, based on the new exceptions to the Families First Coronavirus Response Act continuous enrollment requirements set forth in the Interim Final Rule published by the Center for Medicare and Medicaid Services on 11/6/20, 42 C.F.R. § 433.400, in each of these categories:

- Individuals who are 65 or older or disabled and on Medicare and also are eligible for a Medicare Savings Program, per 42 C.F.R. § 433.400 (c)(2)(i)(B)
- Individuals who are non-citizens legally present in the United States less than five years and who are no longer under 21 or are no longer in the post-partum period after being pregnant, per 42 C.F.R. § 433.400 (d)(2)
- Individuals who are deemed by your agency not to have been validly enrolled in Medicaid, as defined in 42 C.F.R. § 433.400(a)
- Individuals who were otherwise terminated or had their benefits reduced based on 42 C.F.R. § 433.400.

Also requested are all documents referring or relating to the numbers of people so terminated or reduced in each such category **each month** from when the terminations or reductions began to the present.

This request includes documents in any form, including email correspondence and any attachments thereto. However, as an alternative if this is more efficient for your agency, it can just provide the numbers, initially and for each month thereafter, and dispense with the underlying documents. This will be viewed as full compliance.

I note that this request is made in the public interest and on behalf of clients of Disability Rights CT who are low-income individuals on or formerly on Medicaid, and therefore, pursuant to Conn. Gen. Stat. § 1-212(d), we request that any fees related to responding to this request be waived.

I thank you in advance for your attention to this matter within the timeframe provided by the Act.

Sincerely,

Sheldon V. Toubman  
Litigation Attorney  
(475)345-3169  
sheldon.toubman@disrightsct.org

# EXHIBIT 3

LETTER WITH ATTACHMENT FROM DAVID SEIFEL,  
FOIA OFFICER & LEGISLATIVE LIASON  
FOR DEPARTMENT OF SOCIAL SERVICES,  
IN RESPONSE TO FOIA REQUEST

September 12, 2022

Date: September 12, 2022

**Via E-Mail**

Sheldon V. Toubman, Esq.  
[Sheldon.toubman@disrightsct.org](mailto:Sheldon.toubman@disrightsct.org)  
Disability Rights Connecticut  
846 Wethersfield Avenue  
Hartford, CT 06114

Re: Freedom of Information Act request dated August 12, 2022

Dear Attorney Toubman:

This correspondence is in response to your request dated August 12, 2022, pursuant to the Freedom of Information Act, Conn. Gen. Stat. § 1-200, *et seq.*, for statistics as to the number of individuals who have been terminated from Medicaid or had Medicaid benefits reduced “based on the new exceptions to the Families First Coronavirus Response Act continuous enrollment requirements set forth in the Interim Final Rule published by the Center for Medicare and Medicaid Services on 11/6/20, 42 C.F.R. §433.400” for various categories of individuals as itemized in your August 12<sup>th</sup> request.

Unfortunately, while data within the Department’s possession reflects the number of individuals who have transferred to a Medicare Savings Program (MSP) during the requested timeframe, the Department does not maintain any specific record or coding as to whether each such transfer was pursuant to implementation of the Interim Final Rule (IFR), nor whether such individuals subsequently enrolled in another Medicaid program such as HUSKY C. As a result, the Department is unable to produce, or generate a report that accurately produces, such specific figures pursuant to your request.

However, the Department has generated a report based upon data and information that *is* in the Department’s possession that may be of some assistance. Please be advised that the Department commenced programmatic implementation of the IFR for the 65 and over population in June 2021, and for those under 65 in January 2022. Accordingly, the attached Excel report identifies the number of individuals who have had HUSKY D closed due to enrollment in MSP each week since the Department commenced any potential processing of clients pursuant to the IFR. As you may be aware, aside from the implementation of the IFR, individuals may have had their HUSKY coverage closed during the public health emergency if they passed away, moved out of state, or requested closure of their coverage. Each

individual receives a closure letter explaining the reason for HUSKY D closure as well as a HUSKY C supplemental form that the Department requires to determine HUSKY C eligibility.

The Department trusts that this information is useful.

Best Regards,

*David Seifel*

David Seifel  
FOIA Officer and Legislative Liaison



CATEGORY	File_Date	Count
<b>Over Age 65</b>	6/2/2021	2,451
	6/22/2021	11
	7/2/2021	177
	7/5/2021	128
	7/12/2021	9
	7/19/2021	23
	7/26/2021	8
	8/2/2021	149
	8/9/2021	13
	8/17/2021	8
	8/23/2021	16
	8/31/2021	21
	9/7/2021	39
	9/13/2021	54
	9/20/2021	48
	9/27/2021	43
	10/4/2021	40
	10/11/2021	33
	10/18/2021	64
	10/25/2021	26
	11/1/2021	43
	11/8/2021	364
	11/15/2021	72
	11/22/2021	37
	11/29/2021	55
	12/6/2021	39
	12/13/2021	74
	12/20/2021	69
	12/27/2021	1
	1/3/2022	81
	1/13/2022	25
	1/17/2022	169
	1/24/2022	28
	1/31/2022	182
	2/7/2022	182
	2/14/2022	17
	2/21/2022	29
	2/28/2022	11
	3/7/2022	13
	3/14/2022	14
	3/21/2022	34
	3/28/2022	15
	4/4/2022	20
	4/11/2022	16
	4/18/2022	11
	4/25/2022	38
	5/2/2022	17
	5/9/2022	22
	5/16/2022	25
	5/23/2022	13
	5/30/2022	12
	6/6/2022	15
	6/13/2022	32
	6/20/2022	15
	6/27/2022	10
	7/4/2022	18
	7/11/2022	23
	7/18/2022	9
	7/25/2022	48
	8/1/2022	33
	8/8/2022	6
	8/15/2022	20
	8/22/2022	38
<b>TOTAL</b>		<b>5,356</b>

CATEGORY	File_Date	Count
<b>Under Age 65</b>	1/31/2022	3,897
	2/7/2022	263
	2/14/2022	72
	2/21/2022	39
	2/28/2022	44
	3/7/2022	116
	3/14/2022	150
	3/21/2022	31
	3/28/2022	31
	4/4/2022	176
	4/11/2022	42
	4/18/2022	16
	4/25/2022	60
	5/2/2022	21
	5/9/2022	243
	5/16/2022	49
	5/23/2022	28
	5/30/2022	23
	6/6/2022	208
	6/13/2022	41
	6/20/2022	30
	6/27/2022	27
	7/4/2022	210
	7/11/2022	23
	7/18/2022	51
	7/25/2022	50
	8/1/2022	28
	8/8/2022	208
	8/15/2022	83
	8/22/2022	40
<b>TOTAL</b>		<b>6,300</b>