

77-428
Plaintiffs, et al.
vs.
Defendants.

MEMORANDUM

follow, the Court finds that Plaintiffs' Motion for
Judgment is due to be GRANTED on the issue of liability.

On November 2, 1994, Plaintiffs' filed this
pursuant to 42 U.S.C. § 1983 seeking to enforce th
under the Social Security Act. Plaintiffs,
recipients, seek injunctive relief that
Alabama to ensure necessary medic
all Medicaid recipients, a

forgo needed medical services and has subjected the Plaintiffs to a deterioration of their medical care. Plaintiffs allege that Defendants have failed to develop, implement, and maintain an adequate state plan that ensures necessary non-emergency

transportation for recipients and actually provides such

transportation
transportation

n. Plaintiffs contend that 42 U.S.C. § 1396

[REDACTED]

[REDACTED]

in their briefs.

The court notes that Defendants have not filed their own Motion for Summary Judgment on the basis of the

[REDACTED]

Defendants contend that although Alabama's non-emergency
transportation plan is a "state plan" (as defined in the Act) and
is not a "state law,"

and that the Plaintiffs may not
bring this action because they have not done all they can to get
help with their transportation problems under the current system.

Defendants ask the court to distinguish the Alabama plan from the
Texas plan that a federal district court struck down in Smith v.
Vowell, 379 F. Supp. 139 (W.D. Tex.), aff'd, 504 F.2d 759 (5th

services ("Secretary") has taken a laissez-faire attitude to

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often. Id. In 1992, Harris asks the Department

to review the Department's policies regarding the use of force by its employees. The Department's response is that it is not possible to review the Department's policies regarding the use of force by its employees.

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BERNARD, 2000.

any appointments because there is no way,

the transportation.

id.

stage renal
miles for her

Bertha J. is a Medicaid recipient with end
stage renal disease. (Bertha J. Aff.) She must travel fifty
miles for her hemodialysis treatment.

of her transportation to dialysis constitutes at least a third of her total income. Id. Consequently, she struggles to pay her utilities and other necessities. Id.

Foreparented represent¹³ live plaintiffs has contacted Medicaid employees about transportation requests (see, e.g., 42 C.F.R. § 435.101). They have sought transportation from such sources as the Alabama Kidney Foundation, private individuals, Children's Aid, and the Alabama Institute of the Deaf. Id.

In addition to the evidence presented, the court notes that

Various state officials

in 1991 in which she said that "[w]e do not have a [non-emergency transport

persons in need of medical
Department of Health and Human

care. (Plf. Ex. 54-14). The De

Service, which monitors

informed Alabama that its failure to ensure transportation to recipients presents a long-standing compliance issue. (Ptf. Ex. 8).

On the other hand, C. Russell Black, the Program Manager for Medicaid Transportation for the Alabama Medicaid Agency, avers that Alabama has a working plan for providing

transportation to Medicaid recipients. Black states that the system is working daily to provide transportation to "many" Medicaid recipients. Id. Black

concedes that the system is not "perfect," but argues that the system is working daily to provide transportation to "many" Medicaid recipients. Id.

The provisions in Alabama's Medicaid plan that are intended to provide for ensuring necessary transportation of recipients

and from providers are contained in Defendants' Exhibit 1. The plan states that

[t]he State agency assures that necessary transportation of recipients to and from sources of medical care will be provided as follows:

1. Any appropriate means of transportation which can be obtained without charge through voluntary

Emergency ambulance services are provided eligible recipients when:

(1) Emergency ambulance services are required for emergency to hospital.

(2) Non-emergency ambulance services are required to transport recipients from home to hospital.

(3) Local ambulance services are required to transport recipients from a local hospital to specialized hospital. (Example: From Montgomery to University Hospital in Birmingham.)

Non-Emergency ambulance services are provided eligible recipients in the local area between:

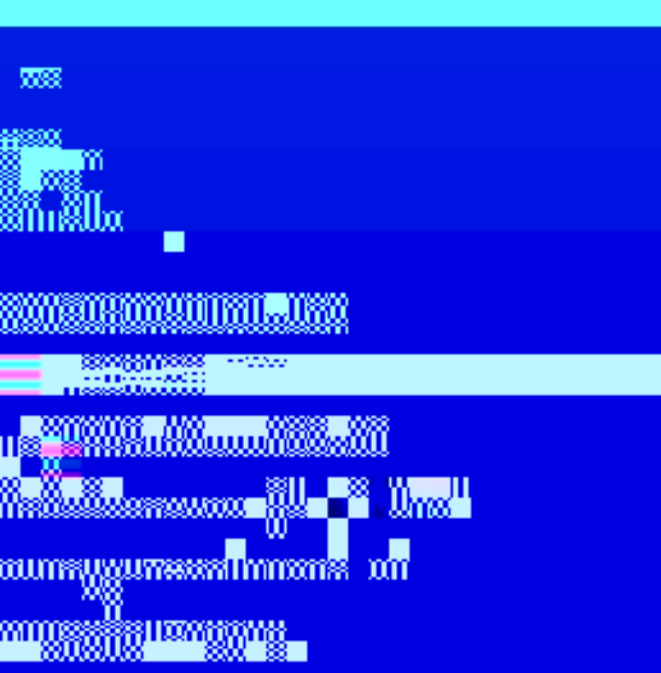
(1) Non-emergency ambulance services are provided between a hospital and specialized clinics for diagnostic tests.

(Does not include physician's office for outpatient services.)

(2) Hospital to hospital or hospital to clinic.

(3) Home to hospital or hospital to home.

(4) Home to clinic for diagnostic tests or procedures.



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depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.

It is beyond the pleadings and by [his] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' which it believes demonstrate the absence of a genuine issue of material fact.

IV. DISCUSSION

A. 42 U.S.C. § 1983

Plaintiff asserts correctly that this court has original jurisdiction over this case because it falls under 28 U.S.C. § 1331.

b. Specific Provisions at Issue

Subchapter XIV of the Social Security Act governs the states for medical assistance. Specifically, the subchapter appropriates funds

for the purpose of enabling each State, as far as practicable under the conditions

and of the State, to pay the cost of hospital and medical services for individuals who are unable to meet the costs of necessary medical services, and (2) to provide for the payment of such services to individuals who are unable to pay for such services.

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plan) as are for the Secretary to be necessary for the proper and efficient operation of the plan[.]

42 U.S.C. § 1396a (emphasis added).

Through regulations promulgated under this section and authority granted by 42 U.S.C. § 1302,⁴ the Secretary has set forth which methods



42 C.F.R. § 431.1 (emphasis added). In particular, Subpart

sets forth State plan requirements that pertain to the proper and efficient administration of such a plan. See, 42 C.F.R. § 431.40(a)(2). The first provision at issue in this case is

contained within Subpart B and is denominated 42 C.F.R. § 431.53.



the methods that the agency will use to meet this requirement.



Secretary's Security Act, 42 U.S.C. § 1302

42 C.F.R. § 431.53 (emphasis added). Clearly, this regulation was issued pursuant to Section 1396a(a)(4)(A), the statutory requirement that a state plan must provide such methods of administration. 42 C.F.R. § 431.53 requires the Secretary to be necessary to the proper and efficient operation of the plan.⁵

Plaintiffs also rely on 42 C.F.R. § 441.62 which provides that an agency must offer to t

the C.F.R. statute it implements section 302(a)(43) and 1905(a)(4)(B) of the Social Security Act. Thus, this regulation is also firmly grounded in the statute.

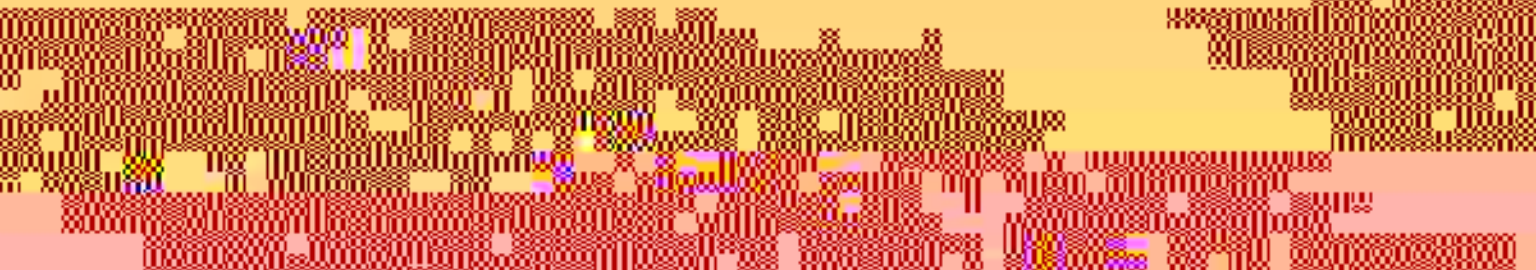
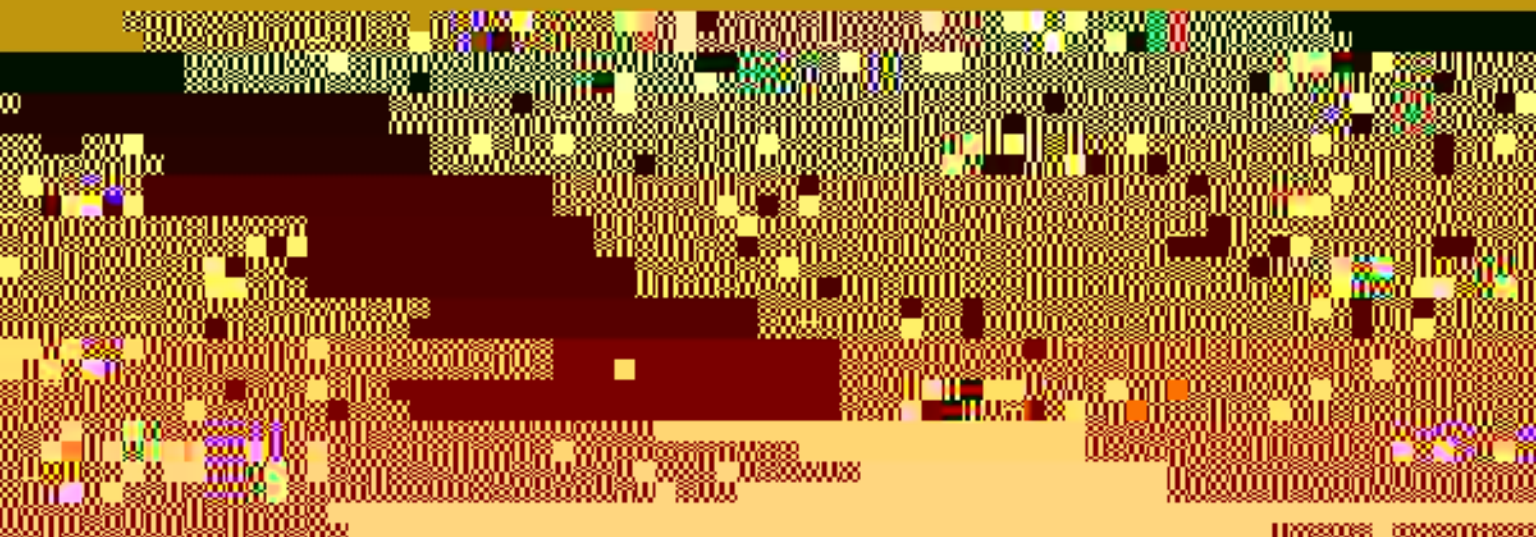
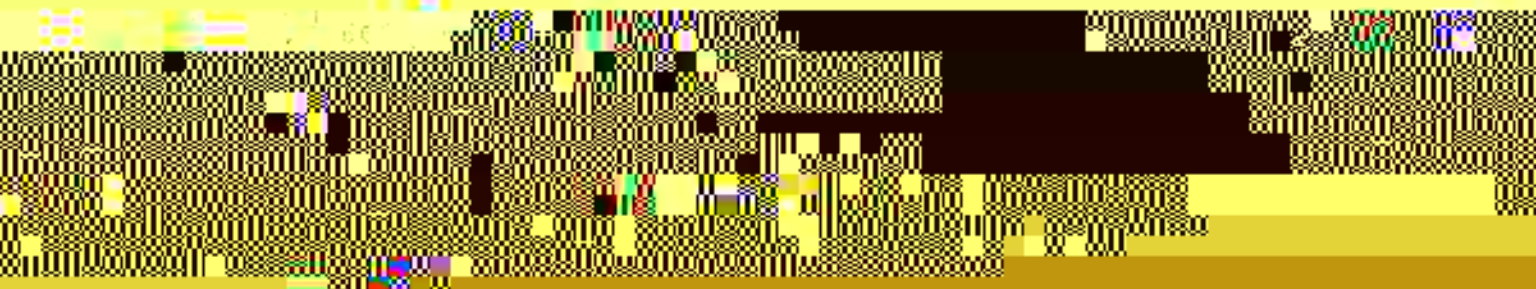
This case was before the court earlier on defendants' Motion to Dismiss. In reaching its ruling on that Motion, the court

carefully analyzed the applicable case law and the particular provisions at issue and determined that Plaintiffs have made allegations necessary to establish that 42 U.S.C. § 405

Alabama's plan is in accordance with the requirements of 42 U.S.C. § 405(a)(4)(A)(i) and (ii). Alabama's plan is inadequate, then this court must find the plaintiffs' motion for summary judgment to be denied. The question is whether the plaintiffs have established that their motion for summary judgment is appropriate relief.

3. Challenge to the constitutionality of the Alabama plan

1987, 81 B.R. 100 (S.D. Cal. 1987), 142, (Cal. Ct. App. 1987) 19
33); Fant v. Stumbo, 552 F. Supp. 617 (W.D. Ky. 1982)¹⁰. Two
cases dealing with challenges to a transportation plan
are especially



Smith v. Vowell involved an action brought by a Texas welfare recipient and others in a similar situation seeking injunctive and declaratory relief. The recipient claimed that Texas had failed to comply with the requirements of the Social Security Act.

The named plaintiff in the Smith case had a variety of medical problems that caused him to need transportation to various health care providers approximately every two weeks.

143. His income was insufficient to cover the costs of these trips to these appointments, and Smith was also unable to pay for these trips. See, e.g., at 143-144. Personal friends, private charities, other

cial work plan with the client, family or other appropriate persons for necessary transportation satisfied its obligations.

... plan.

Furthermore, one of the lessons of this entire case is of the futility of mere "planning" without any resources to follow through with the "plans" formulated. The State urges

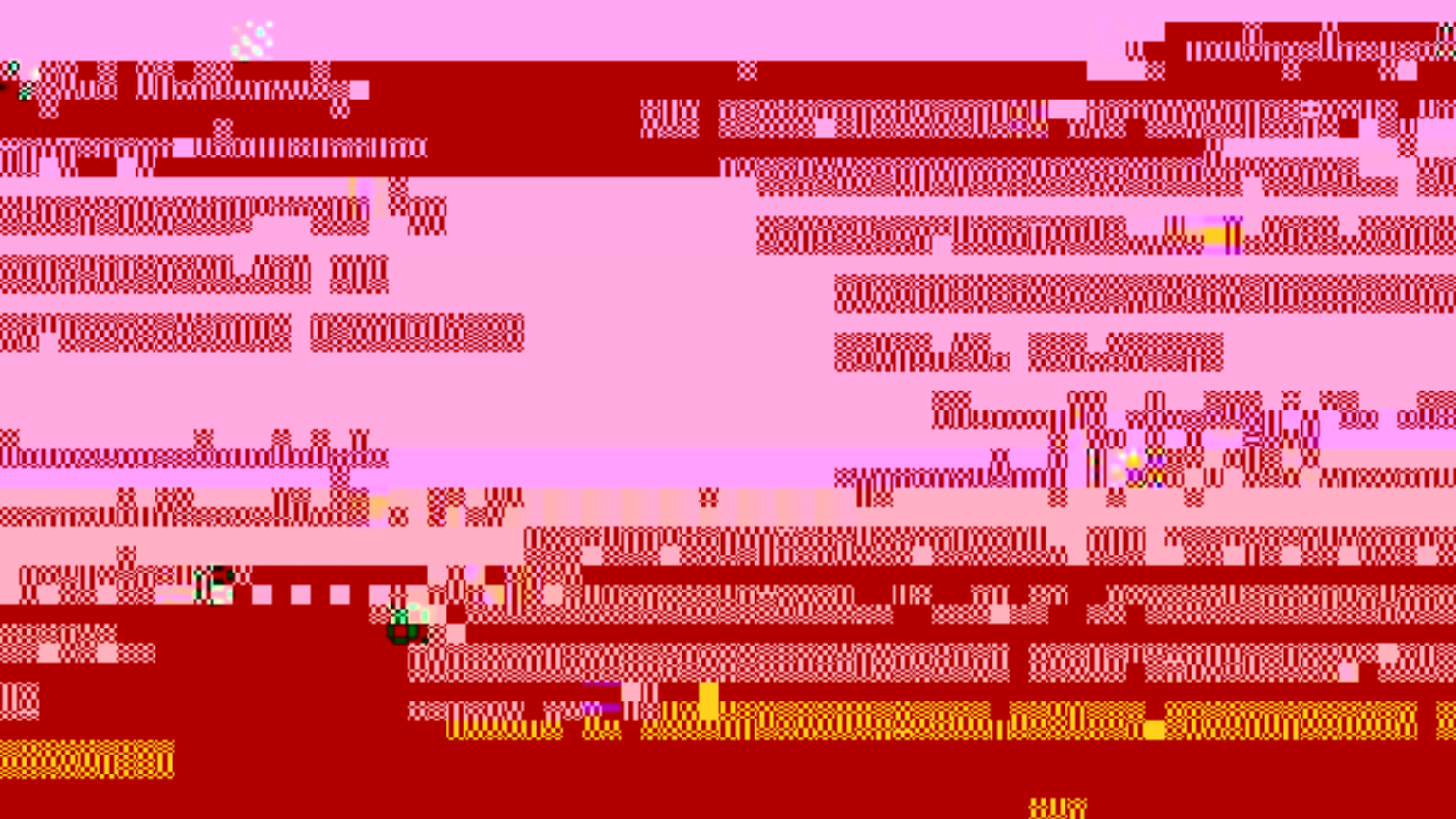


THE UNIVERSITY OF TEXAS AT AUSTIN

1968

THE MEDICAL PROFESSION IN THE STATE OF TEXAS

THE MEDICAL PROFESSION IN THE STATE OF TEXAS



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receiving a request for transportation at #4.

The purpose of the utility is a special screening forms for use in screening requests and keeping records of services requested and provided. Id. A backup mechanism was made available to the county case worker in the event that transportation could not be arranged on the local level, in that the county case worker could then draw upon the assistance of the Medicaid division of the Department of Health and Environment in Nashville using a toll free number. Id. The court further noted that

{i}n addition to the establishment of this formalized structure for meeting the transportation needs of Medicaid recipients,

jurisdiction over the case for twelve months from implementation

so that it could ensure the efficacy of the program. Id.

4. Adequacy of Alabama's Medicaid Plan

The court has a duty to discern whether Alabama's Medicaid plan, while acting under color of State law, have deprived Medicaid recipients of rights granted to them by a federal statute. In this case, the court is asked to determine whether Alabama's state Medicaid plan en

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...The court is well aware that Alabama may exercise discretion in shaping a plan that implements the Social Security Act and the regulations that implement it. Such discretion includes considering the cost to the

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Alabama has not exercised its discretion in a way that ensures that recipients will have necessary transportation providers. The court notes that within its rights to the extent that it

federal requirements. Neither a state's exercise of discretion nor its attempts to keep costs down may override this mandate. This is not to say that the State cannot

to its plan, but it cannot rely exclusively on such volunteers

less to do so, ensures necessary transportation

no evidence exists that cost is a significant barrier to the

implementation of the program, and that the program is

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transportation agencies without overseeing how they carry out that mandate.

The Alabama state plan for transportation for Medicaid

beneficiaries fails to ensure that every eligible individual will have transportation needed for access to care provided.

Medicaid reimbursement

SECTION 104

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volunteers who transport recipients to providers. Alabama's plan does not include any of these features. In fact, like the plan in *Smith v. Vowell*,¹⁰ it relies on emergency ambulance

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situation, Alabama provides no more than Texas did prior to
the decision in Smith v. Vowell.¹³

The court is not saying that unpaid volunteers cannot have a
place

unpaid volunteers can have a place in the community, and that is the
point of the decision. The court is not saying that unpaid volunteers
cannot have a place in the community.

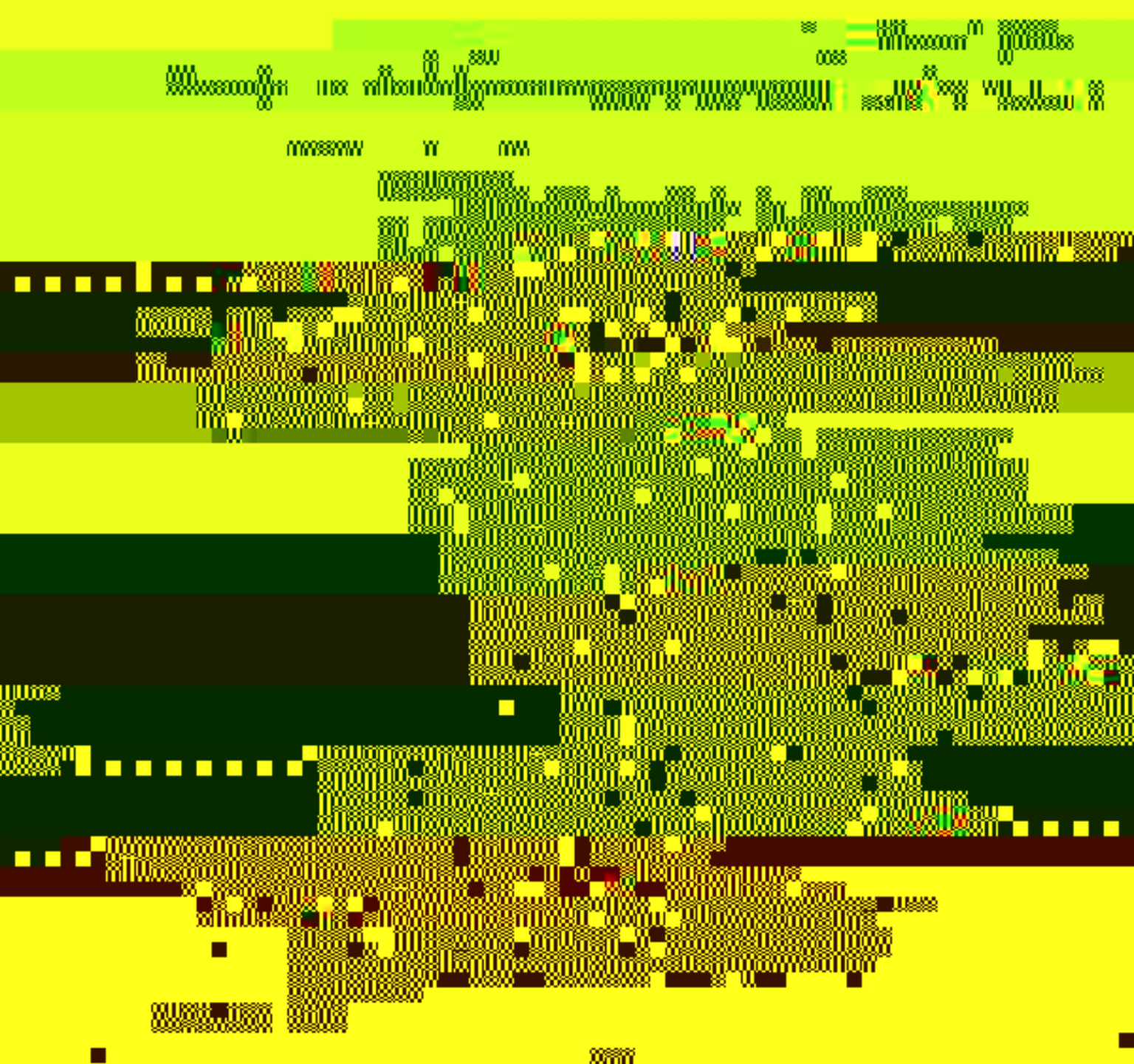
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volunteers cannot have a place in the community.

Perhaps even more troubling is the year-to-year gain for federal requirements placed on states that agree to participate in the Medicaid program.



there had been repeated inquiries about the use of money
Alabama spent on non-emergency transportation which he had
deflected by stating that Al

U. S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR, FBI
SUBJECT: ALABAMA

ALABAMA, JAMES EARL RAY, JR. (AKA);
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exhaust administrative remedies prior to filing a suit under Section 1983, they attempt to recast an exhaustion argument by stating that unless and until Pl

It is undisputed that one class member requested assistance from both the Department of Human Resources and the local Medicaid District Office. (Prince Aff.) He

... advised ...
... to get the ...
... assistance when it appears that it would be ...
... no Medicaid funds ...
... to provide ...
... assistance ... to find a ride from someone

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Security Act, and regulations promulgated thereunder. See

Ambulance Serv. v. Alabama, 36 F.3d 1074, 10

1994); Alabama Hosp. Ass'n v. Beasley, 782 F.2d 955,

Cir. 1983); Smith v. Ves

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or in cases where there is doubt as to how the Department's

Department of the District Court Judge to proceed without the Department's approval. The Department's

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Department of the District Court Judge to proceed without the Department's approval. The Department's

where the care was to be given. Therefore, if a state elects to receive federal funds from the Medicaid program to provide medical services to its poor citizens, it must also ensure that the citizens have transportation.

of the program; it

it is just as clear from undisputed evidence before the court that the Alabama plan does not provide that

assurance. Viewing the evidence in the light most favorable to the Defendants, it is clear that Alabama's plan fails

to provide any method of ensuring non-emergency transportation

when efforts at obtaining it from non-paid volunteers fail.

Because of that, the requirement of ensuring necessary

transportation to every recipient is not met.

A State has absolute discretion in deciding whether to provide free medical care to its poor. It does not have to

participate in the federal Medicaid program. But, if

it chooses to participate and to receive money from this federal

program, as

Alabama has

Although some might argue that scarce Medicaid funds would be better utilized if allocated to services rather than to transportation, that is a policy argument best directed to

the Legislature. The Department of Transportation is not responsible for the allocation of Medicaid funds. The Department of Transportation is responsible for the transportation of Medicaid recipients. The Department of Transportation is responsible for the transportation of Medicaid recipients.

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