

<p>DISTRICT COURT, CITY & COUNTY OF DENVER, COLORADO Denver City & County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202</p>	<p>DATE FILED: August 1, 2014 12:00 PM FILING ID: C5E781D05C084 CASE NUMBER: 2014CV33054</p>
<p>Plaintiff(s): LAMAR RICHARDSON and JENNIFER RICHARDSON</p> <p>v.</p> <p>Defendant(s): STATE OF COLORADO, DEPARTMENT OF PERSONNEL & ADMINISTRATION; and KAISER FOUNDATION HEALTH PLAN OF COLORADO</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No.</p> <p>Div.:</p>
<p>William S. Finger, #7224 Andrew M. Newcomb, #37032 Frank & Finger, P.C. 29025-D Upper Bear Creek Road P.O. Box 1477 Evergreen, Colorado 80437-1477 Telephone: (303) 674-6955 Facsimile: (303) 674-6684 e-mail: bill@fn-pc.com</p> <p>COUNSEL TO PLAINTIFFS</p>	
<p align="center">COMPLAINT AND JURY DEMAND</p>	

This is an action for declaratory relief and for contract damages related to denied benefits for which the Plaintiffs were entitled to as a result of the employment of Lamar Richardson with the State of Colorado.

INTRODUCTION

1. Contractual benefits are part of the employment package offered to State employees for which Mr. Richardson and his wife, as a dependent, were fully able to receive and which were denied to them by the State and by Kaiser Permanente.

JURISDICTION

2. This Court has jurisdiction as a court of general jurisdiction. Venue is proper in that this action is brought against the State of Colorado. Further, venue in the Denver District Court is proper in that the Department of Personnel & Administration is housed and located in the City and County of Denver. Kaiser Permanente also operates businesses in the City and County of Denver.

PARTIES

3. Lamar and Jennifer Richardson are residents of the State of Colorado and reside in Colorado Springs, Colorado. Mr. Richardson is an employee of the Department of Corrections and at all relevant times pertaining to this lawsuit was an employee. Jennifer Richardson is the wife of Lamar Richardson and at all relevant times was the wife of Mr. Richardson, who was eligible for dependent coverage under health programs offered by the State as a benefit and term and condition of employment. Mr. Richardson chose Kaiser Permanente as the medical provider for medical coverage, but was denied such coverage and subsequently Kaiser Permanente denied Mrs. Richardson medical treatment for which she was entitled pursuant to contracts of the parties

4. The State of Colorado is a sovereign entity who employs thousands of employees. One of the individuals employed by the State of Colorado is Lamar Richardson. Mr. Richardson works for the Department of Corrections and as an employee of the State of Colorado is entitled to benefits and rights to programs offered by the State of Colorado to employees, including health insurance coverage or plans. The State of Colorado also provides coverage for spouses upon the election of the State employee.

5. The Department of Personnel & Administration is an entity of the State of Colorado that handles the contracting for state health insurance plans for state employees. The Department of Personnel & Administration (hereafter "DPA") is headed by an Executive Director, who oversees actions and conduct by subordinate employees. On December 12, 2011, the Department of Personnel & Administration, through its Executive Director, admitted that it had erroneously excluded Jennifer Richardson from coverage and that benefits to Mrs. Richardson should not have been cancelled as they were by the Department, which on information and belief said cancellation occurred on August 1, 2011.

6. Kaiser Permanente Insurance Company, is a California company doing business in the State of Colorado. Kaiser Permanente offered to the State of Colorado a health plan program. The Richardsons enrolled in the Kaiser Permanente program while Mr. Lamar Richardson was an employee of the Department of Corrections. The claims and actions against Kaiser Permanente relate to their refusal to provide Mrs. Richardson benefits to which she was

entitled after the State of Colorado notified the Richardsons and Kaiser Permanente that they had wrongfully denied Mrs. Richardson coverage under Mr. Richardson's election of coverage.

FACTUAL ALLEGATIONS

7. Plaintiffs reallege and incorporate by reference paragraphs 1 - 6 above.

8. At all times relevant hereto Mr. Richardson was an employee of the State of Colorado and eligible for benefits offered pursuant to his employment with the State of Colorado, including but not limited to medical, dental and life insurance. Additionally, Mr. Richardson's spouse, same gender domestic partner and children were also eligible for such coverage. Coverage pursuant to the State program existed for Mrs. Richardson and the children in calendar year 2010.

9. In calendar year 2011, the State of Colorado communicated to State of Colorado employees, including Mr. Richardson, that information must be provided by May 23, 2011 for dependent coverage and that if information was not provided there would be cancellation of existing coverages for dependents.

10. The Richardsons provided to the State of Colorado and/or its designated agent, the required information concerning Mrs. Richardson being the spouse of Mr. Richardson and medical information about the children for a continuation of coverage.

11. On May 10, 2011, the Department of Corrections sent out information concerning dependent verification for benefits. This message relating to providing additional information for which information was not already provided. Mrs. Jennifer Richardson was already on Mr. Lamar Richardson's coverage information and thus, the State of Colorado already had existing information showing coverage.

12. On or around July 22, 2011, Plaintiffs received from the State of Colorado written notice indicating that documentation verifying dependent eligibility for coverage under State medical, dental or life insurance plans had not been received. The notice indicated that additional information must be received by August 1, 2011 and that coverage would continue through that date.

13. On July 29, 2011 the Richardsons timely submitted the additional information showing that they were married and other required information.

14. On August 31, 2011, the Richardsons received a written communication from the State and DPA saying that Jennifer Richardson's medical and life insurance coverage had been terminated effective September 1, 2011.

15. At the time of receiving this information Mrs. Richardson had a serious medical condition for which regular medical treatment was necessary. The termination of medical benefits, which was improper, materially altered the medical treatment that Mrs. Richardson could obtain.

16. On September 1, 2011, Mrs. Richardson called the State of Colorado and talked with a representative of the Department of Personnel & Administration. In the conversation Mrs. Richardson was told that the State did not have the necessary information which included a marriage certificate, a bank statement and an appeal form.

17. The Richardsons had previously submitted that material. Mrs. Richardson advised the representative of the State of that fact. It made no difference. Following this conversation the Richardsons filed an additional appeal form with attached materials.

18. On October 12, 2011, the State of Colorado, Department of Personnel & Administration, through the Executive Director, denied the appeal and request for reinstatement of the medical insurance and coverage. This letter from Kathy Nesbitt inaccurately claimed that certain paperwork had not been provided and that the termination dated August 31, 2011 for Mrs. Richardson was the correct decision.

19. The Richardsons thereafter sought reconsideration from the Department of Personnel & Administration, utilizing the services of an attorney.

20. On December 12, 2011, the Department of Personnel & Administration, through its Executive Director Kathy Nesbitt, reversed its decision and reinstated Mrs. Richardson effective September 1, 2011 and provided the Richardsons a letter admitting error.

21. The letter affirmatively acknowledged that the benefits should not have been cancelled because materials and documents were received and faxed to the employee benefit unit on July 29, 2011. A copy of that letter is **Exh. A** to this Complaint.

22. The termination of Mrs. Richardson's benefits from September 1, 2011 into December 2011, caused Mrs. Richardson to be unable to receive the medical treatment needed for her medical condition. It further caused the Richardsons to incur substantial medical expenses that had to be paid for out of pocket.

23. Additionally, upon resuming medical treatment with Kaiser, the pre-existing medications were not effective and a more expensive medication was required.

24. Kaiser initially refused to provide the required medication claiming that the medication prescribed pre-termination of benefits was sufficient.

25. Kaiser's refusal to provide needed medication was a breach of its contractual obligations to the Richardsons, pursuant to the insurance plan or health plan secured by the Plaintiff through the State of Colorado.

26. As a direct result of the breach of contract and denial of benefits to the Richardsons and the failure of Kaiser to provide the required and necessary medication services that was called for pursuant to the contractual undertakings of Kaiser with the State, Plaintiffs have been injured. The direct and foreseeable injuries to the Plaintiffs is that Mrs. Richardsons' medical expenses have substantially escalated and will continue to escalate throughout her life.

27. Additionally the Richardsons have incurred substantial medical bills from providers, which have gone to judgment and for which the Richardsons are required to pay out of pocket for the treatment and care that should have been provided.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Declaratory Judgment Against the State of Colorado and DPA)

28. Plaintiffs reallege and incorporate by reference paragraphs 1 through 27 above.

29. Article 51 of Title 13, C.R.S., provides for declaratory judgments that relate to the legal relationships of parties and the obligations of the parties pursuant to contract.

30. Rule 57 of the Colorado Rules of Civil Procedure likewise mirror the provisions for declaratory judgments.

31. Plaintiff Lamar Richardson, as an employee with the State of Colorado, had certain contractual rights with the State, including the right for certain benefits for himself and his spouse.

32. Jennifer Richardson is the spouse of Lamar Richardson and a person who was enrolled in the State health benefit program. Mr. and Mrs. Richardson had rights in contract, either direct contract rights or as third party beneficiary rights to receive medical coverage and care.

33. Pursuant to Colorado Revised Statute and Rule 57 of the Colorado Rules of Civil Procedure, these parties seek declaratory relief concerning the existence of their contractual rights and a determination that the State of Colorado breached the Richardsons' contractual rights by failing to timely renew coverage for Mrs. Richardson and initial termination of coverage on September 1, 2011.

34. Plaintiffs further seek a declaration of whether they are entitled to obtain damages for the contractual breach under C.R.C.P. Rule 57 provisions for further relief, which would include amounts for which the Plaintiffs should be reimbursed because of the State's wrongful breach of contract.

**SECOND CAUSE OF ACTION
(Breach of Contract)**

35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34 above.

36. Mr. and Mrs. Richardson both had contractual rights with the State of Colorado to receive health care coverage and the payment of benefits pursuant to the terms and conditions of Mr. Richardson's employment with the State of Colorado.

37. The State of Colorado and Department of Personnel & Administration, as the administrator for the State of Colorado, breached the contractual rights of the Richardsons by wrongfully removing Mrs. Richardson from coverage effective September 1, 2011.

38. As a direct and proximate foreseeable consequence of the wrongful removal of Mrs. Richardson from insurance coverage, Mrs. Richardson was deprived of certain medical treatment, has incurred medical expenses, will incur medical expenses in the future, and has incurred additional out-of-pocket expenses relating to her care and treatment.

39. The wrongful breach of contract also threatens Mrs. Richardson's future health and life expectancy.

40. The damages caused to Mrs. Richardson were clearly foreseeable and Plaintiffs are entitled to contractual compensatory damages against the State of Colorado and the Department of Personnel & Administration.

**THIRD CAUSE OF ACTION
(Declaratory Judgment Against Kaiser Permanente)**

41. Plaintiffs reallege and incorporate by reference paragraphs 1 through 40 above.

42. Plaintiffs seek a declaratory judgment that they had contractual rights with Kaiser Permanente, either as direct insureds or alternatively as third party beneficiaries to the State's arrangement with Kaiser Permanente.

43. Plaintiffs further seek declaratory judgment against Kaiser Permanente relating to non-treatment or Kaiser Permanente refusal to provide proper care and medication to Mrs. Richardson and that such constituted a breach of contractual obligations.

44. Plaintiffs also seek further relief in determining what, if any, expenses should be repaid for obtaining treatment that Kaiser refused to provide.

**FOURTH CAUSE OF ACTION
(Breach of Contract by Kaiser Permanente)**

45. Plaintiffs reallege and incorporates by reference paragraphs 1 through 44 above.

46. Kaiser Permanente, in offering an insurance plan to the State of Colorado for the benefit of its employees and acceptance by the State of Colorado, entered into a contract with the State of Colorado for the provision of necessary medical care and treatment for employees at certain prices.

47. Plaintiffs Lamar and Jennifer Richardson had contractual rights in the insurance plan or health care plan either directly or as third party beneficiaries of the contract between Kaiser Permanente and the State of Colorado.

48. Kaiser Permanente wrongfully and improperly refused treatment for Jennifer Richardson that was covered treatment for which Mrs. Richardson was qualified. The refusal and denial of treatment and medication to Mrs. Richardson, which was called for the treatment of Mrs. Richardson's condition, was a breach of the contractual undertakings of Kaiser Permanente.

49. Kaiser Permanente is liable to the Richardsons for breach of its contractual undertakings, including out-of-pocket expenses for obtaining medical treatment, additional expenses in obtaining medical treatment for the worsening of a condition, and other out-of-pocket expenses incurred by the Richardsons.

50. Kaiser Permanente acted with a reckless disregard of the rights and obligations of the Richardsons and Plaintiffs additionally seek emotional upset and distress damages against Kaiser Permanente.

PRAYER FOR RELIEF

Plaintiffs requests that this Court enter the following relief:

1. Make the necessary declaratory judgments and orders concerning the contractual rights between the Plaintiffs and Defendants

2. The Court find that the Defendants each breached contracts with the Plaintiffs or breached obligations to the Plaintiffs as third party beneficiaries of contracts and award Plaintiffs damages as proven at trial.

3. Plaintiffs request an award of interest from the earliest possible date.

4. Plaintiffs demand a trial on all issues triable by a jury.

DATED this 1st day of August, 2014.

FINGER & NEWCOMB, P.C.

s/William S. Finger

Signature on File

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