

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

ARE YOU OR A FAMILY MEMBER ON MEDICAID?

**HAVE YOU OR A FAMILY MEMBER BEEN DIAGNOSED
WITH HEPATITIS C?**

**WERE YOU OR A FAMILY MEMBER DIAGNOSED WITH
HEPTATIS C AND DENIED TREATMENT WHILE YOU WERE
ON MEDICAID?**

YOU COULD BE ENTITLED TO NEW DRUG TREATMENTS.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- You are getting this notice because:
 - You were, are, or will be enrolled in Medicaid in Kansas on or after October 31, 2016, and require or expect to require testing or treatment for Hepatitis C; or
 - While you were on Medicaid, you asked for treatment for Hepatitis C and were denied treatment for Hepatitis C.
- If you have Hepatitis C and were, are, or will be enrolled in the Kansas Medicaid Program, guidelines for treatment have changed. You could get treatment with new highly effective drugs such as Mavyret® and others.
- If you are no longer on Medicaid, check to see if you can go back on Medicaid. If you can, you get treatment with new highly effective drugs such as Mavyret® and others
- A liver fibrosis score tells how badly a person's liver has been scarred by Hepatitis C. Under the old guidelines, people with fibrosis scores of F0, F1, and most with F2, could not get treatment with the new drugs. Only people with fibrosis scores of F3 and F4 were approved. **As the result of a lawsuit, that has now changed. Fibrosis score does not matter anymore. If you go back on Medicaid in Kansas, you cannot be denied treatment because your fibrosis score is too low.**
- If you get back on Medicaid, go see your doctor. Take this notice with you, show it to your doctor, and ask if the drugs are right for you. If so, ask your doctor to apply for the new drugs.
- If you cannot get back on Medicaid, you can talk to a lawyer. You may have a claim under state law.

- If you have Hepatitis C and are on Medicaid go see your doctor. Take this notice, show it to your doctor, and ask if the new drugs are right for you. If they are, ask your doctor to apply to Medicaid.
- Defendants told some people with lower fibrosis scores they could not get the new drugs for Hepatitis C treatment. Two people were denied because of their fibrosis scores and sued Defendants in a class action lawsuit in federal court. The case is called *Harper et al. v. Anderson et al.*, Case No. 5:18-CV-4008-DDC-GEB.
- Both sides decided to settle the case. Defendants agreed not to deny the new drugs based on fibrosis score. If you are a member of the class, then you have certain rights. These are explained below.

| YOUR LEGAL RIGHTS IN THIS LAWSUIT | |
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| YOU MAY COMMENT ON THE PROPOSED SETTLEMENT | You have the right to comment on, object to, or support the proposed Settlement Agreement. The Court will decide whether to approve or reject the proposed Settlement Agreement after a Final Hearing on Thursday, April 18, 2019 at 9:00 a.m. at the Federal Courthouse, located at 444 S.E. Quincy, Topeka, Kansas, 66683, Courtroom 403 (DDC). |
| YOU MAY APPLY FOR TREATMENT WITH MAVYRET® OR A SIMILAR DRUG. | Your doctor may apply for coverage with one of the new Hepatitis C drugs. You cannot be turned down because of your fibrosis score. If you have Hepatitis C, go see your doctor to see if treatment with one of the new drugs is right for you. |
| YOU MAY DO NOTHING. | If you do nothing, then you will remain in the class. If you decide to get treatment, you cannot be turned down because of your fibrosis score. Hepatitis C is harmful to your health. For example, it can cause cancer and other serious health problems. Go see a doctor about treatment options. |

FREQUENTLY ASKED QUESTIONS

1. Why did I get this notice?

You got this Notice because you or your family member may be someone who:

- (1) Was, are, or will be enrolled in the Medicaid Program on or after October 31, 2016;
- (2) Need, or are expected to need treatment for Hepatitis C with Mavyret® or other new Hepatitis C drugs; and
- (3) Did not meet the coverage criteria for the drugs adopted by the state Medicaid before July 11, 2018 because, for example, the state determined that you were not sick enough to get treatment with the new drugs.

2. What is this lawsuit about?

Two people on Medicaid brought this lawsuit. They said the state was keeping some people on Medicaid from getting the Hepatitis C treatment they needed. They said the state was using a person's fibrosis score to decide who got treatment. Only people with fibrosis scores of F3 and

F4, and some with an F2 score were getting treatment. A person's fibrosis score tells how much Hepatitis C has scarred the person's liver. A higher score means more scarring.

They asked the judge to say that using fibrosis scores this way was not allowed under the law. They wanted people with lower fibrosis scores to get treated with the new Hepatitis C drugs. These new drugs usually cure Hepatitis C.

3. What is a class action, and who is involved?

In a class action lawsuit, one or more people ("Class Representatives") sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." All of the Class Members are called the Plaintiffs. One court resolves the issues for everyone in the Class. In this case, Jamie Harper and Jessica Owens are people on Medicaid with Hepatitis C. They are the Class Representatives. The defendants are the Secretary of the Kansas Department of Health and Environment and the Director of the Division of Health Care Finance. Their agencies operate the Medicaid program in Kansas.

4. What has happened in this case?

Five months after the case was filed, the parties agreed to a settlement in which the state agreed to stop using fibrosis scores to decide who could get the new Hepatitis C drugs. You can see the class action complaint and the Minute Order of Settlement at: www.aclukansas.org/medicaidhepc

5. What does the proposed Settlement Agreement say?

The bullet points below tell you the main points of the proposed Settlement Agreement. You can see the whole Agreement online at: www.aclukansas.org/medicaidhepc

The judge will hold a hearing on the Agreement. The judge has to approve the Agreement before it takes effect. If you need treatment, do not wait for the judge's approval. **You may be eligible to get Mavyret® or one of the other new drugs right now.**

- **Coverage of Mavyret® and other similar drugs for the treatment of Hepatitis C**

The Agreement says the state will follow a newly adopted protocol for the Prior Authorization needed by Medicaid enrollees to receive drugs for the treatment of Hepatitis C. Fibrosis scores cannot be used to deny coverage for Mavyret® or one of the other new drugs.

- **Attorney's Fees, Litigation Costs, and Costs of Claims Administration**

Under the proposed Settlement Agreement, the State will pay the attorneys' fees of the attorneys representing the class and the money they paid out of pocket on behalf of the class, in an amount not to exceed \$68,000. The amount actually awarded will be based

upon the attorneys' normal hourly rates and the time they spent on the case. The court will determine the exact amount of attorney fees and out-of-pocket costs to be awarded.

- **Case Contribution Awards**

The judge will be asked to award an amount not to exceed \$7,500 each to Jamie Harper and Jessica Owens, who served as class representatives. The judge must approve the case contribution awards.

6. How do I respond to the proposed Settlement Agreement?

- **You May Comment on, Object to, or Support the Proposed Settlement Agreement**

The judge will hold a final hearing on the proposed Settlement Agreement on April 18, 2019 at 9:00 a.m. at the Federal Courthouse, located at 444 S.E. Quincy, Topeka, Kansas, 66683, Courtroom 403 (DDC).

You do not have to attend the hearing. You can if you want to.

You can send comments to the judge instead of coming to the hearing. Comments must be in writing. You must send them to the judge before the hearing.

You may attend the hearing, and you may bring a legal representative if you wish at your own expense. You must send the judge a letter before the hearing if you want the judge to allow you to speak at the hearing. Send your letter to:

Clerk of Court, Harper v. Andersen, Case 5:18-cv-04008
U.S. Courthouse
500 State Avenue, Suite 628
Kansas City, Kansas 66101

If you choose to send written comments or come to the hearing, the judge must get your letter no later than February 28, 2019. Any attorney hired by you for the purpose of appearing and/or making an objection shall file his or her entry of appearance at the Settlement Class Member's expense no later than 5 days after the objection has been filed, with service on Class Counsel and Defendants' Counsel under the Federal Rules of Civil Procedure. You also have to send a copy of your letter to all the attorneys. Mail to:

J. Stan Sexton
SHOOK HARDY & BACON
2555 Grand Blvd.
Kansas City, MO 64108
Class Counsel

and

Dennis D. Depew and Shon Qualseth
OFFICE OF THE KANSAS ATTORNEY GENERAL
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612-1597
Counsel for the Defendants

7. Where can I get more information?

- For more information, go to: www.aclukansas.org/medicaidhepc
- You can email Class Counsel at: medicaidhepc@aclukansas.org
- You can call Class Counsel at: ACLU-Kansas (913) 490-4108 ask for “Medicaid Hep. C”