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15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO

17 MATERNAL AND CHILD HEALTH
18 ACCESS,

Petitioner,

19 vs.

20 DEPARTMENT OF HEALTH CARE
21 SERVICES, MEDICAL RISK
22 MANAGEMENT INSURANCE BOARD,
23 SANDRA SHEWRY, in her official
24 capacity as Director of Department of
25 Health Care Services and CLIFF
26 ALLENBY, in his official capacity as
27 Chair of the Medical Risk Management
28 Insurance Board; DOES I-XX,

Respondents.

PETITION FOR WRIT OF MANDATE AND
INJUNCTIVE RELIEF

(Cal. Civ. Proc. Code § 1085)

**PETITION FOR WRIT OF MANDATE
AND INJUNCTIVE RELIEF
CCP § 1085**

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INTRODUCTION

1. This is a facial challenge to California Insurance Code¹ § 12698(a), which bars otherwise eligible low-income women from receiving critical prenatal health care services through California's Access for Infants and Mothers (AIM) insurance program solely because they have not been residents of the state for at least six continuous months before applying for benefits. Because this requirement discriminates against pregnant women who are new California residents on the basis of how long they have lived in the state, it violates both the California and United States Constitutions.

2. Early access to prenatal care through programs like AIM is essential for the health of both mother and child. Prenatal care can help prevent premature deliveries and low birth weights. When pregnant women do not receive prenatal care, or experience delays in accessing it, they and their babies face increased health risks—risks that may even put the mother's or newborn's life in danger.

3. In addition, without health insurance coverage, working poor pregnant women and their families can be ruined by debt for the medical care that they and their children need-- coverage for which they would qualify except for the AIM program's illegal six-month in-state residency requirement being challenged here.

4. Petitioner Maternal and Child Health Access (MCH Access) is a non-profit organization that advocates for improving health programs and policies for low-income families. Petitioner seeks a writ of mandate to prohibit Respondents, i.e., the State agencies and officials responsible for administering the AIM program, from enforcing or otherwise applying § 12698(a)'s six-month in-state residency requirement.

PARTIES

5. Petitioner MCH Access is a California non-profit organization incorporated in 1996. MCH Access advocates for improving health programs and policies for low-income families,

¹ References are to California Insurance Code, unless otherwise indicated.

1 including the AIM program and its policies. Petitioner brings this action as a representative of
2 the public interest under California Code of Civil Procedure (CCP) § 1085.

3 6. Respondent Department of Health Care Services (DHCS) finances and administers a
4 number of California's health insurance programs, including AIM.

5 7. Respondent Medical Risk Management Insurance Board (MRMIB) is the state agency
6 charged with administering the AIM program (§§ 12695.08, 12696), under authority delegated
7 from respondent DHCS. MRMIB has authority to set AIM eligibility criteria (§ 12696.05 (a))
8 and to determine the eligibility of applicants for AIM (§ 12696.05(b)).

9 9. Respondent Sandra Shewry is the Director of DHCS. Respondent Shewry is sued in
10 her official capacity only.

11 10. Respondent Cliff Allenby is the Chair of the MRMIB Board. Respondent Allenby is
12 sued in his official capacity only.

13 11. DOES I-XX are individuals and entities whose true names are unknown to Petitioner
14 at this time. Petitioner will seek leave of this court to amend their true names and capacities
15 when they have been ascertained.

16 **FACTUAL ALLEGATIONS**

17 **AIM and Its Importance For Pregnant Women and Children**

18 12. The AIM program, set forth at §§ 12695 *et seq.*, provides comprehensive health
19 insurance benefits to eligible low-income pregnant California residents through publicly-
20 subsidized managed care plans. The regulations governing the program are set forth at Title 10,
21 California Code of Regulations (CCR), §§ 2699.100 *et seq.*

22 13. AIM serves uninsured or underinsured women with family income from 201% to
23 300% of the federal poverty level (e.g., \$2,335 to \$3,500 a month for a family of two in 2008) at
24 the time of her application. §§ 12698.05 and 12698(b)(2); 10 CCR § 2699.200 (b)(1)(C), (F)
25 and (G). At these levels, AIM participants have too much income to qualify for the Medi-Cal
26 program, California's program serving pregnant women with income at or below 200% of
27 poverty. AIM recipients are often referred to as the "working poor" and must pay "subscriber

1 contributions” (§§ 12695.24, 12698(c)), equal to 1.5% of their gross household income (10 CCR
2 § 2699.400(a)(4)).

3 14. In order to qualify for AIM, a woman must be less than 30 weeks pregnant. 10 CCR
4 § 2699.201(d)(1)(h).

5 15. A woman must also be a resident of California to qualify for AIM. 10 CCR §§
6 2699.200(b)(1)(B) and 2699.100(u). Petitioner does not challenge this requirement.

7 16. However, under the requirement that is the subject of this litigation, a woman must
8 also have resided in California for at least the last six continuous months before the date of her
9 AIM application. § 12698(a); 10 CCR § 2699.200(b)(1)(B), 2699.201(d)(1)(P).

10 17. As part of the AIM application process, a pregnant woman must declare and certify
11 in writing not only that she is “a resident of the State of California” but also that she has “lived
12 here for at least six continuous months prior to the date of signing this application for
13 enrollment.” (See page A3 of AIM application, attached to this petition as Exhibit 1 and
14 incorporated by reference as though fully set forth herein.)

15 18. MRMIB—the state agency that administers AIM-- has ten days from the date it
16 receives what it considers to be a “complete” AIM application to decide whether to grant or
17 deny a woman AIM enrollment. 10 CCR § 2699.203(a). Health insurance coverage begins
18 within ten days after the date the woman’s application for the AIM program is approved. 10
19 CCR § 2699.209(a).

20 19. Once enrolled into the AIM program, the recipient is entitled to comprehensive
21 health insurance benefits (not limited to pregnancy-related care) for the duration of her
22 eligibility.

23 20. AIM eligibility ends on the 60th day after the pregnancy ends. § 12698.30(a); 10
24 CCR § 2699.209(b).

25 21. Qualifying for AIM health insurance coverage has important legal consequences for
26 a woman’s child, who becomes an “AIM-linked infant” (§ 12695.03):

1 (a) First, newborns whose mothers had AIM coverage are “deemed eligible” for one year
2 for Healthy Families, which is another of California’s publicly-funded health insurance
3 programs. § 12693.765. “Deemed eligibility” means the newborn automatically qualifies at
4 birth and continuously to the first year birthday for health insurance without having to follow
5 Healthy Families’ usual application process. *Id.* Following the usual Healthy Families
6 application process, a requirement when there is no “deemed eligibility”, can result in long
7 delays in a newborn’s getting health insurance coverage.

8 (b) Second, infants under age one year without “deemed eligibility” for Healthy Families
9 through the mother’s AIM enrollment may not qualify for Healthy Families at all since the
10 Healthy Families income eligibility limit is 250% of the poverty level while the AIM limit for
11 the mother is 300% of poverty.

12 (c) Third, the children of AIM mothers remain eligible for the Healthy Families
13 insurance program until age two years so long as family income does not exceed 300% of the
14 poverty level. In contrast, children whose mothers did not have AIM coverage are excluded
15 from Healthy Families at any age if the family’s income is over 250% of poverty.
16 §12963.70(a)(6)(A)(ii).

17 **The Effects of AIM’s Six-Month In-State Residency Requirement**

18 22. Time is of the essence in accessing prenatal care. Prenatal care is especially
19 important to maternal and fetal health in the first trimester.

20 23. As set out above, § 12698 conditions AIM eligibility on residing in California for at
21 least six continuous months before application. The six-month eligibility requirement means
22 that pregnant women who are new residents in the state may not be able to access prenatal care
23 through AIM until very late in pregnancy, even as late as the third trimester. Moreover, women
24 who are more than 30 weeks pregnant or who have already delivered their babies by the time
25 they have resided in California for six months cannot qualify for AIM at all.

1 24. Section 12698's six-month residency requirement deprives pregnant women of health
2 insurance to which they are entitled as well as access to the medical services they need for a
3 healthy pregnancy and newborn.

4 25. Low-income pregnant women who are uninsured are less likely to access early or on-
5 going prenatal care or medically necessary post-partum care. Extensive post-partum care may
6 be necessary in the event of a difficult miscarriage or a birth with major medical complications.

7 26. A delay of up to six months in accessing prenatal care through AIM, or having to
8 forego prenatal care under AIM altogether, can literally mean the difference between a positive
9 and a poor birth outcome. Women with one or more chronic medical conditions that require on-
10 going monitoring and treatment, such as high blood pressure, diabetes, or heart disease, are
11 high-risk patients during pregnancy. Risks to the newborn from the woman's lack of necessary
12 medical care during pregnancy may include life-long disability or even death.

13 27. Uninsured low-income pregnant women denied AIM coverage who do receive
14 medical care face bankrupting debt, especially for emergency medical care provided at a hospital
15 and expensive labor and delivery services. Low-income women in poor health and with high-
16 risk pregnancies are most likely to require and seek emergency medical care that they cannot
17 afford but need literally for survival.

18 28. As noted in paragraph 21, children from birth to the age of two years whose mothers
19 are denied AIM coverage have more difficulty qualifying for health insurance coverage for
20 themselves through the Healthy Families program or may be excluded from Healthy Families
21 altogether in circumstances where a child's Healthy Families eligibility would instead have been
22 legally assured had the mother had AIM coverage on the day the child was born.

23 29. The first year of a child's life is a crucial period for health and physical and mental
24 development. Children are at greatest risk of illness, disease and life-long debilitating health
25 conditions during the first year even if not born premature or sick.

26 30. According to the American Academy of Pediatrics, newborns, infants and other
27 children under the age of two years require frequent check-ups for timely identification,

1 diagnosis, and, where necessary, treatment of developmental delays, potentially serious diseases,
2 and other physical or mental health conditions.

3 31. Newborns, infants and other children under the age of two years also require timely
4 medical care for ordinary childhood illnesses.

5 32. Children under the age of two years in working poor families who lack health
6 insurance are significantly less likely to receive the recommended immunizations, check-ups and
7 diagnostic services for their age group or to have access to timely medical care when they are
8 sick or otherwise need medical treatment than are children who are insured through Healthy
9 Families or other sources.

10 33. Working poor uninsured families face dire financial consequences when they divert
11 scarce household resources from shelter or food or incur debt to get their children the medical
12 care they need.

13 **REQUISITES FOR RELIEF**

14 34. Administrative appeal of the issues raised herein is futile.

15 35. Petitioner's claims are ripe and appropriate for judicial review.

16 36. Demand has been made upon Respondents to perform their duties in accord with the
17 requirements of law. Respondents have failed and refused to perform their duties as required by
18 law, despite having the ability to carry out those duties.

19 37. Petitioner lacks a plain, speedy, and adequate remedy at law except by way of
20 peremptory writ of mandate. No money damages or other legal remedy could adequately
21 compensate Petitioner and others affected by the harms caused by Respondents' failure to
22 perform their legal duty.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Equal Protection under the California Constitution)**

26 38. Petitioner realleges and incorporates by reference each and every allegation
27 contained within paragraphs 1-37.

1 39. Section 12698(a)'s exclusion of new California residents from the AIM program
2 discriminates against pregnant women who have been California residents for less than six
3 months but who otherwise satisfy all of the AIM program's eligibility requirements, in violation
4 of Article I, Section 7 of the California Constitution..

5 **SECOND CAUSE OF ACTION**

6 **(Violation of the Right to Travel Under the United States Constitution)**

7 40. Petitioner realleges and incorporates by reference each and every allegation
8 contained within paragraphs 1-39.

9 41. Section 12698(a)'s exclusion of new California residents from the AIM program
10 infringes on the fundamental right to travel freely among the states and migrate to different
11 states, as guaranteed by the Fourteenth Amendment to the United States Constitution.

12 **THIRD CAUSE OF ACTION**

13 **(Violation of the Privileges and Immunities Guarantees of the U.S. Constitution)**

14 42. Petitioner realleges and incorporates by reference each and every allegation
15 contained within paragraphs 1-41.

16 43. Section 12698(a)'s exclusion of new California residents from the AIM program
17 violates the Privileges and Immunities Clauses of Article IV, § 2 and the Fourteenth Amendment
18 of the United States Constitution.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Equal Protection Under the United States Constitution)**

21 44. Petitioner realleges and incorporates by reference each and every allegation
22 contained within paragraphs 1-43.

23 45. Section 12698(a)'s exclusion of new California residents from the AIM program
24 discriminates against pregnant women who have been California residents for less than six
25 months but who otherwise satisfy all of the AIM program's eligibility requirements by treating
26 them differently than long-term residents.

1 **FIFTH CAUSE OF ACTION**

2 **(Mandamus-CCP §1085)**

3 46. Petitioner realleges and incorporates by reference each and every allegation
4 contained within paragraphs 1-45.

5 47. Respondents have a clear and present duty to administer the AIM program without
6 discriminating against pregnant women solely because they have resided in California for less
7 than six months. As described above, Respondents' implementation of the AIM program,
8 pursuant to § 12698(a), has and continues to breach these duties.

9 48. Petitioner MCH Access has an interest in ensuring, on behalf of the public, that
10 Respondents carry out their duty to administer the AIM program in a manner that does not
11 violate the law.

12 WHEREFORE, petitioner prays as follows:

13 1. For a permanent injunction and a peremptory writ of mandate ordering respondents to
14 refrain from:

15 A. Enforcing the requirement in § 12698(a) and 10 CCR §§ 2699.200(b)(1)(B) and
16 2699.201(d)(1)(P) that a woman have been a California resident for at least six continuous
17 months prior to the date of her AIM application in order to qualify for the program, including:

18 (1) Failing to enroll into the AIM program and provide its benefits to any pregnant
19 California resident who applies and satisfies all of AIM's eligibility requirements except for the
20 unconstitutional requirement that she have been a California resident for at least six continuous
21 months prior to her AIM application;

22 (2) Requiring applicants for AIM benefits to certify that they have resided in California
23 for six months; and

24 (3) Informing individuals who request information about AIM, AIM applicants, or
25 members of the general public that a condition of AIM eligibility is having resided in California
26 for the last six months.

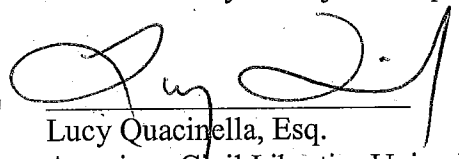
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B. Otherwise conditioning eligibility for the AIM program on residency in California for any particular length of time.

2. For reasonable attorneys' fees and other costs of suit. Bay Area Legal Aid does not seek attorneys' fees.

3. For such other and further relief as this court may deem just and proper.

Dated: April 23, 2008



Lucy Quacinella, Esq.
American Civil Liberties Union Foundation
of Northern California
Bay Area Legal Aid
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area

Attorneys for Petitioner

EXHIBIT 1

Access for Infants and Mothers Application

Part C: See page 12 for more information about income deductions and the documentation the pregnant woman is required to submit. List all unmarried children/stepchildren under age 21 of married persons or of unmarried persons who have a child in common, living in the home or away at school who are claimed as tax dependents. Include disabled dependents who live in the home of the pregnant woman and the applicable monthly child day care expense or disabled dependent care expense paid by either the pregnant woman or the father of the baby (if living with the pregnant woman). If there are no expenses write N/A or zero. If more space is needed, write the information on a separate piece of paper and mail it with the application.

Name of Child or Disabled Dependent	Date of Birth	Relationship to the Pregnant Woman	Monthly Amount Paid

Does the pregnant woman pay court-ordered monthly child support or spousal support? YES/NO	Does the father of the baby, listed in part B, pay court-ordered monthly child support or spousal support? YES/NO
If yes, how much child support? \$ _____ How much spousal support? \$ _____ Documentation Required	If yes, how much child support? \$ _____ How much spousal support? \$ _____ Documentation Required

See page 12 for more information about income deductions and the documentation the pregnant woman is required to submit.

Where did you first learn about the AIM Program? (circle one)		
1. Doctor's Office 2. Community Clinic 3. Newspaper 4. Internet 5. Hospital	6. Government Office 7. 1-800-BABY-999 8. Employer 9. School/Church 10. Friend/Relative	11. TV/Radio 12. Health Fair/Community Event 13. Insurance Agent 14. Other (specify) _____

SECTION 4

PREGNANT WOMAN'S DECLARATIONS

I declare that:

- I have a reasonable good faith belief that I am not over 30 weeks pregnant as of the application date, and I have enclosed a document certifying that I am pregnant.
- I am a resident of the State of California and have lived here for at least six continuous months prior to the date of signing this application for enrollment.
- I am not and will not be reimbursed by any health care provider or government entity for the payment of my subscriber contribution, with the exception of a California Indian Tribal Government, if applicable.
- I do not have health insurance to cover my pregnancy or have a deductible or co-payment specifically for maternity services of more than \$500 through my health insurance policy.
- I am not currently enrolled in no-cost Medi-Cal or Medicare Part A and Medicare Part B at the time of application.
- I give the AIM Program permission to verify my family income, health insurance status, residency and other information presented in the application.
- I will abide by the rules of participation, the utilization review process and the dispute resolution process of any participating health plan in which I am enrolled.
- I have reviewed the benefits offered by the participating health plans.
- I understand and will follow the rules and regulations of the AIM Program.
- I agree to pay the required subscriber contribution even if I do not take full advantage of the coverage or services offered by AIM, and I acknowledge that the AIM Program will take action to collect the full subscriber contribution.



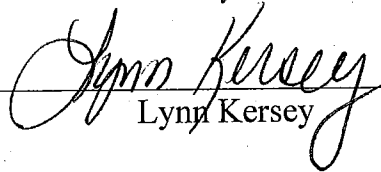
VERIFICATION

I, Lynn Kersey, M.A., MPH, declare:

I am the Executive Director of Maternal and Child Access, and am authorized to execute this verification on its behalf. I have read the Petition for Writ of Mandate filed with this Verification and know its contents. The matters stated in the Petition are true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of April, 2008, in Los Angeles, California.


Lynn Kersey