

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

FILED

NOV 13 2015

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David A. [Signature]
Clerk of the
Circuit Court

TOM L. TYRRELL, in his official capacity)
as Director of the Illinois Department of)
Central Management Services,)

Plaintiff,)

v.)

LISA MADIGAN, in her official capacity as)
Attorney General of the State of Illinois,)

Defendant.)

CASE NO.

2015MR001050

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW COMES Plaintiff **Tom L. Tyrrell**, in his official capacity as Director of the Illinois Department of Central Management Services (“CMS”), by and through his attorneys, Brown, Hay & Stephens, LLP and Michael Basil, and as and for his Complaint against Lisa Madigan, in her official capacity as Attorney General for the State of Illinois (“Attorney General”), states as follows:

COUNT I

1. Plaintiff Tom L. Tyrrell was appointed by Illinois Governor Bruce Rauner and approved by the Illinois Senate as the Director of CMS.

2. CMS is a part of the Executive Branch under the Governor of the State of Illinois and is statutorily responsible for acting as the representative of the Department of Human Services (“DHS”) for claims against the State brought under the Workers’ Compensation Act.

3. As such, CMS has the duty to initially evaluate and determine the compensability of any injury that is the subject of a Workers' Compensation claim against Executive branch agencies and provide for the administration and payment of such a claim for all such agencies.

4. The Attorney General typically represents CMS before the Workers' Compensation Commission in cases brought against Executive branch agencies and has the duty to do so in a manner that does not unreasonably interfere with the exercise of the powers conferred upon CMS.

5. In addition, the Attorney General has common law and statutory responsibilities for protecting State revenues from impairment.

6. Stephanie Yencer-Price worked as a Personal Assistant in the Dailey household in Sangamon County pursuant to the Disabled Persons Rehabilitation Act.

7. Yencer-Price allegedly sustained two injuries while performing her duties as a Personal Assistant and claims that for purposes of the Workers' Compensation Act she was an employee of the State.

8. Plaintiff Tyrrell and CMS determined that Yencer-Price was not a State employee for Workers' Compensation purposes and that she is not entitled to Workers' Compensation benefits from the State for her alleged injuries in the Dailey household.

9. CMS's determination that Yencer-Price was not a State employee for Workers' Compensation purposes relied, in part, on CMS's analysis and consideration of CMS's duties and obligations as an Executive Branch agency responsible for defending claims against the State under the Workers' Compensation Act.

10. In analyzing the issue whether Yencer-Price was a State employee for Workers' Compensation purposes, CMS consulted the regulations, state law, and controlling precedent that

CMS must follow in the faithful execution of the law and the proper administration of the Workers' Compensation program for State employees, including the following:

- a. 20 ILCS 2405/3, which provides that the "State shall not be considered to be the employer of home care and home health workers who function as personal assistants . . . for any purposes not specifically provided in Public Act 93-204 or Public Act 97-1158, including but not limited to, purposes of vicarious liability in tort and purposes of statutory retirement or health insurance benefits."
- b. 5 ILCS 315/3(n) (including Public Acts 93-204 and 97-1158, respectively the 2003 and 2013 amendments to such section), which provides that a Personal Assistant is an employee of the State for purposes of the Illinois Public Labor Relations Act only and further providing that the "State shall not be considered to be the employer of home care and home health workers who function as personal assistants . . . for any purposes not specifically provided [in such amendments], including but not limited to, purposes of vicarious liability in tort and purposes of statutory retirement or health insurance benefits."
- c. Ill. Admin. Code tit. 89, § 676.30(b)(3), which provides that "For purposes of the [] Personal Assistant services performed . . . the customer shall serve as the employer of the [] Personal Assistant. In this capacity, the customer is responsible for controlling all aspects of the employment relationship between the customer and the [] Personal Assistant."
- d. Ill. Admin. Code tit. 89, § 676.30(p), which defines a Personal Assistant as "an individual employed by the customer to provide varied HSP [Home Services Program] services."

- e. Ill. Admin. Code tit. 89, § 677.200(g) and § 684.20(b), which provides that the customer, not the State, has full control over the employment relationship with the Personal Assistant.
- f. Ill. Admin. Code tit. 89, § 686.10(h)(9), which requires a Personal Assistant to enter into an employment agreement with the customer acknowledging that the Personal Assistant understands that he/she “may apply for Workers’ Compensation benefits through [the State] . . . however, DHS maintains the customer, not DHS, is the employer for these purposes.” A true and correct copy of the employment agreement Yencer-Price signed is attached as Exhibit 1.
- g. *Harris v. Quinn*, 134 S. Ct. 2618 (2014), which provides that Personal Assistants are State employees for one purpose only – collective bargaining over wages – and that for all other purposes Personal Assistants are private-sector employees. *Id.* at 2035 (recognizing Personal Assistants are not eligible for Workers’ Compensation benefits from the State).
- h. *People of Ill. v. David Dailey*, Circuit Court for the Seventh Judicial Circuit, Sangamon County Case No. 2012-SC-5261, holding there was no employer/employee relationship between the State of Illinois and Yencer-Price at the time of her alleged injuries. A true and accurate copy of the April 20, 2015 Order in the *Dailey* case is attached as Exhibit 2.
- i. *Evans v. State*, 65 Ill.Ct.Cl. 150, 2013 WL 10936645 (Ill.Ct.Cl.), holding, at the request of the Attorney General, that there is no employer/employee relationship between the State of Illinois and Personal Assistants. A true and accurate copy of the Attorney General’s July 22, 2008 Motion to Dismiss is attached as Exhibit 3.

11. CMS notified Yencer-Price of the CMS determination that no employer/employee relationship existed with the State, and that Yencer-Price's claim for benefits against the State was therefore denied.

12. Yencer-Price currently has two claims pending against the DHS in the Workers' Compensation Commission for her alleged injuries, case numbers 11WC 04222 and 11 WC 24577.

13. The Attorney General is currently representing CMS in Yencer-Price's claims before the Workers' Compensation Commission.

14. CMS has requested that the Attorney General defend CMS's determination that Yencer-Price was not an employee of the State for purposes of the Workers' Compensation Act and is not entitled to benefits from the State.

15. The Attorney General is professionally, statutorily and constitutionally obligated to "faithfully discharge" her duties, which at the very least requires her to comply with the laws and regulations of this State in its representation of CMS before the Commission. The Attorney General also has an ethical obligation to apprise the tribunal of the reason for CMS's denial of a claim for Workers' Compensation benefits.

16. Despite CMS's explicit request, the Attorney General refuses to present the lack of an employer/employee relationship between the State and Yencer-Price, which is both a factual explanation for CMS's administrative denial of Yencer-Price's claims and a complete legal defense to Yencer-Price's claims before the Commission.

17. The Attorney General's failure and refusal to perform her professional, constitutional and statutory duties substantially interferes with the statutory responsibilities of

CMS to administer the Workers' Compensation program for State employees, thereby harming CMS's office as follows:

- a. Approximately 30,000 Personal Assistants are employed throughout the State.
- b. Such Personal Assistants have filed hundreds of workers' compensation claims against the State.
- c. Such claims have resulted in millions of dollars in benefit payments improperly flowing through CMS to individuals who are not employees of the State.
- d. Funds that are appropriated to CMS to compensate injured workers who are legitimate State employees are inappropriately depleted.
- e. Residents of the State of Illinois are unnecessarily taxed to pay for workplace injury benefit costs of workers who are not State employees.

18. In addition to her refusal to perform her professional, constitutional and statutory duties in accordance with the law, the Attorney General has objected to the granting of Special Assistant Attorney General ("SPAAG") counsel, chosen by CMS, to represent CMS's interests and present the foregoing information to the Commission so that the Workers' Compensation program for State employees can be administered and faithfully executed in accordance with the law.

19. The Attorney General's objections to SPAAG appointments for the administration in the context of her refusal to perform her duties in accordance with the law harms CMS in all the ways previously set forth herein.

20. In light of the Attorney General's refusal to follow relevant law in putting on a viable defense, CMS requested that the Arbitrator in the Workers' Compensation Commission appoint SPAAGs. The Arbitrator agreed that there was a conflict warranting a SPAAG

appointment but opined that he does not have the jurisdiction to make such an appointment. A true and accurate copy of the Arbitrator's August 26, 2015 Order is attached as Exhibit 4.

21. Given the number of Personal Assistants employed in Illinois under the DHS program, and the Attorney General's refusal to defend the administration by informing the Workers' Compensation Commission of the lack of an employer/employee relationship between the State and Yencer-Price (and other Personal Assistants), CMS and the State of Illinois will continue to be harmed by the Attorney General's conduct, and the Workers' Compensation Commission will not have the benefit of accurate information when it makes its determination as to the compensability of Yencer-Price's and other Personal Assistants' allegedly compensable injuries.

22. There is no adequate remedy at law that would redress the Attorney General's failure and refusal to faithfully discharge her duties because:

- a. The Attorney General has already publicized her refusal to represent the administration's position and interests. CMS is entitled to advice and representation from a lawyer who will zealously advocate the public policy positions of the client in pleadings, negotiations, and in the courtroom, and who will avoid even the appearance of impropriety by appearing to be in conflict with the desires of the client; and
- b. The Attorney General has refused to assert a meritorious defense that is clearly delineated in the law, as referenced above.

WHEREFORE, Plaintiff Tom L. Tyrrell, in his official capacity as Director of the Illinois Department of Central Management Services, requests that this Court grant the following relief:

- a. Enjoin the Attorney General from representing the administration before the Commission for any and all cases involving Personal Assistants;
- b. Appoint SPAAGs for CMS for the purposes of presenting a legal and viable defense, such as the lack of an employer/employee relationship in any and all claims brought by Personal Assistants to the Commission; and
- c. Grant such other and further relief as this Court deems just and proper.

COUNT II

23. Plaintiff realleges the foregoing paragraphs as though fully set forth herein.

24. The foregoing allegations demonstrate there is an actual live controversy between the parties.

25. The Workers' Compensation Commission is responsible for administering the Workers' Compensation Act and has authority for the promulgation of procedural rules, the determination of cases heard *en banc*, and other matters determined by the full Commission.


26. The Commission's regulations provide that it has the authority to regulate the attorneys practicing before it and may take appropriate action relating to such attorneys, not inconsistent with the Illinois Supreme Court's jurisdiction over professional conduct of attorneys or the provisions of the Workers' Compensation Act.

27. The Commission therefore should have the concomitant authority to appoint a SPAAG under circumstances where the Attorney General interferes with CMS's responsibility to properly administer the Workers' Compensation program or faithfully execute the laws.

WHEREFORE, Plaintiff **Tom L. Tyrrell**, in his official capacity as Director of the Illinois Department of Central Management Services, requests that this Court enter an Order declaring as follows:

- a. That the Attorney General does not have the authority to represent CMS in Workers' Compensation proceedings involving Personal Assistants if the Attorney General fails to defend CMS's administrative decision to deny Workers' Compensation claims by Personal Assistants by refusing to assert a legal and viable defense—such as the lack of an employer/employee relationship—on which CMS relied in making its decision;
- b. That the Commission, pursuant to its general authority to regulate the conduct of attorneys appearing before it, has the authority to appoint a SPAAG for the purposes of presenting a legal and viable defense such as the lack of an employer/employee relationship to any and all claims against CMS brought by Personal Assistants to the Commission;
- c. And granting such other and further relief as this Court deems just and proper.

Tom L. Tyrrell, in his official capacity as
Director of the Illinois Department of
Central Management Services, Plaintiff

By: 
One of Their Attorneys

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STATE OF ILLINOIS
COUNTY OF SANGAMON

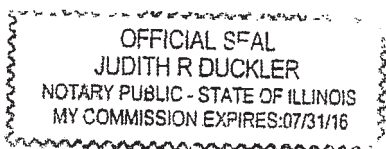
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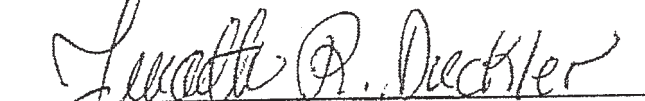
TOM L. TYRRELL, Director of the Illinois Department of Central Management Services, states that he has read the foregoing Complaint for Injunctive and Declaratory Relief and that the facts and matters contained therein are true and correct to the best of his knowledge.



TOM L. TYRRELL

Subscribed and sworn to before me this 13th day of November, 2015.





Notary Public