

Handwritten notes: "AZ" and "Cdoc" on the left margin.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FILED ENTERED  
LODGED RECEIVED

FILED ENTERED  
LODGED RECEIVED

MAR 12 1991

MAR 4 1991

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF WASHINGTON  
SEATTLE, WASHINGTON

LUISA REYES and SALVADOR PENADO,  
on behalf of themselves and  
other similarly situated

Plaintiffs,

vs.

RICHARD THOMPSON, Secretary,  
STATE OF WASHINGTON DEPARTMENT  
OF SOCIAL AND HEALTH SERVICES,

Defendant.

NO: C91-303

CLASS ACTION

STIPULATION, AGREEMENT  
OF SETTLEMENT AND CONSENT  
ORDER

THIS MATTER COMES BEFORE THIS COURT by an agreement of the parties. Plaintiffs, represented by Sandra Fancher, Kelly Owen, John Hughes, and Gillian Dutton, of Evergreen Legal Services (ELS) and Defendant, Washington State Department of Social and Health Services, Division of Economic and Medical Field Services, (hereinafter referred to as DSHS) represented by Charles Murphy, Assistant Attorney General, hereby stipulate to the conditions below as disposition of this matter and to entry of this Order.

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 1

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A2  
200 PALOUSE STREET  
P.O. BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 This is a class action by Plaintiffs who are limited-English  
2 proficient (LEP) and who seek declaratory and injunctive relief  
3 requiring DSHS to provide them with information, notice and ser-  
4 vices concerning public assistance benefits in their primary lang-  
5 uages, in accordance with Title VI of the Civil Rights Act of 1964,  
6 the Title VI regulations, Office of Civil Rights Agreements made by  
7 DSHS pursuant to Title VI, federal statutes and the United States  
8 Constitution.

9 This agreement specifies further actions which will be taken  
10 by DSHS to provide services in accordance with Title VI of the  
11 Civil Rights Act of 1964, the Title VI regulations, Office of Civil  
12 Rights Agreements made by DSHS pursuant to Title VI, federal stat-  
13 utes and the United States Constitution. DSHS by consenting to  
14 this agreement intends to obligate only the Division of Economic  
15 and Medical Field Services and its program responsibilities to  
16 those requirements contained in this agreement.

17 Having reviewed the record in this matter, IT IS HEREBY  
18 ORDERED that:

19 1. As stipulated herein, Plaintiffs bring this action under  
20 Federal Rule of Civil Procedure 23(b)(2) on behalf of themselves  
21 and all similarly situated applicants for public assistance within  
22 the State of Washington. Plaintiffs proceed with this action on  
23 behalf of a plaintiff class defined as follows:

24 All persons of limited English-language proficiency  
25 who have applied for or received or will apply for  
26 or receive public assistance benefits within Wash-

27 STIPULATION, AGREEMENT OF  
28 SETTLEMENT AND CONSENT ORDER  
PAGE 2

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGOON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

why this date?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ington State since October 1, 1987. Public assistance is defined as services and notices provided by DSHS Economic and Medical Field Services, including but not limited to Aid to Families with Dependent Children, Family Independence Program, Food Stamps, General Assistance, medical assistance, refugee assistance, and consolidated emergency assistance program.

2. Based upon the stipulation of the parties, all the elements of a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2) are met. There are approximately 14,000 cases of families and individuals who are limited-English proficient and who currently receive benefits from the Division of Economic and Medical Services during any given month. In addition, there are many other people who will be eligible for benefits in the future. The class is so numerous that joinder of all members is impracticable.

3. There are questions of law and fact common to the class; namely, whether DSHS's policies, practices, and procedures violate federal law and constitute a breach of contract which DSHS entered into pursuant to Title VI regulations. Additionally, the claims of the representative plaintiffs are typical of the claims of the class. The named plaintiffs will fairly and adequately represent the interests of the class.

4. The parties agree that this agreement does not constitute an admission by DSHS of any violation of the Departmental Regulation issued pursuant to Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973. The parties further agree that DSHS intends to act in full and complete compliance

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 3

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE WA 98807-0158  
(509) 662-9681

1 with Title VI, Section 504 and all agreements made with the Office  
2 of Civil Rights.

3 5. DSHS has entered into agreements with the United States  
4 Office of Civil Rights, Department of Health and Human Services, on  
5 October 21, 1983 and June 12, 1987. These agreements, entitled  
6 "Predetermination Settlement Agreement" and "Predetermination  
7 Settlement Amendment" respectively, outline DSHS' Division of Eco-  
8 nomic and Medical Services' responsibilities to provide notice and  
9 service to LEP applicants and recipients. These Agreements are  
10 attached as Exhibit A and B, respectively, and all terms and provi-  
11 sions are incorporated by reference into this Consent Decree.

12 6. As a consequence of this agreed consent order, it is un-  
13 derstood that the costs, fees and attorney fees of the parties will  
14 be borne by each party and no claims will be made against the other  
15 party for said costs, fees or attorney fees.

#### 16 DEFINITIONS

- 17 7. The following definitions are used in this agreement:
- 18 a. LIMITED ENGLISH PROFICIENT: any person whose  
19 primary language is not English;
  - 20 b. PRIMARY LANGUAGE: the language in which a per-  
21 son indicates he or she is most proficient;
  - 22 c. COMPUTER-GENERATED NOTICES: notices that are  
23 generated and mailed to class members by a  
24 computerized system at DSHS' state office  
25 level. These include, but are not limited to,  
26 eligibility review forms, monthly reports,  
27 earned income reports, and termination and  
28 denial letters;
  - d. ADVERSE ACTION: the denial, termination, sus-  
pension, or reduction of benefits or services,

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 4

1 or the withdrawal of an application for bene-  
2 fits;

3 e. INADEQUATE NOTICE: notice given to a LEP  
4 applicant/recipient in English or an incom-  
5 plete or incorrect translation. A notice is  
6 incomplete or incorrect if the translation of  
7 the material is not thorough and precise, adds  
8 or omits anything which changes the meaning  
9 and does not state as nearly as possible what  
10 has been stated in English, giving considera-  
11 tions to variations in grammar and syntax for  
12 both languages. The translation must use the  
13 same reading level of language as the English,  
14 at a sixth grade level or below; and

15 f. MAJOR WRITTEN COMMUNICATION: a notice or form  
16 that requests information from an applicant/  
17 recipient, requires a response on the part of  
18 an applicant/recipient, or notifies an appli-  
19 cant/recipient of an adverse action.

20 IDENTIFICATION OF LEP APPLICANTS/RECIPIENTS

21 8. RELEVANT OCR PROVISION:

22 DSHS will computer identify all LEP persons by name, case  
23 number, and primary language to ensure that information  
24 can be retained and appropriate bilingual services can be  
25 provided at the State Office and CSO levels.

26 DSHS shall monitor to ensure that LEP clients are cor-  
27 rectly identified as such.

28 9. DSHS shall ensure that class members are correctly identi-  
fied in its records by inquiring about client language preference  
on forms used:

a. At each request for services made through the use  
of the Reception Slip;

b. At each regular Eligibility Review; and

c. At each request for assistance.

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 5

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P.O. BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 10. DSHS will identify each LEP client by case name and pri-  
2 mary language on the computer-generated lists provided to each CSO,  
3 including but not limited to the following:

- 4 a. The quarterly listing of LEP clients. This list  
5 will be produced monthly upon completion of compu-  
6 ter reprogramming;
- 7 b. Monthly list of redirected warrants;
- 8 c. Monthly list of clients required to participate in  
9 any monthly reporting of income; and
- 10 d. Monthly list of clients receiving computer gener-  
11 ated termination notices. (DSHS 8-183, 8-183A, and  
12 8-183B)

13 NOTICES AND FORMS

14 11. RELEVANT OCR PROVISION:

15 Forms that request information or require a response from  
16 the client involving denial, termination or reduction of  
17 benefits, and forms advising the client of denial, ter-  
18 mination, or reduction of benefits will be translated  
19 fully, except for DSHS 8-183. Any fill-in spaces in the  
20 primary-language forms or notices must be completed in  
21 the appropriate primary language.

22 12. a. Every LEP client has the right to notice in their  
23 primary language without significant delay. Nothing in this sec-  
24 tion shall relieve DSHS from its obligations under the OCR Agree-  
25 ment and Amendment to provide appropriate notices regardless of  
26 whether the primary language is one of the six most common lang-  
27 uages.

28 b. In order to insure that LEP clients receive notices  
in their primary language without significant delay, DSHS shall  
adopt a policy of simultaneous issuance of English and the corres-

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 6

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGOON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 ponding non-English written communications for the five other most  
2 common languages, unless there is an emergent situation.

3 c. In particular, computer-generated notices and forms  
4 meeting the major communication definition, including DSHS 8-183,  
5 will be simultaneously generated in the six most common languages:  
6 English, Spanish, Vietnamese, Cambodian, Laotian, and Chinese. For  
7 all other LEP clients, DSHS will by March 1, 1991 establish a  
8 standardized procedure to provide a translated notice in the appro-  
9 priate language.

10 d. When there is an emergent situation, DSHS may issue  
11 the English version first, but it must provide LEP clients the cor-  
12 responding translation or summary as required by the OCR Agreements  
13 without significant delay. Producing translations through this  
14 emergent process may include, at DSHS discretion, elimination of  
15 the three week translation evaluation process as outlined in the  
16 OCR agreement and the use of a more streamlined translation and  
17 printing process than is used for the English version.

18 e. An emergent situation is one where a court order or  
19 federal law requires DSHS to issue a form or notice in less than 60  
20 days from the date the English text is finalized.

21 13. DSHS has established and will maintain a process between  
22 the CSOs and contracted translators or bilingual staff in order to  
23 provide speedy written translations when other methods would be  
24 slower in providing services to LEP applicants/recipients. Use of  
25

26  
27 STIPULATION, AGREEMENT OF  
28 SETTLEMENT AND CONSENT ORDER  
PAGE 7

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 the process does not excuse DSHS from providing services "without  
2 significant delay" as obligated by the OCR agreements.

3 MONITORING AND COMPLIANCE

4 14. RELEVANT OCR PROVISION:

5 DSHS will develop and implement a system to monitor and  
6 evaluate the implementation and effectiveness of the pro-  
cedures established for providing bilingual services.

7 Monitoring shall include on-site monitoring by DSHS'  
8 bilingual services coordinator of CSOs with LEP popula-  
tions.

9 15. DSHS shall implement a self-audit procedure at each CSO  
10 with an LEP client population by March 1, 1991. The auditing shall  
11 be as follows:

12 a. A mandatory self-audit shall be completed monthly  
13 by each CSO reviewing 10% of its LEP caseload, or  
14 50 LEP case records where the CSO has an LEP case-  
load of over 500. A minimum of 3 cases or all the  
15 CSO's LEP cases shall be audited, whichever is  
less;

16 i. The first audit shall review each file's prior  
17 six months of services and each additional  
audit will review back to the last audit date;

18 ii. DSHS shall direct each CSO to audit different  
19 cases each month to ensure that the maximum  
possible number of different cases are audited  
annually.

20 b. As part of the 10% audit, each CSO shall audit all  
21 LEP cases closed that month;

22 c. The LEP case record audit will include case record  
23 identification, language preference, computer cod-  
24 ing, documentation of interpreter usage, documenta-  
tion of actual numbers of translated and non-trans-  
lated written communications, and corrective action  
taken, if required;

25  
26 STIPULATION, AGREEMENT OF  
27 SETTLEMENT AND CONSENT ORDER  
28 PAGE 8

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681



- 1 d. Each CSO will collect and report findings quarterly  
2 to the regional administrator and to the Economic  
3 and Medical Services LEP program manager;  
4 e. DSHS will use this audit to take immediate correc-  
5 tive action on individual cases where inadequate  
6 notice has been provided. Lost benefits will be  
7 issued within 5 working days; and  
8 f. This self-audit report shall contain the same con-  
9 tent as Exhibit C, attached to this Consent Order.  
10 Substantial changes in content shall not be made  
11 unless agreement is reached between the parties.  
12 The self-audit report shall be reviewed in the  
13 annual compliance review conducted pursuant to  
14 paragraph 17, infra.

15 16. Mandatory quarterly reviews of the results of the monthly  
16 self-audits shall be completed by regional staff as follows:

- 17 a. The results of monthly audits shall be summarized;  
18 b. Auditors will check for required posters and forms  
19 in the reception area, use of translated forms  
20 throughout the office, bilingual staffing formulas  
21 and accomplishments, LEP training information, doc-  
22 umentation of LEP client complaints, contact with  
23 community groups to obtain input on bilingual ser-  
24 vices compliance, delays in processing applications  
25 for LEP clients, and documentation of corrective  
26 actions taken by the CSO based on the quarterly re-  
27 view;  
28 c. The quarterly audits will be reported to the CSO  
administrator, regional administrator, director of  
EMFS, Evergreen Legal Services, and the EMFS LEP  
program manager. Results will be used to monitor  
compliance and to evaluate training needs; and  
d. This quarterly report shall contain the same con-  
tent as Exhibit D, attached to this Consent Order.  
Substantial changes in content shall not be made  
unless agreement is reached between the parties.  
The quarterly report shall be reviewed in the  
annual compliance review conducted pursuant to  
paragraph 17, infra.

29 STIPULATION, AGREEMENT OF  
30 SETTLEMENT AND CONSENT ORDER  
31 PAGE 9

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 17. Both parties agree that the level of auditing set forth  
2 in paragraphs 15 and 16, supra, shall continue for at least one  
3 year from the date of implementation. After one year from the date  
4 of the signing of this order, the parties shall meet to review the  
5 effectiveness of this procedure in complying with the provisions of  
6 the OCR agreements and this consent order.

7 18. Within 270 days of entry of this consent decree, DSHS  
8 will develop and implement a statewide policy on continued moni-  
9 toring for provision of bilingual services without significant  
10 delay. The self-audit process for monthly and quarterly monitor-  
11 ing, referenced in paragraphs 15 and 16, supra, will provide the  
12 required monitoring for provision of bilingual services for at  
13 least the first year of this consent decree. Following the discon-  
14 tinuation of the Self-Audit process, a monitoring process as des-  
15 cribed below will be implemented. This policy will include:

- 16 a. Monitoring CSO records for provision of:
- 17 i. translated written communication;
- 18 ii. correct LEP identification;
- 19 iii. delays in assistance and provision of bilingual  
20 services due to the time needed for translation of  
21 notices; and
- 22 iv. use of bilingual staff or interpreters.
- 23 b. Monitoring CSO reception areas for the required LEP  
24 poster, provision of translated forms and pamphlets, and  
25 for correct identification procedures for LEP clients;
- 26 c. At least quarterly monitoring of management reports for  
27 delays in disposition of applications for assistance,  
28 comparing the application disposition dates for the  
English versus the non-English applicant;

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 10

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

- 1 d. At least quarterly monitoring of percentage of LEP  
2 clients versus the number of bilingual staff to ensure  
3 adequate delivery of bilingual services;  
4 e. Monitoring of client complaints related to inadequate  
5 service because of a language barrier. This monitoring  
6 will include such items as contacts with community based  
7 organizations which serve these LEP populations, client  
8 contact, and a means of telephonic access by LEP clients  
9 which allows clients to make complaints in their primary  
10 language; and  
11 f. A corrective action process which will provide monitoring  
12 results and corrective action plans to Regional Adminis-  
13 trators, the EMFS Director and the EMFS LEP Program Man-  
14 ager where significant delay or inadequate services are  
15 found.

16 19. The results of this monitoring and corrective action  
17 taken will be documented in the CSO quarterly audit reports and  
18 will be shared with Evergreen Legal Services for the period spe-  
19 cified in paragraph 34.8<sup>h</sup>

20 ONE-TIME CORRECTIVE ACTION FOR CLASS MEMBERS  
21 GENERAL REQUIREMENTS

22 20. DSHS shall provide a one-time opportunity for class mem-  
23 bers to request a case review and receive restored benefits for any  
24 past benefits lost due to English-only, incomplete or incorrectly  
25 translated notices. Lost benefits may be recovered back to  
26 October 1, 1987.

27 21. DSHS shall determine restored benefits based on the class  
28 member's receipt of inadequate notice and eligibility for benefits  
at the time adverse action was taken. Benefits will be restored for  
the period of time the class member was eligible.

29 22. To provide this opportunity for benefits, DSHS shall in-  
30 form class members of the settlement of this lawsuit and the pro-

31 STIPULATION, AGREEMENT OF  
32 SETTLEMENT AND CONSENT ORDER  
33 PAGE 11

1 cedures for corrective action required by this lawsuit as set forth  
2 in paragraph 3<sup>3</sup>.

3 REQUESTS FOR RECORD REVIEW

4 23. Any class member may request a full record review by DSHS  
5 to determine whether that person has lost benefits as a result of  
6 having been issued improper notice. Upon the class member's re-  
7 quest, DSHS shall review that person's DSHS records back to October  
8 1, 1987 to determine whether compensation is due.

9 24. Class members shall have 90 days from the last day notice  
10 is posted in DSHS' Community Service Offices as described in para-  
11 graph 3<sup>4</sup>, <sup>st</sup>infra, to request a DSHS record review.

12 DETERMINATION OF ELIGIBILITY FOR LOST BENEFITS

13 25. DSHS agrees to review each record as identified in para-  
14 graph 22, for adverse actions taken since October 1, 1987 upon re-  
15 quest by a class member.

- 16 a. Each notice of adverse action will be reviewed to  
17 determine if adequate notice was provided to the  
18 class member;
- 19 b. Where adequate notice was not provided and the ad-  
20 verse action taken was based on verified ineligi-  
21 bility, DSHS will provide the class member with a  
22 notice explaining the outcome of the case review  
23 and a corrected notice of the adverse action in the  
24 primary language. This notice shall include the  
25 class member's right to a fair hearing upon the  
26 adverse action within 90 days following the issu-  
27 ance of the corrected notice;
- 28 c. If the adverse action notice was originally pre-  
ceded by a request for information, DSHS shall  
provide that request for information in the  
client's primary language, along with a notice  
explaining the outcome of the case review. This  
notice will advise the client of acceptable verifi-

27 STIPULATION, AGREEMENT OF  
28 SETTLEMENT AND CONSENT ORDER  
PAGE 12

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 cation needed to redetermine eligibility and to  
2 contact the CSO for assistance in obtaining verifi-  
cation, if necessary;

3 d. DSHS will make every reasonable effort to assist  
4 class members in providing requested verification  
5 including advance payment of verification fees as  
6 described in Manual F, Chapter 9.30. DSHS will  
7 follow October 1, 1990 reduced verification re-  
8 quirements contained in Manual F, Chapter 9, the  
9 Food Stamp Program Manual, Chapter 4 and interim  
10 notice FSP 84, and the FIP Manual, Chapter 5.  
11 Using the prudent person concept in determining  
12 eligibility, DSHS will accept and consider unoffi-  
13 cial documents, documents derived from other re-  
14 cords and other written statements from a know-  
15 ledgeable third party or a class member. In de-  
16 termining whether the prudent person would accept  
17 proffered verification, DSHS will consider the dif-  
18 ficulty of finding other forms of verification in  
19 light of the amount of time elapsed since the date  
20 of eligibility at issue. Prior to denial for lack  
21 of sufficient verification needed to determine eli-  
22 gibility, the case will be reviewed at the super-  
23 visory level to assure all options have been ex-  
24 plored;

14 e. A class member's delay in providing verification  
15 will not result in eligibility being denied;

16 f. Lost benefits will be restored for periods of eli-  
17 gibility. Eligibility or ineligibility shall be  
18 determined for each occurrence of adverse action  
19 and benefits will be paid for the period of time  
20 the class member was eligible. For the purposes of  
21 retroactive benefits, no person shall have his or  
22 her assistance automatically reinstated prior to a  
23 determination of eligibility for that period;

20 g. Each class member requesting a file review under  
21 this provision shall receive notice from DSHS of  
22 the determination. This notice shall be mailed no  
23 later than 60 days from the date of the record re-  
24 view request except where the class member is un-  
25 able to supply requested verification within the 60  
26 days. The notice shall inform the class member of  
27 his or her right to request a fair hearing within  
28 90 days of the date of the notice; and

26 STIPULATION, AGREEMENT OF  
27 SETTLEMENT AND CONSENT ORDER  
28 PAGE 13

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING SUITE A 2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE WA 98807-0158  
(509) 662-3681

1 h. DSHS will restore lost benefits within five working  
2 days of the determination that benefits are due.  
3 Retroactive benefits received pursuant to this  
4 order shall be disregarded as income and resources  
5 for purposes of determining eligibility and need  
6 for AFDC, FIP (except FIP Food Assistance), General  
7 Assistance, Refugee Assistance and medical assist-  
8 ance programs. Retroactive benefits received pur-  
9 suant to this order shall be disregarded as income  
10 for purposes of determining eligibility and need  
11 for Food Stamps and FIP Food Assistance.

12 CONTINUING CORRECTIVE ACTION FOR LEP APPLICANTS/RECIPIENTS

13 26. Within 60 days of entry of this consent decree, DSHS --  
14 Economic and Medical Field Services (EMFS) will issue a directive  
15 to all CSOs to assure that there is no delay in providing services  
16 to or correcting improper adverse action taken against class mem-  
17 bers who have received improper notice. These measures shall be  
18 instituted whenever DSHS-EMFS discovers inadequate notice, whether  
19 through client complaint, the self-audit process or other means.  
20 These measures shall include:

21 a. CSOs shall establish an office procedure for expe-  
22 ditious resolution of cases involving inadequate  
23 notice. Resolution will require offering the class  
24 member the option of scheduling an appointment by  
25 the end of the next working day following the day  
26 the class member informs DSHS that he or she re-  
27 ceived an inadequate notice. The purpose of the  
28 appointment shall be to provide the class member  
with a written translation of the communication and  
allow the class member an opportunity to provide  
requested verification. At the class member's  
option, DSHS may provide him or her with an ade-  
quate notice within 24 hours of the complaint in  
lieu of an appointment. DSHS shall take any other  
actions necessary to avoid delay in the class mem-  
ber's receipt of benefits;

b. CSOs shall apply the rules of "advance and adequate  
notice", per WAC 388-33-376 and 388-49-015 (8) and

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 14

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1 388-49-600. If benefits have been adversely af-  
2 fected without proper notice, the class member must  
3 be offered the option of reinstating benefits to  
4 the prior level. Any assistance received during  
5 this period may be an overpayment if the class  
6 member is determined to have been ineligible; and

7 c. For each finding of inadequate notice the CSO shall  
8 review the case records back to the date of the  
9 last audit, if any, and restore lost benefits to  
10 the applicant/recipient for any eligibility during  
11 that period.

12 27. DSHS shall review the case records of class members after  
13 termination has been proposed and prior to actual closure of the  
14 case for any reason, to determine whether the notice informing the  
15 client of adverse action and any notices requesting information or  
16 action were in the class member's primary language. Where notice  
17 was not provided in the primary language, DSHS shall not terminate  
18 benefits prior to issuing notice in the primary language and allow-  
19 ing adequate and advance notice.

20 QUALIFIED BILINGUAL STAFF AND INTERPRETERS

21 28. RELEVANT OCR PROVISION:

22 DSHS will develop and implement a statewide procedure of  
23 recruiting and hiring bilingual employees at the CSOs.  
24 Each CSO shall, through attrition, employ bilingual per-  
25 sonnel to serve LEP applicants/recipients sharing the  
26 same language when the number of those individuals served  
27 by a CSO client contact job classification equals or ex-  
28 ceeds 50 percent of the average caseload of a full-time  
position in such a classification.

29 RECRUITMENT AND HIRING OF BILINGUAL STAFF:

30 Within 180 days of entry of this consent decree, DSHS  
31 will develop and implement a statewide policy on recruit-  
32 ing and hiring bilingual staff with such items as:

- 1 a. Instructions for calculation of the 50% rule for  
2 hiring bilingual staff;
- 3 b. Instructions for evaluation of management reports  
4 which collect information on the number of LEP  
5 clients and the disposition of initial applica-  
6 tions;
- 7 c. Guidelines for hiring additional bilingual staff  
8 and interim instructions for providing services  
9 without significant delay to LEP clients when addi-  
10 tional staff are needed as indicated by the 50%  
11 calculation or evidence of the occurrence of signi-  
12 ficant delay;
- 13 d. Guidelines for prioritizing the use of bilingual  
14 staff and contracted interpreters for effective  
15 provision of bilingual services; and
- 16 e. Guidelines which outline the hiring procedure for  
17 both bilingual staff and contracted interpreters.  
18 These guidelines shall include:
- 19 i. Testing requirements related to hiring;
  - 20 ii. Certification requirements for particular  
21 positions;
  - 22 iii. The rating system used for certification; and
  - 23 iv. The list of acceptable certifications includ-  
24 ing the DSHS-administered Fluency test.

25 TESTING

26 30. RELEVANT OCR PROVISION:

27 DSHS will ensure that all interpreters and bilingual  
28 workers are fluent in English and a primary non-English  
language. DSHS shall develop standards of testing, oral  
and written, to ensure that all interpreters and biling-  
ual workers meet the standard. Testing shall include  
evaluation of the language competence, interpreter  
skills, understanding of DSHS policies regarding confi-  
dentiality, DSHS forms and the role of interpreters.

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 16

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGOON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681



1 31. DSHS will promptly develop and implement a statewide  
2 policy which describes the use of fluency testing for bilingual  
3 staff and contracted interpreters/translators. This test is being  
4 developed and will be administered by DSHS, Administrative Ser-  
5 vices, Language Interpreter Services and Translations (LIST) sec-  
6 tion. DSHS will make a good faith effort to expedite the acceptance  
7 of fluency testing by its employees' union. As soon as the test is  
8 validated and approved, DSHS will begin testing of contracted in-  
9 terpreters and translators and bilingual staff in the five primary  
10 languages of Spanish, Vietnamese, Cambodian, Laotian and Chinese.

11 This policy will include such items as:

- 12 a. Requirements for both oral and written fluency  
13 tests;
- 14 b. Emphasis on the preference for bicultural, as well  
15 as bilingual staff, to assure effective communica-  
16 tion through an understanding of non-verbal and  
17 cultural patterns; and
- 18 c. Guidelines for provision of bilingual services  
19 without delay when an employee or contracted inter-  
20 preter fails the testing process.

21 Implementation Schedule: (Dependent on negotiation with  
22 employees' union by 12/31/90).

23 The testing procedure was submitted for negotiation to the  
24 employee's union on October 8, 1990.

25 Validation of the test is expected to begin by December 15,  
26 1990.

27 The scheduled date for beginning the administration of tests  
28 is March 1, 1991.

The scheduled date for completion of testing of EMS bilingual  
staff and contracted interpreters/translators in the five pri-  
mary languages is September 1, 1991.

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 17

1 The scheduled date for beginning to administer the written  
2 tests for languages other than the five primary is one year  
3 from the date of acceptance by the union.

4 TRAINING

5 32. RELEVANT OCR PROVISION:

6 A position shall be created in the Division of Economic  
7 and Medical Services. The responsibilities of this posi-  
8 tion will include the following:

- 9 a. Supervision of the provision of interpreter, bilin-  
10 gual worker, and translation services;
- 11 b. Provision of training and new employee orientation  
12 regarding bilingual services requirements and sen-  
13 sitivity to the special needs of LEP persons;
- 14 c. Development of testing and hiring criteria for  
15 interpreters and bilingual DSHS workers;
- 16 d. Conducting monitoring of bilingual services in the  
17 various CSOs; and
- 18 e. Assisting the CSOs to effectively use the bilingual  
19 capabilities of bilingual staff.

20 33. Within 30 days of entry of this consent decree, DSHS will  
21 establish a statewide training packet and policy for the provision  
22 of bilingual services. Within 180 days of implementation of this  
23 policy, all bilingual staff and contracted interpreters/translators  
24 will be trained. This training package and policy will include:

- 25 a. Requirements for training all bilingual staff and  
26 contracted interpreters on:
- 27 i. DSHS policies regarding the interpreter code of  
28 ethics and the importance of confidentiality;
- ii. DSHS forms; and
- iii. The role of the interpreter.

- 1
- 2
- 3
- 4
- 5
- 6
- b. Refresher training requirements for all staff and contracted interpreters, to maintain knowledge in the items outlined in the initial training; and
  - c. As training becomes available through the Minority Affairs Initiative, bilingual staff and contracted interpreters will be trained concerning multicultural sensitivity education and non-verbal and cultural patterns of communications.

7

NOTICE OF CONSENT AGREEMENT

8

9

10

34. Pursuant to Federal Rule of Civil Procedure 23(e) and within 180 days of the date of this order, DSHS shall publish notice of this agreement.

- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- a. The contents will include notice of:
    - i. the client's right to notices in the language he or she chooses;
    - ii. the client's right to receive any benefits lost because of inadequate notice;
    - iii. the client's right to request that his or her case be reviewed to determine whether lost benefits are owed to them;
    - iv. the client's right to a fair hearing if he or she disagrees with the results of the case review; and
    - v. a summary of the procedures resulting from this settlement.

- 20
- 21
- 22
- 23
- 24
- 25
- 26
- b. DSHS shall distribute this notice as follows:
    - i. Send a notice (See Exhibit E) to all LEP applicants/recipients who have applied for or received benefits from DSHS since October 1, 1987;
    - ii. Send a notice to community-based organizations serving the LEP population in each CSO service area;

27

28

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 19

EVERGREEN LEGAL SERVICES  
NORTH CENTRAL REGIONAL OFFICE  
CONGDON BUILDING, SUITE A-2  
200 PALOUSE STREET  
P O BOX 158  
WENATCHEE, WA 98807-0158  
(509) 662-9681

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

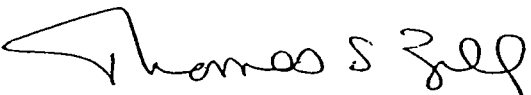
- iii. Post in each CSO, outstations, and satellite offices translated notices (attached as Exhibit F) for one year; and
- iv. Publish once a week for three consecutive weeks in each of the newspapers listed in Exhibit G. The contents of this notice shall be agreed on by the parties.

COMPLIANCE REQUIREMENTS

35. DSHS and Evergreen Legal Services will annually and mutually review compliance with this Consent Agreement for three years. Monitoring reports will be shared with Evergreen Legal Services for this same three year period.

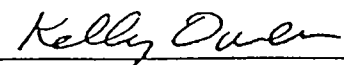
36. The parties recognize that unforeseen circumstances may give rise to a need for amendments to this consent agreement. In this event, both parties agree to negotiate, in good faith, amendments which may be necessary.

DATED this 12th day of March, 1991.

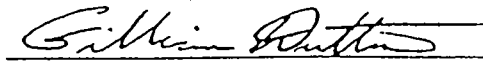


\_\_\_\_\_  
JUDGE/COMMISSIONER

Presented by:  
EVERGREEN LEGAL SERVICES

  
\_\_\_\_\_  
KELLY OWEN  
Attorney for Plaintiffs

2/1/91  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
GILLIAN DUTTON  
Attorney for Plaintiffs

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 20

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Sandra B. Fancher  
SANDRA FANCHER  
Attorney for Plaintiffs

John Hughes  
JOHN HUGHES  
Attorney for Plaintiffs

2/15/91

Approved for Entry and Notice  
of Presentation waived:

Robert Lolcama  
ROBERT LOLCAMA  
Assistant Secretary  
Economic and Medical Services

2/11/91  
Dated

Carol B. Felton  
CAROL B. FELTON  
Director  
Economic and Medical Field Services

2/11/91  
Dated

OFFICE OF THE ATTORNEY GENERAL

Charles Murphy  
CHARLES MURPHY  
Assistant Attorney General  
Attorney for Defendant

FEB 1, 91  
Dated

STIPULATION, AGREEMENT OF  
SETTLEMENT AND CONSENT ORDER  
PAGE 21

PRE-DETERMINATION SETTLEMENT AGREEMENT BETWEEN  
WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
and the  
OFFICE FOR CIVIL RIGHTS OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

Docket Number 10837005

The parties to this Pre-Determination Settlement Agreement, (hereafter "Agreement") are the Office for Civil Rights of the U.S. Department of Health and Human Services, Region X, Seattle, Washington, (hereafter, "OCR") and Washington State Department of Social and Health Services, Division of Community Services (hereafter, "DSHS").

In recognition of its responsibilities as a recipient of Federal financial assistance from the Department of Health and Human Services, DSHS acknowledges that it is subject to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and to the Departmental Regulations issued pursuant to the Acts, Title 45 Code of Federal Regulations, Parts 80 and 84.

In a letter dated December 23, 1982, OCR notified DSHS of a forthcoming review of the Wenatchee CSO's Title VI and Section 504 compliance status, scheduled to be conducted in accordance with authority granted pursuant to 45 CFR 80.7(a). OCR has completed its investigation of the review but has not issued findings. DSHS prefers to resolve the issues of that review through the implementation of this Agreement.

Although the review specifically concerned the policies and practices of the Wenatchee CSO, many of those policies and practices reflect the direction of the Division of Community Services. Both the Wenatchee CSO and the Division of Community Services have responsibility for ensuring DSHS's compliance with Title VI and Section 504. This Agreement specifies those steps necessary for compliance that are outside the direct authority of the Wenatchee CSO but within the authority of the Division of Community Services.

I. General Provisions

- A. This Agreement resolves the specific matters addressed in the notification letter referenced above. The parties agree that settlement of this review is intended to be without prejudice to any other compliance review or complaint of discrimination that may be pending before OCR now or in the future. Any other compliance matters arising from subsequent compliance reviews or complaint investigations shall be dealt with and resolved separately.
- B. The parties agree that this Agreement does not constitute an admission by DSHS of any violation of the Departmental Regulation issued pursuant to Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1973. The parties further agree that DSHS intends to act in full and complete compliance with Title VI and Section 504.

