

FILED
06-10-2024
CIRCUIT COURT
DANE COUNTY, WI
2024CV001711
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

ALYSSA PUPHAL
Robert E. Ellsworth Correctional Center
21425-A Spring Street
Union Grove, Wisconsin 53182

and

NATASHA CURTIN-WEBER
Taycheedah Correctional Institution
751 County Road K
Fond du Lac, Wisconsin 54936

Plaintiffs,

Case Type: Declaratory Judgment
Case Code: 30701

v.

WISCONSIN DEPARTMENT OF CORRECTIONS
3099 East Washington Ave.
Madison, WI 53704, and

JARED HOY, in his official
capacity as Deputy Secretary of the
Wisconsin Department of Corrections,
3099 East Washington Ave.
Madison, WI 53704

Defendants.

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant: You are hereby notified that Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may

reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: Clerk of Circuit Court, Dane County Courthouse, 215 South Hamilton Street, Room 1000, Madison, WI 53703. The answer must also be sent or delivered to Plaintiffs' attorneys at Quarles & Brady LLP, whose address is: 33 E. Main Street, Suite 900, Madison, WI 53703, and at the American Civil Liberties Union of Wisconsin, whose address is: 207 E Buffalo Street, Unit 325, Milwaukee, WI 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 10th day of June 2024.

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Defendants.

COMPLAINT

Plaintiffs, through undersigned counsel, file this Complaint against these Defendants,
alleging as follows:

INTRODUCTION

1. State law, Wis. Stat. § 301.049, establishes a “Mother-Young Child Care Program” (“Mother-Child Program”) whereby the Wisconsin Department of Corrections (the

“Department” or “DOC”) is required to provide programming and support for incarcerated women who are pregnant or have children under the age of one. The law, among other things, requires DOC to provide programming that allows pregnant and postpartum individuals who are incarcerated or on supervised release to retain physical custody of their infants under age one and to be held in the least restrictive custody.

2. Despite a clear statutory mandate, DOC and its executive leadership have failed to offer and administer this Mother-Child Program.

3. The Department has admitted that no such Program exists and has no reasonable explanation for this failure to comply with Wis. Stat. § 301.049.

4. The Department’s only explanation to date is that the statute is “old” and the program is unfunded. The first excuse is baseless. The second excuse is false since the Wisconsin legislature has appropriated funds for this Program since its inception; currently \$198,000 per year for both Fiscal Years 2024 and 2025.

5. Plaintiffs are currently in DOC custody and meet the statutory requirements for the Mother-Child Program. Defendants’ failure to comply with the law is denying Plaintiffs access to a Program the legislature has required DOC to implement. In addition, DOC’s failure is causing Plaintiffs severe and irreparable emotional distress, plus harm to their newborns. They bring this lawsuit and ask the Court to order the Defendants to comply with their legal obligation and offer this Program, as state law plainly requires.

THE PARTIES

6. Plaintiff Alyssa Puphal is currently incarcerated at the Wisconsin Department of Corrections’ Robert E. Ellsworth Correctional Center, located at 21425-A Spring Street, Union Grove, Wisconsin 53182.

7. Plaintiff Natasha Curtin-Weber is currently incarcerated at the Wisconsin Department of Corrections' Taycheedah Correctional Institution, located at 751 County Road K, Fond du Lac, Wisconsin 54936.

8. Defendant Wisconsin Department of Corrections is an administrative agency of the State of Wisconsin created by statute. *See* Wis. Stat. § 15.14. DOC's principal office is located at 3099 East Washington Avenue, Madison, Wisconsin 53704. DOC is the state agency required by law to "maintain and govern the state correctional institutions." Wis. Stat. § 301.02.

9. Defendant Jared Hoy is Secretary of DOC and is sued in his official capacity. By law, Secretary Hoy has supervisory control over the DOC. Wis. Stat. § 15.14. His principal office is located at 3099 East Washington Avenue, Madison, Wisconsin 53704.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant Wis. Stat. § 801.05(1)(d), (2) & (3); § 806.04(1), (2) & (5); and Wis. Stat. § 783.01.

11. Venue is proper in Dane County under Wis. Stat. § 801.50(3)(a) & (c), as the Department of Corrections and its agents are located in Dane County, and this action is commenced by prisoners currently in DOC custody.

FACTUAL ALLEGATIONS

I. Wisconsin's Mother-Young Child Care Program is mandated by state law.

12. The Wisconsin legislature enacted Wisconsin Statute § 301.049, titled the "Mother-Young Child Care Program," in 1991.

13. The Mother-Child Program applies to two categories of people in DOC custody: (1) women who are incarcerated, and (2) women who are on probation, extended supervision, or parole who would participate in the program as an alternative to revocation. Wis. Stat. § 301.049(2)(a).

14. According to the statute, a woman may enter the Program if she meets the above-listed criteria, is pregnant or has a child who has not yet attained the age of one year, consents to participate, and is approved by DOC to participate. Wis. Stat. § 301.049(2).

15. The statute clearly and unambiguously mandates that DOC create and offer this Program by using the word “shall” four separate times:

First, DOC “*shall administer* a mother-young child care program allowing females to retain, during participation in the program, the physical custody of their children.” Wis. Stat. § 301.049(1) (emphasis added).

Second, DOC “*shall provide* the program” to eligible females. Wis. Stat. § 301.049(2) (emphasis added).

Third, DOC “*shall do* all of the following” under the program:

- (a) Place program participants in the least restrictive placement consistent with community safety and correctional needs and objectives.
- (b) Provide a stable, safe and stimulating environment for each child participating in the program.
- ...
- (d) Provide program services with the goal of achieving a stable relationship between each mother and her child during and after participation in the program. [*and*]
- (e) Prepare each mother to be able to live in a safe, lawful and stable manner in the community upon parole, extended supervision or discharge.

Wis. Stat. § 301.049(3) (emphasis added).

Fourth, DOC “*shall purchase* the services of a private, nonprofit organization” to administer the program. Wis. Stat. § 301.049(4) (emphasis added).

16. The Wisconsin legislature has appropriated funds to operate the Mother-Child Program for every year since 1991. *See* Wis. Stat. § 20.410(1)(cw).

17. In the current state budget, for FY24 and FY25 both, the Mother-Child Program is funded at \$198,000 per year. *See* 2023 Wisconsin Act 19 (FY2023-25 state budget), at 69.¹

II. Plaintiffs meet the statutory requirements for entry into the Mother-Child Program.

18. To participate in the Mother-Child Program, Wis. Stat. § 301.049 requires a potential participant to be a female in the custody of DOC who consents to participating in the Program and is pregnant or has a child who has not attained the age of one year. Wis. Stat. § 301.049(2).

Plaintiff Alyssa Puphal

19. In March 2023, Plaintiff Alyssa Puphal, who was four months pregnant, was placed on a probation hold.

20. In late July 2023, Ms. Puphal was in the custody of DOC at Taycheedah Correctional Institution (“TCI”).

21. On or about August 14, 2023, Ms. Puphal was transferred from TCI to a hospital to give birth.

22. Ms. Puphal gave birth to a son on August 14, 2023. Approximately twenty-four (24) hours later, on August 15, 2023, DOC returned Ms. Puphal – without her son – to TCI.

23. On or about November 29, 2023, Ms. Puphal was transferred from TCI to Robert E. Ellsworth Correctional Center (“REECC”), where she is currently housed.

24. Since giving birth in August 2023—approximately ten months ago—Ms. Puphal and her son have had just four (4) visitations, approximately twelve to fifteen hours of time together in total. Her family, including her infant son, lives too far away from REEC for regular in-person visitations.

¹ Also available at <https://doa.wi.gov/budget/SBO/2023%20Wisconsin%20Act%2019.pdf>.

25. Ms. Puphal consents to being in the Mother-Child Program, wishes to enroll, and meets the statutory requirements for entry into this Program.

Plaintiff Natasha Curtin-Weber.

26. Plaintiff Natasha Curtin-Weber is currently in DOC custody at TCI.

27. Ms. Curtin-Weber is pregnant currently, with an expected delivery date in or about July 2024.

28. Ms. Curtin-Weber consents to being in the Mother-Child Program, wishes to enroll, and meets the statutory requirements for entry into this Program.

III. Plaintiffs' requests for entry into the Mother-Child Program have been refused and/or ignored.

Plaintiff Alyssa Puphal

29. Ms. Puphal learned about the Mother-Child Program in early July 2023 while she was pregnant and in custody at Marathon County Jail.

30. In or about mid-July 2023, Ms. Puphal, through her attorney, contacted DOC to learn how she could enroll in the Mother-Child Program.

31. Defendant DOC, through Taycheedah Corrections Program Supervisor Jill E. Wolf, replied to this request stating: "Information from Admin here is that it is an old statute and there is no funding for it."

32. In response to this inquiry, made on Ms. Puphal's behalf, DOC's Director of the Office of Program Services, Alisha R. Kraus, stated she was "not familiar with anything specifically titled this" [*i.e.*, Mother-Young Child Care Program], and that "[t]here is no primary program that [the Office of Program Services] oversees falling under this."

33. Further, when the inquiry was forwarded to DOC's legal counsel, Todd R. Allen, Mr. Allen replied: "I am not familiar with this [Mother-Child] program at all."

34. In February 2024, Ms. Puphal submitted a written request to DOC staff (also known as “dropping a slip”) to participate in the Mother-Child Program.

35. Defendant DOC denied Ms. Puphal’s request on the basis that the Mother-Child Program does not exist.

36. In March 2024, Ms. Puphal again requested entry into the Mother-Child Program.

37. This time, DOC responded by telling Ms. Puphal she is not eligible for the Program.

38. In responding to Ms. Puphal, DOC failed to identify any eligibility criteria for this Program or to explain why Ms. Puphal was ineligible. As shown below, DOC in fact has no criteria for eligibility and has never established such criteria because the Mother-Child Program in fact does not exist. *See* ¶¶ 44-48, *infra*.

Plaintiff Natasha Curtin-Weber

39. Plaintiff Curtin-Weber, currently in custody at Taycheedah Correctional Institution, is eight months pregnant.

40. Ms. Curtin-Weber wants to be with her child after giving birth. She wishes to participate in the Mother-Child Program, meets the statutory requirements for entry, and would also gladly participate in this Program if in fact it existed.

41. In mid-April 2024, Ms. Curtin-Weber submitted a request to participate in the Mother-Young Child Care program.

42. As of at least mid-May 2024, DOC had not responded to Ms. Curtin-Weber’s request.

43. In fact, DOC will refuse Ms. Curtin-Weber's request, just as it refuses *all* eligible women entry into this Program, despite a clear statutory mandate and despite the legislature's appropriation of funds, because the Program does not exist.

IV. DOC's responses to plaintiffs and their counsel fully concede the Mother-Child Program does not exist.

44. In multiple communications with Plaintiffs and their counsel, Defendants have admitted that the Mother-Child Program in fact does not exist; that, despite the statutory mandate and money in its budget, DOC has never established this Program. *See* ¶¶ 29-37, *supra*.

45. On February 13, 2024, ACLU-WI submitted an Open Records Request to DOC, pursuant to Wis. Stat. § 19.35, seeking records reflecting DOC's policies and procedures for the Mother-Child Program, as defined by Wis. Stat. § 301.049, including selection criteria for the program, policies and procedures in force at any time in the past, current contracts or agreements with nonprofit organizations, and other documents and communications about the program.

46. On April 12, 2024, DOC replied to the ACLU-WI's records request, confirming that no such records exist.

47. DOC's response to the ACLU-WI's records request, quoted in full, states: "This is a Complete response to your Public Records Request. The entire record(s) requested does not exist."

48. In other words, DOC confirmed and conceded not only that the program does not exist but also that it has never created any policies or procedures for the Program.

**COUNT ONE
(VIOLATION OF WIS. STAT. § 301.049)**

49. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs 1 – 48 above as if fully set forth herein.

50. The requirements of Wis. Stat. § 301.049 are clear, express and mandatory.

51. Defendants have a legal duty to establish a Mother-Child Program, yet DOC has conceded this Program does not exist.

52. In responding to the ACLU-WI's records request, DOC confirmed and conceded its failure to implement any rules or criteria for entry into the Mother-Child Program, as such criteria also do not exist.

53. Defendants have failed in their duty to faithfully implement state law.

54. Plaintiffs meet the statutory requirements for participation in the Mother-Child Program.

55. Plaintiffs are suffering ongoing damage and harm due to Defendants' failure to implement the Mother-Child Program, including their failure to establish criteria for this Program.

56. Defendants' failure to offer the Mother-Child Program has caused, is causing, and will continue to cause these Plaintiffs emotional pain and sadness, distress, and profound loss.

57. Defendants' failure to offer this Program has caused, is causing, and will also continue to cause serious, significant, and irreparable damage to Plaintiffs' infant children due to the irreparable loss of early maternal contact.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request relief against these Defendants, as follows:

A. A declaratory judgment that Wis. Stat. § 301.049 requires Defendants to offer and administer a Mother-Child Program to allow incarcerated mothers, and other women covered by the law, to retain physical custody of their children in the least restrictive environment possible during their participation in this Program;

B. A declaratory judgment that Defendants' failure to offer and administer this Mother-Child Program violates the positive and plain language of Wis. Stat. § 301.049;

C. A writ of mandamus directing and ordering the Defendants to comply with Wis. Stat. § 301.049 by offering and administering a Mother-Child Program that satisfies the requirements of Wis. Stat. § 301.049;

D. Damages and costs, including attorneys' fees, as allowed by law; and

E. All such other, further relief that the Court deems appropriate, or justice may require.

Dated this 10th day of June 2024.

ACLU of Wisconsin Foundation, Inc.

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