

**DAY CARE AIDE PROVIDER
APPLICATION**
State of Michigan
Department of Human Services (DHS)

INSTRUCTIONS TO PROVIDER:

- Read all pages of this application.
- If there is no name entered in the "Grantee Name" box in the top right corner of this application, enter the name of the parent/substitute parent whose child(ren) is in your care.
- **Complete page 1. Sign and date page 2. Retain page 3.**
- **You must provide proof of your identity, age, and Social Security Number with this application. The name on this application must match the name on the Social Security card. Your Social Security Number will be used for proof of identity and background checks. Failure to provide these verifications within 6 work days will result in denial of your application.**
- You will be sent a DHS-4807, Notice of Child Care Provider Eligibility.
- You will be sent a DHS-198, Child Development and Care Certificate/ Notice of Authorization, indicating whether or not the child(ren) in your care has been authorized to receive subsidy payments.

Grantee Name					
Grantee ID				Case Number	
County	District	Section	Unit	Specialist	Date
Specialist Name					
Local DHS Office				Telephone Number	
Local Office Address (Street Number and Name)					
City				State	Zip Code

- DHS Publication 230, Provider Handbook and Reporting Instructions for Child Care Providers, is available at: www.michigan.gov/childcare.
- The parent is responsible for child care expenses that are not paid by DHS, including expenses incurred while a parent's or provider's eligibility is being determined.

By completing this application, I am applying to be a DHS-enrolled day care aide provider. I have read and certify that I understand and meet all requirements listed on page 2 and 3 of this application.

Name (Last, First, Middle)			Former/Maiden/Alias		
Date of Birth	Sex	Social Security #		Driver's License #	
Residence Address (Number and Street, Apartment Number)			City	State	Zip Code
Mailing Address (If Different From Above)			City	State	Zip Code
Have you ever provided child care services for DHS subsidy eligible children? <input type="checkbox"/> NO <input type="checkbox"/> YES			Provider ID Number		Telephone Number ()
Do you receive DHS payment for providing Adult Home Help Services? <input type="checkbox"/> NO <input type="checkbox"/> YES If yes, for whom? ▶					
DHS will complete background checks for all day care aide applicants. Failure to tell DHS of any and all charges (e.g., misdemeanors, traffic violations, etc.) will result in denial.					
Do you have any criminal charges pending or ever been convicted of a crime? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, what state? ▶					
Describe the crime(s):					
Have you ever been found responsible for the neglect or abuse of children in a Children's Protective Services Case? <input type="checkbox"/> NO <input type="checkbox"/> YES					
If you live in the home of the child, list all adults (18 or older) living in the home.					
Name	Maiden & Other Names Used	Date of Birth	Sex	Social Security #	Driver License #

Department of Human Services (DHS) will not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you are invited to make your needs known to a DHS office in your area.	AUTHORITY: PA 280 of 1939. COMPLETION: Voluntary CONSEQUENCE FOR NONCOMPLETION: Applicant will not be enrolled to care for subsidy eligible children.
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DISTRIBUTION: Pages 1 and 2, Local office central provider file
Page 3 - Provider

Go to page 2 ▶

I certify that I meet the following requirements to be a DHS enrolled day care aide provider:

- I am not the parent or legal guardian of the child needing care, a member of the CDC program group, the CDC applicant/client, or the CDC applicant/client's spouse living in the child's home.
- I may be terminated from or may not be enrolled to care for subsidy eligible children if a Central Registry or criminal background check determines I have been responsible for the neglect or abuse of children in a confirmed Children's Protective Services case, or if I have been charged or convicted of certain disqualifying crimes.
- I am at least 18 years of age and able to read and write.
- I must only care for subsidy eligible children in their home.
- I must not have any untreatable physical or emotional impairment or other problem that would hinder me from giving adequate care and supervision to children.
- I must not have family responsibilities or other obligations that would interfere with providing child care to children.
- I must know how and when to seek help from others, i.e., how to use the telephone, how to respond to emergency situations which might arise during the provision of care to children.
- I must not have had my child care center, group home license, foster care license or family home registration revoked, or not be currently suspended.
- I must immediately report any suspected child abuse or neglect to Children's Protective Services at the local DHS office.
- I must give the parents/substitute parents of the children in my care unlimited access to their children while they are in my care.
- I must only release a child to the parent/substitute parent or persons authorized by the parent/substitute parent.
- I must not charge the parent/substitute parent more than what I charge the general public.
- I must report to the local DHS office, within 10 calendar days of the occurrence, a change in name, my mailing and/or residential address, and when I stop providing child care for a subsidy eligible child.
- I understand that as part of my billing/reporting requirements I must maintain daily records showing the beginning and ending times of the care I provide for each subsidy eligible child. My employer (the parent/substitute parent) must certify that these records are accurate. I must maintain those records for four years. If asked, I must make those records available to an employee of DHS or the auditor general.
- I understand that if I am also a home help provider, I may not provide child care for the same period in which home help is provided.
- I understand that if I have employment other than as a child care provider, my hours of employment must not conflict or interfere with the hours that I provide child care.
- I may only bill for child care services when a subsidy eligible child is physically in my care (except for qualifying State of Michigan holidays and absences due to a child's illness) and the child would normally be in my care.
- I must not care for more than 4 children (including my own children) at the same time, unless all children are siblings or migrant children. The maximum number of siblings or migrant children in my care may not exceed 6 (including my own children) at any one time.
- I must not care for more than 2 children (including my own children) under the age of 12 months at the same time.
- I understand that payment for all DHS subsidy eligible children in my care is limited to 540 hours in a biweekly pay period.
- I must cooperate with the DHS in connection with an investigation.
- I understand that if I am found guilty of an intentional program violation, my enrollment may be terminated.
- I understand that I may be prosecuted for fraud if my intentional misrepresentation causes an overpayment.
- I understand that if a DHS subsidy has been overpaid to my employer (the parent/substitute parent) for any reason, extra payments received must be repaid and future payments to my employer (the parent/substitute parent) may be reduced by 20%.
- I understand I will not be authorized payment for care of subsidy eligible children if my provider enrollment is denied or terminated.
- I understand the parent/substitute parent is my employer (not DHS) and is responsible for the employer's share of any employer's taxes that must be paid, such as Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax (FUTA) taxes. My employer (parent/substitute parent) is also required to provide me with a W-2 at the end of the year for tax purposes.
- I understand that the terms and conditions of this enrollment may be changed without notice.
- I understand that this certification applies to any subsidy eligible children I care for, until my enrollment is terminated.
- I understand that if I have misrepresented my circumstances, or if I fail to meet and abide by the requirements as listed, the DHS may deny or terminate my enrollment as a day care aide provider.
- I have reviewed the Provider Handbook and Reporting Instructions for Child Care Providers and the DHS Web site (www.michigan.gov/childcare).
- I have read, understand, and meet all enrollment requirements to be a DHS enrolled day care aide provider. I have retained a copy of the requirements for my records.

Provider Signature

Date

REQUIREMENTS TO BE A DHS-ENROLLED DAY CARE AIDE PROVIDER

- I am not the parent or legal guardian of the child needing care, a member of the CDC program group, the CDC applicant/client, or the CDC applicant/client's spouse living in the child's home.
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- I must not charge the parent/substitute parent more than what I charge the general public.
- I must report to the local DHS office, within 10 calendar days of the occurrence, a change in name, my mailing and/or residential address, and when I stop providing child care for a subsidy eligible child.
- I understand I am employed by the parent of the children in my care and not an employee of the DHS.
- I understand that as part of my billing/reporting requirements I must maintain daily records showing the beginning and ending times of the care I provide for each subsidy eligible child. My employer (the parent/substitute parent) must certify that these records are accurate. I must maintain those records for four years. If asked, I must make those records available to an employee of DHS or the auditor general.
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- I have read, understand, and meet all enrollment requirements to be a DHS enrolled day care aide provider. I have retained a copy of the requirements for my records.

Provider retain this page for your records.

memorandum

Mott Community College

Office of the President

Date: May 12, 2006
To: MHBCC Appointee Review Panel
From: Dick Shaink
Re: Candidates for Appointment to Michigan Home-Based Child Care Council

Thank you for agreeing to review background information and provide your thoughts and comments on each of the candidates for appointment to the Michigan Home-Based Child Care Council (MHBCC).

The candidates are as follows (in alphabetical order):

- **Kay Behm**, Attorney, Winegarden, Haley, Lindholm & Robertson, P.L.C.
- **Judy Garza**, Field Interviewer, University of Michigan, Institute for Social Research, Ann Arbor
- **Elizabeth (Beth) Hackett**, Consultant for Health, Safety and Nutrition Services at Genesee Intermediate School District
- **S. Olof Karlstrom**, retired lawyer, community advocate
- **Jan Nieuwenhuis**, assessment and data collection for the High/Scope Educational Research Foundation; retired/former Executive Director of Greater Flint/Thumb Area 4C Association
- **Carolyn M. Rutledge**, Director, Early Head Start and Coordinator of Community Education/State & Federal Programs at Carman-Ainsworth Community Schools
- **Cynthia Terry**,

Enclosed you will find a more detailed resume and/or biography for each of the candidates listed above. After you have reviewed this information, and based on your own knowledge of the candidate, I would appreciate your thoughts and comments in writing on each of the candidates returned to me no later than Monday, May 15. You may use the attached form if you like, or an email will suffice.

Thank you for your assistance in this matter.

Enclosures

Home-Based Child Care Council Appointees
Candidate Checklist

Name	Initial Phone Call/Contact	Resume Received	Release Received	Completed Background Check	Information Sent to Review Panel	Follow-Up Phone Call Made
Kay Behm	5/9/06 by DS	5/10/06	5/10/06	Yes by HR	5/12/06	
Judy Garza	4/25/06 by DS	5/10/06	5/10/06	Yes by HR	5/12/06	
Beth Hackett	5/1/06 by DS	5/5/06	5/11/06	Yes by HR	5/12/06	
Olof Karlstrom	4/24/06 by DS	5/5/06	5/12/06	Yes by HR	5/12/06	
Jan Nieuwenhuis	5/5/06 by DS	5/9/06	5/10/06	Yes by HR	5/12/06	
Carolyn Rutledge	5/1/06 by DS	5/2/06	5/10/06	Yes by HR	5/12/06	
Cynthia Terry	5/9/06 by DS	No		Yes by HR	5/12/06	

Additional Candidate Information:

Name	Title	Contact Information
Kay Behm	Attorney	Winegarden, Haley, Lindholm & Robertson, PLC 5851 Westwood Drive Grand Blanc, MI 48439 (810) 694-5309 Home (810) 579-3600 Work
Judy Garza	Field Interviewer	University of Michigan, Institute for Social Research, Ann Arbor 1167 Anzio Lane Flint, MI 48507 (810) 767-0190 Home
Elizabeth (Beth) Hackett	Consultant, Health, Safety and Nutrition Services	Genesee Intermediate School District 8331 Bonnie Court Grand Blanc, MI 48439 (810) 591-4504 Work

Name	Title	Contact Information
S. Olof Karlstrom	Retired Lawyer, Community Activist	Northbank Center, Suite 407 432 N. Saginaw Flint, MI 48502 (810) 239-5511 Work
Jan Nieuwenhuis	Assessment & Data Collection	High/Scope Educational Foundation 2224 E. Court Street Flint, MI 48503 (810) 233-6883 Home janicepn@aol.com
Carolyn Rutledge	Director, Early Head Start Coordinator of Community Education/State & Federal Programs	Carman-Ainsworth Community Schools 3290 Rogue River Road, NE Belmont, MI 49306 (616) 447-1044 Home crutledge@comcast.net
Cynthia Terry		(810) 487-1982 Cell

Compiled by L. Poma
5/15/06

lisa.poma

From: Mark.Kennedy [Mark.Kennedy@mcc.edu]
Sent: Monday, May 15, 2006 5:56 PM
To: lisa.poma@mcc.edu
Cc: Sylvia Green
Subject: Child Care Council Background Checks

Lisa – Sylvia has completed the background checks on everyone we have releases for and they are all clean.
They are:

Behm
Garza
Hackett
Karlstrom
Rutledge



Office of the President

May 25, 2006

Ms. Musette Michael
Michigan Department of Human Services
Department of Legal Affairs
P.O. Box 30037
Lansing, MI 48909

Dear Ms. Michael:

On behalf of the Board of Trustees of Mott Community College, I am pleased to announce that the following two individuals were appointed to the Michigan Home-Based Child Care Council at our regular meeting held on Monday, May 22, 2006:

Ms. Elizabeth (Beth) Hackett
Mr. S. Olof Karlstrom

A resume/bio for each of the appointees as well as a copy of the formal resolution is enclosed for your information and files.

Mott Community College is both honored and enthused to be working with the Michigan Department of Human Services on this important initiative for our state. We are certain that this collaboration will do much to enhance the quality of child care, increase the number of providers, and provide new employment opportunities in the child care field.

Again, we look forward to working with you. If you have any questions or need additional information, please do not hesitate to contact me. As always, thank you for your continued support.

Sincerely,

M. Richard Shaink, Ph.D.
President

Enclosures

- c: K. Keenan, Chief Legal Counsel, Governor's Office
B. Hoffmeister, Deputy Legal Counsel, Governor's Office
L. Croudy, Chair, MCC Board of Trustees
J. Delaney, Legal Counsel, MCC Board of Trustees

Charles Stewart Mott Community College
1401 East Court Street • Flint, Michigan 48503-2089 • (810) 762-0200
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

JAP
5/25/06

lisa.poma

From: lisa.poma [lisa.poma@mcc.edu]
Sent: Wednesday, May 24, 2006 8:17 AM
To: hofmeisterb@michigan.gov
Cc: Dick Shaink
Subject: MHBCC Appointees Contact Information

Hello, Brandon. Listed below is the contact information for the two individuals that the MCC Board appointed to the Michigan Home-Based Child Care Council. I will also be sending a letter with this information and a copy of the formal resolution...to who should I address it?

Thanks for all your help. If you need any other information, please let me know.

Elizabeth (Beth) Hackett
8331 Bonnie Court
Grand Blanc, MI 48439
Work phone: 810-591-4504
Email: bhackett@geneseeisid.org

S. Olof Karlstrom
Northbank Center
432 N. Saginaw Street, Suite 407
Flint, MI 48502
Work phone: 810-239-5511
Fax: 810-232-6311

Lisa M. Poma
Administrative Assistant
Office of the President
Mott Community College
(810) 762-0453 phone

FOR ACTION

Board of Trustees
 Charles Stewart Mott Community College
 Regular Meeting, May 22, 2006
 Volume 37

1.58 Appointments to the Michigan Home-Based Child Care Council

The Interlocal Agreement approved at the April 17, 2006 Board of Trustees meeting provides the College with the ability to appoint two persons to serve on the Michigan Home-Based Child Care Council Advisory Board.

After soliciting names of potential appointees and having these names reviewed by a panel including the Board Chair, faculty and staff members, it is recommended that Elizabeth Hackett and S. Olof Karlstrom be appointed by the Mott Community College Board of Trustees to serve on the Michigan Home Based Child Care Council Board (herein after referred to as the Council Board). These two individuals will serve the Council Board well as a result of their experience, expertise, and interest in the field. Both appointments will be contingent on completion of appropriate background checks to be conducted both by the College and the Governor's Office of the State of Michigan.


On the basis of the preceding information, the following resolution is recommended:

Be it Resolved, That

The Charles Stewart Mott Community College Board of Trustees

Appoints Elizabeth Hackett and S. Olof Karlstrom to the Michigan Home-Based Child Care Council Advisory Board as provided in the Interlocal Agreement between the Department of Human Services and Mott Community College creating the Michigan Home Based Child Care Council, contingent upon completion of appropriate background checks.

Reviewed and Submitted by:


 M. Richard Shaink, President

Date: 5/16/06


 James Delaney, Board Attorney

Date: 5-16-06

Policy Reference: Policy 8100: Governmental Relations: The Board acknowledges the importance of establishing a good working relationship and to open lines of communication with governmental agencies having an interest in building relationships in the community.



Office of the President

May 24, 2006

Mr. S. Olof Karlstrom, Attorney
Northbank Center
432 N. Saginaw Street, Suite 407
Flint, MI 48502

Dear Olof:

Enclosed is a copy of the Michigan Home-Based Child Care Inter-local Agreement and some additional background information that I thought you might like to have.

Again, let me say how pleased we are that you have agreed to serve on the MHBCC Council as a Mott Community College appointee. We look forward to working with you. I have forwarded your contact information to Brandon Hoffmeister, Legal Counsel to Governor Granholm. I would expect that you will be hearing from him in the near future.

If you have any other questions or need additional information, please feel free to call me.

Sincerely,

M. Richard Shaink, Ph.D.
President

Enclosures

Charles Stewart Mott Community College

1401 East Court Street • Flint, Michigan 48503-2089 • (810) 762-0200
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



Office of the President

May 24, 2006

Ms. Elizabeth Hackett
8331 Bonnie Court
Grand Blanc, MI 48439

Dear Ms. Hackett:

As promised, enclosed is a copy of the Michigan Home-Based Child Care Inter-local Agreement and some additional background information.

Again, let me say how pleased we are that you have agreed to serve on the MHBCC Council as a Mott Community College appointee. We look forward to working with you. I have forwarded your contact information to Brandon Hoffmeister, Legal Counsel to Governor Granholm. I would expect that you will be hearing from him in the near future.

If you have any other questions or need additional information, please feel free to call me.

Sincerely,

M. Richard Shaink, Ph.D.
President

Enclosures

ATTN: PATRICK WRIEAT

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code and telephone no. DEPARTMENT OF HUMAN SERVICES P.O. BOX 30025 LANSING, MICHIGAN 48909 1-800-444-5364		1 Rents \$	OMB No. 1545-0115 2008 Form 1099-MISC		Miscellaneous Income
PAYER'S federal identification number 38 6000134		2 Royalties \$	4 Federal income tax withheld \$		
RECIPIENT'S name PAULETTE SILVERSON Street address (including apt. no.) 13175 E LASHBROOK City, state, and ZIP code BRIGHTON MI 48116		3 Other Income \$	5 Fishing boat proceeds \$		Copy 2 To be filed with recipient's state income tax return, when required.
RECIPIENT'S identification number 383 26 7854		6 Medical and health care payments \$	7 Nonemployee compensation 39985.73 \$		
Account number (see instructions) 52 4793848 052862		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		10 Crop insurance proceeds \$
11		12		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

Department of the Treasury Internal Revenue Service

CUT ALONG THIS LINE

CUT ALONG THIS LINE

CUT ALONG THIS LINE

Instructions to Recipients

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Amounts shown may be subject to self-employment (SE) tax. If your net income from self-employment is \$400 or more, you must file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334, Tax Guide for Small Business, for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES, Estimated Tax for Individuals. Individuals must report as explained for box 7 below. Corporations, fiduciaries, or partnerships report the amounts on the proper line of your tax return.

Boxes 1 and 2. Report rents from real estate on Schedule E (Form 1040). If you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business, report on Schedule C or C-EZ (Form 1040). For royalties on timber, coal, and iron ore, see Pub. 544, Sales and Other Dispositions of Assets.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes, awards, taxable damages, Indian gaming profits, payments from a former employer because you are serving in the Armed Forces or the National Guard, or other taxable income. See Pub 525, Taxable and Nontaxable Income. If it is trade or business income, report this amount on Schedule C, C-EZ, or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number. See Form W-9, Request for Taxpayer Identification Number and Certification, for more information. Report this amount on your incometax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator considers you self-employed. Report this amount on Schedule C or C-EZ (Form 1040). See Pub. 334.

Box 6. For individuals, report on Schedule C or C-EZ (Form 1040).

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee and cannot get this form corrected, report the amount from box 7 on Form 1040, line 7 (or Form 1040 NR, line 8). You must also complete and attach to your return form 8919, Uncollected Social Security and Medicare Taxes on Wages.

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other Income" line of Form 1040.

Box 9. If checked, \$5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C or C-EZ (Form 1040).

Box 10. Report this amount on line 8 of Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 instructions for where to report.

Box 14. Shows gross proceeds paid to an attorney in connection with legal services. Report only the taxable part as income on your return.

Box 15a. Shows current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A. Any earnings on current and prior year deferrals must also be reported.

Box 15b. Shows income as a nonemployee under a NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 as nonemployee compensation. Any amount included in box 15a that is currently taxable is also included in this box. This income is also subject to a substantial additional tax to be reported on Form 1040. See "Total Tax" in the Form 1040 instructions.

Boxes 16-18. Shows state or local income tax withheld from the

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code and telephone no. DEPARTMENT OF HUMAN SERVICES P.O. BOX 30025 LANSING, MICHIGAN 48909 1-800-444-5364		1 Rents \$	OMB No. 1545-0115 2008 Form 1099-MISC		Miscellaneous Income
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City, state, and ZIP code BRIGHTON MI 48116		11	12		
Account number (see instructions) 52 4793848 052862		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
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Form 1099-MISC

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Amounts shown may be subject to self-employment (SE) tax. If your net income from self-employment is \$400 or more, you must file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334, Tax Guide for Small Business, for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES, Estimated Tax for Individuals. Individuals must report as explained for box 7 below. Corporations, fiduciaries, or partnerships report the amounts on the proper line of your tax return.

Boxes 1 and 2. Report rents from real estate on Schedule E (Form 1040). If you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business, report on Schedule C or C-EZ (Form 1040). For royalties on timber, coal, and iron ore, see Pub. 544, Sales and Other Dispositions of Assets.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes, awards, taxable damages, Indian gaming profits, payments from a former employer because you are serving in the Armed Forces or the National Guard, or other taxable income. See Pub 525, Taxable and Nontaxable Income. If it is trade or business income, report this amount on Schedule C, C-EZ, or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number. See Form W-9, Request for Taxpayer Identification Number and Certification, for more information. Report this amount on your incometax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee and cannot get this form corrected, report the amount from box 7 on Form 1040, line 7 (or Form 1040 NR, line 8). You must also complete and attach to your return form 3919, Uncollected Social Security and Medicare Taxes on Wages.

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other income" line of Form 1040.

Box 9. If checked, \$5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C or C-EZ (Form 1040).

Box 10. Report this amount on line 8 of Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 instructions for where to report.

Box 14. Shows gross proceeds paid to an attorney in connection with legal services. Report only the taxable part as income on your return.

Box 15a. Shows current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A. Any earnings on current and prior year deferrals must also be reported.

Box 15b. Shows income as a nonemployee under a NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 on nonemployee compensation.

CORRECTED (if checked)

PAYER'S name, street address, city, state, and ZIP code and telephone no. DEPARTMENT OF HUMAN SERVICES P.O. BOX 30025 LANSING, MICHIGAN 48909 1-800-444-5364		1 Rents \$	OMB No. 1545-0115 2008 Form 1099-MISC		Miscellaneous Income Copy 2 To be filed with recipient's state income tax return, when required.
PAYER'S federal identification number 38 6000134		2 Royalties \$	4 Federal income tax withheld \$		
RECIPIENT'S identification number 436 29 9550	5 Fishing boat proceeds \$	6 Medical and health care payments \$	8 Substitute payments in lieu of dividends or interest \$		
RECIPIENT'S name BERRY MICHELLE Street address (including apt. no.) 4058 W COURT ST City, state, and ZIP code FLINT MI 48532	7 Nonemployee compensation 24478.63 \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
Account number (see instructions) 51 3493097	002382	11	12		
15a Section 409A deferrals \$	15b Section 409A income \$	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	16 State tax withheld \$	17 State/Payer's state no.
					18 State income \$

Form 1099-MISC

Department of the Treasury Internal Revenue Service

CUT ALONG THIS LINE

CUT ALONG THIS LINE

CUT ALONG THIS LINE

Instructions to Recipients

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Amounts shown may be subject to self-employment (SE) tax. If your net income from self-employment is \$400 or more, you must file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334, Tax Guide for Small Business, for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES, Estimated Tax for Individuals. Individuals must report as explained for box 7 below. Corporations, fiduciaries, or partnerships report the amounts on the proper line of your tax return.

Boxes 1 and 2. Report rents from real estate on Schedule E (Form 1040). If you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business, report on Schedule C or C-EZ (Form 1040). For royalties on timber, coal, and iron ore, see Pub. 544, Sales and Other Dispositions of Assets.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes, awards, taxable damages, Indian gaming profits, payments from a former employer because you are serving in the Armed Forces or the National Guard, or other taxable income. See Pub 525, Taxable and Nontaxable Income. If it is trade or business income, report this amount on Schedule C, C-EZ, or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number. See Form W-9, Request for Taxpayer Identification Number and Certification, for more information. Report this amount on your incometax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator considers you self-employed. Report this amount on Schedule C or C-EZ (Form 1040). See Pub. 334.

Box 6. For individuals, report on Schedule C or C-EZ (Form 1040).

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee and cannot get this form corrected, report the amount from box 7 on Form 1040, line 7 (or Form 1040 NR, line 8). You must also complete and attach to your return form 8919, Uncollected Social Security and Medicare Taxes on Wages.

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other income" line of Form 1040.

Box 9. If checked, \$5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C or C-EZ (Form 1040).

Box 10. Report this amount on line 8 of Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 instructions for where to report.

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Box 15a. Shows current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A. Any earnings on current and prior year deferrals must also be reported.

Box 15b. Shows income as a nonemployee under a NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 as nonemployee compensation. Any amount included in box 15a that is currently taxable is also included in this box. This income is also subject to a substantial additional tax to be reported on Form 1040. See "Total Tax" in the Form 1040 instructions.

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30758
LANSING, MICHIGAN 48909

October 28, 2009

VIA HAND DELIVERY

Clerk of the Court
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
Lansing, MI 48933

Re: *Loar v Michigan Dept. of Human Services and Ismael Ahmed, in his
official capacity as Director of the Michigan Dept. of Human Services*
Michigan Court of Appeals: No: 294087

Dear Clerk of the Court:

Enclosed is an original plus four copies of Defendants' Response Brief Opposing
Plaintiffs' Motion to File Amended Complaint, together with Proof of Service for filing in the
above-referenced matter.

Thank you for your courtesy in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua S. Smith", written over a horizontal line.

Joshua S. Smith
Assistant Attorney General
Health, Education & Family
Services Division
Phone: (517) 373-7700
Fax: (517) 335-1152

mmj
Enclosures
c: Patrick Wright, Esq.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR and DAWN IVES,

Plaintiffs,

Court of Appeals No: 294087

V

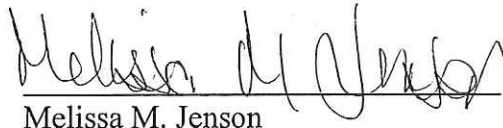
MIHCIGAN DEPT. OF HUMAN SERVICES
And ISMAEL AHMED, in his official
Capacity as Director of the Michigan Dept.
Of Human Services,

Defendants.

PROOF OF SERVICE

To: Patrick Wright
140 W. Main St.
PO Box 568
Midland, MI 48640

The undersigned certifies that a copy of Defendants' Response Brief Opposing Plaintiffs' Motion to File Amended Complaint was served upon the above attorneys of record or parties appearing *in pro per* in the above cause by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 28th day of October, 2009.


Melissa M. Jenson

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR and DAWN IVES,

Plaintiffs,

Court of Appeals No: 294087

V

MICHIGAN DEPT. OF HUMAN SERVICES
And ISMAEL AHMED, in his official
Capacity as Director of the Michigan Dept.
Of Human Services,

Defendants.

**DEFENDANTS' RESPONSE BRIEF OPPOSING PLAINTIFFS'
MOTION TO FILE AMENDED COMPLAINT**

Respectfully submitted,

Joshua S. Smith (P63349)
Joseph E. Potchen (P49501)
Assistant Attorneys General
Attorneys for Defendants
Health, Education & Family Services
Division
525 W Ottawa St Fl 3
PO Box 30758
Lansing, MI 48909
517-373-7700

Dated: October 28, 2009

Introduction

On October 7, 2009, Defendants Michigan Department of Human Services ("DHS") and DHS Director Ishmael Ahmed filed a Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4). DHS and Mr. Ahmed argued that Plaintiffs' Complaint failed to state a claim because it did not allege either the elements of mandamus or any factual foundation for those elements. In addition, DHS and Mr. Ahmed argued that Plaintiffs failed to add necessary parties who, once added, would strip this Court of jurisdiction. Furthermore, Plaintiffs failed to exhaust their available remedies. Plaintiffs responded by filing a Motion to File Amended Complaint. As argued below, the proposed amended complaint fails to cure the defects in the Complaint and any amendment would be futile. Accordingly, this Court should deny Plaintiff's Motion.

Legal Argument

Under Michigan law, a party may amend a complaint only if the amendment will cure the deficiencies in the complaint or where the amendment will not be futile.¹ An amendment is futile where "it merely restates the allegations already made or adds allegations that fail to state a claim."² It logically follows that an amendment which fails to cure the defects of the original is futile because, like the original, it would also result in dismissal. In the present case, Plaintiffs' proposed amendment would not cure the defects in the Complaint because it does not add the necessary parties and does not address Plaintiffs' failure to exhaust their remedies. Thus, even with the proposed Amended Complaint, summary disposition pursuant to MCR 2.116(C)(4) would remain warranted. In addition, because the proposed amended complaint merely adds

¹ *Miller v Chapman Contracting*, 477 Mich 102, 105-108; 730 NW2d 462 (2007); *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997); *Lane v Kindercare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

² *Lane*, 231 Mich App at 697-698.

conclusory allegations that fail to state a claim, dismissal pursuant to MCR 2.116(C)(8) also would remain warranted.

A. Plaintiffs' proposed Amended Complaint fails to state a claim on which relief can be granted because it merely states conclusory allegations and fails to lay a sufficient factual foundation.

A complaint that merely makes conclusory allegations must be dismissed³ and a claim must allege a factual basis for each of its elements.⁴ Where a plaintiff fails to allege specific facts in support of each element of a claim, the action must be dismissed.⁵ The proposed Amended Complaint adds the elements of mandamus, at ¶¶ 54-57, but fails to establish a factual basis for those elements. As such, "it merely . . . adds allegations that fail to state a claim."⁶ The proposed Amended Complaint would be futile because it fails to state a claim. Therefore, for the same reasons set forth in Defendants' Motion to Dismiss, Plaintiffs' Motion must be denied.

B. Plaintiffs' proposed Amended Complaint fails to add necessary parties who, once added, divest this Court of jurisdiction.

The proposed Amended Complaint still fails to cure the defect of Plaintiffs' failure to name necessary parties. Plaintiffs' claim does not properly belong in this Court because other parties exist whose roles in this case make them necessary to this action and whose claims must therefore be joined and litigated.⁷ Plaintiffs premise this Court's jurisdiction on MCR

³ *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006); *Demido v Attorney General*, 100 Mich App 254, 257; 299 NW2d 43 (1980).

⁴ *Merillat v Michigan State University*, 207 Mich App 240, 248; 523 NW2d 802 (1994); *Eichhorn v Lamphere School Dist*, 166 Mich App 527, 546; 421 NW2d 230 (1988).

⁵ *Merillat*, 207 Mich App at 248; *Eichhorn*, 166 Mich App at 546; *Demido*, 100 Mich App at 257.

⁶ *Lane*, 231 Mich App at 697-698.

⁷ These parties are the Michigan Home Based Child Care Council (Council), Mott Community College (Mott), the Michigan Employment Relations Commission (MERC), and the Child Care Providers Together Michigan (Union).

7.203(C)(2) and MCR 3.305(A)(1), which grant this Court jurisdiction over an original action for mandamus action against a state officer.⁸ If the action involves a party other than a state officer, however, it "must be brought in the Circuit Court."⁹ Once the necessary parties have been joined, this Court will no longer have jurisdiction pursuant to MCR 3.305(A)(2). Because the proposed amended complaint fails to cure this defect, it would be futile and Plaintiffs' Motion must be denied.

C. Plaintiffs' proposed Amended Complaint fails to show how Plaintiffs satisfied their obligation to exhaust their available remedies.

Nor does the proposed amendment address Plaintiffs' failure to exhaust their remedies under the Public Employee Relations Act (PERA), which gives MERC exclusive jurisdiction over the composition of bargaining units¹⁰ and unfair labor practices.¹¹

Once again, Plaintiffs do not allege they filed any claim with MERC regarding the matters challenged in this lawsuit. The proposed Amended Complaint, like the original Complaint, challenges MERC's 2006 certification of a union representing home-based child care providers. Plaintiffs, however, waited three years to bring this present action. If Plaintiffs, who are members of the Union, claim that the deduction of dues somehow constitutes an unfair labor practice or that the union breached its duty of fair representation, they were required to file their

⁸ Defendants do not concede their claim that this Court lacks jurisdiction based on the present case being an action for declaratory and injunctive, rather than mandamus, relief.

⁹ MCR 3.305(A)(2).

¹⁰ MCL 423.213; *St. Clair Intermediate School Dist v Intermediate Education Ass'n*, 458 Mich 540, 549; 581 NW2d 707 (1998) (MERC has "exclusive jurisdiction" over unfair labor practices with respect to bargaining policy).

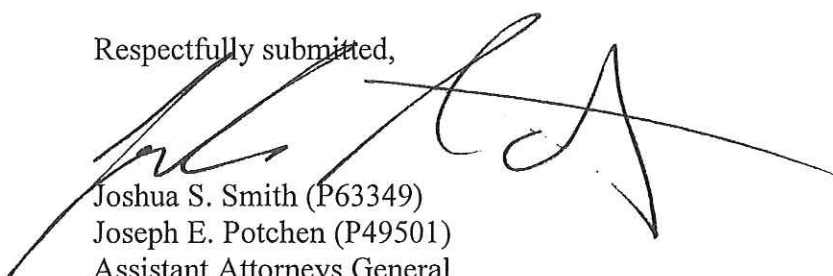
¹¹ MCL 423.216; *Kent County Deputy Sheriff's Assoc v Kent County Sheriff*, 463 Mich. 353, 359; 616 NW2d 677 (2000). *See also Labor Mediation Board v Jackson County Road Commissioners*, 365 Mich 645, 654; 114 NW2d 183 (1962); *Lamphere Schools v Lamphere Federation of Teachers*, 400 Mich 104, 118; 252 NW2d 818 (1977).

claim, before either MERC or in Circuit Court,¹² within six months after discovering the claim.¹³ Plaintiffs failed to exhaust their available remedies, a defect not cured by the proposed amended Complaint. Accordingly, Plaintiffs Motion to File Amended Complaint must be denied as futile.

Conclusion

Plaintiffs' proposed Amended Complaint fails to cure the defects of the Complaint and merely adds conclusory, unsupported allegations that fail to state a claim. It would therefore be futile to allow them to file an amended complaint. The proposed Amended Complaint also fails to avoid the jurisdictional infirmities set forth in Defendants' Motion to Dismiss. Defendants Michigan Department of Human Services and Ishmael Ahmed therefore respectfully request that this Court deny Plaintiffs' Motion to File Amended Complaint and dismiss Plaintiffs' Complaint.

Respectfully submitted,



Joshua S. Smith (P63349)
Joseph E. Potchen (P49501)
Assistant Attorneys General
Attorneys for Defendants
Health, Education & Family Services
Division
525 W Ottawa St Fl 3
PO Box 30758
Lansing, MI 48909
517-373-7700

Dated: October 28, 2009

¹² *Demings v City of Ecorse*, 423 Mich 49, 63-64; 377 NW2d 275 (1985).

¹³ *Silbert v Lakeview Education Ass'n, Inc*, 187 Mich App 21, 25; 466 NW2d 333 (1991).

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30758
LANSING, MICHIGAN 48909

November 5, 2009

VIA HAND DELIVERY

Clerk of the Court
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
Lansing, MI 48933

Re: *Loar v Michigan Dept. of Human Services and Ismael Ahmed, in his
official capacity as Director of the Michigan Dept. of Human Services*
Michigan Court of Appeals: No: 294087

Dear Clerk of the Court:

Enclosed is an original plus four copies of Defendants' Motion for Leave to File Brief in Reply to Plaintiff's Brief in Support of Answer to Defendants' Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(10) and Defendants' Brief in Support of Motion, together with Proof of Service for filing in the above-referenced matter.

Further enclosed is a Request for Electronic Payment to the Court of Appeals in the amount of \$100.00, which represents the filing fee for the enclosed motion.

Thank you for your courtesy in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joshua S. Smith", written over a horizontal line.

Joshua S. Smith
Assistant Attorney General
Health, Education & Family
Services Division
Phone: (517) 373-7700
Fax: (517) 335-1152

JSS/mmj
Enclosures
c: Patrick Wright, Esq.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR,

Plaintiff,

Court of Appeals No: 294087

v

MIHCIGAN DEPT. OF HUMAN SERVICES
and ISMAEL AHMED, in his official
capacity as Director of the Michigan Dept.
of Human Services,

Defendants.

PROOF OF SERVICE

To: Patrick Wright
140 W. Main St.
PO Box 568
Midland, MI 48640

The undersigned certifies that a copy of Defendants' Motion for Leave to File Brief in Reply to Plaintiff's Brief in Support of Answer to Defendants' Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(10) and Brief in Support of Motion was served upon the above attorneys of record or parties appearing *in pro per* in the above cause by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 5th day of November, 2009.


Melissa M. Jenson

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR,

Plaintiff,

Court of Appeals No: 294087

v

MIHCIGAN DEPT. OF HUMAN SERVICES
and ISMAEL AHMED, in his official
capacity as Director of the Michigan Dept.
of Human Services,

Defendants.

**DEFENDANTS' MOTION FOR LEAVE TO FILE BRIEF IN REPLY TO
PLAINTIFF'S BRIEF IN SUPPORT OF ANSWER TO DEFENDANTS'
MOTION TO DISMISS PURSUANT TO MCR 2.116(C)(8) AND (C)(4)**

Defendants, Michigan Department of Human Services and Ismael Ahmed, move to file Brief in Reply to Plaintiff's Brief in Support of Answer to Defendants' Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4) and state as follows:

1. On October 7, 2009, Defendants filed a Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4). Plaintiff Sherry Loar filed an Answer and supporting Brief on October 28, 2009.¹
2. In her Brief, Plaintiff mischaracterizes the role of DHS, misapplies the elements of mandamus to claim she has stated a cause of action and makes several inaccurate statements of fact and law.

¹ The parties stipulated to dismiss Plaintiff Dawn Ives from this action.

3. For example, based on the allegations in her complaint and the statements in her Brief, it is readily apparent that Plaintiff objects to the holding of an election that approved union representation for home day care workers and the certification of that election by the Michigan Employment Relations Commission (MERC). Notably, Plaintiff states she is "not contending that the election was run improperly, but rather that the election never should have taken place without legislation bringing Plaintiff within PERA" (P Brief, pp 13-14). DHS, however, was not involved in these actions.

4. DHS did not set up the union, did not hold the election, did not approve the union and did not enter into collective bargaining with the union. Plaintiff had the opportunity to challenge the union election and MERC's certification of it, but failed to timely exercise her rights.

5. Plaintiff also misstates the requirements of pleading and the elements of mandamus. For instance, Plaintiff's claim that she has no duty to plead the elements of mandamus and supporting facts is contrary to well established case law on this issue.

6. Moreover, Plaintiff provides misleading reference to case law to claim this Court's jurisdiction, without revealing that jurisdiction was never raised in those cases. Plaintiff also cites to cases that arose under the General Court Rules rather than the rules applicable to this matter. In fact, Plaintiff fails to address the actual language of the controlling court rules, MCR 7.203(C)(2) and MCR 3.305(A)(1).

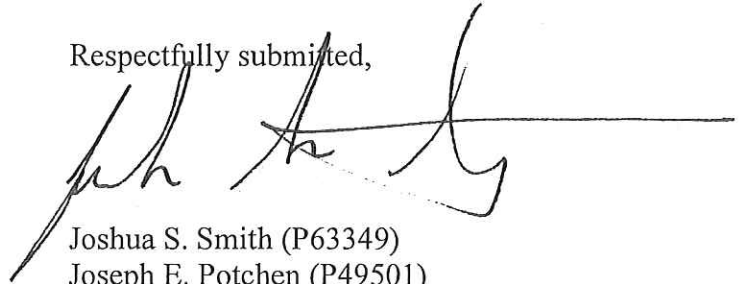
7. Due to the numerous inaccuracies and misstatements contained in Plaintiff's Brief, Defendants request leave to file a reply brief so that this Court is fully and fairly apprised of the actual facts and relevant law.

8. This Court allows parties to file a reply to an answer to a motion where accompanied by a motion for leave to file the reply. IOP 7.211(B)(2).

9. A copy of Defendants' proposed reply brief is attached to this motion.

WHEREFORE, Defendants Michigan Department of Human Services and Ismael Ahmed respectfully request that this Court grant leave to allow them to file a Brief in Reply to Plaintiff's Brief in Support of Answer to Defendants' Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4).

Respectfully submitted,

A handwritten signature in black ink, appearing to be a cursive combination of the names Joshua S. Smith and Joseph E. Potchen, written over a horizontal line.

Joshua S. Smith (P63349)
Joseph E. Potchen (P49501)
Assistant Attorneys General
Attorneys for Defendants
Health, Education & Family Services
Division
PO Box 30758
Lansing, MI 48909
517-373-7700

Dated: November 5, 2009

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR,

Plaintiff,

Court of Appeals No: 294087

v

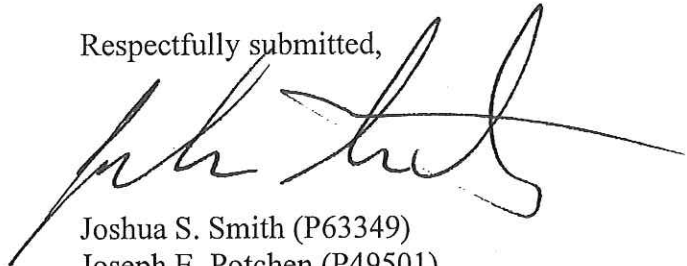
MICHIGAN DEPT. OF HUMAN SERVICES
and ISMAEL AHMED, in his official
capacity as Director of the Michigan Dept.
of Human Services,

Defendants.

**DEFENDANTS' REPLY TO PLAINTIFF'S BRIEF IN SUPPORT OF
ANSWER TO DEFENDANTS' MOTION TO DISMISS
PURSUANT TO MCR 2.116(C)(8) AND (C)(4)**

ORAL ARGUMENT REQUESTED

Respectfully submitted,



Joshua S. Smith (P63349)
Joseph E. Potchen (P49501)
Assistant Attorneys General
Attorneys for Defendants
Health, Education & Family Services
Division
525 W Ottawa St Fl 3
PO Box 30758
Lansing, MI 48909
517-373-7700

Dated: November 5, 2009

A. Plaintiff mischaracterizes the role of Department of Human Services ("DHS") in the present case and fails to properly recognize the role of the Michigan Employment Relations Commission.

Based on the allegations in the complaint and statements in her response brief, it is readily apparent that Plaintiff misunderstands DHS's role in this case, the collective bargaining process and the role played by the Michigan Employment Relations Commission (MERC). DHS was not involved in most of the actions that Plaintiff claims as support for her mandamus action. In fact, most of the "clear legal rights" or "clear legal duties" that Plaintiff cites as the basis for her mandamus claim do not involve DHS.

For example, Plaintiff claims that DHS gave the Michigan Home Based Child Care Council (MHBCCC) the "power to collectively bargain" (Plf's Brief, pp 4-5). DHS did not—indeed *could not*—grant MHBCCC the power to collectively bargain. Rather, DHS entered into an interlocal agreement with Mott Community College (Mott), which resulted in the creation of the MHBCCC. In 2006, in an election certified by MERC, the home child care workers voted to form a union, Child Care Providers Together Michigan (Union). The Union then negotiated and entered into a collective bargaining agreement with the MHCCC.

Plaintiff challenges the Union's existence, but DHS did not set up the Union. Plaintiff challenges the fact that an election was held, but DHS did not take part in that election. Plaintiff challenges the certification of the election, but DHS did not certify the election. Plaintiff challenges the propriety of the collective bargaining agreement, but DHS did not enter into that agreement. In fact, the only thing DHS has done is to deduct dues for which Plaintiff and other providers are already legally obligated to pay. Even if this Court prevented DHS from deducting the dues, Plaintiff would still be required to pay her union dues pursuant to the MERC decision and the collective bargaining agreement.

While Plaintiff objects to the Union's certification and the terms of the collective bargaining agreement that requires her union dues to be deducted, she clearly had notice of the election.¹ Indeed, Plaintiff states she is "not contending that the election was run improperly" (Plf's Brief, p 13). While she concedes this point, she is now trying to indirectly challenge the formation of the Union and the collective bargaining agreement by stating the election should not have taken place (Plf's Brief, pp 13-14).

While Plaintiff seemingly argues that MERC could not have had actual jurisdiction over the present case (Plf's Brief, p 14), that argument ignores the reality that *MERC actually exercised jurisdiction over the certification election* and issued a decision. Plaintiff no doubt knew this, as shown by her discussion of MERC's role in their Brief in Support of Original Action for Mandamus (Plaintiff's Brief in Support of Original Action for Mandamus, at pp 13-14). Plaintiff thus contrived the present suit, which serves as a retroactive attack on the MERC proceedings—without the presence of the Union, MHBCCC or MERC—as a way around their failure to challenge the MERC decision. The proper forum for a challenge to MERC's jurisdiction would seemingly be before MERC or, after the fact, at least *against* MERC. Plaintiff's arguments that the election should not have occurred "without legislation" should have been raised *when the case was before MERC or within the appeal period*. Plaintiff, however, not only failed to timely challenge MERC's jurisdiction, she failed to even add MERC to the present case.²

¹ See Representation Election—Mailings to Petoskey, attached as Exhibit A.

² Defendants statements should be viewed to waive any valid defenses MERC may have should Plaintiff attempt to join it as a party.

Instead of squarely addressing these failures, Plaintiff cites to a pair of cases that she claims bar MERC's jurisdiction.³ Both are inapposite. Plaintiff conveniently ignores the fact that both *City of Lansing* and *Prisoners' Labor Union* originated in MERC.⁴ If anything, these cases stand for the proposition that the proper time for Plaintiffs' action to decertify the Union was before MERC, not three years after the fact in this Court. In addition, both cases involve far different legal issues than those presently at issue. *Prisoners Labor Union* held that the Department of Corrections rather than MERC had exclusive jurisdiction over correctional industries and the inmates who work for them.⁵ And *City of Lansing* involved a challenge to a project labor agreement requiring a private company to unionize its employees in order for it to work on a city project.⁶ Neither situation applies to the present case.

B. Plaintiff misapplies the elements of mandamus to wrongfully claim she has stated a valid cause of action.

Plaintiff seems to believe that she has a right so compelling that, rather than go through the cumbersome method of pleading the elements of a mandamus claim with supporting facts, merely adding the word "mandamus" to her complaint compels this Court to grant her chosen writ. Mandamus, however, is not a "writ of right."⁷ Rather, it is an "extraordinary remedy" within the discretion of the court.⁸ Because "[t]he burden of showing entitlement to the

³ See *City of Lansing v Carl Schlegel Inc*, 257 Mich App 627; 669 NW2d 315 (2003); *Prisoners' Labor Union v Dep't of Corrections*, 61 Mich App 328; 232 NW2d 699 (1975).

⁴ *City of Lansing*, 257 Mich App at 629-630; *Prisoners' Labor Union*, 61 Mich App at 329.

⁵ *Prisoners' Labor Union*, 61 Mich App at 336-337. The providers, including Plaintiff, are not in the Michigan prison system.

⁶ *City of Lansing*, 257 Mich App at 629. Unlike *City of Lansing*, the present case involves employees who voted in favor of a union in a free and fair election.

⁷ *McGregor v Carney*, 271 Mich 278, 281; 260 NW 163 (1935).

⁸ *Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999).

extraordinary remedy of a writ of mandamus is on the Plaintiff," merely stating "mandamus" in the complaint or even reciting the elements, bereft of support, do not satisfy that burden.⁹

Plaintiff similarly ignores the substantial case law that elucidates the requirements for mandamus relief. For instance, mandamus is not available to collect money seized by a defendant unless there is no factual or legal dispute that that the plaintiff is entitled to the funds—a situation that does not exist here.¹⁰ In general, mandamus is not available where a party has failed to exhaust its remedies, including challenging the rules, processes and procedures before the appropriate agency.¹¹ Plaintiff, however, made no attempt to challenge the MERC decision or any of its rules, processes or procedures. Nor is mandamus available to decide difficult and unresolved issues of law.¹² Given that the present case involves difficult and unresolved issues of law, and that Plaintiff failed to pursue remedies at the agency level, it would be inappropriate to grant mandamus relief in the present case.

Plaintiff attempts to remedy her failure to plead mandamus by stringing together unconnected snapshots of events and slapping the elements of mandamus onto them. For instance, Plaintiff alleges that she has "a clear legal right" to a presumption against public-sector collective bargaining. But Plaintiff makes no effort to link her asserted "clear legal right" to any action undertaken by DHS or explain how a ruling consistent with their understanding of that right would lead to the relief requested.

⁹ *White-Bey v Dept of Corrections*, 239 Mich App 221, 223; 608 NW2d 833 (1999).

¹⁰ *Lobaido v Detroit Police Comm'r*, 15 Mich App 138, 140; 166 NW2d 515 (1968).

¹¹ *Michigan Ass'n of Homes & Servs for the Aging v Shalala*, 127 F3d 496, 503 (6th Cir 1997) (discussing 28 USC 1351, which codifies common law action for mandamus against a state officer).

¹² *State Board of Education v Fox*, 620 F2d 578, 580 (6th Cir 1980).

Similarly, Plaintiff argues that the well-established requirement that a complaint state the elements of a claim and explain, *via* allegations of fact, how those elements are satisfied somehow does not apply to her. In support of this, she cites to a case in which this Court reversed a trial court decision dismissing a case for the plaintiff's failure to provide an accurate label in the complaint for the action.¹³ In the present case, however, Plaintiff's Complaint lacked any attempt to link the elements of mandamus to the Defendants' conduct. Citing to *Smith* does not remedy Plaintiff's defective pleadings, and neither does offering an out-of-context quote from *Duncan v Michigan*.¹⁴

Plaintiff engages in further sophistry in her attempted recitation of the mandamus case law. For example, Plaintiff relies on this Court's decision in *Citizens Protecting Michigan's Constitution v Secretary of State* for the proposition that this Court retains jurisdiction where a non-state party is added.¹⁵ Jurisdiction, however, was never raised in *Citizens Protecting Michigan's Constitution* nor was it an issue in the case or central to this Court's holding. Thus, any statement concerning jurisdiction in that case is mere *dicta* and lacks precedential value.¹⁶ It is thus slightly disingenuous to cite it as conferring jurisdiction over the present case. To be certain, courts have a duty to *sua sponte* question their own jurisdiction, but a court's failure to do so can in no way be twisted to support the conclusion that it has jurisdiction in all similar cases, particularly when that conclusion contradicts the language of the court rules. Moreover, Defendants specifically raise jurisdiction in this case.

¹³ *Smith v Stolberg*, 231 Mich App 256, 260-261; 586 NW2d 103 (1998).

¹⁴ *Duncan v Michigan*, 284 Mich App 246, 273, 275; __ NW2d __ (2009).

¹⁵ *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273; 761 NW2d 210 (2008).

¹⁶ *Dressel v Ameribank*, 468 Mich 557, 569; 664 NW2d 151 (2003).

The other cases cited by Plaintiff are even less relevant. In *Secretary of State v State Treasurer*, jurisdiction was neither raised nor addressed by this Court.¹⁷ Moreover, not only was the opinion vacated by the Michigan Supreme Court,¹⁸ it also features separate opinions by each judge on the panel. Finally, it was decided under the former General Court Rules, which were superseded in 1985 by the present Michigan Court Rules.¹⁹

Plaintiff also cites to *People ex rel Oakland Prosecuting Attorney v State Bureau of Pardons and Paroles*.²⁰ Once again, however, the issue of this Court's jurisdiction was neither raised nor addressed. Moreover, it also originated under the General Court Rules. Finally, *Oakland County Prosecuting Attorney* was originally composed of two original actions in this Court—a complaint filed by Edward A. Trudeau for superintending control and a complaint by the Oakland County Prosecuting Attorney for mandamus.²¹ This Court then consolidated the cases for consideration. Needless to say, the procedural posture of *Oakland County Prosecuting Attorney* was far different than the present case and in no way stands for the proposition that the language of the court rules may be ignored.

Plaintiff fails to address the actual language of the rules governing jurisdiction in the present case. The rules governing the interpretation of statutes apply to court rules, including the cardinal rule that a court rule must be interpreted according to its plain language.²² The basis for this Court's jurisdiction is MCR 7.203(C)(2) and MCR 3.305(A)(1). Under MCR 7.302(C)(2), this Court has jurisdiction over an original action for "mandamus against a state officer." At the

¹⁷ *Secretary of State v State Treasurer*, 113 Mich App 153; 317 NW2d 238 (Mich Ct App 1982).

¹⁸ *Secretary of State v State Treasurer*, 414 Mich 874; 322 NW2d 710 (1982).

¹⁹ See generally MCR 1.102.

²⁰ *People ex rel Oakland Prosecuting Attorney v State Bureau of Pardons and Paroles*, 78 Mich App 111; 259 NW2d 385 (1977).

²¹ *Oakland County Prosecuting Attorney*, 78 Mich at 111.

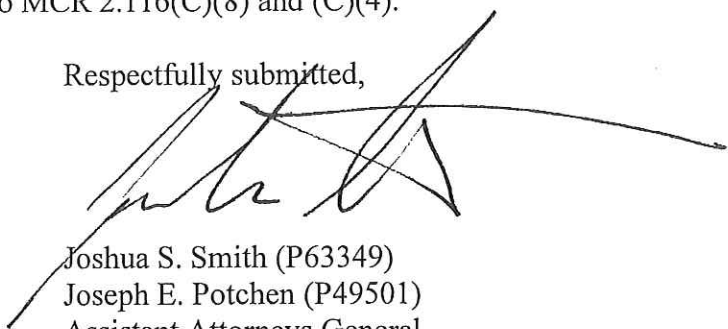
²² *People v Williams*, 483 Mich 226, 232; 769 NW2d 605 (2009).

same time, however, MCR 3.305(A)(2) makes it clear that where the action involves a party other than a state officer it, "must be brought in the circuit court." Accordingly, applying the plain language of the relevant rules, once the necessary parties are added, this Court is stripped of jurisdiction.²³

Conclusion

The arguments presented in Plaintiff's Brief in Support of Answer to Defendants' Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4) fail to accurately capture the facts of the present case or the relevant law. Accordingly, this Court should grant Defendants' the relief requested in their Motion to Dismiss Pursuant to MCR 2.116(C)(8) and (C)(4).

Respectfully submitted,



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²³ Contrary to Plaintiff's assertions, MCR 2.207 does not apply because it does not address the jurisdictional requirements set forth in MCR 7.203(C)(2) and MCR 3.305(A)(1) and (2).