

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOHN and KAREN WALDROP, as parents
and legal guardians of B.W., et al.,**

Plaintiffs,

vs.

Civ. No. 14-047 JH/KBM

**NEW MEXICO HUMAN SERVICES
DEPARTMENT, et al.,**

Defendants.

ORDER OF PRELIMINARY INJUNCTION

For the reasons set forth in the Memorandum Opinion and Order entered contemporaneously with this Order of Preliminary Injunction, the Court has granted Plaintiffs' Motion for Preliminary Injunction. In accordance with that Memorandum Opinion and Order, the Defendants are hereby preliminarily enjoined as follows:

1. The services and benefits afforded to New Mexico DD Waiver recipients must be returned to the *status quo ante* preceding the initiation of the SIS assessment process.
2. Defendants must send notices of SIS assessment to DD Waiver recipients, their guardians, and their case managers. In the event a recipient requests a reassessment, the State must again send a notice. The notices of SIS assessment and reassessment must specifically and explicitly provide notice that the SIS assessment may result in a reduction or termination of DD Waiver benefits and services.
3. The SIS assessment and reassessment must satisfy the requirements of *Goldberg v. Kelly*, 379 U.S. 254 (1970). It must include an opportunity for the DD Waiver recipient and/or his representatives to present testimony and evidence and an opportunity to cross examine adverse witnesses. The DD Waiver recipient must be permitted to have counsel present if he or

she wishes. The SIS assessor must set forth, in writing, the basis of his or her decision, including the evidence considered and relied upon and reasoning for the decision.

4. The same procedural safeguards set forth in Paragraphs 2 and 3, *supra*, must accompany the verification process in every instance in which Defendants elect to conduct verification.

5. Defendants must give notice to DD Waiver recipients that they are entitled to a fair hearing to challenge the results of the SIS assessment or reassessment. The notice must inform recipients that they may raise any challenge at the fair hearing, including a challenge to the SIS score or Group assignment. At the fair hearing itself, the State may not limit the issues raised by the DD Waiver recipient and his representatives. The State may introduce the SIS assessment as evidence, but only if the SIS assessor is subject to cross examination. The hearing officer must issue his written decision before any reduction or termination of DD Waiver benefits or services, as well as the preparation of a budget and any planning by the DD Waiver recipient's interdisciplinary team ("IDT").

6. If the State intends to use the SIS assessment merely as a tool to inform the State's decision regarding benefits and services for DD Waiver recipients, rather than as a substitute for a final decision regarding such benefits and services, it may do so. However, if the State proposes to reduce or terminate benefits or services by setting a cap on a recipient's budget or his service package, it may actually do so only after notice and an opportunity to be heard at a fair hearing. That fair hearing must adhere to the requirements of *Goldberg v. Kelly*, 397 U.S. 254 (1970) as described in Paragraph 5, *supra*.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE