

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

THOMAS E. PEREZ,
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,

v.

COMMUNITY CARE, INC. 403(b) RETIREMENT PLAN,
Defendant.

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) CIVIL ACTION
) NO. 3:15-cv-139
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COMPLAINT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (the "Secretary"), alleges the following:

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq., and is brought by the Secretary against the Community Care Inc. 403(b) Retirement Plan ("the Plan"). The Secretary brings this action to obtain the appointment of an independent fiduciary to administer and terminate the Plan as well as to effect distribution of all Plan assets and to obtain other appropriate relief under the provisions of Title I of ERISA.

PARTIES

2. Plaintiff is the Secretary of the United States Department of Labor who has authority to bring this civil action under ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

3. An employee benefit plan may be sued under this title as an entity.

ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). Defendant, the Community Care Inc. 403(b) Retirement Plan, is an employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3). A 403(b) plan is a tax-advantaged retirement savings plan available for public education organizations, some non-profit employers (Internal Revenue Code 501(c)(3) organizations), cooperative hospital service organizations, and self-employed ministers in the United States. This 403(b) Plan is a deferred compensation plan administered in the State of Iowa. The Plan allowed employees of Community Care, Inc. (“CCI”) to elect to defer a portion of their compensation and to have that amount contributed to the Plan.

JURISDICTION AND VENUE

4. Venue for this action lies in the Southern District of Iowa, Davenport Division, where the Plan was administered, pursuant to section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

5. Jurisdiction over this action is conferred upon the Court by section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

GENERAL ALLEGATIONS

6. CCI was an Iowa corporation operating in Dewitt, Iowa until ceasing operations in May 2014 following accusations of Medicaid fraud. While in operation, CCI was an agency providing programs and services to individuals diagnosed with mental illness, developmental disabilities, and /or physical disabilities. CCI established the Plan on March 1, 1993 for the benefit of its employees. CCI was the Plan Sponsor, Plan

Administrator, and named fiduciary. MG Trust Company, LLC serves as the asset custodian.

7. CCI management resigned in October 2013 after entering into a settlement agreement with Iowa Medicaid Enterprise and the Iowa Department of Human Services to resolve the Medicaid fraud allegations. A new Chief Executive Officer and Board President took over operations of CCI in October, 2013, as a series of Plan Administrators either resigned or were removed throughout 2013 and into 2014. Eventually, the corporation was dissolved and assets were transferred into receivership in May 2014, and the company ceased operations on May 31, 2014. The receiver did not take over administration of the Plan.

8. CCI never appointed a discretionary fiduciary to administer and manage the Plan in its place or to ensure the orderly termination and liquidation of the Plan. The Plan has no named trustee or other functional fiduciary with the authority of administration. No individual or entity has taken fiduciary responsibility for the operation and administration of the Plan and its assets since the cessation of business operations and transfer of assets to the receiver. The Plan has not been formally terminated.

9. As a result of the resignation of all CCI management, the transfer of operations to the receiver, and the cessation of operations, the Plan now stands abandoned, with participants and beneficiaries of the Plan unable to gain access to their individual account balances.

10. Upon information and belief, the Plan currently has assets totaling approximately \$630,000 and 291 participants or their beneficiaries with account balances.

11. Following an independent bidding process, R.L. Billings and Co. of Sioux City, Iowa has agreed to serve as an independent fiduciary to administer the Plan in order to effectuate its termination and the distribution of Plan assets to the participants and beneficiaries, for a fee of \$50 per participant, up to \$14,550.00. In accordance with the Plan documents, the expenses associated with the appointment of R.L. Billings and Co. as an independent fiduciary and the duties performed by R.L. Billings and Co. in carrying out the duties of an independent fiduciary will be borne by the Plan.

VIOLATIONS OF ERISA

12. Because of the facts and circumstances set forth in Paragraphs 6 through 10 above, the Plan does not have named fiduciaries or trustees with exclusive authority and discretion to manage and control the operation of the Plan and its assets as required by ERISA § 402(a), 29 U.S.C. § 1102(a) and ERISA § 403(a), 29 U.S.C. § 1103(a). There is no one other than this Court with the authority to appoint a new trustee.

13. Because of the facts and circumstances set forth in Paragraphs 6 through 10 above, participants are unable to liquidate their accounts, either to reinvest them in other tax-qualified retirement savings vehicles before retirement, or to draw them down upon retirement. Because the basis upon which payments are made from the Plan are not and cannot be specified without a trustee or fiduciary, the Plan exists in violation of ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4).

WHEREFORE, pursuant to Section 502(a)(5) of ERISA, 29 U.S.C. § 1132(a)(5), Plaintiff prays that the Court:

- a. Appoint R.L. Billings and Co. as the independent fiduciary of the Plan, with plenary authority to locate the remaining participants and to distribute the Plan's assets to eligible participants and beneficiaries;
- b. Grant R.L. Billings and Co. the authority to withhold and remit any state and/or federal income tax on behalf of participants who chose not to roll over funds to an IRA and to file the necessary 1099-R and 945 Forms with participants and the IRS;
- c. Grant R.L. Billings and Co. the authority and duty to terminate the Plan, including the filing of a final Form 5500 for the year in which the last distribution is made;
- d. Provide that R.L. Billings and Co. shall not be held individually responsible for any claims against the Plan or related entities which existed, arose, matured or vested prior to the appointment of R.L. Billings and Co.;
- e. Require the Plan to pay administrative expenses and fees to R.L. Billings and Co. up to \$14,550.00, and
- f. Provide such other relief as may be just and equitable.

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