

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23-CVS-4731

Plaintiff,

**v.**

Defendant.

ANSWER  
AND COUNTERCLAIM

## First Defense

1. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Ms. Ratcliff is without sufficient information to admit or deny that Plaintiff operates as a regional and multi-state facility. Ms. Ratcliff admits that she currently receives care at Plaintiff's location in Winston-Salem, North Carolina known as Atrium Health Wake Forest Baptist Medical Center, which includes a pediatric hospital known as Brenner Children's Hospital. Except as otherwise expressly admitted, the allegations of Paragraph 6 of the Complaint are denied.

7. Admitted.

8. Ms. Ratcliff admits that on January 30, 2019, when she was approximately 13 ½ years old, she was first admitted as a juvenile in the pediatric unit. Ms. Ratcliff denies that she was admitted to the intensive care unit ("ICU"). She admits she was admitted to the intermediate care unit. Except as otherwise expressly admitted, the allegations of Paragraph 8 of the Complaint are denied.

9. Ms. Ratcliff is without sufficient information to admit or deny the allegations of Paragraph 9 of the Complaint, and the same are therefore denied.

10. Ms. Ratcliff admits that she remained in the intermediate care unit at Brenner Children's Hospital because of her dependence on the ventilator that she has used at the hospital. The remaining allegations of this paragraph refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. Except as otherwise expressly admitted, the allegations of Paragraph 10 of the Complaint are denied.

11. Admitted.



12. Admitted except that Ms. Ratcliff denies that she was admitted to the pediatric ICU. She admits she was admitted to the intermediate care unit.

13. Ms. Ratcliff admits her condition stabilized and that she remained (and remains) dependent on a ventilator and related medical support. The remaining allegations of this paragraph refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. Except as otherwise expressly admitted, the allegations of Paragraph 13 of the Complaint are denied.

14. The allegations of Paragraph 14 of the Complaint refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. The allegations of Paragraph 14 of the Complaint also refer to the contents of an alleged document that speaks for itself and does not require a response; to the extent a response is required, those allegations are denied.

15. Ms. Ratcliff admits on August 3, 2023, after she reached the age of 18, she was transferred from the pediatric unit at Brenner Children's Hospital to the adult intermediate care unit at the Hospital. She denies that she was transferred from the pediatric ICU to the adult ICU. She lacks information to admit or deny that she was moved because she was no longer a minor child. Except as otherwise expressly admitted, the allegations of Paragraph 15 of the Complaint are denied.

16. Ms. Ratcliff is without sufficient information to admit or deny the allegations of Paragraph 16 of the Complaint, and the same are therefore denied.

17. The allegations of Paragraph 17 of the Complaint refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied.

18. Ms. Ratcliff is without sufficient information to admit or deny the allegations of Paragraph 18 of the Complaint, and the same are therefore denied. It is expressly denied that the only hospital discharge option for individuals who rely on a ventilator is to a skilled nursing facility.

19. The allegations of Paragraph 19 of the Complaint refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. Ms. Ratcliff expressly denies that she wants to live in a skilled nursing facility and admits that she prefers to live in a home in her community in North Carolina that is equipped to meet her medical needs.

20. The allegations of Paragraph 20 of the Complaint refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. Ms. Ratcliff expressly denies that she wants to live in a skilled nursing facility or that she wants to live in Ohio or Virginia, and admits that she prefers to live in a home in her community in North Carolina that is equipped to meet her medical needs.

21. Ms. Ratcliff admits that she has been made aware of the existence of a facility in Bastian, Virginia. Ms. Ratcliff is without sufficient information to admit or deny the allegations regarding the quality or characteristics of care offered by the facility in Bastian, Virginia, and the same are therefore denied. Ms. Ratcliff admits that her home community is Mount Airy, North Carolina. Ms. Ratcliff expressly denies that she wants to live in a skilled nursing facility or that she wants to live in Ohio or Virginia, and admits that she prefers to live in a home in her community in North Carolina that is equipped to meet her medical needs. Except as otherwise expressly admitted, the allegations of paragraph 21 of the Complaint are denied.



22. It is admitted that there is a potential adoptive family presently working to modify their home to create a safe and appropriate living environment where Ms. Ratcliff will reside. It is further admitted that Ms. Ratcliff must maintain her enrollment in North Carolina Medicaid in order to effectuate her move to the identified adoptive home, and that Plaintiff has attempted to remove Ms. Ratcliff from North Carolina to an out-of-state institutional placement that jeopardizes her ability to maintain her enrollment in North Carolina Medicaid and live in the community in the potential adoptive home. Except as otherwise expressly admitted, the allegations of paragraph 22 of the Complaint are denied.

23. The allegations of Paragraph 23 of the Complaint refer to the alleged actions or state of mind of third parties and do not require a response; to the extent a response is required, those allegations are denied. Ms. Ratcliff admits that there is an appropriate residential setting that can safely and appropriately meet her care needs being readied for her and that she has made Plaintiff aware of those efforts. Except as otherwise expressly admitted, the allegations of paragraph 23 of the Complaint are denied.

24. It is denied that Ms. Ratcliff has not identified a residential setting to which she will move, and it is denied that she has failed to identify that setting to Plaintiff. It is admitted that Ms. Ratcliff has identified potential adoptive parents who are working to modify their home to create a safe and appropriate living environment where Ms. Ratcliff will reside and that Ms. Ratcliff is actively engaged in the process of securing services that will enable her to move to the identified residential setting. Except as otherwise expressly admitted, the allegations of paragraph 24 of the Complaint are denied.

25. Ms. Ratcliff denies that she has refused to leave the hospital but admits that she needs the ventilator and other medical support provided by Plaintiff in order to remain alive. Ms.

Ratcliff denies she has refused to transfer but admits that no option has been identified to her that will meet her needs, including her need to remain enrolled in North Carolina Medicaid, other than the potential adoptive home currently being prepared for her. Except as otherwise expressly admitted, the allegations of paragraph 25 of the Complaint are denied.

26. Ms. Ratcliff is without sufficient information to admit or deny the allegations regarding the diversion of resources or needs of other patients, and the same are therefore denied. Ms. Ratcliff denies that she has refused to leave the hospital. Except as otherwise expressly admitted, the allegations of paragraph 26 of the Complaint are denied.

27. Ms. Ratcliff is without sufficient information to admit or deny the allegations regarding the prevention of admissions of other patients, and the same are therefore denied. Ms. Ratcliff denies that she does not require the ventilator and other medical support provided by Plaintiff in order to remain alive. Ms. Ratcliff denies that she has refused to leave the hospital, and admits that no residential option has been identified to her that will meet her needs, including her need to remain enrolled in North Carolina Medicaid, other than the potential adoptive home currently being prepared for her. Except as otherwise expressly admitted, the allegations of paragraph 27 of the Complaint are denied.

28. Ms. Ratcliff is without sufficient information to admit or deny the allegations regarding Medicaid coverage criteria, and the same are therefore denied. Ms. Ratcliff denies that it is not medically necessary for her to remain in Plaintiff hospital until a residential option has been identified to her that will meet her needs, including her need to remain enrolled in North Carolina Medicaid, because she relies on the ventilator and other medical support provided by Plaintiff in order to remain alive. The remaining allegations of paragraph 28 of the Complaint are denied.



29. Ms. Ratcliff denies that it is not medically necessary for her to remain in Plaintiff's hospital until a residential option has been identified to her that will meet her needs, including her need to remain enrolled in North Carolina Medicaid, because she relies on the ventilator and other medical support provided by Plaintiff in order to remain alive. The remaining allegations of paragraph 29 of the Complaint are denied.

30. Ms. Ratcliff is without sufficient information to admit or deny the allegations of paragraph 30 of the Complaint regarding the alleged actions or opinions of third parties, and the same are therefore denied.

31. Paragraph 31 states the Hospital's legal position to which no response is required. To the extent a response to paragraph 31 is required, it is denied.

**FIRST CLAIM FOR RELIEF  
(Trespass)**

32. Defendant incorporates by reference all answers to the preceding allegations.

33. Ms. Ratcliff is without sufficient information to admit or deny the allegations of paragraph 33 of the Complaint, and the same are therefore denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

**SECOND CLAIM FOR RELIEF  
(Preliminary and Permanent Mandatory Injunction)**

38. Defendant incorporates by reference all answers to the preceding allegations.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. The allegation in paragraph 43 is a conclusion of law and therefore no response is required. If a response is required, Ms. Ratcliff denies the allegation in paragraph 43.

### COUNTERCLAIM

Complaining of the Plaintiff, Defendant shows to the Court as follows and asserts the following counterclaims:

1. The Defendant incorporates the statements admitted to in the Answer into this Counterclaim.

2. Ms. Ratcliff is currently a Medicaid beneficiary and therefore entitled to receive health care benefits from North Carolina Medicaid. As such, she has a property interest in her North Carolina Medicaid benefit. *See Westminster Nursing Ctr. v. Cohen*, No. 5:17-CV-96-FL, 2017 U.S. Dist. LEXIS 193330 (E.D.N.C. Nov. 22, 2017)(providing a detailed analysis of the procedural due protections of an individual's property right in a Medicaid benefit).

3. Medicaid is run as a partnership between each state and the federal Centers for Medicare and Medicaid Services (CMS). Each state operates its own Medicaid program, with its own array of services and eligibility requirements (consistent with federal law).

4. There is no obligation of an out-of-state entity to accept North Carolina Medicaid.

5. A Medicaid beneficiary who leaves the state to receive care in another state can be removed from North Carolina's Medicaid system unless an out-of-state entity has agreed to participate in the North Carolina Medicaid program and North Carolina Medicaid has agreed to contract with the out-of-state entity.



6. Medicaid is notoriously complex, requiring careful navigation in order to access appropriate services and avoid pitfalls for the unwary. *See Davis v. Shah*, 2017 U.S. Dist. LEXIS 96528, 2017 WL 2684100 (W.D.NY 2017)(reciting federal case references to Medicaid as “among the most intricate [statutes] ever drafted by Congress,’ ‘unintelligible to the uninitiated,’ ‘a virtually impenetrable thicket of legalese and gobbledygook, an ‘aggravated assault on the English language, resistant to attempts to understand it, and a ‘Serbonian bog.’”) Ms. Ratcliff has worked for months, since she turned 18, to navigate Medicaid and arrange the support she needs to move into a potential adoptive home that is currently being readied for her in her home community of Surry County, North Carolina. Those efforts require coordination with North Carolina Medicaid, a North Carolina Department of Health and Human Services program called Money Follows the Person, and a separate program called Independent Living through the North Carolina Division of Vocational Rehabilitation, as well as other medical and service providers.

7. Ms. Ratcliff has attempted to locate in-state residential care options that can accommodate her while her potential adoptive home is being readied.

8. If Ms. Ratcliff is moved out of North Carolina, she is subject to removal from North Carolina Medicaid. If she is removed from North Carolina Medicaid, she would no longer be eligible for the services and financial support that Money Follows the Person and the Independent Living programs provide, and she would lose all progress she has made toward establishing services and a permanent residence in her potential adoptive home.

9. In August 2023, the Plaintiff hospital attempted to have Ms. Ratcliff removed to a Virginia facility, despite being informed that such a move would endanger Ms. Ratcliff’s property right in her North Carolina Medicaid benefit and her efforts to obtain community-based services.

10. Ms. Ratcliff has attempted to determine whether she can move to another state and retain her property right in North Carolina Medicaid through payment for services to the out-of-state residential care option identified by Plaintiff with an individual contract between North Carolina Medicaid so that she could leave Plaintiff hospital while awaiting establishment of services at her potential adoptive home, but has yet to receive a response from North Carolina Medicaid.

11. If Ms. Ratcliff is forced to relinquish her property right to North Carolina Medicaid, she would likely be unable to return to her home community in North Carolina. This is because she requires the services offered by North Carolina Medicaid to transition to the community with appropriate supports and services in place prior to her transition. The supports and services offered by North Carolina Medicaid are not available to an out of state resident not currently enrolled in North Carolina Medicaid. Furthermore, Ms. Ratcliff will be unable to access services offered by other organizations that serve only North Carolina enrollees and/or residents.

12. Since Ms. Ratcliff turned 18, Plaintiff hospital has consistently pressured Ms. Ratcliff to leave the state and has purported to discharge her knowing that a discharge endangers her access to North Carolina Medicaid and her ability to pursue community-based services through the Money Follows the Person benefit, which she has been granted by the North Carolina Department of Health and Human Services.

13. Ms. Ratcliff has made Plaintiff hospital aware of her need to remain at Plaintiff hospital until such time as an appropriate residential option is identified in North Carolina, or an appropriate out-of-state option is identified that would not result in her disenrollment from North Carolina Medicaid.



14. Since Ms. Ratcliff has made Plaintiff hospital aware of her need to remain at Plaintiff hospital until such time as an appropriate residential option is identified in North Carolina, or an appropriate out-of-state option is identified that would not result in her disenrollment from North Carolina Medicaid, Plaintiff hospital has done the following: Plaintiff's hospital social worker utilized intimidation to attempt to coerce Ms. Ratcliff into relinquishing her property right in North Carolina Medicaid despite Ms. Ratcliff informing her that she did not wish to do so at the time; Plaintiff hospital's social worker threatened Ms. Ratcliff that if she did not consent to relinquishing her property right in NC Medicaid and consent to immediate removal to an out-of-state facility, that she would provide no further assistance to Ms. Ratcliff in finding a placement outside the hospital; Plaintiff hospital has retaliated against Ms. Ratcliff by providing no further assistance in locating an appropriate placement outside the hospital that will allow her to either remain in North Carolina or to retain her North Carolina Medicaid benefit and utilize it as payment for out-of-state services; Plaintiff hospital has denied Ms. Ratcliff access to fresh air and the ability to leave her hospital room by discontinuing its contract with a nurse who assisted Ms. Ratcliff with the same.

#### **COUNTERCLAIM FOR RELIEF**

##### **Violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.***

15. Ms. Ratcliff is an individual with disabilities as defined by the Americans with Disabilities Act ("ADA"). *See* 42 U.S.C. § 12102.

16. The Plaintiff hospital is a place of public accommodation as defined by the ADA. *See* 42 U.S.C. § 12181(7)(F).

##### ***Failure to Provide Reasonable Accommodations/Modifications***

17. The ADA prohibits discrimination against individuals with disabilities, including the refusal to provide reasonable accommodations and modification of policies and procedures. See 42 U.S.C. § 12182.

18. Due to her reliance on a ventilator, Ms. Ratcliff must remain in Plaintiff hospital until she can arrange a residential option that will meet her needs, including her need to remain enrolled in North Carolina Medicaid.

19. Ms. Ratcliff has consistently articulated her need to remain in Plaintiff hospital until she can arrange a residential option that will meet her medical needs, including her need to remain enrolled in North Carolina Medicaid.

20. Plaintiff hospital's efforts to discharge Ms. Ratcliff and to remove her from the state without any guarantee that she will remain on North Carolina Medicaid is a refusal to provide her a reasonable accommodation or a modification of its policies, practices, and/or procedures.

*Retaliation Against Ms. Ratcliff for Exercising her Rights*

21. The ADA prohibits retaliation against individuals who assert their rights under the ADA. 42 U.S.C. § 12203(a).

22. Plaintiff hospital informed Ms. Ratcliff that it would cease any efforts to help her identify appropriate residential options and withdrew nursing support necessary for Ms. Ratcliff to leave her hospital room in retaliation after Ms. Ratcliff made Plaintiff hospital she needed to remain at their facility while identifying an appropriate residential option that would maintain her North Carolina Medicaid benefit,

*Plaintiff Hospital's Interference, Coercion, and/or Intimidation*



23. Title V of the ADA also prohibits interference, coercion, or intimidation against individuals with disabilities exercising their rights conferred by the statute. 42 U.S.C. § 12203(b).

24. The ADA contains an "integration mandate," which requires that individuals with disabilities receive services in the most integrated setting appropriate to their needs. 42 U.S.C. § 12182(b)(1)(B).

25. Pursuant to the Integration Mandate, Ms. Ratcliff is entitled to pursue community-based services rather than accept only institution-based care for her lifelong support needs.

26. Ms. Ratcliff continues to pursue community-based services through North Carolina Medicaid, which is obligated by the Integration Mandate to ensure that Ms. Ratcliff is able to access comparable services in the community rather than having to remain institutionalized so long as she remains eligible for North Carolina Medicaid. *See Olmstead v LC*, 527 U.S. 581, 600 (1999).

27. The Plaintiff hospital's efforts at discharge and purported discharge of Ms. Ratcliff, including its efforts to discharge her to a facility in Virginia, endanger and interfere with her right to seek community-based services in lieu of institutionalization.

28. The Plaintiff hospital's efforts to discharge Ms. Ratcliff and remove her from the state interferes with her ADA rights in violation of Title V of the ADA.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendant respectfully requests that the Court grant the following relief:

1. Find that Ms. Ratcliff is not liable for trespass against Plaintiff hospital;

2. Enter a judgment and declaration that Plaintiff hospital violates Ms. Ratcliff's rights under the ADA by: denying her a reasonable accommodation/modification of its discharge policies, practices, or procedures; retaliating against her for exercising her rights to a reasonable accommodation/modification of its discharge policies, practices, or procedures; and, its coercion and intimidation of Ms. Ratcliff and interference in her exercise of her rights to live in the community in seeking to force her discharge to an institutional setting and/or an out-of-state facility that would result in loss of her property right in North Carolina Medicaid;

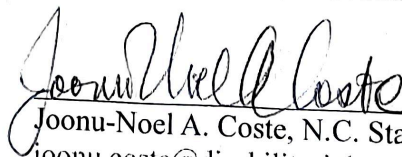
3. Enter an injunction requiring that the status quo be maintained until such time as Ms. Ratcliff is able to identify a residential option that will meet her needs, including her need to remain enrolled in North Carolina Medicaid, or the adoptive home and community services are available and ready for her;

4. Award Plaintiff the costs of this action and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 12205; and

5. Provide such other and further relief as the Court deems to be just and equitable.

Respectfully Submitted, this 17th day of November, 2023

DISABILITY RIGHTS NORTH CAROLINA



Joonu-Noel A. Coste, N.C. State Bar No. 55138

[joonu.coste@disabilityrightsncc.org](mailto:joonu.coste@disabilityrightsncc.org)

Lisa Nesbitt, N.C. State Bar No. 39942

[lisa.nesbitt@disabilityrightsncc.org](mailto:lisa.nesbitt@disabilityrightsncc.org)

801 Corporate Center Drive, Suite 118

Raleigh, NC 27607

Phone: (919) 856-2195

Fax: (919) 856-2244

*Attorneys for Defendant*