

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. CV-18-__

MAINE EQUAL JUSTICE PARTNERS,)
CONSUMERS FOR AFFORDABLE)
HEALTH CARE, *et al.*,)

Petitioners,)

v.)

RICKER HAMILTON, COMMISSIONER)
MAINE DEPARTMENT OF HEALTH &)
HUMAN SERVICES,)

Respondent.

**MOTION TO EXPEDITE
PURSUANT TO RULE 80C(g)
AND 5 M.R.S. § 11005**

Pursuant to Me. R. Civ. P. 80C(g) and 5 M.R.S. § 11005, Petitioners hereby move this Court for an expedited briefing schedule and for expedited consideration of the merits of this Petition in order to prevent any unlawful and unnecessary delay in obtaining medically-necessary and potentially life-saving health coverage for more than 70,000 newly eligible individuals under the Maine Medicaid Expansion Act, which the Commissioner unlawfully refuses to implement. In support of this motion, Petitioners state as follows:

1. On motion pursuant to 5 M.R.S. § 11005 the Court may order the agency to file a responsive pleading and file any administrative record materials within “such shorter or longer time as the court may allow.”
2. “On a showing of good cause the court may ... decrease the time limits” for filing Rule 80C merits briefs. Me. R. Civ. P. 80C(g).
3. The judicial standard of “good cause is a highly relative concept which lacks fixed and definite meaning, and the application of it requires the court to evaluate the circumstances of each individual case and then to make its determination by exercising a sound

discretion.” See *W. Point-Pepperell, Inc. v. State Tax Assessor*, 1997 ME 58, ¶ 7, 691 A.2d 1211, 1213 (internal quotations omitted).

4. Good cause exists for an expedited briefing schedule and expedited consideration in this case, as described below.

5. The merits of this Petition are very simple and do not require extensive briefing; nor are the legal issues novel or complicated: as described in the Petition, under Maine’s Medicaid Expansion Act, enacted by citizens’ referendum and codified at 22 M.R.S. § 3174-G(1)(H), the Department (“DHHS”) is under a statutory mandate to submit a state plan amendment (“SPA”) to the federal Centers for Medicare and Medicaid Services (“CMS”) by April 3, 2018, but DHHS has failed or refused to comply with that statutory mandate.

6. Medicaid is the nation’s public health insurance program for people with low incomes, disabilities, and those needing long term care. 42 U.S.C. §§ 1396 *et. seq*; MaineCare is Maine’s combined Medicaid and State Children’s Health Insurance Program; the SPA, once approved by CMS, enables Maine to receive federal funds for the MaineCare services that it is required to provide to adults under 65 years of age with incomes below 138 percent of the federal poverty level under the Medicaid Expansion Act.

7. Voters enacted the Medicaid Expansion Act based on estimates that it would extend medically-necessary and potentially life-saving health coverage to an additional estimated 70,000-80,000 Mainers. See <http://mej.org/sites/default/files/Medicaid-Expansion-Get-the-Facts-10-5-17.pdf> (citing a study by the Maine Health Access Foundation estimated that approximately 70,000 people would gain coverage, and an estimate by the non-partisan Office of Fiscal Policy and Review that 80,000 Mainers would gain coverage).

8. In order to ensure that these approximately 70,000 people would be enrolled in MaineCare as quickly as possible, and that Maine would be eligible to receive the bulk of the costs of expansion from the federal government, the Medicaid Expansion Act required DHHS to submit the SPA within 90 days of the effective date of the Act and to adopt any necessary rules to implement expansion so as to make sure that those eligible could begin to receive services starting July 2, 2018.

9. DHHS' unlawful and unnecessary failure or refusal to comply with these unambiguous statutory mandates means that each and every individual petitioner faces a delay in obtaining life-saving health coverage, as will the more than 70,000 other Mainers expected to gain coverage. That delay requires expedite briefing and consideration.

10. There is no factual record that needs to be filed by the agency or considered by this Court: the only relevant fact (that the DHHS has not yet submitted a SPA) is not in dispute.

11. Petitioners have already filed their merits brief on even date herewith.

12. Because of the absence of any complicated legal or factual issues, one week should be plenty of time for DHHS to respond to Petitioners' merits brief and file any record materials it believes are relevant; Petitioners request only 2 days to file a reply to DHHS' merits brief.

13. The potential for more than 70,000 Mainers to face a delay in obtaining medically-necessary and potentially life-saving health coverage as a result of the delay caused by DHHS' continued failure or refusal to comply with its unambiguous statutory mandate far outweighs any inconvenience to DHHS in briefing this case on an expedited schedule, and provides good cause to expedite briefing on this matter.

14. In this case, the good cause for expedited briefing and expedited consideration meets or exceeds that in other cases where expedited briefing and decisions were deemed appropriate. *See e.g., Baker's Table, Inc. v. City of Portland*, 2000 ME 7, ¶¶ 5 & 15, 743 A.2d 237, 240 (Superior Court Decision issued on the merits within 17 days of filing of Petition involving a three month license suspension of a single restaurant); *Hammer v. Sec'y of State*, 2010 ME 109, ¶ 5, 8 A.3d 700, 704 (giving the State 7 days to file an 80C merits brief in response to an election issue and the impending election); *The Lewin Group, Inc. v. Dept. of Health and Human Services*, 2014 WL 1270193 (Me.B.C.D.), 3 (briefing completed and decision issued in under 4 weeks from filing of 80C Petition to review contract award decision of DHHS).

WHEREFORE, Petitioners request that this Court:

- a. Order that DHHS file its merits brief and the certified record, if any, with the Court within 7 days of this Order and simultaneously serve it electronically on Petitioners; and that Petitioners file their reply brief with the Court within 2 days thereafter; and
- b. Expedite a decision on the merits as soon as practicable for the Court.

Dated: April 30, 2018

/s/ James T. Kilbreth
James T. Kilbreth, Bar No. 2891
David M. Kallin, Bar No. 4558
Drummond Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, Maine 04101
Tel: (207) 772-1941
Fax: (207) 772-362
jkilbreth@dwmlaw.com
dkallin@dwmlaw.com

/s/ Jack Comart

Jack Comart, Bar No. 2475
Robyn Merrill, Bar No. 4405
Maine Equal Justice Partners
126 Sewall Street
Augusta, ME 04330-6822
(207) 626-7058, ext. 202
rmerrill@mejp.org
jcomart@mejp.org

Attorneys for Petitioners

NOTICE Pursuant to M.R. Civ. P. 7(b)(1)(A)

Matter in opposition to this motion pursuant to subdivision (c) of Rule 7 must be filed not later than 21 days after the filing of the motion unless another time is provided by these Rules or set by the court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.