

ADMINISTRATIVE COMPLAINT
Third Additional Supplemental Filing

Office for Civil Rights – **Filing Receipt No. 30017390**
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 509F
Washington, DC 20201

U.S. Department of Justice – **Reference No. 414820-FJQ**
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244

RE: Colorado’s discriminatory provision of case management services to people with disabilities and *request for expedited review and action by the federal agencies*

On February 21, 2024, the National Health Law Program (NHeLP) and Colorado Center on Law and Policy (CCLP) filed an Administrative Complaint with the above agencies. We provided the agencies with supplemental information on February 28, 2024 and on March 12, 2024.

We now write to provide yet more information regarding continuing problems in Colorado for people with disabilities as the State is transitioning to a new case management system. Previously described confusion continues; gaps in services persist. Eligibility determinations lag far behind the legally imposed deadlines, with over 600 applications submitted in 2023 still pending as of August 2024. People are still going without needed assistance and care. Notable updates include:

1. Extreme delays in enrollment and service delivery. Although Colorado is no longer terminating eligibility for Coloradans enrolled in Long Term Services and Supports (LTSS) programs who have unprocessed applications as of February 2024, new applicants for Medicaid coverage and those seeking to transfer to a different waiver continue to experience extreme delays in enrollment and service delivery. Oversight failure on the part of the single state Medicaid agency, the Colorado Department of Health Care Policy and Financing (HCPF), is the primary cause of persistent backlogs in processing applications for disability-based (non-MAGI) applicants. These continue to include, for example, a severely understaffed case management system and technology failures. Advocates report that a number of Case Management Agencies (CMAs) are utilizing temporary staff who appear to lack training. People’s health and safety continue to be jeopardized.

Federal rules set a 90-day standard for processing applications involving disability, 42 C.F.R. § 435.912. State rules also require eligibility sites (typically counties) to process applications within 90 days for persons who apply for Medicaid “and a disability determination is required.”

10 CCR 2505-10 8.100.3.D.1.a, c. (stating timeframe covers “the period from the date of receipt of a complete application to the date the eligibility site mails a notice of its decision to the applicant”). Applicants are responsible for submitting the financial application and disability application to the county, consistent with requirements in 42 C.F.R. § 435.907(c)(1). At that point, there is nothing further they should need to submit, and the date that both have been submitted is thus “the date of receipt of a complete application.” 10 CCR 2505-10 8.100.3.D.1.c. To determine an applicant’s eligibility for LTSS , the eligibility site/county must initiate and complete a three part process: (1) process the applicant’s application and financial documentation and determine them financially eligible; (2) forward the completed disability application to the vendor, Arbor E&T LLC dba Action Review Group (ARG), and enter the results of the determination once ARG has completed its work and informed the county of its decision; and (3) refer the case to the local CMA for completion of intake and a level-of-care determination, which is then transmitted back to the county.

As is obvious, Medicaid enrollment requires a high level of coordination in Colorado, where multiple entities are involved in the processing of disability applications, though HCPF is ultimately responsible. To illustrate just one problem: Our original complaint described delays individuals are experiencing with CMAs. We continue to receive reports of people being told it is going to take months for a case manager to call them back to even begin their intake process.

2. Lack of tracking and accountability for delays and errors in non-MAGI application processing at the county and CMA levels. Based on advocates’ conversations with HCPF staff, Colorado either fails to track the date that the application has been received by the county or does not share data about the time it takes to fully process non-MAGI applications. Instead, HCPF shares information only on the second part of the three-part process—the disability determination by the ARG vendor. Even if we assume that ARG can acquit *its* part of the work within 90 days (but see 3, below), processing the full application can take many months longer because of delays at both the county and CMA levels.
 - A. County Delays: Advocates have identified multiple cases where a county has failed to send the disability application to ARG for days or months, with one such example captured in Exhibit A. The email chain of correspondence between Megan Bowser, Director of Family Voices Colorado, and ARG concerns the status of a disability application submitted to Adams County in November 2023 that, as of April 2024, was not yet submitted to ARG for processing. Emails dated March 29, 2024 and April 2, 2024 show that applicants and their advocates are unable to circumvent failures on the part of a county to process cases. Advocates report that there is no automated system to confirm receipt of disability applications at the county level or to indicate whether it has, in fact, been submitted to ARG.
 - B. CMA Delays: Advocates also report that wait times for CMAs to initiate intake with a new applicant takes months, with an example captured in Exhibit B. The July 2024 email between CMA Rocky Mountain Human Services and an advocate described what applicants should expect in terms of delays for initiating intake: four to six months after the request for intake. After the intake is completed, additional delays occur to perform

the Level of Care assessment, which is required before services begin. Advocates report months-long waits, in some cases, for the assessment to be completed. In one case, a quadriplegic applying for a waiver waited nearly six months to have the LOC assessment performed, despite a request for it to be expedited.¹

3. ARG continues to lag in completing disability determinations. The ARG portion of the application process alone frequently takes more than 90 days. According to data shared by the State, ARG currently has over 1000 cases that have not been processed within 90 days and 1300 that have not been processed within 30 days. ARG letters to families regarding the results of the disability determination contain a timeline of application processing. Exhibit C is a page of one letter issued by ARG that shows the determination took *nine months*, though it is unclear whether the “application date” reflects the date the application was submitted to the county by the applicant or the date the application was provided to ARG by the county.

HCPF staff have been meeting weekly with disability advocates and have been forthcoming about challenges. Staff have informed advocates that ARG is under a backlog reduction plan and has worked to hire additional staff. However, at the August 16, 2024 meeting, HCPF disclosed that ARG had pending cases not only from 2024 but also *several hundred applications from 2023* yet to be processed. Specifically, 655 applications date from 2023. These applications are not due to be completed until September 30, 2024, a minimum of 300 days after submission by the county to ARG. ARG has been given a December 2024 date to complete applications that were submitted by June 2024, a plan that guarantees that many applications will exceed the legally required 90-day processing time, even without consideration of county and CMA delays.

4. Fundamental problems identified in previous filings continue or are only beginning to be addressed, with errors requiring lengthy workarounds by CMA staff, which further exacerbates the delays described above. Concerns raised about the Care and Case Management system (CCM) for case management agencies continue. Substantial tech updates are frequent, and each requires additional training or workarounds, with Stabilization Release 9 launched in August 2024. Documentation of the continued problems and attempted fixes is included in Exhibits D and E. Those include inability to produce accurate data and lack of full access to client history, both problems highlighted in our February 28, 2024 Supplemental filing. In July 2024, the State’s vendor made changes to address inaccuracies in multiple reports; more changes were made in August 2024. It was also not until July 2024 that a change was made to allow a case manager to identify a client’s previous case managers, though that information would be essential for a smooth transition. [Stabilization Releases, Exh. D.]

¹ For two of Colorado’s Medicaid programs, Health First Colorado Buy-In Program for Working Adults with Disabilities and Children with Disabilities, there is an additional complexity: it is not the county but a separate entity, the Colorado Medical Assistance Program (CMAP), that manages the program. Advocates report that this distinction is often missed by the CMAs, who submit their completed LOC to the county, rather than CMAP. This adds additional delays. There are fewer requirements to qualify for these buy-in programs than for 1915(c) Medicaid waivers, and they are often used by Coloradans to cover some benefits while they wait for the completion of the longer determination process for a more robust Medicaid waiver.

Interoperability issues with the Bridge system also continue, as identified in the 2d Supplemental Filing, dated March 12, 2024. The “Troubleshooting and Workarounds Job Aid,” contained in Exhibit E, describes new multistep workarounds for Bridge errors that were shared in August 2024.

We are asking the federal agencies to require HCPF to: (1) describe its process for monitoring all stages in the application and renewal process and the strategies being used to improve timeliness and accuracy of non-MAGI applications; (2) provide information on the State staffing for oversight of counties, CMAs, and ARG; and (3) submit data on processing and timeframes for non-MAGI application and renewal determinations, specific to each of the steps in the eligibility process. Finally, given the persistence of problems we have repeatedly documented, we request that HHS expedite its review of our complaint(s) at this time.

If we can provide further information or if you would like referrals to affected people with disabilities and their families, please let us know.

Dated: September 16, 2024

Respectfully submitted,

Jane Perkins
Sarah Grusin
National Health Law Program
1512 E. Franklin St., Ste. 110
Chapel Hill, NC 27514
grusin@healthlaw.org
perkins@healthlaw.org

Bethany Pray
Katherine Wallat
Colorado Center on Law and Policy
789 Sherman St #300
Denver, CO 80203
bpray@copolicy.org
kwallat@copolicy.org

FW: Disability Application Status

Katie Wallat <kwallat@copolicy.org>

Mon 8/26/2024 3:15 PM

To: Bethany Pray <bpray@copolicy.org>

Katie Wallat, Esq.

Legal Director

she/her ([why pronouns matter](#))

[copolicy.org] Colorado Center on Law and Policy

789 N. Sherman St., Suite 300

Denver, CO 80203

(303) 573 5669



Colorado Center
on Law and Policy

From: Megan Bowser <megan@familyvoicesco.org>

Sent: Monday, August 26, 2024 3:05 PM

To: Katie Wallat <kwallat@copolicy.org>

Subject: Fwd: Disability Application Status

Megan Bowser

Executive Director

Family Voices Colorado

megan@familyvoicesco.org

(303) 877-1747

Direct Line: (720) 853-8442

www.familyvoicesco.org



----- Forwarded message -----

From: **ARGcoloradoapps** <ARGcoloradoapps@equusworks.com>

Date: Tue, Apr 2, 2024 at 12:48 PM

Subject: Re: Disability Application Status

To: Megan Bowser <megan@familyvoicesco.org>

I am sorry but we are not allowed to accept applications from clients (or third parties) directly. They have to come from the County DHS office.

I apologize for any inconvenience,

Jean Loomis

Administrative Assistant

Action Review Group
P.O. Box 340
Olyphant, PA 18447

Phone: 877-265-1864

Fax: 877-672-2077

Email: jean.loomis@equusworks.com

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From: Megan Bowser <megan@familyvoicesco.org>
Sent: Tuesday, April 2, 2024 2:15 PM
To: ARGcoloradoapps <ARGcoloradoapps@equusworks.com>
Subject: Re: Disability Application Status

Is there any way for us to submit the application directly to you since it's been sitting at the county for so long?

Megan Bowser

Deputy Director
Family Voices Colorado
megan@familyvoicesco.org
(303) 877-1747
Direct Line: (720) 853-8442
www.familyvoicesco.org



On Tue, Apr 2, 2024 at 12:06 PM ARGcoloradoapps <ARGcoloradoapps@equusworks.com> wrote:

Hello,

We have not received an application for this client.

If you know the case developer handling the case, questions and/or status checks can be sent to the team at:

Supervisor:

Francine Rodgers - francine.rodgers@equusworks.com

Case Developers:

Dylan Wormuth - dylan.wormuth@equusworks.com

Brian Dankulich - brian.dankulich@equusworks.com

Shanel Garrison - shanel.garrison@equusworks.com

For Intake Applications & Supporting Documentation:

ARGcoloradoapps@equusworks.com

For General Inquiries and Status Checks:

ARGcoloradostatusinquiry@equusworks.com

Please note: This is an ongoing migration, and some email addresses are having issues. This changeover will be finalized in the near future, and the email addresses listed above will be the only ones that will work.

Thank you!

Regards,

Jean Loomis

Administrative Assistant

Action Review Group
P.O. Box 340
Olyphant, PA 18447

Phone: 877-265-1864

Fax: 877-672-2077

Email: jean.loomis@equusworks.com

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From: Megan Bowser <megan@familyvoicesco.org>

Sent: Monday, April 1, 2024 4:42 PM

To: ARGcoloradoapps <ARGcoloradoapps@equusworks.com>

Subject: Fwd: Disability Application Status

Megan Bowser

Deputy Director
Family Voices Colorado
megan@familyvoicesco.org
(303) 877-1747
Direct Line: (720) 853-8442
www.familyvoicesco.org



----- Forwarded message -----

From: **Megan Bowser** <megan@familyvoicesco.org>
Date: Fri, Mar 29, 2024 at 5:48 PM
Subject: Disability Application Status
To: ARGcoloradoapps <argcoloradoapps@rescare.com>

I'm reaching out to see if I can get a status update for X (DOB X) - ROI attached. Her disability application was submitted to Adam's County DHS in November but last mom had heard, you all had not received it. I'm hoping that's been resolved.

Megan Bowser

Deputy Director
Family Voices Colorado
megan@familyvoicesco.org
(303) 877-1747
Direct Line: (720) 853-8442
www.familyvoicesco.org



FW: timeframe

Christine Russell
<Christine.Russell@aveanna.com>

Wed 8/28/2024 1:52 PM

To: Bethany Pray <bpray@copolicy.org>



Chris Russell, Family Advocate
P: 303-880-1859
304 Inverness Way South Suite 125
Englewood, CO 80112
Christine.Russell@aveanna.com

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From: [REDACTED] <[REDACTED]@rmhumanservices.org>
Sent: Monday, July 1, 2024 1:50 PM
To: Christine Russell <Christine.Russell@aveanna.com>
Subject: [EXTERNAL SOURCE] RE: timeframe

This Message Is From an External Sender

This message came from outside your organization.

Hi Chris,

I hesitate to give a timeframe right now because we are quite behind, and we are putting processes in place to get caught up. I'd say families can expect to wait at least 4 months, maybe 6. They should definitely apply for buy-in in the meantime given how much we have to do.

From: Christine Russell <Christine.Russell@aveanna.com>
Sent: Monday, July 1, 2024 1:32 PM
To: [REDACTED] <[REDACTED]@rmhumanservices.org>
Subject: timeframe

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender, expect links and/or attachments, and know the content is safe.

Hi [REDACTED],

I hope things are looking up a bit. Would you be able to give me a typical timeframe between sending in the intake on the online form and hearing from a case manager. I want to prepare parents so they can get their kids on the Buy-In in the meantime if necessary. Thanks!!

Chris



Chris Russell, Family Advocate
P: 303-880-1859
304 Inverness Way South Suite 125
Englewood, CO 80112
Christine.Russell@aveanna.com

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Exhibit C: ARG Disability Decision Dates

The Social Security Administration (SSA) has already decided you do NOT have a disability

- If you disagree with that decision, you can appeal that decision with Social Security.
- If you have new critical and / or disabling conditions, you can submit a new disability application to your local COUNTY Department of Human or Social Services OR Medical Assistance SITE OFFICE.
 - For a listing of County Department of Human or Social Services OR Medical Assistance Site locations, please see <https://apps.colorado.gov/apps/maps/hcpf.map>

If you have any questions about this letter, please contact the State Disability Contractor at 877-265-1864

If you disagree with your disability determination, you have the right to appeal. Please see the Appeal Information section of this letter for more information.

Sincerely,



Dylan Wormuth
Disability Review Case Developer ARG,
State Disability Contractor

cc: - DENVER COUNTY

Your Case File #: [REDACTED]

Your SSN: ***-**-****

***** Important Dates *****

Disability Application Date 07/11/2023

This is the most recent date on the disability application we received.

Disability Decision Date: 04/03/2024

This is the date we made our disability determination.

Disability Onset Date: 10/30/2018

This is the date at which you became unable to work as a result of a disabling medical condition.

Disability Diary Date: 04/03/2027

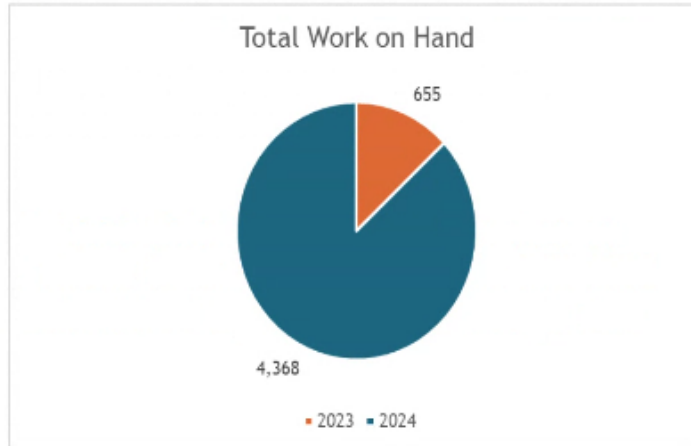
This is the due date for the periodic review of your disability claim, which will determine whether you still qualify as medically disabled under Social Security Administration rules.

The Diary Date is the deadline for your case review. If this date passes without a case review, your benefits may be impacted. If you have not received a new application or request for updated information related to your disability sixty (60) days prior to the Diary Date, please contact your Case Worker, County Department of Human / Social Services

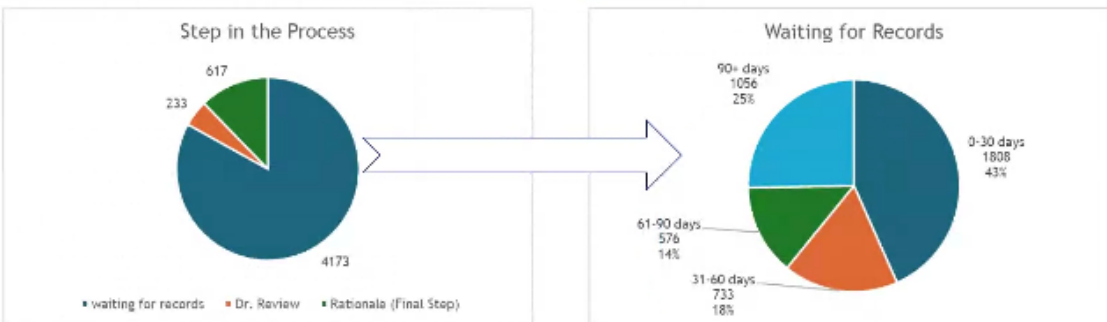
Data Update

As of 8/2/2024

- ARG has 5,023 Disability applications in process
- Focus has been on clearing 2023 backlog
- Total work on hand is increasing as ARG works to clear backlog



Data Update



83% of applications are waiting for medical records

- 61% are less than 60 days old
- 25% are greater than 90 days old

Backlog Reduction Plan

- **Objective:**
 - Complete all 90+ day cases from 2023 to June 2024 by December 30, 2024, ensuring that each application goes through the process until objective medical evidence is received and a determination can be made by physicians.
- **Key Milestones:**
 - **September 30, 2024:** All 2023 cases are completed.
 - **December 30, 2024:** All cases through June 2024 completed

Problems identified by HCPF to prompt processing of disability applications include understaffing at ARG, failure of providers to respond timely to requests for documents, refusal of providers to honor digital signatures on the disability application and unexpectedly high volume.