

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-20759-CIV-UNGARO

MARKEISHA JENKINS, on behalf of
and as parent and natural guardian of
LAMARIYA REDFORD, a minor,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

The defendants, by and through the undersigned Assistant United States Attorney, hereby answer the complaint and states:

1. The plaintiff has set forth a characterization of the case. To the extent that a response is required, paragraph 1 is denied.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. A. Defendant admits that the plaintiff served the defendant with an notice of intent to initiate litigation and attached copies of the letters and receipts to the complaint. The balance of the paragraph is denied.
B. Defendant admits that Pie Kamoso, M.D. Director, Performance Improvement, Economic Opportunity Family Health Center wrote a letter dated July 31, 2006 to the plaintiff's counsel and that a copy is attached to the complaint. Defendant admits that the

Economic Opportunity Family Health Center and Christ-Ann Magloire, M.D. are deemed to be “employees of the government” only to the extent provided in 28 U.S.C. Section 2671. The balance of the paragraph is denied.

C. The defendant admits that the plaintiff sent various copies of the administrative claim to several offices within the Health and Human Services (HHS) agency, the first of which the HHS has noted was received by the Claims office on August 11, 2006. The defendant admits that a copy of a return receipt reflecting receipt of an envelope was received at the HHS on August 21, 2007.

D. Defendant is without sufficient information to admit or deny, and denies same.

E. Defendant denies paragraph 4E. The claim was officially denied by letter dated May 16, 2007.

5. Defendant incorporates by reference answers to paragraphs 1 through 4 as set forth above.

6. Defendant admits that the Economic Opportunity Family Health Center and Christ-Ann Magloire, M.D. are deemed to be “employees of the government” only to the extent provided in 28 U.S.C. Section 2671. The balance of the paragraph is denied.

7. Defendant admits paragraph 7.

8. Defendant denies paragraph 8.

9. Defendant denies paragraph 9.

10. Defendant denies paragraph 10.

11. Defendant denies paragraph 11.

12. Defendant incorporates by reference the answers to paragraphs 1 through 4 as set forth

above.

13. Defendant admits paragraph 13.
14. Defendant admits paragraph 14.
15. Defendant admits paragraph 15.
16. Defendant admits paragraph 16.
17. Defendant is without sufficient knowledge or belief to admit or deny, and denies same.
18. Defendant admits paragraph 18.
19. Defendant denies paragraph 19.
20. Defendant denies paragraph 20.
21. Defendant denies paragraph 21.
22. Defendant denies paragraph 22.

Any allegations in the Complaint not specifically admitted are hereby denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. The plaintiffs' alleged injuries were not proximately caused by any negligent act or omission of any employee of the United States acting within the course and scope of his employment.
3. The amount of damages, if any, awarded to plaintiffs must be reduced by the amounts which have been paid for the benefit of the plaintiffs or which are available to them from collateral sources.
4. With regard to any derivative claim by Markeisha Jenkins, any award must be reduced in proportion to the negligence attributable to Markeisha Jenkins.

5. In the event the court finds the defendant negligent, any award to Lamariya Redford must be reduced in proportion to the negligence attributable to Markeisha Jenkins.
6. Plaintiffs' damages, if any, are subject to and limited to the provisions of Florida Statute 766.118.
7. Plaintiffs' damages, if any, are subject to and limited to the provisions of Florida Statute 768.81.
8. If defendant is found liable, defendant is entitled to a set-off of monies paid or payable to any party to this action by settlement or judgment or through an agreement entered into by plaintiff.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Karin D. Wherry _____
KARIN D. WHERRY

SERVICE LIST

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