

# Colorado mother sues over son's death after Medicaid denial

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A Denver mother, whose son died in 2009 after pharmacists wrongly insisted he was ineligible for Medicaid, has filed a lawsuit against the city and Denver County Human Services.

The mother, Zuton Lucero-Mills, was turned away by a Walgreen's pharmacy while seeking a refill on her son's prescription in March 2009. Pharmacists said he was listed as ineligible for drug coverage in the Colorado Benefits Management System, a statewide database of medical and food assistance recipients managed through county human services offices.

Nine-year-old Zumante suffered from life-long asthma that required medications and inhalers. His condition had been managed successfully with a combination of treatments since the time he was four months old, and Zumante was a healthy, active child involved in sports, school activities, and karate.

With regular treatment, asthma is an entirely manageable and non-fatal health condition that is very common among American children, particularly in low-income urban areas where pollution contributes to health problems and poor air quality.

For many poor families, Medicaid benefits are the only way to manage conditions like asthma because prescription drug costs can run hundreds or even thousands of dollars a month. Without coverage, such simple ailments can become life-threatening problems.

Desperate to restore her son's Medicaid coverage, Lucero-Mills called the Denver office several times every week to try to resolve an error in the department's computer system in the months leading up to the boy's death.

In a recent interview with local CBS news channel 4, Lucero-Mills described the bureaucratic nightmare she encountered. "They would tell me that they would forward a message to my caseworker and that they would have three days to call me back and if I hadn't received any return calls or correspondence by then, then I could call back.

"And so I would call back in three days, and they would say, 'There are no new notes on your case and we will

forward another message, and if they don't call you back, then you can call us back.' And sometimes I would call sooner than three days, and they would say, 'It has not been three days since you called, so we can't do anything for you. We're not going to send another message or put any new notes that you called. You're going to have to wait.'" (The unedited interview is available [here](#).)

According to an August 11 report in the *Denver Post*, most of Lucero-Mills' calls to the agency were not returned. She reached her caseworker only once, in March; in that conversation Lucero-Mills was told that the problem had been resolved.

Zumante's health deteriorated without the anti-inflammatory drug Advair, which had long kept the inflammation in his lungs down. He began suffering progressively more severe asthma attacks for which his mother had no treatment options other than the hospital emergency room.

During a June emergency room visit, sympathetic hospital staff gave the family sample packages of Advair. When his mother told him he would again have his medicine, Zumante was so relieved he broke down in tears. However, after months of going without, his lungs were badly inflamed and his asthma attacks were becoming unmanageable with only nebulizers and sporadic treatments.

On July 16, he collapsed, unable to breathe. Lucero-Mills called for an ambulance and held him as he fell unconscious. "I'm holding him in my lap and he's flailing because he's in an absolute panic because he can't breathe and then he passed out in my arms," she told CBS news channel 4. "I had him limp in my arms and I carried him down the stairs and out of the house and paced the yard as we waited for the ambulance to come. And the fire truck got there first and they looked at him... as though... that was an awful moment."

After lying unresponsive in the hospital's intensive care unit for four days, the ventilator was removed. He died shortly thereafter.

"He'd still be here [if he had gotten the medication]... and that is perhaps the saddest thing of all with this," she said. "I

don't think it's necessary that I'm sitting here. I don't think it's necessary that my son died and is in the cemetery. I don't think any of this is necessary—all preventable, and that is the heart-wrenching part of this.”

“You don't hear about people dying from asthma attacks, especially nine-year-olds. A nine-year-old little boy, you don't hear about that. People shouldn't die from asthma. It's absolutely treatable. So he should be sitting here.”

The lawsuit names the Human Services for Denver and three employees, including Zumante's caseworker and two supervisors in the office. Each time Lucero-Mills called the agency, paperwork confirming that Zumante qualified for Medicaid was automatically generated, yet the state database was never updated.

“Can it really be acceptable that in government, no one answers the phone?” John Holland, one of Lucero-Mills' attorneys, asked the *Denver Post*. “Who is responsible for nothing happening? Is it nobody? Is it God? Is it a computer? Or is it the people who didn't act?”

The suit seeks monetary damages for emotional loss and grief. Lucero-Mills has pursued the case for the past two years in part to make the problems in the disbursement system public. “I don't want any other mothers sitting where I'm sitting,” she told CBS 4. “I don't want any other children thinking about their own mortality—shouldn't have to happen.

“I want someone to wake up and say ‘we don't have to do this and we shouldn't have to do this and we're going to change this so this never happens again.’ I want Zumante's legacy to be one of life, and how we can sustain it, with not even a whole lot of effort.”

Michelle Tafoya, a worker at Rose Pediatrics who processes Medicaid and Child Health Plan cases, told the *Denver Post* in March 2010 that the computer errors such as the one that led to Zumante's death were rampant. “I deal with this every day,” she said. “There is some problem, someone I have to call, and it hurts care.” Tafoya was herself put through the maze of paperwork and phone calls due to a glitch in the system when she was denied at a pharmacy counter for medication for her son.

Indeed, eligibility errors have plagued the state system since it was introduced in 2004, according to a federal audit in 2010 that was prompted by internal complaints about system crashes.

At the same time, numerous legal cases have been brought against the Colorado Health Care Policy and Financing Department (HCPF) over delays in processing benefits in as many as 70 percent of cases. Earlier this year, the state settled in a lawsuit brought by the legal advocacy group Center on Law and Policy over benefit delays that affected nearly one quarter of a million enrollees.

Colorado Medicaid recipients are cut off from benefits when they must go through “redetermination” every year. The *Denver Post* reported on an October 2010 case in which a 52-year-old woman suffering from emphysema was pushed off of Medicaid, making her treatment unaffordable. She immediately appealed the decision and sought to have her benefits restored. On October 31, the woman nearly died after collapsing in the shower.

The delays and bureaucratic hurdles have been exacerbated by a huge rise in need since the onset of the economic crisis, with social workers overwhelmed by hundreds of additional cases, and departmental funding stretched.

HCPF reported that as of June, just under 590,000 residents were enrolled in the state's Medicaid program, and nearly 66,000 children received benefits through the Child Health Plan Plus (CHP+).

The advocacy group Colorado Covering Kids and Families states, “the piecemeal development of the eligibility and enrollment system over time has created a complicated maze of barriers for Medicaid and CHP+ applicants to navigate. A confusing application form, burdensome documentation requirements, unnecessary paperwork and administrative processes that make both families and state and local agencies process the same paperwork over and over again conspire to keep eligible families from coverage and add inefficiency to Colorado's public health coverage systems.”

While tens of thousands have enrolled since 2008, by one estimate, nearly 153,000 Colorado children are uninsured. Of these, 78,000 are eligible for CHP+ benefits. According to a report by the Robert Wood Johnson Foundation, uninsured children are eight times more likely than insured children to go without needed medical care.



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