

ATTORNEY NAME (BAR #)
ADDRESS

Attorneys for Plaintiff

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PLAINTIFF,

v.

XXXXXXXXXX, Director,
Arizona Health Care Cost
Containment System, in her official
capacity, ARIZONA HEALTH CARE
COST CONTAINMENT SYSTEM,
a state agency

DEFENDANTS.

No.

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS'
FEES, COSTS, AND OTHER
EXPENSES**

(Assigned to Hon. XXXXXX)

This matter was an administrative appeal of a decision of the Arizona Health Care Cost Containment System that denied Plaintiff, XXXX , a home modification that would provide him with wheelchair access to his backyard. After considering the administrative record and after presiding over oral argument, this Court determined that the Arizona Health Care Cost Containment System's decision was against the substantial weight of the evidence presented in the record and reversed that decision and found that the requested home modification to be a medical necessity for Plaintiff. This Court requested that Plaintiff submit his application for fees and other expenses pursuant to A.R.S. § 12-348.

**I. PLAINTIFF IS ENTITLED TO ATTORNEYS' FEES, COSTS,
AND OTHER EXPENSES REQUESTED UNDER A.R.S. § 12-348.**

Section 12-348 specifically provides that in addition to any costs authorized by statute, "a

court shall award fees and other expenses to any party” which prevails by an adjudication on the merits in a court decision to review a state agency decision. A.R.S. § 12-348(A)(2). Plaintiff is the prevailing party in this action and entitled to his fees, costs, and other expenses.

A. **Plaintiff Is Entitled To Attorneys’ Fees At The Prevailing Market Rate.**

Pursuant to A.R.S. § 12-348(E), Plaintiff is entitled to attorneys’ fees at the prevailing market rate. The statute provides that the court shall base any award of fees on prevailing market rates for the kind and quality of the services furnished, except that

the award of attorney fees may not exceed the amount which the prevailing party has paid or has agreed to pay the attorney or a maximum amount of seventy-five dollars per hour **unless** the court determines that an increase in the cost of living or a special factor, **such as the limited availability of qualified attorneys for the proceeding involved, justifies a higher fee.**

A.R.S. § 12-348(E)(2) (emphasis added).

Attorneys’ fees in this case should be awarded at the prevailing market rate because of the limited availability of qualified attorneys to represent XXXX *Affidavit of XXXX at & 6.* (See Exhibit A) XXXX is a teenager with significant disabilities. As a result of his complex disabilities, XXXX is a beneficiary of the State of Arizona’s Long Term Care Services (ALTCS), under the auspices of the Arizona Health Care Cost Containment System, the state’s designated Medicaid agency. Medicaid is a jointly-funded, Federal-State health insurance program for certain low-income and needy people, such as individuals who are elderly and/or disabled. Plaintiff’s counsel, XXXX is a public interest law firm that represents individuals [DESCRIBE CLIENTS] in advocating for their rights. XXXX represented XXXX on a pro bono basis. In Maricopa County, there is a dearth of qualified attorneys to represent plaintiffs with disabilities on a pro bono basis. XXXX *Affidavit at & 6.* XXXX are the only legal programs in Maricopa County that provide representation to litigants [DESCRIBE] in civil cases. XXXX *Affidavit at & 6.*

Affiant XXXX has been the Director of the XXXXXXXX for over six years. The purpose of

the Program is to provide representation to XXXX . XXXXX has extensive knowledge of the private bar and the availability of pro bono attorneys. XXXX states there are few, if any, private attorneys who represent individuals in administrative appeals to Superior Court on a pro bono basis. XXXX Affidavit at & 6.

The Arizona Supreme Court has held that the fact that no other attorneys would undertake a case on a pro bono basis satisfies the requirements of A.R.S. § 12-348 regarding the limited availability of qualified attorneys to provide representation. *Arnold v. Dep't. of Health Servs.*, 160 Ariz. 593, 608, 775 P.2d 521 (1989). In *Arnold*, the Supreme Court affirmed the trial court's decision that this special factor justified the award of attorneys' fees for the representation of the plaintiffs at the prevailing market rate. *See generally, Quine v. Godwin*, 132 Ariz. 409, 646 P.2d 294 (App. 1982) (award for pro bono representation promotes enforcement of individual rights and deters wrongdoing). Therefore, under *Arnold*, Plaintiff is entitled to attorneys' fees at the prevailing market rate in the instant case.

B. Plaintiff's Attorneys' Hours Are Reasonable.

Plaintiff's attorneys seek fees for a reasonable amount of hours. The hours are well documented. The Affidavits of XXXXXXXX and XXXXXXXX include itemized statements of the time expended in the litigation of this case. (*See Exhibit B*) Although two attorneys worked on the case, there was little duplication of effort in the hours claimed.

Plaintiff's counsel seek 79.3 hours for their work in this case. Plaintiffs have exercised sound billing judgment. Plaintiffs have not submitted fee requests for , the XX'S more senior attorneys who contributed to the case. Plaintiff has exercised sound billing judgment by discounting travel time. Plaintiff's counsel has also discounted all work in conjunction with the Plaintiff's application for attorney's fees, supporting memorandum and documentation. (*See Exhibit B*). Plaintiff's counsel seeks reimbursement for the reasonable time expended in representing Plaintiff in the administrative proceedings and in the Plaintiff's appeal to this Court. Therefore, Plaintiff respectfully requests that

this Court award him the attorneys' fees for the total hours sought in this matter.

C. **Plaintiff Is Entitled To All Costs And Other Expenses Requested.**

Plaintiff's counsel has submitted a detailed Statement of Costs and Other Expenses for the costs and other expenses expended to litigate this matter. (*See Exhibit C*).

A.R.S. § 12-348(A) provides:

In addition to any costs which are awarded as prescribed by statute, a court shall award fees and other expenses to any party other than this state or a city, town or county which prevails by an adjudication on the merits in any of the following:

Fees and other expenses are defined as:

[t]he reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test or project which the court finds to be directly related to and necessary for the presentation of the party's case and reasonable and necessary attorney fees, and in the case of an action to review an agency decision pursuant to subsection A, paragraph 2 of this section, all fees and other expenses that are incurred in the contested case proceedings in which the decision was rendered.

A.R.S. § 12-348I(1).

Plaintiff has itemized the costs and other expenses he seeks in this case. All are costs allowable under the statute. The expenses were necessary expenditures to litigate this case. Therefore, Plaintiff respectfully requests that this Court award him all the costs and other expenses sought.

CONCLUSION

For the reasons set forth above, the Plaintiff's Motion for an Award of Attorneys' Fees, Costs, and Other Expenses in the amount of \$ 12,664.00 should be granted.

RESPECTFULLY SUBMITTED this 4th day of December, 2001.

Attorney Name

Address

Attorneys for Plaintiff

ORIGINAL of the foregoing filed
this 4th day of December, 2001 with:

Clerk of the Court
Superior Court of Arizona
201 West Jefferson
Phoenix, Arizona 85003-2234

COPY of the foregoing hand-delivered
this 4th day of December, 2001 to:

The Honorable XXXXXXXXXXXX
East Court Building
101 W. Jefferson, Ste. 811
Phoenix, Arizona 85003

COPY of the foregoing mailed
this 4th day of December, 2001 to:

Attorney Name.
Firm
Address
City, State ZIP

Attorney for Defendants

By: _____