IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEBORAH M. HOMEWOOD, *et al.*,	:	
	:	**Case No. 2:15-CV-1119**
	:	
Plaintiffs,	:	**JUDGE ALGENON L. MARBLEY**
	:	
v.	:	**Magistrate Judge King**
	:	
JOHN McCARTHY, DIRECTOR OF THE OHIO DEPARTMENT OF MEDICAID	:	
	:	
Defendant.	:	

TEMPORARY RESTRAINING ORDER

This matter comes before the Court on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. (Doc. 3). Pursuant to Local Rule 65.1, on April 1, 2015, this Court held a Conference with counsel representing both parties. The Court entertained arguments on the Motion at the 65.1 Conference, and the portion of the Motion regarding a Temporary Restraining Order is now ripe for adjudication. For the following reasons, Plaintiffs' Motion for a Temporary Restraining Order pursuant to Federal Rule of Civil Procedure 65(b) is hereby **GRANTED in part and DENIED in part.**

I. BACKGROUND

Plaintiffs bring this action due to the Ohio Department of Medicaid's ("Department or "Defendant") alleged failure to comply with federal law, regulations and due process regarding yearly Medicaid eligibility redeterminations. First, Plaintiffs testify that the Department has failed to comply with federal regulation mandating a passive redetermination process for people currently receiving Medicaid. *See* 42 U.S.C. § 1396a(a)(8), 42 CFR § 435.916. Indeed, the Defendant states that the "passive" redetermination procedure required by

federal law should have been implemented on January 1, 2015, but it is not slated for implementation until May 2015. Second, Plaintiffs testify that Defendant has failed to comply with federal regulations mandating a pre-termination review process for people deemed ineligible for one type of Medicaid, but who may be eligible for a different category of Medicaid. *See* 42 U.S.C. § 1396a(a)(8), 42 C.F.R. § 435.916(f), 42 C.F.R. § 435.930(b); *Crippen v. Kheder*, 741 F.2d 102, 106-07 (6th Cir. 1984); *Crawley v. Amande*, No. 08–14040, 2009 U.S. Dist. LEXIS 40794, 2009 WL 1384147 (E.D.Mich. May 14, 2009). *See also Dozier v. Haveman*, No. 14-12455, 2014 WL 5480815, at *8 (E.D. Mich. Oct. 29, 2014).

Third, Plaintiffs testify that the termination notices sent to Medicaid recipients who are deemed ineligible after their yearly redeterminations do not comply with Due Process: the notices fail to include specific facts upon which the Department bases its decision, including, for instance, which pieces of documentation are missing for a recipient's file in order to perform a redetermination; (b) they fail to identify with specificity the regulations supporting its decision, including by using regulations that are no longer in effect; and (c) they fail to inform recipients of their rights to keep their Medicaid if they request a state hearing, or explain the difference between reapplying for benefits and requesting a hearing. *See Goldberg v. Kelly*, 397 U.S. 254, 268 (requiring that notice of termination to welfare recipients be reasonably calculated to inform the recipient of the action to be taken and an "effective opportunity to be heard"); *Hamby v. Neel*, 368 F.3d 549, 560 (6th Cir. 2004) (finding Medicaid termination notice was "constitutionally inadequate" that failed to advise applicants of the precise reasons for denial and precise factors effecting their right to appeal); *Day v. Shalala*, 23 F.3d 1052, 1066 (6th Cir.1994) (finding termination constitutionally deficient that failed to make clear the crucial distinction between appealing a determination and reapplying for benefits).

All individual Plaintiffs allege their benefits have been terminated or are at immediate risk of termination as a direct result of the legal and procedural infirmities in the Department's yearly Medicaid redetermination processes, which are identified above. While the Department has presented to this Court that the Medicaid benefits of all five of the individual Plaintiffs named in the Complaint have been restored, the Plaintiffs only concede that the benefits of Plaintiff Ibrahim have been restored. Further, Plaintiffs presented facts to this Court showing that the remaining four individual Plaintiffs face immediate risk of irreparable harm, in that they all face current or immediate loss of all medical insurance, and thus loss of access to any medical care, including medically necessary prescription medication and treatment.

Further, two organizational Plaintiffs seek injunctive relief on behalf of their members and all others similarly situated. Plaintiff Community Refugee and Immigration Services, Inc. ("CRIS") is a not-for-profit whose mission is to help immigrants and refugees attain self-sufficiency, including by helping them to obtain and maintain Medicaid benefits. CRIS is projected to apply for Medicaid for 600 individuals in this fiscal year, and to help many others undergo their redetermination process. To date, CRIS is aware of at least 20 constituents who have improperly received redetermination letters; further, three refuges have had their benefits terminated. Plaintiff Community Development for all People ("CDP") also is a not-for-profit whose mission is to improve the quality of life for low income people living on the South Side of Columbus. It has 45,000 members, 25,000 of whom are active. To fulfill its mission, CDP helps its members apply for and maintain Medicaid coverage, and it testifies that 50% to 80% of its members are eligible for Medicaid. At least nine members have informed CDP staff that they recently have received either notices of termination of their Medicaid benefits or have actually had their Medicaid benefits terminated.

II. ORDER

Pursuant to Federal Rule of Civil Procedure 65(b), a temporary restraining order is appropriate if a movant establishes both immediacy and irreparability of an alleged injury. This Court finds immediacy and irreparability of injury because Plaintiffs have presented evidence showing individual Plaintiffs' Medicaid benefits, and the Medicaid benefits of the members of the two associational Plaintiffs, have been terminated or are at immediate risk of termination as a direct result of procedures that violate federal law governing Medicaid redetermination, and due to termination notices which are in violation of Due Process. Loss of medically necessary medical benefits constitutes irreparable harm. *See Wood v. Detroit Diesel Corp.*, 213 F. App'x 463, 472 (6th Cir. 2007) (finding irreparable hardship where retired employees brought a class action challenging employer's attempts to unilaterally modify or reduce their health coverage by having them pay a premium contribution); *see also See Parents' League for Effective Autism Servs. v. Jones-Kelley*, 339 F. App'x 542, 552 (6th Cir. 2009) (finding loss of medically necessary public benefits, which could not be received from any other providers under other sources of federal of state funding, constitutes irreparable harm).

An association may obtain "standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (U.S. 1977) (holding). This Court finds that Plaintiffs CRIS and CDP have associational standing to seek injunctive relief on behalf of their members who receive Medicaid benefits, because: their thousands of members who currently receive Medicaid, and who undeniably have been subject to the infirm redetermination processes which affect all Medicaid recipients, would otherwise have

standing to seek relief in their own right; restoring and maintaining their members' Medicaid benefits is germane to the purposes of both organizations; and, the relief the organizations seek on behalf of their members does not require participation of individual members, considering they seek to correct unlawful procedures that harm every Medicaid recipient. *See Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (U.S. 1977).

Defendant is incorrect that CDP and CRIS have not shown injury-in-fact. In *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, a union brought suit on behalf of its members challenging the Secretary of Labor's interpretation of the Trade Act's eligibility requirements for unemployment benefits for employees laid off due to competition of imports. 477 U.S. 274, 284, 106 S. Ct. 2523, 2530, 91 L. Ed. 2d 228 (1986). The Supreme Court assumed that there were at least some members of the union who had yet to receive benefits they allegedly were due, and who would have standing to bring cases on their own behalf. The Court found, therefore, without requiring the union to identify individual members, that "there is no question here that among the [union's] members are many such individuals," who had and would be affected by the misinterpretation of the guidelines. *Id*. Thus, the Supreme Court found that under *Hunt*, the union had associational standing on behalf of "at least some" of its members who would otherwise have an individual "live interest" in challenging the guidelines. *Id*. at 284-6.

As in *International Union*, this Court assumes that by virtue of the fact that a high percentage of CDP's and CRIS's members are Medicaid recipients, at least some of their members recently have been subject to infirm redetermination processes that affect all Medicaid recipients. Indeed, CRIS and CDP have sworn affidavit testimony that a number of their

constituents recently have come forward seeking assistance with recent Medicaid terminations flowing from the infirm redetermination processes. Thus, there is no question here that among CDP's and CRIS's members, there are some, and likely many, individual members who would have standing in their own right to challenge the Department's practices. Thus, CDP and CRIS properly have asserted associational standing.

Associational Plaintiffs CDP and CRIS do not, however, have standing to seek injunctive relief on behalf of similarly situated Medicaid recipients who are not members of their respective organizations.

IT IS THEREFORE ORDERED:

A. Defendant is ordered to reinstate the Medicaid benefits for individual Plaintiffs Hoff, Homewood, Gilmore and Mustaqeen.

B. Defendant is enjoined from terminating CRIS's constituents' and CDP's members' Medicaid coverage until:

(1) Defendant adopts the practice of using notices of termination that: (a) set forth the specific facts upon which it bases its decision; (b) identify with specificity the existing regulations supporting its decision; (c) inform recipients of their rights to keep their Medicaid if they request a state hearing, and that explain the difference between reapplying for benefits and requesting a hearing; and

(2) Defendant institutes the passive Medicaid eligibility redetermination process in compliance with federal law, using information available to Defendants in Plaintiffs' members files and through databases accessible to agency; and

(3) Defendant institutes a procedure in compliance with federal law for conducting a pre-termination review to determine if Plaintiffs are eligible for any other category of Medicaid prior to termination of coverage.

C. If CRIS or CDP identify to the Defendant individual members who are as at risk of losing their Medicaid benefits as a result of redetermination processes, prior to the implementation of the above procedures, or identify to the Defendant individual members who have been terminated from January 1, 2015 to the present as a result of infirm redetermination processes, the Defendant is hereby ordered to reinstate those members that CRIS or CDP identified to the Defendant, until this Court has found the Department is compliant with federal law and due process, or until the preliminary injunction is ruled upon.

IT IS FURTHER ORDERED that, for good cause shown, Plaintiff will post a bond in the nominal amount of $1.00. *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (finding no bond is required when strong public interest is involved); *see also Cheatham v. Donovan*, No. 07-13168, 2009 WL 2922150, at *11 (E.D. Mich. Sept. 8, 2009) (citing *Moltan* and determining that "because of the strong public interest involved in this litigation, no bond is required").

This case is set for a preliminary injunction hearing at **10:00 a.m., on the 15th day of April, 2015**, before the Honorable Algenon L. Marbley, United States District Court, 85 Marconi Boulevard, Columbus, Ohio, Court Room 1.

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: April 2, 2015