UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

JANET AND FRANCIS MURNAGHAN

1024 Arbor Way

Newtown Square, Pa 19073

Civil Action No. 13-3083

Plaintiff. :

v.

:

UNITED STATES DEPARTMENT OF HEALTH: & HUMAN SERVICES; KATHLEEN SEBELIUS, : in her official capacity as Secretary of the U.S. : Department of Health & Human Services; : 200 Independence Ave., S.W., Room 120F : Washington, D.C. 20201 :

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Defendant.

ORDER

The Plaintiffs in this matter have moved on an emergency basis under Rule 65(b), Fed. R. Civ. P., for a temporary restraining order to prevent the Secretary of the United States Department of Health and Human Services (the "Secretary") from applying that aspect of Policy 3.7 of the Organ Procurement and Transplantation Network (the "OPTN") that discriminates against children under 12 in the system established by law for allocating donated lungs (the "Under 12 Rule") on the grounds that their 10-year-old daughter Sarah may soon die if she does not receive new lungs and that every hour that she can participate in the OPTN's system for allocating lungs without being forced to stand at the back of the line for the much larger pool of lungs donated from adults (more than 50 times greater than the pool of lungs donated from children under 12) could save her life. The Plaintiffs contend, *inter alia*, that the Under 12 Rule violates the command of the National Organ Transplant Act of 1984, 42 U.S.C. § 274(b)(2) that the system for allocating donated organs be "equitable" and address "the unique health care

needs of children" as well as the Secretary's own regulation, 42 C.F.R. § 121.8(b), which requires OPTN's policies to give greatest consideration to allocating organs based on medical urgency, and that the Secretary's refusal to set aside the Under 12 Rule to protect the very few children nationally who are subject to it, despite evidence showing that the Rule discriminates against children and serves no purpose, is arbitrary, capricious, and an abuse of discretion. AND NOW, having considered the matter, including the Declarations of Sharon Ruddock and Arthur Baines, it is hereby ordered that the motion for a TRO is granted and that the Secretary shall direct the OPTN to immediately cease application of the Under 12 Rule as to Sarah Murnaghan so that she can be considered for receipt of donated lungs from adults based on the medical severity of her condition as compared to the medical severity of persons over 12 in the OPTN system. This Order shall remain in effect unless and until the Court orders otherwise at the conclusion of the hearing on a preliminary injunction.

A hearing on the preliminary injunction will be held June 14, 2013, at 10 a.m. in Courtroom 3A.

/s/ Michael M. Baylson

MICHAEL M. BAYLSON U.S. District Judge 6/5/13

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