

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Peter B., Jimmy “Chip” E., and Michelle M.)

Plaintiffs,)

v.)

Marshall C. Sanford, Emma Forkner,)
Beverly Buscemi, Kelly Floyd,)
The South Carolina Department of Health)
and Human Services, and The South)
Carolina Department of Disabilities)
and Special Needs)

Defendants.)

C.A. No. 6:10-cv-00767-JMC

ORDER

This matter is before the Court on Defendant Marshall Sanford’s first motion to dismiss [Doc.# 11] pursuant to Federal Rules of Civil Procedure 12(b)(1) & (6). Plaintiffs allege violations of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act of 1973 (Section 54); the Medicaid Act, 42 U.S.C. § 1396; and 42 U.S.C. §§ 1983, 1985, 1988. The Magistrate Judge’s Report and Recommendation [Doc.# 73], filed on December 6, 2010, recommends that Defendant’s motion to dismiss [Doc. # 11] be granted as to all causes of action in Plaintiffs’ original Complaint [Doc. # 1]. Furthermore, Defendant should not be dismissed from the case insofar as additional averments against him, related to newly added Medicaid Act and 42 U.S.C. § 1983 claims, have not been implicated, and, therefore, are not addressed, by the present motion. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s

recommendation herein without a recitation.

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation [Doc. # 73] and incorporates it

herein. It is therefore **ORDERED** that Defendant's first motion to dismiss [Doc. # 11] is **GRANTED** as to all causes of action in Plaintiffs' original Complaint [Doc. # 1]. Defendant is not dismissed from the case insofar as additional averments against him, related to newly added Medicaid Act and 42U.S.C. § 1983 claims, have not been implicated, and, therefore, are not addressed, by the present motion.

IT IS SO ORDERED.

s/ J. Michelle Childs
United States District Judge

Greenville, South Carolina
February 1, 2011