

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MICHELE HADDAD,

Plaintiff,

vs.

Case No. 3:10-cv-414-J-99MMH-TEM

THOMAS ARNOLD, in his official capacity
as Secretary, Florida Agency for Health
Care Administration, and

DR. ANNA VIAMONTE ROSS, in her
official capacity as Secretary, Florida
Department of Health,

Defendants.

_____ /

ORDER GRANTING PRELIMINARY INJUNCTIVE RELIEF

THIS CAUSE is before the Court on Plaintiff Michele Haddad's Motion for Preliminary Injunction, Memorandum in Support Thereof, and Expedited Hearing (Doc. No. 2; Motion), filed on May 13, 2010. Plaintiff is suing Defendants, under 42 U.S.C. § 12133 and 29 U.S.C. § 794(a), alleging that they are discriminating against her on the basis of her disability in violation of the Americans with Disabilities Act (the "ADA") and the Rehabilitation Act (the "Rehab Act"). See Complaint (Doc. No. 1) at 1, 11-13. In the Motion, Plaintiff requests that the Court enjoin Defendants from denying her in-home health care services in order to prevent her from being forced into unnecessary institutionalization in a nursing home. See Motion at 1.

In support of her request, Plaintiff, a quadriplegic, contends that she has continuously lived in the community and could continue to do so if Defendants would provide her with the

services she is eligible to receive through the state's Traumatic Brain Injury/Spinal Cord Injury (TBI/SCI) Medicaid waiver program.¹ See id. at 2-5. To date, she has been denied those services due to a limitation on the number of persons who can participate in the program. See id. at 5. Thus, although eligible for the services, Plaintiff has remained on a waiting list for nearly two and a half years. See id. at 2, 5. Having lost her caregiver, Plaintiff now faces institutionalization if not provided in-home health care services such as those provided under the TBI/SCI waiver which she is otherwise medically and financially eligible to receive. See id. at 4.

I. PROCEDURAL HISTORY

Upon review of the Motion, the Court entered an order taking the Motion under advisement and directing Plaintiff to serve the Motion and supporting materials on Defendants. See May 13, 2010 Order (Doc. No. 4) at 1. While Plaintiff was complying with the Court's order, the United States filed a motion seeking leave to submit a brief in this action, see United States' Motion for Leave to Appear Specially (Doc. No. 6) at 1, and the Court granted that request, see May 21, 2010 Order at 1-2. As such, the United States filed its brief on May 24, 2010. See Statement of Interest of the United States of America (Doc. No. 10; Statement of Interest).

Once Plaintiff advised the Court that she had accomplished service of process,² the Court entered another order scheduling a hearing on the Motion for June 7, 2010, and

¹ Plaintiff also contends she should be provided the personal care services otherwise provided to persons in assisted living facilities. The Court does not address this contention in this Order.

² See Returns of Service (Doc. Nos. 11 and 12) filed May 25, 2010.

setting an expedited briefing schedule due to the urgency of this matter. See May 25, 2010 Order (Doc. No. 13) at 1-2. In the May 25, 2010 Order, the Court directed Defendants to respond to the Motion by May 28, 2010, and permitted Plaintiff to submit a reply brief on or before June 2, 2010. See id. at 2-3. However, on May 27, 2010, Defendants filed an emergency motion requesting an extension of time in which to file their response. See Emergency Motion for Extension of Time (Doc. No. 20; Emergency Motion) at 1-2. That same day, the Court held a telephonic hearing on the Emergency Motion. See May 27, 2010 Order (Doc. No. 21) at 1. During the hearing, Plaintiff's counsel advised that Plaintiff was currently hospitalized due to medical complications unrelated to the alleged denial of services that are the subject of this action. Although he did not know when she would be medically able to be discharged, he indicated that Plaintiff was in limbo and would be unable to go home without the provision of the services she seeks to compel Defendants to provide. After hearing from the parties, the Court granted Defendants' requested extension and continued the hearing on the Motion until June 15, 2010. See Clerk's Minutes (Doc. No. 22) at 1. However, in light of Plaintiff's circumstances, the Court directed Plaintiff's counsel to immediately file a notice if Plaintiff was medically able to be released from the hospital, but not able to do so because of the unavailability of in-home health care services. In accordance with the Court's directives from the May 27, 2010 hearing, the parties timely filed their responsive memoranda, see Defendants' Response and Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction (Doc. No. 27; Response); Plaintiff Michele Haddad's Response to Defendants' Memorandum in Opposition to the Preliminary Injunction (Doc. No. 29; Reply), which are supported by various documents.

The Court held a hearing on the Motion on June 15, 2010. At the beginning of the hearing, Plaintiff's counsel advised that Plaintiff's medical condition was improving. Indeed, Plaintiff was able to leave the hospital for a short period of time to attend a portion of the hearing in person. Her counsel also advised the Court that he had spoken to Plaintiff's social worker who indicated that Plaintiff would be discharged from the hospital in two to three weeks. At the conclusion of the hearing, after again confirming that Plaintiff was expected to be hospitalized for reasons unrelated to the allegations in this action for an additional period of two to three weeks, the Court requested additional briefing from the parties on one legal issue. Although it was the Court's initial request that the briefing be submitted on June 18, 2010, the Court accommodated a request from counsel that the deadline be set for Monday, June 21, 2010. The parties have filed those memoranda. See Plaintiff Michele Haddad's Memorandum in Response to the Court's Request Regarding Preliminary Injunction Standards (Doc. No. 41; Plaintiff's Memorandum); Defendants' Memorandum of Law on the Standard for Injunctive Relief (Doc. No. 43-1; Defendants' Memorandum); United States' Memorandum of Law Regarding the Preliminary Injunction Standard (Doc. No. 44; United States' Memorandum). In addition to filing Plaintiff's Memorandum on June 21, 2010, Plaintiff's counsel filed a notice indicating that he had "just received notice that Brooks Rehabilitation Hospital plans to discharge Michele Haddad on Thursday, June 24, 2010." See Notice of Status Regarding Michele Haddad (Doc. No. 40).

Having considered the arguments set forth in the Motion and the various memoranda filed by Plaintiff, the United States and Defendants, as well as the arguments presented during the June 15, 2010 hearing, the record of which this Court hereby incorporates, the

Court finds that the Motion is due to be granted. In reaching this conclusion, the Court has carefully considered each of the arguments set forth by Defendants in the Response and Defendant's Memorandum and those presented at the hearing. While the Court recognizes that its resolution of the issues raised in the Motion and the opposing memoranda warrants a thorough written analysis, the Court finds that the exigency of Plaintiff's current circumstances will not permit the completion of such an order in advance of Plaintiff's impending release from the hospital. Given that the Court has determined that the Motion is due to be granted, a delay in so ordering, simply to accommodate the preparation of a thorough legal opinion, could defeat the very purpose of the relief sought. As such, the Court has determined that resolving the Motion at this time is appropriate with an opinion setting forth the Court's reasoning to follow.³

II. STANDARD FOR RELIEF

A party seeking preliminary injunctive relief must establish that "(1) it has a substantial likelihood of success on the merits, (2) the movant will suffer irreparable injury unless the injunction is issued, (3) the threatened injury to the movant outweighs the possible injury that the injunction may cause the opposing party, and (4) if issued, the injunction would not disserve the public interest" before the district court may grant such relief. Horton v. St. Augustine, 272 F.3d 1318, 1326 (11th Cir. 2001) (citing Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000)); see also Int'l Cosmetics Exch. v. Capardis Health & Beauty, Inc., 303 F.3d 1242, 1246 (11th Cir. 2002) (citing Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51

³ Should the parties agree that such an order is unnecessary, they may so advise the Court.

F.3d 982, 985 (11th Cir. 1995)). Additionally, “[i]t is well established in this circuit that a preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion as to all four elements.” Siegel, 234 F.3d at 1176 (internal quotations and alterations omitted).

A typical preliminary injunction is prohibitive in nature and seeks simply to maintain the status quo pending a resolution of the merits of the case. See Mercedes-Benz U.S. Int’l, Inc. v. Cobasys, LLC, 605 F. Supp. 2d 1189, 1196 (N.D. Ala. 2009). When a preliminary injunction is sought to force another party to act, rather than simply to maintain the status quo, it becomes a “mandatory or affirmative injunction” and the burden on the moving party increases. Exhibitors Poster Exch. v. Nat’l Screen Serv. Corp., 441 F.2d 560, 561 (5th Cir. 1971). Indeed, a mandatory injunction “should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.” Id. (quoting Miami Beach Fed. Sav. & Loan Ass’n v. Callander, 256 F.2d 410, 415 (5th Cir. 1958)); see also Martinez v. Mathews, 544 F.2d 1233, 1243 (5th Cir. 1976) (“Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendente lite, is particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party.”)⁴ Accordingly, a plaintiff seeking such relief bears a heightened burden of demonstrating entitlement to preliminary injunctive relief. See Verizon Wireless Pers. Commc’n LP v. City of Jacksonville, Fla., 670 F. Supp. 2d 1330, 1346 (M.D. Fla. 2009) (quoting the Southern District of New York, “Where a mandatory injunction is sought, ‘courts apply a heightened standard of

⁴ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

review; plaintiff must make a clear showing of entitlement to the relief sought or demonstrate that extreme or serious damage would result absent the relief.”); Mercedes-Benz, 605 F. Supp. 2d at 1196; OM Group, Inc. v. Mooney, No. 2:05-cv-546-FtM-33SPC, 2006 WL 68791, at *8-9 (M.D. Fla. Jan. 11, 2006).

Here, the parties disagree as to the nature of the relief sought. Plaintiff contends that because she merely seeks to prohibit unlawful discrimination, the injunctive relief she requests is prohibitive in nature and does not seek to change the status quo. However, Defendants argue that because Plaintiff is not currently receiving in-home health care services from Defendants and requests that this Court order Defendants to provide her with such services, she seeks to change the status quo by requiring them to act. Because the Court determines that Plaintiff has satisfied the heightened burden of demonstrating her entitlement to mandatory preliminary injunctive relief, the Court need not resolve the parties' dispute as to the applicable standard.

III. FINDINGS

Upon due consideration of the record in this action, the Motion and Reply, the Response, the memoranda filed by the United States, the supplemental memoranda filed by the parties, and the arguments presented at the June 15, 2010 hearing, the Court finds that Plaintiff, Michele Haddad, has satisfied her burden of showing that the facts and law are

clearly in her favor and warrant the entry of preliminary injunctive relief in this action.⁵ Specifically, the Court finds that Plaintiff has made a clear showing that she has a significant and substantial likelihood of succeeding on the merits of her claim that Defendants' refusal to provide her with in-home based health care services for which she is financially and medically eligible, and which Defendants provide to others through the TBI/SCI Medicaid waiver program violates the ADA and the Rehab Act; that she will suffer irreparable injury unless the injunction is issued in that she is at imminent risk of being institutionalized in order to obtain the necessary services which Defendants refuse to provide her outside the institutional setting; that the threatened injury to Plaintiff outweighs the possible injury that the limited injunctive relief ordered here may cause Defendants; and that this injunction will not disserve the public interest.

In the Motion, Plaintiff requests that the Court waive the requirement that she post a bond pursuant to Federal Rule of Civil Procedure 65(c). Defendants do not appear to oppose this relief as they did not address it in their Response. The record in this action reflects that Plaintiff is indigent. Her sole source of support is her social security disability insurance payment, and she is eligible for both Medicare and Medicaid. In light of these representations, and in the absence of any opposition by Defendants, the Court will waive the requirement that Plaintiff post a bond.

⁵ The Court cautions that its findings in this Order are strictly limited to the unique circumstances currently facing Plaintiff, Michele Haddad, and are based upon the limited record now before the Court. Thus, this Court's order granting preliminary injunctive relief should not be interpreted as suggesting that the Court will find such relief warranted under circumstances different from those here, or that Defendants, on a more complete record, cannot establish that such relief would constitute an undue burden or that they have a comprehensive, effectively working plan for providing services to qualified individuals with disabilities obviating the need for such relief.

In light of the foregoing, the undersigned having found that Plaintiff has satisfied all of the prerequisites to the entry of the preliminary injunctive relief sought in this action, it is hereby **ORDERED**:

1. Plaintiff Michele Haddad's Motion for Preliminary Injunction, Memorandum in Support Thereof, and Expedited Hearing (Doc. No. 2; Motion) is **GRANTED**.

2. Defendants shall immediately re-assess Plaintiff's eligibility and placement on the waiting list for services under the Traumatic Brain Injury/Spinal Cord Injury Medicaid waiver program.

3. In the event that reassessment results in a decision that services are to be denied, Defendants, their officers, agents, employees, attorneys, and all persons who are in active concert or participation with them, are hereby enjoined from denying or otherwise refusing to provide Plaintiff services consistent with those that would be authorized by the Traumatic Brain Injury/Spinal Cord Injury Medicaid waiver program, pending further order of the Court.

4. Defendants shall continue to re-assess Plaintiff's status every **forty (40) days** and file a notice with the Court advising of Plaintiff's position on the waiting list.

5. Based upon the evidence presented, the Court determines that no security bond will be required under Federal Rule of Civil Procedure 65(c).

DONE AND ORDERED in Jacksonville, Florida, this 23rd day of June, 2010.


MARCIA MORALES HOWARD
United States District Judge

Copies to:

Counsel of Record