

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JACQUELINE JONES,

Plaintiff,

v.

Case No. 3:09-CV-1170-J34JRK

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.

MOTION FOR CLASS CERTIFICATION

Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiff Jones, through her counsel, submits this Motion for Class Certification.

1. Plaintiff respectfully request the Court to certify the case to proceed on behalf of the following class:

Florida disabled residents with a spinal cord injury who are Medicaid recipients; reside in the community; desire to continue to reside in the community instead of a nursing facility; could reside in the community with appropriate Medicaid-funded services; and are at risk, as determined by the recipient's treating physician or other treating health professional, of being forced to enter a nursing home because Defendants do not provide adequate community-based services.

2. Plaintiffs seek declaratory and injunctive relief under the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) to require Defendants to comply

with federal statutory law and federal regulations.

3. The named Plaintiff, Jacqueline Jones, seeks certification of this case as a class action pursuant to Fed. R. Civ. P. 23(b)(2) to pursue an efficient and just resolution of all class members' claims.

4. The proposed class consists of: Florida residents who currently, or at any time during this litigation: (1) are Medicaid eligible adults with spinal cord disabilities; (2) reside in the community and want to continue residing in the community and not in a nursing facility; (3) are at risk of institutionalization if they do not receive appropriate community-based Medicaid-funded services and (4) could reside in the community with appropriate Medicaid-funded community-based services.

5. **Numerosity:** The Plaintiff class is so numerous that joinder of all its members is impracticable. According to the recently released Kaiser Commission "Medicaid Home and Community-Based Service Programs: Data Update," at Table 11, there were 434 people with spinal cord injuries on Florida's "wait list" in FY 2008 for Medicaid community-based services. In December 2008, based on a document prepared by one of the Defendants, the Florida Medicaid waiting list for persons with spinal cord injuries had increased to 554 people. [Attachment "A."] By applying for community-based services, these people have indicated that they would rather live in the community. Joinder is impracticable because class members lack the knowledge and financial means to maintain individual actions.

6. **Commonality:** There are questions of law and fact that are common to all named Plaintiff, as well as to all putative class members, including whether Defendants failure to increase the number of people served in the community violates the Americans with Disabilities Act and the

Rehabilitation Act of 1973.

7. **Typicality:** The claims of the named Plaintiff is typical of the claims of the class as a whole in that the plaintiff and class members currently are at risk of institutionalization if Defendants do not provide appropriate community-based services.

8. **Adequate representation:** The named Plaintiff will fairly represent and adequately protect the interests of members of the class as a whole. The named Plaintiff does not have any interests antagonistic to those of other class members. By filing this action, the named Plaintiff has displayed an interest in vindicating their rights, as well as the claims of others who are similarly situated. The relief sought by the named Plaintiff will inure to the benefit of members of the class generally. The named Plaintiff is represented by counsel who are skilled and knowledgeable about civil rights litigation, disability discrimination, Medicaid law, practice and procedure in the federal courts and the prosecution and management of class action litigation.

9. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole under Fed. R. Civ. P. 23(b)(2). Although the specific disabilities of the class members vary, they share a common need for health and personal care services. A class action is superior to individual lawsuits for resolving this controversy.

10. The proposed class definition is adequate and includes identifiable class members. Any member of the proposed class would have the requisite standing to sue on his or her own behalf or in his or her own right.

WHEREFORE, Plaintiffs respectfully request that this court certify this case as a class action pursuant to Fed. R. Civ. P. 23(b)(2).

Respectfully submitted,

s/ Stephen F. Gold

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Counsel for the Plaintiff

LOCAL RULE 3.01 (g) CERTIFICATION

The undersigned counsel has attempted to discuss the matters raised with counsel for Agency for Health Care Administration and Florida Department of Health and has been informed by their office that they object to the relief sought herein.

s/ Stephen F. Gold

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by Notice of Electronic Filing, and was electronically filed with the Clerk of the Court via the CM/ECF system, which generates a notice of filing, to the following: **Andrew T. Sheeran**, Agency for Health Care Administration, Office of the General Counsel, 2727 Mahan Drive, Building 3, MS #3, Tallahassee, Florida 32308; **George L. Waas**, Florida Department of Health, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399, this 6th day of January, 2010.

s/ Stephen F. Gold

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