

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED ED4
DEC 17 2001
U.S. DISTRICT COURT

DONNA RADASZEWSKI, Guardian, on behalf)
of Eric Radaszewski,)

Plaintiff,)

vs.)

JACKIE GARNER, Director of Illinois)
Department of Public Aid,)

Defendant.)

Civil Action
No.

DOCKETED
DEC 17 2001
01C 9551
JUDGE JOHN W. DARRAH

NOTICE OF REMOVAL

MAGISTRATE JUDGE LEVIN

To the Judges of the United States District Court for the Northern District of Illinois:

The petition of Defendant JACKIE GARNER, Director of the Illinois Department of Public Aid ("IDPA"), respectfully shows:

1. On December 1, 2000, an action was commenced against Petitioner in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, entitled Donna Radaszewski, Guardian, on behalf of Eric Radaszewski, Plaintiff, against Ann Patla (predecessor in office to Petitioner), Director of Illinois Department of Public Aid, Defendant, Docket No. 00 CH 1475. Copies of the Summons and Complaint for Injunctive Relief served upon Petitioner are annexed hereto as Exhibit A.

2. The case stated by the Complaint for Injunctive Relief initially served upon Petitioner was not removable to this Court in that all the claims alleged therein were based on state law. Plaintiff was challenging the reduction of the amount of in-home private duty nursing provided by IDPA under Illinois' Medicaid program to her son after he reached age 21. Plaintiff's four-count Complaint charged that (1) IDPA's limitation of private duty nursing services provided to

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adult Medicaid recipients constituted an invalid rule not adopted in accordance with notice and comment rulemaking procedures specified in Illinois' Administrative Procedure Act, 5 ILCS 100/1-1 et seq. (Count I); (2) IDPA violated Illinois' Medicaid Plan by failing to provide Eric with the full amount of private duty nursing described in the Plan (Count II); (3) IDPA's refusal to cover all the private duty nursing sought for Eric violated 89 Illinois Administrative Code §140.435(b)(2) (Count III); and (4) IDPA committed a breach of contract by failing to provide the full amount of private duty nursing included in Illinois' Medicaid Plan to Eric (Count IV).

3. On October 15, 2001, Plaintiff served on Petitioner a Motion for Leave to File Supplemental Complaint and a Supplemental Complaint for Injunctive Relief, copies of which are annexed hereto as Exhibits C and D. Although she realleged the four counts previously brought in her initial Complaint and brought a new count alleging that IDPA had violated the Illinois Administrative Procedure Act by amending 89 Illinois Administrative Code §§140.435 and 140.436 to delete all text relating to payment for private duty nursing (Count V), Plaintiff added two new counts alleging violations of federal law. Specifically, Plaintiff charged that (1) IDPA's failure to provide Eric the amount of in-home nursing she sought violated Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, and one of its implementing regulations, 28 C.F.R. §35.130 (Count VI), and (2) IDPA's failure to provide the sought-for amount of in-home nursing violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and one of its implementing regulations, 28 C.F.R. §41.51(d) (Count VII). On November 15, 2001, the Circuit Court granted Plaintiff leave to file her Supplemental Complaint instanter. See Order annexed hereto as Exhibit E. Thus it first became ascertainable on November 15, when the Circuit Court granted Plaintiff leave to file her federal claims instanter, that this action had become removable to this Court.

4. By reason of the said amendment of Plaintiff's Complaint for Injunctive Relief the above described action is now a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. §1331, and is one which may be removed to this Court by Petitioner, Defendant therein, pursuant to the provisions of 28 U.S.C. §§1441 and 1446(b). This action alleges controversies arising out of United States statutes and regulations, *i.e.*, 29 U.S.C. §794, 42 U.S.C. §12132, and 28 C.F.R. §§35.130 and 41.51(d), and matters alleged by Plaintiff are governed by these provisions of federal law. Furthermore, Plaintiff asserts separate and independent claims, rights and causes of action arising under these laws of the United States. If sued upon alone, these claims, rights and causes of action would be ones of which this Court has original jurisdiction under 28 U.S.C. §1331, and which could be removed to this Court by Petitioner. Under 28 U.S.C. §1441(c), this entire case is one which may be removed to this Court.

5. For the foregoing reasons, Petitioner desires and is entitled to have this cause removed from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois to the United States District Court for the Northern District of Illinois, Eastern Division, such being the district where this suit is pending, and conditioned that Petitioner will pay all costs and disbursements incurred by reason of these removal proceedings should it be determined that this case was not removable or was improperly removed.

6. Pursuant to the provisions of 28 U.S.C. §1446, Petitioner attaches herewith and incorporates herein by reference true copies of the following documents in this action:

- (a) Summons and Complaint in Radaszewki v. Patla, No. 00 CH 1475, filed in Circuit Court of Eighteenth Judicial Circuit, County of Du Page, State of Illinois, on December 1, 2000, marked as Exhibit A.

- (b) Order, entered by Circuit Court on December 19, 2000, (1) denying Defendant's Motion to Dismiss, (2) granting Plaintiff's Motion for Temporary Restraining Order and (3) ordering Defendant to maintain level of private duty nursing Eric Radaszewski received before he turned 21, marked as Exhibit B.
- (c) Plaintiff's Motion for Leave to File Supplemental Complaint and to Extend Temporary Restraining Order, served on Defendant on October 15, 2001, marked as Exhibit C.
- (d) Plaintiff's Supplemental Complaint for Injunctive Relief, served on Defendant on October 15, 2001, marked as Exhibit D.
- (e) Order, entered by Circuit Court on November 15, 2001, (1) denying Defendant's Motion to Vacate Temporary Restraining Order and Dismiss Case as Moot, (2) granting Plaintiff's Motion to Extend Temporary Restraining Order and (3) granting Plaintiff leave to file Supplemental Complaint instanter, marked as Exhibit E.

7. Written notice of the filing of this Petition will be given to adverse parties as required by law.

8. A true copy of this Petition will be filed with the Clerk of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois as provided by law.

WHEREFORE, Petitioner prays that the above action now pending against her in the Circuit Court of he Eighteenth Judicial Circuit, DuPage County, State of Illinois, be removed therefrom to this Court.

Respectfully submitted,

James C. O'Connell
David Adler
Christopher S. Gange
Assistant Attorneys General
(Of Counsel)
160 N. LaSalle St., Ste. N-1000
Chicago, Illinois 60601
(312) 793-2380
Attorneys for Petitioner-Defendant
Date: December 14, 2001

By:

James E. Ryan,
Attorney General of Illinois



**SEE CASE
FILE FOR
EXHIBITS**

Cat #2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS FILED-ED4

Civil Cover Sheet

01 DEC 14 AM 11:13

U.S. DISTRICT COURT

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only the Northern District of Illinois.

Plaintiff(s): **DONNA RADASZEWSKI, Guardian, on behalf of ERIC RADASZEWSKI** Defendant(s): **JACKIE GARNER, Director of Illinois Department of Public Aid**

County of Residence: DuPage

County of Residence:

Plaintiff's Atty: Eliot Abarbanel
Prairie State Legal Services, Inc.
350 S. Schmale Rd., Ste. 150,
Carol Stream, IL 60188
(630) 690-2130

Defendant's Atty: James C. O'Connell
Office of the Illinois Attorney
General
160 N. LaSalle St., Ste.
N-1000, Chicago, IL 60601
(312) 793-2380

DOCKETED
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II. Basis of Jurisdiction

3. Federal Question (U.S. not a party)

III. Citizenship of Principle Parties (Diversity Cases Only)

Plaintiff:-N/A
Defendant:-N/A

01C 9551

JUDGE JOHN W. DARRAH
MAGISTRATE JUDGE LEVIN

IV. Origin :

2. Removed From State Court

V. Nature of Suit:

444 Welfare

VI. Cause of Action:

State court action, removed pursuant to 28 U.S.C. 1441 and 1446(b), raises federal claims under Americans with Disabilities Act, 42 U.S.C. 12132, and Rehabilitation Act, 29 U.S.C. 794.

VII. Requested in Complaint

Class Action:No
Dollar Demand:Injunctive Relief
Jury Demand:No

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature: *James C. O'Connell*

Date: DEC 13, 2001

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

Eastern Division

In the Matter of

DONNA RADASZEWSKI, Guardian, on behalf of ERIC
RADASZEWSKI

v.

JACKIE GARNER, Director of Illinois Department of Public Aid

Case Number:
01C 9551

FILED-ED4
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U.S. DISTRICT COURT

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR **JUDGE JOHN W DARRAI**
Defendant JACKIE GARNER, Director of the Illinois Department of Public Aid

MAGISTRATE JUDGE LEVIN

DOCKETED

DEC 17 2001

(A)			(B)		
SIGNATURE <i>James C. O'Connell</i>			SIGNATURE <i>David Adler</i>		
NAME James C. O'Connell			NAME David Adler		
FIRM Assistant Illinois Attorney General			FIRM (Same as A)		
STREET ADDRESS 160 N. LaSalle Street, Suite N-1000			STREET ADDRESS		
CITY/STATE/ZIP Chicago, Illinois 60601			CITY/STATE/ZIP		
TELEPHONE NUMBER (312) 793-2380			TELEPHONE NUMBER		
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 2084740			IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6189071		
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
			DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
(C)			(D)		
SIGNATURE <i>Christopher S. Gange</i>			SIGNATURE		
NAME Christopher S. Gange			NAME		
FIRM (Same as A)			FIRM		
STREET ADDRESS			STREET ADDRESS		
CITY/STATE/ZIP			CITY/STATE/ZIP		
TELEPHONE NUMBER			TELEPHONE NUMBER		
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6255970			IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		

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