

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID GROOMS,)	
)	
Plaintiff,)	
)	No. 06 C 2211
v.)	Judge Rebecca R. Pallmeyer
)	Magistrate Judge Martin C. Ashman
BARRY S. MARAM, Director,)	
Illinois Department of Healthcare and)	
Family Services,)	
)	
Defendant.)	

**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

NOW COMES Defendant, BARRY S. MARAM, Director of the Illinois Department of Healthcare and Family Services, in his official capacity only, by his attorney, LISA MADIGAN, Attorney General of Illinois, and hereby objects to Plaintiff's Motion for Preliminary Injunction, stating as follows:

1. On March 13, 2007, Plaintiff filed his Motion for Preliminary Injunction. (*Grooms v. Maram*, 06 C 2211, Civil Docket No. 42). This Motion was filed eleven months after Plaintiff filed his Complaint in this action on or about April 20, 2006. The Complaint, in turn, was filed some six months after Plaintiff began receiving benefits under the Persons with Disabilities Waiver of the Home Service Program.

2. Plaintiff's Motion for Preliminary Injunction should be denied because: 1) the Motion for Preliminary Injunction is not supported by any evidentiary material, and 2) Plaintiff is not entitled to a preliminary injunction because he has delayed seeking preliminary relief. In the alternative, any hearing on preliminary injunction should be consolidated with the trial on the merits under F.R.Civ.P. 65(a)(2).

**THE MOTION FOR PRELIMINARY INJUNCTION
IS NOT SUPPORTED BY EVIDENTIARY MATERIALS**

3. A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S.Ct. 1865 (1977). Accordingly, the motion for preliminary injunction must be accompanied by affidavits or a verified complaint. *See, Bascom Food Prods. v. Reese Finer Foods, Inc.*, 715 F.Supp. 616, 624 n. 14 (D.N.J. 1989).

4. Plaintiff's Motion for Preliminary Injunction is not supported by any evidentiary materials, such as affidavits. Moreover, the Complaint filed in this action on or about April 20, 2006 was not verified.

5. Consequently, Plaintiff's Motion for Preliminary Injunction is fatally flawed and must be denied since it lacks any evidentiary basis to make a clear showing of entitlement to an "extraordinary and drastic remedy." *Mazurek*, 520 U.S. at 972.

**PLAINTIFF HAS DELAYED SEEKING PRELIMINARY
RELIEF UNTIL NEAR THE CLOSE OF DISCOVERY**

6. Plaintiff filed his Complaint in this action on or about April 20, 2006. However, Plaintiff has been continuously eligible for and enrolled in the Persons with Disabilities Waiver since he turned 21 years old on October 8, 2005, and signed-off on a Service Plan as recently as January 24, 2007. In order to be eligible and receive benefits and services under the Persons with Disabilities Waiver, an individual's physician must certify that the care plan developed can safely provide care to the individual in the home. Plaintiff participated in the Persons with Disabilities Waiver for approximately six months before he filed his Complaint. Plaintiff did not seek preliminary relief contemporaneously with the filing of his Complaint.

7. On June 15, 2006, this Court entered a scheduling order setting forth the sequence of discovery, expert disclosure dates, the close of all discovery on April 27, 2007, and setting this matter for trial on July 16, 2007. (*Grooms v. Maram*, 06 C 2211, Civil Docket No. 13).

8. The parties have engaged in discovery. Plaintiff has not disclosed any retained expert witnesses. Defendant disclosed his retained expert, the expert's report, and has made available to Plaintiff documents utilized by the retained expert, in conformance with this Court's order entered March 5, 2007. (*Grooms v. Maram*, 06 C 2211, Civil Docket No. 41).

9. A preliminary injunction is sought upon the theory that there is an urgent need for speedy action to protect the plaintiff's rights. By sleeping on his rights, a plaintiff demonstrates the lack of need for speedy action. *Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984). While a plaintiff's delay in seeking an injunction is not alone a basis to withhold relief, it is a fact to be considered in measuring the claim of urgency. *Id.* at 1214; *Flint v. Dennison*, 336 F.Supp 2d 1065, 1070 (D. Mont. 2004).

10. Plaintiff's delay in seeking preliminary relief, taken in conjunction with the fact that he has, since October 8, 2005, been certified by his physician to participate in the Persons with Disabilities Waiver belies any claim that he has an urgent need for speedy action to protect his rights.

**SHOULD THE COURT WISH TO DETERMINE WHETHER
PRELIMINARY RELIEF MAY BE APPROPRIATE, THE COURT
SHOULD CONSOLIDATE THE HEARING FOR THE PRELIMINARY
INJUNCTION WITH THE TRIAL ON THE MERITS**

11. Pursuant to F.R.Civ.P. 65(a)(2), before or after the commencement of hearing of an application for a preliminary injunction, the court may order the trial of the action

on the merits to be advanced and consolidated with the hearing of the application. *See also Proimos v. Fair Auto Repair, Inc.*, 808 F.2d 1273, 1277-78 (7th Cir. 1987).

12. As detailed in Paragraphs 7 and 8 above, discovery is set to close shortly and the July 16, 2007 trial date can be advanced. Defendant is prepared to go to trial in this matter. Given the stage of the proceedings, it would certainly be judicially economical to advance the trial date and consolidate the preliminary injunction hearing with trial on the merits. Defendant would propose a trial date, based on the Court's availability, sometime after May 7, 2007. This date would allow the parties to compile their final pre-trial order materials to be prepared and submitted to the court after the close of discovery on April 27, 2007.

WHEREFORE, for the reasons stated above, Defendant respectfully requests that the court:

- 1) Deny Plaintiff's Motion for Preliminary Injunction; or
- 2) Advance the trial of the action on the merits and consolidate the trial with the hearing of the preliminary injunction on or after May 7, 2007; or
- 3) Allow Defendant such time to present evidence and a memorandum of law to respond to any such submission the Court may allow Plaintiff to file in support of his Motion for Preliminary Injunction.

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

By: John E. Huston
KAREN KONIECZNY #1506277
JOHN E. HUSTON #3128039
CHRISTOPHER S. GANGE #6255970
Assistant Attorneys General
160 N. LaSalle St. Suite N-1000
Chicago, IL 606012
(312) 793-2380

DATED: March 27, 2007

CERTIFICATE OF SERVICE

JOHN E. HUSTON, one of the attorneys of record for the Defendant, hereby certifies that he caused a copy of the foregoing **DEFENDANT'S OBJECTIONS TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** to be served by the Court's ECF/electronic mailing system upon the following:

Karen I. Ward
Byron L. Mason
Equip for Equality
20 N. Michigan Ave., Ste. 300
Chicago, IL 60602

*/s/John E. Huston*_____