

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

WILLIAM R. HAMPE, by and through his)
mother / guardian Jill Hampe, individually)
and on behalf of a class,)
Plaintiff,)

vs.)

JULIE HAMOS, in her official capacity)
as Director of the Illinois Department of)
Healthcare and Family Services,)
Defendant.)

No. 10-3121
Judge: William J. Hibler
Magistrate: Arlander Keys

PLAINTIFFS MOTION FOR CLASS CERTIFICATION

Now comes the Plaintiffs, by and through their attorney, Robert H. Farley, Jr., Ltd., and requests that this Court pursuant to Rule 23 of the F.R.C.P. to certify a class of Plaintiffs. In support of this motion, the Plaintiffs state as follows:

1. Plaintiffs seek certification of this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

2. The Class consists of the following:

All persons who are enrolled or will be enrolled or were enrolled in the State of Illinois Medically Fragile, Technology Dependent Medicaid Waiver Program (MF/TD) or Medicaid and when they obtain the age of 21 years are subjected to reduce Medicaid funding which reduces the medical level of care which they had been receiving prior to obtaining 21 years.

3. The Class is so numerous that joinder of all persons is impracticable. As of September 1, 2009, 504 children were receiving services in the MF/TD program on that specific date. From

July 1, 2007 through June 30, 2008, 606 children had received services in the MF/TD program.¹ “For the period of July 1, 2007 through [December, 2009], 37 individuals aged out of the waiver.”² In *Jones v. Maram*, 373 Ill.App.3d 184 (3rd Dist. 2007), Barbara Ginder from the State of Illinois stated in an affidavit “there were 34 active cases of 18 to 20-year-old individuals, 19 of whom were ventilator dependent” in the MFTDC program. *Id.*, at 192. “Ginder stated these individuals are likely to transition from MF/TD to HSP [Home Services Program] (if they select) at age 21.” *Id.* The class members have limited financial resources and are unlikely to institute individual actions.

4. The claims of the class members raise common questions of law and fact. These include:

(a) Whether the Defendant violated the ADA and Rehabilitation Act by reducing the level of funding for persons enrolled in the Illinois Medically Fragile, Technology Dependent Medicaid Waiver Program or Medicaid which resulted in a reduction of medical services.

(b) Whether the ADA and Rehabilitation Act permits the Defendant to reduce the level of funding which results in a reduction of medical services for disabled persons after the age of 21, even though there has been no change in their medical needs.

(c) Whether a fundamental alteration of the Illinois disability programs would occur if the Defendant provided funding to continue the same level of services for the Plaintiff and the putative class when they turn the age of 21 years;

¹ Exhibit “A” at page 3, Section 1 - “Report of Medicaid Services for Persons who are Medically Fragile, Technology Dependent - December, 2009.”

² Exhibit “A” at page 9, Section 6.

(d) Whether compelling an increase in the “exceptional care rate” for persons exiting the MF/TD program into the Illinois Home Services Program is unreasonable under the ADA and Rehabilitation Act; and

(e) Whether the Illinois disability programs can reasonable accommodate a modification to their existing programs to allow the Plaintiff and putative class to continue to receive the same level of care in the community when they turn 21 years of age.

The common questions of fact and law predominate over questions affecting only individual class members.

5. The Plaintiff's claims is typical of the class members' claims.

6. The Plaintiff is an adequate representatives of the class because he suffers from deprivations identical to those of the class members and has been denied the same federal rights that he seeks to enforce on behalf of the other class members. The Plaintiff will fairly and adequately represent the interests of the other class members, many of whom are unable to pursue claims on their own behalf as the result of their disabilities. Plaintiff's interest in obtaining injunctive relief for the violations of constitutional rights and privileges are consistent with and not antagonistic to those of any person within the class. Plaintiff's counsel is qualified, experienced and able to conduct the proposed litigation.

7. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:

(i) A multiplicity of suits with consequent burden on the courts and defendants should be avoided.

(ii) It would be virtually impossible for all class members to intervene as parties-

plaintiffs in this action.

8. This matter is brought as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure because the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class.

Wherefore, the Plaintiffs request that this Court enter an order certifying this action as a class action under Rule 23(b)(2).

Respectfully submitted,

/s/ Robert H. Farley, Jr.
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., Attorney for the Plaintiff, deposes and states that he caused the foregoing Plaintiffs' Motion For Class Certification to be to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 2nd day of June, 2010.

/s/ Robert H. Farley, Jr.