

IN THE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

A.M.T., by his mother and next friend Karla )  
T., *et al.*, )

Plaintiffs, )

vs. )

ANNE WALTERMANN MURPHY, *et al.*, )

Defendants. )

No. 1:10-cv-0358-JMS-TAB

**MORE DEFINITE STATEMENT**  
**CONCERNING LEGAL CLAIMS**

**COME NOW** Plaintiffs and the putative class, by counsel, and pursuant to this Court's Order of September 28, 2010 (R. Doc. 57), file this More Definite Statement Concerning Legal Claims. Specifically, the plaintiffs inform the Court and all other parties of the following:

1. On March 25, 2010, the plaintiffs filed their Class Action Complaint for Declaratory and Injunctive Relief ("Complaint") in this cause.
2. On May 17, 2010, the defendants filed their Motion to Dismiss (R. Doc. 33) and accompanying memorandum (R. Doc. 34) in this cause, in which they argued that the plaintiffs' Complaint should be dismissed insofar as "[t]he [p]laintiffs have made a broad, sweeping allegation that the [d]efendants are violating federal Medicaid law" and "do not point to a specific provision or provisions of federal Medicaid law that are violated by the alleged practices of the [d]efendants." Mem. in Supp. of Defts.' Mot. to Dismiss, at 3.
3. On September 28, 2010, the Court granted in part the defendants' Motion to Dismiss, "to the extent that it is treated as a motion for more definite statement," and ordered the

plaintiffs to file a more definite statement within fourteen days. Order of September 28, 2010, at 2–3.

4. Accordingly, the plaintiffs supply the following more definite statement concerning the legal claims of their Complaint (paragraph numbers are derived from the plaintiffs' Complaint):

81. The defendants' practice or policy whereby it denies and/or limits Medicaid coverage for the plaintiffs and the members of the class for physical therapy, occupational therapy, respiratory therapy, and/or speech pathology notwithstanding the fact that these services have been recommended and/or prescribed by a Medicaid recipient's physician or other licensed practitioner of the healing arts acting within the scope of his or her practice violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

82. The defendants' practice or policy whereby it refuses to cover "maintenance therapy" for the plaintiffs and the members of the class violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

83. The defendants' practice or policy whereby it refuses to cover therapies for more than two (2) years for the plaintiffs and the members of the class without a significant change in medical condition requiring longer therapy violates and is preempted by the following provisions of federal Medicaid law: 42 U.S.C. § 1396a(a)(8); 42 U.S.C. § 1396a(a)(10); 42 U.S.C. § 1396a(a)(17); and 42 C.F.R. § 440.230.

5. As noted during the hearing on the defendants' Motion to Dismiss conducted on September 22, 2010, 42 U.S.C. § 1396d is a definitional statute. Nonetheless, the plaintiffs inform the Court and all other parties that the following provisions of that statute are relevant to each of their legal claims: 42 U.S.C. § 1396d(a)(4)(B) (and 42 C.F.R. § 440.40(b) and 42 C.F.R. § 441.50, *et seq.*); 42 U.S.C. § 1396d(a)(11) (and 42 C.F.R. § 440.110); 42 U.S.C. § 1396d(a)(13) (and 42 C.F.R. § 440.130); 42 U.S.C. § 1396d(a)(20); and 42 U.S.C. § 1396d(r)(5). To the extent that the defendants' practices

or policies have attempted to redefine the relevant services, these practices or policies are also preempted by the definitional statutes and regulations.

**WHEREFORE**, the plaintiffs file their More Definite Statement Concerning Legal Claims pursuant to this Court's Order of September 28, 2010 (R. Doc. 57), and request all other proper relief.

Respectfully submitted,

*/s/ Gavin M. Rose*

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**CERTIFICATE OF SERVICE**

I hereby verify that on this 1st day of October, 2010, a copy of the foregoing was filed electronically with the Clerk of this Court. This filing may be accessed through the Court's electronic system. This filing was served on the following parties by operation of the Court's electronic system:

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