

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

MARLO M., by her guardians and next friends WILLIAM and CARLETTE PARRIS, and DURWOOD W. by his guardian and next friend WILLIE WILLIAMS,	)	
	)	Civil Case No. _____
Plaintiffs,	)	
	)	MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
v.	)	
	)	Fed. R. Civ. P. 65
LANIER CANSLER, in his official capacity as Secretary of the Department of Health and Human Services, and KAREN SALACKI, in her official capacity as Area Director of The Beacon Center Local Management Entity,	)	
	)	
Defendants	)	

---

Plaintiff Marlo M., by her guardians and next friends William and Carlette Parris, and Durwood W., by his guardian and next friend Willie Williams hereby move the court for a Temporary Restraining Order and a Preliminary Injunction, pursuant to Fed. R. Civ. P. 65, prohibiting Defendants from reducing or terminating Plaintiffs' State-funded services and/or requiring Defendants to provide sufficient services and funding under the CAP-MR/DD waiver, up to but not more than the waiver budget of \$135,000, to preserve Plaintiffs' level of care and community placements in their own homes.

Background

1. Plaintiffs suffer from a variety of chronic and disabling conditions, including mental retardation and some form of mental illness (MR/MI) that require twenty-four hours of care and supervision each day.

2. Plaintiffs are former recipients of *Thomas S.* funding (now called MR/MI funding) who have been receiving state-funded Supervised Living 811 services through North Carolina's DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. In addition, Plaintiffs receive health care and other services through North Carolina's Medicaid Assistance Program and Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities waiver (CAP-MR/DD).

3. Defendant Lanier Cansler is the Secretary of the North Carolina Department of Health and Human Services (DHHS). DHHS is the "single state agency" responsible for the administration and supervision of North Carolina's Medicaid program under Title XIX of the Social Security Act. 42 C.F.R. § 431.10 (2008). Secretary Cansler bears responsibility for the implementation and management of the North Carolina Medicaid program, including in particular the State's Medicaid waiver program, the Community Alternatives Program for Persons with Mental Retardation and Developmental Disabilities (CAP-MR/DD). Defendant Cansler is also responsible for the ultimate oversight of LME area directors to ensure that they provide publicly funded services in accordance with the law. *See* N.C.G.S. § 122C-111, *et seq.*

4. Defendant Karen Salacki is the Area Director of the Beacon Center, a Local Management Entity (LME), with a catchment area covering Edgecombe, Greene, Nash and Wilson Counties. Within the State and Medicaid-funded system of mental health, developmental disabilities, and substance abuse services in North Carolina, the LMEs are the locus of coordination for these services at the community level. *See* N.C.G.S. § 122C-101; N.C.G.S. § 112C-115.4(a). Defendant Salacki's responsibilities include

financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services. *See* N.C.G.S. § 112C-115.4(b)(7).

5. These Medicaid and state-funded services have allowed Plaintiffs to live successfully and independently in their own homes and to participate in family and community life; Plaintiff Marlo M. for more than five years and Plaintiff Durwood W. for approximately ten years.

6. On or about November 30, 2009, Defendant Karen Salacki, Area Director of the Beacon Center Local Management Entity (“LME”), notified Plaintiffs of her final decision to terminate the state funding Plaintiffs rely upon to remain in their own home as of December 15, 2009.

7. Pursuant to the North Carolina State Budget, Defendant Salacki has the discretion to maintain MR/MI state funds for Plaintiffs’ services. The budget legislation provides:

*Except as otherwise provided in this section for former Thomas S. recipients, CAP-MR/DD recipients are not eligible for any State-funded services except for those services for which there is not a comparable service in the CAP-MR/DD waiver. The excepted services are limited to guardianship, room and board, and time-limited supplemental staffing to stabilize residential placement. Former Thomas S. recipients currently living in community placements may continue to receive State-funded services.*

Session Law 2009-451 § 10.21B (emphasis added).

8. Upon information and belief, Defendant Salacki or her predecessor have authorized Plaintiff Marlo M. for \$64,298.40 per year for state-funded Supervised Living 811 services since 2005, which is the amount subject to termination on December 15, 2009. Upon information and belief, Plaintiff Marlo M.’s residential services provider has introduced cost-cutting measures that have decreased Plaintiff Marlo M.’s requested state

funds to \$51,548.95 per year. Under either budget, given that Plaintiff Marlo M.'s total proposed yearly budget (including state, federal, and personal funds) for services is \$114,053.16, the loss of state funds halves Plaintiff Marlo M.'s budget for necessary services.

9. Upon information and belief, Defendant Salacki or her predecessor have authorized Plaintiff Durwood W. for \$70,682.25 per year for state-funded Supervised Living 811 services since 2005, which is the amount subject to termination on December 15, 2009. Upon information and belief, Plaintiff Durwood W.'s residential services provider has introduced cost-cutting measures that have decreased Plaintiff Durwood W.'s requested state funds to \$55,399.70 per year. Under either budget, given that Plaintiff Durwood W.'s total proposed yearly budget (including state, federal, and personal funds) for services is \$111,582.44, the loss of state funds halves Plaintiff Durwood W.'s budget for necessary services.

10. As a result of these denials, Plaintiffs will be forced out of their community placement in their own homes into more restrictive congregate placements and/or institutions.

11. Defendant Cansler has failed to exercise his authority and direct Defendant Salacki to restore state-funded services for Plaintiffs and/or to direct the Division of Medical Assistance (DMA) or the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMHDDSAS) to make changes to the service definitions in the CAP-MR/DD waiver to allow Plaintiffs to access funding for continuous, twenty-four hour, direct residential care through the waiver.

12. Defendant Salacki has failed to properly exercise her discretion to assess Plaintiff's individual needs and maintain their state MR/MI funding and keep them in their long-time community placements.

13. Currently, Plaintiffs are faced with two equally discriminatory options when their state-funded services terminate on December 15, 2009: (1) transition to congregate placements that cannot meet Plaintiffs' need for constant care, support, and supervision or (2) enter institutions.

14. The Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, require that individuals with disabilities, such as Plaintiffs, be served in the least restrictive environment in the community when that option is cost-neutral as compared to an institution. Plaintiffs' placements have been successful and cost-effective as compared to their care in an institution for many years.

15. Plaintiffs will suffer irreparable injury if the Defendants are permitted to eliminate or significantly reduce their funding and services. Plaintiffs will exchange the safety and independence of their individual community placements, where they have been able to receive regular and reliable treatment and care, for more restrictive and inappropriate institutional or congregate settings that do not meet their needs. In addition, the entire system of care that Plaintiffs have enjoyed for years will be dismantled and is in danger of being permanently lost.

WHEREFORE, Plaintiffs seek a Temporary Restraining Order and a Preliminary Injunction to enjoin Defendants from reducing or terminating Plaintiffs' State-funded services on December 15, 2009, and to additionally or alternatively require Defendants to

make reasonable modifications to the service definitions in the CAP-MR/DD waiver to allow Plaintiffs to fully access the waiver budget of \$135,000.00, which would preserve Plaintiffs' access to twenty-four hour care and supervision and maintain their community placements in their own homes.

Dated: December 11, 2009

Respectfully submitted,

/s/ John R. Rittelmeyer \_\_\_\_\_

John R. Rittelmeyer  
john.rittelmeyer@disabilityrightsnc.org  
N.C. State Bar No. 17204

Jennifer L. Bills  
jennifer.bills@disabilityrightsnc.org  
N.C. State Bar No. 37467

Holly A. Stiles  
holly.stiles@disabilityrightsnc.org  
N.C. State Bar No. 38930

DISABILITY RIGHTS NC  
2626 Glenwood Avenue, Suite 550  
Raleigh, NC 27608  
Phone: (919) 856-2195  
Fax: (919) 856-2244

*Attorneys for Plaintiffs*