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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

The Arc of Washington State, Inc. a
Washington corporation, on behalf of its
members, et al.,

Plaintiffs,

v.

LYLE QUASIM, in his official capacity as the
Secretary of the Washington Department of
Social and Health Services, et al.,

Defendants

Case No. C99-5577FDB

ORDER

At the Pre-trial Conference, it became clear that the parties disagree about which of
Plaintiffs' claims remain for resolution at trial. Defendants argued in particular that the Court had
designated The Arc of Washington State as a class representative and had limited it to pressing class
claims. Plaintiffs argued that the Court's rulings left The Arc free to assert claims on behalf of its
members that are distinct from the class claims.

In its Order Granting Plaintiffs' Motion to Maintain Class Action, the Court authorized the
"named individual plaintiffs" to proceed as representatives on behalf of a narrowly defined class.
Order, p. 6, ln. 14 (emphasis added) (dkt. # 87). The Arc of Washington State was not designated
a class representative. In its subsequent orders, the Court has endeavored to distinguish between
the "Claims of the Named Individual Plaintiffs and the Class they Represent" and the "Claims of the
Arc of Washington State." See Order Denying Plaintiffs' Motion For Partial Summary Judgment, p.
3, ln. 17 and p. 10, ln. 2 (dkt. # 119), and Order Granting Defendants' Motion for Summary

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1 Judgment on ADA Claims, pp. 4-6 (dkt. # 132). The Court has treated the Arc and the class as
2 distinct parties, and they may properly present distinct claims in this action in so far as they raise
3 common questions of law and fact or arise from the same "series of transactions or occurrences."
4 Fed. R. Civ. P. 20(a).

5 Accordingly, the Court finds the following claims properly remain for resolution at trial:

6 **A. Class Claims:**

- 7 1) A claim under the Medicaid Act to hearings when applications for placement
8 on the HCBS waiver are denied.
9 2) A claim under the Equal Protection clause to placement on the HCBS waiver.

10 **B. Claims by The Arc on behalf of its members:**

- 11 3) A claim under the Medicaid Act that persons already on the HCBS waiver are
12 not receiving all the services to which they are entitled.¹
13 4) A claim under the Medicaid Act that persons eligible for ICF-MR services
14 are not receiving such services with reasonable promptness.²
15 5) A claim under the Medicaid Act that persons eligible for placements in ICF-
16 MRs are entitled to their choice of type of ICF-MR (in particular, that eligible
17 persons are entitled to choose "community residential" ICF-MRs as opposed
18 to the large, state-run institutions like the Fircrest School), and that the State
19 is obligated to provide services of the type chosen with reasonable
20 promptness.³

19 ¹Defendants' Trial Brief, pp. 12-13, misconstrues the Court's Order (dkt. # 119) as being
20 skeptical about the propriety of allowing *the Arc* to advance this claim. The Order expressed
21 skepticism about allowing *the named individual plaintiffs* to claim that they were already on the
22 waiver, because those plaintiffs had repeatedly stated that they had been improperly denied
23 placement on the waiver.

22 ²Plaintiffs did not highlight this claim until recently, and the Court did not discuss it in its
23 prior orders. It nonetheless falls squarely within the general terms of Plaintiffs' Complaint.

24 ³The Court decided that this is not a proper claim *for the class*, because there is a genuine
25 issue of fact concerning whether the named individual plaintiffs desire any sort of institutional care.
26 However, the Court has determined that *The Arc* has standing to press this claim on behalf of its
members. Order Granting Defendants' Motion for Summary Judgment, pp. 4-5 (dkt. # 132).

1 The resolution of these five claims will require determination of issues of both fact and law,
2 but it appears to the Court that issues of law predominate. The Court encourages the parties to
3 collaboratively determine the witnesses, if any, necessary to present the factual issues at trial, and
4 invites the parties to submit supplemental briefs in advance of trial on the following legal issues:

- 5 1) What sort of hearing (if any) does the Medicaid Act oblige the State to provide to persons
6 who are denied placement on the HCBS waiver?
- 7 2) Does the Equal Protection clause require the State to open the HCBS waiver program to all
8 those developmentally disabled persons eligible for institutional care?
- 9 3) Once a person is placed on the HCBS waiver, what determines the particular services to
10 which they are legally entitled under the Medicaid Act?
- 11 4) What period of time is consistent with the "reasonable promptness" requirement of 42
12 U.S.C. § 1396a(a)(8)?
- 13 5) Once the State determines that a person is eligible for ICF-MR care, does the Medicaid Act
14 require the State to offer that person a choice of type of ICF-MR and provide services in the
15 chosen type with reasonable promptness?

16 The Court is aware there is little time remaining before the scheduled mediation set for January 6,
17 2001 and the trial set for January 16, 2001, but believes supplemental briefings filed by January 5,
18 2001 may be instrumental in allowing the parties, the mediator, and this Court to achieve a just and
19 expeditious resolution of this matter.

20 DATED this 22 day of December, 2000.

21 
22 FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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ec

United States District Court
for the
Western District of Washington
December 22, 2000

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:99-cv-05577

True and correct copies of the attached were mailed by the clerk to the following:

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