UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

CLINTON L., by his guardian and next friend CLINTON L., SR., and TIMOTHY B. by his guardian and next friend ROSE B., VERNON W., by his guardian and next friend VERNON D. W., STEVEN C.,	)	CIVIL CASE NO. 1:10-CV-00123
Plaintiffs,	)	
v.	)	RENEWED MOTION FOR PRELIMINARY INJUNCTION
LANIER CANSLER, in his official capacity as Secretary of the Department of Health and Human Services, and DAN COUGHLIN, in his official capacity as CEO and Area Director of Piedmont Behavioral Healthcare Local Management Entity,	)	
Defendants	)	

Plaintiff Timothy B., by his guardian and next friend Rose B., and four additional Plaintiffs: Plaintiff Vernon W., by his guardian and next friend Vernon D. W., and Plaintiff Steven C., as well as Plaintiff-Intervener Jason A., by his guardian and next friend Brenda Arthur, and Diane D., by her guardian and next friend Thomas Smith, hereby renew their February 11 Motion for Preliminary Injunction, pursuant to Fed. R. Civ. P. 65, prohibiting Defendants from implementing any current or planned reductions to the daily reimbursement rate for Supervised Living services, otherwise known by their service codes YM-811 and YM-812, to preserve Plaintiffs' level of care and community placements in their own homes.

Plaintiffs Timothy B. and Vernon W. both face the elimination of this service and discharge by their residential provider on April 15, 2010, based on the provider's inability to continue the Supervised Living services at the new rate. On April 13, 2010, Plaintiff Steven C. faces eviction from his home and a forced move to a group home without any clinical determination as to the appropriateness of the group home placement. Plaintiff-Intervener Jason A. has already experienced a reduction in his level of support. The addition of another resident to what had been his two-bed group home has already resulted in an increase in his violent and self-injurious behaviors. Plaintiff-Intervener Diane D already has experienced a cut to her staffing level resulting from the rate cut on February 15, 2010. The provider of her services, Monarch, has informed Diane's guardian that, due to PBH's Supervised Living rate cuts and the elimination of other state-funded services, they will no longer be able to meet Diane's need for constant supervision. They have scheduled a meeting for April 8, 2010 to discuss alternative, more restrictive placements, such as a group home or an institution, and Monarch will terminate their services to Diane as of May 1, 2010.

In support of their motion, Plaintiffs state as follows:

1. Plaintiffs and Plaintiff-Interveners ("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. In addition, Plaintiff Timothy B. is deaf.

2. Plaintiffs are recipients of state-funded Supervised Living services, or *Thomas S.* funding (now called MR/MI funding), 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 the Cardinal Health Plan and Innovations Waiver programs offered by their Local Management Entity (LME), Piedmont Behavioral Healthcare (PBH).

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). Defendant Cansler is also responsible for the ultimate oversight of Local Management Entities to ensure that they provide publicly-funded services in accordance with the law. *See* N.C.G.S. § 122C-111, *et seq*.

4. Defendant Dan Coughlin is the CEO and Area Director of PBH, an LME with a geographic service area encompassing Cabarrus, Davidson, Rowan, Stanly, and Union Counties. Within the State and Medicaid-funded system of mental health, developmental disabilities, and substance abuse services in North Carolina, LMEs are the locus of coordination for these services at the community level. *See* N.C.G.S. § 122C-101; N.C.G.S. § 122C-115.4(a). Defendant Coughlin'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. § 122C-115.4(b)(7).

5. Defendant Coughlin is also responsible for the implementation and management of PBH's Medicaid Home and Community-Based Services (HCBS) Community Alternatives Program Waivers (the Innovations Waiver), consistent with federal law.

6. 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 Timothy B. for more than a decade, Plaintiff Vernon W. for over five years, Plaintiff Steven C. for over seven years, Plaintiff-Intervener Jason A. for nearly a decade, and Plaintiff-Intervener Diane D. for more than a decade. The Plans of Care for all Plaintiffs call for YM-811 or YM-812 services to be delivered, reflecting a determination by their treatment teams that the service is medically necessary. This determination of medical necessity has been ratified by PBH through its authorization for delivery of the service.

7. On January 11, 2010, PBH issued a memorandum to providers describing cuts to the Supervised Living services. Effective February 15, 2010, the per diem rate for Supervised Living services decreased to $116.15. The memorandum does not state that PBH will permit any exception to these rate cuts. PBH did not notify Plaintiffs of these rate cuts, choosing instead to give notice only to providers.

8. For all Plaintiffs except Timothy B. and Diane D., the proposed rate is nearly 30% less than the current rate. For Plaintiff Timothy B. and Plaintiff-Intervener Diane D., the proposed rate is nearly 55% less than the current rate.

9. On April 15, 2010, Plaintiffs Timothy B. and Vernon W. will face discharge from their respective providers. The discharge letters for both Plaintiffs specifically cite the rate reduction as the reason for discharging Plaintiffs. No plan is in place for the transfer of Timothy B.'s plan of care to the Wake County LME; to the contrary, Wake LME has not been appropriated sufficient state funds for his care, and it has not agreed to accept any transfer.

10. Plaintiff Steven C. was originally scheduled to be discharged from his current provider on March 21, 2010. In response to both the provider's discharge letter and to PBH's persistent threats to revoke Steven's guardianship, Steven applied to various group homes in the area. One of these group homes accepted Steven and has now offered him a place in their group home. Meanwhile, Steven's current provider has informally agreed to keep Steven in his current living arrangement until April 13, 2010, at which time Steven must accept the group home placement.

11. Plaintiff-Intervener Jason A. has already experience a cut to his staffing level resulting from the rate cut to YM-812 services on February 15, 2010. His provider, RHA, added another resident to what had previously been a two-bed group home, transforming it into a three-bed group home. This change has already resulted in an increase in Jason's violent and self-injurious behaviors.

Jason is already in a more restrictive and less supportive and integrated environment, and he is at imminent risk of failing in this placement, and having to be institutionalized.

12. Plaintiff-Intervener Diane D. has already experienced a cut to her staffing level resulting from the rate cut to YM-811 services on February 15, 2010. The provider of her services, Monarch, has informed Diane's guardian that, due to the Supervised Living rate cuts and the elimination of other state-funded services, they will no longer be able to meet Diane's need for constant supervision. Monarch has scheduled a meeting with Diane's family for April 8, 2010 to discuss alternative, more restrictive placements, such as a group home or an institution. Monarch will terminate its services to Diane as of May 1, 2010.

13. The costs incurred by the providers of residential services for Supervised Living consumers substantially exceed PBH's new per diem rate of $116.15. Because their providers would only be able to operate Supervised Living services at a loss, they are refusing to offer Plaintiffs the specified level of service in the five counties served by PBH. The rate cuts force providers to either offer a reduced level of service for these clients, or withdraw from offering the Supervised Living services altogether. Neither choice provides a level of care appropriate to Plaintiffs' needs.

14. As a result of the reduced rate, Plaintiffs will no longer have access to the level of care provided by Supervised Living YM-811 and YM-812 services.

Plaintiffs will then be forced out of their community placement in their own homes into more restrictive congregate placements and/or institutions.

15. Residential staffing services available through the Innovations Waiver cannot be combined in any way to achieve twenty-four hour staffing and supervision without reasonable modification of the service definitions. Consequently, a plan of care under the Innovations Waiver must be supplemented with additional state-funded services, such as Supervised Living services, if twenty-four hour staffing is required.

16. Currently, Plaintiffs are faced with two equally discriminatory options after their planned discharge date: (1) transition to congregate placements that cannot meet Plaintiffs' need for constant care, support, and supervision or (2) enter institutions.

17. Pursuant to Fed. R. Civ. P. 65(b)(1)(B), Plaintiffs' counsel certifies that it made efforts to give notice to Defendants of its intent to litigate this matter. On January 29, 2010, Plaintiffs' counsel faxed a copy of a demand letter to Defendant Coughlin at his place of business and delivered a copy of the same demand letter to Defendant Cansler.

18. 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. For many years, Plaintiffs' placements have been successful and cost-effective as compared to their care in an institution.

19. Defendant Coughlin has failed to properly exercise his authority and discretion to assess Plaintiffs' individual needs and maintain their state MR/MI funding and keep them in their long-time community placements. By his actions in sharply reducing the reimbursement rate for Plaintiffs' Supervised Living services, Defendant Coughlin has effectively abolished this necessary service in the area served by PBH.

20. 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 renew their motion for a Preliminary Injunction to enjoin Defendants from implementing any current or planned reductions to the daily reimbursement rate for Supervised Living services to allow Plaintiffs to preserve their access to twenty-four hour care and supervision and to maintain their community placements in their own homes.

Dated: April 7, 2010

/s/ John R. Rittelmeyer
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Certificate of Service

The undersigned hereby certifies that on April 7, 2010, I electronically filed the foregoing Plaintiffs' Renewed Motion for Preliminary Injunction with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

/s/ John R. Rittelmeyer

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