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United States District Court,
D. Delaware.

THE ARC OF DELAWARE, et al., Plaintiffs,
v.
Vincent MECONI, Secretary, Delaware Department of Health & Social Services, in his official capacity, et al. Defendants.

No. Civ.A. 02–255–KAJ. | June 13, 2005.

Attorneys and Law Firms

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Opinion

MEMORANDUM ORDER

JORDAN, J.

Introduction

***1** Before me is a motion for attorneys' fees (Docket Item ["D.I."] 91; the "Motion") filed by the plaintiffs in this now settled putative class action for health and rehabilitative services allegedly owed by the State of Delaware to the plaintiff class. (*See* D.I. 1 at ¶¶ 1, 110–135; D.I. 91 at ¶ 1.) For the reasons that follow, the Motion is granted.

Background

On April 8, 2002, nine individuals claiming to have developmental disabilities (D.I. 1 at ¶¶ 3, 17–65) and to need "residential placement, training, treatment, day services, therapies and other home and community-based services for which they are eligible and entitled" under federal law (*id.* at ¶ 1), including Title XIX of the Social Security Act (*see id.* at ¶¶ 110–111) and the Americans with Disabilities Act (*see id.* at ¶¶ 112–116), filed suit on their own behalf and, as they alleged, "on behalf of all other persons similarly situated" (*id.* at ¶¶ 1, 66). In addition, two advocacy organizations and a housing organization were named as plaintiffs. (*Id.* at ¶ ¶ 1, 9–15.) The defendants are Delaware state officials and governmental units responsible for administering Medicaid programs in the state. (*See id.* at ¶¶ 73–77.) The complaint lists eight claims for relief which basically assert that, through unreasonable delay and underfunding, the defendants have failed to properly administer Medicaid funded programs, resulting in a denial of the plaintiffs' regulatory, statutory, and constitutional rights. (*See, e.g., id.* at ¶¶ 110–135.) According to the plaintiffs, the "defendants ... adopted and implemented procedures, practices and policies that result[ed] in the denial of any meaningful choice of services ... to persons eligible for residential services." (*Id.* at ¶¶ 90.)

After the complaint was filed, there was extensive motions practice. The plaintiffs sought preliminary relief, which was denied. (D.I. 14; *see* D.I. 91 at ¶¶ 3–6.) The defendants filed a motion to dismiss, which was fully briefed and ultimately denied without prejudice when the parties indicated their intention to settle. (*See* D.I. 18—D.I. 21, D.I. 24—D.I. 25, D.I. 30—D.I. 31, D.I. 70.) So too was the plaintiffs' fully briefed motion for class certification. (*See* D.I. 44—D.I. 46, D.I. 53—D.I. 54, D.I. 64—D.I. 65; D.I. 70.)

Ultimately, the parties filed a stipulation and proposed order approving their settlement and dismissing the plaintiffs' claims. (D.I. 90.) As part of that stipulation, the parties acknowledged that they were bound by the terms of a Memorandum of Understanding (the "MOU") they had entered and which they incorporated into their stipulation and proposed order. (D.I. 90 at 2.) They further acknowledged that the MOU terms had been supplemented by other terms in the stipulation. (*Id.*) The parties expressly provided for the court to retain jurisdiction for the purpose of enforcing the agreement. (*See id.* at 7.) More specifically, the parties agreed to continuing jurisdiction to resolve disputes regarding compliance with the stipulation, such jurisdiction to terminate, with limited exception, by June 30, 2005. (*Id.*) They also agreed "that this Court's retention of jurisdiction for enforcement purposes shall not be dispositive of the issue of whether the plaintiffs are 'prevailing parties' for purposes of determining their eligibility for a statutorily authorized award of attorneys fees." (*Id.* at 5.)

***2** On August 26, 2004, I signed the proposed stipulated settlement and order. The present Motion followed.[1]

Standard of Review

Motions for attorneys fees are committed to the discretion of the court.[2] *See* 42 U.S.C. § 1988(b) (court may allow

fees, "in its discretion"); 42 U.S.C § 12205 (same); *Lanni v. New Jersey,* 259 F.3d 146, 148 (3d Cir.2001) ("We review the District Court's decision to award attorney's fees under an abuse of discretion standard."); *Silberman v. Bogle,* 683 F.2d 62, 64–65 (3d Cir.1982) ("We can find an abuse of discretion if no reasonable man would adopt the district court's view."). However, that discretion is limited, since "it is well settled that a prevailing plaintiff should recover an award of attorney's fees absent special circumstances." *Truesdell v. Philadelphia Housing Auth.,* 290 F.3d 159, 163 (3d Cir.2002) (quoting *County of Morris v. Nationalist Movement,* 273 F.3d 527, 535 (3d Cir.2001)).[3]

Discussion

Prevailing Party

The operative fee-shifting statutes, 42 U.S.C. § 1988(b) and 42 U.S.C § 12205, both provide that attorneys' fees can be awarded to a "prevailing party" in a law suit. "The Supreme Court has given a 'generous formulation' to the term 'prevailing party[.]" ' *Truesdell,* 290 F.3d at 163 (internal citation omitted). Under the standard adopted by the high court, "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart,* 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (quoting *Nadeau v. Helgemoe,* 581 F.2d 275, 278–279 (1st Cir.1978)). According to the Third Circuit, the Supreme Court has

> ... synthesized the definition of 'prevailing party' as follows: "[T]o be considered a prevailing party within the meaning of § 1988, the plaintiff must be able to point to a resolution of the dispute which *changes the legal relationship* between itself and the defendant." [*Texas State Teachers Ass'n v. Garland Independent School School Dist.,* 489 U.S. 782, 792, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989)] (emphasis added). "The touchstone of the prevailing party inquiry must be the *material alteration of the legal relationship of the parties...." Id.* at 792–93 (emphasis added).

Truesdell, 290 F.3d at 163.

The opportunity to claim "prevailing party" status is not limited to litigants who pursue a claim to judgment. A plaintiff can obtain fees from a defendant if the plaintiff has obtained " '[either] an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement...." ' *Id.* (quoting *Farrar v. Hobby,* 506 U.S. 103, 111, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992)). For a settlement to qualify as the basis for a fee award, however, the settlement must involve judicial approval and oversight. *See Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health and Human Resources,* 532 U.S. 598, 604 n. 7, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001) (noting that "[p]rivate settlements do not entail the judicial approval and oversight involved in consent decrees," and that "federal jurisdiction to enforce a private contractual settlement will often be lacking unless the terms of the agreement are incorporated into the order of dismissal"); *Truesdell,* 290 F.3d at 164 (quoting *Buckhannon* and noting Justice Scalia's observation in concurrence "that at least in the situation of court-approved settlements, 'the outcome is ... the product of, and bears the sanction of, judicial action in the lawsuit." ').

***3** In the case at bar, the defendants contend that the plaintiffs are not prevailing parties because "[t]hey did not succeed on any of the claims in their Complaint." (D.I. 94 at 19.) That assertion, even if it were true, fails to apply the legal test required by the Supreme Court's and the Third Circuit's decisions. As the *Truesdell* opinion amply demonstrates, the question is not, as defendants would have it, whether a plaintiff fully achieves success on the claims it makes. In *Truesdell,* the Third Circuit reversed a district court decision denying "prevailing party" status to a plaintiff. 290 F.3d at 161. The circuit court first re-emphasized that the definition of "prevailing party" is to be given a "generous formulation[.]" *Id.* at 165. It then focused on whether the plaintiff had materially altered his legal relationship with the defendant. As to one claim, the court observed he had achieved complete success. *Id.* The court did not stop its analysis there, however. It went on to examine the plaintiff's other claim and noted that, "while Truesdell did not achieve complete success ..., the litigation did bring about partial success [on that claim]...." *Id.* at 165–66.

The inquiry, then, must not be whether the plaintiffs achieved complete success, but, instead, and in light of the required "generous formulation" of "prevailing party," whether the plaintiffs achieved success in altering their legal relationship with the defendants. *See id.* at 165 ("[I]t would be difficult to conclude that Truesdell has not achieved a change in his legal relationship with [the defendant]...."). I am compelled to conclude that the plaintiffs in this case have met that test. Whereas, according to their allegations,[4] they had previously suffered interminable delays in getting the state to respond to requests for treatment opportunities and housing assistance, under the stipulated order[5] governing their settlement they have been assured "79 new residential placements for persons with developmental disabilities for State Fiscal Year 2005." (D.I. 90 at Ex. A., ¶ 3(a).) The stipulated order further provides that the individual plaintiffs who had not already received a residential placement and still wanted one would receive "assessments ... within thirty days...." (*Id.* at Ex. A., ¶ 2.) Other time frames are mandated by the stipulated order (*see, e.g. id.* at 4–5 and Ex. A, ¶¶ 4(b), 4(c)), placing

enforceable limits on the discretion of the defendants. Thus, whether or not one believes the plaintiffs in their assertion that they have "obtained substantially all of the relieve which they sought by this litigation" (D.I. 91 at 11, ¶ 18), they have clearly effected a "material alteration of the legal relationship of the parties," which is the touchstone for determining "prevailing party" status. *Texas State Teachers Ass'n,* 489 U.S. at 792–93.

Reasonable Fee Award

***4** Resolving the "prevailing party" question, however, only "brings the plaintiff[s] ... across the statutory threshold. It remains for the district court to determine what fee is 'reasonable." ' *Hensley,* 461 U.S. at 433. The plaintiffs have requested $215,938.60 in fees.[6]

After reviewing the parties' submissions, which include the plaintiffs' Motion with supporting affidavits (D.I.91), the defendants' response in opposition with supporting declaration and attachments (D.I.94), the plaintiffs' reply to the opposition, with further supporting documents, including time sheets (D.I.95), the defendants' supplemental opposing brief (D.I.98), and the plaintiffs' response thereto, with a further supporting affidavit (D.I. 99),[7] it is all the more apparent that this case was vigorously contested and its resolution thoroughly negotiated. At the end of the round upon round of briefing submitted on this Motion, the defendants are left disputing neither the reasonableness of the rates requested nor, for the most part, the number of hours that plaintiffs' counsel invested. Thus, with limited exception, the lodestar calculation submitted by the plaintiffs is uncontested. That is as it should be, since the fees and hours are reasonable, given the complexity of the case, the experience of the attorneys, and the result achieved.

The major dispute over the claimed fees bears on the sum attributable to approximately 154 hours spent between October 2003 and August 2004 negotiating the final form of the stipulated order. (*See* D.I.98 at 3.) The defendants are disturbed by what they perceive to have been an unfair and unnecessary additional expenditure of time and effort when, as they see it, the settlement had already been memorialized by the MOU. In their view, "[t]hose additional ten months ... were devoted solely to plaintiffs' lawyers efforts to re-negotiate the settlement to include additional terms that would support their eventual request for attorney's fees." (*Id.*) The defendants reason that the plaintiffs should therefore not be compensated the $37,019.50 they seek for that time. (*Id.*)

The plaintiffs respond that the defendants' objection to all time spent between October 2003 and August 2004 is overbroad, as it "would eliminate recovery for time spent meeting with the Court and Magistrate, for preparing the case management plan, and for consulting with clients so that counsel could ethically discharge their obligations...." (D.I. 99 at 2 n. 1.) Moreover, they assert, it is plain that the terms embodied in the stipulated order that go beyond the MOU confer substantive benefits on the putative plaintiff class, including "a re-evaluation of Plaintiffs' eligibility for services pursuant to the changed evaluation criteria, a re-evaluation of all clients (i.e. class members) utilizing the changed criteria, ... explicit enforceability of the MOU, dispute resolution provisions, and time lines for completion of agreements in the MOU." The plaintiffs reason that these benefits warrant compensation, and I agree.

***5** I need not speculate on the motives of plaintiffs' counsel. It is enough to know that the benefits for the plaintiffs set forth in the stipulated order are not a simple restatement of terms in the MOU. They are significant, substantive, additional benefits and their inclusion in the final form of the settlement represents an advance of the plaintiffs' legal interests for which fees are appropriate.

Conclusion

Accordingly, for the reasons stated herein, it is hereby ORDERED that the plaintiffs' Motion for attorneys fees (D.I.91) is GRANTED and the defendants shall pay $215,938.60 as the fees due to plaintiffs in this case, pursuant to 42 U.S.C. § 1988(b) and 42 U.S.C § 12205.

Footnotes

1 The Motion, on its face, states that it is brought "pursuant to Federal Rule of Civil Procedure 54." That rule requires that, "[u]nless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment...." Fed.R.Civ.P. 54(d)(2)(B). Here, the Motion was not filed until September 16, 2004, or 21 days after the stipulated settlement was executed on behalf of the court and made a binding order. No one has pointed to any exception in the applicable statutes to the time frame called for by Rule 54, nor did I earlier authorize a late filing of the fee motion. Nevertheless, no party has objected to the timeliness of the application, and the delay in this case does not appear to have prejudiced any party. I therefore consider the Motion on its merits.

2 Of course, that discretion is predicated on the application of the correct legal standards, which is subject to plenary review. *Lanni v. New Jersey,* 259 F.3d 146, 148 (3d Cir.2001).

3 Because the standards for awarding fees are generally the same when Congress authorizes fee shifting, *see Hensley v. Eckerhart,* 461 U.S. 424, 433 n. 7, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) ("The standards set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party." '), the provisions for attorneys fees set forth in the Americans with Disabilities Act, 42 U.S.C § 12205, and in the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b), are subject to the same discretion. Provisions unique to particular statutes not at issue here, such as the provision in the Equal Access to Justice Act forbidding the awarding of fees against the federal government if the government's position was "substantially justified[,]" 28 U.S.C. § 2412(d)(1)(A), are exceptions to the general rule.

4 *See, e.g.,* D.I. 1 at ¶¶ 104(c) ("[Plaintiffs] have lingered on lengthy waiting lists for years, waiting for necessary community-based residential or specialized in-home services and other support services [.]"); 104(d) ("[Plaintiffs] have been forced into permanent dependence status, including seeking assistance almost entirely from relatives who lack training and whose emotional, physical and financial resources are insufficient for their needs[.]").

5 As in *Truesdell,* the stipulated order here provides the requisite court sanction and oversight to be more akin to a consent decree than merely a "private settlement." *See* 290 F.3d at 165. On its face, the stipulated order provides mandatory and enforceable time frames for action by the defendants to benefit the plaintiffs and the putative plaintiff class (*see, e.g.,* D.I. 90 at 4–5); it is denominated as a "stipulation *and order"* (*id.* at 1 (emphasis added)); it contains specific enforcement provisions involving the potential of court oversight (*id.* at 5); tellingly, it includes a provision contemplating the filing of a fee application (*id.*); and, finally, it bears my signature as the presiding judicial officer (*id.* at 9).

6 The plaintiffs initially claimed $216,416.10 in fees, but that amount was reduced by $477.50 which, following a challenge by the defendants, the plaintiffs conceded was mistakenly added to their request. (*See* D.I. 99 at 3.) While the plaintiffs say the amount they are now seeking represents "fees and costs" (*see* D.I. 91, which is captioned "Plaintiffs' Motion for Attorney Fees and Costs"), it appears to be strictly a calculation of fees, with no separate information being submitted on costs.

7 I emphasize that this set of submissions was permitted (D.I.97) but is not the norm, since the local rules of this court provide that, other than an opening, answering, and reply brief, *see* L.R. 7.1.2(a), "[n]o additional briefs, affidavits, or other papers in support of or in opposition to the motion shall be filed without prior approval of the Court...." L.R. 7.1.2(c).