UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Walter Barry, et al.,

Plaintiffs, Case No. 13-cv-13185
Hon. Judith E. Levy

v.

Nick Lyon, in his capacity as
Acting Director, Michigan
Department of Human Services,

Defendant.

_____/

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR STAY OF JUDGMENT PENDING APPEAL [109]

This matter is before the Court on defendant's Nick Lyon's Motion for Stay of Judgment Pending Appeal, filed on March 27, 2015. (Dkt. 109.) After the motion was set for hearing, defendant filed a notice of appeal and moved the Court of Appeals for an emergency stay of all proceedings resulting from this Court's January 9, 2015 Opinion and Order and March 26, 2015 Judgment. (Case No. 15-1390, Dkt. 14.) The Court of Appeals denied the motion for an emergency stay, finding that

defendant "has not demonstrated a sufficient likelihood of success on the merits or irreparable harm to support a stay pending appeal." (Dkt. 117.)

The Court of Appeals also noted it would not consider the impact of the United States Supreme Court's decision in *Armstrong v. Exceptional Child Care Center, Inc.*, 135 S. Ct. 1378 (2015) on this case until this Court has done so. (*Id.* at 2.) To that end, the parties submitted supplemental briefs to this Court on the effect of *Armstrong* on defendant's likelihood of success on the merits of his appeal. (*See* Dkt. 118, 121, 122.) A hearing was held on May 5, 2015, at which the Court heard oral argument on the effect of *Armstrong*. As indicated at the hearing, and for the reasons set forth below, defendant's motion to stay will be denied.

I. Standard

The determination of whether to grant a stay pending appeal is governed by the same factors as a motion for a preliminary injunction: "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be

harmed if the court grants the stay; and (4) the public interest in granting the stay." *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). "In essence, a party seeking a stay must ordinarily demonstrate to a reviewing court that there is a likelihood of reversal." *Id.* If the movant "demonstrates irreparable harm that decidedly outweighs any potential harm to the [non-movant] if a stay is granted, he is still required to show, at a minimum, serious questions going to the merits." *Id.* at 153-54.

II. Analysis

As mentioned above, the Court of Appeals has already determined that defendant "has not demonstrated a sufficient likelihood of success on the merits or irreparable harm to support a stay pending appeal." (Dkt. 117.) The analysis here will therefore focus solely on the effect, if any, of *Armstrong* on defendant's likelihood of success on the merits.

A. The Supreme Court's Opinion in *Armstrong*

The issue in *Armstrong* was whether the respondents – Medicaid providers – had a right of action under the Supremacy Clause, Art. VI, cl. 2, to enforce a provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), against the state of Idaho. The providers claimed

Idaho violated §(30)(A) by reimbursing them for in-home medical services – "habilitation services" – at rates lower than those required by the statute. *Armstrong*, 135 S. Ct. at 1382. The district court entered summary judgment for the providers, and the Ninth Circuit affirmed, holding that the providers "had an implied right of action under the Supremacy Clause to seek injunctive relief against the enforcement or implementation of state legislation." *Id.* at 1383.

The Supreme Court reversed, first holding, in Part II of its Opinion, that the Supremacy Clause does not create an implied private right of action. *Armstrong*, 135 S. Ct. at 1384. The Court then addressed, in Part III of its Opinion, the question of whether the respondents could nonetheless seek equitable relief against Idaho. *Id.* at 1385. Equitable relief from the unconstitutional actions of state officers does not depend upon an implied right of action under the Supremacy Clause. *Id.* at 1384. Rather, such relief "is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action." *Id.*

Congress may, however, "displace the equitable relief that is traditionally available to enforce federal law." *Armstrong*, 135 S. Ct. at

1385-86. The Court held that Congress had done just that, based on two aspects of § 30(A). *Id.* at 1385. First, Congress provided a single remedy for a state's violation of Medicaid's requirements: the withholding of funds by the Secretary of Health and Human Services. *Id.* (citing 42 U.S.C. § 1396c). Second, the "judicially unadministrable nature of § 30(A)'s text" – namely, the requirement that a state plan provide for reimbursements "consistent with efficiency, economy, and quality of care," while "safeguard[ing] against unnecessary utilization of . . . care and services" – indicates Congress' intent for the agency, not the courts, to enforce § 30(A). *Id.* To be clear, the Court held that both of these aspects combined to foreclose equitable relief. *Id.* ("The provision for the Secretary's enforcement by withholding funds might not, *by itself*, preclude the availability of equitable relief . . . But it does so when combined with the judicially unadministrable nature of § 30(A)'s text.").

Justice Breyer concurred with four other justices in Parts I-III of the majority opinion. In his concurrence to Part III, Justice Breyer emphasized that the availability of equitable relief depends on the characteristics of the particular federal statute at issue. *Armstrong*,

135 S. Ct. at 1388. Justice Breyer agreed that the reimbursement standard in § 30(A) is "broad and nonspecific." *Id.* But he focused more narrowly on the fact that the standard applied to the setting of rates, a complex task for which administrative agencies are better suited than courts. *Id.* at 1388-89.

Part IV of the Opinion concerns the availability of a private right of action under § 30(A) itself. This issue was not before the Court, and only four justices joined Part IV. Part IV is thus dicta and is not binding precedent. In Part IV, four justices concluded that § 30(A) "lacks the sort of rights-creating language needed to imply a private right of action." *Armstrong*, 135 S. Ct. at 1387 (citing *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001)). Rather, § 30(A) "is phrased as a directive to the federal agency charged with approving state Medicaid plans." *Id.*

B. Application of *Armstrong* to this case

Defendant argues that *Armstrong* precludes relief for plaintiffs on Counts II, III, and IV of their complaint.[1] Specifically, defendant maintains (1) *Armstrong* precludes this Court's holding that sections

[1] Count I is brought to enforce plaintiffs' due process rights under the Fourteenth Amendment, not under a statute. Defendant's arguments about a private right of action therefore do not apply to Count I.

2020(e)(10) and 2014(a) of the SNAP Act create private rights enforceable under 42 U.S.C. § 1983 (Counts II and III) and (2) relief on Count IV is precluded by *Armstrong*'s holding that the Supremacy Clause does not create an implied right of action. Defendant stated at the hearing on this motion that his argument does not rely on Part IV of *Armstrong* – with good reason, since Part IV, as discussed above, is dicta and only garnered four votes.

1. Counts II and III

To begin with, defendant misreads *Armstrong*, citing the holding in Part III as support for his argument that the SNAP Act does not create a private right of action. (*See* Dkt. 121, Def.'s Supp. Br. 5-6.) As discussed above, Part III of *Armstrong* concerns the availability of equitable relief in the absence of a private right of action – not whether a private right of action is available in the first place. Part III simply has no bearing on whether the SNAP Act creates a private right of action.

Part IV of *Armstrong* does address whether § 30(A) of the Medicaid Act creates a private right of action. But again, Part IV is not binding law, and even if it were, it would not change this Court's

analysis. Part IV consists of a straightforward, although brief, analysis under *Blessing v. Freestone*, 520 U.S. 329 (1997) and *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002). Defendant is wrong to suggest that *Armstrong* narrows, or changes in any other way, the "availability of private rights of action to enforce statutes."

In the view of four justices, the language in § 30(A) – central to the private right of action analysis – "is phrased as a directive to the federal agency charged with approving state Medicaid plans." Slip Op. at 10. But § 30(A)'s language differs significantly from the relevant SNAP Act language, which is not phrased as a directive to an agency. *See* 7 U.S.C. §§ 2014(a), 2020(e)(10). Rather, as explained in the Court's January 9, 2015 Opinion and Order, the relevant SNAP Act provisions are "phrased in terms of the persons benefited." *Gonzaga*, 536 U.S. at 284.

In sum, *Armstrong* has no bearing on defendant's likelihood of success on Counts II and III.

2. Count IV

Armstrong thus only bears on Count IV, in which plaintiffs allege the SNAP Act expressly preempts Mich. Comp. Laws § 400.10b and

defendant's fugitive felon policy as set forth in Bridges Eligibility Manual 204 [hereinafter BEM 204]. (Dkt. 70, Second Amend. Compl. ¶ 373.)

Even if *Armstrong* precluded relief on Count IV, plaintiffs would still obtain the same relief through Count III – an injunction prohibiting enforcement of Mich. Comp. Laws § 400.10b and BEM 204. (*See* Dkt. 91, Opinion and Order 79.) *Armstrong* thus has no effect on defendant's likelihood of success on appeal.

Armstrong does not, however, preclude relief on Count IV. True, under *Armstrong*, plaintiffs do not have an implied right of action under the Supremacy Clause to enforce the SNAP Act. But they do not need one. As mentioned above, the relevant provisions of the SNAP Act create private rights enforceable under 42 U.S.C. § 1983. (Dkt. 91, Opinion and Order 58.) And, unlike in *Armstrong*, the plaintiffs here are entitled to relief under the Court's equitable power, independent of a private right of action.

The two aspects of § 30(A) of the Medicaid Act that precluded equitable relief in *Armstrong* are not present in the SNAP Act. First, the SNAP Act expressly contemplates private action to enforce its

provisions. Section 2020 (a)(3)(B)(ii) requires that any records necessary to determine a state program's compliance with the SNAP Act "shall . . . be available for review in any action filed by a household to enforce any provision of this chapter (including regulations issued under this chapter) . . ." (emphasis added). Section 2023 (b) provides for restoration of wrongfully withheld SNAP benefits "in any judicial action arising under this chapter."

Second, the relevant SNAP Act provisions are not "judicially unadministrable." *Armstrong*, 135 S. Ct. at 1385. Section 2015(k) sets forth the relevant eligibility disqualification in clear, objective language: the household member must be (1) "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony, and (2) law enforcement must be "actively seeking" that person "for the purpose of holding criminal proceedings" against him or her.[2] 7 U.S.C.

[2] Defendant has previously maintained that the clause "under the law of the place from which the individual is fleeing" means that state law, not federal law, determines the definition of fleeing. The Court has already explained why this interpretation is incorrect (Dkt. 91, Opinion and Order 81-83), but adds here that section 2020(e)(8) requires states to make available to law enforcement officers certain information about household members who are "fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony." 7 U.S.C. 2020(e)(8). This makes clear that state law determines only whether the relevant crime is a felony, not the meaning of "fleeing," in § 2015(k).

2015(k). The respective meanings of "fleeing" and "actively seeking" are relatively easy to determine – is the person trying to avoid arrest? Are police trying to find the person? The same cannot be said of "consistency," "efficiency," "economy," "quality," and "unnecessary," especially when they must all be considered in combination. *See* 42 U.S.C. § 1396a(a)(30)(A). Moreover, as Justice Breyer emphasized, § 30(A) concerns rate-setting, a complex task that requires administrative expertise.

Defendant is no likelier to obtain relief on Count IV as a result of *Armstrong*, as plaintiffs can enforce the relevant SNAP Act provisions by private action or, alternatively, through this Court's traditional equitable powers.

III. Conclusion

Defendant has failed to show that *Armstrong* increases his likelihood of success on appeal with respect to any of plaintiffs' claims. Accordingly, defendant's Motion for Stay of Judgment Pending Appeal (Dkt. 109) is DENIED.

IT IS SO ORDERED.

Dated: June 5, 2015 s/Judith E. Levy

Ann Arbor, Michigan

JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 5, 2015.

s/Felicia M. Moses
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Case Manager